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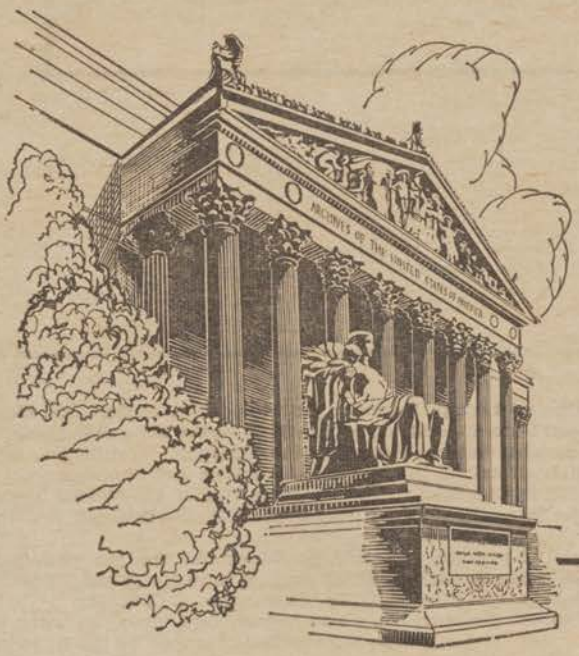

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Chapter VIII—Agricultural Stabilization and Conservation Service (Sugar), Department of Agriculture

SUBCHAPTER B—SUGAR REQUIREMENTS AND QUOTAS

[Sugar Reg. 814.8, Amdt. 2]

PART 814—ALLOTMENT OF SUGAR QUOTAS, MAINLAND CANE SUGAR AREA

1970

Basis and purpose. This allotment order is issued under section 205(a) of the Sugar Act of 1948, as amended (61 Stat. 926, as amended), hereinafter called the "Act", for the purpose of allotting the 1970 sugar quota for the Mainland Cane Sugar Area among persons who process sugar from sugarcane and market such sugar for consumption in the continental United States.

Section 205(a) of the Act requires the Secretary to allot a quota whenever he finds that the allotment is necessary among other things (1) to prevent disorderly marketing of sugar or liquid sugar and (2) to afford all interested persons an equitable opportunity to market sugar or liquid sugar. Section 205(a) also requires that such allotment be made after such hearing and upon such notice as the Secretary may prescribe.

Pursuant to the applicable rules of practice and procedure a preliminary finding was made that allotment of the quota is necessary and a notice was published on April 22, 1970 (35 F.R. 6434), of a public hearing to be held in Miami Beach, Fla., at the Eden Roc Hotel on May 22, 1970, beginning at 10 a.m., e.d.t., for the purpose of receiving evidence to enable the Secretary (1) to affirm or revoke the preliminary finding of necessity for allotments, (2) to establish a fair, efficient, and equitable allotment of the 1970 quota for the Mainland Cane Sugar Area, (3) to revise or amend the allotment of the quota for the purposes of (a) allotting any increase or decrease in the quota, (b) prorating any deficit in the allotment for any allottee when written notification of release by an allottee of any part of an allotment becomes a part of the official records of the Department, and (c) substituting revised or corrected data where such data becomes a part of the official records of the Department, and (4) to make provision for transfer and exchange of allotments.

The hearing was held at the place and time specified in the notice and testimony was given with respect to all of the issues referred to in the hearing notice. In arriving at the findings, conclusions, and regulatory provisions of this order, all proposed findings and conclusions were carefully and fully considered in conjunction with the record evidence pertaining thereto.

Omission of a recommended decision and effective date. The record of the hearing shows that the supply of sugar available for marketing is substantially in excess of the quota of 1,308,000 tons and that 1970 marketings of mainland cane sugar, unless restricted, would substantially exceed the 1970 quota for the Mainland Cane Sugar Area. The proceeding to which this order relates was instituted for the purpose of allotting the quota for the Mainland Cane Sugar Area to prevent disorderly marketing and to afford each interested person an equitable opportunity to market sugar within the quota for the area. In view of the need for allotments, it is imperative that processors know as soon as possible the approximate quantity of sugar each may market within the quota during the balance of the year in order to plan marketings and prevent disorderly marketing that could occur if the effective date of the allotment order is unduly delayed. Accordingly, in order to fully effectuate the purposes of section 205(a) of the Act it is hereby found that due and timely execution of the functions imposed upon the Secretary under the Act imperatively and unavoidably requires the omission of a recommended decision in this proceeding. It is also hereby further found and determined for the reasons given above for the omission of a recommended decision that compliance with the 30-day effective date requirement of 5 U.S.C. (80 Stat. 378) is impractical and contrary to the public interest, and consequently, this order shall become effective when published in the FEDERAL REGISTER.

Basis for findings and conclusions. Section 205(a) of the Act reads in pertinent parts as follows:

* * * Allotments shall be made in such manner and in such amounts as to provide a fair, efficient, and equitable distribution of such quota or proration thereof, by taking into consideration the processings of sugar or liquid sugar from sugarbeets or sugar cane, limited in any year when proportionate shares were in effect to processings to which proportionate shares, determined pursuant to the provisions of subsection (b) of section 302, pertained; the past marketings or importations of each such person; and the ability of such person to market or import that portion of such quota or proration thereof allotted to him. * * * The Secretary is also authorized in making such allotments of a quota for any calendar year to take into consideration in lieu of or in addition to the foregoing factors of processing, past marketings, and ability to market, the need for establishing an allotment which will permit such marketing of sugar as is necessary for the reasonably efficient operation of any nonaffiliated single plant processor of sugar beets or any processor of sugarcane and as may be necessary to avoid unreasonable carryover of sugar in relation to other processors in the area: *Provided*, That * * * the marketing allotment of a processor of sugarcane shall not be increased under this provision above an allotment equal to the effective inventory of sugar of such processor on January 1 of the calendar year for which such allotment is made: * * * *Provided further*, That the total increases in marketing allotments made pursuant to this sentence * * * to processors in the mainland cane sugar areas shall be limited to 16,000 short tons of sugar, raw value, for each calendar year. In making such allotments, the Secretary may also take into consideration and make due allowance for the adverse effect of drought, storm, flood, freeze, disease, insects, or other similar abnormal and uncontrollable conditions seriously and broadly affecting any general area served by the factory or factories of such person. * * *

The record of the hearing indicated that the prospective supply of mainland cane sugar available for marketing in 1970 exceeds the quota for that area to an extent that allotment of the quota is necessary (10).

The Government witness introduced for the record annual data on processings, marketings, and inventories for the most recent 5-year period (R. 10, 11, Ex. 5).

The three factors of "processings," "past marketings," and "ability to market," the adverse effect of storm, freeze, and other similar abnormal conditions and the provision of section 205(a) of the Act added by the Sugar Act Amendments of 1965 which provides for establishing an allotment for any processor as may be necessary to avoid unreasonable carryover of sugar in relation to other processors in the area have been considered by the allotment method herein adopted as set forth in Finding 4.

The allotment method adopted is the same as that proposed by the Government witness at the hearing and was also supported at the hearing by the witnesses representing all Mainland Cane processors.

The Government witness proposed that the factor "processings from proportionate shares" should be measured for each processor by the higher of either its production of sugar from 1969 crop sugarcane or 70 percent of his average production from the 1967 and 1968 crops of sugarcane in short tons, raw value, expressed as a percentage of the total of the measure for all processors and weighted by 60 percent. The primary purpose for using an alternative measure of "processings" (70 percent of his average production from the 1967 and 1968 crops of sugarcane) is to give protection against a crop failure or some other unavoidable occurrence which reduced processings of the crop used for the measure of processings.

Giving consideration to "past marketings" by using the average annual marketings for each processor for the 3-year period 1967 through 1969 and giving this factor a weighting of 20 percent in determining allotments contributes to an orderly rate of change in the marketings of each processor relative to others. Measuring the factor "ability to market" as herein adopted and giving this factor a weighting of 20 percent in determining allotments gives recognition to the sugar produced from 1969 crop sugarcane which each processor will have available for marketing within the 1970 quota and also recognizes the relative sharing of each processor in past new-crop marketings within the quota.

The allotment method adopted herein gives consideration to the provision in section 205(a) of the Act which provides for increasing allotments for any processor to avoid unreasonable carryover of sugar in relation to other processors in the area.

An allotment of 50 short tons, raw value, is established herein for Louisiana State University as proposed by the Government witness.

Findings and conclusions. On the basis of the record of the hearing, I hereby find and conclude that:

(1) The quantity of sugar available for marketing in 1970, consisting of January 1, 1970, effective inventories of mainland cane sugar of approximately 975,000 tons plus 1970 crop sugar produced before January 1, 1971, of between 700,000 and 800,000 tons would substantially exceed the current 1,308,000-ton quota established for the area.

(2) The supply situation makes necessary the allotment of the 1970 sugar quota for the Mainland Cane Sugar Area to assure an orderly marketing of sugar, and to afford all interested persons equitable opportunities to market sugar within the quota.

(3) Fifty short tons, raw value, shall be set aside from the quota, and an allotment of 50 short tons, raw value, shall be established for the Louisiana State University.

(4) The remainder of the 1970 Mainland Cane Sugar Area quota for consumption within the continental United States, after setting aside 50 tons as provided in finding (3) shall be allotted to processors other than Louisiana State University by measuring and weighting each of the three factors of "processings," "past marketings," and "ability to market" specified in section 205(a) of the Act; and by giving consideration to the need for establishing an allotment for any processor as may be necessary to avoid unreasonable carryover of sugar in relation to other processors in the area (within specified limits) as provided in section 205(a) of the Act; and by determining allotments as follows based on data in the hearing record and any revised or corrected final data of which official notice will be taken:

(a) The factor "processings from proportionate shares" shall be measured for each processor by the higher of either his production of sugar from 1969 crop sugarcane in short tons, raw value, or 70 percent of his average crop-year production from the 1967 and 1968 crops of sugarcane in short tons, raw value, expressed as a percentage of the total of the measure for all processors and weighted by 60 percent.

(b) The factor "past marketings" shall be measured for each processor by his average annual quota marketings for the years 1967 through 1969 in short tons, raw value, expressed as a percentage of the total of the measure for all processors and weighted 20 percent.

(c) The factor "ability to market" shall be measured by the sum of (i) each processor's January 1, 1970, effective inventory, and (ii) his share of the difference between the 1970 quota in short tons, raw value, for the Mainland Cane Sugar Area after deducting 50 tons set aside under finding (3) and the total of the effective inventories of all processors. Each processor's share of such difference shall be determined by applying to the area total difference the percentage that his average 1967 through 1969 new-crop marketings were of the total average new-crop marketings of all processors for such years. The sum of (i) and (ii) in short tons, raw value, expressed for each processor as a percentage of the total of the measure for all processors shall be weighted 20 percent.

(d) To determine each processor's basic allotment in short tons, raw value, the total percentage for each processor derived by measuring and weighting the three factors as heretofore proposed shall be multiplied by the quota for the Mainland Cane Sugar Area in short tons, raw value, less 50 tons set aside under finding (3). If the basic allotments computed for each processor under this paragraph (d) equals or exceeds each respective processor's January 1, 1970, effective inventory, the basic allotments computed pursuant to this paragraph will constitute the marketing allotments of the 1970 quota.

(e) In the event any processor's basic allotment established pursuant to paragraph (d) of this finding is less than the respective processor's January 1, 1970 effective inventory, the basic allotments established in paragraph (d) shall be adjusted as provided in this paragraph (e) and the resulting allotments will constitute the marketing allotments of the 1970 quota. Basic allotments esablished pursuant to paragraph (d) of this finding which are less than the respective processors' January 1, 1970, effective inventories are subject to upward adjustments by a total not to exceed 16,000 short tons, raw value, and the basic allotments of processors having January 1, 1970, effective inventories less than their basic allotments shall be reduced proportionately as necessary to make total adjusted allotments equal to the area quota in short tons, raw value, less 50 tons set aside under finding (3), except, that no processor's basic allotment shall be reduced to a level less than the respective processor's January 1, 1970, effective inventory. The basic allotments of those processors having January 1, 1970 effective inventories larger than their basic allotments are subject to upward adjustments (not to exceed 16,000 tons) in the following manner: (i) The basic allotments of processors having January 1, 1970, physical inventories in excess of basic allotments shall be increased to the level of the physical inventories, (ii) The remainder of the 16,000 tons or lesser quantity (if such lesser quantity will provide adjusted allotments equal to Jan. 1, 1970, effective inventories) shall be added to the basic allotments of the other processors in such a manner that will not permit any processor to market a larger percentage of its January 1, 1970, effective inventory by the use of this adjustment than other processors. No increased allotment established pursuant to this subdivision shall be larger than the respective processor's January 1, 1970, effective inventory.

(f) Any revision in allotments made to give effect to any increase or decrease in the Mainland Cane Sugar Area quota shall be determined by the full application of the formula for determining allotments as provided in paragraphs (a) through (e) of this finding (4).

(g) Any revision in allotments made to give effect to a release of all or a part of an allotment by an allottee shall be determined by prorating such release or deficit to all other allottees to the extent they are able to market additional sugar on the basis of adjusted allotments as determined pursuant to preceding paragraphs of this finding (4).

(5) Final adjustments in the data for the 1969 crop including January 1, 1970, effective inventories, were made on the basis of sugar production and marketing reports covering the period ending April 30, 1970.

(6) The following processors shall succeed to the interest in the historical data, pertinent to determining allotments, of the former allottee, Little Texas, Inc., to the extent shown: J. Aron & Co., Inc., 7.402 percent; Dugas & LeBlanc, 12.531 percent; Lafourche Sugar Co., 73.233 percent; and South Coast Corp., 6.834 percent.

(7) The following processors shall succeed to the interest in the historical data, pertinent to determining allotments, of the former allottee Erath Sugar Co., Ltd., to the extent shown: Albania Sugar Co., Inc., 1.661 percent; Billeaud Sugar Factor, 9.889 percent; Cajun Sugar Co-op, Inc., 17.948 percent; Duhe & Bourgeois Sugar Co., 23.110 percent; Louisa Sugar Co-op, Inc., 16.442 percent; M. A. Patout & Son, Ltd., 23.579 percent and Vida Sugars, Inc., 7.371 percent.

(8) The quantities of sugar and the percentages referred to in finding (4) and the computation of processor allotments are set forth in the following table:

Processor	Processings of sugar [1]		Average quota marketings within allotments 1967–69		Ability to market					Processor's basic allotment [4]	
					Effective inventory Jan. 1, 1970 [2]	New crop quota marketings		Measures used			
						Average 1967–69	Shares of difference [3]	Col. (5) plus col. (7)	Percent of total	Percent of total	Short tons, raw value
	Short tons, raw value	Percent of total	Short tons, raw value	Percent of total	Short tons, raw value						
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
Albania Sugar Co.	9,002	0.838	9,779	0.828	4,571	6,382	8,658	13,229	1.011	0.871	11,392
Alma Plantation, Ltd.	11,181	1.041	10,041	.850	7,215	6,248	8,477	15,692	1.200	1.035	13,537
J. Aron & Co., Inc.	12,946	1.205	14,146	1.198	6,810	9,657	13,102	19,912	1.522	1.267	16,572
Billeaud Sugar Factory	10,412	.969	9,942	.842	6,489	5,576	7,565	14,054	1.074	.965	12,622
Breaux Bridge Sugar Co-op.	9,387	.874	9,843	.834	7,958	3,531	4,790	12,748	.975	.886	11,588
Wm. T. Burton Industries, Inc.	6,516	.606	7,335	.621	3,701	4,396	5,964	9,665	.739	.636	8,319
Caire & Graugnard	5,878	.547	5,898	.499	4,224	2,985	4,050	8,274	.633	.555	7,259
Cajun Sugar Co-op., Inc.	22,781	2.120	25,871	2.191	22,781	603	818	23,599	1.804	2.071	27,088
Caldwell Sugar Co-op., Inc.	14,953	1.392	14,068	1.191	10,780	7,640	10,365	21,145	1.617	1.397	18,272
Columbia Sugar Co.	7,383	.687	8,555	.724	4,399	4,255	5,773	10,172	.778	.713	9,326
Cora-Texas Manufacturing Co., Inc.	8,909	.829	9,554	.809	8,909	792	1,074	9,983	.763	.812	10,621
Dugas & LeBlanc, Ltd.	17,505	1.629	16,988	1.439	13,664	7,846	10,645	24,309	1.858	1.637	21,411
Duhe & Bourgeois Sugar Co.	10,502	.977	11,380	.965	5,924	7,246	9,831	15,755	1.204	1.020	13,341
Evan Hall Sugar Co-op., Inc.	23,433	2.181	24,043	2.036	16,246	12,946	17,564	33,810	2.585	2.233	29,207
Frisco Cane Co., Inc.	2,551	.237	2,443	.207	1,211	1,784	2,420	3,631	.278	.239	3,126
Glenwood Co-op., Inc.	16,264	1.514	17,163	1.453	11,389	9,100	12,346	23,735	1.815	1.562	20,430
Helvetia Sugar Co-op., Inc.	12,212	1.137	13,095	1.109	8,955	6,264	8,498	17,453	1.334	1.171	15,316
Iberia Sugar Co-op., Inc.	17,825	1.659	19,632	1.663	14,247	7,429	10,079	24,326	1.860	1.700	22,235
Lafourche Sugar Co.	21,353	1.987	22,305	1.889	14,792	11,356	15,407	30,199	2.309	2.032	26,578
Harry L. Laws & Co., Inc.	15,693	1.460	15,629	1.324	10,533	8,597	11,663	22,196	1.697	1.480	19,358
Levert-St. John, Inc.	11,406	1.061	12,910	1.093	4,709	9,256	12,558	17,357	1.327	1.121	14,662
Louisa Sugar Co-op., Inc.	10,591	.986	12,394	1.050	5,838	6,473	8,782	14,620	1.118	1.025	13,406
Louisiana State Penitentiary	3,978	.370	3,858	.327	3,718	546	741	4,459	.341	.355	4,643
Meeker Sugar Co-op., Inc.	11,374	1.059	11,861	1.004	11,882	613	832	12,714	.972	1.031	13,485
Milliken & Farwell, Inc.	11,464	1.067	10,958	.928	8,801	5,163	7,005	15,806	1.208	1.067	13,956
M. A. Patout & Son, Ltd.	15,247	1.419	17,022	1.442	8,987	10,063	13,652	22,639	1.731	1.486	19,436
Poplar Grove Planting & Refining Co.	9,188	.855	9,302	.788	7,245	3,938	5,343	12,588	.962	.863	11,288
Savoie Industries	15,555	1.448	16,420	1.391	11,990	7,554	10,248	22,238	1.700	1.487	19,449
St. James Sugar Co-op., Inc.	20,764	1.932	22,404	1.897	20,764	2,600	3,527	24,291	1.857	1.910	24,982
St. Mary Sugar Co-op., Inc.	14,265	1.328	14,900	1.262	9,232	8,376	11,364	20,596	1.575	1.364	17,840
South Coast Corp.	60,002	5.584	67,988	5.758	59,957	5,772	7,831	67,788	5.183	5.539	72,447
Southdown, Inc.	37,989	3.535	37,535	3.179	28,729	16,547	22,449	51,178	3.913	3.539	46,288
Sterling Sugars, Inc.	24,953	2.322	26,708	2.262	16,121	14,751	20,012	36,133	2.763	2.398	31,365
J. Supple's Sons Planting Co.	4,995	.465	5,685	.481	3,623	2,428	3,294	6,917	.529	.481	6,291
Valentine Sugars, Inc.	13,877	1.291	10,897	.923	10,002	6,589	8,939	18,941	1.448	1.248	16,323
Vida Sugars, Inc.	4,873	.454	5,590	.473	2,020	3,878	5,261	7,281	.557	.478	6,252
A. Wilbert's Sons Lumber & Shingle Co.	9,748	.907	10,111	.856	6,119	5,610	7,611	13,730	1.050	.925	12,099
Young's Industries, Inc.	5,170	.481	6,666	.565	308	3,777	5,124	5,432	.415	.484	6,330
Louisiana subtotal	542,125	50.453	570,928	48.351	404,933	238,567	323,662	728,595	55.705	51.083	668,140
Atlantic Sugar Association, Inc.	28,164	2.621	33,613	2.847	28,117	16	22	28,139	2.151	2.572	33,640
Florida Sugar Corp.	18,056	1.680	20,503	1.736	19,641	429	582	20,223	1.546	1.664	21,764
Glades County Sugar Growers Co-op. Association	42,108	3.919	41,922	3.550	45,070	0	0	45,070	3.446	3.751	49,061
Osceola Farms Co.	45,871	4.269	53,229	4.508	49,686	0	0	49,686	3.799	4.223	55,235
South Puerto Rico Sugar Co., Inc.	62,161	5.785	77,351	6.551	65,484	556	754	66,238	5.064	5.794	75,783
Sugarcane Growers Co-op. of Florida	94,293	8.775	111,304	9.426	101,915	0	0	101,915	7.792	8.708	113,896
Talisman Sugar Corp.	43,150	4.016	44,871	3.800	44,954	0	0	44,954	3.437	3.857	50,448
United States Sugar Corp.	198,588	18.482	227,078	19.231	214,558	6,318	8,572	223,130	17.060	18.348	239,983
Florida subtotal	532,391	49.547	609,871	51.649	569,425	7,319	9,930	579,355	44.295	48.917	639,810
Total all mainland cane	1,074,516	100.000	1,180,799	100.000	974,358	245,886	333,592	1,307,950	100.000	100.000	1,307,950

[1] The higher of either the production of sugar from the 1969 crop sugarcane or 70 percent of the average production from the 1967 and 1968 crops of sugarcane.

[2] Effective inventory, Jan. 1, 1970, is the physical inventory Jan. 1, 1970, plus processings from 1969 crop cane in 1970.

[3] The difference between 1,307,950 tons (quota for 1970 established by S.R. 811, less 50 tons reserve for Louisiana State University) and the total Jan. 1, 1970, effective inventories prorated on the basis of the 1967–69 average new crop marketings shown in column 6.

[4] Column (10) was determined by weighting "processings" col. (2) by 60 percent, "marketings" col. (4) by 20 percent, and "ability" col. (9) by 20 percent. Column (11) was determined by multiplying the quota, less 50 tons reserved for Louisiana State University, by column (10).

(9) The order shall be revised without further notice or hearing for the purpose of (a) allotting any quantity of an allotment to other allottees when written notification of release by an allottee of any part of an allotment becomes a part of the official records of the Department, (b) revising allotments by the substitution of revised or corrected data which have become a part of the official records of the Department; and (c) revising allotments to give effect to any increase or decrease in the quota made by the Administrator pursuant to the provisions of the Sugar Act of 1948, as amended. Any revision in allotments made to give effect to (a) of this finding (9) shall be made by increasing proportionately the allotments as provided in finding (4) (g), except that the quantity prorated to any allottee releasing allotments in excess of a specified quantity should be limited in accordance with the written statement of release by any such allottee. In making changes under (b) and (c) of this finding (7) allotments shall be determined by the full application of the formula for determining allotments as provided in paragraphs (a) through (e) of finding (4).

(10) Official notice will be taken of (a) written notification to the Agricultural Stabilization and Conservation Service by an allottee that he is unable to fill all or a part of his allotment when the notification becomes a part of the official records of the Department, (b) substitution of revised or corrected data where such data becomes a part of the official records of the Department, and (c) any regulation issued by the Administrator, after publication in the FEDERAL REGISTER, which changes the 1970 Mainland Cane Sugar Area quota.

(11) To facilitate full and effective use of allotments, provision shall be made in the order for transfer of allotments under circumstances of a succession of interest, and under circumstances involving an allottee becoming unable to process sugarcane and such sugarcane as he would normally process, if operating, is processed by other allottees.

(12) To aid in the efficient movement and storage of sugar, provision shall be made to enable a processor to market a quantity of sugar of his own production in excess of his allotment equivalent to the quantity of sugar which he holds in storage and which was acquired by him within the allotment of another allottee.

(13) Allotments established in the foregoing manner and in the amounts set forth in the order provide a fair, efficient, and equitable distribution of any 1970 Mainland Cane Sugar Area quota that may be established for consumption within the continental United

States and meet the requirements of section 205(a) of the Act.

Order. Pursuant to the authority vested in the Secretary of Agriculture by section 205(a) of the Act, it is hereby ordered that § 814.8 be amended to read as follows:

§ 814.8 Allotment of the 1970 sugar quota for the Mainland Cane Sugar Area.

(a) *Allotments.* The 1970 sugar quota for the Mainland Cane Sugar Area of 1,308,000 short tons, raw value, is hereby allotted to the following processors in the quantities which appear opposite their respective names:

Processors	Allotments (short tons, raw value)
Albania Sugar Co	11,392
Alma Plantation, Ltd	13,537
J. Aron & Co., Inc	16,572
Billeaud Sugar Factory	12,622
Breaux Bridge Sugar Co-op	11,588
Wm. T. Burton Industries, Inc	8,319
Caire & Graugnard	7,259
Cajun Sugar Co-op, Inc	27,088
Caldwell Sugars Co-op, Inc	18,272
Columbia Sugar Co	9,326
Cora-Texas Manufacturing Co., Inc	10,621
Dugas & LeBlanc, Ltd	21,411
Duhe & Bourgeois Sugar Co	13,341
Evan Hall Sugar Co-op, Inc	29,207
Frisco Cane Co., Inc	3,126
Glenwood Co-op, Inc	20,430
Helvetia Sugar Co-op, Inc	15,316
Iberia Sugar Co-op, Inc	22,235
Lafourche Sugar Co	26,578
Harry L. Laws & Co., Inc	19,358
Levert-St. John, Inc	14,662
Louisa Sugar Co-op, Inc	13,406
Louisiana State Penitentiary	4,643
Louisiana State University	50
Meeker Sugar Co-op, Inc	13,485
Milliken & Farwell, Inc	13,956
M. A. Patout & Son, Ltd	19,436
Poplar Grove Planting & Refining Co	11,288
Savoie Industries	19,449
St. James Sugar Co-op, Inc	24,982
St. Mary Sugar Co-op, Inc	17,840
South Coast Corp	72,447
Southdown, Inc	46,288
Sterling Sugars, Inc	31,365
J. Supple's Sons Planting Co	6,291
Valentine Sugars, Inc	16,323
Vida Sugars, Inc	6,252
A. Wilbert's Sons Lumber & Shingle Co	12,099
Young's Industries, Inc	6,330
Louisiana subtotal	668,190
Atlantic Sugar Association	33,640
Florida Sugar Corp	21,764
Glades County Sugar Growers Co-op Association	49,061
Osceola Farms Co	55,235
South Puerto Rico Sugar Co., Inc	75,783
Sugarcane Growers Co-op of Florida	113,896
Talisman Sugar Corp	50,448
United States Sugar Corp	239,983
Florida subtotal	639,810
Total, all mainland cane	1,308,000

(b) *Marketing limitations.* Marketings shall be limited to allotments as established herein subject to the prohibitions and provisions of §§ 816.1 through 816.9 of this chapter (33 F.R. 8495).

(c) *Transfer of allotments.* The Director, Sugar Division, Agricultural Stabilization and Conservation Service of the Department, may permit marketings to be made by one allottee, or other persons, within the allotment established for another allottee upon relinquishment by such allottee of a quantity of its allotment and upon receipt of evidence satisfactory to the Director that (1) a merger, consolidation, transfer of sugar-processing facilities, or other action of similar effect upon the allottees or persons involved has occurred, or (2) the allottee receiving such permission will process 1970 crop sugarcane which the allottee relinquishing allotment has become unable to process.

(d) *Exchanges of sugar between allottees.* When approved in writing by the Director, Sugar Division, Agricultural Stabilization and Conservation Service of the Department, any allottee holding sugar or liquid sugar acquired by him within the allotment of another person established in paragraph (a) of this section may ship, transport, or market up to an equivalent quantity of sugar processed by him in excess of his allotment established in paragraph (a) of this section. The sugar or liquid sugar held under this paragraph shall be subject to all other provisions of this section as if it had been processed by the allottee who acquired it for the purpose authorized by this paragraph.

(e) *Revision of allotments.* Allotments established under this order may be revised without further notice or hearing in accordance with findings and conclusions heretofore made, to give effect to (1) the substitution of revised or corrected data, (2) the reallocation of any quantity of an allotment released by an allottee, and (3) any change in the Mainland Cane Sugar Area quota.

(Secs. 205, 209, 403, 61 Stat. 926 as amended, 928, 932; 7 U.S.C. 1115, 1119, 1153)

Effective date. This docket will become effective when published in the FEDERAL REGISTER.

Signed at Washington, D.C., on August 10, 1970.

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

[F.R. Doc. 70-10670; Filed, Aug. 14, 1970; 8:45 a.m.]

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

[Lemon Reg. 440]

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

Limitation of Handling

§ 910.740 Lemon Regulation 440.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 910, as amended (7 CFR Part 910), regulating the handling of lemons grown in California and Arizona, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and upon the basis of the recommendations and information submitted by the Lemon Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such lemons, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) 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 section until 30 days after publication hereof in the FEDERAL REGISTER (5 U.S.C. 553) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The committee held an open meeting during the current week, after giving due notice thereof, to consider supply and market conditions for lemons and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such meeting was held; the provisions of this section, including its effective time, are identical with the aforesaid recommendation of the commttee, and information concerning such provisions and effective time has been disseminated among handlers of such lemons; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period herein specified; and compliance with this section will not require any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on August 11, 1970.

(b) *Order.* (1) The respective quantities of lemons grown in California and Arizona which may be handled during the period August 16, 1970, through August 22, 1970, are hereby fixed as follows:

(i) District 1: Unlimited movement;

(ii) District 2: 240,000 cartons;

(iii) District 3: Unlimited movement.

(2) As used in this section, "handled," "District 1," "District 2," "District 3," and "carton" have the same meaning as when used in the said amended marketing agreement and order.

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

Dated: August 12, 1970.

PAUL A. NICHOLSON,
Deputy Director, Fruit and Vegetable Division, Consumer and Marketing Service.

[F.R. Doc. 70-10766; Filed, Aug. 14, 1970; 8:50 a.m.]

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

[Milk Order No. 137]

PART 1137—MILK IN EASTERN COLORADO MARKETING AREA

Order Terminating Certain Provisions

This termination order is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and of the order regulating the handling of milk in the Eastern Colorado marketing area.

It is hereby found and determined that the following provisions of the order no longer tend to effectuate the declared policy of the Act:

1. In the introductory text of § 1137.51(a), "and plus or minus a supply-demand adjustment calculated for each month as follows:"; and

2. Subparagraphs (1) and (2) of § 1137.51(a) in their entirety.

This action will terminate the supply-demand adjustor as a component in determining the Class I price.

Discontinuance of the supply-demand adjustor was requested by Mountain Empire Dairymen's Association, a cooperative representing a majority of the Eastern Colorado order producers.

Because of changed marketing conditions, the supply-demand adjustor (which ranged between zero and minus 14 cents in the most recent 12 months and is currently zero), is no longer serving the purpose for which it was originally instituted in the order.

It is hereby found and determined that 30 days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) This termination is necessary to reflect current marketing conditions and to maintain orderly marketing conditions in the marketing area;

(b) This termination order does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Interested parties were afforded opportunity to file written data, views or arguments concerning this termination (35 F.R. 11699). None were filed in opposition to the proposed termination.

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

It is therefore ordered, That the aforesaid provisions of the order are hereby terminated.

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

Effective date. Upon publication in the FEDERAL REGISTER.

Signed at Washington, D.C., on August 11, 1970.

RICHARD E. LYNG,
Assistant Secretary.

[F.R. Doc. 70-10724; Filed, Aug. 14, 1970; 8:50 a.m.]

Title 9—ANIMALS AND ANIMAL PRODUCTS

Chapter I—Agricultural Research Service, Department of Agriculture

SUBCHAPTER C—INTERSTATE TRANSPORTATION OF ANIMALS AND POULTRY

[Docket No. 70-240]

PART 76—HOG CHOLERA AND OTHER COMMUNICABLE SWINE DISEASES

Areas Quarantined

Pursuant to provisions of the Act of May 29, 1884, as amended, the Act of February 2, 1903, as amended, the Act of March 3, 1905, as amended, the Act of September 6, 1961, and the Act of July 2, 1962 (21 U.S.C. 111–113, 114g, 115, 117, 120, 121, 123–126, 134b, 134f), Part 76, Title 9, Code of Federal Regulations, restricting the interstate movement of swine and certain products because of hog cholera and other communicable swine diseases, is hereby amended in the following respects:

1. In § 76.2, the reference to the State of Arkansas in the introductory portion of paragraph (e) and paragraph (e)(2) relating to the State of Arkansas are deleted.

2. In § 76.2, in paragraph (e)(10) relating to the State of North Carolina, subdivision (i) relating to Chatham and Moore Counties is amended to read:

(10) *North Carolina.*

(i) The adjacent portions of Chatham and Moore Counties bounded by a line beginning at the junction of the Chatham-Moore County line, Secondary Road 2339 in Chatham County, and Secondary Road 1620 in Moore County; thence, following Secondary Road 1620 in a southeasterly direction to Secondary Road 1619; thence, following Secondary Road 1619 in a southwesterly direction to Secondary Road 1006; thence, following Secondary Road 1006 in a southeasterly direction to the Deep River; thence, following the north bank of the Deep River in a generally southwesterly direction to North Carolina Road 22; thence, following North Carolina Road 22 in a northwesterly direction to Secondary Road 1606; thence, following Secondary Road 1606 in a northeasterly direction to Secondary Road 1605; thence, following Secondary Road 1605 in a northwesterly direction to Secondary Road 1604; thence, following Secondary Road 1604 in a northeasterly direction to Secondary Road 2318 in Chatham County; thence, following Secondary Road 2318 in a northeasterly direction to North Carolina Road 42; thence, following North Carolina Road 42 in a generally northwesterly direction to Secondary Road 1151; thence, following Secondary Road 1151 in a northerly direction to Secondary Road 1005; thence, following Secondary Road 1005 in a northeasterly direction to Secondary Road 1139; thence, following Secondary Road 1139 in a southeasterly direction to Secondary Road 1009; thence, following Secondary Road 1009 in a generally southerly direction to Secondary Road 2314; thence, following Secondary Road 2314 in a southwesterly direction to Secondary Road 2303; thence, following Secondary Road 2303 in a southerly direction to North Carolina Road 42; thence, following North Carolina Road 42 in a southeasterly direction to Secondary Road 2339; thence, following Secondary Road 2339 in a southeasterly direction to its junction with Secondary Road 1620 in Moore County and the Chatham-Moore County line.

* * * * *

3. In § 76.2, in subparagraph (e)(15) relating to the State of Texas, a new subdivision (xiii) relating to Bosque and McLennan Counties is added to read:

(15) *Texas.* * * *

(xiii) The adjacent portions of Bosque and McLennan Counties bounded by a line beginning at the junction of State Highway 6 and Farm to Market Road 219; thence, following Farm to Market Road 219 in a northeasterly direction to Farm to Market Road 708; thence, following Farm to Market Road 708 in a generally southeasterly direction to Farm to Market Road 56; thence, following Farm to Market Road 56 in a northeasterly direction to Farm to Market Road 2114; thence, following Farm to Market Road 2114 in a generally southeasterly direction to Brazos River; thence, following the west bank of the Brazos River in a generally southerly direction to the Bosque-McLennan County line; thence, following the Bosque-McLennan County line in a southwesterly direction to Farm to Market Road 2490; thence, following Farm to Market Road 2490 in a southeasterly direction to Farm to Market Road 1637; thence, following Farm to Market Road 1637 in a northwesterly direction to Farm to Market Road 185; thence, following Farm to Market Road 185 in a generally southwesterly direction to the McLennan-Coryell County line; thence, following the McLennan-Coryell County line in a northwesterly direction to the Bosque-Coryell County line; thence, following the Bosque-Coryell County line in a northwesterly direction to Farm to Market Road 217; thence, following Farm to Market Road 217 in a northeasterly direction to Farm to Market Road 2602; thence, following Farm to Market Road 2602 in a generally northeasterly direction to State Highway 6; thence, following State Highway 6 in a northwesterly direction to its junction with Farm to Market Road 219.

(Secs. 4–7, 23 Stat. 32, as amended, secs. 1, 2, 32 Stat. 791–792, as amended, secs. 1–4, 33 Stat. 1264, 1265, as amended, sec. 1, 75 Stat. 481, secs. 3 and 11, 76 Stat. 130, 132; 21 U.S.C. 111, 112, 113, 114g, 115, 117, 120,

121, 123–126, 134b, 134f; 29 F.R. 16210, as amended)

Effective date. The foregoing amendments shall become effective upon issuance.

The amendments quarantine a portion of Chatham County, N.C., and portions of Bosque and McLennan Counties in Texas because of the existence of hog cholera. This action is deemed necessary to prevent further spread of the disease. The restrictions pertaining to the interstate movement of swine and swine products from or through quarantined areas as contained in 9 CFR Part 76, as amended, will apply to such counties.

The amendments also exclude a portion of Chicot County, Ark., from the areas quarantined because of hog cholera. Therefore, the restrictions pertaining to the interstate movement of swine and swine products from or through quarantined areas as contained in 9 CFR Part 76, as amended, will not apply to the excluded area, but will continue to apply to the quarantined areas described in § 76.2. Further, the restrictions pertaining to the interstate movement of swine and swine products from nonquarantined areas contained in said Part 76 will apply to the area excluded from quarantine.

Insofar as the amendments impose certain further restrictions necessary to prevent the interstate spread of hog cholera they must be made effective immediately to accomplish their purpose in the public interest. Insofar as they relieve restrictions, they should be made effective promptly in order to be of maximum benefit to affected persons.

Accordingly, under the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to the amendments are impracticable, unnecessary, and contrary to the public interest, and good cause is found for making them effective less than 30 days after publication in the FEDERAL REGISTER.

Done at Washington, D.C., this 11th day of August 1970.

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

[F.R. Doc. 70–10723; Filed, Aug. 14, 1970; 8:50 a.m.]

Title 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Administration, Department of Transportation

[Docket No. 10504; Amdt. No. 21–34]

PART 21—CERTIFICATION PROCEDURES FOR PRODUCTS AND PARTS

Production Under Type Certificate

The purpose of this amendment to the Part 21 is to authorize an extension of the period within which products may be manufactured under a type certificate only without establishing an approved production inspection system.

Present § 21.123(c) requires a manufacturer to establish an approved production inspection system for products manufactured more than 6 months after the date of issue of the type certificate for that product. This 6-month limitation has proven to be impracticable for products which are in limited or infrequent production and for licensees and transferees of type certificates that were issued more than 6 months prior to the licensing agreement or transfer.

Since this amendment removes an unnecessary restriction and imposes no additional burden on any person, the FAA finds that notice and public procedures on this amendment are unnecessary and that good cause exists for making it effective on less than 30 days' notice.

In consideration of the foregoing, § 21.123(c), Part 21 of the Federal Aviation Regulations (14 CFR Part 21) is amended, effective on publication in the FEDERAL REGISTER, to read as follows:

§ 21.123 Production under type certificate.

* * * * *

(c) Except as otherwise authorized by the Regional Director in the region in which the manufacturer is located, for products manufactured more than 6 months after the date of issue of the type certificate, establish and maintain an approved production inspection system that insures that each product conforms to the type design and is in condition for safe operation.

(Secs. 313(a), 601, 603, Federal Aviation Act of 1958, 49 U.S.C. 1354(a), 1421, 1423; sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c))

Issued in Washington, D.C., on August 11, 1970.

K. M. SMITH,
Acting Administrator.

[F.R. Doc. 70–10707; Filed, Aug. 14, 1970; 8:49 a.m.]

[Airworthiness Docket No. 70–SW–20; Amdt. 39–1065]

PART 39—AIRWORTHINESS DIRECTIVES

Bell Model 47D–1, 47G, 47G–2, and 47H–1 Helicopters

Amendment 39–1022 (35 F.R. 11175), AD 70–14–1, limits the life of the tail rotor pitch change bearing and requires an inspection of the tail rotor bearing and guide sleeve on Bell Model 47D–1, 47G, 47G–2, and 47H–1 helicopters. After issuing Amendment 39–1022, a typographical error was discovered in the date of the appropriate maintenance manual. Therefore, the AD is being amended to correct the date.

Since this amendment corrects a date only and imposes no additional burden on any person, notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (31 F.R. 13697), section 39.13 of Part 39 of the Federal Aviation Regulations, Amendment 39–1022 (35 F.R. 11175), AD 70–14–1, is amended by striking out "1969" from paragraph (b)(3) and inserting "1961" in place thereof.

This amendment becomes effective August 17, 1970.

(Secs. 313(a), 601, 603, Federal Aviation Act of 1958; 49 U.S.C. 1354(a), 1421, 1423; sec. 6(c), Department of Transportation Act; 49 U.S.C. 1655(c))

Issued in Fort Worth, Tex., on August 6, 1970.

HENRY L. NEWMAN,
Director, Southwest Region.

[F.R. Doc. 70–10681; Filed, Aug. 14, 1970; 8:45 a.m.]

[Airworthiness Docket No. 70–SW–50, Amdt. 39–1069]

PART 39—AIRWORTHINESS DIRECTIVES

Mooney Model M–10

There have been failures of the screw attaching the rudder pedal shaft bellcrank (P/N 720061–000) to the nose wheel steering tie rod assembly (P/N 720084–000) due to improper screws (AN526–8) being used on Mooney Model M–10 Airplanes that could result in loss of rudder control and nose gear steering. Since this condition is likely to exist or develop in other airplanes of the same make and model, an airworthiness directive is being issued to require inspection of the attachments and replacement with the correct screw when necessary.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (31 F.R. 13697), section 39.13 of Part 39 of the Federal Aviation Regulations is amended by adding the following new airworthiness directive:

MOONEY. Applies to Mooney Model M–10 Airplanes.

Compliance required before further flight after the effective date of this AD, unless already accomplished.

To detect the use of improper screws attaching the rudder pedal shaft bellcrank (P/N 720061–000) to the nose wheel steering tie rod (P/N 720084–000), accomplish the following inspection and rework as required or an equivalent approved by the Chief, Engineering and Manufacturing Branch, FAA, Southwest Region, Fort Worth, Tex.:

a. Remove seats and floorboard.

b. Remove screws from left and right rudder pedal shaft bellcranks attaching the nose wheel steering tie rods. The screws, nuts and washers should consist of:

(1) NAS 221–16 screws,
(2) AN 363–1032 nuts.
(3) AN 960–10 washers.

c. Reinstall the correct hardware specified in b (1), (2), and (3) above.

NOTE: The M-10 Parts Catalog shows AN 509-10R20 screws, which is incorrect.

d. Reinstall floorboard and seats.

This amendment becomes effective to all known owners of Mooney Model M-10 Airplanes upon receipt of individual copies mailed August 7, 1970, and to all other persons on publication in the FEDERAL REGISTER.

(Secs. 313(a), 601, 603, Federal Aviation Act of 1958, 49 U.S.C. 1354(a), 1421, 1423; sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c))

Issued in Fort Worth, Tex., on August 7, 1970.

HENRY L. NEWMAN,
Director, Southwest Region.

[F.R. Doc. 70-10682; Filed, Aug. 14, 1970; 8:45 a.m.]

Title 22—FOREIGN RELATIONS

Chapter II—Agency for International Development, Department of State

[A.I.D. Reg. 1]

PART 201—RULES AND PROCEDURES APPLICABLE TO COMMODITY TRANSACTIONS FINANCED BY A.I.D.

Revision of the Commodity Approval Application (Form 11)

Part 202 of Chapter II, Title 22 (A.I.D. Reg. 1) is amended as follows:

1. Section 201.11 is amended as follows:

a. In subparagraph (b)(2)(i) the phrase "as listed in" is amended to read "as described in".

b. A new subparagraph (b)(4) is added as follows:

(4) *Identification of principal geographic code numbers.* Following are descriptions of the principal A.I.D. Geographic Source area code numbers that may be referenced in an authorizing or implementing document:

Code 000—United States and areas of U.S.-associated Sovereignty.

Code 940—"The Americas:" The United States and areas of U.S.-sovereignty and all independent countries in the Americas south of the United States, except the participating country itself and Cuba.

Code 901—"Limited Free World:" Any area or country in the Free World, excluding the participating country itself and the following developed countries: Australia, Austria, Belgium, Canada, Denmark, France, Germany (Federal Republic), Italy, Japan, Luxembourg, Monaco, Netherlands, New Zealand, Norway, South Africa, Spain, Sweden, Switzerland, and the United Kingdom.

Code 899—"Free World:" Any area or country excluding the participating country itself and the following countries:
Albania.
Bulgaria.
China (Mainland) and other Chinese Communist-controlled Areas.
Cuba.
Czechoslovakia.
Estonia.
East Germany.
Hungary.
North Korea.
Latvia.
Lithuania.
Outer Mongolia.
Poland.
Romania.
North Vietnam.
Union of Soviet Socialist Republics (USSR).

c. In paragraph (k) the phrase "Commodity Eligibility Application" is amended to read "Commodity Approval Application".

2. Section 201.52(a)(10) is amended by the addition of the following sentence: "In the case of claim for reimbursement or payment for partial shipment, presented subsequent to submission of the original Commodity Approval Application, one reproduced copy of the original countersigned Commodity Approval Application appropriately certified as such by the supplier."

3. Section 201.72(c) is amended by changing the period at the end of the sentence to a comma and adding the following: "by the supplier and the Commodity Approval Application has been countersigned by A.I.D."

4. Appendix E is revised to read as follows:

APPENDIX E—APPLICATION FOR APPROVAL OF COMMODITY ELIGIBILITY

AID 11 (6-1-70)

Budget Bureau No. 24-R0055

Approval Expires 5-31-74

TRANSACTION NO. (Assigned by A.I.D.)

TRANSACTION IDENTIFICATION

1. A.I.D. No. _____
2. Payment Terms:
   Letter of Credit No. _____
   Date _____
   Name and Address of U.S. Bank _____
   _____
   Other Payment Terms _____
3. Import License No. _____
   Date _____
4. Supplier's Relationship to United States:
   ☐ Corporation or Partnership Organized under U.S. Laws.
   ☐ Individual: U.S. Citizen or U.S. Resident.
   ☐ Controlled Foreign Corporation.
   ☐ Other.
5. Supplier's Name and Address _____
   _____
6. Importer's Name and Address _____
   _____
7. Contract:
   Total Amount _____
   Date _____
8. Shipping Plans as of Time of Application:
   a. Partial Shipment ☐ No ☐ Yes $_____
   b. Loading Port _____
   c. Destination Port _____
   d. Month(s) of Shipment _____

COMMODITY IDENTIFICATION

9. Schedule B 7-Digit Code(s):
   (a) _____
   (b) _____
   (c) _____
   (d) _____
   (e) _____
10. Commodity Details:
    _____
    _____
    _____
    _____
    _____
11. Unit and Unit Price FAS/FOB Vessel (Named Port of Loading):
    _____
    _____
    _____
    _____
    _____
12. Commodity Condition: ☐ Unused ☐ Other.
13. Source:
    a. Authorized Area _____
    b. Shipped From _____
    c. Produced in _____
14. Components:
    a. From Other than 13.a Source ☐ Yes ☐ No.
    b. If 14.a is "Yes," Country Imported From _____
    c. Cost Per Unit of 14.b Components _____
15. Information about Producers and Plants:
    a. Name of Producer(s) and Location of Plants _____
    _____
    b. Size Class of Producer(s) Small Business ☐ Not Small Business ☐.
    c. Estimated Value Furnished from Each Plant _____
    _____
16. Remarks and Additional Information _____
    _____
17.:

SUPPLIER'S CERTIFICATIONS

As a condition for securing a determination of commodity eligibility preparatory to the receipt by the supplier of funds made available by the United States under the Foreign Assistance Act of 1961, as amended, in payment in whole or in part in the transaction described and for the commodity identified on this form, the undersigned, acting on behalf of the supplier whose name appears in block 5 above and authorized to bind the supplier, agrees with and certifies to A.I.D. as follows:

1. The supplier has contracted for the sale of the commodity described on this form to the importer whose name appears in block 6, and the supplier has either attached to this form a copy of such contract or has furnished in block 2 information concerning a letter of credit confirmed or advised in his favor under a payment obligation assumed by the importer in the sales contract.

2. The supplier has filled in the applicable portions of this form and certifies to the correctness of the information shown herein.

3. The supplier agrees that the commodity will be shipped and invoiced in accordance with the information shown herein; that if any change in commodity identification takes place after A.I.D. has approved this transaction, the supplier will resubmit this form to A.I.D. for review and further approval for financing in light of the changed commodity; and that this Commodity Approval Application which the supplier proposes to use as a basis for securing payment from A.I.D. funds, is in every respect the original or true copy of the original application approved by A.I.D. The supplier acknowledges that any commodity, other than a commodity described on this form by the supplier and

approved by A.I.D. below, is ineligible for A.I.D. financing with respect to the sale transaction for which this form must be submitted as a condition for payment.

4. With respect to any commodity which the supplier proposes to furnish from the United States, the supplier certifies that he is an individual, resident in the United States; a nonresident citizen of the United States; a corporation or partnership organized under the laws of the United States; or a controlled foreign corporation (within the meaning of Section 957 et seq. of the Internal Revenue Code) as attested by current information on file with the Internal Revenue Service of the United States (on IRS Form 959, 2952, 3646, or any substitute or successor forms) submitted by shareholders of the corporation. If the supplier is a controlled foreign corporation without a regular place of business in the United States, the supplier appoints any shareholder or officer thereof agent for the supplier to receive service of process in the United States in connection with any dispute arising between the supplier and A.I.D. and relating to the commodity sale financed by A.I.D.

5. The supplier has not received notice directly by mail or indirectly by publication in the FEDERAL REGISTER or otherwise that A.I.D. has suspended or debarred him pursuant to A.I.D. Regulation 8 (22 CFR Part 208) or that the Treasury Department has placed his name on the Consolidated List of Designated Nationals and thereby rendered him ineligible to receive A.I.D. funds. To the best of his knowledge, the supplier has not acquired, and in any event will not acquire, for resale under A.I.D. financing the goods described on this form from any supplier suspended or debarred by A.I.D. or included on the Treasury List of Designated Nationals or from any affiliate of such a person.

6. The supplier acknowledges that this application, when approved, is not valid for shipments having a delivery date on or after the expiration date shown below.

Typed or Printed Name and Title_____

_____

Signature of Authorized Representative of Supplier _____

_____

Date_____

18.:

A.I.D. APPROVAL

By the signature and seal which appear below, A.I.D. has given limited approval to the sale described on this form. This approval is limited strictly to a determination that the commodity which the supplier has described is of a description, condition, and source eligible for A.I.D. financing. This approval and determination of commodity eligibility does not represent an approval of the sale price and does not in any way preclude an A.I.D. refund claim based upon a detailed analysis of the transaction upon postaudit in accordance with the provisions of A.I.D. Regulation 1 (22 CFR Part 201). A.I.D. expressly reserves to itself such rights as it may have under that regulation and under such other A.I.D. forms as the supplier may be required to submit by the terms of financing documents and by the terms of Regulation 1.

Expiration Date_____

Approved for A.I.D. Authorized Signature

_____

Date_____

19.:

CERTIFICATE FOR PARTIAL SHIPMENT

I hereby certify that the partial shipment for which payment is being requested from A.I.D. funds is being made under the contract covered by the original validated form AID–11 of which this is a true copy.

Typed or Printed Name and Title_____

_____

Signature of Authorized Representative of Supplier _____

_____

Date_____

GENERAL INSTRUCTIONS

Requirement for payment: Section 201.11 (k) of A.I.D. Regulation 1 declares that a commodity sale transaction is eligible for A.I.D. financing only if A.I.D. provides a determination of the commodity eligibility on the Commodity Approval Application. Section 201.52(a)(10) of the regulation states that to secure payment in connection with any sale governed by the regulation, a supplier must submit to the paying bank the signed original of this form, countersigned by A.I.D. As appropriate, a reproduced copy of the validated form, certified as provided in the second paragraph below, is required with each subsequent claim for partial shipments made under the original validated form AID–11.

Approval by A.I.D.: To secure A.I.D. approval, a supplier must submit signed and properly executed original and one copy of the form, addressed to the Agency for International Development, Office of the Controller, Washington, D.C. 20523, or to the alternative direct mail address published in A.I.D. Small Business Memorandums. A.I.D. will indicate its approval in Block 18 of the form if the form is properly executed and if A.I.D. has no objection to financing the described commodity. If A.I.D. refuses approval, the Agency will return the form to the supplier with an explanation for the refusal. In either case, an identification number will be assigned by A.I.D. in the upper right-hand corner of the form. Any followup correspondence between the supplier and A.I.D. should refer to this number.

Partial shipments: In the event a supplier expects to make more than one shipment under a single contract, letter of credit, or collection document, he may either submit a separate form AID–11 covering each shipment, or submit a single form AID–11 covering the entire contract. In the latter case, the original A.I.D.-approved form will be presented to the paying bank with the supplier's first request for payment and a reproduced copy of the approved form, properly certified in block 19, will be presented with each request for payment for subsequent partial shipments. See detailed instructions for block 8.

Duration of A.I.D. approval: A.I.D. approval remains valid for 6 months as evidenced by the expiration date entered by A.I.D. in block 18. If the letter of credit is valid for a longer period, upon request from the supplier and submission of a copy of the letter of credit, A.I.D. will provide an approved expiration date corresponding to the expiration date of the letter of credit. If the A.I.D. approval expires prior to delivery, the supplier must reapply for approval, making reference to the transaction number assigned by A.I.D.

Timing of submission: Under letter of credit financing the application normally should be submitted subsequent to receiving confirmation or advice concerning the credit, but prior to shipment. The form may, however, be submitted prior to receipt of such credit provided that an original or true copy of the contract with the importer accompanies the application. Under any other method of financing, the application will be submitted following receipt of instructions that the transaction is to be A.I.D.-financed and must be accompanied by an original or true copy of the contract with the importer. In no case should the form be submitted prior to the time the supplier is able to furnish all required information in blocks 12 through 15.

Submissions in English language: Every commodity description which appears on the form must be stated in English. If a supplier furnishes as an attachment to this form a contract in a language other than English, an English translation of the commodity description must also be furnished.

Necessity for complete information: All numbered blocks MUST be appropriately completed. If the application contains incomplete blocks, it will NOT be processed but will be returned for completion.

A.I.D. geographic codes: See § 201.11(b)(4) of A.I.D. Regulation 1 for countries and areas included in geographic code numbers.

Obtaining forms: Forms may be obtained in limited quantities from banks holding A.I.D. letters of commitment, field offices of the Department of Commerce, the A.I.D. office in the supplier's country, U.S. Embassies or consulates, local banks, or the Distribution Branch, Agency for International Development, Washington, D.C. 20523. A supplier may reproduce the form provided the reproduction is identical with the original copy in every respect, including size, color, and format. A supplier may overprint his name and address in block 5.

INSTRUCTIONS RELATING TO SPECIFIC ITEMS

Block 1: Enter the letter of commitment number or Project Implementation Order number, as applicable. If neither is available, enter the loan or grant agreement number. A.I.D. cannot act on an application unless one of these numbers is provided.

Block 2: Indicate the method of financing. If by letter of credit, enter the letter of credit number assigned by the U.S. bank, the date the bank issued, advised, or confirmed the letter of credit, and the name and address of the bank concerned. If the application is submitted prior to receipt of this information, enter the words "Firm contract" and attach a copy of the contract.

If the transaction is not to be financed by letter of credit, enter the applicable payment terms (e.g., sight draft collection, open account) and attach a copy of the contract.

Block 3: The importer should provide the supplier with this information. Generally the import license number appears on the letter of credit. If the information is not known or is not available at the time of submission of the application, enter "Unknown". (In some cases it may be necessary for A.I.D. to require this information before approving the application.)

Omit this information and enter "NA" (not applicable) if the importer has not been required by his government to secure an import license.

Block 4: Check the appropriate box to indicate the supplier's relationship to the United States. This information is relevant to certification 4 in block 17. If the box for "Controlled Foreign Corporation" is checked, show the U.S. payment address in block 16. If "Other" is checked, furnish explanation of relationship in block 16.

Block 5: Enter name and address, taking care to center the information in order to permit A.I.D. to use a window envelope in returning the form.

Block 7: Enter the total contract sales price, i.e., the total remuneration (in whatever currency and whether paid directly to the supplier or in whole or in part to a designee of the supplier) to be received under the contract. Enter contract date or date the purchase order was accepted.

Block 8: (a) Check the appropriate box to indicate whether the supplier expects to make partial shipments. If "yes" and a separate application form will be submitted for each partial shipment, enter the value of

the shipment to which this application relates. If only one application form will be submitted to cover all partial shipments, omit the dollar value.

(b) Enter the proposed loading port. If only the range of ports is known, enter the range of ports; e.g., North Atlantic, South Atlantic, Gulf, Pacific, Great Lakes. If expected that partial shipments will be made, but only one application form is to be submitted, entries under (b) and (c) will relate to the first shipment only.

(c) Enter the proposed destination port.

(d) Enter the month in which it is expected shipment will be made. In the case of partial shipments, indicate the estimated first and last months of shipments; e.g., April–September.

Blocks 9 and 10: Enter the U.S. Department of Commerce Schedule B 7-digit code or the A.I.D. 10-digit Schedule B—Vietnam code, as appropriate, in block 9 and describe the commodity in block 10, giving size, quantity, and a clear word description of the commodity, including any special formula or other distinguishing characteristics such as substandard quality (e.g., reject, imperfect, second) which will help to identify it.

If the contract or the letter of credit identifies the commodity by other than Schedule B code or A.I.D. Schedule B—Vietnam code (e.g., Standard International Trade Classification, Brussels Trade Classification, importing country tariff classification), this identification should be furnished as part of the commodity description.

If the commodity description varies significantly within the same Schedule B code, separate entries must be furnished for each commodity.

Block 11: Enter the unit and unit price for the commodity on an F.A.S. or F.O.B. basis for the loading port specified in block 8.b. For other delivery terms, enter a constructive price F.A.S. or F.O.B. vessel; i.e., subtract from a C. & F. or C.I.F. price estimated ocean freight and marine insurance, or add to an inland price (e.g., ex plant, F.O.B. rail cars [named point]) the estimated inland freight and accessorial costs necessary to place the commodity in the custody of the ocean carrier.

If the supplier is unable to compute a unit price F.A.S. or F.O.B. vessel, the unit price of the commodity may be shown on the basis of the inland price with estimated inland freight cost, if available, footnoted in an explanatory entry in block 16. This alternative is not applicable to certain commodities subject to an eligibility test based on maximum F.A.S. value per unit. (Such commodities are identified in Office of Small Business Memorandums.)

Special instructions—multicoded items: If the shipment (or contract) is made up of commodities bearing differing Schedule B codes, or if the commodity description varies significantly within the same Schedule B code, separate entries must be furnished for each code or description. When there are six or more items to be listed in blocks 9 through 11, a signed and dated accepted contract, order, invoice, or other separate listing of the information may be attached to the original and copy of the form AID–11, provided the full 7-digit Schedule B code, complete and accurate description of the commodity, and F.A.S. or F.O.B. vessel unit price are shown for each. If the information required by blocks 12 through 15 is not common to all commodities listed, appropriate information related to each such commodity is also required to be shown either on the attachment or in the blocks 12 through 15 and related to the appropriate line of the attachment. If an attachment is used in lieu of entry of the information on form AID–11, complete blocks 9–11 inclusive, and 12–15 inclusive (when applicable) by entering the words "See attachment".

Special instructions—Blocks 12 through 15: If more than one commodity is listed in block 9, provide information required by blocks 12 through 15 on separate lines in those blocks, identified to the corresponding line on which the commodity is listed in block 9. For example, information concerning a commodity listed on line (c) in block 9 would be identified as line (c) in blocks 12 through 15. When only one form AID–11 is submitted, information in these blocks should be descriptive of the total contract. If a separate form AID–11 is submitted for each shipment under the contract, the information in these blocks should cover only that single shipment.

Block 12: Enter check mark in the appropriate box to indicate the condition of the commodity. If the commodity is other than unused, describe the condition in the space below or in block 16. For this purpose, any commodity declared surplus by a U.S. Government agency and any commodity containing rebuilt or rehabilitated components are not considered as "unused."

Block 13: See § 201.11(b)(4) of A.I.D. Regulation 1 for countries and areas included in geographic code numbers.

(a) Enter in block 13.a the authorized geographic source area as provided by the importer.

(b) Enter in block 13.b the country from which the commodity will be shipped to the importer. If the commodity will be shipped from a free port or bonded warehouse, indicate this fact in block 16 and give the location of the bonded warehouse.

(c) Enter in block 13.c the country in which the commodity has been or will be mined, grown, or produced through manufacturing, processing, or assembly.

Block 14: (a) Enter in block 14.a "Yes" if the commodity includes components imported into the country of production from a country not included in the authorized geographic source area indicated in block 13.a. If such components are not included, enter "No."

(b) If block 14.a is "Yes," identify in block 14.b each country from which components were imported into the country of production.

(c) In block 14.c enter the total cost, within each unit of the finished product, attributable to components imported from each country indicated in block 14.b. If the supplier is unable to furnish information required by blocks 14.b and 14.c at the time of submission of the application, A.I.D. will accept a statement in these blocks or in block 16 that (1) the commodity contains no components from other than "free world" countries, and (2) the total cost of imported components per unit of finished commodity is no more than 10 percent of the lowest selling price per unit at which the supplier makes the commodity available for export. If the total cost of imported components is more than (2) above, A.I.D. will accept a statement which declares (i) the actual percentage of such components *or* an affirmation that the percentage is not in excess of the percentage allowed by A.I.D., *and* (ii) a citation to the pertinent percentage modification permitting such an increased percentage of imported components. The supplier should thereafter be prepared to demonstrate the accuracy of these statements upon request of A.I.D.

Block 15: At the supplier's option, this information may be omitted from the original form and shown only on the duplicate copy which does not leave A.I.D.'s possession. (a) Enter the name of the producer (e.g., the manufacturer, processor, assembler) and the location (city and State or country) of the plant where produced. "Same as block 5" may be entered when appropriate.

(b) (This information is required only when a U.S. address is indicated in block 15.a. The information is required so that A.I.D. can compile information recommended by Congress.) Indicate whether the producer is considered a small business concern for the purposes of U.S. Government procurement. Generally a small business concern is a firm that (1) is not dominant in its field of operations and, with its affiliates, employs fewer than 500 employees, or (2) is certified as a small business concern by the Small Business Administration. (Code of Federal Regulations, Title 13, Part 121, as amended.) If a producer is unsure of his classification, he may obtain guidance from the nearest field or regional office of the Small Business Administration.

(c) Enter the part of the total commodity value, F.A.S. or F.O.B. vessel port of loading, attributable to the goods furnished from each plant.

Block 16: This block may be used to furnish explanation of or additional information in connection with, any entries on the form. Identify any explanatory entry to the block (and line, as appropriate) to which it relates.

Block 17: The supplier, or his authorized representative, must manually sign this certification, showing name, title, and date signed.

Block 18: For A.I.D. use. Note that A.I.D. approval is not valid for deliveries on and after the expiration date shown in this block.

Block 19: If reproduced copies of this original form are presented with the supplier's request for payment (see third paragraph of General Instructions), the supplier or his authorized representative must manually sign this certification in block 19 of the reproduced form, showing name, title, and the date signed.

5. The foregoing amendments shall enter into effect on August 17, 1970, but shall not apply to shipments under letters of credit opened or confirmed before that date.

Dated: August 6, 1970.

JOHN A. HANNAH,
Administrator.

[F.R. Doc. 70–10680; Filed, Aug. 14, 1970; 8:45 a.m.]

Title 24—HOUSING AND HOUSING CREDIT

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

PART 7—EQUAL EMPLOYMENT OPPORTUNITY; POLICY AND PROCEDURES

On May 26, 1970, notice of proposed rule making revising Department policy and procedures with respect to Equal Employment Opportunity was published in the FEDERAL REGISTER (35 F.R. 8240). No comments were received in response to this publication and accordingly the amendment as so proposed is hereby adopted, subject to the following changes:

1. In paragraph (a) of § 7.31 insert the word "acting" after the word "organization" in line 7.

2. In paragraph (d) of § 7.31, insert a comma after the word "investigated" in line 8.

3. In paragraph (b)(4) of § 7.34 change line 4 to read "including affidavits: (i) Of the complainant;" in line 5 insert "(ii)" at beginning of line; and in line 6 change the comma to a semicolon following the word "discrimination" and insert "(iii)" following the word "and".

4. In paragraph (a) of § 7.38 insert the word "time" after the word "applicable" in line 16.

5. In paragraph (a)(3) of § 7.45 change "but" to read "if" in line 2.

Effective date. This amendment is effective as of July 1, 1969. However, complaints of discrimination based on matters occurring before July 1, 1969, will be processed under the regulations as they existed prior to this amendment.

GEORGE ROMNEY,
Secretary of Housing and Urban Development.

1. Subpart A is amended to read as follows:

Subpart A—Equal Employment Opportunity Without Regard to Race, Color, Religion, Sex, or National Origin

GENERAL PROVISIONS

AUTHORITY: The provisions of this Subpart A issued under sec. 7(d), 79 Stat. 670; 42 U.S.C. 3535(d); E.O. 11478 of Aug. 8, 1969, 34 F.R. 12985, Aug. 12, 1969; 42 U.S.C. 2000e note.

Subpart A—Equal Employment Opportunity Without Regard to Race, Color, Religion, Sex, or National Origin

GENERAL PROVISIONS

§ 7.1 Policy.

In conformity with the policy expressed in Executive Order 11478 and with implementing regulations of the Civil Service Commission, codified under 5 CFR Part 713, it is the policy and intent of the Department of Housing and Urban Development to provide equality of opportunity in employment in the Department for all persons; to prohibit discrimination because of race, color, religion, sex, or national origin in all aspects of its personnel policies, programs, practices, and operations and in all its working conditions and relationships with employees and applicants for employment; and to promote the full realization of equal opportunity in employment through continuing programs of affirmative action at every management level within the Department.

§ 7.2 Definitions.

(a) For the purpose of this subpart, "organizational unit" means the jurisdictional area of the Office of the Secretary, each Assistant Secretary, the General Counsel, the Federal Insurance Administrator, and each Regional Administrator. For the purpose of this subpart the jurisdictional area of each Regional Administrator includes all HUD Area Offices and HUD–FHA Insuring Offices within the region.

(b) The term "EEO," as used herein, means Equal Employment Opportunity.

§ 7.3 Designations.

(a) *Director of Equal Employment Opportunity.* The Assistant Secretary for Equal Opportunity is designated the Director of EEO.

(b) *Deputy Director of Equal Employment Opportunity.* The Deputy Assistant Secretary for Equal Opportunity is designated the Deputy Director of EEO.

(c) *Equal Employment Opportunity Officers.* Each Assistant Secretary, the General Counsel, the Federal Insurance Administrator, and each Regional Administrator shall be the EEO Officer for his organizational unit. The Executive Assistant to the Secretary shall be the EEO Officer for the Office of the Secretary.

(d) *Equal Employment Opportunity Counselors.* Each EEO Officer, with the concurrence of the Director of EEO, shall designate a sufficient number of EEO Counselors for his organizational unit.

§ 7.4 Affirmative action programs.

Each Assistant Secretary, the General Counsel, the Federal Insurance Administrator, the Executive Assistant to the Secretary, each Regional Administrator, Area Office Head, and HUD–FHA Insuring Office Director shall establish, maintain, and carry out a plan of affirmative action to promote equal opportunity in every aspect of employment policy and practice. Each plan shall be specifically designed to recognize conditions, situations, and needs of the particular office, community characteristics, and problems of the particular locality. Each plan is subject to approval by the Director of EEO and shall be developed within the framework of departmentwide guidelines published by the Director of EEO.

RESPONSIBILITIES

§ 7.10 Responsibilities of the Director and Deputy Director of EEO.

The Director and Deputy Director of EEO are assigned the functions of:

(a) Advising the Secretary with respect to the preparation of plans, procedures, regulations, reports, and other matters pertaining to the Government's equal employment opportunity policy and the Department's EEO program;

(b) In coordination with other officials, developing and maintaining plans, procedures, and regulations necessary to carry out the Department's EEO program, including a departmentwide program of affirmative action developed in coordination with other officials; he approves programs of affirmative action established throughout the Department;

(c) Evaluating from time to time the sufficiency of the Department's EEO program and reporting thereon to the Secretary with recommendations as to any improvement or correction needed, including remedial or disciplinary action with respect to managerial or supervisory employees who have failed in their responsibility;

(d) Appraising the Department's personnel operations at regular intervals to insure their conformity with the policy of the Government and the Department's equal employment opportunity program;

(e) Making changes in programs and procedures designed to eliminate discriminatory practices and improve the Department's EEO program;

(f) Providing for counseling by an EEO Counselor of an aggrieved employee or applicant for employment who believes that he has been discriminated against because of race, color, religion, sex, or national origin, and for attempting to resolve on an informal basis the matter raised by the employee or applicant before a complaint of discrimination may be filed under § 7.31;

(g) Providing for the receipt and investigation and for the prompt, fair, and impartial consideration and disposition of individual complaints involving issues of discrimination within the Department subject to §§ 713.211 through 713.222 of the Regulations of the Civil Service Commission, codified under 5 CFR Part 713;

(h) Providing for the receipt, investigation, and disposition of general allegations by organizations or other third parties of discrimination in personnel matters within the Department which are unrelated to an individual complaint of discrimination, with notification of

decision to the party submitting the allegation;

(i) Making the final decision on discrimination complaints and ordering such corrective measures as he may consider necessary, including the recommendation for such disciplinary action as is warranted by the circumstances when an employee has been found to have engaged in a discriminatory practice; and

(j) Concurring in the designations of EEO Counselors by each EEO Officer.

§ 7.11 Responsibilities of the EEO Officers.

Each EEO Officer shall:

(a) Advise the Director or Deputy Director of EEO on all matters affecting the implementation of the Department's EEO policy and program in his organizational unit;

(b) Develop and maintain a program of affirmative action for his organizational unit and insure that it is carried out in an exemplary manner;

(c) Serve as processing office for discrimination complaints and keep the Director or Deputy Director of EEO informed of significant developments;

(d) Publicize to all employees of the organizational unit for which he is responsible the name and address of the Director and Deputy Director of EEO, the EEO Officer, and the EEO Counselors;

(e) Inform all supervisors in the organizational unit of the responsibilities and objectives of the EEO Counselor and of the importance of cooperating with him in the effort to informally find solutions to problems brought to his attention by employees and applicants; and

(f) Review the activities of the EEO Counselors in the organizational unit as well as furnish guidance and otherwise assist them in their work.

§ 7.12 Responsibilities of EEO Counselors.

The EEO Counselors are responsible for counseling, in accordance with § 7.26, any employee or applicant for employment who believes that he has been discriminated against because of race, color, religion, sex, or national origin.

§ 7.13 Responsibilities of the Assistant Secretary for Administration.

The Assistant Secretary for Administration shall:

(a) Provide leadership in developing and maintaining personnel management policies, programs, and procedures which will promote continuing affirmative action to insure equal opportunity in the recruitment, selection, placement, training, and promotion of employees;

(b) Provide positive assistance and guidance to organizational units and personnel offices to insure the effective implementation of the personnel management policies, programs, and procedures on equal employment opportunity; and

(c) Participate at the national level with other Government departments and agencies, other employers, and other public and private groups, in cooperative action to improve employment opportunities and community conditions which affect employability.

§ 7.14 Responsibilities of personnel officers.

In conformity with guidelines issued by the Director of Personnel of the Department, personnel officers designated by him shall:

(a) Appraise job structure and employment practices to insure genuine equality of opportunity for all employees to participate fully on the basis of merit in all occupations and levels of responsibility;

(b) Communicate the Department's equal employment opportunity policy and program and its employment needs to all sources of job candidates without regard to race, color, religion, sex, or national origin, and solicit their recruitment assistance on a continuing basis;

(c) As appropriate, provide personnel information to complainants, complainant's representatives, counselors, and others who are involved in a discrimination complaint;

(d) Evaluate hiring methods and practices to insure fair and impartial consideration for all job applicants;

(e) Insure that new employee orientation programs contain appropriate references to the Department's EEO policies and programs;

(f) Participate in the preparation and distribution of such educational materials as may be necessary to inform adequately all employees of their rights and responsibilities as described in this chapter, including the Department's directives issued to carry out the Equal Employment Opportunity Program;

(g) Develop an on-going training program for various levels of administration and supervision, to insure understanding of the Departmental EEO procedures and practices; and

(h) Actively encourage employees to take full advantage of Government training programs and other educational opportunities.

§ 7.15 Responsibilities of the Assistant Regional Administrators for Equal Opportunity.

Each Assistant Regional Administrator for Equal Opportunity is responsible for advising and assisting the Regional Administrator in carrying out all aspects of the EEO program, including:

(a) Appraising the equal employment opportunity program in the jurisdictional area of the Regional Administrator;

(b) Conducting reviews and making special studies; and

(c) Processing complaints of discrimination in employment.

§ 7.16 Responsibilities of supervisors.

Supervisors shall:

(a) Keep informed on current EEO policies, plans, and procedures;

(b) Provide positive leadership and support for the EEO program;

(c) Maintain relationships with all those supervised in a manner that fosters effective teamwork and high morale, and provide communication with employees on any matter related to equal employment opportunity;

(d) Take all personnel actions on merit principles and in a manner which will demonstrate affirmative equal employment opportunity for his organization;

(e) Insure the greatest possible utilization and development of the skills and potential ability of all subordinates;

(f) Insure that the staff member selected by the EEO Officer to be the EEO Counselor is given sufficient official time to carry out his duties;

(g) Promptly take or recommend appropriate action to overcome any impediment to the achievement of the objectives of the EEO program; and

(h) Provide recognition to employees, supervisors, managers and units demonstrating superior accomplishment in equal employment opportunity.

§ 7.17 Responsibilities of employees.

All employees of the Department are responsible for:

(a) Being informed as to the Department's EEO program;

(b) Adopting an attitude of full acceptance of minority group associates;

(c) Providing equality of treatment of, and service to, all citizens with whom they come in contact in carrying out their job responsibilities; and

(d) Providing assistance to supervisors and managers in carrying out their responsibilities in the EEO program.

PRECOMPLAINT PROCESSING

§ 7.25 Who may request counseling.

An aggrieved person who believes that he has been discriminated against by the Department because of race, color, religion, sex, or national origin, and who wishes to resolve the matter, shall consult with an appropriate EEO Counselor.

§ 7.26 The EEO Counselor.

The EEO Counselor shall:

(a) Make whatever inquiry into the matter he believes necessary;

(b) Seek a solution of the matter on an informal basis;

(c) Counsel the aggrieved person concerning the merits of the matter;

(d) Insofar as is practicable, conduct his final interview with the aggrieved person not later than 15 workdays after the date on which the matter was called to his attention by the aggrieved person;

(e) If the matter has not been resolved to the satisfaction of the aggrieved person, advise the aggrieved person in writing at the final interview of his right to file a complaint of discrimination with the appropriate EEO Officer and of the time limits governing the acceptance of a complaint;

(f) Keep a record of his counseling activities so as to be able to periodically brief the appropriate EEO Officer on those activities;

(g) When advised by the EEO Officer that a complaint of discrimination has been accepted from an aggrieved person, submit a written report to the EEO Officer, with a copy to the aggrieved person, summarizing his actions and advice both to the Department and the aggrieved

person concerning the merits of the matter (the report shall be included in the complaint file);

(h) Not reveal the identity of an aggrieved person who has come to him for consultation, except when authorized to do so by the aggrieved person, until the Department has accepted a complaint of discrimination from him;

(i) Upon acceptance by the Department of a complaint of discrimination from an aggrieved person, be relieved of further counseling responsibility with respect to the matter; and

(j) Be free from restraint, interference, coercion, discrimination, or reprisal in connection with the performance of his duties.

COMPLAINTS

§ 7.30 Presentation of complaint.

At any stage in the presentation of a complaint, including the counseling stage, the complainant shall be free from restraint, interference, coercion, discrimination, or reprisal and shall have the right to be accompanied, represented, and advised by a representative of his own choosing. If the complainant is an employee of the Department, he shall have a reasonable amount of official time to present his complaint if he is otherwise in an active duty status. If the complainant is an employee of the Department and he designates another employee of the Department as his representative, the representative shall be free from restraint, interference, coercion, discrimination, or reprisal, and shall have a reasonable amount of official time, if he is otherwise in an active duty status, to present the complaint.

§ 7.31 Who may file complaint, with whom filed, and time limits.

(a) Any aggrieved person (hereafter referred to as the complainant) who has observed the provisions of § 7.25 may file a complaint if the matter of discrimination was not resolved to his satisfaction. A complaint may also be filed by an organization acting for the complainant with his consent. The Department may accept a complaint only if the complainant:

(1) Brought to the attention of the EEO Counselor the matter causing the complainant to believe he has been discriminated against within 15 calendar days of the date of that matter; or, if a personnel action, within 15 calendar days of its effective date; and

(2) Submitted his complaint in writing to the appropriate EEO Officer within 15 calendar days of the date of his final interview with the EEO Counselor.

(b) The EEO Officer shall extend the time limits in this section:

(1) When the complainant shows that he was not notified of the time limits and was not otherwise aware of them, or that he was prevented by circumstances beyond his control from submitting the matter within the time limits; or

(2) For other reasons considered sufficient by the EEO Officer.

(c) A complaint concerned with a continuing discriminatory practice having a material bearing on employment may be filed at any time.

(d) The Department will also accept from an individual or an organization complaints or allegations of a general pattern or practice of discrimination which may be unrelated to any specific complaint involving a particular individual. Such complaints shall be received, investigated, and processed on an individual basis as determined by the Director of EEO. There is no appeal to the Civil Service Commission from actions taken on these complaints.

(e) The right to withdraw a complaint at any stage is assured.

§ 7.32 Contents.

(a) In order to expedite the processing of complaints of discrimination, the complainant should be urged to include in his complaint the following information:

(1) Whether the alleged discrimination is based upon race, color, religion, sex, or national origin.

(2) The specific action or personnel matter about which the complaint is made.

(3) Facts and other pertinent information to support the allegation of discrimination.

(4) The relief desired.

(b) In no event shall the lack of complete information at the time of filing constitute grounds for refusal by the Department to accept a complaint.

(c) The written complaint need not conform to any particular style or format.

§ 7.33 Acceptability.

(a) The EEO Officer shall determine whether the complaint comes within the purview of this subpart and shall advise the complainant in writing of the acceptance, rejection, or cancellation of his complaint. A complaint may be rejected, with the concurrence of the Director or Deputy Director of EEO, because it was not filed within the required time limits or because it is not within the purview of this subpart. It may be canceled because of a failure of the complainant to prosecute the complaint or because of a separation of the complainant from the Department for reasons not related to his complaint.

(b) If the EEO Officer determines, and the Director or Deputy Director of EEO concurs, that the complaint is to be rejected or canceled, the written decision of the EEO Officer to the complainant shall inform him of his right to appeal to the Civil Service Commission and of the time limit applicable thereto, if he believes the rejection or cancellation improper.

§ 7.34 Processing.

(a) The EEO Officer will process complaints involving the organizational unit for which he is responsible. However, the Director or Deputy Director of EEO, as he deems necessary, may assume jurisdiction of any case. This may include the designation as processing officer of an official other than the EEO Officer for the organizational unit concerned. In the latter case, the Director or Deputy Director of EEO shall so notify all interested parties.

(b) Based on a request from the EEO Officer, the Director or Deputy Director of EEO shall provide for the prompt investigation of the complaint. The request for an investigation shall be made in writing to the Director, Office of Investigation.

(1) The person assigned to investigate the complaint shall occupy a position in the Department which is not, directly or indirectly, under the jurisdiction of the head of that part of the Department in which the complaint arose.

(2) The investigation shall include a thorough review of the circumstances under which the alleged discrimination occurred, the treatment of members of the complainant's group identified by his complaint as compared with the treatment of other employees in the organizational unit in which the alleged discrimination occurred, and any policies and practices related to the work situation which may constitute, or appear to constitute, discrimination even though they have not been expressly cited by the complainant. If necessary, the investigator may obtain information regarding the membership or nonmembership of a person in the complainant's group by asking each person concerned to provide the information voluntarily; he shall not require or coerce an employee to provide this information. Information needed for an appraisal of the utilization of members of the complainant's group as compared to the utilization of persons outside the complainant's group shall be recorded in statistical form in the investigative file, but specific information as to a person's membership or nonmembership in the complainant's group needed to facilitate an adjustment of the complaint or to make an informed decision on the complaint shall, if available, be recorded by name in the investigative file.

(3) Insofar as is practicable, the investigative process shall be completed within 30 calendar days.

(4) The investigative file shall contain the various documents and information acquired during the investigation including affidavits: (i) Of the complainant; (ii) of the official charged with discrimination; and (iii) of other persons interviewed and copies of, or extracts from, records, policy statements, or regulations of the Department organized to show their relevance to the complaint or the general environment out of which the complaint arose.

(5) The investigator shall be furnished a written authorization to: (i) Investigate all aspects of complaints of discrimination, (ii) require all employees of the Department to cooperate with him in the conduct of the investigation, and (iii) require employees of the Department having any knowledge of the matter complained of to furnish testimony under oath or affirmation without a pledge of confidence.

(6) The investigator shall submit to the EEO Officer and to the Director of EEO the results of the investigation as

well as the investigative file, which shall be included in the complaint file.

(7) The EEO Officer shall furnish the complainant or his representative a copy of the investigative file.

§ 7.35 Adjustment of complaint.

The EEO Officer shall provide an opportunity for adjustment of the complaint on an informal basis after the complainant has reviewed the investigative file.

(a) *Adjustment arrived at.* If an adjustment of the complaint is arrived at, the terms of the adjustment shall be reduced to writing by the EEO Officer, signed by him, the complainant, and other appropriate persons, and made part of the complaint file. The EEO Officer shall furnish a copy of the terms to the complainant and forward the complaint file to the Director or Deputy Director of EEO.

(b) *Adjustment not arrived at.* If an adjustment of the complaint is not arrived at, the EEO Officer shall notify the complainant in writing of the proposed disposition of his case. The notice shall advise the complainant of his right to a hearing with subsequent decision by the Director or Deputy Director of EEO. The notice also shall indicate the complainant's right to a decision without a hearing if he so elects. The notice shall advise the complainant that he has 7 calendar days from receipt of the notice to inform the EEO Officer whether or not a hearing is desired. The EEO Officer shall make a copy of the notice a part of the complaint file.

(1) *No hearing to take place.* Upon timely notification to the EEO Officer by the complainant that he does not desire a hearing, or upon his failure to notify the EEO Officer of his wishes within the 7-day period, the EEO Officer shall forward the complaint file to the Director or Deputy Director of EEO for decision.

(2) *Hearing to take place.* Upon timely notification to the EEO Officer by the complainant that he desires a hearing, the EEO Officer shall take the steps described in § 7.36.

§ 7.36 Hearing.

(a) *Appeals Examiner.* The hearing shall be held by an appeals examiner who must be an employee of a Federal agency other than the Department. The EEO Officer shall request the appropriate local office of the Civil Service Commission to supply the name of an appeals examiner who has been certified by the Commission as qualified to conduct a hearing under this section.

(b) *Arrangements for hearing.* The EEO Officer shall transmit the complaint file to the appeals examiner who shall review it to determine whether further investigation is needed before scheduling the hearing. The complaint file shall include all the documents described in § 7.40 which have been acquired in the processing of the complaint. When the appeals examiner determines that further investigation is needed, he shall remand the complaint to the EEO Officer for further investigation or arrange for the appearance of witnesses necessary to supply the needed information at the hearing. The requirements of § 7.34 apply to any further investigation by the Department on the complaint. The appeals examiner shall schedule the hearing for a convenient time and place.

(c) *Prehearing conference.* In arranging for the hearing, the appeals examiner at his discretion may arrange a prehearing conference during which he shall seek to clarify the issues, accept stipulations on facts to which the interested parties may agree, establish a schedule for the hearing, and explain his role in the hearing.

(d) *Conduct of hearing.* (1) Attendance at the hearing shall be limited to persons determined by the appeals examiner to have a direct connection with the complaint; (2) the appeals examiner shall conduct the hearing so as to bring out pertinent facts, including the production of pertinent documents. Rules of evidence shall not be applied strictly, but the appeals examiner shall exclude irrelevant or unduly repetitious evidence. Information having a bearing on the complaint or employment policy or practices relevant to the complaint shall be received in evidence. The complainant, his representative and the representatives of the Department at the hearing shall be given the opportunity to cross-examine witnesses who appear and testify. Testimony shall be under oath or affirmation.

(e) *Powers of appeals examiner.* In addition to the other powers vested in the appeals examiner by the Department in accordance with this subpart, the appeals examiner is authorized to:

(1) Administer oaths or affirmations;

(2) Regulate the course of the hearing;

(3) Rule on offers of proof;

(4) Limit the number of witnesses whose testimony would be unduly repetitious; and

(5) Exclude any person from the hearing for contumacious conduct or misbehavior that obstructs the hearing.

(f) *Witnesses at hearing.* The appeals examiner shall request the EEO Officer to make available as a witness at the hearing an employee requested by the complainant when the appeals examiner determines that the testimony of the employee is necessary. The appeals examiner shall also request the appearance of any other employee whose testimony he desires to supplement the information in the investigative file. The appeals examiner shall give the complainant his reasons for the denial of a request for the appearance of employees as witnesses and shall insert those reasons in the record of the hearing. Employees shall be made available as witnesses at a hearing on a complaint when so requested by the appeals examiner and it is administratively practicable to comply with the request. When it is not administratively practicable to comply with the request for a witness, the EEO Officer shall provide an explanation to the appeals examiner. If the explanation is inadequate, the appeals examiner shall so advise the EEO Officer and request that the employee be made available as a witness at the hearing. If the explanation is adequate, the appeals examiner shall insert it in the record of the hearing, provide a copy to the complainant, and make arrangements to secure testimony from the employee through a written interrogatory. Employees shall be in a duty status during the time they are made available as witnesses. Witnesses shall be free from restraint, interference, coercion, discrimination, or reprisal in presenting their testimony at the hearing or during the investigation.

(g) *Record of hearing.* The hearing shall be recorded and transcribed verbatim. All documents submitted to, and accepted by, the appeals examiner at the hearing shall be made a part of the record of the hearing. If the Department submits a document that is accepted, it shall furnish a copy of the document to the complainant. If the complainant submits a document that is accepted, he shall make the document available to the Department representative for reproduction.

(h) *Findings, analysis, and recommendations.* The appeals examiner shall transmit to the Director or Deputy Director of EEO the complaint file (including the record of the hearing), together with his findings and analysis with regard to the matter which gave rise to the complaint and the general environment out of which the complaint arose and his recommended decision on the merits of the complaint, including recommended remedial action where appropriate. The appeals examiner shall notify the complainant of the date on which this was done. In addition, the appeals examiner shall transmit, by separate letter to the Director or Deputy Director of EEO, whatever findings and recommendations he considers appropriate with respect to conditions in the Department even though they have no bearing on the matter which gave rise to the complaint or the general environment out of which the complaint arose.

§ 7.37 Relationship to other HUD appellate procedures.

When a complainant makes a written allegation of discrimination because of race, color, religion, sex, or national origin in connection with an action that would otherwise be processed under the grievance or other internal appeal procedures of the Department, the Department may process the allegation of discrimination under its grievance or other appropriate internal appeal procedure when that procedure meets the principles and requirements in §§ 7.25 through 7.38. However, with regard to the issue of discrimination (as distinguished from other aspects of the action), the Director or Deputy Director of EEO shall make the decision of the Department as provided in § 7.39. That decision shall be incorporated in and become a part of the decision on the grievance or other internal appeal.

§ 7.38 Avoidance of delay.

(a) The complaint shall be resolved promptly. To this end, both the complainant and the Department shall proceed with the complaint without undue delay so that the complaint is resolved, except in unusual circumstances, within

(1) 60 calendar days after its receipt by the appropriate EEO Officer, exclusive of time spent in the processing of the complaint by the appeals examiner, or (2) 90 calendar days after its receipt by the EEO Officer when a hearing is held under the adverse action provisions of 5 CFR Part 771, Subpart B. When the complaint has not been resolved within the applicable time limit, the complainant may appeal to the Civil Service Commission for a review of the reasons for the delay. Upon review of this appeal, the Commission may require the Department to take special measures to insure the prompt processing of the complaint, or the Commission may accept the appeal for consideration pursuant to §§ 7.45 through 7.49.

(b) The Director of EEO may cancel a complaint if the complainant fails to prosecute the complaint without undue delay. However, instead of canceling for failure to prosecute, he may adjudicate the complaint if sufficient information for that purpose is available.

§ 7.39 Decision by Director of EEO.

(a) Following consultation with the General Counsel and the Assistant Secretary for Administration, the Director of EEO shall make the decision of the Department on a complaint based on information in the complaint file.

(b) The decision shall be in writing and shall be transmitted by letter to the complainant and his representative, with copies to the head of the organizational unit in which the complaint arose; the Assistant Secretary for Administration; and the General Counsel. When there has been a hearing on the complaint, the complainant and his representative shall be furnished a copy of the findings, analysis, and recommended decision of the appeals examiner as described in § 7.36(h), as well as a copy of the transcript of the oral testimony and other oral statements at the hearing.

(1) When there has been a hearing, the decision shall adopt, reject, or modify the decision recommended by the appeals examiner. When the decision is to reject or modify the recommended decision of the appeals examiner, the letter transmitting the decision shall set forth the reasons for rejection or modification.

(2) When there has been neither an adjustment as described in § 7.35 nor a hearing, the letter transmitting the decision shall set forth the findings, analysis, and decision of the Director of EEO.

(c) The decision shall require any remedial action authorized by law determined to be necessary or desirable to effect the resolution of the issues of discrimination and to promote the policy of equal opportunity. In such cases, the decision shall include any necessary instructions to the head of the organizational unit concerned and the Assistant Secretary for Administration as to the specific action to be taken with respect to each individual involved.

(d) The letter transmitting the decision shall advise the complainant of his right to appeal the decision on his complaint to the Civil Service Commission if he is not satisfied with it and of the time limit within which he must file the appeal pursuant to § 7.47.

(e) An employee, other than a complainant, who believes that a decision constitutes an inequity to him, has recourse to the Department grievance procedures or, as appropriate, the Department adverse action procedures including opportunity for an appeal to the Civil Service Commission.

§ 7.40 Complaint file.

The Director of EEO shall establish and maintain a complaint file containing all documents pertinent to the complaint. The complaint file, which shall not contain any document that has not been made available to the complainant, shall include copies of:

(a) The written report of the EEO Counselor to the EEO Officer on whatever counseling efforts were made with regard to the complainant's case before a formal complaint was filed by the complainant as described in §§ 7.25 and 7.26;

(b) The complaint;

(c) The investigative file;

(d) If the complaint is withdrawn by the complainant, a written statement by the complainant or his representative to that effect;

(e) If the adjustment of the complaint is arrived at as described in § 7.35, the written record of the terms of the adjustment;

(f) If no adjustment of the complaint is arrived at as described in § 7.35, a copy of the letter notifying the complainant of the proposed disposition of the complaint and of his right to a hearing;

(g) If the decision is made as described in § 7.39, a copy of the letter to the complainant transmitting that decision;

(h) If a hearing was held, the record of the hearing, together with the appeals examiner's findings, analysis, and recommended decision on the merits of the complaint; and

(i) A copy of the letter transmitting the decision.

Appeal to the Civil Service Commission

§ 7.45 Entitlement.

(a) Except as provided by paragraph (b) of this section, a complainant may appeal to the Civil Service Commission the decision of the Department:

(1) To reject his complaint because it was not:

(i) Filed within required time limits (see § 7.31); or

(ii) Within the purview of the policy and procedures set forth in this subpart; or

(2) To cancel his complaint because of the complainant's:

(i) Failure to prosecute his complaint; or

(ii) Separation from the Department for reasons which are not related to his complaint; or

(3) On the merits of the complaint, as described in § 7.39 if the decision does not resolve the complaint to the satisfaction of the complainant.

(b) A complainant may not appeal to the Civil Service Commission under paragraph (a) of this section when the issue of discrimination giving rise to the complaint is being considered, or has been considered, in connection with any other appeal by the complainant to the Commission.

§ 7.46 Where to appeal.

An appeal by a complainant must be filed by him or his representative in writing either personally or by mail, with the Board of Appeals and Review, U.S. Civil Service Commission, Washington, D.C. 20415.

§ 7.47 Time limit.

(a) Except as provided in paragraph (b) of this section, a complainant may file an appeal at any time up to 15 calendar days after his receipt of the letter transmitting the decision of the Department.

(b) The time limit stated in paragraph (a) of this section may be extended in the discretion of the Board of Appeals and Review of the Commission, upon a showing by the complainant that he was not notified of the prescribed time limit and was not otherwise aware of it or that circumstances beyond his control prevented him from filing an appeal within the prescribed time limit.

§ 7.48 Appellate procedures.

The Board of Appeals and Review of the Commission shall review the complaint file of the Department and all relevant written representations made to the Board. However, there is no right to a hearing before the Board. The Board may remand a complaint to the Department for further investigation or a rehearing if the Board considers that action necessary, or have additional investigation conducted by Commission personnel. The provisions of this subpart apply to any further investigation or rehearing resulting from a remand from the Board. The Board shall issue a written decision setting forth its reasons for the decision and send copies thereof to the complainant, his designated representative, and the Department's Director of EEO. When corrective action is ordered, the Director of EEO shall report promptly to the Board that the corrective action has been taken. The decision of the Board is final and there is no further right to appeal.

§ 7.49 Appellate review by the Commissioners.

The Civil Service Commissioners may, in their discretion, reopen and reconsider any previous decision when the party requesting reopening submits written arguments or evidence which tends to establish that:

(a) New and material evidence is available that was not readily available when the previous decision was issued.

(b) The previous decision involves an erroneous interpretation of law or regulation or a misapplication of established policy; or

(c) The previous decision is of a precedential nature involving a new or unreviewed policy consideration that may have effects beyond the actual case at

hand, or is otherwise of such an exceptional nature as to merit the personal attention of the Commissioners.

2. Subparts B and C are revoked.

[F.R. Doc. 70-10359; Filed, Aug. 14, 1970; 8:50 a.m.]

Title 32—NATIONAL DEFENSE

Chapter XIV—Renegotiation Board

SUBCHAPTER B—RENEGOTIATION BOARD REGULATIONS UNDER THE 1951 ACT

PART 1453—MANDATORY EXEMPTIONS FROM RENEGOTIATION

Common Carriers by Water

Section 1453.3(d)(2) *Fiscal years ending on or after December 31, 1953* is amended by deleting, in subdivision (i) thereof, the words "January 1, 1969", and inserting in lieu thereof the words "January 1, 1970".

(Sec. 109, 65 Stat. 22; 50 U.S.C.A., App. sec. 1219)

Dated: August 12, 1970.

LAWRENCE E. HARTWIG,
Chairman.

[F.R. Doc. 70-10719; Filed, Aug. 14, 1970; 8:50 a.m.]

[Renegotiation Ruling 24]

PART 1499—RENEGOTIATION RULINGS AND BULLETINS

Government-Furnished Materials

Section 1499.1-24 *Renegotiation Ruling No. 24: Government-furnished materials* is amended by deleting paragraphs (d), (e), (f), and (g) and inserting in lieu thereof the following:

§ 1499.1-24 Renegotiation Ruling No. 24: Government-furnished materials (interprets act sections 102(a) and 103(f)).

* * * * *

(d) Under certain procurement practices, when the Government is to furnish materials, the contractor includes in his bid the value of the furnished materials he estimates he will need, and such amount is deducted in his invoices; final adjustment is made at the end of the contract, with the contractor realizing an increased profit for materials saved or a decreased profit for excess materials consumed. The contractor may be required to pay charges arising from the shipment of the Government materials, and he may be held liable for any loss or damage thereto from the time the materials are delivered to the carrier at the point of origin until they are returned to the Government. However, the contractor does not invest capital in the materials; he does not expend effort in finding and purchasing the materials; and legal title remains in the Government. Since the contractor does not purchase, and at no time owns, the Government-furnished materials, his return of the finished product does not constitute a sale of such materials. Therefore, the value of the furnished materials may not be included in renegotiable sales or costs. See Ellis Coat Co. v. Secretary of War, 9 T.C. 1004 (1947); Stoner Manufacturing Corp. v. Secretary of War, 21 T.C. 200, 209 (1953).

(e) Even though the value of Government-furnished materials is not included in sales or costs, the Board will give appropriate consideration in each case to the method of procurement employed, in evaluating the contractor's performance under the statutory factors. See Part 1460 of this chapter.

(f) Costs incurred by the contractor which are directly chargeable to Government-furnished materials, and items of manufacturing overhead or other indirect cost which are properly allocable thereto, are allowable. With respect to general and administrative expense, it was held in Ellis Coat Co., supra, that the contractor could not use the value of Government-furnished materials for the purpose of overall allocation of general and administrative expense between renegotiable and nonrenegotiable business, because by virtue of such materials any appreciable drain on his general and administrative expense was eliminated. The Board follows this rule when such circumstances exist. On the other hand, the contractor's administrative effort and responsibility often are not appreciably diminished by his receipt and use of furnished materials, as in cases where the contractor is responsible for insurance, freight, storage and other handling costs for such materials. In such cases, if general and administrative expense is allocated to renegotiable and nonrenegotiable business on a cost-of-goods sold basis, the value of Government-furnished materials is included in the base for such allocation.

(Sec. 109, 65 Stat. 22; 50 U.S.C.A., App. sec. 1219)

Dated: August 12, 1970.

LAWRENCE E. HARTWIG,
Chairman.

[F.R. Doc. 70-10720; Filed, Aug. 14, 1970; 8:50 a.m.]

Title 33—NAVIGATION AND NAVIGABLE WATERS

Chapter I—Coast Guard, Department of Transportation

PART 92—ANCHORAGE AND NAVIGATION REGULATIONS; ST. MARYS RIVER, MICHIGAN

Temporary Reduction of Vessel Speed Limits

CROSS REFERENCE: For a document relating to the temporary reduction of vessel speed limits on St. Marys River, Mich., see F.R. Doc. 70-10764, Department of Transportation, Coast Guard, Notices section.

Title 36—PARKS, FORESTS, AND MEMORIALS

Chapter I—National Park Service, Department of the Interior

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

Mount McKinley National Park, Alaska; Mountain Climbing, Aircraft

On page 4554 of the FEDERAL REGISTER of March 14, 1970 there was published a notice and text of a proposed amendment to § 7.44 of Title 36, Code of Federal Regulations. The purpose of this amendment is to provide a registration system for mountain climbing in certain areas of the Park in the interest of public safety, and to designate a permissible aircraft landing area within the Park.

Interested persons were given 30 days within which to submit written comments, suggestions, or objections, with respect to the proposed amendment. One letter of comments was received pertaining to the proposed mountain climbing regulations. Considering these comments, minor changes were made to clarify the proposed amendment as regards to mountain climbing.

Since the changes to the proposed amendment have been minor and of a clarifying nature, rather than more restrictive with respect to Park visitors, the proposed amendment is adopted with changes as set forth below. This amendment shall take effect the date of its publication in the FEDERAL REGISTER.

§ 7.44 Mount McKinley National Park, Alaska.

* * * * *

(g) *Mountain climbing.* (1) Registration is required in advance on a form provided by the Superintendent for climbing Mount McKinley and Mount Foraker. Registration shall also include a statement of previous climbing experience for each member of the climbing party and a physician's statement certifying the current physical fitness for the climb for each member.

(2) A two-way radio capable of reaching another manned station in ready contact with Park Headquarters must be carried by the climbing party.

(3) The leader of the registered party, or his designee, is required to report in with Park Headquarters as soon as practical upon return from the climb.

(h) *Aircraft operations.* Aircraft shall be operated within the Park as provided in § 2.2 of this chapter, except as hereinafter specified.

(1) Landing of aircraft shall be permitted on the airstrip locally known as the McKinley Park Station Airport, located in secs. 3 and 4, T. 14 S., R. 7 W.; and secs. 33 and 34, T. 13 S., R. 7 W., Fairbanks Meridian.

ERNEST J. BORGMAN,
Superintendent,
Mount McKinley National Park.

[F.R. Doc. 70-10679; Filed, Aug. 14, 1970; 8:45 a.m.]

Title 41—PUBLIC CONTRACTS AND PROPERTY MANAGEMENT

Chapter 4—Department of Agriculture

PROCUREMENT

Miscellaneous Amendments

The following miscellaneous amendments are made in the Agriculture Procurement Regulations:

PART 4–2—PROCUREMENT BY FORMAL ADVERTISING

1. Section 4–2.407–8 is amended to read:

§ 4–2.407–8 Protests against award.

(a) *General.* (1) The written final decision to the protestor required by § 1–2.407–8(a)(1) of this title shall include a paragraph substantially as follows:

This decision shall be final and conclusive unless a further written notice of protest addressed to the Comptroller General of the United States is mailed or otherwise furnished to the Contracting Officer or the Comptroller General. The protest, which may be in letter form, should refer to this decision and should include a statement of the reasons why the decision is considered to be erroneous.

(2) Where protests addressed to the Comptroller General are received by the contracting officer, he shall immediately forward the protest and documents required by § 1–2.407–8(a)(2) of this title to the Office of Plant and Operations through agency channels. The Office of Plant and Operations will transmit the protest to the General Accounting Office.

* * * * *

(c) *Protests after award.* Protests received after award will be handled in accordance with § 1–2.407–8 and § 4–2.407–8 of this title insofar as applicable. If the award was erroneously made, the instructions in § 4–2.407–53 shall be followed. Protests addressed to the Secretary or to the Department will be handled by the Office of Plant and Operations except as otherwise instructed in individual cases. If the contracting agency is in doubt as to proper resolution of a protest addressed to it, the advice of the Office of Plant and Operations or the Office of General Counsel should be sought.

PART 4–4—SPECIAL TYPES AND METHODS OF PROCUREMENT

1. The table of contents for Part 4–4 is amended as follows:

a. The following entry is added:

Sec.
4–4.5018a Consultant Services.

2. Section 4–4.5016 is amended as follows:

a. So much as reads "(See § 4–52.117.)" is deleted.

3. Section 4–4.5018 is amended as follows:

a. So much as reads "(See § 4–52.118–1.)" is corrected to read "(See § 4–52.131K.)".

4. A new § 4–4.5018a is added as follows:

§ 4–4.5018a Consultant services.

The use of consultant services or the services and facilities of others, in the functional areas assigned to the Office of Management Improvement, must be reviewed and approved by the Office of Management Improvement. This approval must be acquired prior to initiating any procurement action. (See 5AR 3.)

PART 4–50.103—DISPUTES AND APPEALS

1. Section 4–50.103 is amended as follows:

a. The following paragraph is added:

A contractor may designate legal counsel or other persons to represent him in disputes with the Contracting Officer. The Contracting Officer, after receipt of any such designation, should furnish the representative with a copy of any written communication to the contractor. If a contractor has more than one representative, the furnishing of a copy of such communication to any one representative is sufficient.

(5 U.S.C. 500; see § 4–52.103)

Done at Washington, D.C., this 12th day of August 1970.

ELMER MOSTOW,
Director, Office of Plant and Operations.

[F.R. Doc. 70–10725; Filed, Aug. 14, 1970; 8:50 a.m.]

Title 49—TRANSPORTATION

Chapter III—Federal Highway Administration, Department of Transportation

SUBCHAPTER B—MOTOR CARRIER SAFETY REGULATIONS

[Docket No. MC–14; Notice No. 70–10]

PART 393—PARTS AND ACCESSORIES NECESSARY FOR SAFE OPERATION

Fire Extinguishers and Fusees

On September 17, 1969, the Federal Highway Administrator issued a notice of proposed rule making, announcing that he was considering amendments to § 393.95 of the Motor Carrier Safety Regulations for the purpose of revising the requirements for fire extinguishers and fusees carried on commercial motor vehicles (34 F.R. 14853). In response to the notice's invitation, 20 interested persons filed comments on the proposed rules. The comments have been carefully considered.

The minimum size of fire extinguishers required by the existing rules is either a 1½-quart carbon tetrachloride type extinguisher, a 4-pound carbon dioxide type extinguisher, a 4-pound dry chemical type extinguisher, or an extinguisher rated at least 4 B:C by Underwriters' Laboratories. The proposal would have required extinguishers having at least a 16 B:C Underwriters' Laboratories rating on power units that transport hazardous materials and extinguishers rated at 8 B:C or more on all other power units. A number of respondents noted that Underwriters' Laboratories has modified its rating system for hand portable extinguishers so that, after tests on class B indoor fires, the extinguishers may be rated either 1 B, 2 B, 5 B, 10 B, or 20 B. It was also argued that to require fire extinguishers with a larger capacity than 4 B:C would not produce a safety benefit commensurate with the increased costs involved in complying with that requirement. Several respondents claimed that fires that cannot be dealt with by persons using a 4 B:C extinguisher are too large to be fought with hand fire extinguishers at all. Faced with such a fire, it was said, the driver should be encouraged to call the fire department rather than to attempt to extinguish it on his own.

The Director of the Bureau of Motor Carrier Safety agrees that, in the case of a power unit that is not being used to transport hazardous materials, availability of a fire extinguisher rated at 5 B:C should be adequate to control the vast majority of small fires. For that reason, and to avoid imposing an undue financial burden on motor carriers, he has limited the requirement for a fire extinguisher in such units to one having a minimum rating of 5 B:C. In addition, extinguishers rated at 4 B:C may continue to be used on those units until January 1, 1973. Furthermore, as noted below, two 4 B:C extinguishers may be used in place of the 5 B:C unit required.

In the case of power units that transport hazardous materials, on the other hand, the Director has concluded that larger fire extinguishers are needed. If a relatively small fire on such a unit gets out of control, the results could easily be catastrophic. Therefore, the somewhat greater expense to equip a unit transporting hazardous materials with a larger extinguisher is justified. On and after July 1, 1971, an extinguisher having at least a 10 B:C rating will be required on power units used to transport hazardous materials.

In an effort to mitigate its financial impact, the new rule permits motor carriers to install two fire extinguishers in a power unit not transporting hazardous materials, and to total their combined capacities to comply with the minimum requirement of 5 B:C capacity. As a result, the rule avoids rendering many of the 4 B:C extinguishers presently in use obsolete. A carrier may, for example, comply with the requirement for a 5 B:C extinguisher by simply installing two 4 B:C fire extinguishers, as long as both of those extinguishers meet certain other requirements applicable to all fire extinguishers.

One of those requirements is a prohibition against any fire extinguisher using a

vaporizing liquid that gives off toxic vapors. As explained in the notice of proposed rule making, the principal object of the prohibition is to eliminate the use of carbon tetrachloride and chlorobromomethane type extinguishers, which are both inherently hazardous and relatively inefficient. In response to requests for clarification of the term "toxic vapors," the Director has made use of the "Classification of Comparative Life Hazard of Gases and Vapors," issued by Underwriters' Laboratories as the benchmark for determining the substances that are prohibited.

The rule also requires all fire extinguishers on commercial vehicles to be designed, constructed, and maintained so that a driver can determine upon visual examination whether or not they are fully charged. Some respondents asked for modification or abandonment of this requirement, pointing out that techniques other than visual examination, such as weighing the extinguisher, are at least equally reliable methods for determining whether it is fully charged. True as that may be in a setting other than a motor vehicle about to begin a journey, the Director has concluded that a means of visually checking the condition of a fire extinguisher is essential to ensure that drivers can quickly and accurately ascertain that their extinguishers are ready for use, as § 392.8 of the Motor Carrier Safety Regulations requires them to do.

Several respondents who are engaged in large scale driveaway-towaway operations protested the proposal to extend the requirements for fire extinguishers to them. Careful study of the comments and data submitted by these respondents indicates that not enough information is available at the present time to extend the fire extinguisher requirements to driven vehicles in driveaway-towaway operations. There is evidence that driveaway-towaway operations are not immune from the risk of fire and the hazards resulting from fire. Therefore, the Director will continue the present exemption for a period of 1 year, during which a careful study of driveaway-towaway operations will be made to determine whether fire extinguishers should be required. If the study shows that fires do occur in this type of operation, it will be the subject of a notice of proposed rule making.

There was no adverse comment on the proposal to revise the requirements for fusees, and the proposal has been adopted without change.

In consideration of the foregoing, paragraphs (a) and (j) of § 393.95 in Part 393 of Title 49, CFR, are revised to read as set forth below. These revisions are effective on September 10, 1970.

(Sec. 204, Interstate Commerce Act, as amended, 49 U.S.C. 304, 18 U.S.C. 834, sec. 6, Department of Transportation Act, 49 U.S.C. 1655, and the delegations of authority in 49 CFR 1.48 and 389.4)

Issued on August 5, 1970.

ROBERT A. KAYE,
Director, Bureau of Motor Carrier Safety.

§ 393.95 Emergency equipment on all power units.

* * * * *

(a) *Fire extinguisher.* (1) Except as provided in subparagraph (4) of this paragraph, every power unit must be equipped with a fire extinguisher that is properly filled and located so that it is readily accessible for use. The fire extinguisher must be securely mounted on the vehicle. The fire extinguisher must be designed, constructed, and maintained to permit visual determination of whether it is fully charged. The fire extinguisher must have an extinguishing agent that does not need protection from freezing. The fire extinguisher must not use a vaporizing liquid that gives off vapors more toxic than those produced by the substances shown as having a toxicity rating of 5 or 6 in the Underwriters' Laboratories "Classification of Comparative Life Hazard of Gases and Vapors." [1]

(2) (i) Before July 1, 1971, a power unit that is used to transport hazardous materials must be equipped with a fire extinguisher having an Underwriters' Laboratories rating [2] of 4 B:C or more. On and after July 1, 1971, a power unit that is used to transport hazardous materials must be equipped with a fire extinguisher having an Underwriters' Laboratories rating [2] of 10 B:C or more.

(ii) Before January 1, 1973, a power unit that is not used to transport hazardous materials must be equipped with a fire extinguisher having an Underwriters' Laboratories rating [2] of 4 B:C or more. On and after January 1, 1973, a power unit that is not used to transport hazardous materials must be equipped with either—

(*a*) A fire extinguisher having an Underwriters' Laboratories rating [2] of 5 B:C or more; or

(*b*) Two fire extinguishers, each of which has an Underwriters' Laboratories rating [2] of 4 B:C or more.

(iii) Each fire extinguisher required by this subparagraph must be labeled or marked with its Underwriters' Laboratories rating [2] and must meet the requirements of subparagraph (1) of this paragraph.

(3) For purposes of this paragraph, a power unit is used to transport hazardous materials only if the power unit or a motor vehicle towed by the power unit must be marked or placarded in accordance with § 177.823 of this title.

(4) This paragraph does not apply to the driven unit in a driveaway-towaway operation.

* * * * *

(j) *Requirements for fusees.* Each fusee shall be adequate, reliable, capable of burning for at least 15 minutes and shall comply with the specifications of the Bureau of Explosives, Two Pennsylvania Plaza, New York, N.Y. 10001, dated February 1969. Each fusee shall be marked to show that it complies with the specifications of the Bureau of Explosives.

* * * * *

[F.R. Doc. 70-10683; Filed, Aug. 14, 1970; 8:45 a.m.]

[1] Copies of the Classification can be obtained by writing to Underwriters' Laboratories, Inc., 205 East Ohio Street, Chicago, Ill. 60611.

[2] Underwriters' Laboratories ratings are given to fire extinguishers under the standards of Underwriters' Laboratories, Inc., 205 East Ohio Street, Chicago, Ill. 60611. Extinguishers must conform to the standards in effect on the date of manufacture or on Jan. 1, 1969, whichever is earlier.

Title 50—WILDLIFE AND FISHERIES

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

PART 28—PUBLIC ACCESS, USE AND RECREATION

Necedah National Wildlife Refuge, Wisconsin

The following special regulations are issued and are effective on date of publication in the FEDERAL REGISTER.

§ 28.28 Special regulations, public access, use, and recreation; for individual wildlife refuge areas.

WISCONSIN

NECEDAH NATIONAL WILDLIFE REFUGE

Public recreational activities are permitted on the Necedah National Wildlife Refuge subject to the following special conditions:

(1) Public recreational activities are limited to sightseeing, nature observation, and photography.

(2) General public recreational use is permitted as follows:

Area 1—September 18 through December 31, 1970;

Area 2—November 20 through December 31, 1970.

These open areas, comprising approximately 39,000 acres are delineated on a map available at the refuge headquarters, Necedah, Wis. 54646, and from the Regional Director, Bureau of Sport Fisheries and Wildlife, Federal Building, Fort Snelling, Twin Cities, Minn. 55111.

The provisions of this special regulation supplement the regulations which govern public access, use, and recreation on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 28, and are effective through December 31, 1970.

GERALD H. UPDIKE,
Refuge Manager, Necedah National Wildlife Refuge, Necedah, Wis.

AUGUST 10, 1970.

[F.R. Doc. 70-10686; Filed, Aug. 14, 1970; 8:45 a.m.]

PART 32—HUNTING

Kofa Game Range, Ariz.

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

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

ARIZONA

KOFA GAME RANGE

The public hunting of quail, rabbits, coyotes, gray fox, bobcat, and skunks on the Kofa Game Range, Ariz., is permitted only on the area designated by signs as open to hunting. This open area, comprising 660,041 acres or 100 percent of the total area of the game range, is delineated on a map available at the refuge headquarters, Yuma, Ariz., and from the Regional Director, Bureau of Sport Fisheries and Wildlife, Post Office Box 1306, Albuquerque, N. Mex. 87103. Hunting shall be in accordance with all applicable State regulations governing the hunting of quail, rabbits, coyotes, gray fox, bobcat, and skunks subject to the following special condition:

(1) The open season for hunting quail, rabbits, coyotes, gray fox, bobcat and skunks on the refuge extends from October 1 through November 30, 1970, inclusive.

The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 32, and are effective through November 30, 1970.

CLAUDE F. LARD,
Refuge Manager, Kofa Game Range, Yuma, Ariz.

AUGUST 6, 1970.

[F.R. Doc. 70-10691; Filed, Aug. 14, 1970; 8:46 a.m.]

PART 32—HUNTING

Imperial National Wildlife Refuge, Ariz. and Calif.

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

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

ARIZONA AND CALIFORNIA

IMPERIAL NATIONAL WILDLIFE REFUGE

Public hunting of quail, cottontail and jack rabbits on the Imperial National Wildlife Refuge, Ariz. and Calif., is permitted only on the area designated by signs as open to hunting. This open area, comprising 16,500 acres, is delineated on maps available at refuge headquarters, Yuma, Ariz., and from the Regional Director, Bureau of Sport Fisheries and Wildlife, Post Office Box 1306, Albuquerque, N. Mex. 87103. Hunting seasons are as follows: Arizona—quail, October 1, 1970 through January 31, 1971, inclusive; cottontail and jack rabbits, September 1, 1970 through January 31, 1971, inclusive. California—quail, October 31, 1970 through January 31, 1971, inclusive; cottontail and jack rabbits, September 1, 1970 through January 31, 1971, inclusive.

Hunting shall be in accordance with all applicable State and Federal regulations covering the hunting of quail and rabbits subject to the following special condition:

(1) Use of shotguns only.

The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 32, and are effective through January 31, 1971.

CLAUDE F. LARD,
Refuge Manager, Imperial National Wildlife Refuge, Yuma, Ariz.

AUGUST 6, 1970.

[F.R. Doc. 70-10688; Filed, Aug. 14, 1970; 8:46 a.m.]

PART 32—HUNTING

Seedskadee National Wildlife Refuge, Wyoming

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

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

WYOMING

SEEDSKADEE NATIONAL WILDLIFE REFUGE

Public hunting of sage grouse on the Seedskadee National Wildlife Refuge, Wyo., is permitted from August 29, 1970, to September 7, 1970, inclusive. All of the refuge area, comprising 12,370 acres, and so designated by signs, is open to hunting. Maps of the area are available at the refuge office, Room 118, Courthouse, Green River, Wyo., and from the Regional Director, Bureau of Sport Fisheries and Wildlife, Box 1306, Albuquerque, N. Mex. 87103. Hunting shall be in accordance with all applicable State regulations governing the hunting of sage grouse.

The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 32, and are effective through September 7, 1970.

MERLE O. BENNETT,
Refuge Manager, Seedskadee National Wildlife Refuge, Green River, Wyo.

AUGUST 4, 1970.

[F.R. Doc. 70-10693; Filed, Aug. 14, 1970; 8:46 a.m.]

PART 32—HUNTING

Cabeza Prieta Game Range, Ariz.

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

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

ARIZONA

CABEZA PRIETA GAME RANGE

Public hunting of bighorn sheep on the Cabeza Prieta Game Range, Ariz., is permitted only on the area designated by signs as open to hunting. The bighorn sheep season is from December 8 through December 20, 1970, inclusive. The open bighorn sheep area, comprising 685,000 acres, is delineated on a map available at the game range headquarters, Yuma, Ariz., and from the Regional Director, Bureau of Sport Fisheries and Wildlife, Post Office Box 1306, Albuquerque, N. Mex. 87103. Hunting shall be in accordance with all applicable State regulations governing the hunting of bighorn sheep subject to the following special condition:

(1) Bighorn sheep limited to four permits issued by the Arizona Game and Fish Department.

The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 32, and are effective through December 20, 1970.

CLAUDE F. LARD,
Refuge Manager, Cabeza Prieta Game Range, Yuma, Ariz.

AUGUST 6, 1970.

[F.R. Doc. 70-10690; Filed, Aug. 14, 1970; 8:46 a.m.]

PART 32—HUNTING

Kofa Game Range, Ariz.

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

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

ARIZONA

KOFA GAME RANGE

Public hunting of bighorn sheep and deer on the Kofa Game Range, Ariz., is permitted only on the area designated by signs as open to hunting. The bighorn sheep season is from December 5 through December 20, 1970, inclusive, and the deer season is from September 4 through September 20, 1970, inclusive, and from October 30 through November 15, 1970, inclusive. The open bighorn sheep and deer hunting area, comprising 660,041 acres, is delineated on maps available at refuge headquarters, Yuma, Ariz., and from the Regional Director, Bureau of Sport Fisheries and Wildlife, Post Office Box 1306, Albuquerque, N. Mex. 87103.

Hunting shall be in accordance with all applicable State regulations covering the hunting of bighorn sheep and deer subject to the following special condition:

(1) Bighorn sheep limited to 10 permits issued by the Arizona Game and Fish Department.

The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 32, and are effective through December 20, 1970.

CLAUDE F. LARD,
Refuge Manager, Kofa Game Range, Yuma, Ariz.

AUGUST 6, 1970.

[F.R. Doc. 70-10692; Filed, Aug. 14, 1970; 8:46 a.m.]

PART 32—HUNTING

Imperial National Wildlife Refuge, Ariz. and Calif.

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

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

ARIZONA AND CALIFORNIA

IMPERIAL NATIONAL WILDLIFE REFUGE

Public hunting of deer and bighorn sheep on the Imperial National Wildlife Refuge, Arizona and California, is permitted only on the area designated by signs as open to hunting. This area, comprising 16,500 acres, is delineated on maps available at refuge headquarters, Yuma, Ariz., and from the Regional Director, Bureau of Sport Fisheries and Wildlife, Post Office Box 1306, Albuquerque, N. Mex. 87103. Hunting seasons are as follows: Arizona—deer, September 4 through September 20, 1970, inclusive, and October 30 through November 15, 1970, inclusive; bighorn sheep, December 5 through December 20, 1970, inclusive. California—deer, September 26 through November 8, 1970, inclusive; bighorn sheep, no open season in California. Hunting shall be in accordance with all applicable State regulations.

The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 32, and are effective through December 20, 1970.

CLAUDE F. LARD,
Refuge Manager, Imperial National Wildlife Refuge, Yuma, Ariz.

AUGUST 6, 1970.

[F.R. Doc. 70-10689; Filed, Aug. 14, 1970; 8:46 a.m.]

PART 32—HUNTING

Necedah National Wildlife Refuge, Wisconsin

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

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

WISCONSIN

NECEDAH NATIONAL WILDLIFE REFUGE

Public hunting of deer, coyote, fox, skunk, and raccoon on the Necedah National Wildlife Refuge, Wis., is permitted with bow and arrow from September 19 through November 15, 1970, and December 5 through December 31, 1970, and with firearms from November 21 through November 29, 1970, but only on those areas designated by signs as open to hunting. These open areas, comprising approximately 39,000 acres are delineated on a map available at the refuge headquarters, Necedah, Wis., and from the Regional Director, Bureau of Sport Fisheries and Wildlife, Federal Building, Fort Snelling, Twin Cities, Minn. 55111. Hunting shall be in accordance with all applicable State and Federal regulations.

The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 32, and are effective through December 31, 1970.

GERALD H. UPDIKE,
Refuge Manager, Necedah National Wildlife Refuge, Necedah, Wis.

AUGUST 10, 1970.

[F.R. Doc. 70-10687; Filed, Aug. 14, 1970; 8:46 a.m.]

Proposed Rule Making

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[25 CFR Part 221]

OPERATION AND MAINTENANCE CHARGES

Wapato Indian Irrigation Project, Wapato-Satus Unit, Yakima Indian Reservation, Wash.

Pursuant to section 4(a) of the Administrative Procedure Act of June 11, 1946 (60 Stat. 238 U.S.C. 1001) and pursuant to the Acts of August 1, 1914, and March 7, 1928 (38 Stat. 538, 45 Stat. 210; 25 U.S.C. 385, 387), and by virtue of authority delegated by the Secretary of the Interior to the Commissioner of Indian Affairs in Secretary's Order 2508 (10 BIAM 2.1 section 15(a)), and by virtue of authority delegated by the Commissioner of Indian Affairs to Area Directors by 10 BIAM 3.1, notice is hereby given of the intention to modify § 221.86 Charges, of Title 25, Code of Federal Regulations, dealing with the operation and maintenance charges on assessable lands under the Wapato Indian Irrigation Project, Wapato-Satus Unit, Yakima Indian Reservation, Wash., beginning with calendar year 1971 and for subsequent years until further notice, as follows:

By increasing the annual operation and maintenance assessments under subsection (a) paragraph (1) minimum charges for all tracts in noncontiguous single ownership from $9.30 to $9.80 and under paragraph (2) from $9.30 to $9.80 per acre.

Interested parties are hereby given opportunity to participate in preparing the proposed amendment by submitting their views and data or arguments in writing to Dale M. Baldwin, Area Director, Bureau of Indian Affairs, Post Office Box 3785, Portland, Oreg. 97208, within 30 days from the date of publication of this notice of intention in the daily issue of the FEDERAL REGISTER.

RICHARD M. BALSIGER,
Acting Area Director.

[F.R. Doc. 70-10696; Filed, Aug. 14, 1970; 8:46 a.m.]

[25 CFR Part 221]

OPERATION AND MAINTENANCE CHARGES

Toppenish-Simcoe Indian Irrigation Project, Yakima Indian Reservation, Wash.

Pursuant to section 4(a) of the Administrative Procedure Act of June 11, 1946 (60 Stat. 238 U.S.C. 1001) and pursuant to the Acts of August 1, 1914, and March 7, 1928 (38 Stat. 583, 45 Stat. 210; 25 U.S.C. 385, 387), and by virtue of authority delegated by the Secretary of the Interior to the Commissioner of Indian Affairs in Secretary's Order 2508 (10 BIAM 2.1, section 15(a)), and by virtue of authority delegated by the Commissioner of Indian Affairs to Area Directors by 10 BIAM 3.1, notice is hereby given of the intention to modify § 221.73 Charges, of Title 25, Code of Federal Regulations, dealing with the operation and maintenance charges on assessable lands under the Toppenish-Simcoe Indian Irrigation Project, Yakima Indian Reservation, Wash., beginning with calendar year 1971 and for subsequent years until further notice, as follows:

By increasing the annual operation and maintenance assessments from $3.25 to $3.50 per acre for all lands for which application for water is made and approved by the Project Engineer.

Interested parties are hereby given opportunity to participate in preparing the proposed amendment by submitting their views and data or arguments in writing to Dale M. Baldwin, Area Director, Bureau of Indian Affairs, Post Office Box 3785, Portland, Oreg. 97208, within 30 days from the date of publication of this notice of intention in the daily issue of the FEDERAL REGISTER.

RICHARD M. BALSIGER,
Acting Area Director.

[F.R. Doc. 70-10697; Filed, Aug. 14, 1970; 8:47 a.m.]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Public Health Service

[42 CFR Part 81]

AIR QUALITY CONTROL REGIONS

Notice of Proposed Designation of Metropolitan Boise Intrastate Air Quality Control Region; Notice of Consultation With Appropriate State and Local Authorities

Pursuant to authority delegated by the Secretary and redelegated to the Commissioner of the National Air Pollution Control Administration (33 F.R. 9909), notice is hereby given of a proposal to designate the Metropolitan Boise Intrastate Air Quality Control Region (Idaho) as set forth in the following new § 81.87 which would be added to Part 81 of Title 42, Code of Federal Regulations. It is proposed to make such designation effective upon republication.

Interested persons may submit written data, views, or arguments in triplicate to the Office of the Commissioner, National Air Pollution Control Administration, Parklawn Building, Room 17-82, 5600 Fishers Lane, Rockville, Md. 20852. All relevant material received not later than 30 days after the publication of this notice will be considered.

Interested authorities of the State of Idaho and appropriate local authorities, both within and without the proposed region, who are affected by or interested in the proposed designation, are hereby given notice of an opportunity to consult with representatives of the Secretary concerning such designation. Such consultation will take place at 10 a.m., August 25, 1970, in the Bankruptcy Courtroom, Old Post Office Building, Eighth and Bannock, Boise, Idaho 83707.

Mr. Doyle J. Borchers is hereby designated as Chairman for the consultation. The Chairman shall fix the time, date, and place of later sessions and may convene, reconvene, recess, and adjourn the sessions as he deems appropriate to expedite the proceedings.

State and local authorities wishing to participate in the consultation should notify the Office of the Commissioner, National Air Pollution Control Administration, Parklawn Building, Room 17-82, 5600 Fishers Lane, Rockville, Md. 20852 of such intention at least 1 week prior to the consultation. A report prepared for the consultation is available upon request to the Office of the Commissioner.

In Part 81 a new § 81.87 is proposed to be added to read as follows:

§ 81.87 Metropolitan Boise Intrastate Air Quality Control Region.

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

In the State of Idaho:
Ada County. Canyon County.

This action is proposed under the authority of sections 107(a) and 301(2) of the Clean Air Act, section 2, Public Law 90-148, 81 Stat. 490, 504, 42 U.S.C. 1857c-2(a), 1857g(a).

Dated: August 12, 1970.

JOHN T. MIDDLETON,
Commissioner, National Air Pollution Control Administration.

[F.R. Doc. 70-10708; Filed, Aug. 14, 1970; 8:49 a.m.]

[42 CFR Part 81]

AIR QUALITY CONTROL REGIONS

Notice of Proposed Designation of Metropolitan Billings Intrastate Air Quality Control Region; Notice of Consultation With Appropriate State and Local Authorities

Pursuant to authority delegated by the Secretary and redelegated to the Commissioner of the National Air Pollution Control Administration (33 F.R. 9909), notice is hereby given of a proposal to designate the Metropolitan Billings Intrastate Air Quality Control Region (Montana) as set forth in the following new § 81.88 which would be added to Part 81 of Title 42, Code of Federal Regulations. It is proposed to make such designation effective upon republication.

Interested persons may submit written data, views, or arguments in triplicate to the Office of the Commissioner, National Air Pollution Control Administration, Parklawn Building, Room 17–82, 5600 Fishers Lane, Rockville, Md. 20852. All relevant material received not later than 30 days after the publication of this notice will be considered.

Interested authorities of the State of Montana and appropriate local authorities, both within and without the proposed region, who are affected by or interested in the proposed designation, are hereby given notice of an opportunity to consult with representatives of the Secretary concerning such designation. Such consultation will take place at 10 a.m., August 26, 1970, in the Council Chambers, Second Floor, City Hall, 220 North 27th Street, Billings, Mont. 59101.

Mr. Doyle J. Borchers is hereby designated as Chairman for the consultation. The Chairman shall fix the time, date, and place of later sessions and may convene, reconvene, recess, and adjourn the sessions as he deems appropriate to expedite the proceedings.

State and local authorities wishing to participate in the consultation should notify the Office of the Commissioner, National Air Pollution Control Administration, Parklawn Building, Room 17–82, 5600 Fishers Lane, Rockville, Md. 20852 of such intention at least 1 week prior to the consultation. A report prepared for the consultation is available upon request to the Office of the Commissioner.

In Part 81 a new § 81.88 is proposed to be added to read as follows:

§ 81.88 Metropolitan Billings Intrastate Air Quality Control Region.

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

In the State of Montana:

Carbon County.	Yellowstone County.
Stillwater County.	

This action is proposed under the authority of sections 107(a) and 301(2) of the Clean Air Act, section 2, Public Law 90–148, 81 Stat. 490, 504, 42 U.S.C. 1857c–2(a), 1857g(a).

Dated: August 12, 1970.

JOHN T. MIDDLETON,
Commissioner, National Air Pollution Control Administration.

[F.R. Doc. 70–10709; Filed, Aug. 14, 1970; 8:49 a.m.]

[42 CFR Part 81]

AIR QUALITY CONTROL REGIONS

Notice of Proposed Designation of Metropolitan Cheyenne Intrastate Air Quality Control Region; Notice of Consultation With Appropriate State and Local Authorities

Pursuant to authority delegated by the Secretary and redelegated to the Commissioner of the National Air Pollution Control Administration (33 F.R. 9909), notice is hereby given of a proposal to designate the Metropolitan Cheyenne Intrastate Air Quality Control Region (Wyoming) as set forth in the following new § 81.89 which would be added to Part 81 of Title 42, Code of Federal Regulations. It is proposed to make such designation effective upon republication.

Interested persons may submit written data, views, or arguments in triplicate to the Office of the Commissioner, National Air Pollution Control Administration, Parklawn Building, Room 17–82, 5600 Fishers Lane, Rockville, Md. 20852. All relevant material received not later than 30 days after the publication of this notice will be considered.

Interested authorities of the State of Wyoming and appropriate local authorities, both within and without the proposed region, who are affected by or interested in the proposed designation, are hereby given notice of an opportunity to consult with representatives of the Secretary concerning such designation. Such consultation will take place at 10 a.m., August 28, 1970, in Federal Courtroom No. 2, Post Office Building, 2120 Capitol Avenue, Cheyenne, Wyo. 82001.

Mr. Doyle J. Borchers is hereby designated as Chairman for the consultation. The Chairman shall fix the time, date, and place of later sessions and may convene, reconvene, recess, and adjourn the sessions as he deems appropriate to expedite the proceedings.

State and local authorities wishing to participate in the consultation should notify the Office of the Commissioner, National Air Pollution Control Administration, Parklawn Building, Room 17–82, 5600 Fishers Lane, Rockville, Md. 20852 of such intention at least 1 week prior to the consultation. A report prepared for the consultation is available upon request to the Office of the Commissioner.

In Part 81 a new § 81.89 is proposed to be added to read as follows:

§ 81.89 Metropolitan Cheyenne Intrastate Air Quality Control Region.

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

In the State of Wyoming:

Albany County.	Laramie County.
Goshen County.	Platte County.

This action is proposed under the authority of sections 107(a) and 301(2) of the Clean Air Act, section 2, Public Law 90–148, 81 Stat. 490, 504, 42 U.S.C. 1857c–2(a), 1857g(a).

Dated: August 12, 1970.

JOHN T. MIDDLETON,
Commissioner, National Air Pollution Control Administration.

[F.R. Doc. 70–10710; Filed, Aug. 14, 1970; 8:49 a.m.]

Social Security Administration

[20 CFR Part 405]

FEDERAL HEALTH INSURANCE FOR THE AGED

Hospital Insurance Benefits; Election Not To Use Lifetime Reserve Days for Inpatient Hospital Services

Notice is hereby given, pursuant to the Administrative Procedure Act (5 U.S.C. 552 et seq.) that the amendments to the regulations set forth in tentative form below are proposed by the Commissioner of Social Security, with the approval of the Secretary of Health, Education, and Welfare. The proposed amendments to the regulations include the policies applicable to a beneficiary's right to elect not to use the lifetime reserve of 60 additional days, or a portion thereof, for inpatient hospital services furnished to him after he has been furnished 90 days of such services in a spell of illness.

Prior to the final adoption of the proposed amendments to the regulations, consideration will be given to any data, views, or arguments pertaining thereto which are submitted in writing in duplicate to the Commissioner of Social Security, Department of Health, Education, and Welfare Building, Fourth and Independence Avenue SW., Washington, D.C. 20201, within a period of 30 days from the date of publication of this notice in the FEDERAL REGISTER.

The proposed amendments are to be issued under the authority contained in

sections 1102, 1812, and 1871, 49 Stat. 647, as amended, 79 Stat. 291, as amended, 79 Stat. 331; 42 U.S.C. 1302, 1395 et seq.

Dated: July 16, 1970.

ROBERT M. BALL,
Commissioner of Social Security.

Approved: August 6, 1970.

ELLIOT L. RICHARDSON,
Secretary of Health, Education, and Welfare.

Subpart A of Regulations No. 5 is amended as set forth below.

1. Section 405.110 is amended by revising paragraph (a) to read as follows:

§ 405.110 Inpatient hospital services; scope of benefits.

(a) *Benefits.* An individual who meets the requirements set forth in § 405.102 is eligible to have payment made on his behalf to a participating hospital (see Subpart J of this Part 405 and § 405.150), subject to the conditions and limitations contained in this Part 405 and title XVIII of the Act, for:

(1) Inpatient hospital services (see § 405.116) furnished to him for up to 90 days during a spell of illness; plus

(2) An additional 60 days of inpatient hospital services furnished to him during such spell of illness—less 1 day for each day of inpatient hospital services in excess of 90 received during any preceding spell of illness. Payment may be made for such additional days unless the provider furnishing such services has on record the individual's signed election not to have payment made for such services. The additional days are referred to in this subpart as lifetime reserve days. They are available with respect to inpatient hospital services furnished after December 31, 1967, even though the spell of illness started before 1968. (See §§ 405.117–405.119 for regulations relating to election not to use lifetime reserve days.)

* * * * * *

2. Sections 405.117–405.119 are added to read as follows:

§ 405.117 Election not to use lifetime reserve days.

(a) *General.* An election not to use lifetime reserve days may be made by the beneficiary (or by someone acting on his behalf (see § 405.118)) at the time of admission to a hospital or at any time thereafter, subject to the limitations on retroactive elections described in paragraph (c) of this section. A beneficiary will be deemed to have elected not to use his lifetime reserve days to cover inpatient days where the charges for covered services furnished to him on such days are equal to or less than the applicable coinsurance amount. (See § 405.115(b).)

(b) *Election made prospectively.* Ordinarily, an election not to use reserve days will apply prospectively. If the election is filed at the time of admission to a hospital it may be made effective beginning with the first day of hospitalization, or with any day thereafter. If filed later it may be made effective beginning with any day after the day it is filed.

(c) *Retroactive election.* A beneficiary may, while he is still in the hospital, or within a period of 90 days following his discharge, execute a retroactive election not to use his reserve days for inpatient hospital services already furnished to him, provided that (1) the beneficiary or some other person or organization agrees to pay the hospital for the services in question, or (2) the hospital agrees to accept the retroactive election.

Example. Prior to July 1, A had used 90 days of inpatient hospital services in a spell of illness. Beginning July 1, he was hospitalized for 10 days. A was informed of his election right on July 1 at the time of his admission and indicated that he wanted to use his reserve days for that stay. One month after being discharged from the hospital, A informed the hospital that he now wished to save his reserve days for a future stay. A agreed to pay the hospital for the services he received during the 10 days of hospitalization and he was permitted to file a retroactive election not to use his reserve days for such stay effective July 1.

(d) *Period covered by election.* An individual may elect not to use reserve days for only one period of consecutive days in a single hospital stay. If an election (whether made prospectively or retroactively) is made effective beginning with the first day for which reserve days are available, it may be terminated by the individual at any time. Therefter, the remaining days of his hospital stay are covered under the hospital insurance program to the extent that reserve days are available. Thus, an individual who has private insurance which covers hospitalization beginning with the first day after the first 90 days of benefits have been exhausted may terminate his election as of the first day not covered by the private insurance plan. If an election not to use reserve days is made effective beginning with any day after the first day for which reserve days are available, it must remain in effect until the end of that stay, unless it is revoked as provided in § 405.119.

§ 405.118 Election where beneficiary incapacitated.

Where a beneficiary is physically or mentally unable to file an election not to use his reserve days, such an election may be filed by any person who is authorized to execute a request for payment on behalf of the beneficiary for services furnished to him by a provider of services, e.g., a relative (see § 405.1664 for persons authorized to request payment), provided the beneficiary has private insurance which will pay for the hospitalization or some other person agrees to pay the hospital for the services. If the beneficiary does not have private insurance and no other person agrees to pay the hospital for the services, then only the beneficiary's legal representative may file an election on the beneficiary's behalf.

§ 405.119 Revocation of election.

A beneficiary who elected not to use his reserve days for a period of hospitalization may revoke this election while he is still in the hospital or within a period of 90 days following his discharge, provided that a claim has not been filed to have payment made to the hospital under Part B of title XVIII of the Act for medical and other health services (see section 1861(s) of the Act) furnished to him on the hospital days in question by, or under arrangements made by, the hospital. If the beneficiary is incapacitated, any individual who is permitted to sign the request for payment on behalf of the beneficiary for services furnished to him by a provider of services (see § 405.1664 for persons authorized to request payment) may file the revocation on the beneficiary's behalf. The revocation must be submitted to the hospital in writing and should specify the name of the hospital and the admission date of the stay or stays to which it applies. An election not to use reserve days may not be revoked after the beneficiary dies.

[F.R. Doc. 70–10642; Filed, Aug. 14, 1970; 8:45 a.m.]

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[49 CFR Part 393]

[Docket No. MC–21; Notice 70–11]

GLAZING AND WINDOW CONSTRUCTION

Notice of Proposed Rule Making

The Director of the Bureau of Motor Carrier Safety is considering amending paragraphs (a), (b), and (c) of § 393.61 and § 393.63 of Part 393 of the Motor Carrier Safety Regulations.

Section 393.61(a) pertains to windows in trucks and truck tractors. The proposed amendment would enlarge the minimum area of required windows on trucks and truck tractors manufactured after January 1, 1972. The enlargement is considered necessary to provide greater emergency escape areas for persons in the vehicle during a crash, a fire, or other accident. Human factors data show that the size of the average vehicle occupant has increased since the date the section was originally issued. The larger opening appears necessary to allow speedy exit of a 95th percentile male.

Section 393.61 (b) and (c) and § 393.63 pertain to bus windows. The Director of the Bureau of Motor Carrier Safety proposes to amend these sections to make them consistent with the proposed Motor Vehicle Safety Standard pertaining to bus windows which the Director of the National Highway Safety Bureau has this day published (see p. 13025 of this issue).

Interested persons are invited to submit written data, views, or arguments pertaining to the proposed amendments. Comments must identify the docket (No.

MC-21) and must be submitted in three copies to the Director, Bureau of Motor Carrier Safety, Washington, D.C. 20591. All comments received before the close of business on November 12, 1970, will be considered. All comments will be available for examination in the docket at Room 5306, 400 Seventh Street SW., Washington, D.C., before and after the closing date for comments.

In consideration of the foregoing the Director of the Bureau of Motor Carrier Safety proposes to amend paragraphs (a), (b), and (c) of § 393.61 and § 393.63 of Part 393 of Title 49, Code of Federal Regulations to read as set forth below.

Proposed effective date: January 1, 1972.

This notice of proposed rule making is issued under the authority of section 204 of the Interstate Commerce Act, 49 U.S.C. 304, section 6 of the Department of Transportation Act, 49 U.S.C. 1655, the delegation of authority by the Secretary of Transportation in 49 CFR 1.48 (35 F.R. 4959) and the delegation of authority by the Federal Highway Administrator in 49 CFR 389.4 (35 F.R. 9209).

Issued in Washington, D.C., on August 7, 1970.

ROBERT A. KAYE,
Director,
Bureau of Motor Carrier Safety.

§ 393.61 Window construction.

(a) *Windows in trucks and truck tractors.* Every truck and truck tractor, except vehicles engaged in armored car service, shall have, in addition to the area provided by the windshield, at least one window on each side of the driver's compartment. On vehicles manufactured before January 1, 1972, each required window shall have sufficient area to contain either an ellipse having a major axis of 18 inches and a minor axis of 13 inches or an opening containing 200 square inches formed by a rectangle 13 by 17¾ inches with corner arcs of 6-inch maximum radius. On vehicles manufactured on and after January 1, 1972, each required window shall have sufficient area to contain an ellipse having a major axis of 20 inches and a minor axis of 13 inches. The major axis of either ellipse or the long axis of the rectangle shall not make an angle of more than 45° with the surface on which the unladen vehicle stands. If the cab is designed with a folding door or doors or with clear openings where doors or windows are customarily located, then no windows shall be required in such locations.

(b) *Bus windows.* (1) Except as provided in subparagraph (3) of this paragraph, every bus manufactured before January 1, 1972, having a seating capacity of more than eight persons shall have, in addition to the area provided by the windshield, adequate means of escape for passengers through windows. The adequacy of such means shall be determined in accordance with the following standards: For each seated passenger space provided, inclusive of the driver there shall be at least 67 square inches of glazing if such glazing is not contained in a push-out window; or at least 67 square inches of free opening resulting from opening of a push-out type window. No area shall be included in this minimum prescribed area unless it will provide an unobstructed opening sufficient to contain an ellipse having a major axis of 18 inches and a minor axis of 13 inches or an opening containing 200 square inches formed by a rectangle 13 inches by 17¾ inches with corner arcs of 6-inch maximum radius. The major axis of the ellipse and the long axis of the rectangle shall make an angle of not more than 45° with the surface on which the unladen vehicle stands. The area shall be measured either by removal of the glazing if not of the push-out type or of the movable sash if of the push-out type, and it shall be either glazed with laminated safety glass or comply with paragraph (c) of this section. No less than 40 percent of such prescribed glazing or opening shall be on one side of any bus.

(2) A bus manufactured on and after January 1, 1972, having a seating capacity of more than 10 persons shall have push-out windows in conformity with Motor Vehicle Safety Standard No. ------, Part 571 of this title.

(3) A bus manufactured before January 1, 1972, may conform to Motor Vehicle Safety Standard No. ------, Part 571 of this title, in lieu of conforming to subparagraph (1) of this paragraph.

(c) *Push-out window requirements.* (1) Except as provided in subparagraph (3) of this paragraph, every glazed opening in a bus manufactured before January 1, 1972 and having a seating capacity of more than eight persons, used to satisfy the requirements of paragraph (b) (1) of this section, if not glazed with laminated safety glass, shall have a frame or sash so designed, constructed, and maintained that it will yield outwardly to provide the required free opening when subjected to the drop test specified in Test 25 of the American Standard Safety Code referred to in § 393.60. The height of drop required to open such push-out windows shall not exceed the height of drop required to break the glass in the same window when glazed with the type of laminated glass specified in Test 25 of the Code. The sash for such windows shall be constructed of such material and be of such design and construction as to be continuously capable of complying with the above requirement.

(2) On a bus manufactured on and after January 1, 1972, having a seating capacity of more than 10 persons, each push-out window shall conform to Motor Vehicle Safety Standard No. ------, Part 571 of this title.

(3) A bus manufactured before January 1, 1972, may conform to Motor Vehicle Safety Standard No. ------, Part 571 of this title, in lieu of conforming to subparagraph (1) of this paragraph.

* * * * *

§ 393.63 Windows, markings.

(a) On a bus manufactured before January 1, 1972, each bus push-out window and any other bus escape window glazed with laminated safety glass required in § 393.61 shall be identified as such by clearly legible and visible signs, lettering, or decalcomania. Such marking shall include appropriate wording to indicate that it is an escape window and also the method to be used for obtaining emergency exit.

(b) On a bus manufactured on and after January 1, 1972, each push-out window required in § 393.61 shall be marked to conform to Motor Vehicle Safety Standard No. ------, Part 571 of this title.

(c) A bus manufactured before January 1, 1972, may mark each push-out window to conform to Motor Vehicle Safety Standard No. ------, Part 571 of this title in lieu of conforming to paragraph (a) of this section.

[F.R. Doc. 70-10593; Filed, Aug. 14, 1970; 8:45 a.m.]

National Highway Safety Bureau

[49 CFR Part 571]

[Docket No. 2-10; Notice 2]

BUS WINDOW RETENTION AND RELEASE

Proposed Motor Vehicle Safety Standard

On October 14, 1967, an advance notice of proposed rule making was issued concerning a possible standard with respect to bus side and rear windows, push-out type windows, and emergency exits (32 F.R. 14278). The purpose of this notice is to propose a standard that would require buses to meet minimum requirements in these areas.

The proposed standard would require side and rear windows on all buses, including school buses, to be retained in a manner that would assure adequate resistance to outward forces.

The notice proposes that buses, other than school buses, be required to have push-out windows that provide unobstructed openings that collectively amount, in total square inches, to 67 times the number of designated seating positions in the bus. Push-out windows would be required to meet requirements for accessibility, force limits, opening dimensions, and markings to assure identification and adequate instructions for operation as emergency exits.

In view of discipline problems associated with mandatory quick-release and exit devices throughout a school bus which may interfere with the school bus driver's task, and the added risk of children falling from moving school buses, push-out windows for school buses would remain optional.

The standard would not be applicable to bus windshields. Windshield retention requirements for bus windshields are

being considered under a separate rulemaking (34 F.R. 18941).

Interested persons are invited to submit data, views, and arguments on the proposed regulation set forth below. Comments suggesting alternative test techniques where data can be submitted to justify the use of these alternatives are specifically invited. Comments should refer to the docket and notice number (Docket No. 2–10, Notice No. 2) and be submitted to: Docket Section, National Highway Safety Bureau, Room 4223, 400 Seventh Street SW., Washington, D.C. 20591. It is requested, but not required that 10 copies be submitted. All comments received before November 12, 1970, will be considered. All comments will be available for examination in the Docket Section at the above address before and after the closing date for comments. Comments filed after the above date will be considered by the Bureau. The rulemaking action may, however, proceed at any time after that date, and comments received too late for consideration in regard to the action will be treated as suggestions for future rulemaking. The Bureau will continue to file relevant material, as it becomes available in its docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Section 393.61 (b) and (c) of the Motor Carrier Safety Regulations of the Department of Transportation (49 CFR Part 393) presently sets forth requirements for windows and push-out type windows in buses engaged in interstate commerce. The Federal Highway Administrator has issued a notice of proposed rulemaking proposing (35 F.R. 13024) to amend paragraphs (b) and (c) of §§ 393.61 and 393.63 to be consistent with the substance of the changes proposed by this notice.

Proposed effective date: January 1, 1972.

This notice is issued under the authority of sections 103 and 119 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1392, 1407) and the delegation of authority at 49 CFR 1.51 (35 F.R. 4955) and 49 CFR 501.8 (35 F.R. 11126).

Issued on August 6, 1970.

RODOLFO A. DIAZ,
Acting Associate Director,
Motor Vehicle Programs.

MOTOR VEHICLE SAFETY STANDARD
No. ------

BUS WINDOW RETENTION AND RELEASE

S1. *Purpose and scope.* The standard specifies requirements for the retention of all windows (excluding windshields) in buses, and specifies operating forces, opening dimensions, and markings for push-out bus windows to minimize the likelihood of occupants being thrown from the bus and to provide a means of accessible emergency exit.

S2. *Application.* This standard applies to buses.

S3. *Definitions.* "Push-out window" means a window designed to open outwardly to provide for emergency exit from the vehicle.

"Adjacent designated seating position" means a designated seating position located so that its occupant space falls within a 10-inch perpendicular distance from the window throughout a 15-inch horizontal span of the window as illustrated in Figure 1. Occupant space for a designated seating position is the space above the seat and foot-well, projecting horizontally from the normally positioned seat back in the direction it faces to the nearest obstruction of occupant motion, and extending vertically to the ceiling.

S4. *Requirements.*

S4.1 *Window retention.* When testing in accordance with S5.1, until a force level of 2,000 pounds is reached or a 5-inch diameter portion of the head form has penetrated the glazing, each window in the bus, including windows in doors, shall be retained by its surrounding structure in a manner which prevents any opening large enough to pass a 4-inch diameter sphere, and which provides for retention of at least 75 percent of the glazing periphery in the window mounting.

S4.2 *Push-out windows.*

S4.2.1 Each bus, except school buses, shall have side and rear push-out windows which, when fully open, provide unobstructed openings for emergency exit which collectively amount, in total square inches, to 67 times the number of designated seating positions on the bus. At least 40 percent of the required unobstructed openings shall be provided on each side of the bus.

S4.2.2 Each push-out window, whether in a school bus or other bus, shall:

(a) Have a release mechanism or mechanisms which comply with S4.3;

(b) Provide, when extended to the full push-out position, an unobstructed opening large enough to contain an ellipse having a horizontal major axis of 20 inches and a minor axis of 13 inches; and

(c) Have the marking "For Emergency Exit", followed by concise operating instructions, located within 6 inches of a point of manual operation either on the window or on the adjacent structure.

S4.2.3 In addition to the requirements of S4.2.2, each push-out window having one or more adjacent designated seating positions shall:

(a) Allow, from each adjacent designated seating position, when tested in accordance with S5.2, manual release and extension to the full push-out position of the window by a single occupant using reach distances and corresponding force levels set forth in either Figure 2 (a and b) or Figure 3 (a and b); and

(b) Have when tested in accordance with S5.3, markings required by S4.2.2 (c) located where visible to and readable by an occupant in each adjacent designated seating position, to an occupant in the seat directly adjoining each adjacent designated seating position, and to an occupant standing in the aisle location nearest each adjacent designated seating position.

S4.3 *Push-out window release mechanism.* Each release mechanism on a push-out window shall:

(a) Require one or two motions, differing by 90° to 270° from the direction of the initial push-out motion of the window, for its release; and

(b) Be retained in the latched position when subjected to a sustained longitudinal, transverse, or vertical inertial load of plus or minus 30 g applied by calculation to all moving parts connected to the release mechanism and to the push-out window.

S5. *Demonstration procedures.*

S5.1 *Retention testing of windows.* With a bus, bus body, or body section including window and supporting structure, in a level floor attitude with windows installed, closed, and latched (where latches are provided) in the condition intended for normal bus operations, with the specimen inside and outside environment kept within a temperature range of 70° to 85° Farenheit for 4 hours immediately preceding the test and continuously during the test, an increasing force shall be applied through a head form specified in Figure 4, acting outward and perpendicular to the inside surface at the center of area of each window glazing with a head form travel of 2 inches per minute, until one of the following occurs:

(a) A force level of 2,000 pounds is reached.

(b) A 5-inch diameter portion of the head form has penetrated the glazing.

S5.2 *Operational testing of push-out windows having one or more adjacent designated seating positions.* Before and after performance of S5.1, full release and opening of push-out windows shall be accomplished as required in S4.2.3(a) under the conditions of S5.1 and with seats, arm rests, and interior objects near the windows installed and adjusted in the position closest to mid-range.

S5.3 *Marking legibility demonstration.* The test shall be conducted in completely finished bus with windows closed and latched, doors closed, and seats adjusted in the condition intended for normal operation, both in daylight, and at night with interior lights on but with no other artificial lighting. Each marking shall be readable by an occupant having central corrected visual acuity of 20/40 (Snellen ratio) while the corresponding adjacent designated seating positions are occupied by either the demonstrator or other occupants.

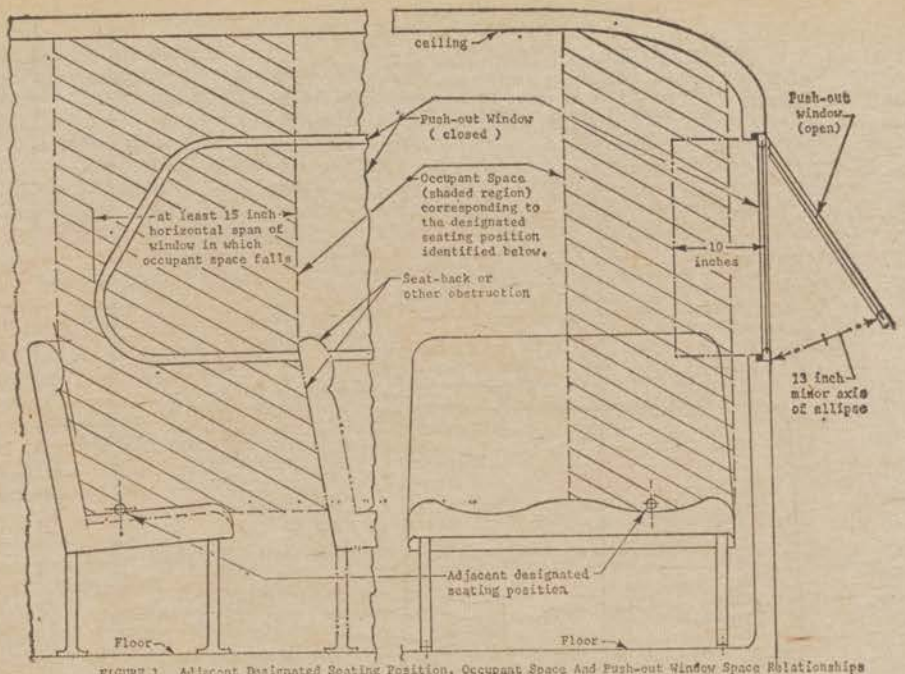

FIGURE 1 Adjacent Designated Seating Position, Occupant Space And Push-out Window Space Relationships

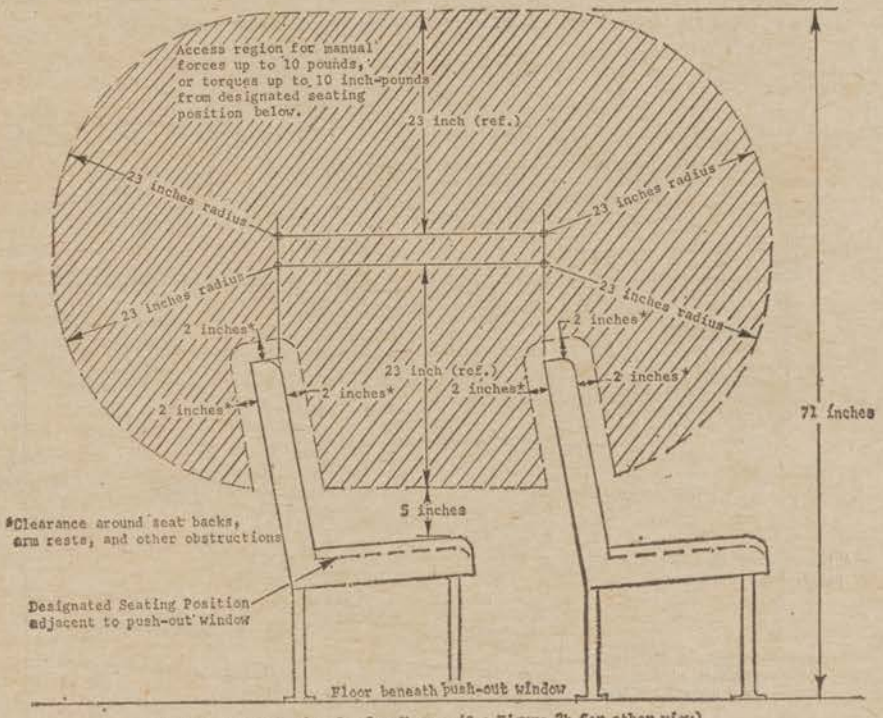

FIGURE 2a Access Region for Low Forces (See Figure 2b for other view)

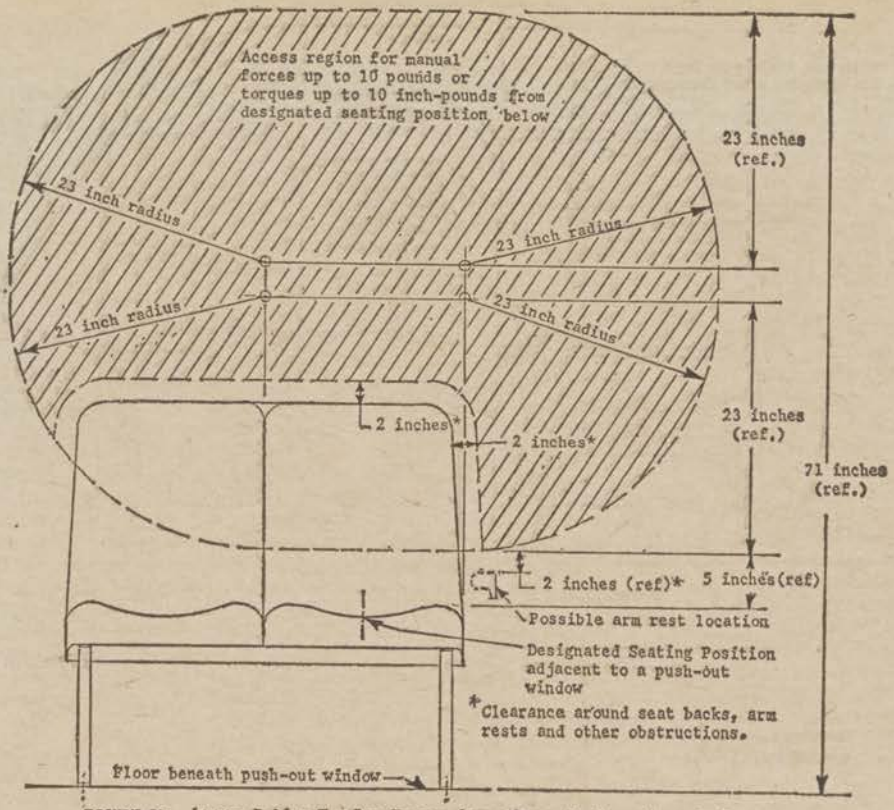

FIGURE 2b Access Region For Low Forces (See Figure 2a for other view)

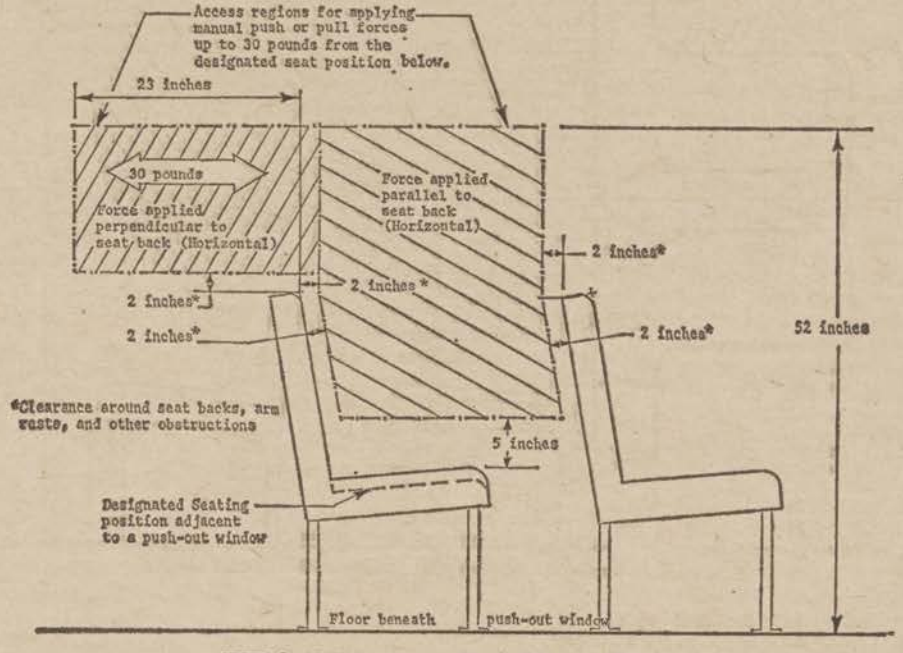

FIGURE 3a ACCESS REGION FOR HIGH FORCES (See Figure 3b for other view)

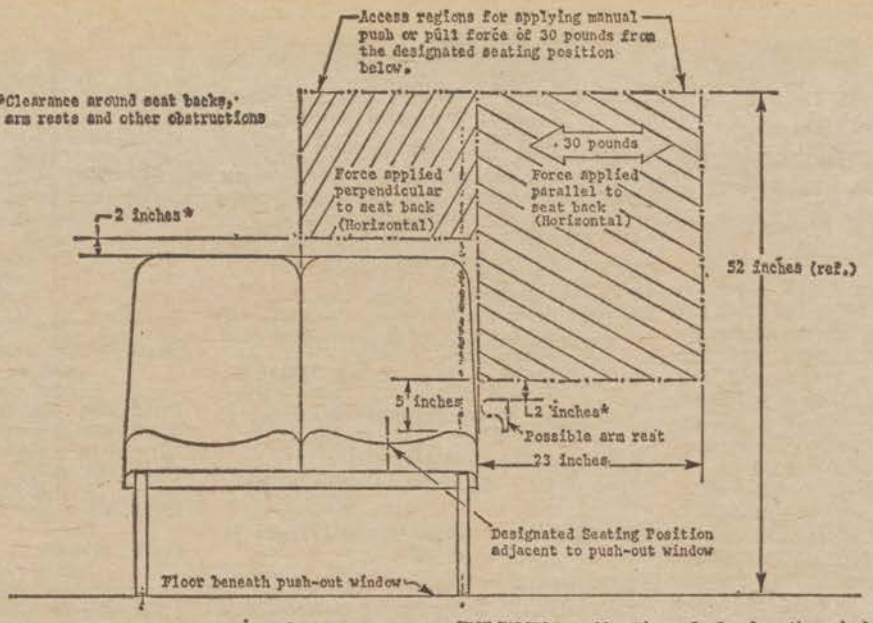

FIGURE 3b ACCESS REGION FOR HIGH FORCES (See Figure 3a for for other view)

-11-

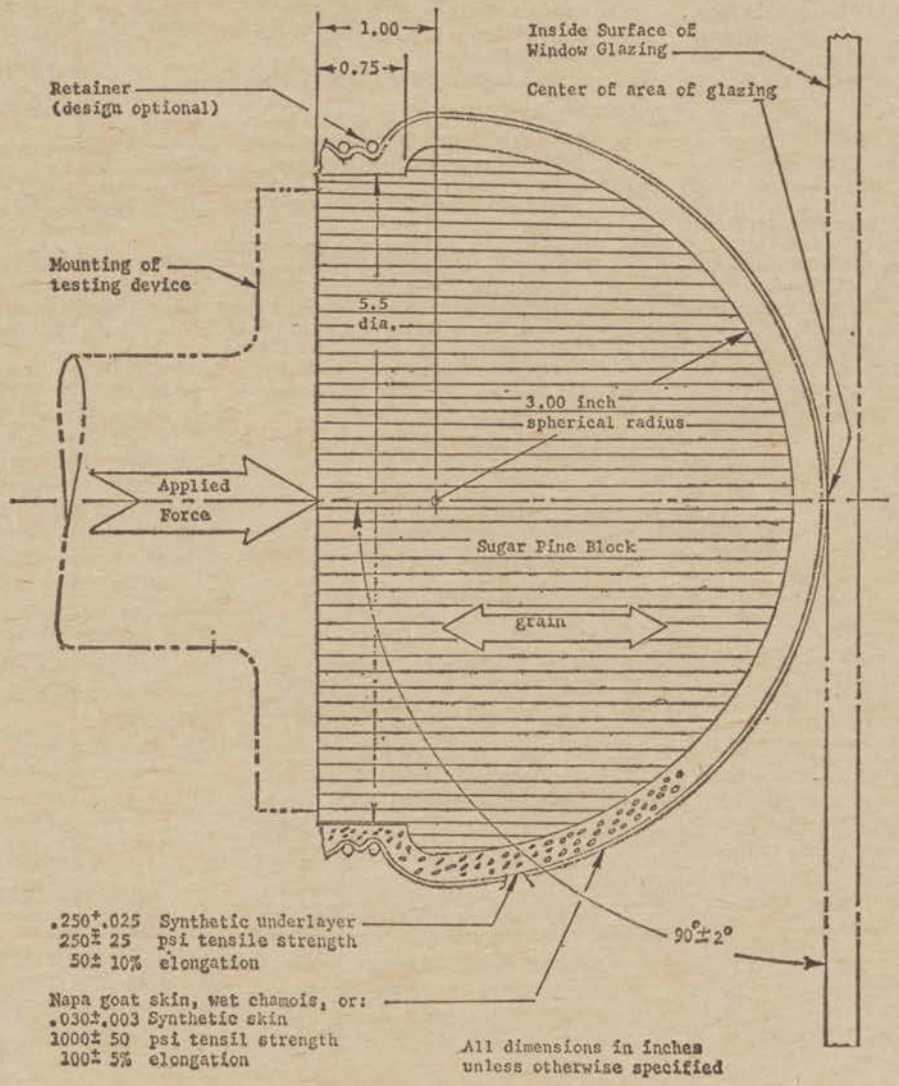

FIGURE 4 HEAD FORM

[F.R. Doc. 70-10594; Filed, Aug. 14, 1970; 8:45 a.m.]

FEDERAL POWER COMMISSION

[18 CFR Part 2]

[Docket No. R-389A]

INITIAL RATES FOR FUTURE SALES OF NATURAL GAS FOR ALL AREAS

Final Schedule of Oral Presentations

AUGUST 7, 1970.

Pursuant to paragraph 7 in Docket No. R-389 issued June 17, 1970, requests for oral hearings in lieu of written submittals were received by this Office from the following parties whose requests are granted at the date and time specified herein. Supplemental requests to be heard in Midland pursuant to paragraph 7 in Docket No. R-389A issued July 17, 1970, will be considered on July 24, 1970, and the supplemental list promulgated.

The public hearing in Midland will be held at the Midland High School Auditorium; in New Orleans at 701 Loyola Avenue, Room T 9007; in Denver at the U.S. Post Office Building, 1823 Stout Street; and in Pittsburgh at 1000 Liberty Avenue, Room 2214.

Any applicant for oral hearing whose name does not appear on this schedule shall deem his request denied and is invited to file a written submittal pursuant to paragraph 10.

July 29—Midland, Tex. (Concluded):

10:00 Hon. George Bush, M.C.
10:15 Hon. Preston Smith, Governor of Texas.
10:30 Hon. Crawford Martin, Attorney General of Texas.
10:45 Hon. Jim Langdon, Chairman, Railroad Commission of Texas.
11:00 Tom Sealy, Esq., for Permain Basin Petroleum Association.
11:15 Tom Sealy, Esq., for BEA Oil Producers.
11:30 Tom Sealy, Esq., for Hanley Co., Adobe Oil Co., Sams Oil Co.
11:45 Tom Sealy, Esq., for Deane H. Stoltz, Leede Zoller; Major, Giebel, and Forster.
12:00 William I. Powell, Esq., for Independent Petroleum Association of America.
12:15 Recess.
1:15 William J. Murray, Jr., for Texas Independent Producers and Royalty Owners Association.
1:30 Raymond A. Lynch, Esq., for Chambers and Kennedy, Murphy H. Baxter, Chriss R. Inman.
2:00 H. J. Rucker, Esq., for Imperial-American Management Co., George T. Abell, Estate of Elizabeth R. Sharp, Jack N. Blair.
2:15 Richard S. Brooks, Esq., for David Fasken.
2:30 Ellis Evans for Ellis Evans et al. interests.
2:45 Mr. Tom Culbertson.
3:00 Paul G. White for Western Oil Fields, Inc.

SUPPLEMENTAL FILINGS UNDER DOCKET NO. R-389A

3:15 Hon. John Tower, U.S. Senate.
3:30 Hon. A. L. Porter for Hon. David F. Cargo, Governor of New Mexico.
3:45 Hon. Gordon Markham for Hon. Alex J. Armijo, Commissioner of Public Lands, State of New Mexico.
4:00 Mr. J. Hugh Liedtke for Pennzoil United, Inc.
4:15 Conrad Caffield for William D. Morris.

August 10—New Orleans:

10:00 Hon. C. C. Ayecock, Lieutenant Governor of the State of Louisiana.
10:15 J. M. Menefee for the Conservation Commission of the State of Louisiana.
10:30 Neal Powers, Jr., Esq., for Bradco Oil & Gas Co.; Bradco Properties, Inc.; E. Cockrell, Jr.; Freeport Oil Co., Division of Freeport Sulphur Co.; Lake Washington, Inc.; John W. Mecom; U.S. Oil of Louisiana, Inc.; U.S. Oil of Louisiana, Ltd.
11:00 Mr. Wilbur R. Lilly for James W. Harris Oil Operations.
11:15 Mr. R. R. Brooksher for Mid Continent Oil and Gas Association, Louisiana-Arkansas Division.
11:30 Mr. J. B. Storey for Pelto Oil Co.
11:45 Mr. William H. Allen for LVO Corp.
12:00 Recess.
1:00 John Gordon, Esq., for Birthright Oil Co.
1:15 John Gordon, Esq., for Edwin L. Cox.
1:30 Mr. Don Weir for Arkansas Louisiana Gas Co.
1:45 Mr. Wardell Leisk for Austral Oil Co., Inc.
2:00 Mr. C. Templeton for Amarex, Inc.

August 13—Denver:

10:00 Harry A. Galligan, Jr., for The Public Utilities Commission of the State of Colorado.
10:15 Mr. J. R. McMinn for Inexco Oil Co.
10:30 Mr. Kenneth R. Whiting for Ladd Petroleum Corp.
10:45 Mr. Robert F. Hefner III, for Glover Hefner Kennedy Oil Co.
11:00 Mr. R. E. Kelly for Western Slope Gas Co.
11:15 Richard G. Rorschach, Esq., for Colonial Royalties Co. and Margaret Rorschach.
11:30 Mr. William R. Bixler for Consolidated Oil and Gas, Inc.
11:45 Mr. Robert B. Laughlin for the Rocky Mountain Oil and Gas Association.

August 14—Pittsburgh:

10:00 Honorable Paul W. Brown, Attorney General of Ohio for the Public Utilities Commission of Ohio.
10:15 Anthony Z. Roisman, Esq., for the Consumer Federation of America.
10:30 Larry L. Skeen, Esq., for the Independent Oil and Gas Association of West Virginia.
10:45 Mr. John T. Galey.
11:00 Richard A. Rosan, Esq., for the Columbia Transmission Companies.

Pursuant to paragraph 7 additional oral hearings may be held upon notice from the Secretary.

GORDON M. GRANT,
Secretary.

[F.R. Doc. 70-10674; Filed, Aug. 14, 1970; 8:45 a.m.]

Notices

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Serial No. 2445]

IDAHO

Rochat Unit, Notice of Classification of Public Lands for Multiple Use Management; Correction

AUGUST 10, 1970.

In F.R. Doc. 70-9841 appearing in the third column on page 12228 in the issue of Thursday, July 30, 1970, the second line under "T. 47 N., R. 2 E.," should read as follows:

Sec. 20, N½, W½SW¼;.

ORVAL G. HADLEY,
Acting State Director.

[F.R. Doc. 70-10694; Filed, Aug. 14, 1970; 8:46 a.m.]

[Group 506]

ARIZONA

Notice of Filing of Plats of Survey

AUGUST 7, 1970.

1. Plat of Survey of the land described below will be officially filed in the Land Office, Phoenix, Ariz., effective at 10 a.m., September 14, 1970:

GILA AND SALT RIVER MERIDIAN

T. 1 N., R. 14 E.,
Partial subdivision of section 22 and metes and bounds survey of Tract 37.

The area described contains 24.51 acres.

2. The land varies from heavy rolling to mountainous with Webster Gulch cutting through the southern portion of the section. A portion of Camelback Mountain lies in the northern portion of the section. Scattered junipers, together with dense oak, brush, and manzanita covers a large portion of the section.

3. This survey was executed to accommodate a claim under the Mining Claim Occupancy Act, serial No. A 1378.

GLENDON E. COLLINS,
Manager.

[F.R. Doc. 70-10695; Filed, Aug. 14, 1970; 8:46 a.m.]

[New Mexico 11690]

NEW MEXICO

Notice of Classification

AUGUST 7, 1970.

Pursuant to section 2 of the Act of September 19, 1964 (43 U.S.C. 1412), the lands described below are hereby classified for disposal through exchange under section 8 of the Act of June 28, 1934 (48 Stat. 1272; 43 U.S.C. 315g), as amended. No comments were received following publication of notice of proposed classification (35 F.R. 7827).

The lands affected by this classification are located in McKinley County, N. Mex., and are described as follows:

NEW MEXICO PRINCIPAL MERIDIAN

T. 13 N., R. 17 W.,
Sec. 3, lots 1, 2, 3, 4, and W½W½;
Sec. 5, S½N½ and S½;
Sec. 9, E½, N½NW¼, and E½SW¼.
T. 14 N., R. 18 W.,
Sec. 1;
Sec. 3, S½;
Secs. 7, 9, 11, and 13;
Sec. 15, N½ and N½S½;
Sec. 17;
Sec. 19, E½;
Sec. 21, NW¼ and S½;
Secs. 23, 25, and 27;
Sec. 29, NE¼ and S½;
Sec. 31;
Sec. 33, NE¼ and S½.
T. 14 N., R. 19 W.,
Sec. 1, S½;
Secs. 3 and 5;
Sec. 7, lots 3, 4, E½SW¼ and SE¼;
Sec. 9, W½E½ and W½;
Secs. 11 and 13;
Sec. 15, W½W½;
Sec. 17, NE¼ and S½;
Sec. 19, lots 3, 4, E½ and E½SW¼;
Secs. 21, 23, 25, and 27;
Sec. 29, NE¼ and S½;
Secs. 31, 33, and 35.

The areas described aggregate 19,923.38 acres.

For a period of 30 days, interested parties may submit comments to the Secretary of the Interior, LLM, 721, Washington, D.C. 20240 (43 CFR 2461.3).

B. BUFFINGTON,
Acting State Director.

[F.R. Doc. 70-10713; Filed, Aug. 14, 1970; 8:49 a.m.]

[New Mexico 11692]

NEW MEXICO

Notice of Classification

AUGUST 7, 1970.

Pursuant to section 2 of the Act of September 19, 1964 (43 U.S.C. 1412), the lands described below are hereby classified for disposal through exchange under section 8 of the Act of June 28, 1934 (48 Stat. 1272; 43 U.S.C. 315g) as amended. No comments were received following publication of the notice of proposed classification (35 F.R. 8600).

The lands affected by this classification are located in McKinley County, N. Mex., and are described as follows:

NEW MEXICO PRINCIPAL MERIDIAN

T. 15 N., R. 19 W.,
Sec. 7, lots 1, 2, E½ and E½NW¼;
Sec. 17, W½NW¼.
T. 13 N., R. 20 W.,
Sec. 1;
Sec. 3, lot 1, S½NE¼, SE¼NW¼, and SE¼;
Secs. 5, 7, 9, and 11;
Sec. 13, N½ and SE¼;
Sec. 15, NW¼ and S½;
Sec. 17;
Sec. 19, lots 1, 2, 3, 4, NE¼ and E½W½;
Secs. 21 and 23;
Sec. 25, N½NW¼, S½SW¼, and SE¼;
Sec. 27, E½, N½NW¼, SE¼NW¼, and SW¼SW¼;
Sec. 29;
Sec. 31, lots 1, 2, 3, 4, and E½W½.
T. 13 N., R. 21 W.,
Sec. 1;
Sec. 3, lots 1, 2, 3, and 4;
Sec. 13, SE¼NE¼, NW¼NW¼, S½NW¼, and S½;
Sec. 15, lots 2, 3, and 4;
Secs. 23 and 25;
Sec. 27, lots 1, 2, 3, and 4;
Sec. 35.
T. 14 N., R. 21 W.,
Sec. 1, lots 1, 2, 3, 4, S½N½ and SW¼;
Sec. 3, lots 1, 2, 3, and 4;
Secs. 11 and 13;
Sec. 15, lots 1, 2, 3, and 4;
Sec. 23;
Sec. 25, S½N½ and S½;
Sec. 27, lots 1, 2, 3, and 4;
Sec. 35, NE¼NE¼, S½NE¼, SW¼NW¼, and S½.
T. 15 N., R. 21 W.,
Sec. 1;
Sec. 3, lots 1, 2, 3, and 4;
Secs. 11 and 13;
Sec. 15, lots 1, 2, 3, and 4;
Secs. 23 and 25;
Sec. 27, lots 1, 2, 3, and 4;
Sec. 35, W½.

The areas described aggregate 20,231.94 acres.

For a period of 30 days, interested parties may submit comments to the Secretary of the Interior, LLM, 721, Washington, D.C. 20240 (43 CFR 2461.3).

B. BUFFINGTON,
Acting State Director.

[F.R. Doc. 70-10714; Filed, Aug. 14, 1970; 8:49 a.m.]

Bureau of Reclamation

TAHOE NATIONAL FOREST, CALIF.

Order of Transfer of Administrative Jurisdiction of Land at Prosser Creek Reservoir, Washoe Project

By virtue of the authority vested in the Secretary of the Interior by section 7(c) of the Act of July 9, 1965 (79 Stat. 217), and his delegation of authority to the Commissioner of Reclamation dated February 25, 1966, published March 4, 1966 (31 F.R. 3426), jurisdiction over the following described lands, aggregating some 1,534.85 acres which lie within or adjacent to exterior boundaries of the Tahoe National Forest, Calif., and which were acquired by the Bureau of Reclamation

in the development of the Prosser Creek Reservoir, Washoe project, is hereby transferred to the Secretary of Agriculture for recreational and other National Forest System purposes:

MOUNT DIABLO MERIDIAN

T. 18 N., R. 16 E., M.D.M.
Sec. 25, all.
Sec. 26, NE¼, and S½S½.
Sec. 35, NE¼, N½NW¼, and N½NE¼SE¼.
Sec. 36, NW¼.
T. 18 N., R. 17 E., M.D.M.
Sec. 30, lots 1 and 2, E½SW¼, NW¼SW¼, and SW¼SW¼.

Pursuant to said section 7(c) of the aforesaid Act of July 9, 1965, the above lands shall become National Forest lands provided lands and waters within the Prosser Creek Reservoir area needed or used for the operation of the project or for other Reclamation purposes shall continue to be administered by the Commissioner of Reclamation to the extent he determines to be necessary for such operation.

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

Dated: August 10, 1970.

ELLIS L. ARMSTRONG,
Commissioner of Reclamation.

[F.R. Doc. 70-10698; Filed, Aug. 14, 1970; 8:47 a.m.]

DEPARTMENT OF THE TREASURY

Bureau of Customs

[T.D. 70-178]

INSTRUMENTS OF INTERNATIONAL TRAFFIC

Communications Satellites, Components, and Parts

AUGUST 7, 1970.

Components and parts imported solely for the assembly of communications satellites that will be launched in the United States or satellites assembled abroad to be launched in the United States.

It has been established to the satisfaction of the Bureau that communications satellites and components and parts for such satellites, to be launched in the United States for use in a global communications satellite system, are substantial and designed for and capable of repeated use in international traffic.

Under the authority of § 10.41(a), Customs Regulations, I hereby designate the above-mentioned articles as "instruments of international traffic" within the meaning of section 322(a), Tariff Act of 1930. These articles may be released under the procedures provided for in § 10.41a.

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

[F.R. Doc. 70-10722; Filed, Aug. 14, 1970; 8:50 a.m.]

DEPARTMENT OF AGRICULTURE

Office of the Secretary

NORTH DAKOTA

Designation of Areas for Emergency Loans

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

NORTH DAKOTA

Cass.	Pembina.
Cavalier.	Towner.
Grand Forks.	Traill.
McHenry.	Walsh.

Pursuant to the authority set forth above, emergency loans will not be made in the above-named counties after June 30, 1971, except to applicants who previously received emergency or special livestock loan assistance and can qualify under established policies and procedures.

Done at Washington, D.C., this 11th day of August 1970.

CLIFFORD M. HARDIN,
Secretary of Agriculture.

[F.R. Doc. 70-10684; Filed, Aug. 14, 1970; 8:45 a.m.]

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGFR 70-94]

EQUIPMENT, CONSTRUCTION, AND MATERIALS

Approval Notice

1. Certain laws and regulations (46 CFR, Ch. I) require that various items of lifesaving, firefighting and miscellaneous equipment, construction, and materials used on board vessels subject to Coast Guard Inspection, on certain motorboats and other recreational vessels, and on the artificial islands and fixed structures on the outer Continental Shelf be of types approved by the Commandant, U.S. Coast Guard. The purpose of this document is to notify all interested persons that certain approvals have been granted as herein described during the period from May 28, 1970, to June 9, 1970 (list No. 13-70). These actions were taken in accordance with the procedures set forth in 46 CFR 2.75-1 to 2.75-50.

2. The statutory authority for equipment, construction, and material approvals is generally set forth in sections 367, 375, 390b, 416, 481, 489, 526p, and 1333 of title 46, United States Code, section 1333 of title 43, United States Code, and section 198 of title 50, United States Code. The Secretary of Transportation has delegated authority to the Commandant, U.S. Coast Guard with respect to these approvals (49 CFR 1.46(b) 35 F.R. 4959). The specifications prescribed by the Commandant, U.S. Coast Guard for certain types of equipment, construction and materials are set forth in 46 CFR, Parts 160 to 164.

3. The approvals listed in this document shall be in effect for a period of 5 years from the date of issuance, unless sooner cancelled or suspended by proper authority.

HATCHETS (LIFEBOAT AND LIFE RAFT) FOR MERCHANT VESSELS

Approval No. 160.013/5/0, Hatchet steel handle, Estwing Model E-3-24A, Type I, Class I, Design E, Style 2, Revere's dwg. B-692-2 dated May 8, 1970, Model RSCH-12, manufactured by Revere Supply Company, Inc., 603-607 West 29th Street, New York, N.Y. 10001, effective May 28, 1970.

Approval No. 160.013/6/0, Hatchet steel handle, Vaughn Model A 1¼, Type I, Class I, Design E, Style 2, Revere's dwg. B-692-3 dated May 8, 1970, Model RSCH-13, manufactured by Revere Supply Co., Inc., 603-607 West 29th Street, New York, N.Y. 10001, effective May 28, 1970.

LIFE RAFTS FOR MERCHANT VESSELS

Approval No. 160.018/13/2, Type "B" life raft, for other than ocean and coastwise service, 9.67' x 8.38' x 2.92' 18-person capacity, identified by general arrangement dwg. No. M-99-10 dated April 4, 1951, and revised January 13, 1960, manufactured by Marine Safety Equipment Corp., foot of Wycoff Road, Farmingdale, N.J. 07727, effective June 2, 1970. (It is an extension of Approval No. 160.018/13/2 dated Aug. 25, 1965, and change of address of manufacturer.)

LIFEBOATS FOR MERCHANT VESSELS

Approval No. 160.035/410/7, 30.0' x 10.0' x 4.33' fibrous glass reinforced plastic (FRP), hand-propelled lifeboat, 78-person capacity, identified by general arrangement dwg. No. P-30-1H, revision N dated May 14, 1970, 46 CFR 160.035-13(c) Marking. Weights: Condition "A" = 5,010 pounds; Condition "B" = 19,149 pounds, manufactured by Marine Safety Equipment Corp., foot of Wycoff Road, Farmingdale, N.J. 07727, effective June 4, 1970. (It supersedes Approval No. 160.035/410/6 dated Feb. 24, 1970, to show change in construction.)

Approval No. 160.035/443/4, 30.0'x 10.0'x4.33' fibrous glass reinforced plastic (FRP) motor-propelled Class I lifeboat, 74-person capacity, identified by general arrangement dwg. No. P-30-1M. Rev. I dated April 2, 1970, 46 CFR 160.035-13 (c) Marking. Weights: Condition "A"= 6,000 pounds; Condition "B"=19,763 pounds, manufactured by Marine Safety

Equipment Corp., foot of Wycoff Road, Farmingdale, N.J. 07727, effective June 3, 1970. (It supersedes Approval No. 160.-035/443/3 dated Mar. 25, 1969, to show change in construction.)

Approval No. 160.035/461/0, 26.0'x 9.0'x3.83' fibrous glass reinforced plastic (FRP), hand-propelled lifeboat, 53-person capacity, identified by general arrangement dwg. No. P-26-2B, Rev. A dated May 12, 1970, 46 CFR 160.035-13(c) Marking. Weights: Condition "A"= 3,807 pounds; Condition "B"=13,519 pounds, manufactured by Marine Safety Equipment Corp., foot of Wycoff Road Farmingdale, N.J. 07727, effective May 28, 1970.

KITS, FIRST-AID, FOR INFLATABLE LIFERAFTS

Approval No. 160.054/5/0, Model No. 12 L.R., first-aid kit for inflatable liferafts, dwg. revised July 7, 1960, manufactured by The Pac-Kit Safety Equipment Co., Inc., 1 Seneca Place, Greenwich, Conn. 06830, effective June 2, 1970. (It is an extension of Appr. No. 160.054/5/0 dated August 2, 1965, and change of address of manufacturer.)

RELIEF VALVES (HOT WATER HEATING BOILERS)

Approval No. 162.013/12/1, McDonnell No. 230—¾" relief valve for hot-water-heating boiler, relieving capacity 303,000 B.t.u. per hour, at maximum set pressure of 30 p.s.i., dwg. No. 230 dated October 9, 1951, approved for ¾" inlet size, manufactured by McDonnell & Miller, Inc., 3500 North Spaulding Avenue, Chicago, Ill. 60618, effective June 8, 1970. (It is an extension of Approval No. 162.013/12/1 dated Aug. 19, 1965.)

Approval No. 162.013/36/0, Type No. 130—¾", relief valve for hot-water-heating boilers, maximum set pressure 30 p.s.i., relieving capacity 480,000 B.t.u. per hour, dwg. No. MA-130, dated January 12, 1960, approved for ¾" inlet size, manufactured by McDonnell & Miller, Inc., 3500 North Spaulding Avenue, Chicago, Ill. 60618, effective June 8, 1970. (It is an extension of Approval No. 162.-013/36/0 dated Aug. 2, 1965.)

PRESSURE VACUUM RELIEF VALVES AND SPILL VALVES FOR TANK VESSELS

Approval No. 162.017/85/0, Figure No. 720 pressure vacuum relief valve, enclosed pattern, without pressure or vacuum unloader, weight loaded poppets, bronze parts except monel screen, 6" inlet, 6" outlet, dwg. No. C-3116 dated April 7, 1958, manufactured by Varec, Inc., 2820 North Alameda Street, Post Office Box 4429, Compton, Calif. 90223, effective June 8, 1970. (It is an extension of Approval No. 162.017/85/0 dated June 17, 1965.)

Approval No. 162.017/86/0, Figure No. 720B pressure vacuum relief valve, enclosed pattern, with pressure but not vacuum unloader, weight loaded poppets, bronze parts except monel screen, 6" inlet, 6" outlet, dwg. No. C-3138 dated April 7, 1958, manufactured by Varec, Inc., 2820 North Alameda Street, Post Office Box 4429, Compton, Calif. 90223, effective June 8, 1970. (It is an extension of Approval No. 162.017/86/0 dated June 17, 1965.)

Approval No. 162.017/99/0, OCECO Model V-130N pressure vacuum relief valve, flanged inlet, weight loaded discs, aluminum construction, dwg. F17310 dated October 30, 1958; approved for 6" and 8" sizes, dwg. F17310 dated October 30, 1958, B/M 1018 dated May 19, 1964; and B/M 1019-B dated May 4, 1965, manufactured by The Johnston & Jennings Co., OCECO Division, 4700 West Division Street, Chicago, Ill. 60651, effective June 8, 1970. (It is an extension of Approval No. 162.017/99/0 dated June 11, 1965.)

INDICATORS, BOILER WATER LEVEL, SECONDARY TYPE

Approval No. 162.025/75/1, Model 1 Truscale boiler water level indicator, remote reading, fitted with high and low level alarms, 900 p.s.i. maximum pressure for water level ranges up to 24 inches, identified by dwg. No. T-67, Rev. A dated April 10, 1956, T-60, dated January 18, 1955, GD-1334 dated June 26, 1958, and GD-1467 dated December 29, 1959, manufactured by Jerguson Gage & Valve Co., Adams Street, Burlington, Mass. 01803, effective June 8, 1970. (It is an extension of Approval No. 162.025/75/1 dated Aug. 19, 1965.)

Approval No. 162.025/76/1, Model 2 Truscale boiler water level indicator, remote reading, fitted with high and low level alarms, 900 p.s.i. maximum pressure for water level ranges up to 24 inches, identified by dwg. No. T-68 dated April 10, 1957; and for water level ranges above 24 inches, identified by dwg. No. T-69 dated April 30, 1956, dwgs. T-60 dated January 18, 1955, GD-1334 dated June 26, 1958, GD-1467 dated December 29, 1959, T-68 dated April 10, 1957 and T-69 dated April 30, 1956, manufactured by Jerguson Gage & Valve Co., Adams Street, Burlington, Mass. 01803, effective June 8, 1970. (It is an extension of Approval No. 162.025/76/1 dated Aug. 19, 1965.)

Approval No. 162.025/91/0, Model 1A Truscale boiler water level indicator, remote reading, fitted with high and low level alarms, 1,500 p.s.i. maximum pressure for water level ranges up to 24 inches, identified by dwg. No. T-71 dated May 7, 1958, Dwgs. T-71 dated May 7, 1958, T-82 dated July 25, 1960, GD-1484 dated March 30, 1960, and GD-1467 dated December 29, 1959, manufactured by Jerguson Gage & Valve Co., Adams Street, Burlington, Mass. 01803, effective June 8, 1970. (It is an extension of Approval No. 162.025/91/0 dated Aug. 19, 1965.)

STRUCTURAL INSULATIONS FOR MERCHANT VESSELS

Approval No. 164.007/31/0, "Cafco Blaze-Shield", sprayed asbestos fiber type structural insulation identical to that described in Underwriters Laboratories, Inc., reports Nos. Retardant 3749-3 and 3749-4 dated May 8, 1958; Underwriters Laboratories of Canada report number Canadian Retardant 193 dated October 31, 1958, and National Bureau of Standards Test Report No. TG10210-2053:FP3550 dated March 10, 1960, approved for use without other insulating material to meet Class A-60 requirements in a 2" thickness and not less than 12 pounds per cubic foot density, manufactured by United States Mineral Products Co., Stanhope, N.J. 07874, effective May 28, 1970. (It is an extension of Approval No. 164.007/31/0 dated Aug. 16, 1965.)

INCOMBUSTIBLE MATERIALS FOR MERCHANT VESSELS

Approval No. 164.009/61/0, "Cafco Heat-Shield," sprayed asbestos fiber type incombustible material identical to that described in National Bureau of Standards Test Report No. TG10210-2053: FP3550 dated March 10, 1960, approved in a density of not less than 9 pounds per cubic foot, manufactured by United States Mineral Products Co., Stanhope, N.J. 07874, effective June 2, 1970. (It is an extension of Approval No. 164.009/61/0 dated Aug. 16, 1965.)

Approval No. 164.009/62/0, "Cafco Blaze-Shield Type H," sprayed asbestos fiber type incombustible material identical to that described in National Bureau of Standards Test Report No. TG10210-2053:FP3550 dated March 10, 1960, approved in a density of not less than 20 pounds per cubic foot, manufactured by United States Mineral Products Co., Stanhope, N.J. 07874, effective June 2, 1970. (It is an extension of Approval No. 164.009/62/0 dated Aug. 16, 1965, and change of name of product.)

Approval No. 164.009/105/0, "Luwal No. 60" acrylic fibrous glass cloth-faced fibrous glass insulation board incombustible type material identical to that described in National Bureau of Standards Test Report No. TG10210-2157: FR3694 dated October 25, 1967, and U.S.C.G. letter dated October 31, 1967, approved in a density of 4.4 pounds per cubic foot, manufactured by Avallone Division, Eastern Cold Storage Insulation Co., Inc., 630 Third Avenue, New York, N.Y. 10017 (formerly Avallone Corp.), effective June 9, 1970. (It supersedes Approval No. 164.009/105/0 dated Oct. 31, 1967, to show change of name and address of manufacturer.)

Approval No. 164.009/113/0, "Luwal No. 60-OC" acrylic finished fibrous glass cloth-faced fibrous glass insulation board incombustible type material identical to that described in National Bureau of Standards Test Report No. TG10210-2164:FR3701 dated February 15, 1968, and Avallone letter dated January 15, 1968, approved in a density of 4.3 pounds per cubic foot in a 1-inch thickness, manufactured by Avallone Division, Eastern Cold Storage Insulation Co., Inc., 630 Third Avenue, New York, N.Y. 10017 (formerly Avallone Corp.), effective June 9, 1970. (It supersedes Approval No. 164.009/113/0 dated Feb. 21, 1968, to show change in name and address of manufacturer.)

Dated: August 10, 1970.

C. R. BENDER,
Admiral, U.S. Coast Guard
Commandant.

[F.R. Doc. 70-10706; Filed, Aug. 14, 1970; 8:49 a.m.]

[CGFR 70-109]

ST. MARYS RIVER, MICH.

Temporary Reduction of Vessel Speed Limits

1. The vessel speed limits for the St. Marys River published in 33 CFR Part 92 are hereby temporarily reduced in order to reduce damage to property of riparian owners during this period of high water levels in the river.

2. The reduced vessel speed limits will be effective until December 1, 1970, unless sooner amended, revoked, or extended. Any such amendment, revocation, or extension will be published in the FEDERAL REGISTER and in the Notice to Mariners.

3. Speed limits in statute miles per hour over the ground are temporarily reduced from 10 to 9 between Everens Point and Johnson Point, from 12 to 9 between Johnson Point and Mirre Point, from 12 to 10 between Mirre Point and Middle Neebish Channel Light 50, from 15 to 12 between Nine-Mile Point and Six-Mile Point, from 12 to 9 between Six-Mile Point and Mission Point, and from 12 to 10 between West Neebish Channel Light 25 and Moon Island.

4. Upbound and downbound vessels may pass vessels bound in the same direction between Nine-Mile Point and Six-Mile Point. The passing vessel shall not exceed the temporarily reduced speed limit of 12 statute miles per hours over the ground.

5. These reduced speed limits are temporary in nature and they are established to reduce damage to property of riparian owners during a presently existing period of high water levels in the St. Marys River. Accordingly, it is hereby found that notice and public procedures thereon are contrary to the public interest and the reduced speed limits are made effective in less than 30 days.

6. This notice is issued under authority of secs. 1-3, 29 Stat. 54-55, as amended, sec. 6(b)(1), 80 Stat. 937; 33 U.S.C. 474, 49 U.S.C. 1655(b)(1); 49 CFR 1.46(b); delegated under authority of 49 CFR 1.45(b) to the Commander, Ninth Coast Guard District, in 33 CFR 92.49 (d) (35 F.R. 12395).

Effective date. The temporarily reduced speed limits shall become effective on publication in the FEDERAL REGISTER.

Dated: August 10, 1970.

W. A. JENKINS,
Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.

[F.R. Doc. 70-10764; Filed, Aug. 14, 1970; 8:50 a.m.]

ATOMIC ENERGY COMMISSION

PROJECT RULISON, GARFIELD COUNTY, COLO.

Availability of Containers of Gas at Project Site

1. Notice is hereby given by the U.S. Atomic Energy Commission that containers of gas produced in connection with Project Rulison will be available at the project site, Garfield County, Colo., during the flaring test period now anticipated to commence about the end of July 1970 and to last for 3 to 6 months.

2. Project Rulison is a joint experiment of the U.S. Atomic Energy Commission, U.S. Department of the Interior, Austral Oil Co., Inc., and CER Geonuclear Corp. to investigate the use of a nuclear explosion deep underground to stimulate natural gas production. The nuclear explosion was conducted in a natural gas formation in Garfield County, near Grand Valley, Colo., on September 10, 1969.

3. Each container shall hold approximately 7,950 milliliters (approximately 0.28 cubic feet) of gas. Containers shall be available f.o.b. customer's vehicle or commercial conveyance at the project site. The charge shall be $113 per container, excluding packaging. If packaging for shipment is required, there shall be an additional charge of $14 per container.

4. Requests for such samples shall be made in writing to the Manager, U.S. Atomic Energy Commission, Las Vegas, Nev., and shall include (a) the name and principal business activity of the requestor, (b) the anticipated use of the sample, and (c) the nature of the analysis that will be conducted.

5. Users will be required to (a) procure all necessary permits and licenses, (b) provide the results of their research to the AEC, and (c) extend to the AEC appropriate data and patent rights.

Effective date. This notice is effective upon publication in the FEDERAL REGISTER.

Dated at Washington, D.C., this 5th day of August 1970.

For the Atomic Energy Commission.

W. B. MCCOOL,
Secretary.

[F.R. Doc. 70-10715; Filed, Aug. 14, 1970; 8:49 a.m.]

DEPARTMENT OF COMMERCE

Business and Defense Services Administration

YALE UNIVERSITY ET AL.

Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Articles

Correction

In F.R. Doc. 70-10025 appearing on page 12420 in the issue for Tuesday, August 4, 1970, make the following changes in column 2:

1. In the third paragraph from the bottom, the docket number should read "Docket No. 68-00387-01-11000".

2. In the second paragraph from the bottom, the docket number should read "Docket No. 68-00395-98-07800".

CIVIL AERONAUTICS BOARD

[Docket No. 22264; Order 70-8-43]

AIR INDIES CORP.

Order Fixing Final Mail Rate

Issued under delegated authority August 12, 1970.

All interested persons, and particularly the parties named below,[1] were directed to show cause by Order 70-7-127, July 28, 1970, why the Board should not establish the service mail rates proposed therein.

The time designated for filing notice of objection has elapsed and no notice of objection or answer to the order has been filed by any party. All parties have therefore waived the right to a hearing and all other procedural steps short of a decision by the Board fixing the service mail rates.

Upon consideration of the record, the findings and conclusions set forth in said order are hereby reaffirmed and adopted.

Accordingly, pursuant to the Federal Aviation Act of 1958, and particularly sections 204(a) and 406 thereof, the Board's regulations, 14 CFR Part 302; 14 CFR Part 298; and the authority duly delegated by the Board in its organization regulations, 14 CFR 385.16(g).

It is ordered, That:

1. On and after July 23, 1970, the fair and reasonable final service mail rates to be paid to Air Indies Corp., pursuant to section 406 of the Act for the transportation of mail by aircraft, the facilities used and useful therefor, and the services connected therewith between St. Croix, V.I., and St. Thomas, V.I., shall be:

(a) For priority mail, the multielement rate established by the Board in Order E-25610, August 28, 1967;

(b) For nonpriority mail, the multielement rate established by the Board in Order 70-4-9, April 2, 1970.

2. The service mail rates here fixed and determined are to be paid entirely by the Postmaster General.

3. This order shall be served upon Air Indies Corp., the Postmaster General, Caribbean-Atlantic Airlines, Inc., Eastern Air Lines, Inc., Pan American World Airways, Inc., and Trans Caribbean Airways, Inc.

Persons entitled to petition the Board for review of this order pursuant to the Board's regulations, 14 CFR 385.50, may file such petitions within 10 days after the date of service of this order.

This order shall be effective and become the action of the Civil Aeronautics Board upon expiration of the above period unless within such period a petition for review thereof is filed, or the Board gives notice that it will review this order on its own motion.

[SEAL] HARRY J. ZINK,
Secretary.

[F.R. Doc. 70-10716; Filed, Aug. 14, 1970; 8:49 a.m.]

[1] Air Indies Corp., the Postmaster General, Caribbean-Atlantic Airlines, Inc., Eastern Air Lines, Inc., Pan American World Airways, Inc., and Trans Caribbean Airways, Inc.

[Docket No. 22394; Order 70-8-33]

JIM HANKINS AIR SERVICE, INC.

Order To Show Cause

Issued under delegated authority August 10, 1970.

The Postmaster General filed a notice of intent July 28, 1970, pursuant to 14 CFR Part 298, petitioning the Board to establish for the above-captioned air taxi operator, a final service mail rate of 38.9 cents per great circle aircraft mile for the transportation of mail by aircraft between Waycross and Atlanta, Ga., via Valdosta and Albany, Ga., 5 days weekly.

No protest or objection was filed against the proposed services during the time for filing such objections. The Postmaster General states that the Department and the carrier agree that the above rate is a fair and reasonable rate of compensation for the proposed services. The Postmaster General believes these services will meet postal needs in the market. He states the air taxi plans to initiate mail service with Piper, Model PA-23 Aztec, twin-engine aircraft equipped for all-weather operation.

It is in the public interest to fix, determine, and establish the fair and reasonable rate of compensation to be paid by the Postmaster General for the proposed transportation of mail by aircraft, the facilities used and useful therefor, and the services connected therewith, between the aforesaid points. Upon consideration of the notice of intent and other matters officially noticed, it is proposed to issue an order [1] to include the following findings and conclusions:

The fair and reasonable final service mail rate to be paid to Jim Hankins Air Service, Inc., in its entirety by the Postmaster General pursuant to section 406 of the Act for the transportation of mail by aircraft, the facilities used and useful therefor, and the services connected therewith, shall be 38.9 cents per great circle aircraft mile between Waycross and Atlanta, Ga., via Valdosta and Albany, Ga., 5 days weekly.

Accordingly, pursuant to the Federal Aviation Act of 1958, and particularly sections 204(a) and 406 thereof, and regulations promulgated in 14 CFR Part 302; 14 CFR Part 298; and 14 CFR 385.16(f).

It is ordered, That:

1. Jim Hankins Air Service, Inc., the Postmaster General, Eastern Air Lines, Inc., Southern Airways, Inc., and all other interested persons are directed to show cause why the Board should not adopt the foregoing proposed findings and conclusions and fix, determine, and publish the final rate specified above for the transportation of mail by aircraft, the facilities used and useful therefor, and the services connected therewith as specified above as the fair and reasonable rate of compensation to be paid to Jim Hankins Air Service, Inc.;

2. Further procedures herein shall be in accordance with 14 CFR Part 302, and notice of any objection to the rate or to the other findings and conclusions proposed herein, shall be filed within 10 days, and if notice is filed, written answer and supporting documents shall be filed within 30 days after service of this order;

3. If notice of objection is not filed within 10 days after service of this order, or if notice is filed and answer is not filed within 30 days after service of this order, all persons shall be deemed to have waived the right to a hearing and all other procedural steps short of a final decision by the Board, and the Board may enter an order incorporating the findings and conclusions proposed herein and fix and determine the final rate specified herein;

4. If answer is filed presenting issues for hearing, the issues involved in determining the fair and reasonable final rate shall be limited to those specifically raised by the answer, except insofar as other issues are raised in accordance with Rule 307 of the rules of practice (14 CFR 302.307); and

5. This order shall be served upon Jim Hankins Air Service, Inc., the Postmaster General, Eastern Air Lines, Inc., and Southern Airways, Inc.

This order will be published in the FEDERAL REGISTER.

[SEAL] HARRY J. ZINK,
Secretary.

[F.R. Doc. 70-10717; Filed, Aug. 14, 1970; 8:50 a.m.]

[1] As this order to show cause is not a final action but merely affords interested persons an opportunity to be heard on the matters herein proposed, it is not regarded as subject to the review provisions of Part 385 (14 CFR Part 385). These provisions for Board review will be applicable to final action taken by the staff under authority delegated in § 385.16(g).

[Docket No. 22401; Order 70-8-37]

ROSS AVIATION, INC.

Order To Show Cause

Issued under delegated authority August 11, 1970.

The Postmaster General filed a notice of intent July 29, 1970, pursuant to 14 CFR Part 298, petitioning the Board to establish for the above-captioned air taxi operator, a final service mail rate of 58.5 cents per great circle aircraft mile for the transportation of mail by aircraft between Baltimore, Md., Pulaski, Va., and Greensboro, N.C.

No protest or objection was filed against the proposed services during the time for filing such objections. The Postmaster General states that the Department and the carrier agree that the above rate is a fair and reasonable rate of compensation for the proposed services. The Postmaster General believes these services will meet postal needs in the market. He states the air taxi plans to initiate mail service with Beechcraft 18 aircraft.

It is in the public interest to fix, determine, and establish the fair and reasonable rate of compensation to be paid by the Postmaster General for the proposed transportation of mail by aircraft, the facilities used and useful therefor, and the services connected therewith, between the aforesaid points. Upon consideration of the notice of intent and other matters officially noticed, it is proposed to issue an order [1] to include the following findings and conclusions:

The fair and reasonable final service mail rate to be paid to Ross Aviation, Inc., in its entirety by the Postmaster General pursuant to section 406 of the Act for the transportation of mail by aircraft, the facilities used and useful therefor, and the services connected therewith, shall be 58.5 cents per great circle aircraft mile between Baltimore, Md., Pulaski, Va., and Greensboro, N.C.

Accordingly, pursuant to the Federal Aviation Act of 1958, and particularly sections 204(a) and 406 thereof, and regulations promulgated in 14 CFR Part 302; 14 CFR Part 298; and 14 CFR 385.16(f).

It is ordered, That:

1. Ross Aviation, Inc., the Postmaster General, Eastern Air Lines, Inc., Piedmont Aviation, Inc., United Air Lines, Inc., and all other interested persons are directed to show cause why the Board should not adopt the foregoing proposed findings and conclusions and fix, determine, and publish the final rate specified above for the transportation of mail by aircraft, the facilities used and useful therefor, and the services connected therewith as specified above as the fair and reasonable rate of compensation to be paid to Ross Aviation, Inc.;

2. Further procedures herein shall be in accordance with 14 CFR Part 302, and notice of any objection to the rate or to the other findings and conclusions proposed herein, shall be filed within 10 days, and if notice is filed, written answer and supporting documents shall be filed within 30 days after service of this order;

3. If notice of objection is not filed within 10 days after service of this order, or if notice is filed and answer is not filed within 30 days after service of this order, all persons shall be deemed to have waived the right to a hearing and all other procedural steps short of a final decision by the Board, and the Board may enter an order incorporating the findings and conclusions proposed herein and fix and determine the final rate specified herein;

4. If answer is filed presenting issues for hearing, the issues involved in determining the fair and reasonable final rate shall be limited to those specifically raised by the answer, except insofar as other issues are raised in accordance with Rule 307 of the rules of practice (14 CFR 302.307); and

5. This order shall be served upon Ross Aviation, Inc., the Postmaster General,

[1] As this order to show cause is not a final action but merely affords interested persons an opportunity to be heard on the matters herein proposed, it is not regarded as subject to the review provisions of Part 385 (14 CFR Part 385). These provisions for Board review will be applicable to final action taken by the staff under authority delegated in § 385.16(g).

Eastern Air Lines, Inc., Piedmont Aviation, Inc., and United Air Lines, Inc.

This order will be published in the FEDERAL REGISTER.

[SEAL] HARRY J. ZINK,
Secretary.

[F.R. Doc. 70-10718; Filed, Aug. 14, 1970; 8:50 a.m.]

FEDERAL POWER COMMISSION

[Dockets Nos. RI71-96, etc.]

PENNZOIL PRODUCING CO. ET AL.

Order Providing For Hearing on and Suspension of Proposed Changes in Rates, and Allowing Rate Changes To Become Effective Subject to Refund [1]

AUGUST 6, 1970.

The respondents named herein have filed proposed changes in rates and charges of currently effective rate schedules for sales of natural gas under Commission jurisdiction, as set forth in appendix A hereof.

The proposed changed rates and charges may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is in the public interest and consistent with the Natural Gas Act that the Commission enter upon hearings regarding the lawfulness of the proposed changes, and that the supplements herein be suspended and their use be deferred as ordered below.

The Commission orders:

(A) Under the Natural Gas Act, particularly sections 4 and 15, the regulations pertaining thereto (18 CFR Ch. I), and the Commission's rules of practice and procedure, public hearings shall be held concerning the lawfulness of the proposed changes.

(B) Pending hearings and decisions thereon, the rate supplements herein are suspended and their use deferred until date shown in the "Date suspended until" column, and thereafter until made effective as prescribed by the Natural Gas Act: *Provided, however,* That the supplements to the rate schedules filed by respondents, as set forth herein, shall become effective subject to refund on the date and in the manner herein prescribed if within 20 days from the date of the issuance of this order respondents shall each execute and file under its above-designated docket number with the Secretary of the Commission its agreement and undertaking to comply with the refunding and reporting procedure required by the Natural Gas Act and § 154.102 of the regulations thereunder, accompanied by a certificate showing service of copies thereof upon all purchasers under the rate schedule involved. Unless respondents are advised to the contrary within 15 days after the filing of their respective agreements and undertakings, such agreements and undertakings shall be deemed to have been accepted.[2]

(C) Until otherwise ordered by the Commission, neither the suspended supplements, nor the rate schedules sought to be altered, shall be changed until disposition of these proceedings or expiration of the suspension period.

(D) Notices of intervention or petitions to intervene may be filed with the Federal Power Commission, Washington, D.C. 20426, in accordance with the rules of practice and procedure (18 CFR 1.8 and 1.37(f)) on or before September 15, 1970.

By the Commission.

[SEAL] GORDON M. GRANT,
Secretary.

[1] Does not consolidate for hearing or dispose of the several matters herein.

[2] If an acceptable general undertaking, as provided in Order No. 377, has previously been filed by a producer, then it will not be necessary for that producer to file an agreement and undertaking as provided herein. In such circumstances the producer's proposed increased rate will become effective as of the expiration of the suspension period without any further action by the producer.

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.
RI71-96	Pennzoil Producing Co. (Operator) et. al.[3]	234	[4] 9	United Gas Pipe Line Co. (Gibson Field, Terrebonne Parish, La.) (South Louisiana).	$54,750	7-9-70	[6] 7-9-70	[7] 7-10-70	18.5	[8] [9] 20.0	RI69-407
RI71-97	Continental Oil Co.	138	[4] [10] 26	Tennessee Gas Pipeline Co., a division of Tenneco Inc. (West Delta and Grand Island Area, offshore Louisiana) (Zone 3).	9,934	7-10-70	[6] 7-10-70	[7] 7-11-70	19.5	[9] [11] 20.0	
RI71-98	Atlantic Richfield Co.	158	[4] [10] [12] 41	Tennessee Gas Pipeline Co., a division of Tenneco Inc. (Grand Isle Block 43 Field, offshore Louisiana) (Zone 3).	[12] 3,000	7-13-70	[6] 7-13-70	[7] 7-14-70	[14] 19.5	[9] [11] 20.0	
	do	320	[4] [13] [17] 5	Tennessee Gas Pipeline Co., a division of Tenneco Inc. (West Cameron Block 193 Field, offshore Louisiana) (Federal Domain).	[12] 2,500	7-13-70	[15] 8-13-70	[7] 8-14-70	19.5	[9] [11] 20.0	

[3] Applies only to gas well gas produced from the 14,700 foot reservoir.
[4] Includes supporting documents required by Opinion No. 567.
[5] Both buyer and seller are wholly owned subsidiaries of Pennzoil United, Inc.
[6] Suspended for 1 day from the date of filing or 1 day from the date of initial delivery, whichever is later.
[7] The suspension period is limited to 1 day.
[8] Filed pursuant to Opinion No. 567.
[9] Pressure base is 15.025 p.s.i.a.
[10] Applies only to gas well gas produced from reservoirs in the Grand Isle Block 43 Field.
[11] Filed pursuant to Opinion No. 546-A based on the determination in Opinion No. 567.
[12] Not stated—based on prior filing.
[13] Relates to acreage added by amendment dated Aug. 31, 1964 (Supp. No. 10); Initial filings pursuant to Opinion No. 567. Effective subject to refund in Docket No. RI70-1485 (Supp. No. 38).
[14] Subject to refund in Docket No. RI70-349. Rate reduction per Opinion No. 546 on file.
[15] Suspended for 1 day upon expiration of the statutory notice period or 1 day from the date of initial delivery, whichever is later.
[16] Applies only to gas well gas produced from the KM 0-5 Reservoir.
[17] Initial increased rate filings pursuant to Opinion No. 567. Effective subject to refund in RI70-1485 (Supp. No. 4).

Although Pennzoil's proposed increase does not exceed the applicable area rate, it should be suspended for 1 day because of Pennzoil's affiliation with the purchaser.

Atlantic's proposed increase under its FPC Gas Rate Schedule No. 320, involving a sale in the Federal Domain, was submitted pursuant to paragraph (A) of Opinion No. 546-A with respect to gas well gas which qualifies for a third vintage price in accordance with Opinion No. 567. This increase should be suspended for 1 day upon expiration of the statutory notice period. Thereafter, the proposed rate may be placed in effect subject to refund pending the outcome of Docket No. AR69-1.

Atlantic's other proposed increase and Continental's proposed increase involve gas well gas produced from newly discovered reservoirs in the Disputed Zone, Offshore Louisiana. The rates proposed equal the ceiling established in Opinion No. 546 for third vintage gas well gas produced from within the State's taxing jurisdiction but exceed the ceiling for gas produced in the Federal Domain. These increases shall be suspended for 1 day from the date of filing and thereafter Atlantic and Continental may collect the proposed rates subject to refund of those amounts attributable to the 1.5-cent difference in the offshore and onshore area rate paid for gas held to have been produced from the Federal Domain.

Atlantic has requested that its prior Opinion No. 567 filings with respect to the same rate schedules involved here and the related rate proceeding be supplemented to include the subject filings effective as of the date of first deliveries from such reservoirs. Good cause has not been shown for granting Atlantic's request and it is denied.

[F.R. Doc. 70-10611; Filed, Aug. 14, 1970; 8:45 a.m.]

[Docket No. CP70-196]

DISTRIGAS CORP.

Notice of Extension of Time and Postponement of Prehearing Conference and Hearing

AUGUST 7, 1970.

On July 27, 1970, Distrigas Corp. filed a motion requesting an extension of time within which to comply with requirements of the Commission letter dated July 9, 1970, and the order issued July 13, 1970, in the above-designated matter.

Upon consideration, notice is hereby given that the times within which to comply with the requirements of the Commission letter dated July 9, 1970, and the order issued July 13, 1970, are extended as follows:

1. Distrigas Corp. shall file the information requested by the letter dated July 9, 1970, on or before September 29, 1970;

2. Parties, including Commission Staff, shall submit in writing on or before October 13, 1970, a statement of the issues which they believe have been raised by the application herein, pursuant to paragraph (B) of the order issued July 13, 1970;

Further,

1. The prehearing conference presently scheduled to commence on August 26, 1970, in a hearing room of the Federal Power Commission, 441 G Street NW., Washington, D.C., at 10 a.m. is postponed to October 27, 1970;

2. Formal hearing now scheduled to commence on September 28, 1970, in a hearing room of the Federal Power Commission is postponed to November 17, 1970.

The letter dated July 9, 1970, and paragraphs (B) and (C) of the order issued July 13, 1970, are amended accordingly.

GORDON M. GRANT,
Secretary.

[F.R. Doc. 70-10676; Filed, Aug. 14, 1970; 8:45 a.m.]

[Docket No. CP71-6, etc.]

EL PASO NATURAL GAS CO. ET AL.

Notice of Application; Correction

AUGUST 5, 1970.

In the notice of application, issued July 17, 1970, and published in the FEDERAL REGISTER July 25, 1970, 35 F.R. 12037, Line 14: Change "proposal" to "proposed"; Line 13: Change "7(c)" to "1(c)"; Line 2: After "Washington" delete comma and add "Natural,"; Line 6: After "$571,734" delete period and add "which will be financed by working funds."; Line 11: After "$9,266,100" delete "which will be financed by working funds," and add "as of June 30, 1970."

GORDON M. GRANT,
Secretary.

[F.R. Doc. 70-10677; Filed, Aug. 14, 1970; 8:45 a.m.]

OFFICE OF EMERGENCY PREPAREDNESS

IMPORTS OF MANGANESE, CHROMIUM AND SILICON FERROALLOYS AND REFINED METALS

Report of the Effects on the National Security

The Director of the Office of Emergency Preparedness made public on August 14, 1970, his report in the above matter. The report concludes an investigation which was requested in an application filed on May 24, 1968, with the Office of Emergency Preparedness by the Committee of Producers of Ferroalloys and Related Products on behalf of the six domestic producers of those products. The investigation was conducted under the authority of section 232 of the Trade Expansion Act of 1962.

The director found, as a result of the investigation, that manganese, chromium, and silicon ferroalloys and refined metals are not being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security.

Dated: August 14, 1970.

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

[F.R. Doc. 70-10824; Filed, Aug. 14, 1970; 10:55 a.m.]

SECURITIES AND EXCHANGE COMMISSION

AUTOMATIC DATA PROCESSING, INC., ET AL.

Notice of Applications for Unlisted Trading Privileges and of Opportunity for Hearing

AUGUST 10, 1970.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the common stocks of the following companies, which securities are listed and registered on one or more other national securities exchanges:

	File No.
Automatic Data Processing, Inc.	7-3428
H & R Block, Inc.	7-3429
Champion Home Builders Co.	7-3430
First National City Corp.	7-3431
Fleetwood Enterprises, Inc.	7-3432
H & B American Corp.	7-3434
Home Oil Co. Ltd (class A)	7-3435
Molybdenum Corp. of America	7-3436
British Petroleum Co., Ltd. (ADR'S £ 1 Par)	7-3437

Upon receipt of a request, on or before August 25, 1970, from any interested person, the Commission will determine whether the application with respect to any of the companies named shall be set down for hearing. Any such request should state briefly the title of the security in which he is interested, the nature of the interest of the person making the request, and the position he proposes to take at the hearing, if ordered. In addition, any interested person may submit his views or any additional facts bearing on any of the said applications by means of a letter addressed to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, not later than the date specified. If no one requests a hearing with respect to any particuler application, such application will be determined by order of the Commission on the basis of the facts stated therein and other information contained in the official files of the Commission pertaining thereto.

For the Commission (pursuant to delegated authority).

[SEAL] ORVAL L. DUBOIS,
Secretary.

[F.R. Doc. 70-10700; Filed, Aug. 14, 1970; 8:47 a.m.]

[812-2768]

BANK OF NEW YORK CO., INC.

Notice of Application for Order Exempting Certain Common Trust Funds From All Provisions of the Act

AUGUST 7, 1970.

Notice is hereby given that The Bank of New York, Inc. (Applicant), 48 Wall Street, New York, N.Y., has applied for an order pursuant to section 6(c) of the Investment Company Act of 1940 (Act) exempting from all provisions of the Act common trust funds established by any bank controlled by Applicant and maintained by it exclusively for the collective investment and reinvestment of moneys contributed thereto by the bank or one or more banks controlled by said Applicant, provided (1) each bank contributing moneys to such common trust fund makes its contributions solely in its capacity as a trustee, executor, administrator or guardian within the meaning of section 3(c)(3) of the Act, and (2) such common trust fund meets the requirements of section 100-c(17) of the New York Banking Law. All interested persons are referred to the application on file with the Commission for a statement of the representations therein, which are summarized below.

Applicant, a New York bank holding company organized in 1968, controls seven trust companies and banks with fiduciary powers organized under the banking laws of the State of New York.

Section 3(c)(3) of the Act excepts from the definition of "investment company" within the meaning of the Act "any common trust fund or similar fund maintained by a bank exclusively for the collective investment and reinvestment of

moneys contributed thereto by the bank in its capacity as a trustee, executor, administrator or guardian." By its terms, section 3(c)(3) applies only to common trust funds which receive funds exclusively from the bank maintaining the common trust fund.

In 1968 the New York Banking Law was amended, in relation to common trust funds, by the addition of a new subdivision 17 to section 100-c, as follows:

Upon receiving permission of the banking board to do so, a trust company, at least ninety per centum of the capital stock of which is owned by a bank holding company registered under article three-a of this part, may establish and maintain one or more common trust funds, or may utilize one or more common trust funds previously established by it, for funds held in any of the fiduciary capacities mentioned in subdivision one of this section, by itself and by other trust companies at least ninety per centum of the capital stock of each of which is owned by such bank holding company. Each trust company, the capital stock of which is so held, may invest and reinvest in one or more of such common trust funds the moneys of any estate, trust or fund which would be eligible under subdivision one of this section for investment in a common trust fund established and maintained by such trust company. The trust company shall comply with, and be subject to, all of the provisions of this section as though such trust company and the other trust companies participating in such fund were one and the same corporate entity.

In support of its application, Applicant asserts that, with respect to the purposes underlying section 3(c)(3) of the Act, it would appear that separate banks under common control in a bank holding company system are not significantly different from branch offices of a single bank. It alleges that the text of section 1 of the Act, which states the findings and declarations of policy of the Act, would not lead to the conclusion nor imply that the exemption from the definition of an investment company in section 3(c)(3) of the Act should not apply where funds are contributed by affiliated banks to the common trust funds maintained by a bank of the same bank holding company. As long as the common trust funds are used by affiliated banks only for bona fide fiduciary purposes and not as a means of investment by the public, Applicant argues that it is consistent with the legislative intent that underlies section 3(c)(3) to exempt from the Act common trust funds which may receive funds from other banks which are 90 percent or more owned by a bank holding company which owns 90 percent or more of the capital stock of the bank maintaining the common trust fund. Applicant represents that the subject common trust funds are not used as a vehicle for general investment by the public.

Section 6(c) of the Act, as here pertinent, authorizes the Commission, by order upon application, conditionally or unconditionally to exempt any person or any class or classes of persons from any provision or provisions of the Act if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than August 27, 1970, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon Applicant at the address stated above. Proof of such service (by affidavit or in case of attorney at law by certificate) shall be filed contemporaneously with the request. At any time after said date, as provided by Rule 0-5 of the rules and regulations promulgated under the Act, an order disposing of the application herein may be issued by the Commission upon the basis of information stated in said application, unless an order for hearing upon said application shall be issued upon request or upon the Commission's own motion. Persons who request shall be served personally or by 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. 70-10703; Filed, Aug. 14, 1970; 8:47 a.m.]

[812-2785]

BROGAN ASSOCIATES, INC.

Notice of Application for Order of Temporary Exemption

AUGUST 10, 1970.

Notice is hereby given that Brogan Associates, Inc. (Applicant), 80 Urban Avenue, Westbury, Long Island, N.Y., a New York corporation, has filed an application pursuant to section 6(c) of the Investment Company Act of 1940 (Act) for an order of the Commission temporarily exempting Applicant from the provisions of section 7 of the Act, until such time as the Commission has acted upon the application under section 3(b)(2) filed by Applicant on April 2, 1970. Applicant, in requesting such temporary exemption, has agreed that Applicant and other persons in their transactions and relations with it shall be subject to all other provisions of the Act and the respective rules and regulations promulgated under each of such provisions as though Applicant were a registered investment company, other than the following: Section 8; section 10(a); section 13(a)(2); subsections (f), (g) and (h) of section 17 (provided that presently outstanding stock options granted by Applicant or any of its controlled subsidiaries, may be exercised by any holder thereof who is not an officer, director or controlling person of Applicant); section 18, except subsection (d) thereof (provided that Applicant may issue convertible debentures, convertible preferred stock or warrants in connection with any refinancing of existing indebtedness or in connection with obtaining additional working capital; and provided that Applicant will not be permitted to have outstanding at any time more than two classes of senior securities representing indebtedness and more than one class of senior security which is a stock); subsections (a) and (b) of section 23; section 30; and section 31 of the Act, and the rules and regulations thereunder. All interested persons are referred to the application on file with the Commission for a statement of Applicant's representations, which are summarized below.

On April 2, 1970, Applicant filed an application pursuant to section 3(b)(2) of the Act for an order of the Commission declaring that it is not an investment company. Section 3(b)(2) provides that the filing of an application thereunder shall exempt the Applicant for a period of 60 days from all provisions of the Act applicable to investment companies as such.

The 60-day period of exemption provided in section 3(b)(2) expired, in Applicant's case, on June 1, 1970. Applicant, which has not registered as an investment company under the Act, has asked that it be exempted as requested until the Commission has acted upon the application under section 3(b)(2) of the Act.

Section 6(c) provides that the Commission, by order upon application, may conditionally or unconditionally exempt any person from any provision or provisions of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Section 6(e) provides that, if, in connection with any order under section 6 exempting any investment company from section 7, the Commission deems it necessary or appropriate in the public interest or for the protection of investors that certain specified provisions of the Act pertaining to registered investment companies shall be applicable in respect of such company, the provisions so specified shall apply to such company, and to other persons in their transactions and relations with such company, as though such company were a registered investment company.

Notice is further given that any interested person may, not later than August 28, 1970, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by

a statement as to the nature of his interest, the reasons for such request, and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission should order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon Applicant at the address stated above. Proof of such service (by affidavit or in case of an attorney at law by certificate) shall be filed contemporaneously with the request. At any time after said date, as provided by Rule 0–5 of the rules and regulations promulgated under the Act, an order disposing of the application herein may be issued by the Commission upon the basis of the information stated in said application, unless an order for hearing thereon shall be issued upon request or upon the Commission's own motion. Persons who request a hearing or advice as to whether a hearing is ordered will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

ORVAL L. DUBOIS,
Secretary.

[F.R. Doc. 70–10704; Filed, Aug. 14, 1970; 8:48 a.m.]

GULF & WESTERN INDUSTRIES, INC.

Notice of Application for Unlisted Trading Privileges and of Opportunity for Hearing

AUGUST 10, 1970.

The above named national securities exchange has filed an application with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the warrants to purchase common stock of the following company, which security is listed and registered on one or more other national securities exchanges:

Gulf & Western Industries, Inc., File No. 7–3433.

Upon receipt of a request, on or before August 25, 1970 from any interested person, the Commission will determine whether the application shall be set down for hearing. Any such request should state briefly the nature of the interest of the person making the request and the position he proposes to take at the hearing, if ordered. In addition, any interested person may submit his views or any additional facts bearing on the said application by means of a letter addressed to the Secretary, Securities and Exchange Commission, Washington 25, D.C., not later than the date specified. If no one requests a hearing, this application will be determined by order of the Commission on the basis of the facts stated therein and other information contained in the official files of the Commission pertaining thereto.

For the Commission (pursuant to delegated authority).

[SEAL] ORVAL L. DUBOIS,
Secretary.

[F.R. Doc. 70–10699; Filed, Aug. 14, 1970; 8:47 a.m.]

[70–4903]

HARTFORD ELECTRIC LIGHT CO.

Notice of Proposed Issue and Sale of Notes to Banks and to Dealer in Commercial Paper and Exception From Competitive Bidding

AUGUST 7, 1970.

Notice is hereby given that The Hartford Electric Light Co. (Hartford), 176 Cumberland Avenue, Wethersfield, Conn. 06109, a public-utility subsidiary company of Northeast Utilities, a registered holding company, has filed a declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 (Act), designating sections 6 and 7 of the Act and Rule 50(a)(5) promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transactions.

Hartford proposes, from time to time but not later than December 31, 1971, to issue and sell short-term notes (including commercial paper), in an aggregate principal amount outstanding at any one time of not more than $35 million. Hartford intends to utilize the proceeds of the sale of its notes for construction expenditures and for investments in nuclear generating companies. Hartford's construction program contemplates gross construction expenditures of approximately $66,600,000 for 1970 and $63,700,000 for 1971. Estimated investments in or advances to nuclear generating companies (i.e., Main Yankee Atomic Power Co. and Vermont Yankee Nuclear Power Corp.) are estimated to aggregate approximately $4,900,000 during 1970 and $2 million during 1971.

Hartford presently has outstanding short-term promissory notes to banks in an aggregate principal amount of $1,500,000, and expects to issue and sell up to an aggregate principal amount of $13,800,000 of its short-term notes to banks or to a dealer in commercial paper prior to August 31, 1970, pursuant to the 5 percent exemptive provision of section 6(b) of the Act. Hartford proposes to renew and extend any notes so issued or to refund them with other similar notes issued to banks or to a dealer in commercial paper and to issue and sell up to an additional $21,200,000 of short-term notes (and to renew such notes) from time to time but not later than December 31, 1971, to meet portions of its capital requirements. The aggregate amount of all such notes at any one time outstanding, including both notes issued on or prior to August 31, 1970, and those thereafter issued, will at no time exceed $35 million. The bank notes will each be dated the date of issue, will have maximum maturity dates of 9 months, with right of renewal, will bear interest at the prime rate (currently 8 percent per annum) in effect at the lending bank on the date of issue, and will be subject to prepayment at any time at the Company's option without premium. Although no formal commitments for future borrowings have been made with any bank, Hartford expects such borrowings will be effected from the following banks:

Name of bank	*Maximum amount to be borrowed*
The Connecticut Bank & Trust Co., Hartford, Conn	$6,000,000
Hartford National Bank & Trust Co., Hartford, Conn	7,000,000
City Trust Co., Bridgeport, Conn	1,750,000
Colonial Bank & Trust Co., Waterbury, Conn	1,800,000
The First National Bank of Boston, Boston, Mass	24,000,000
The First New Haven National Bank, New Haven, Conn	500,000
Simsbury Bank & Trust Co., Simsbury, Conn	200,000
The State National Bank of Connecticut, Greenwich, Conn	2,000,000
Union Trust Co., Stamford, Conn	2,000,000
United Bank & Trust Co., Hartford, Conn	400,000
Total	45,650,000

The commercial paper notes will be issued in denominations of not less than $50,000 and not more than $1 million and will be sold by Hartford directly to a dealer in commercial paper at the discount rate per annum prevailing at the date of issuance for commercial paper of comparable quality and of the particular maturity sold by public-utility issuers to commercial paper dealers. No commercial paper notes will be issued having a maturity of more than 90 days after December 31, 1971, which have an effective interest cost which exceeds the prime commercial bank rate at which Hartford could borrow from banks in an amount at least equal to the principal amount of such commercial paper. No commission or fee will be payable in connection with the issuance and sale of the commercial paper.

The commercial paper dealer, as principal, will reoffer the commercial paper to institutional investors at a discount of no more than one-eighth of 1 percent per annum less than the prevailing discount rate to Hartford. The commercial paper will be reoffered to not more than 200 identified and designated customers in a list (nonpublic) prepared in advance by the dealer. It is anticipated that the commercial paper will be held by customers to maturity, but if such customers desire to resell prior to maturity, the dealer, pursuant to a verbal repurchase agreement, will repurchase the commercial paper and reoffer the same to others in the group of 200 customers.

The declaration states that, unless otherwise authorized by the Commission, any bank notes or commercial paper of Hartford outstanding at December 31, 1971, will be repaid from internal cash resources or from the proceeds of long-term debt or equity financing.

Hartford requests that the issue and sale of its commercial paper notes, pursuant to subparagraph (a)(5) of Rule 50, be excepted from the requirements thereof in view of the fact that current rates for commercial paper for prime borrowers such as Hartford are readily ascertainable by reference to daily financial publications and that it is not practicable to invite competitive bids for commercial paper.

It is represented that no fees or commissions (including legal fees) will be paid or incurred, directly or indirectly, in connection with the proposed transactions and that incidental services, estimated at $500, will be performed at cost by Northeast Utilities Service Co., an affiliated service company. It is further represented that no State commission and no Federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Notice is further given that any interested person may, not later than August 27, 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 declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon the declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as filed or as it may be amended, may be 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. 70-10701; Filed, Aug. 14, 1970; 8:47 a.m.]

[70-4902]

OHIO EDISON CO.

Notice of Proposed Issue and Sale of Bonds at Competitive Bidding and Issue of Bonds for Sinking Fund Purposes

AUGUST 10, 1970.

Notice is hereby given that Ohio Edison Co. (Ohio Edison), a registered holding company and a public-utility company, has filed a declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 (Act), designating sections 6(a) and 7 of the Act and Rule 50 promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transactions.

Ohio Edison proposes to issue and sell, subject to the competitive bidding requirements of Rule 50 under the Act, $45 million principal amount of first mortgage bonds _____ percent series of 1970 due 1995. The interest rate of the bonds (which will be a multiple of one-eighth of 1 percent and the price, exclusive of accrued interest, to be paid to Ohio Edison (which will be not less than 100 percent nor more than 102¾ percent of the principal amount thereof) will be determined by the competitive bidding. The bonds will be issued under Ohio Edison's indenture dated as of August 1, 1930, between Ohio Edison and Bankers Trust Co., trustee, as heretofore amended and supplemented and as to be further amended and supplemented by a 19th supplemental indenture to be dated as of the first day of the calendar month in which the bonds are issued. The indenture, as supplemented, includes a prohibition until September 1, 1975, against refunding the issue with funds borrowed at a lower annual cost of money.

The proceeds from the sale of the new bonds will be used for the acquisition of property, the construction, completion, extension, renewal, or improvement of Ohio Edison's facilities or for the improvement of its services, or for repayment of unsecured short-term debt, estimated at the time of issue, to be outstanding in the amount of $8 million, or for the reimbursement of its treasury for expenditures made for such purposes. Ohio Edison's construction expenditures for the year 1970 are estimated at $92,445,000. The company presently proposes to issue and sell additional securities in 1971 to provide, in part, for the remainder of its cash requirements during 1971 for the above purposes.

Ohio Edison also proposes, from time to time prior to November 1, 1970, to issue an additional $337,500 principal amount of its first mortgage bonds 3¼ percent series of 1955 due 1985, under the provisions of its 12th supplemental indenture dated as of May 1, 1955, and to surrender such bonds to the trustee in accordance with the sinking fund provisions. The bonds are to be identical with those authorized by the Commission on May 12, 1970 (Holding Company Act Release No. 16720) and are to be issued on the basis of property additions. Ohio Edison estimates that, after the proposed issue of the new bonds and the sinking fund bonds, unfunded net property additions will amount to approximately $157 million as of May 31, 1970.

It is stated that the issuance of the new bonds and the sinking fund bonds is subject to the jurisdiction of the Public Utilities Commission of Ohio and that no other State commission and no Federal commission, other than this Commission, has jurisdiction over the proposed transactions. The fees and expenses to be paid in connection with the sinking fund bonds are estimated at $600. The fees and expenses in connection with the new bonds are to be filed by amendment.

Notice is further given that any interested person may, not later than September 1, 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 declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon the declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as filed or as it may be amended, may be 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. 70-10702; Filed, Aug. 14, 1970; 8:47 a.m.]

[812-2570]

SOUTHEASTERN CAPITAL CORP.

Notice of Filing of Application for an Order Exempting Certain Transactions

AUGUST 10, 1970.

Notice is hereby given that Southeastern Capital Corp. (Applicant), 3204 First

National Bank Tower, Atlanta, Ga., a Tennessee corporation registered as a closed-end, nondiversified, management investment company under the Investment Company Act of 1940 (Act) and licensed as a small business investment company under the Small Business Investment Act of 1958, has filed an application pursuant to section 6(c) of the Act requesting an order of the Commission for certain exemptions from sections 12(e), 17(a), and 17(d) of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations therein which are summarized below.

Applicant was organized in 1958 and throughout its corporate existence has functioned as a small business investment company. Applicant has 1531 shareholders, and as of March 31, 1970, it had net assets of $9,822,287 taking assets at their fair value as determined in good faith by Applicant's board of directors.

In order to provide a framework within which it can retain and employ a portion of its assets under the Small Business Administration (SBA) program, and at the same time free the major portion of its assets for investment in opportunities not contemplated under the SBA program, Applicant proposes, subject to shareholder approval, and should the requested exemptive order be issued, to cause its license as a small business investment company to be transferred to a wholly owned subsidiary to be incorporated under the laws of Georgia, and to be named Southeastern Capital Small Business Investment Corp. (SCSBIC). SCSBIC will register as a closed-end, nondiversified management investment company, and Applicant will then and from time to time in the future transfer certain of its assets to SCSBIC of not less than $1 million and not more than $3,666,667 in value and thereafter will operate as a closed-end, nondiversified, management investment company. SCSBIC will assume a $1 million loan that Applicant obtained from the SBA in April of 1970, but Applicant will guarantee payment of said loan. Applicant further proposes to continue to engage, and to cause SCSBIC to engage in the business of furnishing capital to industry, financing promotional enterprises, purchasing securities of issuers for which no ready market exists, reorganizing companies and similar activities. As an exhibit to the application, Applicant has filed a copy of a letter from the SBA which indicates that the SBA has no objection to the proposal.

Section 12(d)(1), as here pertinent, prohibits the acquisition by a registered investment company of more than 5 percent of the total outstanding voting stock of any other investment company if the policy of such other investment company is the concentration of investments in a particular industry or group of industries, or more than 3 percent of such stock, if the policy is not so to concentrate.

Section 12(e) of the Act provides, among other things, that notwithstanding the provisions of section 12(d)(1), a registered investment company may utilize up to 5 percent of the value of its assets to purchase or otherwise acquire any securities issued by another investment company engaged in the business of underwriting, furnishing capital to industry, financing promotional enterprises, purchasing securities of issuers for which to ready market is in existence and reorganizing companies or similar activities, provided that the securities issued by such other investment company consist solely of one class of common stock. An exemptive order from section 12(e) of the Act is necessary in order to enable Applicant to invest more than 5 percent of the value of its assets in SCSBIC which, as noted, will be a 100 percent owned subsidiary of Applicant and permit SCSBIC to issue two classes of securities, common stock to be held by Applicant and debt to be held or guaranteed by the SBA.

Section 17(a) of the Act, as here pertinent, prohibits an affiliated person of a registered investment company from selling to or purchasing from such registered company any securities or other property. Since SCSBIC will be an affiliated person of Applicant, a registered investment company, section 17(a) makes it unlawful for any transfer of assets to be effected between the two companies, as presently contemplated, in the absence of an exemptive order of the Commission.

Section 17(d) of the Act and Rule 17d–1 thereunder, taken together, provide, among other things, that it shall be unlawful, with certain exceptions not applicable here, for an affiliated person of a registered investment company or any affiliated person of such a person, acting as principal, to participate in, or effect any transaction in connection with any joint enterprise or arrangement in which any such registered company or a company controlled by such registered company is a participant unless an application regarding such arrangement has been granted by the Commission. Applicant has requested an order exempting it and SCSBIC from the prohibitions of section 17(d) of the Act to permit it to participate with SCSBIC in any possible joint transactions with third persons having no affiliation with Applicant, SCSBIC, or with their affiliates.

Section 6(c) of the Act provides that the Commission, by order upon Application, may conditionally or unconditionally exempt any person, security, or transaction from any provisions of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicant submits that the requested exemptions are necessary to enable it contemporaneously to implement the congressional intent recited in the Small Business Investment Act of 1958 and to engage in furnishing venture capital as contemplated by section 12(e) of the Act.

Applicant has agreed that the order the Commission may issue pursuant to this notice may be conditioned upon the following:

1. Applicant will at all times own and hold, beneficially and of record, all of the outstanding capital stock of SCSBIC.

2. Applicant will not cause or permit SCSBIC to change any of its fundamental investment policies, unless such action shall have been authorized by Applicant as the holder of all of the outstanding voting securities of SCSBIC after approval of such action by the vote of a majority (as defined in the Act) of Applicant's outstanding voting securities.

3. Applicant will not cause or permit SCSBIC to enter into, renew or perform any investment advisory or underwriting contracts or agreements, written or oral, as contemplated by section 15 of the Act, unless the terms of such contracts or agreements and any renewal thereof shall have been approved in compliance with section 15 of the Act. Any vote of the stockholders of SCSBIC as required by section 15 of the Act will be deemed to require a vote of Applicant's stockholders. Any action of the directors of SCSBIC as required by section 15 of the Act will be deemed to require a vote of the directors of Applicant, including a majority of those directors who are not parties to any such contract or agreement or affiliated persons of any such party.

4. The directors of SCSBIC and Applicant will be in all respects identical.

5. Applicant will not cause or permit SCSBIC to issue or sell (and SCSBIC will not have outstanding) any securities other than (i) common stock to be held and owned by Applicant; (ii) debt securities to be held and owned by Applicant evidencing borrowings from the latter; and/or (iii) debt securities to be held and owned by the SBA (or by one or more banks, insurance companies and/or pension funds where payment is guaranteed by the SBA) evidencing borrowings by SCSBIC from the SBA (or from one or more banks, insurance companies and/or pension funds) on such terms as the SBA may lend to or guarantee for small business investment companies and as may be permitted under the Act and this order: *Provided, however,* That so long as Applicant has outstanding any senior security other than as described in paragraph (9) hereunder, Applicant will not cause or permit SCSBIC to issue or sell or to have outstanding any security other than common stock and debt held and owned by Applicant.

6. Applicant will not make any investment in SCSBIC if the aggregate value of any existing investment plus the cost of any additional investment in SCSBIC would exceed 25 percent of the value of Applicant's total assets on a corporate basis.

7. Applicant will file with the Commission and transmit to its stockholders reports prescribed and required by section 30 of the Act, including separate financial statements of SCSBIC. Applicant will also cause SCSBIC to file with

the Commission copies of all reports which SCSBIC will be required to file with the SBA.

8. Any independent public accountant who signs a financial statement filed by Applicant or SCSBIC with the Commission shall be selected and approved for Applicant in compliance with section 32(a) of the Act by a majority (as defined in the Act) of Applicant's outstanding voting securities.

9. So long as SCSBIC has any debt outstanding other than debt of SCSBIC held and owned by Applicant, Applicant will not issue any security or sell or have or permit to remain outstanding any security issued by it other than (i) common stock and (ii) unsecured promissory notes or other unsecured evidences of indebtedness issued in consideration of any loan, extension, or renewal thereof, made by one or more banks, insurance companies and/or pension funds and privately arranged, and not intended to be publicly distributed and not convertible into, exchangeable for, or accompanied by any options to acquire any equity security.

Notice is further given that any interested person may, not later than August 31, 1970, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reasons for such request, and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission should order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon Applicant at the address stated above. Proof of such service (by affidavit or in case of an attorney at law by certificate) shall be filed contemporaneously with the request. At any time after said date, as provided by Rule 0–5 of the rules and regulations promulgated under the Act, an order disposing of the application herein may be issued by the Commission upon the basis of the information stated in said application, unless an order for hearing thereon shall be issued upon request or upon the Commission's own motion. Persons who request a hearing or advice as to whether a hearing is ordered, will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

It is ordered, That the Secretary of the Commission shall send a copy of this notice by certified mail to the Associate Administrator for Investment, Investment Division, Small Business Administration, Washington, D.C. 20416.

For the Commission, by the Division of Corporate Regulation pursuant to delegated authority.

[SEAL] ORVAL L. DUBOIS,
Secretary.

[F.R. Doc. 70–10705; Filed, Aug. 14, 1970; 8:49 a.m.]

INTERSTATE COMMERCE COMMISSION

[Notice 132]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

AUGUST 12, 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 76266 (Sub-No. 118 TA), filed August 4, 1970. Applicant: ADMIRAL-MERCHANTS MOTOR FREIGHT, INC., 2625 Territorial Road, St. Paul, Minn. 55114. Applicant's representative: L. R. Cernjar (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except classes A and B explosives, livestock, household goods as defined by the Commission, commodities in bulk and those requiring special equipment), between Moline, Ill., and Bloomington, Ill., for 180 days. NOTE: Applicant will be interlined at Bloomington, Ill., with Jack Cole-Dixie Highway Co. with MC 108185. Supporting shipper: Applicant's own statement. 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 109658 (Sub-No. 8 TA), filed August 7, 1970. Applicant: LYLE E. WINN, doing business as MARION MACHINE WORKS, 523 South Main Street, Marion, Ky. 42064. Applicant's representative: Herbert S. Melton, Jr., Suite 234 Katterjohn Building, Box 1284, Avondale Station, Paducah, Ky. 42001. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fluorspar*, in pneumatic trailers, from points in Hardin County, Ill., to plantsite of Pennwalt Corp., Calvert City, Ky., for 180 days. Supporting shippers: Gill Montgomery, vice president and general manager, The Minerva Co., Box 531, Eldorado, Ill. 62930; Harvey F. Kerr, assistant traffic manager, Pennwalt Corp., 3 Penn Center, Philadelphia, Pa. 19102. Send protests to: Wayne L. Merilatt, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 426 Post Office Building, Louisville, Ky 40202.

No. MC 111375 (Sub-No. 37 TA), filed August 7, 1970. Applicant: PIRKLE REFRIGERATED FREIGHT LINES, INC., 3567 East Barnard Avenue, Cudahy, Wis. 53110. Applicant's representative: Charles W. Singer, 33 North Dearborn Street, Chicago, Ill. 60602. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Cheese*, from Newman Grove, Nebr., to points in California, Nevada, Arizona, Utah, Washington, Oregon, and Colorado, restricted to shipments originating at Fond du Lac, Wis., for 180 days. Supporting shipper: Tolibia Cheese, Inc., 45 East Scott Street, Fond du Lac, Wis. 54935 (J. R. Tolibia, president). Send protests to: District Supervisor Lyle D. Helfer, Interstate Commerce Commission, Bureau of Operations, 135 West Wells Street, Room 807, Milwaukee, Wis. 53203.

No. MC 119654 (Sub-No. 17 TA), filed July 31, 1970. Applicant: HI-WAY DISPATCH, INC., 1401 West 26th Street, Marion, Ind. 46952. Applicant's representative: Frank Bove (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Glass containers, caps and covers for glass containers, and fiberboard boxes*, from the plantsite and facilities of Obear-Nester Glass Co., at or near Lincoln, Ill., to points in Indiana, the lower peninsula of Michigan, Ohio, and Milwaukee, Wis., and points in that part of Wisconsin beginning at Milwaukee, and extending along U.S. Highway 41 to Fond du Lac (including Fond du Lac), thence along U.S. Highway 151 to Madison (including Madison), and then along U.S. Highway 51 to the Wisconsin-Illinois State line, for 180 days. Supporting shipper: Obear-Nester Glass Co., East St. Louis, Ill. 62205. Send protests to: District Supervisor J. H. Gray, Interstate Commerce Commission, Bureau of Operations, Room 204, 345 West Wayne Street, Fort Wayne, Ind. 46802.

No. MC 133892 (Sub-No. 3 TA), filed July 31, 1970. Applicant: B & W SERVICE, INC., 25 Littlefield Street, Avon, Mass. 02322. Applicant's representative: Frank J. Weiner, 6 Beacon Street, Boston, Mass. 02108. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Such merchandise* as is dealt in by retail department stores, and *equipment, materials, and supplies* used in the operations of retail department stores, between Avon, Mass., on the one hand, and, on the other, Bridgeport, Danbury, and New Haven, Conn. Restriction: The authority granted above is restricted to the transportation of commodities originating at and destined to the facilities of Child World, Inc., and its subsidiary Play "N Learn, Inc. Restriction: The operations authorized herein are limited to a

transportation service to be performed, under a continuing contract, or contracts, with Child World, Inc., for 180 days. Supporting shipper: Child World, Inc., 25 Littlefield Street, Avon, Mass. 02322. Send protests to: District Supervisor Harold G. Danner, Interstate Commerce Commission, Bureau of Operations, John F. Kennedy Federal Building, Government Center, Boston, Mass. 02203.

No. MC 134341 (Sub-No. 2 TA), filed July 30, 1970. Applicant: CHARLES R. STROP, doing business as STROP TRANSPORTATION, Rural Route 1, Hastings, Nebr. 68901. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meat, meat products, and meat byproducts and packinghouse products*, from the plantsite and storage facilities of Minden Beef Co. at or near Minden, Nebr., to Allentown, Pa.; Baltimore, Md.; Boston, Mass.; Hartford, Conn.; Henrietta, N.Y.; Landover, Md.; La Porte, Ind.; New York, N.Y.; Philadelphia, Pa.; Rochester, N.Y.; Springfield, Mass.; Stamford, Conn.; and Washington, D.C., for 150 days. Supporting shipper: Minden Beef Co., Minden, Nebr. Send protests to: District Supervisor Johnston, Bureau of Operations, Interstate Commerce Commission, 315 Post Office Building, Lincoln, Nebr. 68508.

No. MC 134653 (Sub-No. 1 TA), filed July 30, 1970. Applicant: STERRITT TRUCKING, INC., Post Office Box 367, West Coxsackie, N.Y. 12192. Applicant's representative: Alfred C. Purello, 451 State Street, Albany, N.Y. 12203. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Precast, prestress concrete products*, from Pittsfield, Mass., to Cobleskill, N.Y., for the account of Unistress Corp., Pittsfield, Mass.; and (2) *scrap metals*, from Cementon, N.Y., to Jersey City, N.J., for the account of Kaiser-Nelson Steel & Salvage Corp., Cleveland, Ohio, for 150 days. Supporting shippers: Unistress Corp., 465 Cheshire Road, Post Office Box 1145, Pittsfield, Mass. 01201; Kaiser-Nelson Steel & Salvage Corp., 1 Public Square, Cleveland, Ohio 44113. Send protests to: Charles F. Jacobs, District Interstate Commerce Commission, Bureau of Operations, 518 Federal Building, Albany, N.Y. 12207.

No. MC 134724 (Sub-No. 2 TA), filed August 3, 1970. Applicant: TEDDY D. CLARK, doing business as BIG RIG REFRIGERATION, Route 2, Box 59, Centerville, Iowa 52544. Applicant's representative: Donald L. Stern, 630 City National Bank Building, Omaha, Nebr. 68102. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *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, in tank or hopper type vehicles), from the plantsite of John Morrell & Co., at Ottumwa, Iowa, to points in Ohio, Pennsylvania, New York, New Jersey, Massachusetts, Connecticut, Rhode Island, Maryland, District of Columbia, Virginia, and West Virginia, for 150 days. Supporting shipper: John Morrell & Co., Ottumwa, Iowa 52501. Send protests to: Ellis L. Annett, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 677 Federal Building, Des Moines, Iowa 50309.

No. MC 134760 (Sub-No. 1 TA), filed August 6, 1970. Applicant: PHILLIP W. SLIGHTOM, doing business as P & B TRUCKING, Rural Route 1, Bettendorf, Iowa 52722. Applicant's representative: Kenneth F. Dudley, 611 Church Street, Post Office Box 279, Ottumwa, Iowa 52501. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Lumber, building materials and building supplies*, from Davenport, Iowa, to points in Illinois, for 180 days. Supporting shipper: Wickes Corp., 1425 East 39th Street, Davenport, Iowa. Send protests to: Ellis L. Annett, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 332 Federal Building, Davenport, Iowa 52801.

No. MC 134820 TA, filed August 4, 1970. Applicant: ROBERT ALBRIGHT, 11271 Glendale Way, Seattle, Wash. 98168. Applicant's representative: Joseph O. Earp, 411 Lyon Building, Seattle, Wash. 98104. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: For the account of West Coast Paper Co., Seattle, Wash.; (1) *tape*, pressure, sensitive; *plastic film;* strapping plastic; from Stowe and Alliance, Ohio, and Gary, Ind., to Seattle, Wash.; and (2) *paper*, printing, from Chicago, Ill., Hamilton, Ohio, Fort Smith, Ark., and Port Edwards, Wisconsin Rapids, and Appleton, Wis., to Seattle, Wash., for 180 days. Supporting shipper: West Coast Paper Co., 2203 First Avenue South, Seattle, Wash. 98134. Send protests to: E. J. Casey, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 6130 Arcade Building, Seattle, Wash. 98101.

No. MC 134830 TA filed August 6, 1970. Applicant: BSX AIR EXPEDITORS, Post Office Box 8033, Charlotte, N.C. 28208. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (with the usual exceptions), between Elizabethtown, N.Y., and points within 50 miles thereof, and Wadesboro, Rockingham, and Hamlet, N.C., on the one hand, and, on the other, Charlotte Douglas Municipal Airport, Charlotte, N.C. Restricted to shipments having a prior or subsequent movement by air, for 180 days. Supporting shippers: There are approximately (7) 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: Jack K. Huff, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 316 East Morehead, Suite 417, BSR Building, Charlotte, N.C. 28202.

By the Commission.

[SEAL] JOSEPH M. HARRINGTON,
Acting Secretary.

[F.R. Doc. 70-10721; Filed, Aug. 14, 1970; 8:50 a.m.]

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PART II

FEDERAL COMMUNICATIONS COMMISSION

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Use of Broadcast Facilities by Candidates for Public Office

[Public Notice of August 7, 1970]

FEDERAL COMMUNICATIONS COMMISSION

[FCC 70-871]

USE OF BROADCAST FACILITIES BY CANDIDATES FOR PUBLIC OFFICE

APRIL 27, 1966.

This Public Notice is a compilation of the Commission's interpretive rulings under section 315 of the Communications Act of 1934, as amended, and the Commission's rules implementing that section of the Act and brings up-to-date and supersedes all prior Public Notices issued by the Commission entitled "Use of Broadcast Facilities by Candidates for Public Office." The Commission has reviewed its Public Notice of April 27, 1966, 3 F.C.C. 2d 463 2d (1966), which contained section 315, as amended, the Commission's rules, additional rulings, and recommended complaint procedures. Significant rulings made subsequent to the 1966 Public Notice have been added, and editorial and other revisions have been made with respect to some of the interpretations previously published. Where appropriate, cumulative rulings have been cited.

In preparing this revision of the section 15 Primer, an attempt has been made not only to give a concise statement of prevailing law and policy in this area but to provide the user with the citations necessary to reconstruct the evolution and/or modification of particular 315 questions. For this reason, prior interpretations of particular questions have been cross-referenced and appear in the relevant sections. We stress that we have included these cross-referenced cases as a research aid rather than as an implication that action should be taken in reliance thereon. Included herein are the determinations of the Commission with respect to problems which have been presented to it and which appear likely [1] to be involved in future campaigns. While the information contained herein does not purport to be a discussion of every problem that may arise in the political broadcast field, experience has shown that these documents have been of assistance to candidates and broadcasters in understanding their rights and obligations under section 315.

In its first report and order in Docket No. 18397 (20 F.C.C. 2d 201 (1969)) the Commission adopted rules, essentially the same as those applicable to broadcast licensees, making the provisions of section 315 applicable to programs originated on Community Antenna Television (CATV) Systems (§ 74.1101 of the Commission's rules). All rulings, interpretations and complaint procedures contained herein are thus fully applicable to political programs originated by CATV Systems, and references to "stations" and "licensees" throughout this primer include "CATV systems" and "CATV operators."

The purpose of this notice is to apprise licensees, candidates, and other interested persons of their respective responsibilities and rights under section 315, and the Commission's rules, when situations similar to those discussed herein are encountered. In this way, resort to the Commission may be obviated in many instances and time—which is of great importance in political campaigns—will be saved. We do not mean to preclude inquiry to the Commission when there is a genuine doubt as to licensee obligations and responsibilities to the public interest under section 315. Procedures for filing complaints are set out below. But it is believed that the following document will, in many instances, remove the need for inquiries, and that licensees will be able to take the necessary prompt action in accordance with the interpretations and positions set forth below.

This discussion relates solely to obligations of broadcast licensees towards candidates for public office under section 315 of the Act. It is not intended to include the question of the treatment by broadcast licensees of political or other controversial programs not governed by the "equal opportunities" provisions of that section. As to the responsibilities of broadcast licensees with respect to controversial issues of public importance included in political broadcasts, licensees are referred to the Commission's "fairness doctrine," and the current Public Notice entitled "Applicability of the Fairness Doctrine in the Handling of Controversial Issues of Public Importance." (40 F.C.C. 598 (1964).)

We have continued the question-and-answer format as an appropriate means of delineating the section 315 problems. Wherever possible, reference to Commission's decisions or rulings are made so that the researcher may, if he desires, review the complete text of the Commission's ruling. (See also the Commission's rules relating to "personal attacks" and political editorializing, §§ 73.123 (AM), 73.300 (FM), 73.598 (noncommercial educational FM), 73.679 (TV) and 74.1115 (CATV), 47 CFR, §§ 73.123, 73.300, 73.598, 73.679, and 74.1115 (1970). Citations are to the F.C.C. Reports (F.C.C.) and F.C.C. Reports, Second Series (F.C.C. 2d).) [2]

This Public Notice summarizes significant rulings issued by the Commission including those promulgated since the date of the 1966 Public Notice. In the interval, the Commission has reemphasized the importance of licensee presentation of political broadcasting.

In short, the presentation of political broadcasting, while only one of the many elements of service to the public * * *, is an important facet, deserving the licensee's closest attention, because of the contribution broadcasting can thus make to an informed electorate—in turn so vital to the proper functioning of our Republic, In re Licensee Responsibility as to Political Broadcasts, 15 F.C.C. 2d 94 (1968).

The Supreme Court had previously stated:

Instead the thrust of section 315 is to facilitate political debate over radio and television. Recognizing this, the Communications Commission considers the carrying of political broadcasts a public service criterion to be considered both in licensee renewal proceeding, and in comparative contests for a radio or television construction permit [footnote omitted]. Certainly Congress knew the obvious—that if a licensee could protect himself from liability in no other way but by refusing to broadcast candidates' speeches, the necessary effect would be to hamper the congressional plan to develop broadcasting as a political outlet, rather than to foster it. [footnote omitted] Farmers Educational and Cooperative Union of America, North Dakota Division v. WDAY, Inc., 360 U.S. 525 (1959). (See Red Lion Broadcasting Co., Inc. v. Federal Communications Commission, 395 U.S. 367, 393–94 (1969).)

Recommended Complaint Procedures

Complaints relating to 315 matters are given priority consideration by the Commission. Compliance with the following recommended procedures will further greatly assist in the orderly and expeditious disposition of such complaints. However, we do not mean, of course, to preclude in any way inquiry to the Commission when there is a genuine question as to licensee rights and obligations under section 315. We set out these recommended procedures in order to expedite and permit timely consideration of complaints in this important area. Failure to follow these procedures may result in unnecessary delays in resolution of section 315 complaints.

First, barring unusual circumstances, a complaint should not be made to the Commission until the licensee has denied the candidate's request for time after opportunity for passing on the essential claims raised by the candidate. Further, it has been the Commission's consistent policy to encourage negotiations between licensees and candidates seeking broadcast time or having questions under section 315, looking toward a disposition of the request or questions in a manner which is mutually agreeable to all parties. A complaint relating to a section 315 matter thus should be filed with the Commission after an effort has been made in good faith by the parties concerned to resolve the questions at issue. In this way, resort to the Commission might be obviated in many instances and time—which is of great importance in political campaigns—might be saved.

Where a complaint is filed with the Commission, (i) the complainant should simultaneously send a copy to the licensee, (ii) the licensee should respond,

[1] A few of the questions taken up within have been presented to the Commission informally—that is, through telephone conversations or conferences with station representatives. They are set out in this Public Notice because of the likelihood of their recurrence and the fact that no extended Commission discussion is necessary to dispose of them; the answer in each case is clear from the language of section 315.

[2] Volume 40 of the F.C.C. Reports is currently being printed.

as promptly as possible, and not await Commission inquiry regarding the complaint, and (iii) the complainant and licensee should furnish each other with copies of all correspondence sent to the Commission.

A complaint filed with the Commission should be in written form and should contain: (i) The name and address of the complainant, (ii) the call letters (but in the case of a CATV system, the name of the person, company or corporation operating the system) and location (city and State) of the station against whom the complaint is made, and (iii) a detailed statement of the factual basis of the complaint which shall include, but not necessarily be limited to: the public office involved, the date and nature of the election to be held, whether the complainant and his opponent(s) are legally qualified candidates for public office, the date(s) of prior appearances by opponents if any, the time of request for equal opportunities submitted to the licensee, and the licensee's stated reasons for refusing to satisfy the complaint.

If at any time the licensee satisfies the complaint, the licensee should so notify the Commission, setting forth when and how the complaint has been satisfied and furnish a copy of such notification to complainant.

I. The Statute

Section 315 of the Communications Act of 1934, as amended, provides as follows:

SEC. 315. (a) If any licensee shall permit any person who is a legally qualified candidate for any public office to use a broadcasting station, he shall afford equal opportunities to all other such candidates for that office in the use of such broadcasting stations: *Provided*, That such licensee shall have no power of censorship over the material broadcast under the provisions of this section. No obligation is hereby imposed upon any licensee to allow the use of its station by any such candidate. Appearance by a legally qualified candidate on any—

(1) Bona fide newscast,

(2) Bona fide news interview,

(3) Bona fide news documentary (if the appearance of the candidate is incidental to the presentation of the subject or subjects covered by the news documentary), or

(4) On-the-spot coverage of bona fide news events (including but not limited to political conventions and activities incidental thereto), shall not be deemed to be use of a broadcasting station within the meaning of this subsection. Nothing in the foregoing sentence shall be construed as relieving broadcasters, in connection with the presentation of newscasts, news interviews, news documentaries, and on-the-spot coverage of news events, from the obligation imposed upon them under this Act to operate in the public interest and to afford reasonable opportunity for the discussion of conflicting views on issues of public importance.

(b) The charges made for the use of any broadcasting station for any of the purposes set forth in this section shall not exceed the charges made for comparable use of such station for other purposes.

(c) The Commission shall prescribe appropriate rules and regulations to carry out the provisions of this section.

(48 Stat. 1088 (1934), 66 Stat. 717 (1952), 73 Stat. 557 (1959), 47 U.S.C. § 315 (1964))

II. The Commission's Rules and Regulations With Respect to Political Broadcasts

The Commission's rules and regulations with respect to political broadcasts coming within section 315 of the Communications Act are set forth in §§ 73.120 (AM), 73.290 (FM), 73.590 (noncommercial Educational FM), and 73.657 (TV), respectively. These provisions are identical (except for elimination of any discussion of charges in § 73.590 relating to noncommercial educational FM stations) and read as follows:

Broadcasts by candidates for public office—(a) *Definitions:* A "legally qualified candidate" means any person who has publicly announced that he is a candidate for nomination by a convention of a political party or for nomination or election in a primary, special, or general election, municipal, county, State or national, and who meets the qualifications prescribed by the applicable laws to hold the office for which he is a candidate, so that he may be voted for by the electorate directly or by means of delegates or electors, and who:

(1) Has qualified for a place on the ballot or

(2) Is eligible under the applicable law to be voted for by sticker, by writing in his name on the ballot, or other method, and (i) has been duly nominated by a political party which is commonly known and regarded as such, or (ii) makes a substantial showing that he is a bona fide candidate for nomination or office, as the case may be.

(b) *General requirements.* No station licensee is required to permit the use of its facilities by any legally qualified candidate for public office, but if any licensee shall permit any such candidate to use its facilities, it shall afford equal opportunities to all such other candidates for that office to use such facilities: *Provided*, That such licensee shall have no power of censorship over the material broadcast by any such candidate.

(c) *Rates and practices.* (1) The rates, if any, charged all such candidates for the same office shall be uniform and shall not be rebated by any means direct or indirect. A candidate shall, in each case, be charged no more than the rate the station would charge if the candidate were a commercial advertiser whose advertising was directed to promoting its business within the same area as that encompassed by the particular office for which such person is a candidate. All discount privileges otherwise offered by a station to commercial advertisers shall be available upon equal terms to all candidates for public office.

(2) In making time available to candidates for public office no licensee shall make any discrimination between candidates in charges, practices, regulations, facilities, or services for or in connection with the service rendered pursuant to this part, or make or give any preference to any candidate for public office or subject any such candidate to any prejudice or disadvantage; nor shall any licensee make any contract or other agreement which shall have the effect of permitting any legally qualified candidate for any public office to broadcast to the exclusion of other legally qualified candidates for the same public office.

(d) *Records; inspection.* Every licensee shall keep and permit public inspection of a complete record of all requests for broadcast time made by or on behalf of candidates for public office, together with an appropriate notation showing the disposition made by the licensee of such requests, and the charges made, if any, if request is granted. Such records shall be retained for a period of 2 years.

NOTE: See § 1.526 of this chapter.

(e) *Time of request.* A request for equal opportunities must be submitted to the licensee within 1 week of the day on which the first prior use, giving rise to the right of equal opportunities, occurred: *Provided, however*, That where the person was not a candidate at the time of such first prior use, he shall submit his request within 1 week of the first subsequent use after he has become a legally qualified candidate for the office in question.[3]

(f) *Burden of proof.* A candidate requesting such equal opportunities of the licensee, or complaining of noncompliance to the Commission shall have the burden of proving that he and his opponent are legally qualified candidates for the same public office.

(47 CFR §§ 73.120, 73.290, 73.590, 73.657 (1970).)

In addition, the attention of the licensees is directed to the following provisions of §§ 73.119, 73.289, and 73.654, relating to sponsorship identification which provide in pertinent part:

(a) When a * * * broadcast station transmits any matter for which money, services, or other valuable consideration is either directly or indirectly paid or promised to, or charged or received by, such station, the station shall broadcast an announcement that such matter is sponsored, paid for, or furnished, either in whole or in part, and by whom or on whose behalf such consideration was supplied: *Provided, however*, That "service or other valuable consideration" shall not include any service or property furnished without charge or at a nominal charge for use on, or in connection with, a broadcast unless it is so furnished in consideration for an identification in a broadcast of any person, product, service, trademark, or brand name beyond an identification which is reasonably related to the use of such service or property on the broadcast.

(b) The licensee of each television broadcast station shall exercise reasonable diligence to obtain from its employees, and from other persons with whom it deals directly in connection with any program matter for broadcast, information to enable such licensee to make the announcement required by this section.

(c) In any case where a report (concerning the providing or accepting of valuable consideration by any person for inclusion of any matter in a program intended for broadcasting) has been made to a television broadcast station, as required by section 508 of the Communications Act of 1934, as amended, of circumstances which would have required an announcement under this section had the consideration been received by such television broadcast station, an appropriate announcement shall be made by such station.

(d) In the case of any political program or any program involving the discussion of public controversial issues for which any records, transcriptions, talent, scripts, or other material or services of any kind are furnished, either directly or indirectly, to a station as an inducement to the broadcasting of such program, an announcement shall be made both at the beginning and

[3] Paragraph (e) was amended May 6, 1970; 35 F.R. 7118 (1970). Analogous political broadcasting rules have been promulgated with respect to CATV systems, 47 CFR § 74.1113 (1970); 34 F.R. 17651, 17660 (1969); 20 F.C.C. 2d 201, 223 (1969); See section IX, infra.

conclusion of such program on which such material or services are used that such records, transcriptions, talent, scripts, or other material or services have been furnished to such station in connection with the broadcasting of such program: *Provided, however,* That only one such announcement need be made in the case of any such program of 5 minutes' duration or less, which announcement may be made either at the beginning or conclusion of the program.

* * * * *

(f) In the case of any program, other than a program advertising commercial products or services, which is sponsored, paid for, or furnished, either in whole or in part, or for which material or services referred to in paragraph (d) of this section are furnished, by a corporation, committee, association, or other unincorporated group, the announcement required by this section shall disclose the name of such corporation, committee, association, or other unincorporated group. In each such case the station shall require that a list of the chief executive officers or members of the executive committee or of the board of directors of the corporation, committee, association, or other unincorporated group shall be made available for public inspection at the studios or general offices of one of the standard broadcast stations carrying the program in each community in which the program is broadcast. Such lists shall be kept and made available for a period of 2 years.

(g) In the case of broadcast matter advertising commercial products or services, an announcement stating the sponsor's corporate or trade name, or the name of the sponsor's product, when it is clear that the mention of the name of the product constitutes a sponsorship identification, shall be deemed sufficient for the purposes of this section and only one such announcement need be made at any time during the course of the program.

* * * * *

(i) Commission interpretations in connection with the provisions of this section may be found in the Commission's Public Notice entitled "Applicability of Sponsorship Identification Rules" (FCC 63-409; 28 F.R. 4732, May 10, 1963) and such supplements thereto as are issued from time to time.

(47 CFR §§ 73.119, 73.289, 73.654 (1970).)[4]

III. "Uses," in General

In general, any use of broadcast facilities by a legally qualified candidate for public office imposes an obligation on licensees to afford "equal opportunities" to all other such candidates for the same office.

Section 315 of the Act was amended by the Congress in 1959 to provide that appearances by legally qualified candidates on specified news-type programs are deemed not to be a "use" of broadcast facilities within the meaning of that section. In determining whether a particular program is within the scope of one of these specified news-type programs, the basic question is whether the program meets the standard of "bona fides." To establish whether such a program is in fact a "bona fide" program, the following considerations, among others, may be pertinent: (1) The format, nature and content of the programs; (2) whether the format, nature or content of the program has changed since its inception and, if so, in what respects; (3) who initiates the programs; (4) who produces and controls the program; (5) when the program was initiated; (6) is the program regularly scheduled; and (7) if the program is regularly scheduled, specify the time and day of the week when it is broadcast. Questions have also been presented by the appearances on news-type broadcast programs of station employees who are also legally qualified candidates. In such cases, in addition to the above, the following considerations, among others, may be pertinent to a determination of the applicability of section 315: (1) What is the dominant function of the employee at the station?; (2) what is the content of the program and who prepares the program?; and (3) to what extent is the employee personally identified on the program? In the rulings set forth below, wherein the Commission held that the "equal opportunities" provision was applicable, it should be assumed that the news-type exemptions contained in the 1959 amendments were not involved.

III.A. Types of Uses

III.A. 1. Q. Does section 315 apply to one speaking for or on behalf of the candidate, as contrasted with the candidate himself?

A. No. The section applies only to legally qualified candidates. Candidate A has no legal right under section 315 to demand time where B, not a candidate, has spoken against A or in behalf of another candidate. (Felix v. Westinghouse Radio Stations, 186 F. 2d 1 (3d Cir. 1950), cert. den. 341 U.S. 909 (1951). See letter to Mr. Lawrence M. C. Smith, 40 F.C.C. 549 (1963); see also letter to Mr. George F. Mahoney, 40 F.C.C. 336 (1962).)

2. Q. Does section 315 confer rights on a political party as such?

A. No. It applies in favor of legally qualified candidates for public office, and is not concerned with the rights of political parties, as such. (Letters to The National Laugh Party, 40 F.C.C. 289 (1957); Mr. Harry Dermer, 40 F.C.C. 407 (1964).)

3. Q. Does section 315 require stations to afford "equal opportunities" in the use of their facilities in support of or in opposition to a public question to be voted on in an election?

A. No. Section 315 has no application to the discussion of political issues, as such, but is concerned with the use of broadcast stations by legally qualified candidates for public office. In the 1959 amendment of section 315, relating to certain news-type programs, Congress stated specifically that its action was not to be construed "* * * as relieving broadcasters, in connection with the presentation of newscasts, news interviews, news documentaries, and on-the-spot coverage of news events, from the obligation imposed upon them under this Act to operate in the public interest and to afford reasonable opportunity for the discussion of conflicting views on issues of public importance." The Commission has considered this statement to be an affirmation of its "fairness doctrine", as enunciated in its Report on Editorializing by Broadcast Licensees, 13 F.C.C. 1246 (1946). (See In re Greater New York Broadcasting Corp., 40 F.C.C. 235 (1946); In re Arkansas AFL-CIO, 18 F.C.C. 2d 497 (1969); Dowie A. Crittenden, 18 F.C.C. 2d 499 (1969); Harry Lerner, 15 F.C.C. 2d 75 (1968); see caveat in letter to Cumberland Publishing Co., 13 F.C.C. 2d 897 (1968); Red Lion Broadcasting Co., Inc. v. Federal Communications Commission, 395 U.S. 367, 393-94 (1969).)

III.B. What Constitutes a "Use" of Broadcast Facilities Entitling Opposing Candidates to "Equal Opportunities"?

III.B. 1. Q. If a legally qualified candidate secures air time but does not discuss matters directly related to his candidacy, is this a use of facilities under section 315?

A. Yes. Section 315 does not distinguish between the uses of broadcast time by a candidate, and the licensee is not authorized to pass on requests for time by opposing candidates on the basis of the licensee's evaluation of whether the original use was or was not in aid of a candidacy. (In re Socialist Labor Party, 40 F.C.C. 241 (1952); In re Fordham University, 40 F.C.C. 321 (1961), Q. and A. III.B.6., infra.)

2. Q. Must a broadcaster give equal time to a candidate whose opponent has broadcast in some other capacity than as a candidate?

A. Yes. For example, a weekly report of a Congressman to his constituents via radio or television is a broadcast by a legally qualified candidate for public office as soon as he becomes a candidate for reelection, and his opponent must be given "equal opportunities" for time on the air. Any "use" of a station by a candidate, in whatever capacity, entitles his opponent to "equal opportunities." (In re Clinton D. McKinnon, 40 F.C.C. 291 (1952); see Q. and A. III.C.1, for a joint Congressional Report infra; letter to Honorable Joseph S. Clark, 40 F.C.C. 325 (1962); and for a Judge's report see telegram to Television Co. of America, 40 F.C.C. 319 (1961); see also Q. and A. III.B.10, infra; but see Q. and A. III.C.4, infra; for more recent rulings see Q. and A.'s III.B. 11, 12, 13, and 15, infra.)

3. Q. If a candidate appears on a variety program for a very brief bow or statement, are his opponents entitled to "equal opportunities" on the basis of this brief appearance?

A. Yes. All appearances of a candidate, no matter how brief or perfunctory, are "uses" of a station's facilities within section 315. (See letters to KUGN, 40 F.C.C. 293 (1958); Kenneth E. Spengler, 40 F.C.C. 279 (1956).)

4. Q. If a candidate is accorded station time for a speech in connection with a ceremonial activity or other public service, is an opposing candidate entitled

[4] Analogous rules are now applicable to CATV Systems, 47 CFR § 74.1119; 34 F.R. 17651, 17660 (1969); 20 FCC 2d 201, 225 (1969).

to equal utilization of the station's facilities?

A. Yes. Section 315 contains no exception with respect to broadcasts by legally qualified candidates carried "in the public interest" or as a "public service." It follows that the station's broadcasts of the candidate's speech was a "use" of the facilities of the station by a legally qualified candidate giving rise to an obligation by the station under section 315 to afford "equal opportunities" to other legally qualified candidates for the same office. (Letters to Columbia Broadcasting System, Inc., 40 F.C.C. 254 (1952); K.F.I., 40 F.C.C. 257 (1952).)

5. Q. The United Community Campaigns of America advised the Commission that dating back to the early thirties it had "kicked off" its United Fund and Community Chest Campaigns with a special message broadcast by the President of the United States each fall. For the past several years the broadcast has consisted of a 5 minute program filmed on video-tape in advance at the White House and later carried on the three television networks and the four radio networks. Would the candidate opposing the President be entitled to equal opportunities if the message were carried?

A. The Commission held that section 315 contains no exceptions with respect to broadcasts by legally qualified candidates carried "in the public interest" or as a "public service" and that a candidate's speech in connection with a ceremonial activity is a section 315 "use." It is immaterial whether or not the candidate uses the time to discuss matters related to his candidacy, and the fact that the appearance of the candidate is nonpolitical is not determinative of whether his appearance is a "use." Whether the presentation of the special message in connection with a particular newstype program would meet the criteria for exemption specified in the 1959 amendment is a question initially for the exercise of the good faith judgment of the broadcast licensee. (Letter to United Community Campaigns of America, 40 F.C.C. 390 (1964).)

6. Q. Where a candidate delivers a nonpolitical lecture on a program which is part of a regularly scheduled series of lectures broadcast by an educational FM station, is that station required to grant equal time to opposing candidate?

A. Yes. Unless the candidate's appearance comes within the category of broadcasts exempt from section 315's "equal opportunities" provision, equal time must be granted. The use to which the candidate puts this broadcast time is immaterial. (See Q. and A. III.B.1, supra; telegram to Fordham University, 40 F.C.C. 321 (1961).)

7. Q. Are acceptance speeches by successful candidates for nomination for the candidacy of a particular party for a given office, a use by a legally qualified candidate for election to that office?

A. Where the successful candidate for nomination becomes legally qualified as a candidate for election as a result of the nomination, his acceptance speech constitutes a use. (Letter to Progressive Party, 40 F.C.C. 248 (1952).) However, after 1959, acceptance speeches in connection with *political conventions* are governed by section 315(a)(4). (For rulings after the 1959 Amendments see Lar Daly, 40 F.C.C. 316 (1960); Q. and A. III.C.22, infra and letter to DeBerry-Shaw Campaign Committee, 40 F.C.C. 394 (1964), Q. and A. III.C.23, infra.)

8. Q. Does section 315 apply to broadcasts by a legally qualified candidate where such broadcasts originate and are limited to a foreign station whose signals are received in the United States?

A. No. Section 315 applies only to stations licensed by the FCC and to CATV systems regulated by the FCC. (Letter to Mr. Gregory N. Pillon, 40 F.C.C. 267 (1955).)

9. Q. A candidate for the Democratic nomination for President appeared on a network variety show. A claimant for "equal opportunities" showed that his name had been on the ballots in the Democratic presidential primary elections in two states; that the network had shown him in a film on a program concerned with the various 1960 presidential candidates; and that he was continuing his efforts as a candidate for the Democratic nomination. Would the claimant be entitled to "equal opportunities"?

A. Yes, since the appearance of the first candidate was on a program which was not exempt from the "equal opportunities" requirement of section 315 and the claimant had shown that he was a "legally qualified" candidate for the nomination for the same office. (Lar Daly, 40 F.C.C. 314 (1960).)

10. Q. If a station owner, or a station advertiser, or a person regularly employed as a station announcer were to make appearances over a station after having qualified as a candidate for public office, would section 315 apply?

A. Yes. Such appearances of a candidate are a "use" under section 315. (Letters to KUGN, 40 F.C.C. 293 (1958); Robert Yeakel, 40 F.C.C. 282 (1957); Kenneth E. Spengler, 40 F.C.C. 279 (1956); to Georgia Association of Broadcasters, 40 F.C.C. 343 (1962); cf., Q.'s and A.'s III.B. 11, 12, 13, and 15, infra; letter to D. L. Grace, 40 F.C.C. 297 (1958); but compare KWTX Broadcasting Co., 40 F.C.C. 304 (1960), aff'd Brigham v. F.C.C., 276 F. 2d 828 (C.C.A.5, 1960) and Q. and A. III.C.4, infra.)

*11. Q. A television station employs an announcer who, "off camera" and unidentified, supplies the audio portion of required station identification announcements, public service announcements, and commercial announcements. The announcer is not authorized to make comments or statements concerning political matters, and he has no control over the format or content of any program material. In the event that this employee announced his candidacy for the city council, would his opponent be entitled to equal opportunities?

A. No. The employee's appearance for purposes of making commercial, noncommercial, and station identification announcements would not constitute a "use" where the announcer himself was neither shown nor identified in any way. (Letters to WNEP–TV, 40 F.C.C. 431 (1965); Station WAMB, 17 F.C.C. 2d 176 (1969); Station WENR, 17 F.C.C. 2d 613 (1969); KYSN Broadcasting Co., 17 F.C.C. 2d 164 (1969).)

12. Q. The station employee mentioned in Q. and A.III.B.11, supra, also hosts a weekly dance party on which he is identified but during which he appears or is heard only a portion of the time. He has some discretion with respect to the program's content insofar as he conducts brief conversations with teenagers appearing on the program. In the event he becomes a candidate for the city council, would his opponent be entitled to "equal opportunities"?

A. Yes. The employee's appearance as host of the dance party program would entitle other candidates for the same office to "equal opportunities" for the amount of time he appeared on the program. The deletion of the announcer's identity would not exempt his appearances from the "equal opportunities" provision, since in the case of television it is the appearance itself which constitutes the "use" of the facilities without regard to the format of the program. If an appearance of this nature were made, other candidates would be entitled to free time since the announcer would not have paid for the time he appeared. (Letter to WNEP–TV, 40 F.C.C. 431 (1965).)

13. Q. An employee of a radio station who had been for a number of years the station's news director and is responsible for preparing the news material and presenting it on regularly scheduled news programs announced his candidacy for the school board. Prior to becoming a candidate the employee was identified on the news programs he announced, but he will not be identified during his candidacy. Would the appearance of the employee while he was a legally qualified candidate on the particular news-type programs constitute a "use" of the station entitling the employee's opponents to "equal opportunities"?

A. Yes. In cases where the newscaster is identified up to the date of his candidacy and prepares and broadcasts the news, including that of a local nature, the general line of rulings prior to the 1959 amendments to section 315 would be applicable and such appearances would constitute a "use" of the station's facilities. (Newscaster Candidacy, 40 F.C.C. 433 (1965); but compare letter to KWTX Broadcasting Co., 40 F.C.C. 304 (1960), aff'd Brigham v. F.C.C. 276 F. 2d 828 (C.C.A., 5, 1960) and Q. and A. III.C.4, infra.)

14. Q. When a station, as part of a newscast, uses film clips showing a legally qualified candidate participating as one of a group in official ceremonies and the newscaster, in commenting on the ceremonies, mentions the candidate and others by name and describes their participation, has there been a "use" under section 315?

A. No. Since the facts clearly showed that the candidate had in no way directly or indirectly initiated either filming or presentation of the event, and that the broadcast was nothing more than a routine newscast by the station in the

*An asterisk denotes a new question and answer.

exercise of its judgment as to newsworthy events. (Letter to Allen H. Blondy, Esq., 40 F.C.C. 284 (1957); but see the 1959 amendments to section 315 exempting news programs from the equal opportunities provisions. See rulings in III.C., infra.)

*15. Q. A radio station employee, who for the last 8 months had been the announcer on a Monday through Friday all-night music-news radio show where he announced the news, made station identification announcements and time checks and gave those commercials and public service announcements which were not on tape, became a candidate for public office. The announcer never stated his name on the air and he had not been identified over the air since he had begun this show. Prior to his appearances on the present show, he was a well known air personality who had been frequently identified over the air and the licensee stated that his voice was "no doubt known to many listeners." Would the employee's appearances constitute a "use" under section 315?

A. Yes. This determination depends upon whether or not, despite his name not being given over the air since he began his present show, the announcer remains "identified" to a substantial degree because of the particular circumstances. This is a matter for licensee's reasonable good faith judgment and in light of the statement by the licensee that the announcer's voice was undoubtedly known to many listeners, his appearances would be a section 315 use. (In re Station WBAX, 17 F.C.C. 2d 316 (1969).)

*16. Q. A political party purchased television time to distribute to individual candidates for such use as they deemed appropriate. Would each of these three situations be a "use" by a candidate under 315? The camera pans a group of candidates seated in the studio while a noncandidate reads a political spot; a noncandidate reads a political spot while a silent film of a candidate is shown; and a photograph of a candidate appears on the screen while a noncandidate reads a political spot.

A. In these circumstances, each of these three situations would constitute a "use" entitling opposing legally qualified candidates for the same public office to "equal opportunities." (In re Station KWWL–TV, 23 F.C.C. 2d 758 (1966).)

*17. Q. A legally qualified candidate for a public office used on television a film of scenes taken at a college while he was talking with college students. None of the voices of the college students was actually heard because the political film was narrated by an offscreen announcer. None of the students was identified by name, and there were no close-ups of any students, but there were merely scenes of the entire group. Included in the film clips was a college student who later became a legally qualified candidate for another public office. If these film clips are shown by the first candidate who was talking with the students to further his own campaign, are legally qualified opposing candidates of the "student" shown on these clips entitled to equal opportunities?

A. Yes. Since the student was identifiable on the film, his appearance would constitute a "use" giving all opposing legally qualified political candidates the right to "equal opportunities" (limited to the time the student candidate actually appeared). (In re Station KRTV, 23 F.C.C. 2d 778 (1966); cf. National Urban Coalition, 23 F.C.C. 2d 123 (1970); see letter to the Honorable Warren D. Magnuson, 23 F.C.C. 2d 775 (1967).)

*18. Q. The National Urban Coalition requested a declaratory ruling concerning the applicability of section 315 to a 118-second public service television announcement featuring a group of about 120 people, many of whom are leading personalities in the political, sports and entertainment fields, all singing as a group, the song "Let the Sunshine In." No one's name was mentioned nor were any voices separately identifiable. Subsequent to the filming of this announcement, one of the persons appearing therein became a legally qualified candidate for public office. In an edited version of this program which eliminated any close-up of this candidate, the candidate was nevertheless visible in two video shots: (1) For about 4.2 seconds in a long-range shot of 100 people, and (2) approximately 2.8 seconds in a medium-range shot of about 6 people in which only the lower half of his face is seen. If broadcast, would one or both of these two video shots constitute a section 315 "use" by the candidate?

A. No. In video shot number one, the duration of the shot was too fleeting and the camera range too distant for the candidate to be readily identified in the group of 100 persons. In video shot number two, the camera angle caught only a partial view of the candidate's face for a fleeting moment so that he was not readily identifiable. Based on the facts and since the candidate was not readily identifiable on the film, his appearances were not "uses" within the meaning of section 315(a) of the Communications Act. (National Urban Coalition, 23 F.C.C. 2d 123 (1970).)

III.C. What Constitutes an Appearance Exempt From the Equal Opportunities Provisions of Section 315?

III.C. 1. Q. Does an appearance on a program subject to the equal opportunities provision of section 315 such as a Congressman's Weekly Report, attain exempt status when the Weekly Report is broadcast as part of a program not subject to the equal opportunities provisions, such as a bona fide newscast?

A. No. A contrary view would be inconsistent with the legislative intent and recognition of such an exemption would in effect subordinate substance to form. (Letter to Honorable Clark W. Thompson, 40 F.C.C. 328 (1962).)

2. Q. Are appearances by an incumbent-candidate in film clips prepared and supplied by him to the stations and broadcast as part of a station's regularly scheduled newscast, "uses" within the meaning of section 315?

A. Yes. Broadcast of such film clips containing appearances by a candidate constitute uses of the station's facilities. Such appearances do not attain exempt status when the film clips are broadcast as part of a program not subject to the equal opportunities provision, for the reasons set forth in Question and Answer III.C.1, above. (Letter to Honorable Clem Miller, 40 F.C.C. 353 (1962).)

3. Q. A sheriff who was a candidate for nomination for U.S. Representative in Congress conducted a daily program, regularly scheduled since 1958, on which he reported on the activities of his office. He terminated each program with a personal "Thought for the Day." Would his opponent be entitled to "equal opportunities?"

A. Yes. In light of the fact that the format and content of the program were determined by the sheriff and not by the station, the program was not of the type intended by Congress to be exempt from the "equal opportunities" requirement of section 315. (Stanley R. Cox, 40 F.C.C. 308, (1960).)

4. Q. A local weathercaster who was a candidate for reelection for Representative in the Texas Legislature was regularly employed by an AM and TV station in Texas. His weathercasts contained no references to political matters. He was identified over the air while a candidate as the "TX Weatherman." Would his opponent be entitled to "equal opportunities?"

A. No. The Court of Appeals, Fifth Circuit, ruled that the weathercaster's appearance did not involve anything but a bona fide effort to present the news; that he was not identified by name but only as the "TX Weatherman"; that his employment did not arise out of the election campaign but was a regular job; and that the facts did not reveal any favoritism on the part of the stations or any intent to discriminate among candidates. (KWTX Broadcasting Co., 40 F.C.C. 304 (1960), aff'd, Brigham v. FCC, 276 F. 2d 828 (C.C.A.5, 1960); but cf. Q.'s and A.'s III.B. 12, 13, and 15, supra, and Q. and A. III.C.5, infra, which reflect the Commission's more recent pronouncements in this area.)

5. Q. Where the facts are the same as those set forth in Q. and A. III.B.13, *supra*, would the appearances of the employee while a legally qualified candidate on news type programs constitute a "use" exempted from the provisions of 315 by reason of the 1959 Amendment?

A. No. The main purpose of the amendment was to allow greater freedom to the broadcaster in reporting *news* to the public, that is to say, in carrying news about and pictures of candidates as part of the contents of news programs. The amendment did not deal with the question of whether the appearance of station employees who have become candidates for office should be exempted on a news-type program where such employees are announcing the news (rather than being a part of the content

*An asterisk denotes a new question and answer.

of the news), any more than it dealt with the general question of such appearances (e.g., on a variety program or as a commercial continuity announcer), and the legislative history indicates that the appearance of the candidate on a news-type program in which he has participated in the "format and production" would not be exempt. (Newscaster Candidacy, 40 F.C.C. 433 (1965); but compare Q. and A. III.C.4, supra.)

6. Q. A Philadelphia TV station had been presenting a weekly program called "Eye on Philadelphia." This program consisted of personalities being interviewed by a station representative. Three candidates for the office of Mayor of Philadelphia, representing different political parties, appeared on the program. Would a write-in candidate for Mayor be entitled to "equal opportunities"?

A. No, since it was ascertained that the appearances of the three mayoralty candidates were on a bona fide, regularly scheduled news interview program and that such appearances were determined by the station's news director on the basis of newsworthiness. (Telegram to Mr. Joseph A. Schafer, 40 F.C.C. 303 (1959), reconsideration denied; cf. telegrams to Mr. Kenneth F. Klinkert, 40 F.C.C. 427 (1964), David Dichter, 15 F.C.C. 2d 95 (1968).)

7. Q. A New York television station had been presenting a weekly program called "Search Light". This program consisted of persons, selected by the station on the basis of their newsworthiness, interviewed by a news reporter selected by the station, a member of the Citizens Union (a permanent participant initially selected by the station), and a station newsman who acted as moderator. Two candidates appeared on the program and were interviewed. Is a third opposing candidate entitled to "equal opportunities"?

A. No. The format of the program was such as to constitute a bona fide news interview pursuant to section 315(a)(2), since the program was regularly scheduled, was under the control of the licensee, and the particular program had followed the usual program format. (Telegram to Socialist Workers Party, 40 F.C.C. 322 (1961); cf. telegraph to Mr. Kenneth F. Klinkert, 40 F.C.C. 427 (1964).)

8. Q. A Washington, D.C., television station had been presenting a weekly program called "City Side". This program consisted of persons being interviewed by a panel of reporters. The panel was selected by the station and the persons interviewed were selected by the station on the basis of newsworthiness. Three candidates for the Democratic nomination for the office of Governor of Maryland were invited to appear on the program and one of them accepted. Would a fourth candidate for the same nomination, not invited by the station to appear, be entitled to "equal opportunities"?

A. No. It was determined that "City Side" was a regularly scheduled, weekly, live, news-interview program on the station for approximately 6 years; that the normal format of the program consisted of the interview of a newsworthy guest or guests by a panel of reporters; that the appearances on the program were determined by the station on the basis of newsworthiness; and that it was on this basis that the three candidates were invited to appear. Such a program constitutes a bona fide news-interview program pursuant to section 315(a)(2). (Telegram to Mr. Charles Luthardt, Sr., 40 F.C.C. 345 (1962).)

9. Q. A New York television station had been presenting a weekly half-hour program series for over 2 years. The program, "New York Forum", was presided over by a station moderator and consisted of interviews of currently newsworthy guests by a panel of three lawyers. The guests were selected by the station in the exercise of its bona fide news judgment and not for the political advantage of any candidate for public office. The local bar association suggested the lawyer-interviewers to be used on a particular program but their final selection remained subject to the station's approval. The Democratic and Republican candidates for the office of Governor of New Jersey had appeared on separate programs in the series. Would a third party candidate be entitled to "equal opportunities"?

A. No. Such a program is a bona fide news interview and, as such, appearances on the program are exempt pursuant to section 315(a)(2). (Telegram to Socialist Labor Party of New Jersey, 40 F.C.C. 324 (1961).)

10. Q. Certain networks had presented over their facilities various candidates for the Democratic nomination for President on the programs "Meet the Press", "Face the Nation", and "College News Conference." Said programs were regularly scheduled and consisted of questions being asked of prominent individuals by newsmen and others. Would a candidate for the same nomination in a State primary be entitled to "equal opportunities"?

A. No. The programs were regularly scheduled, bona fide news interviews and were of the type which Congress intended to exempt from the "equal opportunities" requirement of section 315. (Letters to Mr. Andrew J. Easter, 40 F.C.C. 307 (1960); Lar Daly, 40 F.C.C. 310 (1960); Lar Daly, 40 F.C.C. 311 (1960); Honorable Frank Kowalski, 40 F.C.C. 355 (1962).)

11. Q. On September 30, 1962, one of the networks interviewed two Congressmen, one presenting the Republican Party view and the other presenting the Democratic Party view concerning legislative achievements of the current Congressional session. The program in which the Congressmen appeared, "Direct Line", was initiated in April 1959, and its format, nature, and content had not materially changed since its inception; it was produced and controlled by the network and was regularly scheduled on Sundays as a half-hour program, although the particular program had been expanded to an hour because of preelection interest in the subject matter. The persons interviewed were asked questions submitted by viewers of the program, supplemented by questions prepared in cooperation with the League of Women Voters. The questions to be asked were selected exclusively by employees of the network and propounded by a moderator, also a network employee, although on some occasions, an additional person such as a news reporter assisted the moderator in asking questions. Would the opponent of one of the Congressmen running for re-election be entitled to "equal opportunities"?

A. No. On the basis of the information submitted, the Commission was of the view that the program "Direct Line" was a "bona fide news interview" within the meaning of section 315(a)(2) and, therefore, the Congressmen's appearances were exempt. (Telegram to Martin B. Dworkis, 40 F.C.C. 361 (1962).)

12. Q. One of the networks had been presenting a program called "Issues and Answers" each Sunday since November 27, 1960, and the format, nature, and content of the program had not changed since its inception. The program, originated, produced and controlled by the network in question, consisted of one or more news correspondents interviewing one or more nationally or internationally prominent individuals such as Government officials, U.S. Senators, U.S. Congressmen, foreign ambassadors, etc., on topics of national interest. The Minority Leaders of the Senate and House, one of whom was a candidate for reelection, were interviewed on the program as the official Republican Congressional spokesmen. The following week the official Democratic Congressional spokesmen appeared and were interviewed on the program. Would the opponent of the Republican spokesman who was running for reelection be entitled to "equal opportunities"?

A. No. The Commission ruled that the program "Issues and Answers" was a bona fide news interview program of the type which Congress intended to be exempt from the "equal opportunities" provisions of section 315. (Telegram to Yates For U.S. Senator Committee, 40 F.C.C. 368 (1962).)

13. Q. A candidate for the Democratic nomination for President was interviewed on a network program known as "Today." It was shown that this was a daily program emphasizing news coverage, news documentaries, and on-the-spot coverage of news events; that the determination as to the content and format of the interview and the candidate's participation therein was made by the network in the exercise of its news judgment and not for the candidate's political advantage; that the questions asked of the candidate were determined by the director of the program; and that the candidate was selected because of his newsworthiness and the network's desire to interview him concerning current problems and events. Would the candidate's opponent be entitled to "equal opportunities"?

A. No, since the appearance of the candidate was on a program which was

exempt from the "equal opportunities" requirement of section 315. (Lar Daly, 40 F.C.C. 314 (1960).)

14. Q. Does the appearance of a candidate on any of the following programs constitute a "use" under the "equal opportunities" provisions of section 315: "Meet the Press", "Youth Wants to Know", "Capitol Cloakroom", "Tonight", and "PM"?

A. The programs "Meet the Press" and "Youth Wants to Know" were specifically referred to during the Senate debates on the 1959 amendments as being regularly scheduled news interview programs of the type intended to be exempt from the "equal opportunities" provision of section 315. (Letter to Hon. Russell B. Long, 40 F.C.C. 351 (1962); Q. and A. III.C.10, supra; as to the "Tonight" program, see Q. and A. III.B.9, supra.)

15. Q. A candidate for Governor of the State of New York appeared on "The Barry Gray Show", a nightly news and discussion program which had been broadcast by the station, using the same format, for a period of at least 4 years. The program consisted of a series of interviews of indeterminate length with persons from all walks of life concerning newsworthy events. The show was interrupted five times nightly for 5-minute newscasts, two of which were given by Barry Gray. Barry Gray, an independent contractor, exercised day-to-day control over the program subject to overall and ultimate control by the station. Candidates appearing on the program were selected, not for their own political advantage, but on the basis that they were bona fide candidates and would serve to inform the audience on issues on which the audience would have to make a decision in order to vote. The station allowed Barry Gray the maximum latitude for initiative and editorial freedom. Barry Gray determined, on the basis of the interest value of the guest and the articulate manner in which he expressed himself on the topic under discussion, the amount of time to be allocated to any particular interview, and either actively participated in the discussion, acted as an impartial moderator in the interview, or on occasion, "talked the show" out if the guest was of little interest value. In some instances, the program consisted of an exchange of views and in other instances, constituted a panel discussion. Would the opponent of the candidate for Governor of New York be entitled to "equal opportunities"?

A. Yes. The Commission held that the definition of a bona fide news interview must be derived from the specific examples of such programs cited in the legislative history of the 1959 amendment to section 315. On the basis of the information submitted, the Commission could not determine that the Barry Gray Show was a bona fide news interview. (Telegram to WMCA, Inc., 40 F.C.C. 367 (1962); but compare Q. and A. III.C.13, supra.)

16. Q. A New Jersey television station had been presenting for approximately 2½ years a weekly program called "Between the Lines." This program consisted of interviews by a station moderator of persons involved with current public events in New Jersey and New York. The incumbent, candidate for reelection to the State assembly, appeared on the program. Would his opponent be entitled to "equal opportunities"?

A. No. The Commission ruled that "* * * the program in question is the type of program Congress intended to be exempt from the equal time requirements of section 315." (James N. Fazio, 40 F.C.C. 318 (1960).)

17. Q. The "Governor's Radio Press Conference" is a weekly 15-minute program which has been broadcast approximately 2 years employing essentially the same format since its inception. In the program, the Governor-candidate is seated in his office and speaks into a microphone; each of the participating stations has selected a newsman, who, while located at his respective station, asks questions of the Governor which the newsman considers to be newsworthy. The questions are communicated to the Governor-candidate by telephone from the respective stations and the questions and the Governor's answers are communicated to the stations by the means of a broadcast line from his office to the stations. The questions and answers are taped both by his office and each of the participating stations, and no tapes are supplied by the Governor to the stations. Questions asked of the Governor and all of the material, including his answers, are not screened, or edited by anyone in his office or on his behalf. The program is unrehearsed and there is no prepared material of any kind used by the Governor or by anyone on his behalf. The newsmen are free to ask any question they wish and each program in under the control of the participating stations. Does the appearance of the Governor-candidate on said program constitute a "use" under the "equal opportunities" provision of section 315?

A. No. Since the program involves the collective participation of the stations' newsmen, is prepared by the stations, is under their sole supervision and control, has been regularly scheduled for a period of time, and was not conceived or designated to further the candidacy of the Governor, it was held to be a bona fide news interview program and, therefore, exempt from the "equal opportunities" provision of section 315. (Letter to Honorable Michael V. DiSalle, 40 F.C.C. 348 (1962).)

18. Q. The "Governor's Forum" program has been broadcast for approximately 8 months by several participating stations. In this program, the Governor-candidate is seated in his office and speaks into a microphone. The program consists of his answers to and questions submitted by the listening public. Questions asked are either telephoned or written to the stations or directly to his office. The questions which are telephoned or written to the several stations are forwarded to the principal participating station, which then selects the questions, edits the questions, and accumulates them on a tape. The questions telephoned or written to the Governor's office are likewise selected and edited by his office for taping. The tape or tapes containing the questions are played in his office and the questions and the Governor's answers are then recorded on a master tape prepared by his office. Additional questions are asked of the Governor by the principal station's newsman, present in the Governor's office, to amplify any prior question and answer. On occasion, further editing of the tape has been made by the Governor's office or by the stations. The tape is sent to each of the participating stations by the Governor's office. There is no prepared material or rehearsal by the Governor's office. Would the appearance by the Governor-candidate on the above program constitute a "use" under the "equal opportunities" provision of section 315?

A. Yes. Such a program is not a news-interview program as contemplated by section 315(a)(2). This conclusion has been reached since the selection and compilation of the questions, as well as the production, supervision, control, and editing of the program are not functions exercised exclusively by the stations. (Letter to Hon. Michael V. DiSalle, 40 F.C.C. 348 (1962).)

19. Q. A Congressmen who was a candidate for reelection appeared in a news interview on a station and was interviewed by the station's Public Affairs Department regarding his experiences as a freshman Congressman. The program was described by the licensee as a "bona fide special news interview" and the licensee stated that it had sought the interview on the basis of its news judgment. The interview was conducted by a station employee and the questions asked related to current newsworthy events. The licensee stated further that although the program was a "special news interview" (the station did not broadcast regularly scheduled news interviews but presented special news interviews as the occasion arose and this was deemed by the licensee to be such an occasion), the interview itself and the format and nature of the questions were the same as in news interview programs of other newsworthy individuals and that the program was initiated, produced, and controlled by the licensee. Would the Congressman's opponent be entitled to "equal opportunities"?

A. Yes. The Commission pointed out that the legislative history of the 1959 amendment to section 315 clearly indicated that a basic element of a "bona fide news interview" is that it be regularly scheduled. Accordingly, it held that the Congressman's appearance did not occur in connection with a "bona fide news interview" within the meaning of section 315(a)(2) and that his appearance, therefore, constituted a "use" entitling his opponent to "equal opportunities." (Telegram to Station KFDX-TV, 40 F.C.C. 374 (1962).)

20. Q. CBS Television Network presented a 1-hour program entitled "The Fifty Faces of '62." The program consisted of a comprehensive news report of the current off-year elections and

campaigns. It included a brief review of the history of off-year elections, individual and group interviews, on-the-spot coverage of conventions and campaigns, and flashbacks of currently newsworthy aspects of the current campaigns and elections. In addition to the appearances on the broadcast of private citizens, voters, college students, and candidates, there were approximately 25 political figures, none of whom was on camera for more than approximately 2 or 3 minutes. Some of the candidates appearing on the program mentioned their candidacy; others, including the minority leader of the House of Representatives, who appeared in that capacity and discussed the prospect of his party in the Fall elections, did not discuss their candidacies. The determination as to who was to appear on the program was made solely by CBS News on the basis of of its bona fide news judgment that their appearances were in aid of the coverage of the subject of the programs and not to favor or advance the candidacies of any of those who appeared, such appearances being incidental and subordinate to the subject of the documentary. Is the appearance on the program of a candidate, in his capacity as minority leader of the House of Representatives, a "use" within the "equal opportunities" provision of section 315?

A. No. Such a program is a bona fide news documentary pursuant to section 315(a)(3). The appearance of the candidate therein is incidental to the presentation of the subject covered by the documentary and the program is not designed to aid his candidacy. (Telegram to Judge John J. Murray, 40 F.C.C. 350 (1962).)

21. Q. A television station had been presenting since 1958 a weekly 30 minute program concerning developments in the State legislature with principal Democratic and Republican party leaders of both houses of the legislature participating. At the close of each legislative term, the station televised a one hour summary of the legislature's activities, using film and recordings made during its meetings. Is the appearance, in the latter program, of an officer of the State legislature, who is also a candidate, in which he and others express their views on the accomplishments of the legislative session a "use" under the "equal opportunities" provision of section 315?

A. No. For the reasons stated in Q. and A. III.C.20, supra.

22. Q. A former President expressed his views with respect to a forthcoming national convention of his party. A candidate for that party's nomination for President called a press conference at the convention site and immediately prior to the convention to comment on said views, which conference was broadcast by two networks. Would said candidate's opponent for the same nomination be entitled to "equal opportunities"?

A. No, since the appearance of the first candidate incidental to a political convention was on a program which constituted "on-the-spot coverage of bona fide news events," pursuant to section 315(a)(4). (Letter to Lar Daly, 40 F.C.C. 316 (1960); see section 315(a)(4), and Q. and A. III.C.23, infra; but see Q. and A. III.B.7, supra for a ruling prior to the 1959 amendment.)

*23. Q. Are acceptance speeches made at a nominating convention by successful candidates for a political party's nomination for president and vice president uses which entitle other parties' candidates for those offices to "equal opportunities" under section 315?

A. No. Prior to 1959 any use of a station's facilities by a candidate for public office required the station to afford "equal opportunities" to other candidates for the same office. However, one of the specific types of news programs exempted by Congress was "on-the-spot coverage of bona fide news events (including but not limited to political conventions and activities incidental thereto)" in the language of 315(a)(4). The broadcast of an acceptance speech made at a political convention is an aspect of the coverage of the political convention. (Letter to Deberry-Shaw Campaign Committee, 40 F.C.C. 392 (1964). See also Q. and A. III.C.22, supra; but for a ruling prior to the 1959 Amendments see letter to Progressive Party, 40 F.C.C. 248, Q. and A. III.B.7, supra.)

24. Q. A Chicago television station covered the annual Saint Patrick Day parade in that city. During the broadcast, the Mayor, a candidate for reelection, appeared for 2 minutes. Would the Mayor's opponent be entitled to "equal opportunities"?

A. No. Broadcast coverage of a parade is the type of bona fide news event contemplated by Congress in enacting the 1959 amendments to section 315. Therefore, such a broadcast would appear to constitute "on-the-spot coverage of bona fide news events" pursuant to section 315(a)(4) and any appearance by a candidate during the course of such a broadcast would not constitute a "use" of broadcast facilities entitling opposing candidates to "equal opportunities." (Letter to Lar Daly, 40 F.C.C. 377 (1963).)

25. Q. An Indiana station presented the County Court Judge, who was a candidate for the Democratic mayoralty nomination in Gary, Ind., on a program entitled "Gary County Court on the Air". The program had been broadcast live by the station as a public service for the past 14 years, each Monday, Wednesday, Thursday and Friday from 9:05 a.m. to 10 a.m. One of the programs was taped for broadcast 1 day prior to the actual broadcast. The station had met with the presiding Judge some 14 years prior to the election in question to arrange for the broadcasts and each succeeding judge had agreed to continue the program because of its public interest value. For 7½ years prior to the election in question, the judge who was a candidate for the mayoralty nomination had appeared on the program. Persons appearing in the court had the privilege of declining to have their cases heard during broadcast time to prevent invasion of privacy. If, in the opinion of the presiding judge, certain cases did not lend themselves to broadcast, they were heard at times when the proceedings were not being covered by the station. The court was the usual type of City Court, handling a variety of cases and was not solely a traffic court, and it was, generally, impossible for the judge to control the content and/or persons who did appear. The program could not be by its nature and was not, by licensee insistence, tailored to suit the judge who was a candidate. The format of "Gary County Court on the Air" had remained unchanged since the inception of the program. The station used City Court case decisions on its regularly scheduled newscasts and such decisions also appeared in Gary newspapers. Would the Judge's opponent for the nomination for Mayor be entitled to "equal time"?

A. No. The Commission concluded that the program fell within the "news event" exemption of section 315(a)(4) because the program covered the operation of an official governmental body and because the court proceedings were newsworthy. The Commission held that the program was "bona fide" in view of the fact that it had been presented by the station for 14 years, with this particular judge for 7½ years, and inasmuch as the appearance of the candidate was incidental to the on-the-spot coverage of a news event rather than for the purpose of advancing his candidacy. Therefore, the Commission ruled that "Gary County Court on the Air" fell within the reasonable latitude allowed to licensees for the exercise of good faith news judgment and was exempt from the "equal time" requirement of section 315. (Letter to Thomas R. Fadell, Esq., 40 F.C.C. 379 (1963); affirmed by order entered Apr. 29, 1963, Thomas R. Fadell v. U.S., FCC and WWCA Radio Station, Case No. 14142 (U.S.C.A., 7th 1963).)

26. Q. On September 30, 1962, two candidates for the office of Governor of California held a 1-hour debate which was given coverage on every major television station in California, the time being donated by the stations carrying the debate. The debate was held in San Francisco as part of the annual convention of United Press International which had invited the two candidates to appear and had invited all news media to cover the event. The debate was not arranged by the stations but was broadcast by them as a public service and in the exercise of their bona fide news judgment. No other aspect of the UPI convention was broadcast other than the joint appearance of the two candidates. A third candidate for the same office requested "equal opportunities" and the stations denied the request on the basis that the prior appearances constituted "on-the-spot coverage of a bona fide news event" pursuant to section 315(a)(4) of the Communications Act. Was the third candidate entitled to "equal opportunities"?

A. Yes. The Commission held that neither the language of the amendment, the legislative history nor subsequent Congressional action indicated a Congressional intent to exempt from the

*An asterisk denotes a new question and answer.

"equal opportunities" provision of section 315 a debate qua debate between legally qualified candidates. The Commission pointed out that the bona fides of the licensee's news judgment, while not questioned, was not the sole criterion to be used in determining whether section 315(a)(4) had been properly invoked. It was concluded that where the appearance of the candidates was designed by them to serve their own political advantage and such appearance was ultimately the subject of a broadcast program encompassing only their entire appearance, such program cannot be considered to be on-the-spot coverage of a bona fide news event simply because the broadcaster deems that the candidates' appearance (or speeches) will be of interest to the general public and, therefore, newsworthy. (Telegram to Robert L. Wyckoff, 40 F.C.C. 366 (1962), reconsideration denied in letter to Robert L. Wyckoff, 40 F.C.C. 370 (1962); cf. letter to The Goodwill Station, Inc., 40 F.C.C. 362 (1962), the ruling mentioned in Robert L. Wyckoff telegram, supra at 366; see In re Socialist Labor Party, 15 F.C.C. 2d 98 (1968), aff'd per curiam by order entered Oct. 31, 1968, sub nom, Taft Broadcasting Co. v. F.C.C., Case No. 22445 (C.A.D.C., 1968); See also Q. and A. VI.B.6, infra. The Advocates, 23 F.C.C. 2d 462 (1970); reconsideration denied.)

*27. Q. The Columbia Broadcasting System, Inc., advised the Commission that over the years it had become the practice of the President to hold press conferences; that President Johnson had held such conferences on a periodic, though irregular, basis in the past and would undoubtedly hold press conferences prior to election day, as would his opposing candidate Senator Goldwater. CBS stated that it considered Presidential press conferences important news events, and had given them such broadcast coverage as it in its news judgment had thought was warranted and that it believed it would be in the public interest to continue to cover these press conferences, as well as those of Senator Goldwater, or some of them, in whole or in part, provided this would not require it to afford equal time to all other persons who might also be candidates for the presidency. Would such press conferences be exempt from the requirements of section 315 on the ground that the appearances were considered to be either "bona fide news interviews" or "on the spot coverage" of "bona fide news events"?

A. No. The broadcast of press conferences, such as the one described in the inquiry, would not be exempt from the provisions of section 315 either as "bona fide news interviews" or "on the spot coverage of a bona fide news event." The press conference could not qualify as a "bona fide news interview" exemption inasmuch as it was not a regularly scheduled program, within the recognized and accepted meaning of that term, but rather was one that could be called by the candidates solely in their discretion and at times they themselves specify. Such a press conference could not, in any event, qualify for exemption, since the scheduling and in significant part the content and format of the press conference was not under the control of the network. In addition the broadcast of the press conference could not be deemed to be an "on-the-spot coverage of a bona fide news event," since prior Commission rulings issued on October 19 and 26, 1962 (see Q. and A. III.C.26, supra) pointed out inter alia, "* * * that if the sole test of the on-the-spot coverage exemption is simply whether or not the station's decision to cover the event and put it on a broadcast program constitutes a bona fide news judgment, there would be no meaning to the other three exemptions in section 315(a) since these, too, all involve a bona fide news judgment by the broadcaster." Such a test would, in effect, amount to a repeal of the "equal opportunities" provision of section 315(a)—something Congress clearly did not intend, as shown, for example by the necessity for the suspension of that provision for the 1960 debates between the two major presidential candidates. (Letter to Columbia Broadcasting System, Inc., 40 F.C.C. 395 (1964); In re Socialist Labor Party, 15 F.C.C. 2d 98 (1968), aff'd per curiam by order entered Oct. 31, 1968, sub nom, Taft Broadcasting Co. v. F.C.C., and U.S.A. Case No. 22445 (C.A.D.C., 1968).)

28. Q. The President of the United States during a presidential campaign used 15 minutes of radio and television time to address the Nation with respect to an extraordinary international situation in the Middle East (the so-called Suez crisis). Would the networks carrying this address be obliged to afford "equal opportunities" to the other presidential candidates?

A. No. On the basis of the legislative history of section 315 the Commission concluded that Congress did not intend to grant equal time to all presidential candidates when the President uses the air waves in reporting to the Nation on an international crisis. (Section 315 interpretations Telegrams to CBS, NBC, and ABC, 40 F.C.C. 276 (1956).)

29. Q. The President of the United States, upon the recommendation of the National Security Council, went on the air to deliver a report to the Nation with respect to an important announcement by the Soviet Government as to change in its leadership, and the explosion by Communist China of a nuclear device. Would the President's opponents for the Presidency be entitled to "equal opportunities?"

A. No. The networks carrying the report, in determining that such a report by the President on specific, current international events affecting the country's security falls within the "on-the-spot coverage of a bona fide news event" exemption of section 315(a)(4), acted within their "reasonable latitude for the exercise of good faith news judgment." The Commission also discussed its previous ruling of 1956 (Q. and A. III.C28 supra) and noted that this ruling had been fully reported to the Congress and that Congress had reexamined the concept of "use" in connection with extensive amendments in 1959 to section 315, but did not alter or comment adversely upon the 1956 ruling. (Letter to Republican National Committee, 40 F.C.C. 408 (1964), aff'd per curiam by an equally divided Court by order entered October 27, 1964, sub nom, Goldwater v. F.C.C. and U.S.A., Case No. 18963 (C.A.D.C. 1964); cert. den. 379 U.S. 893 (1964).)

*30. Q. The complainant stated that an opposing candidate for public office had appeared on "NET Journal" and he demanded "equal opportunities" based on this appearance. Is this program one of the kind which Congress meant to exempt under 315(a)(2) so that an appearance thereon would not establish any equal opportunity rights?

A. Yes. "NET Journal" was a regularly scheduled program; the format, although varying depending on the issues examined, included debates, panel discussions, documentary films, video tape documentaries and combinations thereof; the news-interview type format was regularly used on the program; the format was determined by the NET staff and the questions used in the news interview were formulated by the program producer and NET Public Affairs department; the factors in selecting interviewees were the public significance of the individuals and their news interest; and the program had been on the air every week for almost 2 years. (In re Socialist Workers 1968 National Campaign Committee, 14 F.C.C. 2d 858 (1968).)

*31. Q. Licensee had broadcast weekdays, since June 14, 1965, a regularly scheduled phone-in program entitled "Phone Forum." The program was prepared and produced by the station's news department; the station's news director selected the guests, including candidates for public office, on the basis of newsworthiness and availability. During the program, questions were directed to the guest by members of the listening public by telephone. The moderator of the program used a 4-second tape delay to exclude questions phoned in by listeners using offensive language and those which posed unsuitable questions, i.e., not relevant to the topic of the specific program. The moderator prepared a list of questions which were asked the guest when no questions were being phoned in. The views of listeners were neither solicited nor broadcast. Was this program exempt as a "bona fide news interview?"

A. The Commission assumed that the licensee's employees exercised control not only as to the suitability of the questions asked but also to insure that the program couldn't be taken over by either the supporters or opponents of the guest candidates. The Commission held that merely because the questions were posed by the listening public did not remove it from the category of a bona fide news interview. It also stated that this type of program was readily distinguishable from the "open mike" format of programming which generally consists of an

*An asterisk denotes a new question and answer.

airing of the views of callers on various subjects but which occasionally may also feature a guest who is a public figure and answers questions. On "Phone Forum", the program sought primarily to elicit the views of the guest-interviewee. (Letter to Socialist Labor Party, 7 F.C.C. 2d 857 (1967).)

*32. Q. On the occasion of a visit to a community by a presidential candidate during the course of the election campaign, a licensee arranged and broadcast a 30-minute "press conference" during which the candidate was interviewed on problems of particular interest to the community by three prominent public officials selected by the news staff of the licensee. All questions asked were selected by the interviewers and the candidate had no advance knowledge of the questions and no opportunity to make any statements other than in answer to the questions. The station contended that the broadcast constituted on-the-spot coverage of a bona fide news event, that the program consisted of a bona fide news interview, and that therefore the candidate's appearance on the program did not constitute a use of the station under section 315. The station contended that the news interview exemption was not limited to regularly scheduled programs and while Congress did not intend to exempt interviews which are under the control of the candidate, this program should be exempt since it was not controlled by the candidate. Was the broadcast a section 315 "use" entitling an opposing candidate to equal opportunities?

A. Yes. The broadcast was not exempt either as on-the-spot coverage of a bona fide news event or a bona fide news interview. With respect to the first point, the Commission cited many analogous cases where it had ruled the exemption did not apply in light of the legislative history and the fact that any other ruling on this point would mean that by adding section 315(a)(4), Congress, in effect, largely repealed the equal opportunities provision of section 315. The Commission further stated that it has consistently held in the light of legislative history of section 315(a)(2), that in order to qualify as a "bona fide news interview" the program must be regularly scheduled. (In re Socialist Labor Party, 15 F.C.C. 2d 98, aff'd per curiam by order entered Oct. 31, 1968, sub nom Taft Broadcasting Co. v. F.C.C., Case No. 22445 (C.A.D.C., 1968).)

IV. Who is a Legally Qualified Candidate?

IV 1. Q. How can a station know which candidates are "legally qualified"?

A. The determination as to who is a legally qualified candidate for a particular public office within the meaning of section 315 and the Commission's rules must be determined by reference to the law of the State in which the election is being held. In general, a candidate is legally qualified if he can be voted for in the State or district in which the election is being held, and, if elected, is eligible to serve in the office in question.

2. Q. Need a candidate be on the ballot to be legally qualified?

A. Not always. The term "legally qualified candidate" is not restricted to persons whose names appear on the printed ballot; the term may embrace persons not listed on the ballot if such persons are making a bona fide race for the office involved and the names of such persons, or their electors can, under applicable law, be written in by voters so as to result in their valid election. The Commission recognizes, however, that the mere fact that any name may be written in does not entitle all persons who may publicly announce themselves as candidates to demand time under section 315; broadcast stations may make suitable and reasonable requirements with respect to proof of the bona fide nature of any candidacy on the part of applicants for the use of facilities under section 315. (§§ 73.120, 73.290, 73.657, esp. par. (f) of the Commission rules; letters to Socialist Party of America, 40 F.C.C. 239 (1951); Columbia Broadcasting System, Inc., 40 F.C.C. 244 (1952); Lar Daly, 40 F.C.C. 270 (1956); reconsideration denied; "Legally Qualified Candidate", 40 F.C.C. 233 (1941); see also Q.'s and A.'s IV. 10, 11, 12, 13, 14, 15, and 16, infra.)

3. Q. May a person be considered to be a legally qualified candidate where he has made only a public announcement of his candidacy and has not yet filed the required forms or paid the required fees for securing a place on the ballot in either the primary or general elections?

A. The answer depends on applicable State law. In some States persons may be voted for by the electorate whether or not they have gone through the procedures required for getting their names placed on the ballot itself. In such a State, the announcement of a person's candidacy—if determined to be bona fide—is sufficient to bring him within the purview of section 315. In other States, however, candidates may not be "legally qualified" until they have fulfilled certain prescribed procedures. The applicable State laws and the particular facts surrounding the announcement of the candidacy are determinatives. (Letter to Honorable Earle C. Clements, 23 F.C.C. 2d 756 (1954); see letter to Clinton D. McKinnon, 40 F.C.C. 291 (1952).)

4. Q. May a station deny a candidate "equal opportunities" because it believes that the candidate has no possibility of being elected or nominated?

A. No. Section 315 does not permit any such subjective determination by the station with respect to a candidate's chances of nomination or election. (Letter to Columbia Broadcasting System, Inc., 40 F.C.C. 244 (1952).)

5. Q. When is a person a legally qualified candidate for nomination as the candidate of a party for President or Vice President of the United States?

A. In view of the fact that a person may be nominated for these offices by the conventions of his party without having appeared on the ballot of any State having presidential primary elections, or having any pledged votes prior to the convention, or even announcing his willingness to be a candidate, no fixed rule can be promulgated in answer to this question. Whether a person so claiming is in fact a bona fide candidate will depend on the particular facts of each situation, including consideration of what efforts, if any, he has taken to secure delegates or preferential votes in State primaries. It cannot, however, turn on the licensee's evaluation of the claimant's chances for success. (Letter to Columbia Broadcasting System, Inc., 40 F.C.C. 244 (1952); and see also par. (f) of §§ 73.120, 73.290, 73.657, and par. (e) of § 74.1113 of the Commission rules.)

6. Q. Has a claimant under section 315 sufficiently established his legal qualifications when the facts show that after qualifying for a place on the ballot for a particular office in the primary, he notified State officials of his withdrawal therefrom and then later claimed he had not really intended to withdraw, and where the facts further indicated that he was supporting another candidate for the same office and was seeking the nomination for an office other than the one for which he claimed to be qualified?

A. No. Where a question is raised concerning a claimant's legal qualification, it is incumbent on him to prove that he is in fact legally qualified. The facts here did not constitute an unequivocal showing of legal qualification. (Letter to Lar Daly, 40 F.C.C. 270 (1956), reconsideration denied; cf. letter to American Vegetarian Party, 40 F.C.C. 278 (1956).)

7. Q. If a candidate establishes his legal qualifications only after the date of nomination or election for the office for which he was contending, is he entitled to equal opportunities which would have been available had he timely qualified?

A. No, for once the date of nomination or election for an office has passed, it cannot be said that one who failed timely to qualify therefor is still a "candidate". The holding of the primary or general election terminates the possibility of affording "equal opportunities", thus mooting the question of what rights the claimant might have been entitled to under section 315 before the election. (Letter to Socialist Workers' Party, 40 F.C.C. 281 (1956), referring to letter to Socialist Workers' Party, 40 F.C.C. 280 (1956); letter to Mr. Lar Daly, 40 F.C.C. 273 (1956); aff'd. by order dismissing appeal entered Mar. 7, 1957, Lar Daly v. U.S.A. and F.C.C., Case No. 11946 (C.C.A. 7, 1957) rehearing denied by order entered Apr. 2, 1957; cert. den., 355 U.S. 826, rehearing denied 355 U.S. 885 (1957).)

8. Q. Under the circumstances stated in the preceding question, is any post-election remedy available to the candidate, before the Commission, under section 315?

A. None, insofar as a candidate may desire retroactive "equal opportunities". But this is not to suggest that a station can avoid its statutory obligation under

* An asterisk denotes a new question and answer.

section 315 by waiting until an election has been held and only then disposing of demands for "equal opportunities". (See citations in Q. and A. IV.7, supra).

9. Q. A, a candidate for the Democratic Party nomination for President, appeared on a variety program prior to the nominating convention because of the prior appearance of B, his opponent. After the closing of the convention, A claimed he was entitled to additional time in order to equalize his appearance with that afforded B. Would A be entitled to additional time?

A. No. A licensee may not be required to furnish the use of its facilities to a candidate for nomination for President after the convention has chosen its nominee. (Telegram to Lar Daly, 40 F.C.C. 317 (1960), reconsideration denied.)

10. Q. When a State Attorney General or other appropriate State official having jurisdiction to decide a candidate's legal qualification has ruled that a candidate is not legally qualified under local election laws, can a licensee be required to afford such "candidate" "equal opportunities" under section 315?

A. In such instances, the ruling of the State Attorney General or other official will prevail, absent a judicial determination. (Telegram to Ralph Muncy, 23 F.C.C. 2d 766 (1956); letter to Socialist Workers' Party, 40 F.C.C. 280 (1956); In re Lester Posner, 15 F.C.C. 2d 807 (1968); Q. and A. IV.16, infra.)

*11. Q. A television station afforded time to the Democratic candidate from the State of California for the U.S. Senate. The station subsequently turned down a request from the Socialist Labor Party for time for their candidate for the same office, on the basis of a telegram which it had received from the Secretary of State of the State of California which declared that he did not consider the Socialist Labor Party candidate a legally qualified candidate under provisions of the California Election Code. The candidate in question was duly nominated and had accepted the nomination at the Party State Convention; the Secretary of State's office was officially notified of his nomination; notification of his candidacy was sent to all news media and was published in the metropolitan newspapers; he had addressed public meetings in four large California cities on behalf of his candidacy. Upon request of the Secretary of State the Deputy Attorney General advised the Commission that under California election law write-in votes may be cast and counted for an individual seeking the office of U.S. Senator and if the individual received a plurality of the votes cast for the office the Secretary of State would certify the individual as having been elected. Would the candidate be considered legally qualified so as to be entitled to "equal opportunities" for the use of the station's facilities?

A. Yes. The Commission's rules define a legally qualified candidate, in part, as any person who has publicly announced that he is a candidate; meets the qualifications prescribed by the applicable laws to hold the office for which he is a candidate so that he may be voted for by the electorate; is eligible under the law to be voted for by writing in his name on the ballot; and makes a substantial showing that he is a bona fide candidate for nomination or office. On the basis of the facts recited it was determined that the candidate was a legally qualified candidate and as such was entitled to "equal opportunities." (Letter to Socialist Labor Party of California, 40 F.C.C. 423 (1964).)

*12. Q. An incumbent county clerk having publicly announced his intention to run for renomination in an upcoming primary continued to broadcast sports events and otherwise speak on radio. It appeared that he had not filed his notification and declaration papers with the appropriate State official. Is a legally qualified candidate for the same nomination entitled to "equal opportunities" in response to the broadcast by the incumbent?

A. No. The State Attorney General indicated that a person does not become a legally qualified or "bona fide" candidate in the primary until his notification and declaration papers have been received and accepted by the applicable State officer. Since the incumbent county clerk had not filed these required papers, he was not a legally qualified candidate under section 73.120(a) of the Commission rules at the time of his broadcasts. His opponent, therefore, was not entitled to "equal opportunities" to respond to these broadcasts. (Letter to Rady Davis, 40 F.C.C. 435 (1965); see Q. and A. IV.16, infra.)

*13. Q. When a State Secretary of State has ruled that an individual has not followed the procedures required by State law for becoming a legally qualified candidate for U.S. Senator from that State, can a licensee be required to afford that individual "equal opportunities" under section 315?

A. No. When it appears that a State Secretary of State has ruled that an individual is not a legally qualified candidate under the State election law and that individual has presented no further information regarding his claimed candidacy, he has failed to meet the burden imposed by section 73.120(f) of the Commission's rules of proving that he is a legally qualified candidate for public office under section 73.120(a) of those rules. (Letter to Socialist Workers Party, 40 F.C.C. 421 (1964).)

*14. Q. An individual seeking a U.S. Senate seat requested time from a station equal to that afforded his opponents. The individual's request had been refused by the station on the grounds that he was not a bona fide candidate. The candidate informed the Commission that he had been advised by the local election board that he possessed the necessary requisites to be a write-in candidate and claimed that he was thus entitled to equal time. Would the individual be entitled to equal opportunities under these circumstances?

A. No. The Commission found that the individual had not complied with the Commission's rules for establishing one's self as a legally qualified candidate. He had failed to submit any proof other than his own statements relating to whether he was "eligible under the applicable law to be voted for * * * by writing in his name on the ballot." Therefore, he had not met his burden of proof under section 73.657(f) of the rules. (Letter to Raymond Harold Smith, 40 F.C.C. 430 (1964); see Mr. Roy Anderson, 14 F.C.C. 2d 1064 (1968), aff'd per curiam, Anderson v. Federal Communications Commission, 403 F. 2d 61 (C.C.A. 2, 1968), which although it made no determination of the legal qualifications of the complainant, set forth some criteria in this area.)

*15. Q. The names of candidates for delegates to the national political convention did not appear on the ballot in the Primary of a certain State. The electorate voted solely for the candidate for nomination to the Presidency, including favorite son candidates. If a licensee presents a delegate in such a fashion that would constitute a "use" if he were a legally qualified candidate for a public office, would it constitute a "use" here?

A. No. The Secretary of State, with the concurrence of the State's Attorney General, stated that the State did not consider a candidate for delegate on a slate of delegates in a Presidential Primary to be a legally qualified candidate for any public office. In view of this fact, the candidate was not a legally qualified candidate for any public office and his appearances would not constitute a "use" within the meaning of section 315. (In re KNBC–TV, 23 F.C.C. 2d 765 (1968); see also In re Lester Posner, 15 F.C.C. 2d 807 (1968).)

*16. Q. Under State law, the General Assembly was preparing to vote to fill a vacancy in the office of Governor. The complainant asserted that he was a legally qualified candidate for the office of Governor. The licensee contended that the complainant was not a legally qualified candidate for public office within the meaning of section 315 and forwarded a letter from the Deputy Attorney General of the State, which stated that the forthcoming legislative action by the General Assembly choosing a new governor was not an election under State law by which the voters of the State would elect a governor. Under this fact situation, was the complainant entitled to equal opportunities?

A. No. The position of the licensee that the complainant had no right to time under section 315 was not unreasonable in light of the circumstances of the case. (In re Lester Posner, 15 F.C.C. 807 (1968).)

*17. Q. A write-in candidate for Mayor sought equal time to that given to the only two candidates for that office whose names appeared on the ballot. The State law provided that only the two candidates for each elective position receiving the greatest number of votes cast in the city primary election would become the "official candidates" for the final election. The Secretary of State, the "Ex Officio Chief Elections Officer," stated that write-in candidates were not "official candidates" and that there was no statutory provision whereby a person

*An asterisk denotes a new question and answer.

could be "officially" identified as a write-in candidate. Therefore only the candidates whose names were printed on the ballot could qualify as official candidates and only these official ones were entitled to "equal time" under section 315. The licensee stated that under the Commission rule regarding write-in candidates, this candidate appeared to be legally qualified in that he met the requirements of the laws of the State to hold office and his name could be written on the ballot if any voter so desired. Was the write-in candidate entitled to equal time?

A. Yes. The Commission observed that the Secretary of State had stated that write-in candidates were not "official candidates," but that he did not state that they were not "legally qualified candidates." After quoting from § 73.657(a), the Commission noted that the write-in candidate met the requirements of state laws to hold office and could be written-in on the ballot by any voter who so desired. The Commission stated that the write-in candidate may be a legally qualified candidate under the Commission rules if he made a substantial showing that he was a bona fide candidate. (In re Request by Tom Leonard, 20 F.C.C. 2d 177 (1969).)

18. Q. The networks broadcast a program entitled "A conversation with President Johnson" on December 19, 1967. The President had not publicly announced his intention to be a candidate for his party's nomination for president and refused to speculate about the matter during the program in question stating that he had not made his decision about running again and "* * * in due time * * * will cross that bridge." Complainant, who had publicly announced his intention to seek the presidential nomination of the same party as the President's, requested equal time contending that he and the President were opposing candidates for the nomination of their party for President of the United States. Was the complainant entitled to equal time under the above facts?

A. No. The Commission's rules, in effect for over 25 years and adhered to without exception, provide that a person is not a legally qualified candidate within the meaning of the statute unless he had publicly announced his intention to be a candidate. In re Senator Eugene J. McCarthy, 11 FCC 2d 511 (1968), aff'd. Eugene McCarthy v. Federal Communications Commission, 390 F.2d 471 (D.C. Cir. 1968), in which the Court stated that: "[t]he obvious difficulty in determining whether a likely public figure is a candidate within the intent of the statute justifies the Commission in promulgating a more or less absolute rule. If the application of such a rule more often than not produces a result which accords with political reality, its rational basis is established. * * * Considering the content and the timing of the not unprecedented year-end interview with the President, we cannot say that the application of the Commission's Rule in this case without the requested hearing produced an unreasonable result." (See § 73.657(a) of the Commission rules which indicates the criteria in addition to a public announcement which must be met to be considered a legally qualified candidate.)

*19. Q. A complainant stated that he disagreed with a licensee's determination that he was a legally qualified candidate. He had publicly announced his intention to seek the nomination of his party for Governor. He stated that there were only three procedures whereby a person could be listed on his party's primary ballot and he was not a legally qualified candidate until he had completed one of them. The licensee contended that under certain circumstances a person designated by a meeting of the State Committee of the party could become the nominee of the party without any primary being held. Was the licensee's determination that the complainant was a legally qualified candidate reasonable?

A. Yes. It was possible that the complainant could become his party's nominee solely by action of the party's State Committee and because § 73.657(a) of the Commission rules provides, inter alia, that "a 'legally qualified candidate' means any person who has publicly announced that he is a candidate for nomination by a convention of a political party * * *", the licensee's judgment was not unreasonable. (Letter to Mr. William vanden Heuvel, 23 F.C.C. 2d., 119 (1970).)

V. When Are Candidates Opposing Candidates?

V. 1. Q. What public offices are included within the meaning of section 315?

A. Under the Commission's rules, section 315 is applicable to both primary and general elections, and public offices include all offices filled by special or general election on a municipal, county, state, or national level as well as the nomination by any recognized party of a candidate for such an office.

2. Q. May the station under section 315 make time available to all candidates for one office and refuse all candidates for another office?

A. Yes. The "equal opportunities" requirement of section 315 is limited to all legally qualified candidates for the same office.

3. Q. If the station makes time available to candidates seeking the nomination of one party for a particular office, does section 315 require that it make equal time available to the candidates seeking the nomination of other parties for the same office?

A. No, the Commission has held that while both primary elections or nominating conventions and general elections are comprehended within the terms of section 315, the primary elections or conventions held by one party are to be considered separately from the primary elections or conventions of other parties, and, therefore, insofar as section 315 is concerned, "equal opportunities" need only be afforded legally qualified candidates for nomination for the same office at the same party's primary or nominating convention. The station's actions in this regard, however, would be governed by the public interest standards encompassed within the "fairness doctrine". (Letters to KWFT, Inc., 40 F.C.C. 237 (1948); Socialist Labor Party, 40 F.C.C. 240 (1952); Carbondale Broadcasting Company, 40 F.C.C. 259 (1953); Honorable Joseph S. Clark, 40 F.C.C. 325 (1962); Honorable Joseph S. Clark, 40 F.C.C. 332; Mrs. Eleanor Clark French, 40 F.C.C. 417 (1964); Telegrams to The Lueddeke For Governor Committee, 40 F.C.C. 320 (1961); Mr. Paul H. Rivet, 40 F.C.C. 437 (1965); Q. and A. V.5, infra; see letter to Lar Daly, 40 F.C.C. 302 (1959); see also letter to Greater New York Broadcasting Corp., 40 F.C.C. 235 (1946).)

4. Q. If the station makes time available to all candidates of one party for nomination for a particular office, including the successful candidate, may candidates of other parties in the general election demand an equal amount of time under section 315?

A. No. For the reason given in Q. and A. V.3, supra. (Letter to KWFT, Inc., 40 F.C.C. 237 (1948).)

5. Q. On May 3, 1964, an incumbent Congressman from New York was afforded time to appear on a television program. At that time he was the only person who had been designated by petition under New York law as the Republican nominee for his Congressional seat. The complainant at that date was the only designated Democratic—Liberal nominee. Primaries for both parties were due to be held on June 2, 1964. However, if no further nominees were designated by April 28, 1964, and if no petitions for write-in nominees were filed by May 5, 1964, no primary would be held, since the incumbent and the complainant each would have the uncontested nomination of his respective party. In fact, no further petitions, either "designating" or "write-in," were ever filed. Was the licensee correct in refusing "equal opportunities" to the complainant in response to incumbent's May 3, broadcast on the ground that on that date each was merely a candidate for his respective party's nomination, and thus they were not opposing candidates for the same office?

A. Yes. The issue must be determined under the New York State election laws and should be resolved by appropriate State or local authorities. Since neither the complainant nor the Commission was able to obtain an interpretation of that law from the New York authorities, the Commission of necessity interpreted the law. An "uncontested position" as defined by the New York statute is one as to which (1) the number of candidates designated for the particular office does not exceed the number to be nominated or elected thereto by the party in the primary, and (2) no valid petition requesting an opportunity to write-in the name of an undesignated candidate has

*An asterisk denotes a new question and answer.

been filed. If both conditions are fulfilled when the period for filing such petitions is over (May 5), no primary is required. Since condition (2) of this definition could not be fulfilled until May 5, 1964, 2 days after the Republican incumbent's broadcast, neither designated candidate here involved could be considered the nominee of his respective party until May 5, and, therefore, they were not opposing candidates for Congress at the time of incumbent's broadcast. (Letter to Mrs. Eleanor Clark French, 40 F.C.C. 417 (1964); cf. Honorable Clarence E. Miller, 23 F.C.C. 2d 121 (1970).)

VI. What Constitutes Equal Opportunities?

A. In General.

VI.A. 1. Q. Generally speaking, what constitutes "equal opportunities"?

A. Under section 315 and §§ 73.120, 73.290, and 73.657 of the Commission's rules, no licensee shall make any discrimination in charges, practices, regulations, facilities, or services rendered to candidates for a particular office.

2. Q. Is a licensee required or allowed to give time free to one candidate where it had sold time to an opposing candidate?

A. The licensee is not permitted to discriminate between the candidates in any way. With respect to any particular election it may adopted a policy of selling time, or of giving time to the candidates free of charge, or of giving them some time and selling them additional time. But whatever policy it adopts, it must treat all candidates for the same office alike with respect to the time they may secure free and that for which they must pay.

3. Q. Is it necessary for a station to advise a candidate or a political party that time has been sold to other candidates?

A. No. The law does not require that this be done. If a candidate inquires, however, the facts must be given him. It should be noted here that a station is required to keep a public record of all requests for time by or on behalf of political candidates, together with a record of the disposition and the charges made, if any, for each broadcast. (§§ 73.120(d), 73.290(d), 73.657(d); and (47 C.F.R. 74.1113(c) (1970) of the rules; telegram to Norman William Seeman, Esq., 40 F.C.C. 341 (1962); letter to Honorable William Benton, 40 F.C.C. 1081 (1950).)

4. Q. If a station desires to make its facilities available on a particular day for political broadcasts to all candidates for the same office, is one of the candidates precluded from requesting "equal opportunities" at a later date if he does not accept the station's initial offer?

A. This depends on all of the circumstances surrounding the station's offer of time and, particularly, whether the station has given adequate advance notice. The Commission has held that a 4-day notice by a Texas station to a Congressman while Congress is in session does not constitute adequate advance notice and the Congressman is not foreclosed from his right to request "equal opportunities". (Letter to KTRM, 40 F.C.C. 335 (1962) but compare letter to Senate Committee on Commerce, 40 F.C.C. 357 (1962), Q. and A. VI.B.8., infra.)

5. Q. With respect to a request for time by a candidate for public office where there has been no prior "use" by an opposing candidate, must the station sell the candidate the specific time segment he requests?

A. No. Neither the Act nor the Commission's rules contain any provisions which require a licensee to sell a specific time segment to a candidate for public office. (Letter to KTRM, 40 F.C.C. 331 (1962) but see Q. and A. VI.A.14, infra.)

6. Q. Is a station required to sell to a candidate time which is unlimited as to total time and as to the length of each segment?

A. Neither the Act nor the Commission's rules contain provisions requiring stations to sell unlimited periods of time for political broadcasts. Section 315 of the Act imposes no obligation on any licensee to allow the use of its station by any candidate. Commission's programming statement contemplates the use of stations for political broadcasting. Where the station showed that sale of limited time segments to candidates was based on its experience and the interests of viewers in programing diversification, no Commission action was required. (Telegrams to Mr. J. B. Lahan, 40 F.C.C. 342 (1962) to Grover C. Doggette, Esq., 40 F.C.C. 346 (1962); to Grover C. Doggette, 40 F.C.C. 347 (1962); see Q. and A. IV.A.14 infra; cf. letters to Station WLBT–TV, 40 F.C.C. 333 (1962) and Radio Station WROX, 40 F.C.C. 339 (1962). In a public notice entitled, Licensee Responsibility as to Political Broadcasts, 15 F.C.C. 2d 94 (1968), the Commission apprised licensees of "* * * the desirability of making their facilities effectively available to candidates for political office even though this may require modification of normal station format." See also: In re Complaint of W. Roy Smith, 18 F.C.C. 2d 747 (1969), and In re Port Huron Broadcasting Co. (WHLS), 12 F.C.C. 1069, 1071 (1948).)

7. Q. If a station offers free time to opposing candidates and one candidate declines to use the time given him, are other candidates for that office foreclosed from availing themselves of the offer?

A. No. The refusal of one candidate does not foreclose other candidates wishing to use the time offered. However, whether the candidate initially declining the offer could later avail himself of "equal opportunities" would depend on all the facts and circumstances. (Letter to section 315 Requirements, 40 F.C.C. 272 (1956); compare letter to Senate Committee on Commerce, 40 F.C.C. 357 (1962); cf. letter to Station WBTW–TV, 5 F.C.C. 2d 479 (1966); Q. and A. VI.A.13, infra; cf. In re Stations KHJ–TV and KABC–TV, 23 F.C.C. 2d 769 (1966); Q. and A. VI.A.14, infra.)

8. Q. If one political candidate buys station facilities more heavily than another, is a station required to call a halt to such sales because of the resulting imbalance?

A. No. Section 315 requires only that all candidates be afforded "equal opportunities" to use the facilities of the station. (Letter to Mrs. M. R. Oliver, 40 F.C.C. 253 (1952); letter to Honorable Frank M. Karsten, 40 F.C.C. 269 (1955).)

9. Q. Can a station contract with the committee of a political party whereby it commits itself in advance of an election to furnish substantial blocks of time to the candidates of that party?

A. Neither section 315 nor the Commission's rules prohibit a licensee from contracting with a party for reservation of time in advance of an election. However, substantial questions as to a possible violation of section 315 would arise if the effect of such prior commitment were to disable a licensee from meeting its "equal opportunities" obligations under section 315. (Letter to Honorable Frank M. Karsten, 40 F.C.C. 269 (1955).)

10. Q. Where a television station had previously offered certain specified time segments during the last week of the campaign to candidate A, who declined the purchase, and then sold the same segments to A's opponent was the station obligated under section 315 to accede to A's subsequent request for particular time periods immediately preceding or following the time segments previously offered to him and refused by him and subsequently sold to his opponent?

A. No. But the time offered to candidate A must be generally comparable. The principal factors considered in this situation were: (a) the total amount of time presently scheduled for each candidate; (b) the time segments presently offered to candidate A; (c) the time segments presently scheduled for candidate A's opponent and previously rejected by candidate A; (d) the time segments now scheduled for candidates for other offices, if any, and previously rejected by candidate A; and (e) the station's possible obligations to other candidates for office. (Telegram to Major General Harry Johnson, 40 F.C.C. 323 (1961).)

11. Q. If a station has a policy of confining political broadcasts to sustaining time, but has so many requests for political time that it cannot handle them all within its sustaining schedule, may it refuse time to a candidate whose opponent has already been granted time, on the basis of its established policy of not canceling commercial programs in favor of political broadcasts?

A. No. The station cannot rely upon its policy if the latter conflicts with the "equal opportunities" requirement of section 315. (In the matter of E. A. Stephens, 11 F.C.C. 61 (1945).)

12. Q. If one candidate has been nominated by Parties A, B, and C, while a second candidate for the same office is nominated only by Party D, how should time be allocated as between the two candidates?

A. Section 315 has reference only to the use of facilities by persons who are candidates for public office and not to the political parties which may have nominated such candidates. Accordingly, if broadcast time is made available for the use of a candidate for public office, the provisions of section 315 require that "equal opportunities" be afforded each person who is a candidate for the same office, without regard to the number of nominations that any particular candidate may have. (Letters to Greater New York Broadcasting Corp., 40 F.C.C. 235 (1946); to Lar Daly, 40 F.C.C. 302 (1959).)

*13. Q. Licensee intended to devote a substantial block of time on a sustaining basis to legally qualified candidates for various public offices, but desired that all candidates avail themselves of the opportunity to appear on the chosen date only. It proposed to require a waiver from each candidate who accepted the invitation to appear that, if subsequent events forced the candidate to not appear at the chosen date, he forfeited his right to appear at a later date. It also intended to request of those candidates who could not or did not want to appear at the specified date a waiver of their right to appear at a different date. Finally, the licensee wanted to apprise all candidates that if any one of them refused to sign such a waiver, the licensee would be forced to rescind all invitations to candidates for that particular office, whether already accepted or not, and notify all other candidates for that office of the reason for cancellation. Would all of these plans of the licensee be generally valid and consistent with requirements under section 315?

A. Yes, as a general matter. If the licensee has made a good faith, reasonable judgment that his area's interests would be best served by all legally qualified candidates appearing on a particular program, he may make the offer of free time contingent on all candidates agreeing to appear or to waive their right to equal opportunities. As a general matter the waiver would be binding, but because this letter is based on uncertain future events, circumstances might arise which would alter this conclusion. However, the candidate who does not sign the waiver and rejects the offer is exercising rights expressly bestowed upon him by Congress. Therefore, it would be inappropriate for the licensee to impute blame or indicate that the candidate was acting improperly in so doing. Likewise, it would be wrong to use the threat to blame failure of the negotiations on any particular candidate as a lever to dictate the format of the program. (Letters to Station WBTW–TV, 5 F.C.C. 2d 479 (1966); to Senate Committee on Commerce, 40 F.C.C. 357 (1962); see In re Station WOR–TV, 22 F.C.C. 2d 528 (1969).)

*14. Q. When an offer of free time is made by a licensee to legally qualified candidates for a public office and this offer is refused, does this give any rights to opposing candidates for the same office, i.e., can they require that they be afforded free time?

A. No. The "equal opportunities" provision of section 315 becomes applicable only when a licensee permits a legally qualified candidate for public office to actually use its facilities. (In re Stations KHJ–TV and KABC–TV, 23 F.C.C. 2d 767 (1966); cf. Telegram to Socialist Labor Party, 40 F.C.C. 376 (1962); "Legally Qualified Candidate", 40 F.C.C. 233 (1941); Q. and A. VI.A. 5 and 6, supra.)

*15. Q. A station proposed to make its facilities available free of charge to all candidates for the office of Mayor of New York and Governor of New Jersey on the day before the election. The broadcast day would be divided into four segments and each of the seven candidates for governor and seven for mayor would have a 15-minute period within each of the segments. Drawing by lot would determine the order of appearance; each candidate could use his segment as he desired. However, the station would require the candidate to appear personally during each of his four broadcasts. Telephone call-in facilities would be available for any candidate upon request; free helicopter service to and from the studio would be provided each candidate; office facilities would be provided for any candidate who desired it. Any candidate who refused to appear in person or those who did not use all or any part of their free time would not receive substitute time by the station, and their unused time would be used to broadcast "information of interest" to the electorate. The station requested a ruling as to whether this proposal complied with section 315.

A. The Commission stated that while it could not anticipate the basis for all complaints candidates might file alleging violations of section 315 rights, it would offer the licensee guidance. The Commission advised that the proposed program constituted a highly commendable effort to contribute to an informed electorate and appeared to provide a good basis for affording equal opportunities to the candidates. However, insistance that each candidate appear personally at each of his broadcasts might be inconsistent with the provision of section 315. Some candidates might prefer to participate by prerecorded videotape or film rather than by the "give and take" of a live appearance, or to devote their last day of campaigning to purposes other than live appearances on the proposed program. (In re WOR–TV, 22 F.C.C. 2d 528 (1969).)

B. Comparability

VI.B. 1. Q. Is a station's obligation under section 315 met if it offers a candidate the same amount of time an opposing candidate has received, where the time of the day or week afforded the first candidate is superior to that offered his opponent?

A. No. The station in providing "equal opportunities" must consider the desirability of the time segment allotted as well as its length. And while there is no requirement that a station afford candidate B exactly the same time of day on exactly the same day of the week as candidate A, the time segments offered must be comparable as to desirability. In the matter of E. A. Stephens, 11 F.C.C. 61 (1945); telegram to Major General Harry Johnson, 40 F.C.C. 323 (1961) Q. and A. VI.B.2, infra.)

2. Q. If candidate A has been afforded time during early morning, noon and evening hours, does a station comply with section 315 by offering candidate B time only during early morning and noon periods?

A. No. However, the requirements of comparable time do not require a station to make available exactly the same time periods, nor the periods requested by candidate B. (Letter to D. L. Grace, Esq., 40 F.C.C. 297 (1958).)

3. Q. If a station broadcasts a program sponsored by a commercial advertiser which includes one or more qualified candidates as speakers or guests, what are its obligations with respect to affording "equal opportunities" to other candidates for the same office?

A. If candidates are permitted to appear without cost to themselves, on programs sponsored by commercial advertisers, opposing candidates are entitled to receive comparable time also at no cost. ("Equal Time Requirements," 40 F.C.C. 251 (1952); Telegram to WWIN, 40 F.C.C. 338 (1962); In re Station WAKR, 23 F.C.C. 2d 759 (1970).)

*4. Q. When a station broadcasts an appearance by a candidate which constitutes a use and it is paid for by the political campaign committee of a labor union, is an opposing candidate entitled to comparable *free* time?

A. No. Where a political committee of an organization such as a labor union purchases time specifically on behalf of a candidate, opposing candidates are not entitled to *free* time. There is a distinction between this situation and a case where a candidate is permitted to appear on a program which is regularly sponsored. (Telegram to Metromedia, Inc., 40 F.C.C. 426 (1964); compare Q. and A. VI.B.3, supra, and In re Station WAKR, 23 F.C.C. 2d 759 (1970).)

5. Q. Where a candidate for office in a State or local election appears on a national network program, is an opposing candidate for the same office entitled to equal facilities over stations which carried the original program and serve the area in which the election campaign is occurring?

A. Yes. Under such circumstances an opposing candidate would be entitled to time on such stations. (Equal Time Requirements, 40 F.C.C. 251 (1952).)

6. Q. Where a candidate appears on a particular program—such as a regular series of forum programs—are opposing candidates entitled to demand to appear on the same program?

A. Not necessarily. The mechanics of the problem of "equal opportunities" must be left to resolution of the parties. And while factors such as the size of the potential audience because of the appearance of the first candidate on an es-

*An asterisk denotes a new question and answer.

tablished or popular program might very well be a matter for consideration by the parties, it cannot be said, in the abstract, that "equal opportunities" could only be provided by giving opposing parties time on the same program. (Letters to Socialist Workers Party, 40 F.C.C. 256 (1952); to Columbia Broadcasting System, Inc., 40 F.C.C. 254 (1952); to Mr. Harry Dermer, 40 F.C.C. 407 (1964).)

7. Q. Where a station asks candidates A and B (opposing candidates in a primary election) to appear on a debate-type program, the format of which is generally acceptable to the candidate, but with no restrictions as to what issues or matters might be discussed, and candidate A accepts the offer and appears on the program and candidate B declines to appear on the program, is candidate B entitled to further "equal opportunities" in the use of the station's facilities within the meaning of section 315 of the act? If so, is any such obligation met by offering candidate B, prior to the primary, an opportunity to appear on a program of comparable format to that on which candidate A appeared, or is the station obligated to grant candidate B time equal to that used by candidate A on the program in question unrestricted as to format?

A. Since the station's format was reasonable in structure and the station put no restrictions on what matters and issues might be discussed by candidate B and others who appeared on the program in question, it offered candidate B "equal opportunities" in the use of its facilities within the meaning of section 315 of the Act. The station's further offer to candidate B, prior to the primary, of its facilities on a "comparable format" was reasonable under the facts of the case, consistent with any continuing obligation to afford candidate B "equal opportunities" in the use of the station which he may have had. (Letter to Honorable Bob Wilson, 40 F.C.C. 300 (1958); but see letter to Senate Committee on Commerce, 40 F.C.C. 357 (1962), Q. and A. VI.B.8, infra, which partially superseded this ruling.)

8. Q. A licensee offered broadcast time to all the candidates for a particular office for a joint appearance, the details of which program were determined solely by the licensee. If Candidate "A" rejects the offer and Candidate "B" and/or other candidates accepts and appears, would Candidate "A" be entitled to "equal opportunities" because of the appearance of Candidate "B" and/or other candidates on the program previously offered by the licensee to all of the candidates?

A. Yes, provided the request is made by the candidate within the period specified by the rules. The Commission stated that licensees should negotiate with the affected candidates and that where the offer was mutually agreeable to such candidates, "equal opportunities" were being afforded to the candidates. Where the candidate rejected the proposal, however, and other candidates accepted and appeared, the Commission stated: "Where the licensee permits one candidate to use his facilities, section 315 then—simply by virtue of that use—requires the licensee to 'afford equal opportunities to all other such candidates for that office in the use of such broadcasting station.' This obligation may not be avoided by the licensee's unilateral actions in picking a program format, specifying participants other than and in addition to the candidates, setting the length of the program, the time of taping, the time of broadcast, etc., and then offering the package to the candidates on a 'take it or leave it—this is my final offer' basis. For * * * section 315 provides that the station 'shall have no power of censorship over the material broadcast.' (Cf. In re Port Huron Broadcasting Co. (WHLS), 12 F.C.C. 1069 (1948).) Clearly, the 'take it or leave it' basis described above would constitute such prohibited censorship, since it would, in effect, be dictating the very format of the program to the candidate—and thus, an important facet of 'the material broadcast.' We wish to make clear that the Commission is in no way saying that one format is more in the public interest than another. On the contrary, the thrust of our ruling is that the Act bestows upon the candidate the right to choose the format and other similar aspects of 'the material broadcast', with no right of 'censorship' in the licensee." (Letter to Senate Committee on Commerce, 40 F.C.C. 357 (1962); see In re Licensee Obligations In Political Campaigns, 14 F.C.C. 2d 765 (1968); In re Station WOR–TV, 22 F.C.C. 2d 528 (1969); compare earlier rulings Q.'s and A.'s VI.A.4.7 and VI.B.7, supra; cf. Farmers Educational and Cooperative Union of America, North Dakota Division v. WDAY, Inc., 360 U.S. 525 (1959).)

9. Q. In affording "equal opportunities", may a station limit the use of its facilities solely to the use of a microphone?

A. A station must treat opposing candidates the same with respect to the use of its facilities and if it permits one candidate to use facilities over and beyond the microphone, it must permit a similar usage by other qualified candidates. (Letter to D. L. Grace, Esq., 40 F.C.C. 297 (1958).)

*10. Q. (See Q. and A. III.B.17, supra, for additional facts.) A station developed a policy that advertisements for candidates for local offices in an election would be shown before 6 p.m. while those of candidates for national offices would be shown after 6 p.m. On a film clip used by a candidate for a national office shown after 6 p.m., there were scenes of the national candidate talking with a group of students, one of whom later becomes a legally qualified candidate for a local public office. Can legally qualified opponents of this "student"—candidate for local public office demand and receive broadcast time after 6 p.m.?

A. Yes. Although the station's policy of not affording time to candidates for local offices after 6 p.m., if uniformly applied, seemed reasonable, if, as here, the licensee permitted a use of the station's facilities by a legally qualified candidate for a local public office after 6 p.m., it must afford comparable time periods to all opposing legally qualified candidates for the same local public office. (In re Station KRTV, 23 F.C.C. 2d 778 (1966).)

*11. Q. Two out of four candidates of the same party in a primary election were given free time by a television station for a one-half hour face-to-face debate. The other two candidates were offered free time in comparable time segments to engage in a one-half hour debate or to talk in separate 15-minute programs. The two candidates not in the original debate protested to the Commission and stated that all four should be included in the debate because a debate format was more effective, the original two debaters were publicized as "front runners" and the original debate had been well-publicized so it was certain to draw a large audience. Was the equal opportunity requirement met by this station licensee when it did not grant this demand?

A. Yes. The station fulfilled the requirements of the equal opportunity provisions when it offered all candidates equal amounts of time free of charge in comparable time periods. (In re Messrs. William F. Ryan and Paul O'Dwyer, 14 F.C.C. 2d 633 (1968); In re Constitutional Party and Frank W. Gaydosh, 14 F.C.C. 2d 255 (1968), petition to review denied, 14 F.C.C. 2d 861 (1968), in which the Commission stated that "[e]qual time right under section 315 of the Communications Act does not include right to appear on same program with other candidates since station licensee cannot compel political candidates to appear on same program with you." (In re Conservative Party, 40 F.C.C. 1086 (1962).)

*12. Q. It was arranged that approximately the first hour of a debate between two legally qualified candidates could be videotaped by licensee A. Licensee B arranged to have a copy of the tape made for broadcast of the one hour program at 10:30 p.m. that night. At 5 p.m., licensee B discovered that because of the failure of licensee A's videotape machine, the video portion of the last 2 minutes and 50 seconds of the closing remarks of candidate C were lost, but the audio portion was unaffected. Licensee B substituted a still picture of candidate C during its broadcasting of the defective video portion of the tape. During the presentation of this still picture image, the video image became defective and a slide which read "technical difficulties" was flashed on the screen. Candidate C requested that he be permitted to rebroadcast the portion of the tape which was not shown over the facilities of licensee B. Under the requirements of section 315, can candidate C require that licensee B rebroadcast the defective portion of the tape and to also permit candidate C to repeat what was said on the defective portion of the tape?

A. No. Because the audio portion of candidate C's remarks was broadcast

*An asterisk denotes a new question and answer.

without interruption and licensee B appeared to have made a reasonable effort to remedy the defective video portion. Licensee B substantially complied with the requirements of section 315. (In re Senator Birch Bayh, 15 F.C.C. 2d 47 (1968).)

VII. What Limitations Can Be Put on the Use of Facilities by a Candidate?

VII. 1. Q. May a station delete material in a broadcast under section 315 because it believes the material contained therein is or may be libelous?

A. No. Any such action would entail censorship which is expressly prohibited by section 315 of the Communications Act. (In re Port Huron Broadcasting Co. (WHLS), 12 F.C.C. 1069 (1948); In the matter of WDSU Broadcasting Corporation, 16 F.C.C. 345 (1951); see Q. and A. VII.2, infra.)

2. Q. If a legally qualified candidate broadcasts libelous or slanderous remarks, is the station liable therefor?

A. In Port Huron Broadcasting Co., 12 F.C.C. 1069 (1948), the Commission expressed an opinion that licensees not directly participating in the libel might be absolved from any liability they might otherwise incur under State law, because of the operation of section 315, which precludes them from preventing a candidate's utterances. In a subsequent case, the Commission's ruling in the Port Huron case was, in effect, affirmed, the Supreme Court holding that since a licensee could not censor a broadcast under section 315, Congress could not have intended to compel a station to broadcast libelous statements of a legally qualified candidate and at the same time subject itself to the risk of damage suits. (Farmers Educational & Cooperative Union of America v. WDAY, Inc., 360 U.S. 525 (1959).)

3. Q. Does the same immunity apply in a case where the Chairman of a political party's campaign committee, not himself a candidate, broadcasts a speech in support of a candidate?

A. No, licensees are not entitled to assert the defense that they are not liable since the speeches could have been censored without violating section 315. Accordingly, they were at fault in permitting such speeches to be broadcast. (Felix v. Westinghouse Radio Stations, 186 F. 2d 1 (C.C.A. 3, 1950), cert. den., 341 U.S. 909; George F. Mahoney, 40 F.C.C. 336 (1962); Q. and A. VII.4, infra; but cf. In re Gray Communications Systems, Inc., 14 F.C.C. 2d 766 (1968) and Herald Publishing Company, 14 F.C.C. 2d 767, 768 (1968); reconsideration denied, In the Matter of Gray Communications Systems, Inc., 19 F.C.C. 2d 532, 533 (1969); see In re Station WOR–TV, 22 F.C.C. 2d 528 (1969).)

4. Q. A candidate prepared a 15-minute video tape which contained the opinions of several private citizens with respect to an issue pertinent to the pending election. If the station broadcast such program in which the candidate did not appear, would the immunity afforded licensees by section 315 from liability for the broadcast of libelous or slanderous remarks by candidates be applicable?

A. No. The provision of section 315 prohibiting censorship by a licensee over material broadcast pursuant to section 315 applies only to broadcasts by candidates themselves. Section 315, therefore, is not a defense to an action for libel or slander arising out of broadcasts by non-candidates speaking in behalf of another's candidacy. Since section 315 does not prohibit the licensee from censoring such a broadcast, the licensee is not entitled to the protection of section 315. (George F. Mahoney, 40 F.C.C. 336 (1962); but cf. In re Gray Communications System, Inc., 14 F.C.C. 2d 766 (1968) and Herald Publishing Company, 14 F.C.C. 2d 767 (1968); reconsideration denied, In the Matter of Gray Communications System, Inc., 19 F.C.C. 2d 532, 534 (1969); Q. and A. VII.5, infra; cf. In re Station WOR–TV, 22 F.C.C. 2d 528 (1969).)

5. Q. If a candidate secures time under section 315, must he talk about a subject directly related to his candidacy?

A. No. The candidate may use the time as he deems best. To deny a person time on the ground that he was not using it in furtherance of his candidacy would be an exercise of censorship prohibited by section 315. (Socialist Labor Party of America, 40 F.C.C. 241 (1952).)

6. Q. If a station makes time available to an office holder who is also a legally qualified candidate for reelection and the office holder limits his talks to nonpartisan and informative material, may other legally qualified candidates who obtain time be limited to the same subjects or the same type of broadcast?

A. No. Other qualified candidates may use the facilities as they deem best in their own interest. (Legally Qualified Candidate, 40 F.C.C. 246 (1952).)

7. Q. May a licensee, as a condition to allowing a candidate the use of its broadcast facilities, require the candidate to submit an advance script of his program?

A. Section 315 expressly provides that licensees "shall have no power of censorship over the material broadcast under the provisions of this section." The licensee may request submission of an advance script, to aid in its presentation of the program (e.g., suggestions as to the amount of time needed to deliver the script). But any requirement of an advance script from a candidate violates section 315. A licensee could not condition permission to broadcast upon receipt of an advance script, because "the Act bestows upon the candidate the right to choose the format and other similar aspects of 'the material broadcast', with no right of 'censorship in the licensee.'" (See letter to Senate Committee on Commerce, 40 F.C.C. 357 (1962); see also Farmers Educational and Cooperative Union of America, North Dakota Division v. WDAY, Inc., 360 U.S. 525 (1959).)

8. Q. Where a candidate desires to record his proposed broadcast, may a station require him to make the recording at his own expense?

A. Yes. Provided that the procedures adopted are applied without discrimination between candidates for the same office and no censorship is attempted. (Legally Qualified Candidate, 40 F.C.C. 249 (1952).)

*9. Q. The complainant made an agreement with a licensee that the complainant would receive equal opportunities free because of the appearance of an opposing candidate for public office. The complainant desired to have some high-school students sing and entertain on the program he would broadcast under his equal opportunity rights. During the program, he also wanted to have the keys to a car be presented to the winner of the automobile by a member of a merchant's association. Does section 315 prohibit the licensee from restricting the appearance of other persons with the complainant during the time allocated because of a prior appearance by an opposing candidate, and if any of these persons thus appearing utter libelous statements, does 315 guarantee immunity to the licensee from civil action based on these utterances?

A. Yes to both questions. The complainant intended to appear throughout the program and to participate in it. He planned to use the entertainment to supplement the program and he would introduce the entertainment, interview the people involved and thank them for appearing with him. If the candidate in his contemplated "use" proposed merely to substitute others for himself, without appearing to a substantial degree on the program himself, then the program would not in fact be a "use." But this is not the case here and thus this program falls within the protection of section 315, and, as required by that section, the licensee cannot censor the program in any manner. Therefore, the licensee would not be liable for libelous statements made by persons appearing with the candidate on his broadcast under the reasoning of Farmers Educational and Cooperative Union of America, North Dakota Division v. WDAY, Inc., 360 U.S. 525 (1959). In re Gray Communications Systems, Inc., 14 F.C.C. 2d 766 (1968); Herald Publishing Company, 14 F.C.C. 2d 767 (1968); reconsideration denied in In the Matter of Gray Communications System, Inc., 19 F.C.C. 2d 532, 534 (1969), there the Commission stated, "[i]n general, we believe that where a candidate's personal appearance, either vocal or visual, is the focus of the program presented, the program constitutes a section 315 'use' and the station is prohibited from censoring the candidate's choice of program material. This general rule is framed for circumstances where the candidate's personal appearance(s) is substantial in length, integrally involved in the program, and indeed the focus of the program, and where the program is under the control and direction of the candidate." (In the Matter of Gray Communications System, Inc., 19 F.C.C. 2d 532, 534 (1969); cf. In re Station WOR–TV, 22 F.C.C. 2d 528 (1969); see Capitol

*An asterisk denotes a new question and answer.

Broadcasting Co., Inc., 8 F.C.C. 2d 975 (1967); but see Q. and A.'s VII. 3 and 4, supra.)

*10. Q. During a broadcast, a legally qualified candidate made a personal attack in the course of a discussion of a controversial issue of public importance on two people who didn't fit within the exception to the personal attack rules, because they were neither candidates, their authorized spokesmen, nor persons associated with candidates in the campaign. The licensee contended that the Commission should consider waiving, amending or holding the personal attack rules inapplicable to situations like this. Was the licensee required to comply with all the requirements of the personal attack rules in these circumstances?

A. Yes. The public interest reasons supporting the personal attack rule were not outweighed by the consideration that the licensee could not censor the broadcast of the candidate who made the attack. The Commission stated that situations such as this one do not appear to arise frequently and there is no showing or indication that application of the personal attack obligations to political broadcasts (with the important exemption in subsection (b) of the personal attack rules) had discouraged licensees from carrying such broadcasts. Moreover, the licensee's reliance on Fairness Education and Cooperative Union of America v. WDAY, Inc., 360 U.S. 525 (1969) was inapposite because the obligation to notify a person that has been attacked and to send him a copy of the attack and an offer of an opportunity to reply was not comparable to the possible liability for large sums of money which may result from civil action based on the broadcast of defamatory remarks. No penalty was involved. The licensee, in its discharge of its obligation to serve the public interest, is generally called upon to afford a reasonable amount of time to the coverage of controversial issues of public importance, including political broadcasts, and, if on such broadcasts, nonexempt personal attacks occur, all the licensee is required to do is give notification and afford a reasonable opportunity for the person attacked to present his side of the attack issue, so that the electorate may be fully and fairly informed. (Capital Cities Broadcasting Corp., 13 F.C.C. 2d 869 (1968); see Commission rules 47 C.F.R. §§ 73.123, 73.300, 73.598, 73.679, and 74.1115 (1970).)

11. Q. A legally qualified candidate allegedly was personally attacked under the fairness doctrine during broadcasts by a licensee. The licensee allegedly also broadcast editorials supporting another candidate. The licensee asked the Commission whether, if the candidate himself was given time to reply personally to the attacks and the editorials, the opponents of this candidate would be entitled to equal opportunities as a result of the broadcast?

A. Yes. If a licensee in its discretion, permits the candidate personally to broadcast the reply, this would give rise to a right to equal opportunities for all opposing legally qualified candidates for the same office. (Times-Mirror Broadcasting Company, 40 F.C.C. 531, 532 (1962); 40 F.C.C. 538, 539–540 (1962); see Personal Attack and Political Editorializing Rules, 8 F.C.C. 2d 721, 727 (1967); 47 C.F.R. §§ 73.123, 73.300, 73.598, 73.679, and 74.1115 (1970).)

VIII. What Rates Can Be Charged Candidates for Programs Under Section 315?

VIII. 1. Q. May a station charge premium rates for political broadcasts?

A. No. Section 315, as amended, provides that the charges made for the use of a station by a candidate "shall not exceed the charges made for comparable use of such stations for other purposes." (See Noe Enterprises, Inc., 40 F.C.C. 388 (1964).)

2. Q. Does the requirement that the charges to a candidate "shall not exceed the charges for comparable use" of a station for other purposes apply to political broadcasts by persons other than qualified candidates?

A. No. This requirement applies only to candidates for public office. Hence, a station may adopt whatever policy it desires for political broadcasts by organizations or persons who are not candidates for office, consistent with its obligation to operate in the public interest. (Political Broadcast Rates, 40 F.C.C. 265 (1955).)

3. Q. May a station with both "national" and "local" rates charge a candidate for local office its "national" rate?

A. No. Under §§ 73.120, 73.290, 73.657 and 74.1113 of the Commission's rules a station may not charge a candidate more than the rate the station would charge if the candidate were a commercial advertiser whose advertising was directed to promoting its business within the same area as that within which persons may vote for the particular office for which such person is a candidate. (See letter to Mr. Waldo E. Spence, 40 F.C.C. 392 (1964).)

4. Q. Considering the limited geographical area which a member of the House of Representatives serves, must candidates for the House be charged the "local" instead of the "national" rate?

A. This question cannot be answered categorically. To determine the maximum rates which could be charged under section 315, the Commission would have to know the criteria a station uses in classifying "local" versus "national" advertisers before it could determine what are "comparable charges." In making this determination, the Commission does not prescribe rates but merely requires equality of treatment as between 315 broadcasts and commercial advertising. (Political Broadcast Rates, 40 F.C.C. 286 (1957).)

5. Q. Is a political candidate entitled to receive discounts?

A. Yes. Under §§ 73.120, 73.290, 73.657 and new rules in 74.1113 of the Commission's rules political candidates are entitled to the same discounts that would be accorded persons other than candidates for public office under the conditions specified, as well as to such special discounts for programs coming within section 315 as the station may choose to give on a nondiscriminatory basis. (Letter to Mr. Waldo E. Spence, 40 F.C.C. 392 (1964).)

6. Q. Can a station refuse to sell time at discount rates to a group of candidates for different offices who have pooled their resources to obtain a discount, even though as a matter of commercial practice, the station permits commercial advertisers to buy a block of time at discount rates for use by various businesses owned by them?

A. Yes, section 315 imposes no obligation on a station to allow the use of its facilities by candidates, and neither that section nor the Commission's rules require a station to sell time to a group of candidates on a pooled basis, even though such may be the practice with respect to commercial advertisers. (Political Ad Requirements, 40 F.C.C. 263 (1954); Letter to Mr. Waldo E. Spence, 40 F.C.C. 392 (1964); see Political Broadcast Rates, 40 F.C.C. 1075 (1954); Q. and A. VI.A.5, supra; but see caveat in Q. and A. VI.A.6, supra.)

7. Q. If candidate A purchases 10 time segments over a station which offers a discount rate for purchase of that amount of time, is candidate B entitled to the discount rate if he purchases less time than the minimum to which discounts are applicable?

A. No. A station is under such circumstances only required to make available the discount privileges to each legally qualified candidate on the same basis. (See "Equal Time Requirements," 40 F.C.C. 261 (1954).)

8. Q. If a station has a "spot" rate of 2 dollars per "spot" announcement, with a rate reduction to 1 dollar if 100 or more such "spots" are purchased on a bulk time sales contract, and if one candidate arranges with an advertiser having such a bulk time contract to utilize five of these spots at the 1 dollar rate, is the station obligated to sell the candidates of other parties for the same office time at the same 1 dollar rate?

A. Yes. Other legally qualified candidates are entitled to take advantage of the same reduced rate. (Political Ad Requirements, 40 F.C.C. 252 (1952).)

9. Q. Where a group of candidates for different offices pool their resources to purchase a block of time at a discount, and an individual candidate opposing one of the group seeks time on the station, to what rate is he entitled?

A. He is entitled to be charged the same rate as his opponent since the provisions of section 315 run to the candidates themselves and they are entitled to be treated equally with their individual opponents. (Political Broadcast Rates, 40 F.C.C. 1075 (1954); see also Q. and A. VI.B.3 supra.)

10. Q. Is there any prohibition against the purchase by a political party of a block of time for several of its candidates, for allocation among such candidates on the basis of personal need,

*An asterisk denotes a new question and answer.

rather than on the amount each candidate has contributed to the party's campaign fund?

A. There is no prohibition in section 315 or the Commission's rules against the above practices. It would be reasonable to assume that the group time used by a candidate is, for the purposes of section 315, time paid for by the candidate through the normal device of a recognized political campaign committee, even though part of the campaign funds was derived from sources other than the candidates' contributions. ("Equal Time Requirements," 40 F.C.C. 261 (1954); letter to Mr. Lar Daly, 40 F.C.C. 377 (1963).)

11. Q. When a candidate and his immediate family own all the stock in a corporate licensee and the candidate is the president and general manager, can he pay for time to the corporate licensee from which he derives his income and have the licensee make a similar charge to an opposing candidate?

A. Yes. The fact that a candidate has a financial interest in a corporate licensee does not affect the licensee's obligation under section 315. Thus, the rates which the licensee may charge to other legally qualified candidates will be governed by the rate which the stockholder candidate actually pays to the licensee. If no charge is made to the stockholder candidate, it follows that other legally qualified candidates are entitled to equal time without charge. (Letter to WKOA, 40 F.C.C. 288 (1957).)

12. Q. A station adopted and maintained a policy under which commissions were not paid to advertising agencies in connection with political advertising although it did pay such commissions in connection with commercial advertising. Further, in the case of commercial advertisers who did not use advertising agencies, the station performed those functions which the advertising agency would normally perform, but in the case of political advertisers, the station performed no such services. An agency which had placed political advertising over the station in a recent election made a demand of the station for payment of the agency commission. Was the station's policy consistent with section 315 of the Communications Act?

A. No. The Commission held that such a policy violated both section 315(b) of the Act and § 73.120(c) of the rules; that the benefits accruing to a candidate from the use of an advertising agency were neither remote, intangible nor insubstantial; and that while under the station's policy, a commercial advertiser would, in addition to broadcast time, receive the services of an advertising agency merely by paying the station's established card rate, the political advertiser, in return for payment of the same card rate, would receive only broadcast time. The Commission held that such a resultant inequality in treatment vis-a-vis commercial advertisers is clearly prohibited by the Act and the rules. (Noe Enterprises, Inc., 40 F.C.C. 388 (1964); compare letter to KTRM, 40 F.C.C. 331 (1962), and Q. and A. VIII.19, infra.)

*13. Q. The Commission received a complaint on behalf of a member of the Pennsylvania House of Representatives running for reelection claiming that a local station was charging him more for his political spot announcements than it had charged him for commercial announcements on behalf of his business in the past. The station stated that the rates normally charged to the complainant for his commercial spot announcements on behalf of his business were based on an existing contract between the station and the complainant which had been entered into 8 years previously. The provisions of the contract had apparently been renewed with unchanged rates and the rates set at the time the contract was entered into were less than the present rates the local station charged to other commercial advertisers. The rates being charged to the complainant for his political announcements were the same rates the station currently charged to other commercial advertisers for a comparable use of the station's facilities. Under these circumstances is the station acting in compliance with the provisions of section 315(b) of the Communications Act and of the Commission's rules?

A. Yes. If the station were to allow the complainant to purchase political spot announcements at the rates charged to him for his commercial spot announcements, then the station would either be giving him treatment preferential to that given to his opponents or it would have to charge all candidates this lesser rate. This was not the intent of either section 315(b) of the Communications Act or the Commission's rules. In charging the complainant the rate for a political advertisement that was normally charged other commercial advertisers for a comparable use, the station was acting in compliance with both the Act and the rules. (Letter to Honorable J. Irving Whalley, 40 F.C.C. 428 (1964).)

*14. Q. The Commission received a complaint alleging that several stations were charging the national rate to a candidate for election to Congress but were charging a candidate for local office a local rate which was less than the national rate. The stations informed the Commission that this classification of national as against local rates for political broadcast purposes paralleled their commercial rate policy which provided that the local retail rate was applicable only to strictly local concerns whose products or services were confined to the immediate metropolitan area and that all other advertisers taking advantage of the station circulation and coverage outside and beyond the metropolitan area must pay the general or national rate. Is the stations' practice with respect to rates charged to political candidates consistent with the Act and the Commission rules?

A. Yes. The stations' action was not inconsistent with either the Act or its rules, since the rates charged to candidates (both for the local office and Congress) were the same as the rates charged to commercial advertisers whose advertising was directed to promoting their businesses within the same area as that encompassed by the political office for which such person is a candidate. (Letter to Mr. Waldo E. Spence, 40 F.C.C. 392 (1964).)

*15. Q. Five days prior to the election, a licensee changed its policy of not selling 30-minute program time to political candidates and offered them 30-minute programs. One candidate's representative complained to the Commission that the licensee had previously refused the candidate's earlier request for half-hour program and so the candidate had not produced any program of that length. Claiming that the production of an effective half-hour program so late in the campaign was impossible, he contended that the licensee should charge the candidate a proportionally reduced rate for the 5-minute programs which the representative had on hand. Is this required by section 315?

A. No. Neither the statute nor the rules require the sale of 5-minute periods to complainant at a rate lower than the licensee would charge if the candidate were a commercial advertiser. (In re Complaint by William V. Rawlings, 18 F.C.C. 2d 746 (1969).)

*16. Q. A licensee made "packages" of "run of schedule" (hereinafter ROS) spot announcements available to commercial advertisers at a reduced rate. These ROS spots were carried at the convenience and discretion of the licensee and were subject to preemption by a fixed position commercial. The licensee refused to sell ROS spots to candidates because it contended that if one candidate fortuitously had his ROS spots broadcast in prime time, his opponents could demand that their ROS spots also be broadcast in prime time and this would result in some candidates obtaining fixed rate spots at ROS spot prices. Was the licensee's refusal to sell ROS spots to candidates consistent with section 315 and the Commission's rules?

A. No. Since the licensee sells spots to political candidates and makes packages of ROS spots (discount privileges within the meaning of § 73.120(c)(1) of the rules) available to its commercial advertisers, it must make ROS spots available to political candidates on the same basis. However, if one candidate purchases ROS spots which are broadcast, equal opportunity does not require that the licensee sell his opponents fixed position spots for the same time periods at ROS spot rates. Equal opportunity requires that other candidates be permitted the opportunity to buy an equivalent number of ROS spots at the same price and on the same conditions as the first candidate, or that they be afforded comparable time periods to those actually used by the first candidate at the prescribed rates for such time periods. If ROS spots were chosen by the other candidates the licensee would be required to act in good faith and scrupulously follow normal procedures in the allotment

*An asterisk denotes a new question and answer.

of these ROS spots. (In re WFBG, 23 F.C.C. 2d 760 (1967); see the Commission's rules, 47 CFR, §§ 73.120(c)(1), 73.290(c)(1), 73.657(c)(1), and 74.1113(b)(1) (1970); Q. and A. VIII.6, supra.)

*17. Q. A licensee informed the Commission that it sold both preemptible and nonpreemptible spot announcements to commercial advertisers on time available basis and the purchase orders specify the times of their broadcast. However, nonpreemptible spot purchasers can select any time previously scheduled for preemptible time spots in addition to other available times. If the preemptible spots were subsequently preempted no charge was made for them. The licensee did not sell preemptible spots to candidates because it reasoned that if one candidate for public office purchased preemptible spot announcements and they were actually used by him, equal opportunity would require that his opponent be permitted to buy spots at preemptible spot prices and have them broadcast when scheduled regardless of whether or not a purchaser of nonpreemptible spots requested that availability. Could the licensee refuse to sell preemptible spot announcements to political candidates?

A. No. If the licensee sells both preemptible and nonpreemptible spot announcements to commercial advertisers it must make them both available to political candidates at the same rates charged commercial advertisers. However, section 315(b) of the Communications Act does not require the sale of nonpreemptible spots at preemptible spot rates. If one political candidate buys preemptible spots and they are broadcast, his opponents are entitled to buy preemptible or nonpreemptible spots. If the opponents desire to make certain that their spots will be broadcast, nonpreemptible spots at nonpreemptible rates should be made available to them. But if the opponents buy preemptible spots and they are preempted by nonpreemptible spots, these opponents are then entitled to buy this same number of spots equal to those broadcast by the first candidate but now they must pay the higher nonpreemptible rates. (Letter to WHDH, Inc., 23 F.C.C. 2d 763 (1967); compare Q. and A. VIII.6, supra.)

*18. Q. Two Democratic candidates and four Republican candidates were running in a special election for a Congressional House seat. A committee for one candidate purchased one-half hour of television time. The candidate then offered to debate the alleged principal opponent of the other party who agreed to debate if all of the other candidates were also invited to debate. All then were invited, and a second debate was held with the one other candidate who accepted which was also paid for by the committee for the candidate who first offered to debate. Would the other candidates not participating in the debates be entitled to *free* time because of their opponents' appearances?

A. No. Under the above facts, the other candidates would be entitled to equal opportunities, but only on a paid basis. (In re Station KTVU–TV, 23 F.C.C. 2d 757 (1967).)

*19. Q. A political candidate purchased time through an advertising public relations agency which he heads. Since he shares in the profit, would the 15-percent agency commission be a "rebate" and thereby become a violation of section 315?

A. No. There is no Commission rule or regulation which would prevent or forbid a political candidate from using the services of his own advertising agency. (Political Broadcast Rates, 23 F.C.C. 2d 770 (1966).)

20. Q. A licensee adopted and has consistently maintained a policy whereby agency commissions were not paid in connection with political advertising placed by recognized advertising agencies on behalf of a candidate for local office. It adopted and has consistently maintained a similar policy with respect to agency commission in connection with local commercial advertising. The stations most recent local retail rate card indicates that its established policy is " * * all rates net to station." Therefore, a candidate who utilized an advertising agency would pay the same station rate as one who did not, but the advertising agency would charge its client-candidate the station rate plus 15-percent agency commission. Is this policy consistent with the mandates of section 315 of the Act and the rules?

A. Yes. Because the station's rate policy is applicable to both commercial and political advertising, such policy does not contravene section 315 of the Act nor the rules. (In re KSEE, 23 F.C.C. 2d 762 (1968).)

*21. Q. A station increased in advertising rates 30 percent on August 1. Some legally qualified candidates had purchased time before the rate change for use in the month of August. If their opposing legally qualified candidates request "equal opportunities" based on the use of this time, can they be charged the increased rate for time?

A. No. The rate charged these opposing candidates must be the rate charged their political opponents. Therefore, they should pay the rate in effect before the price change.

IX. Period Within Which Request Must Be Made [5]

IX. 1. Q. When must a candidate make a request of the station for opportunities equal to those afforded his opponent?

A. Within 1 week of the day on which the prior use occurred. (Par. (e) of 47 CFR §§ 73.120, 73.290, 73.590, and 73.657 (1970), and 47 CFR § 74.1113(d) (1970); telegram to WWIN, 40 F.C.C. 338 (1962).)

2. Q. A U.S. Senator, unopposed candidate in his party's primary had been broadcasting a weekly program entitled "Your Senator Reports". If he becomes opposed in his party's primary, would his opponent be entitled to request "equal opportunities" with respect to all broadcasts of "Your Senator Reports" since the time the incumbent announced his candidacy?

A. No. A legally qualified candidate announcing his candidacy for the above nomination would be required to request "equal opportunities" concerning a particular broadcast of "Your Senator Reports" not later than 1 week after the date of such broadcast. Thus, any of the incumbent's opponents for the nomination who first announced his candidacy on a particular day, would not be in a position to request "equal opportunities" with respect to any showing of "Your Senator Reports" which was broadcast more than 1 week prior to the date of such announcement. (Letter to Honorable Joseph S. Clark, 40 F.C.C. 332 (1962).)

3. Q. A candidate for U.S. Senator in the Democratic primary, who was also the part owner and president of AM and FM stations in the State, wrote to his opponent, the incumbent Senator, and stated, in substance, that he was using a certain amount of time daily on his stations and that the incumbent was "entitled to equal time, at no charge" and was urged to take advantage of the time. A couple of weeks later, the incumbent, by letter, thanked the station owner for advising him "of the accumulation of time" on each station and stated that the station owner would be notified when incumbent decided to start using the accumulated time. The station owner did not respond to the incumbent's letter. About 6 weeks later, incumbent requested equal opportunities. Were the stations correct in advising incumbent that the Commission's 7-day rule was applicable, thereby precluding requests for "equal opportunities" for any broadcasts prior to 7 days before the request?

A. No. The Commission stressed that where, as here, the licensee, or a principal of the licensee, was also the candidate, there is a special obligation upon the licensee to insure fair dealings in such circumstances and held that the licensee was estopped in the circumstances from relying upon the 7-day rule. The Commission held that the incumbent's letter reasonably constituted a notification as required under the rules; that the licensee knew that equal opportunities were requested; and that he could have made, if he wished, reasonable scheduling plans. (Letters to Mr. Emerson Stone, Jr., 40 F.C.C. 385 (1964); In re KTTV-TV, 23 F.C.C. 2d 769 (1966); compare Legally Qualified Candidate, 40 F.C.C. 246 (1952).)

*4. Q. (See Q. and A. VII.9, supra, for additional facts.) The complainant demanded equal opportunity based on appearances by his political opponent. The licensee granted it but put restrictions on the content of the program which was ultimately determined by the

*An asterisk denotes a new question and answer.

[5] See footnote 3, supra; substantive amendments were made to the rule so the present form of the rule should be examined in regard to any questions of timing.

Commission to be unreasonable. Between the time of the original complaint to the Commission and prior to its ruling, complainant's opponent appeared on additional programs, but complainant didn't request equal opportunities within 7 days of each appearance. Was the licensee correct in refusing to grant equal opportunity based on these appearances because complainant didn't comply with the 7-day rule?

A. No. The complainant was within his rights in refusing to appear on the program on which the licensee placed restrictions subsequently adjudged unreasonable. He was entitled to use of the facilities as he had proposed. The filing of the complaint apprised the licensee that if the complainant prevailed, he would be entitled to the time requested. Thus, after consideration of all the circumstances of the case, the Commission decided that complainant was entitled to "equal opportunities" based on all the appearances of his opponent. (In re Gray Communications System, Inc., 14 F.C.C. 2d 766, 767 (1968); Herald Publishing Co., 14 F.C.C. 2d 767 (1968); reconsideration denied in In the Matter of Gray Communications System, Inc., 19 F.C.C. 2d 532 (1969); Q. and A. VII.9, supra.)

*5. Q. Four days prior to an announced broadcast use by a political candidate, one of the candidate's opponents for the same office requested time based on that specific future use. The station denied the request because the opponent had not asked for equal opportunities within 1 week after the day on which the prior use occurred. Had the opposing candidate complied with the 7-day rule with his request made prior to the broadcast?

A. Yes. The Commission has always considered as valid and appropriate an equal opportunities request made prior to a section 315 broadcast if the request is based on a specific future use which was known or announced prior to the actual broadcast. (Socialist Workers Party, 15 F.C.C. 2d 96 (1968); other aspects of this ruling are now governed by the revised 7-day rule, 35 F.R. 7118 (1970).)

*6. Q. A, B, and C were all legally qualified candidates for the same public office as of August 29. A approached licensee for use of broadcast time over licensee's station and was afforded time on September 1. B requested equal time to respond to A's use on September 5, and C made a similar request on September 10, claiming his request to be timely made within 7 days of B's request. The licensee granted B's request but not C's. D became a legally qualified candidate for the same public office on October 10. On October 15, B was afforded time on licensee's station in compliance with his earlier request. The next day, October 16, D requested equal time to respond, which request was promptly rejected by the licensee, stating that the request was too late coming more than 7 days after A's first prior use. Both C and D appealed to the Commission to compel the licensee to afford each of them equal time. Must the licensee grant both requests?

A. The licensee properly refused C's request, that request being made more than 7 days after A's first prior use. There of course is no validity to the claim that the request was within 7 days of B's request for time. The licensee was incorrect in refusing D's request. D, who became a legal candidate after A's first prior use, may properly request equal time within 7 days of a subsequent use, here B's. (47 CFR §§ 74.1113(d), 73.120(e), 73.290(e), 73.590(e), and 73.657(e) (1970); In re Seven-Day Rule, 35 F.R. 7118 (1970); cf. In re Socialist Workers Party, 15 F.C.C. 2d 96 (1968), which was decided before the recent changes in the 7-ray rule; Telegram to Mr. Herbert Steimer, 10 F.C.C. 2d 966 (1962).)

X. Issuance of Interpretations of Section 315 by the Commission

*X.1. Q. Under what circumstances will the Commission consider issuing declaratory orders, interpretive rulings, or advisory opinions with respect to section 315?

A. The Administrative Procedure Act, 80 Stat. 385 (1966), 5 U.S.C. § 554(e) provides that "The agency, with like effect as in the case of other orders, and in its sound discretion, may issue a declaratory order to terminate a controversy or remove uncertainty." However, agencies are not required to issue such orders merely because a request is made therefor. The grant of authority to agencies to issue declaratory orders is limited, and such orders are authorized only with respect to matters which are required by statute to be determined "on the record after opportunity for an agency hearing." (See Attorney General's Manual on the Administrative Procedure Act, pp. 59–60 (1947); 15 ICC Prac. J. 49–50 (February 1948 section II); In re Harry S. Goodman, 12 F.C.C. 678 (1948).) In general, the Commission limits its interpretive rulings or advisory opinions to situations where the critical facts are explicity stated without the possibility that subsequent events will alter them. It prefers to issue such rulings or opinions where the specific facts of a particular case in controversy are before it for decision. In response to general inquiries, the Commission limits itself to giving general guidelines to help an individual or station determine their rights and obligations under section 315. (WDSU Broadcasting Corp., 40 F.C.C. 295 (1958); Mr. Roy Anderson, 14 F.C.C. 2d 1064 (1968); aff'd. per curiam, Anderson v. Federal Communications Commission, 403 F. 2d 61 (C.C.A. 2, 1968).)

Adopted: August 7, 1970.

FEDERAL COMMUNICATIONS COMMISSION [1]

[SEAL] BEN F. WAPLE, *Secretary.*

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*An asterisk denotes a new question and answer.

[1] Commissioner Cox absent.