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Agencies in this issue—

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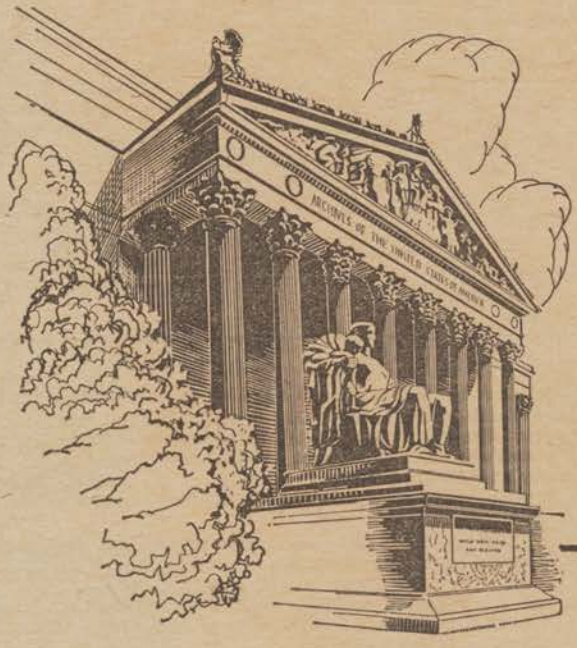

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List of CFR Parts Affected

The following numerical guide is a list of the parts of each title of the Code of Federal Regulations affected by documents published in today's issue. A cumulative list of parts affected, covering the current month to date, appears at the end of each issue beginning with the second issue of the month.

A cumulative guide is published separately at the end of each month. The guide lists the parts and sections affected by documents published since January 1, 1970, and specifies how they are affected.

Rules and Regulations

Title 5—ADMINISTRATIVE PERSONNEL

Chapter I—Civil Service Commission

PART 213—EXCEPTED SERVICE

Treasury Department

Section 213.3305 is amended to show that one new position of Staff Assistant to the Secretary is excepted under Schedule C, and that the position of Secretary to the Special Assistant to the Secretary, having been abolished, is no longer excepted under Schedule C. Effective on publication in the FEDERAL REGISTER, subparagraph (27) is added and subparagraph (14) is revoked under paragraph (a) of § 213.3305 as set out below.

§ 213.3305 Treasury Department.

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

(14) [Revoked]

* * * * *

(27) One Staff Assistant to the Secretary.

* * * * * *

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

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

[F.R. Doc. 70-10815; Filed, Aug. 17, 1970; 8:50 a.m.]

PART 213—EXCEPTED SERVICE

Treasury Department

Section 213.3305 is amended to show that the following positions in the Office of the Assistant Secretary (International Affairs) are excepted under Schedule C: Special Assistant to the Assistant Secretary, Deputy Assistant Secretary for Industrial Nations Finance, Deputy Assistant Secretary for Trade and Investment Policy, Deputy Assistant Secretary for Research and/or Director of Research, and Deputy Assistant Secretary for Development Finance. Effective on publication in the FEDERAL REGISTER, subparagraphs (28) through (32) are added to paragraph (a) of § 213.3305 as set out below.

§ 213.3305 Treasury Department.

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

(28) One Special Assistant to the Assistant Secretary (International Affairs).

(29) One Deputy Assistant Secretary for Industrial Nations Finance (International Affairs).

(30) One Deputy Assistant Secretary for Trade and Investment Policy (International Affairs).

(31) One Deputy Assistant Secretary for Research and/or Director of Research (International Affairs).

(32) One Deputy Assistant Secretary for Development Finance (International Affairs).

* * * * * *

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

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

[F.R. Doc. 70-10813; Filed, Aug. 17, 1970; 8:50 a.m.]

PART 213—EXCEPTED SERVICE

Department of Health, Education, and Welfare

Section 213.3316 is amended to show that the position of Private Secretary (interdepartmental activities) to the Commissioner of Education is excepted under Schedule C. Effective on publication in the FEDERAL REGISTER, subparagraph (6) is added to paragraph (c) of § 213.3316 as set out below.

§ 213.3316 Department of Health, Education, and Welfare.

* * * * * *

(c) *Office of Education.* * * *

(6) One Private Secretary (interdepartmental activities) to the Commissioner of Education.

* * * * * *

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

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

[F.R. Doc. 70-10814; Filed, Aug. 17, 1970; 8:50 a.m.]

PART 213—EXCEPTED SERVICE

General Services Administration

Section 213.3337 is amended to show that an additional position of Confidential Assistant to the Commissioner, Property Management and Disposal Service, is excepted under Schedule C. Effective on publication in the FEDERAL REGISTER, subparagraph (2) of paragraph (f) of § 213.3337 is amended as set out below.

§ 213.3337 General Services Administration.

* * * * * *

(f) *Property Management and Disposal Service.* * * *

(2) Two Confidential Assistants to the Commissioner.

* * * * * *

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

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

[F.R. Doc. 70-10812; Filed, Aug. 17, 1970; 8:50 a.m.]

PART 335—PROMOTION AND INTERNAL PLACEMENT

Agency Authority To Promote, Demote, or Reassign

Section 335.102(f)(1) of the regulations is amended to permit the Commission to authorize temporary promotions for a longer period than 2 years when the needs of the service so require. Section 335.102 is amended as set out below.

§ 335.102 Agency authority to promote, demote, or reassign.

Subject to § 335.103 and, when applicable, to §§ 305.502 and 305.505 of this chapter, an agency may:

* * * * * *

(f)(1) Except as otherwise specifically authorized by the Commission, temporarily promote an employee to meet a temporary need for a definite period of 1 year or less and extend such a promotion for a definite period not to exceed 1 additional year. At the end of the period for which the agency temporarily promoted the employee, or when the agency determines that it no longer needs the employee in the position, the agency shall return the employee to the position from which it temporarily promoted him, except when it reassigns or demotes him, without time limitation and with his consent, to a different position. The return of an employee to the position from which the agency temporarily promoted him under this subparagraph or his reassignment or demotion to a different position that is not at a lower grade or level than the position from which he was temporarily promoted is not subject to Parts 351, 752, 771 or 772 of this chapter.

* * * * * *

(5 U.S.C. 3301, 3302, E.O. 10577; 3 CFR 1954–1958 Comp., p. 218)

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

[F.R. Doc. 70-10816; Filed, Aug. 17, 1970; 8:50 a.m.]

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

Open Season

On June 18, 1970, the following was published in the FEDERAL REGISTER as

proposed rule making. The purpose is to provide for a special 2-week open season to enrolled employees and annuitants for the Columbia Medical Plan of Columbia, Md. The comments and suggestions received on the proposal have been considered by the Civil Service Commission. Accordingly, Part 890 of Title 5, Code of Federal Regulations, is amended by revising §§ 890.301(d)(2) and 890.306(c) as set out below:

§ 890.301 Opportunities to register to enroll and change enrollment.

* * * * *

(d) *Open season.* * * *

(2) During the period November 16 to November 30, 1970, an enrolled employee or annuitant living in the enrollment area of the Columbia Medical Plan may change his enrollment from the plan in which he is already enrolled to the Columbia Medical Plan. The election must be for the same type of coverage (self only or self and family) as the present enrollment unless a change of type is otherwise authorized by this part.

* * * * *

§ 890.306 Effective dates.

* * * * *

(c) *Open season.* (1) The effective date of a change in enrollment under § 890.301(d)(2) is the first day of the first pay period beginning on or after January 1, 1971.

* * * * *

(5 U.S.C. 8913)

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

[F.R. Doc. 70-10817; Filed, Aug. 17, 1970; 8:50 a.m.]

Title 7—AGRICULTURE

Chapter II—Food and Nutrition Service, Department of Agriculture

PART 265—PILOT FOOD CERTIFICATE PROGRAM REGULATIONS

Procedure for Redeeming Certificates

The procedure for approval or denial of claims submitted by unauthorized retailers or wholesalers does not clearly define who can approve or deny such claims. In addition, it has been determined that the requirement for notarized affidavits in support of such claims are not necessary. Therefore, to clarify the procedure, Part 265 of Chapter II of Title 7 of the Code of Federal Regulations is amended as follows:

In § 265.10, paragraph (c) is revised to read as follows:

§ 265.10 Procedure for redeeming certificates.

* * * * *

(c) Certificates accepted by a retail food or drug store or a wholesale food or drug concern prior to the receipt by such firm of Form FNS-92, "Food Certificate Program Authorization," shall not be presented for redemption under the procedure set forth above in this section. Stores or concerns seeking to redeem such certificates shall present a claim in writing to the local FNS Field Office. This claim shall be accompanied by a full written statement signed by the store or concern of the circumstances surrounding the acceptance of the certificates. The statement shall also include a certification that the certificates were accepted in good faith, and without any intent to circumvent the requirements of this part. Upon receipt of the claim, the local FNS Officer-in-Charge may approve redemptions of such certificates if he finds that the following conditions exist: (1) The certificates were received in accordance with the provisions of this part governing acceptance of certificates, except the provisions requiring that the store or concern be authorized before acceptance; (2) the certificates were accepted by the store or concern in good faith and without any intent to circumvent the provisions of this part; and (3) the store or concern has applied for and has received authorization to participate in the program. In the event that the local FNS Officer-in-Charge finds that such conditions do not exist, he shall forward the claim to the appropriate FNS Regional Director for review and final determination. If the final determination results in denial of the claim, the provisions of § 265.12(b) are applicable.

NOTE: The reporting and/or recordkeeping requirements contained herein have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

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

RICHARD E. LYNG,
Assistant Secretary.

AUGUST 13, 1970.

[F.R. Doc. 70-10811; Filed, Aug. 17, 1970; 8:50 a.m.]

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

SUBCHAPTER B—FARM MARKETING QUOTAS AND ACREAGE ALLOTMENTS

PART 725—FLUE-CURED TOBACCO

Subpart—Proclamations, Determinations and Announcements of National Marketing Quotas and Referendum Results

RESULTS OF REFERENDUM

Basis and purpose. Section 725.3 is issued pursuant to and in accordance with the Agricultural Adjustment Act of 1938, as amended, to proclaim the results of the Flue-cured tobacco marketing quota referendum for the 3 marketing years beginning July 1, 1971. The Secretary proclaimed national marketing quotas for Flue-cured tobacco for the 1971–72, 1972–73, and 1973–74 marketing years, and announced the amount of the national marketing quota for such kind of tobacco for the 1971–72 marketing year (35 F.R. 10838). The Secretary announced (35 F.R. 10870) that a referendum would be held on July 16, 1970, to determine whether Flue-cured tobacco producers were in favor of or opposed to marketing quotas for the 3 marketing years beginning July 1, 1971. Since the only purpose of this proclamation is to announce the results of the referendum, it is hereby found and determined that with respect to this proclamation, application of the notice, public procedure and effective date provisions of 5 U.S.C. 553 is unnecessary.

§ 725.3 Results of the Flue-cured tobacco marketing quota referendum for the 3-year period beginning July 1, 1971.

In a referendum of farmers engaged in the production of the 1970 crop of Flue-cured tobacco held on July 16, 1970, 129,961 farmers voted. Of those voting, 127,854 or 98.4 percent favored quotas for a period of 3 years beginning July 1, 1971; 2,107 or 1.6 percent were opposed to quotas. Therefore, the national marketing quota of 1,071.4 million pounds for Flue-cured tobacco proclaimed (35 F.R. 10838) for the 1971–72 marketing year will be in effect for such year, and marketing quotas on such kind of tobacco will be in effect for the 3 marketing years beginning July 1, 1971.

(Secs. 312, 317, 375; 52 Stat. 46, as amended, 79 Stat. 66, 52 Stat. 66, as amended; 7 U.S.C. 1312, 1314c, 1375)

Signed at Washington, D.C., on August 12, 1970.

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

[F.R. Doc. 70-10804; Filed, Aug. 17, 1970; 8:50 a.m.]

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

[Valencia Orange Reg. 325, Amdt. 1]

PART 908 — VALENCIA ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

Limitation of Handling

Findings. (1) Pursuant to the marketing agreement, as amended, and Order No. 908, as amended (7 CFR Part 908), regulating the handling of Valencia oranges grown in Arizona and designated part of California, 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 recommendation and information submitted by the Valencia Orange 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 Valencia oranges, 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 amendment until 30 days after publication thereof in the FEDERAL REGISTER (5 U.S.C. 553) because the time intervening between the date when information upon which this amendment is based became available and the time when this amendment must become effective in order to effectuate the declared policy of the act is insufficient, and this amendment relieves restriction on the handling of Valencia oranges grown in Arizona and designated part of California.

Order, as amended. The provisions in paragraph (b)(1) (i) and (ii) of § 908.625 (Valencia Orange Regulation 325, 35 F.R. 12529) are hereby amended to read as follows:

§ 908.625 Valencia Orange Regulation 325.

* * * * *

(b) *Order.* (1) * * *

(i) District 1: 276,000 cartons;

(ii) District 2: 324,000 cartons.

* * * * *

(Sec. 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. 70–10767; Filed, Aug. 17, 1970; 8:47 a.m.]

Chapter XIV—Commodity Credit Corporation, Department of Agriculture

SUBCHAPTER B—LOANS, PURCHASES, AND OTHER OPERATIONS

PART 1434—HONEY

Subpart—Honey Price Support Regulations for 1970 and Subsequent Crops

QUANTITY FOR WAREHOUSE STORAGE LOAN; CORRECTION

In F.R. Doc. 70–9459 appearing at page 11773 in the issue of Thursday, July 23, 1970, in § 1434.23(a) the reference to "§ 1434.43" is corrected to read "§ 1434.44."

This correction is effective as of July 23, 1970, the effective date of the document being corrected.

Signed at Washington, D.C., on August 12, 1970.

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

[F.R. Doc. 70–10806; Filed, Aug. 17, 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. 70–241]

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 introductory portion of paragraph (e) is amended by adding the name of the State of Illinois, and a new paragraph (e)(19) relating to the State of Illinois is added to read:

(19) *Illinois.* That portion of Macoupin County comprised of Nilwood and South Otter Townships.

2. In § 76.2, paragraph (e)(13) relating to the State of Rhode Island is amended to read:

(13) *Rhode Island.* That portion of Kent County bounded by a line beginning at the junction of State Highway 2 and Middle Road; thence, following State Highway 2 in a southerly direction to Frenchtown Road; thence, following Frenchtown Road in a generally southwesterly direction to Carr Pond Road; thence, following Carr Pond Road in a generally northwesterly direction to Middle Road; thence, following Middle Road in an easterly direction to its junction with State Highway 2.

3. In § 76.2, the reference to the State of Pennsylvania in the introductory portion of paragraph (e) and paragraph (e)(12) relating to the State of Pennsylvania are deleted.

(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 Macoupin County, Ill., 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 county.

The amendments also exclude all of Bristol, Newport, Providence and a portion of Kent Counties in Rhode Island, and portions of Berks and Lancaster Counties in Pennsylvania 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 areas, 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 areas excluded from quarantine.

Insofar as the amendments impose certain further restrications 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 12th day of August 1970.

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

[F.R. Doc. 70–10768; Filed, Aug. 17, 1970; 8:47]

Title 28—JUDICIAL ADMINISTRATION

Chapter I—Department of Justice

[Memo No. 398, Supp. No. 4]

PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

Subpart O—Administrative Division

DISCONTINUANCE OF YEARLY REPORTS COVERING CLAIMS SETTLED UNDER MILITARY PERSONNEL AND CIVILIAN EMPLOYEES' CLAIMS ACT OF 1964

JULY 29, 1970.

Under and by virtue of the authority vested in me by § 0.76(a) of Title 28 of the Code of Federal Regulations, and pursuant to Public Law 91–311, July 8, 1970, 84 Stat. 412, the intradepartmental yearly reporting requirements regarding claims settled under the Military Personnel and Civilian Employees' Claims Act of 1964, as amended, are hereby rescinded. The second paragraph in each of Supplement Nos. 2 and 3 of Memo No. 398 should, therefore, be deleted.

L. M. PELLERZI,
Assistant Attorney General, for Administration.

[F.R. Doc. 70–10771; Filed, Aug. 17, 1970; 8:47 a.m.]

Title 32—NATIONAL DEFENSE

Chapter VI—Department of the Navy

SUBCHAPTER C—PERSONNEL

PART 720—DELIVERY OF PERSONNEL; SERVICE OF PROCESS AND SUBPOENAS; PRODUCTION OF OFFICIAL RECORDS

PART 726—PAYMENT OF AMOUNTS DUE MENTALLY INCOMPETENT MEMBERS OF THE NAVAL SERVICE

Parts 720 and 726 of Subchapter C of Chapter VI of Title 32 of the Code of Federal Regulations are revised.

PART 720—DELIVERY OF PERSONNEL; SERVICE OF PROCESS AND SUBPOENAS; PRODUCTION OF OFFICIAL RECORDS

Part 720 is revised to read as follows:

Subpart A—Delivery of Personnel

Subpart B—Service of Process and Subpoenas Upon Personnel of Naval Establishment

Subpart C—Production of Official Records

AUTHORITY: The provisions of this Part 720 issued under secs. 814, 5031, 6011, 70A Stat. 41, 278, 375, as amended, sec. 301, 80 Stat. 379; 5 U.S.C. 301, 10 U.S.C. 814, 5031, 6011, unless otherwise noted.

SOURCE: This part is Chapter XIII of the Manual of the Judge Advocate General of the Navy.

Subpart A—Delivery of Personnel

§ 720.1 Delivery when personnel within territorial limits of the requesting State.

In cases in which the delivery of any person in the Navy or Marine Corps is requested by local civil authorities of a State, Territory, or Commonwealth for an alleged offense punishable under the laws of that jurisdiction, and such person is attached to a Navy or Marine Corps activity within the requesting jurisdiction, or aboard a ship within the territorial waters of such jurisdiction, commanding officers are authorized to and normally will deliver such person when a proper warrant is presented, subject to exceptions in § 720.8.

§ 720.2 Delivery when personnel beyond territorial limits of requesting State.

(a) *General.* In all cases in which the delivery of any person in the Navy or Marine Corps is wanted by State, Territory, or Commonwealth civil authorities for an alleged crime or offense made punishable by the laws of the jurisdiction making the request, and such person is not attached to a Navy or Marine Corps activity within such requesting State, Territory, or Commonwealth, or a ship within the territorial waters thereof, any officer exercising general courts-martial jurisdiction, or officer designated by him, is authorized, subject to exceptions in § 720.8, to deliver such person for the purpose of making him amenable to prosecution. The authorities of the requesting State will be required, in the absence of a waiver of extradition by the member concerned, to complete extradition process according to the prescribed procedures to obtain custody of a person from the State in which the individual is located, and to make arrangements to take the individual into custody there. Compliance with § 720.5 is required.

(b) *Waiver of extradition.* (1) Any person may waive formal extradition under circumstances cognizable under paragraph (a) of this section. A waiver must be in writing and witnessed. It must include a statement that the person signing it has received counsel of either a military or civilian attorney prior to executing the waiver, and it must further set forth the name and address of the attorney consulted. The form for waiver should be substantially as that suggested in § 720.33.

(2) In every case where there is any doubt as to the voluntary nature of a waiver, such doubt shall be resolved against its use and all persons concerned will be advised to comply with the procedures set forth in paragraph (a) of this section.

(3) Executed copies of all waivers will be mailed to the Judge Advocate General immediately after their execution.

§ 720.3 Personnel stationed outside the United States.

In all cases in which the delivery of any person in the Navy or Marine Corps is desired for trial by State, Territory, Commonwealth, or local civil authorities and such person is stationed outside the United States, a requisition for the delivery of the person must be made by the Governor of such State, Territory, or Commonwealth, addressed to the Secretary of the Navy. It must show that the person desired, is charged with a crime in that State, Territory, or Commonwealth, for which he could be extradited under the Constitution of the United States, the enactments of Congress, or the laws of the State, Territory, or Commonwealth desiring his delivery. Such requisition should be forwarded to the Secretary of the Navy (Judge Advocate General) for examination, together with the appointment of the agent of the State, Territory, or Commonwealth to whom the delivery is to be made. If the papers allege that the person is a fugitive from the justice of that State, Territory, or Commonwealth and that he is charged with an extraditable crime and the papers are otherwise found to be in due form, the Secretary of the Navy (Judge Advocate General) will send the necessary authorization to the designated agent permitting him to take the person into custody upon compliance with § 720.5. Determinations regarding requisitions will be made on the merits of each individual case in conjunction with the existing military exigencies.

§ 720.4 JAG authority.

The Judge Advocate General, the Deputy Judge Advocate General or any Assistant Judge Advocate General is authorized to act for the Secretary of the Navy in the performance of functions under §§ 720.1, 720.2, 720.3, 720.5, 720.8, 720.14, 720.20, 720.23, 720.30.

§ 720.5 Agreement required prior to delivery to State authorities.

In every case in which the delivery for trial of any person in the Navy or Marine Corps to the civilian authorities of a State, is authorized, such person's commanding officer shall, before making such delivery, obtain from the Governor or other duly authorized officer of such State a written agreement that conforms to the agreement as set forth in § 720.34. When indicating in the agreement the naval or Marine Corps activity to which the person delivered is to be returned by the State, care should be taken to designate the closest appropriate activity which possesses special court-martial jurisdiction. The Department of the Navy considers this agreement substantially complied with when the man is furnished transportation back to a naval or Marine Corps activity as set forth herein and necessary cash to cover his incidental expenses en route thereto, and the Department of the Navy so informed. Any departure from the agreement set forth in § 720.34 must have prior approval from the Secretary of the Navy (Judge Advocate General).

§ 720.6 Delivery of personnel to Federal authorities.

(a) *Authority to deliver.* Commanding officers are authorized to and should deliver personnel to Federal authorities on presentation of a proper warrant, subject to exceptions in § 720.8.

(b) *Agreement not required of Federal authorities.* An agreement as to expenses will not be exacted as a condition to the delivery of personnel to Federal authorities for trial. Personnel desired by Federal authorities for trial may be called for and taken into custody by a U.S. marshal or a deputy marshal. In the event that the person delivered is acquitted, or, if convicted, immediately upon satisfying any sentence of the court, or upon other disposition of his case the person will be returned to the naval service (provided that naval authorities desire his return) and the necessary expenses paid from an appropriation under the control of the Department of Justice.

§ 720.7 Delivery of personnel to foreign authorities.

Except when provided by agreement between the United States and the foreign government concerned commanding officers are not authorized to deliver persons in the Department of the Navy to foreign authorities. When a request for delivery of personnel is received, in a country with which the United States has no agreement or when the commanding officer is in doubt, advice should be sought from the Judge Advocate General.

§ 720.8 Circumstances in which delivery is refused.

(a) *Disciplinary proceedings pending.* When disciplinary proceedings involving military offenses are pending or the person is undergoing a sentence of a court-martial, commanding officers must obtain specific authority from the Secretary of the Navy (Judge Advocate General) delivery personnel to State, Territory, Commonwealth, or local authorities.

(b) *When delivery may be refused.* Delivery may be refused in the following circumstances:

(1) Where the accused has been retained for prosecution as set forth in § 719.107(g)(3)(i);

(2) Where the accused is undergoing a sentence of a court-martial;

(3) When the commanding officer considers that conditions exist which indicate that delivery should be denied.

§ 720.9 Reports required when personnel delivered.

(a) *General.* Upon delivery of naval personnel to civil authorities, whether Federal, State, Territory, Commonwealth, local or foreign, a written report of delivery shall be made by the commanding officer to the Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate. A copy will be furnished the Judge Advocate General in cases in which the Secretary of the Navy or the Judge Advocate General has authorized the delivery. The reports required by this subsection and by subsection b need not be made when personnel are delivered to local civil authorities for misdemeanors not involving moral turpitude and are returned to the command within 24 hours.

(b) *When disposition is made by civil authorities.* When the trial of a person delivered pursuant to this chapter is completed or the charges dismissed, the commanding officer shall submit, by letter to the Chief of Naval Personnel or to the Commandant of the Marine Corps, a full report of the offense or offenses charged, the findings, sentence or other action taken. A copy shall be furnished the Judge Advocate General in cases where delivery of the person was authorized by the Secretary of the Navy or the Judge Advocate General. As a separate matter, certain cases also must be processed under applicable provisions of the Bureau of Naval Personnel Manual or the Marine Corps Personnel Manual relating to the separation of personnel.

§ 720.10 Report required when delivery refused.

In any case where delivery has been refused, the commanding officer shall report the circumstances to the Judge Advocate General by dispatch (telephone if circumstances warrant). He shall thereafter confirm the initial report by letter setting forth a full statement of the facts. A copy of the report shall be forwarded to the Commandant of the Naval District or to the Area Coordinator, as appropriate.

§ 720.11 Report required when personnel confined by foreign authorities.

When any person in the Navy or Marine Corps is held or confined by foreign authorities in connection with criminal charges, the commanding officer shall promptly submit by letter a full initial report to the Chief of Naval Personnel or the Commandant of the Marine Corps with a copy to the Judge Advocate General. The report, and subsequent reports as to any significant change, shall include the offenses charged and of which convicted, sentence (if convicted), place of confinement, confinement conditions, and health and welfare of personnel concerned. As a separate matter, certain cases also must be processed under the applicable provisions of the Bureau of Naval Personnel Manual or the Marine Corps Personnel Manual relating to the separation of Navy and Marine Corps personnel. The provisions of this subsection do not affect the reporting requirements set forth in SECNAVINST 5820.4 series (NOTAL).

§ 720.12 Personnel released by civil authorities on bail or on their own recognizance.

A person in the Navy or Marine Corps arrested by Federal, State, or Territorial authorities and released on bail or on his own recognizance has a duty to return to his parent organization. Accordingly, where a person in the Navy or Marine Corps is arrested by Federal, State, or Territorial authorities and returns to his ship or station on bail, or on his own recognizance, the commanding officer upon verification of the attending facts, date of trial, and approximate length of time that should be covered by the leave of absence should normally grant liberty or leave to permit appearance for trial. Nothing in this section is to be construed as permitting the person arrested and released to avoid the obligations of his bond or of his recognizance by reason of his being in the military service.

§ 720.13 Interviewing of naval personnel by Federal civilian investigative agencies.

Requests by the Federal Bureau of Investigation or other Federal civilian investigative agencies to interrogate persons in the naval service suspected or accused of crimes should be promptly honored. Any refusal of such a request shall be immediately reported to the Judge Advocate General.

§ 720.14 Habeas corpus.

(a) *General.* In all cases where habeas corpus process is served on a person in the Navy or Marine Corps, the nearest U.S. attorney will be informed immediately and his assistance requested. A report of such service will be made to the Secretary of the Navy (Judge Advocate General) by message (telephone if circumstances warrant) confirming the initial report by a speed letter to the Secretary of the Navy (Judge Advocate General). This letter should include the information outlined in paragraph (b) of this section. Action must be taken expeditiously in habeas corpus proceedings as the courts generally allow but a short period of time in which to prepare a response.

(b) *Reports required.* (1) Immediately following the dispatch or telephonic report to the Secretary of the Navy (Judge Advocate General) a copy of the petition for the writ of habeas corpus, and all other pleadings, orders, and process in the case, will be forwarded to the Secretary of the Navy (Judge Advocate General) by speed letter. The letter should also include a full statement as to the circumstances under which the petitioner has been detained.

(2) When the hearing has been completed and the court has issued its order in the case, a copy of the order shall be forwarded promptly to the Secretary of the Navy (Judge Advocate General). This is particularly important if the order was adverse to the Navy in order to permit a timely determination as to whether or not to undertake further proceedings.

Subpart B—Service of Process and Subpoenas Upon Personnel of the Naval Establishment

§ 720.20 Service of process upon personnel.

(a) *Within the jurisdiction.* Commanding officers afloat and ashore are authorized to permit service of process of Federal, State, Territorial, or local courts upon naval personnel or civilians located within their commands and within the jurisdiction of the court out of which the process issues. However, such service should not be allowed within the confines of the command until the permission of the commanding officer has first been obtained. Personnel serving aboard vessels located within the territorial waters of the State or Territory out of which the process issues are considered within the jurisdiction of that State or Territory for the purpose of service of process. The commanding officer shall permit the service of process

except in unusual cases where he concludes that compliance with the mandate of the process would seriously prejudice the public interest. Where practicable, the commanding officer shall require that the process be served in his presence, or in the presence of an officer designated by him. Where service of process by mail is sufficient, the process may be mailed to the person named therein. In all cases commanding officers will ensure that the nature of the process is explained to the person concerned.

(b) *Personnel beyond the jurisdiction of the court.* (1) Where a person in the naval service, or a civilian, is beyond the jurisdiction of the court issuing the process, the commanding officer will permit service or delivery of the process under the same conditions as noted in a above for whatever legal effect it may have. At the same time the commanding officer or his designee will advise the person being served that he is not required to indicate acceptance of service, in writing or otherwise, although he may do so voluntarily. In most cases he should further advise the person concerned to consult legal counsel.

(2) Where process is forwarded to a commanding officer with the request that it be delivered to a person within his command, he may deliver it to the person named therein, provided such person voluntarily agrees to accept it. In such cases the commanding officer will ensure that the serviceman or civilian concerned is informed that he is not required to accept service of the process but may do so voluntarily. The commanding officer is not required to act as a process server. When the person named in the process does not voluntarily accept the process, it should be returned with a notation that the person named therein refused to accept it.

(c) *Service of process of foreign courts.* (1) Usually, the question of the amenability of military personnel, civilian employees, and dependents of both stationed in a foreign country, to the service of process from courts of the host country will have been settled by an agreement between the United States and the foreign country concerned. (For example, in the countries of the signatory parties, amenability to service of civil process is governed by paragraphs 5(g) and 9 of Article VIII of the NATO Status of Forces Agreement, TIAS 2846.) Where service of process on a person in the Department of the Navy is attempted within the command in a country with which the United States has no agreement on this subject, advice should be sought from the Judge Advocate General.

(2) Usually, persons in the Department of the Navy are not required to accept service of process outside the geographic limits of the jurisdiction of the court from which the process issued. In such cases acceptance of the service is not compulsory, but service may be voluntarily accepted in accordance with this paragraph. In exceptional cases where the United States has agreed that service of process will be accepted by persons in the Department of the Navy located outside the geographic limits of the jurisdiction of the court from which the process issued, the provisions of the agreement and of paragraph (a) of this section will govern.

(3) Under the laws of some countries (such as Sweden), service of process is effected by the document, in original or certified copy, being handed to the person for whom the service is intended. Service is considered to have taken place even if the person refuses to accept the legal document. If a commanding officer or other officer in the military service calls the serviceman to his office and personally hands him or attempts to hand him the document, service is considered to have been effected, permitting the court to proceed to judgment. Upon receipt of foreign process with a request that it be served upon a member of his command, a commanding officer shall notify the serviceman of the fact that a particular foreign court is attempting to serve process upon him and inform him that he may ignore the process or come to the office and receive it. If the serviceman chooses to ignore the service, the commanding officer will return the document to the embassy or consulate of the foreign country with the notation that the serviceman had been notified that the document was in the office of the commanding officer, but that he chose to ignore it, and that no physical offer of service had been made. The commanding officer will keep the Judge Advocate General advised of all requests for service of process from a foreign court and the details thereof.

(d) *Leave or liberty to be granted persons served with process.* In those cases where personnel are served with process, as noted in paragraph (a) of this section, or accept service of process, as noted in paragraph (b) of this section, the commanding officer normally should grant leave or liberty to the person served in order to permit him to comply with the process; provided, such absence will not prejudice the best interests of the naval service.

(e) *Report where service is not allowed.* Where service of process is not permitted, a report of such refusal and the reasons therefor shall be forwarded by speed letter (telephone if conditions warrant) to the Secretary of the Navy (Judge Advocate General).

§ 720.21 Personnel subpoenaed as witnesses in State or local courts.

Where military personnel or civilian employees are subpoenaed to appear as witnesses in State or local courts, and are served in the manner described under conditions set forth in § 720.20, the provisions of § 720.20(d) apply. If naval personnel are requested to appear as witnesses in State or local courts where the interests of the Federal Government are involved (e.g., Medical Care Recovery Act cases) the procedures described in § 720.22(a) may be followed.

§ 720.22 Personnel subpoenaed as witnesses in Federal courts.

(a) *Witnesses on behalf of Federal Government.* Where naval personnel are required to appear as witnesses in a Federal Court to testify on behalf of the Federal Government in a case involving activities of the Department of the Navy, the Bureau of Naval Personnel, or the commandant of the Marine Corps, as the case may be, will direct the activity to which the person is attached to issue Temporary Additional Duty Travel Orders to the person concerned. The charges for such orders shall be borne by the activity to which the required witness is attached. Payment to witnesses will be as provided by the Joint Travel Regulations and U.S. Navy Travel Instructions. If the required witness is to appear in a case where the activities of the Department of the Navy are not involved, the Department of the Navy will be reimbursed in accordance with the procedures outlined in the Navy Comptroller Manual, section 046278.

(b) *Witnesses on behalf of nongovernmental parties*—(1) *Criminal actions.* Where naval personnel are served with a subpoena to appear as a witness for the defendant in a criminal action and the fees and mileage required by Rule 17(d) of the Federal Rules of Criminal Procedures are tendered, the commanding officer is authorized to issue the person subpoenaed permissive orders authorizing attendance at the trial at no expense to the Government, unless the public interest would be seriously prejudiced by his absence. In this case a full report of the circumstances will be made to the Judge Advocate General. In those cases where fees and mileage are not tendered as required by Rule 17(d) of the Federal Rules of Criminal Procedure, but the person subpoenaed still desires to attend, the commanding officer is authorized to issue permissive orders at no cost to the Government. However, such persons should be advised that an agreement as to reimbursement for any expenses incident to travel, lodging, and subsistence should be effected with the party desiring their attendance and that no reimbursement should be expected from the Government.

(2) *Civil actions.* Where naval personnel are served with a subpoena to appear as a witness on the behalf of a non-Governmental party in a civil action brought in a Federal court, the provisions of § 720.20 apply.

§ 720.23 Naval prisoners as witnesses or parties in civil courts.

(a) *Criminal actions.* In those instances where the Federal, State, or Territorial authorities desire the attendance of a naval prisoner as a witness in a criminal case, a request for such person's attendance should be submitted to the Secretary of the Navy (Judge Advocate General). Upon receipt of such a request, authority will be given, in a proper case, for the production of the requested naval prisoner in court without resort being had to a writ of habeas corpus ad testificandum (a writ which requires the production of a prisoner to testify before a court of competent jurisdiction).

(b) *Civil actions.* The Department of the Navy will not authorize the attendance of a naval prisoner in a Federal, State, or Territorial court, either as a party or as a witness, in private litigation pending before such court, because in these the court may grant a postponement or a continuance of the trial. The

deposition of a naval prisoner may be taken in such a case subject to such reasonable conditions or limitations as may be imposed by the command concerned.

§ 720.24 Interviewing personnel preliminary to litigation in matters pertaining to official duties.

(a) *Request by parties in interest.* Except as hereinafter limited, requests, preliminary to litigation, for permission to interview persons in the Department of the Navy (enlisted, commissioned, or civilian) in matters growing out of their official duties, and the obtaining of their statements shall be forwarded to the Judge Advocate General. The Judge Advocate General, when practicable, will make appropriate arrangements in order that all of the desired personnel may be interviewed at the same time. The interview will be by all of the counsel for the various parties in interest or by such counsel as desire to be present. Interviews of such personnel shall be conducted in the presence of an officer designated by the Judge Advocate General. If any of the parties in interest desire statements from the interviewed personnel, such statements shall be prepared under the direction of the designated officer. A signed copy of the statement shall be furnished to each party in interest, to the person making the statement, and to the Judge Advocate General. The officer assigned for the purpose of the interview shall distribute the copies of the statement as prescribed. If the interview involves any line of inquiry which would disclose or compromise classified material or otherwise result in detriment to the interests of the United States, the assigned officer shall immediately preclude that line of inquiry.

(b) *Limitations.* Requests mentioned in paragraph (a) of this section shall not be granted where the United States is a party in any related litigation or where its interests are involved, including cases where the interests of the United States or any department thereof are represented by private counsel by reason of insurance or subrogation arrangements. In these instances, records, data, and witnesses shall be made available only to the Department of Justice or to such other U.S. Government departments, agencies, or personnel requiring access thereto in the performance of their official duties.

(c) *Admiralty matters.* Inquiries which relate to admiralty matters or to maritime litigation, whether involving naval vessels or not, shall be sent to the Office of the Judge Advocate General (Deputy Assistant Judge Advocate General (Admiralty)). Examples of admiralty matters are set forth in § 752.1(c) of this chapter.

§ 720.25 Suits against the United States.

(a) *General.* The primary responsibility for representing the United States in any litigation in which the United States has an interest rests in the Attorney General. For the purpose of affording the Attorney General timely notice of legal actions arising out of operations of the Naval Establishment, the Judge Advocate General and the General Counsel, within the areas of their respective jurisdictions, maintain close liaison with the Department of Justice. Reports are required of all suits against the United States, or its prime contractors or subcontractors on contracts under which the Government may be obligated to make reimbursement or in cases where the United States is, in legal effect, the defendant.

(b) *Reports to the Judge Advocate General.* When any command is apprised, by service of process or otherwise, of the commencement of any civil litigation or legal proceedings, including those involving nonappropriated-fund activities, other than suits within the jurisdiction of the General Counsel as set forth in paragraph (c) of this section, which arise out of the operations of the Naval Establishment or are otherwise of substantial interest to it, such command will report to the Judge Advocate General, Navy Department, Washington, D.C., by the most expeditious means, using message, telephone, or letter, as may be warranted by the circumstances. This category of civil litigation and other legal proceedings includes, but is not limited to, any legal proceeding involving the United States as a party and arising out of operations of the Department of the Navy; proceedings against any person subject to military law or any official or employee of the Department of the Navy in connection with his public duties; and proceedings in which attachment of Government funds or other property is sought. The report shall contain as much of the following information as may be pertinent:

(1) Name of parties to the proceeding.

(2) Nature of the action.

(3) Correct designation of the tribunal in which the proceeding is brought.

(4) Docket number of case, if available.

(5) Names of person or persons on whom service was made, method of service and dates.

(6) Explanation of Government's interest in the proceeding.

(7) Date by which the defendant must plead or otherwise respond.

(8) Nature of the principal defense, if known.

(9) Status of the defendant as being a Government officer, employee, agent, contractor, nonappropriated-fund activity employee, etc.

(10) Amount claimed, or other relief sought.

(11) If a contractor is involved, the contract number, and information as to whether the contractor desires or is willing to permit the suit to be defended by a U.S. attorney.

(12) Data as to whether the subject matter of the suit is covered by insurance; if so, whether covered to the amount claimed, and whether the insurance carrier will accept full responsibility for defense of the suit.

(13) If action is brought in a foreign country, a recommendation as to qualified local attorneys, English-speaking if possible, available for retention to defend the interest of the United States. Normally, the names of such attorneys should be from a list maintained by the U.S. Embassy or Consulate.

(14) Such other available information as may be necessary for a full understanding of the action and to enable the Government to prepare a defense.

(c) *Reports to the General Counsel.* A report as required above shall be made to the General Counsel, Navy Department, Washington, D.C., rather than to the Judge Advocate General, in all cases in the field of business and commercial law, including cases relating to:

(1) The acquisition, custody, management, transportation, taxation, disposition of real and personal property, and the procurement of services, including the fiscal, budgetary, and accounting aspects thereof; excepting, however, tort claims and admiralty claims arising independently of contract, matters concerning nonappropriated-fund activities, and matters related to the Naval Petroleum Reserves;

(2) Operations of the Military Sea Transportation Service, excepting tort and admiralty claims arising independently of contract;

(3) The Office of the Comptroller of the Navy;

(4) Procurement matters in the field of patents, inventions, trademarks, copyrights, royalty payments, and similar matters, including those in the Armed Services Procurement Regulations and Navy Procurement Directives and deviations therefrom; and

(5) Industrial security.

(d) *Initial and supplemental reports.* If all pertinent information is not readily available, a prompt report should be made with such information as is available, supplemented by an additional report as soon as possible.

Subpart C—Production of Official Records

§ 720.30 Production of official records in response to court order.

(a) *General.* Where unclassified naval records are desired by or on behalf of litigants, the parties will be informed that the records desired, or certified copies thereof, may be obtained by forwarding to the Secretary of the Navy, Navy Department, Washington, D.C., or other custodian of the records, a court order calling for the particular records desired or copies thereof. Compliance with such court order will be effected by transmitting certified copies of the records to the clerk of the court out of which the process issues. If an original record is produced by a naval custodian, it will not be removed from the custody of the person producing it, but copies may be placed in evidence. Upon written request of all parties in interest or their respective attorneys, records which would be produced in response to a court order as set forth above may be furnished without court order except as noted in paragraphs (b) and (c) of this section.

(b) *Records in the custody of National Personnel Records Center.* Court orders, subpoenas duces tecum, and other legal documents demanding information from, or the production of, service or medical records in the custody of the

National Personnel Records Center involving former (deceased or discharged) Navy and Marine Corps personnel shall be served upon the General Services Administration, 9700 Page Boulevard, St. Louis, Mo. 63132, rather than the Department of the Navy. In the following situations, the request shall be forwarded to the Secretary of the Navy (Judge Advocate General).

(1) When the United States (Department of the Navy) is one of the litigants.

(2) When the case involves a person or persons who are or have been senior officers within the Department of the Navy; and

(3) In other cases considered to be of special significance to the Judge Advocate General or the Secretary of the Navy.

(c) *Exceptions.* Where not in conflict with the foregoing restrictions relative to confidential matter, the production in Federal, State, Territorial, or local courts of evidentiary material from investigations conducted pursuant to this Manual, and the service, employment, pay or medical records (including medical records of dependents) of persons in the naval service is authorized upon receipt of a court order, without procuring specific authority from the Secretary of the Navy. Where travel is involved, it must be without expense to the Government.

(d) *Medical and other records of civilian employees.* Production of medical certificates or other medical reports concerning civilian employees is controlled by the provisions of Executive Order 10561, 19 F.R. 5963, as implemented by Federal Personnel Manual, section 339.14 (reprinted in MAN-MED article 23-255(6)). Records of civilian employees other than medical records may be produced upon receipt of a court order without procuring specific authority from the Secretary of the Navy, provided there is not involved any classified or otherwise confidential material such as loyalty or security records. Records relating to compensation benefits administered by the Bureau of Employees' Compensation may not be disclosed except upon the written approval of that Bureau (20 CFR 1.21). In case of doubt, the matter should be handled in accordance with the provisions of subsection a above. Where information is furnished hereunder in response to a court order, it is advisable that certified copies rather than originals be furnished and that where original records are to be produced, the assistance of the U.S. attorney or U.S. Marshal be requested so that custody of the records may be maintained.

§ 720.31 Production of official records in the absence of court order.

(a) *Furnishing information from personnel and related records to personnel concerned.* Whether or not litigation is involved, naval personnel, civilian employees of the Naval Establishment, their personal representatives (e.g., executors, guardians, etc.), or other properly interested parties may be furnished copies of records or information therefrom relating to death, personal injury, loss, or property damage to or involving such personnel without following the procedures prescribed in either § 720.24 or § 720.30 provided the interests of the United States are not prejudiced thereby. All such requests (except requests for medical records, for such traffic accident reports as are described in subparagraph (2) of this paragraph, and for records relating to matters under the cognizance of the General Counsel) shall be referred to the appropriate District Judge Advocate, or to the area coordinator, or to the Judge Advocate General. In no event shall findings of fact, opinions, and recommendations, or endorsements thereon, be released outside the Department of the Navy without approval of the Secretary of the Navy or the Judge Advocate General.

(1) *Medical records.* Requests for medical records, shall be processed in accordance with the Department of Defense policy set forth in 32 CFR 66.1–66.2, as implemented by the Manual of the Medical Department. If, in processing a request for medical records, it appears that the interests of the United States may be involved, then such requests shall be referred to the Judge Advocate General for a determination. Production of medical certificates or other medical reports concerning civilian employees is controlled by the provisions of the Executive order and the Federal Personnel Manual referred to in § 720.30(d). See § 757.6 of this chapter concerning release of medical records in Medical Care Recovery Act cases

(2) *Provost marshal or base police reports of traffic accidents.* Local commanders are authorized to release copies of traffic accident investigative reports where service personnel are not involved and where no Government vehicle is involved, provided the interests of the United States will not be prejudiced thereby. Release may be made to any properly interested party or to his authorized representative. If it appears that the interests of the United States may be involved, the request shall be referred to the appropriate district judge advocate, or the area coordinator, or the Judge Advocate General. (Charges will be made in accordance with the schedule of fees published in the Navy Comptroller Manual, paragraph 035887 (minimum fee $3). Fees collected will be credited as set forth in the Navy Comptroller Manual, paragraph 043145.)

(b) *OGC matters.* The General Counsel, Deputy General Counsel, and Assistant to the General Counsel for litigation matters have been designated to act for the Secretary of the Navy in releasing or producing, and authorizing the release or production of official records or copies thereof in matters within the assigned responsibilities of the Office of the General Counsel. Such responsibilities are outlined in § 720.25(c).

(c) *Security matters.* For information on the production of records involving classified matter, whether or not litigation is involved, see OPNAVINST 5510.1 series, Department of the Navy Security Manual for Classified Information, article 0922.3.

(d) *Confidential nature of military personnel records.* Officer and enlisted personnel records are deemed confidential. Such records may be released only to persons properly and directly concerned, including the serviceman himself, and personal representatives of the serviceman (e.g., executors, guardians, etc.) who present proper proof thereof, or in accordance with § 720.30 (a) and (b).

(e) *How to address requests for military medical and other personnel records.* The serviceman or personal representatives may obtain access to the health and medical records of both Navy and Marine Corps personnel by applying to the Chief of the Bureau of Medicine and Surgery, Navy Department, Washington, D.C. 20360. Applications for Navy and Marine Corps personnel records should be addressed to the Chief of Naval Personnel, Navy Department, Washington, D.C. 20370, or to the Commandant of the Marine Corps, Washington, D.C. 20380. Applications may be made in person or in writing.

§ 720.32 Certificates of full faith and credit.

The Judge Advocate General, the Deputy Judge Advocate General, or any Assistant Judge Advocate General is authorized to execute certificates of full faith and credit certifying the signatures and authority of officers of the Department of the Navy.

§ 720.33 Form for waiver of extradition.

I, _____, U.S. Navy (U.S. Marine Corps), having been advised of my rights to formal extradition as provided for in section 720.2 of these regulations by

_____
(Name of military or civilian attorney)

of _____, waive such
(Address of attorney)

rights and agree to accompany _____, a representative of the State of _____, into the territorial limits of said State. I have been advised that the crime which I am charged to have committed in the State of _____ is as follows:

_____
(Signature)

Witnessed:

_____
(Signature of witness)

§ 720.34 Form for delivery agreement.

In consideration of the delivery of _____, U.S. Navy (U.S. Marine Corps), to _____
(Name of person delivered)

at _____, for trial upon the charge of _____, I hereby agree pursuant to the authority vested in me as _____ that _____,
(Name of person delivered)

U.S. Navy (U.S. Marine Corps), will be transported to the State of _____ without expense to him or the United States and that the Commanding Officer of the _____ will be notified immediately of the outcome of the trial and that the said _____, will be returned
(Name of person delivered)

to the _____, or to such place as the Secretary of the Navy shall designate, or transportation issued thereto, without expense to the United States or to the person delivered immediately upon dismissal of the charges or completion of the trial in the event he is acquitted, or immediately upon satisfying the sentence of the court in the event he is convicted and a sentence imposed, or upon other disposition of the case, provided that the

Department of the Navy shall then desire his return.

Effective date. This part shall become effective on October 1, 1970.

PART 726—PAYMENT OF AMOUNTS DUE MENTALLY INCOMPETENT MEMBERS OF THE NAVAL SERVICE

Part 726 is revised to read as follows:

Sec.
726.1 Purpose.
726.2 Scope.
726.3 Authority to designate trustees to receive Federal moneys.
726.4 Procedure for medical examinations.
726.5 Approval of medical board report and suspension of pay account.
726.6 Comfort items while in hospital.
726.7 Procedure for designation of a trustee.
726.8 Reports and supervision of trustees.
726.9 Requirement that a trustee shall file a final accounting report.
726.10 Authority of the Judge Advocate General to issue implementing instructions.
726.11 Chapter 11, 37 United States Code.

AUTHORITY: The provisions of this Part 726 issued under sec. 5031, 70A Stat. 278, as amended, secs. 601–604, 1001, 76 Stat. 483, 489, sec. 301, 80 Stat. 379; 5 U.S.C. 301, 10 U.S.C. 5031, 37 U.S.C. 601–604, 1001.

SOURCE: This part is Chapter XV of the Manual of the Judge Advocate General of the Navy.

§ 726.1 Purpose.

This part prescribes the regulations necessary to carry out 37 U.S.C. Chapter 11, "Payments to Mentally Incompetent Persons".

§ 726.2 Scope.

37 U.S.C. Chapter 11 grants authority for the designation of a trustee (without appointment in judicial proceedings of a committee, guardian, or other legal representative by a court of competent jurisdiction) to receive the active-duty pay and allowances, amounts due for accrued or accumulated leave, or retired or retainer pay, otherwise payable to:

(a) Members of the Navy or Marine Corps who are on active duty (other than for training) or who are on a retired list, and

(b) Members of the Fleet Reserve or Fleet Marine Corps Reserve who are found by competent medical authority to be mentally incapable of managing their affairs. In this part they shall be referred to as "member" or "members."

§ 726.3 Authority to designate trustees to receive Federal moneys.

(a) The Judge Advocate General; the Deputy Judge Advocate General; any Assistant Judge Advocate General of the Navy; and the Officer in Charge, Navy Appellate Review Activity, Office of the Judge Advocate General, have been delegated authority by the Secretary of the Navy to designate the person or persons who may receive active duty pay and allowances, amounts due for accrued or accumulated leave, or retired or retainer pay, otherwise payable to a member of the naval service who, in the opinion of competent medical authority, is mentally incapable of managing his affairs, and for whom no committee, guardian, or other legal representative has been appointed by a court of competent jurisdiction.

(b) The Judge Advocate General has granted to the Officer in Charge, Navy Appellate Review Activity, Office of the Judge Advocate General (hereafter referred to in this chapter as the OinC) authority to fully administer the Fiduciary Affairs Division of the Office. This Division provides for the designation, supervision, and discharge of trustees for members of the naval service found to be incapable of managing their affairs. All questions and other matters pertaining to trustees for incompetent members should be forwarded to the OinC, or the Director, Fiduciary Affairs Division.

§ 726.4 Procedure for medical examinations.

(a) *Convening of medical board upon notification by OinC.* When a request for trustee desgnation has been received by the OinC, he shall examine the sufficiency of the request or recommendation for the designation of a trustee. If it is sufficent he shall request:

(1) The commanding officer of the naval hospital to which the alleged mental incompetent may most conveniently be referred for examination; or

(2) In case of members receiving medical treatment by a hospital or other activity of the Department of the Army, the Department of the Air Force, the Department of Health, Education, and Welfare, or the Veterans' Administration, the Commanding officer or head of the hospital or activity or the appropriate commandant of the naval district; or

(3) In cases of members receiving medical treatment by a non-Federal hospital or other institution, the appropriate commandant of the naval district to convene a board of medical officers or physicians as required by 37 U.S.C. 602 to examine the member in order to determine whether he is capable of handling his affairs.

(b) *Members in naval hospitals or ordered before medical boards*—(1) *Members in naval hospitals presenting mental disorders and who are not immediately due for disposition under 10 U.S.C. 1201–1221.* Whenever it appears to the commanding officer of a naval hospital that a member undergoing treatment therein may be mentally incapable of managing his affairs, he shall, unless the member is to be immediately presented to a medical board preliminary to his appearance before a physical evaluation board, convene a medical board of not less than three medical officers or physicians under the jurisdiction of the Secretary of the Navy, one of whom shall be specially qualified in the treatment of mental disorders, to inquire into the mental competency of such member. The board shall be appropriately conducted in accordance with 37 U.S.C. 602 and shall render a definite opinion as to whether or not the member is capable of managing his own affairs.

(2) *Members presenting mental disorders and who are ordered before medical boards preliminary to their appearance before a physical evaluation board.* Whenever the case of any member presenting, or alleged to present, a mental disorder is referred to a medical board preliminary to appearance before a physical evaluation board, the convening authority shall ensure that the board is constituted as set forth in 37 U.S.C. 602. In the event that a medical board not so constituted should determine that any member whose case is being considered presents a significant mental disorder, it shall suspend its proceedings and advise the convening authority in order that a properly constituted medical board may be convened. The board, convened in accordance with 37 U.S.C. 602, shall render a definite opinion as to whether or not the member is capable of managing his own affairs.

(3) *Members on the temporary disability retired list.* Whenever a member on the temporary disability retired list presents, or is alleged to present, or has previously presented at the time of his last examination, a mental disorder, he shall be referred to a command for a periodic physical examination by orders of the Chief of Naval Personnel or the Commandant of the Marine Corps pursuant to paragraph 0901 of the Disability Separation Manual. The receiving command shall convene a board as required by 37 U.S.C. 602. The board shall render a definite opinion as to whether or not the member is capable (or continues to be incapable) of managing his own affairs.

(c) *Action by the convening authority.* (1) Upon receipt of information that a member of the naval service is alleged to be mentally incapable of handling his affairs, a board of not less than three medical officers or physicians, (one of whom shall be specially trained in the treatment of mental disorders), shall be convened to determine if the alleged mental incompetent is capable of managing his own affairs. Such a board shall also be convened when requested to do so by proper authority or upon receipt of information that a member of another uniformed service in a naval hospital is alleged to be mentally incapable of handling his affairs. In accordance with 37 U.S.C. 602, the board shall consist of at least three qualified medical officers or physicians appointed from medical officers or physicians available to, and under the jurisdiction of, the convening authority. Membership may include members of the Reserve components on active or inactive duty. At least one of the members of the board, preferably a psychiatrist, shall personally observe the alleged mental incompetent and shall satisfy himself that the medical record correctly reflects the individual's state of mental health.

(2) The convening authority shall ensure that the board attaches to its record a certification, signed by three members of the board. This certification shall state that the member is mentally capable or incapable of managing his affairs.

(3) The convening authority shall forward one copy of the record and competency certification as follows:

(i) *Naval service.* To the OinC, Navy Appellate Review Activity, Office of the

Judge Advocate General, Washington Navy Yard, Washington, D.C. 20390;

(ii) *Army.* To the Commanding General, Finance Center, U.S. Army, Indianapolis, Ind. 46249 (Attention: Settlements Operations in the case of active-duty personnel, or Retired Pay Division in the case of retired personnel);

(iii) *Air Force.* To the Director of Military Personnel, Headquarters USAF, Washington, D.C. 20030 (Attention: AEPMP);

(iv) *Coast Guard.* To the Commandant, U.S. Coast Guard (Code PS), 1300 E Street NW., Washington, D.C. 20226;

(v) *Coast and Geodetic Survey.* To the Director, Coast and Geodetic Survey, Washington Science Center, 11800 Old Georgetown Road, Bethesda, Md. 20852;

(vi) *Public Health Service (ESSA).* To the Chief, Office of Personnel, Public Health Service, Department of Health, Education, and Welfare, Washington, D.C. 20201.

This report is to be used as the medical basis for a trustee designation, or for the termination of a trusteeship previously established on a finding of incompetency.

(4) In the case of a finding of incompetency, the convening authority, in his forwarding endorsement, shall set forth the name, relationship, and address of the member's next of kin, and such other pertinent data as may be available to assist in the designation of a trustee to receive amounts which are, or may become, payable to the member. This additional information need not be furnished where a trustee or other legal representative has been designated or has been appointed as the result of a prior determination of mental incompetency and the designation is still in effect.

§ 726.5 Approval of medical board report and suspension of pay account.

(a) In the naval service, a certification of competency or incompetency becomes effective, for purposes of the establishment or termination of a trusteeship, upon approval by the OinC. In the case of a trustee designation by the OinC, after receipt of the medical-board report, separate approval of the report and certification is not required. It is considered to have been expressed through the act of trustee designation. Otherwise, the approval action of the OinC shall be by endorsement on the report. The disbursing officer shall be notified of the trustee designation or other approval action in accordance with § 726.7. If trustee designation is for any reason delayed beyond the date of the approval of the report, the OinC shall notify the disbursing officer holding the member's active duty pay account or retired-pay account of the approval of the medical board report and of the effective date to suspend the pay account of the member pending (1) designation of a trustee by the OinC, (2) appointment of a committee, guardian, or other legal representative by a court of competent jurisdiction, or (3) notification by the OinC that a board of medical officers has thereafter found the member capable of managing his own affiairs.

(b) The member shall, as usual, be paid funds due him (subject to any allotments, tax withholdings, etc.) until the disbursing officer is notified of (1) the designation of a trustee, (2) the appointment of a legal representative, or (3) the approval of the medical board report plus effective date of suspension of the member's pay account.

§ 726.6 Comfort items while in hospital.

The commanding officer of any service hospital may designate an officer under his command to receive and receipt for a sum of money not to exceed $15 per month from the accrued pay of a member who is a patient at the hospital, and who has been found to be mentally incompetent in a report of medical officers. This money may be used only for the purchase of comfort items for the use and benefit of such member when all of the following conditions exist:

(a) A trustee has not yet been designated and a committee, guardian, or other legal representative has not been appointed by a court of competent jurisdiction;

(b) The member has no other funds available for use in his own behalf; and

(c) Competent medical authority agrees that the items to be purchased will serve the comfort of the member.

This section shall be indicated on the voucher as the authority for payment and receipt of such monthly comfort money.

§ 726.7 Procedure for designation of a trustee.

(a) *Requests.* (1) Requests for the designation of a person or persons to receive moneys due Navy or Marine Corps personnel believed to be mentally incapable of managing their affairs should be submitted to the OinC by any person or persons who believe, because of their relationship, that they should receive payments on behalf of the alleged incompetent; by the commanding officer of the alleged incompetent if the latter is on active duty; by the commanding officer of any Armed Forces or Public Health Service hospital in which the alleged incompetent is undergoing treatment; by the head of any Veterans' Administration hospital or other public or private institution in which the alleged incompetent is undergoing treatment; or by any other person or organization acting for, and in the best interests of, the alleged mental incompetent.

(2) If a trustee has not been designated pursuant to subparagraph (1) of this paragraph, the member's commanding officer or the commanding officer of a naval hospital, the Governor, U.S. Naval Home, or the director of a Veterans' Administration hospital, in order to provide for the patient's anticipated needs, may request the OinC to provide the commanding officer or director with funds, not to exceed $250 due in the accounts of the incompetent person, until a trustee is appointed. See paragraph (g) of this section for possible release of additional funds by supplemental instruction.

(b) *Interview of prospective trustee.* Upon receipt of a request for the designation of a trustee, and after a medical report has been received showing that the member is incapable of handling his affairs, the OinC may request the Commandant of the Naval District in which the prospective trustee resides to designate an officer to interview the prospective trustee and to make a recommendation as to whether the prospective trustee is suitable to be designated as trustee to receive the Navy or Marine Corps pay of the incompetent. The Commandant shall forward the report of such interview, together with his recommendations, to the OinC.

(c) *Surety bond.* The trustee designated to receive moneys in behalf of the incompetent shall furnish a suitable bond in all cases when the amounts to be received may be expected to exceed $1,000 and in other cases when deemed appropriate by the OinC. The bond so required and furnished shall have as a surety a company approved by the Federal Government and shall be in such amount as required by the OinC. Expenses in connection with furnishing of such bond may be paid after the designation of a trustee out of sums due the incompetent. The officer designated to interview the prospective trustee may advise and assist the prospective trustee regarding the securing of the required bond.

(d) *Affidavit requirement.* The interviewing officer will have the prospective trustee execute an affidavit for filing with the OinC, deposing that any moneys henceforth received by virtue of the designation as trustee shall be applied solely to the use and benefit of the incompetent and his legal dependents, if any, and that no fee, commission, or charge shall be demanded, or in any manner accepted, for any service or services rendered in connection with such designation as trustee.

(e) *Designation of trustee by the OinC.* After receipt of a medical report which states that an individual is incompetent, and the required affidavit and bond have been furnished, the OinC may designate a suitable person, not under legal disability, to act as trustee to receive and expend, under instructions of the OinC, all amounts due from the Navy or Marine Corps, whether active duty pay and allowances, amounts due for accrued or accumulated leave, or retired or retainer pay.

(1) While a next of kin or other relative of the member is ordinarily considered preferable for designation as trustee, any other person, willing and suitable to act as such may be designated as trustee, permanently or temporarily, unless or until a committee, guardian, or other legal representative has been appointed by a court of competent jurisdiction.

(2) In lieu of the designation of an interviewing officer by the District Commandant (as set forth in paragraph (b) of this section) the OinC may, when considered feasible by him, request the commanding officer of a naval hospital or the member's commanding officer to interview the prospective trustee, or to have him interviewed, and to have the prospective trustee execute the affidavit described in paragraph (d) of this section. In order to expedite the proceedings

in the interest of the member, if the commanding officer cannot locate any relative willing and suitable to act as trustee and so states in his forwarding endorsement, he may make recommendations for the designation as trustee, permanent or temporary, of any other person willing and suitable to act as such, interview him or have him interviewed; obtain his affidavit, and attach it to the forwarding endorsement. See § 726.4(c)(4).

(3) When delay is encountered in locating a relative or other person who is willing and suitable to act as trustee, or when otherwise considered in the best interest of the member, the commanding officer of a naval hospital or the member's commanding officer may, subject to local law, initiate action for appointment of a committee, guardian, or other legal representative for the member by a court of competent jurisdiction. In order to initiate such action, the commanding officer may suggest appropriate action to the local legal aid society, a cognizant official of the State or municipal public welfare department, or any other State or local official cognizant of the matter under State law, or the local U.S. attorney; or a legal officer of the command could take action as may be appropriate under the circumstances and in accordance with local law. No appropriated or nonappropriated naval funds may be expended in connection with proceedings thus initiated by a legal officer of the command, or by others in the civilian community as a consequence of the initiative of the commanding officer. Nor shall funds accrued to the account of the member be expended in connection with any such proceeding except as may be authorized by a court of competent jurisdiction.

(f) *Notification to the disbursing officer of the designation of a trustee.* Upon the designation of a trustee to receive moneys due an incompetent, the OinC, in the case of those incompetents on active duty, shall notify the commanding officer of the incompetent and such commanding officer shall notify the disbursing officer having custody of the incompetent's pay record. The OinC, in the case of retired personnel of the Navy and Naval Reserve, and personnel of the Fleet Reserve, shall notify the Commanding Officer, U.S. Navy Finance Center (Retired Pay Department), Cleveland, Ohio 44199, and the Chief of Naval Personnel of the designation. In cases of retired personnel of the Marine Corps Reserve, and personnel of the Fleet Marine Corps Reserve the OinC shall notify the Commanding Officer, Marine Corps Finance Center (Retired Pay Division), Kansas City, Mo. 64197 of the designation of a trustee. After such notification, payments of all moneys due to the incompetent shall be made by the appropriate officer to the designated trustee.

(g) *Notification to the disbursing officer of the designation of commanding officer or director as a temporary fiduciary.* Upon the designation of the commanding officer; the Governor, U.S. Naval Home, or the director of a Veteran's Administration hospital as a temporary fiduciary in accordance with paragraph (a)(2) of this section to receive sums not to exceed $250 due an incompetent, the OinC, in the case of an incompetent on active duty shall notify the commanding officer of the incompetent, and such commanding officer shall notify the disbursing officer having custody of the incompetent's pay record to pay to the temporary fiduciary a designated amount or amounts as they become due, not to exceed $250. However, further sums as they become due in the accounts of the member shall be held in a suspended status pending the formal designation or appointment of a trustee or guardian, or the OinC shall issue a supplemental instruction for the further release of funds. The OinC, in the case of retired personnel of the Navy and Naval Reserve and personnel of the Fleet Reserve, shall notify the Commanding Officer, U.S. Navy Finance Center (Retired Pay Department), Cleveland, Ohio 44199, of the designation. In cases of retired personnel of the Marine Corps, Marine Corps Reserve, and personnel of the Fleet Marine Corps Reserve, the OinC shall notify the Commanding Officer Marine Corps Finance Center, Retired Pay Division, Kansas City, Mo. 64197, of the designation. After such notification, amounts as they become due (other than the $250) shall be held in a suspended status pending the formal designation or appointment of a trustee or guardian, or a supplemental instruction by the OinC for release of further funds.

§ 726.8 Reports and supervision of trustees.

(a) *Annual accounting report.* The trustee designated under this part shall submit accounting reports annually or at such time as the OinC may desire. The reports shall show all funds received from the Navy or Marine Corps in behalf of the incompetent, all expenditures made in behalf of the incompetent, and a statement of the condition of the trustee account at the time of the submission of the report. When requested by the OinC, it shall be accompanied by receipts, canceled checks, or vouchers covering expenditures. If the trustee fails to report promptly at the end of any annual reporting period, or at such other time as the OinC desires, the OinC may, in his discretion, cause further payments to such trustee to cease and may, if deemed advisable, designate a successor trustee, not under legal disability, to receive the future payments of moneys due the incompetent. Upon request of the OinC, the trustee shall furnish for examination all bank statements of the trustee checking accounts, trustee savings account pass books or trustee savings account bank statements, or other records concerning the trustee account.

(b) *Termination of payments to trustee.* Payments due an incompetent member shall cease to be paid to the trustee upon receipt of notification by the disbursing officer; Commanding Officer, U.S. Navy Finance Center (Retired Pay Department); or Commanding Officer Marine Corps Finance Center (Retired Pay Division) of the occurrence of any of the following:

(1) Death of the incompetent;

(2) Death or disability of the trustee appointed;

(3) Receipt of notice that a committee, guardian, or other legal representative has been appointed for the incompetent by a court of competent jurisdiction;

(4) Receipt of notification from the OinC of the failure of a trustee to render any of the required reports;

(5) Receipt of notification by the OinC that there is probable cause to believe that there is improper use of moneys received on behalf of the incompetent;

(6) Receipt of notification from the OinC that a board of medical officers or other appropriate medical authorities have found the former incompetent mentally capable of managing his own affairs. (The OinC may, at his discretion, accept the findings of a Veterans' Administration hospital or of a Public Health Service hospital, or the findings of other public or private institutions, that a person formerly found incompetent is now competent.); or

(7) Receipt of notification that the OinC deems it to be in the best interest of the incompetent.

In the event of termination of payments under subparagraph (2), (4), (5), or (7) of this paragraph, the OinC may appoint a successor trustee under the provisions of this part.

(c) *Notification by the disbursing officer to the OinC of all payments made to trustee.* The disbursing officer carrying the active-duty pay account of an incompetent shall report to the OinC all payments made to a trustee and shall notify the OinC when the accounts of the incompetent have been transferred to another activity.

(d) *Notification to the OinC of change in status of the pay account of the incompetent.* The Commanding Officer, U.S. Navy Finance Center (Retired Pay Department), and the Commanding Officer Marine Corps Finance Center (Retired Pay Division) shall notify the OinC if the retired pay is waived, in whole or in part, in favor of Veterans' Administration compensation. In addition, the respective officers shall notify the OinC of any other change in the status of the retired-pay account of the incompetent, such as caused by death, or the appointment of a legal guardian, committee, or other legal representative by a court of competent jurisdiction. Said officer shall furnish the OinC with a report as to the amount of pay paid trustees annually, or as requested, or at the time of a change in the status of the trusteeship.

§ 726.9 Requirement that a trustee shall file a final accounting report.

When payments under this part are terminated, the trustee shall file a final accounting report with the OinC. When the final accounting report has been approved, the trustee shall be discharged by the OinC and the surety released on its bond. In the event of death or disability of a trustee, the final accounting report shall be filed by his legal representative.

§ 726.10 Authority of the Judge Advocate General to issue implementing instructions.

All powers given the OinC in this part are also vested in the Judge Advocate General. The Judge Advocate General may issue such further instructions, not in conflict with this part, as may be necessary to give full force and effect to this part.

§ 726.11 Chapter 11, 37 United States Code.

The provisions of 37 U.S.C. 601, et seq., are applicable. (See § 726.1.)

Effective date. This Part 726 is effective as of October 1, 1970.

[SEAL] D. D. CHAPMAN,
Rear Admiral, Judge Advocate General's Corps, U.S. Navy, Acting Judge Advocate General of the Navy.

AUGUST 12, 1970.

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SUBCHAPTER E—CLAIMS

PART 750—NAVY GENERAL CLAIMS

PART 751—NAVY PERSONNEL CLAIMS

PART 752—ADMIRALTY CLAIMS

PART 753—FOREIGN CLAIMS REGULATIONS

PART 755—CLAIMS FOR INJURIES TO PROPERTY UNDER ARTICLE 139 OF THE UNIFORM CODE OF MILITARY JUSTICE

PART 756—NONAPPROPRIATED-FUND CLAIMS REGULATIONS

PART 757—MEDICAL CARE RECOVERY CLAIMS

Parts 750, 751, 752, 753, 755, 756, and 757 of Subchapter E of Chapter VI of Title 32 of the Code of Federal Regulations are revised.

PART 750—NAVY GENERAL CLAIMS

Part 750 is revised to read as follows:

Subpart A—Federal Tort Claims

Subpart B—Military Claims

Subpart C—"Nonscope" Law Claims

Subpart D—General Provisions for Claims

Subpart E—Joint Regulations on Claims Collection

Subpart F—Forms Used in Part 750

AUTHORITY: The provisions of this Part 750 issued under sec. 301, 80 Stat. 379, secs. 2671–2680, 62 Stat. 982–984, sec. 5031, 70A Stat. 278, as amended; 5 U.S.C. 301, 28 U.S.C. 2671–2680, 10 U.S.C. 5031; and sec. 301, 80 Stat. 379, secs. 2733, 5031, 70A Stat. 153, 278, as amended, sec. 2736, 75 Stat. 488, sec. 2736, 76 Stat. 767; 5 U.S.C. 301, 10 U.S.C. 2733, 2736, 5031; and secs. 2733, 5031, 70A Stat. 153, 278, as amended, sec. 2736, 75 Stat. 488, 76 Stat. 593, sec. 2736, 76 Stat. 767; 5 U.S.C. 301, 10 U.S.C. 2733, 2736, 28 U.S.C. 2671–2680, 42 U.S.C. 2651–2653.

SOURCE: This part is Chapter XX of the Manual of the Judge Advocate General.

Subpart A—Federal Tort Claims

§ 750.1 Definition of employee.

The term "employee of the Government," as used in this chapter, includes members of the naval forces of the United States, officers or employees of the Navy, and persons acting on behalf of the Navy in an official capacity, temporarily or permanently in the service of the United States, with or without compensation. (This does not include a contractor with the United States.)

§ 750.2 Statutory authority.

(a) *Administrative claims.* Pursuant to the Federal Tort Claims Act, as amended (28 U.S.C. 2671–2680), and in accordance with regulations issued by the Attorney General (see § 750.16) the Secretary of the Navy or his designee, acting on behalf of the United States, is authorized to consider, ascertain, adjust, determine, compromise, and settle any claim for money damages against the United States for damage to or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. Any award, compromise, or settlement in excess of $25,000 may be effected only with the prior written approval of the Attorney General or his designee.

(b) *Jurisdiction of district courts.* Pursuant to, and subject to the limitations of, the Federal Tort Claims Act, as amended (28 U.S.C. 1346(b), 1402, 2403, 2411, 2412, 2674), the U.S. District Court for the district where the plaintiff resides or wherein the act or omission complained of occurred, including the U.S. District Court for the District of the Canal Zone and the District Court of the Virgin Islands, sitting without a jury, has exclusive jurisdiction of civil actions on claims against the United States for money damages for damage to or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant for such damage, loss, injury, or death in accordance with the law of the place where the act or omission occurred.

(c) *Setoff etc. encompassed.* The jurisdiction described in this section includes jurisdiction of any setoff, counterclaim, or other claim or demand on the United States against any plaintiff commencing an action under 28 U.S.C. 1345(c).

(d) *Exclusive character of remedies.* The remedies provided by 28 U.S.C. 1346(b) with respect to civil action against the United States are the exclusive remedies whereby action may be brought upon claims against the United States for money damages, for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant for such damage, loss, injury, or death in accordance with the law of the place where the act or omission occurred.

§ 750.3 Administrative action under Federal Tort Claims Act required.

Administrative consideration of all claims accruing after January 17, 1967,

is a prerequisite to suit. The failure of the Navy to make final disposition of a claim within 6 months after it is filed shall, at the option of the claimant any time thereafter, be deemed a final denial of the claim. The provisions of this section do not apply to such claims as may be asserted under the Federal Rules of Civil Procedure by third-party complaint, cross-claim, or counterclaim. (28 U.S.C. 2675)

§ 750.4 Who is authorized to settle Federal tort claims.

(a) A claim in any amount may be approved, disapproved, compromised, or settled by any of the following, each of whom is designated to administer 28 U.S.C. 2672 for the Navy;

(1) The Judge Advocate General;

(2) The Deputy Judge Advocate General; and

(3) Such other officers as may be designated by the Secretary of the Navy provided that any award, compromise, or settlement involving payment of more than $25,000 shall be effected only with the prior written approval of the Attorney General or his designee.

(b) A claim in an amount not exceeding $10,000 may be approved or disapproved, compromised or settled, and a claim in any amount may be compromised or settled in an amount not exceeding $10,000, by any of the following:

(1) Any Assistant Judge Advocate General;

(2) Deputy Assistant Judge Advocate General (Litigation and Claims); and

(3) Such other officers as may be designated by the Secretary of the Navy.

(c) A claim in an amount not exceeding $5,000 may be approved or disapproved, compromised or settled, and a claim in any amount may be compromised or settled in an amount not exceeding $5,000, by any of the following:

(1) The Director, Litigation and Claims Division;

(2) The Commandant or district judge advocate of the naval district within which the claim arose;

(3) Such other officers as may be designated by the Secretary of Navy; and

(4) The following area or subarea commanders or their staff judge advocates:

(i) Commander, U.S. Naval Base, Newport, R.I.;

(ii) Commander, Fleet Air, Jacksonville, Fla.;

(iii) Commander, U.S. Naval Base, Key West, Fla.;

(iv) Chief of Naval Air Basic Training, Pensacola, Fla.;

(v) Chief of Naval Air Technical Training, Memphis, Tenn.;

(vi) Chief of Naval Air Advanced Training, Corpus Christi, Tex.;

(vii) Commander, U.S. Naval Base, Long Beach, Calif.; and

(viii) Commander, U.S. Naval Forces, Marianas.

§ 750.5 Claim: when and to whom presented.

(a) Every claim against the United States submitted for consideration under the Federal Tort Claims Act must be presented in writing within 2 years after the claim accrued or be forever barred. 28 U.S.C. 2401.

(b) A claim shall be deemed to have been presented when the Navy receives from a claimant an executed Standard Form 95 or written notification of an incident, together with a claim for money damages, in a sum certain. See § 750.90 for a sample form.

(c) A claim presented to the wrong Federal agency shall be transferred forthwith to the appropriate agency. For purposes of the 6-month provision of § 750.3 above, a claim shall be deemed to have been filed when it is received by the appropriate Federal agency.

§ 750.6 Measure of damages.

In claims under the Federal Tort Claims Act, the measure of damages is determined by the law of the place where the act or omission occurred.

(a) *Liability of United States.* Subject to the provisions of title 28, United States Code, the United States is liable in respect of claims cognizable thereunder in the same manner and to the same extent as a private individual under like circumstances, but is not liable for interest prior to judgment or for punitive damages. If, however, in any case wherein death was caused, the law of the place where the act or omission complained of occurred provides, or has been construed to provide, for damages only punitive in nature, the United States is liable for, in lieu thereof, actual or compensatory damages measured by the pecuniary injuries resulting from such death to the persons, respectively, for whose benefit the action was brought. 28 U.S.C. 2674.

(b) *Interest on final judgments.* On all final judgments rendered against the United States in actions instituted under 28 U.S.C. 1346(b), interest is to be computed at the rate of 4 percent per annum from the date of judgment up to, but not exceeding, 30 days after the date of approval of any appropriation act providing for payment of the judgment.

(c) *Costs and attorneys' fees.* Costs are to be allowed in all courts to the successful claimant, but such costs are not to include attorneys' fees. See § 750.13 concerning statutory limitations on attorneys' fees.

§ 750.7 Notice to claimants upon final determination.

The claimant shall be notified in writing by the approving or disapproving authority of the action taken on his claim. Final denial of an administrative claim submitted under the Federal Tort Claims Act shall be in writing and sent to the claimant or to his attorney or legal representative by certified or registered mail. Notification of final denial may include a statement of reasons for the denial and shall include a statement that if the claimant is dissatisfied with the agency action, he must file suit in an appropriate U.S. district court within 6 months after the date of mailing of the notice of final denial.

§ 750.8 Action on approved claims.

(a) *Payment.* Any award, compromise, or settlement in an amount of $2,500 or less shall be paid in accordance with § 750.65. Payment of awards in excess of $2,500 and not more than $100,000 will be obtained by forwarding Standard Form 1145 to the Claims Division, General Accounting Office. Payment of awards in excess of $100,000 will be obtained by forwarding Standard Form 1145 to the Bureau of Accounts, Department of the Treasury. When an award is in excess of $25,000, Standard Form 1145 must be accompanied by evidence that the award has been approved by the Attorney General or his designee. When the use of Standard Form 1145 is required, it shall be executed by the claimant or it shall be accompanied by either a claims settlement agreement or a Standard Form 95 executed by the claimant. When a claimant is represented by an attorney, the voucher for payment shall designate as "payee" both the claimant and his attorney. The check shall be mailed or delivered to the attorney, whose address shall appear on the voucher.

(b) *Effect of acceptance.* Acceptance by the claimant, his agent, or legal representative, of any award, compromise, or settlement made pursuant to the provisions of 28 U.S.C. 2672 or 2677, shall be final and conclusive, and shall constitute a complete release of such claim against the United States, and against the employee of the Government whose act or omission gave rise to the claim.

§ 750.9 Claim: who may file.

(a) *Property.* A claim for damage to or loss or destruction of property may be presented by the owner of the property or his duly authorized agent or legal representative.

(b) *Personal injury.* A claim for personal injury may be presented by the injured person or his duly authorized agent or legal representative.

(c) *Death.* A claim based on death may be presented by the executor or administrator of the deceased's estate, or by any other person legally entitled to do so in accordance with local law governing the rights of survivors.

(d) *Loss compensated by insurer.* A claim for loss wholly compensated by an insurer with the rights of a subrogee may be presented by the insurer. A claim for loss partially compensated by an insurer with the rights of a subrogee may be presented by the parties individually as their respective interests appear, or jointly.

(e) *Claim presented by agent or legal representative.* A claim presented by an agent or legal representative will be presented in the name of the claimant; be signed by the agent or legal representative; show the title or legal capacity of the person signing; and be accompanied by evidence of his authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian, or other representative.

§ 750.10 Evidence to support claims.

In addition to the evidence required by § 750.33, the claimant may be required to furnish any other evidence which would have a bearing on the award.

§ 750.11 Limitation on authority to compromise or settle.

(a) *Consultation with Department of Justice.* An administrative claim presented under the provisions of Subpart A of this part may be approved, disapproved, compromised, or settled only after consultation with the Department of Justice by the Judge Advocate General when:

(1) A new precedent or a new point of law is involved;

(2) A question of policy is or may be involved;

(3) The United States is or may be entitled to indemnity or contribution from a third party and the agency is unable to adjust the third-party claim; or

(4) For any reason, the compromise of a particular claim, as a practical matter, will control the disposition of a related claim in which the amount to be paid may exceed $25,000.

(b) *Other litigation pending related to same transaction.* An administrative claim presented under the provisions of 28 U.S.C. 2672 may be adjusted, determined, approved or disapproved, compromised, or settled only after consultation with the Department of Justice when the United States or its employee, agent, or cost-plus contractor is involved in litigation based on a claim arising out of the same transaction.

(c) *Principal and derivative or subrogated claims.* For purposes of this section, the principal claim and any derivative or subrogated claim shall be treated as a single claim.

(d) *Forwarding of claim and file.* In all situations noted in paragraphs (a) and (b) of this section in which the approval, disapproval, compromise, or settlement of a claim would otherwise be within the authority of the person handling it, the claim, along with the entire file, shall be forwarded to the Judge Advocate General with a full statement of the reasons therefor.

§ 750.12 Investigation and examination.

A Federal agency may request any other Federal agency to investigate a claim filed under 28 U.S.C. 2672 or to conduct a physical examination of a claimant and to provide a report of the physical examination.

§ 750.13 Attorneys' fees.

(a) An attorney's fee not in excess of 20 percent of any compromise or settlement made pursuant to § 750.4 above may be allowed. Attorneys' fees so determined are to be paid out of the amount awarded and not in addition to the award. Where judgment is rendered in favor of the claimant by a court of competent jurisdiction or where settlement is made after suit is filed, attorney's fees shall not exceed 25 percent (28 U.S.C. 2678).

(b) The fee limitations noted above are imposed by statute, and in order to ensure compliance they shall be incorporated in any settlement agreement secured from a claimant.

§ 750.14 Settlement agreement.

A sample settlement agreement including the required statement concerning fee limitations is contained in § 750.91.

§ 750.15 Claims not payable.

(a) *Claims not within the Act.* The provisions of the Federal Tort Claims Act do not apply to:

(1) Any claim based upon an act or omission of an employee of the Government exercising due care in the execution of a statute or regulation, whether or not such statute or regulation be valid; or based upon the exercise or performance of, or the failure to exercise or perform, a discretionary function or duty on the part of the Navy or an employee of the Government, whether or not the discretion involved may be abused;

(2) Any claim arising out of the loss, miscarriage, or negligent transmission of letters or postal matter;

(3) Any claim arising in respect of the assessment or collection of any tax or customs duty, or the detention of any goods or merchandise by any officer of customs or excise or any other law enforcement officer;

(4) Any claim for which a remedy is provided by the act of March 9, 1920, as amended (46 U.S.C. 741–752), or the act of March 3, 1925, as amended (46 U.S.C. 981–790) relating to claims or suits in admiralty against the United States (see Part 752 of this chapter concerning admiralty matters);

(5) Any claim arising out of an act or omission of any employee of the Government in administering the provisions of the Trading with the Enemy Act, as amended (50 U.S.C. App. 1–39);

(6) Any claim for damages caused by the imposition or establishment of a quarantine by the United States;

(7) Any claim arising from the activities of the Panama Canal Company;

(8) Any claim arising out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights;

(9) Any claim for damages caused by the fiscal operations of the Treasury or by the regulation of the monetary system;

(10) Any claim arising out of the combatant activities of the military or naval forces, or the Coast Guard, during time of war;

(11) Any claim arising in a foreign country (see Part 753 of this chapter concerning Foreign Claims); and

(12) Any claim arising from the activities of the Tennessee Valley Authority.

(b) *Additional claims not payable.* Although not expressly excepted from the application of the provisions governing administrative settlement of Federal Tort Claims under title 28, United States Code, the following types of claims shall not be paid:

(1) Any claim for the personal injury or death of a member of the naval forces of the United States incurred incident to service or duty;

(2) Any claim of military personnel or civilian employees of the Navy for damage to or loss, destruction, capture, or abandonment of personal property occurring incident to their service, which claim is cognizable under 31 U.S.C. 240–243 and the applicable Personnel Claims Regulations (see Part 751 of this chapter); and

(3) Any claim for the personal injury or death of a civilian employee of the Navy to whom the Federal Employees' Compensation Act, as amended (5 U.S.C. 751–793), is applicable.

§ 750.16 Regulations prescribed by the Attorney General.

Attorney General Regulations for administrative claims under the Federal Tort Claims Act are found at 28 CFR Part 14.

Subpart B—Military Claims

§ 750.20 Definitions.

As used in this subpart (§§ 750.20–750.29):

(a) The word "claim" refers to any demand for payment submitted by any individual, partnership, association, corporation, or political entity, including countries, states, territories, and political subdivisions thereof, but excluding the Federal Government of the United States and its instrumentalities.

(b) The words "military personnel or civilian employees of the Navy" includes all military personnel of the Navy, prisoners of war and interned enemy aliens engaged by the Navy in labor for pay, and volunteer workers and others serving as employees of the Navy with or without compensation.

(c) Military includes "naval".

§ 750.21 Statutory authority.

(a) *Described.* 10 U.S.C. 2733, commonly known as the Military Claims Act, authorizes the Secretary of the Navy to pay certain types of claims when they are substantiated in such manner as he, by regulations, may prescribe. The claim must be for damage or loss or destruction of property, real or personal, or for personal injury or death, caused by military personnel or civilian employees of the Navy while (1) acting within the scope of their employment or (2) otherwise incident to noncombat activities of the Navy. It includes claims for damage to or loss or destruction by criminal acts of registered or insured mail while in the possession of the military authorities, claims for damage to or loss or destruction of personal property bailed to the Government, and claims for damages to real property incident to the use and occupancy thereof, whether under a lease, express or implied, or otherwise. The authority to pay a claim may be delegated, subject to appeal to the Secretary of the Navy and under such regulations as he may prescribe, to such other officer or officers as he may designate for such purposes, when the amount to be paid is $2,500 or less. The Judge Advocate General may pay an amount not in excess of $5,000. When a claim is in excess of $5,000, the Secretary of the Navy may make a partial payment of $5,000 and refer the balance to the Bureau of the Budget for submission to Congress for its consideration.

(b) *Applicability.* Subject to the exceptions set forth in paragraph (c) of this section, claims not in excess of

$5,000 for damage to or loss or destruction of real or personal property, or for personal injury or death, caused by military personnel or civilian employees of the Navy while acting within the scope of their employment, or otherwise incident to noncombat activities of the Navy, including claims for damage to or loss or destruction by criminal acts of registered or insured mail while in the possession of the military authorities, claims for damage to or loss or destruction of personal property bailed to the Government, and claims for damage to real property incident to the use and occupancy thereof, whether under a lease, express or implied, or otherwise, are payable by the Secretary of the Navy or his designees under 10 U.S.C. 2733 and §§ 750.20–750.29.

(c) *Nonapplicability.* See § 750.29 for description of claims not payable.

§ 750.22 Claims "otherwise incident to noncombat activities."

Claims for damage to or loss or destruction of property, real or personal, or for personal injury or death, although not shown to have been caused by any particular act or omission of military personnel or civilian employees of the Navy while acting within the scope of their employment, are payable under the provisions of the Military Claims Act (10 U.S.C. 2733) if otherwise incident to noncombat activities of the Navy. Claims within this category are those arising out of authorized activities which are peculiarly military activities having little parallel in civilian pursuits, and out of situations in which the Government has historically assumed a broad liability, such as claims for damage or injury arising from, and which are the natural or probable results or incidents of: maneuvers and special exercises; practice firing of heavy guns; practice bombing; naval exhibitions; operation of missiles, aircraft, and anti-aircraft equipment; use of barrage balloons; use of instrumentalities having latent mechanical defects not traceable to negligent acts or omissions; explosions of ammunition; movement of combat vehicles or other vehicles designed especially for military use; and the use and occupancy of real estate.

§ 750.23 Who is authorized to settle claims under the Military Claims Act.

The Judge Advocate General is authorized to approve or disapprove a claim under the Military Claims Act (10 U.S.C. 2733) in an amount of not more than $5,000, and the following are authorized to approve or disapprove such claims in an amount of not more than $2,500:

(a) The Deputy Judge Advocate General;

(b) Any Assistant Judge Advocate General;

(c) The Deputy Assistant Judge Advocate General (Litigation and Claims);

(d) The Director, Litigation and Claims Division;

(e) The commandant or the district judge advocate of the naval district within which the claims arose;

(f) The Officer in Charge, U.S. Sending State Office for Italy, and the Officer in Charge, U.S. Sending State Office for Australia;

(g) The Staff Judge Advocate, U.S. Naval Base, Newport, R.I., and the Staff Judge Advocate, U.S. Naval Submarine Base, New London, Conn., for claims accruing to operators of fishing vessels for damage to nets, booms, lines and other trawler impedimenta as a result of contact with naval ordnance (e.g., mines, torpedoes);

(h) Foreign Claims Commissions;

(i) The following area or subarea commanders and their staff judge advocates:

(1) Commander, U.S. Naval Base, Newport, R.I.;

(2) Commander, Fleet Air, Jacksonville, Fla.;

(3) Commander, U.S. Naval Base, Key West, Fla.;

(4) Chief of Naval Air Basic Training, Pensacola, Fla.;

(5) Chief of Naval Air Advanced Training, Corpus Christi, Tex.;

(6) Chief of Naval Air Technical Training, Memphis, Tenn.;

(7) Commander, U.S. Naval Base, Long Beach, Calif.;

(8) Commander, U.S. Naval Base, Guantanamo Bay, Cuba;

(9) Commander, U.S. Naval Activities, United Kingdom;

(10) Commander, U.S. Naval Activities, Spain;

(11) Commanding Officer, U.S. Naval Support Activity, Naples, Italy;

(12) Commander, U.S. Naval Forces, Japan;

(13) Commander, Fleet Activities, Sasebo, Japan;

(14) Commander, Naval Forces Marianas;

(15) Commander, Naval Forces Philippines;

(16) Commander, Naval Forces Taiwan;

(17) Commander, Naval Activities Ryukyus; and

(j) Such other officers as may be designated by the Secretary of the Navy.

§ 750.24 Claims for damage, loss, or destruction of mail.

(a) *Registered or insured mail.* Claims for damage to or loss or destruction, by criminal acts, of registered or insured mail while in the possession of the military authorities are payable under the Military Claims Act. This provision of the Act is in the nature of an exception to the general requirement that the damage, loss, or destruction of personal property, in order to be compensable thereunder, be caused by military personnel or civilian employees of the Navy while acting within the scope of their employment or be otherwise incident to noncombat activities of the Navy. In effect, this provision makes it possible for the Navy to relieve the Post Office Department of its obligation as an insurer with respect to registered and insured mail relinquished into the possession of the Navy for transportation or for delivery to the addressee. For this reason, any award to a claimant under the provisions of this section shall be limited in amount to that which the claimant would be entitled from the Post Office Department in accordance with the registry or insurance fee paid. In all other respects the award shall be subject to the conditions and limitations set forth in the Postal Manual, United States Post Office Department, as applicable to the payment of indemnity by the Post Office Department where the damage, loss, or destruction occurs while the mail matter is in the possession of that Department.

(b) *Mail of any class.* Claims for damage to or loss or destruction of mail matter of any class, whether or not such mail is insured or registered, are payable, upon proper substantiation, if shown to have been caused by military personnel or civilian employees of the Navy while acting within the scope of their employment, or if otherwise incident to noncombat activities of the Navy. Failure to insure or register mail containing money or articles of substantial value, however, may constitute negligence on the part of the claimant which will preclude recovery. In claims for damage, loss, or destruction of mail matter, not resulting from criminal acts, the amount of the award is not limited to the amount of coverage provided by the insurance or registry fee paid to the Post Office Department, but is governed by the provisions of this chapter with respect to measure of damages. If claimed, additional damages may be recovered in mail cases in the amount of the postage and any registration insurance or other special fees prepaid, except that such additional damages shall not be paid if the mail matter is delivered to the correct addressee.

§ 750.25 Bailed personal property.

(a) *Loaned or rented to the Government.* Claims for damage to, or loss, or destruction of personal property loaned, rented, or otherwise bailed to the Government under an agreement, expressed or implied, are payable under the provisions of the Military Claims Act (10 U.S.C. 2733) even though legally enforceable against the Government as contract claims, unless by express agreement the bailor has assumed the risk of damage, loss, or destruction. Subject to the exceptions set forth in § 750.29, the cause of the damage, loss, or destruction is immaterial.

(b) *Claims of prisoners of war.* Claims of prisoners of war and of interned enemy aliens for damage to, or destruction of, personal property in the custody of the Government are payable only when the proximate cause of the damage, loss, or destruction is shown to be the tortious act or omission of military personnel or civilian employees of the Navy. The authority to pay claims of this nature is also subject to the exceptions set forth in § 750.29.

(c) *Processing as contract claims.* Claims filed under this section may, if deemed in the best interests of the Government, be referred to and processed by the Office of the General Counsel, Department of the Navy as contract claims.

§ 750.26 Use and occupancy of real property.

(a) *Under lease or otherwise.* Subject to the exceptions set forth in § 750.29,

claims for damage to real property incident to the use and occupancy thereof by the Government, whether under an express or implied lease or otherwise, are payable under the provisions of the Military Claims Act even though legally enforceable against the Government as contract claims.

(b) *Processing as contract claims.* Claims filed under this section may, if deemed in the best interests of the Government, be referred to and processed by the Office of the General Counsel, Department of the Navy as contract claims.

§ 750.27 Military claims arising in foreign countries.

(a) *Preemptive application of Foreign Claims Act.* There are no geographical limitations upon the scope of application of the Military Claims Act. The Foreign Claims Act (10 U.S.C. 2734) and regulations issued pursuant thereto, however, have preemptive application to claims for damage to or loss or destruction of real or personal property, and for personal injury or death, caused by military forces or individual members thereof, whether military personnel or civilian employees, or otherwise incident to noncombat activities of such forces, in a foreign country, to public property located therein, or to the privately owned property, or to the persons of inhabitants of a foreign country. Any claim which arises in a foreign country and which is within the scope of the Foreign Claims Act is precluded from consideration under the Military Claims Act. Any claim which arises in a foreign country and is for any reason not cognizable under the Foreign Claims Act and the regulations issued thereunder, however, may be considered and paid under the Military Claims Act provided it is in all respects in accordance therewith.

(b) *Enemy alien.* See § 750.29(m).

(c) *Relation to other statutory provisions*—(1) *Advance payments.* 10 U.S.C. 2736, concerning advance payments and implemented in §§ 750.43–750.44 is applicable to payments otherwise payable under the Military Claims Act (10 U.S.C. 2733).

(2) *Claims not cognizable under any other law.* 10 U.SC. 2737, relating to certain claims not cognizable under any other law and implemented in §§ 750.40–750.42, may, in proper cases, be applied to claims arising in foreign countries.

(3) *Federal Tort Claims Act not applicable.* Claims arising in foreign countries are expressly excluded by 28 U.S.C. 2680(k) from consideration under the provisions governing the settlement of Federal Tort Claims.

§ 750.28 Statute of limitations: Military Claims Act.

No claim may be settled under the Military Claims Act unless it is presented in writing within 2 years after it accrues. If such accident or incident occurs in time of war or armed conflict, however, or if war or armed conflict intervenes within 2 years after its occurrence, any claim may, on good cause shown, be presented within 2 years after the war or armed conflict is terminated. For the purposes of the Military Claims Act, the dates of the beginning and ending of an armed conflict are the dates established by concurrent resolution of Congress or by determination of the President.

§ 750.29 Claims not payable under the Military Claims Act.

The following types of claims are not payable:

(a) Any claim for damage, loss, destruction, injury, or death which was proximately caused, in whole or in part, by any negligence or wrongful act on the part of the claimant, his agent, or his employee;

(b) Any claim for damage, loss, destruction, injury, or death resulting from action by the enemy, or resulting directly or indirectly from any act by armed forces engaged in combat;

(c) Any claim for reimbursement for medical or hospital services furnished at the expense of the United States, or, in the case of burial, for such portion of the expense thereof as may be otherwise paid by the United States;

(d) Any claim of military personnel or civilian employees of the Navy for damage to or loss, destruction, capture, or abandonment of personal property occurring incident to their service which claim is cognizable under the Military Personnel and Civilian Employees' Claims Act as amended (31 U.S.C. 240–243) and applicable regulations (Part 751 of this chapter);

(e) Any claim arising in a foreign country or possession thereof which is cognizable under the provisions of the Foreign Claims Act (10 U.S.C. 2734) and applicable regulations thereto (Part 753 of this chapter);

(f) Any claim cognizable under 10 U.S.C. 7622 relating to admiralty claims and to claims for damages caused by naval vessels (Part 752 of this chapter);

(g) Any claim for damage to or loss or destruction of real or personal property founded in written contract, except as provided in §§ 750.25–750.26;

(h) Any claim for rent of real or personal property, except as provided in § 750.26;

(i) Any claim involving the infringement of patents;

(j) Any claim for damage, loss, or destruction of mail matter occurring prior to delivery by the Post Office Department to authorized military personnel or civilian employees of the Navy (e.g., designated Navy mail clerks and assistant Navy mail clerks, mail orderlies, or postal officers);

(k) Any claim for damage, loss, or destruction of mail matter occurring due to the fault of, or while in the hands of, bonded personnel;

(l) Any claim for damage, loss, or destruction of mail matter arising after resumption of possession by the Post Office Department (e.g., for the purpose of forwarding to the addressee at a different address) and prior to redelivery to authorized military personnel or civilian employees of the Navy charged with transportation or distribution to the addressee;

(m) The provisions of the Military Claims Act do not apply to any claim by an inhabitant of a foreign country who is a national of a country at war with the United States or of any ally of such an enemy country, unless it be determined that the claimant is friendly to the United States;

(n) Any claim for personal injury or death of military personnel or civilian employees of the Navy, if such injury or death occurs incident to their service; and

(o) Any claim for damage, injury, or death caused by a member or employee of the Department of the Navy while acting within the scope of his employment, and which is in all other respects within the cognizance of the Federal Tort Claims Act and §§ 750.1–750.16, unless the damage, injury, or death occurred "incident to the noncombat activities" of the Navy as defined in § 750.22.

Subpart C—"Nonscope" Law Claims

§ 750.40 Statutory authority and definitions.

10 U.S.C. 2737 provides authority for the administrative settlement in an amount not to exceed $1,000 of any claim against the United States not cognizable under any other provision of law for damage to or loss of property, or for personal injury or death, caused by military personnel or a civilian official or employee incident to the use of a vehicle of the United States at any place, or incident to the use of any other property of the United States on a Government installation. For the purpose of §§ 750.40–750.42 the following terms will have the meanings indicated:

(a) *Civilian official or employee.* Any civilian official or employee of the Department of the Navy paid from appropriated funds at the time of the incident which resulted in the damage or loss.

(b) *Vehicle.* Includes every description of carriage or other artificial contrivance used, or capable of being used, as a means of transportation on land. (1 U.S.C. 4.)

§ 750.41 Who may authorize payment of "nonscope" claims.

Those delegated to approve or to disapprove claims made pursuant to 10 U.S.C. 2737 are listed as follows:

(a) The Judge Advocate General;

(b) The Deputy Judge Advocate General;

(c) Any Assistant Judge Advocate General;

(d) Deputy Assistant Judge Advocate General (Litigation and Claims);

(e) Director, Litigation and Claims Division; and

(f) Such other officers as may be designated by the Secretary of the Navy.

§ 750.42 Claims not payable under 10 U.S.C. 2737.

A claim may not be allowed under 10 U.S.C. 2737:

(a) If the damage to or loss of property, or the personal injury or death,

was caused wholly or partly by a negligent or wrongful act of the claimant, his agent, or his employee;

(b) In the case of personal injury or death, for more than the cost of reasonable medical, hospital, and burial expenses actually incurred, and not otherwise furnished or paid by the United States;

(c) Unless it is presented in writing within 2 years after it accrues;

(d) Unless the amount tendered is accepted in writing by the claimant in full satisfaction of any claim against the United States arising from the incident;

(e) To the extent that the claim or any part thereof is legally recoverable by the claimant under an indemnifying law or an indemnity contract;

(f) If it is a subrogated claim; or

(g) If it is cognizable under any other provision of law.

§ 750.43 Advance payments.

10 U.S.C. 2736 authorizes the Secretary of the Navy or his designee to pay an amount not in excess of $1,000 in advance of the submission of a claim to or for any person, or the legal representative of any person, who was injured or killed, or whose property was damaged or lost, as the result of an accident involving an aircraft or missile under the control of the Department of the Navy for which allowance of a claim is authorized by law. Payment under this law is limited to that which would be payable under the Military Claims Act (10 U.S.C. 2733) or the Foreign Claims Act (10 U.S.C. 2734). Payment of an amount under this law is not an admission by the United States of liability for the accident concerned. Any amount so paid shall be deducted from any amount that may be allowed under any other provision of law to the person or his legal representative for injury, death, damage, or loss attributable to the accident concerned. Those delegated to authorize advance payments pursuant to 10 U.S.C. 2736 are listed as follows:

(a) The Judge Advocate General;

(b) The Deputy Judge Advocate General;

(c) Any Assistant Judge Advocate General;

(d) Deputy Assistant Judge Advocate General (Litigation and Claims);

(e) Director, Litigation and Claims Division; and

(f) Such other officers as may be designated by the Secretary of the Navy.

§ 750.44 Conditions for advance payments.

Prior to making an advance payment under 10 U.S.C. 2736, the adjudicating authority shall ascertain that:

(a) The injury, death, damage, or loss resulted from an accident involving an aircraft or missile under the control of the Department of the Navy;

(b) The injury, death, damage, or loss would be payable under the Military Claims Act (10 U.S.C. 2733) or the Foreign Claims Act (10 U.S.C. 2734).

(c) The payee, insofar as can be determined, would be a proper claimant under this part or under the Foreign Claims Regulations Part 753 of this chapter, or is the spouse or next of kin of a proper claimant who is incapacitated;

(d) The provable damages are estimated to exceed the amount to be paid;

(e) There exists an immediate need of the person who suffered the injury, damage, or loss, or of his family, or of the family of a person who was killed, for food, clothing, shelter, medical, or burial expenses, or other necessities, and other resources for such expenses are not reasonably available;

(f) The prospective payee has signed a statement that it is understood that the payment is not an admission by the Navy or the United States of liability for the accident concerned, and that the amount paid is not a gratuity but shall constitute an advance against and shall be deducted from any amount that may be allowed under any other provision of law to the person or his legal representative for injury, death, damage, or loss attributable to the accident concerned; and

(g) No payment under 10 U.S.C. 2736 may be made if the accident occurred in a foreign country in which the NATO Status of Forces Agreement (4 UST 1792, TIAS 2846) or other similar agreement is in effect and the injury, death, damage, or loss (1) was caused by a member or employee of the Department of the Navy acting within the scope of his employment or (2) occurred "incident to noncombat activities" of the Department of Navy as defined in §§ 750.20–750.21.

Subpart D—General Provisions for Claims

§ 750.50 Who constitutes a proper claimant.

(a) *Damage to property cases.* A claim for damage to or loss, or destruction of, property shall be presented by the owner of the property or his duly authorized agent or legal representive. The word "owner" as used herein, includes a bailee, lessee, mortgagor, and conditional vendee, but does not include a mortgagee, conditional vendor, or other person having title for purposes of security only. If the claim is filed by an agent or legal representative of the owner of the property, it shall show the title or capacity of the person signing and shall be accompanied by the evidence of the appointment of such person as agent, executor, administrator, guardian, or other fiduciary.

(b) *Personal injury or death cases.* A claim on account of personal injury shall be presented by the person injured or his duly authorized agent, or, in the case of death, by the legal representative of the person deceased.

(c) *Subrogation.* Settlement of claims involving subrogation by reason of insurance or operation of law when the combined claims of both insured and insurer do not exceed $2,500 in the case of the Federal Tort Claims Act, or $5,000 in the case of Military Claims Act, may be made separately with the subrogor or the subrogee for their respective interests when separate claims are submitted, or jointly with both when one claim has been filed in the names of both and signed by both, but only with the subrogee when the subrogor has received full compensation from him in cases of damage, loss, destruction, injury, or death. Appropriate documentary evidence should be furnished by the subrogee in support of a subrogated claim.

(d) *Limitation on transfers and assignment.* All transfers and assignments made of any claim upon the United States, or of any part or share thereof or interest therein, whether absolute or conditional and whatever may be the consideration therefor, and all powers of attorney, orders, or other authorities for receiving payment of any such claim, or of any part or share thereof, are absolutely null and void unless they are made after the allowance of such a claim, the ascertainment of the amount due, and the issuing of a warrant for the payment thereof. 31 U.S.C. 203. This statutory provision does not apply to the assignment of a claim by operation of law, as in the case of a receiver or trustee in bankruptcy appointed for an individual, firm, or corporation, or the case of an administrator or executor of the estate of a person deceased, or an insurer subrogated to the rights of the insured.

§ 750.51 The submission of a claim.

(a) *Standard Form No. 95.* A claim shall be submitted by presenting in triplicate a written statement setting forth the amount of the claim and, as far as possible, the detailed facts and circumstances surrounding the incident from which the claim arose. The Claim for Damage or Injury, Standard Form No. 95 (see § 750.90), shall be used whenever practicable. The claim and all other papers requiring signature by the claimant shall be signed by the claimant personally or by his duly authorized agent. The signature of the claimant or his agent shall be identical throughout. When more than one person has a claim arising from a single incident, each person should file his claim separately and individually.

(b) *To whom submitted.* The claim shall be submitted by the claimant to the commanding officer of the naval activity involved, if known. Otherwise, it shall be submitted to the commanding officer of any naval activity, preferably the one within which, or nearest to which, the incident occurred, or to the Judge Advocate General of the Navy, Washington, D.C. 20370.

§ 750.52 The contents of a claim.

(a) *Information to be submitted.* The claimant shall include the following information in his claim:

(1) The full name and complete address of the claimant;

(2) The amount claimed for property damage, loss, or destruction, and the amount claimed on account of personal injury or death;

(3) The date, time, and place of occurrence of the incident giving rise to the claim;

(4) The persons, vehicles, and other property involved;

(5) The identity of the Government department, agency, or activity involved;

(6) A detailed description of the occurrence of the incident and the facts and circumstances attending it;

(7) The nature and extent of the resulting damage, loss, destruction, or injury;

(8) The names and addresses of any witnesses to the occurrence of the incident; and

(9) An agreement by the claimant to accept the amount claimed in full satisfaction and final settlement of the claim stated.

(b) *Amount of the claim.* The amount of the claim shall be substantiated by competent evidence, as follows:

(1) In support of claims for damage to real or personal property which has been or can be economically repaired, the claimant shall submit, in triplicate, an itemized, signed statement or estimate of the cost of repairs. If the property is not economically repairable, or if it is lost or destroyed, the value thereof, both before and after the incident, shall be stated. If damage to realty is not economically repairable, the value, both before and after the incident, of the land damaged, or of the improvement or fixture if it can be readily and fairly valued apart from the land, shall be stated. In support of claims for damage to crops, the statement shall indicate the number of acres or other unit of measure of the crops damaged, the normal yield per unit, the gross income which would have been realized from such normal yield, and an estimate of the further costs of cultivation, harvesting, and marketing. If the crop is one which need not be planted each year, the diminution in value of the land beyond the damage to the current year's crop shall also be stated. All such statements or estimates shall, if possible, be made by competent, disinterested witnesses, preferably reputable dealers or officials familiar with the type of property damaged or lost. If payment for repairs has been made, itemized receipts evidencing payment shall be included. All itemized statements or receipted bills shall be certified by the creditor to be just and correct. A claimant for damage to, or loss or destruction of, registered or insured mail shall, in addition, submit the registration or insurance receipt showing the amount of fees and postage paid, or, in the event the receipt is not available, a signed statement by the issuing post office containing the essential information from the official records.

(2) In support of claims for personal injury or death, the claimant shall submit, in triplicate: A written report by the attending physician showing the nature and extent of the injury and the treatment; the period of hospitalization or incapacitation; the degree of temporary or permanent disability, if any; and the prognosis. Itemized statements or receipted bills, certified by the creditor to be just and correct, shall be included to cover medical, hospital, or burial expenses actually incurred.

(c) *Brief.* The claimant may, if he desires, file with his claim a brief setting forth the law and arguments in support of his position.

§ 750.53 Measure of damages.

(a) *Damage to property.* In claims for damage to, or loss or destruction of, property cognizable under the provisions governing the administrative settlement of Federal tort claims under title 28, United States Code, or the civil action provisions of 28 U.S.C. 1346(b), the measure of damages is determined by the law of the place where the act or omission occurred. In cases cognizable under the Military Claims Act (10 U.S.C. 2733) or "nonscope" claims under 10 U.S.C. 2737, however, the measure of damages shall be as follows:

(1) If the property has been or can be economically repaired, the measure of damages shall be the actual or estimated net cost of the repairs necessary to restore the property to substantially the condition which existed immediately prior to the incident. Damages so determined shall not, however, exceed the value of the property immediately prior to the incident less the value thereof immediately after the incident. To determine the actual or estimated net cost of repairs, the value of any salvaged parts or materials and the amount of any net appreciation in value effected through the repair shall be deducted from the actual or estimated gross cost of repairs, and the amount of any net depreciation in the value of the property shall be added to such gross cost of repairs, provided such adjustments are sufficiently substantial in amount to warrant consideration. All estimates of the cost of repairs shall be based upon the lower or lowest of two or more competitive bids, or upon statements or estimates by one or more competent and disinterested persons, preferably reputable dealers or officials familiar with the type of property damaged, lost, or destroyed.

(2) If the property cannot be economically repaired, the measure of damages shall be the value of the property immediately prior to the incident less the value thereof immediately after the incident. All estimates of value shall be made, if possible, by one or more competent and disinterested persons, preferably reputable dealers or officials familiar with the type of property damaged, lost, or destroyed.

(3) Loss of use of damaged property which is economically repairable may, if claimed, be included as an additional element of damage to the extent of the reasonable expense actually incurred for appropriate substitute property, but only for such period as is reasonably necessary for repairs, and provided that idle substitute property of the claimant was not employed. When substitute property is not obtainable, other competent evidence such as rental value, if not speculative or remote, may be considered. When substitute property is reasonably available but is not obtained and used by the claimant, loss of use is normally not payable.

(b) *Personal injury or death cases under the Federal Tort Claims Act.* In claims for personal injury or death cognizable under the provisions governing States Code, or the civil action provisions of 28 U.S.C. 1346(b), the measure of damages is determined by the law of the place where the act or omission occurred.

(c) *Personal injury or death cases under the Military Claims Act.* In claims for personal injury or death cognizable under Military Claims Act, the measure of damages may include reasonable medical, hospital, and burial expenses, loss of earnings and services, diminution of earning capacity, pain and suffering, permanent injury, and death. In computing damages in cases of personal injury or death, local standards will be taken into consideration as a guide. In case of death, only one claim will be allowed. The amount approved therefor shall, to the extent found practicable or feasible, be apportioned among the beneficiaries, and in the proportions prescribed by law or custom of the place in which the accident or incident resulting in death occurs.

(d) *Limitations.* In claims cognizable under the Military Claims Act (10 U.S.C. 2733) or "nonscope" claims under 10 U.S.C. 2737, payment shall not be made for the following elements of damage: interest, cost of preparation of claims, attorneys' fees, inconvenience, and other similar items.

(e) *Joint tort-feasor.* If a claimant under the Military Claims Act (10 U.S.C. 2733) or "nonscope" law (10 U.S.C. 2737) has elected to proceed against a third party as a joint tort-feasor, any amount paid by such third party for damage which might otherwise be properly included in the claim against the Government shall be deducted from any award by the Government to the claimant.

§ 750.54 Investigation: general.

Every incident which may result in claims against or in favor of the Government shall be promptly and thoroughly investigated by trained personnel. The investigation shall be closely supervised to ensure the preparation of an investigative report providing a sufficient basis for the prompt and just disposition of claims against and in favor of the Government and for all other official action required by the circumstances of the case. The procedures set forth in §§ 750.54–750.63 shall be followed with respect to the appointment of investigating officers, the conduct of the investigation, the preparation of the investigative report, and the processing of claims cognizable under these regulations.

§ 750.55 Investigation: when required.

(a) *Categories.* Investigations shall be conducted in any of the following circumstances:

(1) When private property is damaged, lost, or destroyed in service connected incidents;

(2) When Government property is damaged, lost, or destroyed under circumstances which indicate the existence of a claim in favor of the Government;

(3) When injury or death results to any civilian other than an employee of the administrative settlement of Federal tort claims under title 28, United the Government acting in the performance of his duty and covered by the Federal Employees' Compensation Act; or

(4) When specifically directed by competent authority.

(b) *Investigation without delay.* Incidents falling within any of the categories listed in paragraph (a) of this section shall be investigated and reported upon without delay, even though no claim has been filed, and even though there may be no existing law or regulation under which any claim arising therefrom might be paid.

(c) *Steps upon commencement of civil action.* Upon receipt by the Judge Advocate General of notice from the Department of Justice, or from any other source, that an action involving the Navy has been instituted against the United States under the civil action provisions of 28 U.S.C. 1346(b), a request shall be made upon the commandant of the appropriate naval district for an investigative report of the incident giving rise to the action if a complete report of the incident has not already been received. This request shall be forwarded immediately to the appropriate naval activity for prompt compliance in order that the preparation of the Government's defense may not be delayed. The commencement, under the civil action provisions of 28 U.S.C. 1346(b), of any action against the United States, involving the Navy, which comes to the attention of any officer in connection with his official duties, shall be reported immediately to the commandant of the cognizant naval district, to the attention of the district staff judge advocate who shall initiate any necessary administrative action and shall give further prompt notification to the Judge Advocate General. The commencement of any legal action against any employee of the Navy as a result of an act or omission committed within the scope of his employment which comes to the attention of any officer in connection with his official duties, whether or not the United States has been made a party to such legal action, shall be reported in the same manner.

(d) *Additional requirements under other regulations.* This part in no way modifies the requirements of U.S. Navy Regulations, the Manual for Courts-Martial, or other provisions of the Manual of the Judge Advocate General, and the making of an investigation and report thereunder does not constitute or excuse compliance with any provision of U.S. Navy Regulations, the Manual for Courts-Martial, or other provisions of the Manual of the Judge Advocate General.

§ 750.56 Investigation: responsibility for.

(a) *Immediate responsibility.* Responsibility for the investigation of an incident normally lies with the commanding officer or officer in charge of the local naval activity which is most directly concerned, normally the commanding officer or officer in charge of the personnel involved or of the activity in which the incident occurred. Where two or more activities are involved, see § 719.207.

(b) *Assistance.* When an accident or incident occurs at a place where the naval service does not have an installation or a unit conveniently located for conducting an investigation, the commanding officer or officer in charge having immediate responsibility for making such investigation may request assistance from the commanding officer or officer in charge of any other organization of the Department of Defense. Such assistance may take the form of a complete investigation of the accident or incident, or it may cover only part of the investigation. Likewise, in the event that under similar circumstances the commanding officer or officer in charge of any other organization of the Department of Defense requests such assistance from the commanding officer or officer in charge of any naval installation or unit, the latter should comply with the request. If a complete investigation is requested, the report will be made in accordance with the regulations of the requested service. These investigations will normally be conducted without reimbursement for per diem, mileage, or other expenses incurred by the investigating installation or unit.

(c) *Report of Motor Vehicle Accident, Standard Form No. 91.* The driver of any Government motor vehicle involved in an accident of any sort shall be responsible for making an immediate report on the Operator's Report of Motor Vehicle Accident, Standard Form No. 91. This driver's report shall be made even though the driver of the other vehicle, or any other person involved, states that no claim will be filed, and even though the only vehicles involved are Government owned. An accident shall be reported by the driver regardless of who was injured, or what property was damaged, or to what extent, or where the accident occurred, or who was responsible. The driver's report shall be referred to the investigating officer, who shall be responsible for examining it for completeness and accuracy and who shall file it for future reference or for attachment to any subsequent investigative report of the accident.

§ 750.57 The investigating officer.

Every investigation required by these regulations shall be conducted by an investigating officer. The commanding officer or officer in charge of each naval activity shall designate a qualified individual under his command, preferably one with legal training and with experience in the conduct of investigations, as the investigating officer for the activity. Whenever necessary, in the discretion of the commanding officer or officer in charge, additional or assistant investigating officers may be appointed, each with all and the same powers as the investigating officers, except that all assistant investigating officers shall be under the general supervision of the investigating officer. To ensure prompt investigation of every incident while witnesses are available and before damage has been repaired, the duties of an individual in his capacity as an investigating officer shall ordinarily have priority over any other assignments he may have.

§ 750.58 Duties of the investigating officer.

It shall be the duty of the investigating officer, in making an investigation pursuant to these regulations:

(a) To consider all information and evidence obtained as a result of any previous investigation or inquiry into any aspect of the incident.

(b) To conduct further investigation of the matter in a fair and impartial manner, covering all phases of the incident and giving consideration to its bearing on possible claims against, or in favor of, the Government and on other interests of the service, to the end that a comprehensive, accurate, and unbiased factual report of the incident may be made available to higher authority for such action as is required by the circumstances of the case.

(c) To secure and consider signed statements from all competent witnesses on facts pertinent to the incident. Witnesses should be interviewed by the investigating officer at the earliest opportunity. Full statements from principal witnesses, especially the claimant or prospective claimant, should be reduced to writing and their signatures obtained thereon if at all possible. The interests of the United States may be seriously prejudiced if the investigating officer fails to obtain such statements before witnesses forget significant facts or are confused by questions from persons with adverse interests.

(d) To inspect the property damage and to interview injured persons or their representatives personally; and, if such personal inspection and interview are not conducted, to state the reason therefor.

(e) To ascertain the nature, extent, and amount of damage and to obtain all pertinent repair bills or estimates, medical, hospital, and associated bills as are necessary to the proper adjudication of a claim against or in favor of the Government which may arise from the incident. For the proper method of computing the amount of damages, see § 750.53. Claims for loss of earnings and diminution of earning capacity arising under the Federal Tort Claims Act or the Military Claims Act require submission by the claimant of a statement by his employer executed before a notary public or, where the claimant is in business for himself, a certified copy of company records showing claimant's age, occupation, wage or salary, and time lost from work as a result of the incident. Where such statements or records are not available, a sworn statement by the claimant will be obtained. Claims for loss of earnings, diminution of earning capacity, medical and hospital expenses, anticipated medical expense, pain and suffering, physical disfigurement, and temporary or permanent injury arising under the Federal Tort Claims Act or the Military Claims Act require submission by the claimant of a written statement by the attending

physician setting forth the nature and extent of the injury and treatment, the duration and extent of the disability involved, the prognosis, and period of hospitalization or incapacity.

(f) To obtain from the proper maintenance office the latest report of material inspection of the Navy aircraft or motor vehicle that was conducted prior to the accident in all cases in which a suit against the United States is likely or is pending, and in all other cases in which it appears pertinent to determine liability.

(g) To secure from qualified persons of the activity concerned, or of another appropriate activity, statements concerning the extent of damage or injury and the reasonableness of the damages claimed. The investigating officer, if the injured person does not object, should have a physical examination made of the injured person at a military installation. Consideration should be given to the availability of personnel and facilities of the installation. Expenses for services or supplies from other Federal agencies or civilian agencies should not be incurred. A copy of the report of the physical examination obtained from the medical installation shall be included in the report of investigation or, if made subsequent to the forwarding of the latter report, forwarded to the same addresses as the report of investigation.

(h) To reduce to writing and incorporate into a unified investigative report (prepared in triplicate) all pertinent testimony, exhibits, and any other evidence taken or considered, subject, however, to the exception for claims under $100 as set forth in § 750.59(b).

(i) To furnish the proper claim forms to any person who inquires concerning the procedure for making claim against the Government as a result of a service connected incident, and to advise such person where the claim should be filed and what substantiating evidence should accompany the claim.

(j) To submit the complete investigative report to his commanding officer or officer in charge as promptly as circumstances permit; and, in the case of an incident involving any personal injury or property damage estimated to be in excess of $2,500, to submit immediately a preliminary report, containing such information as may be available, to his commanding officer for forwarding to reach the Judge Advocate General within 20 days of the occurrence of the incident under investigation. In a case where not all of the required information is immediately available, as in an accident resulting in personal injuries requiring extended periods of hospitalization or medical care, the investigative report containing all available information shall be submitted promptly. It shall then be completed by means of a supplementary report or reports submitted as soon as the previously omitted information becomes available.

§ 750.59 Contents of the investigative report.

A written report of investigation will be made in each case using standard forms whenever appropriate.

(a) *Pertinent data.* Except in cases falling within the provisions of paragraph (b) of this section, the report shall be complete in every significant detail and will include particularly such of the following information as is pertinent:

(1) Data, time, and exact place the accident or incident occurred, specifying the highway, street, road, or intersection, including the streets between which or the number of the block where the accident or incident occurred, or the number of miles and the direction from the nearest town.

(2) A concise but complete statement of the circumstances of the accident or incident. Reference should be made to pertinent physical facts observed and to any material statements, admissions, or declarations against interest by any person involved.

(3) A statement as to whether a claim has been or is likely to be filed and, if so, the name and address of the claimant or potential claimant.

(4) A statement as to whether the claimant is the sole owner of the damaged property and, if not, the name and address of the owner, or part owners, and the basis of the claimant's alleged right to file a claim.

(5) Names, service numbers, grades, organizations, and addresses of military personnel and civilian employees involved as participants or witnesses.

(6) Names and address of witnesses.

(7) A statement as to whether military personnel and civilian employees were acting within the scope of their employment, and the basis for such determination.

(8) Accurate description of Government property involved and nature and amount of damage, if any. If Government property was not damaged, that fact should be stated.

(9) Accurate description of all privately owned property involved, nature and amount of damage, if any, and the names and addresses of the owners thereof.

(10) Names, addresses, and ages of all civilians or military personnel injured or killed, information as to the nature and extent of injuries, degree of permanent disability, prognosis, period of hospitalization, name and address of attending physician and hospital, and amount of medical, hospital, and burial expenses actually incurred; occupation and wage or salary of civilians injured or killed; and names, address, ages, relationship, and extent of dependency of survivors of any such person fatally injured.

(11) If straying animals are involved, a statement whether the jurisdiction has an "open range law" and, if so, reference to such statute.

(12) A statement as to whether any person involved violated any State or Federal statute, local ordinance, or installation regulations and, if so, in what respect. The statute, ordinance, or regulation should be set out in full.

(13) A statement as to whether a police investigation was made. A copy of the police report of investigation should be included if available.

(14) A statement as to whether arrests were made or charges preferred, and the result of any trial or hearing in civil or military courts.

(15) The comments and recommendations of the investigating officer as to the existence of liability; as to the amount of the damage, loss or destruction, or the amount payable on account of personal injury or death; and as to whether and to what extent such liability, damage, loss, destructions, personal injury or death is covered by insurance companies concerned.

(16) As many exhibits or enclosures as are pertinent shall be obtained during the course of the investigation and shall be attached to the investigative report, forming a part thereof. The enclosures shall be numbered consecutively and shall be listed numerically in the investigative report in accordance with standard Navy correspondence procedure.

(b) *Limited investigation and report.* In lieu of the comprehensive investigation contemplated by § 750.58 and the detailed report described in § 750.58(a), a more limited investigation and report may be made when the following circumstances exist:

(1) A claim has been presented for an amount of $100 or less;

(2) The claim is cognizable under the Federal Tort Claims Act (§§ 750.1–750.16) or the Military Claims Act (§§ 750.20–750.29), and

(3) The amount payable on the claim has been agreed upon.

This limited report will take the form of a certification and should provide substantially as set forth in § 750.92.

§ 750.60 Action by the commanding officer or officer in charge.

(a) *Action.* If a claim is likely to arise the investigative report shall be reviewed and, if necessary, returned to the investigating officer for the correction of any omissions noted. If there is a staff judge advocate available, the commanding officer or officer in charge should use his services in reviewing and, if desirable, in endorsing the report. If the report is in order, it shall be forwarded by endorsement, with any pertinent comments and recommendations. In cases in which the certificate report authorized in § 750.59 (b) is used, the commanding officer or officer in charge may indicate his approval of the certificate report by signing this report in the space provided thereon. One copy of the report shall be retained in the file of the local activity and shall be made available to safety officers for use in accident prevention and to superior commands upon request.

(b) *Claim.* The claim and one copy of the investigative report shall be forwarded by means of the aforementioned endorsement to the appropriate adjudicating authority, "Attention Staff Judge Advocate." If the incident arises in Guam, the report and claims shall be forwarded to "Commander Naval Forces Marianas: Attention Staff Judge Advocate." In other cases where the incidents occur outside the geographical limits of any naval district, the reports shall be forwarded through the proper chain of command to the Judge Advocate General.

§ 750.61 Action by reviewing authority.

(a) *Return or endorsement.* The reviewing authority may return the investigative report for such additional investigation and information as may be considered necessary. When satisfied with the report, it shall be endorsed to the adjudicating authority with a recommendation as to whether any claim or claims being forwarded should be paid, and in what amount, stating the legal basis upon which this conclusion is predicated including a citation to the appropriate law or regulation.

(b) *Adjudicating authority.* The commandant, staff judge advocate, commander or his staff judge advocate shall approve or disapprove the claims within his adjudicating authority as described in § 750.4 or § 750.23 or assert demands and compromise or settle affirmative claims within his authority described in § 750.66. In unusual cases the entire record, together with pertinent comments and recommendations, may be referred to the Judge Advocate General for appropriate action.

(c) *Cases outside adjudicating authority of commandant, commander or staff judge advocate.* In all cases not coming within the adjudicating authority of the commandant, commander or his staff judge advocate, one copy of the investigative report shall be retained for the files and the original of the report, together with all related papers and all three copies of any claims filed, shall be forwarded, with pertinent comments and recommendations, to the Judge Advocate General.

(d) *Insurance considered.* Prior to negotiating settlement of a claim within the authority granted by §§ 750.4 and 750.23, consideration shall be given to referral of the claim to the insurer, if any, of the activity where the events giving rise to the claim occurred or which is responsible for the events giving rise to the claim.

(e) *Third party liability considered.* Prior to negotiating settlement of a claim within the authority granted by §§ 750.4 and 750.23, consideration shall be given to the liability of third parties for the damages claimed. Such third parties shall include, but not be limited to, those parties determined to be liable for contribution or indemnification.

(f) *Claims in excess of $5,000 negotiated for less.* All claims, regardless of the amount involved, shall be considered for settlement pursuant to the authority granted by §§ 750.4 and 750.23.

(g) *Analysis, review, evaluation, and recommendation required.* In the event that settlement of a claim cannot be effected within the authority granted by § 750.4, § 750.23, and paragraph (f) of this section, such claim should be forwarded to the Judge Advocate General, accompanied by (1) an analysis of the facts, (2) a review of applicable law, (3) an evaluation of liability, and (4) a recommendation as to settlement value.

(h) *Litigation reports.* Most litigation reports originate from the Litigations and Claims Division of the Office of the Judge Advocate General. Infrequently, the Judge Advocate General may request that the cognizant district judge advocate or staff judge advocate provide a litigation report directly to the U.S. attorney representing the Government's interest. A litigation report consists of a letter addressed to the U.S. attorney containing a narrative summary of the pertinent facts concerning the claim upon which the lawsuit has been filed in the U.S. district court. It will normally contain an evaluation of the facts together with a comment on the law of the State where the claim arose and recommendations respecting settlement or defense of the case. The report should tell whether an administrative claim (Standard Form 95) was submitted and what disposition was made of such claim. Copies of the enclosures to the JAG Manual investigation should be provided if they are not classified for security reasons. The investigative officer's finding of facts, opinions, recommendations, and endorsements thereon shall not be released except as specifically authorized by the Secretary of the Navy or the Judge Advocate General. If there is a question as to the propriety of releasing a particular document or information, the matter should be referred to the Judge Advocate General (Litigation and Claims) for resolution.

§ 750.62 Finality.

Subject to the provisions of 28 U.S.C. 1346(b) and §§ 750.2–750.16 respecting civil action against the United States, any award or determination of the Secretary of the Navy or his designees is final and conclusive upon all officers of the Government, except when procured by means of fraud. Notwithstanding any other provisions of law to the contrary, any settlement made by the Secretary of the Navy under the authority of the Military Claims Act (10 U.S.C. 2733) and §§ 750.20–750.29, or subject to the provisions of § 750.63 with regard to appeal to the Secretary of the Navy, by his designees for the purpose, is final and conclusive for all purposes.

§ 750.63 Notice and appeal under the Military Claims Act.

(a) *Claimant to be notified.* In every case the approving or disapproving authority shall notify, promptly and in writing, the claimant of the action taken on his claim.

(b) *Appeal.* When a claim considered under the Military Claims Act has been disapproved, either in whole or in part, the claimant may, within 30 days after receipt of such notification, appeal to the Secretary of the Navy, stating the grounds relied upon for such appeal. Such appeals may be decided, either by the Secretary of the Navy or the Judge Advocate General, except that in cases originally processed and disapproved by the Judge Advocate General, the appeal shall be decided by the Secretary of the Navy.

§ 750.64 Settlement agreement.

(a) *Difference between fully and partially approved claims.* In cases in which the claim is approved in the full amount claimed, no settlement agreement, other than the agreement incorporated in the claim for damage or injury (Standard Form No. 95), is necessary. In cases in which the claim is being approved for a lesser amount than that claimed, no payment will be made until the claimant has indicated in writing his willingness to accept such amount in full satisfaction and final settlement of the claim.

(b) *Release.* Except for an advance award pursuant to § 750.43, the acceptance by the claimant of any award or settlement made by the Secretary of the Navy, or his designees pursuant to the authority granted by statute and these regulations, or of any award, compromise, or settlement made by the Attorney General, is final and conclusive upon the claimant. It constitutes a complete release by the claimant of any claim against the United States by reason of the same subject matter. The acceptance by the claimant of any award, compromise, or settlement made under the provisions governing the administrative settlement of Federal tort claims under title 28, United States Code, or the civil action provisions of 28 U.S.C. 1346(b) and §§ 750.2–750.16 also constitutes a complete release by the claimant of any claim against any employee of the Government whose act or omission gave rise to the claim.

§ 750.65 Payment of claims.

Claims approved for payment shall be forwarded to such disbursing officer as may be designated by the Comptroller of the Navy for payment from appropriations designated for that purpose. See § 750.8 regarding the payment of Federal tort claims in excess of $2,500.

§ 750.66 Claims in favor of the United States.

(a) *Collection, compromise, termination of collection actions, and referral of civil claims for property damage.* Pursuant to section 3 of the Federal Claims Collection Act of 1966 (31 U.S.C. 952), Title 4 of the Code of Federal Regulations was amended to promulgate joint regulations of the General Accounting Office and the Department of Justice prescribing standards for the administrative collection, compromise, termination of agency collection action, and the referral to the General Accounting Office or the Department of Justice for litigation, of civil claims by the Government for money or property. These regulations are set forth in Subpart E of this part. Department of Defense Directive 5515.11 of December 10, 1966 (see § 750.93) delegates to the Secretary of the Navy, or his designees, the authority granted to the Secretary of Defense under the Federal Claims Collection Act of 1966. Action and procedures pursuant to the regulations quoted in § 750.80 shall be taken with respect to claims for property damage in favor of the United States by the Judge Advocate General or those designated in § 750.66(b). In cases in which it is determined that a valid claim exists in favor of the United States for property damage in excess of $5,000, for other than property damage, or for medical

expenses beyond the authority conferred on JAG designees in Part 757 of this chapter, the record, together with appropriate recommendations, shall be forwarded to the Judge Advocate General for action.

(b) *Collection authority.* Collection, compromise, termination of collection action, and referral to the General Accounting Office or the Department of Justice for litigation, of civil claims of the United States for property damage arising out of activities of, or referred to, the Department of the Navy pursuant to section 3 of the Federal Claims Collection Act of 1966 (31 U.S.C. 952) as implemented in joint regulations for claims collections (see § 750.70), Department of Defense Directive 5515.11 (see § 750.93), shall be made by any of the following; all of whom are designated to administer those provisions of law and regulations for the Department of the Navy:

(1) The Judge Advocate General;

(2) The Deputy Judge Advocate General;

(3) Any Assistant Judge Advocate General;

(4) Deputy Assistant Judge Advocate General (Litigation and Claims Division);

(5) The Director, Litigation and Claims Division; or

(6) Such other officers as may be designated by the Secretary of the Navy.

(c) *Direct private payment for repairs.* Where a private party who has caused damage to Government property, or the insurer of such private party, offers to have the Government property repaired to the satisfaction of the proper Government officials concerned and to pay directly to the person making the repairs the full cost thereof, the commanding officer or officer in charge of the activity concerned is authorized to permit direct payment where such procedure would be in the interest of the Government. The commanding officer or officer in charge is authorized further to assure the private party that a full release of the claim of the United States arising from such damage will be executed upon completion of the repairs to the entire satisfaction of the proper Government official and upon payment in full by the private party. This procedure may be followed without prior approval by the Judge Advocate General and without awaiting the submission of the investigative report required by this part. The investigative report submitted in accordance with this part, however, shall contain a statement of the cost of the repairs and a certification by the proper Government official to the effect that all damages have been satisfactorily repaired and that full payment therefor has been made. A release will then be executed by the Judge Advocate General or his designee.

(d) *Reimbursement for repairs.* In the event the private party, or the insurer of such private party, tenders full payment for repairs accomplished or to be accomplished at the expense of the Government, such payment should be made in the form of a check, draft, or money order payable to the order of the collecting organization, such as "Commandant, Twelfth Naval District" or "Commander, U.S. Naval Forces Marianas," and is to be forwarded for deposit by the disbursing officer serving the collecting organization. (The funds so collected are to be deposited to the Navy General Fund Receipt accounts as provided in the Navy Comptroller Manual.) Upon request, a release will be executed by the Judge Advocate General or his designee. (Exception: Where the loss or cost of repairs has been borne by a Navy Industrial Fund, payment should be deposited locally to such Fund. See Navy Comptroller Manual, paragraph 043114.) When the claim is based upon a loss or damage sustained by a Navy Industrial Fund or any similar revolving account, a notation to this effect shall be included on all claims forwarded to the Judge Advocate General for collection.

(e) *Execution of releases.* Release of all claims in favor of the United States may be executed by the Judge Advocate General and by such other officers as may be designated for that purpose. The following officers are hereby designated to execute releases for the purposes indicated:

(1) The Deputy Judge Advocate General; any Assistant Judge Advocate General; the Deputy Assistant Judge Advocate General (Litigation and Claims); and the Director, Litigation and Claims Division; for all purposes; and

(2) The commandant of a naval district (and in Guam, Commander U.S. Naval Forces Marianas), the district judge advocate, the area or subarea Commander or his staff judge advocate, (a) in all cases involving payment in full, compromise or settlement of claims within the limits of the authority granted by § 750.66 (a) and (b), (b) upon the completion of repairs to Government property and payment in full therefor and in accordance with § 750.66(c), upon local deposit to the Navy Industrial Fund of full payment for loss or damage to Government property.

(f) *Reports.* Any officer authorized to accept payment for, or to determine, assert, compromise, or settle claims in favor of the United States, and to execute releases, shall submit to the Judge Advocate General (Attention: Litigation and Claims) quarterly statements setting forth the number and dollar amounts of property damage claims asserted against, and the number and dollar amounts of recoveries from, parties responsible. Report Symbol JAG 5890-3 is assigned for this reporting requirement. A suggested format is contained in § 750.94.

§ 750.67 Disclosure of information.

No military personnel or civilian employees of the Navy shall release copies of official papers or any other information which can be used as the basis of a claim against the United States unless such release has been properly authorized by competent authority. In particular, the contents of the investigative report shall not be disclosed to the claimant or his attorney or agent, nor shall the claimant be advised as to the recommendations made with regard to his claim. Requests for such information shall be referred to the Judge Advocate General. Where the claim and investigative report have been forwarded to the Judge Advocate General of the Navy for consideration, claimants making inquiry as to the status of their claim should be advised that such information should be requested from the Judge Advocate General.

§ 750.68 Single-service assignment of responsibility for processing of claims.

(a) *Applicable law.* Department of Defense Directive 5515.8 of July 28, 1967 (NOTAL), has assigned single-service responsibility for the processing of claims under the following laws:

(1) Foreign Claims Act (10 U.S.C. 2734 (see Part 753 of this chapter);

(2) Military Claims Act (10 U.S.C. 2733) (see §§ 750.20–750.29);

(3) Act of September 7, 1962 (10 U.S.C. 2734a and 2734b), pro rata cost sharing of claims pursuant to international agreement (see § 753.27);

(4) NATO Status of Forces Agreement (4 UST 1792, TIAS 2846) and other similar agreements (see §§ 750.44 (g) and 753.27);

(5) Act of September 25, 1962 (42 U.S.C. 2651–2653), claims for reimbursement for medical care furnished by the United States (see Part 757 of this chapter);

(6) Act of October 9, 1962 (10 U.S.C. 2737), claims not cognizable under any other provisions of law (see §§ 750.40–750.42);

(7) Act of June 10, 1921 (31 U.S.C. 71), claims and demands by the Government of the United States (see § 750.66); and

(8) Act of September 8, 1961 (10 of the United States (see § 750.66); and ments (see §§ 750.43–750.44).

(b) *List of countries.* Responsibility for the processing of all claims in favor of the United States cognizable under paragraph (a) (4), (5), or (7), of this section or against the United States cognizable under paragraph (a) (1)–(4), (6), or (8) of this section, which arise in the following countries is assigned to the military departments listed below:

(1) Department of the Army: Belgium, the Democratic Republic of the Congo, Ethiopia, France, the Federal Republic of Germany, Iran, Korea, Liberia, Mali, Senegal, the Republic of Vietnam, and as the Receiving State Office in the United States under paragraph (a) (3) and (4) of this section.

(2) Department of the Navy: Australia, Iceland, Italy, and Portugal.

(3) Department of the Air Force: Canada, Denmark, Greece, India, Japan, Libya, Luxembourg, Nepal, Netherlands, Norway, Pakistan, Saudi Arabia, Spain, Turkey, and the United Kingdom.

(c) *U.S. forces afloat cases under $200.* Notwithstanding the provisions of paragraph (b) of this section, the Department of the Navy is authorized to settle

nonscope of duty claims under $200 arising in foreign ports visited by U.S. forces afloat and may, subject to the concurrence of the authorities of the receiving state concerned, process such claims without regard to international agreement described in paragraph (a)(4) of this section concerning the processing of nonscope of duty claims by receiving and sending state authorities.

(d) *Assignment of responsibility of a unified commander.* On an interim basis and while awaiting confirmation and approval from the Office of the Secretary of Defense, a Unified Command may, when necessary to implement contingency plans, assign single-service responsibility for the processing of claims in countries where such assignment has not already been made.

Subpart E—Joint Regulations on Claims Collection

§ 750.80 Joint regulations of the General Accounting Office and the Department of Justice on Federal claims collection standards.

Joint regulations of the General Accounting Office and the Department of Justice on Federal claims collection standards are found 4 CFR 101 et seq.

Subpart F—Forms used in Part 750

§ 750.90 Standard Form 95.

Standard Form 95 is contained in appendix 20–a of the Manual of the Judge Advocate General of the Navy (see §§ 750.5 and 750.51).

§ 750.91 Settlement agreement.

Settlement agreement is contained in appendix 20–b of the Manual of the Judge Advocate General of the Navy (see § 750.13).

§ 750.92 Certificate for limited report format.

Certificate for limited report format is contained in appendix 20–c of the Manual of the Judge Advocate General of the Navy (see § 750.59(b)).

§ 750.93 Delegation of authority of Secretary of Defense under Federal Claims Collection Act of 1966.

Delegation of authority of Secretary of Defense under Federal Claims Collection Act of 1966 is Department of Defense Directive 5515.11 dated December 10, 1966, and is contained in appendix 20–d of the Manual of the Judge Advocate General of the Navy (see § 750.66).

§ 750.94 Report of property damage claims.

Report of property damage claims is contained in appendix 20–e of the Manual of the Judge Advocate General.

This Part 750 is effective as of October 1, 1970.

PART 751—NAVY PERSONNEL CLAIMS

Part 751 is revised to read as follows:

Sec.

AUTHORITY: The provisions of this Part 751 issued under sec. 5031, 70A Stat. 278, 78 Stat. 767–768, as amended, 79 Stat. 791, sec. 301, 80 Stat. 379; 5 U.S.C. 301, 10 U.S.C. 5031, 31 U.S.C. 240 240–243, unless otherwise noted.

SOURCE: This Part 751 is Chapter XXI of the Manual of the Judge Advocate General of the Navy.

§ 751.1 Definitions.

In this part:

(a) "Claim" means any claim filed under oath by the commissioned, appointed, enrolled, and enlisted personnel of the Navy and Marine Corps, including their reserve components, and by civilian employees of the Naval Establishment, for damage, loss, destruction, capture or abandonment of their personnel property incident to their service.

(b) "Service personnel" means the commissioned, appointed, enrolled, and enlisted personnel of the Navy and Marine Corps.

(c) "Civilian employees" means employees of the Naval Establishment, including those paid on a contract basis.

(d) "Navy" and "naval" include "Marine Corps" except where the context indicates to the contrary.

(e) "Damage or loss" includes destruction, capture, or abandonment.

§ 751.2 Scope.

Under this part, claims are settled and paid for damage to or loss of personal property of service personnel and civilian employees of the Navy and Marine Corps. The loss must be incident to service, and possession of the property must be reasonable, useful, or proper under the circumstances. The maximum amount allowable on a claim is $10,000.

§ 751.3 Claims payable.

Claims are payable when the damage to or loss of the claimant's personal property occurs incident to his service under any of the following circumstances:

(a) *Property losses in quarters or other authorized places.* Claims are payable where property is damaged or lost by fire, flood, hurricane, or other serious occurence, or by theft while located at:

(1) Quarters, wherever situated, which were assigned to claimant or otherwise provided in kind by the Government, including permanent or temporary housing units which are owned and maintained by the Government on, or in connection with, a military or naval installation; or

(2) Quarters outside the United States occupied by claimant which were not assigned to him or otherwise provided in kind by the Government, unless the claimant is a civilian employee who is a local inhabitant; or

(3) Any warehouse, office, hospital, baggage dump, or other place (except quarters, but see subparagraphs (1) and (2) of this paragraph), designated by superior authority for the reception of the property.

(b) *Transportation losses.* Claims are payable where property, including baggage checked or in personal custody, and including household effects, is damaged or lost incident to transportation by a government contracted carrier, an agent or agency of the Government, or by a private conveyance:

(1) When shipped under orders; or

(2) In connection with travel under orders irrespective of the purpose of such travel; or

(3) In connection with travel in performance of military duty with or without troops.

(c) *Marine or aircraft disaster.* Claims are payable where property is damaged or lost in consequence of perils of the sea and hazards connected with the operation of aircraft.

(d) *Enemy action.* Claims are payable where property is lost, abandoned, damaged, or destroyed by:

(1) Enemy action or threat of such action;

(2) Combat, or movement in the field which is part of a combat mission;

(3) Guerrilla, organized brigandage or other belligerent activities, whether or not the United State is involved; or

(4) Unjust confiscation by a foreign power or by its nationals.

(e) *Property subjected to extraordinary risks.* Claims are payable when property is damaged or lost as a direct result of extraordinary risks to which it has been subjected by the performance of official noncombat duties by the claimant, including but not limited to:

(1) Performance of duty in connection with civil disturbance, public disorder, or public disaster;

(2) Efforts to save Government property or human life where the situation was such that the claimant could have saved his own property had he not so acted; or by

(3) Abandonment or destruction of property by reason of military emergency or by order of superior authority.

(f) *Property used for benefit of Government.* Claims are payable where property is damaged or lost while being used, or held for use, for the benefit of the Government at the direction or request of superior authority or by reason of military necessity.

(g) *Negligence of the Government.* Claims are payable where property is damaged or lost incident to the service of the claimant and the proximate cause of such damage or loss was the negligent act or omission of agents or employees of the Government acting within the scope of their employment.

(h) *Money deposited for safekeeping, transmittal, or other authorized disposition.* Claims for loss of personal funds which were accepted by naval personnel, military or civilian, acting with the authority of the commanding officer, for safekeeping, deposit, transmittal, or other authorized disposition, are payable where the funds were neither applied as directed by the owner nor returned to him (see article 1922, U.S. Navy Regulations, 1948).

(i) *Motor vehicles.* Claims are allowable for damage to or loss of automobiles and other motor vehicles in overseas shipments provided by the Government. "Shipments provided by the Government" means via Government vessels, charter of commercial vessels or by Government bills of lading on commercial vessels, and includes storage, on-loading and off-loading incident thereto.

(j) *House trailers.* (1) The term "house trailer," as used in this part, denotes a residence designed to be moved overland. It includes all household goods, personal effects and professional books, papers, and equipment contained in the trailer and owned or intended for use by the member or his dependents.

(2) Claims for loss of, or damage to, house trailers and their contents while in storage on Government property pursuant to shipment under orders are payable under paragraph (a)(3) of this section. Claims for loss of, or damage to, house trailers and their contents arising incident to shipment are payable under paragraph (b)(1) of this section: *Provided,* That, when transported by other than the service member or an agent or agency of the Government, the carrier must have operating rights approved by the Interstate Commerce Commission if in interstate commerce, or under applicable State regulations when the shipment is within a single State.

(3) It is the owner's responsibility to place the house trailer (including the chassis, brakes, tires, tubes, bearings, undercarriage, frame, and the other parts of the house trailer) and its contents in fit condition to withstand the stress of normal transportation. The Government has the responsibility of insuring that the house trailer is inspected prior to movement to determine if it is roadworthy. Acceptance of a house trailer for shipment by a carrier is presumptive evidence that the house trailer was in condition to withstand the stress of normal transportation.

(4) The burden of proving a claim against the Government or the carrier rests on the claimant. However, the claimant can establish a prima facie case by proving that the damage occurred during transportation. Damage which is due to (i) the negligence of the carrier, or (ii) collision while the house trailer is in the possession of the carrier, is the responsibility of the carrier. Damage which is due to apparent defects (e.g., a heavily or unevenly loaded trailer; tires which are worn, undersized, or insufficient ply rating, or have deteriorated because of age or lack of use; undercarriage and frame sagging, bent, or of insufficient size or improper construction; loose panels; faulty brakes; missing equipment; etc.) unless noted by the carrier prior to acceptance for shipment, or unless otherwise excepted by contract with the Government, is also the responsibility of the carrier. If the claimant establishes that the damage occurred during shipment, the burden then shifts to the Government and the carrier to establish that they are not liable (e.g., that the damage resulted solely from a latent structural defect).

(5) Evidence desirable for the proper adjudication of a house trailer claim should include, but is not necessarily limited to, the following:

(i) Copy of the premove inspection report;

(ii) Statement from claimant concerning condition of trailer prior to move, to include age of trailer, general condition, number and location of each prior move, whether any prior move resulted in damage, and, if so, type of damage and whether any prior claim has been paid;

(iii) Copy of the damage report (generally prepared by the carrier);

(iv) Government inspection (include photographs of each area or item of damage where this may prove helpful);

(v) Statement from the driver of the towing vehicle as to the circumstances surrounding the damage, as well as detailed travel particulars;

(vi) Repair bills or estimates as to the cost of repairs;

(vii) Statements from the persons providing claimant with estimates of repair as to their professional opinion as to the cause or causes of each area or item of damage;

(viii) Statements similar to the above by an engineer or by a member of the vehicle maintenance division of a public works department who possesses some expertise in this area;

(ix) Statements from the carrier, manufacturer, and dealer as to the cause of the damage;

(x) Dates and places of all prior transportation of the trailer, and, if at Government expense, copies of the Government bills of lading.

§ 751.4 Claims not payable.

Claims may not be allowed for:

(a) Money or currency except when deposited with authorized personnel as contemplated by § 751.3(h), or when lost incident to a marine or aircraft disaster, or when lost by fire, flood, hurricane, or theft from quarters. In instances of theft from quarters, it must be conclusively shown that the money or currency was in a locked container and that the quarters themselves were locked. Reimbursement for loss of money or currency will be limited to an amount which the adjudicating authority determines to have been reasonable for the claimant to have had in his possession at the time of the incident.

(b) Worn-out or unserviceable property.

(c) Easily pilferable articles, such as jewels and jewelry, other small articles of substantial value usually worn or carried, cameras and accessories, watches, rings, binoculars, and necklaces, when shipped with household goods by ordinary means or as unaccompanied baggage (shipment includes storage). Claims for such articles are allowable when their loss is incident to shipment by expedited mode as defined in Joint Travel Regulations. This prohibition does not apply to baggage in the personal custody of the claimant or properly checked, provided reasonable protection or security measures have been taken. However, if small items of substantial value are lost or destroyed because of fire, flood, hurricane, the sinking of a vessel, or other unusual occurrence in which the mode of shipment is not material to the type of loss the claim may be allowed.

(d) Articles intended directly or indirectly for persons other than the claimant or members of his immediate household. This prohibition includes articles acquired at the request of others, and articles to be disposed of as gifts or to be offered for sale.

(e) Articles of extraordinary value, including articles of gold, silver, or other precious metals, paintings, antiques other than bulky furnishings, relics, authentic oriental or similar expensive rugs, and other articles of extraordinary value, are not payable when shipped with household effects by ordinary means or as unaccompanied baggage. Claims for the loss of such articles are payable when their loss is incident to shipment by expedited mode in accordance with current Joint Travel Regulations. This prohibition does not apply to baggage checked, or in the personal custody of the claimant or his agent, provided reasonable protection or security measures have been taken.

(f) Articles being worn, except under the circumstances described in § 751.3 (c), (d), and (e).

(g) Intangible property, such as bank books, checks, promissory notes, stock certificates, bonds, bills of lading, warehouse receipts, baggage checks, insurance policies, money orders, and traveler's checks.

(h) Property owned by the United States, except where the claimant is responsible to an agency of the Government other than the Department of the Navy.

(i) Motor vehicle claims, except as cognizable under § 751.3(i), ordinarily will not be paid. (Meritorious claims for damage to or loss of motor vehicles may

be recommended to the Secretary of the Navy (Judge Advocate General) for payment in exceptional cases.)

(j) Enemy property or property of civilian employees who are nationals of a country at war with the United States, or of any ally of such enemy country, except when it is determined that the claimant is friendly to the United States. The prohibition also includes the property of prisoners of war or interned enemy aliens, and the property of civilian employees who have collaborated with an enemy, or with an ally of an enemy of the United States.

(k) Losses of insurers and other subrogees.

(l) Losses, or any portion thereof, which have been recovered from an insurer or carrier.

(m) Claims otherwise cognizable under § 751.3(a) are not payable for property damaged or lost at quarters occupied by the claimant within the United States which are not assigned to him, or otherwise provided in kind by the Government.

(n) Losses, or any portion thereof, which have been recovered or are recoverable pursuant to contract.

(o) Claims for damage to or loss of personal property caused in whole or in part by any negligence or any wrongful act on the part of the claimant, his dependents, his agents or his employees.

(p) Property normally used for business or profit.

(q) Claims normally are not payable for fees paid to obtain estimates of repair in conjunction with submitting a claim under the regulations in this part. Where, however, in the opinion of the approving authority the claimant could not obtain an estimate without paying a fee, such a claim may be allowed in an amount reasonable in relation to the value and/or the cost of repairs of the article involved, provided the evidence furnished clearly indicates that the amount of the estimate fee paid will not be deducted from the cost of repairs if the work is accomplished by the estimator.

(r) In all cases where a claim is made for articles lost by theft from the possession of the claimant, the claim is not payable unless evidence clearly establishes:

(1) That the claimant exercised due care in the protection of his property; and

(2) The existence of a larceny, burglary or housebreaking.

(s) Loss or damage to trailers, including house trailers and integral parts thereof except as provided in § 751.3(j). Household effects contained in trailers may be considered under § 751.3(a)(1) when the trailer is located in an assigned area on a Government installation.

(t) Property acquired, possessed, or transported in violation of law or regulations of competent authority. This does not apply to limitations imposed on weight of shipments of household effects.

§ 751.5 Type and quantity of property.

(a) Claims are payable under the provisions of this part only for such types and quantities of tangible personal property the possession of which shall be determined by the adjudicating authority to be reasonable, useful, or proper under the attendant circumstances at the time of the loss or damage. Among such items of personal property is property required by law or regulations of the Navy to be possessed or used by its military personnel or civilian employees incident to their service.

(b) Claims which are otherwise within the provisions of this part will not be disapproved for the sole reason that the property was not in the possession of the claimant at the time of the damage, loss, or destruction, or for the sole reason that the claimant was not the legal owner of the property for which the claim was made (e.g., borrowed property may be the subject of a claim if its possession was reasonable, useful, or necesary to the claimant).

§ 751.6 Computation of award.

(a) The amount awarded on any item of property will not exceed its depreciated replacement cost at the time of loss. Unless proved otherwise, replacement cost will be based on the price paid in cash for the property or, if not acquired by purchase or exchange, the value at the time of acquisition. The amount normally payable on property damaged beyond economical repair is found by determining its depreciated value immediately before it was damaged or lost, less any salvage value. If the cost of repair is less than the depreciated value of the property, then it is economically repairable, and the cost of repair is the amount payable.

(b) Depreciation in value of an item is determined by considering the type of article involved, its cost, condition when lost or damaged beyond economical repair, and the time elapsed between the date of acquisition and the date of accrual of the claim. Schedules of depreciation are issued by the Judge Advocate General to the adjudicators as guides for determining the estimated life of various classes of items.

(c) Allowance for expensive items, including heirlooms, or for items purchased at unreasonably high prices, will be based on the fair and reasonable purchase price of substitute articles of a similar nature.

(d) Allowance for articles acquired by barter will not exceed the adjusted cost of the articles tendered in barter.

(e) No reimbursement will be made for articles acquired in black market or other prohibited activities.

(f) The Judge Advocate General will promulgate to the adjudicators from time to time guides for determining the maximum amount allowable for specific articles, and for establishing maximum quantities which will be allowed. In applying these guides the claimant's standard of living, income and social obligations, the size of his family, and his need to have more than average quantities of particular items will be considered.

§ 751.7 Statute of limitations.

No claim may be paid under the provisions of this part unless presented in writing within 2 years after such claim accrues: *Provided*, That if the claim accrues in time of war, or in time of armed conflict in which the Armed Forces of the United States are engaged, or if war or such armed conflict intervenes within 2 years after date of accrual, it may, if good cause for delay is shown, be presented within 2 years after such good cause ceases to exist, but not later than 2 years after peace is established or armed conflict terminates.

§ 751.8 Demand on carrier, contractor, and/or insurer.

(a) *Carrier.* Whenever property is damaged, lost, or destroyed while being shipped pursuant to authorized travel orders, the owner must file a written claim for reimbursement with the carrier according to the terms of its bill of lading or contract before submitting a claim against the Government under these regulations. This demand should be made against the last commercial carrier known or believed to have handled the goods, unless the carrier who was in possession of the property when the damage or loss occurred is known. In this event, the demand should be made against the responsible carrier. If more than one bill of lading or contract was issued, a separate demand should be made against the last carrier on each such document. The demand must be made within 9 months of the date delivery was made, or within 9 months of the date that delivery ordinarily should have been made. If it is apparent that the damage or loss is attributable to packing, storage, or unpacking while in the custody of the Government, no demand need be made against the carrier.

(b) *Military Sealift Command.* A claim for loss, damage, or destruction of a privately owned vehicle or for household goods against an ocean carrier operating under a Military Sealift Command shipping contract and Government bill of lading is the responsibility of Military Sealift Command. No demand shall be made by individual claimants or by claims and adjudicating authorities directly on an ocean carrier operating under such a contract. After payment of a claim against the Government involving loss, damage, or destruction of a privately owned vehicle or household goods by such an ocean carrier, one copy of the completed claim file shall be forwarded to Commander Military Sealift Command. Each file shall include the following:

(1) The payment voucher;

(2) The completed personnel claim form;

(3) The estimated or actual cost of repair;

(4) A document indicating the conditions of the item upon delivery to the carrier; and

(5) A document indicating the forwarding condition of the item upon its return to Government control.

The letter of transmittal should identify the vessel by name, number, and if available the sailing date. See the sample transmittal letter contained in § 751.30.

(c) *Insurer.* Whenever the property which is damaged, lost or destroyed incident to the claimant's service is insured in whole or in part, the claimant must make demand in writing against the insurer for reimbursement under the terms and conditions of the insurance coverage. Such demand should be made within the time limit provided in the policy and prior to the filing of the concurrent claim against the Government as provided in § 751.9.

(d) *Failure to make demand on carrier, contractor, or insurer.* Failure to make demand on a carrier, contractor, or insurer, or to make all reasonable efforts to collect the amount recoverable from the carrier, contractor, or insurer may result in reducing the amount recoverable from the Government by the maximum amount which would have been recoverable from the carrier, contractor, or insurer, had the claim been timely made or diligently prosecuted. However, no deduction will be made where the circumstances of the claimant's service preclude seasonable filing and prosecution of a claim or the evidence indicates that a demand was impracticable or would have been unavailing.

§ 751.9 Concurrent claims on the carrier, contractor, or insurer and the Government.

To expedite the settlement of household effects claims, the claim persented to the Government under the regulations in this part should be submitted concurrently with the demand made against the carrier, contractor, and/or insurer. The claims investigating officer will prepare and submit the claim against the carrier, contractor, and/or insurer and will thereafter assume the responsibility of monitoring the claims against the carrier, contractor, or insurer to final settlement. The claimant shall be advised to direct the carrier, contractor, or insurer to address all correspondence regarding the claim to the commanding officer of the unit or activity at which the claim was filed, "Attention: Claims Investigating Officer." Further, any payment in settlement of the claim by the carrier, contractor, or insurer should be made payable to the claimant and forwarded to the commanding officer, "Attention: Claims Investigating Officer."

§ 751.10 Form of demand on carrier, contractor, or insurer.

Demands on a carrier, contractor or insurer should be made in writing on forms provided or by letter substantially following the format contained in § 751.31.

§ 751.11 Nonconcurrent claims against the carrier, contractor, or the insurer and the Government.

In the event a claim against a carrier, contractor, or insurer is made by the claimant, he is not required to wait until there is approval or denial of his claim by the carrier, contractor, or insurer before submitting his claim against the Government. He may immediately file a claim in accordance with provisions of § 751.18. In submitting his claim he shall certify that he has, or has not, gained any recovery from a carrier, contractor, and/or insurer, and enclose all pertinent correspondence. If final action has not been taken by the carrier, contractor, or insurer on his claim, he will immediately notify them to address all correspondence concerning his claim to him in care of the commanding officer of the unit or activity at which his claim with the Government has been filed, "Attention: Claims Investigating Officer." Thereafter, the entire matter will be treated by the claimant and by the claims investigating officer as if it had been commenced as a concurrent claim under the provisions of § 751.9. The claimant will be required to advise the claims investigating officer of any action taken by the carrier, contractor, and/or insurer on his claim and will furnish the claims investigating officer with all correspondence, documents, and other evidence pertinent to the matter.

§ 751.12 Transfer of right against the carrier, contractor, or insurer.

The claimant will assign to the United States, to the extent of any payment on his claim accepted by him, all his right, title, and interest in any claim he may have against any carrier, insurer, contractor, or other party arising out of the incident on which the claim against the United States is based. He will also furnish such evidence as may be required to enable the United States to enforce the claim.

§ 751.13 Recoveries from carrier, contractor, and/or insurer.

After payment of the claim by the United States, and upon receipt of any payment from a carrier, contractor, and/or insurer, the United States shall be reimbursed as follows:

(a) If the damage or loss adjudicated in accordance with § 751.6 is $10,000 or less, the proceeds will be paid to the United States to the extent of the payment received from the United States less any amount paid by a carrier, contractor or insurer over and above that paid by the Government for any item; and

(b) If the damage or loss adjudicated in accordance with § 751.6 exceeds $10,000, the United States shall be reimbursed to the extent that the payments from the carrier, contractor and insurer, plus the $10,000 paid by the Government are in excess of the adjudicated loss less any amount paid by a carrier, contractor or insurer over and above that paid by the Government for any item.

§ 751.14 Claims within provisions of other regulations.

The provisions of this part are preemptive of other claims regulations. However, claims not allowable under this part may possibly be allowable under Part 750 of this chapter, General Claims Regulations.

§ 751.15 Claimants.

A claim may be presented only by a military member or civilian employee of the Navy, or in his name by his spouse as his authorized agent, or by any other authorized agent or legal representative. In the event the claim is filed by an agent or legal representative, this person must demonstrate his or her capacity to act in the claimant's behalf by submitting a power of attorney or other documentary evidence. If the military or civilian person is deceased, the claim may be presented by his survivor regardless of whether the claim arose before, concurrent with, or after the decedent's death. Survivors' claims will be presented in the following order of precedence:

(a) Spouse;
(b) Child or children;
(c) Father or mother, or both;
(d) Brothers or sisters, or both.

§ 751.16 Form of claim.

The claim will be submitted by presenting a detailed statement in triplicate, signed by or on behalf of the claimant, on NAVJAG Form 5890/1A (see § 751.32). If the claims investigating officer desires a copy of the adjudicated claim returned to his office for use in adjusting recoveries later received from carriers, contractors or insurers, a fourth copy of the claims from clearly marked for this purpose must be included. If NAVJAG Form 5890/1A is not available, any writing will be accepted and considered if it asserts a demand for a specific sum and substantially describes the facts necessary to support a claim cognizable under these regulations. Attention is directed to the following section which outlines the specific evidence required for particular classes of claims. Careful compliance with these requirements by the claimant in the preparation of his claim will substantially expedite adjudication, thus avoiding delays occasioned by the need of the adjudicating authority to obtain additional evidence from the claimant.

§ 751.17 Evidence in support of claim.

(a) *General.* The claim should be supported by the evidence required on the claim form and, in addition, the following evidence when applicable:

(1) Corroborating statement from a person who has personal knowledge of the facts concerning the claim.

(2) Statement of property recovered or replaced in kind.

(3) Itemized bill of repair for damaged property which has been repaired.

(4) At least one written estimate of the cost of repairs from a competent bidder or person if the property is repairable but has not been repaired. "Competent bidder or person" means one who has experience in the line of needed repairs and is in a position to know the cost of repairs of such items in the current market. Exception to the above is permissible when in the opinion of the claims investigating officer the probable estimate fee will be out of proportion to the cost of repairs. In this situation, the claims investigating officer, with the concurrence of the claimant, will recommend an amount for payment. The name, address, and experience of each

such "competent" person must be given. The adjudicating authority may reject any estimate or statement of the cost of repairs that does not meet the above standards. The claimant shall satisfy the claims investigating officer that items claimed as beyond economical repair are in fact in that condition.

(5) Proof of the change in value when a claimant indicates that the replacement cost of an item lost or destroyed exceeds either the price paid in cash or property or, if not acquired by purchase or exchange, the value at the time of acquisition. The proof should be comprised of not less than two direct price quotations from the local market. In case there is no local market, the value may be properly fixed by the value at the nearest market, adding the cost of transportation. Should there be no available market, he should submit at least one written estimate of the value from a competent person. "Competent person" in this instance is deemed to be one who, being apprised of the characteristics of the item in question, is able to render a knowledgeable estimate of its value at the time of loss. For items purchased outside the continental limits of the United States which do not contain qualities of identity to permit specific substantiation, allowances will be limited to a reasonable amount over and above the purchase price as agreed upon by the claimant and the claims officer. In this situation, allowance will not exceed double the cost of the item. Examples include custom-made items, unique items of clothing, art, household furnishings, and jewelry as distinguished from trademark items. In the event a claims officer by his experience knows that the approximate replacement cost in the area is close to what the claimant lists, the claimant will not be requested to submit evidence of the replacement cost. This fact, however, must be noted in the investigation report on the claim. In those cases where he knows the replacement cost to be less than the value claimed, he should include this information along with substantiating evidence.

(6) Certified statement concerning any insurance coverage and reimbursement obtained from the insurer. The statement should describe the type of insurance and coverage and give the name of the insurer. If the claimant has insurance, but has not submitted a claim, the failure to do so should be explained.

(b) *Waiver of written estimates.* (1) Regardless of the total amount of the claim, the requirement for a written estimate of the cost of repairs on any item for which the amount claimed is less than $100 normally will be waived, provided the claims investigating officer has personally inspected the property, or the evidence otherwise available is sufficient to support the claim.

(2) In the event that the claimant and the claims investigating officer cannot agree on a reasonable value, the claims investigating officer should describe in his report the facts upon which his recommendation is based. The value set by the claims investigating officer is not necessarily binding on the adjudicating authority, and the claimant may submit written estimates or other supporting evidence in any case.

(c) *Specific classes of claims.* Claims of the following types should be accompanied by the specific and detailed evidence as listed in this paragraph.

(1) For property losses in quarters or other authorized places, a statement indicating:

(i) Geographical location;

(ii) Whether quarters were assigned or provided in kind by the Government;

(iii) Whether quarters were regularly occupied by the claimant;

(iv) Name of authority, if any, who designated the place of storage of the property, if other than quarters;

(v) Measures taken to protect the property; and

(vi) If claimant is a civilian employee, a statement from the competent authority establishing that when the claim arose the claimant was a civilian employee of the Navy, and was, or was not, a local inhabitant.

(2) For theft, a statement indicating:

(i) Geographical area of the loss;

(ii) Facts and circumstances surrounding the loss, including evidences of larceny, burglary, or housebreaking (e.g., evidence of breaking and entering, capture of the thief, recovery of part of the stolen goods); and

(iii) Evidence that the claimant exercised due care in protecting this property prior to the loss. Attention will be given to the degree of care normally exercised in the locale of the loss due to any unusual risks involved.

(3) For transportation losses:

(i) Copy of orders authorizing the travel, transportation or shipment, or in lieu thereof a certificate explaining the absence of orders, and stating their substance;

(ii) All bills of lading, and inventories of property shipped;

(iii) Copy of demand on carrier, contractor, and/or insurer, and any reply or replies (see §§ 751.9 and 751.11);

(iv) In case of missing baggage, a statement indicating action taken to locate the missing property, with related correspondence; and

(v) Where property was turned over to a Quartermaster, transportation officer, supply officer, or contract packer, a statement indicating:

Name (or designation) and address of Quartermaster, transportation officer, supply officer, or contract packer,

Date property was turned over,

Condition when property was turned over,

When and where property was packed, and by whom,

Date of shipment and reshipment,

Copies of all manifests, bills of lading and contracts,

Date and place of delivery to claimant,

Date property was unpacked,

Statements of disinterested witnesses as to condition of property when received and delivered, or as to handling or storage,

Whether the negligence of any Government employee acting within the scope of his employment caused the damage or loss, and

Whether the last common carrier or local civilian carrier was given a clear receipt.

(4) For marine or aircraft disaster, a copy of orders or other evidence to establish a claimant's right to be on board and/or to have his property on board.

(5) For enemy action, public disaster, or public service:

(i) Copy of orders or other evidence establishing claimant's required presence in the area involved; and

(ii) A detailed statement of facts and circumstances showing applicable causes enumerated in § 751.3 (d) and (e).

(6) For property used for benefit of Government:

(i) A statement from proper authority that the claim was for property which was required to be supplied by the claimant in the performance of his official duty or occupation at the request or direction of superior authority, or by reason of military necessity; and

(ii) Evidence that, if the property being used for the benefit of the Government was lost while not in use, the loss occurred in an authorized storage area.

(7) For money deposited for safekeeping, transmittal, or other authorized disposition:

(i) Name, grade, service number, and address of the person or persons who received the money and of other persons involved;

(ii) The name, and designation of the authority who authorized such person or persons to accept personal funds, and the disposition requested (see article 1922, U.S. Navy Regulations, 1948); and

(iii) Receipts and written sworn statements explaining the failure to account for the funds or to return such funds to the claimant.

§ 751.18 Filing of claim.

All claims coming within the cognizance of this chapter should, if practicable, be submitted by the claimant or his authorized agent to the commanding officer of the Navy or Marine Corps activity nearest to the point where investigation of the facts and circumstances can most conveniently be made. As an alternative, the claim may be submitted to the commanding officer of the unit or activity to which the claimant belongs or is attached. Acceptance of a claim for filing will not be refused even though the claim appears not to be within the scope of this part.

(a) Claims of Air Force personnel and civilian employees of the Air Force will be processed and forwarded directly to the nearest Air Force installation.

(b) Claims of Army personnel and civilian employees of the Army will be processed and forwarded directly to the nearest Army installation.

§ 751.19 Appointment of claims investigating officers.

Each commanding officer shall, as appropriate, appoint one or more claims investigating officers to investigate, process, and make recommendations on all claims presented to him under this part. Commanding officers of major or separate commands and commanding officers processing an appreciable number of claims may appoint one or more claims

investigating officers on a continuing basis. This is particularly pertinent to activities receiving many shipments of household effects. Claims investigating officers will receive their technical guidance from the Judge Advocate General.

§ 751.20 Investigation of claims.

Upon receipt of a claim filed in accordance with the provisions of this part, the commanding officer shall refer the claim, with all available information relating thereto, to the claims investigating officer. The investigating officer shall consider all information and evidence submitted with the claim and shall conduct such further investigation as may be necessary and appropriate. Direct correspondence between investigating officers and commands or other naval personnel is authorized for the purpose of tracing the location or disposition of missing baggage or effects.

§ 751.21 Action of claims investigating officer in transportation losses.

(a) *Filing of concurrent claims against carriers, contractors, and insurers.* Upon submission of a claim against the Government, the claims investigating officer will prepare and submit the claim to the appropriate carrier, contractor, and/or insurer for damage, loss, or destruction of household and personal effects being shipped pursuant to authorized travel orders.

(b) *Concurrent claims against carriers, contractors, and insurers.* The claimant should provide the claims investigating officer with all documents, papers, and other evidence needed to press the claim against the carrier, contractor, and/or insurer. In return, the claims investigating officer shall advise the claimant that the claim will be monitored to final settlement. The claimant shall also be advised that in the event of favorable action by the carrier, contractor, or insurer, he will be so advised and that all necessary adjustments will be made to the concurrent claim filed with the Government. The claimant will notify the claims investigating officer promptly of any communication received from the carrier, contractor, or insurer, particularly if it involves settlement, partial settlement, or denial of liability. Any subsequent correspondence with the carrier, contractor, and/or insurer shall be identified properly with the company's claim or reference symbols.

(c) *Approval or denial of concurrent claim by carrier, contractor, or insurer.* (1) The claims investigating officer shall report any denial of a claim by a carrier, contractor, or insurer to the claimant and to the command where the claim has been forwarded for adjudication.

(2) Upon receipt of approval of the claim by a carrier, contractor, or insurer, the following action shall be taken:

(i) If the claim filed with the Government has been forwarded to the adjudicating authority and the recovery received from the carrier, contractor, or insurer is considered to be sufficient, then the claims investigating officer should advise the claimant to accept the award. Upon acceptance of the award, the claims investigating officer shall notify the adjudicating authority (a suggested speedletter format is shown in § 751.33).

(ii) If the claimant has already received full payment from the Government, he will pay the proceeds received from the carrier, contractor, and/or insurer to the United States by endorsing the check to the Department of the Navy and delivering it to the command or to the claims investigating officer. If the amount to be refunded, as determined according to § 751.13, is less than the amount received, remittance may be made by personal check or money order payable to the Department of the Navy.

(d) *Nonconcurrent claims.* If an independent claim has been filed against a carrier, contractor, or insurer, the claimant will be asked, at the time the claim is filed with the Government, to certify whether or not he has obtained any recovery from a carrier, contractor, and/or insurer. A sample certificate is contained in § 751.34. If any recovery has been obtained from the carrier, contractor, and/or insurer, appropriate comment indicating the amount recovered shall be made by the claims investigating officer on the claim being forwarded to the adjudicating authority. If action by the carrier, contractor, or insurer is still pending, the claimant will advise the carrier, contractor, or insurer to address all correspondence to him, in care of the claims investigating officer of the command, unit or activity at which the claim was filed, "Attention Claims Investigating Officer." Thereafter the matter will be treated as if it had commenced as a concurrent claim. The claimant shall be advised to notify the claims investigating officer promptly as to any offer of settlement or denial of liability by the carrier, contractor, and/or insurer. Forwarding of the claim to the appropriate adjudicating authority will not be delayed pending action of a carrier, contractor, or insurer unless it is apparent that final action by the carrier, contractor, and/or insurer will be immediately forthcoming.

(e) *Failure of carrier, contractor, and/or insurer to respond.* Normally an acknowledgement, or perhaps even final action, will be received from the carrier, contractor, and/or insurer within a month after the claim is submitted to them. In the event a response is not received to the claim or to subsequent correspondence, the matter should be reported to the origin transportation officer as a matter bearing upon the adequacy of contractual performance. The origin transportation officer will render assistance in obtaining action from the company and report the actions taken to the claims investigating officer who will monitor the claim against the carrier, contractor, or insurer until a reply has been received from the origin transportation officer.

(f) *Unjustified denials by the carrier, contractor, or insurer.* If a carrier, contractor, or insurer has refused to respond to a claim within a reasonable time (normally 30 days), or if in the opinion of the claims investigating officer a valid claim has been denied, no adequate settlement offered, or there has been a delay in settlement of a claim, the matter shall be reported to the origin transportation officer. The letter report shall contain a statement of the facts, copies of pertinent correspondence and documents, and the claims officer's opinion as to liability. The origin transportation officer shall review the file with respect to liability of the carrier, contractor, or insurer. If he concurs in the opinion of the claims investigating officer, he shall proceed to seek a satisfactory settlement and to take such other actions against the carrier, contractor, or insurer as may be considered appropriate. He shall keep the claims investigating officer informed as to the status of the case. If at any time he considers that the claimed liability has been satisfied, he shall so inform the claims investigating officer. Failing to respond to correspondence concerning a claim, denying a valid claim, refusing to make an adequate settlement, or delaying the settlement of a claim should be considered by the origin transportation officer as a matter bearing upon the adequacy of contractual performance.

(g) *Unrecovered claims against carrier, contractor, or insurer.* If the origin transportation officer is unable to make a satisfactory settlement within a reasonable time, he shall return the entire file to the claims investigating officer. The claims investigating officer shall forward the file to the appropriate adjudicating authority. The origin transportation officer and the claims investigating officer shall make recommendations as to the disposition of the claim.

(h) *Action by adjudicating officer.* The command adjudicating the claim shall review the entire file and shall make a further demand on the carrier, contractor, or insurer when liability seems clear. If recovery is not effected, the file will be forwarded to the Judge Advocate General with appropriate recommendations. The Judge Advocate General will take whatever action is necessary to recover from the carrier, contractor, or insurer when liability is clear.

§ 751.22 Preparation of claims investigating officer's report.

(a) *General.* The claims investigating officer will prepare a written report of investigation including his recommendations (see NAVJAG Form 5890/1B in § 751.35). Sufficient copies will be prepared so that the original and two copies may be forwarded to the appropriate adjudicating authority and one copy retained at the command. Only one set of supporting papers, documents, and exhibits need be forwarded to the adjudicating authority.

(b) *Claims arising from the same incident.* A separate report shall be prepared on each claim filed. However, where separate claims arise from the same incident, the claims investigating officer may avoid duplication of effort by completing one detailed report of investigation with all necessary exhibits and documents. He may then incorporate this report and its supporting exhibits

by reference. A brief reference to the case (name, case number, date, etc.) in which the detailed report and exhibits may be found shall be included.

§ 751.23 Action by commanding officer.

Items of military clothing and related articles which have been lost or destroyed incident to service may be replaced in kind. The items issued need not be new and unused, provided they are in at least as good condition as the lost or destroyed items immediately prior to the accident or incident causing the loss or damage. If items which were initially issued to the claimant by the Government have been lost or damaged incident to service and replacement in kind cannot be effected, because items are not available for issue, monetary compensation is payable for those items replaced or to be replaced by the claimant at his own expense. The amount allowable normally will be the reasonable cost of replacement with no deduction for depreciation (in order that the claimant will not be required to bear an expense which he would not have incurred if the items had been available for replacement in kind). If military items were initially acquired by the claimant at his own expense, and replacement in kind cannot be effected or the claimant is unwilling to accept replacement in kind because the lost or destroyed items were of a better quality than those available for issue, monetary compensation may be allowed for the loss or destruction of the items involved.

(a) *Examination and approval of report.* The commanding officer, the chief of staff, chief staff officer, or executive officer, or judge advocate shall review the file and determine whether the findings of the investigating officer are complete, whether the facts and evidence are clearly stated, and whether the recommendation of the investigating officer is supported by adequate evidence. In proper cases he may refer such report back to the investigating officer for further investigation and the inclusion of additional data. The commanding officer, chief of staff, chief staff officer, executive officer, or judge advocate shall then by first endorsement to the investigating officer's report, indicate his title and approve the report without qualification or with stated exceptions. In no event will any opinion be expressed to the claimant as to whether his claim will be approved. The endorsement shall express an opinion as to whether the possession of the property by the claimant was reasonable, useful, or proper under the attendant circumstances.

(b) *Statement concerning replacement in kind.* There shall be included in the first endorsement on the investigating officer's report, and attached to each copy of such report, either a statement that no replacement in kind was made or a list of the items replaced, together with the price of each. This statement may be omitted when replacement in kind is made for all items claimed.

(c) *Forwarding of claim.* When there has been replacement in kind for all items claimed, the report need not be forwarded beyond the officer authorizing such replacement. In all other cases the investigating officer's report in triplicate, including the original and two copies of the claim plus one copy of each supporting document or paper, shall be forwarded by endorsement to the cognizant adjudicating authority. A list of commands authorized to adjudicate these claims is contained in § 751.36.

§ 751.24 Adjudicating authority.

(a) *Claims for Navy personnel.* The Judge Advocate General; the Deputy Judge Advocate General; any Assistant Judge Advocate General; the Deputy Assistant Judge Advocate General (Litigation and Claims); the Director, Litigation and Claims Division; and the Head, Operational Claims and Litigation Branch, Litigation and Claims Division, and such other officers as may be specifically designated by the Secretary of the Navy are hereby designated and authorized to consider, adjust, and determine claims of Navy personnel both military and civilian up to $10,000. Commandants of naval districts and their staff judge advocates and certain area or subarea coordinators and their staff judge advocates have authority to adjudicate and to authorize payment of personnel claims up to $2,500. In addition to the above, a judge advocate attached to or assigned to duty at any naval supply center, naval supply depot, or command designated by the Judge Advocate General has the authority to adjudicate and authorize payment of personnel claims up to $500 filed under this part. A list of the adjudicating authorities is contained in § 751.36.

(b) *Claims for Marine Corps personnel.* The Commandant of the Marine Corps; the Director of Personnel of the Marine Corps; the Deputy Director of Personnel of the Marine Corps; the Head, Personal Affairs Branch, Personnel Department, Headquarters, U.S. Marine Corps; and such other officers as may be specifically designated by the Secretary of the Navy are hereby designated and authorized to consider, ascertain, adjust and determine claims of Marine Corps personnel, both military and civilian, filed under this part.

(c) *Replacement in kind.* Officers in the grade of lieutenant commander, major, or higher who are commanding officers, or who are in higher echelons of command, including the officers specified in paragraph (a) of this section, or who are Senior Officers Present, are hereby designated and authorized to consider, ascertain, adjust, and determine the respective claims of Navy or Marine Corps enlisted personnel for replacement in kind filed under this part. Marine Corps officers below the grade of major, where such officers are in command of separate companies, batteries, squadrons, detachments, ports, or stations, are hereby designated and authorized to consider, ascertain, adjust, and determine claims of enlisted personnel for replacement in kind filed under this part. Replacement in kind authority may also be exercised by such other officers as may be specifically designated by the Secretary of the Navy.

(d) *Payments and collections.* Payment of approved personnel claims and deposit of checks received from carriers, contractors, insurers, or members will be made by the Navy or Marine Corps disbursing officer serving the adjudicating authority. Payments will be charged to funds made available to the adjudicating authority for this purpose. Credit for collections will be to the accounting data specified in instructions issued by the Judge Advocate General.

(e) *Reports.* Commands adjudicating personnel claims shall forward quarterly reports to the Judge Advocate General on January 1, April 1, July 1, and October 1 setting forth the following information:

(1) With respect to new claims received during the preceding quarter—the number of such claims and the dollar total of all such claims;

(2) With respect to adjudications during the preceding quarter—the number of claims allowed in whole and in part, the dollar total of the claims allowed and the number of claims forwarded the higher authority for adjudication;

(3) With respect to affirmative claims against carriers, contractors, and insurers during the preceding quarter—the number and dollar total of all claims asserted and the number and dollar total of all recoveries actually received;

(4) With respect to requests for reconsideration during the preceding quarter—the number received, the number and dollar total of those allowed, and the number of requests forwarded to the Judge Advocate General.

(5) Any other significant information relating to the above (e.g. names of carriers, contractors, or insurers failing to respond to recovery requests, number of claims held over 60 days, number of affirmative claims against carriers, contractors, and insurers forwarded to higher adjudicating authority).

Report Symbol JAG–5890–5 is assigned for this reporting requirement. A suggested format is contained in § 751.37.

§ 751.25 Limitation on agent or attorney fees.

(a) *Controlling statute.* The Military Personnel and Civilian Employees' Claims Act of 1964, as amended, the statutory authority underlying this chapter, provides in section 8 that:

> No more than 10 per centum of the amount paid in settlement of each individual claim submitted and settled under the authority of sections 240–243 of this title shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with that claim and the same shall be unlawful, any contract to the contrary notwithstanding. Any person violating the provisions of sections 240–243 of this title shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding $1,000.

(b) *Federal Tort Claims distinguished.* The above-quoted provision which does not require that an attorney's fees be fixed in, and be made a part of, the award adjudicating the claim, is different from an otherwise similar provision

concerning certain Federal Tort Claims as described in § 750.13.

(c) *Other prohibition.* The provisions concerning an attorney's fee set forth in paragraph (a) of this section does not authorize a fee in those cases where a fee is prohibited for other reasons (see SECNAVINST 5801.1B, Legal assistance program, paragraph 15).

§ 751.26 Separation from service.

Separation from the service or termination of employment shall not bar military personnel or civilian employees from filing claims or bar the authority of the designated officers from considering, ascertaining, adjusting, determining, and authorizing payments of claims otherwise failing within the provisions of these regulations when such claim accrued prior to separation or termination.

§ 751.27 Meritorious claims not otherwise provided for.

Meritious claims within the scope of the Military Personnel and Civilian Employees' Claims Act of 1964, as amended (31 U.S.C. 240–243) which are not otherwise provided for in this part, may be forwarded via official channels to the Secretary of the Navy (Judge Advocate General) for consideration. Exceptional meritorious cases may be approved for payment by the Secretary of the Navy or by the Judge Advocate General.

§ 751.28 Reconsideration.

(a) A claim may be reconsidered which was previously disapproved in whole or in part even though final settlement has been made when it appears that the original action was erroneous or incorrect in law or in fact based on the evidence of record at the time of the action or subsequently submitted. A request for reconsideration shall be made in writing to the adjudicating authority originally acting on the claim and should include all documents which have been returned to the claimant. All requests for reconsideration shall be made within six months from the date the claimant received notice of the initial adjudication of his claim. Any adjudicating authority shall reconsider a claim upon which he has originally acted upon the request of a claimant or someone acting in the claimant's behalf and may settle it by granting such relief as may be warranted. If it is determined that the original action was incorrect, it shall be modified and, if appropriate, a supplemental payment shall be approved. An adjudicating authority may also, on his own initiative, reconsider a claim which he has denied in whole or in part.

(b) If an adjudicating authority does not grant the relief requested, the request for reconsideration shall be forwarded, together with the entire file and the adjudicating authority's recommendation, to the Judge Advocate General and the claimant so informed.

§ 751.29 Authorization for issuance of instructions.

The Judge Advocate General of the Navy may issue such amplifying instruction or guidance as may be considered appropriate to give full force and effect to the purposes of this part.

This Part 751 is effective October 1, 1970.

PART 752—ADMIRALTY CLAIMS

Part 752 is revised to read as follows:

Sec.
752.1 Scope.
752.2 Reports.
752.3 Investigations.
752.4 Documents.
752.5 Surveys.
752.6 Damages.
752.7 Miscellaneous.

AUTHORITY: The provisions of this Part 752 issued under sec. 5031, 70A Stat. 278, as amended, sec. 301, 80 Stat. 379; 5 U.S.C. 301, 10 U.S.C. 5031. Interpret or apply secs. 7621–7623, 70A Stat. 472, as amended, 79 Stat. 212; 10 U.S.C. 7621–7623.

SOURCE: This Part 752 is Chapter XII of the Manual of the Judge Advocate General.

§ 752.1 Scope.

(a) *Application of chapter.* This part applies to admiralty tort claims. These include claims against the United States for damage caused by a vessel in the naval service and affirmative claims by the United States for damage caused by a vessel or floating object to Navy property. Most collisions involve claims both by and against the Navy.

(b) *JAGINST 5880.1 series.* Detailed instructions concerning admiralty claims are contained in JAGINST 5880.1 series. This Instruction must be consulted and its provisions followed in the actual handling of any admiralty claim.

(c) *Claims against the United States.* The Secretary of the Navy may settle or compromise, in an amount not more than $1 million, a claim against the United States for damage caused by a vessel in the naval service, or for towage or salvage services rendered to such a vessel. In addition to collisions and cases of actual physical contact with another vessel or a shore structure, the following are examples of damage that may be caused by a naval vessel:

(1) Wave wash or swell damage;

(2) Damage to fish nets or traps, lobster pots, oyster beds or clam flats;

(3) Damage to commercial cargo carried in a Navy bottom;

(4) Personal injury or death of a civilian not employed by the Government (including longshoremen, harbor workers, repairmen, visitors, passengers, and guests);

(5) Damage resulting from oil spills, paint spray, blowing tubes;

(6) Damage to third parties resulting from fire or explosion on a naval vessel.

(d) *Affirmative claims.* The Secretary of the Navy also has authority to settle or compromise affirmative admiralty claims in an amount not over $1 million. These are claims for damage to property under the jurisdiction of the Department of the Navy or property for which the Department has assumed an obligation to respond for damage, if the claim is within the admiralty jurisdiction or is for damage caused by a vessel or floating object.

(e) *Collisions between U.S. naval vessels.* This part does not apply to incidents involving only U.S. naval vessels or property, or where neither private interests nor foreign governments nor any other potential claimants are involved.

(f) *Policy.* The policy of the Navy is to effect fair and prompt settlements of admiralty claims wherever possible. The procedures described in this part are designed to accomplish that end.

§ 752.2 Reports.

(a) *Immediate preliminary report.* A prime requirement in the handling of any admiralty claim is to make an immediate preliminary report by the most expeditious means (telephone or message) to the Judge Advocate General (Admiralty Division) and to the cognizant judge advocate in the field. If a casualty report or report of significant damage is necessary under other directives (e.g., articles 0628, 0727, U.S. Navy Regulations) this requirement can be met by including JAG and the cognizant judge advocate in the field as addressees of the casualty report. If a telephone report is to be used, the call should be directed to the Admiralty Division of the Office of the Judge Advocate General, Navy Department, Washington, D.C., Area Code 202, OXford 45274, during office hours, or OXford 50231 (the OPNAV Duty Captain) at other times for connection with the JAG Duty Officer.

(b) *Assistance by admiralty officers.* Immediate reporting of an admiralty claim enables the local judge advocate or the Admiralty Division to render prompt assistance with respect to surveying the damage, dealing with opposing interests, and advising as to the scope of any investigation which may be required. The district judge advocate or staff judge advocate is prepared to furnish needed assistance.

§ 752.3 Investigations.

(a) *Reference to other chapters.* In the event of a collision between a naval vessel and a merchant vessel, the investigation will be in accordance with Part 719 of this chapter, as applicable, and Chapters VII, IX and XI of the Manual of the Judge Advocate General of the Navy. The type of fact-finding body to be ordered is within the discretion of the commander concerned, unless otherwise directed by higher authority. An advance copy of the report of the investigation in any admiralty case is to be sent directly to the Judge Advocate General (Admiralty Division) as soon as possible.

(b) *Letter report in minor cases.* If the incident or resulting damage is of minor significance, and of interest only from an admiralty claims standpoint, a letter report may suffice. Should later developments so require, a fact-finding body may then be ordered.

(c) *Reporting all the facts.* When dealing with admiralty claims, the major consideration is to obtain and report all the facts upon which an appraisal of liability will depend. The form of the report is of lesser importance.

(d) *Limited use of subpoena power.* An investigation, as distinguished from a court of inquiry, does not have subpoena power. Even in the case of a court of inquiry, it is usually not advisable to subpoena witnesses from a merchant vessel to testify in a case involving collision with a naval vessel. The fact that merchant marine personnel were required to testify before the Navy court would no doubt result in a motion to produce a record of the Navy inquiry in any subsequent litigation.

(e) *Witnesses from merchant vessel.* Witnesses from the merchant ship may be invited to testify before a Navy investigation or court of inquiry. However, such invitations are almost always declined on advice of counsel. Should witnesses from the merchant ship testify, the record must indicate when they and their attorneys were present. Attorneys who represent the interests of the merchant vessel or crew may not examine any of the witnesses, including their own, or participate in the proceedings in any manner. They may only be present when their witnesses testify. A witness from a merchant vessel should be furnished a copy of his testimony before a naval investigation.

(f) *Coast Guard investigation.* The United States Coast Guard has investigative responsibility in marine casualties involving loss of life, violations of the navigation and inspection laws, and incompetency or misconduct of licensed and certificated personnel. Navy employees and personnel cannot be summoned as witnesses in a Coast Guard investigation without the Navy's consent. If the Coast Guard requests the production of Navy witnesses, the circumstances of the particular case and the Navy's interest therein will determine whether or not they will be produced. The final decision is made in the Office of the Judge Advocate General. If naval witnesses are produced, it is essential that the interests of the Government be represented by competent admiralty counsel from a Navy legal office.

§ 752.4 Documents.

(a) *Preserving records of original entry.* Particularly in a collision case, all original documents, logs, and records relating to or recording the occurrence must be preserved. If entries were made in the first instance on slips of paper, such entries must also be preserved. Admiralty courts attach great significance to records of original entry.

(b) *No erasures.* No erasures shall be made for any purpose in a log book or any record of original entry. If an entry is to be corrected, the original shall be lined through and initialed, and the correction inserted in such a manner that no question can arise as to the nature and substance of the original entry.

(c) *List of pertinent records.* Among the records which must be preserved in a collision case are the following:

(1) Quartermaster's notebook;
(2) Deck log;
(3) Bell book;
(4) Engineering log;
(5) Chart in use;
(6) Bearing book;
(7) Magnetic and gyro compass records;
(8) Deviation tables, azimuth records and course recorder (if vessel's course is in issue);
(9) CIC logs;
(10) Radar logs;
(11) Signal and communication logs;
(12) Voice radio log;
(13) Radar plot;
(14) DRT plot;
(15) Night order book; and
(16) Fathometer record.

(d) *Forwarding of records.* In major collision cases, the foregoing documents should be assembled and forwarded to the Judge Advocate General (Admiralty Division) as soon as possible. A copy of the letter of transmittal should be sent to the Chief of Naval Personnel. Copies should first be made of such parts of the original documents as may be required for use by fact finding bodies or for ship's use. In other than major collisions, the same documents should be preserved and assembled, and the Judge Advocate General (Admiralty Division) and the cognizant judge advocate in the field advised where these records are being held. If the original documents are required by the Judge Advocate General in such cases, appropriate instructions will then be forthcoming.

(e) *Photographs.* Although photographs do not constitute original documentary evidence, they are an extremely valuable adjunct to an investigation. In collision cases, photographs indicating the angle of collision and the extent of damage are most helpful. They are also essential in personal injury cases where there is a possible issue of some unseaworthy condition or some alleged defect in a vessel's tackle, gear, or appurtenances. In such cases, photos should be taken of the area of the ship and the apparatus involved. Such photos should be identified as to date, time, and place of taking, and as to the name, rate, and service number of the photographer.

§ 752.5 Surveys.

(a) *Requirements.* Surveys of the damages to both the naval vessel and the privately owned vessel are essential in the Navy's admiralty claims procedure. The requirement applies not only to collisions but also to all damages caused by a vessel, such as to a pier or land structure. The same considerations apply to affirmative claims where a privately owned vessel damages Navy property. The primary purpose of a survey is to reach an agreement between the interested parties as to the extent of physical damage resulting from a casualty, and to eliminate later controversy concerning the items of damage. Surveys should therefore be held as soon after the collision or casualty as possible. When additional damage is discovered, or when repairs to a ship are deferred and no price has been agreed upon, a supplementary survey is frequently held at the time repairs are made.

(b) *Notice.* For a survey to be of most value, it should be a joint survey; that is, with all interests represented. If a naval vessel or property has suffered damage, notice must be given promptly to the owner or representative of the offending vessel, fixing a time and place where the Navy's damages may be surveyed. Where survey would result in disclosure of classified information, opposing interests should be advised in writing that, for this reason, survey of the naval vessel, or certain parts thereof, cannot be permitted. However, every opportunity for a complete survey should be afforded opposing interests if at all possible.

(c) *Report.* The surveyors normally write up their findings as to damage and their recommendations for repair, in the form of a field survey, immediately after making the survey. It is customary for all surveyors to sign this report, without prejudice as to liability. If a surveyor does not agree to all items in the survey, a statement of his objections to certain items should be noted in the survey report.

(d) *Progress of repairs.* The surveyor should follow the progress of repair work, noting whether this is accomplished in accordance with the recommendations. If work other than damage repair is accomplished at the same time, details should be included in his report. Where repairs are made commercially the cost should be reported, and if bids are obtained, these should be checked and reported.

(e) *U.S. Salvage Association, Inc.* The Navy is normally represented at marine surveys by United States Salvage Associations, Inc., which is under contract to represent the Navy worldwide in these matters. The Judge Advocate General and the various district judge advocates and admiralty officers have authority to request the services of the Salvage Association under this contract. In areas served by a district judge advocate, the admiralty officer normally will make all arrangements for the survey, including notification of opposing interest. However, it is the responsibility of the commanding officer to insure that a survey is held. (As to surveys in Army and Air Force cases, see § 752.7(f).)

(f) *Exception—special situations involving foreign government claims.* Depending on the identity of the foreign sovereign involved in the particular incident, admiralty survey procedures may apply to collisions between U.S. Navy ships and foreign naval or public ships. In cases where claims can be legally asserted, it has been determined, for policy reasons, that in certain special situations, joint survey exchanges will not be held without prior specific approval. OPNAV Instructions under subject identification code 3040 establish policy in such cases.

§ 752.6 Damages.

(a) *Documentary proof for affirmative claims.* Establishing Navy affirmative damage claims often presents considerable difficulty, particularly in serious

collision cases. All items of damage must be supported by adequate documentary proof.

(b) *Items of claim.* Among the items of claim which may result from a collision are the following:

(1) Temporary and permanent collision repairs;

(2) Dry docking;

(3) Lost and damaged equipment, stores, provisions, fuel, and ammunition;

(4) Handling fuel and ammunition;

(5) Towage and pilotage after collision;

(6) Personnel claims;

(7) Survey fees; and

(8) Detention.

(c) *Detention costs.* Detention involves the operating and maintenance costs of a naval vessel for the period during which the Navy has been deprived of her services due to a collision. These costs include the out of pocket expenses incurred during the repair period, particularly the following:

(1) Pay and allowances of officers and crew;

(2) Subsistence of crew;

(3) Fuel and lube oil consumed; and

(4) Supplies and stores consumed.

(d) *Collection of data.* As soon as possible after a collision, the commanding officer of a naval vessel must take steps to insure the collection of the necessary data in support of an affirmative claim. Original documents in support of the various items of claim must be preserved. Detailed signed statements in support of the various items are to be prepared by the cognizant officers or persons computing those items. The foregoing data should be retained pending instructions from the Judge Advocate General or the cognizant judge advocate.

(e) *Log entries.* The ship's log should contain entries showing when the vessel entered and departed the repair yard and when collision repairs were started and completed. The log entry for the midwatch of each day of the repair period should state that the vessel is in a repair yard for the accomplishment of collision repairs, if this is the case.

§ 752.7 Miscellaneous.

(a) *Libel against foreign merchant vessel.* Article 0632, U.S. Navy Regulations, provides for the filing of a libel by a commanding officer or senior officer present against a foreign merchant vessel in a foreign port. Such action involves an exercise of authority to institute litigation on behalf of the United States, a matter within the primary cognizance of the Department of Justice. Because of the complications and policy considerations involved, action under 0632 should not be taken without prior clearance from the Judge Advocate General.

(b) *Public information.* Serious collisions and marine casualties are matters of great public interest, and frequently result in requests from press, radio, television, and other media representatives for interviews or statements from personnel involved. Unguarded and impulsive statements by persons still laboring under the strain of an emergency situation can seriously prejudice the interests of the Government in subsequent claims and litigation. Accordingly, all hands should be cautioned after a casualty to give no statements or interviews without prior clearance from both the cognizant public information officer and the cognizant judge advocate.

(c) *Dealings with opposing interests.* All dealings and negotiations with opposing interests in admiralty matters should be handled by a judge advocate or the Judge Advocate General. Any correspondence, letters of claim, or demands received by a commanding officer in this connection may be forwarded to the cognizant judge advocate or to the Judge Advocate General for handling and reply. All hands are to be cautioned against giving statements to opposing interests or making any admission which might prejudice the Government's case.

(d) *Foreign claims.* Certain claims arising in a foreign country can be handled either as admiralty claims or foreign claims. As indicated in § 753.17 of this chapter, such claims are not to be handled as foreign claims without the authorization of the Judge Advocate General.

(e) *Guidance and assistance.* The admiralty officers in the various naval districts and the Admiralty Division of the Office of the Judge Advocate General are prepared to offer advice, assistance, and guidance in the handling of all admiralty matters. Any question which may arise with respect to the applicability of this part or the handling of a particular incident may be referred to an admiralty officer or to the Judge Advocate General with a request for instructions and guidance.

(f) *Surveys in Army and Air Force cases.* While both the Department of the Army and the Department of the Air Force have administrative authority to settle admiralty claims comparable to that of the Navy, neither of these departments has experienced the case volume which would warrant negotiation of a separate contract with the U.S. Salvage Association, Inc. Nevertheless, on occasion, both Departments have needed representation by an independent marine surveyor. The Navy has thus authorized, and the U.S. Salvage Association has agreed to attend joint surveys and represent the Army or the Air Force. Accordingly, when requested to do so by appropriate Army or Air Force commands, naval officers authorized by § 752.5(e) may engage the U.S. Salvage Association for the Army or Air Force under the Navy contract with the U.S. Salvage Association. All such actions will be reported to the Judge Advocate General (Admiralty Division) in the quarterly report of surveys required by section 10 of JAGINST 5880.1 series.

(g) *Salvage, Pilotage, and Towage.* Instructions concerning salvage, pilotage, and towage (including a sample of pilotage contract) are contained in JAGINST 5880.1 series.

The provisions of this Part 752 are effective October 1, 1970.

PART 753—FOREIGN CLAIMS REGULATIONS

Part 753 is revised to read as follows:

Sec.

AUTHORITY: The provisions of this Part 753 issued under secs. 2734, 5031, 70A Stat. 154, 278, sec. 2736, 75 Stat. 488, secs. 133, 2734 a–b, 2737, 76 Stat. 512, 517, 767, as amended, sec. 301, 80 Stat. 379, sec. 21, 80 Stat. 1118; 5 U.S.C. 301, 10 U.S.C. 133, 2734, 2734 a–b, 2736, 2737, 5031.

SOURCE: This Part 753 is Chapter XXII of the Manual of the Judge Advocate General of the Navy.

§ 753.1 General.

Claims for personal injury to, or death of, any inhabitant of a foreign country or damage to, or loss of, real or personal property of a foreign country, political subdivision, or inhabitant of a foreign country, occurring outside the United States, its territories, commonwealths, or possessions and caused by its military forces or individual members thereof (whether military personnel or civilian employees) or otherwise incident to noncombat activities of such forces are within the scope of the Foreign Claims Act (10 U.S.C. 2734). The word "claims" as used in this part refers to those demands for payment submitted by individuals, partnerships, associations, or corporations, including foreign countries, and states, territories, and other political subdivisions of such countries, other than such demands for payment as arise under ordinary obligations incurred by the Department of the Navy in the procurement of services or supplies.

§ 753.2 Purpose.

The purpose of the Foreign Claims Act (10 U.S.C. 2734) is "to promote and maintain friendly relations" in foreign countries "through the prompt settlement of meritorious claims." The regulations of this part are to be so administered as to effectuate this expressed purpose of Congress.

§ 753.3 Territorial application.

The provisions of this part are applicable to claims arising outside the United States, its territories, commonwealths, or possessions. The fact that a claim arises at a place, within a foreign country, under the temporary or permanent jurisdiction of the United States does not preclude consideration of such a claim which would otherwise be within the Foreign Claims Act.

§ 753.4 Acts not within scope of employment.

The doctrine of scope of employment has no application to foreign claims arising from the acts of military personnel. Claims, otherwise within the Foreign Claims Act, may be allowed regardless of whether the service member or employee of the United States who caused the damage, injury, or death was acting within the scope of his employment; provided, that claims for damage, injury, or death caused by a civilian employee of the United States, who is not a citizen of the United States, which occurs in the country where the civilian employee was hired to work, are compensable only when such employee was acting within the scope of his employment. In determining whether conduct, although not expressly authorized, is nevertheless within the scope of employment, consideration may be given to all of the attendant facts and circumstances including the time, place, and purpose of the activity; whether the activity was in the furtherance of the general interest of the Government; whether the activity is usual for personnel of the grade and classification involved, or reasonably to be expected of such personnel; and whether the instrumentality from which the damage or injury resulted was owned or furnished by the Government. A slight deviation as to time or place will ordinarily not constitute a departure from scope of such employment. Such a deviation, to have legal effect, must be substantial.

§ 753.5 Criminal acts.

The fact that the act giving rise to the claim may constitute a crime does not bar relief. Claims, otherwise within the Foreign Claims Act, may be allowed regardless of whether the act of the military member or civilian employee of the United States which caused the damage, injury, or death was a crime or other wrongful act, or negligence, or mere error of judgment.

§ 753.6 Elements of damage in case of personal injury and death.

Actual and reasonable medical and hospital expenses, reasonable compensation for pain and suffering and loss of earning capacity may be paid in cases of personal injury. If death results, actual and reasonable burial expenses and reasonable compensation for loss of prospective support may also be allowed. Claims of dependents for loss of prospective support are allowable only if such claims are recognized by the law of the country where the injury occurred. In computing damages in cases of personal injury or death, local standards will be taken into consideration as the controlling factor. In case of death, only one claim will be considered. In such a case the amount approved will be apportioned among the beneficiaries in the proportions prescribed by the law or customs of the place where the accident or incident occurred to the extent that it is practicable or feasible.

§ 753.7 Bailed or leased property.

Claims for damage to, or loss or destruction of, personal property, otherwise within the Foreign Claims Act, may be settled notwithstanding the fact that the property was loaned, rented, or otherwise bailed to the Government under an agreement, expressed or implied. Claims for rent of personal property are not payable under these regulations.

§ 753.8 Use and occupancy of real property.

Claims for damage to real property incident to the use and occupancy thereof by the Government under a lease, expressed or implied, or otherwise, are payable under the provisions of these regulations even though legally enforceable against the Government as contract claims. Payment may, however, be precluded by the provisions of § 753.13. Claims payable under this section may be processed as contract claims if it is deemed to be in the best interests of the Government. Claims for rent of real property are not payable under this part.

§ 753.9 Other noncombat activities.

Claims for damage to, or loss or destruction of, property, or for personal injury or death, though not caused by acts or omissions of military personnel or civilian employees of the Navy, are payable under the provisions of this section if otherwise incident to the noncombat activities of the Navy. In general, the claims within this category are those arising out of authorized activities which are peculiarly military in nature, having little parallel in civilian pursuits, and which arise out of situations that historically have been considered as furnishing a proper basis for the payment of claims. Included are claims where no particular act or omission on the part of military personnel or civilian employees is present. Claims arising out of activities which involve the use of dangerous instrumentalities, such as explosives, or which result from maneuvers and special field exercises, practice firing of heavy guns, practice bombing, operation of aircraft and antiaircraft equipment, movement of combat vehicles or other vehicles designed especially for military use, or the use of instrumentalities having latent mechanical defects are also included regardless of whether such resulting damage, injury, or death is traceable to acts or omissions of military personnel or civilian employees of the United States.

§ 753.10 Persons excluded as claimants.

The following classes of claimants are among those excluded:

(a) *Inhabitants of the United States.* Members and civilian employees of the Armed Forces of the United States and their dependents who are inhabitants of the United States and who are in a foreign country primarily because of their sponsors' or their own military orders; and

(b) *Enemy aliens.* Nationals of a country at war with the United States, or any ally of such an enemy country, except as the Foreign Claims Commission considering the claim, or the local military commander shall determine that the claimant is friendly to the United States.

§ 753.11 Claims excluded.

The following classes of claims are excluded:

(a) Claims purely contractual in character;

(b) Private contractual and domestic obligations of individual military personnel or civilian employees;

(c) Claims based solely on compassionate grounds;

(d) Bastardy claims; and

(e) Claims for patent infringements.

§ 753.12 Negligence or wrongful act on the part of claimant.

No claim will be allowed where the damage, injury, or death is proximately caused, in whole or in part, by negligence or wrongful act on the part of the claimant, his agent, or employee. This limitation is applicable to situations where, under the law of the country where the claim arises, contributory negligence bars recovery. However, if under the law or custom of the country in which the claim arises, such contributory negligence or wrongful act is not recognized as a bar to recovery in tort claims, or is held to be a factor diminishing the extent of the claimant's recovery, then such local law or custom will be applied as far as practicable in determining the effect of such negligence or wrongful act.

§ 753.13 Combat activities.

Claims for damage to, or loss or destruction of, property, or for personal injury or death resulting from action by the enemy, or resulting directly or indirectly from any act by armed forces engaged in combat, are not payable under the Foreign Claims Act.

§ 753.14 Claims of subrogees.

In cases of damage to or loss or destruction of property or personal injury or death covered by insurance, settlement will be made solely with the insured or his legal representative, rather than with the insurer, or with both the insured and the insurer. No inquiry will be made into the relative interests as between insured and insurer. The entire claim, including any portion covered by

insurance, will be filed by, or on behalf of, the insured and payment of the entire amount alowed will be made to the insured as the real claimant. Claims by insurers in their own right are not within the provisions of the Foreign Claims Act and will not be considered. Insurers presenting such claims shall be informed that subrogation claims are not recognized under the Act. Evidence of authority to file a claim on behalf of the insured may be established by a power attorney or other documentary evidence satisfactory to the Foreign Claims Commission.

§ 753.15 Statute of limitations.

A claim may be allowed under this part only if presented within 2 years after it accrued.

§ 753.16 Nature of claim.

Any claim will be considered if it states the material facts with such definiteness as to give reasonable notice of the time, place, and nature of the accident or incident out of which the claim arose and an estimate or statement of the damage, loss, destruction, injury, or death resulting. The claim should be signed by, or on behalf of, the claimant and should, if practicable, be under oath. In cases in which the claim is made in behalf of the true claimant, satisfactory evidence of authority to act for the claimant must be furnished.

§ 753.17 Claims for damage occasioned by naval vessels.

Unless specifically authorized by the Judge Advocate General in each case, the Foreign Claims Commission shall not assume jurisdiction or proceed to hear any claim for damage occasioned by a naval vessel. This provision applies to claims for damage caused to land structures as well as claims of an admiralty nature. The occurrence of any such damage, if brought to the attention of a claims commission, shall be reported immediately to the Judge Advocate General: Attention Admiralty Division.

§ 753.18 Creation of foreign claims Commission.

(a) *Appointing authority.* All commanding officers are hereby granted authority to appoint Foreign Claims Commissions. For the purposes of the Foreign Claims Act and these regulations, the Officer in Charge, U.S. Sending State Office for Italy; the Officer in Charge, U.S. Sending State Office for Australia; Chiefs of Naval Missions (including chiefs of the naval section of military missions); Chiefs, Military Assistance Advisory Groups (including Chiefs, Naval Section, MAAGS); Senior Naval Advisor to Argentina; and naval attachés are to be considered commanding officers. Commissions may be appointed to consider each claim as presented, or one commission constituting a standing claims commission may be appointed to consider all claims presented. The commanding officer to whom a claim is presented shall refer the claim to such a commission.

(b) *Composition of commissions and review in relation to amount of claims.* Claims may be considered by a one member foreign claims commission where the amount claimed does not exceed $1,000. Where the amount claimed exceeds $1,000, a three member commission shall consider the claim. The findings of the claims commission are final and not subject to review where the amount awarded and accepted is not in excess of $2,500. Where the amount the claims commission recommends exceeds $2,500, but does not exceed $5,000, payment may be made only when the commanding officer has approved the recommendations of the commission. Where the claims commission recommends payment in excess of $5,000 but less than $15,000, payment may be made only when approved by the Judge Advocate General, or, with respect to claims which arise in Italy, the Officer in Charge, U.S. Sending State Office for Italy, or, with respect to claims which arise in Australia, the Officer in Charge, U.S. Sending State Office for Australia. As to claims which exceed $15,000, see § 753.25.

(c) *Appointment of commissions by JAG.* The Judge Advocate General may appoint Foreign Claims Commissions. The appointment and conduct of these commissions shall be in accordance with the regulations of this chapter wherever applicable, except that in cases where the amount awarded is greater than $2,500, the findings may be paid only when approved by the Judge Advocate General.

§ 753.19 Membership of commissions.

As appropriate, foreign claims commissions shall consist of one or three commissioned officers of the Navy or Marine Corps whose grades shall be commensurate with the responsibilities to be executed in carrying out the purposes of the Foreign Claims Act.

§ 753.20 No formal procedure prescribed.

No formal procedure for the conduct of an investigation of a foreign claim is prescribed. However, the investigative procedures as set forth in Subpart M of Part 719 of this chapter should be followed as a guide. A transcript of the testimony of witnesses is not required and only the substance of statements of witnesses need be recorded. It is desirable, however, that signed statements of material witnesses be made a part of the record. The formal rules of evidence need not be adhered to, and any evidence, regardless of its form, which the commission deems material may be received and evaluated.

§ 753.21 Report of proceedings.

(a) The commission shall make a written report of each claim setting forth findings of facts and a determination as to what amount constitutes just compensation to the claimant. This report shall also include the following:

(1) The date or dates of the hearing or hearings;

(2) The date of the final determination;

(3) The amount claimed stated in the indigenous currency and the conversion into U.S. currency at the existing official rate of exchange on the date of initial consideration of the claim;

(4) The amount awarded stated in the indigenous currency and the conversion into U.S. currency at the existing official rate of exchange of the date of final determination;

(5) A brief statement of facts, including the date of accident, incident, or injury, the date the claim was filed, and the nature of the damage or injury sustained;

(6) Findings as to necessary jurisdictional facts; and

(7) A discussion of local law and customs which may be applicable in the adjudication of the claim.

(b) A copy of the precept creating the commission, together with a copy of claimant's release, where the claim has been favorably adjudicated or where favorable adjudication is recommended, or copy of the notice of denial where the claim has been disallowed, should be attached to the report.

(c) The original report, together with three copies, shall be submitted to the convening authority.

§ 753.22 Notification of award and payment.

Upon completion of the report of the commission, and approval by the convening authority when required, the claimant shall be notified of the award. Upon claimant's execution of a release for the amount of the award, this release, together with the original and one copy of the report of the commission, shall be transmitted to the nearest Navy or Marine Corps disbursing officer for preparation and payment of the public voucher. At the same time, one copy of the report shall be forwarded to the Secretary of the Navy (Office of the Judge Advocate General).

§ 753.23 Releases.

(a) A release shall be obtained from the claimant in every case in which an award is accepted.

(b) The release executed by the claimant should release the United States and also release the tortfeasor or the persons who have occasioned the damage, injury, or death, if their identity is known. If the identity of such persons is unknown, the release should recite that the claimant also releases the person or persons who occasioned the damage, injury, or death, the names and identity of said person or persons being unknown to the claimant.

(c) The release should preclude any possible future assertion of the claim for which the United States has made compensation.

(d) A suggested release is contained in § 753.29.

§ 753.24 Claims disallowed by commissions.

Claims within the final jurisdiction of the commission but disallowed as not meritorious, or for any other reason, shall be promptly forwarded directly to the Judge Advocate General. In all such cases, the original and two copies of the report, claim, and supporting papers (in-

cluding a copy of the notification sent to claimant denying the claim) shall be forwarded. The remaining copy should be retained by the commission for its files.

§ 753.25 Meritorious claims in excess of $15,000.

Claims within the Foreign Claims Act where the total amount due on account of damage, injury, and death exceeds $15,000, and where the claimant will not accept $15,000 in full satisfaction and final settlement of his claim, shall be forwarded directly to the Judge Advocate General for legal review and appropriate administrative action. The record in such proceedings shall include signed statements of material witnesses or transcripts of their oral testimony. The Foreign Claims Commission shall forward with any such claim its findings and recommendations as to the action to be taken (including its findings as to the extent and nature of the damage, injury, and/or death sustained) together with, if practicable, a statement from the owner of the property or the person injured, or the legal representative of the person killed, signifying his willingness to accept the amount so found in full satisfaction and final settlement of his claim. In all such cases, the original and two copies of the report, claim, and supporting papers shall be forwarded. The remaining copy should be retained by the commission for its files.

§ 753.26 Claims outside the jurisdiction of the commission.

Claims arising from incidents on the high seas are ordinarily not within the jurisdiction of a Foreign Claims Commission. See § 753.17. In cases in which a commission considers that the claimant (or decedent in the case of a death claim) is not an inhabitant of a foreign country, or is not the government or a political subdivision of a foreign country, reports shall be forwarded in triplicate to the Judge Advocate General as in cases under § 753.25.

§ 753.27 Claims arising in specified foreign countries.

(a) *Under NATO Status of Forces and similar agreements.* The United States has ratified the NATO Status of Forces Agreement and has entered into similar agreements with other foreign countries. Article VIII of the NATO Status of Forces Agreement and certain provisions of other agreements are inconsistent with the unrestricted use of the Foreign Claims Act and its implementing regulations in certain countries. Accordingly, directives of the cognizant area commander shall be consulted and claims shall not be referred to foreign claims commissions until it has been determined that such action is consistent with the provisions of the aforementioned agreements and their implementing directives. Department of Defense Directive 5515.3 of August 18, 1965 (NOTAL) directs that, where a single service has been assigned responsibility for claims in a country or area, all claims arising under the Foreign Claims Act (10 U.S.C. 2734) and the Military Claims Act (10 U.S.C. 2733) shall normally be settled and paid by claims commissions or other claims settlement authorities appointed by the Secretary of that military department, or his designee, in accordance with the department's regulations. In countries in which the NATO Status of Forces Agreement or other similar agreement is in force, incidents which may give rise to tort claims against the United States arising from acts or omissions of naval personnel, or members of the civilian component of the naval service, including claims for death or personal injury, resulting from the navigation or operation of a ship, or from the loading, carriage, or discharge of its cargo, shall be investigated and reports shall be made in accordance with instructions promulgated by the cognizant naval commanders.

(b) *Single-service responsibility and cross-servicing.* Single-service responsibility for processing claims under this chapter shall be accomplished as provided in § 750.68. Where cross-servicing of claims has been accomplished, the forwarding command shall afford any assistance necessary to the appropriate service in the investigation and adjudication of such claims.

§ 753.28 Claims generated by civilian employees of the Department of Defense.

Department of Defense Directive 5515.3 of August 18, 1965 (NOTAL), provides that all Foreign Claims Commissions are designated to settle and pay claims for damage caused by civilian employees of the Department of Defense other than an employee of a military department.

§ 753.29 Release.

(See § 753.23)

Know all men by these presents, that for and in consideration of the sum of _____ _____ ($ _____), the sufficiency whereof is hereby acknowledged, _____, an inhabitant of _____, _____, discharges the United States of America, its departments, instrumentalities, agencies, officers, agents and employees, and _____ from any and all claims, demands, damages, actions, causes of action, or suits of any nature or kind whatsoever which the said _____ has or may in the future have against the said United States of America and/or _____, arising from an accident which occurred on the _____ day of _____ 19____ in _____, _____ and involved a vehicle owned by the United States of America and operated by _____.

In witness whereof, the claimant, _____ _____, has signed these presents this _____ day of _____ 19__.

_____

Witness:

_____

_____

The provisions of this Part 753 are effective as of October 1, 1970.

PART 755—CLAIMS FOR INJURIES TO PROPERTY UNDER ARTICLE 139 OF THE UNIFORM CODE OF MILITARY JUSTICE

Part 755 is revised to read as follows:

Sec.

AUTHORITY: The provisions of this Part 755 issued under secs. 831, 939, 5031, 70A Stat. 48, 78, 278, as amended, sec. 301, 80 Stat. 379; 5 U.S.C. 301, 10 U.S.C. 831, 939, 5031; E.O. 11476 of June 19, 1969.

SOURCE: This Part 755 is Chapter X of the Manual of the Judge Advocate General of the Navy.

NOTE: The Uniform Code of Military Justice (10 U.S.C. 801–940) is referred to in this Part 755 as "the UCMJ". The Manual for Courts-Martial, United States, 1969 (E.O. 11476 of June 19, 1969) is referred to in this Part 755 as "MCM 1969".

§ 755.1 Statutory authority.

This part outlines procedures for administrative settlement of claims when property is willfully damaged or wrongfully taken by members of the armed forces (Article 139, Uniform Code of Military Justice, 10 U.S.C. 939).

§ 755.2 Scope.

Claims for damage, loss, or destruction of property caused by a person or persons in the naval service, subject to the limitations in this section, are within the provisions of Article 139, UCMJ only if such damage, loss, or destruction is caused by riotous conduct, acts of depredation, or acts showing such reckless and wanton disregard of the property rights of others that a willful damage or destruction is implied. Acts of the type punishable under Article 109, UCMJ are cognizable under Article 139. However, redress for damages resulting from such acts is not to be confused with disciplinary action under Article 109 or any other article of the UCMJ. See § 755.10. Charges against pay under the regulations in this part shall be made against the pay of persons shown to have been principal offenders or accessories. Membership in a certain organization or detachment and presence at the scene at the time the damages were sustained are not sufficient in themselves to make a person a principal or an accessory. There must be some evidence of active or passive participation.

§ 755.3 Claims not cognizable.

The following claims are not payable under this part.

(a) Claims payable under other regulations: Claims for damage, loss, or destruction of property which are payable by the Government under the provisions of the general, personnel, or foreign claims regulations set forth in Parts 750, 751, and 753 of this subchapter, or under admiralty claims procedure set forth in Part 752 of this subchapter. No charge will be made under these regulations against the pay of any person in the naval service to reimburse the claimant or the Government for payments warranted under other regulations or other statutes.

(b) Claims resulting from simple negligence: Claims for damage, loss, or destruction of property resulting from simple negligence, whether or not within the scope of employment.

(c) Claims of subrogees: Any portion of a loss covered by insurance, whether carried by the offender, the claimant, or a third party.

(d) Claims for personal injury or death.

(e) Acts or omissions within the scope of employment: Claims for damage, loss, or destruction of property resulting from acts or omissions, while the offender is acting within the scope of his employment.

(f) Absence of riotous or violent conduct: Claims arising from larceny, wrongful appropriation, forgery, or deceit, where the wrongful taking is accomplished under conditions of stealth, deception, trickery, or device, unaccompanied by riotous or violent conduct; or claims for damages arising from breach of contract.

(g) Government property: Reimbursement for damage, loss, or destruction of property of the United States.

§ 755.4 Limitations of applications.

(a) *Time limitations.* In order for a claim to be cognizable under Article 139, UCMJ, a complaint out of which such claim arises must have been made to military authority within 30 days of the date of the incident.

(b) *Aliens.* Claims of aliens under Article 139, UCMJ, in addition to the exclusionary limitations of the regulations in this part, are subject to all laws and regulations controlling payments to aliens in effect at the time of action on the claim. If the claimant is a national of a country at war with the United States, or an ally of such foreign country, the claim will not be approved unless it be determined that the claimant is friendly to the United States.

(c) *Limitation of amount of assessment.* No assessment exceeding the amount of $250 will be made against the pay of any offender under the provisions of Article 139, UCMJ for any single act or incident.

(d) *Acts of property owner.* When the acts or omissions of the owner, his lessee, or his agent were a proximate contributing factor to the loss or damage of the property involved, assessment will not be made against any offender in excess of that amount for which he is found to be directly and solely responsible.

(e) *Only direct damages considered.* Assessment will be made only for direct physical damages. Indirect, remote, or inconsequential damage will not be considered.

§ 755.5 Complaint by injured party.

(a) *Ordering investigation.* Whenever a complaint is made to a commanding officer that willful damage has been done to property or that property has been wrongfully taken by members of the naval service, and the nature of the damage or wrongful taking is within the purview of Article 139, UCMJ, the commanding officer, if he has authority to convene special courts-martial and if an alleged offender is a member of his command, shall order an investigation of the matter. If the alleged offender is not a member of his command, he shall forward the complaint and all evidence which can be obtained locally to the commanding officer of the alleged offender. If the command of an alleged offender is not known, the complaint and all evidence which can be obtained locally shall be sent to the Chief of Naval Personnel or the Commandant of the Marine Corps, whichever is appropriate, for forwarding. If the commanding officer of an alleged offender does not have authority to convene special courts-martial, he shall forward the complaint to his superior with such authority, who shall, for the purposes of Article 139, UCMJ, be considered the commanding officer of the offender. If the incident complained of occurred at a place remote from the command of the alleged offender, and the commanding officer of the alleged offender so requests, the commanding officer of the naval activity located nearest the place of the incident shall order an investigation of the matter as required by Article 139, UCMJ and the regulations in this part. Upon completion of such investigation, the record thereof shall be forwarded to the commanding officer who requested the investigation for action required by § 755.7. Where more than one offender or more than one command is involved, the matter shall be handled by a single investigation, if practicable. In this connection see §§ 719.107 and 755.8 of this subchapter.

(b) *Advice to claimant.* The commanding officer who orders the investigation of the complaint shall fully advise the claimant by the most practicable means, that:

(1) In order for a claim to be cognizable under Article 139, UCMJ, the claimant must be within the provisions of § 750.50.

(2) A claim shall be presented, if practicable, in triplicate. It should contain a statement setting forth the amount of the claim, insurance coverage, and available detailed facts and circumstances surrounding the incident from which the claim arose. When there is more than one claimant as a result of a single incident, each such claimant must file a claim separately and individually. The claim shall be personally signed by the claimant or his duly authorized agent or representative. The appropriate portions of § 750.52 set forth additional information and evidence which ordinarily should be supplied by a person making claim for damage or loss of property.

(3) Such claim must be submitted to the investigating body as expeditiously as possible and not later than 30 days from the date of this advice.

§ 755.6 Investigation.

(a) *General.* The procedure for redress of injuries to property (Article 139, UCMJ) is accomplished by the use of a formal investigation or a court of inquiry. The claim is the subject of inquiry by either of these bodies, and the rules governing the appropriate type of investigation are applicable.

(b) *Fact-finding body.* The fact-finding body appointed to investigate a complaint under Article 139, UCMJ shall consist of from one to three commissioned officers. Subject to the provisions of the regulations in this part, pertinent portions of §§ 750.58 and 750.59 respecting matters to be ascertained in investigating property damage are applicable. The claim of the owner or custodian of the property involved shall be made an enclosure to the record of proceedings of the fact-finding body.

(c) *Statutory requirements and powers.* Under the authority of Article 139, UCMJ, witnesses may be summoned to testify at the investigation in the same manner as for courts-martial. See paragraph 115, MCM. However, when an investigation is convened to inquire into other matters in addition to investigating a complaint under Article 139, UCMJ, the power of subpoena shall not be used to compel the attendance of witnesses whose testimony is not directly related to the Article 139 claim. Witnesses before such investigations shall be examined on their oath or affirmation. Depositions, documents, and other evidence may be received in evidence.

(d) *Rights of an alleged offender.* An alleged offender shall, if practicable, be accorded the rights of a party. See Subpart J of Part 719 of this subchapter. If such rights are not accorded an alleged offender, and such rights have not been waived by him, he shall, prior to any charge being made against his pay, be afforded the opportunity to inspect the record of proceedings or a copy thereof. He shall, in such a case, submit a signed statement in regard thereto or to the effect that he does not desire to make such a statement. If, by reason of unauthorized absence of other factors, the rights of a party cannot be afforded to an alleged offender, a full and complete report of the reasons therefor shall be included in the record of proceedings. If, at the time of the convening of an Article 139 investigation, the identity of an offender is unknown, the investigation shall proceed with the subject matter of the inquiry. However, as soon as the identity of the offender becomes known, such person shall be called before the investigation (unless such action is impractical by reason of unauthorized absence or other factors), designated as a party to the investigation, and

accorded his rights as such. Such proceedings and any waiver on the part of the offender shall be recorded verbatim. A person in an unauthorized absence or desertion status shall, while in such status, be considered as having waived his rights as a party to the investigation. Upon termination of the unauthorized absence or desertion, such person shall, if practicable, be accorded the rights of a party as to any portion of the investigation which has not then been completed.

(e) *Measure of damages.* The inquiry or investigation is to be guided by the general claims regulations (Part 750 of this subchapter) in determining the measure of damages as a basis for recommending assessment.

(f) *Findings.* The investigation shall make findings of fact as to the necessary elements set forth in these regulations pertaining to the validity of the claim under consideration and shall state its findings of fact and opinions as appropriate, as to the person or persons responsible for the damage concerning which the claim is filed. Using the appropriate measure of damages, it shall determine the amount of damage incurred by the property owner.

(g) *Recommendations.* The fact-finding body shall make recommendations as to the amount to be assessed and charged against the pay of the responsible party or parties. If more than one person is found to be responsible, recommendations shall be made as to the amount to be assessed against each offender.

(h) *Consolidation of investigations.* A formal investigation conducted under Article 139, UCMJ may be combined with an investigation required for any other reason.

§ 755.7 Action to be taken by commanding officer and higher authority where offenders are members of one command.

(a) *Action by commanding officer.* When all of the offenders are members of the command of the officer who has ordered the investigation, such officer shall determine, in taking action on the record of such investigation, whether the claim is within the provisions of Article 139, UCMJ and the regulations in this part. If he finds that the claim is within such provisions, he shall fix the amount to be assessed against the offender or offenders. Subject to the limitations of § 755.4, charges totaling the amount of damages assessed and approved shall be made in such proportion as may be deemed just upon the pay of those shown to have been principals or accessories.

(b) *Review.* If the commanding officer has authority to convene a general court-martial, no additional review of the investigation is required as to the redress of injuries to property. If the commanding officer does not have general court-martial jurisdiction, the original of the investigation, with the commanding officer's action thereon approving or disapproving the claim, shall be forwarded to the officer exercising general court-martial jurisdiction over the command. A copy of the report will be filed at the command concerned. Upon receipt by the officer exercising general court-martial jurisdiction, the report, as approved or disapproved, will be reviewed. Such reviewing authority shall place his action on the record and return the record to the commanding officer who, after noting his order or other actions thereon, shall forward it to the Judge Advocate General via any other appropriate commands. The final action of a commanding officer either directing a charge against the pay of an offender or denying the claim, shall be consistent with the reviewing authority's action. The claimant and offender or offenders shall be informed of such final order. Any determination that the claim is invalid or that no members of the command were pecuniarily responsible shall be communicated promptly to the claimant.

(c) *Charge against pay.* The amount ordered by the commanding officer shall, as provided in the Navy Comptroller Manual, be charged against the pay of the offender and the amounts so collected will be paid to the claimant. The amount charged in any single month against the pay of an offender under Article 139, UCMJ shall not exceed one-half of the basic pay of the offender. The basic pay of an offender shall be as defined in paragraph 126h(2), Manual for Courts-Martial. The action by the commanding officer in ordering the assessment against the pay of an offender shall be conclusive on any disbursing officer for payment by him to the claimant of the damages assessed, approved, charged, and collected.

§ 755.8 Action to be taken by commanding officer and higher authority where offenders are members of different commands.

(a) *Action by common superior.* Where the offenders are members of different commands the investigation or investigations conducted under Article 139, UCMJ shall be forwarded, if practicable, to the common superior who exercises general court-martial jurisdiction. In such circumstances, a commanding officer who ordered an investigation shall not make charges against the pay of an offender, but shall make recommendations in this regard. If an alleged offender was neither accorded the rights of a party nor subsequently afforded the right to inspect the investigative report and make a statement thereon, a copy of the report shall be forwarded to such offender for his inspection and his statement. This statement may set forth the member's version of the incident or it may merely reflect the fact that he does not desire to avail himself of the opportunity. The statement shall be forwarded to the superior exercising general court-martial jurisdiction who is to adjudicate the claim. The common superior commander shall fix the amount, if any, to be assessed against the offender or offenders and direct the appropriate commanding officers to take action accordingly. See § 755.7 (b) and (c). The common superior shall forward the record, with his action and all statements appended, to the Judge Advocate General via appropriate commands.

(b) *Forwarding to SECNAV(JAG).* Where it is not practicable or possible to carry out the procedure prescribed in paragraph (a) of this section, the investigation or investigations shall be forwarded to the Secretary of the Navy (Judge Advocate General) who will take action in the matter. Commanding officers, in such a situation, are not to make charges against the pay of an offender until directed by the Secretary of the Navy (Judge Advocate General).

§ 755.9 Reconsideration.

In the absence of newly discovered evidence, an adjudication pursuant to the regulations in this part shall be final except as to the Secretary of the Navy (Judge Advocate General). In the event of newly discovered evidence deemed sufficient to warrant reopening the matter, further investigation shall be conducted by the commanding officer and forwarded with recommendations to the Judge Advocate General.

§ 755.10 Effect of court-martial proceedings.

Administrative action under the regulations in this part is separate and distinct from and is not affected by any disciplinary action against the offender; consequently, a person may be tried and punished for violation of the UCMJ without regard to proceedings under the regulations in this part. The two proceedings, one disciplinary and the other administrative, are legally independent of each other and action in one proceeding is not determinative in the other; the court-martial is of a criminal nature and the assessment of damages is of a civil nature. Acquittal or conviction of the alleged offender by court-martial is evidence but is without independent controlling effect upon the proceedings under Article 139, UCMJ or approval or denial of a claim thereunder.

The provisions of this Part 755 are effective October 1, 1970.

PART 756—NONAPPROPRIATED-FUND CLAIMS REGULATIONS

Part 756 is revised to read as follows:

Sec.
756.1 General.
756.2 Insurance.
756.3 Settlement by insurer.
756.4 Payment of claims.
756.5 Reports.

AUTHORITY: The provisions of this Part 756 issued under sec. 5031, 70A Stat. 278, as amended, sec. 133, 76 Stat. 517, secs. 301, 8171–8173, 80 Stat. 379, 555–556; 5 U.S.C. 301, 8171–8173, 10 U.S.C. 5031.

SOURCE: This part is Chapter XXIII of the Manual of the Judge Advocate General of the Navy.

§ 756.1 General.

Claims arising out of the operation of nonappropriated fund activities, in and outside the United States, shall be investigated in accordance with the procedures for investigating similar claims

against appropriated fund activities. All claims should be submitted to the command having cognizance over the nonappropriated fund activity involved. Claims arising out of the operations of the Navy Exchange System, which is under the Navy Supply Systems Command, shall be processed in accordance with the provisions of the Navy Exchange Manual and therefore are not covered in this Manual.

§ 756.2 Insurance.

Many nonappropriated fund activities carry commercial insurance to protect them from claims for property damage and personal injury attributable to their operations. The Commandant of the Marine Corps, the Chief of Naval Personnel, and the Naval Supply Systems Command determine whether nonappropriated fund activities within their cognizance shall carry liability insurance or become self-insurers, in whole or in part. When the operations of nonappropriated fund activities result in property damage or personal injury, the insurance carrier, if any, should be given written notification immediately. Notification should not be postponed until a claim is filed.

§ 756.3 Settlement by insurer.

In those cases where the insurer for the nonappropriated fund activity effects a settlement with a claimant and obtains appropriate releases, processing of the claim by naval authorities is unnecessary. A copy of the release should be obtained and filed with the investigative report.

§ 756.4 Payment of claims.

(a) *Small claims.* Any claim for $50 or less not covered by insurance (or if covered by insurance and not paid by the insurer) shall be adjudicated by the commanding officer of the activity concerned or his designee. The claim may be paid out of nonappropriated funds available to the commanding officer.

(b) *Where no insurance is carried or where insurance coverage is denied.* Claims in the amount of $5,000 or less adjudicated and approved by a naval district commandant or his district judge advocate, shall be forwarded via the Judge Advocate General to the Commandant of the Marine Corps or to the Chief of Naval Personnel, as appropriate, for payment out of nonappropriated funds. Claims in excess of $5,000 shall be forwarded to the Judge Advocate General for adjudication and referral to the Commandant of the Marine Corps or Chief of Naval Personnel for payment out of nonappropriated funds.

(c) *Settlement under international agreement.* Where claims have been settled by a foreign country pursuant to treaties or agreements with the United States, statements and pertinent data indicating the portion of the claims attributable to nonappropriated fund activities of the Navy shall be transmitted promptly to the Judge Advocate General for referral to the appropriate command, bureau, or office for payment.

§ 756.5 Reports.

(a) *Compromised claims and small claims.* In every instance where a claim has been settled as provided in §§ 756.3 and 756.4, a brief report shall be forwarded to the district judge advocate of the naval district or to the Office of the Judge Advocate General for claims arising in areas not within the jurisdiction of a naval district.

(b) *Claims disputed by insurer.* If responsibility is disputed by an insurer, or if settlement is not reached, a report of the circumstances, including the name of the insurer, shall be forwarded to the Judge Advocate General for referral to the Commandant of the Marine Corps or to Chief of Naval Personnel, as appropriate. A copy of all correspondence shall be provided the district judge advocate of the naval district or to the Office of the Judge Advocate General for claims in areas not within the jurisdiction of a naval district.

Effective date. This part shall become effective on October 1, 1970.

PART 757—MEDICAL CARE RECOVERY CLAIMS

Part 757 is revised to read as follows:

Sec.
757.1 Definitions.
757.2 Authority of the Judge Advocate General and JAG designees.
757.3 Report of care and treatment.
757.4 Investigations.
757.5 Determination, assertion, and collection of claims.
757.6 Medical records.
757.7 Notice of claim.
757.8 Statistical reports.
757.9 Geographical limitations—single service responsibility.
757.10 Rates for medical care provided in Federal hospitals.
757.11 Claims under the act involving other claims.
757.12 Reference material.

AUTHORITY: The provisions of this Part 757 issued under sec. 5031, 70A Stat. 273, as amended, 76 Stat. 593–594, sec. 301, 80 Stat. 379; 5 U.S.C. 301, 10 U.S.C. 5031, 42 U.S.C. 2651–2653; E.O. 11060, 27 FR. 10925, 3 CFR 1959–1963 Comp p. 651; 28 CFR Part 43; and Bureau of the Budget notices (28 F.R. 11510, 12104, 29 F.R. 12482, 30 F.R. 16220, 31 F.R. 10754).

SOURCE: This Part 757 is Chapter XXIV of the Manual of the Judge Advocate General of the Navy.

§ 757.1 Definitions.

For purposes of this part:

(a) "Medical care" includes hospital, medical, surgical, or dental care and treatment, and the furnishing of prostheses and medical appliances.

(b) "JAG designees" are: Commandants of all Naval Districts; District Judge Advocates; Commander, U.S. Naval Forces Marianas and his Staff Judge Advocate; Commander, U.S. Naval Forces, Iceland; Officer in Charge, U.S. Sending State Office for Italy; Officer in Charge, U.S. Sending State Office for Australia; Deputy Judge Advocate General; any Assistant Judge Advocate General; the Deputy Assistant Judge Advocate General (Litigation and Claims); and the Director, Litigation and Claims Division.

(c) "Action JAG designees" are the JAG designees in whose area the incident giving rise to the claim occurred. This is a general definition and should not be considered applicable in cases where the best interests of the Government would be served by transferring the case to another JAG designee; e.g., where the tort feasor has moved from or resides in a place other than the place where the incident occurred. When a case is transferred from one JAG designee to another, the responsibility for conducting an investigation and making an initial assertion remains with the JAG designee in whose area the incident giving rise to the claim occurred.

(d) "The Act" means the Medical Care Recovery Act (42 U.S.C. 2651–53).

§ 757.2 Authority of the Judge Advocate General and JAG designees.

(a) *Assertion of claim.* When the Department of the Navy is responsible for furnishing medical care, the Judge Advocate General or the action JAG designee shall determine whether medical care was or will be furnished for an injury or disease caused under circumstances entitling the United States to recover under the Act. If it is so determined, the action JAG designee shall assert a claim for the reasonable value of such care and treatment. When an accident occurs at a place where the naval service does not have a command, unit, or activity conveniently located for conducting an investigation, the commanding officer or officer in charge having immediate responsibility for making the investigation may request assistance from the commanding officer or officer in charge of any other command, unit or activity within the Department of Defense. Such assistance may take the form of a complete investigation of the accident or incident, or it may cover only part of the investigation. In a reciprocal situation where the commanding officer or officer in charge of any other command, unit, or activity within the Department of Defense requests assistance from any naval command, unit or activity, the latter should honor the request. If a complete investigation is requested, the report shall be made in accordance with the regulations of the service actually making the investigation. These investigations will normally be conducted without reimbursement for per diem, mileage, or other expenses incurred by the investigating activity.

(b) *Authority of JAG and certain JAG designees.* (1) The Judge Advocate General and JAG designees serving in the Office of the Judge Advocate General may accept payment for the full amount of any claim and execute a release therefor.

(2) A claim not in excess of $20,000 may be compromised or settled, and a release executed therefor by either the Judge Advocate General or the Deputy Judge Advocate General.

(3) A claim not in excess of $10,000 may be compromised or settled, and a release executed therefor by any Assistant Judge Advocate General.

(4) A claim not in excess of $7,500 may be compromised or settled, and a release executed therefor by the Deputy Assistant Judge Advocate General (Litigation and Claims).

(c) *Authority of other JAG designees.* All other JAG designees are authorized to (1) accept payment for the full amount of a claim and execute a release therefor, or (2) compromise or settle and execute a release of any claim not in excess of $5,000.

(d) *Waiver.* The Judge Advocate General, the Deputy Judge Advocate General, or any JAG designee when specifically authorized by either of the foregoing, may waive and release any claim not in excess of $20,000, in whole or in part, either for the convenience of the Government or if it is determined that collection would result in undue hardship on the person who suffered the injury or disease giving rise to the claim.

(e) *Claims exceeding $20,000.* Claims in excess of $20,000 may be comprised, settled, and waived only with the prior approval of the Department of Justice.

(f) *Limitations.* The authority set forth in this section shall not be exercised in any case in which (1) the claim of the United States has been referred to the Department of Justice or (2) a suit has been instituted by the third party against the United States or against the individual who received or is receiving the medical care described above, and the suit arises out of the occurrence which gave rise to the third-party claim of the United States.

(g) *Restrictions on contact with Department of Justice and United States Attorneys.* JAG designees, except those serving in the Office of the Judge Advocate General, shall refrain from dealing directly with the Department of Justice or U.S. Attorneys except in those cases (1) where the Department of Justice or a U.S. attorney has assumed cognizance over the case; (2) where circumstances dictate immediate action to protect the interests of the United States; or (3) where such action is authorized by the Judge Advocate General.

§ 757.3 Report of care and treatment.

(a) *NAVJAG Form 5890/12.* NAVJAG Form 5890/12 (see § 757.12(d)) shall be utilized by all Navy medical facilities to report the furnishing of medical care to any patient under circumstances indicating that a third person may be liable for the injury or disease being treated. The Report Symbol is JAG 5890–1. Forms shall be prepared using the rates set forth in § 757.12(c) and shall be submitted to the action JAG designee, or directly to the Judge Advocate General when the action JAG designee has forwarded the file to the Judge Advocate General. The action JAG designee shall always notify the proper medical facility when a case is forwarded to the Judge Advocate General for action.

(b) *Treatment of naval personnel by other Federal agencies.* Where medical care is provided to civilian personnel of the Navy or naval service personnel or their dependents by another Federal agency or department, the Navy generally will assert any claim in behalf of the United States. The appropriate forms should be forwarded to the action JAG designees.

(c) *Treatment of nonnaval personnel.* Where care is provided to personnel of another Federal agency or department by a Naval medical facility, that agency or department generally will assert any claim in behalf of the United States. In such cases, the NAVJAG Form 5890/12 shall be forwarded directly to the appropriate addressee as follows:

(1) *U.S. Army.* Commanding General of the Army or comparable area commander in which the incident occurred;

(2) *U.S. Air Force.* Staff Judge Advocate of the Air Force installation nearest the location where the initial medical care was provided;

(3) *U.S. Coast Guard.* Department of Health, Education, and Welfare Regional Attorney's Office in the region where the incident occurred;

(4) *Department of Labor.* Subrogation, Office of the Solicitor, Bureau of Employees Compensation, Department of Labor, Washington, D.C. 20210;

(5) *Veterans Administration.* Director of the Veterans Administration hospital responsible for medical care of the injured party;

(6) *Department of Health, Education, and Welfare.* Department of Health, Education, and Welfare Regional Attorney's Office in the region where the incident occurred.

(d) *Initial report.* An "initial" submission of NAVJAG Form 5890/12 shall be made as soon as practicable after the admission for treatment of a patient if it appears that inpatient care will exceed 1 day, or that more than ten outpatient treatments will be furnished. The "initial" submission need not be based on extensive investigation of the cause of the injury or disease, but it should include all known facts. Statements of the patient, police reports, and similar information should be appended to the form, if available.

(e) *Interim reports.* An "interim" submission of NAVJAG Form 5890/12 shall be made every 4 months after the "initial" submission until the patient is changed from inpatient to outpatient status, has been released, or a "final" submission is made. An "interim" submission shall also be submitted each time a patient is transferred.

(f) *Final report.* A "final" submission of NAVJAG Form 5890/12 shall be made upon completion of treatment or upon transfer of the patient to a Veterans Administration hospital for a service-connected disability under the provisions of chapter 17 of title 38, United States Code. A "Narrative Summary" (Standard Form 502) should accompany each final NAVJAG Form 5890/12 in all cases involving inpatient care. In those cases where the Government's final claim exceeds $1,000, the final NAVJAG Form 5890/12 shall also be accompanied by a completed NAVJAG Form 5890/13 (see § 757.12(f)). The determination of "patient class," as required by NAVJAG Form 5890/13, will be made according to the current use of the hospital concerned. The total number of inpatient days to date should be entered in blocks 8 (a), (b), and (c) of NAVJAG Form 5890/12.

(g) *Civilian medical care.* In cases coming within the Act where District Medical Officers or District Dental Officers have authorized payments for civilian medical care, such officers shall, in lieu of a NAVJAG Form 5890/12, forward copies of all bills and statements supporting the authorized payments to the action JAG designee, or directly to the Judge Advocate General in those cases where the file has been forwarded to the latter for action.

(h) *Information for health record and for action JAG designees.* Copies of all NAVJAG Forms 5890/12 shall be retained in the health record of the patient. Action JAG designees shall be notified immediately when a patient receives treatment subsequent to the issuance of a "final" NAVJAG Form 5890/12 if the subsequent treatment is related to the treatment which gave rise to the claim.

(i) *CHAMPUS cases.* Appropriate reports of care and treatment in CHAMPUS (Civilian Health and Medical Program of the Uniformed Services) cases are forwarded to the action JAG designee by the Executive Director, OCHAMPUS, Denver, Colo. 80240. These reports are based on information submitted to the Executive Director by the fiscal administrators with whom claims for payment or reimbursement for costs of medical care are filed.

§ 757.4 Investigations.

(a) *When required.* Whenever medical care is furnished by the Department of the Navy, either in kind without reimbursement or by reimbursing another department, agency, private facility, or individual, under circumstances which may give rise to a claim against a third person, an investigation shall be conducted in the manner and form prescribed in Part 750 of this subchapter. However, no investigation is required for the purposes of this part if the medical care furnished does not exceed 3 inpatient days or 10 outpatient treatments. In cases where the Department of the Navy receives reimbursement from another department or agency for medical care furnished at a naval facility, that department or agency will normally be responsible for investigating the incident giving rise to the medical care and processing any resulting claim. See § 757.3(c) for addresses of other departments and agencies.

(b) *Consolidation.* Separate investigations are not required for the purposes of this part in cases where there has been an investigation for other purposes which can be used as a basis for determining liability on the part of the

third person. It shall be the responsibility of the action JAG designee, upon receipt of a NAVJAG Form 5890/12 or equivalent SHAMPUS forms, to supervise and to avoid duplication of investigative effort and to request an investigation in those cases where it appears that none has been or is likely to be conducted.

(c) *Information for action JAG designee.* All investigations, regardless of origin, involving a possible claim under the Act shall be routed via, or a copy forwarded to, the action JAG designee.

§ 757.5 Determination, assertion, and collection of claims.

(a) *Department and Notice of Claim.* Action JAG designees, regardless of the amount of the claim, shall determine the third-party liability in accordance with the law of the State or country in which the incident occurs, and if it is determined that the third party is liable, shall forward a "Notice of Claim" Standard Form 96 (see § 757.12(e)) to the third party. If the action JAG designee determines that there is no liability, this fact shall be reflected in the endorsement on any information forwarded to the Judge Advocate General. The specific reasons supporting the determination of no liability should be included. If the action JAG designee is in doubt on the question of liability, the matter should be submitted to the Judge Advocate General for final decision.

(b) *Foreign claims.* Claims against a foreign government or a political subdivision, agency, or instrumentality thereof, or against a member of the armed forces or an official or civilian employee of such foreign government, shall not be asserted without the prior approval of the Judge Advocate General. Investigation and report thereof shall be made as provided in this part unless the provisions of applicable agreements, or regulations in implementation thereof, negate the requirement for such investigation and report.

(c) *Advice for injured party.* In cases where an action JAG designee determines that liability is indicated and a "Notice of Claim" (Standard Form 96) is issued, the injured party shall be contacted and advised in writing that:

(1) Under the Act, the United States is entitled to recover from the third party the value of medical care furnished or to be furnished by the United States to the injured party.

(2) The injured party may be required to: (i) furnish the action JAG designee any pertinent information concerning the incident; (ii) notify the action JAG designee of any settlement offer from the third party or his insurer; and (iii) cooperate in the prosecution of the Government's claim against the third party.

(3) The injured party may seek the advice of legal counsel concerning any possible claim he may have for personal injury and should furnish the action JAG designee the name and address of any civilian attorney consulted or retained.

(4) The injured party should not execute a release or settle any claim concerning the injury and should not furnish the third party, the third party's insurance company, or other representative of the third party, any information or signed statement without the approval of his attorney and the approval of the action JAG designee.

(d) *Pursuit of claims.* (1) Action JAG designees shall, if possible and not contrary to the best interests of the United States, pursue to satisfactory settlement all claims coming within their authority. In those cases where administrative settlement is not possible, or is not considered in the best interests of the United States, the action JAG designee shall determine whether the case should be closed and filed or forwarded to the Judge Advocate General for further action. However, the authority of any JAG designee to close and file cases shall be limited to those cases over which compromise authority is granted by § 757.2 (c). Before action is taken on a file, the action JAG designee shall determine:

(i) Whether the injured party has retained or intends to retain counsel;

(ii) Whether the tort-feasor denies liability and/or refuses to pay;

(iii) In cases involving insurance, whether the insurance carrier denies liability and/or refuses to settle; and

(iv) Whether consideration has been given to recover from their insurer under the uninsured motorist provisions of the injured party's policy.

(e) *Claims file.* In cases exceeding their settlement authority, or in other cases deemed appropriate, the action JAG designees shall take the action set forth in paragraphs (a) and (b) of this section, and shall forward the file to the Judge Advocate General for action. The claim file should contain the following information:

(1) The name, address, and occupation of each person determined to be a third party.

(2) In those cases where the third party is a serviceman or an employee of the United States, a statement should be included regarding whether such person was acting within the scope of his official duties or employment at the time of the incident.

(3) The nature and extent of any insurance coverage of the third party with the name and address of the insurer.

(4) In vehicle accident cases, where the third party is uninsured; a report as to whether any injured party, owner, driver, or passenger had uninsured-motorist coverage, whether such coverage was mandatorily offered by the insurer in accordance with a state requirement, and whether action has been taken under the financial-responsibility law of the situs.

(5) Completed copies of NAVJAG Forms 5890/12 (or equivalent forms of the other services) and a statement whether there will be any permanent disability and the degree thereof. If such forms are not presently available, then a statement to the effect that the action JAG designee will request the appropriate medical facility to forward them directly to the Judge Advocate General should be included. It shall be the responsibility of the action JAG designee to ensure that all completed copies of NAVJAG Forms 5890/12 and authorizations made by district medical or dental officers for payment for civilian care are forwarded to the Judge Advocate General in those cases where the file has been forwarded to the Judge Advocate General for action.

(6) The original or copies of all bills or statements of cost incurred where treatment is furnished by civilian facilities.

(7) A statement regarding liability of the third party. (Where liability is questionable, a brief of the law of situs applicable should be included.)

(8) A statement as to whether a "Notice of Claim" (Standard Form 96) was sent to the third party; the name, address, and phone number of the injured party's attorney, if any; and a statement as to whether a suit has been or is likely to be instituted.

(9) A statement as to whether the injured party's attorney will protect the interests of the United States—i.e., whether the Government's claim will be included in the injured party's demand or suit.

(10) A recommended disposition of the case.

(f) *Waiver requests.* In cases in which waiver of the Government's claim is requested, the claims file shall be forwarded to the Judge Advocate General. In addition to the information required by paragraph (e) of this section, the file should also contain detailed information as to:

(1) The anticipated amount of the gross recovery from the tortious third party.

(2) The degree and permanency of any disability and the extent to which the Government otherwise is obligated to compensate the injured party for such disability.

(3) Whether the injured party is entitled to continuing medical care at Government expense.

(4) Out of pocket expenses incurred or anticipated by the injured party, including litigation costs and counsel fees.

(5) The present and prospective assets, income, and obligations of the injured party.

(g) *Payments.* Payments of claims under the Act should be made in the form of checks, drafts, or money orders payable to the collecting organization, such as "Commandant Twelfth Naval District" or "Commander, U.S. Naval Forces Marianas," and are to be forwarded for deposit by the disbursing officer serving the collecting organization. (These receipts are to be credited to appropriation accounts as designated by the Comptroller of the Navy.)

§ 757.6 Medical records.

The Surgeon General has been designated by the Secretary of the Navy as the official responsible for the execution of Department of Defense policies in releasing medical records of members or

former members of the Navy. Commanding officers of U.S. naval hospitals and U.S. naval dispensaries have been authorized to release medical records physically located within their commands directly to the injured member or his representative subject to the limitations contained in chapter 23, Manual of the Medical Department. See § 720.32 of this chapter concerning certifications where necessary for litigation.

§ 757.7 Notice of claim.

Only Standard Form 96 (Notice of Claim; see § 757.12(e)) shall be utilized in initially notifying the tortfeasor of the Government's claim. Substitute forms or duplicate copies are not authorized.

§ 757.8 Statistical reports.

Action JAG designees shall forward monthly reports to the Judge Advocate General setting forth the following information:

(a) The number of claims asserted during the month;

(b) The number of recoveries made during the month (In cases where partial recoveries are made, the claim will not be considered to be "recovered" until the total recovery is effected);

(c) The dollar amount of claims asserted during the month;

(d) The dollar amount of recoveries made during the month (including partial recoveries); and

(e) The total number of active claims on file at the end of the month.

Report Symbol JAG–5800–2 is assigned for this reporting requirement.

§ 757.9 Geographical limitations—single service responsibility.

There is no geographical limitation to the Act, and claims shall be asserted in countries where such claims are recognized by local law. (See § 750.68 of this subchapter for single-service responsibility).

§ 757.10 Rates for medical care provided in Federal hospitals.

The rates to be charged for medical care provided in Federal hospitals under circumstances coming within the provisions of the Act are set forth in § 757.12(c).

§ 757.11 Claims under the act involving other claims.

In asserting claims under this part, an effort shall be made to include in a single demand for payment against a third party all other aspects of the Government's damages, e.g., property claims in favor of the United States as set forth in § 750.66 of this subchapter.

§ 757.12 Reference material.

(a) Executive Order 11060 of November 7, 1962, authorizes the Director of the Bureau of the Budget to establish rates and the Attorney General to prescribe regulations to carry out the purpose of the Medical Care Recovery Act;

(b) Department of Jusitce Order No. 289–62 relating to the recovery of the cost of hospital and medical care and treatment furnished by the United States appears in 28 CFR Part 43.

The provisions of this Part 757 are effective October 1, 1970.

[SEAL] D. D. CHAPMAN,
Rear Admiral, Judge Advocate General's Corps, U.S. Navy, Acting Judge Advocate General of the Navy.

AUGUST 12, 1970.

[F.R. Doc. 70–10825; Filed, Aug. 17, 1970; 8:50 a.m.]

Title 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Administration, Department of Transportation

[Docket No. 10505; Amdts. 1–18; 91–80]

PART 1—DEFINITIONS AND ABBREVIATIONS

PART 91—GENERAL OPERATING AND FLIGHT RULES

Visual Aids Tables

The purpose of these amendments to Parts 1 and 91 of the Federal Aviation Regulations is to revise the inoperative component and visual aid tables in § 91.117 in accordance with recent changes in visual aids and to add abbreviations of these new aids to Part 1.

The U.S. Standard for Terminal Instrument Procedures (TERPS) contains criteria which are used to formulate, review, approve, and publish procedures for instrument approach and departure of aircraft to and from civil and military airports. TERPS was issued in September 1966, and has been adopted by the Departments of the Army, Navy, Air Force, and the U.S. Coast Guard. The second edition of TERPS, which was adopted on February 6, 1970, is set forth in FAA Handbook 8260.3A. Copies may be obtained (for a nominal fee) by written request to the Manager of Headquarters Operations, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20590. Copies of TERPS can be examined at any Regional or Area Office of the FAA.

One objective of TERPS is to reduce chart clutter and enhance graphic presentation of terminal procedures. Therefore, only the lowest landing minimums are published and portrayed in the instrument approach procedure charts. The lowest minimums are determined with all the components and visual aids of the instrument approach system operating. To reduce chart clutter, the standard adjustments of landing minimums for inoperative components or aids, as prescribed in TERPS, are not portrayed on the charts, but are set out in tables in § 91.117 of the Federal Aviation Regulations.

Paragraph 343 of Handbook 8260.3A provides for reductions in visibility requirements for approach lighting systems that were not previously included in the standard lighting systems. Descriptions of lighting systems may be found in Appendix 5 of the TERPS Handbook. This amendment makes necessary revisions to the inoperative component and visual aid tables in § 91.117 to include these new lighting systems and the adjustments to landing minimums which must be made when the aid is inoperative or not useable.

The changes are as follows:

1. The short approach light system (SALS) is replaced by the simplified short approach light system with runway alignment indicator lights (SSALSR) in the table in § 91.117(c)(1). Until such time as existing SALS installations are converted to SSALSR, the definition of SALS will remain in Part 1 and the adjustment to landing minimums for an inoperative SALS will appear on the instrument approach procedure charts for airports where SALS is installed.

2. The medium intensity approach light system with runway alignment indicator lights (MALSR) is added to the table in § 91.117(c)(1).

3. The short approach light system (SALS) is deleted from the table in § 91.117(c)(3).

4. The simplified short approach light system (SSALS), SSALSR, and MALSR are added to the table in § 91.117(c)(3).

5. SSALSR and MALSR are added to the table in § 91.117(c)(4).

This amendment also adds the definitions of these visual aids to § 1.2 of Part 1.

The visibility reductions associated with these visual aids, and the visibility increases which must be made when they are inoperable or unuseable, have been discussed in meetings with industry and aviation associations in connection with the revision of TERPS. Several of the new lighting systems are already in use.

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

In consideration of the foregoing, Parts 1 and 91 of the Federal Aviation Regulations are amended, effective August 18, 1970, as follows:

1. By adding the following abbreviations to § 1.2 in their proper alphabetical order:

"RAIL" means runway alignment indicator light system.

"MALSR" means medium intensity approach light system with runway alignment indicator lights.

"SSALS" means simplified short approach light system.

"SSALSR" means simplified short approach light system with runway alignment indicator lights.

2. By revising the table in § 91.117(c)(1) by striking out the abbreviation "SALS" in the last line and inserting the abbreviation "SSALSR" in place thereof, and by adding a line to read as follows:

MALSR 50 feet ¼ ABC

3. By revising the table in § 91.117 (c) (3) by striking out the abbreviations "ALS, SALS" in the first line and inserting the abbreviations "ALS, SSALSR, MALSR" in place thereof, and by striking out the abbreviations "HIRL, MALS, REILS" in the second line and inserting the abbreviations "SSALS, MALS, HIRL, and REIL" in place thereof.

4. By revising the table in § 91.117 (c) (4) by striking out the abbreviation "ALS" and inserting the abbreviations "ALS, SSALSR, MALSR" in place thereof.

(Secs. 307, 313, 601, Federal Aviation Act of 1958 (49 U.S.C. 1348, 1354, 1421); 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. 70-10761; Filed, Aug. 17, 1970; 8:47 a.m.]

[Airworthiness Docket No. 70-WE-29-AD; Amdt. 39-1070]

PART 39—AIRWORTHINESS DIRECTIVES

Hughes Model 269 Series Helicopters

There have been longitudinal cracks due to material lap roll in the lead-lag hinge bolts and the flapping hinge bolts, P/N HS 1446-10-68, with vendor identification BM impression-stamped on top of the bolt heads, installed on Hughes Model 269 Series Helicopters. Such cracks could result in the loss of a main rotor blade.

Since this condition is likely to exist or develop in other helicopters of the same type design, an airworthiness directive is being issued to require inspections of the lead-lag hinge bolts and the flapping hinge bolts for cracks and replacement of these bolts if such cracks are found on Hughes Model 269 Series Helicopters.

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 upon publication in the FEDERAL REGISTER.

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

HUGHES. Applies to Model 269 Series helicopters certificated in all categories, which incorporate lead-lag and flapping hinge bolts, P/N HS 1446-10-68 (only the lead-lag bolts are affected on Model 269C), with vendor identification BM (stylized) impression stamped on top of the bolt heads hereinafter referred to as BM bolts. Compliance required as indicated.

To detect cracks in the BM bolts, P/N HS 1446-10-68, accomplish the following:

Within 50 hours' time in service after the effective date of this AD, unless already accomplished, remove all BM bolts in accordance with Hughes Handbook of Maintenance Instruction. (BM bolts with the head dyed green or a white dot painted in the recessed head have been inspected and are not affected by this AD. The white dot was used in instances where the green dye application was not effective.) Perform a magnaflux inspection of the BM bolts for evidence of cracking.

(a) Replace any BM bolt which shows evidence of cracking, with a serviceable bolt prior to further flight. Efface the part number of any cracked bolts sufficiently to prevent their inadvertent return to service.

(b) Any BM bolt which shows no evidence of cracking may be returned to service after it has been identified with a white dot painted in the recessed head of the bolt.

NOTE: (Hughes Service Information Notice No. N-78, dated July 31, 1970, pertains to the same subject.)

This amendment becomes effective August 20, 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 Los Angeles, Calif., on August 7, 1970.

ARVIN O. BASNIGHT,
Director, FAA Western Region.

[F.R. Doc. 70-10775; Filed, Aug. 17, 1970; 8:48 a.m.]

[Airspace Docket No. 70-SW-37]

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

Designation of Transition Area

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

On June 19, 1970, a notice of proposed rule making was published in the FEDERAL REGISTER (35 F.R. 10114) stating the Federal Aviation Administration proposed to designate a 700-foot transition area at Morrilton, Ark.

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

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective 0901 G.m.t., October 15, 1970, as hereinafter set forth.

In § 71.181 (35 F.R. 2134), the following transition area is added:

MORRILTON, ARK.

That airspace extending upward from 700 feet above the surface within an 8.5-mile radius of Petit Jean Airport (lat. 35°08'15" N., long. 92°54'30" W.), and within 3.5 miles each side of the 216° bearing from the Morrilton RBN (lat. 35°07'07" N., long. 92°55'-30" W.) extending from the 8.5-mile radius area to 11.5 miles southwest of the RBN.

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

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

HENRY L. NEWMAN,
Director, Southwest Region.

[F.R. Doc. 70-10776; Filed, Aug. 17, 1970; 8:48 a.m.]

[Airspace Docket No. 70-CE-75]

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

Alteration of Transition Area

The purpose of this amendment to Part 71 of the Federal Aviation Regulations is to alter the transition area at Juneau, Wis.

U.S. Standard for Terminal Instrument Procedures (TERPS) became effective November 18, 1967, and was issued only after extensive consideration and discussion with Government agencies concerned and affected industry groups. TERPS updates the criteria for the establishment of instrument approach procedures in order to meet the safety requirements of modern day aviation and to make more efficient use of the airspace possible. As a result, the criteria for designation of controlled airspace for the protection of these procedures were modified to conform to TERPS. The new criteria requires minor alteration of the Juneau, Wis., transition area. Action is taken herein to reflect this change.

Since changes in most, if not all, existing airspace designations are required in order to achieve the increased safety and efficient use of the airspace that TERPS is designed to accomplish and since these changes are minor in nature, notice and public procedure hereon have been determined to be both unnecessary and impracticable.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended effective 0901 G.m.t., October 15, 1970, as hereinafter set forth:

In § 71.181 (35 F.R. 2134), the following transition area is amended to read:

JUNEAU, WIS.

That airspace extending upward from 700 feet above the surface within a 6½-mile radius of Dodge County Airport (latitude 43°25'35" N., longitude 88°42'00" W.); and within 3 miles each side of a 195° bearing from Dodge County Airport extending from the 6½-mile radius area to 8 miles south of the airport.

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

Issued in Kansas City, Mo., on July 30, 1970.

DANIEL E. BARROW,
Acting Director, Central Region.

[F.R. Doc. 70-10777; Filed, Aug. 17, 1970; 8:48 a.m.]

[Airspace Docket No. 70-SO-46]

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

Alteration of Control Zones and Transition Area

On July 2, 1970, a notice of proposed rule making was published in the FEDERAL REGISTER (35 F.R. 10776), stating that the Federal Aviation Administration was considering an amendment

to Part 71 of the Federal Aviation Regulations that would alter the Columbus, Ga. (Columbus Metropolitan Airport and Lawson AAF) control zones and the Columbus, Ga., transition area.

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

Subsequent to publication of the notice, it was determined that although R–3002 is designated as joint-use, the amount of time it could be available for utilization by the controlling agency would be negligible. It was also determined that the control zone extension predicated on the Columbus ILS localizer northeast course was erroneously cited as 2.5 miles each side in lieu of 1.5 miles each side in width. Since it is desirable that LOC(BC)RWY 23 instrument approach procedure to Columbus Metropolitan Airport be implemented, it is necessary to alter the Columbus Metropolitan Airport control zone by reducing the width of the extension predicated on the ILS localizer northeast course to 1.5 miles each side. It is also necessary to alter the transition area by reducing the width of the extension predicated on the Columbus ILS localizer northeast course to 1.5 miles each side at the intersection of the Columbus VOR 102° radial, expanding in width to 5 miles each side of a point 11.5 miles northeast of this intersection. Since these amendments are less restrictive in nature, notice and public procedure hereon are unnecessary and action is taken herein to amend the descriptions accordingly.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective 0901 G.m.t., October 15, 1970, as hereinafter set forth.

In § 71.171 (35 F.R. 2054), the Columbus, Ga. (Columbus Metropolitan Airport and Lawson AAF) control zones are amended to read:

COLUMBUS, GA. (COLUMBUS METROPOLITAN AIRPORT)

Within a 5-mile radius of Columbus Metropolitan Airport (lat. 32°30'55" N., long. 84°56'25" W.); within 1.5 miles each side of Columbus ILS localizer northeast course, extending from the 5-mile radius zone to the intersection of the Columbus VOR 102° radial; within 1.5 miles each side of Columbus VOR 149° radial, extending from the 5-mile radius zone to 1 mile southeast of the VOR; within 2 miles each side of Runway 5 extended centerline, extending from the 5-mile radius zone to 6 miles southwest of the runway end; within 2 miles each side of Runway 12 extended centerline, extending from the 5-mile radius zone to 6 miles northwest of the runway end.

COLUMBUS, GA. (LAWSON AAF)

Within a 5-mile radius of Lawson AAF (lat. 32°20'20" N., long. 84°59'35" W.); within 2 miles each side of the 213° bearing from Lawson RBN, extending from the 5-mile radius zone to 6.5 miles southwest of the RBN; within 2 miles each side of Lawson VOR 339° radial, extending from the 5-mile radius zone to 1 mile south of the Columbus LOM; excluding the portion within Columbus Metropolitan Airport control zone.

In § 71.181 (35 F.R. 2134), the Columbus, Ga., transition area is amended to read:

COLUMBUS, GA.

That airspace extending upward from 700 feet above the surface within a 10.5-mile radius of Columbus Metropolitan Airport (lat. 32°30'55" N., long. 84°56'25" W.); within a 10-mile radius of Lawson AAF (lat. 32°20'20" N., long. 84°59'35" W.); within 1.5 miles each side, expanding in width to 5 miles each side of Columbus ILS localizer northeast course, extending from the intersection of the Columbus VOR 102° radial to 11.5 miles northeast; within 9.5 miles southwest and 4.5 miles northeast of Lawson AAF ILS localizer southeast course, extending from the 10-mile radius area to 12 miles southeast of Louvale RBN; within 9.5 miles southwest and 4.5 miles northeast of Columbus VOR 149° and 329° radials, extending from the 10.5-mile radius area to 18.5 miles northwest of the VOR; within 4 miles each side of Lawson VOR 339° radial, extending from the 10-mile radius area to 20.5 miles north of the VOR.

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

Issued in East Point, Ga., on August 10, 1970.

JAMES G. ROGERS,
Director, Southern Region.

[F.R. Doc. 70–10778; Filed, Aug. 17, 1970; 8:48 a.m.]

[Airspace Docket No. 70–SO–47]

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

Designation of Transition Area

On July 2, 1970, a notice of proposed rule making was published in the FEDERAL REGISTER (35 F.R. 10776), stating that the Federal Aviation Administration was considering an amendment to Part 71 of the Federal Aviation Regulations that would designate the Clinton, N.C., transition area.

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

Subsequent to publication of the notice, the geographic coordinate (lat. 34°58'48" N., long. 78°21'48" W.) for Sampson County Airport was obtained from Coast and Geodetic Survey. Additionally, the geographic coordinate (lat. 34°58'31" N., long. 78°21'48" W.) for Clinton Nondirectional Radio Beacon was refined by Coast and Geodetic Survey. It is necessary to alter the description by inserting the airport coordinate and changing the nondirectional radio beacon coordinate. Since these amendments are editorial in nature, notice and public procedure hereon are unnecessary and action is taken herein to alter the description accordingly.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective 0901 G.m.t., October 15, 1970, as hereinafter set forth.

In § 71.181 (35 F.R. 2134), the Clinton, N.C., transition area is amended to read:

CLINTON, N.C.

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Sampson County Airport (lat. 34°58'48" N., long. 78°21'48" W.); within 3 miles each side of the 244° bearing from Clinton RBN (lat. 34°58'31" N., long. 78°21'48" W.), extending from the 6.5-mile radius area to 8.5 miles southwest of the RBN.

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

Issued in East Point, Ga., on August 10, 1970.

JAMES G. ROGERS,
Director, Southern Region.

[F.R. Doc. 70–10779; Filed, Aug. 17, 1970; 8:48 a.m.]

[Airspace Docket No. 70–AL–4]

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

Designation of Federal Airway

On May 21, 1970, a notice of proposed rule making was published in the FEDERAL REGISTER (35 F.R. 7816) stating that the Federal Aviation Administration was considering an amendment to Part 71 of the Federal Aviation Regulations that would designate a VOR Federal airway from Fairbanks, Alaska, to Chandalar Lake, Alaska.

Interested persons were afforded an opportunity to participate in the proposed rule making through the submission of comments. No comments were received.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective 0901 G.m.t., October 15, 1970, as hereinafter set forth.

In § 71.125 (35 F.R. 2040) the following Alaskan VOR Federal airway is added:

V–347 From Fairbanks, Alaska, Chandalar Lake, Alaska, RBN.

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

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

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

[F.R. Doc. 70–10780; Filed, Aug. 17, 1970; 8:48 a.m.]

[Airspace Docket No. 70–SW–23]

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

Alteration of Control Zone and Designation of Transition Area

The purpose of this amendment to Part 71 of the Federal Aviation Regulations is to alter the McAllen, Tex., control zone and designate the McAllen, Tex., transition area.

On June 17, 1970, a notice of proposed rule making was published in the FEDERAL REGISTER (35 F.R. 9932) stating the Federal Aviation Administration proposed to alter the control zone and designate a 700-foot transition area at McAllen, Tex.

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

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective 0901 G.m.t., October 15, 1970, as hereinafter set forth.

(1) In § 71.171 (35 F.R. 2054), the McAllen, Tex., control zone is amended to read:

MCALLEN, TEX.

Within a 5-mile radius of Miller International Airport (lat. 26°10'40" N., long. 98°14'25" W.), within 3 miles each side of the McAllen VOR 095° radial extending from the 5-mile radius zone to 8 miles east of the VOR, and within 1.5 miles each side of the McAllen VOR 324° radial extending from the 5-mile radius zone to the Tacos Intersection, excluding the portion outside the United States.

(2) In § 71.181 (35 F.R. 2134), the following transition area is added:

MCALLEN, TEX.

That airspace extending upward from 700 feet above the surface within a 5-mile radius of Miller International Airport (lat. 26°10'40" N., long. 98°14'25" W.), within 3.5 miles each side of the McAllen VOR 095° radial extending from the 5-mile radius area to 11.5 miles east of the VOR, and within 3.5 miles each side of the McAllen VOR 324° radial extending from the 5-mile radius area to 11.5 miles northwest of the Tacos Intersection, excluding the portion outside the United States.

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

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

HENRY L. NEWMAN,
Director, Southwest Region.

[F.R. Doc. 70-10781; Filed, Aug. 17, 1970; 8:48 a.m.]

[Airspace Docket No. 70-SW-36]

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

Alteration of Control Zone and Transition Area

The purpose of this amendment to Part 71 of the Federal Aviation Regulations is to alter the Deming, N. Mex., control zone and transition area.

On June 17, 1970, a notice of proposed rule making was published in the FEDERAL REGISTER (35 F.R. 9931) stating the Federal Aviation Administration proposed to alter controlled airspace in the Deming, N. Mex., terminal area.

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

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective 0901 G.m.t., October 15, 1970, as hereinafter set forth.

(1) In § 71.171 (35 F.R. 2054), the Deming, N. Mex., control zone is amended to read:

DEMING, N. MEX.

With a 5-mile radius of Deming Municipal Airport (lat. 32°15'40" N., long. 107°43'10" W.).

(2) In § 71.181 (35 F.R. 2134), the Deming, N. Mex., transition area 700-foot portion is amended to read:

DEMING, N. MEX.

That airspace extending upward from 700 feet above the surface within an 8-mile radius of Deming Municipal Airport (lat. 32°15'40" N., long. 107°43'10" W.).

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

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

HENRY L. NEWMAN,
Director, Southwest Region.

[F.R. Doc. 70-10786; Filed, Aug. 17, 1970; 8:48 a.m.]

[Airspace Docket No. 70-SW-17]

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

PART 73—SPECIAL USE AIRSPACE

Designation of Temporary Restricted Area

On June 5, 1970, a notice of proposed rule making was published in the FEDERAL REGISTER (35 F.R. 8750) stating that the Federal Aviation Administration was considering amendments to Parts 71 and 73 of the Federal Aviation Regulations which would establish a temporary restricted area at White Sands Proving Grounds, N. Mex., and include it in the Continental Control Area.

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

In consideration of the foregoing, Parts 71 and 73 of the Federal Aviation Regulations are amended, effective 0901 G.m.t. September 17, 1970, as hereinafter set forth.

Section 73.51 (35 F.R. 2340) is amended by adding:

R-5116A WHITE SANDS PROVING GROUNDS, N. MEX.

Boundaries: Beginning at lat. 33°53'40" N., long. 106°44'35" W.; to lat. 34°20'35" N., long. 107°02'35" W.; to lat. 34°25'00" N., long. 106°51'45" W.; to lat. 34°09'55" N., long. 106°41'35" W.; to the point of beginning.

Designated altitudes: Surface to FL 240, excluding the airspace below 7,000 feet MSL west of long. 106°50'00" W.

Time of designation: Sunrise to sunset, October 1, 1970, through December 31, 1970, as published in NOTAMs at least 12 hours in advance of use.

Controlling agency: Federal Aviation Administration, Albuquerque ARTC Center.

Using agency: Commander, Air Force Special Weapons Center, Kirtland AFB, N. Mex.

Section 71.151 (35 F.R. 2043) restricted areas included, is amended by adding "R-5116A White Sands Proving Grounds, N. Mex."

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

Issued in Washington, D.C., on August 12, 1970.

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

[F.R. Doc. 70-10782; Filed, Aug. 17, 1970; 8:48 a.m.]

[Airspace Docket No. 70-WA-33]

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

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

Alteration of Federal Airway and Jet Route

The purpose of these amendments to Parts 71 and 75 of the Federal Aviation Regulations is to alter VOR Federal airway No. 129 and Jet Route No. 38.

A recent mathematical computation of V-129 revealed that the portion between International Falls, Minn., and the United States/Canadian border should be based on the International Falls 335° radial rather than the 336° radial. Also, the present description of J-38 is based, in part, on the Kenora, Ontario, Canada, VORTAC. The name of the Kenora VORTAC has recently been changed to Sioux Narrows VORTAC. Action is taken herein to alter the descriptions of V-129 and J-38.

Since these amendments are minor and editorial in nature and no substantive change in the regulation is effected, notice and public procedure thereon are unnecessary, and good cause exists for making these amendments effective on less than 30 days notice.

In consideration of the foregoing, Parts 71 and 75 of the Federal Aviation Regulations are amended, effective upon publication in the FEDERAL REGISTER, as hereinafter set forth.

1. Section 71.123 (35 F.R. 2009) is amended as follows: In V-129 "336°" is deleted and "335°" is substituted therefor.

2. Section 75.100 (35 F.R. 2359) is amended as follows: In Jet Route No. 38 the phrase "Kenora, Ont." is deleted and "Sioux Narrows, Ont." is substituted therefor.

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

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

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

[F.R. Doc. 70-10783; Filed, Aug. 17, 1970; 8:48 a.m.]

[Reg. Docket No. 10501; Amdt. 95-196]

PART 95—IFR ALTITUDES

Miscellaneous Amendments

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

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

In consideration of the foregoing and pursuant to the authority delegated to me by the Administrator (24 F.R. 5662), Part 95 of The Federal Aviation Regulations is amended, effective September 17, 1970 as follows:

1. By amending Subpart C as follows:

Section 95.101 *Amber Federal airway 1* is amended to read in part:

From, To, and MEA

Sandspit, British Columbia, LFR; Muzon INT, Alaska; *#5,000. *4,000—MOCA. #For that airspace over U.S. territory.
Muzon INT, Alaska; Port Alexander INT, Alaska; *5,200. *5,100—MOCA.
Port Alexander INT, Alaska; Sitka, Alaska, LFR; 5,200.
Sitka, Alaska, LFR; Harbor Point INT, Alaska; 5,200.
Harbor Point INT, Alaska; Yakutat, Alaska, LFR; *6,000. *2,000—MOCA.

Section 95.102 *Amber Federal airway 2* is amended to read in part:

Big Delta, Alaska, LFR; Fairbanks, Alaska, LFR; 5,000.

Section 95.103 *Amber Federal airway 3* is added to read:

Bettles, Alaska, LF/RBN; Drill INT, Alaska; *10,000. *9,600—MOCA.
Drill INT, Alaska, Toolik INT, Alaska; *2,700. *2,000—MOCA.
Toolik INT, Alaska; Deadhorse, Alaska, LF/RBN; *2,100. *1,400—MOCA.

Section 95.115 *Amber Federal airway 15* is amended to read in part:

Big Delta, Alaska, LFR; Fairbanks, Alaska, LFR; 5,000.
Sagwon, Alaska, LF/RBN; Franklin INT, Alaska; *3,000. *2,200—MOCA.
Franklin INT, Alaska; Deadhorse, Alaska, LF/RBN; *2,000. *1,200—MOCA.
Deadhorse, Alaska, LF/RBN; Oliktok, Alaska, LF/RBN; *2,000. *1,100—MOCA.

Section 95.638 *Blue Federal airway 38* is amended to read in part:

Petersburg, Alaska, LFR; Sisters Island, Alaska, LF/RBN; 6,900.
Sisters Island, Alaska, LF/RBN; Haines, Alaska, LF/RBN; *9,000. *8,600—MOCA.

Section 95.679 *Blue Federal airway 79* is amended to read:

Sandspit, British Columbia, LFR; Annette Island, Alaska, LFR; *#5,000. *4,900—MOCA. #For that airspace over U.S. territory.
Annette Island, Alaska, LFR; Hazy Island INT, Alaska; *6,900. *5,900—MOCA.
Hazy Island INT, Alaska; Sitka, Alaska, LFR; *6,900. *6,100—MOCA.
Sitka, Alaska, LFR; Sisters Island, Alaska, LF/RBN; *6,500. *6,300—MOCA.
Sisters Island, Alaska, LF/RBN; Cape Spencer, Alaska, LF/RBN; *6,000. *5,100—MOCA.
Cape Spencer, Alaska, LF/RBN; Harbor Point INT, Alaska; *6,000. *7,400—MOCA.

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

Lavon INT, Tex.; McAlester, Okla., VOR; *4,000. *2,500—MOCA.
Prudhoe Bay, Alaska, LF/RBN; Fresto INT, Alaska; *2,000. *1,800—MOCA.
Fresto INT, Alaska; Hills INT, Alaska; *3,000. *2,400—MOCA.
Hills INT, Alaska; Umiat, Alaska, LF/RBN; *3,000. *10,000—MEA required without HF airborne communications equipment *2,700—MOCA.
Yolo INT, Calif., via MYU 186° M rad; Marysville, Calif., VOR; *2,000. *1,300—MOCA.
Montgomery, Ala., VOR; Crenshaw INT, Ala.; 2,500.
INT 168 M rad, Montgomery VOR & 069° M rad, Monroeville VOR; Montgomery, Ala., VOR; 2,500.

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

Princeton INT, Tex.; McAlester, Okla., VOR; *4,000. *2,500—MOCA.
Umiat, Alaska, LF/RBN; Hills INT, Alaska; *2,700. *2,000—MOCA.
Hills INT, Alaska; Fresto INT, Alaska; *2,500. *1,700—MOCA.
Fresto INT, Alaska; Gayuk INT, Alaska; *2,000. *1,300—MOCA.
Gayuk INT, Alaska; Deadhorse, Alaska, LF/RBN; *2,000. *1,200—MOCA.
Camp INT, Hawaii; Maui, Hawaii, VORTAC; *7,000. *6,500—MOCA.
Camp INT, Hawaii; Maui, Hawaii, LMM; 7,000.
Lumpkin INT, Ga.; INT 354° M rad, Albany, Ga., VOR and 041° M rad, Dothan, Ala., VOR; *5,000. *1,800—MOCA.
Crenshaw INT, Ala.; Montgomery, Ala., VOR; 2,500.

Section 95.1001 *Direct routes—United States* is amended to read in part:

Drake, Ark., VOR; Harrison, Ark., VOR; *3,900. *3,300.
Dukes INT, Fla.; Cecil (NAS), Fla., VOR; 1,700.

Section 95.6001 *VOR Federal airway 1* is amended to read in part:

Salisbury, Md., VOR; Waterloo, Del., VOR; 1,800.
Swamp INT, N.C.; Wilmington, N.C., VOR; *2,000. *1,600—MOCA.

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

Freeport INT, Maine; Augusta, Maine, VOR; 2,400.

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

Laramie, Wyo., VOR via N alter.; Nunn INT, Colo., via N alter.; *11,000. *10,100—MOCA.

Section 95.6005 *VOR Federal airway 5* is amended to read in part:

Cartersville INT, Ga.; via W alter.; Kirby INT, Ga., via W alter.; *4,500. *4,000—MOCA.
Kirby INT, Ga., via W alter.; Chattanooga, Tenn., VOR via W alter.; 3,000.
Jacksonville, Fla., VOR; Pafford INT, Ga.; *2,000. *1,500—MOCA.

Section 95.6008 *VOR Federal airway 8* is amended to read in part:

Kremmling, Colo., VOR; Superior INT, Colo.; *16,000. *14,900—MOCA.

Section 95.6009 *VOR Federal airway 9* is amended to read in part:

Crystal City INT, Mo.; Arnold INT, Mo.; *3,000. *1,800—MOCA.
Arnold INT, Mo.; Imperial INT, Mo.; *2,800. *1,900—MOCA.
Meramec INT, Mo.; St. Louis, Mo., VOR; 2,600.

Section 95.6011 *VOR Federal airway 11* is amended by adding:

Mobile, Ala., VOR via E alter.; Yarbo INT, Ala., via E alter.; *2,000. *1,600—MOCA.
Yarbo INT, Ala., via E alter.; Laurel, Miss., VOR via E alter.; *2,000. *1,800—MOCA.

Section 95.6011 *VOR Federal airway 11* is amended to read in part:

Mobile, Ala., VOR; *Greene County, Miss., VOR; **2,000. *9,500—MCA Greene County VOR northwest bound. **1,600—MOCA.
Greene County, Miss., VOR; *Richton INT, Miss.; **9,500. *9,500—MCA Richton INT, southeast bound. **1,700—MOCA.
Richton INT, Miss.; Laurel, Miss., VOR; *2,000. *1,800—MOCA.

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

Readsville INT, Mo.; Hermann INT, Mo.; *2,600. *1,900—MOCA.
Hermann INT, Mo.; *New Melle INT, Mo.; **2,700. *4,000—MRA. **2,200—MOCA.
New Melle INT, Mo.; Howell INT, Mo.; *2,500. *2,000—MOCA.

Section 95.6013 *VOR Federal airway 13* is amended to read in part:

Lydia INT, Minn., via W alter.; Minneapolis, Minn., VOR via W alter.; *2,500. *2,300—MOCA.

Section 95.6014 *VOR Federal airway 14* is amended to read in part:

Vichy, Mo., VOR via N alter.; INT 032° M rad, Vichy VOR and 244° M rad, St. Louis VOR via N alter.; *2,900. *2,200—MOCA.
INT 032° M rad, Vichy VOR and 244° M rad, St. Louis VOR via N alter.; Holstein INT, Mo., via N alter.; *2,600. *1,900—MOCA.
Holstein INT, Mo., via N alter.; St. Louis, Mo., VOR via N alter.; *2,500. *2,000—MOCA.

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

Silver INT, Tex.; Cypress INT, Tex.; *1,800. *1,600—MOCA.

Section 95.6016 *VOR Federal airway 16* is amended to read in part:

Ironsides INT, Md.; Nottingham, Md., VOR; *1,900, *1,600—MOCA.
Nottingham, Md., VOR; North Beach INT, Md.; 1,900.

Section 95.6017 *VOR Federal airway 17* is amended to read in part:

Cotulla, Tex., VOR; Millett INT, Tex.; *2,500. *1,600—MOCA.
Cotulla, Tex., VOR via E alter.; Millett INT, Tex., via E alter.; *2,500. *1,600—MOCA.
San Antonio, Tex., VOR via W alter.; Blanco INT, Tex., via W alter.; *3,300. *3,100—MOCA.

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

Coles Point INT, Va.; Nottingham, Md., VOR; 1,900.

Section 95.6023 *VOR Federal airway 23* is amended to delete:

Applegate INT, Oreg., via W alter.; Medford, Oreg., VOR via W alter.; 8,000.
Medford, Oreg., VOR via W alter., Roseburg, Oreg., VOR via W alter.; 7,000.
Roseburg, Oreg., VOR via W alter.; *Drain INT, Oreg., via W alter.; 5,000. *6,100—MRA.
Drain INT, Oreg., via W alter.; Eugene, Oreg., VOR via W alter.; northbound, 4,000; southbound, 5,000.
Eugene, Oreg., VOR via W alter.; Corvallis, Oreg., VOR via W alter.; 3,400.
Corvallis, Oreg., VOR via W alter.; Kings Valley INT, Oreg., via W alter.; 4,000.
Kings Valley INT, Oreg., via W alter.; McCoy INT, Oreg., via W alter.; *4,000. *3,400—MOCA.
McCoy INT, Oreg., via W alter.; Newberg, Oreg., VOR via W alter.; 4,000.

Section 95.6023 *VOR Federal airway 23* is amended by adding:

Applegate INT, Oreg., via W alter.; Merlin INT, Oreg., via W alter.; *9,000. *6,000—MOCA.
Merlin INT, Oreg., via W alter.; Roseburg, Oreg., VOR via W alter.; *8,000. *7,300—MOCA.
Roseburg, Oreg., VOR via W alter.; Noti INT, Oreg., via W alter.; *7,000. *4,400—MOCA.
Noti INT, Oreg., via W alter.; Corvallis, Oreg., VOR via W alter.; northbound, 4,000; southbound, 7,000.
Corvallis, Oreg., VOR via W alter.; Newberg, Oreg., VOR via W alter.; 4,000.

Section 95.6023 *VOR Federal airway 23* is amended to read in part:

Fort Jones, Calif., VOR via E alter.; Klamath Junction INT, Oreg., via E alter.; *10,000. *9,500—MOCA.

Section 95.6025 *VOR Federal airway 25* is amended to read in part:

Redmond, Oreg., VOR; *Gateway INT, Oreg.; **7,000. *10,000—MRA. **6,500—MOCA.
Gateway INT, Oreg.; The Dalles, Oreg., VOR; *7,000. *6,500—MOCA.

Section 95.6026 *VOR Federal airway 26* is amended by adding:

Philip, S. Dak., VOR via N alter.; Pierre, S. Dak., VOR via N alter.; *4,000. *3,400—MOCA.

Section 95.6026 *VOR Federal airway 26* is amended to read in part:

Farmington, Minn., VOR via S alter.; Prescott INT, Wis., via S alter.; *2,800. *2,300—MOCA.
Sand Creek INT, Wyo.; *Rushmore INT, S. Dak.; **13,000. *9,000—MRA. **9,200—MOCA.
Rushmore INT, S. Dak.; *Rapid City, S. Dak., VOR; **13,000. *6,500—MCA Rapid City VOR, westbound. **7,000—MOCA.

Section 95.6029 *VOR Federal airway 29* is amended to read in part:

East Texas, Pa., VOR; Wilkes-Barre, Pa., VOR; 4,000.

Section 95.6031 *VOR Federal airway 31* is amended to read in part:

Selinsgrove, Pa., VOR; Watson INT, Pa.; 3,500.
Watson INT, Pa.; Williamsport, Pa., VOR; 3,800.

Section 95.6033 *VOR Federal airway 33* is amended to read in part:

Coles Point INT, Md.; Nottingham, Md., VOR; 1,900.

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

Thurston INT, N.Y.; Elmira, N.Y., VOR; 3,600.
Elmira, N.Y., VOR; Dalton INT, N.Y.; 3,600.
INT 146° M rad, Lake Henry VOR and 301° M rad, Sparta VOR; Sparta, N.J., VOR; 3,800.

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

Lowell INT, Ill.; Denham INT, Ind.; *4,000. *2,200—MOCA.
Denham INT, Ind.; Claypool INT, Ind.; *4,000. *2,400—MOCA.

Section 95.6039 *VOR Federal airway 39* is amended to read in part:

Freeport INT, Maine; Augusta, Maine, VOR; 2,400.

Section 95.6044 *VOR Federal airway 44* is amended to read in part:

Mounds INT, Ill.; Sugar INT, Ill.; 2,200.
Sugar INT, Ill.; Centralia, Ill., VOR; *2,300. *1,900-MOCA.

Section 95.6051 *VOR Federal airway 51* is amended to read in part:

Jacksonville, Fla., VOR; Pafford INT, Ga.; *2,000. *1,500—MOCA.

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

Quincy, Ill., VOR; *Hardin INT, Ill.; **2,600. *3,700—MRA. **1,900—MOCA.
Hardin INT, Ill.; *Winfield INT, Mo.; **2,500. *4,000—MRA. **1,800—MOCA.
Winfield INT, Mo.; St. Louis, Mo., VOR; *2,500. *1,800—MOCA.

Section 95.6062 *VOR Federal airway 62* is amended to read in part:

Field INT, N. Mex.; Texico, Tex., VOR; *6,500. *6,000—MOCA.

Section 95.6069 *VOR Federal airway 69* is amended to read in part:

Crystal City INT, Mo.; Arnold INT, Mo.; *3,000. *1,800—MOCA.
Arnold INT, Mo.; Imperial INT, Mo.; *2,800. *1,900—MOCA.

Section 95.6086 *VOR Federal airway 86* is amended to read in part:

Mystic DME Fix, S. Dak.; *Pactola INT, S. Dak.; eastbound, 8,000; westbound, 13,000. *9,700—MRA.

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

Gregg County, Tex., VOR; Bethany INT, Tex.; *2,000. *1,700—MOCA.

Section 95.6112 *VOR Federal airway 112* is amended to read in part:

Walla Walla, Wash., VOR via E alter.; Dayton INT, Wash., via E alter.; 4,000.
Dayton INT, Wash., via E alter.; Spokane, Wash., VOR via E alter.; 5,000.

Section 95.6118 *VOR Federal airway 118* is amended to read in part:

Medicine Bow, Wyo., VORTAC; Laramie, Wyo., VORTAC; 9,400.
Laramie, Wyo., VORTAC; *Silver Crown INT, Wyo.; 11,000. *9,600—MCA Silver Crown INT, westbound.

Section 95.6121 *VOR Federal airway 121* is amended to read in part:

Scottsburg INT, Oreg.; *Vaughn INT, Oreg.; **5,000. *7,000—MRA. **4,500—MOCA.

Section 95.6127 *VOR Federal airway 127* is amended to read in part:

Harmon INT, Ill.; Polo, Ill., VOR; *2,600. *2,300—MOCA.

Section 95.6143 *VOR Federal airway 143* is amended to read in part:

Lancaster, Pa., VOR; Pottstown, Pa., VOR; 2,600.

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

Lowell INT, Ill.; Denham INT, Ind.; *4,000. *2,200—MOCA.
Denham INT, Ind.; Claypool INT, Ind.; *4,000. *2,400—MOCA.

Section 95.6147 *VOR Federal airway 147* is amended to read in part:

East Texas, Pa., VOR; Wilkes-Barre, Pa.; VOR; 4,000.

Section 95.6155 *VOR Federal airway 155* is amended to read in part:

Flat Rock, Va.; Gordonsville, Va., VORTAC; 2,300.

Section 95.6163 *VOR Federal airway 163* is amended to read in part:

San Antonio, Tex., VOR; Johnson City INT, Tex.; *3,300. *3,100—MOCA.

Section 95.6170 *VOR Federal airway 170* is amended to read in part:

Mankato, Minn., VOR; Farmington, Minn., VOR; *2,900. *2,400—MOCA.

Section 95.6181 *VOR Federal airway 181* is amended by adding:

Watertown, S. Dak., VOR via E alter.; Fargo, N. Dak., VOR via E alter.; *3,800. *3,100—MOCA.

Section 95.6181 *VOR Federal airway 181* is amended to read in part:

Watertown, S. Dak., VOR; Barney INT, N. Dak.; *3,800. *3,300—MOCA.

Section 95.6184 *VOR Federal airway 184* is amended to read in part:

Delroy INT, Pa.; Paradise INT, Pa.; 2,800.

Section 95.6198 *VOR Federal airway 198* is amended to read in part:

Harvey, La., VOR; Pearl INT, La.; 2,000.
Pearl INT, La.; Dog INT, Miss.; *2,300. *1,000—MOCA.
Dog INT, Miss.; *Rom INT, Miss.; **2,800. *2,500-MCA Rom INT, northeastbound. **1,000—MOCA.
Rom INT, Miss.; *Theodore INT, Ala.; **2,500. *2,500—MCA Theodore INT, southwestbound. **1,600—MOCA.
Theodore INT, Ala.; Brookley, Ala., VOR; *1,900. *1,400—MOCA.

Section 95.6200 *VOR Federal airway 200* is amended to read in part:

Kremmling, Colo., VOR; Superior INT, Colo.; *16,000. *14,900—MOCA.

Section 95.6209 *VOR Federal airway 209* is amended to read in part:

Mobile, Ala., VOR; Yarbo INT, Ala.; *2,000. *1,600—MOCA.

Yarbo INT, Ala.; Kewanee, Miss., VOR; *2,000. *1,700—MOCA.

Section 95.6219 *VOR Federal airway 219* is amended to read in part:

Mankato, Minn., VOR; Farmington, Minn., VOR; *2,900. *2,400—MOCA.

Section 95.6232 *VOR Federal airway 232* is amended to read in part:

Freeland INT, Pa.; Broadway INT, N.J.; *8,000. *4,000—MOCA.

Section 95.6240 *VOR Federal airway 240* is amended to read in part:

Opal INT, La.; Pearl INT, La.; *1,700. *1,100—MOCA.
Pearl INT, La.; Dog INT, Miss.; *2,300. *1,000—MOCA.
Dog INT, Miss.; *Rom INT, Miss.; **2,800. *2,500—MCA Rom INT, northeastbound. **1,000—MOCA.
Rom INT, Miss.; Drum INT, Miss.; *1,800. *1,400.
Drum INT, Miss.; Mobile, Ala., VOR; *2,000. *1,300—MOCA.

Section 95.6243 *VOR Federal airway 243* is amended to read in part:

Cartersville INT, Ga.; Kirby INT, Ga.; *4,500. *4,000—MOCA.
Kirby INT, Ga.; Chattanooga, Tenn., VOR; 3,000.
Jacksonville, Fla., VOR; Pafford INT, Ga.; *2,000. *1,500—MOCA.

Section 95.6260 *VOR Federal airway 260* is amended to read in part:

Richmond, Va., VOR; Hopewell, Va., VOR; 1,900.

Section 95.6287 *VOR Federal airway 287* is amended by adding:

Medford, Oreg., VOR via E alter.; Roseburg, Oreg., VOR via E alter.; 7,000.
Roseburg, Oreg., via E alter.; Drain INT, Oreg., via E alter.; 5,000.
Drain INT, Oreg., via E alter.; Eugene, Oreg., VOR via E alter.; northbound, 4,000; southbound, 5,000.
Eugene, Oreg., VOR via E alter.; Corvallis, Oreg., VOR via E alter.; 3,400.
Corvallis, Oreg., VOR via E alter.; Kings Valley INT, Oreg., via E alter.; 4,000.

Section 95.6287 *VOR Federal airway 287* is amended to read in part:

North Bend, Oreg., VOR; *Reedsport INT, Oreg.; northbound, 6,000; southbound, 3,700. *5,500—MRA.
Reedsport INT, Oreg.; Kings Valley INT, Oreg.; 6,000.

Section 95.6294 *VOR Federal airway 294* is amended to read in part:

Cedar Rapids, Iowa, VOR; Solon INT, Iowa; *2,500. *2,000—MOCA.
Solon INT, Iowa; Bennett INT, Iowa; *2,600. *2,100—MOCA.
Bennett INT, Iowa; Big Rock INT, Iowa; *2,500. *2,000—MOCA.
Big Rock INT, Iowa; Cordova, Iowa, VOR; *2,400. *2,000—MOCA.

Section 95.6335 *VOR Federal airway 335* is amended to read in part:

St. Louis, Mo., VOR; Meramec INT, Mo.; 2,600.
Imperial INT, Mo.; Arnold INT, Mo.; *2,800. *1,900—MOCA.
Arnold INT, Mo.; Crystal City INT, Mo.; *3,000. *1,800—MOCA.

Section 95.6409 *Hawaii VOR Federal airway 9* is amended to read in part:

Coral INT, Hawaii; *Makai INT, Hawaii; **4,000. *4,000—MCA Makai INT, southbound. **1,000—MOCA.
Makai INT, Hawaii; Pineapple INT, Hawaii; *2,000. *1,000—MOCA.

Section 95.6436 *VOR Federal airway 436* is amended to read in part:

Nenana, Alaska, VOR; Goldstream INT, Alaska; *4,000. *3,600—MOCA.
Goldstream INT, Alaska; Tolovana INT, Alaska; *4,000. *3,400—MOCA.
Tolovana INT, Alaska; Livengood INT, Alaska; *5,000. *4,800—MOCA.
Livengood INT, Alaska; Chandalar Lake, Alaska, LF/RBN; *10,000. *7,900—MOCA.

Section 95.6437 *VOR Federal airway 437* is amended to read in part:

Charleston, S.C., VOR; Wessels INT, S.C.; *1,800. *1,400—MOCA.

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

*Anchorage, Alaska, VOR; **Martha INT, Alaska; 2,000. *5,000—MCA Anchorage VOR, eastbound. **5,000—MCA Martha INT, westbound.
Martha INT, Alaska.; *Friday INT, Alaska; 6,500. *7,000—MCA Friday INT, westbound.
Friday INT, Alaska; *Windy Fork INT, Alaska; **10,000. *8,600—MCA Windy Fork INT, southbound. **9,500—MOCA.
Windy Fork INT, Alaska: McGrath, Alaska, VOR; 4,000.

Section 95.6444 *VOR Federal airway 444* is amended to read:

Burwash, Yukon Territory, LFR; Northway, Alaska, VOR; *#9,600. *8,900—MOCA. #For that airspace over U.S. territory.
Northway, Alaska, VOR; *Tok INT, Alaska; **7,000. *6,800—MCA Tok, northwestbound. **5,300—MOCA.
Tok INT, Alaska; Big Delta, Alaska, VOR; *8,000. *6,800—MOCA.
Big Delta, Alaska, VOR; Fairbanks, Alaska, VOR; *5,000. *4,200—MOCA.
Fairbanks, Alaska, VOR; Hess Creek INT, Alaska, *5,000. *4,900—MOCA.
Hess Creek INT, Alaska; Livengood INT, Alaska; *5,000. *4,400—MOCA.
Livengood INT, Alaska; Bettles, Alaska, VOR; *9,000. *5,200—MOCA.
Fairbanks, Alaska, VOR via S alter. Wickersham INT, Alaska, via S alter.; *5,000. *4,900—MOCA.
Wickersham INT, Alaska, via S alter.; Tolovana INT, Alaska, via S alter.; *5,000. *3,400—MOCA.
Tolovana INT, Alaska, via S alter.; Bettles, Alaska, VOR via S alter.; *7,000. *6,600—MOCA.

Section 95.6452 *VOR Federal airway 452* is amended by adding:

Newport, Oreg., VOR; Eugene, Oreg., VOR; 6,000.

Section 95.6477 *VOR Federal airway 477* is amended to read in part:

Silver INT, Tex., via W alter.; Cypress INT, Tex., via W alter.; *1,800. *1,600—MOCA.

Section 95.6488 *VOR Federal airway 488* is amended to read:

Galena, Alaska, VORTAC; Tanana, Alaska, VOR; *6,000. *5,900—MOCA.
Galena, Alaska, VORTAC via S alter.; Tanana, Alaska, VOR via S alter.; *6,000. *4,000—MOCA.
Tanana, Alaska, VOR; Goldstream INT, Alaska; *7,000. *4,700—MOCA.
Goldstream INT, Alaska; Minto INT, Alaska; 4,000.
Minto INT, Alaska; Fairbanks, Alaska, VORTAC; 4,000.

Section 95.6506 *VOR Federal airway 506* is amended to read in part:

*Kodiak, Alaska, VOR; Brooks INT, Alaska; **#10,000. *4,000—MCA Kodiak VOR, northwestbound. **9,700—MOCA. #MEA is established with a gap in navigation signal coverage.

Section 95.6536 *VOR Federal airway 536* is amended by adding:

North Bend, Oreg., VOR; *Reedsport INT, Oreg.; northbound, 6,000; southbound, 3,700. *5,500—MRA.
Reedsport INT, Oreg.; Corvallis, Oreg., VOR; 6,000.

Section 95.7018 *Jet Route No. 18* is amended to read in part:

From, to MEA, and MAA

Garden City, Kans., VORTAC; Salina, Kans., VORTAC; 18,000; 45,000.

Section 95.7052 *Jet Route No. 52* is amended to read in part:

Greenwood, Miss., VORTAC; Columbus, Miss., VORTAC; 18,000; 45,000.
Columbus, Miss., VORTAC; Birmingham, Ala., VORTAC; 18,000; 45,000.

Section 95.7096 *Jet Route No. 96* is amended to read in part:

Garden City, Kans., VORTAC; Salina, Kans., VORTAC; 18,000; 45,000.

Section 95.7106 *Jet Route No. 106* is amended to read in part:

INT 105° M rad, Green Bay VORTAC and 021° M rad, Pullman VORTAC; Weidman INT, Mich.; 29,000; 45,000.
Weidman INT, Mich.; Flint, Mich., VORTAC; 18,000; 45,000.
Flint, Mich., VORTAC; United States-Canadian Border; 18,000; 45,000.
United States-Canadian Border; Jamestown, N.Y., VORTAC; 18,000; 45,000.

Section 95.7115 *Jet Route No. 115* is amended by adding:

Fairbanks, Alaska, VORTAC; Chandalar Lake, Alaska, LF/RBN; 18,000; 45,000.
Chandalar Lake, Alaska, LF/RBN; Sagwon Alaska, LF/RBN; 18,000; 45,000.
Sagwon, Alaska, LF/RBN; Deadhorse, Alaska, LF/RBN; 18,000; 45,000.

Section 95.7125 *Jet Route No. 125* is amended by adding:

Chandalar Lake, Alaska, LF/RBN; Flaxman Island, Alaska, LF/RBN; 18,000; 45,000.

Section 95.7139 *Jet Route No. 139* is added to read:

Bettles, Alaska, VOR; Deadhorse, Alaska, LF/RBN; 18,000; 45,000.

Section 95.7155 *Jet Route No. 155* is added to read:

Chandalar Lake, Alaska, LF/RBN; Oliktok, Alaska, LF/RBN; 18,000; 45,000.

Section 95.7507 *Jet Route No. 507* is amended to read in part:

Yakutat, Alaska, VORTAC; Border INT, Alaska; #22,000; 45,000. #For that airspace over U.S. territory.
Border INT, Alaska; Northway, Alaska, VOR; 22,000; 45,000.
Fort Yukon, Alaska, LF/RBN; Deadhorse, Alaska, LF/RBN; #18,000; 45,000. #MEA is established with a gap in navigational signal coverage.

Section 95.7511 *Jet Route No. 511* is amended to read in part:

Gulkana, Alaska, VOR; *Border INT, Alaska; 18,000; 45,000. *22,000—MRA.
Border INT, Alaska, Burwash, Yukon Territory, LFR; #18,000; 45,000. #For that airspace over U.S. territory.

2. By amending Subpart D as follows:

Section 95.8003 *VOR Federal airway changeover points:*

From; to—Changeover point: distance; from

V–198 is amended by adding:
Harvey, La., VOR; Brookley, Ala, VOR; 61; Harvey.

V–500 is amended to read in part:
Newberg, Oreg., VOR; John Day, Oreg., VOR; 78; Newberg.

Section 95.8005 *Jet route changeover points:*

J–125 is amended by adding:
Kodiak, Alaska, VOR; Anchorage, Alaska, VORTAC; 120; Anchorage.

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

Issued in Washington, D.C., on August 10, 1970.

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

[F.R. Doc. 70–10627; Filed, Aug. 17, 1970; 8:45 a.m.]

Title 16—COMMERCIAL PRACTICES

Chapter I—Federal Trade Commission

PART 245—GUIDES FOR THE WATCH INDUSTRY

Disclosure of Foreign Origin of Watch Movements, Movement Parts and Related Matters

Statement by the Commission. Proceedings looking toward the revision of § 245.10, Disclosure of Foreign Origin of Watch Movements, of the guides for the Watch Industry were instituted by the Commission on its own initiative. On August 7, 1969, a proposed revision of the mentioned § 245.10 was made public by the Commission for consideration of industry members and other interested or affected parties all of whom were invited to present their views, including such pertinent information, suggestions, amendments, or objections, as they might care to submit.

Thereafter, and upon full consideration of the entire matter, including all of the materials presented in response to the foregoing invitation, final action was taken by the Commission whereby it approved the final text of § 245.10 as hereinafter set forth. The section, as approved, supersedes the present § 245.10, and becomes effective as to all movements assembled subsequent to November 16, 1970.

§ 245.10 Disclosure of foreign origin of watch movements, movement parts, and related matters.

(a) Watches having movements of foreign origin or movements which contain parts of foreign origin should not be offered for sale or sold unless they are accompanied by a clear and conspicuous disclosure of the country or countries of origin of the movement.

(b) The countries of origin of a watch movement are the country in which the movement has been assembled and the country in which its substantial and significant parts have been manufactured. For purposes of this section, if parts constituting 50 percent or more of the cost to the assembler of all the parts of the movement are manufactured in a single country, those parts shall be presumed to be the substantial and significant parts of the movement.

(1) If the movement has been assembled in the same foreign country in which parts constituting 50 percent or more of the cost to the assembler of all the parts of the movement have been manufactured, the name of that country alone should be used to designate the origin of the movement. Appropriate forms of disclosure would include "Swiss Made", or "Japan".

(2) If the watch movement has been assembled in one country and parts constituting 50 percent or more of the cost to the assembler of all the parts of the movement have been manufactured in a single other country, the names of both such countries, and no other, should be used to designate the origin of the movement. Appropriate forms of disclosure would include "Assembled in France from Swiss parts", or "Japanese parts, assembled in the United States".

(3) If the watch movement has been assembled in one country but parts constituting 50 percent or more of the cost to the assembler of all the parts of the movement have not been manufactured in a single other country, only the name of the country of assembly should be used, accompanied by a disclosure that the parts are partially foreign, imported or domestic, as the case may be. Appropriate forms of disclosure would include "Movement assembled in the United States from domestic and imported parts" or "Movements assembled in France from foreign parts" or "Assembled in Germany with parts from foreign countries".

(4) For purposes of this section, the United States includes only the States, the District of Columbia, Puerto Rico, the American Virgin Islands, Guam and American Samoa.

(c) In making the disclosures under the circumstances set forth in paragraph (b) (2) and (3) of this section, care should be exercised to insure that the form selected does not imply directly or indirectly that the movement is solely a product of the country from which its substantial and significant parts were obtained, or that it is solely a product of the country in which the movement was assembled.

(d) The disclosures provided for in this section should be permanently marked on an exposed surface of the watch or on a label or tag affixed thereto which has such a degree of permanency as to remain thereon until consummation of the consumer sale of the watch and be of such size and conspicuousness that they will be readily apparent to purchasers or prospective purchasers making a casual inspection of the watch.

[Guide 10]

(Secs. 5, 6, 38 Stat. 719, as amended, 721; 15 U.S.C. 45, 46)

Promulgated by the Federal Trade Commission August 18, 1970.

[SEAL] JOSEPH W. SHEA,
Secretary.

[F.R. Doc. 70–10662; Filed, Aug. 17, 1970; 8:45 a.m.]

Title 17—COMMODITY AND SECURITIES EXCHANGES

Chapter II—Securities and Exchange Commission

[Released IC–6154]

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

Certain Stock Option and Stock Purchase Plans and Profit-Sharing Plans of Controlled Portfolio Companies

On April 30, 1970, the Securities and Exchange Commission published notice (Investment Company Act Release No. 6038) (35 F.R. 7132) that it had under consideration an amendment of Rule 17d–1 (17 CFR 270.17d–1) under the Investment Company Act of 1940 ("Act") and invited all interested persons to comment upon the proposal. The purpose of the amendment is to clarify the applicability of Rule 17d–1 to stock option and stock purchase plans of companies controlled by registered investment companies and to exempt from the requirement of filing an application under the Rule transactions in connection with such plans where no affiliated person of any investment company, investment adviser or principal underwriter participates therein.

The Commission has considered all of the comments and suggestions received and has determined to adopt the proposed amendment in the form set forth below. Adoption of the amendment is made pursuant to the authority granted to the Commission in sections 17(d), 6(c), and 38(a) of the Act.

Section 17(d) of the Act makes it unlawful for any "affiliated person of or principal underwriter for a registered investment company * * * or any affiliated person of such a person or principal underwriter, acting as principal to effect any transaction in which such registered company, or a company controlled by

such registered company, is a joint or a joint and several participant with such person, principal underwriter, or affiliated person, in contravention of such rules and regulations as the Commission may prescribe for the purpose of limiting or preventing participation by such registered or controlled company on a basis different from or less advantageous than that of such other participant."

Rule 17d–1 prohibits all such affiliated persons, acting as principal, from participating in or effecting any "transaction in connection with, any joint enterprise or other joint arrangement or profit-sharing plan in which any such registered company, or a company controlled by such registered company, is a participant * * * unless an application regarding such joint enterprise, arrangement or profit-sharing plan has been filed with the Commission and has been granted * * *."

Section 6(c) of the Act provides that the Commission, by rule, regulation or order, may exempt any person or transaction, or any class of persons or transactions, from any provision of the Act, if and to the extent 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 38(a) of the Act authorizes the Commission to issue and amend such rules as are necessary or appropriate to the exercise of the powers conferred upon the Commission in the Act.

Section 17(d) and Rule 17d–1 taken together, are designed to enable the Commission to pass upon transactions in which a conflict of interest may result in investment companies or their controlled companies participating on a basis different from or less advantageous than other participants. Officers, directors and employees of operating companies controlled by registered investment companies, by virtue of their office or employment, are affiliated persons of affiliated persons within the scope of sections 2(a)(3) and 17(d) of the Act.

The amendment clarifies the extent of the coverage and exempts from the requirement of filing an application pursuant to the Rule transactions in connection with any stock option or stock purchase plan of a company controlled by a registered investment company provided that participants are not affiliated persons of any investment company which is an affiliated person of such controlled company, or of the investment adviser or principal underwriter of such an investment company, during the life of the plan or for 6 months prior to the transaction. Transactions in which affiliates of such an investment company, its investment adviser or principal underwriter participate are subject to Commission approval under Rule 17d–1.

The amendment as proposed would have exempted plans covering only officers or employees. Recognizing that directors of the controlled company might also participate in such plans, the amendment as adopted makes clear that the exemption applies to directors as well as to officers and employees.

Since the applicability of Rule 17d–1 to stock option and stock purchase plans of controlled companies may heretofore have been unclear, the amendment to the Rule, as adopted, shall be applied by the Commission prospectively only. Accordingly, options or rights to purchase which have been granted and exercised prior to the date of publication of this Release will not be affected by the Rule. However, options or rights to purchase granted to affiliated persons of the investment company, its investment adviser or principal underwriter prior to that date and not yet exercised may not be exercised without the filing of an application and approval of the transaction by the Commission under the rule, as amended. In passing upon applications to exercise such previously issued options or rights to purchase, the Commission will take into consideration the fact that the options were granted prior to the adoption of this amendment. However, the ultimate determination in each case will, of course, depend upon all of the facts and circumstances surrounding the proposed exercise of the option or right. The adoption of any stock option or stock purchase plan or the granting, modification or exercise of options subsequent to the date of this Release will require the filing of an application under the rule.

Adoption of this amendment is not intended to modify the prohibitions contained in the Act against the issuance of stock options or the adoption of stock purchase plans either directly or indirectly by registered investment companies.

Commission action. Paragraphs (c) and (d)(1) of § 270.17d–1 of Chapter II of Title 17 of the Code of Federal Regulations is amended to read as follows:

§ 270.17d–1 Applications regarding joint enterprises or arrangements and certain profit-sharing plans.

* * * * *

(c) "Joint enterprise or other joint arrangement or profit-sharing plan" as used in this section shall mean any written or oral plan, contract, authorization or arrangement, or any practice or understanding concerning an enterprise or undertaking whereby a registered investment company or a controlled company thereof and any affiliated person of or a principal underwriter for such registered investment company, or any affiliated person of such a person or principal underwriter, have a joint or a joint and several participation, or share in the profits of such enterprise or undertaking, including, but not limited to, any stock option or stock purchase plan, but shall not include an investment advisory contract subject to section 15 of the Act.

(d) Notwithstanding the requirements of paragraph (a) of this section, no application need be filed pursuant to this section with respect to any of the following:

(1) Any profit-sharing, stock option or stock purchase plan provided by any controlled company which is not an investment company for its officers, directors or employees, or the purchase of stock or the granting, modification or exercise of options pursuant to such a plan, provided:

(i) No individual participates therein who is either: (*a*) An affiliated person of any investment company which is an affiliated person of such controlled company; or (*b*) an affiliated person of the investment adviser or principal underwriter of such investment company; and

(ii) No participant has been an affiliated person of such investment company, its investment adviser or principal underwriter during the life of the plan and for six months prior to, as the case may be: (*a*) Institution of the profit-sharing plan; (*b*) the purchase of stock pursuant to a stock purchase plan; or (*c*) the granting of any options pursuant to a stock option plan.

* * * * *

(Secs. 6(c), 17(d), 38(a), 54 Stat. 800, 815, 841, 15 U.S.C. 80a–6(c), 80a–17(d), 80a–37(a))

The foregoing action shall become effective August 10, 1970.

By the Commission, August 10, 1970.

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

[F.R. Doc. 70–10734; Filed, Aug. 17, 1970; 8:45 a.m.]

Title 21—FOOD AND DRUGS

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

SUBCHAPTER B—FOOD AND FOOD PRODUCTS

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

Phenothiazine

No comments and no requests for referral to an advisory committee were received in response to the notice published in the FEDERAL REGISTER of May 15, 1970 (35 F.R. 7569), proposing that the tolerances for residues of phenothiazine in or on apples, pears, and quinces be revoked because use of the insecticide on such fruits has been discontinued in all major growing areas.

The Commissioner of Food and Drugs concludes that the proposal should be adopted. Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 408(e), 68 Stat. 514; 21 U.S.C. 346a(e)) and under authority delegated to the Commissioner (21 CFR 2.120), Part 120 is amended by revoking § 120.170 *Phenothiazine; tolerances for residues.*

Any person who will be adversely affected by the foregoing order may at any time within 30 days after its date of publication in the FEDERAL REGISTER file with the Hearing Clerk, Department of

Health, Education, and Welfare, Room 6–62, 5600 Fishers Lane, Rockville, Md. 20852, written objections thereto in quintuplicate. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof.

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

(Sec. 408(e), 68 Stat. 514; 21 U.S.C. 346a(e))

Dated: July 30, 1970.

SAM D. FINE,
Acting Associate Commissioner for Compliance.

[F.R. Doc. 70–10739; Filed, Aug. 17, 1970; 8:45 a.m.]

PART 121—FOOD ADDITIVES

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

ADHESIVES; ANTIOXIDANTS AND/OR STABILIZERS FOR POLYMERS

The Commissioner of Food and Drugs, having evaluated the data in a petition (FAP OB2527) filed by Geigy Chemical Corp., Ardsley, N.Y. 10502, and other relevant material, concludes that the food additive regulations should be amended as set forth below to provide for the safe use of octadecyl 3,5-di-*tert*-butyl-4-hydroxyhydrocinnamate as a component of food-packaging adhesives. Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(c)(1), 72 Stat. 1786; 21 U.S.C. 348(c)(1)) and under authority delegated to the Commissioner (21 CFR 2.120), Part 121 is amended as follows:

1. Section 121.2520(c)(5) is amended by alphabetically inserting in the list of substances a new item as follows:

§ 121.2520 Adhesives.

* * * * * * *

(c) * * *

(5) * * *

COMPONENTS OF ADHESIVES

Substances	*Limitations*
* * *	* * *
Octadecyl 3,5-di-*tert*-butyl-4 hydroxyhydrocinnamate.	
* * *	* * *

2. Section 121.2566(b) is amended by revising the limitations for the subject item to read as follows:

§ 121.2566 Antioxidants and/or stabilizers for polymers.

* * * * * * *

(b) * * *

* * *	*Limitations* * * *
Octadecyl 3,5-di-*tert*-butyl-4-hydroxyhydrocinnamate.	For use only: 1. At levels not exceeding 0.25 percent by weight of olefin polymers complying with § 121.2501(c), items 1.1, 1.2, 1.3, 2.1, 2.2, 2.3, 3.1, 3.2, 3.3, or 4. Also such polymers shall be used in contact with fatty food only under conditions of use E, F, or G, described in table 2 of § 121.2526(c) and the average thickness of such polymers in the form in which they contact fatty food under condition of use E shall not exceed 0.010 inch. 2. As provided in § 121.2520.
* * *	* * *

Any person who will be adversely affected by the foregoing order may at any time within 30 days after its date of publication in the FEDERAL REGISTER file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 6–62, 5600 Fishers Lane, Rockville, Md. 20852, written objections thereto in quintuplicate. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof.

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

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

Dated: August 6, 1970.

SAM D. FINE,
Acting Associate Commissioner for Compliance.

[F.R. Doc. 70–10740; Filed, Aug. 17, 1970; 8:45 a.m.]

Title 31—MONEY AND FINANCE: TREASURY

Chapter V—Office of Foreign Assets Control, Department of the Treasury

PART 500—FOREIGN ASSETS CONTROL REGULATIONS

Census of Blocked Chinese Property

A census is being taken of all blocked Chinese property in the United States similar to the one conducted in January 1951. Census reports on Treasury Form TFR–610 are required to be filed on or before October 1, 1970, with respect to all blocked Chinese property in the United States. In addition, reports are required with respect to all property reported under the 1951 census with the exception of property reported of persons who were in Taiwan.

The Foreign Assets Control Regulations are hereby amended by the addition of § 500.610, which reads as follows:

§ 500.610 Reports on Form TFR–610.

(a) *Requirement for reports.* Reports on Form TFR–610 are hereby required to be filed on or before October 1, 1970, in the manner prescribed herein with respect to all property subject to the jurisdiction of the United States on December 18, 1950, in which on that date China or a Chinese national had any direct or indirect interest and which was reported on Form TFR–603. In addition, reports on Form TFR–610 are required to be filed with respect to all property subject to the jurisdiction of the United States on July 1, 1970, in which on that date China or a Chinese national had any direct or indirect interest, except any such national who is unblocked. (See subparagraph (3) of this paragraph for exemptions.)

(1) *Who must report.* (i) Every person (or his successor) in the United States who is either:

(*a*) A person who filed a report on Form TFR–603 with respect to any property he held, or had in his custody, control, or possession, directly or indirectly, in trust or otherwise, in which there was as of December 18, 1950, any direct or indirect interest of China or a Chinese national; or

(*b*) A person who held, or had in his custody, control, or possession, directly or indirectly, in trust or otherwise, any property on July 1, 1970, in which there was as of that date any direct or indirect interest of China or a Chinese national; or,

(*c*) A business or nonbusiness entity in the United States with respect to any financial interest in such entity of China or a Chinese national which was reported on Form TFR–603 or which interest existed on July 1, 1970; or,

(*d*) An agent or representative in the United States of China or a Chinese national, who reported his principal's property on Form TFR–603 or who has any information with respect to property subject to the jurisdiction of the United States on July 1, 1970, in which his Chinese principal had any interest on that date.

(2) *Primary responsibility for reporting.* (i) Primary responsibility for reporting property blocked as of July 1, 1970, is on the person having actual custody thereof, with the following exceptions: Primary responsibility for reporting any trust is on the trustee; for any estate on the executor or administrator; for any safe deposit box on the lessee.

(ii) No person is excused from filing Form TFR–610 by reason of the fact

that another person has submitted a report with regard to the same property unless he has actual knowledge the other person has filed a report with respect to the same interests in the property of the national which is as full and complete as that which such person would otherwise be required to file.

(iii) A report on Form TFR–610 must be filed by every person or his successor who reported property on Form TFR–603, whether or not he held the property on July 1, 1970.

(3) *Property which is not required to be reported.* (i) Property of an unblocked Chinese national, except property which was reported on Form TFR–603.

(ii) Patents, trademarks, copyrights, and inventions, but this exemption shall not constitute a waiver of any reporting requirement with respect to royalties due and unpaid.

(4) *Separation of reports for different nationals.* (i) A separate report shall be made with respect to China and each Chinese national having any interest in any property to be reported but all items of property of each person shall be included in one report.

(ii) If it is known or there is reasonable cause to believe that a Chinese national other than the Chinese national in whose name any property was carried had an adverse claim upon the property, the property must be shown on a separate report for the national in whose name the property was carried and for each such adverse claimant.

(5) *Obtaining Form TFR–610.* Forms TFR–610 with reporting instructions are being mailed to all persons who reported on Form TFR–603 in January 1951. Other persons required to report or otherwise interested in obtaining Form TFR–610 may do so by applying to Unit 610, Office of Foreign Assets Control, Treasury Department, Washington, D.C. 20220, or to the Federal Reserve Bank of New York, 33 Liberty Street, New York, N.Y. 10045, for copies of Form TFR–610 and the reporting instructions.

(6) *Filing Form TFR–610.* Reports on Form TFR–610 shall be prepared in duplicate. On or before October 1, 1970, both copies shall be sent in a set to Office of Foreign Assets Control, Treasury Department, Washington, D.C. 20220.

(7) *Confidentiality of reports.* Reports filed on Form TFR–610 are regarded as privileged and confidential.

[SEAL] MARGARET W. SCHWARTZ,
Director,
Office of Foreign Assets Control.

[F.R. Doc. 70–10860; Filed, Aug. 17, 1970; 8:50 a.m.]

Title 38—PENSIONS, BONUSES, AND VETERANS' RELIEF

Chapter I—Veterans Administration

PART 17—MEDICAL

Grants for Assistance in Remodeling, Modification or Alteration of Existing State Home Hospital and Domiciliary Facilities

In Part 17, a centerhead and §§ 17.180 through 17.184 are added to read as follows:

GRANTS FOR ASSISTANCE IN REMODELING, MODIFICATION OR ALTERATION OF EXISTING STATE HOME HOSPITAL AND DOMICILIARY FACILITIES UNDER PROVISIONS OF 38 U.S.C. 644

§ 17.180 Definitions.

(a) The phrase "remodeling, modification or alteration of existing hospital or domiciliary facilities in State homes" will be referred to in §§ 17.180 through 17.184 as "construction". The term includes work performed over and above that required for maintenance and repair. It does not include expansion of existing buildings or construction of new buildings. Equipment included will be that fixed equipment which is initially furnished and installed as part of a construction contract. Fixed equipment includes, generally, building service equipment and fixed operating equipment.

(1) The term "building service equipment" includes equipment and fixtures which are permanently installed in or attached to buildings and structures and become a part of real property for the purpose of rendering the buildings or structure usable or habitable, and includes entire utility systems or segments thereof, i.e., electrical, plumbing and heating systems, elevators, etc.

(2) The term "fixed operating equipment" includes operating machinery and processing equipment which is semipermanently installed in or attached to buildings and structures for operational use such as washing machines, ranges, steam and laboratory tables, etc., removal of which does not render the structure unusable or uninhabitable but may involve consequential defacement and repair. Generally, special provisions are necessary to closely integrate design, construction, and the procurement and installation of equipment.

(b) The term "cost of construction" means the amount found by the Administrator to be necessary for a project of construction of State home hospital and domiciliary facilities including, but not limited to, architectural, engineering, supervision and site inspection services, and printing and advertising costs.

(c) The term "State agency" means that State agency designated by a State as authorized to apply for assistance to construct State home hospital and domiciliary facilities for war veterans and, thereafter, administer such construction program.

(d) The term "construction" applies to hospital or domiciliary facilities in State homes as defined in 38 U.S.C. 101 (19), except that nursing home care facilities are excluded. It includes necessary support systems but excludes employee quarters.

Generally, facilities such as parking lots, landscaping, sidewalks, streets, storm sewers, etc., are excluded except to the extent that such facilities meet the general design considerations set forth in paragraph 1d of § 17.184, appendix.

§ 17.181 Scope of grant program.

Subject to availability of an appropriation, a grant may be made to a State which has submitted, and has had approved by the Administrator, an application for assistance in remodeling, modification or alteration of existing domiciliary and hospital facilities in State homes providing care and treatment of war veterans and recognized by the Veterans Administration for the purpose of payment of Federal aid pursuant to 38 U.S.C. 641. The amount of the grant requested with respect to such project may not exceed 50 percent of the estimated total cost of construction of such project nor may one State receive a commitment of more than 20 percent of the amount appropriated for the grant program for that fiscal year. Grants shall include fixed equipment included in construction contracts, but shall not be made for construction of new buildings or for additions to existing buildings.

§ 17.182 Project applications.

(a) A State or such agency representing the State desiring to receive assistance for construction of existing facilities must submit a formal application to the Administrator. The applicant will submit as part of the application, or as an attachment thereto:

(1) Current as-built site plan, floor plan, and building sections and a description of the present use of the facility to be altered;

(2) Medical program including staffing criteria for operation of proposed facility;

(3) Preliminary drawings to scale and outline specifications;

(4) Narrative description of construction program; and

(5) Preliminary cost estimates.

(b) The applicant must furnish reasonable assurance in writing that:

(1) Upon completion of such project, the facilities will be used to furnish hospital or domiciliary care principally to war veterans for a period of 7 years;

(2) Title to such site is or will be vested solely in the State home, or another agency or instrumentality of the State;

(3) Adequate financial support will be available for the completion of the project and for its maintenance and operation when complete;

(4) The State will make such reports in such form and containing such information as the Administrator may from time to time reasonably require, and give the Administrator, upon demand, access to the records upon which such information is based;

(5) The rates of pay for laborers and mechanics engaged in construction of the project will be not less than the prevailing local wage rates for similar work as determined in accordance with sections 276a through 276a–5 of title 40, United States Code (known as the Davis-Bacon Act);

(6) Contractors engaged in the construction of the project will be required to comply with the provisions of Executive Order 11246 of September 24, 1965 (30 F.R. 12319), and such rules, regulations or orders as the Secretary of Labor may issue or adopt in implementation thereof; and

(7) The project conforms to the applicable requirements for the implementation, maintenance, and enforcement of ambient air quality standards adopted pursuant to section 108(c) of the Clean Air Act, as amended (42 U.S.C. 1857d); that it conforms to the applicable requirements for water pollution control adopted pursuant to section 10(c) of the Federal Water Pollution Control Act, as amended (33 U.S.C. 466g); and that the project will comply with the standards provided under the National Environmental Policy Act of 1969, Public Law 91–190 (83 Stat. 852), and Executive Order 11514 (35 F.R. 4247), issued pursuant thereto.

(c) The Administrator will approve any such application if he finds that:

(1) There are sufficient funds available to make the grant requested with respect to such project;

(2) Such grant does not exceed 50 percent of the estimated cost of construction of such project and does not result in a commitment of more than 20 percent of the amount appropriated for that fiscal year;

(3) The application contains such assurances as to use, title, financial support, reports and access to records, payment of prevailing rates of wages and compliance with the provisions of Executive Order 11246 (30 F.R. 12319) as required in paragraph (b) of this section;

(4) The application contains assurances that the applicable requirements for the implementation, maintenance and enforcement of ambient air quality standards adopted pursuant to section 108(c) of the Clean Air Act, as amended (42 U.S.C. 1857d), are met; that the project conforms to the applicable requirements for water pollution control adopted pursuant to section 10(c) of the Federal Water Pollution Control Act, as amended (33 U.S.C. 466g); and complies with the standards provided under the National Environmental Policy Act of 1969, Public Law 91–190 (83 Stat. 852), and Executive Order 11514 (35 F.R. 4247), issued pursuant thereto; and

(5) The application contains assurance that the plans and specifications for such project will be in accordance with § 17.184, appendix.

(d) The Administrator shall certify applications which he approves to the Secretary of the Treasury in the amount of the grant requested but in no event an amount greater than 50 percent of the estimated (or actual) cost of construction of the project, which shall not have resulted in commitment in any fiscal year of more than 20 percent of the amount appropriated for that fiscal year, and shall designate the appropriation from which it shall be paid. Such certification shall provide for payment to the applicant or, if designated by the applicant, the State home for which such project is being constructed or any other agency or instrumentality of the applicant. Such amount shall be paid by way of reimbursement, and in such installments consistent with the progress of construction as the Administrator may determine and certify for payment to the Secretary of the Treasury. Funds paid for the construction of an approved project will be used solely for carrying out such project as so approved.

(e) Any amendment of any application approved under paragraph (c) of this section will be subject to review and approval pursuant to §§ 17.180 through 17.184 in the same manner as an original application.

§ 17.183 Disallowance of a grant application and notice of a right to a hearing.

(a) No application for the construction of State home facilities for furnishing hospital and domiciliary care to war veterans shall be disapproved until the applicant has been afforded an opportunity for a hearing.

(b) Whenever a hearing is requested under this section, notice of hearing, procedure for the conduct of such hearing, and procedures relating to decisions and notices shall be in accord with the provisions of §§ 18.9 and 18.10 of this chapter. Failure of an applicant to request a hearing under this section or to appear at a hearing for which a date has been set shall be deemed to be a waiver of the right to be heard and constitutes consent to the making of a decision on the basis of such information as is available.

§ 17.184 Appendix—General standards of construction for State home facilities for furnishing hospital or domiciliary care.

AUTHORITY: 38 U.S.C. 644, as added by section 2, Public Law 91–178.

Incorporation by reference. In accordance with 5 U.S.C. 552(a)(1), the various codes, requirements, recommendations and any amendments or revisions thereof of State and local authorities or technical and professional organizations to the extent and manner in which reference is made in the standards set forth in this appendix are incorporated and made a part of such standards. The incorporated material is either available for inspection at, or further information concerning the source may be obtained from, the Veterans Administration (10), 810 Vermont Avenue NW., Washington, D.C. 20420.

1. *Introduction.* a. The standards set forth in this appendix are established pursuant to the provisions of 38 U.S.C. 644(c). Such standards constitute general criteria for construction and fixed equipment and shall apply to all projects for which Federal assistance is requested under 38 U.S.C. 644. They are considered necessary to insure properly planned and well-construced hospital and domiciliary facilities which can be maintained and efficiently operated to furnish hospital or domiciliary care.

b. No attempt has been made in developing these standards to comply with all of the various State and local codes and regulations which must be observed. The standards set forth herein should be followed where they exceed any State or local codes and regulations. Conversely, compliance is required with minimum standards of construction and equipment promulgated by the State where such requirements provide a higher standard than the standards contained in this appendix. However, the additional cost, if any, in upgrading over VA standards should be carefully considered and justified. These standards apply to all remodeling, alterations, modification and equipment for existing facilities for furnishing hospital or domiciliary care which are constructed with assistance received under 38 U.S.C. 644.

c. The space criteria, functional areas, equipment and construction standards contained in this appendix should be used as a guide. Additional facilities beyond those specified as basic facilities may be included if found to be required by the program but are subject to approval by the VA. Substantial deviation from the space, equipment and construction standards included in this appendix should be carefully considered and justified. Except for occasional variances which would require individual justification, failing to meet or exceeding the space criteria by more than 20 percent in the aggregate would be regarded respectively as evidence of inferior construction or as exceeding the boundaries of professional requirements as ordinarily comprehended by domiciliary or hospital care. VA participation may be subject to proportionate reduction in those projects which exceed the aggregate maximum space criteria by more than 20 percent or contain functional areas which are not approved.

d. General design consideration:

(1) Existing buildings must be adaptable in size, shape and construction to the proposed use and be basically sound to warrant remodeling, modifying or altering. The continuing effect and cumulative cost over the period of the economic life of the property should be considered against the cost of the initial alterations. Deviations from the specific requirements of the standards for economical or functional reasons are permissible provided the essential features and intent of these standards are observed.

(2) No overhauling or replacement, in kind, of mechanical, electrical, structural and architectural work, nor maintenance and repair of any features, in kind, will be considered except as the work is involved inextricably with remodeling, modification or alteration of existing facilities.

(3) Limited deviation from the fire safety requirements established in these standards may be granted and shall be fully justified by the State Agency.

(a) Generally, standards may be waived in projects involving only minor functional changes.

(b) Where substantial functional changes are involved in nonpatient/member care areas, deviation may be allowed if adequate fire separation is provided around the functionally changed area.

(c) Where substantial functional changes are involved in patient/member care areas, deviation will not be permitted.

2. *Fire safety*—a. *Applicable codes*—(1) *Exit facilities.* All exit facilities shall follow the recommendations of the Building Exits Code of the National Fire Protection Association (NFPA No. 101).

(2) *Fire protection facilities.* Other fire protection requirements such as standpipes, sprinklers, chemical fire extinguishers and fire systems shall conform to the requirements of any one of the codes listed in structural requirements.

b. *Fire-resistive construction requirements.* (1) One-story buildings shall be protected noncombustible construction of 1-hour fire-resistive rating throughout except as follows:

(a) Boilerrooms and rooms used for the storage of combustible materials shall be of 2-hour fire-resistive noncombustible construction.

(b) Interior nonload-bearing partitions, other than those enclosing corridors and vertical shafts, shall be of noncombustible construction without a fire-resistive rating.

(2) Buildings more than one-story in height shall be constructed of noncombustible materials using a structural framework of reinforced concrete or structural steel except that load-bearing masonry walls and piers may be utilized for buildings up to and including three stories in height. The fire-resistive requirements of the various building elements shall follow the requirements of any one of the national codes listed in the structural requirements, except for the modifications listed below:

(a) Corridor partitions shall be of 1-hour fire-resistive construction.

(b) Walls enclosing stairways, elevators, laundry and trash chutes, and other vertical shafts, boilerrooms and rooms used for storage of combustible materials shall be of 2-hour fire-resistive construction.

c. *Materials, flame spread and smoke developed limitations.* Flame spread and smoke developed ratings shall be determined by ASTM Designation E 84. Combustible interior finish materials such as wood or vegetable fiberboard and combustible acoustical materials or insulation shall not be permitted.

(1) *Interior finish.* (a) Interior finish shall have a flame spread rating not exceeding 25 and a smoke developed rating not higher than 50. Interior finish shall include materials of walls, ceilings and other exposed interior surfaces of buildings, except floors. It shall include the plaster, tile or other interior finish material and any surfacing material such as vinyl wall covering, wainscoting material and wallpaper (including adhesives) applied thereto.

(b) Acoustical treatment shall be noncombustible (Class 25) in accordance with Federal Specification SS–S–00118, or meet the requirements above.

(2) *Draperies, curtains, and carpeting.* Window draperies, window curtains and carpeting shall be made of inherently noncombustible materials or permanently flameproofed materials.

(3) *Thermal insulation and noncombustible covering.* Insulation, vapor barriers, adhesives, covering and linings for piping, ducts and related equipment shall have flame spread rating not exceeding 25 and a smoke developed rating not higher than 50.

3. *Architectural requirements*—a. Finishes—(1) Floors shall be easily cleanable and shall have wear resistance appropriate for the space served. Floors in kitchens and related spaces shall be waterproof, greaseproof, nonslip and resistant to heavy wear. All floors subject to wetting shall have a nonslip finish. Adjacent dissimilar floor materials shall be flush with each other. Floor materials in anesthetizing areas and rooms used for storage of flammable anesthetics shall comply with NFPA Standard No. 56. Flame spread requirements shall conform to the limits specified in the section on fire safety herein.

(2) Walls shall be washable or easily cleaned and smooth. Walls in kitchens and related spaces shall have glazed materials or similar finish and bases shall be waterproof and free from voids. Walls subjected to wetting should also be glazed to a point above the splash or spray line. Wainscots of durable material should be used in patient corridors and other corridors where there is considerable wheeled traffic. Walls in areas used for surgical procedures shall have glazed materials with the base integral with the wall or floor material without voids.

(3) Ceilings shall be acoustically treated in all areas except mechanical spaces, equipment rooms, etc. The acoustical material shall be washable and moisture proof in dietary, surgical and other areas of high humidity or asepsis.

b. *Details.* (1) Exit facilities shall comply with the requirements for exit facilities listed in NFPA Standard No. 101. Minimum corridor widths shall be 8'0". Minimum width of doors to all rooms needing access for beds or stretchers shall be 3'10".

(2) Such items as drinking fountains, telephone booths and vending machines shall be so located that they do not restrict the required width of exit corridors.

(3) All doors to patient-room toilets or patient-room bathrooms shall be equipped with hardware which will permit access in any emergency.

(4) All doors opening into corridors shall be swinging except elevator doors. Alcoves and similar spaces which generally do not require doors may be excluded from this requirement.

(5) No doors shall swing into the corridor except closet doors.

(6) Thresholds and expansion joint covers, if used, shall be flush with the floor.

(7) The location and arrangement of plumbing fixtures with blade handles intended for handwashing purposes shall provide clearance necessary for operation without use of hands.

(8) Paper towel dispensers shall be provided at all lavatories and sinks used for handwashing.

(9) If linen and refuse chutes are used, they shall be designed as follows:

(a) Service openings to chutes shall have approved class "B", 1½-hour fire doors.

(b) Service openings to chutes shall be located in a room or closet of not less than 1-hour fire-resistive construction, and the entrance door to such room or closet shall be a class "C", ¾-hour fire door.

(c) Minimum diameter of gravity-type chutes shall be 2'0".

(d) Chutes shall terminate in or discharge directly into a refuse room or linen chute room separate from the incinerator or laundry. Such rooms shall be of not less than 2-hour fire-resistive construction and the entrance door shall be a class "B", 1½-hour fire door.

(e) Chutes shall be vented through an aluminum vent having cross sectional area of not less than 10 percent of chute area. Vent shall extend through the roof and terminate in a weatherproof aluminum cap.

(10) Dumbwaiters, conveyors, and material handling systems shall not open into any corridor or exitway but shall open into a room enclosed by not less than 1-hour fire-resistive construction. The entrance door to such room shall be a class "C", ¾-hour fire door.

(11) Protection requirements of X-ray and Gamma-ray installations shall conform to NBS Handbooks, as follows:

(a) X-ray: Handbook 76.

(b) Gamma-ray: Handbook 73.

(12) Ceiling heights:

(a) Operating rooms, cystoscopic rooms, radiographic rooms, and rooms having ceiling-mounted surgical light fixtures. Not less than 8'0".

(b) Corridors, storage rooms, patients' toilet rooms, and other minor rooms. Not less than 8'0".

(13) The width of stairways shall be not less than 3'8". The width shall be measured between handrails where handrails project more than 3½ inches.

(14) Water closet stalls for patient use shall have grab bars on both sides.

(15) Bathtubs may be elevated. Grab bars shall be provided at all bathtubs.

(16) Showers should be approximately 4 feet square and should have grab bars and curtains. Curbs shall be omitted. If shower doors are used, they shall be made from a shatterproof material.

4. *Structural requirements*—a. *Codes.* In addition to compliance with the standards set forth herein, all applicable local and State building codes and regulations must be observed. In areas not subject to local or State buildings codes, the recommendations of any one of the following national codes shall apply insofar as such recommendations are not in conflict with the standards set forth herein.

(1) *National Building Code.* National Board of Fire Underwriters, 85 John Street, New York, N.Y. 10038.

(2) *Basic Building Code.* Building Officials Conference of America, 1313 East 60th Street, Chicago, Ill. 60637.

(3) *Southern Building Code.* Southern Building Code Congress, Brown-Marx Building, Birmingham, Ala. 35203.

(4) *Uniform Building Code.* International Conference of Building Officials, 50 South Los Robles Street, Pasadena, Calif. 91101.

b. *Design data*—(1) *General.* The buildings and all parts thereof shall be of sufficient strength to support all dead, live, and lateral loads without exceeding the working stresses permitted for the materials in the applicable code.

(2) *Special.* Special provisions shall be made for machine or apparatus loads which would cause a greater stress than that produced by the specified minimum live load, with due consideration of vibration or impact resulting from operation of such equipment. Consideration shall be given to structural members and connections of structures which may be subject to hurricanes, tornadoes and earthquakes. Suitable allowance shall be made for future partition changes.

(3) *Live loads.* The unit live loads shall be taken as the minimum uniformly distributed live loads for the occupancies listed in the above codes. Any loads not specifically listed will be determined by the VA.

(4) *Foundations.* Where required, foundations shall rest on natural solid ground, leveled rock, load bearing piles or caissons where solid ground or rock is not encountered, and shall be carried below the depth of the estimated frostline but not less than one foot into natural ground. Footings, piers, and foundation walls shall be adequately protected against deterioration from the action of ground water. Proper bearing values for the soil shall be established in accordance with recognized standards.

5. *Site conditions.* The State agency shall provide current as-built drawings showing existing grades, parking, roads, walks, utilities services, and buildings. The building or buildings involved in the proposed project shall be distinctively identified. Any proposed alterations of the existing site shall also be noted. Soil investigation will not be required unless the proposed alterations increase the existing loads on the structure to the extent that new foundations are necessary.

6. *Mechanical requirements.* Existing mechanical systems shall be utilized as far as is possible. Where boilers or incinerators are provided, the design and specifications shall comply with the standards relating to control of air pollution.

a. *Codes.* The heating system, boilers, steam system, ventilation system and air-conditioning system shall be furnished and installed to meet all requirements of the local and State codes and regulations, and the regulations of the National Board of Fire Underwriters and the minimum general standards as set forth. Where there is no local or State boiler code, the recommendations of the American Society of Mechanical Engineers (ASME) shall apply. Gas and oil fired equipment shall comply with the regulations of applicable codes and published recommended practices.

b. *Heating*—(1) *Boilers.* Boilers shall have the capacity when operating at normal rating to supply the heating system, hot water, and steam-operated equipment with one boiler in reserve. All steam and hot water boilers shall be ASME labeled.

(2) *Boiler accessories.* Boiler-fed pumps, return pumps and circulating pumps shall be furnished in duplicate, each of which has a capacity to carry the full load. Provide blow-off valves, relief valves, nonreturn valves, injectors and fittings to meet the requirements of the city and State codes.

(3) *Temperatures.* Heating system shall maintain a minimum temperature of 70° F. in each habitable room and occupied space. Storerooms, workrooms and similar areas may be maintained at lower design temperatures. In spaces where radiant heat is used, the minimum temperatures specified may be reduced to maintain an equivalent comfort level.

(4) *Covering.* Boilers, smoke breeching and all steam and hot water supply and return piping shall be adequately insulated with noncombustible covering.

c. *Ventilation.* (1) Rooms which do not have outside windows and which are used by patients or hospital personnel, such as utility rooms, toilets, baths, and food-storage rooms, shall be provided with forced or suitable ventilation.

(2) Kitchens and laundries which are located inside the building shall be ventilated by exhaust systems which will discharge the air above the main roof or 50 feet from any window.

(3) The ventilation of these spaces shall comply with the State or local codes but if no code governs, the air in the workspaces shall be exhausted at least once every 6 minutes with the greater part of the air being taken from the flatwork ironer and ranges. Air from the laundry sorting area shall be discharged with no recirculation. Rooms used for the storage of combustible anesthetic agents, paints and other highly flammable materials shall be ventilated to the outside air with intake and discharge ducts.

d. *Air conditioning.* Existing facilities may be air conditioned if located in a geographic area where weather data establishes that:

(1) The wet bulb temperature is 67° F. or higher for 900 or more hours per year using 3 of 5 consecutive years.

(2) The dry bulb temperature is 80° F. or higher for 900 or more hours per year using 3 of 5 consecutive years.

e. *Plumbing and drainage.* Plumbing systems shall comply with all applicable local and State codes and the requirements of the State Department of Health and the minimum general standards as set forth herein. Where no State or local codes are in force or where such codes do not cover special hospital equipment, appliances, and water piping, the National Plumbing Code ASA–A40–.8 latest edition shall apply.

(1) *Drains.* Drains from sinks which use chemicals shall be of acid resistant material.

(2) *Standpipe systems.* Where no local or State Codes are in force, the standpipe system shall comply with the requirements of the National Fire Protection Association.

(3) *Sprinkler system.* It is desirable to provide automatic sprinkler system in soiled linen rooms, basement corridors, paint shops, woodworking shops, workrooms, storage rooms, accessible attics, laundry and trash chutes and entire non-fireproofed buildings.

f. *Kitchen equipment*—(1) *Codes.* The kitchen equipment shall comply with the applicable local and State laws, codes, regulations and requirements, and with the applicable sanitation standards of Public Health Bulletin No. 37, entitled "Ordinance and Code Regulating Eating and Drinking Establishments, recommended by the U.S. Public Health Service", and with the minimum general standards set forth herein.

(a) Adequate cabinets or other facilities shall be provided for the storage or display of food, drink, and utensils, and shall be designed as to protect them from contamination by insects, rodents, other vermin, splash, dust, and overhead leakage.

(b) Adequate facilities shall be provided for the washing and bactericidal treatment of utensils used for eating, drinking, and food preparation. Where utensils are to be washed by hand, there shall be provided an adequate sink equipped with heating facilities to maintain a water temperature of at least 180° F. in the bactericida' treatment compartment throughout the dishwashing period. Where utensils are to be washed by machine, there shall be provided facilities for supplying to the dishwashing machine an adequate supply of rinse water at 180° F. measured at the rinse sprays, throughout the dishwashing period. All tables, shelves, counters, display cases, stoves, hoods, and similar equipment shall be so constructed as to be easily cleaned and shall be free of inaccessible spaces providing haborage for vermin. Where there is not sufficient space between equipment and the walls or floor to permit easy cleaning, the equipment shall be set tight against the walls or floor and the joint properly sealed. All utensils and equipment surfaces with which food or drink comes in contact shall be of smooth, not readily corrodible material free of breaks, corrosion, open seams, or cracks, chipped places, and V-type threads. All surfaces with which food or drink comes in contact shall be easily accessible for inspection and cleaning and shall be self-draining, and shall not contain or be plated with cadmium or lead. All water supply and waste line connections to kitchen equipment shall be installed in compliance with the plumbing requirements of these standards.

(2) *Refrigerators.* Refrigerators shall be provided in all kitchens and other preparation centers where perishable foods will be stored. In the main kitchen, at least two refrigerators shall be provided, one for meats and dairy products, and one for general storage.

g. *Laundry codes.* The laundry equipment shall be designed and installed to comply with all local and State codes and laws, and the requirements of the State Department of Health and the minimum general standards as set forth herein. Where laundries are provided they shall be complete with washers, extractors, tumblers, ironers, and pressers which shall be provided with all safety appliances and sanitary requirements.

7. *Electrical requirements*—a. *Codes and Regulations.* The installation of electrical work and equipment shall comply with all local and State codes and laws applicable to electrical installations and the minimum general standards as set forth herein. Where such codes and laws are not in effect or where they do not cover special installations, the National Electrical Code and standards referenced therein which are applicable shall apply. The regulations of the local utility company shall govern service connections. All materials shall be new and and shall equal standards established by the Underwriters' Laboratories, Inc.

b. *Existing materials.* Existing materials may be used on an individual project basis only. Materials shall be tested after installation and proven to be satisfactory or replaced.

c. *Service.* Connections from the service mains, with meter connections and service switches, shall be installed as required by the public service company.

d. *Feeders and circuits.* Separate power and light feeders should be run from the service to a main switchboard. Subfeeders shall be provided to the motors and power and light distributing panels. Where there is only one service feeder, separate power and light feeders from the service entrance to the switchboard will not be required. From the power panels, feeders shall be provided for large motors and circuits from the light panels shall be run to the lighting outlets. Large heating elements shall be supplied by separate feeders from the power service as directed by the public service company.

e. *Switchboard and power panels.* Circuit breakers shall be installed to protect all feeders and subfeeders. Motors shall be connected with breakers or fused switches.

f. *Light panels.* Light panels shall be provided on each floor for the lighting circuits on that floor. Light panels shall be located near the load centers not more than 100 feet from the farthest outlet.

g. *Lighting outlets and switches.* All occupied areas shall be adequately lighted as required by duties performed in the space. Patients' bedrooms shall have as a minimum, general illumination, a night light, and a patient's reading light. The outlets for general illumination and night lights shall be switched at the door. Switches in patients' bedrooms shall be of an approved, quiet operating type. It is suggested that lighting levels be not less than those for similar areas recommended in I.E.S. Lighting Handbook.

h. *Receptacles (convenience outlets).* Grounding-type receptacles suitable for the service shall be located where plug-in service is required. Each bedroom shall not have less than two duplex receptacles, with at least one receptacle above the head of each bed. Polarized receptacles for special equipment shall be installed where required. Receptacles shall be installed not more than 50 feet apart in all corridors.

i. *Emergency lighting.* Emergency lighting shall be provided in accordance with Building Exits Code—NFPA 101 for exits, stairs and patient corridors and shall be supplied by second utility emergency service, an automatic emergency generator or battery with automatic switch. Should an emergency service from the street be used, it shall be from a generating plant independent of that used for the main electrical service.

j. *Nurses' call.* Each patient shall be furnished with an audio-visual or visual nurses' call system which will register a call from the patient; with signal light above corridor door and at the nurses' station. A duplex unit may be used for two patients. Indicating lights shall be provided at each station where there are more than two beds in a room. A nursing call emergency station shall also be provided in each patient's toilet room and bathroom. Wiring for nurses' call systems shall be installed in conduit.

k. *Lighting fixtures.* Lighting fixtures shall be furnished for all lighting outlets. They shall be of a type suitable for the space. Should ceiling lights be used in patients' rooms, they shall be of a diffused type.

l. *Fire alarms.* A manually operated fire alarm system shall be required. It is recommended that this system be coded and electrically supervised. The alarm system shall comply with applicable local codes or, in the

absence of such codes, the NFPA 101 "Building Exits Code" and NFPA 72 "Standard for Proprietary Protective Signalling Systems".

m. *Tests.* Lighting fixtures, all wiring and equipment shall be tested to show that they are free from grounds, shorts, or open circuits, that motors rotate correctly and that all equipment operates as specified.

8. *Elevator and dumbwaiter requirements*—a. *Codes.* The elevator installations shall comply with all local and State codes, American Standard Safety Code for Elevators, the National Board of Fire Underwriters, the National Electric Codes, and the minimum general standards as set forth herein.

b. *Number of cars.* Any State home with patients on one or more floors above the first shall have at least one automatic elevator. State homes with a bed capacity of from 60 to 200 above the first floor shall have not less than two automatic elevators.

c. *Cab.* Passenger cab platforms shall be not less than 5'4" x 8'0" with a capacity of 3,500 pounds. Cab and shaft doors shall be power operated and shall be not less than 3'10" clear opening.

d. *Controls.* Elevators, for which operators will not be empolyed, shall have selective collective automatic operation. Where two elevators are located together, they shall have duplex selective collective automatic operation. The elevator shall be equipped with automatic self-leveling control which will automatically bring the car platform level with the landing with no load or full load. Multivoltage or variable voltage machines shall be used where speeds are greater than 150 feet per minute. For speeds above 350 feet per minute, the elevators shall be of the gearless type.

e. *Dumbwaiters.* Dumbwaiter cabs shall be of steel and not less than 24" x 24" x 36", with one shaft to operate at speed of 50 feet to 100 feet per minute when carrying a load of 200 pounds. Dumbwaiters serving four floors shall have a minimum speed of 100 feet per minute.

f. *Tests.* Elevators shall be tested for speed and load, with and without loads, in both directions and shall be given overspeed tests as covered by the "Safety Code for Elevators".

9. *Requirements for preparation of plans, specifications and estimates*—a. *General.* (1) The requirements contained herein have been established for the guidance of the State agency and the architect to provide a standard method of preparation of drawings, specifications, and estimates.

(2) The State agency will find it advantageous to submit the material to the VA in two stages for its recommendation and approval. However, the State agency may, if it so elects, combine the two stages.

(3) At stage two, certification shall be submitted that no new buildings are involved in the project, there is no appreciable overall increase in quantity of sewage discharged to the public sewer, or sewage treatment plant, that there are no appreciable overall changes in the quality of sewage so discharged, and that there are no sewage treatment or control facilities involved. If there are such changes, evidence of approval of plans by the Federal Water Quality Administration shall be submitted.

b. *Drawings and specifications*—(1) *First stage—as-built drawings, preliminary plans, narrative description, outline specifications and cost estimates*—(a) *As-built drawings.* Current as-built site plan, floor plans and building sections that show the present status of the building and a description of its use and type of construction.

(b) *Preliminary plans.* Indicate the assignment of all spaces, size of areas and rooms and indicate in outline the fixed and movable equipment and furniture. The plans shall be drawn at ⅛" or ¼" scale to clearly present the proposed design. The total floor and room areas shall be computed and shown on the drawings. The drawings shall include a plan of each floor including the basement or ground floor; roof plan; site plan showing roads, parking areas, sidewalks, etc.; demolition work; and sections through the building.

(c) *Narrative description.* List in outline form, the rooms or spaces to be included in each department, explaining the functions or services to be provided in each. Note any special or unusual services or equipment to be included in the facility.

(d) *Outline specifications.* Provide a general description of the modernization including architectural, electrical and mechanical work (elevators, nurses' call systems, air conditioning, heating, lighting, power, etc.) as well as interior finishes (floor coverings, acoustical material, wall finishes, etc.).

(e) *Cost estimates.* Show separately the cost of each building and cost of all work outside the buildings. Each separate estimate shall be broken down to show the cost analyses or allowances (noted as such) based on anticipated design of each major component of building(s) and outside work. As example: building construction cost shall be shown separately from mechanical and equipment costs and these in turn shall be separated into their various trades and types. Similarly, outside work shall show components of grading, roads and sidewalks, landscaping, sanitary, electrical, etc. The estimate for the mechanical and electrical work shall be broken down by trades such as plumbing, electrical, heating, ventilation, air conditioning, steam generation, equipment; for outside utility work, sanitary, electrical and steam distribution shall be listed as separate items. This information shall be summarized and totaled under each trade or type of work showing the manner or basis for establishing the estimated cost.

(2) *Second stage—working drawings and specifications.* All working drawings shall be well prepared so that clear and distinct prints may be obtained; accurately dimensioned and include all necessary explanatory notes, schedules and legends. Working drawings shall be complete and adequate for contract purposes. Separate drawings shall be prepared for each of the following branches of work: architectural, structural, heating and ventilating, plumbing and electrical. They shall include the following:

(a) *Architectural drawings.* Site plan showing all new topography, grades, existing buildings, roadways, walks and areas to be seeded. Show all structures and other work to be removed; all floor plans and a roof plan if any new work is involved; all elevations that are affected by the alterations; building sections; demolition drawings. All details to complete the proposed work and finish schedules.

(b) *Equipment drawings.* Large scale drawings of typical and special rooms indicating all fixed equipment and major items of furniture and movable equipment.

(c) *Structural drawings.* Foundation and framing plans and details. Design data including governing code, allowable unit stresses, live loads, windload, and seismic zone.

(d) *Mechanical drawings.* Heating and ventilation drawings showing complete systems and details of air conditioning, heating, ventilation and exhaust. Plumbing drawings shall show sizes and elevations of soil and waste systems; sizes of all hot and cold water piping; drainage and vent systems; plumbing fixtures and riser diagrams; medical gases systems. Elevator and dumbwaiter drawings, if required, will show shaft details and dimensions; size of car platform and doors; pit and machine room details; and all necessary details for a complete installation.

(e) *Electrical drawings.* Provide separate drawings for lighting and power. Show service entrance and feeders and its characteristics. Include all panel, breaker, switchboard and fixture schedules. Indicate all lighting outlets, receptacles, switches, power outlets and circuits. Show telephone layout, nurses' call systems, fire alarm systems, and emergency lighting.

(f) *Specifications.* Provide to supplement the drawings and comply with the following:

1. The specifications shall fully describe, except where fully indicated and described on the drawings, the materials, workmanship, the kind, finishes and other characteristics of all materials, products, articles and devices.

2. The State agency or its architect shall develop and include in the specifications the invitation for bids; cover or title sheet; index; general requirements; form of bid bond; bid form; form of agreement; performance and payment bond forms; and sections describing materials and workmanship in detail for each class of work.

3. In order to obtain a standard procedure, the VA will furnish the General Conditions, labor standards and kickback regulations and wage schedules. These sections shall be included in the specifications.

(g) *Estimates.* Show in convenient form and detail the probable total cost of the work to be performed under the contract including provision of fixed equipment shown by plans and specifications.

10. *Equipment requirements*—a. *General.* Fixed equipment necessary for the functioning of the facility shall be provided. This equipment shall be included in the cost of the project.

b. *Definition of equipment.* The term "equipment" as used herein means fixed equipment, built-in, such as pharmacy cabinets, cubicle curtain tracks, kitchen equipment, laboratory casework, sterilizers, nourishment kitchens and medication cabinets.

c. *Drawings.* Equipment shall be identified on drawings as noted herein with appropriate characteristics such as size, power requirements and plumbing requirements listed in a schedule.

d. *Limitations.* Care shall be taken in the selection to prevent unduly expensive or elaborate equipment being indicated or specified.

11. *Hospital program and space criteria*—a. *General.* The sizes of the various departments will depend upon the requirements of the hospital. Some functions allotted separate spaces or rooms in these general standards may be combined provided that the resulting plan will not compromise the best standards of safety and of medical and nursing practices. In other respects, the general standards set forth in this publication, including area requirements, shall apply.

(1) Facilities for the physically handicapped shall be provided for necessary ingress, egress and movement throughout the building.

(2) The VA will generally accept the design and waive minimum requirements in situations where departments or services are to have minimal renovations and retained in their present locations. However, if extensive structural changes are being made for new or relocated functional areas, criteria will be used as a basis to determine participation.

b. *Nursing units.* Bedrooms for patients, grouped into distinct nursing units, may be planned for both general medical and surgical patients and for psychiatric patients. The size of rooms and essential bed spacing, together with certain support facilities, should be planned according to the following:

(1) *Size of units.* A 40-bed unit is most desirable; however, under exceptional circumstances a range of 30–50 beds may be allowed.

(2) *Size of rooms.*
Single rooms—120–168 square feet.
Double rooms—180–270 square feet.
Four bed rooms—300–414 square feet.

(3) *Distribution of beds.* One-bed rooms should be provided for infectious, terminal, disturbed or offensive patients, and for hospital patients who for other reasons require separation from others. Two-bed rooms may be provided to allow flexibility in the accommodations of patients by sex, medical condition, or similar reasons and to provide for patients who would be adversely affected by the confusion resulting from multioccupancy but who do not require single rooms. Room size should not exceed four beds each.

(4) *General planning of bedrooms.* (a) The criteria are based on accommodations for a bed, bedside table, lavatory, clothing storage and chair.

(b) Multibed rooms should be designed to permit no more than two beds side by side parallel to the window wall.

(c) Window sill shall not be higher than 3'0" above the floor and shall be above grade.

(d) Nurses' call systems may be planned.

(e) A toilet room directly accessible to each patient room is encouraged, each having as a minimum of one each water closet, lavatory and tub/shower should be provided for up to every five patients. Separate lavatories should be provided in each patient room, if feasible.

(f) Piped medical gases, such as oxygen, medical air and vacuum, may be installed into patient bedrooms.

(5) *Service facilities other than bedrooms.* Space should be provided for each nursing unit in accordance with the following:

(a) Nurses' station, including medication preparation, nurses' toilet, charting and physicians' dictation—250 square feet.

(b) Clean utility room—120 square feet.

(c) Soiled utility room—120 square feet.

(d) Examination treatment room—140 square feet.

(e) Day room-visitors area—8 square feet per bed in unit.

(f) Janitor's closet.

(6) *Other support areas.* The following areas may be included in the program, based upon the overall operating plan for the Home and Hospital:

(a) Physician's office—120 square feet.

(b) Nurse Supervisor's office—120 square feet.

(c) Clean linen room—60 square feet.

(d) Ward supply room—40 square feet.

(e) Storage—80 square feet minimum plus 2 square feet per bed in nursing unit.

(f) Sitz bath.

(g) Nourishment pantry.

(h) Classrooms and other teaching areas in the nursing unit may be considered if required by hospital program.

(7) *Patients' clothing storage.* Space is included in the criteria for the storage of patients' clothing and small personal effects. If central storage of patients' clothing is preferred, space may be provided for this purpose on the basis of not more than 2 square feet per bed. In addition, space may be provided for storage of large pieces of luggage, or other items at the rate of 1 square foot per bed.

c. *Clinical services*—(1) *Outpatient/admission service.* These criteria provide space for outpatient services and examinations for admission.

(a) *Physicians' offices and examining rooms.* Office and examination rooms will be provided for each physician's office required for the projected workload, each—120 square feet.

(b) *Office, secretary and reception.* Space—120 square feet.

(c) *Consultation rooms.* Where the projected utilization of consultants is of such a magnitude and/or the size of the outpatient staff is large, consultation rooms may be provided for inservice training and demonstrations—300 square feet.

(d) *General office space.* General office space may be provided as follows:

1. Office, clerk-typists and stenographers. For each such employee—80 square feet.
2. Escort service—120 square feet.
3. Office, private—120 square feet.
4. Chief of Admissions:
   a. Office—120 square feet.
   b. Examining room—120 square feet.
5. Office, secretary to Chief of Admissions—120 square feet.

(e) *Nursing facilities.* For planning purposes, the following spaces may be provided for outpatient clinics:

1. Office, supervisory nurse—120 square feet.
2. Recovery room, each bed—100 square feet.
3. Private toilet—30 square feet.
4. Medication and treatment room—150 square feet.
5. Wheelchair and stretcher space—80 square feet.
6. Linen cart alcove—24 square feet.
7. Utility room, clean—120 square feet.
8. Utility room, soiled—100 square feet.
9. Additional space for nursing services may be provided as follows:
   a. Interview and consultation room—120 square feet.
   b. Procedure room—100 square feet.

(f) *Waiting space.*

(g) *EKG room.* Facilities may be planned as part of the outpatient clinic or located elsewhere in the hospital.

(h) *Endoscopy room.* Room with an adjacent toilet in the outpatient clinic.

(i) *Plaster room.*

(j) *Quarters for officer-of-the-day.* A single room with complete bath may be provided for use by the officer-of-the-day.

(k) *Clinics.* Arthritic, Dermatology, Diabetic, etc.

(2) *Pathology and allied sciences service.* (a) Facilities for chemistry, bacteriology, serology, hematology, etc., will be available, including:

1. Glasswashing and sterilizing.
2. Recording and filing.
3. Blood storage room. (May be located in an area other than the laboratory suite.)
4. Specimen collection room. This room should be located near the laboratory and contain a water closet and lavatory.
5. Morgue and autopsy facilities.
6. General storage.
7. Patient waiting.
8. *Sanitation testing.*

(b) Additional facilities may be provided to meet program objectives:

1. Offices for pathologists, other professional and technical, each—120 square feet.
2. Secretary—120 square feet.
3. Clerical, each—80 square feet.
4. Blood donor facilities.
5. *Histopathology.*
6. Cytology.
7. Gross specimen (museum).
8. Storage.

(c) Specialized facilities will not be considered except in very unusual situations:

1. Electron microscopy.
2. Bone and tissue banks.

(3) *Radiology service.* (a) The following facilities will be available for diagnostic services:

1. Radiographic room, including space for control area.
2. Dressing room.
3. Toilet room.
4. Barium preparation area.
5. Film processing area.
6. Waiting area.
7. Exposed film storage for up to 10-year retention.

(b) The following facilities may also be included in the program:

1. Film viewing room.
2. Equipment storage.
3. Offices, radiologists, chief technicians.
4. Offices, clerical, secretary, typists, clerks.

(c) The following facilities will be included in the program only under special circumstances:

1. Special procedure diagnostic X-Ray room. Rooms for special diagnostic procedures of a complexity beyond the routine work and involving "team" procedures will be provided as justified on an individual project basis.
2. Therapy.

(4) *Surgical service.* (a) Net square foot area per operating room.

	Planning range
1. General purpose operating rooms.	320 to 400 sq. ft.
2. Orthopedic operating rooms.	360 to 450 sq. ft.
3. Cystoscopic; eye, ear, nose, and throat and similar specialized operating rooms.	180 to 230 sq. ft.

(b) Surgical recovery room.

(c) Scrub-up and substerilization facilities.

(d) Surgical nurses' station.

(e) Anesthesia gases storage (Daily Storage). (Provision should be made for two enclosures to permit the separation of flammable anesthetics and oxidizing gases. See code for use of flammable anesthetics by National Fire Protection Association International.)

(f) Anesthesia equipment and workroom including office space for anesthetists.

(g) Anesthesiologist office.

(h) Anesthesia induction room for hospitals not doing induction in operating room.

(i) Plaster closet and splint closet.

(j) Physicians' lounge, locker, toilet, and shower.

(k) Staff lounge, locker, toilet, and shower.

(l) Dictation booths.

(m) Stretcher alcove.

(n) Housekeeping aids' closet.

(o) X-ray control booth.

(p) Darkroom.

(q) Frozen section laboratory.

(r) Surgical work area.

(s) Surgical facilities for open heart, organ transplant and other highly specialized procedures will be considered only under very special conditions.

(t) Genito-urinary surgery will usually be performed in one of the sterile operating rooms. Cystoscopic examinations may be performed in a separate clinic, located either in the outpatient clinic or adjacent to surgery.

(5) *Other services which may be planned*—(a) *Dental.* Facilities for dental examination and treatment may be included in the program.

1. Examination chair.
2. X-ray, if separate, and developing room.
3. Oral hygiene.
4. Treatment chair.
5. Oral surgery.
6. Storage.
7. Linen.
8. Sterilization.
9. Prosthetics laboratory may be provided if such services cannot be obtained through VA services.

(b) *Eye, ear, nose, and throat clinic.* The following facilities may be included:

1. Examination room(s).
2. Refraction area.
3. Offices.
4. Waiting.

(c) *Electroencephalography.* 1. EEG examining rooms.

2. Workroom.
3. Physicians' office and reading room.
4. Records storage.

(d) *Inhalation therapy.*

(e) *Mental hygiene clinic.* Facilities may be planned for treatment of psychiatric disorders when similiar facilities are not otherwise available.

1. Group therapy room.
2. Offices for psychiatrist, social worker, psychologist, others.
3. Walk-in clinics, day care centers, and other similar specialized facilities may be included under very special conditions.

(f) *Physical medicine and rehabilitation service.* The following may be included in the program to meet overall objectives:

1. Physical therapy.
2. Occupational therapy.
3. Manual arts therapy.
4. Education therapy.
5. Industrial therapy (storage for outside detail clothing and tools).
6. Recreation therapy.
7. Swimming pools, projection booths, theaters will be considered to meet program requirements.

(g) *Podiatry/chiropody.*

(h) *Psychology service.*

(i) *Social service.*

(j) *Speech and hearing.*

(k) Intensive care units for medical, surgical and/or coronary care patients, as combined or separate units. Adequate bed spacing, treatment modalities, safe electrical grounding protection and other recognized features should be clearly identified in the program.

(6) *Services which may be planned only to meet very special program requirements—*

(a) *Cardiac catheterization.*
(b) *Cardiopulmonary function laboratory.*
(c) *Hemodialysis.*
(d) *Radioisotopes.*
(e) *Research.*
(f) *Medical illustration service.*

d. *Support services*—(1) *Central sterile supply.* The following facilities should be planned:

(a) *Receiving and cleanup room.* Space for cleaning equipment and disposing or processing of unclean articles should be provided including showers, toilets, and lavatories for male/female employees.

(b) *Clean workroom.* This room should be divided into work space, clean storage area, sterilizing facilities and storage area for sterile supplies.

(c) *Unsterile supply storage area.* (May be located in an area other than this department.)

(2) *Dietetic service.* (a) Food service facilities for the purpose of these criteria include dining rooms and all other facilities and space necessary for the receiving, storing, processing, serving, and delivering food. These criteria will have as their objective the point of providing high quality food service to patients and personnel. Such quality service will be maintained through the maintenance of high sanitation standards, the provision of adequate nourishment, attractively served at optimum temperatures, consistently well-prepared according to the standards set by the recipes, and served within normal eating hours.

(b) Food service to patients may be either at bedside or in dining rooms depending upon the overall operation of the hospital. Contractual food service may be planned dependent upon cost and prevailing local conditions.

(c) Vending machines may be planned for off hours or for the public or others.

(3) *Engineering.* The following may be included in the program:

(a) *Boiler—heating—A/C.*
(b) *Maintenance shops.*
(c) *Incineration.*
(d) *Grounds maintenance.*
(e) *Mechanical and electrical.*
(f) *Water storage.*
(g) *General storage.*
(h) *Offices.*

(4) *Employees' lockers, toilets, showers*—(a) *Lockers for staff.* Lockers may be provided for all employees who require a place to change from street clothing into work clothing or who require a locker for coats, hats or boots.

(b) *Lounge space.*

(5) *Laundry.* The following areas may be included if the laundry is a part of the hospital:

(a) Soiled linen room.
(b) Clean linen and mending room.
(c) Linen cart storage.
(d) Lavatories. Accessible from soiled, clean, and processing rooms.
(e) Laundry processing room.
(f) Janitor's closet.
(g) Storage for laundry supply (Items (e) and (g), need not be provided if laundry is processed outside the hospital).

(6) *General lobby area*—(a) *Public toilets.* Public toilets may be provided for both men and women convenient to the lobby area of each separate building and elsewhere in the building to meet needs.

(b) *Information, telephone, switchboard, and control center facilities.* The information desk is generally located adjacent to the main lobby entrance. It serves as a first point of contact, information, and control area for those people entering the hospital for admission, visiting, or on business. Included are the information counter or desk and telephone switchboard facilities for both staff and patient telephone systems.

(7) *Pharmacy service.* Pharmacy service includes space for administration, dispensing and compounding, prescriptions, solution preparation, and storage of material and equipment for which the pharmacy is responsible.

(a) *Office, chief of pharmacy.*
(b) *Office, other.*
(c) *All other areas.* Includes space for dispensing, storage safe or vault, quality control, sterile manufacturing, compounding, inflammable storage, solution manufacture and storage, equipment storage, and wrapping and mailing. Space for manufacturing will be included only if required to meet special needs.

(8) *Warehouse—central stores.* General warehouse for medical and dietary stores may be planned at approximately 20 square feet per bed and should be centrally located.

(9) *Others which may be planned.* (a) The chaplain service facilities include office space, chapel with chancel, sacristry, devotional, confessional, and Eucharistic rooms where applicable, and supporting areas such as toilet, housekeeping aids' closets, etc.

(b) Canteen, barber, and/or beauty shops, retail sale and storage and office space may be planned. Dining rooms, food preparation and dishwashing facilities will usually not be planned as separate facilities from the dietetics services which include staff dining.

e. *Administrative support.* The following areas may be included in the program:

(1) *Administrator/director's suite.* The Hospital Director's Suite includes all administrative areas required by the Director, Assistant Director, Chief of Staff, and their immediate staffs (secretaries, management analysts, administrative assistants, and trainees).

Offices may include:

(a) Director—200–240 square feet.
(b) Assistant Director—150–220 square feet.
(c) Chief of Staff—150–200 square feet.
(d) Secretaries, each office—120 square feet.
(e) Clerical, each—80 square feet.
(f) Assistants, each office—120 square feet.

Offices may be planned for various administrative staffs, at 120 square feet each for private offices and 65–80 square feet when placed in multiple person offices.

(2) *Fiscal.*
(3) *Housekeeper.*
(4) *Library.*

(5) *Medical records.* Space may be included for the essential areas of this service as follows:

(a) Active records.
(b) Inactive records.
(c) Workroom.
(d) Mail, reproduction, and telecommunications.
(e) Forms storage.
(f) Offices, private.
(g) Offices, multiple.
(h) Interview room.

(6) *Nursing administration.*
(7) *Personnel.*
(8) *Veterans service officer.*
(9) *Voluntary service offices.*

(10) *Janitor's closets.* Space should be planned one each for every nursing unit and one for every 10,000 to 12,000 square feet of other general administrative and clinical space. The Surgical Suite, Pathology, Kitchen, and other areas which generate undue waste or require special care will have their own janitor's closets.

(11) *Storage.* Should be provided for floor-cleaning machines at either a central location or in several areas of the building.

f. *Special patient care support systems and services.* The following may be included:

(1) *Nurse call system.*
(2) *Television.* Conduit system (but excluding sets or receivers).
(3) *Radio paging.* Antenna/Loop (but excluding equipment/pagers).
(4) *Intercom system.* Minimal staff intercom links.
(5) *Patient radio entertainment.* Piped to bedside.
(6) *Remote control dictating.* Various clinical services.
(7) *Physiological monitoring.*
(8) *Trash disposal systems.* Compactor type units; pneumatic and/or grinder type systems under special conditions when entire hospital has such a system.
(9) *Pneumatic tube system.* Only if part of an existing system at hospital.
(10) *Piped oxygen, medical air, and vacuum systems.* Piped system(s) to each bedroom.

12. *Domiciliary program and space criteria*—a. *General considerations.* (1) The modernization of existing domiciliaries should have the objective of creating and/or enhancing a therapeutic, rehabilitative and restorative atmosphere. This will maximize the possibility of restoring domiciliary veterans to the highest level of noninstitutional living.

(2) Improved medical facilities are needed to prevent and detect possible hindrances from delaying participation in the therapeutic program.

(3) Adequate individual privacy must be sought, largely through separation of large barracks into rooms or areas of eight or fewer members.

(4) Facilities for the physically handicapped shall be provided for necessary ingress, egress, and movement throughout the building.

(5) Adequate privacy shall be provided for female members.

(6) These criteria are based on bed sections of 100 beds each, with support facilities for each section. Support facilities may be decentralized for each 100 beds, or consolidated in one or more areas to meet overall program requirements. General support facilities are also provided for the entire domiciliary.

(7) Full height partitions are desirable separating bedrooms. Less than full floor to ceiling partitions may be used to achieve adequate ventilation or because of other structural or operational constraints. As a minimum, demi-partitions should be at least 5'6" to provide line-of-sight privacy. Each bedroom should have at least one window.

b. *Bedroom.* (1) Single rooms—100–140 square feet.

(2) Two-bed rooms—170–210 square feet.

(3) Three-bed rooms—255–330 square feet.

(4) Four-bed rooms—340–440 square feet.

(5) Five-bed rooms—425–540 square feet.

(6) Six-bed rooms—510–630 square feet.

(7) Seven-bed rooms—560–720 square feet.

(8) Eight-bed rooms—680–800 square feet.

NOTE: Multi-bed rooms are based on a range of 85–110 square feet per bed, and with a minimum of 3 feet between beds. The criteria are based on accommodations for bed, bedside chair, locker, and writing desk unit.

c. *Bathing and toilet facilities.* (1) A minimum of one water closet, lavatory, tub/shower should be provided for up to every eight members.

(2) It is desirable to have private, or connecting, toilet-bathrooms in conjunction with member bedrooms. As a minimum, at least one single bedroom should have a private toilet-bathroom.

(3) In congregate rooms, each fixture or tub should be in a separate stall, or enclosed, for privacy.

(4) Adequate facilities should be provided for persons using wheelchairs.

(5) Adequate grab bars and handrails should be provided.

d. *Support facilities for each 100 beds.* (1) Day-Living room, 8 square feet per member—800 square feet.

(2) Dining (based on 15 percent of members using wheelchairs; 2 settings per meal; 13 to 16 square feet per ambulatory member and 23 to 27 square feet per wheelchair. 15 percent wheelchairs = 15 at 25 square feet; 85 percent ambulatory = 85 at 14 square feet)—780 square feet.

(3) Soiled linen—100 square feet.

(4) Clean linen—100 square feet.

(5) Kitchen-Pantry—150 square feet.

(6) Self-care laundry—200 square feet.

(7) Storage, 6 square feet per member—600 square feet.

(8) Examination-treatment room—140 square feet.

(9) Section office—200 square feet.

(10) Section office, storage closet—30 square feet.

(11) Consultation—120 square feet.

(12) Wheelchair storage, 15 at 6 square feet—90 square feet.

(13) Medical administration, two at 85 square feet—170 square feet.

(14) Public health nurse—150 square feet.

(15) Nurse toilet—25 square feet.

(16) Male staff toilet (1 water closet, 1 urinal, 1 lavatory)—90 square feet.

(17) Female staff toilet (1 water closet, 1 lavatory)—60 square feet.

(18) Social worker*—120 square feet.

(19) Psychologist*—120 square feet.

(20) Observation hold room, with connecting toilet—180 square feet.

(21) Section leader-single bedroom and private toilet-bathroom—180 square feet.

(22) Library (100 at 3 square feet)—300 square feet.

(23) Lobby, 1 square foot per bed (minimum of 150 square feet, maximum of 800 square feet).

(a) Public toilets. Public toilets may be provided for both men and women convenient to the lobby area of each separate building and elsewhere in the building to meet needs.

(b) Information, telephone, switchboard, and control center facilities. The information desk is generally located adjacent to the main lobby entrance. It serves as a first point of contact, information, and control area for those people entering for admission, visiting, or on business. Included are the information counter or desk and telephone switchboard facilities for both staff and patient telephone systems.

e. *Domiciliary support areas.* The following support areas may be included for the total domiciliary; additional areas may be included to meet individual program requirements:

(1) *Administrator/director's suite.* The director's suite includes all administrative activities required by the director, assistant director, and their immediate staffs (secretaries, analysts, administrative assistants, and/or trainees).

(a) Director—200–240 square feet.

(b) Assistant director—150–220 square feet.

(c) Medical officer—150–200 square feet.

(d) Secretaries, each office—120 square feet.

(e) Clerical, each—80 square feet.

(f) Assistants, each office—120 square feet.

Offices may be planned for various administrative staffs, at 120 square feet each for private offices and 65–80 square feet when placed in multiple person offices.

(g) Conference and therapeutic planning board room—300 square feet.

(2) *Volunteer service.* (a) Office, chief volunteer—150 square feet.

(b) Office, secretary—120 square feet.

(c) Workroom—800 square feet.

(3) *Health clinic.* (a) Treatment clinic, each 100 members—120 square feet.

(b) Waiting, each 100 members—50 square feet (maximum of 300 square feet).

(c) Pharmacy, each 100 members—100 square feet (maximum of 400 square feet).

(d) Officer of the day (bed, toilet, lavatory, shower)—180 square feet.

(e) Utility room, soiled—100 square feet.

(f) Medication/clean utility room—180 square feet.

(g) Office, nurse—120 square feet.

(h) Toilet, specimen—30 square feet.

(i) Office, physician—120 square feet.

(j) EKG—120 square feet.

(4) *Central sterile supply.* The following facilities may be planned:

(a) Receiving and cleanup room. Space for cleaning equipment and disposing or processing of unclean articles should be provided including showers, toilets, and lavatories for male/female employees.

(b) Clean workroom. This room should be divided into work space, clean storage area, sterilizing facilities and storage area for sterile supplies.

(c) Unsterile supply storage area. (May be located in an area other than this department.)

(5) *Dietetic service.* (a) Food service facilities for the purpose of these criteria include dining rooms and all other facilities and space necessary for the receiving, storing, processing, serving, and delivering food. These criteria will have as their objective the point of providing high quality food service to members and personnel. Such quality service will be maintained through the maintenance of high sanitation standards, the provision of adequate nourishment, attractively served at optimum temperatures, consistently well-prepared according to the standards set by the recipes and served within normal eating hours.

(b) Contractural food service may be planned dependent upon cost and prevailing local conditions.

(c) Vending machines may be planned for off hours or for the public or others.

(6) *Engineering services and equipment areas.*

(7) *Employees' lockers, toilets, showers.* (a) Number of lockers. Lockers may be provided for all employees who require a place to change from street clothing into work clothing or who require a locker for coats, hats, or boots.

(b) Lounge space.

(8) *Protective security office.*

(9) *Closets and storage.* Janitor's closets should be planned one each for every bed unit and one for every 10,000 to 12,000 square feet of other general administrative and clinical space. The pathology, kitchen, and other areas which generate undue waste or require special care will have their own janitor's closets. Storage for floor cleaning machines should be provided at either a central location or in several areas of the building.

(10) *Warehouse—central stores.* General warehouse for medical and dietary stores may be planned at approximately 10 square feet per bed and should be centrally located.

(11) *Chaplaincy.* The chaplain service facilities include office space, chapel with chancel, sacristy, devotional, confessional, and Eucharistic rooms where applicable, and supporting areas such as toilet, housekeeping aids' closets, etc.

(12) *Canteen.* Barber and/or beauty shops, retail sales and storage, and office space may be planned. Dining room, food preparation and dishwashing facilities may be planned as separate facilities from the dietetics service if necessary.

(13) *Dental.*

(14) *Fiscal.*

(15) *Housekeeping.*

(16) *Pathology.*

(17) *Personnel.*

(18) *Physical medicine and rehabilitation.* Physical therapy, occupational therapy, manual arts therapy, educational therapy, greenhouse, incentive/industrial therapy and similar activities may be planned to meet program requirements.

(a) Hobby, arts, and crafts.

(b) Exercise room.

(c) Multipurpose room.

(d) Bowling, two lanes.

(e) Billiards, two tables.

(19) *Podiatry.*

(20) *Radiology.*

(21) *Speech and hearing.*

(22) *Supply.*

(23) *Theater.*

(24) *Laundry.*

(72 Stat. 1114; 38 U.S.C. 210)

These VA regulations are effective upon publication in the FEDERAL REGISTER.

Approved: August 11, 1970.

By direction of the Administrator.

[SEAL] FRED B. RHODES,
Deputy Administrator.

Incorporation by reference provisions approved by the Director of the Federal Register on August 17, 1970.

[F.R. Doc. 70-10802; Filed, Aug. 17, 1970; 8:49 a.m.]

*Based on one position for each 200 members with a minimum of one 120 square foot office for less than 200 members.

PART 18—NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS OF THE VETERANS ADMINISTRATION—EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

Grants for Assistance in Remodeling, Modification or Alteration of Existing State Home Hospital and Domiciliary Facilities

In Part 18, Appendix A, following § 18.13, is amended by adding paragraph 6 to read as follows:

APPENDIX A

STATUTORY PROVISIONS TO WHICH THIS PART APPLIES

* * * * *

6. Grants for Assistance in Remodeling, Modification or Alteration of Existing State Home Hospital and Domiciliary Facilities (38 U.S.C. 644).

(Sec. 602, 78 Stat. 252; 42 U.S.C. 2000d–1; 38 U.S.C. 641, 644, 5031–5037, 5055, 3402(a)(2), chapters 31, 34, 35, and 36)

This VA regulation is effective upon publication in the FEDERAL REGISTER.

Approved: August 11, 1970.

By direction of the Administrator.

[SEAL] FRED B. RHODES,
Deputy Administrator.

[F.R. Doc. 70–10803; Filed, Aug. 17, 1970; 8:49 a.m.]

Title 41—PUBLIC CONTRACTS AND PROPERTY MANAGEMENT

Chapter 1—Federal Procurement Regulations

PART 1–8—TERMINATION OF CONTRACTS

PART 1–16—PROCUREMENT FORMS

Use of Certain Standard Forms

The amendment of the Federal Procurement Regulations published at 35 F.R. 6476, April 23, 1970, prescribed the use of the October 1969 editions of Standard Forms 19, 19–B, 22, and 23–A effective July 15, 1970. The amendment of the Federal Procurement Regulations published at 35 F.R. 7070, May 5, 1970, prescribed the use of the November 1969 editions of Standard Forms 32 and 33 effective July 15, 1970. Due to delays in the uniform availability of the new editions of the forms the effective date for their use is hereby changed to October 15, 1970. However, the new editions of the forms may be used when available.

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

Effective date. This regulation is effective July 15, 1970.

Dated: August 11, 1970.

JOHN W. CHAPMAN, Jr.,
Acting Administrator of General Services.

[F.R. Doc. 70–10769; Filed, Aug. 17, 1970; 8:47 a.m.]

Chapter 101—Federal Property Management Regulations

SUBCHAPTER E—SUPPLY AND PROCUREMENT

PART 101–26—PROCUREMENT SOURCES AND PROGRAMS

Special Purpose Furniture

This amendment specifies the circumstances in which special purpose furniture available in Federal Supply Schedule, FSC Group 71, Part X, may be used.

The table of contents for Part 101–26 is amended by the addition of the following entry:

Sec.
101–26.410 Special purpose furniture.

Subpart 101–26.4—Purchase of Items From Federal Supply Schedule Contracts

Section 101–26.410 is added to read as follows:

§ 101–26.410 Special purpose furniture.

Federal Supply Schedule, FSC Group 71, Part X, contains multiple-award contracts for special purpose furniture. Items procured from this schedule shall ordinarily be used only for furnishing classrooms, conference rooms, and lounges. Other special purpose areas in which these items may be used may be established by the appropriate authority at the agency level, except that procurement for use in general purpose office areas is prohibited. This prohibition, however, does not extend to situations where individuals are otherwise entitled to executive or unitized furniture pursuant to § 101–25.302–1 of this chapter, and the cost of the special purpose item does not exceed the cost of the comparable stock or schedule item.

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

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

Dated: August 11, 1970.

JOHN W. CHAPMAN, Jr.,
Acting Administrator of General Services.

[F.R. Doc. 70–10770; Filed, Aug. 17, 1970; 8:47 a.m.]

Title 45—PUBLIC WELFARE

Chapter VI—National Science Foundation

PART 600—STANDARDS OF CONDUCT OF EMPLOYEES AND CONSULTANTS

Employee Conduct

The National Science Foundation is revising its regulations governing the Standards of Conduct of Employees and Consultants by deleting the words "or indirectly" from § 600.735–9(e)(3). The effect of the word "indirectly" in § 600.735–9(e)(3) is actually broader than is necessary for purposes of protecting against a conflict of interest. A considerable number of the Foundation's professional staff are rotators who leave academic faculties for a year or two to serve with the Foundation and then return to the academic community. A literal interpretation of the prohibition against receiving indirect compensation might preclude such a person from serving the institution in an administrative capacity since part of his salary could be paid out of the overhead costs charged to the institution's grants and contracts. Strict compliance with the section would impose a burden on the Director by needlessly requiring a written exception in each instance.

The revised section reads:

§ 600.735–9 Employee conduct.

* * * * *

(e) * * *

(3) Former employees of the Foundation may not be compensated directly from an NSF grant or contract within 1 year of their leaving the Foundation, except with the written permission of the Director.

* * * * *

The revision was approved by the Civil Service Commission on July 15, 1970.

Dated: August 10, 1970.

W. D. MCELROY,
Director,
National Science Foundation.

[F.R. Doc. 70–10760; Filed, Aug. 17, 1970; 8:47 a.m.]

Title 50—WILDLIFE AND FISHERIES

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

PART 32—HUNTING

Clarence Cannon National Wildlife Refuge, Mo.

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

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

MISSOURI

CLARENCE CANNON NATIONAL WILDLIFE REFUGE

Public hunting of mourning doves on the Clarence Cannon National Wildlife Refuge is permitted only on the area designated by signs as open to hunting. This open area, comprising 3,746 acres, is delineated on a map available from the refuge headquarters 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 regulations concerning the hunting of mourning doves subject to the following conditions:

(1) The open season for hunting mourning doves on the refuge is from September 1, 1970, through September 30, 1970, inclusively.

The provision of this special regulation supplements the regulations which govern hunting on wildlife refuges generally, which are set forth in Title 50, Code of Federal Regulations, Part 32, and are effective through September 30, 1970.

DON E. ADAMS,
Acting Refuge Manager, Clarence Cannon National Wildlife Refuge, Quincy, Ill.

AUGUST 10, 1970.

[F.R. Doc. 70-10796; Filed, Aug. 17, 1970; 8:49 a.m.]

PART 32—HUNTING

Certain National Wildlife Refuges in Alaska

The following regulations are issued and are effective on date of publication of the FEDERAL REGISTER. These regulations apply to public hunting on portions of certain national wildlife refuges in Alaska.

General conditions. Hunting shall be in accordance with applicable State regulations. Information relative to hunting may be obtained from Refuge Managers addressed to respective refuges.

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

Migratory game birds may be hunted on the following refuge areas:

Aleutian Islands National Wildlife Refuge, Pouch No. 2, Cold Bay, Alaska 99571.

Special condition. Hunting permitted only on Unimak, Adak, Attu, Shemya, and Atka.

Arctic National Wildlife Range, 1412 Airport Way, Fairbanks, Alaska 99701.

Clarence Rhode National Wildlife Range, Post Office Box 346, Bethel, Alaska 99559.

Izembek National Wildlife Range, Pouch No. 2, Cold Bay, Alaska 99571.

Special condition. The landing of aircraft is prohibited except in the event of emergency.

Kenai National Moose Range, Post Office Box 500, Kenai, Alaska 99611.

Kodiak National Wildlife Refuge, Post Office Box 825, Kodiak, Alaska 99615.

Nunivak National Wildlife Range, Post Office Box 346, Bethel, Alaska 99559.

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

Upland game may be hunted on the following refuge areas:

Aleutian Islands National Wildlife Refuge, Pouch No. 2, Cold Bay, Alaska 99571.

Special condition. Exception Amchitka, Alaska.

Arctic National Wildlife Range, 1412 Airport Way, Fairbanks, Alaska 99701.

Clarence Rhode National Wildlife Range, Post Office Box 346, Bethel, Alaska 99559.

Izembek National Wildlife Range, Pouch No. 2, Cold Bay, Alaska 99571.

Special condition. The landing of aircraft is prohibited except in the event of emergency.

Kenai National Moose Range, Post Office Box 500, Kenai, Alaska 99611.

Special conditions. (1) Except in the event of an emergency, the landing of aircraft on that portion of the Kenai National Moose Range located south of the Sterling Highway is restricted to all lakes, streams, and other bodies of water except:

a. The following named lakes are closed to aircraft use: Cirque, Benchland, Fuller, Newman, Timberline, Trophy, Upper Jean, Watson, and those lakes in the Skilak Loop Recreational Area between the Sterling Highway and Skilak Lake.

b. The landing of wheeled aircraft south of the Sterling Highway and the landing of aircraft on any glacier or snow field is prohibited.

(2) The use of motorized vehicles is restricted to the established maintained road system.

Kodiak National Wildlife Refuge, Post Office Box 825, Kodiak, Alaska 99615.

Special condition. Except in the event of an emergency, the landing of aircraft on the Kodiak National Wildlife Refuge is restricted to the lakes, streams, and other bodies of water.

Nunivak National Wildlife Range, Post Office Box 346, Bethel, Alaska 99559.

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

Big game animals may be hunted on the following refuge areas:

Aleutian Islands National Wildlife Refuge, Pouch No. 2, Cold Bay, Alaska 99571.

Special conditions. (1) Species permitted to be taken: Caribou on the islands of Atka, Unimak, and Adak; brown bear on the island of Unimak.

(2) A Federal permit is required to take brown bear on Unimak Island. Permits may be obtained from the Refuge Manager, Aleutian Islands National Wildlife Refuge, Pouch No. 2, Cold Bay, Alaska 99571.

(3) Landing of aircraft on Unimak Island or taking aircraft off from Unimak Island, while transporting big game or big game hunters, is restricted to the following areas:

Area No. 1. The airstrip situated at the village of False Pass.

Area No. 2. The airstrip situated at Cape Sarichef.

Area No. 3. The waters of all lakes, bays, and lagoons on or adjacent to Unimak Island.

Arctic National Wildlife Range, 1412 Airport Way, Fairbanks, Alaska 99701.

Bering Sea National Wildlife Refuge, Post Office Box 346, Bethel, Alaska 99559.

Izembek National Wildlife Range, Pouch No. 2, Cold Bay, Alaska 99571.

Special condition. The landing of aircraft is prohibited except in the event of emergency.

Kenai National Moose Range, Post Office Box 500, Kenai, Alaska 99611.

Special conditions. (1) Except in the event of an emergency, the landing of aircraft on that portion of the Kenai National Moose Range located south of the Sterling Highway is restricted to the following:

a. All lakes, streams, and other bodies of water except the following named lakes which are closed to aircraft use: Cirque, Benchland, Fuller, Newman, Timberline, Trophy, Upper Jean, Watson, and those lakes in the Skilak Loop Recreational Area between the Sterling Highway and Skilak Lake.

b. The landing of wheeled aircraft south of the Sterling Highway and the landing of aircraft on any glacier or snow field is prohibited.

(2) The use of motorized vehicles is restricted to the established maintained road system.

Kodiak National Wildlife Refuge, Post Office Box 825, Kodiak, Alaska 99615.

Special conditions. (1) Except in the event of an emergency, the landing of aircraft on the Kodiak National Wildlife Refuge is restricted to the lakes, streams, and other bodies of water.

(2) A Federal permit is required to hunt brown bear. Permits will be nontransferable and issued by hunting area units on a priority application basis from public announcement dates. Permits may be obtained by applying to the Refuge Manager, Bureau of Sport Fisheries and Wildlife, Post Office Box 825, Kodiak, Alaska 99615.

The provisions of these special regulations supplement the regulations which govern hunting on wildlife refuge areas generally and which are set forth in Title 50, Code of Federal Regulations, Part 32, and are effective through June 30, 1971.

LOREN W. CROXTON,
Deputy Area Director, Bureau of Sport Fisheries and Wildlife, Anchorage, Alaska.

AUGUST 10, 1970.

[F.R. Doc. 70-10795; Filed, Aug. 17, 1970; 8:49 a.m.]

Proposed Rule Making

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

[7 CFR Part 729]

PEANUTS

Notice of Proposed Proclamation With Respect to 1971 National Marketing Quota, National Acreage Allotment, Apportionment of National Acreage Allotment to States

The Secretary of Agriculture is required by section 358(a) of the Agricultural Adjustment Act of 1938, as amended (7 U.S.C. 1358(a)), to proclaim, between July 1 and December 1 of each calendar year, the amount of the national marketing quota for peanuts for the crop produced in the next succeeding calendar year. The amount of such quota is the total quantity of peanuts which will make available for marketing a supply of peanuts from the crop with respect to which the quota is proclaimed equal to the average quantity of peanuts harvested for nuts during the 5 years immediately preceding the year in which such quota is proclaimed, adjusted for current trends and prospective demand conditions.

Section 358(a) of the act further provides that the national marketing quota for peanuts shall be converted to a national acreage allotment by dividing such quota by the normal yield per acre of peanuts for the United States determined by the Secretary on the basis of the average yield per acre of peanuts in the 5 years preceding the year in which the quota is proclaimed, with such adjustment as may be found necessary to correct for trends in yields and for abnormal conditions of production affecting yields.

Section 358(a) of the act also requires that the national marketing quota be a quantity of peanuts sufficient to provide a national acreage allotment of not less than 1,610,000 acres.

Section 358(c)(1) of the act (7 U.S.C. 1358(c)(1)) provides that the national acreage allotment for any year, less the acreage to be allotted to new farms under section 358(f) of the act (7 U.S.C. 1358(f)), shall be apportioned among the States on the basis of their shares of the national acreage allotment for the most recent year in which such apportionment was made. Pursuant to this provision of the act, the national acreage allotment for the 1971 crop of peanuts will be apportioned to States on the basis of their shares of the 1970 national acreage allotment.

The subjects and issues involved in the proposed determinations are:

1. The amount of the national marketing quota.

2. The amount of the national acreage allotment.

3. The amount of acreage to be reserved from the national acreage allotment for new farms.

Consideration will be given to data, views, and recommendations pertaining to the proposed determinations covered by this notice which are submitted in writing to the Director, Oilseeds and Special Crops Division, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture, Washington, D.C. 20250. All written submissions made pursuant to this notice will be made available for public inspection at such times and places and in a manner convenient to the public business (7 CFR 1.27(b)). All submissions must, in order to be considered, be postmarked not later than 30 days after the date of publication of this notice in the FEDERAL REGISTER.

Signed at Washington, D.C., on August 12, 1970.

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

[F.R. Doc. 70-10807; Filed, Aug. 17, 1970; 8:50 a.m.]

Consumer and Marketing Service

[7 CFR Part 945]

IRISH POTATOES GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO AND MALHEUR COUNTY, OREG.

Proposed Expenses and Rate of Assessment

Consideration is being given to the approval of proposed expenses and a proposed rate of assessment as hereinafter set forth, which were recommended by the Idaho-Eastern Oregon Potato Committee, established pursuant to Marketing Agreement No. 98 and Order No. 945, both as amended (7 CFR Part 945).

This marketing order program regulates the handling of Irish potatoes grown in Idaho and Malheur County, Oreg., and is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.).

All persons who desire to submit written data, views, or arguments in connection with these proposals shall file the same, in quadruplicate, with the Hearing Clerk, U.S. Department of Agriculture, Room 112-A, Washington, D.C. 20250, not later than the 10th day after the publication of this notice in the FEDERAL REGISTER. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The proposals are as follows:

§ 945.223 Expenses and rate of assessment.

(a) *Expenses.* The reasonable expenses that are likely to be incurred during the fiscal period ending May 31, 1971, by the Idaho-Eastern Oregon Potato Committee, for its maintenance and functioning, and for such other purposes as the Secretary determines to be appropriate, will amount to $33,000.

(b) *Rate of assessment.* The rate of assessment to be paid by each handler in accordance with the amended marketing agreement and this part, shall be twenty-six hundredths of one cent ($0.0026) per hundredweight, or equivalent quantity, of potatoes handled by him as the first handler thereof during the fiscal period: *Provided,* That potatoes for canning, freezing, and "other processing" as defined in the recent amendment to the act (Public Law 91-196) shall be exempt.

(c) *Reserve.* Unexpended income in excess of expenses for the fiscal period ending May 31, 1971, may be carried over as a reserve.

(d) *Definition of terms.* Terms used in this section have the same meaning as when used in the said amended marketing agreement and this part.

Dated: August 13, 1970.

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

[F.R. Doc. 70-10808; Filed, Aug. 17, 1970; 8:50 a.m.]

[7 CFR Part 981]

ALMONDS GROWN IN CALIFORNIA

Proposed Salable, Reserve, and Export Percentages for 1970-71 Crop Year

Notice is hereby given of a proposal to establish, for the 1970-71 crop year, which began July 1, 1970, salable, reserve, and export percentages of 55, 45, and 100 percent, respectively, applicable to California almonds. The proposed percentages would be established in accordance with the provisions of the marketing agreement, as amended, and Order No. 981, as amended (7 CFR Part 981; 35 F.R. 11372), regulating the handling of almonds growns in California, effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). The proposal was unanimously recommended by the Almond Control Board.

All persons who desire to submit written data, views, or arguments in connection with the aforesaid proposal should file the same, in quadruplicate, with the Hearing Clerk, U.S. Department of Agriculture, Room 112, Administration Building, Washington, D.C. 20250, not later than 8 days after publication of

this notice in the FEDERAL REGISTER. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during official hours of business (7 CFR 1.27(b)).

The proposed percentages are based upon the following estimates (kernel weight basis) for the crop year beginning July 1, 1970:

(1) Production of 143 million pounds;

(2) Trade demand for domestic almonds of 70 million pounds (which is based on a total demand of 70.5 million pounds less 500,000 pounds of imports for consumption);

(3) Handler carryover of 25.6 million pounds on July 1, 1970;

(4) Desirable handler carryover of 34.2 million pounds on June 30, 1971;

(5) Trade demand and desirable handler carryover requirements for 1970 crop almonds of 78.6 million pounds (items 2 plus 4 minus 3);

(6) 64.4 million pounds of reserve almonds (item 1 minus item 5);

(7) Export requirements of 60 million pounds of reserve almonds;

(8) Reserve carryover of 4.4 million pounds on June 30, 1971, needed for export during the period July 1, 1971 through August 31, 1971; and

(9) Total export requirements of 64.4 million pounds from 1970 crop (item 7 plus item 8).

On the basis of the foregoing estimates, salable, reserve, and export percentages of 55, 45, and 100 percent, respectively, appear to be appropriate for the 1970–71 season.

The proposal is as follows:

§ 981.220 Salable, reserve, and export percentages for almonds during the crop year beginning July 1, 1970.

The salable, reserve, and export percentages during the crop year beginning July 1, 1970, shall be 55, 45, and 100 percent, respectively.

Dated: August 13, 1970.

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

[F.R. Doc. 70-10809; Filed, Aug. 17, 1970; 8:50 a.m.]

[7 CFR Part 993]

DRIED PRUNES PRODUCED IN CALIFORNIA

Proposed Salable and Reserve Percentages and Handler Reserve Obligation for 1970–71 Crop Year

Notice is hereby given of proposals recommended by the Prune Administrative Committee to establish for the 1970–71 crop year, salable and reserve percentages for California dried prunes of 63 and 37 percent, respectively, and, in connection therewith, the required composition of each handler's reserve obligation. The proposals would be established in accordance with provisions of the marketing agreement, as amended, and Order No. 993, as amended (7 CFR Part 993), regulating the handling of dried prunes produced in California, effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674).

The Committee has determined that the requirement in § 993.56 as to setaside reflecting average marketable content of receipts is not essential to achieve program objectives for the crop of the 1970–71 season, and proposed elimination of that requirement for such season. On the basis of its proposed setaside procedures, as hereinafter described, for the 1970–71 season, the Committee found that such procedures would assure that the trade demand for manufacturing prunes, as well as prunes for consumption as prunes, will be met. Under such procedures, any handler receiving prunes from a producer or dehydrator during the 1970–71 crop year would be required to meet, but not to exceed, the reserve obligation referable to the total receipts from such producer or dehydrator with undersized prunes contained therein.

If the total quantity of undersized prunes so delivered is insufficient to meet the handler's reserve obligation, the remainder of the reserve obligation would be based on field pricing size categories other than undersized prunes comprising such receipts. If, however, such total receipts contain no undersized prunes, the handler's reserve obligation referable to such receipts would be based on the field pricing size categories comprising the receipts. With respect to all such total receipts of prunes, those prunes which pass freely through a round opening twenty three thirty seconds inch in diameter would be designated as undersized prunes.

It is recognized that not all undersized prunes will in each instance be segregated from prunes of larger sizes during the course of sizing opeartions by a handler. For example, this may be due to the shape of the prunes. It would, therefore, appear reasonable to provide for some tolerance as to size in connection with the requirements as to undersized prunes. The Committee has recommended that a reasonable tolerance would be one that permits a handler to deliver to it, or its designee, as undersized prunes those reserve prunes which pass freely through a round opening twenty eight thirty seconds inch in diameter. Such delivery would be pursuant to § 993.57.

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

The proposed percentages are based on the following estimates:

TONS OF DRIED PRUNES

Item	Natural condition weight
1. Domestic trade demand [1]	103,000
2. Foreign trade demand [2]	32,000
3. Desirable carryout—July 31, 1971	30,000
4. Total trade requirements	165,000
5. Carryout—July 31, 1970	45,000
6. Trade demand for 1970 crop (Item 4 minus Item 5)	120,000
7. 1970 production	180,000
8. Total apparent reserve (Item 7 minus Item 6)	60,000
(a) Desirable reserve	24,000
(b) Undersized prunes (reserve)	9,000
(c) Prune plum diversion objective	27,000
	Percent
9. Salable percentage (Item 6 ÷ by Item 7)	66⅔
10. Reserve percentage (100% minus Item 9)	33⅓
11. Adjustment for possible errors in estimates:	
(a) Salable percentage (66⅔% minus 3⅔%)	63
(b) Reserve percentage (33⅓% plus 3⅔%)	37

[1] United States, Canal Zone, Puerto Rico, Virgin Islands, and Canada.

[2] All countries other than those specified in footnote 1.

The proposed percentages and handler reserve obligation are as follows:

§ 993.206 Salable and reserve percentages for prunes and handler reserve obligation for the 1970–71 crop year.

(a) *Percentage.* The salable and reserve percentages for the 1970–71 crop year shall be 63 percent and 37 percent, respectively.

(b) *Reserve obligation.* The reserve obligation of each handler shall, in accordance with § 993.56, be a weight of natural condition prunes equal to the sum of the results of applying the reserve percentage to the natural condition weight of each lot of prunes received by him from producers and dehydrators, excluding the weight obligation of § 993.49(c), plus that diverted tonnage on diversion certificates credited to or held by the handler that were issued by the Committee in accordance with § 993.162. With respect to the reserve obligation incurred by the handler in connection with such receipt of prunes from a producer or dehydrator the handler shall hold the quantity of undersized prunes received from such producer or dehydrator necessary to meet the applicable reserve obligation referable to the total receipts from such producer or dehydrator. In the event the quantity of undersized prunes is insufficient to meet the applicable reserve obligation, or the handler has not received any undersized prunes from a producer or dehydrator, the remainder of the reserve obligation applicable to any such receipts of prunes which do not contain sufficient undersized prunes, and the reserve obligation applicable to any such receipts of prunes which do not contain any undersized prunes, shall be comprised of natural condition prunes, by variety and standard or substandard grade, and shall be consistent with the receipt by field pricing size categories

other than undersized prunes: *Provided*, That a handler's reserve obligation with respect to all prunes received from producers and dehydrators shall be the weighted average size count of prunes exclusive of undersized prunes in all such lots within each such category, as computed from inspection analysis.

(c) *Field pricing size categories.* Undersized prunes, and other field pricing size categories by variety and grade expressed in minimum and maximum numbers of prunes per pound for each, are as follows:

Undersized prunes—Prunes which pass freely through a round opening twenty-three thirty-seconds of an inch in diameter;

Standard French prunes—33 or less, 34/50, 51/60, 61/70, 71/81, 82/101, 102/111, 112/121, and 122 or more;

Substandard French prunes—70 or less, 71/101, and 102 or more;

Standard Non-French prunes (except Robe de Sargent)—24 or less, 25/29, 30/33, 34/50, and 51 or more;

Substandard Non-French prunes (except Robe de Sargent)—51 or less, and 52 or more;

Standard Robe de Sargent—33 or less, 34/50, 51/60, and 61 or more; and

Substandard Robe de Sargent—61 or less, and 62 or more.

(d) *Delivery of prunes as undersized prunes.* At the request of the Committee pursuant to § 993.57, reserve prunes which pass freely through a round opening twenty-eight thirty-seconds of an inch in diameter and are delivered by a handler to the Committee or its designee shall be considered as the delivery of undersized prunes.

Dated: August 13, 1970.

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

[F.R. Doc. 70-10810; Filed, Aug. 17, 1970; 8:50 a.m.]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Part 191]

HAZARDOUS SUBSTANCES

Proposed Definitions and Procedural and Interpretative Regulations

The Commissioner of Food and Drugs proposes that the hazardous substances regulations (21 CFR Part 191) be amended to define and provide test methods for determining "combustible substances," "combustible solids," and "combustible contents of self-pressurized containers" to clarify provisions of the Federal Hazardous Substances Act as amended by the Child Protection and Toy Safety Act of 1969 (Public Law 91-113 enacted Nov. 6, 1969). The Commissioner also proposes that certain portions of the existing regulations regarding flammability be revised and updated as indicated.

Therefore, pursuant to provisions of the Federal Hazardous Substances Act (sec. 10(a), 74 Stat. 378; 15 U.S.C. 1269) and under authority delegated to him (21 CFR 2.120), the Commissioner proposes that Part 191 be amended:

1. In § 191.1 by revising paragraphs (j), (k), (l), and (m) to read as follows:

§ 191.1 Definitions.

* * * * *

(j) *Extremely flammable, flammable, and combustible substances*—(1) *Extremely flammable substances.* The term "extremely flammable" means any substance that has a flashpoint at or below 20° F., as determined by the method described in § 191.13.

(2) *Flammable substances.* The term "flammable" means any substance that has a flashpoint of above 20° F., to and including 80° F., as determined by the method described in § 191.13.

(3) *Combustible substances.* The term "combustible" means any substance that has a flashpoint above 80° F., to and including 150° F., as determined by the method described in § 191.13.

(k) *Extremely flammable, flammable, and combustible solids*—(1) *Extremely flammable solids.* A solid substance is "extremely flammable" if it ignites and burns at an ambient temperature of 80° F. or less when subjected to friction or to percussion or to an electrical spark.

(2) *Flammable solids.* A solid substance is "flammable" if, when tested by the method described in § 191.14, it ignites and burns with a self-sustained flame at a rate greater than one-tenth of an inch per second.

(3) *Combustible solids.* Combustible solids are those solids that will ignite and burn with a substantial evolution of heat or flame for at least 60 seconds or until essentially consumed when tested by the methods described in § 191.14.

(l) *Extremely flammable, flammable, and combustible contents of self-pressurized containers*—(1) *Extremely flammable contents.* Contents of self-pressurized containers are "extremely flammable" if, when tested by the method described in § 191.15, a flashback (a flame extending 3 or more inches back toward the dispenser) is obtained at any degree of valve opening and the flashpoint, when such contents are tested by the method described in § 191.16, is less than 20° F.

(2) *Flammable contents.* Contents of self-pressurized containers are "flammable" if, when tested by the method described in § 191.15, a flame projection exceeding 18 inches is obtained at full valve opening or a flashback (a flame extending 3 or more inches back toward the dispenser) is obtained at any degree of valve opening.

(3) *Combustible contents.* Contents of self-pressurized containers are combustible if, when tested by the method described in § 191.15, a flame projection exceeding 8 inches but less than 18 inches is obtained at full valve opening.

(m) *Substances that generate pressure.* A substance is hazardous because it "generates pressure through decomposition, heat, or other means" if it:

(1) Explodes when subjected to an electrical spark or to percussion or to a butane microburner flame 1 inch in length with a ⅜-inch cone.

(2) Expels the closure of its container or bursts its container when held at or below 160° F. for 2 weeks or less.

(3) Erupts from its opened container at a temperature of 160° F. or les after having been held in a closed container at 160° F. for 2 weeks.

(4) Comprises the contents of a self-pressurized container.

2. By revising § 191.14 to read as follows:

§ 191.14 Method for determining extremely flammable, flammable, and combustible solids.

(a) *Preparation of sample*—(1) *Granules, powders, and pastes.* Pack the sample into a flat, rectangular boat of household aluminum foil (0.001-inch thick) with inner dimensions 6-inches long by 1-inch wide by ¼-inch deep. This may be accomplished by lining a suitable form with foil and removing it after the material is packed.

(2) *Rigid and pliable solids.* Measure the dimensions of the sample and support it by means of metal ringstands, clamps, rings, or other suitable devices as needed, so that a major axis is oriented horizontally and the maximum surface is freely exposed to the atmosphere.

(b) *Procedure.* Place the prepared sample in a draft-free area that can be ventilated and cleared after each test. The temperature of the sample at the time of testing shall be between 68° and 86° F. Adjust a butane microburner flame to a length of 1 inch with a ⅜-inch cone. Position the microburner with its tip three-fourths inch from the specimen, and impinge the flame on the specimen at a corner or end for 5 seconds or until the sample ignites, whichever is less. By means of a stopwatch, determine the time of combustion with self-sustained flame. Do not exceed 60 seconds. Extinguish flame with a CO_2 or similar nondestructive type extinguisher. Measure the dimensions of the burnt area and calculate the maximum rate of burning along any axis of the sample.

6. By revising the heading of § 191.15 to read as follows:

§ 191.15 Method for determining extremely flammable, flammable, and combustible contents of self-pressurized containers.

* * * * *

Interested persons may, within 30 days after publication hereof in the FEDERAL REGISTER, file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 6-62, 5600 Fishers Lane, Rockville, Md. 20852, written comments (preferably in quintuplicate) regarding this proposal. Comments may be accompanied by a memorandum or brief in support thereof.

Dated: August 4, 1970.

SAM D. FINE,
Acting Associate Commissioner for Compliance.

[F.R. Doc. 70-10742; Filed, Aug. 17, 1970; 8:45 a.m.]

[21 CFR Part 191]

HAZARDOUS SUBSTANCES

Proposed Exemption of Difluorodichloromethane and Flammable Wire Materials in Model Kits From Classification as Banned Hazardous Substances

The Commissioner of Food and Drugs has received a request from Vashon Industries, Inc., Box 309, Vashon, Wash. 98070, submitted pursuant to section 2(q)(1)(B)(i) of the Federal Hazardous Substances Act and § 191.62(c) of the regulations thereunder, to exempt the articles described below from classification as "banned hazardous substances," as defined by section 2(q)(1)(A) of the act. The functional purpose of the articles requires inclusion of hazardous substances; however, they will bear labeling giving adequate directions and warnings for safe use and are intended for use by children who have attained sufficient maturity and may reasonably be expected to read and heed such directions and warnings.

Accordingly, pursuant to provisions of the act (sec. 2(q)(1)(B)(i), 74 Stat. 374, 80 Stat. 1304; 50 U.S.C. 1261) and under authority delegated to him (21 CFR 2.120), the Commissioner proposes that § 191.65(a) be amended by adding two new subparagraphs, as follows:

§ 191.65 Exemptions from classification as banned hazardous substances.

(a) * * *

(12) Kits intended for construction of model rockets and jet propelled model airplanes requiring the use of difluorodichloromethane as a propellant, provided the outer carton bears on the main panel in conspicuous type size the statement "WARNING—Carefully read instructions and cautions before use."

(13) Flammable wire materials intended for electro-mechanical actuation and release devices for model kits described in subparagraph (12) of this paragraph, provided each wire does not exceed 15 milligrams in weight.

* * * * *

Interested persons may, within 30 days after publication hereof in the FEDERAL REGISTER, file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 6-62, 5600 Fishers Lane, Rockville, Md. 20852, written comments (preferably in quintuplicate) regarding this proposal. Comments may be accompanied by a memorandum or brief in support thereof.

Dated: August 3, 1970.

SAM D. FINE,
Acting Associate Commissioner for Compliance.

[F.R. Doc. 70-10741; Filed, Aug. 17, 1970; 8.45 a.m.]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Parts 25, 121, 123]

[Docket No. 9344; Reference Notice 69-2]

PROTECTIVE SMOKE HOODS FOR EMERGENCY USE BY PASSENGERS AND CREWMEMBERS

Withdrawal of Notice of Proposed Rule Making

The purpose of this notice is to withdraw Notice No. 69-2 (34 F.R. 465, published on Jan. 11, 1969) in which the FAA solicited comments on proposed amendments of Parts 25, 121, and 123 of the Federal Aviation Regulations. It was proposed to require protective smoke hoods to be carried on all airplanes operated under Parts 121 and 123 for use by the occupants to facilitate airplane evacuation when fire or smoke is present after a crash landing or other emergency. In addition, it was proposed to require the use of these hoods during emergency evacuation demonstrations.

In Notice No. 69-2 the FAA expressed the view that, if protective smoke hoods were provided in large transport airplanes, the probability of occupant survival in airplane crashes would be significantly increased and that prototype hoods had been tested and evaluated to a sufficient extent to justify a requirement for them. However, further study and evaluation by the FAA has enhanced its view that rapid evacuation of an aircraft after an emergency crash landing is the most vital element for survival. The FAA believes that the use of currently designed smoke hoods might delay emergency evacuation to an unacceptable degree. In addition, in the light of many comments received from representatives of the aviation industry, and other interested persons who support this view, the FAA has concluded that the proposed regulatory action is not justified at this time.

In consideration of the foregoing, the notice of proposed rule making published in the FEDERAL REGISTER (34 F.R. 465) on January 11, 1969, and circulated as Notice No. 69-2, entitled "Protective Smoke Hoods for Emergency Use by Passengers and Crewmembers", is hereby withdrawn.

The FAA wishes to emphasize that this withdrawal will in no way lessen the interest of the agency in evaluating new concepts and the use of devices which may contribute to increasing the number of passengers who survive exposure to smoke or fire following otherwise survivable accidents. To this end, the FAA will continue its research and study of any potentially beneficial approach to the problem. Accordingly, it should be understood that the withdrawal of Notice No. 69-2 does not preclude the FAA from issuing similar notices in the future or commit the FAA to any course of action.

This withdrawal is issued under the authority of sections 313(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a)), and section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

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

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

[F.R. Doc. 70-10762; Filed, Aug. 17, 1970; 8:47 a.m.]

[14 CFR Part 71]

[Airspace Docket No. 70-SW-49]

TRANSITION AREA

Proposed Alteration

The Federal Aviation Administration is considering amending Part 71 of the Federal Aviation Regulations to alter the Roswell, N. Mex., transition area.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Chief, Air Traffic Division, Southwest Region, Federal Aviation Administration, Post Office Box 1689, Fort Worth, Tex. 76101. All communications received within 30 days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Chief, Air Traffic Division. Any data, views, or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official docket will be available for examination by interested persons at the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, Fort Worth, Tex. An informal docket will also be available for examination at the Office of the Chief, Air Traffic Division.

It is proposed to amend Part 71 of the Federal Aviation Regulations as hereinafter set forth.

In § 71.181 (35 F.R. 2134), the Roswell, N. Mex., transition area 700-foot portion is amended to read:

ROSWELL, N. MEX.

That airspace extending upward from 700 feet above the surface within a 23-mile radius of the Roswell VORTAC extending clockwise between the 092° and 036° radials of

the VORTAC, and within a 29-mile radius of the Roswell VORTAC extending clockwise between the 036° and 092° radials of the VORTAC.

The proposed alteration is required to provide controlled airspace for aircraft executing amended and proposed amended instrument approach procedures to the Roswell Industrial Air Center. These procedures are being amended to provide a uniform terminal traffic flow.

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

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

HENRY L. NEWMAN,
Director, Southwest Region.

[F.R. Doc. 70-10785; Filed, Aug. 17, 1970; 8:48 a.m.]

National Highway Safety Bureau

[49 CFR Part 568]

[Docket No. 70-6]

VEHICLES MANUFACTURED IN TWO OR MORE STAGES

Notice of Public Meeting

On March 17, 1970, a notice of proposed rule making concerning Vehicles Manufactured in Two or More Stages was published (35 F.R. 4639), proposing a system whereby manufacturers of incomplete vehicles would furnish information to subsequent completers of the vehicles, enabling the latter to conform to the motor vehicle safety standards and certify the vehicles' conformity.

The National Highway Safety Bureau will hold a public meeting on September 18, 1970, in Room 2230, 400 Seventh Street SW., Washington, D.C. 20591, from 9 a.m. to 4 p.m., to enable interested persons to discuss the proposal. The meeting will be informal in format, to encourage a free interchange of views. There will be no formal presentations.

To enable the Bureau to determine whether the meeting room indicated will be of appropriate size, it is requested that persons wishing to attend so inform Mr. George C. Neild, Assistant for Technology, Motor Vehicle Programs, National Highway Safety Bureau, Washington, D.C. 20591 (Telephone No.: 202/426-1812), not later than September 1, 1970.

Issued on August 12, 1970.

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

[F.R. Doc. 70-10765; Filed, Aug. 17, 1970; 8:47 a.m.]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 73]

[Docket No. 18882]

TELEVISION BROADCAST STATIONS

Table of Assignments, Camden, N.J., etc.; Order Further Extending Time for Filing Comments and Reply Comments

In the matter of amendment of § 73.606 (b), table of assignments, television broadcast stations (Camden and Atlantic City, N.J., and Philadelphia, Pa.); Docket No. 18882.

1. This proceeding was begun by notice of proposed rule making (FCC 70-638) adopted June 17, 1970, released June 19, 1970, and published in the FEDERAL REGISTER on June 25, 1970 (35 F.R. 10375). The dates for filing comments and reply comments were previously extended to August 10, 1970, and August 20, 1970, respectively.

2. On August 6, 1970, Vue-Metrics, Inc. (Vue-Metrics), filed a request for a further extension of time for filing comments to August 20, 1970, and reply comments to August 31, 1970. Vue-Metrics states that this further extension is necessary due to the fact that its consulting engineer, Mr. Rohrer, has not been able to meet with the staff engineer for the New Jersey Public Broadcasting Authority to consider and discuss the alternative plan devised by him. It further states that no meeting with the New Jersey Public Broadcasting Authority will be possible until August 12 due to the fact that Mr. Rohrer will be on vacation until August 10. Counsel for the New Jersey Public Broadcasting Authority indicates that it has no objection to the grant of this request.

3. We are of the view that the additional time requested is warranted and would serve the public interest. *Accordingly, it is ordered,* That the time for filing comments and reply comments in Docket No. 18882 is extended to and including August 20, 1970, and August 31, respectively.

4. This action is taken pursuant to authority found in sections 4(i), 5(d)(1), and 303(r) of the Communications Act of 1934, as amended, and § 0.281(d)(8) of the Commission's rules.

Adopted: August 10, 1970.

Released: August 11, 1970.

[SEAL] GEORGE S. SMITH,
Chief, Broadcast Bureau.

[F.R. Doc. 70-10787; Filed, Aug. 17, 1970; 8:48 a.m.]

[47 CFR Part 73]

[Docket No. 18867]

STANDARD BROADCAST STATIONS

Limit on Positive Modulation; Order Extending Time for Filing Comments and Reply Comments

1. This proceeding was begun by notice of proposed rule making (FCC 70-539) adopted May 20, 1970, released May 22, 1970, and published in the FEDERAL REGISTER May 27, 1970, 35 F.R. 8282. The dates for filing comments and reply comments are presently September 3, 1970, and October 2, 1970, respectively.

2. On August 10, 1970, the Association for Broadcast Engineering Standards, Inc. (Association), filed a request to extend the time for filing comments to and including October 5, 1970. Association states it is preparing comprehensive and technical materials which will be the basis of its comments. It further states that vacations and out of city obligations of counsel and other individuals who are involved in the preparation of the comments have necessitated this request for more time.

3. It appears that the additional time requested is warranted and would serve the public interest. *Accordingly, it is ordered,* That the request filed by the Association for Broadcast Engineering Standards, Inc., for extension of time is granted to and including October 5, 1970, for comments and November 2, 1970, for reply comments.

4. This action is taken pursuant to authority found in section 4(i), 5(d)(1), and 303(r) of the Communications Act of 1934, as amended, and § 0.281(d)(8) of the Commission's rules and regulations.

Adopted: August 12, 1970.

Released: August 13, 1970.

[SEAL] GEORGE S. SMITH,
Chief, Broadcast Bureau.

[F.R. Doc. 70-10788; Filed, Aug. 17, 1970; 8:48 a.m.]

FEDERAL POWER COMMISSION

[18 CFR Part 2]

[Docket No. R-389A]

INITIAL RATES FOR FUTURE SALES OF NATURAL GAS FOR ALL AREAS

Notice of Petition

AUGUST 14, 1970.

On July 30, 1970, "People Organized to Win Effective Regulation (POWER)"

by and through Anthony R. Martin-Trigona filed a motion which is construed to be pursuant to § 1.7 of the Commission's rules of practice and procedure (18 CFR 1.7). Petitioner seeks:

Prayer for relief. POWER prays (1) that the Commission immediately suspend any and all rate increases until a comprehensive plan for future energy source development and consumption has been promulgated for public analysis; (2) that POWER be allowed to intervene as a party, and be allowed an initial $10,000 in costs and fees payable by the Commission on proper proof of expenditure, for POWER to secure counsel and act as a public interest and consumer surrogate in lieu of the Commission; (3) that hearing on any and all rate increases be held in major consumer cities; (4) that the public be invited and indeed encouraged to intervene and participate in the rate increase proceedings in opposition to such rate increases; (5) that Members of Congress and other political candidates be prohibited from participation in the proceeding, either directly or indirectly; (6) that any and all Commissioners who have been publicly identified with increased rates disqualify themselves from consideration and participation in these proceedings, with special reference to the Chairman of the Commission who must disqualify himself; (7) that the Commission revert to normal unexpedited procedures for the consideration of these issues, with customary retroactive safeguards for rebates and other consumer protection.

The Secretary notes, sua sponte, that Mr. Martin-Trigona is already a party to this proceeding by virtue of his letter to me of July 20, 1970. While that letter did not identify Mr. Martin-Trigona as a representative of People Organized to Win Effective Regulation, the Secretary will construe that letter as such, and therefore People Organized to Win Effective Regulation is deemed to be a party to this proceeding.

Answers to the petition may be filed on or before August 19, 1970. The petition is on file with the Commission and available for public inspection in the Office of Public Information, Room 2523, 441 G Street NW., Washington, D.C. 20426.

KENNETH F. PLUMB,
Acting Secretary.

[F.R. Doc. 70-10889; Filed, Aug. 17, 1970; 10:13 a.m.]

Notices

DEPARTMENT OF THE INTERIOR

National Park Service

NATIONAL REGISTRY OF NATURAL LANDMARKS

Pursuant to authority contained in the Act of August 21, 1935 (49 Stat. 666, 16 U.S.C. 461), the National Park Service, Department of the Interior is administering and implementing a natural areas program, including the National Registry of Natural Landmarks.

It is the purpose of this notice, through publication of the following information and list of sites, to apprise the public, as well as governmental agencies, associations, and all other organizations and individuals interested in the preservation of nationally significant natural areas, of the objectives of the Natural Landmark Program, of the methods used in identifying potential natural Landmarks, and of the criteria used in evaluating natural areas. Sites listed in this notice have been determined to be eligible for inclusion in the National Registry of Natural Landmarks. Those which have been registered are indicated by an asterisk.

GEORGE B. HARTZOG, Jr.,
Director, National Park Service.

AUGUST 12, 1970.

THE NATURAL LANDMARKS PROGRAM

I. *The National Registry of Natural Landmarks and Procedures for Registration.* A. *Program objective.* The objective of the Natural Landmarks Program is to assist in the preservation of a variety of significant natural areas which, when considered together, will illustrate the diversity of the country's natural history. This objective is attained through identification of sites eligible for inclusion in the national registry. Natural landmark registration is voluntary and does not change ownership.

Inclusion in the national registry is intended to (1) encourage the preservation of sites illustrating the geological and ecological character of the United States, (2) enhance the educational and scientific value of sites thus preserved, (3) strengthen cultural appreciation of natural history, and (4) foster a wider interest and concern in the conservation of the Nation's natural heritage.

B. *Inventory of natural areas.* To provide a logical and scientific basis for the selection of natural landmarks which adequately represent the natural history of the United States the National Park Service has developed a system of natural history themes as follows:

LANDFORMS OF THE PRESENT

Plains, plateaus, mesas.
Cuestas and hogbacks.
Mountain systems.
Works of volcanism.
Hot water phenomena.
Sculpture of the land.
Eolian landforms.
River systems and lakes.
The work of glaciers.
Seashores, lakeshores, islands.
Coral islands, reefs, atolls.
Earthquake phenomena.
Caves and springs.
Meteor impact sites.

GEOLOGICAL HISTORY OF THE EARTH

Precambrian.
Cambrian—Ordovician.
Silurian—Devonian.
Mississippian—Permian.
Triassic—Cretaceous.
Paleocene—Eocene.
Oligocene—Recent.

LAND ECOSYSTEMS

Tundra.
Boreal forest.
Pacific forest.
Dry coniferous forest and woodland.
Eastern deciduous forest.
Grassland.
Chaparral.
Deserts.
Tropical ecosystems.

AQUATIC ECOSYSTEMS

Marine environments.
Estuaries.
Streams.
Underground ecosystems.
Lakes and ponds.

A prime product of the natural history theme studies is an inventory of the country's natural areas. Evaluation focuses attention on these areas and often stimulates communities to take action in preserving significant sites.

C. *Natural landmarks criteria.* The National Registry of Natural Landmarks parallels, at the national level, the National Register of Historic Places, in that it lists the natural areas that are nationally significant (natural landmarks) similar in importance to the historical or archeological areas that are nationally significant (national historic landmarks) listed in the National Register of Historic Places. The difference between the two registers is that the National Register of Historic Places includes, in addition to national historic landmarks, historic areas administered by the National Park Service and historic places of State and local significance.

To be eligible for natural landmark designation, a site must be nationally significant as possessing exceptional value or quality in illustrating or interpreting the natural heritage of our Nation, and must present a true, accurate, essentially unspoiled example of natural history.

Examples of the kinds of areas which could qualify for natural landmark designation are:

1. Outstanding geological formations or features significantly illustrating geologic processes.

2. Significant fossil evidence of the development of life on earth.

3. An ecological community significantly illustrating characteristics of a physiographic province or a biome.

4. A biota of relative stability maintaining itself under prevailing natural conditions, such as a climatic climax community.

5. An ecological community significantly illustrating the process of succession and restoration to natural condition following disruptive change.

6. A habitat supporting a vanishing, rare, or restricted species.

7. A relict flora or fauna persisting from an earlier period.

8. A seasonal haven for concentrations of native animals, or a vantage point for observing concentrated populations, such as a constricted migration route.

9. A site containing significant evidence illustrating important scientific discoveries.

10. Examples of the scenic grandeur of our natural heritage.

D. *Implementation.* If, after study by the National Park Service, the site is considered to possess the requisite characteristics for eligibility, it is proposed to the Advisory Board on National Parks, Historic Sites, Buildings and Monuments of the Secretary of the Interior for consideration. The Advisory Board, authorized by the Act of August 21, 1935 (49 Stat. 667; 16 U.S.C. 463), is composed of 11 nonsalaried members who are appointed by the Secretary and who are competent in the fields of history, archeology, architecture, or human geography. The Advisory Board's recommendation is transmitted to the Secretary and, if approved by him, the Secretary may announce that the site is eligible for registration. The owner is then invited to apply for a certificate and bronze plaque designating the site a registered natural landmark.

Registration as a natural landmark requires agreement by the landowner to preserve, insofar as possible, the significant natural values contained in the site. In applying for such registration the owner agrees to so manage the site as to prevent the destruction or deterioration of the values upon which landmark status is based. He relinquishes none of his rights and privileges as to use of the land. Neither does the Department of the Interior gain any possessory interest in lands so designated, but will, upon request, provide consultative assistance in protecting and interpreting the natural values of the site.

Should the natural integrity of an eligible site deteriorate from either natural or man-induced causes, to the extent that national significance is lost, the site will be removed from the National Registry of Natural Landmarks.

The National Park Service will evaluate new sites and reevaluate designated sites periodically to determine their current eligibility for landmark status. Additions to and deletions from the National Registry of Natural Landmarks will be published at intervals in the FEDERAL REGISTER.

II. *Sites eligible for inclusion in the National Registry of Natural Landmarks.* (Sites which have been registered are indicated by an asterisk.)

ALASKA

Aniakchak Crater—24 air miles southeast of Port Heiden.
Arrigetch Peaks—250 miles northwest of Fairbanks.
**Bogoslof Island*—25 miles north of Umnak Island in the Aleutian Archipelago.
**Brown Bear Refuge*—200 miles southwest of Anchorage.
**Clarence Rhode National Wildlife Range*—on the Bering Sea Coast between Hooper Bay and Kipnuk.
**Lake George*—44 miles northeast of Anchorage.
Malaspina Glacier—25 miles west of Yakutat.
Middleton Island—155 miles southeast of Anchorage.
Mount Veniaminof—20 miles northeast of Port Moller on the Alaska Peninsula.
**Shishaldin Volcano*—50 miles west of Cold Bay in the Aleutian Archipelago.
**Simeonof National Wildlife Refuge*—in the Shumagin Island Group south of the Alaska Peninsula.
Unga Island—in the Shumagin Island Group.
Walker Lake—250 air miles northwest of Fairbanks.
**Walrus Islands*—375 miles southwest of Anchorage in Bristol Bay on the Bering Sea.
**Worthington Glacier*—30 miles east of Valdez.

ARIZONA

**Barringer Meteor Crater, Coconino County*—15 miles west of Winslow.
Hualapai Valley Joshua Trees, Mohave County—45 miles north of Kingman.
**Patagonia-Sonoita Creek Sanctuary, Santa Cruz County*—1 mile from Patagonia.
**Ramsey Canyon, Cochise County*—7 miles south of Sierra Vista.
Willcox Playa, Cochise County—4 miles south of Willcox.

CALIFORNIA

**Audubon Canyon Ranch, Marin County*—20 miles northwest of San Francisco.
**Elder Creek, Mendocino County*—4 miles north of Branscomb.
**Emerald Bay, El Dorado County*—16 miles south of Tahoe City.
**Point Lobos, Monterey County*—near Carmel.
**Pygmy Forest, Mendocino County*—5 miles southeast of Fort Bragg.
**Rainbow Basin, San Bernardino County*—8 miles north of Barstow.
**Rancho La Brea, Los Angeles County*—Hancock Park, Wilshire Boulevard, Los Angeles.
**San Andreas Fault, San Benito County*—at Cienega Winery, 10 miles south of Hollister.
**Sand Hills, Imperial County*—15 miles west of Yuma.
**Trona Pinnacles, San Bernardino County*—7 miles south of Argus.

COLORADO

Lost Creek Scenic Area, Park County—40 miles southwest of Denver.
Raton Mesa, Las Animas County—10 miles south of Trinidad.
Slumgullion Earthflow, Hinsdale County—2 miles south of Lake City.
**Summit Lake, Clear Creek County*—13 miles southwest of Idaho Springs.

CONNECTICUT

**Dinosaur Trackway, Hartford County*—5 miles south of Hartford.

FLORIDA

**Big Cypress Bend, Collier County*—1 mile west of Florida 29 on Tamiami Trail (U.S. 41).
**Corkscrew Swamp Sanctuary, Collier County*—25 miles southeast of Fort Myers.
Lignumvitae Key, Monroe County—one-half mile north of U.S. Highway No. 1 causeway near north end of Matecumbe Key.
**Reed Wilderness Seashore Sanctuary, Martin County*—8 miles south of Stuart.
**Wakulla Springs, Wakulla County*—15 miles south of Tallahassee.

GEORGIA

**Marshall Forest, Floyd County*—near Rome.
**Wassaw Island, Chatham County*—14 miles south of Savannah, in the Atlantic Ocean.

HAWAII

**Diamond Head, Island of Oahu*—in city of Honolulu.

IDAHO

**The Great Rift, Power County*—25 miles northwest of American Falls.

ILLINOIS

Bird Haven, Richland County—2 miles north of Olney.
**Forest of the Wabash, Wabash County*—3 miles south of Mount Carmel.

INDIANA

Big Walnut Creek, Putnam County—35 miles west of Indianapolis.
**Cowles Bog, Porter County*—10 miles west of Michigan City.
Ohio Coral Reef (Falls of the Ohio)—in Ohio River between Jeffersonville, Ind., and Louisville, Ky. (See also Kentucky).
**Pine Hills Natural Area, Montgomery County*—15 miles west-southwest of Crawfordsville.
**Pinhook Bog, La Porte County*—4 miles south of Waterford.

IOWA

**Cayler Prairie, Dickinson County*—5 miles west of West Okoboji.
**Hayden Prairie, Howard County*—12 miles northwest of Cresco.
**White Pine Hollow Preserve, Dubuque County*—20 miles northwest of Dubuque.

KANSAS

**Baker University Wetlands, Douglas County*—3 miles south of Lawrence.
**Monument Rocks Natural Area, Gove County*—23 miles south of Oakley.

KENTUCKY

Ohio Coral Reef (Falls of the Ohio)—in Ohio River between Louisville, Ky., and Jeffersonville, Ind. (See also Indiana).

MAINE

**Gulf Hagas, Piscataquis County*—14 air miles east of Greenville.
Monhegan Island, Lincoln County—10 miles south of Port Clyde in the Atlantic Ocean.
**Mount Katahdin, Piscataquis County*—20 miles north of Millinocket.

MARYLAND

**Battle Creek Cypress Swamp, Calvert County*—on Md. 206 between Bowens and Port Republic.
**Cranesville Swamp Nature Sanctuary, Garrett County, Md.*, and *Preston County, W. Va.*—9 miles north of Terra Alta, W. Va. (See also West Virginia)
**Sugar Loaf Mountain, Frederick County*—16 miles south of Frederick.

MASSACHUSETTS

**Gay Head Cliffs, Dukes County*—on western tip of Martha's Vineyard.

MICHIGAN

Grand Mere Lakes, Berrien County—2 miles southwest of Stevensville.
Warren Woods Natural Area, Berrien County—3 miles north of Three Oaks.

MINNESOTA

**Ancient River Warren Channel, Traverse and Big Stone Counties, Minn., and Roberts County, S. Dak.*—near Browns Valley, Minn. (See South Dakota.)
**Itasca Natural Area, Clearwater County*—30 miles southwest of Bemidji.
**Lake Agassiz Peatlands, Koochiching County*—30 airline miles south of International Falls.

MISSISSIPPI

**Chestnut Oak Disjunct, Calhoun County*—16 miles north of Bruce.
**Mississippi Petrified Forest, Madison County*—17 miles north of Jackson.

MONTANA

Bug Creek Fossil Area, McCone County—34 miles southeast of Fort Peck.
Glacial Lake Missoula, Sanders County—12 miles north of Perma.
Hell Creek Fossil Area, Garfield County—16 miles north of Jordan.

NEBRASKA

**Fontenelle Forest, Sarpy County*—1 mile south of Omaha.

NEVADA

**Valley of Fire, Clark County*—35 miles northeast of Las Vegas.

NEW HAMPSHIRE

**Madison Boulder, Carroll County*—3 miles north of Madison.

NEW JERSEY

**Great Falls of Paterson, Passaic County*—Paterson.
**Great Swamp, Morris County*—7 miles south of Morristown.
**Moggy Hollow Natural Area, Somerset County*—2 miles east of Far Hills.
**Stone Harbor Bird Sanctuary, Cape May County*—Stone Harbor Borough.
Sunfish Pond, Warren County—3 miles northeast of the Delaware Water Gap.
Troy Meadows, Morris County—near Troy Hills.

NEW MEXICO

Grants Lava Flow, Valencia County—extends for about 25 miles south of Grants between State Routes 117 and 53 on the east and west, respectively.

NEW YORK

**Bergen-Byron Swamp, Genesee County*—between Bergen and Byron.
**Deer Lick Nature Sanctuary, Cattaraugus County*—4 miles southeast of Gowanda.
**Ellenville Fault-Ice Caves, Ulster County*—5 miles southeast of Ellenville.
**Fall Brook Gorge, Livingston County*—1½ miles south of Geneseo.
**Fossil Coral Reef, Genesee County*—4 miles northwest of Le Roy.
Gardiner's Island, Suffolk County—100 miles east of New York City, in Block Island Sound off Long Island.
**Ironsides Island, Jefferson and St. Lawrence Counties*—8 miles northeast of town of Alexandria Bay in St. Lawrence River.
**Mendon Ponds Park, Monroe County*—11 miles south of Rochester.

Mianus River Gorge, Westchester County—2 miles south of Bedford.
Petrified Gardens, Saratoga County—4 miles west of Saratoga Springs.

NORTH DAKOTA

Two-Top Mesa and Big Top Mesa, Billings County—14 airline miles northwest of Fairfield.

OHIO

Brown's Lake Bog, Wayne County—11 miles southwest of Wooster.
Buzzardroost Rock-Lynx Prairie, Adams County—75 miles east of Cincinnati.
Cedar Swamp, Champaign County—7 miles north of Springfield.
Clear Fork Gorge, Ashland County—4 miles south of Loudenville.
Clifton Gorge, Greene County—10 miles east of Springfield.
Cranberry Bog, Licking County—20 miles east of Columbus.
Dysart Woods, Belmont County—11 miles southwest of St. Clairsville.
Glacial Grooves State Memorial, Erie County—5 miles off-shore from Marblehead on Kelleys Island.
Glen Helen Natural Area, Greene County—in Yellow Springs.
Holden Natural Areas, Lake and Geauga Counties—30 miles east of Cleveland.
Hueston Woods, Butler and Preble Counties—4½ miles north of Oxford.
Mentor Marsh, Lake County—near Painesville.
Tinkers Creek Gorge, Cuyahoga County—12 miles southeast of Cleveland.

OREGON

Horse Ridge Natural Area, Deschutes County—16 miles southeast of Bend.
John Day Fossil Beds, Grant County—40 miles west of town of John Day on Oregon 19.

PENNSYLVANIA

Bear Meadows Natural Area, Centre County—6 miles southeast of State College.
Box Huckleberry Site, Perry County—1 mile south of New Bloomfield.
Cook Forest, Clarion County—Cook Forest State Park.
Hawk Mountain Sanctuary, Berks County—30 miles north of Reading.
Hickory Run Boulder Field, Carbon County—in the Pocono Plateau region.
Lake Lacawac, Wayne County—25 miles east of Scranton.
Pine Creek Gorge, Tioga County—12-mile roadless stretch between Ansonia and Blackwell.
Presque Isle, Erie County—near the city of Erie.
Snyder-Middleswarth Natural Area, Snyder County—5 miles west of Troxelville.
Susquehanna Water Gaps, Perry County—18 miles north of Harrisburg.
The Glens Natural Area, Sullivan and Luzerne Counties—in Ricketts Glen State Park 25 miles east of Williamsport.
Tinicum Wildlife Preserve, Philadelphia County—Philadelphia.
Wissahickon Valley, Philadelphia County—Fairmount Park, Philadelphia.

SOUTH DAKOTA

Ancient River Warren Channel, Roberts County, S. Dak., and Traverse and Big Stone Counties—Minn., near Browns Valley, Minn. (See also Minnesota.)
Bear Butte, Meade County—5 miles north of Fort Meade.
Fort Randall Eagle Roost, Charles Mix County—directly below Fort Randall Dam on Missouri River.
Sieche Hollow, Marshall and Roberts Counties—10 miles northwest of town of Sisseton.
Snake Butte, Washabaugh County—Pine Ridge Reservation.

TENNESSEE

Reelfoot Lake, Lake and Obion Counties—near Tiptonville.

TEXAS

Attwater Prairie Chicken Preserve, Colorado County—5 miles west of Houston.
Caverns of Sonora, Sutton County—16 miles southwest of Sonora.
Dinosaur Valley, Somervell County—just west of Glen Rose.
Odessa Meteor Crater, Ector County—10 miles southwest of Odessa.
Santa Ana National Wildlife Refuge, Hidalgo County—7 miles south of Alamo.

UTAH

Cleveland-Lloyd Dinosaur Quarry, Emery County—7 miles east of Cleveland.
Joshua Tree Natural Area, Washington County—10 miles southwest of St. George.

VERMONT

Camel's Hump, Chittenden and Washington Counties—midway between Montpelier and Burlington.
Lake Willoughby Natural Area, Orleans County—Westmore Township.

VIRGINIA

Seashore Natural Area—near Cape Henry in City of Virginia Beach.

WASHINGTON

Ginkgo Petrified Forest, Kittitas County—29 miles east of Ellensburg.
Grand Coulee, Grant County—between towns of Grand Coulee and Soap Lake.
Mima Mounds, Thurston County—west of Little Rock.
Steptoe Butte, Whitman County—50 miles south of Spokane.

WEST VIRGINIA

Cathedral Park, Preston County—4 miles west of U.S. 219 on U.S. 50.
Cranesville Swamp Nature Sanctuary, Preston County, W. Va., and Garrett County, Md.—9 miles north of Terra Alta., W. Va. (See also Maryland.)

WISCONSIN

Ridges Sanctuary, Door County—60 miles northeast of Green Bay.

WYOMING

Como Bluff, Carbon and Albany Counties—5 miles east of Medicine Bow.
Crooked Creek Natural Area, Big Horn County—15 miles northeast of Lovell.
Lance Creek Fossil Area, Niobrara County—25 miles north of Lusk.
Two Ocean Pass, Teton County—on the Continental Divide in Teton National Forest.

[F.R. Doc. 70–10758; Filed, Aug. 17, 1970; 8:46 a.m.]

DEPARTMENT OF COMMERCE

Business and Defense Services Administration

BATTELLE-NORTHWEST

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

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89–651, 80 Stat. 897) and the regulations issued thereunder as amended (34 F.R. 15787 et seq.).

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

Docket No. 70–00800–00–46040. Applicant: Battelle-Northwest, Post Office Box 999, Richland, Wash. 99352. Article: Large angle goniometer stage and control unit. Manufacturer: Japan Electron Optics Lab. Co., Japan. Intented use of article: The articles are accessories for an existing electron microscope. Model JEM–7. Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The application relates to accessories for a foreign electron microscope previously imported for the use of the applicant institution. These accessories are being furnished by the foreign manufacturer of the instrument with which they are intended to be used. The Department of Commerce knows of no similar accessories being manufactured in the United States, which are interchangeable with the foreign articles or which can be readily adapted to the foreign article with which such articles are intended to be used.

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

[F.R. Doc. 70–10733; Filed, Aug. 17, 1970; 8:45 a.m.]

GEORGE WASHINGTON UNIVERSITY

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

The consolidated notice of decision as published in Volume 35, No. 150 (pages 12417–12418) of the FEDERAL REGISTER dated Tuesday, August 4, 1970 pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89–651, 80 Stat. 897) is hereby amended to delete the following:

Docket No. 68–00135–33–46500. Applicant: George Washington University, 1337 H Street NW., Washington, D.C. 20005. Article: IKB 8800 Ultratome III ultramicrotome. Date of denial without prejudice to resubmission: November 20, 1967.

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

[F.R. Doc. 70–10727; Filed, Aug. 17, 1970; 8:45 a.m.]

NATIONAL BUREAU OF STANDARDS

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

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89–651, 80 Stat. 897) and the regulations issued thereunder as amended (34 F.R. 15787 et seq.).

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

Docket No. 70–00553–01–07520. Applicant: National Bureau of Standards, Washington, D.C. 20234. Article: Microcalorimeter, Model Calvet. Manufacturer: SETARAM, France.

Intended use of article: The article will be used for the accurate measurement of very small amounts of thermal energy in the range 0.1 millijoule to 1 joule. Types of processes for which the calorimeter will be suitable include vaporization, mixing, and solution studies. The ability to make thermal measurements in this low energy range and to work with small quantities of reactants also allows the applicant to follow both rapid and slow processes and offers the possibility of performing kinetic studies, which are of importance in the area of biophysical chemistry where the quantities of reactants are often limited and the heat evolved is small.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used is being manufactured in the United States.

Reasons: The foreign article has the capability to do high temperature vaporization studies at temperatures up to 200° C. We are advised by the Department of Health, Education, and Welfare (HEW) in a memorandum dated June 18, 1970 that the capability to do high temperature vaporization studies at temperatures up to 200° C. is pertinent to the purposes for which the article is intended to be used. HEW further advises that it knows of no domestic instrument or apparatus being manufactured in the United States which has this pertinent characteristic.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article for the purposes for which such article is intended to be used, which is being manufactured in the United States.

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

[F.R. Doc. 70–10729; Filed, Aug. 17, 1970; 8:45 a.m.]

NATIONAL BUREAU OF STANDARDS

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

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89–651, 80 Stat. 897) and the regulations issued thereunder as amended (34 F.R. 15787 et seq.).

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

Docket No. 70–00061–65–46070. Applicant: National Bureau of Standards, Route 70S and Quince Orchard Road, Gaithersburg, Md. 20760. Article: Scanning electron microscope, Model IIA. Manufacturer: Cambridge Instrument Co., United Kingdom.

Intended use of article: The article will be used to cover many areas of research by the applicant from determinations of the properties of materials to precise measurement methods and techniques. Many of the intended uses involve large, carefully prepared crystal specimens. Studies of plastically deformed single crystals will be conducted concentrating on slip line lengths and slip step density measurements. X-ray microanalysis of complicated materials will be conducted in connection with electron microscope studies to determine composition of the primary elements in the material and to analyze the nature of inclusions and foreign particles.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: In order to relate results to the testing of large specimens under laboratory conditions, many of the carefully prepared single crystals which the applicant intends to study will be as large as 2 inches in length Such crystals require the utmost in orientation capability so that different crystal faces can be examined at the proper orientation with respect to the electron detector in the electron microscope. A variety of experiments which must be performed within the microscope and which must utilize special stages are planned. Therefore, a large specimen chamber which can accept substages, accommodate specimens 2 inches in length with provisions for two independent rotational degrees of freedom and one of tilt, as well as other removal interchangeable stages, is pertinent. In addition, the applicant's research studies include the mapping of concentration gradients in silver-cadmium and copper-zinc alloys. For such studies, which involve elements near each other in atomic number, a dispersive X-ray spectrometer is pertinent. The foreign article provides both of the pertinent features described above. The most closely comparable domestic scanning electron microscopes are the Model SM–2 manufactured by Ultrascan Corp. (Ultrascan), which was formerly doing business as K Square Corp., and the Model 700 manufactured by Materials Analysis Corp. (MAC). The Ultrascan Model SM–2 provides the required specimen chamber but is not equipped with dispersive X-ray spectrometry. The MAC Model 700 can be provided with a large specimen chamber of a standard specimen chamber, however, only the standard specimen chamber, which cannot be used to study 2-inch specimens, can be equipped with a dispersive X-ray spectrometer.

For the foregoing reasons we find that neither the Model SM–2 nor the Model 700 is of equivalent scientific value to the foreign article for such purposes as this article is intended to be used.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article for the purposes for which such article is intended to be used, which is being manufactured in the United States.

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

[F.R. Doc. 70–10731; Filed, Aug. 17, 1970; 8:45 a.m.]

NEW YORK UNIVERSITY MEDICAL CENTER

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

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89–651, 80 Stat. 897) and the regulations issued thereunder as amended (34 F.R. 15787 et seq.).

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

Docket No. 70–00797–00–46040. Applicant: New York University Medical Center, 550 First Avenue, New York, N.Y. 10016. Article: Accessories for Elmiskop IA electron microscope. Manufacturer: Siemens A.G., West Germany.

Intended use of article: The articles will be used on an existing electron microscope for research on the structure of various biomacromolecules.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended

to be used is being manufactured in the United States.

Reasons: The application relates to accessories for a foreign electron microscope previously imported for the use of the applicant institution. These accessories are being furnished by the foreign manufacturer of the instrument with which they are intended to be used. The Department of Commerce knows of no similar accessories being manufactured in the United States, which are interchangeable with the foreign articles or which can be readily adapted to the foreign instrument with which such articles are intended to be used.

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

[F.R. Doc. 70-10732; Filed, Aug. 17, 1970; 8:45 a.m.]

PURDUE UNIVERSITY

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

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (34 F.R. 15787 et seq.).

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

Docket No. 70-00615-98-16600. Applicant: Purdue University, Lafayette, Ind. 47907. Article: Cryobridge, Model 103. Manufacturer: Automatic Systems Laboratories, United Kingdom.

Intended use of article: The materials to be studied, using the article, include metal oxides TiO_2 and Ti_2O_3 and superconductors osmium and titanium. The specific heat of the materials listed will be measured by applying a known quantity of heat to the sample and measuring the increase in temperature of the sample, using a germanium thermometer. The ratio heat input to temperature increase provides the heat capacity of the sample. Measurement of the thermometer temperature is done with a resistance bridge, which provides the resistance of the thermometer.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The foreign article provides the capability of measuring temperature changes between the temperatures of 0.05° Kelvin (°K) to 20° K. at the 10^{-14}-watt power level. The most closely comparable domestic alternating current cryobridge manufactured by Cryotronic Inc. measures such changes at the 10^{-9}-watt power level. We are advised by the National Bureau of Standards (NBS) in a memorandum dated June 12, 1970, that the lower power requirements of the foreign article is pertinent to the purposes for which the foreign article is intended to be used.

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

[F.R. Doc. 70-10730; Filed, Aug. 17, 1970; 8:45 a.m.]

VANDERBILT UNIVERSITY

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

The consolidated notice of decision as published in Volume 35, No. 150 (pages 12419-12420) of the FEDERAL REGISTER dated Tuesday, August 4, 1970 pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897) is hereby amended to delete the following:

Docket No. 69-00237-33-11000. Applicant: Vanderbilt University, Department of Pharmacology, 21st Avenue South Nashville, Tenn. 27203. Article: Gas chromatograph-mass spectrometer, Model IKB 9000. Date of denial without prejudice to resubmission: May 15, 1969.

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

[F.R. Doc. 70-10728; Filed, Aug. 17, 1970; 8:45 a.m.]

Office of the Secretary

[Dept. Organization Order 25-2B]

MARITIME ADMINISTRATION

Organization and Functions

The following order was issued by the Secretary of Commerce effective August 5, 1970. This material supersedes the material appearing at 32 F.R. 12864 of September 8, 1967; 34 F.R. 13487 of August 21, 1969; 34 F.R. 19826 of December 18, 1969; and 35 F.R. 5132 of March 26, 1970.

SECTION 1. *Purpose.* This order prescribes the organization and assignment of functions within the Maritime Administration.

SEC. 2. *Organization structure.* The organization structure and line of authority of the Maritime Administration shall be as depicted in the attached organization chart (Exhibit 1). (A copy of the organization chart is on file with original of this document with the Office of the Federal Register.)

SEC. 3. *Office of the Maritime Administrator.* .01 The Maritime Administrator is the head of the Maritime Administration and serves as Chairman of the Maritime Subsidy Board.

.02 Deputy Maritime Administrator. The Maritime Administrator shall be assisted in his duties by a Deputy Maritime Administrator, who will perform such duties as the Maritime Administrator shall prescribe, together with the duties which he performs as a member of the Maritime Subsidy Board. In addition, he shall be the Acting Maritime Administrator during the absence or disability of the Maritime Administrator and, unless the Secretary of Commerce designates another person, during a vacancy in the office of the Maritime Administrator. The Deputy Maritime Administrator shall be responsible also for supervision and coordination of contract compliance activities and activities under Title VI of the Civil Rights Act of 1964.

.03 The Executive Staffs shall consist of the Secretary of the Maritime Administration who also serves as Secretary of the Maritime Subsidy Board, the hearing examiners, and officials concerned with other special services for the Maritime Administrator and the Maritime Subsidy Board.

SEC. 4. *Maritime Subsidy Board.* The Maritime Subsidy Board shall be responsible for and perform the following functions:

a. The functions with respect to making, amending, and terminating subsidy contracts, which shall be deemed to include, in the case of construction-differential subsidy, the contract for the construction, reconstruction or reconditioning of a vessel and the contract for the sale of the vessel to the subsidy applicant or the contract to pay a construction-differential subsidy and the cost of the national defense features, and, in the case of operating-differential subsidy, the contract with the subsidy applicant for the payment of the subsidy;

b. The functions with respect to: (1) Conducting hearings and making determinations antecedent to making, amending, and terminating subsidy contracts, under the provisions of Titles V, VI, and VIII, and sections 301 (except investigations, hearing and determinations, including changes in determinations, with respect to minimum manning scales, minimum wage scales and minimum working conditions), 708, 805(a) and 805(f) of the Merchant Marine Act, 1936, as amended (the Act), (2) making readjustments in determinations as to operating cost differentials under section 606 of the Act, and (3) the approval of the sale, assignment, or transfer of any operating subsidy contract under section 608 of the Act;

c. The functions with respect to investigating and determining (1) the relative cost of construction of comparable vessels in the United States and foreign countries, (2) the relative cost of operating vessels under the registry of the United States and under foreign registry, and (3) the extent and character of aids and subsidies granted by foreign governments to their merchant marines, under the provisions of subsections (c), (d), and (e) of section 211 of the Act;

d. So much of the functions specified in section 12 of the Shipping Act, 1916, as amended, as the same relate to the functions of the Board under subparagraphs a. through c. of this paragraph; and

e. So much of the functions with respect to adopting rules and regulations, subpoenaing witnesses, administering oaths, taking evidence, and requiring the production of books, papers, and documents, under sections 204 and 214 of the Act, as relate to the functions of the Board.

SEC. 5. *Office of Policy and Plans.* The Office of Policy and Plans shall develop and recommend long-range marine affairs policies and plans, including plans for the revitalization of the U.S. Merchant Marine; direct and coordinate the development and maintenance of plans for carrying out the Administration's responsibilities and functions in the event of mobilization for war or other national emergency; plan, conduct or coordinate the Administration's participation in intergovernmental and international activities concerned with shipping matters; conduct economic studies and operations research activities in support of the planning functions and recommend solutions to problems affecting shipping; develop and maintain the planning-programing-budgeting system; review and evaluate operating programs to determine their effectiveness in accomplishing established goals and objectives; and plan, coordinate, and operate the Administration's management information system.

SEC. 6. *Office of the General Counsel.* The Office of the General Counsel shall, under the overall supervision of the General Counsel, Department of Commerce, serve as the law office of the Administration; review and give legal clearance to applications for subsidy and other Government aids to shipping, sales, mortgages, charters, and transfers of ships; prepare and approve as to form and legality, contracts, agreements, performance bonds, deeds, leases, general orders, and related documents; render legal opinions as to the interpretation of such documents and the statutes; prepare drafts of proposed legislation, Executive orders, and legislative reports to congressional committees and the Office of Management and Budget negotiate and settle, or recommend settlement of, admiralty claims, just compensation claims, tort claims, and claims referred to the office for litigation; assist the Department of Justice in the trial, appeal and settlement of litigation; represent the Administration in public proceedings involving subsidy, charter and related matters before administrative agencies of the Government, and in State and Federal courts; and handle court litigation in actions involving enforcement or defense of the jurisdiction, general orders, and regulations of the Administration.

SEC. 7. *Office of Public Affairs.* The Office of Public Affairs shall develop and coordinate a public information and publications program as needed to further the objectives of the Administration's programs; issue or clear for issuance all information for the general public on shipping and on decisions and activities of the Administration; and prepare periodic and special reports, as assigned.

SEC. 8. *Office of Civil Rights.* The Office of Civil Rights shall formulate and conduct programs to assure compliance by Federal contractors and subcontractors with Executive Orders 11246 and 11375 and related regulations, and applicants for and recipients of Federal financial assistance and their contractors and subcontractors with Title VI of the Civil Rights Act of 1964 and related regulations; plan and direct special programs to assure equal opportunity in employment in the ship and boat building and repair industries, water transportation industry, and related industries as assigned; provide assistance in communicating to minority communities the career opportunities available in the Merchant Marine; assist in the recruitment of qualified minority cadet candidates for the U.S. Merchant Marine Academy and assure equal opportunity for the Academy cadets; conduct compliance reviews of the civil rights and equal employment opportunity programs relating to Maritime Administration employees, and make recommendations for improvement.

SEC. 9. *Office of the Assistant Administrator for Administration.* The Assistant Administrator for Administration shall be the principal assistant and adviser to the Maritime Administrator on administrative services, personnel, management and organization matters. He shall direct the activities of the following organizational units:

.01 The Office of Administrative Services shall plan and establish national policies and programs for the conduct of facilities and supply management and office services activities, including material control and disposal of real and personal property, other than ships; administer the security program; settle loss or damage claims arising from shipments on Government bills of lading; secure allocations of the production capacity of private plants for the manufacture of components and materials required in the event of mobilization; and provide or obtain travel and office services in Washington, D.C., including space, communications, correspondence control, central files, and administrative property management services.

.02 The Office of Management and Organization shall conduct manpower surveys to determine staffing requirements for all components of the Administration; conduct surveys and studies to improve management practices, organization structures, delegations of authorities, procedures, and work methods; maintain a system for the issuance of the manual of orders and other directives; maintain programs for the management and control of reports, forms, and committee activities; administer the records management program; coordinate the management improvement and cost reduction program; and prepare special progress and administrative reports to the Department of Commerce and others, as required.

.03 The Office of Personnel shall plan and administer personnel programs and activities relating to recruitment, placement, promotion, separation, employee performance evaluation, training and career development, employee recognition and incentives, employee relations and services, employee-management relations, classification, pay management, and various employee benefit programs. This office shall also plan and administer the equal opportunity program for employment in the Maritime Administration.

SEC. 10. *Office of the Assistant Administrator for Finance.* The Assistant Administrator for Finance shall be the principal assistant and adviser to the Maritime Administrator on budget, financial management and automatic data processing matters. He shall direct the activities of the following organizational units:

.01 The Office of Budget shall formulate, recommend, and interpret budgetary policies and procedures, collaborate with operating officials in the development of fiscal plans and budget estimates; develop and present budget requests and justifications; allocate and maintain budgetary control of funds available; and review status of funds and program performance in relation to the Administration's fiscal plans.

.02 The Office of Data Systems shall provide data processing services, including conduct of feasibility studies, development of systems and programs for the application of computer techniques, and operation of the electronic data processing and auxiliary equipment.

.03 The Office of Finance shall render financial advice and opinions, develop and maintain financial systems of the Administration, perform accounting functions, including maintenance of general accounts and related fiscal records, preparation of financial statements and reports, issuance of invoices, audit and certification of vouchers for payment; prescribe a uniform system of accounts for subsidized operators, agents, charterers, and other contractors; administer a program of external audits of contractors' accounts to determine compliance with applicable laws, regulations and contract provisions concerning costs and profits; maintain control records of statutory and contractual reserve funds; analyze financial statements and other data submitted by contractors to determine financial qualifications and limitations; take necessary action to effect collection of amounts due; administer the marine and marine war risk insurance programs; and negotiate, settle, or recommend settlement of, marine and war risk insurance claims.

SEC. 11. *Office of the Assistant Administrator for Research and Development.* The Assistant Administrator for Research and Development shall be the principal assistant and adviser to the Maritime Administrator on research and development programs. Within his office are personnel responsible for liaison with the Navy on the surface effect ship program. He shall direct the activities of the following organizational units:

.01 The Office of Maritime Technology shall develop, coordinate and manage programs to establish a scientific and technological base for achieving a more productive and competitive U.S. Merchant Marine; initiate, solicit, develop and recommend specific projects, such as research in hydrodynamics, structures, and oceanographic subjects which have a bearing on improvements in the merchant marine, and institutional and university research in marine science and technology appropriate to maritime affairs; and negotiate and administer technical aspects of contracts in above areas.

.02 The Office of Advanced Ship Development shall develop, organize, coordinate and manage programs for the application of scientific and technological developments to improve ship systems, shipbuilding, ship machinery, equipment, and other components, with the objective of increasing the efficiency, productivity, and effectiveness of the U.S. Merchant Marine; initiate, solicit, develop, and recommend specific projects; and negotiate and administer technical aspects of contracts in these areas.

.03 The Office of Advanced Ship Operations shall develop, organize, coordinate, and manage programs for the application of scientific, technological, and other developments to upgrade the operational efficiency and competitive position of the U.S. Merchant Marine; develop, coordinate, and implement programs for the application of nuclear power to merchant ships; initiate, solicit, develop, and recommend specific projects in these areas, including navigation and communications, port and terminal operations, cargo handling, marine personnel requirements, automation, ship handling, and other operational aspects of the ship; and negotiate and administer technical aspects of contracts in above areas.

SEC. 12. *Office of the Assistant Administrator for Operations.* The Assistant Administrator for Operations shall be the principal assistant and adviser to the Maritime Administrator on ship construction, ship operation, port development, and intermodal transportation systems activities. Within his office are personnel responsible for the conduct of trial, acceptance, and guarantee surveys of ships. He shall direct the activities of the following organizational units:

.01 The Office of Ship Construction shall collect and analyze data on relative costs of shipbuilding in the United States and foreign countries; calculate and recommend the amount of construction-differential subsidy; develop preliminary designs establishing the basic characteristics of proposed ships; review and approve ship designs submitted by applicants for Government aid; recommend and, upon request, conduct research and development projects in ship design and construction; develop or approve contract plans and specifications for the construction, reconstruction, conversion, reconversion, reconditioning and betterment of ships; review, obtain approval and certification of national defense features by the Department of the Navy; prepare cost estimates, invitations to bid, and recommendations for the award of ship construction-type contracts; administer ship construction contracts; provide naval architectural and engineering services in connection with construction of small special purpose ships for other Government agencies; approve designs, supervise construction and undertake final acceptance of fishing vessels constructed under Public Law 86-516, as amended; maintain current records of commercial shipyard ways in the United States; and develop requirements for mobilization ship construction programs. The Office of Ship Construction has the following divisions: Division of Ship Design, Division of Engineering, Division of Estimates, Division of Small Ships, and Division of Production.

.02 The Office of Ship Operations shall give national program direction for the operation, maintenance, and repair of Maritime Administration-owned or acquired merchant ships, conduct of ship condition surveys and ship inventories, operation of warehouses, and maintenance of the national defense reserve fleet, including the ship preservation programs; and other ship operations activities; provide safety engineering services; approve or recommend approval of transfers of ships to foreign ownership, registry or flag; determine program requirements for Government-owned ocean-going merchant shipping; recommend the reactivation, purchase, chartering or requisition of merchant ships for Government use, and administer activities relating to the charter of such ships; recommend terms of and administer General Agency, Charter and Berth Agency agreements, and related orders; recommend terms of, execute, and administer, contracts for ship repairs for the account of the Maritime Administration; develop plans for the allocation and operation of merchant ships in time of war or national emergency; conduct sales of ships, and supervise compliance with ship sales agreements and mortgages; and administer the ship exchange program. The Office of Ship Operations has the following divisions: Division of Operations, Division of Ship Repair and Maintenance, and Division of Reserve Fleet.

.03 The Office of Ports and Intermodals Systems shall formulate national policies and programs, and conduct programs for the development and promotion of intermoral transportation systems, including promotion of palletization, containerization, and bulk transport systems; conduct studies and formulate plans for the promotion, development, and utilization of ports and port facilities; provide technical advice to other Government agencies, private industry and State and municipal governments in the above fields, and conduct emergency planning for the utilization and control of ports and port facilities under national mobilization conditions. The Office of Ports and Intermodal Systems has the following divisions: Division of Ports and Division of Intermodal Transport.

SEC. 13. *Office of the Assistant Administrator for Maritime Aids.* The Assistant Administrator for Maritime Aids shall be the principal assistant and adviser to the Maritime Administrator on subsidy administration, Title XI mortgage insurance, and other Government aids programs, maritime manpower, and trade promotion activities. He shall direct the activities of the following organizational units:

.01 The Office of Subsidy Administration shall process applications for construction-differential subsidy, operating-differential subsidy, Federal Ship Mortgage and/or Loan insurance, trade-in allowances, and other forms of Government aid to shipping; conduct negotiations with applicants, obtain comments of other offices and within delegated authority, approve or recommend approval or disapproval, and take other actions in relation to the award and the administration of aid contracts; administer Construction Reserve Funds; approve with the concurrence of the Chief, Office of Finance, actions relating to the administration of Special and Capital Reserve Funds of subsidized operators; collect, analyze and evaluate costs of operating ships under United States and foreign registry; calculate and recommend operating-differential subsidy rates; analyze and recommend trade route structure and service requirements of the ocean-borne commerce of the United States, and extent of foreign flag competition on essential trade routes; and collect, maintain, analyze, and disseminate statistical data on cargo and commodity movements in the ocean-borne commerce of the United States, composition of world's merchant fleets, and utilization of U.S.-flag ships. Within this office are personnel responsible for the collection of Maritime cost data and other technical maritime activities in foreign countries. The Office of Subsidy Administration has the following divisions: Division of Subsidy Contracts, Division of Mortgage-Insurance Contracts, Division of Subsidy Rates, Division of Trade Studies, and Division of Statistics.

.02 The Office of Maritime Manpower shall analyze and advise the Administration regarding labor management relations and problems as they apply to seamen, longshoremen and shipyard workers, including labor trends, potential areas of dispute, and the effects of technological changes and proposed legislation on labor; develop plans in cooperation with the Department of Labor to provide reserve maritime manpower for mobilization and other emergencies; obtain, analyze, and publish data for use of industry, labor, Government and the public concerning maritime employment, wages, hours, manning, working conditions, and manpower requirements; process nominations for appointment of cadets to the U.S. Merchant Marine Academy; administer a grant-in-aid program for the State maritime academies; determine need for and coordinate training programs for licensed and unlicensed

personnel in maritime industries; coordinate technical maritime training assistance to foreign countries under international cooperative programs; and issue merchant marine decorations and awards. The Office of Maritime Manpower has the following divisions: Division of Labor Studies, Division of Manpower Development, and Division of Maritime Academies.

.03 The Office of Market Development shall develop national policies and prorams, and conduct programs for the promotion and development of increased trade for U.S.-flag ships in the foreign commerce of the United States and domestic shipping; maintain general surveillance of and administer cargo preference activities in accordance with Public Law 664, 83d Congress, Public Resolution 17, 73d Congress, and Recommendation 7 in House Report No. 80, dated February 28, 1955; and calculate and recommend guideline rates, terms and conditions for transportation of Government-financed cargoes.

SEC. 14. *Field organization.* .01a. There shall be three field organizations called Regions, each headed by a Region Director, as specified below:

Region	Headquarters location
Eastern	New York, N.Y.
Central	New Orleans, La.
Western	San Francisco, Calif.

b. The regions shall have geographic areas of responsibility as shown in exhibit 2. (A copy of which is on file with original of this document with the Office of the Federal Register.)

c. The Region Directors shall be responsible for all field operations and programs of the Maritime Administration within their respective regions, except ship construction and the U.S. Merchant Marine Academy, subject to national policies, determinations, procedures and directives of the appropriate office chief in Washington, D.C. The programs and activities under their jurisdiction shall include the custody and preservation of ships in the national defense reserve fleet; operation, repair and maintenance of ships; marine inspections; training for marine personnel in radar, loran, etc.; accounting and external auditing; contract compliance activities, and activities to assure equal opportunity in employment in water transportation industries, as assigned; trade promotion; development of ports and intermodal transportation systems; operation of warehouses; procurement and disposal of property and supplies; facilities management; and administrative support activities.

.02 The U.S. Merchant Marine Academy, Kings Point, N.Y., shall develop and maintain programs for the training of U.S. citizens to become officers in the U.S. Merchant Marine.

Effective date: August 5, 1970.

LARRY A. JOBE,
Assistant Secretary for Administration.

APPENDIX A

PUBLIC INFORMATION APPENDIX—MARITIME ADMINISTRATION

JULY 31, 1970.

A. *Purpose.* The purpose of this appendix is to describe, in general, the public information services of the Maritime Administration (which term includes the Maritime Subsidy Board and the National Shipping Authority), to describe the places at which, and the methods whereby, the public may obtain information, to inform the public as to the sources or availability of rules, regulations, procedures, instructions, forms, reports, or other requirements established by the Maritime Administration which affect the public, and otherwise to comply with the requirements of section 552, Title 5, U.S.C., as amended by Public Law 90–23, June 5, 1967 (81 Stat. 54).

B. *Public information services*—1. *General.* This section describes the information services regularly provided by the Maritime Administration in the execution of its substantive program responsibilities. In general, these services will satisfy most of the informational needs of the maritime industry and the general public concerning the activities of the Administration. The special procedures referred to in section G of this appendix should not be resorted to unless these regular informational services have been found to be inadequate to meet a particular informational need.

2. *Publications of the Maritime Administration.* a. A list of current publications of the Maritime Administration may be obtained from the Office of Public Affairs, Maritime Administration, Department of Commerce, Room 4893, 14th street and Constitution Avenue NW., Washington, D.C. 20235 (Telephone: Area Code 202, 967–2746). Certain publications are also listed in the Annual Catalog of Commerce Publications, and the weekly Business Service Checklist, available through the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.

Reports of a scientific or technical nature are available from the Federal Clearinghouse for Technical and Scientific Information, and are listed in the index provided by the Clearinghouse, which is located at the Sills Building, 5285 Port Royal Road, Springfield, Va. 22151 (Telephone: Area Code 703, 321–8543).

b. Copies of all current Maritime Administration publications which are for sale by the U.S. Government Printing Office or the Department of Commerce, are available for examination by the public in the Office of Public Affairs. Orders to purchase such publications should be directed, for Government Printing Office-printed materials, to the Superintendent of Documents, and for Commerce-printed materials to the Sales and Distribution Branch, Office of Administrative Services, Department of Commerce, Washington, D.C. 20230. Orders for Clearinghouse reports should be directed to the Clearinghouse. Limited numbers of other not-for-sale publications are available upon request to the Office of Public Affairs.

3. *Other informational services.* a. The Maritime section of the Department of Commerce Library contains an extensive collection of technical, legal, and miscellaneous publications relating to the development, operation, and control of the merchant marine, the training of seamen, freight marine rates, tariffs, insurance, and the regulation of shipping rates, vessels, travelers, seamen, and others. The Library is located in the Department of Commerce, 7th Floor, 3 and 0 Corridors, 14th Street and Constitution Avenue NW., Washington, D.C. 20235 (Telephone: Area Code 202, 967–3193).

b. The Office of Public Affairs has available reference files of newspaper clippings and other published articles relating to the merchant marine, photographs of U.S. merchant vessels, press releases, speeches, or statements of particular noteworthiness, and periodic reports concerning the maritime industry. Copies of many of these materials are available upon request. Any oral or written inquiries of a general nature concerning the Maritime Administration or the U.S. merchant marine should be sent to this office.

c. All official actions of the Maritime Administration are indexed and available for public inspection from the Secretary of the Maritime Administration and Maritime Subsidy Board, Department of Commerce, Room 3099–B, 14th Street and Constitution Avenue NW., Washington, D.C. 20235 (Telephone: Area Code 202, 967–2188).

d. Information on matters concerning the U.S. Merchant Marine Academy may be obtained from: Public Information Office, U.S. Merchant Marine Academy, Kings Point, Long Island, N.Y. 11204 (Telephone: Area Code 516, 482–8200).

C. *Guide to published rules and regulations.* 1. All published rules and regulations pertaining to programs of the Maritime Administration appear in the Code of Federal Regulations, as follows:

a. Maritime Administration and Maritime Subsidy Board—Title 46, Ch. II.

b. National Shipping Authority—Title 32A, Ch. XVIII.

c. Office of the Maritime Administrator—Title 32A, Ch. XIX.

2. For the convenience of the public, a guide entitled "Index of Current Regulations of the Maritime Administration-Maritime Subsidy Board—National Shipping Authority" is available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402, at a nominal price.

D. *Submittals and requests.* 1. The established places to which reports or information required or requested by the Maritime Administration are to be submitted are identified on the forms, schedules, or instructions specifying the information desired, and/or in the rules and regulations cited in section C of this appendix.

2. Requests for the preparation of special studies which relate to the functions of the Maritime Administration, and which serve the particular benefit of the requesting individual of group, are governed by the terms of general Order 85 (46 CFR Part 206, Subpart A).

3. Requests for general information, in addition to the Offices cited in section B, may also be submitted to the following field offices:

a. Eastern Region Office, Maritime Administration, Federal Building, 26 Federal Plaza, 37th Floor, New York, N.Y. 10007 (Telephone: Area Code 212, 264–1300).

b. Central Region Office, Maritime Administration, 701 Loyola Avenue, New Orleans, La. 70150 (Telephone: Area Code 504, 527–6556).

c. Western Region Office, Maritime Administration, 450 Golden Gate Avenue, San Francisco, Calif. 94102 (Telephone: Area Code 415, 556–3816).

E. *Final delegations of authority.* The officers and employees to whom there has been delegated or redelegated the authority to take final actions, or make final decisions, with respect to requirements, submissions, or other matters affecting the public, are identified in the following materials:

1. Department Organization Order 25–2A (31 F.R. 8087, June 8, 1966), which is the basic delegation of authority from the Secretary of Commerce to the Maritime Administrator and Maritime Subsidy Board, respectively, and

2. Administrator's orders and management orders in the Maritime Administration Manual of Orders, which set forth all redelegations of authority to officials and employees

of the Maritime Administration, and which are available for public inspection and copying in the Office of Public Affairs, Maritime Administration, Department of Commerce, Room 4893, 14th Street and Constitution Avenue NW., Washington, D.C. 20235 (Telephone: Area Code 202, 967-2746).

F. *Inspection and copying of opinions and orders.* All final opinions of the Maritime Administration made in the adjudication of cases are available from the Secretary of the Maritime Administration and Maritime Subsidy Board, Department of Commerce, Room 3099-B, 14th Street and Constitution Avenue NW., Washington, D.C. 20235 (Telephone: Area Code 202, 967-2188). Statements of policy and interpretations not published in the FEDERAL REGISTER, administrative staff manuals and instructions to staff that affect a member of the public, and any other materials required to be made available for public inspection and copying by 5 U.S.C. 552(a)(2), and indices thereto, are made available for such purposes at the Office of Public Affairs, Maritime Administration, Department of Commerce, Room 4893, 14th Street and Constitution Avenue NW., Washington, D.C. 20235 (Telephone: Area Code 202, 967-2746). Rules prescribing public use of this facility are contained in Part 380, Title 46, Code of Federal Regulations, and may also be obtained from the Office of Public Affairs.

G. *Inspection of bureau records.* Rules for persons desiring, pursuant to 5 U.S.C. 552(a)(3), to inspect records of the Maritime Administration which are not available to the public as part of the regular public information services of the Maritime Administration, are contained in Part 380, Title 46, Code of Federal Regulations. Application forms and instructions are available from the several region offices at the addresses given in section D and the Office of Public Affairs, Maritime Administration, Department of Commerce, Room 4893, 14th Street and Constitution Avenue NW., Washington, D.C. 20235 (Telephone: Area Code 202, 967-2746.).

A. E. GIBSON,
Maritime Administrator,
Maritime Administration.

JULY 31, 1970.

[F.R. Doc. 70-10773; Filed, Aug. 17, 1970; 8:47 a.m.]

[Dept. Organization Order 15-4]

OFFICE OF POLICY DEVELOPMENT

Responsibilities

The following order was issued by the Secretary of Commerce effective on August 5, 1970. This material supersedes the material appearing at 34 F.R. 19828 of December 18, 1969.

SECTION 1. *Purpose.* a. This order prescribes the responsibilities of the Office of Policy Development in the Office of the Secretary.

b. This revision of the order assigns to the Office of Policy Development the responsibilities for labor-management matters heretofore vested in the Business and Defense Services Administration.

SEC. 2. *General.* .01 The Office of Policy Development is continued as a departmental office. It shall be headed by a Special Assistant to the Secretary for Policy Development who shall report and be responsible to the Secretary of Commerce.

.02 The functions of the Business and Defense Services Administration consisting of developing and recommending positions of the Department on labor-management problems affecting American business and industry are hereby transferred to the Office of Policy Development, together with the funds, personnel, property and records directly associated with those functions.

SEC. 3. *Functions.* The Office of Policy Development shall serve as the special problem solving and conceptual group on policy development matters of direct concern to the Secretary. In this capacity, the Office shall:

a. Conduct studies or evaluate matters having a vital impact on the Department's mission, objectives and accomplishments, such analyses to be carried out in the light of special concerns or interests expressed by the Secretary;

b. Develop proposals for the consideration of the Secretary with respect to the future role of the Department in establishing national policies and in providing needed services in light of changing national needs;

c. Evaluate for the Secretary the merits of existing and proposed programs of the Department;

d. Analyze at the Secretary's request, the potential effect upon the Department and its programs of outside events, trends, proposals and other developments;

e. Perform studies and make policy recommendations to the Secretary on domestic and international labor-management relations issues, and participate, as appropriate, in conferences and meetings relating thereto;

f. Organize and monitor a system of periodic, evaluative briefings of the Secretary by key officials of the Department on the status of achievement of fundamental program objectives, such briefings to highlight policy, substantive and managerial problems that may exist as well as possible solutions and courses of corrective action that may be indicated.

g. As determined in consultation with the Assistant Secretary for Administration, undertake analyses of selected program issues from among those identified under the Department's PPB system, and/or otherwise participate in the resolution of such issues, including the discussion thereon with the Office of Management and Budget; as assigned, organize and direct or monitor studies of such matters through in-house groups, or formulate specifications for and monitor contract studies dealing with these problems;

h. Participate in the development or review of legislative proposals having a major impact on Commerce mission, objectives and programs;

i. At the request of the Assistant Secretary for Administration, participate in formulating overall allocations of the Department's resources, and review and comment on significant program and budget plans;

j. As requested by the Secretary, review reports and recommendations submitted to the Secretary and perform other related staff work; and

k. Perform other related duties as assigned by the Secretary.

SEC. 4. *Saving provision.* Department Organization Orders 40-1A and 40-1B (formerly DO's 152-A and 152-B, respectively) pertaining to the Business and Defense Services Administration are hereby constructively amended to reflect the actions of this order.

Issued: August 5, 1970.

Effective date: August 5, 1970.

LARRY A. JOBE,
Assistant Secretary
for Administration.

[F.R. Doc. 70-10772; Filed, Aug. 17, 1970; 8:47 a.m.]

FEDERAL POWER COMMISSION

[Docket No. RI71-99 etc.]

MAGUIRE OIL CO. ET AL.

Order Providing for Hearings on and Suspension of Proposed Changes in Rates [1]

AUGUST 6, 1970.

The respondents named herein have filed proposed increased 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.

(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 22, 1970.

By the Commission.

[SEAL] GORDON M. GRANT,
Secretary.

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

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 subject to refund in dockets Nos.
									Rate in effect	Proposed increased rate	
RI71-99	Maguire Oil Co.	11	3	Natural Gas Pipeline Co. of America (Ann-Mag Field, Brooks County, Tex., RR. District 4).	$6,500	7-13-70	8-13-70	1-13-71	16.0	17.0	
RI71-100	Cleary Petroleum Co.	1	1	Cities Service Gas Co. (Knowles Area, Beaver County, Okla., Panhandle Area).	1,250	7-10-70	8-10-70	1-10-71	[1] [2] 17.0	[1] [3] 18.0	
	do	9	3	Cities Service Gas Co. (Mocane Field, Beaver County, Okla., Panhandle Area).	3,500	7-10-70	8-10-70	1-10-71	[1] [3] 17.0	[1] [3] 18.0	RI65-612.
	do	13	2	Cities Service Gas Co. (Knowles Gas Area, Beaver County, Okla., Panhandle Area).	2,500	7-10-70	8-10-70	1-10-71	[1] [3] 17.0	[1] [3] 18.0	RI65-612.
	do	22	2	do	3,500	7-10-70	8-10-70	1-10-71	[1] [3] 17.0	[1] [3] 18.0	
RI71-101	Lubell Oil Co.	1	6	Arkansas Louisiana Gas Co. (Arpelar Area (South Pine Hollow), Pittsburgh County, Okla., Other Area).	3,559	7-13-70	8-13-70	1-13-71	15.0	16.0	
RI71-102	Continental Oil Co.	196	6	Michigan Wisconsin Pipe Line Co. (Laverne Field, Harper and Woodward Counties, Okla., Panhandle Area).	950	7-10-70	8-10-70	1-10-71	[4] 19.515	[4] 22.015	RI68-153.
RI71-103	Sun Oil Co.	191	3	Panhandle Eastern Pipe Line Co.) Northwest Eva Field, Texas County, Okla., Panhandle Area).	660	7-13-70	9-1-70	2-1-71	[5] 16.015	[5] 17.015	RI68-43.
	do	233	3	Northern Natural Gas Co. (Beaver Area, Beaver County, Okla., Panhandle Area).	3,000	7-13-70	9-1-70	2-1-71	[5] 17.015	[5] 18.015	RI68-390.
	do	389	4	Cities Service Gas Co. (Hugoton Field, Texas County, Okla., Panhandle Area).	250	7-13-70	9-1-70	2-1-71	[5] 12.0	[5] 13.0	RI68-444.
	do	428	3	Northern Natural Gas Co. (Morrison Ranch Field, Roberts County, Tex., RR. District No. 10).	3,693	7-13-70	9-1-70	2-1-71	[5] 17.06375	[5] 18.0675	RI70-410.
	do	484	5	Michigan Wisconsin Pipe Line Co. (Laverne Field, Harper County, Okla., Panhandle Area).	7,021	7-13-70	8-13-70	1-13-71	[6] 17.85	[6] 22.865	
RI71-104	Mobil Oil Corp.	82	23	Texas Eastern Transmission Corp. (Delhi Field, Richland Parish, North Louisiana).	159	7-10-70	8-10-70	1-10-71	[7] [8] 17.10	[8] 17.8519	
	do	182	2	Texas Gas Transmission Corp. (East Lisbon Field, Claiborne Field, North Louisiana).		7-13-70	8-13-70	1-13-71	[9] [10] 18.25	[9] [10] 19.75	
						7-13-70	8-13-70	1-13-71	[9] [11] 17.375	[9] [11] 18.875	
	do	223	5	Panhandle Eastern Pipe Line Co. (Northeast Carthage Field, Texas County, Okla., Panhandle Area).	70	7-13-70	8-13-70	1-13-71	16.01	17.01	RI68-569.
	do	245	3	Natural Gas Pipeline Co. of America (West Panhandle Field, Carson County, Tex., RR. District No. 10).	177	7-13-70	8-24-70	1-24-71	[5] 13.2	[5] 14.2533	
	do	281	[12] 11	Northern Natural Gas Co. (Hugoton Field, Stevens and Morton Counties, Kans.).		7-13-70	8-13-70	1-13-71	[5] 14.0	[5] 15.0	RI67-275.
	do	282	[12] 16	Northern Natural Gas Co. (Hugoton Field, Stevens County, Kans.).		7-13-70	8-13-70	1-13-71	[5] 14.0	[5] 15.0	RI67-275.
RI71-105	Prudential Minerals Corp.	1	8	Natural Gas Pipeline Co. of America (Boonsville Field, Wise County, Tex., RR. District No. 9).	9,052	7-14-70	8-14-70	1-14-71	[4] 14.5499	[4] 17.3138	RI70-389.
	do	2	4	do	4,842	7-14-70	8-14-70	1-14-71	[4] 14.5499	[4] 17.3138	RI70-389.
	do	3	4	do	945	7-14-70	8-14-70	1-14-71	[4] 14.5499	[4] 17.3138	RI70-389.
	do	4	4	do	796	7-14-70	8-14-70	1-14-71	[4] 14.5499	[4] 17.3138	RI70-389.
	do	5	4	do	2,570	7-14-70	8-14-70	1-14-71	[4] 14.5499	[4] 17.3138	RI70-390.
	do	6	5	Natural Gas Pipeline Co. of America (Wise County Area, Wise County, Tex., RR. District No. 9).	29,916	7-14-70	8-14-70	1-14-71	[4] 14.5499	[4] 17.3138	RI70-568.
	do	7	4	do	993	7-14-70	8-14-70	1-14-71	[4] 16.806	[4] 17.8408	RI67-299.
	do	8	2	do	2,026	7-14-70	8-14-70	1-14-71	[4] 14.5	[4] 17.3138	
RI71-106	Texaco Inc.	255	4	Cities Service Gas Co. (Guymon Hugoton Field, Texas County, Okla., Panhandle Area).	3,137	7-16-70	9-1-70	2-1-71	[5] 12.0	[5] 13.0	
RI71-107	Sun Oil Co.	483	3	Panhandle Eastern Pipe Line Co. (Northwest Avard Field, Woods County, Okla., Other Area).	55	7-17-70	8-17-70	1-17-71	[4] 15.13	[4] 18.145	
RI71-108	Mobil Oil Corp.	190	6	Lone Star Gas Co. (Big Mineral Creek Field, Grayson County, Tex., RR. District No. 9).	182	7-10-70	8-10-70	1-10-71	16.56	17.64	RI68-28.
	do	373	2	Cities Service Gas Co. (northwest Lovedale Field, Harper County, Okla., Panhandle Area).	33	7-13-70	8-13-70	1-13-71	[13] 17.0	[13] 18.0	
	do	428	4	Texas Gas Transmission Corp. (Calhoun Field, Quachita Parish, North Louisiana).	131	7-10-70	8-10-70	1-10-71	[7] [13] 19.6	[7] [13] 19.75	RI70-414.
	do	410	2	Arkansas Louisiana Gas Co. (Chimsville Field, Logan County, Ark.).	91	7-13-79	8-13-70	1-13-71	15.0	16.0	
RI71-109	Northern Natural Gas Production Co.	2	112	Northern Natural Gas Co. (Hugoton Field, Stevens County and others, Kansas).	(14)	7-13-70	8-13-70	1-13-71	[14] 14.0	[14] 15.0	RI68-442.
RI71-110	Mobil Oil Corp.	304	9	Cities Service Gas Co. (Guymon-Hugoton (Deep) Field, Texas County, Okla., Panhandle Area).	17,016	7-13-70	8-13-70	1-13-71	[13] 19.5	[13] [15] 20.515	RI70-1176.
					19,205				[13] 19.5	[13] [16] 21.515	RI70-1176.

See footnotes at end of table.

APPENDIX A—Continued

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 subject to refund in dockets Nos.
									Rate in effect	Proposed increased rate	
RI71-111	Pennzoil Producing Co	275	2	Texas Gas Transmission Corp. (Welcome Field, Columbia County, Ark.).	$25,122	7-13-70	8-13-70	1-13-71	[7] 17.35	[7] 20.0	
RI71-112	Graham-Michaelis Drilling Co.	36	2	Colorado Interstate Gas Co. (East Sparks Field, Stanton County, Kans.).	2,876	7-13-70	8-13-70	1-13-71	16.0	18.0	
RI71-113	Pan American Petroleum Corp.	545	4	Northern Natural Gas Co. (42-Township Area, Ellis County, Okla., Panhandle Area).	14	7-13-70	8-13-70	1-13-71	19.89	21.07556	
	do	330	[13] 41	Michigan Wisconsin Pipe Line Co. (Woodward Gas Area, Major County, Okla., Other Area).	1,788	7-13-70	8-13-70	1-13-71	16.0	20.51556	
RI71-114	Glen E. Jeffery	1	4	Northern Natural Gas Co. (McKinney-Finch Field, Meade County, Kans.).	96	7-13-70	8-13-70	1-13-71	[17] 16.0	[17] 17.0	
RI71-115	Cotton Petroleum Corp	2	12	Transwestern Pipeline Co. (Piper Unit, Bradford Cleveland Field, Lipscomb County, Tex., RR. District No. 10).	5,400	7-17-70	8-17-70	1-17-71	[10] 19.5	[10] 21.0	
RI71-116	Getty Oil Co	97	7	Transwestern Pipeline Co. (South Goodwin Field, Beaver County, Okla., Panhandle Area).	1,660	7-17-71	8-17-70	1-17-71	[10] 17.1	[10] 18.5	RI69-624.
	do	127	4	Arkansas Louisiana Gas Co. (Burmah Field, Custer County, Okla., Other Area).	202	7-17-70	8-17-70	1-17-71	17.1	18.0	RI69-646.
	do	145	10	Northern Natural Gas Co. (Anadarko Basin Area, Ellis and Woodward Counties, Okla., Panhandle Area and Dewey County, Okla., Other Area).	6,854	7-17-70	8-17-70	1-17-71	[10] 17.1	[10] 18.0	RI69-647.
RI71-117	Sun Oil Co	256	2	NI-Gas Supply, Inc. (East Elk City Field, Beckham County, Okla., Other Area).	54,000	7-7-70	8-7-70	11-26-70	[10] 15.0	[10] 21.0	
RI71-118	PetroDynamics, Inc	28	3	Natural Gas Pipeline Co. of America (West Panhandle Field, Carson County, Tex., RR. District No. 10).	9,598	7-13-70	8-13-70	1-13-71	[10] 13.2	[10] 14.25	
RI71-119	Skelly Oil Co	133	8	Northern Natural Gas Co. (Finney County, Kans.).	410	7-17-70	8-17-70	1-17-71	[10] 13.0	[10] 14.0	RI69-104.
	do	206	1	Panhandle Eastern Pipe Line Co. (Cimarron County, Okla., Panhandle Area).	109	7-16-70	8-16-70	1-16-71	[10] 17.0	[10] 18.0	
RI71-120	Mobil Oil Corp	199	5	El Paso Natural Gas Co. (Blanco Field, San Juan County, N. Mex., San Juan Basin).	77	7-10-70	8-10-70	1-10-71	[7] 12.0433	[7] [21] 13.2175	
	do	280	10	El Paso Natural Gas Co. (Pegasus Field, Midland and Upton Counties, Tex., RR. District Nos. 7-C and 8, Permian Basin).	(4)	7-13-70	8-13-70	1-13-71	15.33	19.3278	
	do	336	4	El Paso Natural Gas Co. (West Jal Strawn Field, Lea County, N. Mex., Permian Basin).	22	7-10-70	8-10-70	1-10-71	16.58	[21] 17.7929	
	do	400	2	Natural Gas Pipeline Co. of America (Cemetary Field, Eddy County, N. Mex.).	1,967	7-13-70	8-24-70	1-24-71	[22] 16.0	[22] 17.0	
RI71-121	Hunt Oil Co	65	[23] 7	El Paso Natural Gas Co. (Brown-Bassett Field, Crockett County, Tex., RR. District No. 7-C, Permian Basin).	3,337	7-9-70	8-9-70	1-9-71	9.32	10.9884	
RI71-122	Sohio Petroleum Co	64	14	El Paso Natural Gas Co. (Various Fields, Lea County, N. Mex., Permian Basin Area).	3,127	7-13-70	8-13-70	1-13-71	[24] [25] 16.8793	[24] [25] 17.9023	RI69-60.
RI71-123	Northern Natural Gas Producing Co.	32	4	Southern Union Gathering Co. (Basin Dakota Field, San Juan County, N. Mex., San Juan Basin).	99	7-10-70	8-10-70	1-10-71	[7] 13.0	[7] [24] 15.2510	
RI71-124	Pan American Petroleum Corp.	199	[26] 19	El Paso Natural Gas Co. (Basin Dakota Field, San Juan and Rio Arriba Counties, N. Mex., San Juan Basin).	4,108	7-13-70	8-13-70	1-13-71	[7] 13.0	[7] [24] [27] 14.2678	
RI71-125	Getty Oil Co	160	3	Natural Gas Pipeline Co. of America (Crittendon Field, Loving and Winkler Counties, Tex., RR. District No. 8, Permian Basin Area).	13,370	7-10-70	8-10-70	1-10-71	17.0193	[28] 17.5656	RI70-658.
RI71-126	Midhurst Oil Corp	[29]	[30]	El Paso Natural Gas Co. and Pecos Co. (Jack Herbert Field, Upton County, Tex., RR. District 7-C, Permian Basin).	44	7-13-70	8-13-70	1-13-71	14.5	16.276	
	do	[30]	[30]	El Paso Natural Gas Co. and Pecos Co. (Amacker-Tipett Field, Upton County, Tex., RR. District 7-C, Permian Basin).	36	7-13-70	8-13-70	1-13-71	14.5	16.276	
	do	[31]	[31]	El Paso Natural Gas Co. (Amacker-Tippett Field, Upton County, Tex., RR District No. 7-C, Permian Basin Area).	302	7-13-70	8-13-70	1-13-71	14.5	16.276	

* Except where otherwise indicated, pressure base is 14.65 p.s.i.a.
[1] Subject to downward B.t.u. adjustment.
[2] Includes 3 cents paid by buyer to seller for dehydrating, compressing, gathering, and delivering gas.
[3] Includes 1 cent paid by buyer to seller for dehydrating, compressing, gathering, and delivering gas.
[4] Subject to upward and downward B.t.u. adjustment.
[5] Subject to downward B.t.u. adjustment.
[6] Includes 0.85-cent upward B.t.u. adjustment. Base rate subject to upward and downward B.t.u. adjustment.
[7] 15.025 p.s.i.a.
[8] Buyer deducts a 1.35-cent handling charge from the rate shown.
[9] Subject to downward B.t.u. adjustment.
[10] High pressure gas.
[11] Low pressure (less than 50 p.s.i.g. wellhead pressure). Includes 0.875-cent tax reimbursement.
[12] Applicable to production from the base of the Wolfcamp to the top of the Morrow Sand.
[13] Subject to downward B.t.u. adjustment.
[14] Applicable only to production from the base of the Wolfcamp to the top of the Morrow Sand.

[16] Includes 1-cent gathering and delivery charge paid by buyer for nonassociated gas.
[17] Includes 2-cent gathering and delivery charge paid by buyer for associated gas.
[17] Subject to downward B.t.u. adjustment.
[18] Applicable to acreage added by Supplement No. 40.
[19] Subject to a downward B.t.u. adjustment.
[20] Subject to downward B.t.u. adjustment.
[21] Includes partial reimbursement of the full 2.55 percent New Mexico Emergency School Tax.
[22] Subject to upward adjustment for gas containing 1,026 B.t.u. per cubic foot.
[23] For Ellenburger gas produced from the Mitchell No. 1-5 well dedicated to the contract by Supplement No. 5.
[24] Includes partial reimbursement for full 2.55 percent New Mexico Emergency School Tax.
[25] Subject to a deduction by buyer of 0.4466 cent per Mcf for gas delivered below 600 p.s.i.g.
[26] Applicable only to acreage added by Supplement No. 18.
[27] Excludes 1 cent per Mcf minimum guarantee for liquids.
[28] Subject to upward adjustment for gas containing 1,079 B.t.u. per cubic foot.
[29] No rate schedule on file—pertains to contract dated Aug. 24, 1954. Applicant issued small producer certificate in Docket No. CS66-132.
[30] No rate schedule on file—pertains to contract dated Nov. 21, 1956. Applicant issued small producer certificate in Docket No. CS66-132.
[31] Sale covered under Rate Schedule No. 4 (contract dated Nov. 21, 1956); however, by Commission letter dated June 5, 1970, such sale is now considered covered under applicant's small producer certificate issued in Docket No. CS66-132.

Maguire, Pennzoil, Graham-Michaelis, Jeffery, Cotton, and Hunt request effective dates for which adequate notice was not given. Good cause has not been shown for waiving the 30-day statutory notice period and such requests are denied.

There is no formal increased rate ceiling in the Commission's policy statement for sales from Arkansas. However, the sale by Mobil under its FPC Gas Rate Schedule No. 410 is adjacent to the Oklahoma Other Area which has an increased rate ceiling of 11 cents per Mcf. The sale by Pennzoil under its FPC Gas Rate Schedule No. 275 is adjacent to North Louisiana which has an increased rate ceiling of 14 cents, exclusive of tax reimbursement. Applying the full Arkansas tax to the 14-cent base ceiling would result in a ceiling rate of 14.35 cents. In view of the foregoing, we shall suspend these rates for 5 months.

Sun's proposed increase under its FPC Gas Rate Schedule No. 256 relates to a sale to NI–Gas. NI–Gas resells the gas under its FPC Gas Rate Schedule Nos. 2 and 3 to Natural Gas Pipeline Co. of America. A proposed increase for the resale of this gas by NI–Gas to 21 cents is under suspension until November 26, 1970. Consequently, we believe the suspension period for Sun's filing should also expire on November 26, 1970.

As shown in the tables herein, some of the proposed increased rates include partial reimbursement for the full 2.55 percent New Mexico Emergency School tax. The buyers, El Paso and Southern Union, have protested the tax reimbursement part of these proposed rates. In view of the contractural problem presented, the hearings provided with respect to these increased rate filings shall concern themselves with the contractural basis for the filings as well as the statutory lawfullness of the proposed rates.[32]

All of the producers' proposed increased rates and charges, except as previously noted, exceed the applicable area increased rate ceilings set forth in the Commission's Statement of General Policy No. 61–1, as amended (18 CFR 2.56).

[F.R. Doc. 70–10675; Filed, Aug. 17, 1970; 8:45 a.m.]

[Docket No. G–3573 etc.]

SOUTHERN PETROLEUM EXPLORATION, INC., ET AL.

Notice of Applications for Certificates, Abandonment of Service and Petitions To Amend Certificates [1]

AUGUST 7, 1970.

Take notice that each of the applicants listed herein has filed an application or petition pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before September 4, 1970, file with the Federal Power Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules.

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

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

GORDON M. GRANT,
Secretary.

Docket No. and date filed	Applicant	Purchaser and location	Price per Mcf	Pressure base
G–3573 ..... C 6–22–70	Southern Petroleum Exploration, Inc., Post Office Box 192, Sistersville, W. Va. 26175.	El Paso Natural Gas Co., Chacra Formation, Rio Arriba County, N. Mex.	12.0	15.025
G–7241 ..... C 7–20–70	Aztec Oil & Gas Co. (Operator) et al., 2000 First National Bank Bldg., Dallas, Tex. 75202.	El Paso Natural Gas Co., Aztec Pictured Cliffs Field, San Juan County, N. Mex.	13.0	15.025
G–20472 ..... 6–22–70 [1]	Howell Drilling, Inc. (Operator) et al. (formerly H. H. Howell (Operator) et al.), Milam Bldg., San Antonio, Tex. 78205.	United Gas Pipe Line Co., South El Toro Field, Jackson County, Tex.	15.2295	14.65
CI60–299 ..... 6–22–70 [1]	do	United Gas Pipe Line Co., Gabrysch Field, Jackson County, Tex.	[2] 15.2295	14.65
CI60–323 ..... E 6–8–70	Gulf Energy & Development Corp. (Operator) et al.[4] (successor to Jonnell Gas, Inc. (Operator) et al.), 508 Broadway National Bank Bldg., San Antonio, Tex. 78209.	Tennessee Gas Pipeline Co., a division of Tenneco Inc., Lopeno Field, Zapata County, Tex.	[6] 14.6 [7] 15.6	14.65
CI63–334 ..... E 7–13–70	Robert L. Adams (successor to Tenneco Oil Co. (Operator) et al.), Post Office Box 2041, Corpus Christi, Tex. 78403.	South Texas Natural Gas Gathering Co., Hubert Gas Unit, Kleberg County, Tex.	[8] 16.06	14.65
CI63–925 ..... E 6–8–70	Gulf Energy & Development Corp. (Operator) et al.[4] (successor to Jonnell Gas, Inc. (Operator) et al.	Tennessee Gas Pipeline Co., a division of Tenneco Inc., South Escabas (Wilcox) Field, Zapata County, Tex.	[6] [9] 15.6	14.65
CI64–431 ..... E 4–8–70	Cecil Speck et al. (successor to Ed Morris, agent for Morris Drilling Co.), Albany, Ky. 42602.	Consolidated Gas Supply Corp., Murphy District, Ritchie County W. Va.	25.0	15.325
CI64–841 ..... C&D 7–20–70	St. Clair Oil Co., 219 East Main St., St. Clairsville, Ohio 43950.	Equitable Gas Co., acreage in Harrison, Lewis and Upshur Counties, W. Va.	27.0	15.325
CI64–1557 ..... 6–22–70 [1]	Howell Drilling, Inc. (Operator) et al. (formerly H. H. Howell (Operator) et al.).	Almos Gas Gathering Co., Linke Field, Bee County, Tex.	13.0	14.65
CI65–642 ..... E 7–16–70	Jack Johnson (successor to Dabney Crump et al.), Apartment No. 401, 200 Maple Avenue, Falls Church, Va. 22046.	Consolidated Gas Supply Corp., Murphy District, Ritchie County, W. Va.	25.0	15.325
CI65–931 ..... 6–22–70 [1]	Howell Drilling, Inc. (Operator), et al. (formerly H. H. Howell (Operator) et al.).	United Gas Pipe Line Co., Hornbuckle Field, Jackson County, Tex.	[10] 14.17639	14.65

Filing code: A—Initial service.
B—Abandonment.
C—Amendment to add acreage.
D—Amendment to delete acreage.
E—Succession.
F—Partial succession.

See footnotes at end of table.

[32] The Commission may not be required to decide this contract issue in view of pending court litigation. See order issued Mar. 24, 1969, in Pan American Petroleum Corp., Docket No. RI69–244.

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

Docket No. and date filed	Applicant	Purchaser and location	Price per Mcf	Pressure base
CI66-883 [11] E 6-8-70	Gulf Energy & Development Corp. [4] (successor to Jonnell Gas, Inc.).	Tennessee Gas Pipeline Co., a division of Tenneco Inc., Northeast Lopeno Field, Zapata County, Tex.	[5 6] 14.6 [6 7] 15.6	14.65
CI67-232 E 7-13-70	King Oil Co. (Operator) et al. (successor to Eagle Oil Co., Inc. (Operator), et al.), 35 East 18th Street, Tulsa, Okla. 74119.	Northern Natural Gas Co., acreage in Edwards County, Kans.	13.5	14.65
CI67-1552 E 7-13-70	do	Panhandle Eastern Pipe Line Co., Carver Robbins Field, Pratt County, Kans.	15.0	14.65
CI68-276 C 7-13-70	Jerome P. McHugh et al. 930 Petroleum Club Bldg., Denver, Colo. 80202.	El Paso Natural Gas Co., Basin Dakota Field, San Juan County, N. Mex.	[12] 13.0	15.025
CI68-1100 [13] B 7-20-70	The Superior Oil Co., Post Office Box 1521, Houston, Tex. 77001.	Tennessee Gas Pipeline Co., a division of Tenneco Inc., Southwest Lake Arthur Field, Cameron and Vermilion Parishes, La.	Depleted	
CI69-1216 C 7-17-70	J. C. Baker & Son, Inc., Drawer N, Gassaway, W. Va. 26624.	Equitable Gas Co., Collins Settlement District, Lewis County, W. Va.	28.0	15.325
CI70-390 C 7-22-70	The Waverly Oil Works Co., 1627 Bryn Mawr Drive, Newark, Ohio 43055.	Equitable Gas Co., Otter District, Braxton County, W. Va.	28.0	15.325
CI70-556 E 7-20-70	Western States Producing Co., Operator (successor to Southwestern Natural Gas, Inc.), 900 Southwest Bldg., Midland, Tex. 79701.	Natural Gas Pipeline Co. of America, Indian Basin Area, Eddy County, N. Mex.	[14] 16.5	14.65
CI70-831 C 7-13-70	Hill Oil & Gas Co., c/o Gordon L. Llewellyn, Attorney, 1100 Adolphus Tower Bldg., Dallas, Tex. 75202.	Panhandle Eastern Pipe Line Co., Mocane Tonkawa and Mocane Chester Fields, Beaver County; Avard Field, Woods County; and Gage Northeast Field, Ellis County, Okla.	[14] 18.0	14.65
CI70-1005 C 7-17-70	Royal Oil and Gas Corp., Clark Bldg., Indiana, Pa. 15701.	Consolidated Gas Supply Corp., Center District, Gilmer County, W. Va.	27.0	15.325
CI71-18 (CI64-679) F 7-6-70	Anadarko Production Co. (successor to LVO Corp.,[15]). Post Office Box 9317, Fort Worth, Tex. 76107.	Kansas-Nebraska Natural Gas Co., Inc., Bradshaw Field, Hamilton County, Kans.	[16] 13.5	14.65
CI71-41 A 7-16-70	Alert Oil & Gas Company, Inc., Post Office Box 2256, Pikeville, Ky. 41501.	United Fuel Gas Co., acreage in Pike County, Ky.	18.0	15.325
CI71-42 B 7-20-70	Marathon Oil Co., 539 South Main St., Findlay, Ohio 45840.	Cities Service Gas Co., Dietz Unit, Grant County, Okla.	[17]	
CI71-43 A 7-20-70	Walter Duncan (Operator) et al., 100 Park Ave., Oklahoma City, Okla. 73102.	Northern Natural Gas Co., Milder Field, Ellis County, Okla.	[18] 17.0	14.65
CI71-44 A 7-20-70	Walter Duncan	Michigan Wisconsin Pipe Line Co., Woodward Area, Major County, Okla.	[14] 20.0	14.65
CI71-48 A 7-21-70	Phillips Petroleum Co., Bartlesville, Okla. 74004.	Transcontinental Gas Pipe Line Corp., Crowley Field, Acadia Parish, La.	20.0	15.025
CI71-50 A 7-20-70	Gulf Oil Corp., Post Office Box 1589, Tulsa, Okla. 74102.	Plaquemines Oil and Gas Co., Inc., Potash (West Bank) Field, Plaquemines Parish, La.	[19] 18.50	15.025
CI71-51 (CI60-634) F 7-20-70	Texas Oil & Gas Corp. (Operator) (successor to Continental Oil Co.), 2700 Fidelity Union Tower, Dallas, Tex. 75201.	Michigan Wisconsin Pipe Line Co.), Laverne Field, Harper County, Okla.	[20] 19.515	14.65
CI71-53 A 7-24-70	Diamond Shamrock Corp., Post Office Box 631, Amarillo, Tex. 79105.	Northern Natural Gas Co., acreage in Ellis County, Okla.	[14] 17.0	14.65
CI71-54 (G-5337) F 7-20-70	White Shield Oil and Gas Corp. (Operator) et al. (successor to Skelly Oil Co. (Operator) et al.) c/o Robert E. McCormack, attorney, Suite 102, 5963 East 31st St., Tulsa, Okla. 74135.	Texas Gas Transmission Corp., Carthage Field, Panola County, Tex.	[21] 15.06	14.65
CI71-55 A 7-24-70	The Superior Oil Co., Post Office Box 1521, Houston, Tex. 77001.	Pacific Lighting Service Co., Federal Lease No. OCS-P-0240, Parcel 401, Offshore Santa Barbara County, Calif.	27.9	14.73
CI71-56 A 7-27-70	Hill Oil & Gas Co. et al.	Panhandle Eastern Pipe Line Co., Mocane Field, Beaver County, Okla.	[14] 20.0	14.65
CI71-57 A 7-27-70	An-Son Corp., 3814 North Santa Fe, Oklahoma City, Okla. 73118.	Arkansas Louisiana Gas Co., Star Field, Blaine County, Okla.	[22] 20.0	14.65
CI71-58 (CS66-65) F 7-20-70	Clinton Oil Co. (successor to John L. Cox), 217 North Water St., Wichita, Kans. 67202.	El Paso Natural Gas Co., Spraberry Trend Area Field, Reagan County, Tex.	14.5	14.65
CI71-59 (CS66-65) F 7-20-70	do	do	14.5	14.65
CI71-60 B 7-27-70	J. C. Trahan, Drilling Contractor, Inc. (Operator) et al., 2625 Line Ave., Shreveport, La., 71104.	Lone Star Gas Co., Pone Field, Rusk County, Tex.	[23]	
CI71-61 B 7-27-70	Sun Oil Co., 1608 Walnut St., Philadelphia, Pa. 19103.	United Gas Pipe Line Co., Hordes Creek Field, Goliad County, Tex.	Depleted	
CI71-62 B 7-27-70	do	Transcontinental Gas Pipe Line Corp., Shield Field, Nueces County, Tex.	Depleted	
CI71-63 B 7-27-70	Humble Oil & Refining Co., Post Office Box 2180, Houston, Tex. 77001.	Lone Star Gas Co., Red Springs Field, Smith County, Tex.	[23]	
CI71-64 A 7-27-70	Macdonald Oil Corp., (Operator) et al., 4805 Republic National Bank Tower, Dallas, Tex. 75201.	Panhandle Eastern Pipe Line Co., Northwest Keyes Field, Cimarron County, Okla., and Baca County, Colo.	20.0	14.65

See footnotes at end of table.

[1] Amendment to certificate filed to reflect change in corporate name.
[2] Rate in effect subject to refund in Docket No. RI70-740; rate of 17.2601 cents per Mcf suspended in Docket No. RI70-1068.
[3] Rate in effect subject to refund in Docket No. RI70-740; rate of 17.2601 cents per Mcf suspended in Docket No. RI70-1520.
[4] Formerly Gulf Resources, Inc.
[5] For sales made from acreage dedicated under contracts or amendments dated prior to Sept. 28, 1960. An increase in rate to 14.64350 cents per Mcf is suspended in Docket No. RI70-739, but not yet made effective.
[6] Settlement rate approved by Commission letter order dated Mar. 19, 1969 in Dockets Nos. CI60-323 et al.
[7] For sales made from acreage dedicated under contracts or amendments dated on or after Sept. 28, 1960. An increase in rate to 15.64725 cents per Mcf is suspended in Docket No. RI70-739, but not yet made effective.
[8] Rate in effect subject to refund in Docket No. RI70-624.
[9] An increase in rate to 15.65475 cents per Mcf is suspended in Docket No. RI70-739, but not yet made effective.
[10] Rate suspended in Docket No. RI65-591.
[11] No permanent certificate issued—temporary authorization only granted.
[12] By letter filed July 23, 1970, applicant agreed to accept permanent authorization at a price of 13 cents per Mcf in lieu of 14 cents as originally proposed in application.
[13] Original application in Docket No. CI68-1100 sought certificate of public convenience and necessity. Applicant now proposes to abandon service previously commenced pursuant to temporary authorization.
[14] Subject to upward and downward B.t.u. adjustment.
[15] Formerly Livingston Oil Co.
[16] Subject to refund in Docket No. RI70-1717.
[17] Well is no longer capable of delivering into buyer's line.
[18] Contract provides for rate of 20 cents per Mcf; however, applicant agrees to accept certificate at an initial rate of 17 cents per Mcf, plus B.t.u. adjustment.
[19] Includes 1.5 cents Mcf tax reimbursement.
[20] Rate in effect subject to refund in Docket No. RI68-153. Subject to upward and downward B.t.u. adjustment.
[21] Rate in effect subject to refund in Docket No. RI70-691.
[22] Subject to reduction for compression, if required.
[23] Purchaser proposes to remove its pipeline from interstate commerce.

[F.R. Doc. 70-10678; Filed, Aug. 17, 1970; 8:45 a.m.]

[Docket No. CP71-19]

CITIES SERVICE GAS CO.

Notice of Application

AUGUST 12, 1970.

Take notice that on July 27, 1970, Cities Service Gas Co. (applicant), Post Office Box 25128, Oklahoma City, Okla. 73125, filed in Docket No. CP71-19 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the continued operation of existing facilities and the sale of natural gas to Union Gas System, Inc. (Union), for resale and distribution in and about the village of Jarbalo, Kans., all as more fully set forth

in the application which is on file with the Commission and open to public inspection.

The application states that Union is purchasing and will operate the gas distribution system which serves only the residents of the single community and the adjoining area. The system was owned by Mr. George Sheppard and has been receiving gas from applicant under a gas storage lease agreement dated November 19, 1954. Under this agreement applicant was to supply Mr. Sheppard with an amount of gas equal to his then existing gas reserves in the McClouth Storage Field for distribution in and about the village of Jarbalo. Applicant states that these reserves have now become depleted and applicant seeks authority to continue the delivery of gas to Union, as successor to Mr. Sheppard, for resale and distribution in this community. Applicant proposes to make the sale under its F–2, C–2 and I–2 Rate Schedules. No new facilities are proposed to be constructed to enable applicant to make this sale.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 1, 1970, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

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

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

KENNETH F. PLUMB,
Acting Secretary.

[F.R. Doc. 70–10763; Filed, Aug. 17, 1970; 8:47 a.m.]

[Docket No. CP71–22]

COLORADO INTERSTATE GAS CO.

Notice of Application

AUGUST 11, 1970.

Take notice that on August 3, 1970, Colorado Interstate Gas Co., a division of Colorado Interstate Corp. (applicant), Post Office Box 1087, Colorado Springs, Colo. 80901, filed in Docket No. CP71–22 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of meter facilities and the sale for resale of natural gas to Western Slope Gas Co. (Western Slope), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant requests authority to construct and operate a new delivery point near Ault, Colo., for service to Western Slope, an existing customer, in order to meet growth in its natural gas requirements. Western Slope has requested an increase in its contract demand by 21,665 Mcf of natural gas per day, of which 17,000 Mcf is requested for delivery at the new delivery point.

Applicant estimates that the cost of the new meter station will be $51,189, which will be financed from funds on hand, funds from operations, and short-term borrowing.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 1, 1970, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

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

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

KENNETH F. PLUMB,
Acting Secretary.

[F.R. Doc. 70–10735; Filed, Aug. 17, 1970; 8:45 a.m.]

[Docket No. CP70–183]

MICHIGAN WISCONSIN PIPE LINE CO.

Notice of Petition To Amend

AUGUST 11, 1970.

Take notice that on July 31, 1970, Michigan Wisconsin Pipe Line Co. (applicant), 1 Woodward Avenue, Detroit, Mich. 48226, filed in Docket No. CP69–71 a petition to amend the order of the Commission issuing a certificate of public convenience and necessity in said docket pursuant to section 7(c) of the Natural Gas Act on May 19, 1970, to permit applicant to change the location of the facilities authorized to be installed by said order, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Applicant states that since filing its application in this proceeding, applicant has determined that the location of the 37 miles of main-line loop authorized by the Commission's order should be as follows: (1) 9.6 miles on the suction side and 3.7 miles on the discharge side of the Sardis Compressor Station, and (2) 9.5 miles on the suction side and 14.2 miles on the discharge side of the Jasper Compressor Station.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 31, 1970, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

KENNETH F. PLUMB,
Acting Secretary.

[F.R. Doc. 70–10737; Filed, Aug. 17, 1970; 8:45 a.m.]

[Docket No. CP70–96]

OHIO FUEL GAS CO.

Notice of Petition To Amend; Correction

AUGUST 11, 1970.

In the Notice of Petition To Amend, issued July 30, 1970 and published in the

FEDERAL REGISTER August 6, 1970 (35 F.R. 12572), change filing date from "July 19, 1970" to "July 17, 1970". Change "105,800" to read "105,000". Delete period and add to sentence "and 3.9 miles of 16-inch O.D. transmission line in Miami County, Ohio, looping a section of 12-inch line."

KENNETH F. PLUMB,
Acting Secretary.

[F.R. Doc. 70-10736; Filed, Aug. 17, 1970; 8:45 a.m.]

[Docket No. CP71-26]

SOUTHERN UNION GATHERING CO.

Order Fixing Date for Prehearing Conference Prescribing Time Within Which To Intervene and Requiring Respondent To Show Cause Why It Should Not Be Classified as Class A Pipeline Company

AUGUST 11, 1970.

Southern Union Gathering Co. (Gathering Company) is a wholly owned subsidiary of Southern Union Gas Co. (Southern Union). Gathering Company commenced selling gas to El Paso Natural Gas Co. (El Paso) prior to the time that the Commission undertook the regulation of producers. Gathering Company was issued grandfather certificates on October 14, 1955, authorizing initial service to El Paso.[1] Since the aforementioned service began, El Paso's maximum daily demand under its contract with Gathering Company has steadily increased from 40,000 Mcf per day until it was recently set at 125,000 Mcf per day pursuant to Supplement No. 12 to Gathering Company's FPC Gas Rate Schedule No. 1.

Gathering Company is presently classified as an independent producer and is regulated under the Commission's regulations applicable to independent producers. The Commission has heretofore indicated to Gathering Company that it is of the belief that it may not be able to qualify as an "independent producer", as defined in § 154.91(a) of the regulations and should be classified as a class A pipeline.[2]

Gathering Company operates in excess of 330 miles of gathering lines in San Juan and Rio Arriba Counties, N. Mex. The size of these lines vary from 2 to 12 inches in diameter. There are several compressor stations on the system and compression is employed in connection with the deliveries of 125,000 Mcf that Gathering Company is required to make into the interstate pipeline of El Paso on a daily basis. The aforementioned volumes are sold to El Paso under a rate composed of two elements: (1) A gathering charge and (2) a charge for the gas itself. The gathering charge is made up of a commodity component of 2.5 cents per Mcf for gas delivered and a demand component of 58⅓ cents per month per Mcf of the effective contracted maximum daily demand. In addition to the aforementioned, Gathering Company also makes sales to El Paso under another contract which provides for a wellhead exchange of gas.[3] Under the exchange agreements, Gathering Company has historically delivered more gas than received and has been paid for the difference.

Gathering Company does not produce any of the volumes of natural gas that it transports through its gathering system. It purchases this gas from various producers in the area. It is therefore apparent that Gathering Company engages extensively in the transportation of natural gas throughout its vast gathering system. Additionally, El Paso's Form 2 for 1969 reflects that it made purchases of 52,713,388 Mcf from Gathering Company in that year.[4] It seems clear that Gathering Company derives sufficient annual revenues from its sale to El Paso to fall within the category of a class A pipeline company.

Section 154.91(a) of the Commission's regulations defines an independent producer as follows:

(a) *Definition.* An "independent producer" as that term is used in this part means any person as defined in the Natural Gas Act who is engaged in the production or gathering of natural gas and who sells gas in interstate commerce for resale, but who is not engaged in the transportation of natural gas (other than gathering) by pipeline in interstate commerce.

We shall in this order direct that Gathering Company be required to show cause in a formal hearing why it should not be classified as a class A pipeline company under the Commission's regulations. Since the parties may have different views concerning many of the specific areas of evidentiary proof that should be reflected in the record, a prehearing conference to resolve these issues prior to the formal hearing may prove to be beneficial.

The Commission finds:

It is necessary and proper in the public interest and to aid in the enforcement of the Natural Gas Act that the Commission issue an order to show cause requiring Southern Union Gathering Co. to show why it should not be classified as a class A pipeline under the Commission's regulations.

It is appropriate in the administration of the Natural Gas Act to provide for a prehearing conference in this proceeding.

The Commission orders:

(A) At the hearing provided in paragraph (B) hereof, Southern Union Gathering Co. shall show cause, if any there be, why it should not be classified as being a class A pipeline company under the Commission's regulations.

(B) Pursuant to the authority contained in, and subject to the authority conferred upon the Federal Power Commission by the Natural Gas Act, particularly sections 4, 5, 7, 14, 15, and 16, and the Commission's rules and regulations under that Act, a public hearing shall be held concerning the issue presented by paragraph (A) hereof, at a date to be fixed by the Presiding Examiner following a prehearing conference to be held at 10 a.m. on October 6, 1970, d.s.t., in a hearing room of the Federal Power Commission, 441 G Street NW., Washington, D.C., for the purpose of considering all matters at issue, determining the scope of the evidence to be presented, fixing dates for the service of testimony and exhibits, and entertaining the adoption of suggestions which might expedite the hearing.

(C) Protests or petitions to intervene may be filed with the Federal Power Commission, Washington, D.C. 20426, in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before September 14, 1970.

By the Commission.

[SEAL] GORDON M. GRANT,
Secretary.

[F.R. Doc. 70-10738; Filed, Aug. 17, 1970; 8:45 a.m.]

[1] These certificates issued to Gathering Company in Dockets Nos. G-7670 and G-7671 (14 FPC 1220).

[2] Letter to Gathering Company from the Secretary dated Dec. 30, 1966.

[3] Southern Union Gathering Co. Rate Schedule No. 2.

[4] The Commission's records for calendar year 1965 indicate that Gathering Company sales to El Paso amounted to 29,504,046 Mcf and produced revenues of $5,394,943.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[DESI 0085NV]

CERTAIN DRUG PRODUCTS CONTAINING BACITRACIN AND OTHER DRUGS

Drugs for Veterinary Use; Drug Efficacy Study Implementation

The Food and Drug Administration has evaluated reports received from the National Academy of Sciences-National Research Council, Drug Efficacy Study Group, on the following preparations by Pitman-Moore, Inc., Camp Hill Road, Fort Washington, Pa. 19034:

1. Entromycin; each bolutab contains 3750 units of bacitracin methylene disalicylate, 375 milligrams of streptomycin (as streptomycin sulfate), and 12.5 grams roasted powdered carob pulp.

2. Entromycin Veterinary; each gram contains 200 units of bacitracin methylene disalicylate, 20 milligrams of streptomycin (as streptomycin sulfate), and 850 milligrams of roasted powdered carob pulp.

3. Entromycin No. 1; each tablet contains 150 units of bacitracin methylene disalicylate, 15 milligrams of streptomycin (as streptomycin sulfate), and 675 milligrams of roasted powdered carob pulp.

4. Entromycin No. 2; each tablet contains 1,000 units of bacitracin methylene disalicylate, 100 milligrams of streptomycin (as streptomycin sulfate), and 3.25 grams of roasted powdered carob pulp.

The academy classified these preparations as probably not effective for the treatment of bacterial diarrhea in calves, dogs, and baby pigs. The academy stated: (1) The declaration of roasted carob pulp as an active ingredient on the label is questioned—there is evidence, not extensive, that carob flour or carob pulp does have some absorbent and protective effect in the gastrointestinal tract; (2) each disease claim should be properly qualified as "appropriate for use in (name of disease) caused by pathogens sensitive to (name of drug)," and if the disease claim cannot be so qualified the claim must be dropped; (3) substantial evidence was not presented to establish that each ingredient designated as active makes a contribution to the total effect claimed for the drug combination; (4) the disease claims for these preparations must be restricted to diseases involving the gastrointestinal tract because of the chemical and pharmacological properties of the active ingredients; and (5) the manufacturer of these tablets and boluses must provide evidence that they disintegrate in the gastrointestinal tract of the medicated species to produce the desired therapeutic effect.

The Food and Drug Administration concurs with the Academy's findings.

This evaluation is concerned only with these drugs' effectiveness and safety to the animal to which administered. It does not take into account the safety for food use of food derived from drug-treated animals. Nothing herein will constitute a bar to further proceedings with respect to questions of safety of the drugs or their metabolites as residues in food products derived from treated animals.

This announcement is published (1) to inform the holders of new animal drug applications of the findings of the Academy and the Food and Drug Administration, and (2) to inform all interested persons that such articles to be marketed must be the subject of approved new animal drug applications and otherwise comply with all other requirements of the Federal Food, Drug, and Cosmetic Act.

Holders of new animal drug applications are provided 6 months from the publication hereof in the FEDERAL REGISTER to submit adequate documentation in support of the labeling used.

Each holder of a new animal drug application which became effective prior to October 10, 1962, is requested to submit updating information as needed to make the application current with regard to manufacture of the drug, including information on drug components and composition, and also including information regarding manufacturing methods, facilities, and controls, in accordance with the requirements of section 512 of the act.

Written comments regarding this announcement, including requests for an informal conference, may be addressed to the Bureau of Veterinary Medicine, Food and Drug Administration, 5600 Fishers Lane, Rockville, Md. 20852.

The holder of the new animal drug applications for the listed drugs has been mailed a copy of the NAS–NRC reports. Any other interested person may obtain a copy by writing to the Food and Drug Administration, Press Relations Staff, 200 C Street SW., Washington, D.C. 20204.

This notice is issued pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 502, 512, 52 Stat. 1050–51, 82 Stat. 343–51; 21 U.S.C. 352, 360b) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 2.120).

Dated: July 13, 1970.

SAM D. FINE,
Acting Associate Commissioner for Compliance.

[F.R. Doc. 70-10743; Filed, Aug. 17, 1970; 8:46 a.m.]

[DESI 0115NV]

CERTAIN DRUG PRODUCTS CONTAINING CHLORTETRACYCLINE AND VITAMINS

Drugs for Veterinary Use; Drug Efficacy Study Implementation

The Food and Drug Administration has evaluated reports received from the National Academy of Sciences-National Research Council, Drug Efficacy Study Group, on the following preparations by American Cyanamid Co., Post Office Box 400, Princeton, N.J. 08540:

1. Aureomycin Crumbles; each pound contains 2 grams of chlortetracycline, 250,000 U.S.P. units of vitamin A, and 25,000 U.S.P. units of vitamin D_3.

2. Aureomycin T.F.–5; each pound contains 5 grams of chlortetracycline and 0.5 milligram of vitamin B_{12}.

3. Aureomycin T.F.–15; each pound contains 15 grams of chlortetracycline and 1.5 milligrams of vitamin B_{12}.

The Academy evaluated Aureomycin Crumbles as probably not effective for prevention or treatment of bacterial infections and for increasing growth rate in swine, calves, beef cattle, dairy cattle, sheep, and horses.

The Academy evaluated Aureomycin T.F.–5 and Aureomycin T.F.–15 as probably effective for antibiotic activity in the control and treatment of bacterial infections in swine, calves, sheep, and poultry.

The Academy's reports stated:

1. More information is needed to document the value of vitamins and the amounts of vitamins which are added to the preparations.

2. Claims for growth promotion or stimulation are disallowed and claims for faster gains and/or feed efficiency should be stated as "may result in faster gains and/or improved feed efficiency under appropriate conditions."

3. Each disease claim should be properly qualified as "appropriate for use in (name of disease) caused by pathogens sensitive to (name of drug)," and if the disease claim cannot be so qualified, the claim must be dropped.

4. Claims made regarding "for prevention of" or "to prevent" should be replaced with "as an aid in the control of" or "to aid in the control of".

5. Substantial evidence was not presented to establish that each ingredient designated as active makes a contribution to the total effect claimed for the drug combinations.

6. Claims for maintaining or increasing egg production and hatchability should be revised as "May aid in maintaining egg production and hatchability, under appropriate conditions, by controlling pathogenic microorganisms."

7. The label should warn that treated animals must actually consume enough medicated feed to provide a therapeutic dose under the conditions that prevail and as a precaution the label should state the desired dose per unit of animal weight per day for each species as a guide to effective use of the preparation in feed.

The Food and Drug Administration concurs with the Academy's findings; however, the Administration concludes the appropriate claim for faster weight gains and improved feed efficiency should be "For increased rate of weight gain and improved feed efficiency for (under appropriate conditions of use)."

This evaluation is concerned only with these drugs' effectiveness and safety to the animal to which administered. It does not take into account the safety for food use of food derived from drug-treated animals. Nothing herein will constitute a bar to further proceedings with respect to questions of safety of the drugs or their metabolites as residues in food products dervied from treated animals.

This announcement is published (1) to inform manufacturers of the subject drugs of the findings of the Academy and the Food and Drug Administration, and (2) to inform all interested persons that such articles to be marketed must be the subject of approved new animal drug applications and otherwise comply with all other requirements of the Federal Food, Drug, and Comestic Act.

Manufacturers of the subject drugs are provided 6 months from the date of publication of this announcement in the FEDERAL REGISTER to submit adequate documentation in support of the labeling used.

Each holder of a new animal drug application which became effective prior to October 10, 1962, is requested to submit updating information as needed to make the application current with regard to manufacture of the drug, including information on drug components and composition, and also including information regarding manufacturing methods, facilities, and controls, in accordance with the requirements of section 512 of the act.

Written comments regarding this announcement, including requests for an informal conference, may be addressed to the Bureau of Veterinary Medicine, Food and Drug Administration, 5600 Fishers Lane, Rockville, Md. 20852.

The manufacturer of the listed drugs has been mailed a copy of the NAS–NRC reports. Any other interested person may obtain a copy by writing to the Food and Drug Administration, Press Relations Staff, 200 C Street SW., Washington, D.C. 20204.

This notice is issued pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 502, 512, 52 Stat. 1050–51, 82 Stat. 343–51; 21 U.S.C. 352, 360b) and under authority delegated to the Commission of Food and Drugs (21 CFR 2.120.

Dated: July 30, 1970.

SAM D. FINE,
Acting Associate Commissioner for Compliance.

[F.R. Doc. 70–10747; Filed, Aug. 17, 1970; 8:46 a.m.]

[DESI 8018V]

CERTAIN DRUG PRODUCTS CONTAINING HEXYLCAINE HYDROCHLORIDE

Drugs for Veterinary Use; Drug Efficacy Study Implementation

The Food and Drug Administration has evaluated a report received from the National Academy of Sciences-National Research Council, Drug Efficacy Study Group, on the following preparations by Merck & Co., Inc., Chemical Division, Rahway, N.J. 07065:

1. Cyclaine 1 percent; each cubic centimeter contains 10 milligrams of hexylcaine hydrochloride.

2. Cyclaine 5 percent; each cubic centimeter contains 50 milligrams of hexylcaine hydrochloride.

The Academy evaluated these drugs as probably effective for use as local anesthetics for large and small animals. The Academy stated:

1. It is suggested that a more contrasting package and label be used on the 5 percent preparation.

2. The reference to "topical anesthesia in all animals" should be restricted to those species in which such use of the product has been documented.

3. The package insert fails to present information on the side effects that may be encountered, particularly if high doses are used. Since it is stated that the product should be used "to effect" in some of its applications, the possible consequences of systemic toxicity should be outlined including hypotension, cardiac failure, and respiratory failure. The possibility of motor block and posterior paralysis from overdose when used epidurally should be noted. When used as a topical anesthetic the general warning of the possibility of irritation, cellular damage, sensitization, and impaired healing should be stated.

4. The statement on page 3 of the package insert "for treatment of prolapse" is misleading and should be amended to "to produce local anesthesia and to prevent straining as an adjunct to the treatment of".

The Food and Drug Administration concurs with the Academy's findings.

This evaluation is concerned only with these drugs' effectiveness and safety to the animal to which administered. It does not take into account the safety for food use of food derived from drug-treated animals. Nothing herein will constitute a bar to further proceedings with respect to questions of safety of the drugs or their metabolites as residues in food products derived from treated animals.

This announcement is published (1) to inform the holders of new animal drug applications of the findings of the Academy and the Food and Drug Administration and (2) to inform all interested persons that such articles may be marketed provided they are the subject of approved new animal drug applications and otherwise comply with all other requirements of the Federal Food, Drug, and Cosmetic Act.

Holders of new animal drug applications are provided 6 months from the date of publication hereof in the FEDERAL REGISTER to submit adequate documentation in support of the labeling used.

Each holder of a new animal drug application which became effective prior to October 10, 1962, is requested to submit updating information as needed to make the application current with regard to manufacture of the drug, including information on drug components and composition, and also including information regarding manufacturing methods, facilities, and controls, in accordance with the requirements of section 512 of the act.

Written comments regarding this announcement, including requests for an informal conference, may be addressed to the Bureau of Veterinary Medicine, Food and Drug Administration, 5600 Fishers Lane, Rockville, Md. 20852.

The holder of the new animal drug applications for the listed drugs has been mailed a copy of the NAS–NRC report. Any other interested person may also obtain a copy by writing to the Food and Drug Administration, Press Relations Staff, 200 C Street SW., Washington, D.C. 20204.

This notice is issued pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 502, 512, 52 Stat. 1050–51, 82 Stat. 343–51; 21 U.S.C. 352, 360b) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 2.120).

Dated: July 31, 1970.

SAM D. FINE,
Acting Associate Commissioner for Compliance.

[F.R. Doc. 70–10753; Filed, Aug. 17, 1970; 8:46 a.m.]

[DESI 12123V]

CERTAIN INJECTABLE PRODUCTS CONTAINING ERYTHROMYCIN

Drugs for Veterinary Use; Drug Efficacy Study Implementation

The Food and Drug Administration has evaluated a report received from the National Academy of Sciences-National Research Council, Drug Efficacy Study Group, on the following preparations:

1. Gallimycin Injectable, Large Animal; each cubic centimeter contains 50 milligrams of erythromycin; by AMDAL Co., Agricultural Div., Abbott Laboratories, North Chicago, Ill. 60064.

2. Gallimycin Injectable, Large Animal; each cubic centimeter contains 100 milligrams of erythromycin; by AMDAL Co., Agricultural Div., Abbott Laboratories.

3. Gallimycin Injectable; each cubic centimeter contains 50 milligrams of erythromycin; by AMDAL Co., Agricultural Div., Abbott Laboratories.

4. Erythromycin Injectable; each milliliter contains 100 milligrams of erythromycin; by Diamond Laboratories, Inc., Des Moines, Iowa 50304.

The Academy evaluated these products as probably effective in the treatment of certain diseases in cattle, sheep, swine, horses, dogs, cats, chickens, and turkeys when such diseases are caused by micro-organisms sensitive to erythromycin.

The Academy stated: (1) Each disease claim should be properly qualified "appropriate for use in (name of disease) caused by pathogens sensitive to (name of drug," and if the disease claim cannot be so qualified the claim must be dropped; (2) claims made regarding "for prevention of" or "to prevent" should be replaced with "as an aid in the control of" or "to aid in the control of"; (3) the dosages in large animals and frequency of administration in all species need to be documented—the dosage should be expressed on the basis of milligrams of erythromycin per pound of body weight; (4) the resistance statement and statements claiming more effectiveness than other antimicrobial agents need to be deleted; (5) certain items in the labeling need revision including withdrawal times, cautions, misleading association of sensitivity statement and certain diseases, and the recommended use as an aid in curtailing weight losses due to handling and transporting cattle; (6) directions for use should provide for administering the preparation with sterile equipment; and (7) directions for lay use are inadequate.

The Food and Drug Administration concurs with the Academy's findings.

This evaluation is concerned only with these drugs' effectiveness and safety to the animal to which administered. It does not take into account the safety for food use of food derived from drug-treated animals. Nothing herein will constitute a bar to further proceedings with respect to questions of safety of the drugs or their metabolites as residues in food products derived from treated animals.

This announcement is published (1) to inform the holders of new animal drug applications of the findings of the Academy and the Food and Drug Administration and (2) to inform all interested persons that such articles to be marketed must be the subject of approved new animal drug applications and otherwise comply with all other requirements of the Federal Food, Drug, and Cosmetic Act.

Holders of new animal drug applications are provided 6 months from the date of publication hereof in the FEDERAL REGISTER to submit adequate documentation in support of the labeling used.

Each holder of a new animal drug application which became effective prior to October 10, 1962, is requested to submit updating information as needed to make the application current with regard to manufacture of the drug, including information on drug components and composition, and also including information regarding manufacturing methods, facilities, and controls, in accordance with the requirements of section 512 of the act.

Written comments regarding this announcement, including requests for an informal conference, may be addressed to the Bureau of Veterinary Medicine, Food and Drug Administration, 5600 Fishers Lane, Rockville, Md. 20852.

The holders of the new animal drug applications for the listed drugs have been mailed a copy of the NAS–NRC reports. Any other interested person may obtain a copy by writing to the Food and Drug Administration, Press Relations Staff, 200 C Street SW., Washington, D.C. 20204.

This notice is issued pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 502, 512, 52 Stat. 1050–51, 82 Stat. 343–51; 21 U.S.C. 352, 360b) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 2.120).

Dated: July 13, 1970.

SAM D. FINE,
Acting Associate Commissioner for Compliance.

[F.R. Doc. 70–10744; Filed, Aug. 17, 1970; 8:46 a.m.]

[DESI 50125]

CERTAIN PENICILLIN-CONTAINING COMBINATION DRUGS

Drugs for Human Use; Drug Efficacy Study Implementation

A notice was published in the FEDERAL REGISTER of July 1, 1970 (35 F.R. 10698), announcing the conclusions of the Food and Drug Administration concerning certain penicillin-containing drugs.

This notice stated the Administration's conclusions that all the listed drugs lack substantial evidence of effectiveness as fixed combinations for their claimed indications. Those conclusions have been reconsidered, and accordingly, the announcement of July 1, 1970, is hereby amended to read as follows:

The Food and Drug Administration has evaluated reports received from the National Academy of Sciences-National Research Council, Drug Efficacy Study Group, on the following antibiotic drugs:

A. Benzathine Penicillin G with Procaine Penicillin G Injection, marketed as:

1. Bicillin C–R Aqueous Suspension (NDA 50–138); and

2. Bicillin P–A–B Aqueous Suspension (NDA 50–138); Wyeth Laboratories, Inc., Post Office Box 8299, Philadelphia, Pa. 19101.

B. Procaine Penicillin G with Sodium or Potassium Penicillin G for Injection, marketed as:

1. Abbocillin 800 M for Suspension (NDA 60–019); Abbott Laboratories, 14th and Sheridan Road, North Chicago, Ill. 60064.

2. a. Duracillin Fortified Powder for Aqueous Suspension (NDA 60–015); and

b. Duracillin F.A. Powder for Aqueous Suspension (NDA 60–015); Eli Lilly and Co., Post Office Box 618, Indianapolis, Ind. 46206.

3. Pen Produral for Aqueous Injection (NDA 60–204); Merck Sharp & Dohme Division, Merck and Co., Inc., West Point, Pa. 19486.

4. Pronapen for Aqueous Injection (NDA 60–021); Chas. Pfizer & Co., Inc., 235 East 42d Street, New York, N.Y. 10017.

5. Procaine Penicillin G and Potassium (or Sodium) Penicillin G for Aqueous Injection (NDA 60–020); Philadelphia Laboratories, Inc., 9815 Roosevelt Boulevard, Philadelphia, Pa. 19114.

6. a. Bipenicillin Specia for Aqueous Injection (NDA 60–025); and

b. Procaine Penicillin G and Potassium Penicillin G for Aqueous Injection (NDA 60–016); and

c. Bipenicillin 500 for Aqueous Injection (NDA 60–025); Pure Laboratories, Inc., 50 Intervale Road, Parsippany, N.J. 07054.

7. Crystifor Powder for Injection (NDA 60–023); E. R. Squibb & Sons, Inc., Georges Road, New Brunswick, N.J. 08903.

8. a. Depo-Penicillin Fortified Suspension (NDA 60–018); and

b. Diurnal-Penicillin Fortified 400 M for Aqueous Injection (NDA 60–017); The Upjohn Co., 7171 Portage Road, Kalamazoo, Mich. 49002.

9. a. Wycillin Fortified for Aqueous Injection (NDA 60–026); and

b. Lentopen All-Purpose Injection in Oil (NDA 60–027); Wyeth Laboratories, Inc.

C. Potassium Penicillin G with Probenecid, marketed as Remanden-250 Tablets (NDA 50–125); Merck, Sharp & Dohme Division, Merck & Co., Inc.

D. Benzathine Penicillin G with Procaine Penicillin G and Potassium Penicillin G, marketed as Bicillin All-Purpose for Injection (NDA 50–140); Wyeth Laboratories, Inc.

The conclusions of the Food and Drug Administration concerning these drugs are as follows:

I. Potassium Penicillin G with Probenecid Tablets.

The Food and Drug Administration concludes that there is a lack of substantial evidence, within the meaning of the Federal Food, Drug, and Cosmetic Act, that this drug is effective as a fixed combination for its claimed indications.

Accordingly, the Commissioner of Food and Drugs intends to initiate proceedings to amend the antibiotic drug regulations where necessary to delete combination drugs of the kind described above from the list of drugs acceptable for certification.

Prior to initiating such action, however, the Commissioner invites all interested persons who might be adversely affected by removal of this drug from the market to submit pertinent data bearing on the proposal within 30 days following the date of publication of this announcement in the FEDERAL REGISTER. To be acceptable for consideration in support of the effectiveness of a drug, any such data must be previously unsubmitted, well-organized, and include data from adequate and well-controlled clinical investigations (identified for ready review) as described in § 130.12(a)(5) of the regulations published as a final order in the FEDERAL REGISTER of May 8, 1970 (35 F.R. 7250). Carefully conducted and documented clinical studies obtained under uncontrolled or partially controlled situations are not acceptable as a sole basis for the approval of claims of effectiveness, but such studies may be considered on their merits for corroborative support of efficacy and evidence of safety.

II. All Drugs Listed Above Except that Described in I.

Preparations containing these drugs are subject to the antibiotic certification procedures pursuant to section 507 of the Federal Food, Drug, and Cosmetic Act. Requests for certification of the drugs in the dosage forms described above should provide for labeling which includes the indications for which the drugs are regarded as probably effective as described below. Batches of the drugs are regarded as probably effective as described below. Batches of the drugs which bear labeling with such indications and are otherwise in accord with the conditions herein will be accepted for release or certification by the Food and Drug Administration for a period of 12 months from the publication date of this amended announcement to allow any applicant to obtain and submit data to provide substantial evidence of effectiveness of the drug for use in the conditions for which it has been evaluated as probably effective. Reasonable quantities of the products affected will be accepted for release or certification for a period not to exceed 60 days following the date of publication of this announcement to allow time for revision of labeling as required herein.

Any person who would be adversely affected by deletion of indications for which the drug lacks substantial evidence of effectiveness, as described below, may, within 30 days following the publication date of this amended announcement, submit pertinent data bearing on the effectiveness of the drug for such use. The type of data which will be regarded as acceptable for consideration is described above in section I of this announcement.

The Food and Drug Administration concludes that these drugs:

1. Are probably effective for the indications listed in the Indications section shown below.

2. Lack substantial evidence of effectiveness for: Treatment of pneumococcal, meningococcal, streptococcal and

staphylococcal, meningitis; actinomycosis infections; prophylaxis before and after amputations and other surgical procedures; and prophylaxis of infections caused by organisms that are susceptible to penicillin therapy.

INDICATIONS

This drug is indicated in the treatment of moderately severe infections due to penicillin-G sensitive microorganisms that are sensitive to the serum levels common to this particular dosage form. Therapy should be guided by bacteriological studies (including sensitivity tests) and by clinical response.

NOTE: When high-sustained serum levels are required, aqueous penicillin G either IM or IV should be used.

The following infections will usually respond to adequate dosages of this drug:

Streptococcal infections Group A (without bacteremia). Moderately severe to severe infections of the upper respiratory tract, skin and soft tissue infections, scarlet fever, and erysipelas.

NOTE: Streptococci in groups A, C, H, G, L, and M are very sensitive to penicillin G. Other groups, including group D (enterococcus) are resistant. Aqueous penicillin is recommended for streptococcal infections with bacteremic.

Pneumococcal infections. Moderately severe pneumonia and otitis media.

NOTE: Severe pneumonia, empyema, bacteremia, pericarditis, meningitis, peritonitis, and arthritis of pneumococcal etiology are better treated with aqueous penicillin G during the acute stage.

Staphylococcal infections—penicillin G sensitive. Moderately severe infections of the skin and soft tissues.

NOTE: Reports indicate an increasing number of strains of staphylococci resistant to penicillin G emphasizing the need for culture and sensitivity studies in treating suspected staphylococcal infections.

Indicated surgical procedures should be performed.

Fusospirochetosis. (Vincent's gingivitis and pharyngitis). Moderately severe infections of the oropharynx respond to therapy with this drug.

NOTE: Necessary dental care should be accomplished in infections involving the gum tissue.

Treponema pallidum (syphilis); all stages.

Treponema: Yaws, Bejel, Pinta.

N. gonorrhoeae: acute and chronic (without bacteremia), with adequate recommended doses.

c. diphtheriae: This drug may be used as an adjunct to antitoxin for prevention of the carrier stage.

B. anthracis: (Anthrax).

Borrelia duttoni: (Relapsing fever).

Clostridium tetani (Tetanus): with adequate doses and in conjunction with antiserum.

Streptobacillus moniliformis and *Spirillum minus* infections: (rat bite fever).

Erysipeloid.

Subacute bacterial endocarditis (group A streptococcus) only in extremely sensitive infections.

Prophylaxis Against Bacterial Endocarditis—This drug may be given to patients with congenital and/or rheumatic heart lesions who are to undergo dental or upper respiratory tract surgery or instrumentation. Prophylaxis should be instituted the day of the procedure and continued for two or more days following.

NOTE: Since patients who have a past history of rheumatic fever and are receiving continuous prophylaxis may harbor increased numbers of penicillin-resistant organisms, use of another prophylactic anti-infective agent should be considered. If penicillin is to be used in these patients at surgery, the regular rheumatic fever program should be interrupted 1 week prior to the contemplated surgery. At the time of surgery, penicillin may be reinstituted as a prophylactic measure against the hazards of surgically induced bacteremia.

A copy of the NAS–NRC report has been furnished to each firm referred to above. Any other interested person may obtain a copy by request to the appropriate office named below.

Communications forwarded in response to this announcement should be identified with the reference number DESI 50125 and be directed to the attention of the following appropriate office and addressed (unless otherwise specified) to the Food and Drug Administration, 5600 Fishers Lane, Rockville, Md. 20852:

Amendments (identify with NDA number): Division of Anti-Infective Drugs (BD–140), Office of New Drugs, Bureau of Drugs.

All other communications regarding this announcement: Special Assistant for Drug Efficacy Study Implementation (BD–201), Bureau of Drugs.

Requests for NAS–NRC report: Press Relations Staff (CE–100), Food and Drug Administration, 200 C Street SW., Washington, D.C. 20204.

This notice is issued pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 502, 507, 52 Stat. 1050–51, as amended, 59 Stat. 463, as amended; 21 U.S.C. 352, 357) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 2.120).

Dated: August 4, 1970.

SAM D. FINE,
Acting Associate Commissioner for Compliance.

[F.R. Doc. 70-10756; Filed, Aug. 17, 1970; 8:46 a.m.]

[DESI 8594V]

DRUG PRODUCT CONTAINING DIETHYLSTILBESTROL, TYROTHRICIN, SULFANILAMIDE, AND UREA

Drugs for Veterinary Use; Drug Efficacy Study Implementation

The Food and Drug Administration has evaluated a report received from the National Academy of Sciences-National Research Council, Drug Efficacy Study Group, on the product LeGear Cow Clean; each 18-gram tablet contains 25 milligrams of diethylstilbestrol, 16 milligrams of tyrothricin, 3.3 grams of sulfanilamide, and 9.7 grams urea; and the product is marketed by Dr. LeGear, Inc., 4161 Beck Avenue, St. Louis, Mo. 63116.

The Academy classified this preparation as probably not effective for the prevention and treatment of womb infections and retained afterbirth in cows. The Academy stated: (1) More documentation is needed on the value of urea; (2) documentation is needed as to the effectiveness of the bolus ejector in depositing the tablet in the uterus, and the safety of the ejector upon the female genitalia; (3) information is needed from the manufacturer of such a product to be inserted into the uterus with respect to the degree of disintegration of the product within the uterus, the presence of hazardous ingredients in the product that may cause severe irritation, ulceration, perforation, or necrosis, and the chemical compatibility of the vehicle and active agent or agents in the product; (4) each disease claim should be properly qualified as to those diseases caused by pathogens sensitive to the combined activity of the active drug ingredients; (5) substantial evidence should be presented to establish that each ingredient designated as active makes a contribution to the total effect claimed for the drug combination; and (6) more documentation of the value of the low dose of tyrothricin is needed.

The Food and Drug Administration concurs with the Academy's evaluation.

This evaluation is concerned only with the drug's effectiveness and safety to the animal to which administered. It does not take into account the safety for food use of food derived from drug-treated animals. Nothing herein will constitute a bar to further proceedings with respect to questions of safety of the drug or its metabolites as residues in food products derived from treated animals.

This announcement is published (1) to inform the holders of new animal drug applications of the findings of the Academy and the Food and Drug Administration and (2) to inform all interested persons that such articles to be marketed must be the subject of approved new animal drug applications and otherwise comply with all other requirements of the Federal Food, Drug, and Cosmetic Act.

Holders of the new animal drug applications are provided 6 months from the date of publication of this announcement in the FEDERAL REGISTER to submit adequate documentation in support of the labeling used.

Each holder of a new animal drug application which became effective prior to October 10, 1962, is requested to submit updating information as needed to make the application current with regard to manufacture of the drug, including information on drug components and composition, and also including information regarding manufacturing methods, facilities, and controls, in accordance with the requirements of section 512 of the act.

Written comments regarding this announcement, including requests for an informal conference, may be addressed to the Bureau of Veterinary Medicine, Food and Drug Administration, 5600 Fishers Lane, Rockville, Md. 20852.

The holder of the new animal drug application for the listed drug has been mailed a copy of the NAS–NRC report. Any other interested person may obtain a copy by writing to the Food and Drug Administration, Press Relations Staff, 200 C Street SW., Washington, D.C. 20204.

This notice is issued pursuant to provisions of the Federal Food, Drug, and

Cosmetic Act (secs. 502, 512, 52 Stat. 1050–51, 82 Stat. 343–51; 21 U.S.C. 352, 360b) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 2.120).

Dated: July 13, 1970.

SAM D. FINE,
Acting Associate Commissioner for Compliance.

[F.R. Doc. 70–10746; Filed, Aug. 17, 1970; 8:46 a.m.]

[DESI 0154 NV]

DRUG PRODUCT CONTAINING NEOMYCIN

Drugs for Veterinary Use; Drug Efficacy Study Implementation

The Food and Drug Administration has evaluated a report received from the National Academy of Sciences-National Research Council, Drug Efficacy Study Group, on the following preparation: Pectolin with Neomycin; each ounce contains 91 milligrams of neomycin sulfate, commercial grade (equivalent to 63.7 milligrams neomycin base), 108 grains of kaolin N.F., 4 grains of pectin, 2.5 grains of sulfaguanadine, 2.5 grains of sulfacetamide, 0.021 milligram of scopolamine, 0.30 milligram of hyoscyamine hydrobromide, 0.06 milligram of atropine sulfate, and 8 milligrams of phenobarbital; distributed by EVSCO Pharmaceutical Co., 3345 Royal Avenue, Oceanside, Long Island, N.Y. 11572.

The Academy classified this preparation as probably not effective for the treatment of diarrhea in animals. The Academy stated:

1. Each disease claim should be properly qualified as "appropriate for use in (name of disease) caused by pathogens sensitive to (name of drug)," and if the disease claim cannot be so qualified, the claim must be dropped.

2. Substantial evidence was not presented to establish that each ingredient designated as active makes a contribution to the total effect claimed for the drug combination.

3. The dosage should be expressed so as to provide a specific quantity of drug per unit of body weight per unit of time for each animal species.

4. The disease claims for this preparation must be restricted to diseases involving the gastrointestinal tract because of the chemical and pharmacological properties of the active ingredients.

The Food and Drug Administration concurs with the Academy's findings.

This evaluation is concerned only with the drug's effectiveness and safety to the animal to which administered. It does not take into account the safety for food use of food derived from drug-treated animals. Nothing herein will constitute a bar to further proceedings with respect to questions of safety of the drug or its metabolites as residues in food products derived from treated animals.

This announcement is published (1) to inform the holders of new animal drug applications of the findings of the Academy and the Food and Drug Administration and (2) to inform all interested persons that such articles to be marketed must be the subject of approved new animal drug applications and otherwise comply with all other requirements of the Federal Food, Drug, and Cosmetic Act.

Holders of new animal drug applications are provided 6 months from the date of publication hereof in the FEDERAL REGISTER to submit adequate documentation in support of the labeling used.

Each holder of a new animal drug application which became effective prior to October 10, 1962, is requested to submit updating information as needed to make the application current with regard to manufacture of the drug, including information on drug components and composition, and also including information regarding manufacturing methods, facilities, and controls, in accordance with the requirements of section 512 of the act.

Written comments regarding this announcement, including requests for an informal conference, may be addressed to the Bureau of Veterinary Medicine, Food and Drug Administration, 5600 Fishers Lane, Rockville, Md. 20852.

The holder of the new animal drug application for the listed drug has been mailed a copy of the NAS–NRC report. Any other interested person may obtain a copy by writing to the Food and Drug Administration, Press Relations Staff, 200 C Street SW., Washington, D.C. 20204.

This notice is issued pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 502, 512, 52 Stat. 1050–51, 82 Stat. 343–51; 21 U.S.C. 352, 360b) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 2.120).

Dated: July 24, 1970.

SAM D. FINE,
Acting Associate Commissioner for Compliance.

[F.R. Doc. 70–10755; Filed, Aug. 17, 1970; 8:46 a.m.]

[DESI 0132NV]

DRUG PRODUCT CONTAINING NEOMYCIN AND OTHER DRUGS

Drugs for Veterinary Use; Drug Efficacy Study Implementation

The Food and Drug Administration has evaluated a report received from the National Academy of Sciences-National Research Council, Drug Efficacy Study Group, on the following preparation: Big 10, Neomycin Calf Scours Bolus; each bolus contains 250 milligrams of neomycin sulfate (equivalent to 175 milligrams base), 325 milligrams sulfaguanidine, 650 milligrams of sulfamethazine, 2,275 milligrams of sulfathiazole, 65,000 units of vitamin A, 6,500 units of vitamin D_3, 120 milligrams of niacinamide, 100 milligrams of pectin, 2.0 grams of attapulgite, 680 milligrams of sodium chloride, 448 milligrams of sodium bicarbonate, 160 milligrams of calcium gluconate, 100 milligrams of potassium chloride, and 18 milligrams of magnesium carbonate; by Dr. LeGear Inc., 4161 Beck Avenue, St. Louis, Mo. 63116.

The Academy evaluated this product as probably not effective for prevention and treatment of bacterial diarrhea, enteritis, and pneumonia in calves. The report also stated: (1) Each disease claim should be properly qualified as "appropriate for use in (name of disease) caused by pathogens sensitive to (name of drug)," and if the disease claim cannot be so qualified the claim must be dropped; (2) substantial evidence was not presented to establish that each ingredient designated as active makes a contribution to the total effect claimed for the drug combination; (3) tests should be conducted to show that attapulgite does not interfere with the activity of antimicrobial drugs; (4) dosage should be expressed on a unit/weight basis; and (5) the manufacturer of this bolus must provide evidence that it disintegrates in the gastrointestinal tract of the medicated species to produce the desired therapeutic effect.

The Food and Drug Administration concurs with the Academy's findings.

This evaluation is concerned only with the drug's effectiveness and safety to the animal to which administered. It does not take into account the safety for food use of food derived from drug-treated animals. Nothing herein will constitute a bar to further proceedings with respect to questions of safety of the drug or its metabolites as residues in food products derived from treated animals.

This announcement is published (1) to inform the holders of new animal drug applications of the findings of the Academy and the Food and Drug Administration and (2) to inform all interested persons that such articles to be marketed must be the subject of approved new animal drug applications and otherwise comply with all other requirements of the Federal Food, Drug, and Cosmetic Act.

Holders of new animal drug applications are provided 6 months from the date of publication hereof in the FEDERAL REGISTER to submit adequate documentation in support of the labeling used.

Each holder of a new animal drug application which became effective prior to October 10, 1962, is requested to submit updating information as needed to make the application current with regard to manufacture of the drug, including information on drug components and composition, and also including information regarding manufacturing methods, facilities, and controls, in accordance with the requirements of section 512 of the act.

Written comments regarding this announcement, including requests for an informal conference, may be addressed to the Bureau of Veterinary Medicine, Food and Drug Administration, 5600 Fishers Lane, Rockville, Md. 20852.

The holder of the new animal drug application for the listed drug has been mailed a copy of the NAS–NRC report. Any other interested person may obtain a copy by writing to the Food and Drug Administration, Press Relations Staff, 200 C Street SW., Washington, D.C. 20204.

This notice is issued pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 502, 512, 52 Stat. 1050–51, 82 Stat. 343–51; 21 U.S.C. 352, 360b) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 2.120).

Dated: July 13, 1970.

SAM D. FINE,
Acting Associate Commissioner for Compliance.

[F.R. Doc. 70–10745; Filed, Aug. 17, 1970; 8:46 a.m.]

[DESI 11968V]

FEED PREMIX CONTAINING OXYTETRACYCLINE AND OLEANDOMYCIN

Drugs for Veterinary Use; Drug Efficacy Study Implementation

The Food and Drug Administration has evaluated a report received from the National Academy of Sciences-National Research Council, Drug Efficacy Study Group, on the product Taomyxin; each pound contains oxytetracycline quaternary salt equivalent in activity to 8 grams of oxytetracycline hydrochloride and 2 grams of oleandomycin activity; marketed by Chas. Pfizer & Co., Inc., 235 East 42d Street, New York, N.Y. 10017.

The Academy report stated that the product is probably not effective as an antibotic premix for use in swine feeds to increase daily gains and improve feed efficiency. The report further stated that an additive or potentiative effect was not noted with this preparation, and it appeared from the data that the effect could be noted from either one of the drug ingredients alone and not from the drug combination.

The Food and Drug Administration concurs with the Academy's findings.

This evaluation is concerned only with the drug's effectiveness and safety to the animal to which administered. It does not take into account the safety for food use of food derived from drug-treated animals. Nothing herein will constitute a bar to further proceedings with respect to questions of safety of the drug or its metabolites as residues in food products derived from treated animals.

This announcement is published (1) to inform the holders of new animal drug applications of the findings of the Academy and the Food and Drug Administration, and (2) to inform all interested persons that such articles to be marketed must be the subject of approved new animal drug applications and otherwise comply with all other requirements of the Federal Food, Drug, and Cosmetic Act.

Holders of new animal drug applications are provided 6 months from publication hereof in the FEDERAL REGISTER to submit adequate documentation in support of the labeling used.

Each holder of a new animal drug application which became effective prior to October 10, 1962, is requested to submit updating information as needed to make the application current with regard to manufacture of the drug, including information on drug components and composition, and also including information regarding manufacturing methods, facilities, and controls, in accordance with the requirements of section 512 of the act.

Written comments regarding this announcement, including requests for an informal conference, may be addressed to the Bureau of Veterinary Medicine, Food and Drug Administration, 5600 Fishers Lane, Rockville, Md. 20852.

The holder of the new animal drug application for the listed drug has been mailed a copy of the NAS–NRC report. Any other interested person may obtain a copy by writing to the Food and Drug Administration, Press Relations Staff, 200 C Street SW., Washington, D.C. 20204.

This notice is issued pursuant to provisions of the Federal Food, Drug, and Cosmetic Act. (secs. 502, 512, 52 Stat. 1050–51, 82 Stat. 343–51; 21 U.S.C. 352, 360b) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 2.120).

Dated: July 13, 1970.

SAM D. FINE,
Acting Associate Commissioner for Compliance.

[F.R. Doc. 70–10749; Filed, Aug. 17, 1970; 8:46 a.m.]

[DESI 34009V]

IODOCHLORHYDROXYQUIN-HYDROCORTISONE TOPICAL PREPARATION

Drugs for Veterinary Use; Drug Efficacy Study Implementation

The Food and Drug Administration has evaluated a report received from the National Academy of Sciences-National Research Council, Drug Efficacy Study Group, on the following preparation: Vioform-Hydrocortisone Cream; contains 3 percent iodochlorhydroxyquin and 0.5 percent hydrocortisone; marketed by E. R. Squibb and Sons, Inc.; Agricultural Research Center, Three Bridges, N.J. 08887.

The Academy evaluated this product as probably effective as an anti-inflammatory agent and antiseptic for superficial wounds, cuts, and abrasions in dogs. The Academy stated: (1) The labeling should clarify the indication for fungal infections by identifying the specific causative agents for which the product is effective; and (2) each ingredient in a preparation containing more than one drug must be effective, or contribute to the effectiveness of the preparation, to warrant acceptance as a therapeutic ingredient.

The Food and Drug Administration concurs with the Academy's findings.

This announcement is published (1) to inform the holders of new animal drug applications of the findings of the Academy and the Food and Drug Administration, and (2) to inform all interested persons that such articles may be marketed provided they are the subject of approved new animal drug applications and otherwise comply with all other requirements of the Federal Food, Drug, and Cosmetic Act.

Holders of new animal drug applications are provided 6 months from the date of publication hereof in the FEDERAL REGISTER to submit adequate documentation in support of the labeling used.

Each holder of a new animal drug application which became effective prior to October 10, 1962, is requested to submit updating information as needed to make the application current with regard to manufacture of the drug, including information on drug components and composition, and also including information regarding manufacturing methods, facilities, and controls, in accordance with the requirements of section 512 of the act.

Written comments regarding this announcement, including requests for an informal conference, may be addressed to the Bureau of Veterinary Medicine, Food and Drug Administration, 5600 Fishers Lane, Rockville, Md. 20852.

The holder of the new animal drug application for the listed drug has been mailed a copy of the NAS–NRC report. Any other interested person may obtain a copy by writing to the Food and Drug Administration, Press Relations Staff, 200 C Street SW., Washington, D.C. 20204.

This notice is issued pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 502, 512, 52 Stat. 1050–51, 82 Stat. 343–51; 21 U.S.C. 352, 360b) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 2.120).

Dated: July 30, 1970.

SAM D. FINE,
Acting Associate Commissioner for Compliance.

[F.R. Doc. 70–10748; Filed, Aug. 17, 1970; 8:46 a.m.]

[DESI 5733V]

SULFATHIAZOLE-KAOLIN-PECTIN FOR CALF SCOURS

Drugs for Veterinary Use; Drug Efficacy Study Implementation

The Food and Drug Administration has evaluated a report received from the National Academy of Sciences-National Research Council, Drug Efficacy Study Group, on the following preparation: SKP for Calf Scours; contains 1.78 percent sulfathiazole, pectin, kaolin, and ox bile; by Hess & Clark, Division of Richardson-Merrell Inc., Ashland, Ohio 44805.

The Academy classified this product as probably not effective as a liquid suspension for oral administration in the treatment of calf scours. The Academy stated:

1. The recommended dosage level is too low and the presented data are not specific in many areas.

2. The pharmacological compatibility of ox bile and kaolin is questioned.

3. Each disease claim should be properly qualified as "appropriate for use in (name of disease) caused by pathogens sensitive to (name of drug)," and if the disease claim cannot be so qualified, the claim must be dropped.

4. Substantial evidence was not presented to establish that each ingredient designated as active makes a contribution to the total effect claimed for the drug combination.

The Food and Drug Administration concurs with the Academy's findings.

This evaluation is concerned only with the drugs' effectiveness and safety to the animal to which administered. It does not take into account the safety for food use of food derived from drug-treated animals. Nothing herein will constitute a bar to further proceedings with respect to questions of safety of the drug or its metabolites as residues in food products derived from treated animals.

This announcement is published (1) to inform the holders of new animal drug applications of the findings of the Academy and the Food and Drug Administration, and (2) to inform all interested persons that such articles to be marketed must be the subject of approved new animal drug applications and otherwise comply with all other requirements of the Federal Food, Drug, and Cosmetic Act.

Holders of new animal drug applications are provided 6 months from the date of publication hereof in the FEDERAL REGISTER to submit adequate documentation in support of the labeling used.

Each holder of a new animal drug application which became effective prior to October 10, 1962, is requested to submit updating information as needed to make the application current with regard to manufacture of the drug, including information on drug components and composition, and also including information regarding manufacturing methods, facilities, and controls, in accordance with the requirements of section 512 of the act.

Written comments regarding this announcement, including requests for an informal conference, may be addressed to the Bureau of Veterinary Medicine, Food and Drug Administration, 5600 Fishers Lane, Rockville, Md. 20852.

The holder of the new animal drug application for the listed drug has been mailed a copy of the NAS–NRC report. Any other interested person may obtain a copy by writing to the Food and Drug Administration, Press Relations Staff, 200 C Street SW., Washington, D.C. 20204.

This notice is issued pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 502, 512, 52 Stat. 1050–51, 82 Stat. 343–51; 21 U.S.C. 352, 360b) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 2.120).

Dated: July 24, 1970.

SAM D. FINE,
Acting Associate Commissioner for Compliance.

[F.R. Doc. 70–10754; Filed, Aug. 17, 1970; 8:46 a.m.]

[Docket No. FDC–D–206; NDA 11–852]

CHAS. PFIZER AND CO.

Am-Plus Improved Capsules; Notice of Withdrawal of Approval of New-Drug Application

In the FEDERAL REGISTER of September 12, 1969 (34 F.R. 14339–14342) (DESI 1002), the Commissioner announced his conclusions pursuant to evaluation of reports received from the National Academy of Sciences-National Research Council concerning the efficacy of Am-Plus Improved Capsules (5 milligrams each of dextroamphetamine sulfate and hydroxyzine hydrochloride plus vitamins and minerals) and stated his intention to initiate proceedings to withdraw approval of the new-drug application for such preparation, based on a lack of substantial evidence that the drug is effective for the uses recommended or suggested in its labeling and that each component contributes to the total effects claimed for the drug. J. B. Roerig & Co., Division of Chas. Pfizer & Co., Inc., 235 East 42d Street, New York, N.Y. 10017, holder of the new-drug application (NDA 11–852), has requested withdrawal of approval of the application and thereby waived opportunity for a hearing on the proposed withdrawal of approval of such application.

The Commissioner of Food and Drugs, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 505 (e); 52 Stat. 1053, as amended; 21 U.S.C. 355(e)) and under the authority delegated to him (21 CFR 2.120), finds on the basis of new information evaluated together with the evidence available when the application was approved that there is a lack of substantial evidence that Am-Plus Improved Capsules will have the effect purported or represented to have under the conditions of use prescribed, recommended, or suggested in the labeling.

Therefore, pursuant to the foregoing finding, approval of new-drug application No. 11–852 and all amendments and supplements applying thereto, is withdrawn effective on the date of signature of this document.

Dated: August 4, 1970.

SAM D. FINE,
Acting Associate Commissioner for Compliance.

[F.R. Doc. 70–10751; Filed, Aug. 17, 1970; 8:46 a.m.]

[Docket No. FDC–D–203; NDA's 7–695, 8–115]

ORGANON, INC., AND CIBA PHARMACEUTICAL CO.

Methandriol Tablets; Notice of Withdrawal of Approval of New-Drug Applications

In a notice published in the FEDERAL REGISTER of February 11, 1970 (35 F.R. 2836) (DESI 6363), the Commissioner announced his conclusions pursuant to evaluations of reports received from the National Academy of Sciences-National Research Council, Drug Efficacy Study Group, concerning Stenediol (methandriol) Sublingual Tablets and stated his intention to initiate proceedings to withdraw approval of the new-drug application based upon a lack of substantial evidence that the drug is effective for the uses recommended or suggested in its labeling.

The holder of the new-drug application listed in the February 11, 1970, announcement, and any interested person who may be adversely affected were invited to submit pertinent data, within 30 days, bearing on the proposal to withdraw approval of the new-drug application.

The holders of the following new-drug applications have requested withdrawal of approval of their new-drug applications and have waived their opportunity for hearing:

1. Stenediol Sublingual Tablets, containing methandriol 25 mg.; Organon, Inc., 375 Mount Pleasant Avenue, West Orange, N.J. 07052 (NDA 7–695).

2. Stenandren Tablets, containing methandriol 25 mg.; Ciba Pharmaceutical Company, 556 Morris Avenue, Cummit, N.J. 07901 (NDA 8–115).

The Commissioner of Food and Drugs, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 505(e), 52 Stat. 1053, as amended; 21 U.S.C. 355(e)) and under authority delegated to him (21 CFR 2.120), finds on the basis of new information evaluated together with the evidence available when the applications were approved that there is a lack of substantial evidence that the above-listed drugs will have the effects they purport or are represented to have under the conditions of use prescribed, recommended, or suggested in their labeling; i.e., for the oral treatment of retarded growth, endocrine deficiencies, constitutional disease accompanied by protein wastage, and failure to build body protein.

Therefore, pursuant to the foregoing finding, approval of the listed new-drug applications, and all amendments and supplements applying thereto, is withdrawn, effective on the date of signature of this document. Outstanding stocks of the affected drugs should be recalled.

Dated: August 4, 1970.

SAM D. FINE,
Acting Associate Commissioner for Compliance.

[F.R. Doc. 70–10750; Filed, Aug. 17, 1970; 8:46 a.m.]

[Docket No. FDC–D–193; NADA No. 4–173V]

PITMAN-MOORE INC.

Parenteral Solution Amfetasul 5 Percent; Notice of Opportunity for Hearing

An announcement published in the FEDERAL REGISTER of April 15, 1969 (34 F.R. 6493), invited Pitman-Moore, Division of The Dow Chemical Co., Zionsville, Ind. 46077, now known as Pitman-Moore, Inc., Camp Hill Road, Fort Washington,

Pa. 19034, holder of new animal drug application No. 4–173V for Parenteral Solution Amfetasul 5 Percent (a drug containing 50 milligrams amphetamine sulfate per cubic centimeter), and any other holders of new animal drug applications which contain labeling for said drug that differs from the labeling presented in said announcement, to submit revised labeling or adequate documentation in support of the labeling used.

Neither data nor revised labeling was furnished in response to the announcement, and avaliable information still fails to provide substantial evidence of effectiveness of said drug for all uses recommended in the labeling. To alleviate overdoses of barbiturates and as an analeptic and sympathomimetic for cattle, horses, and dogs are the only uses of the drug covered by presently available efficacy data.

Therefore, notice is given to Pitman-Moore Inc., and to any interested person who may be adversely affected, that the Commissioner of Food and Drugs proposes to issue an order under section 512 (e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(e)) withdrawing approval of new animal drug application No. 4–173V and all amendments and supplements thereto held by Pitman-Moore Inc. for the drug Parenteral Solution Amfetasul 5 Percent on the grounds that:

Information before the Commissioner with respect to the drug, evaluated together with the evidence available to him when the application was approved, does not provide substantial evidence that the drug has the effect it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in its labeling.

In accordance with provisions of section 512 of the act (21 U.S.C. 360b), the Commissioner will give the applicant, and any interested person who may be adversely affected by an order withdrawing such approval, an opportunity for a hearing at which time such persons may produce evidence and arguments to show why approval of new animal drug application No. 4–173V should not be withdrawn. Promulgation of the order will cause any drug similar in composition to the subject drug, and recommended for similar conditions of use, to be a new animal drug for which an approved new animal drug application is not in effect. Any such drug then on the market would be subject to regulatory proceedings.

Within 30 days after publication hereof in the FEDERAL REGISTER, such persons are required to file with the Hearing Clerk, Department of Health, Education, and Welfare, Office of the General Counsel, Room 6–62, 5600 Fishers Lane, Rockville, Md. 20852, a written appearance electing whether:

1. To avail themselves of the opportunity for a hearing; or

2. Not to avail themselves of the opportunity for a hearing.

If such persons elect not to avail themselves of the opportunity for a hearing, the Commissioner without further notice will enter a final order withdrawing approval of the new animal drug application.

Failure of such persons to file a written appearance of election within said 30 days will be construed as an election by such persons not to avail themselves of the opportunity for a hearing.

The hearing contemplated by this notice will be open to the public except that any portion of the hearing that concerns a method or process the Commissioner finds entitled to protection as a trade secret will not be open to the public, unless the respondent specifies otherwise in his appearance.

If such persons elect to avail themselves of the opportunity for a hearing, they must file a written appearance requesting the hearing and giving the reasons why approval of the new animal drug application should not be withdrawn, together with a well-organized and full-factual analysis of the clinical and other investigational data they are prepared to prove in support of their opposition. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that a genuine and substantial issue of fact requires a hearing. When it clearly appears from the data in the application and from the reasons and factual analysis in the request for the hearing that no genuine and substantial issue of fact precludes the withdrawal of approval of the application, the Commissioner will enter an order on these data, making findings and conclusions on such data. If a hearing is requested and is justified by the response to this notice, the issues will be defined, a hearing examiner will be named, and he shall issue a written notice of the time and place at which the hearing will commence, not more than 90 days after the expiration of such 30 days unless the hearing examiner and the applicant otherwise agree.

This notice is issued pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 512, 82 Stat. 343–51; 21 U.S.C. 360b) and under authority delegated to the Commissioner (21 CFR 2.120).

Dated: August 3, 1970.

SAM D. FINE,
Acting Associate Commissioner for Compliance.

[F.R. Doc. 70–10752; Filed, Aug. 17, 1970; 8:46 a.m.]

W. A. SCHOLTEN'S CHEMISCHE FABRIEKEN N.V.

Notice of Filing of Petition for Food Additives

Pursuant to provisions of the Federal Food, Drug and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786; 21 U.S.C. 348(b)(5)), notice is given that a petition (FAP 1B2574) has been filed by W. A. Scholten's Chemische Fabrieken N.V., Postbus 1, Foxhol, The Netherlands, proposing that § 121.2506 *Industrial starch-modified* (21 CFR 121.2506) be amended in paragraph (a) to provide for the additional safe uses of industrial starch-modified by treatment with phosphoric acid, not to exceed 6 percent, and urea, not to exceed 20 percent, as surface sizing and coating for paper and paperboard intended for food packaging.

Dated: August 7, 1970.

R. E. DUGGAN,
Acting Associate Commissioner for Compliance.

[F.R. Doc. 70–10757; Filed, Aug. 17, 1970; 8:46 a.m.]

INTERAGENCY TEXTILE ADMINISTRATIVE COMMITTEE

CERTAIN COTTON TEXTILE PRODUCTS PRODUCED OR MANUFACTURED IN THE SOCIALIST REPUBLIC OF ROMANIA

Entry or Withdrawal From Warehouse for Consumption

AUGUST 12, 1970.

On August 12, 1970, the U.S. Government, in furtherance of the objectives of, and under the terms of, the Long-Term Arrangement Regarding International Trade in Cotton Textiles done at Geneva on February 3, 1962, including Article 6(c) thereof relating to nonparticipants, informed the Socialist Republic of Romania that it was renewing for an additional 12-month period beginning August 14, 1970, and extending through August 13, 1971, the restraint on imports into the United States of cotton textile products in Category 34, produced or manufactured in Romania. Pursuant to Annex B, paragraph 3, of the long-term arrangement, the level of restraint for this 12-month period is 5 percent greater than the level of restraint applicable to Category 34 for the preceding 12-month period.

There is published below a letter of August 12, 1970, from the Chairman of the President's Cabinet Textile Advisory Committee to the Commissioner of Customs, directing that the amount of cotton textile products in Category 34, produced or manufactured in Romania, which may be entered or withdrawn from warehouse for consumption in the United States for the 12-month period beginning August 14, 1970, be limited to the designated level.

STANLEY NEHMER,
Chairman, Interagency Textile Administrative Committee, and Deputy Assistant Secretary for Resources.

SECRETARY OF COMMERCE

PRESIDENT'S CABINET TEXTILE ADVISORY COMMITTEE

AUGUST 12, 1970.

COMMISSIONER OF CUSTOMS,
Department of the Treasury,
Washington, D.C. 20226.

DEAR MR. COMMISSIONER: Under the terms of the Long-Term Arrangement Regarding International Trade in Cotton Textiles done

at Geneva on February 9, 1962, including Article 6(c) thereof relating to nonparticipants, and in accordance with the procedures outlined in Executive Order 11052 of September 28, 1962, as amended by Executive Order 11214 of April 7, 1965, you are directed to prohibit, effective as soon as possible, and for the 12-month period beginning August 14, 1970, and extending through August 13, 1971, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Category 34, produced or manufactured in Romania, in excess of a level of restraint for the period of 162,068 pieces.

In carrying out this directive, entries of cotton textile products in Category 34, produced or manufactured in Romania, which have been exported to the United States from Romania prior to August 14, 1970, shall, to the extent of any unfilled balance, be charged against the level of restraint established for such goods during the period August 14, 1969, through August 13, 1970. In the event that the level of restraint established for such goods for that period has been exhausted by previous entries, such goods shall be subject to the directives set forth in this letter.

A detailed description of Category 34 in terms of T.S.U.S.A. numbers was published in the FEDERAL REGISTER on January 17, 1968 (33 F.R. 582), and amendments thereto on March 15, 1968 (33 F.R. 4600).

In carrying out the above directions, entry into the United States for consumption shall be construed to include entry for consumption into the Commonwealth of Puerto Rico.

The actions taken with respect to the Government of the Socialist Republic of Romania and with respect to imports of cotton textiles and cotton textile products from Romania have been determined by the President's Cabinet Textile Advisory Committee to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs being necessary to the implementation of such actions, fall within the foreign affairs exception to the notice provisions of 5 U.S.C. 553 (Supp. V, 1965–69). This letter will be published in the FEDERAL REGISTER.

Sincerely yours,

MAURICE H. STANS,
Secretary of Commerce, Chairman, President's Cabinet Textile Advisory Committee.

[F.R. Doc. 70–10840; Filed, Aug. 17, 1970; 8:50 a.m.]

CIVIL SERVICE COMMISSION

DEPARTMENT OF JUSTICE

Notice of Grant of Authority To Make Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission authorizes the Department of Justice to fill by noncareer executive assignment in the excepted service the position of Confidential Assistant to the Attorney General.

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

[F.R. Doc. 70–10818; Filed, Aug. 17, 1970; 8:50 a.m.]

FEDERAL COMMUNICATIONS COMMISSION

[Report 504]

COMMON CARRIER SERVICES INFORMATION [1]

Domestic Public Radio Services Applications Accepted for Filing [2]

AUGUST 10, 1970.

Pursuant to §§ 1.227(b)(3) and 21.30 (b) of the Commission's rules, an application, in order to be considered with any domestic public radio services application appearing on the list below, must be substantially complete and tendered for filing by whichever date is earlier: (a) The close of business 1 business day preceding the day on which the Commission takes action on the previously filed application; or (b) within 60 days after the date of the public notice listing the first prior filed application (with which subsequent applications are in conflict) as having been accepted for filing. An application which is subsequently amended by a major change will be considered to be a newly filed application. It is to be noted that the cutoff dates are set forth in the alternative—applications will be entitled to consideration with those listed below if filed by the end of the 60-day period, only if the Commission has not acted upon the application by that time pursuant to the first alternative earlier date. The mutual exclusivity rights of a new application are governed by the earliest action with respect to any one of the earlier conflicting applications.

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

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

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

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

APPLICATIONS ACCEPTED FOR FILING

DOMESTIC PUBLIC LAND MOBILE RADIO SERVICE

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

697–C2–P–71—General Telephone Co. of Indiana, Inc. (KSJ815), C.P. to change the antenna system at location No. 3: 4011 North Clinton Street, Fort Wayne, Ind., operating on frequency 35.22 MHz (1-way).

698–C2–P/ML–71—New York Telephone Co. (KEA770), C.P. and modification of license to change service from developmental to regular service for facilities now operating on frequencies 152.51, 152.57, 152.63, 152.69, and 35.66 MHz at location No. 1: 1.5 miles west-northwest of New Salem, N.Y., location No. 2: 1.9 miles southwest of Rotterdam Junction, N.Y. and location No. 3: Mount Rafinesque, 5 miles northeast of Troy, N.Y.

721–C2–P–71—Answer Iowa, Inc. (New), C.P. for a new 1-way station to be located at 3.8 miles northwest of Dubuque, Iowa, to operate on frequency 158.70 MHz.

722–C2–P–71—Com-Nav, Inc. (New), C.P. for a new 1-way station to be located at Copeland Hill, approximately 3 miles west of East Holden, Maine, to operate on frequency 152.24 MHz.

723–C2–P–71—Answer Iowa, Inc. (New), C.P. for a new 1-way station to be located 3 miles east of Sioux City, Iowa, to operate on frequency 158.70 MHz.

724–C2–P–71—All City Telephone Answering Service, Inc. (KSA266), C.P. for additional 2-way facilities to operate on frequency 152.15 MHz at a new site described as location No. 2: Near Wolf Road and Highway JJ, Waukesha, Wis.

725–C2–P–71—All City Telephone Answering Service, Inc. (KSC373), C.P. for additional 1-way facilities to operate on frequency 35.58 MHz at a new site described as location No. 2: Near Wolf Road and Highway JJ, Waukesha, Wis.

726–C2–P–71—Central Mobile Radio Phone Service (KQK595), C.P. to add standby facilities to operate on frequency 152.12 MHz Station location: 505 Jefferson Avenue, Toledo, Ohio.

727–C2–P–71—Central Mobile Radio Phone Service (KQA770), C.P. to add standby facilities to operate on frequency 152.09 MHz Station location: 1000 Urlin Place, Columbus, Ohio.

728–C2–P–71—Radio Dispatch Service (New), C.P. for a new 1-way station to be located at 1300 South Washington Avenue, Holland, Mich., to operate on frequency 158.70 MHz.

729–C2–P–71—Waterloo Communications, Inc. (New), C.P. for a new 1-way station to be located at 201 East Mullan Avenue, Waterloo, Iowa, to operate on frequency 158.70 MHz.

741–C2–AP/AL–(2)–71—Advanced Communications Co. Consent to assignment of license from: Harry L. Brock and Francis I. Lambert, doing business as Advanced Communications Co., Assignor, to: Advanced Radio Communications Co., Assignee, Stations: KLF495, Alexandria, Va.; KQZ755, Falls Church, Va.

796–C2–P–71—Peninsula Radio Secretarial Service, Inc. (KMA608), C.P. to add a second channel to operate on frequency 454.325 MHz at location No. 2: Near the intersection of Lincoln Avenue and Newlands Avenue, San Mateo, Calif.

Correction

530–C2–P–(19)–71—Communications Industries Inc., doing business as Mobilfone (KKG565). Correct entry inpart for locations 2 and 3 to read as follows: location No. 2: On Highway No. 181, 7.5 miles southwest of Seminole., Tex., replace transmitter operating on frequency 152.15 MHz base and 74.50 MHz repeater; change the antenna system for base and repeater and change the transmission line location No. 3: 1200 feet south of

DOMESTIC PUBLIC LAND MOBILE RADIO SERVICE—continued

Highway No. 302, 0.5 mile west of Nortrees, Tex., replace transmitters operating on frequencies 152.09 and 152.15 MHz base and frequencies 459.25 and 459.05 MHz repeater; change the antenna system for repeater facilities and change transmission lines. All other particulars same as reported on public notice dated Aug. 3, 1970, Report No. 503.

RURAL RADIO SERVICE

695–C1–P–71—The Pacific Telephone & Telegraph Co. (KQO82), C.P. to replace transmitter and change the antenna system on frequency 157.77 MHz. Station location: 2 miles west of Willow Springs, Calif.

696–C1–P–71—South Georgia Communications Co. (New), C.P. for a new station to be located at Little Cumberland Island, Ga., to operate on frequency 158.61 MHz.

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

643–C1–P–71—Hawaiian Telephone Co. (New), C.P. for a new station to be located at 9 miles southeast of Honolulu, Hawaii (Koko Head). Frequencies: 5997.1, 6056.4, and 6115.7 MHz toward Tantalus Transmitter Site, Hawaii.

644–C1–P–71—Hawaiian Telephone Co. (KUV83), C.P. to add frequencies 6249.1, 6308.4, and 6367.7 MHz toward Bishop, Hawaii, and 6249.1, 6308.4, and 6367.7 MHz toward Koko Head, Hawaii. Station location: 3.2 miles northeast of Honolulu, Hawaii. (Tantalus Mountain).

645–C1–P–71—Hawaiian Telephone Co. (KUQ97), C.P. to delete frequencies 5952.6 and 6071.2 MHz toward Puu Nana, Molokai, Hawaii, and add 5967.4, 6026.7, 6086.0, and 6145.3 MHz. Station location: Hanauma Bay, 10.8 miles east-southeast of Honolulu, Oahu, Hawaii.

646–C1–P–71—Hawaiian Telephone Co. (KUQ98), C.P. to add frequencies 6219.5, 6278.8, 6338.1, and 6397.4 MHz toward Hanauma Bay, Oahu, Hawaii, a new point of communication and delete 6204.7 and 6323.3 MHz toward Koko Head, Hawaii, delete 2122.0 MHz toward Kaunakakai Molokai, Hawaii, and add frequencies 10,715 and 11,035 MHz; and delete 6308.4 MHz toward Haleakala, Hawaii, and add 6278.8 and 6367.7 MHz.

647–C1–P–71—Hawaiian Telephone Co. (KUV88), C.P. to delete frequency 6056.4 MHz and add 6026.7 and 6115.7 MHz toward Puu Nana, Molokai, Hawaii. Station location: Haleakala, 5.8 miles southeast of town of Waiakoa, Hawaii.

648–C1–P–71—Hawaiian Telephone Co. (KZS94), C.P. to delete frequency 2173.6 MHz and add 11,245 and 11,565 MHz toward Puu Nana, Molokai, Hawaii. Station location: On Kamehameha Highway across from U.S. Post Office, Kaunakakai, Molokai, Hawaii.

649–C1–P–71—Hawaiian Telephone Co. (New), C.P. for a new station to be located at 1177 Bishop Street, Honolulu, Hawaii. Frequencies: 10,715, 10,795, and 10,875 MHz toward Tantalus Receiver Site, Hawaii and 5997.1, 6056.4, and 6115.7 MHz toward Tantalus Transmitter Site, Hawaii.

650–C1–P–71—Hawaiian Telephone Co. (KUV94), C.P. to add frequencies 11,325 and 11,405 MHz toward Kahaku, Hawaii, via passive reflector, and change polarization and transmitter for frequency 11,245 MHz passive reflector at Kawela, Hawaii. Station location: Paumalu, 5.3 miles west of Kahuku, Oahu, Hawaii.

651–C1–P–71—Hawaiian Telephone Co. (KUV93), C.P. to delete frequencies 10,755 MHz toward Laie and 10,715 MHz toward Paumalu, Hawaii, via passive reflector and add 10,715, 10,795, and 10,875 MHz toward Laie and Paumalu, Hawaii, via passive reflector. Station location: 2.3 miles south of northwest Kahuku, Oahu, Hawaii.

652–C1–P–71—Hawaiian Telephone Co. (KUV82), C.P. to delete frequencies 6234.3, 6293.6, and 6412.2 MHz toward Puu Papaa, Hawaii, via passive reflector and 11,285 MHz toward Kahuku, Hawaii. Add frequencies 6219.5, 6278.8, and 6338.1 MHz toward Puu Papaa via passive reflector and add 11,245, 11,325, and 11,405 MHz toward Kahuku, Hawaii. Location: 55–048 Lanihuli Street Street, Laie, Hawaii.

653–C1–P–71—Hawaiian Telephone Co. (KUV81), C.P. to delete frequencies 5952.6, 6071.2, and 6130.5 MHz toward Tantalus, Hawaii; and 5982.3, 6041.6, and 6160.2 MHz toward Laie, Hawaii, via passive reflector. Add 5997.1, 6056.4, and 6115.7 MHz toward Tantalus and 5967.4, 6026.7, and 6086.4 MHz toward Laie, Hawaii, via passive reflector. Station location: Puu Papaa, 2.2 miles northwest of Kailua, Hawaii.

654–C1–P–71—Hawaiian Telephone Co. (KUV80), C.P. to add frequencies 11,245, 11,325, and 11,405 MHz toward Honolulu and 6249.1, 6308.4, and 6367.7 MHz toward Puu Papaa, Hawaii. Station location: Tantalus, 2.9 miles northeast of Honolulu, Hawaii.

683–C1–P–71—Pacific Northwest Bell Telephone Co. (KPG74), C.P. to add frequencies 11,285 and 11,525 MHz toward Lookout Mountain, Wash. Station location 1201 North Forest Street, Bellingham, Wash.

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

684–C1–P–71—Pacific Northwest Bell Telephone Co. (KOY42), C.P. to add frequencies 10,835 and 11,075 MHz toward Bellingham, Wash. Station location: Lookout Mountain, 4.7 miles southeast of Bellingham, Wash.

685–C1–P–71—South Central Bell Telephone Co. (KLG21), C.P. to add frequency 3770 MHz toward McLaurin, Miss., and change polarization for frequencies 3850 and 3930 MHz toward McLaurin, Miss., to Horizontal. Station location: 100 Brunie Street, Hattiesburg, Miss.

686–C1–P–71—South Central Bell Telephone Co. (KKA74), C.P. to add frequencies 3730 MHz toward Hattiesburg and 3830 MHz toward Wiggins, Miss. Change polarization for frequencies 4050 and 4130 MHz toward Hattiesburg to Horizontal. Station location: 2.5 miles southwest of McLaurin, Miss.

687–C1–P–71—South Central Bell Telephone Co. (KKA75), C.P. to add frequency 3770 MHz toward McLaurin, Miss., and 4170 MHz toward Saucier, Miss. Station location: 4 miles northeast of Wiggins, Miss.

688–C1–P–71—South Central Bell Telephone Co. (KKA77), C.P. to add frequency 3730 MHz toward Wiggins and 3730 and 3810 MHz toward Gulfport, Miss. Station location: 1 mile southwest of Saucier, Miss.

689–C1–P–71—South Central Bell Telephone Co. (KKA78), C.P. to add 3770 and 3850 MHz toward Saucier, Miss. Station location: 22d Avenue and 18th Street, Gulfport, Miss.

690–C1–P–71—Pacific Northwest Bell Telephone Co. (KOC65), C.P. to add frequencies 11,245 and 11,485 MHz toward Sentinel Hill, Oreg. Station location: 819 Southwest Oak Street, Portland, Oreg.

691–C1–P–71—Pacific Northwest Bell Telephone Co. (KYS69), C.P. to add frequencies 10,795 and 11,035 MHz toward Portland, Oreg., and 6078.6 and 11,075 MHz toward Saddle Mountain, Oreg. Station location: Sentinel Hill, near Southwest Fairmount Boulevard, Portland, Oreg.

692–C1–P–71—Pacific Northwest Bell Telephone Co. (KYS68), C.P. to add frequencies 6256.5 and 11,565 MHz toward Amity, Oreg., and 6330.7 and 11,525 MHz toward Sentinel Hill, Portland, Oreg. Station location: Saddle Mountain, 9.5 miles northwest of Cherry Grove, Oreg.

693–C1–P–71—Pacific Northwest Bell Telephone Co. (KYS70), C.P. to add frequencies 10,915 and 11,155 MHz toward Salem, Oreg., and 6123.1 and 11,115 MHz toward Saddle Mountain, Oreg. Station location: 4.5 miles northeast of Amity, Oreg.

694–C1–P–71—Pacific Northwest Bell Telephone Co. (KYS71), C.P. to add frequencies 11,365 and 11,605 MHz toward Amity, Oreg. Station location: 740 State Street, Salem, Oreg.

719–C1–P–71—The Eagle Valley Telephone Co. (New), C.P. for a new station to be located at Third and Wall Streets, Eagle, Colo. Frequency: 2128.4 MHz toward Castle Peak, Colo.

720–C1–P–71—The Eagle Valley Telephone Co. (New), C.P. for a new station to be located on Castle Peak, 8.6 miles north-northwest of Eagle, Colo. Frequency: 2178.4 MHz toward Eagle, Colo.

735–C1–P–71—Puerto Rico Telephone Co. (WWY31), C.P. to add frequency 10,755 MHz toward Ponce, P.R. Station location: Baldorioty Street, Santa Isabel, P.R.

736–C1–P–71—Puerto Rico Telephone Co. (WWR76), C.P. to add frequency 11,685 MHz toward Santa Isabel, P.R. Station location: Power and "A" Streets, Ponce, P.R.

797–C1–P–71—Western Tele-Communications, Inc. (New), C.P. for a new station at 211 West Eighth Street, Pueblo, Colo. at latitude 38°16'28" N., longitude 104°36'35" W. Frequency: 4050 and 4130 MHz on azimuth 148°52'.

798–C1–P–71—Western Tele-Communications, Inc. (New), C.P. for a new station at Almagre Mountain, 8 miles west of Broadmoor, Colo. at latitude 38°46'25" N., longitude 104°59'30" W. Frequencies: 3930 and 4010 MHz on azimuth 168°21' and 4090 and 4170 MHz on azimuth 329°06'.

799–C1–P–71—Western Tele-Communications, Inc. (New), C.P. for a new station on Mustang Hill, 19 miles north of Walsenburg, Colo., at latitude 37°54'15" N., longitude 104°45'56" W. Frequencies: 3890 and 3970 MHz on azimuths 164°59' and 337°51'.

800–C1–P–71—Western Tele-Communications, Inc. (New), C.P. for a new station at Bartlett Mesa, 6 miles north of Ration, N. Mex., at latitude 36°59'33" N., longitude 104°27'39" W. Frequencies: 3930 and 4010 MHz on azimuths 187°38' and 345°10'.

801–C1–P–71—Western Tele-Communications, Inc. (New), C.P. for a new station at Cornudo Hills, 5 miles east of Wagon Mound, N. Mex., at latitude 35°59'12" N., longitude 104°37'36" W. Frequencies: 3950 and 4030 MHz on azimuth 239°02' and 3890 and 3970 MHz on azimuth 07°32'.

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

802–C1–P–71—Western Tele-Communications, Inc. (New), C.P. for a new station at Barillas Peak, 14 miles west of Las Vegas, N. Mex., at latitude 35°34'08'' N., longitude 105°28'22'' W. Frequencies: 11,405 and 11,645 MHz on azimuth 246°15' and 3990 and 4070 MHz on azimuth 58°33'.

803–C1–P–71—Western Tele-Communications, Inc. (New), C.P. for a new station at Sandia Crest, 10 miles northeast of Albuquerque, N. Mex., at latitude 35°12'44'' N., longitude 106°26'59'' W. Frequencies: 10,795 and 11,035 MHz on azimuth 41°10' and 10,755 and 10,995 MHz on azimuth 65°41'.

804–C1–P–71—Western Tele-Communications, Inc. (New), C.P. for a new station at 440 Cerrillos Road, Santa Fe, N. Mex., at latitude 35°40'57'' N., longitude 105°56'40'' W. Frequencies: 11,285 and 11,525 MHz on azimuth 221°28'.

(Informative: Applicant proposes to provide data and other specialized services between Denver, Colo. and Albuquerque, N. Mex., and the intermediate points of Pueblo, Colo. and Santa Fe, N. Mex. These applications propose an interconnection with previously filed applications in order to provide this service.)

The Commission has received a request from the Alaska Communications System, 550 Federal Office Building, Seattle, Wash., to operate microwave radio facilities at Cordova, Alaska, latitude 60°32'48'' N., longitude 145°45'09'' W. on frequency 2128 MHz directed toward Boswell, Alaska, latitude 60°25'04'' N., longitude 146°09'08'' W. and to operate facilities at Boswell on frequency 2178 MHz directod toward Cordova. Power, 2 w.; emission, 3500F9.

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

605–C1–P–71—Newhouse Alabama Microwave, Inc. (New), C.P. for a new station near Valley Avenue and Valley View Drive, Birmingham, Ala., at latitude 33°29'02'' N., longitude 86°48'21'' W. Frequency 6152.8 MHz on azimuth 244°26'.

606–C1–P–71—Newhouse Alabama Microwave, Inc. (New), C.P. for a new station 1.2 miles north-northwest of Millet, Ala., at latitude 33°18'17'' N., longitude 87°15'00'' W. Frequency 6404.8 MHz on azimuth 236°20'.

607–C1–P–71—Newhouse Alabama Microwave Inc. (New), C.P. for a new station at 41st Avenue and 35th Street, Tuscaloosa, Ala., at latitude 33°10'25'' N., longitude 87°29'01'' W. Frequency 6152.8 MHz on azimuth 300°24'.

608–C1–P–71—Newhouse Alabama Microwave, Inc. (New), C.P. for a new station 1 mile northeast of Pleasant Grove, Ala., at latitude 33°21'09'' N., longitude 87°50'53'' W. Frequency 6404.8 MHz on azimuth 292°44'.

(Informative: Applicant proposes to provide the CBS network feed from station WBMG in Birmingham to WCFT–TV in Tuscaloosa, Ala., and to WCBI–TV in Columbus, Miss.)

609–C1–P–71 Microwave Service Co. (New), C.P. for a new station at the Peabody Hotel, Memphis, Tenn., at latitude 35°08'32'' N., longitude 90°03'06'' W. Frequency 6256.5 MHz on azimuth 120°10'.

610–C1–P–71—Microwave Service Co. (WAD22), C.P. to add frequency 6034.2 MHz on azimuth 106°30'. Location: Barton, 7.6 miles east of Olive Branch, Miss., at latitude 34°58'05'' N., longitude 89°41'22'' W.

611–C1–P–71—Microwave Service Co. (KUV90), C.P. to add frequency 6256.5 MHz on azimuth 134°15'. Location: 3.6 miles west-northwest of Ashland, Miss., at latitude 34°51'28'' N., longitude 89°14'20'' W.

612–C1–P–71—Microwave Service Co. (KLN74), C.P. to add frequency 6034.2 MHz on azimuth 148°00'. Location: 3.6 miles east-northeast of Keownville, Miss. at latitude 34°35'39'' N., longitude 88°54'06'' W.

613–C1–P–71—Microwave Service Co. (KLH80), C.P. to add frequency 6375.2 MHz on azimuth 187°15'. Location: 2.5 miles north of Tupelo, Miss. at latitude 34°19'24'' N., longitude 88°42'39'' W.

614–C1–P–71—Microwave Service Co. (KLV62), C.P. to add frequency 6034.2 MHz on azimuth 166°15'. Location: 1.5 miles west-southwest of Okolona, Miss., at latitude 33°59'50'' N., longitude 88°46'20'' W.

615–C1–P–71—Microwave Service Co. (KUV91), C.P. to add frequencies 6286.2 and 6404.8 MHz on azimuth 123°40'. Location: 0.5 mile northwest of West Point, Miss., at latitude 33°36'50'' N., longitude 88°39'55'' W.

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

616–C1–P–71—Microwave Service Co. (New), C.P. for a new station 4 miles northeast of Columbus, Miss., at latitude 33°32'24'' N., longitude 88°23'38'' W. Frequency: 6034.2 MHz on azimuth 123°40'.

617–C1–P–71—Microwave Service Co. (New), C.P. for a new station 1.5 miles west of Melrose, Ala., at latitude 33°23''55' N., longitude 88°08'47'' W. Frequency: 6286.2 MHz on azimuth 114°53'.

618–C1–P–71—Microwave Service Co. (New), C.P. for a new station 1.5 miles west of Holman, Ala., at latitude 33°16'51'' N., longitude 87°51'01'' W. Frequency: 6123.1 MHz on azimuth 101°38'.

619–C1–P–71—Microwave Service Co. (New), C.P. for a new station at 41st Avenue and 35th Street, Tuscaloosa, Ala., at latitude 33°10'25'' N., longitude 87°29'01'' W. Frequency: 6375.2 MHz on azimuth 80°28'.

620–C1–P–71—Microwave Service Co. (New), C.P. for a new station 1 mile north-northwest of Woodstock, Ala., at latitude 33°13'09'' N., longitude 87°09'24'' W. Frequency: 6152.8 MHz on azimuth 47°58'.

(Informative: Applicant is proposing to provide the CBS television network feed to WBMG–TV, Birmingham, Ala.; WCFT–TV, Tuscaloosa, Ala., and to WCBI–TV in Columbus, Miss.)

621–C1–P–71—Microwave Service Co. (WAD21), C.P. to change frequency to 6197.2 MHz toward Barton, Miss., on azimuth 123°45'. Location: Memphis, Tenn., at latitude 35°08'07'' N., longitude 89°59'45'' W.

622–C1–P–71—Microwave Service Co. (WAD22), C.P. to change frequency to 5974.8 MHz toward Ashland, Miss., on azimuth 106°30'. Location: 7.6 miles east of Olive Branch, Miss., at latitude 34°58'05'' N., longitude 89°41'22'' W.

623–C1–P–71—Microwave Service Co. (KUV90), C.P. to change frequencies to 6197.2, 6226.9, 6286.2, 6345.5, and 6404.8 MHz toward Keownville, Miss., on azimuth 134°15'. Location: 3.6 miles west-northwest of Ashland, Miss., at latitude 34°51'28'' N., longitude 89°14'20'' W.

624–C1–P–71—Microwave Service Co. (KLN74), C.P. to change frequencies to 5945.2, 5974.8, 6004.5, 6063.8, and 6123.1 MHz toward Tupelo on azimuth 148°00'. Location: 3.6 miles north-northeast of Keownville, Miss., at latitude 34°35'39'' N., longitude 88°54'06'' W.

625–C1–P–71—Microwave Service Co. (KLH80), C.P. to change frequencies at station located 2.5 miles north of Tupelo, Miss., latitude 34°19'24'' N., longitude 88°42'39'' W. as follows: 6226.9, 6286.2, and 6404.8 MHz toward Baldwin, Miss., 12°45'; 6226.9, 6286.2, and 6404.8 MHz toward Okolona, Miss., 187°15'; 6226.9, 6286.2, 6345.5, and 6404.8 MHz toward Fulton, Miss., 100°45'.

626–C1–P–71—Microwave Service Co. (KLV62), C.P. to change frequencies at station located 1.5 miles west-southwest of Okolona, Miss., latitude 33°59'50'' N., longitude 88°46'20'' W. as follows: 5974.8, 6093.5, and 6152.8 MHz toward Amory, Miss., 92°45'; 5974.8, 6093.5, and 6152.8 MHz toward Aberdeen, Miss., 136°45'; 5974.8, 6093.5, and 6152.8 MHz toward West Point, Miss., 166°15'.

627–C1–P–71—Microwave Service Co. (KUV91), C.P. to change frequencies to 6226.9, 6345.5, and 6286.2 on azimuth 208°45' toward Starkville, Miss., and on azimuth 314°30' toward Houston, Miss. Location: 0.5 mile northwest of West Point, Miss., at latitude 33°36'50'' N., longitude 88°39'55'' N.

699–C1–P–71—Western Tele-Communications, Inc. (KPV60), C.P. to add a new point of communications at Cedar Mountain, Wyo. Frequencies: 6078.6, 6108.3, 6137.9, and 6167.6 MHz on azimuth 199°30'. Location: Greeno, 11.5 miles southeast of Laurel, Mont., at latitude 45°32'04'' N., longitude 108°38'28'' W.

(Informative: Applicant proposes to provide the television signals of stations KUTV, KCPX–TV, KSL–TV, and KUED–TV of Salt Lake City and three FM radio channels from Billings, Mont., to Wyoming Microwave Corp., for delivery to their existing subscribers in Powell, Lovell, Cody, Riverton, Lander, Thermopolis, Basin, Greybull, Worland, Sheridan, Buffalo, and Gillette, Wyo.)

700–C1–P–71—American Microwave and Communications, Inc. (New), C.P. for a new station in Pontiac State Bank, Pontiac, Mich., at latitude 42°38'17'' N., longitude 83°17'30'' W. Frequency: 6204.7 MHz on azimuth 322°30'.

701–C1–P–71—American Microwave and Communications, Inc. (New), C.P. for a new station 3.5 miles north-northwest of Clarkston, Mich., at latitude 42°47'28" N., longitude 83°27'08" W. Frequency: 6130.5 MHz on azimuth 321°30'.

702–C1–P–71—American Microwave and Communications, Inc. (New), C.P. for a new station at Flint Hurley Hospital, Flint, Mich., at latitude 43°01'25" N., longitude 83°42'28" W. Frequency: 6234.3 MHz on azimuth 347°34'.

(Informative: Applicant proposes to provide the NBC network television signal from Pontiac, Mich., to station WNEM–TV at Saginaw, Mich.)

717–C1–P–71—Wyoming Microwave Corp. (KPS25), C.P. to power split frequency 6160.2 MHz on azimuth 58°02'. Location: Dome Mountain, 25 miles southwest of Sheridan, Wyo., at latitude 44°35'43" N., longitude 107°22'56" W.

(Informative: Applicant proposes to provide the television signal of KWGN–TV of Denver, Colo., to Clouds Peak Radio and Television Corp., in Sheridan, Wyo.)

718–C1–P–71—Wyoming Microwave Corp. (WAY73), C.P. to power split frequency 6241.7 MHz on azimuth 313°58' Location: Rural Summit, 9 miles southeast of Laramie, Wyo., at latitude 41°14'00" N., longitude 105°26'32" W.

(Informative: Applicant proposes to provide the television signal of KWGN–TV of Denver, Colo., to Community Television, Inc., in Laramie, Wyo.)

730–C1–P–71—Western Tele-Communications, Inc. (KZA87), C.P. to power split frequencies 6271.3, 6301.0, 6330.7, and 6360.3 MHz on azimuth 61°09'. Location: East Butte, 32 miles west of Idaho Falls, Idaho, at latitude 43°30'00" N., longitude 112°39'48" W.

(Informative: Applicant proposes to provide the television signals of KUTV, KCPX–TV, KSL–TV, and KUED–TV of Salt Lake City, Utah, to CATV customer in Rexburg, Idaho.)

731–C1–MP–71—United Video, Inc. (WAN79), Modification of C.P. to change frequency to 10,895 MHz on azimuth 293°02'. Location: 3.3 miles southeast of Lebanon City, Mo., at latitude 37°42'39" N., longitude 92°42'43" W.

732–C1–MP–71—United Video, Inc. (WCZ32), Modification of C.P. to change frequency to 11,585 MHz on azimuth 344°39'. Location: 2.6 miles northwest of Urbana, Ill., at latitude 37°52'16" N., longitude 93°11'25.3" W.

733–C1–MP–71—United Video, Inc. (WCZ33), Modification of C.P. to change frequency to 10,895 MHz on azimuths 290°28' and 6°30'. Location: 2.2 miles east of Warsaw, Ind., at latitude 38°14'17" N., longitude 93°19'05" W.

734–C1–MP–71—United Video, Inc. (WCZ35), Modification of C.P. to change frequency to 11,585 MHz on azimuths 6°21' and 286°31'. Location: 2 miles south of Sedalia, Mo., at latitude 38°40'13" N., longitude 93°15'19" W.

(Informative: Applicant is making technical changes in the authorized system and eliminating one hop. Special temporary authority is requested.)

737–C1–P–71—Wyoming Microwave Corp. (KPS63), C.P. to modify facilities at Cedar Mountain, 5.3 miles southwest of Cody, Wyo., at latitude 44°29'46" N., longitude 109°09'16" W. as follows: 6204.7 MHz toward Greeno, Mont., 19°09'; 6204.7, 6234.3, 6323.3, 6382.6, and 6412.2 MHz toward Powell, Wyo., 46°57'; 6204.7, 6234.3, 6323.3, 6382.6, and 6412.2 MHz toward Cody, Wyo., 67°14'; 6234.3, 6323.3, 6382.6, and 6412.2 MHz toward Lovell, Wyo., 57°46'; 6234.3, 6323.3, 6382.6, and 6412.2 MHz toward Copper Mountain, Wyo., 141°17'; 6234.3, 6323.3, 6382.6, and 6412.2 MHz toward Dome Mountain, Wyo., 84°54'.

738–C1–P–71—Wyoming Microwave Corp. (KPB65), C.P. to modify facilities at Copper Mountain, 12.3 miles north-northwest of Bonneville, Wyo., at latitude 43°26'15" N., longitude 107°59'47" W. as follows: 6115.7 MHz toward Cedar Mountain, Wyo., 322°05'; 5967.4, 6026.7, 6056.4, 6086.0, and 6115.7 MHz toward Riverton, Wyo., 214°22'; 5967.4, 6026.7, 6056.4, 6086.0, and 6115.7 MHz toward Lander, Wyo., 222°13'; 5967.4, 6026.7, 6056.4, and 6086.0 MHz toward Thermopolis, Wyo., 320°48'; 5967.4, 6026.7, 6056.4, and 6086.0 MHz toward Torch Ridge, Wyo., 359°59'; 5967.4, 6026.7, 6056.4, and 6086.0 MHz toward Worland, Wyo., 2°44'.

739–C1–P–71—Wyoming Microwave Corp. (KPS25), C.P. to modify facilities at Dome Mountain, 25 miles southwest of Sheridan, Wyo., at latitude 44°35'43" N., longitude 107°22'56" W. as follows: 6011.9, 6041.6, 6130.5, 6278.8, and 6338.1 MHz toward Sheridan, Wyo., 58°02'; 6011.9, 6041.6, 6130.5, 6160.2, and 6338.1 MHz toward Kingsbury, Wyo., 108°11'.

740–C1–P–71—Wyoming Microwave Corp. (KTG48), C.P. to change frequencies to 6219.5 and 6278.8 MHz on azimuth 282°25' toward Buffalo, Wyo., and on azimuth 66°40'.

(Informative: Applicant is upgrading its existing service to the towns of Powell, Lovell, Cody, Riverton, Lander, Thermopolis, Basin, Greybull, Worland, Sheridan, Buffalo, and Gillette, Wyo. A new channel of service carrying the signal of KHSD–TV of Lead, S. Dak., to the present subscriber in Sheridan, Wyo., and 3 FM radio channels from Billings, Mont., to all of the above mentioned towns.

West Texas Microwave Co. The following applications are for modification of licenses at the stations listed for the purpose of adding an audio subcarrier channel for delivering the programing of the Voice of Southwest Agriculture Radio Network to radio stations located in Abilene, Amarillo, Big Spring, Colorado City, Levelland, Lubbock, Odessa, Plainview, Post, Seminole, Snyder, Stamford, all in Texas and to Hobbs, N. Mex.

743–C1–ML–71—West Texas Microwave Co. (KLR75), Estes Ranch, Tex.

744–C1–ML–71—West Texas Microwave Co. (KZI27), Anson, Tex.

745–C1–ML–71—West Texas Microwave Co. (KTQ81), Colorado City, Tex.

746–C1–ML–71—West Texas Microwave Co. (KTR34), Griffins Creek, Tex.

747–C1–ML–71—West Texas Microwave Co. (KZS70), Seminole, Tex.

748–C1–ML–71—West Texas Microwave Co. (KTR35), Pleasant Valley, Tex.

749–C1–ML–71—West Texas Microwave Co. (KZI26), Abernathy, Tex.

750–C1–ML–71—West Texas Microwave Co. (WAY39), Jennings Farm, Tex.

751–C1–ML–71—West Texas Microwave Co. (KKU85), Midland, Tex.

752–C1–ML–71—West Texas Microwave Co. (KZI25), Lubbock, Tex.

763–C1–P–71—Mountain Microwave Corp. (WAY47), C.P. to add frequency 5930.4 MHz on azimuth 267°28'. Location: 1.2 miles southwest of Huron, S. Dak., at latitude 44°20'05" N., longitude 98°14'00" W.

764–C1–P–71—Mountain Microwave Corp. (KZI52), C.P. to add frequency 6345.5 MHz on azimuth 229°11'. Location: Spring Lake, 9.5 miles west-northwest of Danford, S. Dak., at latitude 44°18'20" N., longitude 99°03'35" W.

765–C1–P–71—Mountain Microwave Corp. (KZI51), C.P. to add frequency 6004.5 MHz on azimuth 308°34'. Location: 6 miles north of Reliance, S. Dak., at latitude 43°57'55" N., longitude 99°36'11" W.

(Informative: Applicant proposes to deliver the signal of television station WTCN–TV of Minneapolis, Minn., to Pierre Cable TV in Pierre, S. Dak.)

[F.R. Doc. 70–10659; Filed, Aug. 17, 1970; 8:45 a.m.]

STANDARD BROADCAST APPLICATIONS READY AND AVAILABLE FOR PROCESSING

Notice is hereby given, pursuant to section 1.571(c) of the Commission's rules, that on September 22, 1970, the standard broadcast applications listed below will be considered as ready and available for processing.

Pursuant to § 1.227(b)(1), § 1.591(b) and note 2 to § 1.571 of the Commission's rules,[1] an application, in order to be considered with any application appearing on the attached list must be in direct conflict with said application, substantially complete and tendered for filing at the offices of the Commission by the close of business.

The attention of any party in interest desiring to file pleadings concerning any pending standard broadcast application pursuant to section 309(d)(1) of the Communications Act of 1934, as amended, is directed to § 1.580(i) of the Commission's rules for provisions governing the time of filing and other requirements relating to such pleadings.

Adopted: August 10, 1970.

Released: August 12, 1970.

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

[1] See report and order released July 18, 1968, FCC 68–739, Interim Criteria to Govern Acceptance of Standard Broadcast Applications, 33 F.R. 10343, 13 RR 2d 1667.

Applications from the top of the processing line:

BP–18637 KBXM, Kennett, Mo.
Bootheel Broadcasting Co.
Has: 1540 kc., 1 kw., 250w–CH, Day.
Req: 1540 kc., 1 kw., 500w–CH, Day.

BP–18746 KYAK, Anchorage, Alaska.
Big Country Radio, Inc.
Has: 650 kc., 25 kw., DA–1, U.
Req: 650 kc., 25 kw., 50 kw.–LS, DA–2, U.

[F.R. Doc. 70–10789; Filed, Aug. 17, 1970; 8:49 a.m.]

[Dockets Nos. 18933, 18934; FCC 70–837]

JAX-AERO SERVICE, INC., AND GATEWAY AVIATION, INC.

Order Designating Applications for Consolidated Hearing on Stated Issues

In regard applications of Jax-Aero Service, Inc., Jacksonville, Fla., Docket No. 18933, File No. 161–A–L–10; Gateway Aviation, Inc., Jacksonville, Fla., Docket No. 18934, File No. 89–A–L–30, for Aeronautical Advisory Station to serve Craig Airport, Jacksonville, Fla.

1. The Commission's rules (§ 87.251 (a)) provide that only one aeronautical advisory station may be authorized to operate at a landing area. The above-captioned applications both seek Commission authority to operate an aeronautical advisory station at Craig Airport, Jacksonville, Fla., and, therefore, are mutually exclusive. Accordingly, it is necessary to designate the applications for hearing. Except for the issues specified herein each applicant is qualified.

2. The city of Jacksonville, Fla., was the licensee of the Aeronautical advisory station (KJH9) serving Craig Airport. The city did not seek renewal of the station license and it expired on May 27, 1969. According to Gateway they have operated this station since 1966. By letter dated April 22, 1970, Jax-Aero alleges that the aeronautical advisory station "which Gateway now operates has been operated in the past illegally, and also is at this time still being operated illegally."

3. In view of the foregoing: *It is ordered*, That pursuant to the provisions of section 309(e) of the Communication Act of 1934, as amended, the above-captioned applications are hereby designated for hearing in a consolidated proceeding at a time and place to be specified in a subsequent order on the following issues:

a. To determine which applicant would provide the public with better aeronautical advisory service based on the following consideration:

(1) Location of the fixed-base operation and proposed radio station in relation to the landing area and traffic patterns;

(2) Hours of operation;

(3) Personnel available to provide advisory service;

(4) Experience of applicant and employees in aviation and aviation communications;

(5) Ability to provide information pertaining to primary and secondary communications as specified in § 87.257 of the Commission's rules;

(6) Proposed radio system including control and dispatch points; and

(7) The availability of the radio facilities to other fixed-base operators.

(b) To determine whether Gateway Service, Inc., has in the past conducted an unauthorized aeronautical advisory service or operated in violation of the Commission's rules governing such service.

(c) To determine in light of the evidence adduced on the foregoing issues which, if either, of the applications should be granted.

4. *It is further ordered*, That the burden of proof and the burden of proceeding with the introduction of evidence on issue (b) is on Jax Aero Service, Inc., on all other issues the burden is on each applicant with respect to its application except to issue (c) which is conclusory.

5. *It is further ordered*, That to avail themselves of an opportunity to be heard Jax Aero Service, Inc., and Gateway Aviation, Inc., pursuant to § 1.221(c) of the Commission's rules, in person or by attorney, shall within 20 days of the mailing of this order file with the Commission, in triplicate, a written appearance stating an intention to appear on the date set for hearing and present evidence on the issues specified in this order. Failure to file a written appearance within the time specified may result in dismissal of the application with prejudice.

Adopted: August 5, 1970.

Released: August 12, 1970.

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

[F.R. Doc. 70–10790; Filed, Aug. 17, 1970; 8:49 a.m.]

[Docket No. 18759, etc.; FCC 70R–284]

RKO GENERAL, INC. (WNAC-TV) ET AL.

Memorandum Opinion and Order Enlarging Issues

In regard applications of RKO General, Inc. (WNAC–TV), Boston, Mass., for renewal of broadcast license, Docket No. 18759, File No. BRCT–63; Community Broadcasting of Boston, Inc., Boston, Mass., Docket No. 18760, File No. BPCT–4198, The Dudley Station Corporation, Boston, Mass., Docket No. 18761, File No. BPCT–4277, for construction permit for new television broadcast station.

1. This proceeding involves the application of RKO General, Inc. (RKO), for renewal of its television broadcast license for Channel 7 (WNAC–TV) in Boston, Mass., and the mutually exclusive applications of Community Broadcasting of Boston, Inc. (Community), and The Dudley Station Corp. (Dudley) for a construction permit for a new television broadcast station to operate on the same channel. By order, FCC 69–1335, 20 FCC 2d 846, released December 11, 1969, the applications were designated for hearing on various issues, including financial issues against Community and Dudley, an anticompetitive practices issue against RKO, and a standard comparative issue. Presently before the Review Board are a petition to enlarge issues and a supplement thereto, filed on January 19 and 23, 1970, respectively, by Community,[1] which seek the addition of 15 separate issues to this proceeding, including a comparative ascertainment of community needs issue, misrepresentation issues against RKO concerning the renewal applicant's Suburban survey and financial reports to the Commission, issues addressed to alleged violations of section 16(b) of the Securities Exchange Act of 1934 by RKO, of Federal automobile and safety laws by RKO's parent, the General Tire & Rubber Co., and of ownership reporting regulations of the Commission by RKO, an issue concerning RKO's alleged harassment of officers and agents of Pikes Peak Broadcasting Co., issues to determine whether RKO used its broadcast profits to acquire nonbroadcast interests and used its National Sales Division to foreclose local advertisers and to obtain commissions from its broadcast stations, concentration of control and delegation of licensee responsibility issues, an issue inquiring into the ramifications of RKO's status as a conglomerate enterprise (including programing supervision, relationship between broadcast and nonbroadcast interests and siphoning of broadcast profits for nonbroadcast interests), an issue inquiring into alleged "kickbacks" in the operation of an RKO-produced show and of an ABC television network show carried by WNAC–TV, and a conclusory issue to determine whether the evidence adduced under the foregoing issues, in combination or cumulatively, warrants RKO's disqualification.[2] The requested issues will be considered in sequence and will be grouped for consolidated consideration by the Board as seems appropriate.

COMPARATIVE EFFORTS ISSUE (REQUESTED ISSUE A)

2. The Community requests the addition of an issue to determine on a comparative basis the significant differences between RKO, Dudley and Community with respect to the efforts made by each applicant to ascertain the community

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[1] A list of the numerous pleadings now before the Review Board for consideration is contained in attached appendix A. As indicated, the last pleading was not filed until Apr. 28, 1970. With reference to Community's motion for acceptance of its late-filed petition to enlarge issues, the Board agrees with Community's undisputed claim that "good cause" has been shown to warrant its acceptance, and, therefore, the instant request has been considered on its merits.

[2] In view of the fact that essentially the same arguments as Community's for a transmitter site issue against Dudley were disposed of by the Board pursuant to RKO's petition to enlarge issues, filed Jan. 19, 1970, Community's request for such an issue in its instant petition and all related requests will be dismissed. See Memorandum Opinion and Order, FCC 70R–224, 19 RR 2d 553, released June 25, 1970.

needs and interests of the area to be served. In support of its request, Community contends that a significant disparity exists with regard to the efforts of RKO, Dudley, and Community to ascertain the needs and interests of the areas each applicant proposes to serve. For example, Community points to its own general public survey showing which discloses that more than 950 individuals in the service area were interviewed by telephone to discern the types of television programs desired; that approximately 6,000 individuals within the Boston Metropolitan Area were surveyed by mail to obtain specific information with respect to the community needs of the service area; and that each survey was conducted along demographic lines to insure representative responses and has been statistically documented in its application. In contrast to its efforts, submits Community, RKO has failed to show any attempts made to ascertain community needs from the general listening public. Petitioner asserts that RKO has not shown in its application any information it acquired as a result of its administrative processing of "thousands of letters evaluating programs and offering suggestions" and of its tabulations of "telephone calls commenting on programs * * * to give an overnight measure of viewer reactions." Moreover, argues Community, such information relates to audience program preferences only and would not be an adequate substitute for eliciting information as to community needs and interests. The petitioner further submits that Dudley's general public survey showing is numerically deficient, noting that Dudley has surveyed a total of only 377 individuals in a metropolitan area with a 1960 population of 2,595,481 and in a television market ranked fifth in the entire nation. Community also points out that, of this total, 127 are identified as community leaders from the Boston area and from Lowell, Worcester, and New Bedford and the remaining 250 are residents of Suffolk, Middlesex, Norfolk, and Essex Counties. The canvass of a mere 377 individuals by Dudley, argues Community, cannot purport to constitute a valid ascertainment of needs and interests in the service area.

3. In the absence of valid general public surveys, alleges Community, RKO, and Dudley, of necessity, must primarily rely upon consultations with community leaders, and, in this regard, the petitioner contends that both applicants' community leader surveys are deficient. RKO's application, states Community, shows that the renewal applicant employed three methods of consulting community leaders: (1) The involvement of WNAC–TV's staff in the community; (2) consultations with community groups; and (3) luncheon seminars. However, petitioner contends, RKO does not document, except for notes on some of the luncheon seminars, any specific needs suggested by the individuals or groups contacted. Moreover, alleges Community, RKO has failed to consult with community leaders on the basis of a demographic study of the service area or of a statistically reliable sampling or cross-sectional survey, citing City of Camden, 18 FCC 2d 412, 16 RR 2d 555 (1969), and, as a result, RKO has not demonstrated any meaningful consultations with leaders representing veterans organizations, social and fraternal groups, has not shown that any persons under the age of 21 were contacted, and has failed to interview sufficient business, labor, and industry leaders.[3] With regard to the community leader contacts of Dudley, petitioner urges that Dudley has failed to disclose demographic data or other valid materials or methods relied upon to discover the true composition of the community to be served and that Dudley's canvass of only 377 individuals, 127 of whom are identified as community leaders, is an inadequate survey of the Boston television market. As a result, asserts Community, the deficiences and the omissions of RKO and Dudley raise a serious question as to the representative nature of the applicants' community consultations. In contrast to the allegedly deficient efforts of RKO and Dudley, Community asserts that its own community leader consultations were based upon a number of sources of demographic data, such as materials published by the U.S. Census Bureau, Editor and Publisher Market Guide, Chambers of Commerce, and the Massachusetts Department of Commerce. As a result, submits Community, it has presented in its application detailed information with regard to specific needs suggested by more than 600 representative community leaders and various individuals in the service area, and its survey showings include interviews with those groups most noticeably absent from the showings of RKO and of Dudley, that is, interviews with more than 25 young people and students, 25 representatives of business, labor and industry, and 11 representatives of veterans and social organizations. Community concludes that the significant disparity which exists between the ascertainment efforts of the parties to the instant proceeding warrants addition of the requested issue.

4. RKO, Dudley, and the Bureau oppose addition of the requested comparative efforts issue. Each party maintains, initially, that the Commission deliberately considered each applicant's efforts to ascertain community needs and interests and found that "all of the applicants have satisfactorily complied" with applicable ascertainment standards. In view of the Commission's consideration of the matter, the respondents argue that the Board is precluded from adding the requested issue, citing Atlantic Broadcasting Co.[4] On the merits of petitioner's request, Dudley argues that its original survey of area needs and its supplement thereto, dated November 24, 1969, show an ascertainment of community needs that qualitatively matches that of Community. Dudley concludes that since Community is "playing a numbers game," unrelated to the quality of the ascertainment showings, the addition of the comparative efforts issue can only result in litigious, expensive, and time-consuming efforts which will be of peripheral significance in this proceeding.

5. For its part, RKO argues that, at the time its application was filed (Dec. 30, 1968), there were no Commission requirements that the listening public (as contrasted with community leaders and other individuals identified by name, position, and organization) be surveyed, or that community leader consultations be based upon evidence of a precise "cross-sectional survey, statistically reliable sampling, or other valid method" of determining who are community leaders. RKO submits that the latter requirement was first announced in the City of Camden case, supra; and that the former requirement was first announced in the Primer on Ascertainment of Community Problems by Broadcast Applicants (Primer), 20 FCC 2d 880, 34 FR 20282, adopted December 19, 1969. It is clear, urges RKO, from paragraph 6 of the designation order in this proceeding[5] that the Commission chose to judge the applicants' survey efforts by policy statements[6] in effect prior to the issuance of the Primer, and that the Commission correctly tested RKO's survey of community leaders according to the pre-City of Camden standards that consultations should be with a "representative range of groups and leaders."[7] Concerning Community's allegation that RKO has insufficiently documented the community problems found by its ascertainment efforts, RKO charges that the

[3] Specifically, Community points out that although 78 percent of the average (1967) metropolitan employment figure, based upon a report for 1967 of the Massachusetts Division of Employment Security, was engaged in the manufacturing industry, in wholesale and retail trade and in service industries, RKO has listed only five community leaders representing business, labor and industry. Furthermore, asserts Community, although the 1960 U.S. Census reported that 957,291 individuals of the Boston area population of 2,595,481 were below the age of 21, although the Massachusetts Department of Education reported in 1967 that 638,204 pupils were attending school up to and including Grade 12, and although there are 48 degree-granting institutions of higher education within the Boston Standard Metropolitan Statistical Area, RKO has failed to show that any student or person under 21 years of age was contacted with regard to the needs of this large segment of the community.

[4] 5 FCC 2d 717, 8 RR 2d 991 (1966).

[5] Paragraph 6 reads as follows:
In Suburban Broadcasters, 30 FCC 1020, 20 RR 951 (1961); our Public Notice of Aug. 22, 1968 (FCC 69–847), 13 RR 2d 1903; and City of Camden (WCAM), 18 FCC 2d 412 (1969), we indicated that applicants were expected to provide full information on their awareness of and responsiveness to local community needs and interests. We find that all of the applicants have satisfactorily complied with these requirements.

[6] RKO cites the Commission's Public Notice of Aug. 22, 1968, on Ascertainment of Community Needs by Broadcast Applicants, FCC 68–847, 13 RR 2d 1903, and City of Camden, supra.

[7] RKO cites the Public Notice on Ascertainment of Community Needs, supra.

petitioner has considered only the statement of needs growing out of community affairs luncheons (Exhibit 2 to section IV–B of the RKO application), and has ignored completely the extensive listing of local problems and programs to deal with those problems in Exhibit 3 to the same section. In any event, states RKO, since the filing of its application, it has undertaken surveys of the general public in its service area concerning community problems and has, moreover, submitted two studies conducted for the benefit of Station WNAC–TV during the period November–December, 1969, as further evidence of its efforts to ascertain community needs by consultation with community leaders (Attachment I to RKO's opposition).[8] Furthermore, argues RKO, not only has it demonstrated compliance with the Commission's requirements, but also a number of substantial weaknesses in Community's Suburban showing preclude a finding by the Board of a "significant disparity" between RKO's and Community's ascertainment efforts: (a) Community's application does not indicate that interviews of Boston-area leaders were conducted by principals or top-level prospective employees of Community, and it appears from the types of responses received that many of said leaders were not consulted as to community problems; (b) Community's mail survey elicited a total of only 312 responses—about 5 percent of the persons sought to be polled—and there is no indication of the range of economic, social, political, cultural, and other elements of the community represented by the responses; and (c) Community's telephone survey was not conducted by principals or prospective employees of Community and does not meet the Commission's basic standard of ascertaining community problems as contrasted with program preferences. Finally, RKO urges that the Commission's more detailed survey requirements should not be understood to encourage a "one-upmanship" contest in ascertainment efforts by applicants for the same facility; rather, submits RKO, the Commission's development of ascertainment guidelines should be read as taking the matter entirely out of the area of comparative consideration to the extent that the adequacy or completeness of ascertainment efforts would be a matter between the applicant and the Commission.

6. In reply, Community asserts that the Commission's brief statement in the designation order concerning the applicants' awareness of and responsiveness to community needs does not amount to a "deliberate consideration" of the matter that effectively precludes consideration by the Review Board of the merits of Community's petition; a contrary view of the Commission's action, argues Community, would virtually foreclose Board authority to review matters "considered" in a designation order. With respect to Dudley's ascertainment efforts, Community reiterates its position that Dudley has failed to consult a sufficient number of persons within the general service area, and has failed to indicate by demographic data, cross-sectional survey or other reliable sampling method that the leaders contacted were representative of the community. Moreover, asserts Community, any "quality" which may be apparent in Dudley's showing is lost by its failure to conduct a numerically sufficient and representative survey. With respect to RKO's ascertainment efforts, Community maintains that, at the time RKO's application was filed (Dec. 30, 1968) and since 1960, there has been a Commission requirement that the listening public be surveyed;[9] that, in the City of Camden case, the Commission faulted an applicant for not making an effort to canvass individual members of the general public to determine community needs, as opposed to program preferences; that, contrary to RKO's argument that the Primer created the requirement of a survey of the general listening public, the Commission, in paragraph 3 of the notice of inquiry pertaining to the Primer, stated that the Primer had been developed to assist in clarifying existing requirements concerning ascertainment of community problems; and, finally, that RKO has failed to make the required general survey of the listening public.[10] Community asserts that the methodology for determining a representative range of community leaders to be surveyed was first set forth in the "Programming Inquiry", supra; and that even if the proper procedure was first enunciated in City of Camden, as RKO claims, RKO has failed to explain its noncompliance with said procedure during the more than 6 months that elapsed between the release of City of Camden and the designation order in this proceeding. Since the attachment to RKO's opposition constitutes, in essence, an amendment to its application and since RKO has failed to meet the long-standing requirements of the Commission regarding a survey of the general public and a cross-sectional survey of community leaders, Community alleges that RKO is precluded by its own lack of diligence from arguing "good cause" to amend its application at this late date and is not entitled to an opportunity, pursuant to paragraph 4 of the notice of inquiry concerning the proposed Primer, to amend its Suburban showing. Community concludes that the requested comparative efforts issue must be added.

7. Initially, it should be noted that respondents' argument to the effect that the jurisdiction of the Review Board to rule on petitioner's request herein has been preempted by the Commission's statement in the designation order concerning the applicant's compliance with Suburban requirements overlooks the fact that the designation order does not address itself to the question of comparative ascertainment efforts. See Azalea Corp., 10 FCC 2d 364, 11 RR 2d 541 (1967), at footnote 11; WTAR Radio–TV Corporation, FCC 70R–247, released July 20, 1970. Therefore, the Board sees no impediment to its consideration of the merits of Community's first request although it does note that the thrust of Community's allegations at times approaches the level of a request for a requisite Suburban issue. In Chapman Radio and Television Co., 7 FCC 2d 213, 9 RR 2d 635 (1967), the Commission held that a comparative efforts issue is warranted where there appears to be a significant disparity among applicants in efforts to ascertain community needs. Community's efforts to ascertain the needs and interest of the proposed service area are documented in detail in its application, and appear to be extensive. However, RKO, and Dudley, in their respective oppositions[11] and applications, have persuasively shown that they, too, have made substantial and extensive good faith efforts to ascertain the needs and interests of the service area. Methodological surveys of community needs and interests were made by Dudley and RKO;[12] and the results of Dudley's and RKO's efforts are set forth in sufficient detail. Though Community has claimed to have interviewed community leaders representative of groups either not interviewed by Dudley or by RKO or not interviewed in sufficient numbers, its own showing in its application fails

[8] RKO points out that, in view of the Commission's designation Order herein, it has not amended its application to include its new general public surveys since, in the absence of an ascertainment issue, such recent efforts are not of decisional significance and its pending application is substantially accurate and complete.

[9] Community cites the Board to Report and Statement of Policy Re: Commission En Banc Programming Inquiry, ("Programming Inquiry"), 20 RR 1901 (1960); Brown Broadcasting Co., Inc., 9 FCC 2d 168, 10 RR 2d 868 (1967); Mace Broadcasting Co., FCC 68–671, 13 R.R. 2d 753 (1968); Vernon Broadcasting Co., 12 FCC 2d 946, 13 RR 2d 245 (1968); City of Camden, supra; Southern Minnesota Supply Co., 18 FCC 2d 824, 16 RR 2d 950 (1969); Heart of Georgia Broadcasting Co., Inc., 19 FCC 2d 20, 16 RR 2d 1134 (1969).

[10] Community contends that RKO's post-designation survey efforts cannot be considered by the Board since the results thereof have not been proffered as an amendment to the renewal application and since RKO should not be permitted to improve its position by submitting information which should have been filed prior to the date of the designation order.

[11] Community's argument that RKO's attachment to its opposition constitutes an "amendment" and, as such, must comply with the provisions of § 1.522(b) is without merit. See Orange Nine, Inc., 8 FCC 2d 876, 10 RR 2d 536 (1967); Florida-Georgia Television Co., Inc., 10 FCC 2d 844, 11 RR 2d 873 (1967). Moreover, the Policy Statement on Comparative Hearings Involving Regular Renewal Applicants, 22 FCC 2d, 424, 18 RR 2d 1901 (1970), precludes evidence only of an "upgrading" of a programing record by a renewal applicant after a competing application or a petition to deny directed to program service is filed.

[12] Dudley reports that its survey showing is based upon a "systematic process of randomization" whereby 250 members of the general listening public were selected and interviewed by telephone, and upon personal interviews of 127 community leaders. RKO reports that its survey showing is based upon "systematic" interviews by its own station personnel and others which resulted in telephone and personal interviews of 789 members of the general listening public and personal interviews of in excess of 500 community leaders.

to support the claim of significant differences in the applicants' ascertainment efforts.[13] Moreover, Community has failed to allege specifically what significant community needs its numerically greater interview efforts have ascertained that the interview efforts of RKO and Dudley have not. In particular, the Board notes that over 500 of Community's 600 interviews with community leaders were conducted after Community's program proposal had been submitted and that, apparently, these interviews had no qualitative effect upon Community's program propsal.[14] For these reasons, petitioner's request for a comparative efforts issue will be denied.

MISREPRESENTATION ISSUE
(REQUESTED ISSUE B)

8. Community also requests addition of a basic qualifications issue to determine whether RKO made material misrepresentations with regard to its community leader contacts. Community alleges that several of the various community leaders allegedly contacted with regard to RKO's ascertainment of needs in the service area were not consulted by representatives of either RKO or Station WNAC–TV. Community has submitted, in support of its allegation, the affidavits of five such persons, each of whom states that "* * * I was neither contacted nor interviewed by any representative of RKO * * * or Station WNAC–TV * * * with regard to the major social, civic, educational, political, or other problems and needs of Boston and its surrounding communities * * *". Community concludes that a disqualification issue is required.

9. The Bureau and RKO oppose addition of the requested issue. RKO has submitted in rebuttal affidavits from four of the five affiants in question; the affidavit of the wife of a former general manager of WNAC–TV, Mrs. William McCormick; and the affidavit of the community relations director for Station WNAC–TV, Mr. William Hahn. Each of the four affiants acknowledges, variously, either a phone consultation or a personal interview with Mr. Hahn or conversations with representatives of WNAC–TV at various conferences. Hahn, in his affidavit, states that the fifth affiant, Henry Cabot, trustee emeritus of the Boston Symphony Orchsetra, was away from his office on business or for reasons of poor health on the two occasions that Hahn allegedly contacted Cabot's office to obtain his counteraffidavit. In addition, RKO submits that Cabot was a direct source of information concerning problems of the Boston Symphony Orchestra through orchestra committee participation by Mrs. McCormick who states, in her affidavit, that when she was invited to become a member of the Council of the Friends of the Boston Symphony, her husband urged her to participate "in order for the station to be apprised of the needs of the Orchestra." Mrs. McCormick explains further that, at an annual meeting of the Council in April of 1967, Mr. Cabot, President of the Council, explained the plan to launch a fund drive for the Boston Symphony, which plan, she states, she brought to the attention of her husband. Hahn, in his affidavit, states that WNAC–TV's personal contact with Mr. Cabot was made through Mrs. McCormick, who, together with her husband, attended the September 19, 1967, fund-raising function for the Symphony; that shortly thereafter, on October 3, 1967, at a community affairs luncheon held at the WNAC–TV studios and attended by officers of the fund drive, an agreement was reached for WNAC–TV to donate a special primetime hour program, Meet Marcel Marceau, to the fund for the Boston Symphony; and that proceeds from the program, telecast on December 11, 1967, were turned over to the fund. Furthermore, states RKO, it is significant that in spite of approximately 130 community leader contacts listed in its renewal application, Community obtained only five affidavits concerning the accuracy of RKO's representations. RKO concludes that its counteraffidavits demonstrate that, contrary to Community's assertions, a station representative had been in contact with those five affiants concerning the community problem area of which each was most knowledgeable and that, therefore, the request for a misrepresentation issue must be denied.

10. In reply, Community states that "fleeting and forgotten isolated conversations" do not constitute evidence of a positive, diligent and continuing effort by an applicant to ascertain the needs of the community to be served and that, therefore, RKO's reliance on these individuals as examples of WNAC–TV's policy to seek and maintain contacts for the purpose of ascertainment of community needs was a "material misrepresentation" to the Commission. Three of the original affiants, alleges Community, do not state in their counteraffidavits that they were consulted with regard to the needs and problems of the community. A fourth affiant, Miss Clara F. Tubby, identified in her counteraffidavit as Public Information and Program Director of the Epilepsy Society of Massachusetts, asserts Community, was subject to an attempt by Mr. Hahn to put words in her mouth and to apply pressure through her superior. In this regard, Community states that, on February 5, 1970, Hahn wrote to Miss Tubby's superior, Edward B. Shaw, Jr., and included a copy of a "suggested form for an affidavit" for Miss Tubby to sign. The suggested affidavit, notes Community, included the following language: "* * * on May 1, 1968, a meeting took place at WNAC–TV offices * * * with Mr. William Hahn * * * [to discuss] the problems and needs of the Epilepsy Society * * *." (Att. II–D, RKO opposition.) Community then points out that, on February 18, 1970, Hahn wrote to Miss Tubby directly and stated that "* * * unless I have a satisfactory statement in hand by Monday or Tuesday at the latest, the matter may become an issue in subsequent hearings. This might require records to be subpoenaed and could mean being called to testify." (Att. II–D, RKO opposition). It is apparent, alleges Community, that Hahn was attempting to frighten Miss Tubby with the specter of a subpoena unless she gave a "satisfactory" statement. Moreover, asserts Community, the language of Miss Tubby's affidavit is quite different from that suggested by Hahn; she reaffirms the fact that she was neither contacted nor interviewed by RKO or WNAC–TV, and states that she requested and received an appointment with Mr. Hahn to discuss the possibility of her organization receiving public service time. Finally, petitioner contends that RKO had ample time to secure a statement from the fifth affiant, Cabot, but did not; and asserts that the "self-serving" affidavits of Mrs. McCormick and Hahn do not rebut Cabot's affidavit given to Community. Community concludes that a misrepresentation issue is warranted.

11. The Review Board is of the view that the counteraffidavits submitted by RKO with its opposition adequately dispel all doubts raised by the affidavits submitted by petitioner as to the veracity of RKO's representations in connection with its community leader contacts. However, Community, in its reply pleading, maintains that the requested issue is warranted because of certain alleged deficiencies in the counteraffidavits submitted by RKO. The Board fails to see how the claimed deficiencies detract in any substantial way from RKO's showing. In our opinion, the charges that certain RKO contacts represented only "fleeting and forgotten isolated conversations" and that the individuals involved in those contacts, in their affidavits, do not state that they were consulted with regard to community needs have little bearing on the question of the veracity of RKO's representations concerning community leader contacts. The further charge that undue influence was brought to bear upon Miss Tubby, while relevant and of concern to the Board, is unsupported by the affidavit of one having personal knowledge thereof and, indeed, seems tenuous in view of the facts that Miss Tubby did not adopt the language suggested by Hahn and RKO has submitted a copy of a letter, dated April 15, 1968, from Miss Tubby to Hahn,

[13] Community's application indicates, for instance, no contacts in the Boston area with youth leaders under 21, only five contacts with social and fraternal groups, and a total of five contacts with predominantly business and labor representatives.

[14] A detailed report of over 500 of its 600 interviews with community leaders was submitted by Community on Mar. 28, 1969. Community's initial ascertainment of needs showing and program proposal were submitted on Feb. 28, 1969. At that time, Community stated in Exhibit 8, page 5, to its application, that "as [additional] interviews are completed and analyzed, it is planned that additional changes may be made in the applicant's proposed programming in order to more fully meet the needs * * * of the public to be served by the station." No such changes have been made to date.

requesting an interview with him.[15] Finally, in view of Mrs. McCormick's sworn and uncontradicted statement concerning her participation in a fund drive as a member of the Council of the Friends of the Boston Symphony, of which Cabot was president, and Hahn's sworn and uncontradicted statement concerning Station WNAC–TV programing that resulted therefrom, the Board is persuaded that there is no serious inconsistency between Cabot's affidavit and the counteraffidavits in response thereto.[16] Since Community has not raised a substantial question concerning alleged misrepresentations by RKO in connection with its community leader contacts, the requested issue will be denied. See Home Service Broadcasting Corp., FCC 70R–212, 19 RR 2d 347 (1970)

OTHER CHARACTER QUALIFICATIONS ISSUES (REQUESTED ISSUES C–I)

12. In requested issues, "c" through "i", of its petition to enlarge, Community seeks the addition of other issues which bear on the requisite qualifications of RKO. In this regard, Community asserts that even though allegations of coercion and harassment made against RKO in another context[17] were dismissed by the Broadcast Bureau on procedural grounds, such serious charges should be heard on their merits in this proceeding because there is no procedural infirmity in Community's petition resurrecting these allegations and because they bear directly on RKO's qualifications to be a licensee. Community asserts further that a holding of September 22, 1969, by the U.S. District Court for the Southern District of New York, that RKO had violated section 16(b) of the Securities Exchange Act of 1934 through its realization of "short swing" profits also reflects adversely on RKO's qualifications to be a licensee and should be examined in this proceeding.[18] Apparent violations of federal auto and safety laws by General Tire in the manufacture of automobile tires, which have prompted the Transportation Department to indicate its intention to refer the violations to the Department of Justice for suit, also require inquiry, according to petitioner. Community also claims that RKO's failure to report to the Commission, during the license renewal period under consideration, that others, in addition to Thomas F. O'Neil, chairman of the board and chief executive officer of RKO, possessed the authority to vote the RKO stock owned by General Tire was a clear violation of the Commission's ownership reporting rules, which reflects adversely on RKO's qualifications to be a licensee.[19] Community asserts further that RKO has misrepresented its financial reports to the Commission in that the following accounting practices of RKO allow its real monetary return from its broadcast facilities to remain hidden: (1) RKO "sells" programs to its individual television stations for an exchange of credit; no cash is paid by the station, which carries the "cost" on its books for purposes of amortization; (2) RKO allocates the expense of maintaining its "Headquarters" in New York to its profitable stations; and (3) individual RKO stations pay commissions to RKO's National Sales Division.[20] Community contends that the KHJ–TV proceeding has also revealed that RKO has not used the profits from its broadcast operations to produce a significant amount of local programing or to render meaningful public service; but, rather, General Tire has used RKO's profits to fund the acquisition of nonbroadcast businesses and to expand its nonbroadcast holdings. For example, Community notes that RKO's assets were encumbered by the acquisitions of the Fleetwood Corp. and of Frontier Airlines, Inc. (both acquired in 1965), and of Citadel Industries, Inc. (acquired in 1966), whose cost amounted to over $30 million, and by other acquisitions as well. These practices, argues petitioner, reflect on RKO's qualifications and should be explored in hearing. Community further asserts that RKO, in the KHJ–TV renewal proceeding, acknowledged that in excess of 60 percent of that station's sales of advertising time was sold at the national level by personnel in RKO's National Sales Division and that the sales were mainly in prime time or adjacent periods and were made to national advertisers, thus foreclosing to local advertisers access to RKO's broadcast time. On this basis, Community concludes that an issue is required to determine whether RKO's practices in this regard are anticompetitive in effect and whether the station has been properly utilized as a local community outlet.

13. In opposition, RKO asserts that the charges originally made by Pikes Peak Broadcasting Co. in another context and raised again in Community's petition were recently considered on their merits and rejected by the Commission. RKO General, Inc. (WGMS), 21 FCC 2d 527, 18 RR 2d 501, released February 24, 1970. RKO maintains that the District Court's decision in Newmark v. RKO General, Inc., supra, reflects a highly technical civil liability created by section 16(b) of the Securities Exchange Act of 1934 and does not raise any adverse inference that RKO was guilty of a callous disregard of Federal law. According to RKO, General Tire has not been found guilty of violating the National Traffic and Motor Vehicle Safety Act of 1966; the Transportation Department has not referred any alleged violations by General Tire to the Department of Justice for suit; and the entire matter has been settled without any final determination of violation of law. RKO maintains that Section 1.65 of the Commission's rules does not bear upon the adequacy of RKO's ownership reports (see footnote 19, supra) and that, in any event, the change in the 1968 ownership report to reflect the ability of persons other than the chairman of the board to vote RKO stock by General Tire, was made to conform it to the letter of the Ohio General Corporation Law. RKO avers that the three purported instances of improper accounting practices cited by Community in no way support petitioner's claim that the real return of individual RKO stations is distorted; the renewal applicant explains that: (1) The well-accepted method of handling charges between corporate headquarters and divisions would reach the same result if the station actually sent cash to RKO headquarters; (2) each station, whether or not it is profitable, is charged with its appropriate share of identifiable headquarters expenses on a fair accounting basis; and (3) the commissions charged by the National Sales Division for services rendered are proper and have been accurately reported to the Commission.

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[15] Community makes a point of noting the fact that Miss Tubby has reaffirmed, in her counteraffidavit, "that she was neither contacted nor interviewed by RKO or WNAC–TV" and has stated that she initiated contact with WNAC–TV. The Board views Community's point as a semantic quibble. No matter who initiated the contact, the fact is that contact between WNAC–TV and Miss Tubby occurred.

[16] In section IV–B, Exhibit 17, of RKO's application, the Board notes a copy of a letter, dated Apr. 20, 1967, from Cabot to Mrs. McCormick, thanking her for her volunteer telephone efforts as a "Friend" of the Boston Symphony.

[17] Community explains that the allegations were made by Pikes Peak Broadcasting Co., licensee of Station KRDO–TV, Colorado Springs, Colo., against RKO and Vumore Video Corporation of Colorado, Inc., a wholly owned CATV subsidiary of RKO, in connection with the renewal applications of RKO for Stations WGMS and WGMS–FM. According to petitioner, Pikes Peak claimed that subsidiaries and executives of RKO had followed a program of harassment against the KRDO–TV licensee and its President in order to keep Pikes Peak from raising legitimate matters before the Commission or to punish the licensee and its President for having done so. Community refers to certain claims made by Pikes Peak that misleading information had been distributed to, and published in, newspapers by RKO subsidiaries, which was intended to harass KRDO–TV; that the RKO-Vumore combination, acting through a chief executive, had acquired stock in a bank in which the president of KRDO–TV is president in order to intimidate the licensee and its president; and that the RKO-Vumore combination has been used to attain economic dominance in the broadcast-CATV field.

[18] Newmark v. RKO General, Inc., 294 F. Supp. 358 (S.D.N.Y. 1968). Community states that RKO, which owned some 56 percent of the outstanding common stock of Frontier Airlines, Inc., contracted to purchase a number of shares of common stock and convertible debentures of Central Airlines, Inc., prior to a proposed merger of Frontier and Central; that the number of securities contracted for was designed to allow RKO to maintain its control of Frontier after the merger; and that, following CAB approval of the merger, RKO exchanged its Central securities for Frontier securities and realized a profit of $7,920,681.

[19] Community suggests the addition of a § 1.65 issue in this regard, but, as the petitioner recognizes in its reply pleading, it is requesting the addition of a § 1.615 issue.

[20] Community's factual allegations for a misrepresentation issue in this regard are derived from the KHJ–TV proceeding in Docket No. 16679, which involves the renewal application of RKO for Station KHJ–TV, Los Angeles, Calif., and the competing application of Fidelity Television, Inc.

RKO argues that if it erred in investing part of its broadcast profits in nonbroadcast businesses such as Frontier Airlines, Inc., then no broadcaster would be entitled to retain profits for investment in nonbroadcast interests because it could always be argued that such profits might have been better spent on programming. Finally, RKO asserts that simply because 60 percent of KHJ–TV's sales of advertising time was sold at the national level by personnel in RKO's National Sales Division does not mean that local advertisers are denied access to advertising time on WNAC–TV. Moreover, the licensee points out that WNAC–TV has maintained a full local sales department and that since WNAC–TV has a single time rate, the purchasing power of the large national advertiser gives it no advantage over local advertisers. RKO concludes that none of the requested qualifications issues is warranted.

14. In reply, Community reiterates its position regarding the allegations made by Pikes Peak. Furthermore, Community asserts, RKO's violation of the Securities Exchange Act is relevant to this proceeding in that RKO has knowingly misused inside information to the detriment of the unsuspecting public and other shareholders. Community avers that although General Tire compromised the matter concerning the Federal Highway Administration's determination that General Tire had produced unsafe tires in violation of federal law, the fact remains that General Tire produced tires which endangered the public health and welfare, and that fact reflects adversely upon General Tire's character and RKO's qualifications to be a licensee. Community argues that Ohio corporation law is not relevant to the question of whether RKO has violated § 1.615 by failing to disclose the identity of those individuals who may have controlled RKO at any given time. Community maintains that RKO's response to its charge that the licensee has misrepresented its financial reports to the Commission fails to explain how commissions and "appropriate shares" of the cost of programs and of headquarters expenses are computed and fails to indicate whether or not an individual RKO station has any choice in the matter. Community maintains that RKO has used its broadcast profits to fund the acquisition and expansion of nonbroadcast interests, but has spent "proportionately little of its profits to produce a significant amount of local programing or render a meaningful public service." Finally, Community avers that the fact that WNAC–TV has local salesmen and allegedly desires local advertisers does not answer Community's charge that local advertisers may be effectively foreclosed from using WNAC–TV as a vehicle for their messages. Moreover, asserts Community, RKO has not denied that 60 percent or more of WNAC–TV's time was sold by RKO's National Sales Division, and it has supplied no figures with regard to sales of time to local advertisers. Community concludes that the requested qualifications issues should be added.

15. The Review Board is of the view that Community's requested issues "c" through "i", which involve various claims of harassment and coercion, of violations of Federal laws and Commission regulations, of misrepresentation, of the misuse of broadcast profits and of the improper operation of a sales representative, by RKO and/or General Tire, are not warranted. Contrary to Community's assertion, the Commission disposed of the allegations of coercion and harassment made by Pikes Peak on their merits notwithstanding unexplained procedural deficiencies in their presentation and, having found no merit to them, decided that it was not necessary to reach RKO's argument that the licensee should not, in any event, be held accountable for the actions of its subsidiary. See RKO General, Inc. (WGMS), supra. In regard to a Colorado State court suit mentioned by the Commission and brought to Vumore's president in the form of a shareholder's suit against a Pueblo, Colo., bank and its president (also Pikes Peak's president), RKO, in a statement in response to the Bureau's comments,[21] points out that Vumore's president was granted judgment and costs and that, therefore, Pikes Peak's charge that the suit was frivolous and without merit is undermined. In this context then, Community's allegations, which are based solely on the charges made by Pikes Peak, are clearly insufficient to support the requested harassment issue. Community alleges that qualifications issues are warranted because RKO and its parent company, General Tire, have violated Federal securities and tire-safety laws, respectively; however, the petitioner has failed to allege specific facts relating to the conduct underlying these "violations." On the showing before the Board, even assuming the accuracy of the allegations made by Community, there is no indication that such "violations" were deliberate, willful or in gross disregard of responsibility or that the "violations" complained of have any relationship to RKO's ability to operate a broadcast station in the public interest. Cf. Kittyhawk Broadcasting Corp., 8 FCC 2d 342, 10 RR 2d 189 (1967). Moreover, the Board notes that the Newmark case involved a private civil action brought by the owner of debentures and warrants of Frontier Airlines against RKO and Frontier under section 16(b) of the Securities Exchange Act to recover profits allegedly realized by RKO from its purchase of Central Airlines securities and the exchange of those securities for Frontier stock; that the initial decision of the court and a subsequent decision (305 F. Supp. 310 (S.D.N.Y. 1969)) are on appeal; and that petitioner has failed to show how the civil liability created by section 16(b) has any bearing on RKO's broadcast qualifications. In a similar vein, the Board notes that the matter of General Tire's compliance with Federal safety standards and the possible imposition of a civil penalty for alleged violations thereof has been settled by the Federal Highway Administration and that, therefore, Community's reliance on these assumed "violations" by General Tire falls short of the requirements of § 1.229 of the rules.

16. The request for an issue relating to RKO's alleged failure to comply with § 1.615 of the rules is also unwarranted since Community has failed to show how the alleged noncompliance is of any decisional significance in this proceeding. An affidavit of RKO's vice president (finance and legal), attached to the opposition pleading, explains that the change incorporated in the August 30, 1968, ownership report to reflect what officers of General Tire could vote RKO stock was prompted by the specific provisions of the Ohio General Corporation Law; that a prior 1965 report, which indicated that the Board Chairman was authorized to vote RKO's stock, was substantially correct; and that Mr. Thomas F. O'Neil, as chairman of the boards of both General Tire and RKO, has been the individual most responsible for General Tire's control of RKO since at least 1955. Community's allegations that RKO has misrepresented its financial reports to the Commission are insufficient to justify addition of the requested misrepresentation issue. In any event, the allegations are effectively rebutted by the affidavit of RKO's controller who describes in detail the accounting procedures used by the corporation and who demonstrates that each is a valid and proper accounting procedure which does not distort the real return of individual RKO stations. Similarly, Community's allegation that RKO has not used the profits from its broadcast operations to produce a significant amount of local programing or to render a meaningful public service is unsupported. The petitioner's reference to the past programing of WNAC–TV as disclosed in the renewal application and its reliance on the Commission's notice of inquiry in Docket No. 18449, concerning the conglomerate ownership of broadcast stations, are insufficient indication that RKO has failed to invest its profits in broadcast endeavors; and the requested issue in this regard will be denied. Finally, Community's charge that local advertisers are denied access to WNAC–TV's broadcast time is not supported by reference to any specific instance or to any observable pattern. It is not enough, in the Board's view, that Community cull general allegations from the hearing record in the KHJ–TV proceeding, provide several citations to that record, and then request the addition of issues to this proceeding. Such a method is clearly at odds with the specificity requirements of § 1.229. In essence, Community has failed to allege with particularity practices on the part of WNAC–TV which effectively foreclose local advertisers from purchasing more desirable broadcast time, and RKO has

[21] The Board will grant RKO's motion for leave to file a statement in response to the Bureau's comments since the information submitted therein is most relevant to the consideration of Community's instant petition and since Community has had an opportunity to respond to the substance of RKO's statement.

adequately demonstrated that Community's charges about RKO's national sales operations are without merit. The requested issue will, therefore, be denied.

DELEGATION OF LICENSEE RESPONSIBILITY ISSUE (REQUESTED ISSUE K)

17. In support of requested issue "k," Community asserts that it is readily apparent from disclosures made in the KHJ–TV proceeding that RKO's mode of operation has been to delegate its licensee responsibility to its station managers, who are neither officers nor directors of RKO, and who cannot own any of its stock, but who are responsible for ascertainment of needs, programing, commercial continuity and other areas of station operation, except the area of finance. Community explains that RKO's broadcast stations fall within the province of RKO's broadcast division in New York City, but that the president of that division exercises only general supervision over the station and leaves day-to-day operations to hired personnel. Community concludes that a qualifications issue is warranted to determine whether RKO's alleged delegation of licensee responsibility violates Commission regulations.

18. The Board agrees with the Bureau and RKO that this request must also be denied. Community, in effect, renews a charge that was made earlier in the KHJ–TV proceeding and that was ultimately rejected by the Hearing Examiner in his Initial Decision. See RKO General, Inc. (KHJ–TV), 16 RR 2d 1181 at 1189–90, 1262 (1969). The Hearing Examiner concluded that "KHJ–TV is a large, well-organized operation manned at the supervisory level by experienced, well-trained and doubtless able men" and that "[b]asic policies of the station are established at the headquarters of General Tire." The petitioner makes no attempt to refute these conclusions, but, instead, presses a collateral attack in this proceeding, based on general allegations and without specific reference to the operation of Station WNAC–TV.

CONCENTRATIONS OF CONTROL AND CONGLOMERATE ISSUES (REQUESTED ISSUES J AND L)

19. In support of requested issue "j", Community asserts that the degree of ownership and control of communications media by RKO has reached such an alarming proportion that there exists a need for a concentration of control issue that would permit disqualification of RKO in lieu of the assessment of a comparative demerit. In this regard, Community submits an engineering statement in which the coverage contours of RKO's various stations, nine of which, Community alleges, are in the top five markets and 13 within the top 10 markets, are converted into population tabulations by number and percentage of total population within each contour, and also within each of the several States circumscribed by the contours. As an example of the effect of RKO's interests, Community notes that RKO's Boston area stations (AM, FM, and TV) reach a population of over 18 million. Community also notes that RKO has extensive holdings in the community antenna industry; operates 126 motion picture theaters in the States of Oklahoma, Texas, and New Mexico; owns controlling interests in the Pittsburgh Outdoor Advertising Corp., and the Union Star Publishing Co., which publishes an evening newspaper 6 days a week in Schenectady, N.Y.; and has recently acquired a substantial interest in Show Corporation of America, which has worldwide television distribution rights to a large number of feature films. Community concludes that where, as here, there are few areas of the country which are not within the reach of one or more of RKO's communications "tentacles," there is more than a remote threat to the public interest, and a qualifications issue is warranted. In support of requested issue "l",[22] Community submits that General Tire owns 100 percent of RKO's stock and is a conglomerate of the first magnitude with direct or indirect ownership interests of in excess of 125 companies, manufacturing and distributing various products throughout the world. Community notes that the Commission has acknowledged the problems inherent in the ownership of broadcast facilities by a conglomerate; that the Justice Department has filed suits to block proposed acquisitions of other companies by many large corporate complexes; and, finally, that this hearing is a proper forum for disclosure of one conglomerate's broadcast operations. Community concludes that the requested issue is imperative.

20. The Board agrees with the Bureau and RKO that the concentration of control and conglomerate-inquiry issues must be denied. The Commission has determined that the renewal process is not an appropriate way to restructure the broadcast industry and that broad policy questions of multiple ownership and diversification should not be raised in a specific adjudicative context unless "particular facts concerning undue concentration or abusive conduct * * * are alleged." Policy Statement on Comparative Hearings Involving Regular Renewal Applicants, 22 FCC 2d 424, 18 RR 2d 1901 (1970). Community's general allegations fall within neither of the two exceptions to the aforementioned Commission policy. The request for a concentration of control issue is based largely on petitioner's recitation of RKO's interests in broadcast facilities, CATV systems, motion picture theaters, etc.; however, Community has made no attempt to demonstrate the extent of broadcast service or other communications media available to the areas and populations served by these RKO interests and has failed to relate RKO's nonbroadcast, mass media interests to a particular market or markets and to assess RKO's position in those markets. See National Broadcasting Co., Inc. (KNBC), 21 FCC 2d 195, 18 RR 2d 74 (1970). In the absence of more specific facts concerning the alleged undue concentration of control by RKO, the requested issue must be denied. Similarly, Community's request for a conglomerate-inquiry issue must fail. The Board agrees with the Bureau's characterization of this requested issue as an attempt by the petitioner to incorporate in a single issue those matters which are already encompassed within specified Issue 3 [23] as well as those encompassed within Community's requested issues "h," "j," and "k," which have been found to be without merit by the Board. Moreover, the conglomerate-inquiry request is directly related to matters which are presently under consideration by the Commission in rule making and investigatory proceedings (Docket Nos. 12782, 18110 and 18397; Inquiry into the Ownership of Broadcast Stations by Persons or Entities with Other Business Interests, 16 FCC 2d 436 (1969), in Docket No. 18449). Since Community's general allegations raise questions of such scope and magnitude as to be appropriate for consideration in other Commission proceedings, the Board will refrain from initiating such an inquiry in the context of this proceeding or from expanding the scope of this hearing, especially since petitioner has relied primarily on only general allegations concerning alleged abuses flowing from the RKO-General Tire conglomerate status. National Broadcasting Co., Inc. (KNBC), supra.[24]

[22] The requested issue reads as follows:

To determine whether RKO's status as a major corporate enterprise and conglomerate member and owner of communications facilities has resulted or may result in consequences inconsistent with the public interest, e.g., inadequate supervision of programing and other broadcast activities; use of communications facilities to advance or protect other corporate interests outside of the broadcast field; reciprocal dealings and siphoning of broadcast profits for nonbroadcast operations or acquisitions, and to determine whether the matters developed in this regard should disqualify RKO or whether such matters should reflect adversely on RKO's comparative qualifications.

[23] Issue 3 reads as follows:

To determine with respect to the application of RKO General, Inc., whether in view of the evidence concerning alleged anticompetitive practices by RKO General, Inc., or its parent corporation, General Tire and Rubber Co., RKO General, Inc., should be disqualified to remain a licensee of the Commission or if not so disqualified, whether a comparative demerit should be assessed against it in this proceeding.

The issue was specified by the Commission as to the result of a civil action brought by the Department of Justice in the U.S. District Court for the Northern District of Ohio (No. 6–67–155) against General Tire and three of its subsidiaries, including RKO, alleging violations of the Sherman Antitrust Act. The allegations of anticompetitive practices contained in the complaint are before the Commission in the KHJ–TV proceeding.

[24] To the extent that matters raised by Community are embraced within the presently specified issues (e.g., anticompetitive practices), they may be explored at the hearing without enlargement of the issues. In this regard, see the Board's memorandum opinion and order, FCC 70R–208, 19 RR 2d 293, released June 11, 1970, dealing with the Examiner's interpretation of the scope of the specified anticompetitive practices issue.

"KICKBACKS" ISSUE (REQUESTED ISSUE o)

21. In support of requested issue "o", Community has submitted the affidavit of Gerald W. Purcell, president of The Conference of Personal Managers, East, who states that practices which involve "kickbacks" from performing artists and nonpayment of union-scale wages to said artists have taken place on the "Della Reese Show", produced by RKO General, Inc., and the "Joey Bishop Show", produced by the ABC television network and carried by WNAC–TV. Purcell describes the alleged "kickback" practices as follows:

> Artists seeking appearances on television shows were informed, generally by the talent coordinators and/or producers of the shows, that they would either not be paid or if they received a check for said appearances, the artists would have to make arrangements whereby either the entire check or a certain percentage of the amount of that check was returned to either the networks or the production company of the television show. Generally, the returned check to the television show and/or the producer was received from a recording company. However, there are instances where it was received either directly from the artist and/or the manager of the artist. The recording company or the person returning the check to the television show rarely was contacted direct and almost never asked for this arrangement. The artist was forced to make this arrangement with the understanding that his appearance on these television shows was conditional upon this arrangement. When the recording company did make a return payment to the television show, almost invariably these amounts were deducted by the recording company from the royalties paid to the artist on records sold. So, in effect, even when a check was paid by a recording company, the artist was paying for his appearances on these television shows.

Community alleges that the practices described by Purcell are comparable to "payola" since both involve payments to a licensee's employees for the inclusion of matter in a program to be broadcast. In Community's opinion, there is no substantial difference between the practice known as "payola," that requires one to pay to have a record played on a radio program, and the practices described by Purcell, that require one to pay to appear on a television program. Community concludes that such practices reflect on RKO's qualifications to be a Commission licensee and that, therefore, its requested issue [25] is warranted.

22. In opposition, RKO states that the Purcell affidavit at no time identifies any specific incident, occasion or circumstance in which "The Della Reese Show," produced by RKO, allegedly engaged in "kickback" or other similar practices; RKO asserts that all performing artists appearing on the "Della Reese Show" are paid union-scale wages or more and that no talent is required to return any portion thereof to RKO. Henry V. Greene, Jr., a vice-president of RKO, states, in his attached affidavit, that the "Della Reese Show" has accepted voluntary offers from recording companies and a few other companies to reimburse RKO in whole or in part for payments made to the talent they have under contract; but that, in such cases, RKO has required that an announcement of such fact be included visually and/or orally within the show. RKO argues that the above practice does not constitute "payola" within the meaning of section 508 of the Communications Act, because the payments by the recording companies have been made directly to RKO and not to any employee of RKO.[26] Finally, RKO asserts that it does not produce the "Joey Bishop Show"; that it has no independent knowledge concerning the alleged talent procurement practices of that program; that it has an appropriate policy to oversee programing broadcast on its stations; and that, moreover, Community has not shown any lack of diligence on RKO's part in connection with its broadcast of the "Joey Bishop Show." RKO concludes that the requested issue must be denied.

23. In reply, Community points out that RKO has not denied the charges made by Purcell that RKO received "kickbacks" from recording companies for artists appearing on the "Della Reese Show," and that the amount of the payment was subsequently deducted from the royalties paid to the artist by the recording company. Moreover, charges Community, RKO's claim that these repayments were all "voluntarily made" and were not "kickbacks" is in direct conflict with Purcell's understanding of the arrangement. Community reiterates its position that the practice in question is akin to "payola" in that both are designed to sell records, and the record company and the artist are paying for exposure on the show. Finally, asserts Community, in view of the fact that RKO was actively engaged in receiving payments for the appearances of recording artists on the "Della Reese Show," it is logical to assume that RKO was aware that a similar practice was followed by other program producers, especially of those shows, such as the "Joey Bishop Show," carried on RKO stations. Community concludes that an issue is required to determine whether RKO's "kickback" practices warrant disqualification of the licensee.

24. The Board is of the opinion that a qualifications issue must be specified. Under section 508 of the Communications Act, producers of programs who receive money or other valuable consideration for the inclusion of matter in a program are required to report its receipt to the licensee or licensees over whose facilities the program is broadcast. The licensee is, in turn, required by section 317 of the Communications Act to announce that the matter contained in the program is paid for, and to disclose the identity of the person furnishing the money or other valuable consideration. (See also § 73.654 of the rules.) The announcements must be such as to inform the viewing public of the true nature of the arrangement between the producer and the performer or other person furnishing "reimbursement", and must be given the same prominence as would identification of other sponsors of the program. The use of an audio or video announcement at the conclusion of a broadcast, which merely mentions the receipt of "promotional assistance" or "promotional consideration," does not meet the requirements of the Commission's rules; at the very least, an audio announcement must be made which states, in essence, that the performer or an identified person acting on his behalf has paid the program producer in order to appear on the program. See Public Notice of June 4, 1970, on Application of Sections 317 and 508 of the Communications Act to "Kickbacks" of Fees Paid to Performers, 23 FCC 2d 588, 19 RR 2d 1581. Neither the affidavit of Greene nor the response of RKO to Purcell's affidavit indicates that RKO has complied with the requirements of section 317 of the Act and § 73.654 of the rules as to the sponsorship identification announcements on the RKO-produced "Della Reese Show." Moreover, the affidavit of Greene acknowledges that postprogram announcements on the show fell into the categories of "promotional assistance" or "promotional consideration", which have been held to be violations of the sponsorship identification provisions of the Act and of the rules. Since RKO has not responded to the charge made by Purcell, in his affidavit, that recording companies, which made return payments to the program producer, thereafter deducted such payments from the royalties paid to the performing artists involved, a further question arises as to whether RKO failed to disclose the true identity of the person making payment, i.e., the performing artist, in the announcements which were made. Therefore, a substantial question is raised as to whether the announcements carried by the "Della Reese Show" conveyed to the television audience the fact that appearances of performing artists were paid for or furnished by the recording companies (and other nonrecord companies) or the performing artists themselves. See WPIX, Inc. (WPIX), 23 FCC 2d 245, 19 RR 2d 182 (1970), review denied, FCC 70–785, released July 24, 1970. The need for inquiry into these matters is reinforced by the Policy Statement on Comparative Hearings Involving Regular Renewal Applicants, supra, in which the Commission indicated that a renewal applicant's

[25] Petitioner requests an issue:

To determine the facts and circumstances surrounding alleged "kickbacks" and other similar practices involving the "Della Reese Show," produced by RKO General, Inc., and the "Joey Bishop Show," produced by the ABC television network and carried by WNAC–TV, Boston, Mass., and whether RKO's involvement in said practices reflects adversely on RKO's comparative and basic qualifications.

[26] RKO explains that similar charges were made by Purcell in articles appearing in the Sept. 17 and 24, 1969, editions of Variety and that, as a result, the Chief of the Commission's Complaints and Compliance Division, in a letter of Oct. 6, 1969, asked for RKO's comments on these charges. A copy of Greene's reply to the Commission is attached to RKO's opposition; Greene explains RKO's policies in regard to supervising programming practices and notes the payments received by the "Della Reese Show." According to RKO, no further action on this inquiry has been taken.

record would be of principal importance at hearing when challenged by a new applicant. However, since the petitioner has failed to show that RKO was either aware of similar practices on the "Joey Bishop Show" or was not reasonably diligent in informing itself of such practices, the Board will confine the scope of the issue to be specified herein to the practices surrounding performer-appearances on the "Della Reese Show" and the effect thereof, if any, upon the renewal applicant's requisite and/or comparative qualifications.

CUMULATIVE ISSUE (REQUESTED ISSUE M)

25. Community's request for a cumulative disqualifying issue, based on a combination of any or all of the foregoing matters, will be denied. This is merely a repetitive request, and the matters have already been discussed and decided above. National Broadcasting Co., Inc. (KNBC), supra.

26. *Accordingly, it is ordered,* That the motion for acceptance of late filing of petition to enlarge issues, filed January 19, 1970, by Community Broadcasting of Boston, Inc., is granted, and the petition to enlarge issues, as supplemented, is accepted; and

27. *It is further ordered,* That the motion for leave to file statement in response to Broadcast Bureau's comments on petition to enlarge issues filed April 2, 1970, by RKO General, Inc., is granted, and the statement is accepted; and

28. *It is further ordered,* That the motion to strike and the petition to accept late filing of reply to opposition to motion to strike, filed April 6, 1970, and April 28, 1970, respectively, by The Dudley Station Corporation, are dismissed; and

29. *It is further ordered,* That the petition to enlarge issues and the supplement thereto, filed January 19, 1970, and January 23, 1970, respectively, by Community Broadcasting of Boston, Inc., are dismissed to the extent indicated above,[27] are granted to the extent indicated below, and are denied in all other respects; and

30. *It is further ordered,* That the issues in this proceeding are enlarged by the addition of the following issue: To determine whether RKO General, Inc. violated the sponsorship identification provisions of section 317 of the Communications Act of 1934, as amended, and § 73.654 of the Commission's rules with respect to the broadcast of the "Della Reese Show," and, if so, the effect thereof on the requisite and/or comparative qualifications of RKO General, Inc., to remain a Commission licensee.

31. *It is further ordered,* That the burden of proceeding with the introduction of evidence under the issue added herein shall be upon Community Broadcasting of Boston, Inc., and the burden of proof shall be upon RKO General, Inc.

Adopted: August 10, 1970.

Released: August 12, 1970.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE,
Secretary.

APPENDIX A

(1) Petition to enlarge issues, filed January 19, 1970, by Community Broadcasting of Boston, Inc.

(2) Motion for accetpance of late filing of (1), filed January 19, 1970, by Community Broadcasting of Boston, Inc.

(3) Supplement to (1), filed January 23, 1970, by Community Broadcasting of Boston, Inc.

(4) Opposition to (1) and (3), filed March 17, 1970, by RKO General, Inc.

(5) Oppositions to (1), filed March 20, 1970, by The Dudley Station Corp.

(6) Comments on (1) and (3), filed March 25, 1970, by the Broadcast Bureau.

(7) Replies to (5), filed March 30, 1970, by Community Broadcasting of Boston, Inc.

(8) Reply to (6), filed April 2, 1970, by Community Broadcasting of Boston, Inc.

(9) Statement in response to (6), filed April 2, 1970, by RKO General, Inc.

(10) Motion for leave to file (9), filed April 2, 1970, by RKO General, Inc.

(11) Reply to (4), filed April 3, 1970, by Community Broadcasting of Boston, Inc.

(12) Motion to strike, filed April 6, 1970, by The Dudley Station Corp.

(13) Opposition to (9) and (10), filed April 10, 1970, by Community Broadcasting of Boston, Inc.

(14) Opposition to (12), filed April 13, 1970, by Community Broadcasting of Boston, Inc.

(15) Reply to (14), filed April 28, 1970, by The Dudley Station Corp.

(16) Petition to accept late filing of (15), filed April 28, 1970, by The Dudley Station Corp.

[F.R. Doc. 70-10793; Filed, Aug. 17, 1970; 8:49 a.m.]

[Docket Nos. 18805, 18806; FCC 70R-283]

WHCN, INC. (WHCN-FM), AND COMMUNICOM MEDIA

Memorandum Opinion and Order Enlarging Issues

In regard applications of WHCN, Inc. (WHCN-FM), Hartford, Conn., for renewal of license, Docket No. 18805, File No. BRH-24; Kenneth W. Sasso, W. Francis Pingree, and Lawrence H. Buck, doing business as Communicom Media, Berlin, Conn., for construction permit, Docket No. 18806, File No. BPH-6806.

1. This proceeding involves the application of WHCN, Inc. (WHCN) for renewal of license of its FM broadcast station WHCN on Channel 290, Hartford, Conn., and the mutually exclusive application of Communicom Media (Communicom) for a construction permit for a new FM broadcast station on the same channel in Berlin, Conn. The applications were designated for hearing on various issues by Commission Order, FCC 70-211, released March 4, 1970. Presently before the Review Board is a petition to enlarge issues, filed on March 23, 1970, by WHCN requesting the addition of cross-interest and adequacy of staff issues against Communicom.[1]

2. In support of its request for a cross-interest issue, petitioner alleges that two partners of Communicom, namely, Kenneth W. Sasso and W. Francis Pingree, each owing a one-third interest, are employed by radio Stations WDRC-AM-FM, Hartford, Conn., as announcer-personality and assistant chief engineer, respectively. WHCN asserts that it cannot be determined from Communicom's application whether either partner proposes to sever his connection with WDRC; therefore, petitioner insists that the addition of a cross-interest issue is necessary to determine whether a grant of Communicom's application would contravene the Commission's policy requiring a divorcement of interests between stations in the same broadcast service and serving substantially the same area. Petitioner cites Media, Inc., FCC 69-1362, 20 FCC 2d 937 as precedent for its request.[2] WHCN next contends that Communicom's proposed staff of five employees will not be able to effectively operate its station and implement its proposed programs. Petitioner points out that Communicom, in its application, indicates that it will operate 119 hours per week with concentration on local discussion and news programs, and that its staff announcers will have the responsibility of gathering, editing, and presenting the news in addition to announcing news. Therefore, petitioner concludes, Communicom's staff shall have no time to perform their required additional duties. The Broadcast Bureau, in its comments, urges the addition of both requested issues.

3. As to the cross-interest issue, Communicom, in opposition,[3] states that

[27] See footnote 2, supra.

[1] Also before the Review Board are: (a) Comments, filed Apr. 7, 1970, by the Broadcast Bureau; (b) petition to deny enlargement of issues, filed Apr. 16, 1970, by Communicom; and (c) letter, filed May 8, 1970, by WHCN. Although Communicom's pleading is labelled a "petition to deny", it is, in effect, an opposition, and will be treated as such. See Commission § 1.229(c). In its letter, WHCN notes that subsequent to the filing of the instant petition, Communicom proposed to extensively amend its application; WHCN submits that this proposal "would appear to render the WHCN [petition] moot * * *." Communicom's proposed amendment would have eliminated two of its three partners, Kenneth W. Sasso and W. Francis Pingree, from the Communicom partnership and would have increased its proposed staff by two. However, the hearing examiner denied Communicom's request on the grounds that the amendment, if accepted, would appear to disrupt the hearing and prejudice the other party. FCC 70M-1025, released July 24, 1970.

[2] In Media, Inc., the Commission stated that it has long been concerned with the potential impairment of competition which might ensue if individuals are permitted to maintain cross-interests in two facilities in the same broadcast service serving substantially the same area.

[3] See note 1, supra.

neither Pingree nor Sasso is presently employed by radio Stations WDRC–AM–FM. According to Communicom, Pingree is now employed at AM Station WILI, Willimantic, Conn., and Sasso is employed at Station WHB, Kansas City, Mo. In response to the requested adequacy of staff issue, Communicom claims that no foundation exists to justify the addition of this issue since WHCN has never engaged in news programing and has shown no qualifications that "would nullify Communicom's broadcasting experience." Communicom concludes that since the requested issues were not specified by the Commission in the designation Order, WHCN's requests should be denied.

4. Since it appears that Sasso and Pingree have terminated their participation in the Communicom partnership, the factual basis relied upon by petitioner in support of its request for a cross-interest issue no longer exists; thus, WHCN's request will be dismissed without prejudice to its subsequent refiling when and if appropriate.[4] With respect to the second requested issue, however, we believe that a substantial question has been raised as to the adequacy of Communicom's staff to effectuate its proposed operation of 119 hours per week. Communicom has indicated only that its staff will consist of five employees without specifying individual duties and responsibilities. Communicom's proposal to add two employees cannot aid it here since its amendment was not accepted by the Hearing Examiner. See note 1, supra. Thus, an issue is warranted to determine the ability of Communicom's proposed staff to effectively carry out its proposed programming.[5] See Lester H. Allen, 17 FCC 2d 439, 16 R.R. 2d 19 (1969).

5. *Accordingly, it is ordered,* That the Petition to Enlarge Issues, filed March 23, 1970, by WHCN, Inc. is granted to the extent indicated below; and is dismissed without prejudice in all other respects; and

6. *It is further ordered,* That the issues in the proceeding are enlarged by the addition of the following issue: To determine whether the staff proposed by Communicom Media is adequate to effectuate its proposed operation.

7. *It is further ordered,* That the burdens of proceeding with the introduction of evidence and proof under the issue added herein shall be upon Communicom Media.

Adopted: August 10, 1970.

Released: August 12, 1970.

FEDERAL COMMUNICATIONS COMMISSION,

[SEAL] BEN F. WAPLE, *Secretary.*

[F.R. Doc. 70–10792; Filed, Aug. 17, 1970; 8:49 a.m.]

[Docket No. 18935; FCC 70–841]

WESTERN UNION TELEGRAPH CO.

Order Instituting Investigation

1. The Commission has before it (1) a Petition filed on behalf of the Department of Defense (DOD) on July 9, 1970, for investigation of The Western Union Telegraph Company's Tariff F.C.C. No. 254, 47th Revised Page 1 and the 59 revised pages indicated thereon filed by Western Union on June 19, 1970, by Transmittal No. 6481, to become effective on July 25, 1970; (2) an Opposition to the above petition filed by Western Union on July 22, 1970; (3) a Petition filed on behalf of DOD on July 28, 1970, for suspension and investigation of Western Union's Tariff F.C.C. No. 254, 50th Revised Page 1 and Original Page 262.3 filed by Western Union on July 13, 1970, by Transmittal No. 6487, to become effective on August 12, 1970; (4) a Petition filed on behalf of DOD on July 31, 1970, for suspension and investigation and for an accounting order for Western Union's Tariff F.C.C. No. 254:

51st Revised Page 1.
Second Revised Page 235.
Third Revised Page 236.
Second Revised Page 237.
Sixth Revised Page 238.
Fifth Revised Page 240.
Fifth Revised Page 241.
Fourth Revised Page 242.
Fourth Revised Page 243.
Third Revised Page 244.
Second Revised Page 245.
Third Revised Page 246.
Third Revised Page 247.
Fourth Revised Page 261.

filed by Western Union on July 17, 1970, by Transmittal No. 6489, to become effective on August 16, 1970.

2. The tariff revisions of Western Union which are objected to by DOD would primarily make the following changes: (1) By Transmittal No. 6481, Western Union extended the Autodin system expiration date from July 31, 1970, to December 31, 1977; (2) by Transmittal No. 6487, Western Union provided for the establishment of specific charges for the termination of certain items of Autodin service switching center equipment; (3) by Transmittal No. 6489, Western Union adjusted certain of its charges for Autodin service—raising the monthly and installation charges, but reducing the termination charges.

3. DOD alleges that the new and increased charges reflected in the subject tariff revisions are unjust and unreasonable and therefore unlawful. With regard to the extension of the expiration date of Autodin service, DOD contends that the tariff revision continues in effect the then current rates without change despite the fact that much of the Autodin related equipment has been fully depreciated and that DOD has understood that as such equipment became fully depreciated, Western Union would reduce the monthly recurring charges to reflect elimination of the depreciation; such practice, it is alleged, results in a return "far in excess of a reasonable level * * *." With regard to the establishment of specific charges for the termination of certain items of Autodin switching center equipment, DOD argues that these too are unjust and unreasonable because, without justification, it results in increased termination liability to DOD of $1,132,000 over the termination liability in effect prior to institution of EMOD–1, the modernization program for Autodin, currently under investigation in Docket No. 18824. With regard to the increased monthly and installation charges, DOD also alleges that they are unjust and unreasonable because substantial increases in rates are not warranted; because the rate of return on the switching center equipment is unreasonably high; and because the actual impact on the Department of Defense is $7.4 million per year rather than the $4.5 million claimed by Western Union as representing the projected increase in revenues to result from the revised rates; this is said to be so because of alleged excessive charges for maintenance and inclusion of software costs in the rates when such software is not salvageable.

4. The Commission has reviewed the pleadings filed herein, the proposed tariff revisions and the currently effective tariff schedules applicable to Autodin service, of which DOD is the sole user and is of the opinion that there are provisions in the revised tariff schedules that present questions as to whether the provisions of such tariff schedules are or will be lawful within the meaning of section 201(b) of the Communications Act of 1934, as amended.

5. We are unable at this time to determine whether or not such tariff schedules are, or will be, just and reasonable and otherwise lawful and we are also concerned that if Western Union Tariff F.C.C. No. 254, 50th Revised Page 1 and Original Page 262.3 and

51st Revised Page 1.
Second Revised Page 235.
Third Revised Page 236.
Second Revised Page 237.
Sixth Revised Page 238.
Fifth Revised Page 240.
Fifth Revised Page 241.
Fourth Revised Page 242.
Fourth Revised Page 243.
Third Revised Page 244.
Second Revised Page 245.
Third Revised Page 246.
Third Revised Page 247.
Fourth Revised Page 261.

are permitted to become effective on August 12, 1970, and August 16, 1970, respectively, substantial injury to the rights of DOD and the public interest may result therefrom. Pending hearing and decision thereon we feel that the

[4] Even if we assume that Sasso and Pingree are still parties to the Communicom application, WHCN's request for a cross-interest issue is not warranted since petitioner has failed, among other things, to demonstrate the degree of overlap, if any, between the primary service contours of the stations in question (WHB and WILI) and that of the proposed FM station in Berlin. Cf. Media, Inc., supra. We also note that, in light of the hearing examiner's denial of Communicom's petition to amend, a substantial question now apparently exists concerning the viability of that applicant and its ability to prosecute its application.

[5] The fact that the requested issue was not considered or specified by the Commission in the designation order does not, as Communicom argues, preclude our doing so at this time. See Atlantic Broadcasting Co., 5 FCC 2d 717, 8 R.R. 2d 991 (1966).

proposed tariff revisions referred to above in this paragraph should be suspended for the full statutory period of 3 months provided for in section 204 of the Act and that an accounting order be entered thereon. In view of the great importance of the Autodin system to the national interest and the fact that DOD did not so request, we did not suspend the effectiveness of Western Union Tariff F.C.C. No. 254, 47th Revised Page 1 and the 59 revised pages indicated thereon, which extended the expiration date of Autodin service and became effective July 25, 1970; this tariff, nevertheless, raised questions of justness and reasonableness also and will be included in the investigation to be ordered.

6. Accordingly, in view of the foregoing considerations: *It is ordered*, That, pursuant to the provisions of sections 201–205 and 403 of the Communications Act of 1934, as amended, an investigation is instituted into the lawfulness of 47th Revised Page 1 and 59 revised pages as indicated thereon; 50th Revised Page 1 and Original Page 262.3 and

51st Revised Page 1.
Second Revised Page 235.
Third Revised Page 236.
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Sixth Revised Page 238.
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Fourth Revised Page 243.
Third Revised Page 244.
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Third Revised Page 247.
Fourth Revised Page 261.

of The Western Union Telegraph Company Tariff F.C.C. No. 254, and any amendments thereto and reissues thereof;

7. *It is further ordered*, That, pursuant to the provisions of section 204, 50th Revised Page 1 and Original Page 262.3 are hereby suspended until November 12, 1970, and that

51st Revised Page 1.
Second Revised Page 235.
Third Revised Page 236.
Second Revised Page 237.
Sixth Revised Page 238.
Fifth Revised Page 240.
Fifth Revised Page 241.
Fourth Revised Page 242.
Fourth Revised Page 243.
Third Revised Page 244.
Second Revised Page 245.
Third Revised Page 246.
Third Revised Page 247.
Fourth Revised Page 261.

are hereby suspended until November 16, 1970, and Western Union shall, in the case of all increased charges and until further order of the Commission, keep accurate account of all amounts received by reason of such increase;

8. *It is further ordered*, That, without in any way limiting the scope of the investigation, it shall include consideration of the following:

(1) Whether the charges, classifications, practices and regulations published in the aforesaid tariffs are or will be unjust and unreasonable within the meaning of section 201(b) of the Act;

(2) If any of such charges, classifications, practices and regulations are found to be unlawful, whether the Commission should prescribe charges, classifications, practices and regulations for the service governed by the tariffs, and if so, what should be prescribed.

9. *It is further ordered*, That a hearing be held in this proceeding at the Commission's offices in Washington, D.C., at a time to be specified; and that the examiner to be designated to preside at the hearing shall certify the record, without preparation of an initial or recommended decision, and the Chief of the Common Carrier Bureau shall thereafter issue a recommended decision which shall be subject to the submittal or exceptions and requests for oral argument as provided in 47 CFR 1.276 and 1.277, after which the Commission shall issue its decision as provided in 47 CFR 1.282; and

10. *It is further ordered*, That the Department of Defense, Western Union, and the Chief, Common Carrier Bureau, are made parties to this proceeding.

11. *It is further ordered*, That the Secretary of the Commission shall send copies of this order by certified mail, return receipt requested, to the United States Department of Defense and The Western Union Telegraph Co., and shall cause a copy to be published in the FEDERAL REGISTER.

Adopted: August 5, 1970.

Released: August 12, 1970.

FEDERAL COMMUNICATIONS COMMISSION,[1]
[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 70-10791; Filed, Aug. 17, 1970; 8:49 a.m.]

SECURITIES AND EXCHANGE COMMISSION

[File No. 24NY-6773]

ROADWAY MAINTENANCE CORP.

Order Temporarily Suspending Exemption, Statement of Reasons Therefor, and Notice of Opportunity for Hearing

AUGUST 11, 1970.

I. Roadway Maintenance Corp. (Roadway) is a New York corporation located at 74–05 Metropolitan Avenue, Middle Village, New York. On April 23, 1969, it filed a notification in the New York regional office pursuant to Regulation A in connection with a proposed offering of 200,000 shares of its $.01 par value common stock at $1.50 per share. The offering was to be conducted by Kevin Securities Corp. as underwriter. The notification became effective on August 12, 1969, and the offering was completed on September 12, 1969. Approximately 30 days after the conclusion of its public offering, the company changed its name to RMC Industries, Inc.

The offering circular states that the purpose for which this offering was conducted was to raise funds in furtherance of Roadway's emergency truck and tire repair business.

II. The Commission, on the basis of information reported to it by its staff, has reasonable cause to believe that:

A. The notification and offering circular contain untrue statements of material facts and omit to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, particularly with respect to the following:

1. The offering circular contains untrue statements of material facts concerning the proposed use of proceeds of the offering, in particular, that the proceeds will primarily be used to develop Roadway's business and that none of the proceeds will be used to pay off debts, guaranteed by Vincent Filippazzo.

2. The offering circular omits to state material facts concerning the proposed use of proceeds and proposed acquisition of or consolidation with other companies, in particular Aarden Security System, Inc. (Aarden), the president of which was Joseph Filippazzo.

B. 1. Roadway filed with the Commission a false and misleading report on Form 2–A, dated March 3, 1970, which omitted to state, as required by the form, material facts concerning the change in the nature of Roadway's business by virtue of Roadway's acquisition of Aarden and the change in stockholdings of certain persons.

2. Form 2–A submitted pursuant to Rule 260 of Regulation A contains untrue statements of material facts and omits to state material facts, in that item 7 of Form 2–A does not disclose that Vincent Filippazzo, an officer and director of the Issuer, borrowed $20,000 from the company out of the proceeds of the offering.

C. The use of the offering circular by the Issuer operated as a fraud and deceit upon purchasers of the securities in violation of section 17(a) of the Securities Act of 1933, as amended.

III. It appearing to the Commission that it is in the public interest and for the protection of investors that the exemption of the Issuer under Regulation A be temporarily suspended:

It is ordered, Pursuant to Rule 261(a) of the general rules and regulations under the Securities Act of 1933, as amended, that the exemption of the Issuer under Regulation A be, and it hereby is, temporarily suspended.

It is further ordered, Pursuant to Rule 7 of the Commission's rules of practice, that the Issuer file an answer to the allegations contained in this order within 30 days of the entry thereof.

Notice is hereby given that any person having any interest in the matter may file with the Secretary of the Commission a written request for a hearing within 30 days after the entry of this order;

[1] Commissioner Cox not participating.

that within 20 days after receipt of such request the Commission will, or at any time upon its own motion may, set the matter down for hearing at a place to be designated by the Commission for the purpose of determining whether this order of suspension should be vacated or made permanent, without prejudice, however, to the consideration and presentation of additional matters at the hearing; and that notice of the time and place for said hearing will be promptly given by the Commission. If no hearing is requested and none is ordered by the Commission, the order shall become permanent on the 30th day after its entry and shall remain in effect unless it is modified or vacated by the Commission.

By the Commission.

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

[F.R. Doc. 70-10801; Filed, Aug. 17, 1970; 8:49 a.m.]

DEPARTMENT OF LABOR

Wage and Hour Division

CERTIFICATES AUTHORIZING EMPLOYMENT OF LEARNERS AT SPECIAL MINIMUM WAGES

Notice is hereby given that pursuant to section 14 of the Fair Labor Standards Act of 1938 (52 Stat. 1060, as amended, 29 U.S.C. 201 et seq.) and Administrative Order No. 595 (31 F.R. 12981) the firms listed in this notice have been issued special certificates authorizing the employment of learners at hourly wage rates lower than the minimum wage rates otherwise applicable under section 6 of the act. For each certificate, the effective and expiration dates, number or proportion of learners and the principal product manufactured by the establishment are as indicated. Conditions on occupations, wage rates, and learning periods which are provided in certificates issued under the supplemental industry regulations cited in the captions below are as established in those regulations; such conditions in certificates not issued under the supplemental industry regulations are as listed.

Apparel Industry Learner Regulations (29 CFR 522.1 to 522.9, as amended, and 29 CFR 522.20 to 522.25, as amended).

The following normal labor turnover certificates authorize 10 percent of the total number of factory production workers except as otherwise indicated.

Aalfs Manufacturing Co., Sioux City, Iowa; 7-8-70 to 7-7-71 (boys', men's, and ladies' jeans).

Ainsbrooke Co., Olney, Ill.; 6-27-70 to 6-26-71 (men's and boys' pajamas).

Angelica Uniform Co., Eminence, Mo.; 7-22-70 to 7-21-71 (women's and men's washable service uniforms).

Angelica Uniform Co., Marquand, Mo.; 7-22-70 to 7-21-71 (men's pants).

Angelica Uniform Co., Summersville, Mo.; 7-22-70 to 7-21-71 (women's washable uniforms and men's washable dental smocks).

Barbizon of Utah, Inc., Provo, Utah; 7-11-70 to 7-10-71 (ladies' lingerie).

Best, Inc., Terra Alta, W. Va.; 7-2-70 to 7-1-71; 10 learners (women's dresses).

Bowcar Manufacturing Corp., Bowman, S.C.; 7-21-70 to 7-20-71 (infants' and children's outerwear).

Caraway Apparel Co., Caraway, Ark.; 7-11-70 to 7-10-71; 10 learners (women's dresses).

Central Apparel Corp., Danville, Va.; 7-2-70 to 7-1-71 (children's clothing).

Chatham Knitting Mills, Inc., Chatham, Va.; 7-22-70 to 7-21-71; 6 learners (jackets and sweaters).

Elizabethtown Manufacturing Co., Elizabethtown, N.C.; 7-23-70 to 7-22-71; 10 learners (women's dresses).

The Fordyce Apparel Co., Fordyce, Ark.; 7-10-70 to 7-9-71 (men's and boys' pants).

Giles Manufacturing Corp., Narrows, Va.; 6-26-70 to 6-25-71 (children's knit shirts, misses' dresses and creepers).

Greenway Manufacturing Co., Waynesburg, Pa.; 7-8-70 to 7-7-71 (boys' and infants' shirts).

Guin Garment Corp., Guin, Ala.; 7-15-70 to 7-14-71 (boys' shirts).

H & H Manufacturing Corp., Statham, Ga.; 7-22-70 to 7-21-71 (men's dress pants).

Hackleburg Manufacturing Co., Hackleburg, Ala.; 7-13-70 to 7-12-71 (boys' shirts).

Hagle Industries, Inc., Ozark, Mo.; 7-27-70 to 7-26-71 (men's and boys' dress pants).

Hartselle Manufacturing Co., Hartselle, Ala.; 7-26-70 to 7-25-71 (men's pants).

Hartsville Garment Corp., Hartsville, Tenn.; 7-26-70 to 7-25-71 (men's shirts).

Irene Sportswear Co., Inc., Nicholson, Pa.; 7-16-70 to 7-15-71; 10 learners (ladies' blouses, slacks and vests).

Jo-Jac Shirt Co., Inc., Pulaski, Tenn.; 7-3-70 to 7-2-71; 10 learners (boys' sport shirts).

Kellwood Co., Coffeeville, Miss.; 7-12-70 to 7-11-71 (boys' pants).

La Crosse Sportswear Corp., La Crosse, Va.; 7-5-70 to 7-4-71 (men's and boys' knit sport shirts).

Lee-Mar Shirt Co., Inc., Pulaski, Tenn.; 7-15-70 to 7-14-71 (boys' sport shirts).

Lion of Troy, Inc., Adamsville, Tenn.; 6-24-70 to 6-23-71 (men's shirts).

Manchester Pants Co., Manchester, Md.; 6-30-70 to 6-29-71 (men's pants).

Marietta Sportswear Manufacturing Co., Inc., Marietta, Okla.; 7-7-70 to 7-6-71 (men's pants).

Martin Manufacturing Co., Inc., Martin, Tenn.; 7-6-70 to 7-5-71 (uniform shirts).

McCreary Manufacturing Co., Inc., Stearns, Ky.; 6-26-70 to 6-25-71 (men's dress shirts).

Middleburg Sportswear Inc., Middleburg, Pa.; 7-8-70 to 7-7-71 (women's dresses).

Monticello Manufacturing Co., Inc., Monticello, Ky.; 6-30-70 to 6-29-71 (men's sport shirts and ladies' blouses).

Morgan Sportswear Co., Madison, Ga.; 7-11-70 to 7-10-71 (men's and boys' shirts).

Morris Maler Manufacturing Co., Inc., Prescott, Ariz.; 7-22-70 to 7-21-71 (ladies' jackets and blouses).

Newport Manufacturing Co., Newport, N.C.; 7-12-70 to 7-11-71 (men's sport shirts).

Pecos Garment Co., Pecos, Tex.; 7-10-70 to 7-9-71 (men's and boys' dungarees and woven shorts).

Rose Hill Textiles, Inc., Rose Hill, N.C.; 6-29-70 to 6-28-71; 10 learners (girls' all weather coats).

Royal Manufacturing Co., Inc., Washington, Ga.; 7-22-70 to 7-21-71 (men's and boys' shirts, shorts, and T-shirts).

Somerville Manufacturing Co., Inc., Vivian, La.; 7-24-70 to 7-23-71 (men's slacks).

Spencer California, Tehachapi, Calif.; 7-1-70 to 6-30-71; 7 learners (children's pajamas, gowns, jumpers, bloomersuits, dresses, and T-shirts).

Levi Strauss & Co., Morrilton, Ark.; 7-16-70 to 7-15-71 (men's and boys' pants).

Levi Strauss & Co., Valdosta, Ga.; 7-15-70 to 7-14-71 (men's pants).

Trace Manufacturing Co., Waynesboro, Tenn.; 7-27-70 to 7-26-71 (cotton work shirts and pants).

Warsaw Manufacturing Co., Warsaw, N.C.; 7-7-70 to 7-6-71 (women's dresses).

The following plant expansion certificates were issued authorizing the number of learners indicated.

Edison Textiles, Inc., Fort Gaines, Ga.; 7-21-70 to 1-20-71; 24 learners (children's sunwear and sportswear).

F. Jacobson & Sons, Inc., Seymour, Ind.; 7-6-70 to 1-5-71; 35 learners (men's dress shirts).

Lakeland Manufacturing Co., Sheboygan, Wis.; 7-20-70 to 1-19-71; 20 learners (men's, boys' and junior jackets).

Manchester Industries, Inc., Manchester, Tenn.; 6-30-70 to 12-29-70; 22 learners (men's and boys' sport shirts).

Royal Manufacturing Co., Inc., Sandersville, Ga.; 6-26-70 to 12-25-70; 50 learners (men's, boys', and juveniles' knitted sport shirts and ladies' blouses).

Vogue Manufacturing Co., Inc., Starke, Fla.; 7-27-70 to 1-26-71; 20 learners (boys' pants).

Glove Industry Learner Regulations (29 CFR 522.1 to 522.9, as amended and 29 CFR 522.60 to 522.65, as amended).

Coop Glove Manufacturing, Inc., Shuqualak, Miss.; 7-27-70 to 7-26-71; 10 learners for normal labor turnover purposes (work gloves).

Lambert Manufacturing Co., Inc., Chillicothe, Mo.; 7-18-70 to 7-17-71; 10 learners for normal labor turnover purposes (cloth work gloves).

Lambert Manufacturing Co., Inc., Chillicothe, Mo.; 7-22-70 to 7-21-71; 10 learners for normal labor turnover purposes (leather work gloves).

Monte Glove Co., Inc., Maben, Miss.; 6-26-70 to 12-25-70; 10 learners for plant expansion purposes (work gloves).

Piedmont Glove Manufacturing Corp., Gaffney, S.C.; 6-29-70 to 6-28-71; 10 learners for normal labor turnover purposes (work gloves).

Wells Lamont Corp., Brownsville, Tenn.; 7-20-70 to 7-19-71; 10 percent of the total number of machine stitchers for normal labor turnover purposes (fabric gloves).

Hosiery Industry Learner Regulations (29 CFR 522.1 to 522.9, as amended and 29 CFR 522.40 to 522.43, as amended).

W. Y. Shugart & Sons, Inc., Fort Payne, Ala.; 7-2-70 to 7-1-71; 5 percent of the total number of factory production workers for normal labor turnover purposes (infants', children's, and misses' hosiery).

Knitted Wear Industry Learner Regulations (29 CFR 522.1 to 522.9, as amended and 29 CFR 522.30 to 522.35, as amended).

Paul-Bruce Manufacturing Co., Inc., Scotland Neck, N.C.; 6-30-70 to 6-29-71; 5 learners for normal labor turnover purposes (ladies' sleepwear).

Royal Manufacturing Co., Inc., Crawfordville, Ga.; 7-24-70 to 7-23-71; 5 learners for normal labor turnover purposes (men's underwear).

Royal Manufacturing Co., Inc., Washington, Ga.; 7-22-70 to 7-21-71; 5 percent of the total number of workers engaged in the production of woven shorts, T-shirts, and thermal underwear for normal labor turnover purposes (men's and boys' shirts, shorts, T-shirts, and underwear).

The following learner certificates were issued in Puerto Rico to the companies hereinafter named. The effective and expiration dates, learner rates, occupations, learning periods and the

number of learners authorized to be employed, are indicated.

Bayuk Ciales, Inc., (Stripping Division) Ciales, P.R.; 7–18–70 to 7–17–71; 13 learners for normal labor turnover purposes in the occupation of machine stripping, for a learning period of 160 hours at the rate of $1.32 an hour (Tobacco).

Cayey Industries, Inc., Cayey, P.R.; 7–6–70 to 7–5–71; 30 learners for normal labor turnover purposes in the occupation of machine knitting, for a learning period of 480 hours at the rates of $1.22 an hour for the first 240 hours and $1.39 an hour for the remaining 240 hours (sweaters, swimwear, and skirts).

Glamourette Fashion Mills, Inc., Quebradillas, P.R.; 6–3–70 to 6–2–71; 14 learners for normal labor turnover purposes in the occupations of (1) knitting, for a learning period of 480 hours at the rates of $1.22 an hour for the first 240 hours and $1.39 an hour for the remaining 240 hours; and (2) machine stitching-seaming, for a learning period of 320 hours at the rates of $1.22 an hour for the first 160 hours and $1.39 an hour for the remaining 160 hours (sweaters, skirts, men's shirts, dresses, etc.).

Meyers & Son Manufacturing Co. of P.R., Inc., Cidra, P.R.; 6–12–70 to 6–11–71; 10 learners for normal labor turnover purposes in the occupation of sewing machine operating, for a learning period of 320 hours at the rate of $1.17 an hour (coveralls).

Puritan Caribbean Inc., Cidra, P.R.; 7–18–70 to 7–17–71; 18 learners for normal labor turnover purposes in the occupation of machine knitting, for a learning period of 480 hours at the rates of $1.22 an hour for the first 240 hours and $1.39 an hour for the remaining 240 hours (Full-fashioned sweaters and shirts).

Sara-Toby, Inc., Maunabo, P.R.; 6–15–70 to 12–14–70; 30 learners for plant expansion purposes in the occupation of sewing machine operating, for a learning period of 320 hours at the rate of $1.23 and hour (ladies' underwear).

Wendy Textile Mills, Inc., Quebradillas, P.R.; 6–3–70 to 6–2–71; 5 learners for normal labor turnover purposes in the occupations of (1) knitting, for a learning period of 480 hours at the rates of $1.22 an hour for the first 240 hours and $1.39 an hour for the remaining 240 hours; and (2) machine stitching-seaming, for a learning period of 320 hours at the rates of $1.22 an hour for the first 160 hours and $1.39 an hour for the remaining 160 hours (Sweaters, skirts, men's shirts, dresses, etc.).

Each learner certificate has been issued upon the representations of the employer which, among other things, were that employment of learners at special minimum rates is necessary in order to prevent curtailment of opportunities for employment, and that experienced workers for the learner occupations are not available. Any person aggrieved by the issuance of any of these certificates may seek a review or reconsideration thereof within 15 days after publication of this notice in the FEDERAL REGISTER pursuant to the provisions of 29 CFR 522.9. The certificates may be annulled or withdrawn, as indicated therein, in the manner provided in 29 CFR Part 528.

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

ROBERT G. GRONEWALD,
Authorized Representative of the Administrator.

[F.R. Doc. 70–10759; Filed, Aug. 17, 1970; 8:47 a.m.]

INTERSTATE COMMERCE COMMISSION

[No. 33434]

DETENTION OF MOTOR VEHICLES

Middle Atlantic and New England Territory

AUGUST 6, 1970.

On May 20, 1970, the Middle Atlantic Conference and its member carrier respondents, filed a petition, as clarified on June 2, 1970, with the Commission to modify the uniform detention rule prescribed by the Commission in its report and order, decided April 23, 1965, 325 I.C.C. 236, as amended by orders dated October 6, 1965, and February 28, 1968. A petition for leave to file a reply, with the sought reply attached, was filed on June 22, 1970, by American Homes Products Corp. et al., and Middle Atlantic Conference and its member carrier respondents filed a reply thereto on July 13, 1970.

The proposal, as clarified, seeks to increase the presently prescribed detention charges as shown in section IV of the rule, except as subsequently modified by the Commission to the basis set forth below:

SEC. IV—*Charges.* A charge of $3 will be assessed for each fifteen (15) minutes or fraction thereof that the vehicle is delayed beyond the Free Time, subject to a minimum charge of $12 per vehicle at each loading and/or unloading site at which vehicle is detained.

Petitioner asks that these increased detention charges be prescribed as a minimum charge level, or in the alternative, as an exact charge level for application within Middle Atlantic Territory and between Middle Atlantic and New England Territories.

The request for modification filed by the petitioners are available for inspection in the public docket located in the Office of the Secretary at the Commission's office in Washington, D.C.

Notice of the filing of the petition to modify the prescribed uniform detention rule will be given to the parties of record by serving them with a copy of this notice, and to the general public by depositing a copy of this notice in the Office of the Secretary of the Commission at Washington, D.C., and by filing with the Director, Office of the Federal Register, for publication in the FEDERAL REGISTER.

Any interested person, desiring to participate in the proceeding, may file a protest, original and 15 copies, to the proposal in writing within twenty (20) days from the date of publication of this notice in the FEDERAL REGISTER. To prevent duplicity, the aforementioned reply of American Home Products Corp. et al., and the reply of Middle Atlantic Conference and its member carriers to the petition for leave to file will be considered.

[SEAL] JOSEPH M. HARRINGTON,
Acting Secretary.

[F.R. Doc. 70–10799; Filed, Aug. 17, 1970; 8:49 a.m.]

FOURTH SECTION APPLICATIONS FOR RELIEF

AUGUST 13, 1970.

Protests to the granting of an application must be prepared in accordance with § 1100.40 of the general rules of practice (49 CFR 1100.40) and filed within 15 days from the date of publication of this notice in the FEDERAL REGISTER.

LONG-AND-SHORT HAUL

FSA No. 42026—*Phthalic anhydride to Baton Rouge, La.* Filed by Traffic Executive Association—Eastern Railroads, agent, (E.R. No. 2982), for interested rail carriers. Rates on phthalic anhydride, in tank carloads, as described in the application, from Bridgeport, N.J., to Baton Rouge, La.

Grounds for relief—Market competition.

Tariff—Supplement 282 to Traffic Executive Association—Eastern Railroads, Agent, tariff ICC C–334.

FSA No. 42027—*Chlorine to Roanoke Rapids, N.C.* Filed by Traffic Executive Association—Eastern Railroads, agent (E.R. No. 2983), for interested rail carriers. Rates on chlorine, in tank carloads, as described in the application, from Reybold, Del., to Roanoke Rapids, N.C.

Grounds for relief—Market competition.

Tariff—Supplement 282 to Traffic Executive Association—Eastern Railroads, Agent, tariff ICC C–334.

By the Commission.

[SEAL] JOSEPH M. HARRINGTON,
Acting Secretary.

[F.R. Doc. 70–10797; Filed, Aug. 17, 1970; 8:49 a.m.]

[Notice 133]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

AUGUST 13, 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 23976 (Sub-No. 33 TA), filed July 27, 1970. Applicant: TRANS WESTERN EXPRESS, INC., 5940 North Basin Avenue, Portland, Oreg. 97217. Applicant's representative: John G. McLaughlin, 100 Southwest Market Street, Portland, Oreg. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except commodities in bulk and commodities requiring special equipment), between Seattle, Wash., and Bend, Oreg., from Seattle over Interstate Highway 5 to Portland, Oreg., thence over U.S. Highway 26 to Madras, Oreg., and thence over U.S. Highway 97 to Bend, and return over the same route, serving all intermediate points between Seattle and Olympia, Wash., for 180 days. NOTE: Applicant states it intends to tack with its presently held authority or to interline with other carriers at Burns, Bend, Eugene, Klamath Falls, Oreg., and Alturas and Redding, Calif. Supporting shippers: There are approximately 13 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: A. E. Odoms, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 450 Multnomah Building, Portland, Oreg. 97204.

No. MC 23976 (Sub-No. 34 TA), filed July 29, 1970. Applicant: TRANS WESTERN EXPRESS, INC., 5940 North Basin Avenue, Portland, Oreg. 97217. Applicant's representative: John G. McLaughlin, 100 Southwest Market, Portland, Oreg. 97201. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Household goods*, as defined by the Commission, between points in Washington, Oregon, California, Nevada, and Idaho, operations to be conducted under the name of Trans Western Van & Storage Co., which is a Division of Trans Western Express, Inc., for 180 days. Supporting shippers: Bobby G. Cheatom, 226th Military Police Det., Fort Irwin, Calif.; Tilmon R. Crook, Jr., 8741 San Marino Drive, Boise, Idaho; Sam Hamilton Transfer Co., 525 Barker St., Mount Vernon, Wash.; Inter-City Auto Freight, Inc., 1821 Dock Street, Tacoma, Wash.; DPA Inc., 2744 Northeast Broadway, Portland, Oreg.; Coast Transfer Co., 2135 Queen Anne Avenue, Seattle, Wash.; Northwood Corp., Box 669, Bend, Oreg. Send protests to: A. E. Odoms, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 450 Multnomah Building, Portland, Oreg. 97204.

No. MC 42487 (Sub-No. 757 TA), filed July 31, 1970. Applicant: CONSOLIDATED FREIGHTWAYS CORPORATION OF DELAWARE, 175 Linfield Drive, Menlo Park, Calif. 94025. Applicant's representative: V. R. Oldenburg, Post Office Box 5138, Chicago, Ill. 60680. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities*, except classes A and B explosives, livestock, household goods as defined by the Commission, commodities in bulk, including bulk liquids, assembled automobiles, and heavy machinery requiring special equipment, serving the site of the Duane Arnold Energy Center located near Palo (Linn County), Iowa, as an off-route point, for 180 days. NOTE: Point will be served as an off-route point to Subs 578 and 646 which authorize service at Cedar Rapids, Iowa. Subs 578 and 646 will be tacked with other authorities at common service points. Supporting shipper: Iowa Electric Light & Power Co., Box 351, Cedar Rapids, Iowa 52406. Send protests to: Claud W. Reeves, District Superviser, Interstate Commerce Commission, Bureau of Operations, 450 Golden Gate Avenue, Box 36004, San Francisco, Calif. 94102.

No. MC 82492 (Sub-No. 42 TA) (Correction), filed July 23, 1970, published in the FEDERAL REGISTER issue of August 5, 1970, and republished in part corrected, this issue. Applicant: MICHIGAN & NEBRASKA TRANSIT CO., INC., 2109 Olmstead Road, Post Office Box 2853, Kalamazoo, Mich. 49003. Applicant's representative: William C. Harris (same address as above). NOTE: The purpose of this partial republication is to show Kansas as a destination State. The rest of this application remains as previously published.

No. MC 83217 (Sub-No. 46 TA), filed July 27, 1970. Applicant: DAKOTA EXPRESS, INC., 1217 West Cherokee Avenue, ZIP 57104, Post Office Box 1252, Sioux Falls, S. Dak. 57101. Applicant's representative: Henry Schuette, Post Office Box 1252, Sioux Falls, S. Dak. 57102. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products and meat byproducts and articles distributed by meat packinghouses*, as described in sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, from Estherville, Iowa, to points in Connecticut, Delaware, District of Columbia, Illinois, Indiana, Kansas, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, South Dakota, Vermont, Virginia, and West Virginia, for 180 days. Supporting shipper: John Morrell & Co., Estherville, Iowa 51334, Dellas Kelper, Traffic Manager. Send protests to: J. L. Hammond, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 369, Federal Building, Pierre, S. Dak. 57501.

No. MC 108207 (Sub-No. 307 TA), filed August 7, 1970: Applicant FROZEN FOOD EXPRESS, 318 Cadiz Street, Zip 75207, Post Office Box 5888, Dallas, Tex. 75222. Applicant's representative: J. B. Ham (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Human blood plasma*, from Cincinnati, Ohio, to Berkeley, Calif., for 180 days. NOTE: Applicant does not intend to tack with existing authority. NOTE: Support letter indicates 5 or 6 shipments and refrigeration not to exceed plus 5° F. Supporting shipper: Cutter Laboratories, Inc., Fourth and Parker Streets, Berkeley, Calif. 94710. Send protests to: E. K. Willis, Jr., District Supervisor, Interstate Commerce Commission, Bureau of Operations, 513 Thomas Building, 1314 Wood Street, Dallas, Tex. 75202.

No. MC 114301 (Sub-No. 62 TA), filed August 7, 1970. Applicant: DELAWARE EXPRESS CO., Post Office Box 97, Elkton, Md. 21921. Applicant's representative: Chester A. Zyblut, 1522 K Street NW., Washington, D.C. 20005. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Insulating materials*, except in bulk, from Parsonsburg, Md., to points in Connecticut, Massachusetts, Maryland, Rhode Island, New York, New Jersey, Pennsylvania, Delaware, Virginia, and District of Columbia, for 180 days. Supporting shipper: Cellutron Products Corp., Post Office Box 76, Route 346, Parsonsburg, Md. 21849, Roland S. Jones, President. Send protests to: Paul J. Lowry, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 206 Old Post Office Building, 129 East Main Street, Salisbury, Md. 21801.

No. MC 114457 (Sub-No. 90 TA), filed August 7, 1970. Applicant: DART TRANSIT COMPANY, 780 North Prior Avenue, St. Paul, Minn. 55104. Applicant's representative: Donald G. Oren (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products and meat byproducts*, from St. Paul. Minn., to points in the Lower Peninsula of Michigan, for 180 days. Supporting shipper: Armour & Co., Chicago, Ill. Send protests to: District Supervisor A. E. Rathert, Interstate Commerce Commission, Bureau of Operations, 448 Federal Building and U.S. Courthouse, 110 South Fourth Street, Minneapolis, Minn. 55401.

No. MC 114647 (Sub-No. 22 TA), filed August 6, 1970. Applicant: ROBERT E. PLETCHER, doing business as PLETCHER TRANSFER & STORAGE, Post Office Box 206, Highway 69 South, Forest City, Iowa 50436. Applicant's representative: Robert E. Pletcher (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Pontoon type boats*, transported on shipper-owned trailers, from Forest City, Iowa, to points in Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Idaho, Kentucky, Louisana, Maine, Maryland, Massachusetts, Mississippi,

Montana, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, South Carolina, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wyoming, Oklahoma, Oregon, Rhode Island, and any points east of U.S. Highway 81 in New York and any points south and east of U.S. Highway 62 in Pennsylvania, with return of *damaged, defective, rejected, and returned shipments* from dealers, for 180 days. Supporting shipper: Kayot, Inc., Forester Division, Forest City, Iowa 50436. Send protests to: Ellis L. Annett, District Supervision, Interstate Commission Commission, Bureau of Operations, 677 Federal Buildings, Des Moines, Iowa 50309.

No. MC 128273 (Sub-No. 75 TA), filed August 7, 1970. Applicant: MIDWESTERN EXPRESS, INC., Box 189, Fort Scott, Kans. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Paper and paper products*, from Cloquet and Brainerd, Minn., to points in the District of Columbia, Maryland, New Jersey, New York, Pennsylvania, and Virginia, for 180 days. Supporting shipper: Northwest Paper Co., Avenue C and Arch Streets, Cloquet, Minn. Send protests to: M. E. Taylor, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 501 Petroleum Building, Wichita, Kans. 67202.

No. MC 133633 (Sub-No. 6 TA) (Correction), filed July 29, 1970, published in the FEDERAL REGISTER issue of Notice No. 130, corrected and republished in part, as corrected this issue. Applicant: HIGHWAY EXPRESS, INC., 715 East Second Street, Post Office Box 1326, Hattiesburg, Miss. 39401. Applicant's representative: William P. Jackson, Jr., 919 18th Street NW., Suite 800, Washington, D.C. 20006. NOTE: The purpose of this partial republication is to show the commodity description as "*general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, and commodities requiring special equipment)", which was inadvertently omitted from the previous publication. The rest of the application remains the same.

No. MC 134631 (Sub-No. 1 TA), filed August 7, 1970. Applicant: SCHULTZ TRANSIT, INC., Post Office Box 503, 323 Bridge Street, Winona, Minn. 55987. Applicant's representative: Val M. Higgins, 1000 First National Bank Building, Minneapolis, Minn. 55402. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Candy*, from Winona, Minn., to Atlanta, Ga.; Boston, Mass.; Charlotte, N.C., and points in Illinois, Indiana, Kentucky, Michigan, New Jersey, New York, Ohio, and Pennsylvania, for 150 days. Supporting shipper: Schuler Chocolates, Inc., 1000 West Fifth Street, Winona, Minn. 55987. Send protests to: A. N. Spath, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 448 Federal Building and U.S. Courthouse, 110 South Fourth Street, Minneapolis, Minn. 55401.

No. MC 134801 (Sub-No. 1 TA), filed August 6, 1970. Applicant: ZELVERT CAUGHERN, Star Route, Heavener, Okla. 74939. Applicant's representative: James E. Hamilton, Post Office Box 608, Poteau, Okla. 74953. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Lumber*, dry, dressed, green or rough, from Heavener, Okla., to Dallas and Amarillo, Tex.; Kansas City, Mo., and Wichita, Kans.; Joplin, Springfield and St. Louis, Mo., and Little Rock, Ark., and points in Arkansas west of U.S. Highway 167 and 65, for 180 days. Supporting shipper: Burnett Lumber Co., Heavener, Okla. 74937. Send protests to: District Supervisor William H. Land, Jr., 2519 Federal Office Building, 700 West Capitol, Little Rock, Ark. 72201.

No. MC 134819 TA, filed August 4, 1970. Applicant: RALPH W. KING, doing business as R. W. KING TRUCKING, 306 North Helm Avenue, Fresno, Calif. 93727. Applicant's representative: William H. Kessler, 638 Divisadero Street, Fresno, Calif. 93721. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Shingles, shakes, and ridge*, from points in Lane and Linn Counties, Oreg., to points in Shasta, Tehama, Sutter, Yuba, Sacramento, Yolo, San Joaquin, Alameda, Contra, Costa, San Francisco, San Mateo, and Santa Clara Counties, Calif. Redding, Red Bluff, Yuba City, Marysville, Sacramento, West Sacramento, Stockton, Oakland, Richmond, San Francisco, Burlingame, and San Jose, Calif., to points in Stanislaus, Merced, Madera, Fresno, Tulare, Kings, Kern, Santa Cruz, Monterey, San Benito, and San Luis Obispo Counties, Calif.; Modesto, Merced, Madera, Fresno, Visalia, Hanford, Bakersfield, Santa Cruz, Monterey, Hollister, and San Luis Obispo, Calif.; to points in Santa Barbara, Ventura, Los Angeles, Orange, San Bernardino and Riverside Counties, Calif.; Santa Barbara, Ventura, Los Angeles, and Long Beach, Anaheim, San Bernardino, and Riverside, Calif., and to points in San Diego and Imperial Counties, Calif., San Diego and El Centro, Calif., for 180 days. Supporting shippers: Meile Shake, Inc., 3395½ West 1st Street, Post Office Box 2401, Eugene, Oreg. 97402; P.B.R. Shake Co., Post Office Box 441, Sweet Home, Oreg. 97386; and Three Pack Shingle Co., Star Route 2, Box 33, Foster, Oreg. 97345. Send protests to: Claud W. Reeves, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 450 Golden Gate Avenue, Box 36004, San Francisco, Calif. 94102.

By the Commission.

[SEAL] JOSEPH M. HARRINGTON,
Acting Secretary.

[F.R. Doc. 70-10800; Filed, Aug. 17, 1970; 8:49 a.m.]

[No. MC-C-6748]

SMOKING BY PASSENGERS OR OPERATING PERSONNEL ON INTERSTATE BUSES

Petition for Rule Making Proceeding

At a general session of the Interstate Commerce Commission, held at its office in Washington, D.C., on the 7th day of August 1970.

It appearing, that by petition filed January 8, 1970, Mr. Ralph Nader requests the institution of a general rulemaking proceeding for the purpose of establishing a rule or regulation of general applicability which would prohibit the smoking of cigars, cigarettes, or pipes by passengers and operating personnel on all passenger carrying motor vehicles operating in interstate or foreign commerce;

It further appearing, that notice of the filing of the petition for the institution of a rule making proceeding was published in the FEDERAL REGISTER on February 14, 1970, and republished on February 18, 1970, and that in the notice any interested person desiring to participate in the proceeding was directed, within 30 days of the date of publication of the notice, to file representations supporting or opposing the relief sought by petitioner, and that, in addition, any person submitting matter in support of the petition was directed to include therein a draft of the rule he believes should be adopted;

It further appearing, that pursuant to the notice published, representations in support of the relief sought, or in opposition thereto, were filed by a number of persons and organizations; and

Upon consideration of the petition in the proceeding, the representations thereto; and good cause appearing therefor:

It is ordered, That the petition filed January 8, 1970, insofar as the institution of a rulemaking proceeding is sought be, and it is hereby, designated for hearing at a time and place to be hereafter fixed.

It is further ordered, That the representations directed to the petition be, and they are hereby, made a part of the record in this proceeding, and the person or persons on whose behalf the representations are submitted be, and they are hereby, made parties to this proceeding with the right to participate in all further proceedings therein.

It is further ordered, That in all other respects; the petition be, and it is hereby, denied.

It is further ordered, That a copy of this order be served upon petitioners and all parties to the proceeding, and published in the FEDERAL REGISTER as notice to all interested persons.

By the Commission.

[SEAL] JOSEPH M. HARRINGTON,
Acting Secretary.

[F.R. Doc. 70-10798; Filed, Aug. 17, 1970; 8:49 a.m.]

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