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Part I

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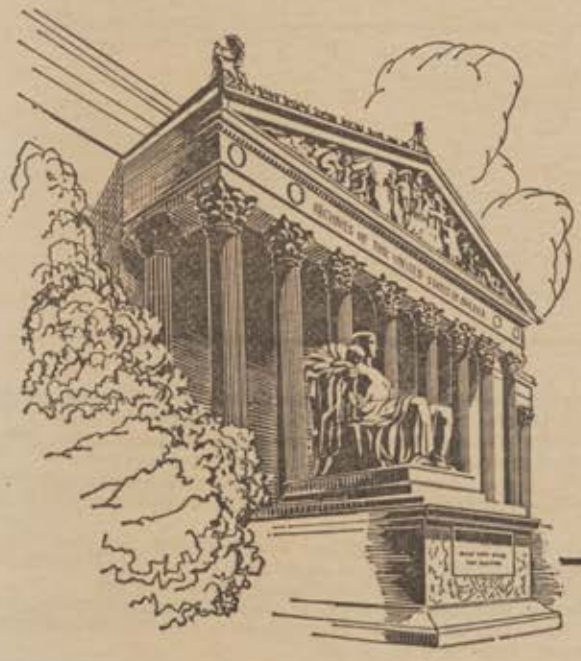

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[Amdt. 3]

PART 892—MAINLAND CANE SUGAR AREA

Credit for Accredited Sugarcane Acreage Record

Correction

In F.R. Doc. 70-13184 appearing at page 15361 in the issue of Friday, October 2, 1970, the 27th line of § 892.9(b) should read "land may not be credited on the basis of a".

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

[Tangerine Reg. 40]

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

Limitation of Shipments

Findings. (1) Pursuant to the marketing agreement, as amended, and Order No. 905, as amended (7 CFR Part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and upon the basis of the recommendations of the committees established under the aforesaid amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of shipments of tangerines, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) The recommendations by the Growers Administrative Committee reflect its appraisal of the Florida tangerine crop and the current and prospective market conditions. Shipments of tangerines, in volume, are expected to begin on or after October 19, 1970. The size and grade requirements specified herein are necessary to prevent the handling, on and after October 19, 1970, of tangerines that are of a lower grade or smaller size so as to provide consumers with good quality fruit, consistent with the overall quality of the crop, while maximizing returns to the producers pursuant to the declared policy of the act.

(3) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this regulation until 30 days after publication thereof in the FEDERAL REGISTER (5 U.S.C. 553) because the time intervening between the date when information upon which this regulation is based became available and the time when this regulation must become effective in order to effectuate the declared policy of the act is insufficient; a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective not later than October 19, 1970. The Growers Administrative Committee held an open meeting on October 6, 1970, to consider recommendations for a regulation, after giving due notice of such meeting, and interested persons were afforded an opportunity to submit their views at this meeting; information regarding the provisions of the regulation recommended by the committees has been disseminated among shippers of tangerines grown in the production area, and this regulation, including the effective time thereof, is identical with the recommendation of the committee; it is necessary, in order to effectuate the declared policy of the act, to make this regulation effective on the date hereinafter set forth so as to provide for the regulation of the handling of tangerines grown in the production area at the start of this marketing season; and compliance with this regulation will not require any special preparation on the part of persons subject thereto which cannot be completed on or before the effective time hereof.

§ 905.528 Tangerine Regulation 40.

(a) Order:

(1) During the period beginning October 19, 1970, through September 12, 1971, no handler shall ship between the production area and any point outside thereof in the continental United States, Canada, or Mexico:

(i) Any tangerines, grown in the production area, which do not grade at least U.S. No. 1; or

(ii) Any tangerines, grown in the production area, which are of a size smaller than 2$^{4}/_{16}$ inches in diameter, except that a tolerance of 10 percent, by count, of tangerines smaller than such minimum diameter shall be permitted, which tolerance shall be applied in accordance with the provisions for the application of tolerances specified in said U.S. Standards for Florida Tangerines.

(b) Terms used in the amended marketing agreement and order shall, when used herein, have the same meaning as is given to the respective term in said amended marketing agreement and order; and terms relating to grade and diameter, as used herein, shall have the same meaning as is given to the respective term in the U.S. Standards for Florida Tangerines (§§ 51.1810–51.1834 of this title).

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

Dated: October 9, 1970.

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

[F.R. Doc. 70-13838; Filed, Oct. 13, 1970; 8:51 a.m.]

Title 9—ANIMALS AND ANIMAL PRODUCTS

Chapter I—Agricultural Research Service, Department of Agriculture

SUBCHAPTER C—INTERSTATE TRANSPORTATION OF ANIMALS AND POULTRY

PART 74—SCABIES IN SHEEP

Change in Permitted Dip

Pursuant to the provisions of sections 4 through 7 of the Act of May 29, 1884, as amended, sections 1 and 2 of the Act of February 2, 1903, as amended, and sections 1 through 4 of the Act of March 3, 1905, as amended (21 U.S.C. 111–113, 115, 117, 120, 121, 123–126) § 74.24(b) of Part 74, Subchapter C, Chapter I, Title 9, Code of Federal Regulations, as amended, is hereby further amended to read as follows:

§ 74.24 Permitted dips; substances allowed.

* * * * *

(b) The dipping bath for lime-sulphur dip must be used at a temperature of 95° to 105° F., and must be maintained at all times at a strength of not less than 2 percent of "sulphide sulphur" as indicated by the field test for such bath approved by the Division.[2] The dipping bath for toxaphene emulsions must be kept within a temperature range of 40°–80° F., and at a concentration between 0.5 and 0.6 percent during dipping operations.[3]

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[2] The field test for lime-sulphur dipping baths is described in U.S. Department of Agriculture Bulletin 163, for sale by the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402, at 5 cents a copy.

[3] Care must be exercised in dipping animals and in maintaining the bath at the standard concentration when using any permitted dip. Detailed instructions will be issued for the guidance of employees who may be called upon to use them in the scabies eradication program.

(Secs. 4–7, 23 Stat. 32, as amended, secs. 1 and 2, 32 Stat. 791–792, as amended, secs. 1–4, 33 Stat. 1264, as amended, 1265, as amended; 21 U.S.C. 111–113, 115, 117, 120, 121, 123–126, 29 F.R. 16210, as amended; 33 F.R. 15485)

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

The foregoing amendment changes the requirement that the dipping bath for lime-sulphur dip be maintained at a strength of not less than "1½ percent of sulphide sulphur" to "2 percent of sulphide sulphur." This action is taken to provide uniformity in dipping procedures for both cattle and sheep. Tests conducted by the Department have proven that lime-sulphur dips have a margin of safety which allows for this change in concentration.

This amendment should be made effective promptly in order to be of benefit to the Sheep Scabies Eradication Program. Accordingly, under the administrative procedure provisions of 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to the amendment are impracticable and contrary to the public interest, and good cause is found for making the amendment effective less than 30 days after publication in the FEDERAL REGISTER.

Done at Washington, D.C., this 9th day of October 1970.

F. J. MULHERN,
Acting Administrator,
Agricultural Research Service.

[F.R. Doc. 70-13835; Filed, Oct. 13, 1970; 8:51 a.m.]

[Docket No. 70-278]

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:

In § 76.2, in paragraph (e)(3) relating to the State of Illinois, subdivision (i) relating to Randolph County is 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 amendment shall become effective upon issuance.

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

The amendment relieves certain restrictions presently imposed and must be made effective immediately 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 amendment are impracticable and unnecessary, and good cause is found for making it effective less than 30 days after publication in the FEDERAL REGISTER.

Done at Washington, D.C., this 9th day of October 1970.

F. J. MULHERN,
Acting Administrator,
Agricultural Research Service.

[F.R. Doc. 70-13836; Filed, Oct. 13, 1970; 8:51 a.m.]

PART 78—BRUCELLOSIS

Subpart D—Designation of Modified Certified Brucellosis Areas, Public Stockyards, Specifically Approved Stockyards and Slaughtering Establishments

MODIFIED CERTIFIED BRUCELLOSIS AREAS

Pursuant to § 78.16 of the regulations in Part 78, as amended, Title 9, Code of Federal Regulations, containing restrictions on the interstate movement of animals because of brucellosis, under sections 4, 5, and 13 of the Act of May 29, 1884, as amended; sections 1 and 2 of the Act of February 2, 1903, as amended; and section 3 of the Act of March 3, 1905, as amended (21 U.S.C. 111–113, 114a–1, 120, 121, 125), § 78.13 of said regulations designating Modified Certified Brucellosis Areas is hereby amended to read as follows:

§ 78.13 Modified Certified Brucellosis Areas.

The following States, or specified portions thereof, are hereby designated as Modified Certified Brucellosis Areas:

Alabama. The entire State;
Alaska. The entire State;
Arizona. The entire State;
Arkansas. The entire State;
California. The entire State;
Colorado. The entire State;
Connecticut. The entire State;
Delaware. The entire State;
Florida. Alachua, Baker, Bay, Bradford, Brevard, Broward, Calhoun, Charlotte, Citrus, Clay, Collier, Columbia, Dade, De Soto, Dixie, Duval, Escambia, Flagler, Franklin, Gadsden, Gilchrist, Glades, Gulf, Hamilton, Hendry, Hernando, Highlands, Holmes, Indian River, Jackson, Jefferson, Lafayette, Lake, Lee, Leon, Levy, Liberty, Madison, Manatee, Marion, Martin, Monroe, Nassau, Okaloosa, Okeechobee, Orange, Osceola, Palm Beach, Pasco, Pinellas, Putnam, St. Johns, St. Lucie, Santa Rosa, Sarasota, Seminole, Sumter, Suwannee, Taylor, Union, Volusia, Wakulla, Walton, and Washington Counties;
Georgia. The entire State;
Hawaii. The entire State;
Idaho. The entire State;
Illinois. The entire State;
Indiana. The entire State;
Iowa. The entire State;
Kansas. The entire State;
Kentucky. The entire State;
Louisiana. Acadia, Allen, Ascension, Assumption, Avoyelles, Beauregard, Bienville, Bossier, Caddo, Calcasieu, Caldwell, Cameron, Catahoula, Claiborne, Concordia, De Soto, East Baton Rouge, East Carroll, East Feliciana, Evangeline, Franklin, Grant, Iberia, Iberville, Jackson, Jefferson, Jefferson Davis, Lafayette, Lafourche, La Salle, Lincoln, Livingston, Madison, Morehouse, Natchitoches, Orleans, Ouachita, Plaquemines, Pointe Coupee, Rapides, Red River, Richland, Sabine, St. Bernard, St. Charles, St. Helena, St. James, St. John the Baptist, St. Landry, St. Mary, St. Tammany, Tangipahoa, Tensas, Terrebonne, Union, Vermilion, Vernon, Washington, Webster, West Baton Rouge, West Carroll, West Feliciana, and Winn Parishes;
Maine. The entire State;
Maryland. The entire State;
Massachusetts. The entire State;
Michigan. The entire State;
Minnesota. The entire State;
Mississippi. The entire State;
Missouri. The entire State;
Montana. The entire State;
Nebraska. The entire State;
Nevada. The entire State;
New Hampshire. The entire State;
New Jersey. The entire State;
New Mexico. The entire State;
New York. The entire State;
North Carolina. The entire State;
North Dakota. The entire State;
Ohio. The entire State;
Oklahoma. Adair, Alfalfa, Atoka, Beaver, Beckham, Blaine, Bryan, Caddo, Canadian, Carter, Cherokee, Cimarron, Cleveland, Coal, Comanche, Cotton, Craig, Creek, Custer, Delaware, Dewey, Ellis, Garfield, Garvin, Grady, Grant, Greer, Harman, Harper, Haskell, Hughes, Jackson, Jefferson, Johnston, Kay, Kingfisher, Kiowa, Latimer, Le Flore, Lincoln, Logan, Love, McClain, McCurtain, McIntosh, Major, Marshall, Mayes, Murray, Muskogee, Noble, Nowata, Okfuskee, Oklahoma, Okmulgee, Osage, Ottawa, Pawnee, Payne, Pittsburg, Pontotoc, Pottawatomie, Pushmataha, Roger Mills, Rogers, Seminole, Sequoyah, Stephens, Texas, Tillman, Tulsa, Wagoner, Washington, Washita, Woods, and Woodward Counties;
Oregon. The entire State;
Pennsylvania. The entire State;
Rhode Island. The entire State;
South Carolina. The entire State;
South Dakota. Aurora, Beadle, Bennett, Bon Homme, Brookings, Brown, Brule, Buffalo, Butte, Campbell, Charles Mix, Clark, Clay, Codington, Corson, Custer, Davison, Day, Deuel, Dewey, Douglas, Edmunds, Fall River, Faulk, Grant, Gregory, Haakon, Hamlin, Hand, Hanson, Harding, Hyde, Jackson, Jerauld, Jones, Kingsbury, Lake, Lawrence, Lincoln, Lyman, McCook, McPherson, Marshall, Meade, Mellette, Miner, Minnehaha, Moody, Pennington, Perkins, Potter, Roberts, Sanborn, Shannon, Spink, Stanley, Todd, Tripp, Turner, Union, Walworth, Washabaugh, Yankton, and Ziebach Counties; and
Crow Creek Indian Reservation;

Tennessee. The entire State;
Texas. Anderson, Andrews, Angelina, Aransas, Archer, Armstrong, Atascosa, Austin, Bailey, Bandera, Bastrop, Baylor, Bee, Bell, Bexar, Blanco, Borden, Bosque, Bowie, Brazos, Brewster, Briscoe, Brooks, Brown, Burleson, Burnet, Caldwell, Calhoun, Callahan, Cameron, Camp, Carson, Cass, Castro, Cherokee, Childress, Clay, Cochran, Coke, Coleman, Collin, Collingsworth, Colorado, Comal, Comanche, Concho, Cooke, Coryell, Cottle, Crane, Crockett, Crosby, Culberson, Dallam, Dallas, Dawson, Deaf Smith, Denton, Dickens, Dimmit, Donley, Duval, Eastland, Ector, Edwards, Ellis, El Paso, Erath, Falls, Fannin, Fayette, Fisher, Floyd, Foard, Freestone, Gaines, Garza, Gillespie, Glasscock, Goliad, Gray, Grayson, Gregg, Guadalupe, Hale, Hall, Hamilton, Hansford, Hardeman, Harrison, Hartley, Haskell, Hays, Hemphill, Henderson, Hidalgo, Hill, Hockley, Hood, Houston, Howard, Hudspeth, Hutchinson, Irion, Jack, Jasper, Jeff Davis, Jefferson, Jim Hogg, Jim Wells, Johnson, Jones, Karnes, Kaufman, Kendall, Kent, Kerr, Kimble, King, Kinney, Knox, Lamb, Lampasas, Lee, Leon, Limestone, Lipscomb, Live Oak, Llano, Loving, Lubbock, Lynn, McCulloch, McLennan, McMullen, Madison, Marion, Martin, Mason, Maverick, Medina, Menard, Midland, Milan, Mills, Mitchell, Montague, Moore, Morris, Motley, Nacagdoches, Navarro, Newton, Nolan, Ochiltree, Orange, Palo Pinto, Panola, Parker, Parmer, Pecos, Potter, Presidio, Rains, Randall, Reagan, Real, Red River, Reeves, Refugio, Roberts, Robertson, Rockwall, Runnels, Rusk, Sabine, San Augustine, San Saba, Schleicher, Scurry, Shackelford, Shelby, Sherman, Smith, Somervell, Starr, Stephens, Sterling, Stonewall, Sutton, Swisher, Tarrant, Taylor, Terrell, Terry, Throckmorton, Tom Green, Travis, Trinity, Tyler, Upshur, Upton, Uvalde, Val Verde, Van Zandt, Ward, Washington, Webb, Wheeler, Wichita, Wilbarger, Williamson, Wilson, Winkler, Wise, Wood, Yoakum, Young, Zapata, and Zavala Counties;
Utah. The entire State;
Vermont. The entire State;
Virginia. The entire State;
Washington. The entire State;
West Virginia. The entire State;
Wisconsin. The entire State;
Wyoming. The entire State;
Puerto Rico. The entire area.
Virgin Islands of the United States. The entire area.

(Secs. 4, 5, 23 Stat. 32, as amended, secs. 1, 2, 32 Stat. 791–792, as amended, sec. 3, 33 Stat. 1265, as amended, sec. 2, 65 Stat. 693; 21 U.S.C. 111–113, 114a–1, 120, 121, 125; 29 F.R. 16210, as amended, 9 CFR 78.16)

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

The amendment adds the following additional areas to the list of areas designated as Modified Certified Brucellosis Areas because it has been determined that such areas come within the definition of § 78.1(i): Highlands County in Florida; Anderson and Fannin Counties in Texas.

Camp County in Texas was deleted from the list of Modified Certified Brucellosis Areas on August 12, 1970. Since said date, it has been determined that such county again comes within the definition of § 78.1(i); and, therefore, it has been redesignated as a Modified Certified Brucellosis Area.

The amendment deletes the following areas from the list of areas designated as Modified Certified Brucellosis Areas because it has been determined that such areas no longer come within the definition of § 78.1(i): St. Martin Parish in Louisiana; Oldham County in Texas.

The amendment imposes certain restrictions necessary to prevent the spread of brucellosis in cattle and relieves certain restrictions presently imposed. It should be made effective promptly in order to accomplish its purpose in the public interest and to be of maximum benefit to persons subject to the restrictions which are relieved. Accordingly, under the administrative procedures provisions of 5 U.S.C. 553, it is found upon good cause that notice and other public procedures with respect to the amendment are impracticable, unnecessary, and contrary to the public interest, and good cause is found for making the amendment effective less than 30 days after publication in the FEDERAL REGISTER.

Done at Washington, D.C., this 9th day of October 1970.

R. S. SHARMAN,
Acting Director, Animal Health Division, Agricultural Research Service.

[F.R. Doc. 70-13837; Filed, Oct. 13, 1970; 8:51 a.m.]

Title 18—CONSERVATION OF POWER AND WATER RESOURCES

Chapter I—Federal Power Commission

SUBCHAPTER E—REGULATIONS UNDER NATURAL GAS ACT

[Dockets Nos. R-371, RI66-211, etc.;[1] Order 411]

PART 154—RATE SCHEDULES AND TARIFFS

PART 157—APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND FOR ORDERS PERMITTING AND APPROVING ABANDONMENT UNDER SECTION 7 OF THE NATURAL GAS ACT

Appalachian Basin and Illinois Basin Area Rates; Small Producer Certificates of Public Convenience and Necessity

OCTOBER 2, 1970.

On October 16, 1969, the Commission issued a notice of proposed rule making in this proceeding, 34 F.R. 17341, October 25, 1969, pursuant to the Administrative Procedure Act, 5 U.S.C. 551, et seq., and sections 4, 5, 7, and 16 of the Natural Gas Act,[2] proposing to issue rules fixing just and reasonable ceiling rates, and otherwise regulating jurisdictional sales by independent producers of natural gas in the Appalachian and Illinois Basin areas. The proposed rules were based on a comprehensive report by the Commission's staff which was attached to the notice. The following ceiling rates were proposed in the notice:

A. In the Appalachian Basin for gas measured at 15.325 p.s.i.a. and 60° F.:

1. 32 cents per Mcf for gas produced in the Northeastern subareas consisting of applicable counties in New York, Pennsylvania, and northern Ohio, including the offshore Lake Erie and Lake Ontario areas adjacent to these three States.

2. 30 cents per Mcf for gas produced in the Central subarea consisting of West Virginia and applicable counties in Maryland, Virginia, and southern Ohio.

3. 28 cents per Mcf for gas produced in the Southwestern subarea consisting of applicable counties in eastern Kentucky.

B. In the Illinois Basin a single ceiling rate of 21 cents per Mcf for gas measured at 15.025 p.s.i.a. and 60° F.

In accordance with § 2.56(e) of the Commission's General Policy and Interpretations, Rules of Practice and Procedure Order No. 367, 33 F.R. 14373, September 24, 1968; 40 FPC 503 the proposed rates at a 14.73 p.s.i.a. pressure base, and as rounded, are:

(a) *Appalachian Basin.*

15.325 p.s.i.a.	14.73 p.s.i.a.	14.73 p.s.i.a., rounded
Cents	*Cents*	*Cents*
32.0	30.7576	30.75
30.0	28.8352	29.0
28.0	26.9129	27.0

(b) *Illinois Basin.*

15.025 p.s.i.a.	14.73 p.s.i.a.	14.73 p.s.i.a., rounded
Cents	*Cents*	*Cents*
21.0	20.5877	20.5

In said notice we stated that we would revise the proposed rates if that appears appropriate in light of the comments. Subsequently, numerous parties filed comments, and some of them also filed responses to the comments of others. At the request of several of the parties, an informal conference of all interested parties was held on June 2, 1970, after due notice, 35 F.R. 8300, May 27, 1970.

Derivation of the proposed rates. As the staff report shows, the proposed rates are based on a cost analysis of the type used in Permian and Southern Louisiana for flowing gas. The data came from the 1962 All Areas Questionnaire (AAQ) covering 38.6 percent of total production in the Appalachian Basin (10.6 percent from producers and 28 percent from pipelines) and 3.1 percent of total production in the Illinois Basin (all from producers). The staff breaks down the costs to production costs, exploration costs and regulatory expense. On this basis, using a 10.5 percent rate of return, the staff found a producer cost of 27.01 cents per Mcf at 15.325 p.s.i.a. for the Appalachian

[1] The other proceedings consolidated herein are listed in Appendix A to this order.

[2] 52 Stat. 822, 823, 824, 825, 830; 56 Stat. 83, 84; 61 Stat. 459; 76 Stat. 72; 15 U.S.C. 717c, 717d, 717f, 717o.

Basin and 20.02 cents per Mcf at 15.025 p.s.i.a. for the Illinois Basin.[3]

The staff made an alternative computation on the basis of the alternative cost of substitute Southwest gas. The average cost over a 3-year period was found to be 36.27 cents per Mcf. Subtracting 7.53 cents per Mcf for gathering, compressing and treating Appalachian gas volumes, the staff arrived at 28.74 cents per Mcf as the adjusted alternate gas cost in the Appalachian Basin. In the Illinois Basin, the staff noted purchase costs from Texas Eastern of 31.0 cents and 33.6 cents per Mcf at 100 percent and 75 percent load factors, but did not compute an alternate cost. It thought the location value of the Illinois Basin was not as determinable but less than that for the Appalachian Basin.

The staff took the 27 cents average Appalachian producer costs and added 2 cents to make the Appalachian gas of pipeline quality. This included 1 cent for compression and dehydration and 1 cent for gathering. The staff thus arrived at an overall cost of 29 cents. Alternatively, the staff adjusted the location value cost of 28.74 cents per Mcf to 30 cents per Mcf to meet pipeline quality standards.

As between the 29-cent and 30-cent results of its analysis, the staff chose 30 cents as the ceiling rate in the Appalachian area.[4] Applying the 30 cents to the central subarea, the staff derived the 2-cent differential for the other subareas on the basis of the alternate gas costs and negotiated contract price levels in those areas. As for the Illinois Basin, the staff added to the average cost of 20 cents per Mcf, 0.5 cent per Mcf for improvement to pipeline quality and selected 21 cents per Mcf as the ceiling rate.[5]

Procedural issues. The people of the State of California and the Public Utilities Commission of the State of California, as well as certain producers, argue that this Commission does not have authority to fix just and reasonable ceiling rates without a "full-blown" hearing. We do not agree. We recognize that as an administrative agency, governed by Congressional mandate, we cannot take any action to raise or lower the price of gas—or take any other action relating to regulation—without affording due process to those affected, and without satisfying ourselves on all available evidence that the public interest, including the consumer interest in an adequate supply of natural gas, is protected.

Those attacking the procedure followed by the Commission herein mainly rely on the language of sections 4 and 5 of the Natural Gas Act which they aver require an adjudicatory hearing by the Commission as a precedent to its taking any action affecting filed rates. Particularly, the phrase in section 4(e) requiring a full hearing is relied upon by the complainants.

By their silence on the issue most parties recognize that section 7 certificate issues are distinct from rate issues under sections 4 and 5, and properly so. A "natural-gas company" must obtain a certificate under section 7 to initiate service at a rate which the Commission authorizes if it finds that the certificate is "required by the present or future public convenience and necessity." Once a certificate is issued, and accepted by an applicant, often after bitter contest, under section 7(b) the service may not be abandoned without permission of the Commission, and the service even may be extended against the will of the holder under section 7(a).

Sections 4 and 5 do not become operative until some future time subsequent to the commencement of service under the certificate. If a natural gas company claims that it is entitled to higher rates, it makes a filing under section 4, and the Commission thereupon is required to determine whether the rate, as changed, is "just and reasonable." Section 4 requires a "full hearing." Section 5, on the other hand, authorizes the Commission to inquire into present rates, charges and practices of a company to determine whether there is unlawful discrimination, and it has the power to order a lowering of rates if "unjust." Again, the section requires a "hearing" to resolve factual questions, because the certificate holder must continue service even if it objects to the rates set by the Commission.

On the other hand, section 7 issues are entirely different. Here an applicant is under no duty to initiate service until and unless it accepts the certificate, as conditioned by the Commission. Until such time as it actually commences service, the producer is legally free to sell gas in the nonjurisdictional market or to consume or conserve gas for its own purposes as alternatives to selling in the jurisdictional market. Thus the applicant has no vested right or duty until it has a certificate. The Commission, therefore, can, and does, legislate in advance the standards under which certificates will be issued in the future.

In the words of the Supreme Court, "* * * the statutory requirement for a hearing under section 7 does not preclude the Commission from particularizing statutory standards through the rulemaking process and barring at the threshold those who neither measure up to them nor show reasons why in the public interest the rule should be waived." F.P.C. v. Texaco, 377 U.S. 33, 39 (1964). The Commission may even determine in advance the evidence which it will consider in conditioning a certificate, U.G.I. v. Callery Properties, 382 U.S. 223 (1965), and a "just and reasonable" rate hearing is not a prerequisite to the issuance of a producer certificate. Atlantic Refining co. v. Public Service Commission of New York, 360 U.S. 378 (1959). Thus, a Commission procedure which affords all interested parties an opportunity to be heard before setting standards for certificates to be issued for new gas under section 7, subject to any further hearings concerning the individual certificate which the Commission may require, adequately satisfies the requirements of section 7 and those of the Administrative Procedure Act (APA).

Therefore the only question relates to sections 4 and 5 "hearings." In application, the effect of Commission action under sections 4 and 5 is prospective—the former from the time of filing for an increase, plus any suspension ordered; the latter from the time of issuance of a final order therein. These proceedings are classified as rulemakings under the APA, since both section 4 and section 5 proceedings prescribe "for the future of rates * * *" section 551(4). Thus, either section 553 or section 556 of the APA apply to section 4 and section 5 proceedings, and the procedure we followed satisfies both. Thus, these proceedings are valid since interested persons had "an opportunity to participate in the rule making through submission of written data, views, or arguments with or without opportunity for oral presentation." Section 553. Here interested parties were also given an opportunity to make an oral presentation at a conference for that purpose. A record was made of all evidence which was considered by us. Consequently, in our view, the requirements of sections 4 and 5 for a "full hearing" and "hearing" have been met by the rulemaking procedure. Even if sections 4 and 5 were deemed to require an adequate hearing as set forth in section 556 (b) and (c) of the APA, then section 556(d) authorizes "[i]n rulemaking * * * or applications for initial licenses an agency may, when a party will not be prejudiced thereby, adopt procedures for the submission of all or part of the evidence in written form." Thus, we find that the procedure followed in this case adequately satisfies both sections 4 and 5 of the Natural Gas Act and sections 553 and 556 of the APA.

In the notice, issued herein on October 16, 1969, the Commission said the proposed rules are based on Commission Staff's comprehensive report, a copy of which was attached to the notice. That report is 31 pages in length, and attached thereto are 12 detailed, analytical appendices. The notice also stated that the staff's recommendations largely reflected standards and principles approved by the courts in the Permian Basin area rate decision.[6] It stated that

[3] Using a 12-percent rate of return the Appalachian producer cost would be 27.96 cents and the Illinois cost would be 21.44 cents.

[4] It should be noted that the result would have been the same if the staff had used a 12 percent rate of return producing an average cost of almost 28 cents to which it would add 2 cents as discussed above.

[5] If the staff had used a 12 percent rate of return, the average cost would be 21.44 cents and the addition of 0.5 cent for quality would result in a rounded ceiling rate of 22 cents.

[6] Permian Basin Area Rate Proceedings, 34 FPC 159, 34 FPC 1068; affirmed sub nom. Permian Basin Area Rate Cases, 390 U.S. 747 (1968); see Southern Louisiana Area Rate Proceeding, 40 FPC 530, 41 FPC 301, affirmed sub nom. Austral Oil Co. x. F.P.C., F. 2d—— (CA5 No. 27492, et al., slip opinion dated March 19, and June 16, 1970).

the staff's recommendations would be considered in light of any comments submitted by interested persons, and that it would make appropriate revisions. Further, the Commission stated in the notice that since it appeared that many of the usual area rate controversies would not be applicable here, it saw no need for the lengthy, full-hearing approach, including presentation of witnesses and cross-examination, characteristic of previous area rate proceedings. Consequently, the Commission said that in the absence of substantial factual controversies, it appeared that the staff report and comments of all interested parties, supplemented by conferences and such limited hearings as might be requested and deemed by it to be necessary, would enable it to arrive at a proper rate order without a "full-blown" evidentiary hearing.

In response to the notice, comments were made by some of the large national producers, among whom are those who question the procedure we are following herein, by distribution companies, such as the Columbia Gas System, Consolidated Gas Supply Corp., National Fuel Gas Co., and Associated Gas Distributors, by Texas Gas Transmission Corp., by the State of California and by local producers and businesses. Some of the parties filed answers to the comments of others. Additionally, oral comments were made at a conference of all interested parties held on June 2, 1970.[1]

Thus, our action herein is not one based on a nugatory record. We fully considered the staff report, and accepted it as evidence. We received lengthy and well-considered comments from many parties, and answers to said comments made by other parties. And, we considered the staff's minutes of the conference of June 2, 1970, and the comments on such minutes filed by Cities Service on July 24, 1970. Added to our consideration of all of this rather extensive record, we have applied the expertise gained by us in determining previous area rate proceedings, and our long experience gained from dealing with the problems of these areas.

Support for our action herein is found in American Airlines, Inc. v. C.A.B., 359 F. 2d 624 (CADC), certiorari denied, 385 U.S. 843 (1966), where the court said (632–633):

> * * * there is no basis on the present record for concluding that additional procedures were requisite for fair hearing. We might view the case differently if we were not confronted solely with a broad conceptual demand for an adjudicatory-type proceeding, which is at least consistent with, though we do not say it is attributable to, a desire for protracted delay. Nowhere in the record is there any specific proffer by petitioners as to the subjects they believed required oral hearings, what kind of facts they proposed to adduce, and by what witnesses, etc. Nor was there any specific proffer as to particular lines of cross-examination which required exploration at an oral hearing.[1a]

Petitioner United stated in its comments that "if the Board accepts the conclusions of its staff predicated as they are on inaccurate and untested cost estimates, the combination carriers will be penalized and their right to operate all-cargo aircraft somehow impaired." Disputes as to costs frequently involve judgement as to cost allocations, and in such matters, as Justice Brandeis noted long ago, "experience teaches us that it is much easier to reject formulas presented as being misleading than to find one apparently adequate." Groesbeck v. Duluth, S.S.&A.R. Co., 250 U.S. 607, 615–615, 40 S. Ct., 38, 41, 63 L.Ed. 1167 (1919).

The Court, therefore, sustained promulgation of a general rate rule by the C.A.B. Here as there, nowhere in the filings of the parties, or in the Staff's minutes of the meeting of June 2d, was there any specific proffer by any party as to any particular issue or subject it believed required oral hearings.[2] The comments do not show that there is any substantial controversy concerning the facts as stated in the notice or the staff report attached thereto. Thus, there has been no showing by any party of any need for a formal, evidentiary hearing. F.C.C. v. W.J.R., The Goodwill Station, Inc., 337 U.S. 265; Sun Oil Co. v. F.P.C., 256 F. 2d 233, 240–241 (CA5, 1958). In these circumstances we believe the procedure we are following in this case is consistent with statutory and constitutional hearing requirements. F.P.C. v. Texaco Inc., 377 U.S. 33 (1964); American Airlines, Inc. v. C.A.B., 359 F. 2d 624 (CADC, 1966). Cf. Hunt Oil Co., et al. v. F.P.C., 424 F. 2d 982 (CA5, 1970). As the Supreme Court observed in Permian (390 U.S. at 790):

> We must reiterate that the breadth and complexity of the Commission's responsibilities demand that it be given every reasonable opportunity to formulate methods of regulation appropriate for the solution of its intensely practical difficulties.

Our course of action here is particularly appropriate for the reasons previously discussed in the October 16, 1969, notice. No party has alleged that those reasons do not pertain.

Appropriate subareas. There is a divergence of viewpoint as to the appropriate subareas in the Appalachian Basin. Ashland Oil, Inc. (Ashland), argues that there is no justification for any subareas because in terms of geology this area is a single producing area. The Columbia Gas System Cos. (Columbia), contends that two subareas (North and South) are more appropriate than three subareas. The North subarea would coincide with the Northeastern subarea proposed in the October 16th notice, and the South subarea would combine the Central and Southwestern subareas proposed in that notice. Consolidated Gas Supply Corp., Kentucky West Virginia Gas Co., Iroquois Gas Corp., Pennsylvania Gas Co., and United Natural Gas Co. (Consolidated et al.), would also combine the Central and Southwestern subareas. In addition, Reynolds and Vincent recommends that the two counties in western Kentucky, Muhlenberg and Hopkins, which are included in the Illinois Basin be included instead in the Southwestern subarea and that the Illinois Basin be eliminated from consideration at this time.

We proposed the three subareas, based on the staff recommendation, because of the distance covered by the Appalachian Basin, the variation in the alternate gas costs, and the differences in contract prices in the subareas. However, the recommendations of Columbia and Consolidated et al., that the Central and Southwest subareas be combined to form a South subarea appear to be proper. Each of them point out that in regard to location factor, much of the production in the staff's Southwestern subarea is located geographically closer to the Northeastern markets than many of the West Virginia and Virginia counties in the Central subarea. Hence, we concur in the contention that the Appalachian Basin should be subdivided into a North subarea coinciding with the proposed Northeastern subarea, and a South subarea representing the combined central and southwestern subarea described by the staff. We do not find, however, that there is adequate justification for including the two western Kentucky counties in the South area, from which they are widely separated.

Rate ceilings. There are relatively few objections to the specific rates proposed in the October 16, 1969, notice insofar as those rates apply to flowing gas in the Appalachian Basin. United Natural Gas Co. (United)[3] suggests that a 36-cent rate would be supportable for Appalachian gas based on current gas supply difficulties. It argues that the present field price of 27 cents established in 1953 would have risen approximately 33 percent higher to a level of approximately 36 cents per Mcf if the growth rate in the national economy (approximately 2 percent per year since World War II) had been permitted to apply to gas produced in this area. In the first place this computation is contrary to the staff cost computations and alternative computations based on location value as referred to above and discussed in the staff Report. Furthermore, the initial service ceiling of 26.91 cents per Mcf at 14.73 p.s.i.a. set forth in the Commission's Statement of General Policy No. 61–1 for West Virginia is the ceiling at which the Commission indicated it would certificate new sales of gas in that area. But, this guideline ceiling was not established until 1960, and further it did not thereafter preclude any producer from contracting for a higher initial rate. Nor did

[1] The minutes of the conference were formally served on all parties, and filed by the staff on July 10, 1970.

[1a] A request for cross-examination is generally of less value when not coupled with a proffer of direct proof, see Westwood, ------ note 18. Westwood, Administrative Proceedings: Techniques of Presiding, 50 A.B.A.J. (1964).

[2] However, Ashland did state that it wanted a hearing to "test" the staff's cost methodology, and Westrans Petroleum, Inc., requested a hearing to demonstrate the need for a two part rate with a higher rate for new gas.

[3] During 1969, United purchased 4,925,913 Mcf of gas in the North subarea of the Appalachian Basin, which constitutes slightly more than 5 percent of its total gas supply.

it preclude a producer from filing under section 4 of the Act for any contractually authorized rate above the authorized initial rate. Thus, in our view, the economic considerations advanced by United, taken alone, do not justify a higher ceiling rate for flowing gas than that proposed.

Pennsylvania Gas Co. (Penn Gas), argues that the averaging proposal, in the October 16, 1969, notice, for two-part (summer-winter) rates tends to defeat the purpose of such dual rates. The averaging process where two part rates are involved was proposed so as to avoid penalizing such arrangements to the extent they appeared useful.[10] Under such a process the rates presently in effect for these sales would be permissible. In the event the averaging process at some future time has the effect of discouraging these sales, Penn Gas, or any other adversely affected party, may bring such matters to our attention for appropriate action.

In regard to gathering, Ashland objects to the inclusion of a 1 cent per Mcf cost allowance for gathering as part of the additive charges and adjustments included in the staff's cost calculations underlying the proposed rate ceilings. It avers that the staff's allowance fails to take into account the fact that in some contracts there is already a separate allowance, ranging from 1 cent to 3 cents per Mcf, where substantial gathering is performed by the producer. Further, Ashland contends, that, at least in the Southwestern subarea, the ceiling rate should apply at the wellhead, because that is where most of the pipeline-purchasers accept delivery. Consequently, Ashland states that the amount of gathering typically performed in this area is de minimis. Like Ashland, Consolidated, et al. states that in the southern half of the Appalachian Basin there is no such practice as delivery at a central point in the field. As an exception, however, Pittston Corp. (Pittston), states that it maintains a substantial gathering system for its contract delivery point on the Kentucky-Virginia border for sales under its FPC Gas Rate Schedule No. 1.

Under the ceiling rates for flowing gas adopted herein no quality adjustments are required for less than pipeline quality gas. As a result, the ceiling rates will apply to sales at the point of delivery, whether it be at the wellhead, after on-lease gathering, or after off-lease gathering. However, as pointed out in the staff's Report, the higher priced Appalachian contracts generally provide for delivery at a central point. In a relatively marginal area, such as involved here, where the vast majority of sales are made by small producers, it is, in our opinion, not feasible to limit the ceiling rates to wellhead sales. To do so would require an additional allowance for any gathering performed by a producer beyond the wellhead. In these circumstances it is proper to include a gathering allowance for all sales as part of the ceiling rate as we have done here. Such allowance should adequately recompense the producers for whatever gathering services, if any, they perform. However, in the event the gathering performed by an individual producer in this area is of such magnitude that special consideration is required, then that producer may file a request for special relief.

With respect to pipeline owned production and pipeline affiliated production on leases acquired after the issuance of Opinion No. 568,[11] Columbia recommends that the ceiling rates cover only on-lease gathering. Columbia states that it has extensive gathering facilities which are utilized by it for both its purchased gas and its own gas production. It further states that since producer gathering operations in the Appalachian Basin are predominantly on-lease operations, its recommendation would place the pipeline producers in the same position as independent producers. This question should be explored, to the extent necessary, in appropriate pipeline rate cases. It is sufficient here to state that we will accept any reasonable division of gathering costs between the "producer" and "pipeline" functions on the books of a pipeline-producer which is in conformity with the usual operating practice in this area.[12]

A number of parties, in general terms, urge us to modify the ceiling rates for new gas to induce expanded exploratory efforts in the Appalachian Basin. They contend that such exploratory efforts would result in the discovery of substantial quantities of new reserves and would help alleviate the current supply crisis. Columbia specifically requests that the ceilings for deliveries initiated after January 1, 1970, for gas production down to 10,000 feet be set at 34 cents in their proposed North subarea and 32 cents in their proposed South subarea, and that an additional 2-cent increment be allowed for all new gas produced from below 10,000 feet.[13] Consolidated et al., recommend that the ceiling rates for gas produced from formations above 6,000 feet and sold under contracts executed on or after October 7, 1969, should be 34 cents in the Northeast subarea, 32 cents in the Central and Southwest subareas. They also assert that an additional increment of 2 cents should be allowed for such gas if produced from formations deeper than 6,000 feet. Additionally, Associated Gas Distributors (AGD) urges us to establish a "two-price system" for the area, with a higher price applicable only to new sales.

We believe that there is considerable merit to the suggestions that we set higher rates for new gas. Accordingly, to encourage exploration and development of new gas supplies in the Appalachian Basin, we shall set the ceiling rates for gas sold under contracts dated on or after October 7, 1969,[14] at 2 cents per Mcf above the ceilings determined here to be appropriate for flowing gas. However, it is apparent from a review of the history of the area, that an appreciable increase in new sales will have to be of gas produced from deeper horizons than those from which production has largely been had in the past. Therefore, with respect to new gas supplies discovered below 8,000 feet, and proposed to be sold at rates higher than herein prescribed we shall consider each contract for the sale of such new gas when application is made for a certificate, and shall fix a rate for each sale on an ad hoc basis upon a proper showing that a rate higher than those which are prescribed herein is appropriate.

As for the Illinois Basin area, no party advocated a higher new gas price, or higher rates for gas produced from deeper formations. However, exploration and development of new gas supplies in this area also require incentive and encouragement.[15] As we noted in discussing the derivation of the rates recommended in the staff's report, and as promulgated in the notice of October 16, 1969, a 10.5 percent rate of return was used in arriving at the staff's proposed 21-cent rate. In view of the small pockets of gas and the relatively small sales volumes—with a likelihood of finding large reserves only through deeper drilling, a rate of return of less than 12 percent in either the Illinois Basin area or the Appalachian Basin area would not be reasonable. Cf. Area Rate Proceeding (Southern Louisiana Area), (supra).

We have pointed out (footnote 5, supra) that if a 12 percent rate of return were used the staff's proposed rate in the Illinois Basin area would be 21.44 cents per Mcf at 15.025 p.s.i.a. After adjustment, we arrived at a rate of 22 cents per Mcf at 15.025 p.s.i.a., or 21.5 cents per Mcf at 14.73 p.s.i.a. However, in arriving at its proposed rate for gas in the Illinois

[10] These winter-summer rates were developed so as to stimulate deliveries during the colder months for winter peaking services. However, winter peaking service in this area has been almost completely filled by deliveries from storage.

[11] Pipeline Production Area Rate Proceeding, Docket No. RP66-24, 42 FPC 738, Oct. 7, 1969.

[12] Cf. Notice of Proposed Rulemaking, Docket No. R-397, issued Aug. 28, 1970, proposing amendments to the Uniform System of Accounts relating to gathering and production facilities.

[13] Columbia states that to its knowledge no gas is currently being produced from depths below 10,000 feet in the Appalachian Area.

[14] The Oct. 7, 1969, date has been selected because it is the date of issuance of Opinion No. 568, 42 FPC 738, where the Commission established as a matter of policy that in future pipeline rate proceedings, with respect to leases acquired after the date of the opinion, gas produced by pipelines or their affiliates would be included in the pipeline cost of service at the applicable area just and reasonable rate. Since the pipelines and their affiliates are particularly active in production operations in this area, we think the selection of the Oct. 7 date will encourage early development and simplify the regulation of pipeline production in this area.

[15] Although it did not recommend a specific rate for new gas, the Department of Mines and Minerals of the Commonwealth of Kentucky urged that an "incentive factor" be given consideration in establishing the rates herein.

Basin, the staff made no adjustment for the location value to interstate pipelines resulting from the proximity of the producing fields in the basin to their markets, nor did we make such an adjustment in promulgating the proposed rate herein. Because of the lesser volumes of gas involved, the staff was of the opinion that the location value of the Illinois Basin gas would be somewhat lower than the Appalachian Basin gas. However, Reynolds and Vincent, a Kentucky consultant firm, aver that just because the location value of the Illinois Basin gas may be somewhat less than that of the Appalachian Basin gas, there is no reason such value should be given no weight whatever in determining a just and reasonable rate for such gas. Reynolds and Vincent submitted a suggested method for calculating such a location value for the Illinois Basin gas. Although not adopting the method Reynolds and Vincent propose, we believe the contention that some adjustment should properly be made has merit.

Consequently, based on our consideration of the history of this area, and the geographical and market data before us, we find that an upward adjustment of 2 cents per Mcf is necessary and proper so as to arrive at a rate of 23.5 cents per Mcf at 14.73 p.s.i.a. Since, as stated above, no need is shown for a two price system in the Illinois Basin at this time, we find it proper to fix the 23.5 cents per Mcf at 14.73 p.s.i.a. rate for both old and new gas in the area.

Texas Gas Transmission Corp. (Texas Gas), the sole jurisdictional pipeline purchaser of gas in the Illinois Basin area, stated that in its opinion the proposed rate "should encourage drilling operations and stimulate the development of additional gas reserves in this area * * *." However, Texas Gas states that it supports the proposed rate for sales in western Kentucky (Illinois Basin) only if such rate is applicable to pipeline quality gas delivered to a central point, and at existing pipeline pressures. Inasmuch as available data show that the gas from this area is generally delivered at the wellhead, we do not believe it appropriate to limit the ceiling rate to deliveries at a central point in the field. As far as future gas sales are involved, pipeline purchasers can protect themselves in contract negotiations with respect to the price, the delivery point, and the pressure of such gas. With respect to existing sales, no particular problem has been brought to our attention by Texas Gas, or any other party.

Minimum rates. Richter Oil Co. (Richter), urges the Commission to amend the proposed rules so as to provide a minimum rate of 25 cents per Mcf, claiming that without such a rate Richter and many other small producers in Appalachian will be prevented or retarded from further exploration, and from making necessary improvements in existing wells and equipment under contracts providing for a lesser price.[16] As shown in the staff report, 10 pipeline buyers and 29 producer buyers purchase gas in Appalachia. As of June 30, 1969, there were 483 sales to pipeline buyers and 617 sales to producer buyers[17] at rates below 20 cents per Mcf at 14.73 p.s.i.a. It appears that the estimated maximum impact of a 20 cent minimum rate in the Appalachian area would be in the range of $400,000 to $750,000 to pipeline buyers, and $850,000 to $1,600,000 to producer buyers. In the Illinois Basin area the estimated maximum impact would be approximately $120,132.

We note the fact that a large portion of the contracts are old life-of-lease agreements with a relatively low price for gas. Also, the fact that where once producers in this area had a bargaining position because they furnished winter peak gas, now most of the pipelines use storage gas for peaking. As Ashland so succinctly stated: the Appalachian area "* * * has historically been and will continue to be * * * one of which the independent producer is largely a captive." Several of the other parties indicate that this is indeed a fact. It is often difficult for a "captive" to renegotiate a contract for his benefit.[18] Although it may be said that pipeline-purchasers may renegotiate the existing contract prices in the hope of obtaining additional sources of supply, it may be that abnormally low prices do not afford the financial means for the drilling and development of such new supplies. Here, as in Permian the amount of additional revenue will have no significant impact on consumers, but the relief afforded the individual producers may be important to their continuation in the search for additional gas supplies so urgently needed.[19] Because of such circumstances, we find that the public interest requires the establishment of minimum rates of 19.25 cents per Mcf at 14.73 p.s.i.a in the Appalachian area, and 16.25 cents per Mcf at 14.73 p.s.i.a. in the Illinois basin area for sales by producers to pipeline purchasers or their affiliates.

The staff report recommended against the adoption of minimum rates because it believed the adoption of minimum rates might have an adverse effect on the resale rates of producers who purchase gas from other producers in the respective area, particularly where such resale rates are below the ceiling prescribed herein. However, the minimum rates we shall prescribe herein are applicable to the sale to the pipeline purchaser, or an affiliate of the same. If there are instances where a producer should receive some relief from unreasonable low contract prices for a sale to an independent intermediate buyer, such situations should be brought to our attention through a petition for special relief. We do not believe, that a minimum rate should be set at this time for such intermediate sales. Therefore, each such instance should be considered individually.

Concerning the proposed indefinite moratorium, Consolidated, et al. recommends that any moratorium be limited to a period of 5 years. Other parties argue that an indefinite moratorium is unlawful. In the Southern Louisiana Area Rate Proceeding, Opinion Nos. 546 and 546–A, the Commission provided for an indefinite moratorium, except for specific limited situations which are inapplicable here. That determination was affirmed by the Fifth Circuit in a decision issued March 19, 1970, in Austral Oil Co. v. F.P.C. ____ F. 2d ____ (CA5, No. 27492, et al., supplemental opinion reaffirming dated June 16, 1970). Particularly in view of the comparatively high ceiling rates authorized here, an indefinite moratorium is appropriate. As in the Southern Louisiana case the producers here will be permitted to petition for a prospective increase in the ceiling or for lifting the prohibition against above ceiling increased rate filings based on a showing of good cause.[20] Such a course of action is preferable to limiting the moratorium to a definite period.

Ontario Petroleum Institute Inc. (Ontario Petroleum), and Ont-Hio Gas & Oil, Inc., request that the ceiling rates for the North subarea not include offshore Lake Erie and Lake Ontario mainly because of the absence of cost data for offshore production. Ontario Petroleum also points out that the current market price for gas being produced in the province of Ontario from the Ontario waters of Lake Erie varies from 39 cents to 45 cents per Mcf. In the event the ceiling rates prescribed herein for the North subarea prove to be inadequate for offshore Lake Erie and Lake Ontario, producers may seek appropriate relief. In the meantime, however, we think it desirable to establish a ceiling rate as a guide for producers in this area instead of leaving the matter undecided.

In the October 16 notice interested persons were invited to submit comments on the legality and feasibility of relying on market forces to establish appropriate differentials in the Appalachian-Illinois areas from the established Southwestern rates. Some favor such a course while others are opposed. In light of the current national supply crisis requiring that rates be sufficient to provide an incentive for the exploration for and production of additional gas supplies, and as we have found, the need for establishment of minimum rates, we do not believe it appropriate at this time to rely solely on market forces to determine area rates in the Appalachian and Illinois areas.

[16] Columbia and Consolidated state that contract prices should govern, if below the ceiling rate, and that they oppose the position of a minimum rate.

[17] 254 sales to Cabot Corp., 240 sales to Pennzoil United, Inc., and 123 sales to other producer buyers.

[18] "Although we have agreed with the Examiner's conclusion as to the need for a minimum rate, we believe that his remedy, which would not allow the producer with sub-minimum rates to raise them to the minimum unless he secured the approval of his purchaser is not sufficient." Permian, Supra, 34 FPC 159 at 232.

[19] In South Louisiana the two principal reasons for not fixing a minimum rate were (1) the reserves under low price contracts were poorly located or otherwise economically unattractive, and (2) one major producer would be the principal beneficiary of a minimum rate. 40 FPC 530 at 624.

[20] See Termination of Moratorium Provisions in Southern Louisiana, Docket No. R–394, notice issued July 30, 1970.

Consequently, there is no need to attempt to resolve the issues raised by the parties as to whether this course alone would be otherwise feasible and in the public interest.

There are two sales presently being made in the Appalachian Basin area at rates which are being charged and collected subject to refund at levels in excess of those we have here determined to be just and reasonable. These are a sale by Ashland Oil & Refining Co., under its FPC Gas Rate Schedule No. 113 to Consolidated Gas Supply Co., at a rate of 30.61 cents per Mcf at 14.73 p.s.i.a. (31.85 cents at 15.325 p.s.i.a.) which is presently subject to the proceeding in Docket No. RI66-211; and a sale by Pittston Corp., under its FPC Gas Rate Schedule No. 1 to Kentucky West Virginia Gas Co., at a rate of 30.16 cents per Mcf at 14.73 p.s.i.a. (31.38 cents at 15.325 p.s.i.a.) which is presently subject to the proceeding in Docket No. RI61-24. Cabot Corp. has a refund obligation under its FPC Gas Rate Schedule No. 2 in Docket No. RI61-308 for all amounts charged and collected under said rate schedule prior to abandonment of the sale some years ago.

Upon review of the comments and based on the foregoing considerations, we shall adopt the rules proposed in the October 16 notice, subject to the modifications heretofore specified. In accordance with these conclusions we shall require Ashland Oil in Docket No. RI66-211, and Pittston Corp. in Docket No. RI61-308 to refund all amounts collected by them in excess of the rates determined herein to be just and reasonable. We shall terminate the suspension proceedings pertaining to those sales set forth in Appendices A and B hereto where the rates do not exceed the ceilings determined herein, but will not terminate those proceedings involving contractual questions (see staff report, p. 28, footnote 14). And, we shall terminate the refund conditions in the initial certificates issued to Wyckoff Development Co. and Cabot Corp. in Docket No. CI68-1097 and G-18118, respectively, since the rates involved there do not exceed the ceilings established by this rulemaking.

The Commission further finds:

(1) The notice and opportunity to participate in this proceeding with respect to the matters presently before the Commission through the submission, in writing, of data, views, comments and suggestions in the manner as described above are consistent and in accordance with all procedural requirements therefor as prescribed in section 553, title 5 of the United States Code. Since the amendment prescribed here does not prescribe an added duty or restriction, compliance with the effective date requirements of 5 U.S.C. 553(d) is unnecessary.

(2) The amendment of Parts 154 and 157, Regulations Under the Natural Gas Act, to add new §§ 154.107 and 154.108, and to add new paragraphs (e) and (f) to § 157.40, as herein prescribed, is necessary and appropriate for the administration of the Natural Gas Act.

(3) Since the modifications to the amendments prescribed herein which were not included in the notice of this proceeding are of a minor nature, and are consistent with the prime purpose of the proposed rulemaking herein, further notice thereof is unnecessary.

The Commission, acting pursuant to the provisions of the Natural Gas Act, as amended, particularly sections 4, 5, 7, and 16 thereof (52 Stat. 822, 823, 824, 825, and 830; 56 Stat. 83, 84; 61 Stat. 459; 76 Stat. 72, 15 U.S.C. 717c, 717d, 717f, and 717o) orders:

A. Part 154 of the Commission's regulations under the Natural Gas Act, Subchapter E, Chapter I, Title 18 of the Code of Federal Regulations is amended by adding new §§ 154.107 and 154.108, to read as follows:

§ 154.107 Area rates — Appalachian Basin area.

(a) The Appalachian Basin area consists of the entire State of West Virginia, and Ohio; Buchanan, Dickinson, Wise, Lee, Scott, Russell, Tazewell, Smyth, and Washington Counties, Va.; Garrett, Allegheny and Washington Counties, Md.; Franklin, Huntingdon, Centre, Lycoming, Sullivan, and Susquehanna Counties, Pa., together with all Pennsylvania counties west of this group; Broome, Chenango, Madison, Onondaga, Cayuga, Wayne, Monroe, Orleans, and Niagara Counties in New York, together with all New York counties to the south and west; and Clinton, Russell, Casey, Boyle, Mercer, Woodford, Scott, Grant, and Boone Counties, Ky., together with all Kentucky counties to the east of this group. The boundary between northern and southern Ohio runs along the southern edges of Van Wert, Allen, Hancock, Wyandot, Crawford, Richland, Ashland, Wayne, Stark, and Columbian Counties. Southern Ohio includes all counties south of the foregoing counties and northern Ohio includes the foregoing counties and all counties north thereof.

(b) Pipeline quality gas in the Appalachian basin is defined as gas dehydrated, sweet, and with sufficient pressure to enter the buyers' gathering lines.

(c) No rate or charge made, demanded or received under a rate schedule filed pursuant to this part for gas produced in the Appalachian Basin area shall exceed the following rates measured at 14.73 p.s.i.a. and 60° F., including all additive charges and adjustments, except in compliance with a specific order of the Commission:

(1) 30.75 cents per Mcf for gas produced in the North subarea consisting of applicable counties in New York, Pennsylvania and northern Ohio, including the offshore Lake Erie and offshore Lake Ontario areas adjacent to these states, and sold pursuant to a contract dated prior to October 8, 1969; and 32.75 cents per Mcf for gas sold pursuant to a contract dated after October 7, 1969;

(2) 29 cents per Mcf for gas produced in the South subarea consisting of West Virginia and applicable counties in Maryland, Virginia, and southern Ohio; and applicable counties in eastern Kentucky and sold pursuant to a contract dated prior to October 8, 1969; and 30.75 cents per Mcf for gas sold pursuant to a contract dated after October 7, 1969;

(d) A minimum rate for natural gas produced and sold to a pipeline company, or its affiliate in the Appalachian Basin area for pipeline quality gas is 19.25 cents per Mcf at 14.73 p.s.i.a. and 60° F., including all additive charges and adjustments, and increases to such minimum rate filed after this order becomes final will be granted notwithstanding contractual provisions to the contrary which are hereby modified pro tanto.

(e) Any seller seeking to charge rates in excess of the area rates specified in paragraph (c) of this section or requesting a change in such area rates must file a petition for waiver or amendment of this section pursuant to § 1.7(b) of this chapter of the Commission's rules of practice and procedure fully justifying the relief sought in light of the proceeding establishing the area rates. Unless and until the Commission grants the petition the seller may not file rate increases in excess of the area rates herein prescribed.[21]

§ 154.108 Area rates—Illinois Basin area.

(a) The Illinois Basin area consists of the entire State of Illinois; all counties in western Kentucky west of and not including Clinton, Russell, Casey, Boyle, Mercer, Woodford, Scott, Grant, and Boone Counties; and Gibson County in Indiana.

(b) Pipeline quality gas in the Illinois Basin is defined as gas: dehydrated, sweet, and with sufficient pressure to enter the buyers' gathering lines.

(c) No rate or charge made, demanded or received under a rate schedule filed pursuant to this part for gas produced in the Illinois Basin area shall exceed 23.5 cents per Mcf measured at 14.73 p.s.i.a. and 60° F., including all additive charges and adjustments, except in compliance with a specific order of the Commission.

(d) A minimum rate for natural gas produced and sold to a pipeline company, or its affiliate in the Illinois Basin area for pipeline quality gas is 16.25 cents per Mcf at 14.73 p.s.i.a. and 60° F., including all additive charges and adjustments, and increases to such minimum rate filed after this order becomes final will be granted notwithstanding contractual provisions to the contrary which are hereby modified pro tanto.

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[21] The area rates for the Appalachian Basin area, if shown at a 15.325 p.s.i.a. pressure base are:

	14.73 p.s.i.a.	15.325 p.s.i.a.
	Cents	*Cents*
(1) North subarea:		
(a) Contracts prior to Oct. 8, 1969.	30.75	32.0
(b) Contracts after Oct. 7, 1969.	32.75	34.0
(2) South subarea:		
(a) Contracts prior to Oct. 8, 1969.	29.0	30.0
(b) Contracts after Oct. 7, 1969.	30.75	32.0
(3) Minimum rate	19.25	20.0

(e) Any seller seeking to charge rates in excess of 23.5 cents per Mcf or requesting a change of that rate must file a petition for waiver or amendment of this section pursuant to § 1.7(b) of this chapter of the Commission's rules of practice and procedure fully justifying the relief sought in light of the proceeding establishing the 23.5 cents area rate. Unless and until the Commission grants the petition the seller may not file rate increases in excess of the area rate herein prescribed.[23]

B. Section 157.40 of the Commission's regulations under the Natural Gas Act, Subchapter E, Chapter I, Title 18 of the Code of Federal Regulations is amended by adding new paragraphs (e) and (f) to read as follows:

§ 157.40 Small producer certificates of public convenience and necessity.

* * * * *

(e) *Certificates for small producers operating in Appalachian Basin area.* Small Producer Certificates are, by this paragraph and without special application, hereby granted to small producers presently operating, or who will operate in the future in the Appalachian Basin area with respect to their small producer sales in that area. Small producer sales in the area may be made at prices no higher than the area rates specified in § 154.107(c) of this chapter, except as provided in § 154.107(e) in this chapter. A small producer in this area who does not want a Small Producer Certificate must seek to be relieved of the Small Producer Certificate within 60 days of the promulgation of this regulation, or within 60 days of the commencement of service, whichever is later.

(f) *Certificate for small producers operating in the Illinois Basin area.* Small Producer Certificates are, by this paragraph and without special application, hereby issued to small producers presently operating, or who will operate in the future in the Illinois Basin area with respect to their small producer sales in that area. A small producer sale in the area may be made at a price no higher than the area rates specified in § 154.108 (c) of this chapter, except as provided in § 154.108(e) of this chapter. A small producer who does not want a Small Producer Certificate must seek to be relieved of the Small Producer Certificate within 60 days of the promulgation of this regulation, or within 60 days of the commencement of service in this area, whichever is later.

C. Ashland Oil, Pittston Corp., and Cabot Corp., in Dockets Nos. RI66-211, RI61-24 and Docket No. RI61-308, respectively, shall compute the difference each of them has charged and collected from its respective purchasers of natural gas, at the rate charged and collected subject to refund and the applicable just and reasonable rate determined herein, with applicable interest, computed to the last day of the month preceding the date of issuance of this order, and each shall file, within 30 days of the date of issuance of this order a report of such refund monies showing separately the principal and interest (with volumes sold, and the period covered) with the Commission and upon the purchaser of the natural gas. Within 20 days of receipt of said refund report, the purchaser shall file its concurrence or nonconcurrence therein, and if it does not concur it will set forth its reasons therefor.

D. Ashland Oil, Pittston Corp., and Cabot Corp., shall each retain the refund monies computed in accordance with ordering paragraph (C) above. If any one of them elects to commingle such refund monies with its general assets and use them for its corporate purposes, it is authorized so to do after notice to the Commission; and it shall pay interest thereon at the rate of 8 percent per annum from the effective date of this order to the date on which they are to be paid over to the person or persons ultimately determined to be entitled thereto by a final order of the Commission. If any one of the aforenamed companies elects to deposit the retained refunds in an escrow account, it shall make such deposit and shall file, on or before the date of filing the refund report, an executed escrow agreement, or a certificate attesting to the fact that it has executed such an agreement, in the form provided for by § 250.12 of Part 250 of the regulations under the Natural Gas Act, 18 CFR Part 250.

E. The suspension proceedings contained in Appendices A and B hereto which do not exceed the just and reasonable rates established herein and the refund conditions contained in the certificate issued to Wyckoff Development Co. in Docket No. CI68-1097; Cabot Corp. in Docket No. G-18118; and those contained in the certificate issued to Commonwealth Gas Corp. in Docket No. CI71-120; are terminated.

F. The amendments provided for herein shall be effective as of the date of issuance of this order.

G. The Secretary of the Commission shall cause prompt publication of this order to be made in the FEDERAL REGISTER.

By the Commission.[23]

[SEAL] GORDON M. GRANT, *Secretary.*

[23] Commissioner Carver not participating.

[23] The area rates for the Illinois Basin area, if shown at a 15.025 pressure base are:

	14.73 p.s.i.a.	15.025 p.s.i.a.
	Cents	*Cents*
(1) Area rate	23.5	24.0
(2) Minimum rate	16.25	16.5

APPENDIX A

APPALACHIAN BASIN AREA RATES INVOLVED IN SUSPENSION PROCEEDINGS OR SUBJECT TO CERTIFICATE CONDITIONS AS OF SEPTEMBER 1, 1969 CONSOLIDATED HEREIN

Producer name	R/S No.	Buyer name	Suspension or certificate Docket No.	Increased rate cents per Mcf at 15.325 p.s.i.a. From—	To—
Ashland Oil, Inc.	90	United Fuel Gas Co.	RI61-269	26.00	27.50
Do.	113	Consolidated Gas Supply Corp.	RI66-211	27.74	31.85
Do.	140	United Fuel Gas Co.	RI66-350	28.00	30.00
Do.	149	do.	RI67-245	25.00	26.00
W. E. Burchett.	10	do.	RI68-467	26.00	28.00
Cabot Corp.	8	do.	RI62-54	24.25	[1] 25.25
Do.	8	do.	RI62-54	25.00	[2] 25.25
Do.	15	Gas Transport, Inc.	G-18118		[3] 29.70
Clear Fork Gas Co.	1	United Fuel Gas Co.	RI67-57	19.00	21.00
Coastal States Gas Production Co.	68	Consolidated Gas Supply Corp.	RI62-406	26.65	26.78
Do.	68	do.	RI64-117	26.78	26.88
Do.	68	do.	RI65-94	26.88	26.97
Do.	68	do.	RI65-615	26.97	27.08
Do.	68	do.	RI68-160	27.08	27.26
Do.	68	do.	RI69-90	27.26	27.53
Do.	69	do.	RI62-406	26.65	26.78
Do.	69	do.	RI64-117	26.78	26.88
Do.	69	do.	RI65-94	26.88	26.97
Do.	69	do.	RI65-615	26.97	27.08
Do.	69	do.	RI68-160	27.08	27.26
Do.	69	do.	RI69-90	27.26	27.53
Do.	72	United Fuel Gas Co.	RI68-140	26.00	27.00
Columbian Carbon Co.	[4] 1	Consolidated Gas Supply Corp.	G-11751	25.00	26.00
Do.	[4] 1	do.	RI61-305	26.00	27.00
Anna Huber.	[4] 1	do.	RI65-370	26.00	26.05
Hyde Carbon Black Co.	2	Sylvania Corp.	RI66-319	25.50	27.44
H. R. Jackson.	1	Consolidated Gas Supply Corp.	G-18183	25.00	26.52
Lloyd G. Jackson, d.b.a. Orbit Drilling Co.	6	do.	RI65-90	25.00	27.00
McCoy Natural Gas Co.	1	United Natural Gas Co.	G-18363	29.13	31.21
Okmar Gas Co.	1	Consolidated Gas Supply Corp.	RI70-83	25.00	27.00
Pip Petroleum Corp.	2	United Fuel Gas Co.	RI69-166	25.00	26.50
Pittston Corp.	1	Kentucky West Virginia Gas Co.	RI61-24	26.77	31.38

See footnotes at end of table.

APPENDIX A—Continued

Producer name	R/S No.	Buyer name	Suspension or certificate Docket No.	Increased rate cents per Mcf at 15.325 p.s.i.a. From—	To—
Ravencliff's Development Co.	1	United Fuel Gas Co.	G-17312	21.50	[4] 25.00
Do.	1	do.	G-17312	24.50	[3] 28.00
Do.	1	do.	RI60-241	25.00	[4] 25.75
Do.	1	do.	RI60-241	28.00	[3] 28.75
Do.	1	do.	RI62-67	25.75	[4] 26.51
Do.	1	do.	RI62-67	28.75	[4] 29.51
R. E. Riley & Thadeus Scott, Agents for Scott Gas Co.	2	do.	RI67-422	21.00	23.00
Thomas G. Wainwright	1	do.	RI65-597	16.00	22.00
Wyckoff Development Co.	1	The Sylvania Corp.	CI68-1097	.....	[4] 30.60

[1] Summer rate.
[2] Winter rate.
[3] Rate schedule canceled.
[4] Noncompressed gas.
[5] Compressed gas.
[6] Initial rate subject to refunding condition.

APPENDIX B

APPALACHIAN BASIN AREA RATES INVOLVED IN SUSPENSION PROCEEDINGS NOT CONSOLIDATED HEREIN

Producer name	R/S No.	Buyer name	Suspension certificate or Docket No.	Increased rate cents per Mcf at 15.325 p.s.i.a. From—	To—
Allegheny Land & Mineral Co.	12	Consolidated Gas Supply Corp.	RI70-1377	27.00	28.00
Arco Petroleum Co. by Arco Industries.	7	do.	RI70-1653	27.00	28.00
Ashland Oil, Inc.	140	United Fuel Gas Co.	RI71-41	30.00	32.00
J. C. Baker & Son, Inc.	1	Consolidated Gas Supply Corp.	RI70-1378	27.00	28.00
Do.	7	Equitable Gas Co.	RI71-266	27.10	28.00
Big Marsh Oil Co.	1	United Fuel Gas Co.	RI64-628	19.00	[1] 21.00
Harry C. Boggs	2	do.	RI70-1720	27.00	28.00
Cabot Corp.	84	Consolidated Gas Supply Corp.	RI70-1418	27.75	28.00
Cities Service Oil Co.	281	United Fuel Gas Co.	RI70-769	28.00	28.50
Do.	291	do.	RI70-765	26.00	28.00
Do.	292	do.	RI70-765	26.00	27.50
Do.	298	Consolidated Gas Supply Corp.	RI70-1479	27.00	28.00
N. G. Clark d.b.a. Trippito Clark	14	Equitable Gas Co.	RI70-109	25.00	27.00
Colonial Oil & Gas Corp.	2	do.	RI70-100	25.10	27.10
Commonwealth Gas Corp.	19	United Fuel Gas Co.	CI71-120	.....	[1] 28.00
Consolidation Coal Co.	1	do.	RI70-961	28.00	29.00
Coastal States Gas Products Co.	68	Consolidated Gas Supply Corp.	RI70-1424	27.00	27.26
Do.	69	do.	RI70-1424	27.00	27.26
J. Phil Cramer d.b.a. Gilmer O & G Properties.	1	Equitable Gas Co.	RI70-784	25.00	27.00
Duquesne Kentucky Gas Co.	1	United Fuel Gas Co.	RI70-1716	22.00	26.00
Willard E. Farrell	20	Equitable Gas Co.	RI70-980	25.10	27.10
Do.	22	do.	RI70-981	25.10	27.10
Hays & Co. Agent for W. C. Wilson d.b.a. Donsar Gas Co.	129	do.	RI70-1299	25.10	27.10
Hunting Oil Co., Inc.	1	The Ohio Fuel Gas Co.	RI69-803	25.00	27.00
J. & B. Oil Co., Inc.	2	do.	RI70-1579	25.10	27.10
George Jackson	10	do.	RI70-377	25.00	27.00
Do.	10	do.	RI71-194	27.00	28.00
H. R. Jackson d.b.a. Penova Interests.	1	Consolidated Gas Supply Corp.	RI69-630	26.52	27.54
Kewanee Oil Co.	19	Equitable Gas Co.	RI70-1086	20.00	27.00
Mareve Oil Corp.	5	Consolidated Gas Supply Corp.	RI70-1360	27.00	28.00
George W. Marthens	1	Equitable Gas Co.	RI70-1128	25.10	27.10
Do.	2	do.	RI70-1128	25.10	27.10
Merchants Petroleum Co.	3	do.	RI70-1419	25.10	27.10
Do.	3	do.	RI71-263	25.10	28.00
				27.10	28.00
Allerton Miller	4	do.	RI70-1478	25.10	27.10
Do.	5	do.	RI69-783	25.00	27.00
Do.	6	do.	RI70-1478	25.10	27.10
P. & M. Oil & Gas Co.	2	do.	RI70-311	25.00	27.00
Edison J. Parsons	1	Consolidated Gas Supply Corp.	RI70-1298	27.00	28.00
Quaker State Oil Refining Corp.	28	The Ohio Fuel Gas Co.	RI69-781	24.01	27.00
Arthur N. Rupe d.b.a. Artex Oil Co.	1	Equitable Gas Co.	RI70-1718	25.10	27.10
Do.	1	do.	RI71-179	27.10	28.00
Saint Clair Oil Co.	12	do.	RI69-751	25.10	27.10
Do.	12	do.	RI71-264	25.10	28.00
				27.10	28.00
Skylark Gas Co.	1	do.	RI71-267	25.10	28.00
Tony Snider d.b.a. Stout Gas Co.	1	United Fuel Gas Co.	RI70-1682	25.00	27.00
Southwestern Development Co.	8	Consolidated Gas Supply Corp.	RI70-1555	27.00	28.00
Union Drilling, Inc.	27	do.	RI70-1358	27.00	28.00
Do.	36	Equitable Gas Co.	RI69-784	25.00	27.00
Do.	37	do.	RI70-1416	25.10	27.10
Do.	40	do.	RI70-1417	25.10	27.10
Do.	40	do.	RI70-1489	25.10	28.00
Weiner Enterprise	1	do.	RI71-265	27.10	28.00

[1] Seller and buyer are affiliates. Consequently, our action herein is without prejudice to any future action that may be found to be appropriate in rate proceedings involving each or both of them.
[2] Initial rate subject to refunding condition.

[F.R. Doc. 70-13709; Filed, Oct. 13, 1970; 8:45 a.m.]

Title 28—JUDICIAL ADMINISTRATION

Chapter I—Department of Justice

[Order No. 440-70]

PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

Subpart M—Land and Natural Resources Division

DELEGATION OF AUTHORITY

Delegation to the Assistant Attorney General in charge of the Land and Natural Resources Division of authority to delegate to Federal departments and agencies the responsibility for the approval of the title to lands being acquired for Federal public purposes and to promulgate regulations governing such title approval.

Under and by virtue of the authority vested in me by 28 U.S.C. 509 and 510 and 5 U.S.C. 301, I hereby amend Subpart M of Part 0 of Chapter I of Title 28 of the Code of Federal Regulations by amending § 0.66 to read as follows:

§ 0.66 Delegation respecting title opinions.

(a) The Assistant Attorney General in charge of the Land and Natural Resources Division or such members of his staff as he may specifically designate in writing, are authorized to sign the name of the Attorney General to opinions on the validity of titles to property acquired by or on behalf of the United States, except those which, in the opinion of the Assistant Attorney General involve questions of policy or for any other reason require the personal attention of the Attorney General.

(b) Pursuant to the provisions of section 1 of Public Law 91-393, approved September 1, 1970, 84 Stat. 835, the Assistant Attorney General in charge of the Land and Natural Resources Division is authorized (1) to exercise the Attorney General's power of delegating to other departments and agencies his (the Attorney General's) responsibility for approving the title to lands acquired by them, (2) with respect to delegations so made to other departments and agencies, to exercise the Attorney General's function of general supervision regarding the carrying out by such departments and agencies of the responsibility so entrusted to them, and (3) to promulgate regulations and any appropriate amendments thereto governing the approval of land titles by such departments and agencies.

Dated: October 2, 1970.

JOHN N. MITCHELL,
Attorney General.

[F.R. Doc. 70-13781; Filed, Oct. 13, 1970; 8:47 a.m.]

Title 32—NATIONAL DEFENSE

Chapter I—Office of the Secretary of Defense

SUBCHAPTER B—PERSONNEL; MILITARY AND CIVILIAN

PART 93—PRESERVATION OF PERSONAL PRIVACY OF MEMBERS OF THE ARMED FORCES

The Assistant Secretary of Defense (Manpower and Reserve Affairs) approved the following on September 22, 1970:

Sec.
93.1 Purpose and applicability.
93.2 Policy.
93.3 Voluntary release of data.

AUTHORITY: The provisions of this Part 93 issued under sec. 301, 80 Stat. 379; 5 U.S.C. 301 and 5 U.S.C. 522(b)(6).

§ 93.1 Purpose and applicability.

This part sets forth the basic Department of Defense policy on preservation of personal privacy of members of the armed forces against invasions by private organizations or individuals. It integrates and clarifies policies set forth in several DOD issuances, including Parts 43, 66, and 64 of this subchapter and Part 286 of Subchapter P of this chapter. It is in no way intended to derogate from the principles set forth in DOD Directive 5230.13, "Public Information Principles," dated June 15, 1970.[1] The policy set forth herein is applicable to all components of the Department of Defense.

§ 93.2 Policy.

(a) The Department of Defense reaffirms its continuing policy of preserving the personal privacy of present and former servicemen and servicewomen. This policy shall be a prime consideration in the formulation and administration of personnel practices and procedures.

(b) Access to information relating to the personal characteristics of present and former members of the armed forces or concerning other information of a highly personal nature shall be limited to those organizations and individuals requiring such information to conduct the business of the Department of Defense; the business of other Federal, State or local agencies (including the business of the Legislative and Judicial Branches of Government at all levels); and in such other instances where release is clearly required by the national interest.

(c) Members of the armed forces and civilian employees may not release nor otherwise provide the following kinds of information to nongovernment organizations or individuals, whether commercial, nonprofit, or other, without previously obtaining the written consent of the individuals concerned, except as specified elsewhere in this part.

(1) Lists or compilations containing the names and addresses of servicemen and servicewomen or former servicemen and servicewomen (also see Part 43 of this subchapter for restrictions on the release of roster listings);

(2) Data from medical records, except as prescribed in Part 66 of this subchapter;

(3) Aptitude test scores;

(4) Identification of the individual member's occupational specialty; and

(5) Similar information of a personal nature.

(d) Unauthorized release (i.e., contrary to the provisions of this part) to private organizations or individuals of personal information from personnel, medical, or similar files without the written consent of the individual concerned shall be considered a clearly unwarranted invasion of his personal privacy within the meaning of section (b)(6) of title 5, United States Code, as implemented in Part 286 of Subchapter P of this chapter.

(e) Restrictions on access to personal information concerning former and present members of the armed forces shall normally not be applicable to the individual concerned, to his properly authorized legal representatives, or to his next of kin whenever he is incapable for reasons of physical or mental health from governing his own affairs.

§ 93.3 Voluntary release of data.

(a) Each Service shall make necessary administrative arrangements by which individual members and former members of the armed forces may volunteer to authorize release of personal information for purposes that justify the expenses involved in establishing a suitable procedure. Such purposes may include, but are not limited to, assistance to separating servicemen in accomplishing the transition to civilian life; other promotion of the welfare of Department of Defense military or civilian personnel; cooperation in scholarly research efforts in the national interest; and other efforts by nongovernmental agencies to further the national interest.

(b) The written consent of the individuals concerned normally must be obtained prior to any such release of personal information to a nongovernment agency. Development by the Services of procedures to obtain authorized releases should be limited by the costs and resources involved in establishing and executing them, weighed against the anticipated benefits to the members or former members of the armed forces, or to the national interest.

MAURICE W. ROCHE,
Director, Correspondence and Directives Division, OASD (Administration).

[F.R. Doc. 70-13751; Filed, Oct. 13, 1970; 8:45 a.m.]

[1] Filed as part of the original. Copies may be obtained from U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, Pa. 19120, Attention Code 300.

Chapter VII—Department of the Air Force

SUBCHAPTER H—AIR FORCE RESERVE OFFICERS' TRAINING CORPS

PART 872—AIR FORCE JUNIOR RESERVE OFFICERS' TRAINING CORPS

Miscellaneous Amendments

Part 872 of Title 32 of the Code of Federal Regulations is amended as follows:

§ 872.8 [Amended]

1. Section 872.8 is amended by deleting paragraph (k) in its entirety.

2. Sections 872.9 and 872.10 are revised to read as follows:

§ 872.9 Procedures for establishment.

The officials of a secondary school may apply for an AFJROTC unit by writing to the Commander, Air University, Maxwell AFB AL 36112. An application and agreement form will be forwarded to the requesting school. If the completed application indicates that the institution satisfies the selection criteria, the school will be visited by Air University personnel before a contract is executed. A report of visit and recommendations by Air University will be forwarded to Hq USAF (AFDPTP) not later than January 15 each year, for permission to establish a unit. If the request is made by a school system, include recommendations stating the advantages and disadvantages of organizing the AFJROTC program as a multiple unit. Upon approval by Hq USAF, Air University will announce the schools selected for establishment.

§ 872.10 Conditions for retaining units.

(a) Each school must constantly meet the requirements outlined in § 872.8. Therefore, each unit will be visited periodically to determine whether it meets these requirements, and the Commandant, AFROTC, will:

(1) Notify the school officials promptly, in writing, of the specific nature of the discrepancies when a visit (or a report) reveals that the school is not meeting the required standards.

(2) If the discrepancy has not been corrected by the end of fall enrollment of the following academic year, notify the school officials, in writing, that the unit has been placed on probation for 1 year.

(b) During the probationary year, Air University will visit each unit that is on probation. If the probation conditions have not been corrected by the end of the probationary year, disestablish the unit. Copies of all correspondence concerning probation and disestablishment will be forwarded to Hq USAF (AFDPTP). Hq USAF (AFDPTP) will be notified in writing 45 days before dispatch of disestablished letters to schools hosting AFJROTC units.

3. Section 872.17 is revised to read as follows:

§ 872.17 Requirements for instructors.

Retired Air Force officers and noncommissioned officer instructors whose qualifications and subsequent performance of duty meet the standards prescribed by the Commander, Air University, will be authorized as follows:

(a) Although each school that qualified for an AFJROTC unit is authorized at least one officer, single and multiple units in high schools and military schools are authorized one retired officer instructor per 500 AFJROTC members (or major fraction thereof), and one retired enlisted instructor per 100 AFJROTC members (or major fraction thereof). Within these authorizations, an officer instructor may be substituted for an enlisted instructor, and vice versa.

(b) The number of instructor personnel authorized for each unit will be determined annually by Air University, based on the average number of member students.

(1) Supervisory personnel for multiple units will be obtained by organizing the multiple unit in such a way that these limitations are not exceeded.

(2) Multiple unit organization and management will be established wherever possible, to minimize the number of instructors required and thus reduce the cost of operation both to the schools and to the Air Force.

(c) The schools will forward to Air University, for approval, the names of the instructor personnel selected.

(d) Retired personnel will wear the Air Force uniform as prescribed by AFM 35-10 (Service and Dress Uniforms for AF Personnel) while conducting the AFJROTC program, and at such other times as considered appropriate.

(e) The Air University may conduct orientation programs and workshops for instructors.

4. Sections 872.25 and 872.26 are revised to read as follows:

§ 872.25 Shipping and other costs.

Charges for shipment of Government property to and from the institution, including the packaging and handling, will be paid for by the Air Force. All other costs incident to maintenance and local storage and safeguarding of the property will be paid by the institution.

§ 872.26 Acquisition of surplus Government property.

(a) Direct acquisition of Department of Defense assets from military Redistribution and Marketing (R&M) activities will be requested by Military Property Custodians by letter, certifying that the property requested is for Air Force Junior ROTC (AFJROTC) units for training purposes. Property will be returned to the servicing R&M activity when usage has terminated.

(b) Schools desiring to acquire other surplus Government property must process requests on SF 123, "Application for Donation of Surplus Personal Property." Submit requests through State surplus property agencies according to Department of Health, Education, and Welfare procedures. Property obtained through DHEW becomes institutional property and does not require the accountability records prescribed by Air Force directives.

(Sec. 8012, 70A Stat. 488; 10 U.S.C. 8012, except as otherwise noted)

By order of the Secretary of the Air Force.

ALEXANDER J. PALENSCAR, Jr.,
Colonel, U.S. Air Force, Chief, Special Activities Group, Office of The Judge Advocate General.

[F.R. Doc. 70-13750; Filed, Oct. 13, 1970; 8:45 a.m.]

Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

APPENDIX—PUBLIC LAND ORDERS

[Public Land Order 4917]

[Oregon 2999 (Wash)]

WASHINGTON

Withdrawal for National Forest Recreation Areas

By virtue of the authority vested in the President and pursuant to Executive Order No. 10355 of May 26, 1952 (17 F.R. 4831), it is ordered as follows:

1. Subject to valid existing rights, the following described national forest land is hereby withdrawn from appropriation under the mining laws (30 U.S.C., Ch. 2), but not from leasing under the mineral leasing laws, in aid of programs of the Department of Agriculture:

WENATCHEE NATIONAL FOREST

WILLIAMETTE MERIDIAN

Fish Creek Recreation Area

T. 32 N., R. 18 E.,
Sec. 28, lot 3.

Elephant Rock Campground

T. 32 N., R. 18 E.,
Sec. 32, lots 3 and 4.

The areas described aggregate 105.40 acres in Chelan County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the national forest lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

HARRISON LOESCH,
Assistant Secretary of the Interior.

OCTOBER 8, 1970.

[F.R. Doc. 70-13772; Filed, Oct. 13, 1970; 8:46 a.m.]

[Public Land Order 4918]

[New Mexico 9509]

NEW MEXICO

Partial Revocation of Executive Order No. 6276

By virtue of the authority vested in the President, and pursuant to Executive Order No. 10355 of May 26, 1952 (17 F.R. 4831), it is ordered as follows:

1. Executive Order No. 6276 of September 8, 1933, withdrawing lands to enable the State of New Mexico to make exchange selections as provided by the Act of June 15, 1926, 44 Stat. 746-748, is hereby revoked so far as it affects the following described land:

NEW MEXICO PRINCIPAL MERIDIAN

T. 18 S., R. 18 W.,
Sec. 9, lots 2, 3, and N½SW¼.

The area described aggregates 144.07 acres in Grant County.

The land is located 5 miles north of the village of Red Rock, N. Mex. The terrain is mountainous with shallow rocky soils. The elevation varies from 4,400 to 5,255 feet. The vegetal cover consists of tobosa and grama grasses, snakeweed and ocotillo.

2. At 10 a.m. on November 13, 1970, the land shall be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior at 10 a.m. on November 13, 1970, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. The land shall be open to location for nonmetalliferous minerals at 10 a.m. on November 13, 1970. It has been and continues to be open to applications and offers under the mineral leasing laws and to location under the U.S. mining laws for metalliferous minerals.

Inquiries concerning the land shall be addressed to the Manager, Land Office, Bureau of Land Management, Santa Fe, N. Mex.

HARRISON LOESCH,
Assistant Secretary of the Interior.

OCTOBER 8, 1970.

[F.R. Doc. 70-13773; Filed, Oct. 13, 1970; 8:46 a.m.]

[Public Land Order 4919]

[Colorado 11289, 11290]

COLORADO

Partial Revocation of National Forest Administrative Site Withdrawals

By virtue of the authority vested in the President and pursuant to Executive Order No. 10355 of May 26, 1952 (17 F.R. 4831), it is ordered as follows:

1. The Departmental Order of January 11, 1908, withdrawing national forest land for an administrative site, is hereby revoked so far as it affects the following described land:

(C-11289)

PIKE NATIONAL FOREST

SIXTH PRINCIPAL MERIDIAN

Lake George Administrative Site

T. 12 S., R. 71 W.,
Sec. 29, S½SE¼SE¼, S½N½SE¼SE¼.

The area described contains 30 acres in Park County.

2. Public Land Order No. 1659 of June 17, 1958, withdrawing national forest land for a recreation area and guard and ranger stations is hereby revoked so far as it affects the following described lands:

(C-11290)

WHITE RIVER NATIONAL FOREST

SIXTH PRINCIPAL MERIDIAN

Minturn Ranger Station

T. 5 S., R. 81 W.,
Sec. 36, lots 15, 16, 17, and 18.

The area described aggregates approximately 173.36 acres in Eagle County.

3. The land described in paragraph 1 of this order shall immediately be made available for consummation of a pending Forest Service exchange. The land described in paragraph 2 shall be open at 10 a.m. on November 13, 1970, to such forms of disposition or use as may by law be made of national forest lands subject to valid existing rights, except that the rights to all of the minerals in the land are owned by the State of Colorado and the land is not subject to disposition under the U.S. mining laws, or leasing under the mineral leasing laws.

HARRISON LOESCH,
Assistant Secretary of the Interior.

OCTOBER 8, 1970.

[F.R. Doc. 70-13774; Filed, Oct. 13, 1970; 8:46 a.m.]

[Public Land Order 4920]

[Riverside 2767, 2768]

CALIFORNIA

Partial Revocation of Public Water Reserve No. 22, and Stock Driveway No. 235, California No. 17

By virtue of the authority vested in the President by section 1 of the Act of June 25, 1910, 36 Stat. 847, 43 U.S.C. sec. 141 (1964), the authority contained in section 10 of the Act of December 29, 1916, 39 Stat. 865, as amended, 43 U.S.C. sec. 300 (1964), and pursuant to Executive Order No. 10355 of May 26, 1952 (17 F.R. 4831), it is ordered as follows:

1. The Executive order of August 8, 1914, creating Public Water Reserve No. 22, is hereby revoked so far as it affects the following described land:

(Riverside 2767)

MOUNT DIABLO MERIDIAN

T. 29 S., R. 37 E.,
Sec. 35, S½NE¼.

The lands described aggregate approximately 80 acres in Kern County.

2. The departmental order of January 21, 1933, creating Stock Driveway Withdrawal No. 235, California No. 17, is hereby revoked so far as it affects the following described lands:

(Riverside 2768)

MOUNT DIABLO MERIDIAN

T. 29 S., R. 37 E.,
Sec. 21, lot 16;
Sec. 28, lots 1, 8, 9, and 16.
T. 30 S., R. 37 E.,
Sec. 4, lot 5, SE¼NE¼, E½SE¼;
Sec. 10, W½NW¼;
Sec. 15, SE¼NW¼.

The lands described aggregate approximately 492.19 acres in Kern County.

3. None of the lands described above shall be open to disposition under the public land laws generally until an appropriate classification order is issued by an authorized officer of the Bureau of Land Management.

The lands described in paragraph 1 of this order have been and continue to be open to applications and offers under the mineral leasing laws, and to location under the U.S. mining laws for metalliferous minerals. These lands will be open to location under the mining laws for nonmetalliferous minerals at 10 a.m. on November 13, 1970.

The lands described in paragraph 2 of this order are open to applications and offers under the mineral leasing laws, and to location and entry under the U.S. mining laws.

Inquiries concerning the lands should be addressed to the Manager, Riverside District and Land Office, Bureau of Land Management, Riverside, Calif. 92502.

HARRISON LOESCH,
Assistant Secretary of the Interior.

OCTOBER 8, 1970.

[F.R. Doc. 70-13775; Filed, Oct. 13, 1970; 8:46 a.m.]

Title 49—TRANSPORTATION

Chapter X—Interstate Commerce Commission

SUBCHAPTER A—GENERAL RULES AND REGULATIONS

[7th Rev. S.O. 1041]

PART 1033—CAR SERVICE

Distribution of Boxcars

At a session of the Interstate Commerce Commission, Railroad Service Board, held in Washington, D.C., on the 7th day of October 1970.

It appearing, that an acute shortage of certain plain boxcars exists on the railroads named in paragraph (a)(1) herein; that shippers located on the lines of these carriers are being deprived of such cars required for loading, resulting in a severe emergency and causing grain elevators to be unable to accept newly harvested grain grain, or to store grain on the ground, thus creating economic loss; that present rules, regulations, and practices with respect to the use, supply, control, movement, distribution, exchange, interchange, and return of boxcars owned by these railroads are ineffective. It is the opinion of the Commission that an emergency exists requiring immediate action to promote car service in the interest of the public and the commerce of the people. Accordingly, the Commission finds that notice and public procedure are impracticable and contrary to the public interest, and that good cause exists for making this order effective upon less than 30 days' notice.

It is ordered, That:

§ 1033.1041 Service Order No. 1041.

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

(1) Return to owners empty, except as otherwise authorized in subparagraphs (2) and (4) of this paragraph, all plain boxcars which are listed in the registration of the specific railroads named herein in the Official Railway Equipment Register, ICC RER 376, issued by E. J. McFarland, or successive issues thereof, as having mechanical designation XM, with inside length 44 feet 6 inches or less and equipped with doors less than 9 feet wide and bearing the identification marks shown:

The Atchison, Topeka and Santa Fe Railway Co. identification marks—ATSF.
Burlington Northern Inc., identification marks—BN, CBQ, GN, NP, SPS.
Chicago, Rock Island and Pacific Railroad Co. identification marks—RI.
Chicago and North Western Railway Co. identification marks—CNW, CMO, MSTL, CGW.
Chicago, Milwaukee, St. Paul and Pacific Railroad Co. identification marks—MILW.
Illinois Central Railroad Co. identification marks—IC.
Missouri-Kansas-Texas Railroad Co. identification marks—MKT.
Missouri Pacific Railroad Co. identification marks—MP.

(2) Except as otherwise provided in subparagraph (4) of this paragraph, boxcars described in subparagraph (1) of this paragraph may be loaded to stations on the lines of the owning railroad, or to any other station which is closer to the owner than the station at which loaded. After unloading at a junction with the car owner, such cars shall be delivered to the car owner at that junction, either loaded or empty.

(3) Boxcars described in subparagraph (1) of this paragraph shall not be back-hauled empty from a junction with the car owner.

(4) Boxcars described in subparagraph (1) of this paragraph located at a point other than a junction with the car owner shall not be back-hauled empty, except for the purpose of loading to a junction with the car owner or to a station on the lines of the car owner.

(5) The return to the owner of a boxcar described in subparagraph (1) of this paragraph shall be accomplished when it is delivered to the car owner, either empty, or loaded as authorized by subparagraph (2) or (4) of this paragraph, at a junction with the car owner.

(6) Junction points with the car owner shall be those listed by the car owner

in its specific registration in the Official Railway Equipment Register, ICC RER No. 376, issued by E. J. McFarland, or successive issues thereof, under the heading "Freight Connections and Junction Points."

(7) In determining distances to the car owner from the points of loading or unloading, tariff distances applicable via the lines of the carriers obligated under Car Service Rules 1 and 2 to move the car shall be used.

(8) No common carrier by railroad subject to the Interstate Commerce Act shall accept from shipper any loaded boxcar for movements contrary to the provisions of subparagraph (2) or (4) of this paragraph.

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

(c) *Effective* date. This order shall become effective at 12:01 a.m., October 12, 1970.

(d) *Expiration date.* This order shall expire at 11:59 p.m., November 15, 1970, unless otherwise modified, changed, or suspended by order of this Commission.

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

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

By the Commission, Railroad Service Board.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[F.R. Doc. 70-13833; Filed, Oct. 13, 1970; 8:50 a.m.]

[S.O. 1051]

PART 1033—CAR SERVICE

Distribution of Privately Owned Coal Cars

At a session of the Interstate Commerce Commission, held in Washington, D.C., on the 6th day of October 1970.

It appearing, that an acute shortage of hopper cars exists in certain sections of the country; that shippers are being deprived of hopper cars required for loading coal to electric utility generating stations; that coal stockpiles of several utility generating stations are being depleted; and that certain car distribution regulations prescribed by the Commission in Docket 12530 (80 ICC 530 and 93 ICC 701) limit the use of privately-owned freight cars used for the transportation of coal; and that fuller utilization of shipper-owned or receiver-owned coal cars in unit train service will substantially assist in relieving the existing emergency and advance the public interest by contributing to a steady and ample supply of fuel to electric utility generating stations.

It is the opinion of the Commission that an emergency exists requiring immediate action to promote car service in the interest of the public and the commerce of the people. Accordingly, the Commission finds that notice and public procedure are impracticable and contrary to the public interest, and that good cause exists for making this order effective upon less than 30 days' notice.

It is ordered, That:

§ 1033.1051 Service Order No. 1051.

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

(1) Place promptly in a position for loading coal for transportation in unit train service to an electric utility generating station, without regard to the provisions of the Commission's Order in Docket 12530 (80 ICC 530 and 93 ICC 701), all coal cars owned by the shipper or consignee which are available for placement for loading and which are ordered placed by the car owner.

(2) No common carrier by railroad subject to the Interstate Commerce Act shall accept from shipper any privately owned coal cars furnished under the provisions of subparagraph (1) of this paragraph, unless loaded in unit train service and consigned to an electric utility generating station.

(b) The term "Unit Train Service" used in this order means the movement of a single shipment of coal of not less than 2,500 tons, tendered to one carrier, on one bill-of-lading, at one origin, on 1 day and destined to one consignee, at one plant, at one destination, via one route.

(c) The term "Privately Owned Coal Cars" used in this order means any open top freight car listed in the Official Railway Equipment Register, ICC R.E.R. No. 376, issued by E. J. McFarland, or successive issues thereof as having a mechanical designation "GA," "GB," "GD," "GE," "GH," "GRA," "GS," "GT," "HD," "HM," "HK," or "HT," and which are owned or leased by either the coal shipper or the electric utility company named as the consignee.

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

(e) Effective date: This order shall become effective at 12:01 a.m., October 12, 1970.

(f) Expiration date: The provisions of this order shall expire at 11:59 p.m., December 31, 1970, unless otherwise modified, changed, or suspended by order of this Commission.

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

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

By the Commission.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[F.R. Doc. 70-13834; Filed, Oct. 13, 1970; 8:50 a.m.]

Title 50—WILDLIFE AND FISHERIES

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

SUBCHAPTER C—THE NATIONAL WILDLIFE REFUGE SYSTEM

PART 32—HUNTING

Great Swamp National Wildlife Refuge, N.J.

On page 11244 of the FEDERAL REGISTER of July 14, 1970, there was published a notice of a proposed amendment to 50 CFR 32.31. The purpose of this amendment is to provide public hunting of big game on certain areas of the National Wildlife Refuge System, as legislatively permitted.

Interested persons were given 30 days in which to submit written comments, suggestions, or objections with respect to the proposed amendment. After consideration of all comments, suggestions, and objections received, the proposed amendment is hereby adopted without change.

Since this amendment benefits the public by relieving existing restrictions on hunting, it shall become effective upon publication in the FEDERAL REGISTER.

(Sec. 7, 80 Stat. 929, 16 U.S.C. 715i; sec. 4, 80 Stat. 927, 16 U.S.C. 668dd (c), (d))

Section 32.31 is amended by the following additions:

§ 32.31 List of open areas; big game.

* * * * *

NEW JERSEY

Great Swamp National Wildlife Refuge.

* * * * *

A. V. TUNISON,
Acting Director, Bureau of Sport Fisheries and Wildlife.

OCTOBER 8, 1970.

[F.R. Doc. 70-13786; Filed, Oct. 13, 1970; 8:47 a.m.]

PART 32—HUNTING

Arrowwood and Chase Lake National Wildlife Refuges, N. Dak.

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

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

NORTH DAKOTA

ARROWWOOD NATIONAL WILDLIFE REFUGE

Public hunting of deer on the Arrowwood National Wildlife Refuge, N. Dak., is permitted only on the area designated by signs as open to hunting. This open area, comprising 10,800 acres, is delineated on a map available at the refuge headquarters and from the Regional Director, Bureau of Sport Fisheries and Wildlife, 1006 West Lake Street, Minneapolis, Minn. 55408. Hunting shall be in accordance with all applicable State regulations covering the hunting of deer subject to the following conditions:

(1) Hunting is permitted from 12 m. to sunset on November 6, 1970, and from sunrise to sunset November 7, 1970, through November 15, 1970.

(2) All hunters must exhibit their hunting license, deer tag, game, and vehicle contents to Federal and State officers upon request.

The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 32, and are effective through November 15, 1970.

CHASE LAKE NATIONAL WILDLIFE REFUGE

Public hunting of deer on the Chase Lake National Wildlife Refuge, N. Dak., is closed for the 1970 season. Population levels are too low on the refuge to allow hunting.

ARNOLD D. KRUSE,
Refuge Manager, Arrowwood National Wildlife Refuge, Edmunds, N. Dak.

OCTOBER 6, 1970.

[F.R. Doc. 70-13818; Filed, Oct. 13, 1970; 8:49 a.m.]

Proposed Rule Making

DEPARTMENT OF AGRICULTURE

Consumer and Marketing Service

[7 CFR Part 989]

RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

Proposed Expenses of Raisin Administrative Committee and Rate of Assessment for 1970–71 Crop Year

Notice is hereby given of a proposal regarding expenses of the Raisin Administrative Committee for the 1970–71 crop year and rate of assessment for that crop year, pursuant to §§ 989.79 and 989.80 of the marketing agreement, as amended, and Order No. 989, as amended (7 CFR Part 989), regulating the handling of raisins produced from grapes grown in California. The amended marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674).

The Raisin Administrative Committee has unanimously recommended for the crop year beginning September 1, 1970, (1970–71 crop year), a budget of expenses in the total amount of $118,150 and an assessment rate of 85 cents per ton of assessable raisins. Expenses in that amount and the assessment rate are specified in the proposal hereinafter set forth.

Consideration will be given to any written data, views, or arguments pertaining to the proposal which are received by the Hearing Clerk, U.S. Department of Agriculture, Room 112, Administration Building, Washington, D.C. 20250, not later than the 10th day after publication of this notice in the FEDERAL REGISTER. All written submissions made pursuant to this notice should be in quadruplicate and will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The proposal follows:

§ 989.321 Expenses of the Raisin Administrative Committee and rate of assessment for the 1970–71 crop year.

(a) *Expenses.* Expenses (other than those specified in § 989.82) in the amount of $118,150 are reasonable and likely to be incurred by the Raisin Administrative Committee during the crop year beginning September 1, 1970, for the maintenance and functioning of the Committee and the Raisin Advisory Board and for such purposes as the Secretary may, in accordance with § 989.79, determine to be appropriate.

(b) *Rate of assessment.* The rate of assessment for that crop year which each handler is required, pursuant to § 989.80, to pay to the Raisin Administrative Committee as his pro rata share of the expenses is fixed at 85 cents per ton applicable to each of the following:

(1) Free tonnage raisins acquired by the handler during the crop year, exclusive of such quantity thereof as represents the assessable portions of other handlers' raisins pursuant to subparagraph (3) of this paragraph;

(2) Reserve tonnage raisins released or sold to the handler for use as free tonnage, during the crop year; and

(3) Standard raisins (which he does not acquire) recovered by the handler by the reconditioning of off-grade raisins but only to the extent of the aggregate quantity of the free tonnage portions of these standard raisins that are acquired by other handlers during the crop year.

Dated: October 8, 1970.

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

[F.R. Doc. 70-13780; Filed, Oct. 13, 1970; 8:47 a.m.]

DEPARTMENT OF LABOR

Wage and Hour Division

[29 CFR Part 697]

[Administrative Order No. 616]

SPECIAL INDUSTRY COMMITTEE FOR ALL INDUSTRY IN AMERICAN SAMOA

Appointment; Convention; Notice of Hearing

Pursuant to section 5 of section 6(a)(3) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 205, 206(a)(3)), and to Reorganization Plan No. 6 of 1950 (3 CFR, 1949–53 Comp., p. 1004), I hereby appoint Special Industry Committee No. 9 for American Samoa. Pursuant to section 6(a)(3) and section 8 of the Act, as amended (29 U.S.C. 206(a)(3), 208) and to Reorganization Plan No. 6 of 1950, I hereby convene this committee, refer to it the question of the minimum wage rate or rates for all industry in American Samoa to be paid under section 6(a)(3) of the Act, as amended, and give notice of the hearing to be held by it.

The Committee shall meet in executive session at 9 a.m., March 29, 1971, in the Legislative Hall, Pago Pago, American Samoa, and shall commence its hearing at 1 p.m. on the same date at the same place. The industry committee shall investigate conditions in such industry and the committee, or any authorized subcommittee thereof, shall hear such witnesses and receive such evidence as may be necessary or appropriate to enable the committee to perform its duties and functions under the Act.

The committee shall recommend to the Administrator of the Wage and Hour Division of the Department of Labor the highest minimum rate or rates of wages for such industry which it determines, having due regard to economic and competitive conditions, will not substantially curtail employment in such industry, and will not give any industry in American Samoa a competitive advantage over any industry in the United States outside of Puerto Rico, the Virgin Islands and American Samoa. The committee shall not, however, recommend minimum wage rates in excess of $1.60 an hour.

Where the committee finds that a higher minimum wage may be determined for employees engaged in certain activities or in the manufacture of certain products in such industry than may be determined for other employees in such industry, the committee shall recommend such reasonable classifications within such industry as it determines to be necessary for the purpose of fixing for each classification the highest minimum wage rate that can be determined for it, under the principles set forth herein, which will not substantially curtail employment in such classification and will not give a competitive advantage to any group in the industry. No classification shall be made, however, and no minimum wage rate shall be fixed solely on a regional basis or on the basis of age or sex. In determining whether there should be classifications within the industry, in making such classifications, the committee shall consider, among other relevant factors, the following: (1) Competitive conditions as affected by transportation, living and production costs; (2) wages established for work of like or comparable character by collective labor agreements negotiated between employers and employees by representatives of their own choosing; and (3) wages paid for work of like or comparable character by employers who voluntarily maintain minimum wage standards.

The Administrator of the Wage and Hour Division, U.S. Department of Labor, shall prepare an economic report containing the information he has assembled pertinent to the matters referred to the committee. Copies of this report may be obtained at the Office of the Governor, Pago Pago, American Samoa, and the National Office of Wage and Hour Division, U.S. Department of Labor, Washington, D.C. 20210, as soon as it is completed. The committee will take official notice of the facts stated in this report. Parties, however, shall be afforded an opportunity to refute such facts by evidence received at the hearing.

The procedure of this industry committee will be governed by the provisions of Title 29, Code of Federal Regulations,

Part 511. Copies of this part of the regulations will be available at the Office of the Governor in Pago Pago, American Samoa, and at the National Office of the Wage and Hour Division. The proceedings will be conducted in English but in the event a witness should wish to testify in Samoan, an interpreter will be provided. As a prerequisite to participation as a party, interested persons shall file nine copies of a prehearing statement at the aforementioned Office of the Governor of American Samoa and one copy at the National Office of the Wage and Hour Division, U.S. Department of Labor, Washington, D.C. 20210. Each prehearing statement shall contain the data specified in § 511.8 of the regulations and shall be filed not later than March 19, 1971. If such statements are sent by airmail between American Samoa and the mainland, such filing shall be deemed timely if postmarked within the time provided.

Signed at Washington, D.C., this 9th day of October 1970.

JAMES D. HODGSON,
Secretary of Labor.

[F.R. Doc. 70-13787; Filed, Oct. 13, 1970; 8:47 a.m.]

DEPARTMENT OF TRANSPORTATION

Coast Guard

[46 CFR Part 69]

[CGFR 70-14B]

MEASUREMENT OF VESSELS

Withdrawal of Proposed Rule Making

1. In the FEDERAL REGISTER of February 28, 1970 (35 F.R. 3916), there was published a notice of proposed rule making and of a public hearing to be held on March 30, 1970, in Washington, D.C., by the Merchant Marine Council on Items PH 1-70 to PH 12-70, inclusive, of the Merchant Marine Council Agenda (CG-249), dated March 30, 1970. The notice invited interested persons to submit written data, views, arguments, or comments concerning the proposals to the Commandant (CMC) of the Coast Guard to be received by March 27, 1970, and to attend the hearing and present oral or written statements on the proposals.

2. Item PH 9-70 of the agenda was entitled "Measurement of Vessels—Limitations of Deep Floors, Frames, Double Bottoms and Side Frames." Many communications were received from interested persons stating that the time afforded by the notice was insufficient to permit detailed study of the proposals contained in that time.

3. Accordingly, in the FEDERAL REGISTER of March 24, 1970 (35 F.R. 5012), there was published another notice which extended the time to submit written data, views, arguments, or comments concerning Agenda Item PH 9-70 until September 1, 1970.

4. Oral presentations were heard at the public hearing on March 30, 1970. Numerous communications were received urging that, among other things, the proposed changes be dropped since if adopted they would disrupt many industries using vessels of up to 500 gross tons; the proposed changes be deferred until after it has been determined whether the International Convention on the Tonnage Measurement of Ships, 1969, will come into force and make the present tonnage measurement rules obsolete; specific language amending the proposed changes be adopted; and meetings be held between Coast Guard and industry representatives to develop new criteria for applying licensing, manning, vessel inspection and other safety requirements which are affected by tonnage measurement.

5. Meetings were held with several industry groups at which the proposed changes to the vessel measurement rules were considered at great length. Data, views, arguments, and comments concerning the proposed rule changes presented at the meetings generally resulted in a consensus among the industry representatives that the common objective of the Coast Guard and other tonnage measurement authorities throughout the world should be that gross tonnage be made an accurate index to vessel size. Despite favoring this objective, the industry representatives urged that the changes proposed in Agenda Item PH 9-70 be canceled or deferred since the changes, in themselves, would not cause the objective to be attained. They expressed great concern that the problems which would arise in connection with enforcement of the proposed changes could not be resolved before similar problems would have to be dealt with in connection with the definitive attainment of the desired objective upon ratification and implementation of the International Convention on Tonnage Measurement of Ships, 1969.

6. The Coast Guard carefully considered all representations made in the matter and concluded that it would be advantageous to defer the changes to 46 CFR Part 69 proposed in Agenda Item PH 9-70 until it can be determined whether the International Convention will be ratified and put into force at an early date.

7. Accordingly, Item PH 9-70, the proposal to amend 46 CFR Part 69 so as to limit the extent to which floor timbers and certain other structural members will be considered as boundaries for space to be included in the gross tonnage of a vessel as presented in the FEDERAL REGISTER of February 28, 1970 (35 F.R. 3919), is withdrawn. The proposal or a similar proopsal may be published subsequently in the FEDERAL REGISTER if it becomes apparent that the coming into force of the International Convention on Tonnage Measurement of Ships, 1969, will be unduly delayed; or regulations similar to those provided by the Convention will not be adopted for vessels in domestic trade; or if other circumstances occur which make such a proposal necessary in connection with the Coast Guard's obligation to meet its responsibilities under the law.

Dated: October 9, 1970.

T. R. SARGENT,
Vice Admiral, U.S. Coast Guard,
Acting Commandant.

[F.R. Doc. 70-13808; Filed, Oct. 13, 1970; 8:49 a.m.]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 73]

[Docket No. 18979]

TELEVISION BROADCAST STATIONS

Table of Assignments, Kerrville-Fredericksburg, Tex.; Order Extending Time for Filing Comments and Reply Comments

In the matter of amendment of § 73.606(b) *Table of Assignments,* Television Broadcast Stations (Kerrville-Fredericksburg, Tex.), Docket No. 18979, RM-1387.

1. This proceeding was begun by notice of proposed rule making (FCC 70-927) adopted August 26, 1970, released August 31, 1970, and published in the FEDERAL REGISTER September 4, 1970, 35 F.R. 14095. The dates for filing comments and reply comments are presently October 9, 1970, and October 20, 1970, respectively.

2. On October 5, 1970, the Southwest Republic Corp. (Southwest), licensee of Station KHFI-TV (Channel 42), Austin, Tex., filed a request to extend the time for filing comments to October 23, 1970. Southwest states it has undertaken extensive engineering studies which are substantially complete, however, it has now become apparent that there is insufficient time to complete these studies and the associated reproduction necessary for their presentation by the present filing deadline.

3. It appears that the additional time is warranted and would serve the public interest. *Accordingly, it is ordered,* That the request of Southwest Republic Corp. for extension of time is granted to and including October 23, 1970, for comments and November 3, 1970, for reply comments.

4. This action is taken pursuant to authority found in section 4(i), and 303(r) of the Communications Act of 1934, as amended, and § 0.281(d)(8) of the Commission's rules and regulations.

Adopted: October 8, 1970.

Released: October 9, 1970.

[SEAL] FRANCIS R. WALSH,
Chief, Broadcast Bureau.

[F.R. Doc. 70-13810; Filed, Oct. 13, 1970; 8:49 a.m.]

[47 CFR Part 81]

[Docket No. 18944]

PUBLIC COAST III–B STATIONS

Technical Standards for Computation of Service Area; Order Extending Time for Filing Comments

1. The Chief, Safety and Special Radio Services Bureau, acting under delegated authority, has under consideration a request filed by the North Pacific Marine Radio Council, Inc. (NPMRC), for extension or time for filing comments in the above-entitled proceeding (35 F.R. 14096). The prescribed time for filing comments expires on October 9, 1970, and reply comments on October 20, 1970. The petitioner has requested that the prescribed time be extended for a period of 30 days.

2. In support of its request, the NPMRC states that the additional time is required in order to allow time for engineers working with NPMRC to complete study and field testing which is now in progress. NPMRC indicates that the information derived from this study and testing is needed to present hard facts to the Commission in this proceeding.

3. It appears that the additional time requested by NPMRC would not unduly delay action and the comments would be useful to the Commission in resolving the issues in this proceeding.

4. In view of the foregoing: *It is ordered*, This 8th day of October 1970, pursuant to §§ 0.331(b)(4) and 1.46 of the Commission's rules, that the time for filing comments in the above-captioned proceeding is extended from October 9, 1970, to November 9, 1970, and the time for filing reply comments is extended from October 20, 1970, to November 20, 1970.

Adopted: October 8, 1970.

Released: October 9, 1970.

[SEAL] JAMES E. BARR,
Chief, Safety and Special Radio Services Bureau.

[F.R. Doc. 70-13809; Filed, Oct. 13, 1970; 8:49 a.m.]

Notices

DEPARTMENT OF THE TREASURY

Bureau of Customs

FISH NETS AND NETTING FROM JAPAN

Antidumping Proceeding Notice

OCTOBER 5, 1970.

On September 2, 1970, information was received in proper form pursuant to §§ 153.26 and 153.27, Customs Regulations (19 CFR 153.26, 153.27), indicating a possibility that fish nets and netting from Japan are being, or likely to be, sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160 et seq.).

There is evidence on record concerning injury to or likelihood of injury to or prevention of establishment of an industry in the United States.

Having conducted a summary investigation as required by § 153.29 of the Customs Regulations (19 CFR 153.29) and having determined as a result thereof that there are grounds for so doing, the Bureau of Customs is instituting an inquiry to verify the information submitted and to obtain the facts necessary to enable the Secretary of the Treasury to reach a determination as to the fact or likelihood of sales at less than fair value.

A summary of information received from all sources is as follows: The information received tends to indicate that the prices of the merchandise sold for exportation to the United States are less than the prices for home consumption.

This notice is published pursuant to § 153.30 of the Customs Regulations (19 CFR 153.30).

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

[F.R. Doc. 70-13848; Filed, Oct. 13, 1970; 8:52 a.m.]

Internal Revenue Service

HARRY WILLIAM SANFORD

Notice of Granting of Relief

Notice is hereby given that Harry William Sanford, 2480 East Colorado Boulevard, Pasadena, Calif. 91107, has applied for relief from disabilities imposed by Federal laws with respect to the acquisition, receipt, transfer, shipment, or possession of firearms incurred by reason of his conviction on November 16, 1964, in the Federal District Court of Southern California, Central Division, Los Angeles, Calif., of a crime punishable by imprisonment for a term exceeding 1 year. Unless relief is granted, it will be unlawful for Mr. Sanford because of such conviction, to ship, transport, or receive in interstate or foreign commerce any firearm or ammunition, and he would be ineligible for a license under chapter 44, title 18, United States Code as a firearms or ammunition importer, manufacturer, dealer or collector. In addition, under title VII of the Omnibus Crime Control and Safe Streets Act of 1968, as amended (82 Stat. 236; 18 U.S.C., Appendix), because of such conviction, it would be unlawful for Harry William Sanford to receive, possess, or transport in commerce or affecting commerce, any firearm.

Notice is hereby given that I have considered Mr. Sanford's application and:

(1) I have found that the conviction was made upon a charge which did not involve the use of a firearm or other weapon or a violation of chapter 44, title 18, United States Code, or of the National Firearms Act; and

(2) It has been established to my satisfaction that the circumstances regarding the conviction and the applicant's record and reputation are such that the applicant will not be likely to act in a manner dangerous to public safety, and that the granting of the relief would not be contrary to the public interest.

Therefore, pursuant to the authority vested in the Secretary of the Treasury by section 925(c), title 18, United States Code and delegated to me by 26 CFR 178.144, it is ordered that Harry William Sanford be, and he hereby is, granted relief from any and all disabilities imposed by Federal laws with respect to the acquisition, receipt, transfer, shipment, or possession of firearms and incurred by reason of the conviction hereinabove described.

Signed at Washington, D.C., this 2d day of October 1970.

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

[F.R. Doc. 70-13849; Filed, Oct. 13, 1970; 8:50 a.m.]

DEPARTMENT OF COMMERCE

Bureau of Domestic Commerce

BROWN 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. 71-00062-00-46050. Applicant: Brown University, 164 Angell Street, Providence, R.I. 02912. Article: Ion/electron image converter for an ion field microscope. Manufacturer: Twentieth Century Electronics, Ltd., United Kingdom.

Intended use of article: The article is an accessory for an existing ion atomic structure of compounds, metals and biological compounds.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The foreign article is an accessory for an instrument that had been previously imported for the use of the applicant institution. The article is being furnished by the manufacturer which produced the instrument with which the article is intended to be used. The Department of Commerce knows of no similar accessory being manufactured in the United States, which is interchangeable with or can be adapted to the instrument with which the article is intended to be used.

CHARLEY M. DENTON,
Bureau of Domestic Commerce,

[F.R. Doc. 70-13752; Filed, Oct. 13, 1970; 8:45 a.m.]

COLUMBIA 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. 71-00068-00-46040. Applicant: Columbia University, 116th Street and Broadway, New York, N.Y. 10027. Article: Image intensifier. Manufacturer: Siemens A.G., West Germany.

Intended use of article: The article is an accessory for an existing Elmiskop 101 electron microscope.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The foreign article is an accessory for an instrument that had been previously imported for the use of the applicant institution. The article is being furnished by the manufacturer which produced the instrument with which the article is intended to be used. The Department of Commerce knows of no similar accessory being manufactured in the United States, which is interchangeable with or can be adapted to the instrument with which the article is intended to be used.

CHARLEY M. DENTON,
Bureau of Domestic Commerce.

[F.R. Doc. 70-13753; Filed, Oct. 13, 1970; 8:45 a.m.]

DREW 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. 70-00406-01-77030. Applicant: Drew University, Route No. 24, Madison, N.J. 07940. Article: NMR spectrometer, Model JNM-MS-60-II. Manufacturer: Japan Electron Optics Laboratory Co., Ltd., Japan.

Intended use of article: The article will be used in studies of temperature dependent exchange phenomena to elucidate mechanisms of rapid organic reactions; high temperature studies of polymers and other compounds of high molecular weight; and low and high temperature studies for determining exchange rates of proton compounds containing groups such as OH, NH, and SH for student's evaluation. Faculty and students research projects concern gas-liquid and liquid-chromatography as an analytical tool; transition-metal organometallic complexes; and characterization of natural products.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for the purposes for which such article is intended to be used, was being manufactured in the United States at the time the article was ordered (Aug. 22, 1969).

Reasons: The foreign article provides a combined internal-external lock capability in one instrument. The new Varian Model XL100-15 which became available September 1969, provides combined internal-external locking in a single instrument. However, at the time the foreign article was ordered the most closely comparable domestic instrument was the Varian Model HA 60 which provided either an internal or external locking capability, but not both locking facilities in the same instrument.

We are advised by the National Bureau of Standards (NBS) in a memorandum dated May 27, 1970, that the availability of both the internal and external locking capability in the same instrument is pertinent to the purposes for which the foreign article is intended to be used.

For this reason, we find that the Varian Model HA 60 with either internal or external locking capability was not of equivalent scientific value to the foreign article, for those purposes for which the foreign article is intended to be used at the time the foreign article was ordered.

CHARLEY M. DENTON,
Bureau of Domestic Commerce.

[F.R. Doc. 70-13754; Filed, Oct. 13, 1970; 8:45 a.m.]

LOS ANGELES SOUTHWEST COLLEGE

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

The following is a decision on a 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. 71-00007-98-26000. Applicant: Los Angeles Southwest College, 11514 South Western Avenue, Los Angeles, Calif. 90047. Article: Standard construction device for the theory of electricity, Model EG ZA/ZT. Manufacturer: Dr. Clemenz, West Germany.

Intended use of article: The article will be used in classes in electricity for teaching the basic theory of electricity and enabling students to construct electrical articles.

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 a means of demonstrating electrical phenomena to students, through construction by the students of alternating and direct current generators, three phase synchronous motors etc.

We are advised by the National Bureau of Standards (NBS) in its memorandum dated September 8, 1970, that it knows of no comparable apparatus being manufactured in the United States which is capable of fulfilling the purposes for which the foreign article is intended to be used.

CHARLEY M. DENTON,
Bureau of Domestic Commerce.

[F.R. Doc. 70-13755; Filed, Oct. 13, 1970; 8:45 a.m.]

LOYOLA 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. 70-00705-33-46500. Applicant: Loyola University, 6363 St. Charles Avenue, New Orleans, La. 70118. Article: Ultramicrotome, Model "OmU2". Manufacturer: C. Reichert Optische Werke A.G., Austria.

Intended use of article: The article will be used to cut ultrathin sections of plastic-embedded biological materials. These include embryonic chick tissues and a variety of cancer tissues, animal and human. Special attention will be given to the cell surface material.

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: Examination of the applicant's thin sections under the electron microscope will provide optimal information when such sections are uniform in thickness and have smoothly cut surfaces. Conditions for obtaining high

quality sections depend to a large extent on the properties of the specimen being sectioned (e.g., hardness, consistency, toughness, etc.), the properties of the embedding media and the geometry of the block. In connection with a prior case (Docket No. 69-00118-33-46500), which relates to the duty-free entry of an identical foreign article, the Department of Health, Education, and Welfare (HEW) advised, that "Smooth cuts are obtained when the speed of cutting (among such [other] obvious factors as knife edge condition and angle), is adjusted to the characteristics of the material being sectioned." In connection with another prior case (Docket No. 69-00665-33-46500) relating to the duty-free entry of a similar foreign article, HEW advised that "The range of cutting speeds and a capability for the higher cutting speeds is * * * a pertinent characteristic of the ultramicrotome to be used for sectioning materials that experience has shown difficult to section." In connection with still another prior case (Docket No. 70-00077-33-46500) relating to the duty-free entry of a similar foreign article, HEW advised that "ultrathin sectioning of a variety of tissues having a wide range in density, hardness, etc." requires a maximum range in cutting speed and, further, that "The production of ultrathin serial sections of specimens that have great variation in physical properties is very difficult".

The foreign article has a cutting speed range of 0.1 to 20 millimeters/second (mm./sec.). The most closely comparable domestic instrument is the Model MT-2B ultramicrotome manufactured by Ivan Sorvall, Inc. (Sorvall). The Sorvall Model MT-2B ultramicrotome has a cutting speed range of 0.09 to 3.2 mm./sec.

In a prior case (Docket No. 70-00547-33-46500) relating to the duty-free entry of an identical foreign article for identical purposes, HEW advised in its memorandum of June 3, 1970, that cutting speeds in excess of 3.2 mm./sec. are pertinent to the applicant's studies of molecular architecture of cell surface during embryonic development and malignant transformation which requires long series of ultrathin sections of soft embryonic chick tissue at stages from egg to advanced embryo involving various consistencies within one specimen as well as a variety of consistencies at different developmental stages.

We, therefore, find that the Model MT-2B ultramicrotome is not of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

CHARLEY M. DENTON,
Bureau of Domestic Commerce.

[F.R. Doc. 70-13756; Filed, Oct. 13, 1970; 8:45 a.m.]

MASSACHUSETTS GENERAL HOSPITAL ET AL.

Notice of Applications for Duty-Free Entry of Scientific Articles

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

Amended regulations issued under cited Act, as published in the October 14, 1969, issue of the FEDERAL REGISTER, prescribe the requirements applicable to comments.

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

Docket No. 71-00140-33-43780. Applicant: Massachusetts General Hospital, Fruit Street, Boston, Mass. 02114. Article: Total hip joint replacements, 10 each. Manufacturer: Protek Ltd., Switzerland. Intended use of article: The purposes for which the articles are intended to be used are for a study and scientific assessment of hip reconstructions, using total hip replacement in contrast to previously existing modes of reconstructive hip surgery. Application received by Commissioner of Customs: September 14, 1970.

Docket No. 71-00141-88-80045. Applicant: New York State Department of Transportation, 1220 Washington Avenue, Albany, N.Y. 12226. Article: Camera, television borehole. Manufacturer: Eastman International Co. GmbH, West Germany. Intended use of article: The article will be used for geological investigation of bore holes, water engineering, tunnel and gallery work, and general geological exploration for determining planes of weakness in rock in order to design back slopes and rock cuts in highways. Application received by Commissioner of Customs: September 14, 1970.

Docket No. 71-00142-33-46500. Applicant: Harvard University Purchasing Department, 75 Mount Auburn Street, Cambridge, Mass. 02138. Article: Ultramicrotome, Model LKB 4800. Manufacturer: LKB Produkter A.B., Sweden. Intended use of article: The article will be used in research which deals with various phenomena relating to the developing nervous system. The programs concern the histogenesis of normal and mutant central nervous system and the cellular interactions in the developing central nervous system requiring ultrathin serial sections. Application received by Commissioner of Customs: September 14, 1970.

Docket No. 71-00143-33-46500. Applicant: Massachusetts Institute of Technology, 77 Massachusetts Avenue, Cambridge, Mass. 02139. Article: Ultramicrotome, Model LKB 8800A. Manufacturer: LBK Produkter A.B., Sweden. Intended use of article: The article will be used to study rat brain in an investigation of the biological properties of nervous tissue by experiments in tracing of neural connections. A course entitled Light and Electron Microscope Techniques in Neurobiology will use the ultramicrotome for the preparation of ultrathin sections and for the study of interneuronal connections. Application received by Commissioner of Customs: September 14, 1970.

Docket No. 71-00145-01-54600. Applicant: Rutgers University—The State University of N.J., New Brunswick, N.J. 08903. Article: Diffractometer, single crystal. Manufacturer: Enraf-Nonius, Inc., The Netherlands. Intended use of article: The article will be used primarily to elucidate the detailed three-dimensional structures of a large number of chemical compounds. Minerals, inorganic complexes, organic compounds, including steroids, charge transfer complexes and larger compounds of biological importance will be studied. Graduate students will be trained in X-ray data collection and analysis in a research course in physical chemistry. Application received by Commissioner of Customs: September 14, 1970.

Docket No. 71-00146-01-86500. Applicant: Purdue University, Lafayette, Ind. 47907. Article: Rheogoniometer, Model R.18. Manufacturer: Sangamo Controls, Ltd., United Kingdom. Intended use of article: The article will be used to study the chemical reactions which are mechanically induced by high shear applied to high molecular weight polymer melts and solutions; for research in the application of integral-type constitutive equations to polymer solutions; for measurements of drag reduction in the turbulent flow of dilute polymer solutions through pipes; and for research on several aspects of the technology of transfusion of blood and other liquids. Application received by Commissioner of Customs: September 14, 1970.

Docket No. 71-00147-33-46500. Applicant: Medical University of South Carolina, 80 Barre Street, Charleston, S.C. 29401. Article: Ultramicrotome, Model LKB 8800A. Manufacturer: LKB Produkter A.B., Sweden. Intended use of article: The article will be used to prepare blocks, thick, and thin sections of animal tissues from several organs treated with poisons or toxic doses of drugs. Graduate and medical students will learn the techniques of ultramicrotomy in courses entitled Methods in Experimental Pharmacology, Electron Microscopy in Pharmacology, and Electron

Microscopy in Cell and Molecular Biology. Application received by Commission of Customs: September 14, 1970.

Docket No. 71-00150-00-46040. Applicant: Stanford University, Purchasing Department, 820 Quarry Road, Palo Alto, Calif. 94304. Article: Shutter/exposure meter. Manufacturer: Siemens A.G., West Germany. Intended use of article: The article is an accessory for an existing Elmiskop 1A electron microscope. Application received by Commissioner of Customs: September 15, 1970.

Docket No. 71-00151-33-46040. Applicant: Lutheran General and Deaconess Hospital, Department of Pathology, 1775 Dempster Street, Park Ridge, Ill. 60068. Article: Electron microscope, Model HU-12. Manufacturer: Hitachi, Ltd., Japan. Intended use of article: The article will be used for research to evaluate the possible therapeutic hyperbaric oxygen effect on early acute myocardial infarction in man. The aim of this study is to reproduce a myocardial infarct in dog heart which would be treated by hyperbaric oxygen following occlusion simulating the clinical conditions as they occur in patients with acute myocardial infarctions. Application received by Commissioner of Customs: September 15, 1970

Docket No. 71-00152-00-46040. Applicant: DHEW/Public Health Service, Food and Drug Administration, 5600 Fishers Lane, Rockville, Md. 20852. Article: Plate magazine camera. Manufacturer: Associated Electrical Industries, Ltd., United Kingdom. Intended use of article: The article is an accessory for an existing Model EM 6B electron microscope. Application received by Commissioner of Customs: September 16, 1970.

Docket No. 71-00153-65-46070. Applicant: Massachusetts Institute of Technology, Charles Stark Draper Laboratory, 68 Albany Street, Cambridge, Mass. 02139. Article: Scanning electron microscope, Model Mark IIA. Manufacturer: Cambridge Instrument Co., Ltd., United Kingdom. Intended use of article: The article will be used to advance the development of, and to refine the performance of, gas bearing developed in the applicant's laboratory. To advance the state of the art of gas bearing fabrication, more knowledge is required with respect to the structure of materials used, machining and measuring techniques, and the quality of bearing geometry and surface finish. Application received by Commissioner of Customs: September 16, 1970.

Docket No. 71-00155-33-46040. Applicant: Stanford University, Purchasing Department, 820 Quarry Road, Palo Alto, Calif. 94304. Article: Electron microscope, Model Elmiskop 101. Manufacturer: Siemens A.G., West Germany. Intended use of article: The article will be used for research on the identification of the arrangement of the proteinaceous microfibrils and their subunits in microtubules, which play a pivotal role in cell division (mitosis). This study is of great importance for the understanding of the action of more effective mitotic inhibitory chemicals, specifically vinblastine, one of the few compounds which are successful in cancer therapy. Another study related to membranes will include the elucidation of the different steps of fusion of certain viruses (Sendai type) with the outer cell wall of tissue culture cells. Application received by Commissioner of Customs: September 16, 1970.

Docket No. 71-00154-33-46500. Applicant: Harvard Medical School, 25 Shattuck Street, Boston, Mass. 02115. Article: Ultramicrotome, Model LKB 8800A. Manufacturer: LKB Produkter A.B., Sweden. Intended use of article: The article will be used for experiments on the normal, physiological behavior of cells and tissues in regard to the transport and ingestion of macromolecules. Variations in the behavior of cells and tissues under experimental pathological conditions will be studied. The development and utilization of new ultrastructural cytochemical tracers—e.g. enzymes, dextrans, inulin and colloidal particles—of varying size, charge and shape, is being studied for transport processes. Application received by Commissioner of Customs: September 16, 1970.

Docket No. 71-00156-01-77030. Applicant: The City College of the City University of New York, Department of Chemistry, Convent Avenue and 138th Street, New York, N.Y. 10031. Article: NMR Spectrometer, Model HFX-2/0. Manufacturer: Bruker Scientific, Inc., West Germany. Intended use of article: The article will be used for research concerning an investigation of nitrates, imines, and hydrozines to define the relationship between coupling and molecular geometry; investigation of ^{15}N labeled compounds of biological importance; energy barriers for rotation abut N-N bond; the location of "amorphous" regions in polymer single crystals; and for a study of the mechanism of compaction in desalinization membranes. Application received by Commissioner of Customs: September 16, 1970.

CHARLEY M. DENTON,
Bureau of Domestic Commerce.

[F.R. Doc. 70-13757; Filed, Oct. 13, 1970; 8:45 a.m.]

NATIONAL ACCELERATOR LABORATORY

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. 70-00735-98-42900. Applicant: National Accelerator Laboratory, Universities Research Association Inc., 2100 Pennsylvania Avenue NW., Washington, D.C. 20006. Article: Magnetic coils for 200 BeV accelerator. Manufacturer: Societe General de Constructions Electriques & Mechaniques, France.

Intended use of article: The article will be used at the 200 BeV accelerator for research in high energy physics to attempt to understand the structure of matter and the forces holding it together at exceedingly small distances. A large variety of scientific exploratory experiments will be performed with protons accelerated by the accelerator to 200 BeV energy by scientists from U.S. universities and also from foreign high energy physics laboratories.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for the purposes for which the article is intended to be used, is being manufactured in the United States.

Reasons: The application relates to 300 pairs of magnet bending coils intended for use in a 200 billion electron volt accelerator which is being constructed by the applicant institution for use in its laboratory as part of a research program in high energy physics. The construction schedule of the applicant requires the delivery of 850 pairs of bending magnet coils and 950 quadrupole magnets on or before April 10, 1971, to complete the accelerator in order to meet the scheduled program of experiments. The National Bureau of Standards (NBS) in its memorandum of August 17, 1970, advised that the applicant's construction schedule is technically proper. The applicant sent invitations to bid to 11 domestic manufacturers, six of which responded with bids. One of the six respondents was considered unqualified to manufacture either the bending magnet coils or the quadrupole magnets. (This manufacturer was, however, awarded a contract for a different type of coils.) Another domestic manufacturer was already under contract to the applicant for certain types of coils and magnets and, consequently, was unable to meet the delivery schedules required for the bending magnet coils and quadrupole magnets. The remaining four domestic companies were awarded contracts for 400 pairs of bending coil magnets and 450 quadrupole magnets. This exhausted the capacity of the domestic manufacturers to produce the bending magnet coils and quadrupole magnets within the specified delivery time.

In order to preclude any delay in completing the accelerator, the applicant solicited bids from foreign manufacturers. The application relates to 300 bending magnet coils being produced by one foreign manufacturer. (Applications for the remaining 150 bending magnet coils and the 450 quadrupole magnets will be submitted when these articles are ready for shipment.)

We find that the delay which would be caused in awaiting the freeing of domestic capacity for the manufacture

of scientifically equivalent bending magnet coils would seriously impair the achievement of the applicant's research program. Therefore, the excessive delivery time provisions of subsection 602.1 (g) of the above-cited regulations have been satisfied with respect to the 300 bending magnet coils to which this application relates.

CHARLEY M. DENTON,
Bureau of Domestic Commerce.

[F.R. Doc. 70-13758; Filed, Oct. 13, 1970; 8:45 a.m.]

NORTHERN ILLINOIS 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. 70-00503-33-46040. Applicant: Northern Illinois University, Department of Biological Sciences, De Kalb, Ill. 60115. Article: Electron microscope, Model HU-125E. Manufacturer: Hitachi, Ltd., Japan.

Intended use of article: The article will be used in biological ultrastructural research on higher plants; chromosomes; and *Actinoplanes philipinensis* and related virus particles. Also the electron microscope will be used for studies of metamorphosing amphibian tissues and cells.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus or equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The foreign article has a specified resolving capability of 3.5 angstroms. The most closely comparable domestic instrument is the Model EMU-4B electron miscroscope which was formerly manufactured by the Radio Corp. of America (RCA), and which is presently being supplied by the Forgflo Corp. (Forgflo). The Model EMU-4B has a specified resolving capability of 5 angstroms. (The lower the numerical rating in terms of angstrom units, the better the resolving capability.) We are advised by the Department of Health, Education, and Welfare (HEW) in its memorandum dated August 20, 1970, that the additional resolving capability of the foreign article is pertinent to the purposes for which the foreign article is intended to be used.

We, therefore, find that the Model EMU-4B is not of equivalent scientific value to the foreign article for such purposes as this article is intended to be used.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

CHARLEY M. DENTON,
Bureau of Domestic Commerce.

[F.R. Doc. 70-13759; Filed, Oct. 13, 1970; 8:45 a.m.]

STATE UNIVERSITY OF NEW YORK

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. 70-00701-33-46040. Applicant: Research Foundation, State University of New York, Upstate Medical Center, 766 Irving Avenue, Syracuse, N.Y. 13210. Article: Electron microscope, Model EM 300. Manufacturer: Philips Electronics NVD, The Netherlands.

Intended use of article: The article will be used for studies of diseased human and animal kidneys; on blood cells and blood vessels in a group of diseases characterized by intravascular coagulation; on ultrastructure of liver related to investigations of mechanisms of hypertrophy, protein synthesis, and lipid metabolism in the liver; of human liver and intestinal disease using human biopsy material; and for studies on nervous tissue responses to injury, particularly related to neuronal changes in axonal injury.

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 a continuous magnification from 220 to 500,000 magnifications, without changing the pole piece. The most closely comparable domestic instrument is the Model EMU-4B which was formerly manufactured by the Radio Corp. of America, and which is presently being supplied by the Forgflo Corp. (Forgflo). The Model EMU-4B, with its standard pole piece, has a specified range from 1,400 to 240,000 magnifications. For survey and scanning, the lower end of this range can be reduced to 400 magnifications or less. But the continued reduction of magnification induces an increasingly greater distortion. The domestic manufacturer suggests in its literature on the Model EMU-4B that for highest quality, low magnification electron micrographs in the magnification range between 500 and 70,000 magnifications, an optional low magnification pole piece should be used. Changing the pole piece on the Model EMU-4B requires a break in the vacuum of the column.

We are advised by the Department of Health, Education, and Welfare (HEW) in its memorandum dated September 10, 1970, that the applicant requires the capability of rapid shift from very low to very high magnification without opening the column in order to achieve the purposes for which the foreign article is intended to be used. HEW further advises that breaking the vacuum in the column induces the danger of contamination which would very likely lead to the failure of the experiment. Therefore, the capability of rapidly moving from 220 to 500,000 magnifications without changing pole pieces, while at the same time providing high-quality low magnification, is considered to be a pertinent characteristic.

For these reasons, we find that the Model EMU-4B is not of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

CHARLEY M. DENTON,
Bureau of Domestic Commerce.

[F.R. Doc. 70-13760; Filed, Oct. 13, 1970; 8:45 a.m.]

SWEDISH COVENANT HOSPITAL

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. 70-00686-33-59600. Applicant: Swedish Covenant Hospital, Pasco Medical Laboratories, 40 South Clay Street, Hinsdale, Ill. 60521. Article: Mark II CYTOTRACK viewing unit—film transport unit. Manufacturer: Tetronics Research & Development Co., Ltd., United Kingdom.

Intended use of article: The article will be used for cancer research and will enable cytological traces to be centrally placed on 35-mm. wide plastic film.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The foreign article is capable of transporting 35-millimeter film with controlled tension and speed on the stage of a specific microscope.

We are advised by the Department of Health, Education, and Welfare (HEW) in its memorandum dated September 2, 1970, that this capability of the foreign article is pertinent to the applicant's research studies. HEW further advises that it knows of no comparable domestic instrument which provides this pertinent capability.

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,
Bureau of Domestic Commerce.

[F.R. Doc. 70-13761; Filed, Oct. 13, 1970; 8:45 a.m.]

UNIVERSITY OF CALIFORNIA

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

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (34 F.R. 15787 et seq.).

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

Docket No. 70-00692-33-46500. Applicant: University of California, San Diego, Post Office Box 109, La Jolla, Calif. 92037. Article: Ultramicrotome, Model LKB 8800A. Manufacturer: LKB Produkter A. B., Sweden.

Intended use of article: The article will be used for research concerned with the elucidation of the mechanism of formation and destruction of surfactant lining of pulmonary alveoli in human and experimental induced diseases. Electron microscopy of lung tissues will be taught to medical students and postgraduate doctoral trainees, who will be required to cut thin sections for electron microscopy.

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: Examination of the applicant's thin sections under the electron microscope will provide optimal information when such sections are uniform in thickness and have smoothly cut surfaces. Conditions for obtaining high quality sections depend to a large extent on the properties of the specimen being sectioned (e.g., hardness, consistency, toughness etc.), the properties of the embedding media and the geometry of the block. In connection with a prior case (Docket No. 69-00665-33-46500) which relates to the duty-free entry of an identical foreign article, the Department of Health, Education, and Welfare (HEW) advised that "Smooth cuts are obtained when the speed of cutting (among such [other] factors as knife edge condition and angle), is adjusted to the characteristics of the material being sectioned. The range of cutting speeds and a capability for the higher cutting speeds is, therefore, a pertinent characteristic of the ultramicrotome to be used for sectioning materials that experience has shown difficult to section." In connection with another prior case (Docket No. 70-00077-33-46500) relating to the duty-free entry of an identical foreign article, HEW advised that "ultrathin sectioning of a variety of tissues having a wide range in density, hardness etc." requires a maximum range in cutting speed and, further, that "The production of ultrathin serial sections of specimens that have great variation in physical properties is very difficult". The foreign article has a cutting speed range of 0.1 to 20 millimeters/second (mm./sec.). The most closely comparable domestic instrument is the Model MT-2B ultramicrotome manufactured by Ivan Sorvall, Inc. (Sorvall). The Sorvall Model MT-2B ultramicrotome has a cutting speed range of 0.09 to 3.2 mm./sec.

We are advised by HEW in its memorandum of September 10, 1970, that cutting speeds in excess of 4 mm./sec. are pertinent to the applicant's study of human and experimental animal lung disease which requires long series of uniform, high quality sections to be obtained from soft tissue. HEW cites as a precedent its prior recommendation relating to Docket No. 70-00519-33-46500, which conforms in many particulars to the captioned application.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

CHARLEY M. DENTON,
Bureau of Domestic Commerce.

[F.R. Doc. 70-13764; Filed, Oct. 13, 1970; 8:46 a.m.]

UNIVERSITY OF CALIFORNIA

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

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (34 F.R. 15787 et seq.).

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

Docket No. 70-00383-90-46070. Applicant: University of California, Santa Cruz, Purchasing Department, Carriage House, Santa Cruz, Calif. 95060. Article: Scanning electron microscope, Model JSM-2, and accessories. Manufacturer: Japan Electron Optics Lab. Co., Japan.

Intended use of article: The article will be used by students and faculty in the fields of biology, geology, and paleontology. Biologists are studying the form, structure, development, and chemical composition of spores of lower land plants, especially of bryophytes; and as well as conducting a study of the structure of the outer membrane of mitochrondria. Geologists are investigating terrestrial and lunar glasses and their alteration products; and also structures and defects within crystals are being studied. Paleontological study with the scanning electron microscope is being made of ultramicroscopic fossils such as coccoliths and discoasters.

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, was being manufactured in the United States at the time the order for the foreign article was prepared (July 19, 1968).

Reasons: The foreign article has a guaranteed resolving power of 250 angstroms. The most closely comparable domestic instrument available at the time the order for the foreign article was prepared was the Model SM-1 scanning electron microscope manufactured by Ultrascan Corp. (Ultrascan), which was formerly doing business as K Square Corp. (K Square). The Model SM-1 scanning electron microscope had a guaranteed resolving power of 500 angstroms. (The lower the numerical rating in terms of angstrom units, the better the resolving capability.)

We are advised by the Department of Health, Education, and Welfare in its memorandum dated April 6, 1970, that the additional resolving capability of the foreign article is pertinent to the purposes for which the article is intended to be used. We, therefore, find that the Model SM-1 was not of equivalent scientific value to the foreign article for such purposes as this article is intended to be used.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which was being manufactured in the United States at

the time the order for the foreign article was being prepared.

CHARLEY M. DENTON,
Bureau of Domestic Commerce.

[F.R. Doc. 70-13765; Filed, Oct. 13, 1970; 8:46 a.m.]

UNIVERSITY OF CALIFORNIA

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

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (34 F.R. 15787 et seq.).

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

Docket No. 70-00791-00-41200. Applicant: University of California, Los Alamos, Scientific Laboratory, Post Office Box 990, Los Alamos, N. Mex. 87544. Article: One each klystron, VC759, VRE-2101A20 center frequency 53 GHZ, tuning .75 GHZ, power output 500 MW. Manufacturer: Varian Associates, of Canada, Ltd., Canada.

Intended use of article: The article is a replacement part for a polarizing proton target.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The foreign article has a frequency range of 2 gigahertz (GHz) at a center frequency of 53 GHz and a power output of 500 milliwatts. We are advised by the National Bureau of Standards (NBS) in its memorandum dated August 31, 1970, that the characteristics described above are pertinent to the applicant's Nuclear Physics Scattering Experiment. NBS further advises that it knows of no comparable domestically manufactured instrument that can provide the pertinent characteristics of the foreign article.

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,
Bureau of Domestic Commerce.

[F.R. Doc. 70-13766; Filed, Oct. 13, 1970; 8:46 a.m.]

UNIVERSITY OF CHICAGO

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. 70-00723-33-45000. Applicant: University of Chicago, Chicago, Ill. 60637. Article: Optoscan microdensitometer, Model M85. Manufacturer: Vickers Ltd., United Kingdom.

Intended use of article: The article will be used for studies concerning the absorption measurements of nucleoproteins.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The foreign article is capable of directly measuring and integrating the absorbencies of biological specimens down to 0.5 microns in size within 10 seconds while keeping photometric noise to a minimum.

The article also permits the operator to draw a field defining mask which allows delimitation of a selected part of the specimen and, in addition to providing a read-out of optical densities, records the area of the specimen. We are advised by the Department of Health, Education, and Welfare (HEW) in its memorandum dated September 2, 1970, that the capabilities described above are pertinent to the applicant's research studies. HEW further advises that it knows of no commercially available domestic instrument that provides these pertinent capabilities.

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,
Bureau of Domestic Commerce.

[F.R. Doc. 70-13767; Filed, Oct. 13, 1970; 8:46 a.m.]

UNIVERSITY OF MASSACHUSETTS

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. 70-00663-01-07520. Applicant: University of Massachusetts, Polymer Science & Engineering, Amherst, Mass. 01002. Article: Microcalorimeter, Model Calvet. Manufacturer: SETARAM, France.

Intended use of article: The article will be used for research on heat capacity, heats of solution of a variety of polymeric and liquid crystalline materials. The materials to be studied are polypeptides, polystyrene, and cholesterol esters in order to gain information about their detailed structures and conformations in solid and solution phases.

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 a sensitivity of 10 nanovolts which corresponds to 10^{-3} calories per hour or one microwatt. We are advised by the National Bureau of Standards (NBS) in a memorandum dated July 29, 1970, that a sensitivity of 10 nanovolts which corresponds to 10^{-3} calories per hour or one microwatt is pertinent to the purposes for which the article is intended to be used. NBS further advises that it knows of no comparable domestic instrument or apparatus being manufactured in the United States that can be used for the applicant's intended purposes.

CHARLEY M. DENTON,
Bureau of Domestic Commerce.

[F.R. Doc. 70-13768; Filed, Oct. 13, 1970; 8:46 a.m.]

UNIVERSITY OF SOUTH CAROLINA

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

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (34 F.R. 15787 et seq.).

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

Docket No. 70-00726-33-43780. Applicant: University of South Carolina, Purchasing Department, Columbia, S.C. 29208 .Article: Heart-beat counter SAMI/HR and accessories. Manufacturer: TEMTRON Electronics Ltd., Canada.

Intended use of article: The article will be used for research to determine heart rate response to various activities. Since heart rate is a good indicator of the overall physiological stress to which a subject is subjected, recording heart rates

provides useful information relative to energy cost of various activities.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The foreign article is a portable device which is capable of obtaining and storing information on the heart beat of an individual over an extended period of time without restricting the subject's activities. We are advised by the Department of Health, Education, and Welfare (HEW) in its memorandum dated September 2, 1970, that the characteristics described above are pertinent to the applicant's research studies. HEW further advises that it knows of no comparable domestic instrument which matches the portability and data storage features of the foreign article.

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,
Bureau of Domestic Commerce.

[F.R. Doc. 70-13769; Filed, Oct. 13, 1970; 8:46 a.m.]

UNIVERSITY OF WASHINGTON

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

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (34 F.R. 15787 et seq.).

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

Docket No. 71-00072-00-57000. Applicant: University of Washington, Seattle, Wash. 98105. Article: Cell compartment with automatic gas and temperature regulator (for automatic oxygen equilibrium analyzer). Manufacturer: Dr. Kiyohiro Imai of Osaka University, Japan.

Intended use of article: The article will be used for a comparative study of the properties of many structurally different hemoglobins in order to gain information concerning the relationships between the structure and function of hemoglobin.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The foreign article is an accessory for an instrument that had been previously imported for the use of the applicant institution. The article is being furnished by the manufacturer which produced the instrument with which the article is intended to be used. The Department of Commerce knows of no similar accessory being manufactured in the United States, which is interchangeable with or can be adapted to the instrument with which the article is intended to be used.

CHARLEY M. DENTON,
Bureau of Domestic Commerce.

[F.R. Doc. 70-13770; Filed, Oct. 13, 1970; 8:46 a.m.]

UNIVERSITY OF WISCONSIN

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. 70-00691-33-46500. Applicant: University of Wisconsin, 518 SMI, 470 North Charter Street, Madison, Wis. 53706. Article: Ultramicrotome, Model LKB 8800A. Manufacturer: LKB Produkter, A. B., Sweden.

Intended use of article: The article will be used in a continuing investigation into basic processes of cellular injury. The applicant has been studying the ultrastructural events that accompany ischemic injury of the proximal convoluted tubules of the rat kidney. More exact knowledge of the events occurring following lethal tubular injury is of significance in the understanding of human kidney disease, as well as in the evaluation of tissues utilized for transplantation.

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: Examination of the applicant's thin sections under the electron microscope will provide optimal information when such sections are uniform in thickness and have smoothly cut surfaces. Conditions for obtaining high quality sections depend to a large extent on the properties of the specimen being sectioned (e.g., hardness, consistency, toughness etc.), the properties of the embedding media and the geometry of the block. In connection with a prior case (Docket No. 69-00665-33-46500) which relates to the duty-free entry of an identical foreign article, the Department of Health, Education, and Welfare (HEW) advised that "Smooth cuts are obtained when the speed of cutting (among such [other] factors as knife edge condition and angle), is adjusted to the characteristics of the material being sectioned. The range of cutting speeds and a capability for the higher cutting speeds is, therefore, a pertinent characteristics of the ultramicrotome to be used for sectioning materials that experience has shown difficult to section." In connection with another prior case (Docket No. 70-00077-33-46500) relating to the duty-free entry of an identical foreign article, HEW advised that "ultrathin sectioning of a variety of tissues having a wide range in density, hardness etc." requires a maximum range in cutting speed and, further, that "The production of ultrathin serial sections of specimens that have great variation in physical properties is very difficult." The foreign article has a cutting speed range of 0.1 to 20 millimeters/second (mm./sec.). The most closely comparable domestic instrument is the Model MT-2B ultramicrotome manufactured by Ivan Sorvall, Inc. (Sorvall). The Sorvall Model MT-2B ultramicrotome has a cutting speed range of 0.09 to 3.2 mm./sec.

We are advised by HEW in its memorandum of September 10, 1970, that cutting speeds in excess of 4 mm./sec. are pertinent to the applicant's study of injury patterns to plasma membranes of mitochondria and nuclei in kidney cells which requires long series of uniform ultrathin sections to be obtained from soft materials and specimens of varying consistencies including specimens in embeddings which are soft. HEW cites as a precedent its prior recommendations relating to Dockets Nos. 70-00203-33-46500 and 70-00519-33-46500, which conform in many particulars to the captioned application.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

CHARLEY M. DENTON,
Bureau of Domestic Commerce.

[F.R. Doc. 70-13771; Filed, Oct. 13, 1970; 8:46 a.m.]

WASHINGTON STATE 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. 70-00698-33-46040. Applicant: Washington State University, Pullman, Wash. 99163. Article: Electron microscope, Model HU-125E. Manufacturer: Hitachi, Ltd., Japan.

Intended use of article: The article will be used for research on the development and fine cell structure of the myxomycete swarm cell; studies on phylogeny of insect and vertebrate enzymes; microbiological ecology of the Snake River, control of carbon dioxide fixation; mechanisms of active ion transport across membranes; and osmotic regulation and the function of regulatory organs.

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 a maximum accelerating voltage of 125 kilovolts. The most closely comparable domestic instrument is the Model EMU-4B which was formerly manufactured by the Radio Corp. of America and which is presently being supplied by the Forgflo Corp. The Model EMU-4B has a specified maximum accelerating voltage of 100 kilovolts.

We are advised by the Department of Health, Education, and Welfare (HEW) in its memorandum dated September 10, 1970, that the higher accelerating voltage provides proportionately greater penetrating power and, consequently, higher resolution for a specimen of a given thickness. HEW further advises that due to the nature of the material on which research will be conducted with the use of the foreign article, relatively thick specimens must be used in the experiments and, therefore, the higher accelerating voltage of the foreign article is a pertinent characteristic. For these reasons, we find that the Model EMU-4B is not of equivalent scientific value to the foreign article for such purposes as this article is intended to be used.

The Department of Commerce knows of no other instrument being manufactured in the United States, which is of equivalent scientific value to the foreign article for such purposes as this article is intended to be used.

CHARLEY M. DENTON,
Bureau of Domestic Commerce.

[F.R. Doc. 70-13762; Filed, Oct. 13, 1970; 8:45 a.m.]

YALE 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. 70-00727-33-74600. Applicant: Yale University, Purchasing Department, 20 Ashmun Street, New Haven, Conn. 06520. Article: Signal analyser, Model BIOMAC 1000. Manufacturer: Data Lab., Ltd., United Kingdom.

Intended use of article: The article will be used for research in the section of neurosurgery in the Department of Medicine for studies in experimental animals and in man involving pain mechanisms and trauma. The application of the statistical theory of communication of electrophysiological events will be observed during the course of these investigations.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The foreign article is a self-contained multipurpose computer designed for life science applications, which performs a variety of analytical functions useful in recovery and interpretation of repetitive electrical data produced in physiological experiments. In addition, the article provides digital filtering, which permits storing the average of 8 signals obtained in a single address dwell time, and stimulus output, which enables the instrument to drive electrodes and other data processing instrumentation synchronously with its analytical operations.

We are advised by the Department of Health, Education, and Welfare (HEW) in its memorandum dated September 2, 1970, that the characteristics of the foreign article described above are pertinent to the applicant's research studies.

HEW further advises that it knows of no comparable domestic instrument which matches these pertinent characteristics. The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

CHARLEY M. DENTON,
Bureau of Domestic Commerce.

[F.R. Doc. 70-13763; Filed, Oct. 13, 1970; 8:46 a.m.]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

IDAHO

Notice of Filing of Plat of Survey; Correction

OCTOBER 6, 1970.

In F.R. Doc. No. 70-12575, appearing on page 14732 of the issue of September 22, 1970, the official filing date of October 20, 1970 is corrected to read November 20, 1970.

ORVAL G. HADLEY,
Manager, Land Office.

[F.R. Doc. 70-13785; Filed, Oct. 13, 1970; 8:47 a.m.]

[OR 1565]

OREGON

Notice of Proposed Amendment of Classification of Public Land for Multiple-Use Management

OCTOBER 7, 1970.

1. Pursuant to the Act of September 19, 1964 (43 U.S.C. 1411-18) and to the regulations in 43 CFR Parts 2400 and 2460, the public land within the area described in paragraph 3, has been classified for multiple use management, notice of which was published in the FEDERAL REGISTER on November 23, 1967 (32 F.R. 16108). This publication had the effect of segregating the land described in paragraph 3 from appropriation only under the agricultural land laws (43 U.S.C. Chs. 7 and 9; 25 U.S.C., sec. 334) and from sales under section 2455 of the Revised Statutes (43 U.S.C. 1171) with the provision that the land shall remain open to all other applicable forms of appropriation, including the mining and mineral leasing laws.

2. The purpose of the proposed amendment of classification is to further segregate the land listed in paragraph 3 from operation of the general mining laws (30 U.S.C. 21). Publication of this notice shall have the effect of so segregating the land.

3. The public land affected is as follows:

WILLAMETTE MERIDIAN

T. 19 S., R. 45 E.,
Sec. 14, N½SW¼ and SE¼SW¼.

The public land in the area described contains 120 acres.

4. For a period of 60 days from the date of publication of this notice in the FEDERAL REGISTER, all persons who wish to submit comments, suggestions or objections in connection with this amended classification may present their views in writing to the Vale District Manager, Bureau of Land Management, 365 A

Street West, Post Office Box 700, Vale, Oreg. 97918.

ARTHUR W. ZIMMERMAN,
Acting State Director.

[F.R. Doc. 70-13817; Filed, Oct. 13, 1970; 8:49 a.m.]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

CERTAIN HUD EMPLOYEES IN REGION VI, FORT WORTH, TEX.

Redelegation of Authority To Administer Oaths Under Title VIII (Fair Housing) of Civil Rights Act of 1968

Each of the following named employees in the Department of Housing and Urban Development, Region VI (Fort Worth, Tex.), is hereby authorized to administer oaths under section 811(a) of the Civil Rights Act of 1968, Public Law 90-284, 42 U.S.C. 3611(a):

1. Samuel W. Hudson, Jr.
2. Harold A. Odom.
3. Clark S. Jefferes.
4. Thomas V. Broadwell.
5. John E. Eubanks.
6. Robert H. Hester, Jr.
7. Darwin J. Stewart.
8. Jack E. Sandridge.
9. Pete T. Hinojosa.
10. John M. Nelson.
11. Eliazar Salinas.
12. Rufus B. Bardwell.

(Redelegation of authority by Regional Administrator effective April 24, 1969 (34 F.R. 6869, April 24, 1969))

This redelegation supersedes the redelegation published in 35 F.R. 1024, January 24, 1970, and shall be effective upon publication in the FEDERAL REGISTER.

A. MACEO SMITH,
Assistant Regional Administrator for Equal Opportunity, Region VI (Fort Worth).

[F.R. Doc. 70-13847; Filed, Oct. 13, 1970; 8:52 a.m.]

DIRECTOR, OFFICE OF NEW COMMUNITIES DEVELOPMENT

Redelegation of Authority

The Director, Office of New Communities Development, is hereby authorized to exercise the authority of the Secretary of Housing and Urban Development to the extent delegated to the Assistant Secretary for Metropolitan Planning and Development in section A of the delegation to the Assistant Secretary for Metropolitan Planning and Development effective February 7, 1970 (35 F.R. 2745-2746) with respect to the following programs:

1. Program of loan guarantees and supplementary grant assistance for new communities under the New Communities Act of 1968 (title IV of the Housing and Urban Development Act of 1968, 42 U.S.C. 1301 et seq.).

2. Program of Surplus Land for Community Development, including authority under section 108 of the Housing Act of 1949 (42 U.S.C. 1458) and authority delegated to the Secretary of Housing and Urban Development with respect to surplus Federal property under section 203 of the Federal Property and Administrative Services Act, as amended (40 U.S.C. 484), or under such other authority relating to transfer of surplus Federal property as may be appropriate.

(Secretary's delegation effective February 7, 1970, 35 F.R. 2745-2746)

Effective date. This redelegation of authority shall be effective as of October 1, 1970.

SAMUEL C. JACKSON,
Assistant Secretary for Metropolitan Planning and Development.

[F.R. Doc. 70-13839; Filed, Oct. 13, 1970; 8:51 a.m.]

PROPERTY DISPOSITION COMMITTEE AND ASSISTANT SECRETARY FOR RENEWAL AND HOUSING MANAGEMENT

Members; Redelegation of Authority and Assignment of Functions

The redelegation of authority and assignment of functions by the Assistant Secretary for Renewal and Housing Management published at 35 F.R. 4022, March 3, 1970, are amended under section A as follows:

(1) Paragraph 1 is amended to read as follows:

1. To pass upon and determine the action to be taken with respect to the program for the operation and disposition of any property acquired by the Secretary in connection with multifamily housing under any title of the National Housing Act (12 U.S.C. 1701, et seq.), college housing under title IV of the Housing Act of 1950 (12 U.S.C. 1749-1749c), housing for the elderly or handicapped under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q), and nonresidential property under section 312 of the Housing Act of 1964 (42 U.S.C. 1452b); and the amounts, interest rates, and amortization plans of mortgages taken as security in connection with the sale of such properties. The minutes of the Committee reflecting its determinations shall constitute the basis of acceptance or rejection of such offers and the execution of all documents and instruments relating and incident thereto by the Director, Property Disposition Division, or his Deputy.

(2) Paragraph 2 is amended to read as follows:

2. To determine whether an expenditure in connection with any multifamily housing project is "necessary to carry out the provisions" of titles I, II, VI, VII, VIII, IX, X, and XI of the National Housing Act as such term is used in section 1 of the Act (12 U.S.C. 1702), and to approve such expenditure for and on behalf of the Assistant Secretary whenever such a determination and approval is necessary to support the legal authority of the Assistant Secretary to make such expenditure.

(Secretary's delegation of authority published at 35 F.R. 2746, et seq., Feb. 7, 1970)

Effective date. This document is effective as of September 1, 1970.

NORMAN V. WATSON,
Acting Assistant Secretary for Renewal and Housing Management.

[F.R. Doc. 70-13846; Filed, Oct. 13, 1970; 8:52 a.m.]

REGIONAL ADMINISTRATORS ET AL.

Redelegation of Authority With Respect to Renewal Assistance Programs

SECTION A. *Authority redelegated with respect to specific programs.* Each Regional Administrator, Deputy Regional Administrator, Area Director, and Deputy Area Director of the Department of Housing and Urban Development is authorized to exercise the power and authority of the Secretary of Housing and Urban Development with respect to the following programs and matters, except as specified under this section A and as additionally excepted under section H:

1. Slum Clearance and Urban Renewal Program under title I of the Housing Act of 1949 (42 U.S.C. 1450, et seq.) and section 312 of the Housing Act of 1954 (42 U.S.C. 1450 note), except the power and authority to:

a. Exercise the power set forth in section 106(a) of the Housing Act of 1949 (42 U.S.C. 1456(a)).

b. Execute legends on bonds, notes, or other obligations evidencing loans made pursuant to title I, indicating acceptance of such instruments and payments therefor.

c. Determine that a workable program for community improvement meets the requirements of section 101(c) of the Housing Act of 1949 (42 U.S.C. 1451(c)), and certify that Federal assistance of the types enumerated in section 101(c) may be made available in the community.

d. Suspend or terminate Federal loan or grant assistance: *Provided, however,* That each Regional Administrator, Deputy Regional Administrator, Area Director, and Deputy Area Director is authorized to cancel reservations of capital grant funds in connection with the termination of Federal assistance under a contract for an advance and to terminate Federal assistance under the demolition grant, code enforcement grant, interim assistance for blighted areas, and certified area programs under title I of the Housing Act of 1949.

e. Make determinations with respect to noncompliances or defaults under contracts for Federal loan or grant assistance: *Provided, however,* That each Regional Administrator, Deputy Regional Administrator, Area Director, and Deputy Area Director is authorized to make determinations with respect to noncompliances or defaults involving budget overrun of specific line items if such overrun does not result in an overrun in the amount of the total contract obligation.

f. Determine interest rates for computing amounts in lieu of carrying charges to be included in Gross Project Cost with respect to local expenditures for project undertakings, under section 110(e) of the Housing Act of 1949 (42 U.S.C. 1460(e)).

2. Rehabilitation Loan Program under section 312 of the Housing Act of 1964 (42 U.S.C. 1452b), except the power and authority to delegate to or use as agent any Federal or private agency or organization pursuant to section 312(f) (42 U.S.C. 1452b(f)), and to make the determination to:

a. Foreclose on any property or to commence any legal action to protect or enforce any right conferred upon the Secretary by any law, contract, or other agreement;

b. Accept deeds in lieu of foreclosure; or

c. Purchase prior liens on such property.

3. Compensation of condemnees under title IV of the Housing and Urban Development Act of 1965 (42 U.S.C. 3071, et seq.), to the extent applicable to matters redelegated herein.

4. Determinations under section 220 (d)(1)(A) of the National Housing Act (12 U.S.C. 1715k(d)(1)(A)), that there exist the necessity authority and financial capacity to assure the completion of the redevelopment or urban renewal plan.

SEC. B. *Authority redelegated to Assistant Regional Administrators for Renewal Assistance and to the Assistant Regional Administrator for Renewal and Housing Management, Region X (Seattle).* Each Assistant Regional Administrator for Renewal Assistance and the Assistant Regional Administrator for Renewal and Housing Management, Region X (Seattle), is authorized to approve requisitions for funds for Neighborhood Development Programs and for Urban Renewal Projects in execution.

SEC. C. *Additional authority redelegated with respect to the Slum Clearance and Urban Renewal Program.* Each Regional Administrator, Deputy Regional Administrator, Regional Counsel, and Associate Regional Counsel and Associate Regional Counsel for Private Market Financing, General Legal Services Division, is authorized to:

1. Execute requisition agreements under section 102(c) of the Housing Act of 1949 (42 U.S.C. 1452(c)), securing payment of the principal and interest on project notes, each of which notes provides that it shall not be valid until the paying agent has executed an agreement appearing on the note to act as paying agent, and under which requisition agreement the United States, among other things:

a. Pledges the full faith and credit of the United States to the aforesaid payment and agrees under section 102(c) of the Act that the payment agreement set forth under paragraph b of this section C, 1 shall be construed separate and apart from the pertinent loan contract and shall be incontestable in the hands of a bearer; and

b. Agrees to evidence its promise to pay or cause to be paid each such note by a payment agreement executed on behalf of the United States by the facsimile signature of the Secretary of Housing and Urban Development holding office on the date of sale by the local public agency of the particular notes, in substantially the following form:

PAYMENT AGREEMENT

Pursuant to section 102(c) of the Housing Act of 1949, as amended (42 U.S.C. 1452(c)), the United States hereby unconditionally agrees that on the Maturity Date of the within Preliminary Loan Note it will pay or cause to be paid to the bearer thereof the principal of and interest thereon, upon the presentation and surrender of such Note to the Paying Agent designated therein, and the full faith and credit of the United States is pledged to such payment. Under section 102(c) of the Act, this Agreement shall be construed separate and apart from the loan contract referred to in the within Note and shall be incontestable in the hands of a bearer.

In witness whereof, this Agreement has been executed on behalf of the United States by the duly authorized facsimile signature of the Secretary of Housing and Urban Development, as of the Date of Issue of the within Note.

UNITED STATES OF AMERICA
By (Facsimile Signature),
Secretary of Housing and Urban Development.

2. Execute requisition agreements under section 102(c) of the Housing Act of 1949 (42 U.S.C. 1452(c)), securing payment of the principal and interest on bonds evidencing a definitive loan under section 102(a) of said Act, and, as an incident to the security and marketability of such bonds, securing the payment of premiums and the cost of the redemption of bonds and the fees and charges of paying agents, each of which bonds provides that it shall not be valid until the paying agent has executed an agreement appearing on the bond to act as paying agent, and under which the requisition agreement the United States, among other things:

a. Pledges the full faith and credit of the United States to the payment of the principal of and interest on such bonds, and agrees under section 102(c) of the Act that the payment agreement set forth under paragraph b of this section C,2 shall be construed separate and apart from the pertinent loan contract, including the specific loan payment contract under such requisition agreement, and shall be incontestable in the hands of a bearer; and

b. Agrees, as an incident to the security and marketability of such bonds, to pay or cause to be paid the premiums and cost of the redemption of the bonds and the fees and charges of paying agents, and also agrees to evidence its promise to pay or cause to be paid each such bond, including the interest thereon, by a payment agreement executed on behalf of the United States by the facsimile signature of the Secretary of Housing and Urban Development holding office on the date of sale by the local public agency of the particular bonds, in substantially the following form:

PAYMENT AGREEMENT

Pursuant to section 102(c) of the Housing Act of 1949, as amended (42 U.S.C. 1452 (c)), the United States hereby unconditionally agrees that on the maturity of the within Bond, and on the respective dates established for the payment of the interest thereon, it will pay or cause to be paid to the bearer or registered owner of either or both said Bond or interest thereon, as the case may be, the principal of and interest on such Bond, upon the presentation and surrender of such Bond or the uncancelled interest coupons appertaining thereto, if any, as the case may be, to the Paying Agent or the alternate Paying Agent identified therein; and the full faith and credit of the United States is pledged payment. Under section 102(c) of the Act, this Agreement shall be construed separate and apart from the loan contract and the specific loan payment contract evidenced by the Requisition Agreement referred to in the within Bond, and shall be incontestable in the hands of a bearer.

In witness whereof, this Agreement has been executed on behalf of the United States by the duly authorized facsimile signature of the Secretary of Housing and Urban Development, as of the date of the within Bond.

UNITED STATES OF AMERICA
By (Facsimile Signature),
Secretary of Housing and Urban Development.

SEC. D. *Authority redelegated to Directors and Deputy Directors, Production Division, Area Offices.* Each Director and Deputy Director, Production Division, is authorized to exercise the power and authority of the Secretary of Housing and Urban Development to the extent redelegated to Regional Administrators, Deputy Regional Administrators, Area Directors, and Deputy Area Directors under section A with respect to the following programs and matters:

1. Slum Clearance and Urban Renewal Program under title I of the Housing Act of 1949 and section 312 of the Housing Act of 1954, except the power and authority to:

a. Authorize advances, loans, and grants (other than grants under section 115(b) of the Housing Act of 1949, approval for which is redelegated under F,2, hereinafter) and to amend or modify the terms thereof.

b. Find that a State or local low-rent housing program in connection with which urban renewal project land is to be used as a site for a State or locally assisted low-rent housing project has the same general purpose as the Federal low-rent program, and find that under such State or local program there are assurances equivalent to those under the Federal program that the local contribution to such project will be made during the entire period the project is used as low-rent housing, pursuant to section 107 of the Housing Act of 1949 (42 U.S.C. 1457).

c. Make determinations with respect to the uncollectibility of Federal advances in accordance with section 103(b) of the Housing Act of 1949 (42 U.S.C. 1453(b)).

d. Make determinations that the objectives of an urban renewal plan could not be achieved through rehabilitation of the project area, under section 110(c)

of the Housing Act of 1949 (42 U.S.C. 1460(e)).

e. Take action in connection with the management of housing on urban renewal sites.

f. Make determinations with respect to workable programs for community improvement under section 101(e) of the Housing Act of 1949 (42 U.S.C. 1451(e)).

g. Determine that the relocation requirements of sections 105(c) (1) and (2) of the Housing Act of 1949 (42 U.S.C. 1455(c) (1) and (2)) have been met.

h. Determine that reasonable and continuing progress is being made to provide the necessary housing units required by sections 105 (f) and (h) of the Housing Act of 1949 (42 U.S.C. 1455 (f) and (h)).

i. Make findings with respect to a State or locally assisted low-rent public housing program, in accordance with section 114(c)(2) of the Housing Act of 1949 (42 U.S.C. 1465(c)(2)).

j. Make determinations with respect to purpose and effect of payment required by state law of eminent domain and whether such payment is to be part of the cost of the project, in accordance with section 114(c)(3) of the Housing Act of 1949 (42 U.S.C. 1465(c)(3)).

2. Make determinations under section 220(d)(1)(A) of the National Housing Act (12 U.S.C. 1715k(d)(1)(A)), that there exist the necessary authority and financial capacity to assure the completion of the redevelopment or urban renewal plan.

SEC. E. *Authority redelegated to Program Managers, Area Offices.* Each Program Manager is authorized to exercise the following power and authority of the Secretary of Housing and Urban Development in connection with the Slum Clearance and Urban Renewal Program under title I of the Housing Act of 1949 and section 312 of the Housing Act of 1954:

1. Approve budget revisions.

2. Review a locality's relocation plan and its effectiveness in carrying out the plan under section 105(c)(3) of the Housing Act of 1949 (42 U.S.C. 1455(c)(3)).

SEC. F. *Authority redelegated to Directors and Deputy Directors, Production Division, Program Managers, and Rehabilitation Loan and Grant Specialists, Area Offices.* Each Director and Deputy Director, Production Division, Program Manager, and Rehabilitation Loan and Grant Specialist is authorized to exercise the power and authority of the Secretary of Housing and Urban Development with respect to:

1. Rehabilitation Loan Program under section 312 of the Housing Act of 1964, to the extent redelegated to each Regional Administrator, Area Director, et al. in section A, except the power and authority to service loans and to dispose of property in the custody of the Secretary.

2. Approval of applications for grants under section 115(b) of the Housing Act of 1949 (42 U.S.C. 1466(b)) to rehabilitate real property to meet insurance underwriting standards under a HUD-approved statewide plan to assure fair access to insurance requirements (FAIR) under title XII of the National Housing Act (12 U.S.C. 1749bbb, et seq.).

SEC. G. *Authority redelegated to Relocation Representatives, Area Offices.* Each Relocation Representative is authorized to exercise the power and authority of the Secretary of Housing and Urban Development in connection with the Slum Clearance and Urban Renewal Program to review a locality's relocation plan and its effectiveness in carrying out the plan under section 105(c)(3) of the Housing Act of 1949 (42 U.S.C. 1455(c)(3)).

SEC. H. *Additional authority excepted.* There is further excepted from the authority redelegated under sections A through G the power and authority to:

1. Establish the rate of interest on Federal loans and advances.

2. Issue notes or other obligations for purchase by the Secretary of the Treasury.

3. Sue and be sued.

4. Issue rules and regulations.

5. Exercise the power and authority under section 402(a) of the Housing Act of 1950 (12 U.S.C. 1749a(a)).

SEC. I. *Exercise of redelegated authority.* Redelegations of authority made under sections A through G shall not be construed to modify or otherwise affect the administrative and supervisory powers of the Regional Administrator or Area Director to whom a delegate is responsible.

(Secretary's delegation of authority to redelegate published at 35 F.R. 15025, Sept. 26, 1970, and other authorities cited therein)

Effective date. This redelegation of authority is effective as of September 1, 1970.

NORMAN V. WATSON,
Acting Assistant Secretary for Renewal and Housing Management.

[F.R. Doc. 70-13840; Filed, Oct. 13, 1970; 8:51 a.m.]

REGIONAL ADMINISTRATORS ET AL.

Redelegation of Authority With Respect to Loan and Contract Servicing

SECTION A. *Authority redelegated with respect to the National Housing Act.* 1. Each Regional Administrator, Deputy Regional Administrator, Area Director, Deputy Area Director, HUD-FHA Insuring Office Director, and HUD-FHA Insuring Office Deputy Director is authorized to exercise the following power and authority of the Secretary of Housing and Urban Development in connection with titles II, V, VI, VII, VIII, IX, X, and XI of the National Housing Act (12 U.S.C. 1701, et seq.), subsequent to final insurance endorsement relating to insured loans and mortgages, claims, rights, and interests involving multifamily projects (other than collection of insurance premiums), housing for the elderly, nursing homes, group practice facilities, and nonprofit hospitals:

a. To approve schedules of rents or carrying charges.

b. To approve requests for the conveyance, transfer or encumbrance of mortgaged property.

c. To approve such plans of operation, budgets and contracts for managerial services as are required to be submitted to HUD.

d. To consent to the release of portions of mortgaged property from the lien of the mortgage.

e. To approve requests from mortgagors for permission:

i. To furnish rental units.

ii. To provide tenants with equipment or services not contemplated in the original processing of the application for mortgage insurance or, in the case of Secretary-held purchase money mortgage, not contemplated at the time of sale.

iii. To alter, modify, or add to the physical structure.

iv. To withdraw funds from replacement reserves for replacement of items originally scheduled.

f. To approve rent increases and seasonal rental charges in rental projects covered by insured or Secretary-held mortgages and to investigate and determine action to be taken on tie-in charges for apartment, garage, furniture, and equipment rentals.

g. To approve the plan of management of cooperative and nonprofit mortgagors under an insured mortgage.

h. In connection with cooperative projects covered by insured mortgages, to determine the adequacy of carrying charges and approve such charges.

i. To endorse loss drafts and checks for settlement of claims for insurance losses.

j. To direct the affairs of mortgagor corporations when control has been assumed by the Secretary as preferred stockholder.

2. Each Director, Housing Services and Property Management Division, Area Office, and each Chief, Mortgages and Properties Division, HUD-FHA Insuring Office, is authorized to exercise the power and authority under section A,1, paragraphs d-j.

SEC. B. *Authority redelegated with respect to specific programs.* Each Regional Administrator, Deputy Regional Administrator, Area Director, Deputy Area Director, and Director, Housing Services and Property Management Division, Area Office, is authorized to exercise the same power and authority of the Secretary of Housing and Urban Development in connection with loans and grants for college housing under title IV of the Housing Act of 1950 (12 U.S.C. 1749-1749c) and loans for housing for the elderly or handicapped under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) as are redelegated in section A.1 with respect to the National Housing Act. There is specifically withheld from the above-mentioned officials and any other field official the power and authority to (1) consent to the modification of any agreement to which the Government is a party with respect to time of payment on any installment of principal,

interest due the Government, or any required deposit into a fund or reserve, under section 402(c)(8) of the Housing Act of 1950 (12 U.S.C. 1749a(c)(8)), or (2) authorize postponement of a scheduled payment due the Government or deferment of any required deposit into a fund or reserve.

SEC. C. *Authority redelegated with respect to the section 312 Rehabilitation Loan Program.* Each Director, Housing Services and Property Management Division, Area Office, is authorized to exercise the power and authority of the Secretary of Housing and Urban Development with respect to the Rehabilitation Loan Program under section 312 of the Housing Act of 1964 (42 U.S.C. 1452b), except the power and authority listed below:

1. To approve applications for section 312 rehabilitation loans and to execute documents in connection therewith.

2. To delegate to or use as agent any Federal of local public or private agency or organization pursuant to section 312(f) (42 U.S.C. 1452(f)).

3. To sue and be sued.

4. To establish the rate of interest on Federal loans and advances.

5. To issue notes or other obligations for purchase by the Secretary of the Treasury.

6. To issue rules and regulations.

7. To make the determination to:

a. Foreclose or any property, or commence any legal action to protect or enforce any right conferred upon the Secretary by any law, contract, or other agreement;

b. Accept deeds in lieu of foreclosure; or

c. Purchase prior liens on such property.

8. Exercise the powers and authorities under section 402(a) of the Housing Act of 1950 (12 U.S.C. 1749a(a)).

[Redelegations to Regional Administrators, Deputy Regional Administrators, et al., with respect to the section 312 Rehabilitation Loan Program, are made under a separate document titled "Redelegation of authority with respect to Renewal Assistance Program," published concurrent herewith.]

SEC. D. *Exercise of redelegated authority.* Redelegations of authority made under sections A through C shall not be construed to modify or otherwise affect the administrative and supervisory powers of the Regional Administrator, Area Director, and HUD–FHA Insuring Office Director, or any of them, to whom a delegate is responsible.

(Secretary's delegation of authority to redelegate published at 35 F.R. 15025, and other authorities cited therein)

Effective date. This redelegation of authority is effective as of September 1, 1970.

NORMAN V. WATSON,
Acting Assistant Secretary for Renewal and Housing Management.

[F.R. Doc. 70-13841; Filed, Oct. 13, 1970; 8:51 a.m.]

REGIONAL ADMINISTRATORS ET AL.

Redelegation of Authority With Respect to Housing Management

SECTION A. *Authority redelegated to Regional Administrators, Deputy Regional Administrators, Area Directors, and Deputy Area Directors.* Each Regional Administrator, Deputy Regional Administrator, Area Director, and Deputy Area Director of the Department of Housing and Urban Development is authorized to exercise the power and authority of the Secretary of Housing and Urban Development with respect to housing management aspects of all housing assisted by the Department under the following programs, and related matters, except as specified in this section A and as additionally excepted in section H. For purposes of this redelegation housing management aspects of all housing does not include loan and contract servicing:

1. Titles II, V, VI, VII, VIII, IX, X, and XI of the National Housing Act (12 U.S.C. 1701, et seq.), except the power and authority to:

a. Establish income limits.

b. Suspend occupancy requirements and income limits.

2. Section 1, title I of the National Housing Act (12 U.S.C. 1702), in exercising the power and authority delegated under section A.1.

3. Sections 235 and 236 of the National Housing Act (12 U.S.C. 1715z and 1715z–1), with respect to administration of contracts and requirements for assistance payments and for interest reduction payments.

4. Section 101(e) of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701w) and section 237(e) of the National Housing Act (12 U.S.C. 1715z–2(e)), with respect to providing budget, debt management, and related conseling services.

5. Section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s), with respect to administration of contracts and requirements for rent supplements for disadvantaged persons.

6. Program of Loans for Housing for the Elderly or Handicapped under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q).

7. College Housing Program under title IV of the Housing Act of 1950 (12 U.S.C. 1749–1749c).

8. Low-Rent Public Housing Program under the U.S. Housing Act of 1937 (42 U.S.C. 1401, et seq.), including the power and authority under sections 1(1) and 1(2) of Executive Order 11196, except the power and authority to:

a. Determine that there is a substantial breach or default and invoke any remedy on behalf of the Federal Government upon default or breach by a local housing authority in respect to the terms, covenants, or conditions of an annual contributions contract.

b. Terminate annual contributions contracts when the decision to terminate is made by the Federal Government.

c. Waive the provisions of annual contributions contracts: *Provided*, That Regional Administrators, Deputy Regional Administrators, Area Directors, and Deputy Area Directors are authorized to waive provisions with respect to the following:

i. Employment of a former local housing authority Commissioner.

ii. Frequency of reexamination of tenants to permit a local housing authority to change its established reexamination schedule.

d. Approve operating budgets and budget revisions which include an operating deficit subsidy.

9. Slum Clearance and Urban Renewal Program under title I of the Housing Act of 1949 (42 U.S.C. 1450, et seq.), and section 312 of the Housing Act of 1954.

10. Compensation of condemnees under title IV of the Housing and Urban Development Act of 1965 (42 U.S.C. 3071, et seq.), to the extent applicable to matters redelegated herein.

SEC. B. *Authority redelegated to Assistant Regional Administrators for Administration, and to Directors and Insurance Advisors, Accounting Division, Regional Offices.* Each Assistant Regional Administrator for Administration and each Director and Insurance Advisor, Accounting Division, is authorized, with respect to the programs listed below, to approve non-Federal insurance contracts and to execute endorsements on behalf of the Department of Housing and Urban Development on insurance checks on which the United States of America, Department of Housing and Urban Development, or any predecessor agency of the Department of Housing and Urban Development is a joint payee:

1. Slum Clearance and Urban Renewal Program under title I of the Housing Act of 1949.

2. Program of Loans for Housing for the Elderly or Handicapped under section 202 of the Housing Act of 1959.

3. College Housing Program under title IV of the Housing Act of 1950.

4. Low-Rent Public Housing Program under the U.S. Housing Act of 1937.

SEC. C. *Authority redelegated to Regional Counsels and Associate Regional Counsels with respect to Low-Rent Public Housing Program.* Each Regional Counsel, each Associate Regional Counsel, General Legal Services Division, and each Associate Regional Counsel for Private Market Financing, General Legal Services Division, is authorized to exercise the power and authority of the Secretary relating to the financing and refinancing of housing under the Low-Rent Public Housing Program.

SEC. D. *Authority redelegated to HUD–FHA Insuring Office Directors and HUD–FHA Insuring Office Deputy Directors.* Each HUD–FHA Insuring Office Director and HUD–FHA Insuring Office Deputy Director is authorized to exercise the power and authority of the Secretary with respect to housing management aspects of housing assisted by the Department under titles II, V, VI, VII, VIII,

IX, X, and XI of the National Housing Act, except the power and authority to:

1. Establish income limits.

2. Suspend occupancy requirements and income limits.

SEC. E. *Authority redelegated to Directors, Housing Services and Property Management Division, Area Offices.* Each Director, Housing Services and Property Management Division, is authorized:

1. To exercise the following power and authority of the Secretary in connection with the Low-Rent Public Housing Program under the U.S. Housing Act of 1937:

a. To waive the provisions of the annual contributions contract with respect to frequency of reexamination of tenants to permit a local housing authority to change its established reexamination schedule.

b. To approve operating budgets and budget revisions, except those which include an operating deficit subsidy.

c. To approve requisitions for funds under an approved modernization program.

d. To approve contributions for Special Subsidy Families, and for Rental Assistance subsidy.

e. To approve schedules of rents and definitions of family income related thereto.

f. To approve definitions of family income.

g. To approve definitions of "family of unusually low income".

h. To approve housing of project employees and of persons providing tenant and neighborhood-oriented services.

i. To approve special use of dwelling and nondwelling space.

j. To certify that "in kind" contributions by local housing authorities to the cost of Community Action Programs are non-Federal in character.

k. To take final action with respect to audit, review, and survey findings.

l. To approve requests for deferment of equivalent elimination.

m. To approve contracts for management services.

n. To approve public retirement plans, health insurance plans, and life insurance plans.

o. To approve changes in number of dwelling units.

p. To approve the conversion of dwelling unit sizes.

2. To exercise the power and authority of the Secretary to the extent redelegated under section A with respect to housing management aspects of housing assisted by the Department under the following programs:

a. Slum Clearance and Urban Renewal Program under title I of the Housing Act of 1949 and section 312 of the Housing Act of 1954.

b. Program of Loans for Housing for the Elderly or Handicapped under section 202 of the Housing Act of 1959.

c. College Housing Program under title IV of the Housing Act of 1950.

SEC. F. *Authority redelegated to Chiefs, Housing Management and Tenant Services Branch, Area Offices.* Each Chief, Housing Management and Tenant Services Branch, is authorized to exercise the following power and authority of the Secretary with respect to the Low-Rent Public Housing Program:

1. To take final action with respect to audit, review, and survey findings.

2. To approve operating budgets and budget revisions, except those which include an operating deficit subsidy.

3. To approve changes in number of dwelling units.

SEC. G. *Authority redelegated to Area Economists, Area Offices.* Each Area Economist is authorized to exercise the power and authority of the Secretary under the Low-Rent Public Housing Program to approve maximum income limits and definitions of family income related thereto.

SEC. H *Additional authority excepted.* There is further excepted from the authority redelegated under sections A through G the power and authority to:

1. Establish the rate of interest on Federal loans and advances.

2. Issue notes or other obligations for purchase by the Secretary of the Treasury.

3. Sue and be sued.

4. Issue rules and regulations.

5. Exercise the powers and authorities under section 402(a) and under section 402(c)(1–7) of the Housing Act of 1950 (12 U.S.C. 1749a(a) and 1749a(c) (1)–(7)).

SEC. I. *Exercise of redelegated authority.* Redelegations of authority made under sections A through G shall not be construed to modify or otherwise affect the administrative and supervisory powers of the Regional Administrator, Area Director, HUD–FHA Insuring Office Director, or any of them, to whom a delegate is responsible.

(Secretary's delegation of authority to redelegate published at 35 F.R. 15025, Sept. 26, 1970, and other authorities set forth therein)

Effective date. This redelegation of authority is effective as of September 1, 1970.

NORMAN V. WATSON,
Acting Assistant Secretary for Renewal and Housing Management.

[F.R. Doc. 70–13842; Filed, Oct. 13, 1970; 8:51 a.m.]

REGIONAL ADMINISTRATORS ET AL.

Redelegation of Authority With Respect to Relocation Requirements and Payments

SECTION A. *Authority redelegated to Regional Administrators, Area Directors, and their deputies.* Each Regional Administrator, Deputy Regional Administrator, Area Director, and Deputy Area Director of the Department of Housing and Urban Development is authorized to exercise the power and authority of the Secretary of Housing and Urban Development with respect to relocation requirements and payments, except the power and authority to sue and be sued and to issue rules and regulations, under section 404 of the Housing and Urban Development Act of 1965 (42 U.S.C. 3074), section 107 of the Demonstration Cities and Metropolitan Development Act of 1966 (42 U.S.C. 3307), sections 15 (7) and (8) of the United States Housing Act of 1937 (42 U.S.C. 1415 (7) and (8)), and section 105(c) and section 114 of the Housing Act of 1949 (42 U.S.C. 1455 (c), 1465).

SEC. B. *Exercise of redelegated authority.* Redelegations of authority in section A shall not be construed to modify or otherwise affect the administrative and supervisory powers of the Regional Administrator to whom a delegate is responsible.

(Secretary's delegation of authority to redelegate published at 35 F.R. 15025 and other authorities set forth therein)

Effective date. This redelegation of authority is effective as of September 1, 1970.

NORMAN V. WATSON,
Acting Assistant Secretary for Renewal and Housing Management.

[F.R. Doc. 70–13843; Filed, Oct. 13, 1970; 8:51 a.m.]

REGIONAL ADMINISTRATORS ET AL.

Redelegation of Authority With Respect to Property Disposition

SECTION A. *Authority redelegated to specific field officials.* Each Regional Administrator, Deputy Regional Administrator, Area Director, and Deputy Area Director; each Director, Housing Services and Property Management Division, and Chief, Property Operations Branch, Area Office; each HUD–FHA Insuring Office Director and HUD–FHA Insuring Office Deputy Director; each Chief, Mortgages and Properties Division, HUD–FHA Insuring Office; and each Real Property Officer Designee in those HUD–FHA Insuring Offices which do not have a Mortgages and Properties Division is authorized to exercise the following power and authority of the Secretary of Housing and Urban Development in connection with all properties conveyed to the Secretary; all properties held during foreclosure proceedings by the Secretary of Housing and Urban Development as mortgagee in possession pursuant to court orders; all properties held pursuant to the agreement between the Department of Defense and the Department of Housing and Urban Development with respect to section 1013 of the Demonstration Cities and Metropolitan Development Act of 1966 (42 U.S.C. 3374) (delegations and redelegations published at 34 F.R. 18031, Nov. 7, 1969; and 35 F.R. 2748, Feb. 7, 1970); and all properties over which the Secretary of Housing and Urban Development has otherwise been granted possession or custody by any Department or Agency of the United States, all of which foregoing classes of properties are referred to as acquired properties:

1. To certify as to eligibility for mortgage insurance commitments in connection with home property sales.

2. To approve offers to rent, lease, or purchase acquired properties; to execute

contracts for the sale of home properties; and to execute contracts for sale for multifamily projects upon approval of such sale by competent authority.

3. To convey and to execute in the name of the Secretary, in connection with the sale or the transfer of acquired properties, including land from which structures have been removed, or any interest therein, deeds or other documents in connection with the conveyance of title, deeds of release, assignments and satisfactions of mortgages, deeds of trust, or other liens taken as security, and any other written instruments relating to real or personal property or any interest therein heretofore or hereafter acquired by the Secretary or pursuant to an agreement with another Agency or Agencies of the United States, and to consent to the assignment of the interest of the contract purchaser under a contract for deed and to the substitution of mortgagor under a mortgage held by or entrusted to the Secretary.

4. To authorize expenditures to remedy defects in heating, plumbing, and electrical systems and equipment, and to correct structural defects subsequent to conveyance of title pursuant to the provisions of the contract of sale.

5. To arrange for protective custody and yard and grounds maintenance of vacant properties which are encumbered by mortgages assigned to the Secretary under contracts of mortgage insurance, or in those instances where the property has been abandoned and the Secretary holds a purchase money mortgage taken back in connection with the sale of such property.

6. To take all actions necessary to protect the interests of the Secretary in the management of multifamily properties during the period the Secretary is mortgagee in possession.

7. To execute purchase orders for supplies and services and to issue orders for the publication of notices and advertisements in newspapers, magazines, and periodicals, all in connection with the repair, construction, improvement, alteration, maintenance, operation, management, demolition, or removal of acquired properties; to inspect or arrange for the inspection of such services, and to authorize payment therefor.

8. As contracting officer, to enter into and administer procurement contracts, not exceeding $10,000 per year per contract, and make related determinations except determinations under sections 302(c) (11), (12), and (13) of the Federal Property and Administrative Services Act (41 U.S.C. 252(c) (11), (12), and (13)), with respect to contracts for goods and services for repair, construction, improvement, removal, demolition or alteration, maintenance, and operation of acquired properties, including properties held by HUD as mortgagee in possession, and broker management services in connection with such properties, and the publication of notices and advertisements in newspapers, magazines, and periodicals.

SEC. B. *Exercise of redelegated authority.* Redelegations of authority in section A shall not be construed to modify or otherwise affect the administrative and supervisory powers of the Regional Administrator, Area Director, and HUD–FHA Insuring Office Director, or any of them, to whom a delegate is responsible.

(Secretary's delegation of authority to redelegate published at 35 F.R. 15025 and other authorities set forth therein)

Effective date. These redelegations of authority are effective as of September 1, 1970.

NORMAN V. WATSON,
Acting Assistant Secretary for Renewal and Housing Management.

[F.R. Doc. 70–13844; Filed, Oct. 13, 1970; 8:51 a.m.]

REGIONAL ADMINISTRATOR ET AL., REGION X (SEATTLE)

Redelegation of Authority With Respect to Program of Assistance for Housing in Alaska

SECTION A. *Authority redelegated with respect to the Program of Assistance for Housing in Alaska.* The Regional Administrator and Deputy Regional Administrator, Region X (Seattle), and the Area Director and Deputy Area Director, Seattle Area Office, each is authorized to exercise the power and authority of the Secretary of Housing and Urban Development with respect to the Program of Assistance for Housing in Alaska under section 1004 of the Demonstration Cities and Metropolitan Development Act of 1966 (42 U.S.C. 3371), except the authority to:

1. Establish the rate of interest on Federal loans.

2. Approve the statewide program prepared by the State of Alaska or any duly authorized agency or instrumentality thereof.

SEC. B. *Exercise of redelegated authority.* Redelegations of authority made under section A shall not be construed to modify or otherwise affect the administrative and supervisory powers of the Regional Administrator.

(Secretary's delegation of authority to redelegate published at 35 F.R. 15025 and other authorities set forth therein)

Effective date. This redelegation of authority is effective as of September 1, 1970.

NORMAN V. WATSON,
Acting Assistant Secretary for Renewal and Housing Management.

[F.R. Doc. 70–13845; Filed, Oct. 13, 1970; 8:51 a.m.]

ATOMIC ENERGY COMMISSION

[Docket No. 50–336]

CONNECTICUT LIGHT AND POWER CO. ET AL.

Notice of Application for Construction Permit and Operating License

The Connecticut Light and Power Co., Selden Street, Berlin, Conn.; The Hartford Electric Light Co., 176 Cumberland Avenue, Wethersfield, Conn.; Western Massachusetts Electric Co., 174 Brush Hill Avenue, West Springfield, Mass.; and The Millstone Point Co., 176 Cumberland Avenue, Wethersfield, Conn. (the applicants), pursuant to the Atomic Energy Act of 1954, as amended, filed an application, dated February 27, 1969, for a permit to construct and a license to operate a pressurized water nuclear power reactor at the Millstone Nuclear Power Station, an approximately 500-acre site on Long Island Sound in the town of Waterford, Conn., about 40 miles southeast of Hartford and 3.2 miles west southwest of New London, Conn.

The application notes that the proposed facility will be owned and financed by The Connecticut Light and Power Co., The Hartford Electric Light Co., and Western Massachusetts Electric Co., as tenants in common. The Millstone Point Co. will act as representative of the owners with respect to design, construction, and operation of the facility.

The proposed reactor, designated as Millstone Nuclear Power Station Unit 2, is designed for initial operation at approximately 2560 megawatts (thermal), with net electrical output of approximately 828 megawatts.

A copy of the application and the amendments thereto is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C., and at the Town Clerk's Office, Waterford Town Hall, 200 Boston Post Road, Waterford, Conn.

Dated at Bethesda, Md., this 9th day of October 1970.

For the Atomic Energy Commission.

FRANK SCHROEDER,
Acting Director, Division of Reactor Licensing.

[F.R. Doc. 70–13869; Filed, Oct. 13, 1970; 8:52 a.m.]

[Docket No. 50–223]

LOWELL TECHNOLOGICAL INSTITUTE

Extension of Completion Date of Construction Permit

Lowell Technological Institute having filed a request dated September 8, 1970, for extension of the latest completion date specified in Construction Permit No. CPRR–87, which authorizes construction of a nuclear research reactor on its campus in Lowell, Mass., and good cause having been shown for extension of said date, pursuant to section 185 of the Atomic Energy Act of 1954, as amended, and 10 CFR 50.55 of the Commission's regulations:

It is hereby ordered, That the latest completion date for Construction Permit No. CPRR–87 is extended from October 31, 1970, to October 31, 1971.

Date of issuance: October 1, 1970.

For the Atomic Energy Commission.

PETER A. MORRIS,
Director, Division of Reactor Licensing.

[F.R. Doc. 70–13782; Filed, Oct. 13, 1970; 8:47 a.m.]

CIVIL AERONAUTICS BOARD

[Docket No. 20993; Order 70-10-53]

AMERICAN IMPORTERS ASSOCIATION

Order Regarding Cargo Terminal Charges

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 9th day of October 1970.

Petition of American Importers Association for reconsideration of Order 70-5-93 relating to agreement adopted by the Traffic Conferences of the International Air Transport Association pertaining to cargo terminal charges.

By a petition filed June 5, 1970, the American Importers Association (AIA) requested Board reconsideration of Order 70-5-93 which extended through September 30, 1971, its approval of a provision which, in effect, reduced from three to two days the free storage allowable after arrival of shipments at United States airports in accord with basic storage provisions applicable in most other areas of the world. AIA requested that the Board vacate the order and condition any approval in a manner earlier requested by AIA, which, among other things, would have required the reinstatement of a 72-hour free storage period and the imposition of other conditions.

AIA, in general terms, asserts that the Board erred in its conclusions in finding that extension of approval of the limitation on free storage would not be unreasonable and unfair to American importers and it contended, at the same time, that the limitation would not serve the purpose of promoting efficient handling and clearance of cargo through cargo terminals. AIA contends, too, that the Board erred in failing to find the asserted ambiguity in the rules pertaining to the commencement of free storage time, the variance in the carriers' practices in application of the rules, the high incidence of storage shipments exceeding free storage, and the variance in conditions for handling cargo prevailing at different airports required disapproval or conditioning of approval of the agreement. AIA also considers that the Board erred in not requiring production of detailed documents and experience data from the IATA carriers.

In a joint answer, Pan American World Airways, Inc., and Trans World Airlines, Inc., urge that the AIA petition be denied, stating, in effect, that extension of the free storage period would aggravate and not relieve storage congestion at airports.

AIA has presented no new facts or issues not previously considered in one manner or another by the Board. As indicated, its request for reconsideration is based essentially upon the contention that the prior Board findings and conclusions were erroneous. The Board took full cognizance of AIA's statistical samplings purporting to show a high incidence of storage charges, but observed, in effect, that the data and conclusions were deficient in that there was no showing of reasons why such traffic was held beyond the free storage period.

In its petition for reconsideration, AIA has presented no information to indicate that the storage charges accrued notwithstanding reasonable diligence to pick up shipments promptly, and the Board does not find a basis on this record to conclude that the "two-day" rule is unreasonably short. Similarly, AIA's contentions as to lack of uniform practices of the carriers consistent with their tariffs does not demonstrate that the free storage period is unreasonably short. In these circumstances, we cannot find that extended approval of the agreement was adverse to the public interest or that the approval of the agreement should be conditioned as requested. The Board therefore does not find that its prior order was in error, and the petition for reconsideration will be denied.

Accordingly, it is ordered, That:

The petition of the American Importers Association for reconsideration of Order 70-5-93 is denied.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] HARRY J. ZINK,
Secretary.

[F.R. Doc. 70-13820; Filed, Oct. 13, 1970; 8:49 a.m.]

[Docket No. 22629]

COLLINGWOOD AIR SERVICE, LTD.

Notice of Hearing

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that hearing on the above-entitled application is assigned to be held on October 29, 1970, at 10 a.m., e.s.t., in Room 805, Universal Building, 1825 Connecticut Avenue NW., Washington, D.C., before Examiner Joseph L. Fitzmaurice.

Dated at Washington, D.C., October 8, 1970.

[SEAL] THOMAS L. WRENN,
Chief Examiner.

[F.R. Doc. 70-13819; Filed, Oct. 13, 1970; 8:49 a.m.]

[Docket No. 22628; Order 70-10-48]

INTERNATIONAL AIR TRANSPORT ASSOCIATION

Order Regarding Fare Matters

Issued under delegated authority October 8, 1970.

An agreement has been filed with the Board, pursuant to section 412(a) of the Federal Aviation Act of 1958 (the Act) and Part 261 of the Board's Economic Regulations, between various air carriers, foreign air carriers, and other carriers, embodied in the resolutions of Joint Conference 1-2 of the International Air Transport Association (IATA). The agreement, which was adopted at the Honolulu Worldwide Passenger Fare Conference, for early effectiveness on November 1, 1970, has been assigned the above-designated C.A.B. agreement number.

The agreement would extend to March 31, 1971, certain North Atlantic fares to/from Budapest which are currently due to expire on October 31, 1970.

Pursuant to authority duly delegated by the Board in the Board's regulations, 14 CFR 385.14, it is not found, on a tentative basis, that Resolution JT12(41) 002r, which is incorporated in the above-described agreement, is adverse to the public interest or in violation of the Act.

Accordingly, it is ordered, That:

Action on Agreement C.A.B. 22006 be and hereby is deferred with a view toward eventual approval.

Persons entitled to petition the Board for review of this order, pursuant to the Board's regulations, 14 CFR 385.50, may, within 10 days after the date of service of this order, file such petitions in support of or in opposition to our proposed action herein.

This order will be published in the FEDERAL REGISTER.

[SEAL] HARRY J. ZINK,
Secretary.

[F.R. Doc. 70-13821; Filed, Oct. 13, 1970; 8:49 a.m.]

FEDERAL COMMUNICATIONS COMMISSION

[Docket Nos. 18308, 18793; FCC 70R-337]

CHRISTIAN VOICE OF CENTRAL OHIO AND DELAWARE-GAHANNA FM RADIO BROADCASTING STATION, INC.

Memorandum Opinion and Order Enlarging Issues

In regard applications of Christian Voice of Central Ohio, Gahanna, Ohio, Docket No. 18308, File No. BPH-6137; and Delaware-Gahanna FM Radio Broadcasting Station, Inc., Delaware, Ohio, Docket No. 18793, File No. BPH-7004; for construction permits.

1. This proceeding involves the mutually exclusive applications of Christian Voice of Central Ohio (CVCO) and Delaware-Gahanna FM Radio Broadcasting Station, Inc. (D-G) for new FM broadcast stations to operate on Channel 285A at Gahanna, Ohio, and Delaware, Ohio, respectively. The applications were designated for consolidated hearing on various issues by Commission memorandum opinion and order, released February 12, 1970, 21 FCC 2d 369, 18 RR 2d 375. By memorandum opinion and order, FCC 70R-278, 24 FCC 2d 709, released August 10, 1970, the Review Board enlarged the scope of the proceeding by adding several issues relating to the character qualifications of D-G. Now before the Review Board are: a petition to enlarge issues, filed June 8, 1970, by

D–G;[1] and a further petition to enlarge issues, filed June 30, 1970, by CVCO.[2] Each of the applicants requests the addition of character qualifications issues against the other. In addition, the Broadcast Bureau, in its comments on D–G's petition, requests the addition of four character qualifications issues against CVCO. Since the two petitions concern similar issues and arise out of the same factual allegations, the Board will consider them together.

2. In its petition, D–G requests the addition of two issues, one to determine whether CVCO, or persons associated with it, engaged in harassment or an attempted boycott of D–G, or its stockholders, and the other to determine in light thereof, whether CVCO is qualified to be a broadcast licensee. In support, D–G alleges that CVCO, through its principals and persons associated with it, have attempted: (1) To influence people to cancel subscriptions to the Rocky Fork Enterprise, a newspaper published by La Roux Mentz, a D–G stockholder; and (2) to persuade D–G stockholders to withdraw from the corporation. D–G submits the affidavits of three persons, one of them a D–G stockholder, to support these allegations:[3] (1) The affidavit of Lola Ulry describes a conversation that affiant had on an unspecified date with CVCO's president, Paul B. "Pat" Patterson, during which Patterson allegedly downgraded Mrs. Mentz, one of D–G's principals, and urged Mrs. Ulry to encourage her friends to cancel their subscriptions to the Enterprise in order to enable CVCO to get the FM facility. According to Mrs. Ulry, Patterson initiated the conversation. (2) The affidavit of Clarence Bowser, a D–G stockholder, describes a conversation that Bowser had "several months ago" with one Charles Pegler, managing editor of the Tri-Community News of Gahanna, during which Pegler allegedly suggested that Bowser withdraw from D–G because it was deliberately trying to take the station away from CVCO and because it was on the verge of bankruptcy. According to Bowser, Pegler offered to have Patterson talk to the affiant; asked Bowser to sign an affidavit to withdraw; and, finally, mentioned that he had already talked the "Russell Twins" into signing an affidavit to withdraw. (3) The affidavit of Ann Kaletz, an employee of an unidentified advertising agency, states that "early in March of 1970," Pegler visited affiant at work and asked her why a client of her agency was advertising in the Enterprise. Pegler allegedly proceeded to show her a copy of the Enterprise's financial statement which, he added, had been submitted to the Commission, and told her that the Enterprise was bankrupt and that doing business with it reflected badly on the agency. Affiant further states that Pegler indicated that he was going to make similar visits to other clients. D–G argues that if the Commission permits CVCO to use such tactics, without further inquiry, then the choice between conflicting applications will be made by means of harassment rather than under the criteria of section 307(b) of the Communications Act of 1934, as amended.

3. The Broadcast Bureau, in its comments, maintains at the outset that D–G's petition is untimely,[4] and, therefore, procedurally defective and subject to dismissal. The Bureau submits that D–G has made no attempt to explain the lateness of the filing and that the affidavits relied upon do not seem to relate to events that occurred so recently as to justify the untimely filing. The Bureau concludes that if additional issues are to be designated, it must be on the basis of the Edgefield-Saluda test.[5] On the merits, the Bureau supports D–G's request for an inquiry into CVCO's conduct and, in addition, requests the Board to add four other issues relating to CVCO's "adversarial tactics" and character qualifications. In support, the Bureau relies on D–G's showing and on other related material filed with the Commission, but not referred to in D–G's petition; copies of the material are attached to the Bureau's comments. Thus, the Bureau states that on May 28, 1970, D–G filed a petition for leave to amend its application to reflect the withdrawal of Farrell W. Russell, one of its stockholders.[6] The Bureau notes that annexed to D–G's petition to amend are affidavits from two D–G stockholders (Mrs. La Roux Mentz and Charles Gordon) in which they allege that Russell told them that he had been visited by Patterson and Pegler and that both had advised him not to become involved with D–G. Next, the Bureau notes that in opposition to CVCO's first petition to enlarge issues, filed March 5, 1970,[7] D–G relied in part on the affidavit of La Roux Mentz which alleged that Charles P. Hagan withdrew as a subscriber to D–G after persons associated with CVCO had informed him that CVCO had "the inside track on the FM facility." The Bureau contends that if CVCO persuaded Hagan to withdraw from the D–G partnership, the seriousness of such conduct would be compounded by CVCO's representation to the Board, in its reply to its March 5, 1970, petition to enlarge, that Hagan's withdrawal caused the D–G partnership to enter into a state of dissolution, thereby preventing D–G from filing a valid application. The Bureau finally notes that the affidavit of Reverend Donald E. Sanders, attached to CVCO's reply pleading, filed April 17, 1970, describes a May 4, 1969, meeting with Charles Gordon, a D–G principal. The Bureau maintains that, as a result of the meeting, Reverend Sanders purchased a D–G partnership certificate, and subsequently consulted with the Ohio Division of Securities concerning D–G. The Bureau notes that a Cease and Desist Order was later issued against the D–G partnership for the illegal sale of securities.[8] In the Bureau's opinion, CVCO may have overstepped the bounds of permissible adversarial tactics by: (1) Contacting D–G investors and encouraging them to withdraw;[9] (2) attempting to bring economic pressure on a newspaper which is published by a D–G principal; and (3) causing a person (i.e., Reverend Sanders) to join D–G without having the usual motivation of a partner. The Bureau concludes that CVCO's conduct raises substantial questions concerning that applicant's character qualifications which require exploration at the hearing.

4. In opposition to D–G's petition, CVCO argues that D–G's allegations are "so lacking in merit as to constitute sham" and that they stem from "misrepresentations and false swearings by D–G principals."[10] In CVCO's view, D–G's misconduct necessitates the addition of issues by the Board to determine whether D–G has submitted to the Commission knowingly false affidavits of its principals, and whether it has filed sham pleadings before the Commission. Accordingly, CVCO, in its further petition to enlarge issues, requests the Board to add two character issues against D–G. CVCO's petition relies entirely on the showing made by it in the opposition pleading. In its opposition, CVCO submits that only one of the three incidents relied upon by D–G involves a principal of CVCO, while the other two relate to activities of Charles Pegler, who has his "own reasons" for exposing D–G stockholders to the truth. With regard to Mrs. Ulry's affidavit, CVCO contends that even if Patterson made the precise remarks attributed to him by Mrs. Ulry, this isolated occurrence could not be considered as an economic boycott. In this regard, Mrs. Ulry, in an affidavit attached to CVCO's opposition, states that she inferred from Patterson's remarks that if people in the community canceled their subscriptions to the Enterprise,

[1] Also before the Board are the following related pleadings: (a) Comments, filed June 17, 1970, by the Broadcast Bureau; and (b) opposition, filed June 30, 1970, by CVCO.

[2] Related pleadings before the Board are: (a) Comments, filed July 17, 1970, by the Broadcast Bureau; (b) opposition, filed July 22, 1970, by D–G; and (c) reply, filed Aug. 20, 1970, by CVCO.

[3] The affidavits are attached to D–G's petition.

[4] The designation order in this proceeding was published in the FEDERAL REGISTER on Feb. 18, 1970 (35 F.R. 3128), and D–G's petition was not filed until June 8, 1970.

[5] The Edgefield-Saluda Radio Co., 5 FCC 2d 148, 8 RR 2d 611 (1966).

[6] D–G's petition does not indicate whether Farrell W. Russell is one of the "Russell Twins" referred to in the Bowser affidavit. See paragraph 2, supra.

[7] See the Review Board's memorandum opinion and order, FCC 70R–278, supra.

[8] The Cease and Desist Order and the circumstances surrounding it will be explored at the hearing. See designation order, 21 FCC 2d at 370, 18 RR 2d at 377. See also our memorandum opinion and order, FCC 70R–278, supra.

[9] The Bureau notes that Charles Pegler, editor of the Tri-Community News is not formally connected with CVCO, but argues that he "appears to have joined forces" with Paul Patterson of CVCO.

[10] CVCO also opposes D–G's petition because it was not timely filed, but does not labor the point.

Mrs. Mentz might "reconsider the wisdom of her application." Patterson, also in an affidavit attached to CVCO's opposition, denies making such a suggestion, claiming that he said no more than that he was canceling his subscription.[11] In fact, states Patterson, he did not cancel his subscription, which is free. In addition, CVCO questions the manner in which D–G took Mrs. Ulry's affidavit. According to CVCO, Mrs. Ulry was first requested by Mrs. Mentz to give an unsworn statement; then, several weeks later, after some modification of the statement, she was asked by Mrs. Mentz to attest to the statement; still later, she signed a second affidavit prepared by Mentz. CVCO maintains that, despite repeated requests for the statement from Mrs. Ulry, she received no copies of these documents. CVCO contends, with respect to the Bowser affidavit, that Pegler's discussion with Bowser cannot be attributed to CVCO, especially because Pegler has his own reasons for upsetting the plans of D–G and the Enterprise newspaper which competes with his. Although Patterson and Pegler are acquainted, CVCO submits, Patterson has refused to join Pegler in his attempt to prevent D–G from gaining a license and has not allowed Pegler to ally himself with CVCO. The Kaletz affidavit, CVCO asserts, demonstrates only that Pegler has his own economic reasons for publicly discouraging participation in D–G. In sum, CVCO alleges that D–G's recent activities demonstrate its "congenital and pervasive inability to tell the truth."

5. In response to the Broadcast Bureau's comments on D–G's petition, CVCO maintains that the affidavits of Gordon and Mentz are "misleading, incomplete, and, in some respects, false." CVCO in particular contests Gordon's and Mentz's statements that Patterson and Pegler encouraged Farrell W. Russell's withdrawal from D–G. Russell, in an affidavit attached to CVCO's opposition, states that his principal reason for withdrawing his pledge to D–G was the "rudeness" of Gordon and Mentz. Next, CVCO attaches the affidavit of Charles P. Hagan, which purports to contradict Mrs. Mentz' affidavit which was filed in opposition to CVCO's March 5, 1970, petition to enlarge. Hagan states that his withdrawal from D–G was not prompted by information received by persons associated with, or principals of, CVCO.[12] With regard to Reverend Sanders' subscription, Sanders and Patterson, by affidavit, submit that Sanders' initial contact with Gordon arose out of a bona fide interest in D–G as an investment; however, based upon advice Patterson received from counsel that the D–G solicitation was in violation of the Ohio securities law, Sanders agreed to cooperate with CVCO in furnishing to the Ohio Division of Securities evidence of the illegal sale of securities.

6. In opposition to CVCO's further petition, D–G relies on another series of affidavits. Preliminarily, D–G submits the affidavit of Patricia Gassman, a secretary in the office in which Mrs. Ulry worked, who states that Mrs. Ulry dictated an original statement to her in the presence of Mrs. Mentz, and that Mrs. Ulry signed it, not under oath. Copies of Mrs. Ulry's two statements are attached to D–G's opposition. D–G asserts that there clearly was no distortion in the preparation of the affidavits. Affidavits of other persons involved in the preparation of Mrs. Ulry's affidavit are also attached.[13] In support of its charge regarding CVCO's improper adversarial tactics, D–G attaches Mrs. Mentz' affidavit of July 18, 1970, describing her conversation with Joseph Fink, a local businessman.[14] According to Mrs. Mentz, Fink told her that Patterson, president of CVCO, said that "Mrs. Mentz is deliberately interfering with our [CVCO's] efforts to obtain a radio station." Finally, D–G contends that there is no subscription to the Enterprise in Patterson's name, but there is a subscription in his wife's name.[15] For this reason, D–G opines that the Commission should add an issue to investigate statements made by CVCO such as the claim that the Patterson subscription is free.

7. In its comments on CVCO's further petition, the Broadcast Bureau notes that the applicants have made a series of charges and countercharges involving each other's character and that affidavits have been submitted which tend to support the conflicting claims. In addition, the Bureau contends that the absence of an affidavit from Pegler prevents final resolution of the Bowser and Russell incidents. Under these circumstances, the Bureau suggests that the Board may wish to add all of the issues that have been requested in order to resolve at the hearing all of the facts and circumstances surrounding the matters brought to the Board's attention.[16]

8. In reply, CVCO continues to dispute D–G's affidavits and the arguments arising from them. CVCO characterizes as a "patent falsehood" Mrs. Mentz's claim that Hagan ascribed his withdrawal to advice from CVCO associates. Next, CVCO notes that Farrell Russell stated that he withdrew from D–G because of "the rudeness of Mr. Gordon and Mrs. Mentz." CVCO avers that the affidavits of Gordon and Mrs. Mentz would lead one to believe that Russell's withdrawal resulted from CVCO's intervention and solicitations. This, posits CVCO, requires an issue to determine whether Gordon and Mrs. Mentz sought to prejudice a fair consideration of CVCO by filing a misleading affidavit with the Commission. Next, in response to the Bureau's request for an affidavit from Pegler, CVCO submits Pegler's August 12, 1970, affidavit which supports Patterson's and Russell's versions of their conversations. Turning to the Ulry matter, CVCO reiterates the fact that D–G has offered no explanation for its 3-month late filing of its petition concerning this matter. In connection with the Joseph Fink affidavit, CVCO observes that "Mrs. Mentz's failure to obtain an affidavit from him as to his personal knowledge of his conversation with Mr. Patterson is eloquent evidence that this charge is substantially lacking as well as procedurally outrageous." Finally, with regard to the matter of Patterson's subscription to the Enterprise, which CVCO labels as "trivia," CVCO attaches an affidavit of Mrs. Patterson, in which she admits to her signature on the September 1, 1964, subscription, but does not remember having signed it, or ever having been billed.

9. The Board agrees with the Bureau and CVCO that D–G's petition, which initiated the series of pleadings now before us, is most untimely and that D–G has advanced no reasons whatsoever for the late filing. However, it is our opinion that D–G, CVCO and the Bureau have all raised public interest questions of substantial magnitude which require us to consider the merits of the various requests now before us. Medford Broadcasters, Inc. (KDOV), 18 FCC 2d 699, 700, 16 RR 2d 900, 902 (1969), and cases cited therein; The Edgefield-Saluda Radio Co., supra. Each of the parties, including the Bureau, has raised very serious questions about the character qualifications of the applicants. The parties rely exclusively on affidavits to substantiate their allegations of wrongdoing and, in many instances, the several affidavits[17] conflict sharply on matters of importance. For

[11] In her affidavit, Mrs. Ulry comments on Patterson's affidavit and states that Patterson correctly related the substance of their conversation, but construes his remarks to mean that he would not be displeased if the Enterprise were to lose a number of subscribers.

[12] CVCO and D–G again raise the issue of when Charles Hagan stopped payment on the check he tendered in payment for an interest in D–G. The matter of Hagan's stop-payment order was placed in issue in our earlier Memorandum Opinion and Order, FCC 70R–278, supra. Therefore, it would serve no useful purpose to again summarize the positions of the parties on the matter. Suffice it to say that both parties continue to dispute the facts.

[13] An affidavit of Mrs. Mentz, dated July 15, 1970, affirms Patricia Gassman's statement. D–G also attaches the affidavit of Mrs. Nancy Framke, dated July 16, 1970, which states that the changes between Mrs. Ulry's signed, unsworn statement and her later affidavit were made merely for clarity, and that there was no attempt to mislead anyone. In addition, D–G submits the affidavit of Mary Jane Garrison, dated July 15, 1970, which states that Mrs. Ulry's affidavit arose from complaints and remarks made by Mrs. Ulry herself, and not from any initiative or pressures from D–G or Mrs. Mentz.

[14] Although D–G's pleading is labeled an opposition to CVCO's further petition to enlarge issues, it contains matters which are in reply to matters raised by CVCO in opposition to D–G's June 8, 1970, petition.

[15] In support of this, D–G attaches a copy of Mrs. Patterson's subscription.

[16] In support, the Bureau cites Television Broadcasters, Inc. (KBMT), 1 FCC 2d 970, 6 RR 2d 293 (1965); Television Broadcasters, Inc. (KBMT), FCC 65–379, 5 RR 2d 155; and Catskills Broadcasting Co., FCC 61–770, 21 RR 757.

[17] In all, there are 20 affidavits, in addition to other documents, attached to the various pleadings filed with the Board.

example, Mrs. Mentz claims that Charles Hagan told her that he was stopping payment on his check to D–G "because he had been informed by persons associated with [CVCO] that they had the inside track on the FM facility." Hagan, in his affidavit, disputes the truth of Mrs. Mentz's statement. Likewise, there is a direct conflict between Charles Gordon and Mrs. Mentz, on one hand, and Farrell Russell, on the other, as to the reasons for Russell's withdrawal from D–G. These examples are not meant to be exhaustive; they merely illustrate the nature of the disputes between the applicants. These disputes arise in some instances through affidavits of persons with personal knowledge of the facts contained therein; in others through hearsay affidavits. However, from an examination of all of the affidavits, it appears that someone may not be telling the truth and the Board is unable to resolve any of the serious questions raised on the basis of the pleadings. In the Board's view, the conflicts between the parties, as exemplified by the contrasting affidavits, must be resolved on the basis of an evidentiary record. See Sumiton Broadcasting Co., Inc., 15 FCC 2d 400, 404, 14 RR 2d 1000, 1005 (1968), and cases cited therein. Therefore, we will grant D–G's petition, CVCO's further petition and the Bureau's request, and will add character qualifications issues against both applicants."[19]

10. *Accordingly, it is ordered*, That the petition to enlarge issues, filed June 8, 1970, by Delaware-Gahanna FM Radio Broadcasting Station, Inc., and the further petition to enlarge issues, filed June 30, 1970, by Christian Voice of Central Ohio, are granted; and

11. *It is further ordered*, That the issues in this proceeding are enlarged by the addition of the following issues:

(a) To determine whether Christian Voice of Central Ohio or persons associated with it engaged in harassment or attempted boycott of Delaware-Gahanna FM Radio Broadcasting Station, Inc., or its stock subscribers.

(b) To determine whether Christian Voice of Central Ohio had directly or indirectly approached members of its competing applicant in an attempt to cause such members to withdraw from Delaware-Gahanna FM Radio Broadcasting Station, Inc.

(c) To determine whether Christian Voice of Central Ohio has directly or indirectly attempted to place economic pressure on stockholders of Delaware-Gahanna FM Radio Broadcasting Station, Inc.

(d) To determine whether Christian Voice of Central Ohio has encouraged or arranged for individuals to join Delaware-Gahanna FM Radio Broadcasting Station, Inc., for reasons other than becoming a principal of the applicant.

(e) To determine in light of the evidence adduced under the foregoing issues, whether Christian Voice of Central Ohio possesses the requisite or comparative qualifications to be a licensee of the Commission.

(f) To determine whether Delaware-Gahanna FM Radio Broadcasting Station, Inc., has submitted knowingly false affidavits of its principals to the Commission.

(g) To determine whether Delaware-Gahanna FM Radio Broadcasting Station, Inc., has engaged in the filing of sham pleadings before the Commission.

(h) To determine whether the principals of Delaware-Gahanna FM Radio Broadcasting Station, Inc., have been guilty of material misrepresentations to potential and/or actual investors in Delaware-Gahanna FM Radio Broadcasting Station, Inc.

(i) To determine in light of the evidence adduced under the foregoing issues, whether Delaware-Gahanna FM Radio Broadcasting Station, Inc., possesses the requisite or comparative qualifications to be a licensee of the Commission.

12. *It is further ordered*, That the burden of proceeding with the introduction of evidence under issue (a) added herein shall be on Delaware-Gahanna FM Radio Broadcasting Station, Inc.; that the burden of proceeding under issues (f)–(h) added herein shall be on Christian Voice of Central Ohio; that the burden of proceeding under issues (b)–(d) added herein shall be on the Broadcast Bureau; that the burden of proof under issues (a)–(d) shall be on Christian Voice of Central Ohio; and that the burden of proof under issues (f)–(h) shall be on Delaware-Gahanna FM Radio Broadcasting Station, Inc.

Adopted: October 5, 1970.

Released: October 7, 1970.

FEDERAL COMMUNICATIONS COMMISSION,[19]

[SEAL] BEN F. WAPLE, *Secretary.*

[F.R. Doc. 70-13812; Filed, Oct. 13, 1970; 8:49 a.m.]

[19] The Board notes that in its Mar. 5, 1970, petition to enlarge issues, CVCO requested, inter alia, an issue to determine whether D–G has been guilty of material misrepresentations to potential and actual investors in D–G. At that time, we denied the request because CVCO alleged only one instance of misrepresentation. See FCC 70R–278, supra. However, in Farrell Russell's affidavit now before us he states that he also was not informed by D–G's principals that "there was another application pending before the Federal Communications Commission for the same frequency." The Board therefore deems it appropriate to add the earlier requested issue at this time.

[Docket No. 19037; FCC 70-1071]

ABEN E. JOHNSON, JR. (WAXN)

Order Designating Application for Oral Argument on Stated Issue

In regards application of Aben E. Johnson, Jr. (WAXN), Hammond, Ind., Docket No. 19037, File No. BMPCT–6380, for extension of time within which to complete construction.

1. The Commission has before it the above-captioned application of Aben E. Johnson, Jr., permittee of television broadcast station WAXN, channel 62, Hammond, Ind.

2. This application was previously before the Commission in connection with a modification application for station WAXN, Aben E. Johnson, Jr., 14 FCC 2d 186 (1968). In that proceeding, the Commission dismissed the applicant's modification application as inconsistent with its rules and also concluded that Mr. Johnson had not satisfactorily shown that construction of station WAXN was prevented by causes not under his control, pursuant to section 319(b) of the Communications Act of 1934, as amended. The applicant was given 30 days to inform the Commission whether or not he intended to prosecute this extension application through the hearing process and a request for a hearing was made by letter of August 29, 1968.

3. A petition for reconsideration of the Commission's denial of Mr. Johnson's modification application was also filed on August 29, 1968, and this proceeding was not terminated until January 8, 1970, FCC 70–36. Since January 8, 1970, the applicant has not begun to construct station WAXN nor committed himself to a firm date as to when construction will commence.

4. *Accordingly, it is ordered*, That the above-captioned application of Aben E. Johnson, Jr., for an extension of time within which to complete construction of television broadcast station WAXN, Hammond, Indiana, is designated for oral argument before the Review Board, at a time and place to be specified in a subsequent Order, upon the following issue: To determine whether the reasons advanced by the permittee in support of his request for an extension of his completion date, constitute a showing that failure to complete construction was due to causes not under the control of the permittee, or constitute a showing of other matters sufficient to warrant a further extension of time within the meaning of section 319(b) of the Communications Act of 1934, as amended, and § 1.534(a) of the Commission's rules.

5. *It is further ordered*, That to avail himself of the opportunity to be heard, the applicant, in person, or by attorney, shall, within ten (10) days of the mailing of this order, file with the Commission an original and nineteen (19) copies of a written appearance stating an intention to appear on the date fixed for the oral argument and present arguments on the issue specified and shall have opportunity to file briefs or memoranda of law by a date to be specified.

Adopted: September 30, 1970.

Released: October 8, 1970.

FEDERAL COMMUNICATIONS COMMISSION,[1]

[SEAL] BEN F. WAPLE, *Secretary.*

[F.R. Doc. 70-13811; Filed, Oct. 13, 1970; 8:49 a.m.]

[19] Review Board Members Nelson and Kessler absent.

[1] Commissioner Wells absent.

[Docket Nos. 19006–19009; FCC 70–1012]

MARITIME COMMUNICATIONS SERVICE ET AL.

Memorandum Opinion and Order Designating Applications for Consolidated Hearing on Stated Issues

In the matter of application of Loren R. McQueen doing business as Maritime Communications Service for a construction permit for a new public Class III–B coast station to be located at Mt. Umunhum near Almaden, Calif., Docket No. 19006, File No. 4900–M–P–48; application of Francis I. Lambert and Harry L. Brock, Jr., doing business as Advanced Communications Co., for a construction permit for a new public Class III–B coast station to be located at Mt. Toro near Monterey, Calif., Docket No. 19007, File No. 5164–M–P–78; application of Western California Telephone Co., for a construction permit for a new public Class III–B coast station to be located near Santa Cruz, Calif., Docket No. 19008, File No. 5427–M–P–98; and application of Salinas Valley Radio Telephone Co., for a construction permit for a new public Class III–B coast station to be located near Pebble Beach, Calif., Docket No. 19009, File No. 770–M–L–40.

1. All the above-captioned applications are for authority to operate new Class III–B public coast stations. This class of station provides ship-shore radiotelephone common carrier (public correspondence) service, primarily of a local character, on VHF channels.[1] The applicants seek authority to serve portions of the area bounded by the San Francisco/Oakland area on the north and Monterey/Pebble Beach on the south. Pacific Telephone and Telegraph Co., is the licensee of public Class III–B coast station KMH–828, the transmitter of which is located on Round Top Hill, near Oakland, Calif. Pacific maintains that the useful service area of station KMH–828 encompasses all the navigable waters of San Francisco Bay, San Pablo Bay, and Suisun Bay and coastal waters of the Pacific Ocean adjacent to the Golden Gate to the north and south of San Francisco.

2. Loren R. McQueen doing business as Maritime Communications Service has filed an application for a new public Class III–B coast station a few miles south of San Jose, near Almaden, Calif., approximately 43 nautical miles south of Pacific's station KMH–828 near Oakland. McQueen proposes to serve boats operating in the South San Francisco Bay area and in coastal waters of the Pacific Ocean in an area extending approximately 75 miles from Monterey north past Pidgeon Point near Half Moon Bay. Pacific has filed a petition to deny the McQueen application primarily on the grounds that the proposed station would duplicate the service of Pacific's station KMH–828 within the San Francisco Bay area, but has not opposed the remaining three applications which also propose to serve the Monterey Bay area.

3. Western California Telephone Co.'s proposed station would be located approximately 8 miles north of Santa Cruz, Calif., but only a few miles south of the site proposed by McQueen; however, Western proposes to use a directional antenna to avoid conflict with Pacific's Oakland station. Western proposes to serve commercial fishing vessels and small pleasure boats operating in coastal waters of the Pacific Ocean in an area extending north of Point Ano Nuevo near Pigeon Point and south to Carmel Bay below Monterey Bay. Francis I. Lambert and Harry L. Brock, Jr., doing business as Advanced Communications Co. Advanced Communications Co.'s proposed station would be located at Mount Toro approximately 17 miles east of Carmel, Monterey, and Pebble Beach, Calif., and approximately 40 miles south of McQueen and Western's proposed sites, and proposes to serve commercial and recreational vessels operating in the Pacific Ocean in coastal waters south of San Francisco in the vicinity of Point Ano Nuevo, Santa Cruz, and Monterey Bay, and to coastal waters considerably south of Big Sur and Lucia, Calif. Salinas Valley Radio Telephone Co.'s proposed station would be located at Pebble Beach between Monterey and Carmel approximately 17 miles west of the Advanced proposed site at Mount Toro, and approximately 40 miles south of McQueen and Western's proposed sites, and proposes to serve vessels operating in waters off the coast of California in the Pebble Beach and Monterey Bay area.

4. The frequencies proposed to be used by the four new applicants and used by Pacific's Class III–B public coast station KMH–828 are set forth in column form. Possible electrical interference between stations is shown by an alphabetic designator following certain frequencies listed in the frequency column. Inasmuch as all stations use the safety and calling frequency 156.8 MHz, only the working frequency will be specified.

Applicant	Transmitter location	Frequency
McQueen doing business as Maritime Communications Service.	Almaden—Mt. Umunhum.	162.0A
Advanced Communications Co.	Monterey—Mt. Toro.	161.90B
Western California Telephone Co.	Santa Cruz....	161.80 161.95
Salinas Valley Radio Telephone Co.	Pebble Beach.	162.0A
Pacific Telephone and Telegraph Co. (KMH–828).	Oakland—Round Top Hill.	161.90B

5. Since filing of the majority of the subject applications, the rules have been changed so that the power of coast stations is now limited to 50 watts by § 81.134(d) of the rules. Applicants will be required to meet this power limitation. Further, in those instances where applicants are proposing the use of certain lands under jurisdiction of the U.S. Government, the procedures specified in § 1.70(e) of the rules must be followed with respect to obtaining a land use permit from the U.S. Government agency involved. Except for these matters and the issues specified herein, the applicants are otherwise qualified.

6. With respect to the McQueen application, Pacific alleges in its petition that McQueen's proposed station would duplicate the service[2] of Pacific's station KMH–828 within a major and the most important portion of the service area of that station. Further that Pacific presently handles a much lower volume of traffic through KMH–828 than the station is capable of handling. In addition, Pacific raises the question as to McQueen's legal qualifications, i.e., lack of a certificate of public convenience and necessity from the California Public Utilities Commission (PUC). No opposition was filed although applicant did submit several letters from boaters in the area concerning the need for service. In addition, McQueen submitted a copy of a letter dated March 9, 1970, to the PUC where he claims that a certificate is not needed and alleges that a major portion of his station's proposed service area would not duplicate the service area of Pacific's station KMH–828 and that a need exists for the proposed new station.[3]

7. The petition to deny filed by Pacific and the allegations contained therein raise substantial and material questions of fact. The issues hereinafter specified in this order allow for resolution of the matters raised in the petition concerning service areas and duplication of service. With respect to the question of the requirement for a certificate from the PUC, it should be noted that Part 81 of the Commission's Maritime Service Rules and Regulations does not contain a provision similar to § 21.15(c)(4) of the

[1] Section 81.3(j) of the rules defines a Class–III coast station as one "* * * licensed to provide a maritime mobile service primarily of a local character * * *" in contradistinction from Class–I stations that provide service "* * * up to several thousand miles * * *" and Class–II stations that "* * * provide service primarily of a regional character * * *" as defined in § 81.3(h) and (i) of our rules.

[2] Section 81.303 Duplication of Facilities. "A public coast station shall not be authorized to provide a very high frequency maritime mobile service by the use of any frequency assignment above 100 Mc/s solely to any geographic area in which such service is already provided, or for which a valid construction permit or permits has or have been issued for the establishment of a station or stations to provide such service in that area, unless the applicant shall make an affirmative showing that the public interest, convenience or necessity would be served by such a grant, and among other things, that there is a need for such additional facilities in the area involved, that the authorized facilities in that area are not, or will not be, adequate to meet the very high frequency communication needs in the area, and that the applicant's proposed facilities involving a frequency assignment above 100 Mc/s will serve the very high frequency communication needs in such area."

[3] This filing was not accepted as a formal opposition since it did not meet the requirements of §§ 1.962(b) and 1.45(a) of the rules. Its contents have been noted, however, and it is included in the Commission's file in this matter.

Commission's Domestic Public Radio Services Rules and Regulations where the possession of a state certificate of public convenience and necessity, if required, must be demonstrated by an applicant.[4] This is not to say that the State of California lacks jurisdiction over such portions of the maritime communication services proposed as are proved to be intrastate in character. The Commission, however, does not require such a certificate as a condition precedent to a grant of an authorization for a Public Coast station. However, any grants made will be conditioned on the applicant securing any appropriate or required authorization from the state regulatory commission.

8. Experience has shown that reliable ship to shore VHF communications can be exchanged up to distances from 30 to 50 miles depending on the stations. The limiting factor is usually the ship station rather than the coast station. It becomes evident from an analysis of the subject applications that overlap in service areas could be substantial if all of the applications were granted. In addition disruptive electrical interference could result. The questions to be resolved are those which relate to the source, and amount of maritime traffic handled and proposed to be handled by each of the stations, the geographical area served and proposed to be served by each applicant, the extent to which these service areas substantially overlap, the extent to which a duplication of VHF public coast radiotelephone facilities would occur, the extent of the need for an additional VHF public coast station or stations, and the public benefits to be derived from authorizing any or all of the proposed facilities. Additionally, there is the fundamental question of whether a community, such as metropolitan San Jose to the south of San Francisco Bay, or Santa Cruz north of Monterey Bay or one on the Monterey peninsula south of Monterey Bay, should be entitled to local exchange service notwithstanding the fact that they individually may be within an area in which satisfactory maritime radio communications can ordinarily be exchanged with a public coast station that may have been established or may be established to provide service primarily to another locality as contemplated by § 81.3(j) of the rules. Accordingly, in view of the substantial and material questions of fact raised by the applications herein, the Commission is unable to make a determination that it would be in the public interest to grant the applications. It appears, therefore, that an evidentiary hearing must be held to determine if the public interest would be served by a grant of any or all the applications.

9. The Public Utilities Commission (PUC) for the State of California by letter dated January 13, 1970, expressed its interest in the subject applications and requested that it be made a party to a consolidated hearing on the applications. The PUC stated that "these applications, if granted, would help to form a network of short-range off-shore communications along a majority of the California coastline, assuming at least some of the applications in the consolidated hearing of Dockets Nos. 18652–18663 are granted."[5] The PUC further stated that its participation in this proceeding will be limited to the extent already indicated in the consolidated hearing of Dockets Nos. 18652–18663, Advanced Electronics et al. In its earlier filed pleadings in Dockets Nos. 18652–18663, in which the PUC was named a party in interest, the California Commission stated that it was questionable whether the state could participate if hearings were held only in Washington, D.C., requested that certain issues be added,[6] offered to adduce testimony relative to the need for the proposed stations, expected traffic volumes and number of vessels to be served by the respective applicant's stations. In addition, because of the local nature of many of the issues, the PUC requested that the hearing be held in California in order to assure maximum participation of interested parties and public witnesses and a full and complete record on all the issues. As a result of the California PUC's position and similar pleadings filed by the parties in Dockets Nos. 18652–18663, the Chief Hearing Examiner subsequently issued an order transferring that hearing to the State of California.

10. With respect to the issues heretofore requested by the California PUC, the issues specified herein allow for development of the matters they raise. The request to hold the hearing in California by the PUC is a matter that may be best acted upon by the Chief Hearing Examiner.

11. *It is ordered*, That the above-captioned applications are 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 the facts with respect to the facilities, rates, practices, interconnection with landline facilities and services of each applicant, including the geographic area served and proposed to be served by each.

b. To determine the nature and amount of traffic to be handled by each of the proposed stations, and from what sources such traffic will be derived.

c. To determine what the need is for VHF Public Coast Service to local communities in the area between San Francisco/Oakland and the Monterey peninsula and how that need can best be filled under existing conditions.

d. To determine the area in which station KMH–828 can satisfactorily exchange communications with vessels, and the extent, if any, to which such area would be overlapped by the stations proposed.

e. To determine, in light of the evidence adduced on issue (d), whether overlap, if any, would result in an economic climate which would adversely affect the ability of the existing station to adequately serve the public.

f. To determine the nature and extent of co-channel interference, if any, that would arise from simultaneous operation of the stations listed in paragraph 4 above with an alphabetic designator, and whether such interference would be tolerable or mutually destructive.

g. To determine whether a public coast station to provide service primarily of a local character should be established at Almaden/San Jose, Santa Cruz, Monterey, and Pebble Beach, Calif., even if the general San Francisco Bay and Monterey Bay harbor areas and coastal waters of the Pacific Ocean in the immediate vicinity lies within an area in which satisfactory maritime radiocommunications can ordinarily be exchanged with a public coast station that may have been established or may be established to provide service primarily to another locality.

h. To determine, in light of the evidence adduced on all the foregoing issues, whether the public interest, convenience and necessity will be served by a grant of any or all of the subject applications.

12. *It is further ordered*, That the burden of proof and the burden of proceeding with the introduction of evidence on issue (d) is on Pacific Telephone and Telegraph Co.; on all the other issues the burden is on each applicant with respect to its application except to issue (h) which is conclusory.

13. *It is further ordered*, That the petition to deny filed herein by Pacific, is granted to the extent indicated herein and, in all other respects, the said petition is denied.

14. *It is further ordered*, That coverage area, i.e., the reliable service area of a Class III–B public coast station, shall be computed on the basis of the parameters, methods, and other information contained in the Commission's notice of

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[4] Part 81 has no provision similar to § 21.15 (c) (4), which reads: "Sec. 21.15 *Content of applications.* * * *

"(c) * * *

"(4) Where required by applicable local law, a certified copy of the franchise or other authorization issued by appropriate regulatory authorities. If no such local requirement exists, a statement to that effect should be included in the application."

[5] Twelve applications for new and changed VHF Class III–B public coast stations to serve coastal waters of the Pacific Ocean in the Southern California area where designated for consolidated hearing on September 10, 1969, Dockets Nos. 18652–18663, and are currently in hearing status.

[6] "1. That the maximum utilization of the available channels or availability of the channels to vessels is a paramount consideration in the granting of channel to individual applicants.

"2. That the public maritime radio service furnished to vessels be compatible with and interconnected to the land-line toll and exchange service furnished within the State of California.

"3. That vessels should have available to them maritime radio service which allows them to call their home port without incurring excessive land telephone toll charges.

"4. That the quality of signal available from fixed stations in the maritime service be adequate to provide complete coverage of California harbor areas as well as the open waters adjacent to such harbors."

proposed rule making in Docket No. 18944, adopted August 26, 1970.

15. *It is further ordered*, That to avail themselves of an opportunity to be heard Loren R. McQueen, doing business as Maritime Communications Service; Francis I. Lambert and Harry L. Brock, Jr., doing business as Advanced Communications Co.; Western California Telephone Co.; Salinas Valley Radio Telephone Co.; Pacific Telephone and Telegraph Co., and the California Public Utilities Commission, pursuant to § 1.221(c) of the Commission's rules, in person or by attorney, shall, within twenty (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.

Adopted: September 23, 1970.

Released: October 7, 1970.

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

[F.R. Doc. 70-13813; Filed, Oct. 13, 1970; 8:49 a.m.]

FEDERAL MARITIME COMMISSION

CALIFORNIA/JAPAN COTTON POOL

Notice of Agreement Filed

Notice is hereby given that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1045 I Street NW., Room 1202; or may inspect the agreement at the Field Offices located at New York, N.Y., New Orleans, La., and San Francisco, Calif. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 20 days after publication of this notice in the FEDERAL REGISTER. Any person desiring a hearing on the proposed agreement shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the statement should indicate that this has been done.

Notice of agreement filed by:

Mr. W. C. Galloway, Chairman, California/Japan Cotton Pool, 635 Sacramento Street, San Francisco, Calif. 94111.

Agreement No. 8882-7 between the member lines of the California/Japan Cotton Pool modifies the basic pool agreement by deleting States Marine Lines as a member thereof and adjusting the percentage participation and allocated sailings of the remaining American and Japanese member companies accordingly.

Dated: October 8, 1970.

By order of the Federal Maritime Commission.

FRANCIS C. HURNEY,
Secretary.

[F.R. Doc. 70-13822; Filed, Oct. 13, 1970; 8:49 a.m.]

OCEANIC STEAMSHIP CO. AND PACIFIC FAR EAST LINE, INC.

Notice of Agreement Filed

Notice is hereby given that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1405 I Street NW., Room 1202; or may inspect the agreement at the Field Offices located at New York, N.Y., New Orleans, La., and San Francisco, Calif. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C., 20573, within 10 days after publication of this notice in the FEDERAL REGISTER. Any person desiring a hearing on the proposed agreement shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the statement should indicate that this has been done.

Notice of agreement filed by:

Mr. Leo C. Ross, President, Pacific Far East Line, Inc., 141 Battery Street, San Francisco, Calif. 94111.

Agreement No. 9903 between the captioned lines provides for Pacific Far East Line's (PFEL) purchase of the four Oceanic Steamship Company's (Oceanic) vessels and their equipage presently engaged in the North American Pacific Coast-Australasian trades. The agreement in the form of a contract of sale also reflects Oceanic's and PFEL's understanding as to the utilization and disposition of affected Oceanic employees; transfer of shoreside facilities and stores; transfer and assignment to PFEL of Oceanic's Maritime Administration construction-differential subsidy and contracts for two containerships; and details pertaining to the "closing of the contract".

Dated: October 13, 1970.

By order of the Federal Maritime Commission.

FRANCIS C. HURNEY,
Secretary.

[F.R. Doc. 70-13962; Filed, Oct. 13, 1970; 11:03 a.m.]

FEDERAL POWER COMMISSION

[Project 82]

ALABAMA POWER CO.

Notice of Application for New License for Constructed Project

OCTOBER 7, 1970.

Public notice is hereby given that application for new license has been filed under the Federal Power Act (16 U.S.C. 791a-825r) by Alabama Power Co. (correspondence to: Joseph M. Farley, President, Alabama Power Co., Post Office Box 2641, Birmingham, Ala. 3522) for its constructed Mitchell Dam Project No. 82, located on the Coosa River in the counties of Chilton and Coosa within a 50-mile radius of Alexander City, Bessemer, Birmingham, Homewood, Montgomery, Selma, Sylacauga, and Talladega.

The existing Mitchell Dam Project consists of: (1) A concrete gravity dam 1,264-feet long with a maximum height of 106 feet, containing 26 gated spillway sections, with top of 15 feet x 30 feet gates at elevation 312 feet U.S.G.S., and five ungated sections with overflow crests at elevation 312; (2) a reservoir with surface area of 5,850 acres at elevation 312 feet; (3) a semioutdoor powerhouse, on the upstream side of the middle section of the dam, containing three turbines rated at 24,000 hp. and one rated at 29,000 hp. connected respectively to three 17,500 kw. generators and one 20,000 kw. generator; (4) nine 7,500 kva. 600/63,600 volt transformers, three 8,333 kv.-a., 6,600/69,360 volt transformers, and one 30,000 kv.-a. 3 phase, 6,600/115,000 volt transformer (spare), and (5) all other facilities and interests appurtenant to operation of the project. Applicant proposes to install additional capacity of 80,000 kw. (two 40,000 kw. units) in a new powerhouse to be constructed on the downstream side of the west end of the dam. The powerhouse will occupy the space presently taken by three ungated and one gated spillway sections. The spillway capacity lost would be replaced by lowering the crests of two ungated spillway sections to elevation 297 and

installing two spillway gates. One new gated spillway section will also be added. The project provides, under recreational facilities, 245 cottage sites, approximately 117 acres for public organizational use, 3,000 acres to be included in a Game and Wildlife Preserve, and a planned 20-acre park.

According to the application: (1) The project is operated as a peaking plant within Applicant's system which is interconnected with that of the Southern Co. consisting of Applicant, Georgia Power Co., Gulf Power Co., Mississippi Power Co. and Southern Electric Generating Co.; (2) the estimated net investment is $5,188,000 as of June 26, 1971, which is less than Applicant's estimate of fair value; (3) the estimated severance damages in the event of "takeover" is $16,398,000; and (4) annual taxes paid to State and local governments are estimated to amount to $333,000.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 10, 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. The application is on file with the Commission and available for public inspection.

GORDON M. GRANT,
Secretary.

[F.R. Doc. 70-13788; Filed, Oct. 13, 1970; 8:47 a.m.]

[Project 349]

ALABAMA POWER CO.

Notice of Application for New License for Constructed Project

OCTOBER 7, 1970.

Public notice is hereby given that application for new license has been filed under the Federal Power Act (16 U.S.C. 791a–825r) by Alabama Power Co. (correspondence to: Joseph M. Farley, President, Alabama Power Co., Post Office Box 2641, Birmingham, Ala. 35202) for its constructed Martin Dam Project No. 349, located on the Tallapoosa River, in the counties of Elmore, Tallapoosa, and Coosa, Ala., within a 30-mile radius of Alexander City, Auburn, and Montgomery.

The existing Martin Dam Project consists of: (1) A concrete dam and earth dike section totaling 2,000 feet in length and a maximum height of 168 feet, including a gated spillway section containing 20 gates, each 30 x 16 feet; (2) four penstocks; (3) 12 intake gates, 9 x 24 feet; (4) a powerhouse containing three turbines rated at 45,000 hp. each connected to three 33,000 kw. generators and one turbine rated at 78,000 hp. connected to a 55,200 kw. generator; (5) ten single phase, water cooled, 14,000 kv.-a., 12 kv.–110 kv. transformers (including spare) and three single phase, water cooled, 22,000 kv.-a., 12 kv.–110 kv. transformers; (6) a switchyard located on the west bank, and (7) all other facilities and interests appurtenant to operation of the project. Upon the issuance of a new license for the project and the licensing by the Commission of applicant's proposed upstream Crooked Creek Project No. 2628 (application for which is pending), applicant proposes to increase the installed capacity of the Martin Dam Project by installing therein one 60,000 kw. generating unit in an extension to the east end of the existing powerhouse and, if studies so indicate, to replace the project spillway capacity thus lost because of the additional unit by modifying the earth dike section of the east abutment and the spillway bucket.

The project provides recreational facilities consisting of: A 40,000 surface-acre reservoir suitable for all water-contact sports; 1,584 shoreline lots for cottages; Wind Creek Park with 1,250 campsites; six free boat launch ramps operated by the State; approximately 735 acres devoted to organizational group camps; and an unspecified amount of land reserved for future recreational development.

According to the application: (1) The project is operated as a peaking plant within applicant's system which is interconnected with that of the Southern Co. consisting of applicant, Georgia Power Co., Gulf Power Co., Mississippi Power Co. and Southern Electric Generating Co.; (2) the estimated net investment is approximately $10.6 million as of June 8, 1973, which is less than applicant's estimate of fair value; the estimated severance damages in the event of "takeover" is $30,561,000; and (4) annual taxes paid to State and local governments are estimated to amount to $527,000.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 10, 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. The application is on file with the Commission and available for public inspection.

GORDON M. GRANT,
Secretary.

[F.R. Doc. 70-13789; Filed, Oct. 13, 1970; 8:47 a.m.]

[Docket No. G-2681 etc.]

B. M. BRITAIN ET AL.

Findings and Order; Correction

SEPTEMBER 23, 1970.

B. M. Britain, et al. (successor to B. M. Britain & C. E. Weymouth) and other applicants listed herein, Docket No. G-2681 et al.; Cities Service Oil Co. (Operator) et al. (successor to Mobile Oil Corp.), Docket No. G-12149 (G-12840).

In the findings and order after statutory hearing issuing certificates of public convenience and necessity, reinstating certificate, amending orders issuing certificates, permitting and approving abandonment of service, terminating certificates, substituting respondent, making successors co-respondents, redesignating proceedings, making rate change effective, requiring filing of agreements and undertakings, and accepting related rate schedules and supplements for filing, issued August 31, 1970, and published in the FEDERAL REGISTER September 12, 1970 (35 F.R. 14417), second paragraph, change Docket No. "G-19516" to read Docket No. "G-12840". Paragraph (H): Change Docket No. "G-19516" to read Docket No. "G-12840". In the first column, under Docket No. G-12149: Change Docket No. "(G-19516)" to read Docket No. "(G-12840)".

GORDON M. GRANT,
Secretary.

[F.R. Doc. 70-13798; Filed, Oct. 13, 1970; 8:48 a.m.]

[Docket No. E-7564]

CAROLINA POWER & LIGHT CO.

Notice of Proposed Rate Schedule Changes

OCTOBER 8, 1970.

Take notice that on September 30, 1970, Carolina Power & Light Co. (applicant) filed rate schedule changes proposing to change existing rate schedules for 44 wholesale customers, effective December 1, 1970. The 44 customers affected include two private utilities, 24 municipalities and 18 rural electric cooperatives.

According to applicant, the effect of the proposed rate increase would be $7,911,780 or 32 percent based upon projections of sales and revenues for the 12 months immediately preceding, and $8,823,971 or 32 percent based upon projections of sales and revenues for the 12 months immediately succeeding December 1, 1970, the date on which the new rate schedule is proposed to become effective.

Applicant seeks to change its existing wholesale for resale rate schedules, Schedules Rs-5A, and Rs-4 by raising both the demand and the energy charges and by providing a uniformity of rates which does not exist under the present schedules.

As justification for the new rate, applicant points to general increases in the cost of capital and the more rapidly growing resale requirements of the

municipalities, private companies, and cooperatives. Applicant further states that "the increased rates are proposed to permit this Company to receive adequate revenues to enable it to earn a fair return from its service to this resale class of customers."

Copies of the filing have been served on customers and interested State regulatory agencies.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 30, 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. The application is on file with the Commission and available for public inspection.

GORDON M. GRANT,
Secretary.

[F.R. Doc. 70-13790; Filed, Oct. 13, 1970; 8:47 a.m.]

[Project 2613]

CENTRAL MAINE POWER CO. ET AL.

Notice of Application for Approval of Exhibit R (Recreation Use Plan) for Constructed Project

OCTOBER 7, 1970.

Public notice is hereby given that application for approval of Exhibit R has been filed under the Regulations under the Federal Power Act (16 U.S.C. 791a-825r) by Central Maine Power Co., Scott Paper Co., Milstar Manufacturing Co., Kennebec River Pulp & Paper Co., and Bates Manufacturing Co. (correspondence to: W. H. Kimball, Vice President, Central Maine Power Co., 9 Green Street, Augusta, Maine 04330) for their constructed Moxie Storage Project, a tributary of the Kennebec River, in Somerset County, in the vicinity of Skowhegan, Dover-Foxcroft, and Farmington.

According to the application, the primary use of the lake (project reservoir) is for fishing and a boat launching ramp at its western end has been provided near the State highway. However, because of the shallowness and narrowness of the lake, together with stumps, algae, and other obstructions, there is limited opportunity for or interest in boating or other water sports except for boating in connection with fishing. Moreover, the surrounding area is not heavily populated. For these and other reasons, the licensees consider no further recreational development is appropriate at this time.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 10, 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. The application is on file with the Commission and available for public inspection.

GORDON M. GRANT,
Secretary.

[F.R. Doc. 70-13791; Filed, Oct. 13, 1970; 8:47 a.m.]

[Dockets Nos. RP71-18—RP71-25]

COLUMBIA GULF TRANSMISSION CO. ET AL.

Notice of Proposed Changes in Rates and Charges

OCTOBER 8, 1970.

Columbia Gulf Transmission Co., Docket No. RP71-18; United Fuel Gas Co., Docket No. RP71-19; Atlantic Seaboard Corp., Docket No. RP71-20; Kentucky Gas Transmission Corp., Docket No. RP71-21; The Ohio Fuel Gas Co., Docket No. RP71-22; Cumberland and Allegheny Gas Co., Docket No. RP71-23; The Manufacturers Light and Heat Co., Docket No. RP71-24; and Home Gas Co., Docket No. RP71-25.

Notice is hereby given that the eight applicants in the above-captioned proceedings (not hereby consolidated), each of which is an affiliate of the Columbia Gas System, Inc., on October 1, 1970, by separate applications tendered for filing proposed changes in their FPC Gas Tariffs, including the proposed overall rate increases set forth below, to become effective on November 16, 1970. Three of the applicants, United Fuel, Seaboard, and Kentucky Gas, also include in their filings proposed increased rates and charges to be effective on October 17, 1970, to track increased rates of their suppliers. Two applicants, Manufacturers and Home, also include in their filings proposed increased rates and charges to be effective November 1, 1970, to track increased rates of their suppliers. The increases which are proposed to take effect on November 16, 1970, based upon operations and sales for the year ended June 30, 1970, as adjusted, are in the following approximate annual amounts: Columbia Gulf $42.6 million, United Fuel $63 million, Seaboard $27.5 million, Kentucky Gas $12.2 million, Ohio Fuel $33.3 million, Cumberland $740,000, Manufacturers $30.6 million, and Home $3.8 million. The tracking increases are in the following approximate annual amounts:[1] United Fuel $17 million, Seaboard $5.3 million, Kentucky Gas $2.6 million, Manufacturers $7.9 million, and Home $831,000. Since these rate increases largely cover sales of gas for resale between the eight applicants within the Columbia Gas System, they are only partially cumulative. The tracking increase amounts are included in the November 16 increases.

In support of their proposed overall rate increases, the eight applicants each state that there are three principal causes necessitating their increased rate filings: (i) The claimed need for an 8.25 percent overall rate of return in order to attract additional capital to develop new sources of gas supply; (ii) proposed changes in depreciation methods and accrual rates; and (iii) proposed change in the determination of allowance for income taxes from "flow-through" to "normalization" with respect to liberalized depreciation. Excepting Columbia Gulf whose charges to United Fuel are on a cost of service basis, the other applicants' filings reflect additional increases in cost of service to cover increased supplier rates and cost of transporting gas from producers and claimed increased costs of labor, other expenses, supplies, and construction.

Columbia Gulf proposes certain changes in its rate schedule to delete from its allowance for income taxes the deduction for consolidated tax savings at 5 percent. Cumberland proposes to supersede its First Revised Volume No. 1 with a new Second Revised Volume No. 1. The other six applicants' filings include the elimination of section 10 of Rate Schedule WS (Winter Service), stating that the purpose is to place all wholesale customers on a comparable basis with respect to entitlement to excess gas.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 29, 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 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. The application is on file with the Commission and available for public inspection.

GORDON M. GRANT,
Secretary.

[F.R. Doc. 70-13792; Filed, Oct. 13, 1970; 8:47 a.m.]

[1] The tracking increases are solely to reflect the increased rates proposed by Tennessee Gas Pipeline Co. in Docket No. RP71-6.

[Docket No. E-7275]

COMMONWEALTH EDISON CO. AND CENTRAL ILLINOIS ELECTRIC AND GAS CO.

Notice of Final Report Regarding Intended Disposition of Reserved Issue

OCTOBER 9, 1970.

Take notice that on October 7, 1970, Commonwealth Edison Co. (Commonwealth), pursuant to the order issued in this proceeding on December 2, 1966, 36 FPC 927, as modified February 18, 1970, 43 FPC ____, filed a final report with respect to the issue reserved by said order concerning Commonwealth's retention of certain gas distribution properties formerly owned and operated by Central Illinois Electric and Gas Co. (Central). The Commission's December 2, 1966, order states in part: "Jurisdiction is retained * * * over the question of Commonwealth's continued operation of the gas distribution facilities of Central, for final determination by subsequent order. * * *" (36 FPC 945). The report requests that the Commission formally "relinquish jurisdiction" over this reserved issue and that public notice be given of the Commission's intent so to dispose of the matter.

The order issued in this proceeding, as modified, provides that not later than December 1, 1970, Commonwealth shall show, inter alia, why it should continue to own and operate the gas properties described therein. The order also provides for interim reports showing what progress has been made in this regard. Four such reports have been filed, the most recent of which was filed on April 30, 1970.

Since the second interim report was filed: Commonwealth on December 30, 1968, transferred its gas properties to its wholly-owned subsidiary, Mid-Illinois Gas Co. (Mid-Illinois) which now owns and operates them; and an agreement among Commonwealth, Mid-Illinois and Northern Illinois Gas Co. (Northern), and a plan of merger by Mid-Illinois and Northern were executed on April 9, 1970. Copies of the plan and agreement were attached to Commonwealth's April 30, 1970, interim report and served on all the parties to this proceeding and the Illinois Commerce Commission.

Commonwealth states: That under the terms of the aforementioned agreement, its obligations are conditioned upon the obtaining of satisfactory rulings from the Internal Revenue Service, approval of the agreement and plan of merger by the Illinois Commission and the obtaining of such approval from this Commission and the Securities and Exchange Commission as may be necessary to the proposed disposition of Mid-Illinois; that satisfactory rulings from the Internal Revenue Service have been obtained and on October 6, 1970, the Illinois Commission entered an order approving the proposed merger of Mid-Illinois and Northern; and that although the merger is subject to the approval of the stockholders of Northern and Mid-Illinois, upon the distribution of the Mid-Illinois stock to Commonwealth's stockholders, Commonwealth will have no interest, direct or indirect, in the gas distribution properties formerly owned by Central.

Any person desiring to be heard or to make any protest with reference to the subject request should on or before October 27, 1970, file with the Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's rules or 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. The final report and the interim reports to which it refers are on file with the Commission and open to public inspection.

GORDON M. GRANT,
Secretary.

[F.R. Doc. 70-13793; Filed, Oct. 13, 1970; 8:48 a.m.]

[Dockets Nos. RP69-19, RP70-2, CP67-307, G-1972]

CONSOLIDATED GAS SUPPLY CORP.

Notice of Proposed Changes in Rates Resulting From Increases in Cost of Purchased Gas

OCTOBER 8, 1970.

Take notice that Consolidated Gas Supply Corp. (Consolidated), on October 1, 1970, tendered for filing proposed changes in its FPC Gas Tariff, Original Volume No. 1,[1] to become effective on November 1, 1970. The proposed rate changes are for the purpose of reflecting increases in the average cost of gas purchased and transported over the level of the average cost of gas for the 12 months ended October 31, 1969. The increase on an annual basis amounts to approximately $13,570,000 which would be an increase of 2.18 cents per Mcf (at 14.73 p.s.i.a.) in the average cost of Consolidated's gas supply.

Consolidated filed alternative substitute revised tariff sheets which it proposes to make effective as of November 1, 1970, in lieu of the tariff sheets listed in footnote 1 if the Commission's order issued September 18, 1970, approving Consolidated's settlement proposal becomes final and nonappealable before November 1, 1970. The amount of the proposed rate increase would be identical regardless of which group of tariff sheets becomes effective, but the substitute sheets would produce a lower level of rates because the settlement proposal anticipated that the Appendix C rates allowed to become effective by the Commission's order would reduce Consolidated's existing rates in effect subject to refund by about $5.6 million annually.

Consolidated states that the major supplier increase which necessitated its filing was an increase which Texas Eastern proposes to put into effect on November 1, 1970, in Docket No. RP70-29. Other principal causes of Consolidated's filing are attributable to (1) an adjustment in gas purchase volumes and costs to reflect the change in contract purchases from Texas Gas Transmission Corp., occasioned by Texas Gas' discontinuance as of November 1, 1970, of a Louisiana transportation service pursuant to the Commission's order issued in Docket No. CP67-307, 39 FPC 248, 399, and the change in rates for purchases from Texas Gas to replace those transportation volumes as proposed by Texas Gas in Docket No. RP70-33, (2) the annualization of the cost of a new supply of 15,000 Mcf per day to be transported from Southern Louisiana by Tennessee Gas Pipeline Co. and Transcontinental Gas Pipe Line Corp., proposed to commence November 1, 1970, in accordance with proposals in Docket No. CP71-40, and (3) the cost of gas purchased from Brooklyn Union Gas Co., Providence Gas Co., New Bedford Gas & Edison Light Co., Equitable Gas Co., and Long Island Lighting Co.

Consolidated avers that the proposed increased rates reflect gas purchase costs consistent with filings by Texas Eastern and Texas Gas asking that certain substitute lower rates be made effective in Dockets Nos. RP70-29 and RP 70-33, respectively, but Consolidated reserves the right to file for the higher rates proposed in those dockets if the lower substitute rates should not ultimately supersede the rates previously filed by those two suppliers.

Copies of Consolidated's filing were served on its customers and interested State commissions.

Any person desiring to be heard or to make any protest with reference to said filing should on or before October 26, 1970, file with the Federal Power Commission, 441 G Street NW., Washington, D.C. 20426, protests or petitions to intervene in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10), except that it is unnecessary for the parties who have already been permitted to intervene in this proceeding to file additional petitions to intervene. 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 protestants parties to the proceeding. Persons, other than those who are already parties to the proceeding, wishing to become parties to the proceeding or to participate in any hearing must file petitions to intervene in accordance with the Commission's rules. The notice of increased rates described above is on file with the Commission and available for public inspection.

GORDON M. GRANT,
Secretary.

[F.R. Doc. 70-13794; Filed, Oct. 13, 1970; 8:48 a.m.]

[1] Third Revised Sheet No. 13, Fifth Revised Sheet Nos. 6, 9, 14, 16, 17, 19, 22, 24, and 36, and Seventh Revised Sheet No. 12 to its FPC Gas Tariff, Original Volume No. 1.

[Docket No. E-7513]

DUKE POWER CO.

Notice of Proposed Rate Schedule Changes; Correction

SEPTEMBER 17, 1970.

In the notice of proposed rate schedule changes, issued August 31, 1970, and published in the FEDERAL REGISTER September 10, 1970 (35 F.R. 14281), change Docket No. E-7513 to Docket No. E-7557.

GORDON M. GRANT,
Secretary.

[F.R. Doc. 70-13799; Filed, Oct. 13, 1970; 8:48 a.m.]

[Docket No. G-2683, etc.]

DUQUESNE NATURAL GAS CO. ET AL.

Findings and Order; Correction

SEPTEMBER 23, 1970.

Duquesne Natural Gas Co. (Operator) et al. (successor to Associated Programs, Inc. (Operator), et al.), and other applicants listed herein, Docket No. G-2683 et al.; Petrodynamics, Inc. (Operator), et al. (successor to Smith Development Co. et al.), Dockets Nos. G-17834 and G-17835.

In the findings and order after statutory hearing issuing certificates of public convenience and necessity, amending orders issuing certificates, permitting and approving abandonment of service, terminating certificates, substituting respondents, making successors co-respondents, redesignating proceedings, making rate changes effective, accepting agreements and undertakings for filing, requiring filing of agreements and undertakings, and accepting related rate schedules and supplements for filing, issued August 25, 1970, and published in the FEDERAL REGISTER September 9, 1970 (35 F.R. 14233), fourth column: Change the effective date to read "7-2-68" in lieu of "7-15-68" related to Dockets Nos. G-17834 and G-17835.

GORDON M. GRANT,
Secretary.

[F.R. Doc. 70-13800; Filed, Oct. 13, 1970; 8:48 a.m.]

[Docket No. CP71-73]

PANHANDLE EASTERN PIPE LINE CO.

Notice of Application

OCTOBER 8, 1970.

Take notice that on September 24, 1970, Panhandle Eastern Pipe Line Co. (applicant), Post Office Box 1642, Houston, Tex. 77001, filed in Docket No. CP71-73 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing a revision of applicant's interruptible rate schedules, increased reservoir inventory to give additional working storage, and new Winter Service for applicant's existing General Service and Small General Service resale customers, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it and its customers anticipate gas supply deficiencies during the forthcoming and subsequent winters due to the national shortage of gas supplies. Applicant proposes to acquire additional gas for use during the winter months by purchasing short-term supplies from other pipelines and by converting off-peak transmission capacity into winter deliveries through expanded use of underground storage.

In order to convert off-peak transmission capacity into stored gas for winter delivery, applicant requests authorization to revise its interruptible service rate schedules. Future availability of interruptible service would be limited to that which is presently rendered or which is subject to Commission proceedings on October 1, 1970. Any excess capacity will be used to supply gas to reservoirs for storage.

Applicant further requests authorization to increase the certificated maximum reservoir content of the Galesville formation of its Waverly Storage Field in Waverly, Ill., from 10,000,000 Mcf to 17,500,000 Mcf, and to augment its capacity for injecting additional off-peak gas through the installation of an additional 1,000 horsepower compressor at the Waverly-Galesville Compressor Station. The proposed compressor unit will cost $727,000.

Applicant proposes to make supplementary Winter Service gas available to certain of its General Service and Small General Service customers at an approved nomination charge of 25 cents per Mcf in addition to other charges for the gas.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 2, 1970, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

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

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

GORDON M. GRANT,
Secretary.

[F.R. Doc. 70-13795; Filed, Oct. 13, 1970; 8:48 a.m.]

[Docket No. G-2640 etc.]

PHILLIPS PETROLEUM CO. ET AL.

Findings and Order; Correction

SEPTEMBER 23, 1970.

Phillips Petroleum Co. and other applicants listed herein, Docket No. G-2640 et al.; Gulf Oil Corp., Docket No. G-7139.

In the findings and order after statutory hearing issuing certificates of public convenience and necessity, canceling docket number, amending orders issuing certificates, permitting and approving abandonment of service, terminating certificates, substituting respondents, making successors co-respondents, redesignating proceedings, making rate changes effective, accepting surety bonds for filing, requiring filing of surety bond, accepting agreements and undertakings for filing, and accepting related rate schedules and supplements for filing, issued June 26, 1970, and published in the FEDERAL REGISTER July 9, 1970 (35 F.R. 11050), column 6: Change "Supp. No. 17" to read "Supp. No. 18" related to Docket No. G-7139.

GORDON M. GRANT,
Secretary.

[F.R. Doc. 70-13801; Filed, Oct. 13, 1970; 8:48 a.m.]

[Project 372]

SOUTHERN CALIFORNIA EDISON CO.

Notice of Application for New License for Constructed Project

OCTOBER 7, 1970.

Public notice is hereby given that application for a new license has been filed under the Federal Power Act (16 U.S.C. 791a-825r) by Southern California Edison Co. (correspondence to: Robert P. O'Brien, Vice President, Southern California Edison Co., Post Office Box 351, Los Angeles, Calif. 90053) for its constructed Lower Tule River Project No. 372, located on the Middle Fork of Tule River in Tulare County, Calif. in the vicinity of Exeter, Lindsay, Porterville, Springville, Tulare, and Visalia, and affecting lands of the United States in the Sequoia National Forest and other lands of the United States.

The existing Lower Tule River Project consists of: (1) A rubble masonry gravity-type diversion dam 113 feet long and 5 feet high on the South Fork of the Middle Fork of the Tule River; (2) a

concrete gravity-type diversion dam 44 feet long and 15 feet high on the North Fork of the Middle Fork of the Tule River; (3) two short conduits-converging into a single 29,000-foot-long conduit having a combined total length of 32,000 feet composed of sections of steel flume, concrete-lined ditch, and steel pipe; (4) a small concrete-lined regulating reservoir; (5) a 2,800-foot-long steel penstock; (6) a powerhouse housing two 1,800 hp. impulse water wheels, operating under a maximum static head of 1,140 feet, and two 1,000 kw. generators; (7) a substation, adjacent to the powerhouse; (8) a 2,350-foot-long concrete lined ditch and concrete box culvert tailrace extending to the Middle Fork of the Tule River; (9) a telephone line and a 66-kv. transmission line extending approximately 50,000 feet from the Lower Tule River Powerhouse to the Springville Substation; and (10) all other facilities and interests appurtenant to operation of the project. The project lands lend themselves only to fishing and hiking. However, applicant has plans to provide a parking area and a hiking trail, providing access to the Middle Fork of the Tule River; animal crossings and animal watering facilities along the project water conduit; and other improvements. According to the application: (1) The market for project power is its service areas in central and southern parts of California. Local market includes the Tule River Indian Reservation, the Tule-Kings Counties Hospital, Success Reservoir and the general requirements of the nearby communities; (2) the estimated net investment is about $520,500 as of June 1970, the end of the license term, which is less than applicant's estimated fair value; (3) the estimated severance damages figure in event of "takeover" is $933,500; and (4) annual taxes paid to State and local governments amounted to $37,000.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 10, 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. The application is on file with the Commission and available for public inspection.

GORDON M. GRANT,
Secretary.

[F.R. Doc. 70-13796; Filed, Oct. 13, 1970; 8:48 a.m.]

[Docket No. CP71-70]

UNITED GAS PIPE LINE CO.

Notice of Application

OCTOBER 7, 1970.

Take notice that on September 22, 1970, United Gas Pipe Line Co. (applicant), 1525 Fairfield Avenue, Shreveport, La. 71102, filed in Docket No. CP71-70 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing applicant to transport a maximum daily quantity of 20,000 Mcf of natural gas for Shell Oil Co. (Shell), from a point in Hinds County, Miss., to a point in Pike County, Miss. and/or to Norco, La., all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it has entered into two agreements with Shell. One, a gas purchase agreement, dated July 31, 1970, provides for applicant to purchase from Shell quantities of natural gas in the Learned Field, Hinds County, Miss. Under the terms of this agreement, Shell reserves to itself certain quantities of natural gas, not to exceed 70,000 Mcf per day, which it desires to have transported by applicant to Pike County, Miss., and/or Norco, La.

The other agreement with Shell, also dated July 31, 1970, which is the subject of this application, calls for the transportation by applicant for the account of Shell of the quantities of natural gas so reserved by Shell under the above-mentioned gas purchase contract. The charge proposed for this transportation service is 2 cents per Mcf if the gas is delivered to Pike County, Miss., and 3 cents per Mcf if the gas is delivered to Norco, La.

The applicant states that the effect of these agreements will be to improve applicant's ability to serve its customers with its existing facilities.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 30, 1970, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

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

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

GORDON M. GRANT,
Secretary.

[F.R. Doc. 70-13797; Filed, Oct. 13, 1970; 8:48 a.m.]

INTERIM COMPLIANCE PANEL (COAL MINE HEALTH AND SAFETY)

ENTERPRISE MINING CO. ET AL.

Notice of Opportunity for Public Hearing

Applications for Renewal Permits for Noncompliance with the Interim Mandatory Dust Standard (3.0 mg./m.^{3}) have been accepted for consideration as follows:

(1) ICP Docket No. 10589, Enterprise Mining Co., No. 4 Mine, USBM ID No. 44 00526 0, Pilgrims Knob, Buchanan County, Va., Section ID No. 001 (East Mains).

(2) ICP Docket No. 10606, Mary E. Coal Co., Jewell Ridge Coal Corp., USBM ID No. 44 00739 0, Whitewood, Buchanan County, Va., Section ID No. 001 (Mains).

(3) ICP Docket No. 10608, Vandyke & Vandyke Coal Co., USBM ID No. 44 00992 0, Bandy, Tazewell County, Va., Section ID No. 001 (Mains).

(4) ICP Docket No. 10602, Douglas R. Vandyke Coal Co., USBM ID No. 44 01503 0, Richlands, Tazewell County, Va., Section ID No. 001 (Mains).

(5) ICP Docket No. 10590, E & P Coal Co., No. 2, Jewell Ridge Coal Corp., USBM ID No. 44 01506 0, Richlands, Tazewell County, Va., Section ID No. 001 (Mains).

(6) ICP Docket No. 10594, Lowe Bros. Coal Co., USBM ID No. 44 00722 0, Cedar Bluff, Tazewell County, Va., Section ID No. 001 (1st Left.).

(7) ICP Docket No. 10587, Squire Coal Co., Jewell Ridge Coal Corp., USBM ID No. 44 00955 0, Patterson, Buchanan County, Va., Section ID No. 001 (Mains).

(8) ICP Docket No. 10446, Valley Camp No. 3, The Valley Camp Coal Co., USBM

ID No. 46 01482 0, Triadelphia, Ohio County, W. Va., Section ID No. 006 (3 North Off 2 West).

(9) ICP Docket No. 10298, Wheeling-Pittsburgh Steel Corp., No. 19-C Mine, USBM ID No. 46 01395 0, Omar, Logan County, W. Va., Section ID No. 002 (1st Right).

In accordance with the provisions of section 202(b)(4) of the Federal Coal Mine Health and Safety Act of 1969 (83 Stat. 742, et seq., Public Law 91-173), notice is hereby given that requests for public hearing as to an application for renewal may be filed within 15 days after publication of this notice. Requests for public hearing must be completed in accordance with 30 CFR Part 505 (35 F.R. 11296, July 15, 1970), copies of which may be obtained from the Panel on request.

A copy of the application is available for inspection and requests for public hearing may be filed in the office of the Correspondence Control Officer, Interim Compliance Panel, Suite 800, 1730 K Street NW., Washington, D.C. 20006.

GEORGE A. HORNBECK,
Chairman,
Interim Compliance Panel.

OCTOBER 9, 1970.

[F.R. Doc. 70-13779; Filed, Oct. 13, 1970; 8:47 a.m.]

WELLMORE COAL CORP.

Notice of Opportunity for Public Hearing

Applications for Renewal Permits for Noncompliance with the Interim Mandatory Dust Standard (3.0 mg./m.^{3}) have been accepted for consideration as follows:

(1) ICP Docket No. 10674, Wellmore Coal Corp., Mine No. 22, USBM ID No. 15 01763 0, Grundy, Buchanan County, Va., Section ID No. 001 (No. 1 Main).

In accordance with the provisions of section 202(b)(4) of the Federal Coal Mine Health and Safety Act of 1969 (83 Stat. 742, et seq., Public Law 91-173), notice is hereby given that requests for public hearing as to an application for renewal may be filed within 15 days after publication of this notice. Requests for public hearing must be completed in accordance with 30 CFR Part 505 (35 F.R. 11296, July 15, 1970), copies of which may be obtained from the Panel on request.

A copy of the application is available for inspection and requests for public hearing may be filed in the office of the Correspondence Control Officer, Interim Compliance Panel, Suite 800, 1730 K Street NW., Washington, D.C. 20006.

GEORGE A. HORNBECK,
Chairman,
Interim Compliance Panel.

OCTOBER 9, 1970.

[F.R. Doc. 70-13807; Filed, Oct. 13, 1970; 8:48 a.m.]

SECURITIES AND EXCHANGE COMMISSION

[70-4928]

DELMARVA POWER & LIGHT CO.

Notice of Proposed Issue and Sale of First Mortgage and Collateral Trust Bonds at Competitive Bidding

OCTOBER 8, 1970.

Notice is hereby given that Delmarva Power & Light Co. (Delmarva), 600 Market Street, Wilmington, Del. 19899, a registered holding company and a public utility company, has filed a declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 (Act), designating sections 6 and 7 of the Act and Rule 50 promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transaction.

Delmarva proposes to issue and sell, subject to the competitive bidding requirements of Rule 50, $30 million principal amount of First Mortgage and Collateral Trust Bonds, ____ percent Series due December 1, 2000. The interest rate (which shall be a multiple of one-eighth of 1 percent) and the price to Delmarva, exclusive of accrued interest (which shall be not less than 100 percent nor more than 102.75 percent of the principal amount thereof), for the bonds will be determined by the competitive bidding. The bonds will be issued under a mortgage and deed of trust, dated October 1, 1943, between Delmarva and the Chemical Bank New York Trust Co., Trustee, as heretofore supplemented and as to be further supplemented by a 39th supplemental indenture to be dated December 1, 1970, which includes a prohibition until December 1, 1975, against refunding the issue with the proceeds of funds borrowed at a lower annual cost of money.

Delmarva will apply the proceeds from the sale of bonds toward the cost of its own construction program and that of its two subsidiary companies including the retirement of short-term notes and commercial paper issued prior to such sale. The system construction program during the last 4 months of 1970 and for 1971 is estimated at $155,735,000.

It is represented that the issuance of the bonds is subject to the approval of The Public Service Commission of Delaware and that no other State commission and no Federal commission, other than this Commission, has jurisdiction over the proposed transaction. A statement of the fees and expenses to be incurred by Delmarva in connection with the sale of the bonds will be supplied by amendment.

Notice is further given that any interested person may, not later than November 2, 1970, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail (air mail if the person being served is located more than 500 miles from the point of mailing) upon the declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as filed or as it may be amended, may be permitted to become effective as provided in Rule 23 of the general rules and regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered, will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

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

[SEAL] ORVAL L. DUBOIS,
Secretary.

[F.R. Doc. 70-13783; Filed, Oct. 13, 1970; 8:47 a.m.]

[812-2806]

WADDELL & REED, INC., ET AL.

Notice of Application To Permit Offer of Exchange and Exempting Applicants

OCTOBER 7, 1970.

In the matter of Waddell & Reed, Inc., United Continental Growth Investment Programs, United Continental Income Investment Programs, United Periodic Investment Programs Plan to Acquire Shares of United Science Fund, and United Vanguard Investment Programs; Post Office Box 1343, 20 West Ninth Street, Kansas City, Mo. 64141.

Notice is hereby given that United Continental Growth Investment Programs, United Continental Income Investment Programs, United Vanguard Investment Programs (collectively referred to as "Programs") and United Periodic Investment Plan (Plan), each of which is a unit investment trust registered as such under the Investment Company Act of 1940 (Act) and Waddell & Reed, Inc., a Massachusetts corporation which is the sponsor-depositor of the Programs and the Plan (collectively referred to with them as "Applicants") have filed an application pursuant to section 11(c) of the Act for an order of the Commission permitting an offer of exchange and pursuant to section 6(c) of the Act exempting Applicants from section 22(d) to the extent that that section

would prohibit the transactions described below. All interested persons are referred to the application on file with the Commission for a statement of the representations made therein which are summarized below.

Each Program has filed a Form S–6 Registration Statement under the Securities Act of 1933 to offer Monthly Investment Programs (MIP) and Executive-Professional Investment Programs (EPIP) for the accumulation of shares respectively in United Continental Growth Fund, United Continental Income Fund, and United Continental Vanguard Fund, each of which is a registered open-end investment company. Plan currently provides for the accumulation of shares of United Science Fund without insurance.

Applicants propose to offer holders of each Program's MIP or EPIP the opportunity to exchange their MIP or EPIP for the MIP or EPIP, respectively, of another Program of the same completion amount at relative net asset value upon payment of a single transaction service charge of $5. For purposes of determining the charges to be deducted from investments made after the exchange and the number of investments permitted to be made, the number of investments made under the original Program would be taken into account. In addition, it is proposed that Plan could be exchanged for a MIP of any one of the Programs on the same conditions and charge.

All aforementioned exchanges would be accomplished by redeeming the underlying shares at net asset value next determined and reinvesting the proceeds in underlying shares of the other Program at net asset value. The initial Program Certificate would be canceled and a new certificate for the Program so acquired would be issued.

Section 11(a) of the Act provides that it shall be unlawful for any registered open-end company or any principal underwriter for such a company to make or cause to be made an offer to the holder of a security of such a company or of any other open-end investment company to exchange his security for a security in the same or another such company on any basis other than the relative net asset values of the respective securities to be exchanged, unless the terms of the offer have first been submitted to and approved by the Commission. Section 11(c) provides that, irrespective of the basis of exchange, the provisions of subsection (a) shall be applicable to any type of offer of exchange of the securities of registered unit investment trusts for the securities of any other investment company.

Section 22(d) of the Act provides in part that no registered investment company shall sell any redeemable security issued by it to any person except at a current public offering price described in the prospectus. An exemption from section 22(d) is required because the above described exchanges would take place at relative net asset value rather than at the current public offering price described in the prospectus.

Applicant states that each of the investment companies whose shares are acquired under the three Programs and the Plan have different investment objectives. Applicant represents that if exchanges are permitted, an investor whose investment goals has changed could acquire another Program to acquire shares of the investment company whose investment objectives are more consistent with his revised investment goals. This could be effected without losing the advantages of prior investments, particularly the front-end load that the investor would have paid at least in part. As to each of the Programs, the sales and other charges are identical as are the amounts of monthly investment and the completion amount.

Applicants represent that the primary purpose of the front-end sales charge of 50 percent imposed upon initial payments is to provide adequate compensation to sales representatives who solicit purchases of the MIP's. Applicants state that since no comparable sales efforts are incurred in an exchange from the MIP of one Program or the Plan to the MIP of another Program, it would be inappropriate and inequitable to impose additional front-end load charges on the transaction.

Section 6(c) permits the Commission, upon application, to exempt such a transaction if it finds that such an 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.

Applicants represent that the granting of the requested exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, no later than October 29, 1970, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission should order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail (air mail if the person being served is located more than 500 miles from the point of mailing) upon Applicants at the address stated above. Proof of such service (by affidavit or in case of an attorney at law by certificate) shall be filed contemporaneously with the request. Any time after said date, as provided by Rule 0–5 of the rules and regulations promulgated under the Act, an order disposing of the application herein may be issued by the Commission upon the basis of the information stated in said application, unless an order for hearing upon said application shall be issued upon request or upon the Commission's own motion. Persons who request a hearing or advice as to whether a hearing is ordered, will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

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

[SEAL] ORVAL L. DUBOIS,
Secretary.

[F.R. Doc. 70–13784; Filed, Oct. 13, 1970; 8:47 a.m.]

OFFICE OF EMERGENCY PREPAREDNESS

CALIFORNIA

Notice of Major Disaster and Related Determinations

Pursuant to the authority vested in me by the President under Executive Order 10427 of January 16, 1953, Executive Order 10737 of October 29, 1957, and Executive Order 11051 of September 27, 1962 (18 F.R. 407, 22 F.R. 8799, 27 F.R. 9683); and by virtue of the Act of September 30, 1950, entitled "An Act to authorize Federal assistance to States and local governments in major disasters, and for other purposes" (42 U.S.C. 1855–1855g); notice is hereby given that on September 29, 1970, a major disaster was declared by the Director of the Office of Emergency Preparedness as follows:

As authorized by the President I have determined that the damages in those areas of the State of California, adversely affected by forest and brush fires and high winds beginning on or about September 22, 1970, are of sufficient severity and magnitude to warrant a major disaster declaration under Public Law 81–875. I therefore declare that such a major disaster exists in the State of California. Areas eligible for Federal assistance will be determined by the Director of the Office of Emergency Preparedness.

Notice is hereby given that pursuant to the authority vested in me by the President under Executive Order 11495, November 18, 1969 (34 F.R. 18447, November 20, 1969) to administer the Disaster Relief Act of 1969 (Public Law 91–79, 83 Stat. 125), I hereby appoint Mr. Ralph D. Burns, Regional Director, OEP Region 7, to act as the Federal Coordinating Officer to perform the duties specified by section 9 of that Act for this disaster.

I do hereby determine the following areas in the State of California to have been adversely affected by the catastrophe declared a major disaster on September 29, 1970:

The counties of:

Alameda	San Bernardino
Kern	San Diego
Los Angeles	Ventura

Dated: October 8, 1970.

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

[F.R. Doc. 70–13778; Filed, Oct. 13, 1970; 8:47 a.m.]

INTERSTATE COMMERCE COMMISSION

[S.O. 1002; Car Distribution Direction 91, Amdt. 1]

BALTIMORE AND OHIO RAILROAD CO. AND PITTSBURG AND SHAWMUT RAILROAD CO.

Car Distribution

Upon further consideration of Car Distribution Direction No. 91, and good cause appearing therefor:

It is ordered, That:

Car Distribution Direction No. 91 be, and it is hereby, amended by substituting the following paragraph (4) for paragraph (4) thereof:

(4) *Expiration date.* This direction shall expire at 11:59 p.m., October 25, 1970, unless otherwise modified, changed, or suspended.

It is further ordered, That this amendment shall become effective at 11:59 p.m., October 11, 1970, and that it shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and per diem agreement under the terms of that agreement; and that it be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., October 8, 1970.

INTERSTATE COMMERCE COMMISSION,
[SEAL] LEWIS R. TEEPLE,
Agent.

[F.R. Doc. 70-13832; Filed, Oct. 13, 1970; 8:50 a.m.]

[No. 35281]

FOURTH-CLASS RATE REFORMATIONS, 1970

Present: Kenneth H. Tuggle, Commissioner, to whom the matter which is the subject of this order has been referred for action thereon.

Upon consideration of the record in the above-entitled proceeding, the motion by the Postmaster General for leave to file briefs discussing issues of law involved in the proceeding, filed September 29, 1970, and statement in opposition thereto by the Parcel Post Association, received on October 5, 1970; and

It appearing, that the Postmaster General and other parties in this proceeding have filed verified statements and exhibits in accordance with rules prescribed by the Commission in an order in this proceeding dated July 16, 1970;

It further appearing, that the filing of briefs would supplement the present record and aid in resolution of issues of law in this proceeding, without injury or prejudice to any involved party;

And it further appearing, that due and timely execution of our functions under the provisions of 39 U.S.C. 4558, requires immediate action on the motion of the Postmaster General, so as to justify waiving the requirements of Rule 23 of the Commission's general rules of practice (49 CFR 1100.23), concerning the filing of replies;

Wherefore, and good cause appearing therefor:

It is ordered, That the order of the Commission in this proceeding, dated July 16, 1970, be, and it is hereby, modified to the extent necessary to allow the parties to file statements of argument concerning issues of law involved in this proceeding, according to the following schedule:

1. On or before 7 days from the date of service of this order, the Postmaster General may file an original and 20 copies of a statement of argument concerning issues of law in this proceeding, and serve copies thereof on all parties of record on the same date by first-class mail.

2. On or before 9 days thereafter, the protestants may file an original and 20 copies of statements of argument concerning issues of law in this proceeding, and serve copies thereof on all parties of record.

It is further ordered, That no other motions or pleadings in this proceeding will be accepted for filing.

And it is further ordered, That notice of this action be given (1) by posting a copy of this order in the office of the Secretary of the Commission for public inspection, (2) by filing a copy thereof with the Director, Office of the Federal Register, and (3) by serving copies thereof on the Postmaster General, the Comptroller General of the United States, and all other parties of record.

Dated at Washington, D.C., this 7th day of October 1970.

By the Commission, Commissioner Tuggle.

[SEAL] ROBERT L. OSWALD,
Secretary.

[F.R. Doc. 70-13831; Filed, Oct. 13, 1970; 8:50 a.m.]

[Notice 23]

MOTOR CARRIER ALTERNATE ROUTE DEVIATION NOTICES

OCTOBER 9, 1970.

The following letter-notices of proposals to operate over deviation routes for operating convenience only have been filed with the Interstate Commerce Commission under the Commission's Revised Deviation Rules-Motor Carriers of Passengers, 1969 (49 CFR 1042.2(c)(9)), and notice thereof to all interested persons is hereby given as provided in such rules (49 CFR 1042.2(c)(9)).

Protests against the use of any proposed deviation route herein described may be filed with the Interstate Commerce Commission in the manner and form provided in such rules (49 CFR 1042.2(c)(9)) at any time, but will not operate to stay commencement of the proposed operations unless filed within 30 days from the date of publication.

Successively filed letter-notices of the same carrier under the Commission's Revised Deviation Rules-Motor Carriers of Property, 1969, will be numbered consecutively for convenience in identification and protests, if any, should refer to such letter-notices by number.

MOTOR CARRIERS OF PASSENGERS

No. MC 1515 (Deviation No. 562) (Cancels Deviation No. 291), GREYHOUND LINES, INC., (Eastern Division), 1400 West Third Street, Cleveland, Ohio 44113, filed September 28, 1970. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *passengers and their baggage, and express and newspapers* in the same vehicle with passengers, over a deviation route as follows: From Indianapolis, Ind., over U.S. Highway 40 to junction Interstate Highway 465, thence over Interstate Highway 465 to junction Indiana Highway 37, thence over Indiana Highway 37 to junction Interstate Highway 69, thence over Interstate Highway 69 to junction U.S. Highway 24, thence over U.S. Highway 24 to Fort Wayne, Ind., with the following access routes: (1) From Anderson, Ind., over Indiana Highway 32 to junction Interstate Highway 69, and (2) from Marion, Ind., over Indiana Highway 18 to junction Interstate Highway 69, and return over the same routes, for operating convenience only. The notice indicates that the carrier is presently authorized to transport passengers and the same property, over a pertinent service route as follows: From Indianapolis, Ind., over Indiana Highway 67 (known as U.S. Highway 36) to junction Indiana Highway 9, thence over Indiana Highway 9 to junction U.S. Highway 24 at Huntington, Ind., thence over U.S. Highway 24 to Fort Wayne, Ind., and return over the same route.

No. MC 45626 (Deviation No. 32), VERMONT TRANSIT CO., INC., Burlington, Vt. 05401, filed October 2, 1970. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *passengers and their baggage, and express and newspapers* in the same vehicle with passengers, over a deviation route as follows: From junction Interstate Highway 89 and Vermont Highway 107 (Interchange No. 3) over Interstate Highway 89 to Montpelier, Vt. (Interchange No. 8), with the following access routes: (1) From junction Interstate Highway 89 and unnumbered highway (Interchange No. 4) at Randolph Center, Vt., over unnumbered highway to junction Vermont Highway 12 at Randolph, Vt., (2) from junction Interstate Highway 89 and unnumbered highway (Interchange No. 4) at Randolph Center, Vt., over unnumbered highway to junction Vermont Highway 14 at East Randolph, Vt., (3) from junction Interstate Highway 89 and unnumbered highway (Interchange No. 5) over unnumbered highway to junction Vermont Highway 12 at South Northfield, Vt., (4) from junction Interstate Highway 89 and unnumbered highway (Interchange No. 5) over unnumbered highway to junction Vermont Highway 14 at Williamstown, Vt., (5) from junction Interstate Highway 89 and access road (Interchange No. 6) over

access road to junction Vermont Highway 14 at South Barre, Vt., (6) from junction Interstate Highway 89 and access road (Interchange No. 7) over access road to junction U.S. Highway 302 at Barre, Vt., and (7) from junction Interstate Highway 89 and access road (Interchange No. 8) over access road to Montpelier, Vt., and return over the same routes, for operating convenience only. The notice indicates that the carrier is presently authorized to transport passengers and the same property over pertinent service routes as follows: (1) From junction Vermont Highways 12 and 107 near Bethel, Vt., over Vermont Highway 107 to junction Vermont Highway 14, (2) from Montpelier, Vt., over Vermont Highway 12 to junction Vermont Highway 107, thence over Vermont Highway 107 to junction Vermont Highway 100, thence over Vermont Highway 100 to junction U.S. Highway 4, thence over U.S. Highway 4 to Rutland, Vt., and (3) from Burlington, Vt., over U.S. Highway 2 to junction U.S. Highway 302, thence over U.S. Highway 302 to Barre, Vt., thence over Vermont Highway 14 to junction U.S. Highway 5, thence over U.S. Highway 5 to Ascutney, Vt., thence over unnumbered highway to the Vermont-New Hampshire State line at Ascutney Bridge, Vt., and return over the same routes.

By the Commission.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[F.R. Doc. 70-13828; Filed, Oct. 13, 1970; 8:50 a.m.]

[Notice 93]

MOTOR CARRIER APPLICATIONS AND CERTAIN OTHER PROCEEDINGS

OCTOBER 9, 1970.

The following publications are governed by the new Special Rule 1.247 of the Commission's rules of practice, published in the FEDERAL REGISTER, issue of December 3, 1963, which became effective January 1, 1964.

The publications hereinafter set forth reflect the scope of the applications as filed by applicant, and may include descriptions, restrictions, or limitations which are not in a form acceptable to the Commission. Authority which ultimately may be granted as a result of the applications here noticed will not necessarily reflect the phraseology set forth in the application as filed, but also will eliminate any restrictions which are not acceptable to the Commission.

APPLICATIONS ASSIGNED FOR ORAL HEARING

MOTOR CARRIERS OF PROPERTY

No. MC 134922 (Republication), filed September 8, 1970, published in the FEDERAL REGISTER, issue of October 1, 1970, and republished this issue. Applicant: B. J. McADAMS, INC., Route 6, Box 15, North Little Rock, Ark. Applicant's representative: William J. Boyd, 29 South La Salle Street, Chicago, Ill. 60603. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs*, in vehicles equipped with mechanical refrigeration, from points in Wisconsin and Minnesota to points in Ohio, Pennsylvania, New York, New Jersey, Vermont, New Hampshire, Maine, Connecticut, Rhode Island, Massachusetts, Virginia, West Virginia, Maryland, Delaware, Florida, Georgia, Mississippi, Alabama, South Carolina, North Carolina, Tennessee, Kentucky, and the District of Columbia. NOTE: The purpose of this republication is to reflect the hearing information.

HEARING: October 26, 1970, in Room 167, New Federal Building, Kellogg and Robert Streets, St. Paul, Minn., before Examiner Francis A. Welch.

No. MC 116254 (Sub-No. 111) (Corrected Republication), filed March 12, 1970, published in the FEDERAL REGISTER issues of April 2, 1970 and October 7, 1970, and republished in part, as corrected, this issue. Applicant: CHEM-HAULERS, INC., Post Office Drawer M, Sheffield, Ala. 35660. Applicant's representative: Walter Harwood, 1822 Parkway Towers, Nashville, Tenn. 37219. NOTE: The sole purpose of this partial republication is to redescribe the territorial scope in the findings to the application as follows: "between the plantsites of A & M Casket Co., at or near Loretto (*Lawrence County*), Tenn., and Muscle Schoals, Ala., on the one hand, and, on the other, points in the United States (except Alaska and Hawaii)." Through inadvertence, Lawrence County was incorrectly spelled Laurence County. The rest of the application remains as previously republished in the FEDERAL REGISTER issue of October 7, 1970.

No. MC 5944 (Notice of Filing of Petition for Modification), filed August 7, 1970. Petitioner: C. M. GRIDLEY & SON, INC., 344 Schenectady Street, Schenectady, N.Y. 12307. Petitioner holds authority in No. MC 5944 to operate as a motor common carrier, over irregular routes, in the transportation of: Heavy machinery, contractors equipment and concrete pipe, between Schenectady, N.Y., and points in New York within 75 miles of Schenectady, on the one hand, and, on the other, points in Vermont on and south of U.S. Highway 4, and that part of Massachusetts and Connecticut west of the Connecticut River. By the instant petition, petitioner requests that the commodity descriptions be modified to authorize, within the same territories, the transportation of: "*Commodities*, the transportation of which because of size or weight requires the use of special equipment, and of related articles and supplies when their transportation is incidental to the transportation of commodities which by reason of size or weight require special equipment." Any interested person desiring to participate may file an original and six copies of his written representations, views, or argument in support of or against the petition within 30 days from the date of publication in the FEDERAL REGISTER.

No. MC 126882 (Notice of Filing of Petition for Modification of Permit), filed September 14, 1970. Petitioner: TRANSPORT DALLAIRE, LTD., Montmagny, Quebec, Canada. Petitioner's representative: Francis E. Barrett, Jr., 536 Granite Street, Braintree, Mass. 02184. Petitioner holds authority, pursuant to No. MC-FC-72030, to conduct operations as a motor contract carrier, transporting: Lumber and wood fencing, over irregular routes, from Jackson, Maine, to points in Maine, New Hampshire, Massachusetts, Connecticut, Rhode Island, New York, and New Jersey, with no transportation for compensation on return except as otherwise authorized. From Norton, Vt., to points in Vermont, New Hampshire, and New York, with no transportation for compensation on return except as otherwise authorized. From Champlain, N.Y., to points in New York and New Jersey, with no transportation for compensation on return except as otherwise authorized, limited to a transportation service to be performed under a continuing contract, or contracts, with the following shippers: Jean Paul Racine, of St. Honore de Beauce, Quebec, Canada, Cedar Products, Ltd., of St. Martin de Beauce, Quebec, Canada, and Rancourt Industries, Ltd., of St. Georges de Beauce, Quebec, Canada. By the instant petition, petitioner requests permission to substitute Berion, Inc., Notre Dame, Du Lac (Temiscouata County) Quebec, Canada, as a contracting shipper, in lieu of Jean Paul Racine, St. Honore de Beauce, Quebec, Canada. Any interested person desiring to participate may file an original and six copies of his written representation, views or argument in support of or against the petition within 30 days from the date of publication in the FEDERAL REGISTER.

APPLICATIONS FOR CERTIFICATES OR PERMITS WHICH ARE TO BE PROCESSED CONCURRENTLY WITH APPLICATIONS UNDER SECTION 5 GOVERNED BY SPECIAL RULE 240 TO THE EXTENT APPLICABLE

No. MC 109533 (Sub-No. 42), filed September 24, 1970. Applicant: OVERNITE TRANSPORTATION COMPANY, a corporation, 1100 Commerce Road, Richmond, Va. 23224. Applicant's representative: Eugene T. Liipfert, Suite 1100, 1660 L Street NW., Washington, D.C. 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities;* (1) between Louisville and Jenkins, Ky.; from Louisville over U.S. Highway 60 to Winchester, thence over Kentucky Highway 15 to Whitesburg, thence over U.S. Highway 119 to Jenkins and return over the same routes, serving all intermediate points on and east of the Clark-Powell County line, and serving the point of Lexington only in connection with freight destined to or originating at points on an east of the Clark-Powell County line; (2) between junction U.S. Highway 60 with U.S. Highway 421 near Frankfort and Lexington; from junction U.S. Highway 60 with U.S. Highway 421 near Frankfort, over U.S. Highway 421 to Lexington and return over the same route, serving no intermediate points, as an alternate

route for operating convenience only, with service at Lexington and junction U.S. Highway 60 with U.S. Highway 421 for purposes of joinder only with applicant's proposed route between Louisville and Jenkins as set out in paragraph No. 1; (3) between junction Kentucky Highway 15 with Kentucky Highway 191 near Stillwater and Hazel Green, Ky.; from junction Kentucky Highway 15 with Kentucky Highway 191, thence over Kentucky Highway 191 to Hazel Green, and return over the same route, serving all intermediate points;

(4) Between Wilhurst and Lee City, from Wilhurst over Kentucky Highway 205 to Lee City, and return over the same route, serving all intermediate points; (5) between Quicksand and Wilstacy, from Quicksand eastward over unnumbered county highway to Wilstacy, and return over the same route, serving all intermediate points; (6) between Stacy and Buckhorn, from Stacy over Kentucky Highway 267 to Clemons, thence over Kentucky Highway 28 to Buckhorn, and return over the same route, serving all intermediate points; (7) between junction Kentucky Highway 15 with Kentucky Highway 80 (north of Hazard) and Hyden, from junction Kentucky Highway 15 with Kentucky Highway 80 north of Hazard over Kentucky Highway 80 to Hyden, and return over the same route, serving all intermediate points; (8) between junction Kentucky Highway 80 with Kentucky Highway 451 (north of Avawam) and Chavies, from junction Kentucky Highway 80 with Kentucky Highway 45 (north of Avawam) over Kentucky Highway 451 to Chavies, and return over the same route, serving all intermediate points; (9) between Kyrpton and Napfor, from Krypton eastward over unnumbered county road to Napfor, and return over the same route, serving all intermediate points; (10) between junction Kentucky Highway 267 with Kentucky Highway 981 (south of Dwarf), from junction Kentucky Highway 267 with Kentucky Highway 981 over Kentucky Highway 981 to junction Kentucky Highway 16, and return over the same route, serving all intermediate points; (11) between Clemons and junction unnumbered county highway with Kentucky Highway 80, from Clemons over unnumbered county highway to junction Kentucky Highway 80, and return over the same route, serving all intermediate points;

(12) Between junction Kentucky Highway 15 with Kentucky Highway 7 (in Perry County) and junction Kentucky Highway 15 with Kentucky Highway 7 (west of Isom), from junction Kentucky Highway 15 with Kentucky Highway 7 (in Perry County) over Kentucky Highway 7 to junction Kentucky Highway 15 (west of Isom), and return over the same route, serving all intermediate points; (13) between Cornettsville and junction Kentucky Highway 699 with Kentucky Highway 80, from Cornettsville over Kentucky Highway 699 to junction Kentucky Highway 80, and return over the same route, serving all intermediate points; (14) between Blackey and Whitesburg, from Blackey over unnumbered county highway to Roxana, thence over Kentucky Highway 588 through Uz to Whitesburg, and return over the same route, serving all intermediate points; (15) between Tillie and Hot Spot, from Tillie over Kentucky Highway 160 to Hot Spot, and return over the same route, serving all intermediate points; (16) between Dwarf and Neon, from Dwarf over Kentucky Highway 80 to Lackey, thence over Kentucky Highway 7 to Kite, thence over Kentucky Highway 275 to Neon, and return over the same route, serving all intermediate points, (17) between Cody and Hindman, from Cody over Kentucky Highway 160 to Hindman, and return over the same route, serving all intermediate points. NOTE: This application is a matter directly related to MC-F-10963, published in the FEDERAL REGISTER issue of September 30, 1970. The instant application seeks to convert the certificate of registration of George Meade Transfer Co., MC 120744 (Sub-No. 1) into a certificate of public convenience and necessity. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C., or Louisville, Ky

APPLICATIONS UNDER SECTIONS 5 AND 210a(b)

The following applications are governed by the Interstate Commerce Commission's special rules governing notice of filing of applications by motor carriers of property or passengers under sections 5(a) and 210a(b) of the Interstate Commerce Act and certain other proceedings with respect thereto (49 CFR 1.240).

MOTOR CARRIERS OF PROPERTY

No. MC-F-10949. (Correction) (GUIGNARD FREIGHT LINES, INC.—Purchase (Portion)—PARRISH DRAY LINE, INC.), published in the September 23, 1970, issue of the FEDERAL REGISTER, on page 14818. Prior to notice read: *General commodities, household goods new furniture,* except commodities of unusual value, and except high explosives, intoxicating liquors, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading, between Sumter, S.C., on the one hand, and points in Alabama, on the other; notice shouldl read: *general commodities, household goods, new furniture,* except commodities of unusual value, and except high explosives, intoxicating liquors, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading, between Sumter, S.C., on the one hand, and, on the other, points in Alabama on and north of U.S. Highway 278.

No. MC-F-10970. BOISE CASCADE CORPORATION, Bank of Idaho Building, 700 West Idaho Street, Boise, Idaho 83702, seeks authority to continue in control of B C T, Inc., Post Office Box 200, Boise, Idaho 83701, upon the latter becoming a motor contract carrier under authority conditionally granted in No. MC-133589. Applicant is not a carrier but controls the following short line carriers by railroad subject to part I of the Interstate Commerce Act: THE CALIFORNIA WESTERN RAILROAD COMPANY, Fort Bragg, Calif. 95437, THE VALLEY AND SILETZ RAILROAD COMPANY, Post Office Box 200, Boise, Idaho 83701, THE MINNESOTA, DAKOTA AND WESTERN RAILWAY COMPANY, Boise, Idaho 83701, and THE INTERNATIONAL BRIDGE AND TERMINAL COMPANY, International Falls, Minn. 56649. Applicants' representative: James R. Gillespie, 711½ Bannock Street, Boise, Idaho 83702. Operating rights sought to be controlled: Authority applied for in pending Docket No. MC-133589, covering the transportation of (1) Paper and paper products, corrugated boxes, fiber containers, bags, and cans and parts thereof; and (2) materials, equipment and supplies used in the manufacture and distribution of the aforementioned commodities, except commodities in bulk; (1) between St. Louis, Mo., on the one hand, and, on the other, points in Alabama, Arkansas, Connecticut, Florida, Georgia, Illinois, Indiana, Kentucky, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Jersey, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, and Wisconsin; restricted against handling shipments between the plantsite of Inland Container Co. in Fenton, Mo., on the one hand, and, on the other, points in Illinois and Indiana; (2) between Moonachie, N.J., on the one hand, and, on the other, points in Alabama, Connecticut, Georgia, Indiana, Maine, Massachusetts, New Hampshire, New York, Pennsylvania, Rhode Island, Vermont, and Virginia,

(3) Between Sandston, Va., on the one hand, and, on the other, points in Alabama, Connecticut, Delaware, Georgia, Indiana, New Jersey, New York, and Pennsylvania (except points lying on and south of U.S. Highway 22 from Easton to Harrisburg, on and north of Pennsylvania Highway 230 from Harrisburg, to Lancaster, and on and north of U.S. Highway 30 from Lancaster to Philadelphia); (4) between Elk Grove Village, Hillside, and Addison, Ill., on the one hand, and, on the other, points in Indiana, Michigan, Ohio, and Wisconsin; (5) between Atlanta, Ga., on the one hand, and, on the other, points in Alabama, Florida, North Carolina, and South Carolina; (6) between Allentown, Pa., on the one hand, and, on the other, points in Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Ohio, Rhode Island, Vermont, Virginia, and Washington, D.C.; (7) between Pittsburgh, Pa., on the one hand, and, on the other, points in Delaware, Maryland, New York, Ohio, Virginia, West Virginia, and Washington, D.C.; (b) between Waterbury and Stratford, Conn., on the one hand, and, on the other, points in Massachusetts, Pennsylvania, New Hampshire, New Jersey, New York, and Rhode Island; (9) between Newton, N.C., on the one hand, and, on the other, points in Alabama, Georgia, South Carolina, and Tennessee; (10) between St.

Paul, Minn., on the one hand, and, on the other, points in Illinois and Wisconsin; (11) between Marion, Ohio, on the one hand, and, on the other, points in Indiana, Michigan, and Pennsylvania; (12) between West Memphis, Ark., on the one hand, and, on the other, points in Alabama, Kentucky, Louisiana, Mississippi, Missouri, and Tennessee; (13) between La Porte, Ind., on the one hand, and, on the other, points in Illinois, Michigan, Ohio, and Wisconsin; (14) between Memphis, Tenn., on the one hand, and, on the other, points in Alabama, Arkansas, Florida, Georgia, Illinois, Indiana, Kentucky, Michigan, Minnesota, Missouri, Ohio, Pennsylvania, and Wisconsin. This authority is pursuant to corrected recommended report and order served April 22, 1970. BOISE CASCADE CORPORATION holds no authority from this Commission. Application has not been filed for temporary authority under section 210a(b).

No. MC-F-10971. Application under section 5(1) of the Interstate Commerce Act for approval of an agreement between common carriers for the pooling of traffic. Applicants: PACIFIC INTERMOUNTAIN EXPRESS CO., 1417 Clay Street, Post Office Box 958, Oakland, Calif. 94604 (MC-730), LOUIS STEFFENSMEIER and EDWARD STEFFENSMEIER, A PARTNERSHIP, doing business as STEFFY'S TRANSFER, Dodge, Nebr. 68633 (MC-7408), seek to enter into an agreement for the pooling of traffic consisting of general commodities moving in interstate commerce between Omaha, Nebr., and points in Clarkson, Creston, Dodge, Howells, Leigh, and Snyder, Nebr. Attorney: W. S. Pilling, 1417 Clay Street, Post Office Box 958, Oakland, Calif. 94604. NOTE: PACIFIC INTERMOUNTAIN EXPRESS CO. holds authority from this Commission to operate from coast to coast.

No. MC-F-10972. Authority sought for purchase by MIDDLE STATES MOTOR FREIGHT, INC., 5723 Este Avenue, Cincinnati, Ohio 45232, of the operating rights of E. C. JONES, INC., 885 West Fifth Avenue, Columbus, Ohio 43212, and for acquisition by CHARLES L. PETERSON, also of Cincinnati, Ohio, of control of such rights through the purchase of applicants' attorneys: James W. Juldoon, 50 West Broad Street, Columbus, Ohio 43215, and Paul F. Beery, 88 West Broad Street, Columbus, Ohio 43215. Operating rights sought to be transferred: Under a certificate of registration, in Docket No. MC-97411 Sub 1, covering the transportation of property, as a common carrier, in interstate commerce, within the State of Ohio. Vendee is authorized to operate as a *common carrier* in Ohio, Illinois, Kentucky, and Indiana. Application has been filed for temporary authority under section 210a(b).

No. MC-F-10973. Authority sought for purchase by ROADWAY EXPRESS, INC., 1077 George Boulevard, Post Office Box 471, Akron, Ohio 44309, of a portion of the operating rights of D. D. JONES TRANSFER AND WAREHOUSE COMPANY, INCORPORATED, 630 Poindexter Street, Chesapeake, Va. 23506, and for acquisition by GALEN J. ROUSH, also of Akron, Ohio, of control of such rights through the purchase. Applicants' attorneys: William O. Turney, 2001 Massachusetts Avenue NW., Washington, D.C. 20036 and Morton E. Kiel, 140 Cedar Street, New York, N.Y. 10006. Operating rights sought to be transferred: *General commodities*, except those of unusual value, and except dangerous explosives, fertilizer, used household goods, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading, between Norfolk, Va., on the one hand, and, on the other, Richmond, Va. Vendee is authorized to operate as a *common carrier* in Ohio, Texas, Oklahoma, Michigan, Missouri, Indiana, Pennsylvania, Kansas, Illinois, Tennessee, Alabama, Georgia, North Carolina, South Carolina, New Jersey, New York, Virginia, Delaware, Maryland, West Virginia, Connecticut, Wisconsin, District of Columbia, Mississippi, Louisiana, Massachusetts, and Rhode Island. Application has not been filed for temporary authority under section 210a(b).

No. MC-F-10974. Authority sought for purchase by MURROW'S TRANSFER, INCORPORATED, 708 West Fairfield Road, Post Office Box 4095, High Point, N.C. 27263, of the operating rights and property of F & B TRUCK LINE, INC., Post Office Box 4258, Springfield Road, High Point, N.C. 27263, and for acquisition by W. C. MURROW Westridge Street, High Point, N.C., of control of such rights and property through the purchase. Applicants' attorney: J. Ruffin Bailey, Post Office Box 2246, Raleigh, N.C. 27602. Operating rights sought to be transferred: Under a certificate of registration, in Docket No. MC 98817 Sub-1, covering the transportation of general commodities, as a common carrier, in interstate commerce, within the State of North Carolina. Vendee is authorized to operate as a *common carrier* in North Carolina, Tennessee, Kentucky, Maryland, New York, New Jersey, Ohio, Alabama, Florida, Illinois, Indiana, Pennsylvania, Michigan, Rhode Island, Connecticut, Massachusetts, Vermont, Maine, New Hampshire, Georgia, South Carolina, Virginia, West Virginia, and the District of Columbia. Application has been filed for temporary authority under section 210a(b). NOTE: No. MC 111936 Sub-12 is a matter directly related.

No. MC-F-10975. Authority sought for purchase by HAROLD M. FELTY, INC., Rural Delivery No. 1, Pine Grove, Pa. 17963, of a portion of the operating rights of FLOYD A. SCHEIB, INC., Rural Delivery No. 2, Hegins, Pa. 17938, and for acquisition by HAROLD M. FELTY, also of Pine Grove, Pa., of control of such rights through the purchase. Applicants' attorney: John W. Dry, 541 Fence St., Reading, Pa. 19601. Operating rights sought to be transferred: *Sand and gravel*, as a *common carrier*, over irregular routes, from points in Cecil County, Md., to certain specified points in Pennsylvania, with restriction. Vendee is authorized to operate as a *common carrier* in Maryland, Pennsylvania, New Jersey, New York, Delaware, District of Columbia, Connecticut, Virginia, Massachusetts, and Rhode Island. Application has not been filed for temporary authority under section 210a(b).

No. MC-F-10976. Authority sought for purchase by ONEIDA MOTOR FREIGHT, INC., Commercial Avenue, Carlstadt, N.J. 07072, of a portion of the operating rights of SOMCO FREIGHT LINES, INC. (FRANK G. MASINI, RECEIVER), Paterson Plank Road, East Rutherford, N.J., and for acquisition by JOSEPH L. SINGLETON and DONALD T. SINGLETON, also of Carlstadt, N.J., of control of such rights through the purchase. Applicants' attorneys: William J. Hanlon, 744 Broad St., Newark, N.J. 07102, and William Biederman, 280 Broadway, New York, N.Y. 10007. Operating rights sought to be transferred: *General commodities*, except those of unusual value, classes A and B explosives, livestock, household goods as defined by the Commission, and commodities requiring special equipment, as a *common carrier* over irregular routes, between certain specified points in New Jersey and its commercial zone, on the one hand, and, on the other, Hartford, Conn., points in that part of Connecticut bounded by a line beginning at the New York-Connecticut State line and extending along U.S. Highway 6 to Sandy Hook, Conn., thence along Connecticut Highway 34 to New Haven, Conn., including points on those portions of the highways specified, points in New York within the New York, N.Y., commercial zone, as defined by the Commission, in 1 M.C.C. 665, points on Long Island, N.Y., and points in New York on and south of New York Highway 5 between Syracuse and Albany, N.Y., and U.S. Highway 20 between Albany and the New York-Massachusetts State line, and on and east of U.S. Highway 11. Vendee is authorized to operate as a *common carrier* in New York, New Jersey, Delaware, and Pennsylvania. Application has been filed for temporary authority under section 210a(b).

No. MC-F-10977. Authority sought for purchase by P. CALLAHAN, INC., 5240 Comly Street, Philadelphia, Pa. 19135, of a portion of the operating rights of SOMCO FREIGHT LINES, INC. (FRANK G. MASINI, RECEIVER), 443 Broad Street, Newark, N.J. 07102, and for acquisition by JAMES M. CALLAHAN, also of Philadelphia, Pa., of control of such rights through the purchase. Applicants' attorney and representative: William J. Hanlon, 744 Broad Street, Newark, N.J. 07102, and Terrence L. Bowers, 5240 Comly Street, Philadelphia, Pa. 19135. Operating rights sought to be transferred: *General commodities*, except those of unusual value, classes A and B explosives, alcoholic beverages, silk, silk products, tobacco, household goods as defined by the Commission, commodities requiring special equipment, and those injurious or contaminating to other lading, as a *common carrier* over regular routes, between Red Bank, N.J., and New York, N.Y., serving certain specified intermediate and off-route points in New Jersey, between

New Brunswick, N.J., and New York, N.Y., serving certain specified intermediate and off-route points in New Jersey, between Somerville, N.J., and New York, N.Y., serving certain specified intermediate and off-route points in New Jersey, between Union, N.J., and New York, N.Y., serving certain specified intermediate and off-route points in New Jersey, between Paramus, N.J., and New York, N.Y., serving certain specified intermediate and off-route points in New Jersey, Vendee is authorized to operate as a *common carrier* in Pennsylvania, New York, New Jersey, Maryland, Massachusetts, Rhode Island, New Hampshire, Connecticut, and Delaware, and as a *contract carrier* in Pennsylvania, Delaware, New Jersey, Maryland, New York, Virginia, and the District of Columbia. Application has been filed for temporary authority under section 210a(b).

No. MC-F-10978. Authority sought for control by MRS. IONIA RABALAIS, MRS. A. J. FRANZ, SR., JAMES A. RABALAIS, SR., ARTHUR J. FRANZ, JR., AND JAMES A. RABALAIS, JR., 1333 Jefferson Highway, Box 10052, New Orleans, La. 70121, of C & D TRANSPORTATION CO., INC., of 962 Bay Bridge Road, Prichard, Ala. 36610. Applicants' attorney: William P. Jackson, Jr., 919 18th Street NW., Washington, D.C. 20006. Operating rights sought to be controlled: *Packing house products, dairy products, fresh and frozen sea food and fresh and frozen fruit and vegetables*, as a *common carrier* over irregular routes, between points in Mobile County, Ala., on the one hand, and, on the other, points in Mississippi, Georgia, and Florida, from points in Mississippi and Florida within 500 miles of Montgomery, Ala., to Montgomery, Ala.; *frozen citrus products*, from points in Florida to points in Mobile County, Ala., from points in Florida within 500 miles of Montgomery, Ala., to Montgomery, Ala., with restriction; *perishable food and foodstuffs*, in vehicles equipped with mechanical refrigeration, moving on Government bills of lading, from New Orleans, La., and points within 15 miles thereof, to Orange, Tex., *meats, meat products, meat byproducts, dairy products, and commodities distributed by meat packinghouses*, as discribed in parts A, B, and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except carcass meats suspended on rails), fresh or frozen, in vehicles equipped with mechanical refrigeration, from Montgomery, Ala., to certain specified points in Mississippi and Mobile, Ala.;

Fresh or frozen foods and foodstuffs (except carcass meats suspended on rails), and *those packinghouse products and articles distributed by meat packinghouses*, described in Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766, which are fresh or frozen and are not for human consumption, in vehicles equipped with mechanical refrigeration, from Birmingham, Ala., and certain specified points in Mississippi and Mobile, Ala.; *fresh or frozen poultry* when moving in mixed shipments, in vehicles equipped with mechanical refrigeration, from Prattville, Ala., to certain specified points in Mississippi and Mobile, Ala.; *bananas*, from New Orleans, La., to Decatur, Ill., and Indianapolis, Ind., from Mobile, Ala., to Atlanta, Ga., Louisville, Ky., Kansas City and St. Louis, Mo., Cincinnati, Ohio, certain specified points in Indiana and points in Tennessee; *coffee beans*, from New Orleans, La., to Mobile, Ala.; *cheese*, from the plantsite of Armour & Co. at New Albany, Miss., to points in Louisiana, Pennsylvania, New York, Massachusetts, Connecticut, New Jersey, Delaware, West Virginia, Virginia, North Carolina, South Carolina, Georgia, Florida, Tennessee, Alabama, Kentucky, and the District of Columbia; *fresh and frozen meat*, from the plantsite of Swift & Co. at Jackson, Miss., to the destination points specified above, foodstuffs (except bananas and except commodities in bulk), from the plantsites and warehouses sites of Mississippi Federated Cooperatives (AAL), at or near Collins, New Albany, Canton, Crystal Springs, and Jackson, Miss., to the destination points specified above, with restriction; *fresh and frozen poultry, poultry products, and poultry byproducts*, from certain specified points in Alabama, to points in Louisiana, Arkansas, Oklahoma, Kansas, Nebraska, Missouri, Iowa, Illinois, Indiana, Ohio, West Virginia, Virginia, Kentucky, Tennessee, North Carolina, Mississippi, Georgia, Florida, Maryland, Delaware, and the District of Columbia;

Fresh and frozen poultry when moving in mixed loads with commodities the transportation of which is subject to full economic regulations by this Commission (presently authorized), from points in Louisiana, Oklahoma, Illinois, West Virginia, Virginia, Kentucky, Tennessee, North Carolina, Mississippi, Georgia, Florida, Delaware (except those on the Delmarva Peninsula), to certain specified points in Alabama; *foodstuffs* (except commodities in bulk), in vehicles equipped with mechanical refrigeration, between Mobile, Ala., on the one hand, and, on the other, points in Alabama on and south of U.S. Highway 80, with restriction; *animal and poultry feed*, except in bulk, from Sikeston, Mo., to Mobile and Eight Mile, Ala.; *agricultural commodities* (not including manufactured products thereof), as defined in section 203(b)(6) of the Interstate Commerce Act, when moving in the same vehicle and at the same time with bananas (otherwise authorized), from Gulfport, Miss., to Atlanta, Ga.; Louisville, Ky.; Kansas City and St. Louis, Mo.; Cincinnati, Ohio; certain specified points in Indiana, Decatur, Ill., and points in Tennessee; *canned goods and frozen foods, and advertising, promotional, and display materials*, when moving in the same vehicle at the same time with canned goods and frozen foods, from the plantsite and facilities of Delta Food Processing Corp. at Moorhead, Miss., to points in Alabama, California, Nebraska, Arizona, New Mexico, Kansas, Oklahoma, Texas, Iowa, Missouri, Arkansas, Louisiana, Illinois, Indiana, Kentucky, Tennessee, Mississippi, Ohio, Georgia, Florida, South Carolina, North Carolina, Virginia, West Virginia, Maryland, Delaware, Pennsylvania, New York, Connecticut, Nevada, Massachusetts, New Jersey, and the District of Columbia;

Cans, boxes, cartons, and containers, from Tampa, Fla.; Atlanta, Ga.; Birmingham, Ala.; New Orleans, La.; Dallas, Houston, and Arlington, Tex.; Kansas City and St. Louis, Mo.; Chicago, Ill.; Austin, Ind.; Winchester, Va.; and Spartanburg, S.C.; to the plantsite and facilities of Delta Food Processing Corp. at Moorhead, Miss.; *cardboard, fiberboard, paper, and composition containers*, from Memphis and Nashville, Tenn.; Birmingham, Ala.; Atlanta, Ga.; Monroe and New Orleans, La.; and Dallas and Houston, Tex.; to the plantsite and facilities of Delta Food Processing Corp. at Moorhead, Miss.; *machinery, parts, accessories*, equipment, supplies, implements, parts, appliances, and products usually of customarily used or useful in the processing, manufacture, packing, freezing, or canning of foodstuffs (except in bulk, in tank vehicles), from points in Arkansas, Louisiana, Texas, Oklahoma, Kansas, Missouri, Illinois, Indiana, Kentucky, Tennessee, North Carolina, South Carolina, Georgia, Florida, Alabama, Ohio, Virginia, Maryland, West Virginia, Nebraska, Iowa, Pennsylvania, New York, New Jersey, Delaware, Massachusetts, Connecticut, New Mexico, Arizona, Nevada, California, and the District of Columbia, to the plantsite and facilities of Delta Food Processing Corp. at Moorhead, Miss., with restriction; *meat* in carcass form, in vehicles equipped with mechanical refrigeration, from Montgomery, Ala., to certain specified points in Florida and Mississippi, and Mobile, Ala.; perishable foods, in vehicles equipped with mechanical refrigeration, as a common carrier over regular routes, between New Orleans, La., and Mobile, Ala., serving all intermediate points and the National Aeronautics and Space Administration Test Site located at or near Santa Rosa, Miss., as an off-route point, from New Orleans over U.S. Highway 90 to Mobile, and return over the same route, with restriction. MRS. IONIA RABALAIS, MRS. A. J. FRANZ, SR., JAMES A. RABALAIS, SR., ARTHUR J. FRANZ, JR., AND JAMES A. RABALAIS, JR., holds no authority from this Commission. However, they are affiliated with A. A. RABALAIS, INC., 1333 Jefferson Highway, Box 10052, New Orleans, La. 70121, which is authorized to operate as a *contract carrier* in Alabama, Louisiana, Mississippi, Florida, Arkansas, Tennessee, and Oklahoma. Application has been filed for temporary authority under section 210a(b).

No. MC-F-10979. Authority sought for purchase by SILVER WHEEL FREIGHTLINES, INC., 1321 Southeast Water Avenue, Portland, Oreg. 97214, of a portion of the operating rights of VANWAYS, INC., 2323 Federal Way, Boise, Idaho 84705, and for acquisition by GEORGE BROWNING, JR. and GEORGE A. GRILL, both also of 1321 Southeast Water Avenue, Portland, Oreg. 97214, of control of such rights

through the purchase. Applicants' attorney: Kenneth G. Thomas, 900 Failing Building, 618 Southeast Fifth Avenue, Portland, Oreg. 97204. Operating rights sought to be transferred: *General commodities*, except those of unusual value, household goods as defined by the Commission, and commodities injurious or contaminating to other lading, as a *common carrier* over irregular routes, between points in Ada, Canyon, Gem, Payette, Washington, and Adams Counties, Idaho, and Baker County, Oreg., and those in that part of Malheur County, Oreg., north of a line beginning at the Malheur-Harney County line and extending east through Crowley and Rockville, Oreg., to the Oregon-Idaho State line. Vendee is authorized to operate as a *common carrier* in Washington and Oregon. Application has been filed for temporary authority under section 210a (b). NOTE: No. MC-107576 Sub-19, is a matter directly related.

No. MC-F-10980. Authority sought for purchase by MALLINGER TRUCK LINE, INC., Otho, Iowa 50569, of the operating rights of INTERCITY EXPRESS, INC., Post Office Box 1055, Fort Dodge, Iowa 50502, and for acquisition by DENNIS MALLINGER also of Otho, Iowa 50569, of control of such rights through the purchase. Applicant's attorney: William L. Fairbank, 610 Hubbell Building, Des Moines, Iowa 50309. Operating rights sought to be transferred: *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*, 61 M.C.C. 209 and 766 (except commodities in bulk and except hides), as a *common carrier* over irregular routes, from the site of Geo. A. Hormel & Co., at or near Bureau, Ill., to points in Iowa and Minnesota, and to Omaha and Fremont, Nebr., with restrictions; from Ottumwa, Iowa, to St. Louis, Mo.; *meats, meat products, and meat byproducts, dairy products, and articles distributed by meat packinghouses*, as described in sections A, B, and C of appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except those commodities moving in bulk, in tank vehicles), between Fort Dodge, Iowa, and Austin, Minn.; *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*, 61 M.C.C. 209 and 766 (except hides and inedible skins or pieces thereof and except commodities in bulk, in tank vehicles), from the plantsite and storage facilities of I. D. Packing Co., at Des Moines, Iowa, to Austin, Minn., and Fremont, Nebr., with restriction;

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*, 61 M.C.C. 209 and 766, and *foodstuffs*, when transported in the same vehicle at the same time with meats, packinghouse products and commodities used by meat packinghouses as described in appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766, from the plantsite and storage facilities of Geo. A. Hormel & Co. at Austin, Minn., to Milan, Ill.; Lincoln, Nebr.; and points in Iowa, from the plantsite and storage facilities of I. D. Packing Co. at Des Moines, Iowa, to Lincoln, Nebr., and Detroit, Mich., from the plantsite and storage facilities of Geo. A. Hormel & Co. at Fort Dodge, Iowa, to Lincoln, Nebr., and points in Illinois, Iowa, and Missouri, between the storage facilities used by Geo. A. Hormel & Co. at Omaha, Nebr., on the one hand, and, on the other, the plantsites and storage facilities of Geo. A. Hormel & Co. at Fort Dodge, Iowa, and Austin, Minn. and the plantsite and storage facilities of Midwest Canning Co. at Owatonna, Minn., with restriction; *meats, meat products, meat byproducts, and articles distributed by meat packinghouses*, as described in sections A and C, and *such commodities* as are used by meatpackers in the conduct of their business when destined to and for use by meatpackers as described in section D of appendix I to the report in *Description in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except hides and commodities in bulk in tank vehicles), between Algona, Iowa, on the one hand, and, on the other, Austin, Minn., and Fremont, Nebr., with restriction;

Meats, meat products, and meat byproducts, dairy products, and articles distributed by meat packinghouses, as described in sections A, B, and C of appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except hides and commodities in bulk, in tank vehicles), from Ottumwa, Iowa, to points in Wisconsin; *meats, packinghouse products, and commodities used by packinghouses*, as described in sections A, C, and D of appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766, from Fremont, Nebr., to Fort Dodge, Iowa, and Austin and Owatonna, Minn., from Fort Dodge, Iowa, to Fremont, Nebr.; *packinghouse products* (except hides, skins, and pieces thereof, and except commodities in bulk), from Ottumwa, Iowa to points in Illinois (except points in Rock Island County); *frozen food for other than human consumption*, from Ottumwa, Iowa, to points in Wisconsin; *used empty steel drums*, from North Chicago, Ill., to Ottumwa, Iowa, with restriction; *canned goods*, from Ottumwa, Iowa, to Omaha, Nebr.; *malt beverages*, from Chicago and Peoria, Ill., Omaha, Nebr., St. Paul, Minn., St. Joseph and St. Louis, Mo., and Milwaukee, Wis., to Ottumwa, Iowa; *nonalcoholic beverages*, from Chicago, Ill., to Ottumwa, Iowa; *carbonated beverages*, in containers, from Ottumwa, Iowa, to points in Arkansas, Illinois, Kansas, Missouri, Nebraska, and South Dakota;

New empty containers for carbonated beverages, from Alton, Ill., to Ottumwa, Iowa, foodstuffs, except meats and packinghouse products as defined by the Commission and commodities in bulk, from the site of the storage facilities of Kold Storage, Inc., at Fort Dodge, Iowa, to points in Iowa, Minnesota, Nebraska, North Dakota, and South Dakota, with restriction; in pending Docket No. MC-119895 Sub-19, covering the transportation of *meats, meat products, meat byproducts, dairy products, and articles distributed by meat packinghouses*, as described in sections A, B, and C of appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except hides and commodities in bulk, in tank vehicles), (1) from the plantsites and/or warehouse facilities of John Morrel & Co., at or near Estherville and Ottumwa, Iowa, to points in Illinois, Indiana, Kansas, Minnesota, Missouri, Nebraska, and South Dakota; and (2) from the plantsites and/or warehouse facilities of John Morrell & Co., at or near Madison and Sioux Falls, S. Dak., to points in Illinois, Indiana, Iowa, Kansas, Minnesota, Missouri, and Nebraska, with restriction; in pending Docket No. MC-119895 Sub-23, covering the transportation of (1) *meats, meat products, and meat byproducts, dairy products and articles distributed by meat packinghouses*, as described in sections A, B, and C of appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766, and

(2) *Foodstuffs* when moving in mixed shipments with the commodities described in (1) above, from (a) Austin, Minn.; Fremont, Nebr.; and Fort Dodge, Iowa; to points in Alabama, Georgia, Kentucky, North Carolina, South Carolina, and Tennessee; (b) from Fort Dodge, Iowa, to points in Kansas; and (c) from Fremont, Nebr., to points in Iowa and Illinois, with restriction; and in pending Docket No. MC-119895 Sub-24, covering the transportation of *meats, meat products, meat byproducts, dairy products, and articles distributed by meat packinghouses*, as described in sections A, B, and C of appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except hides and commodities in bulk), from the plantsites and storage facilities utilized by John Morrell & Co., at or near Sioux Falls and Madison, S. Dak., and Estherville, Iowa, to points in Florida, Georgia, North Carolina, South Carolina, and Tennessee. Vendee is authorized to operate as a *common carrier* in Iowa, Nebraska, Minnesota, Illinois, South Dakota, North Dakota, Wisconsin, Colorado, Kansas, Missouri, and Oklahoma. Application has been filed for temporary authority under section 210a(b).

No. MC-F-10981. Authority sought for purchase by BARNES FREIGHT LINE, INC., Post Office Box 369, Carrollton, Ga. 30117, of the operating rights and property of ANNISTON-TALLADEGA MOTOR EXPRESS, INC., Post Office Box 395, Talladega, Ala. 35160, and for acquisition by B. C. BARNES, also of Carrollton, Ga., of control of such rights and property through the purchase. Applicants' attorney: Guy H. Postell, Suite 713, 3384 Peachtree Road NE., Atlanta, Ga. 30326. Operating rights sought to be transferred: Under a certificate of registration, in Docket No.

MC-99635 Sub-2, covering the transportation of general commodities, as a common carrier, in interstate commerce, within the State of Alabama. Vendee is authorized to operate as a *common carrier*, in Alabama and Georgia. Application has been filed for temporary authority under section 210a(b). NOTE: No. MC-108633 Sub-No. 7 is a matter directly related.

No. MC-F-10982. Authority sought for purchase by J. V. McNICHOLAS TRANSFER COMPANY, 555 West Federal Street, Youngstown, Ohio 44501, of the operating rights and property of LEE FREIGHT LINES, INC., 629 Harger Street, Dover, Ohio 44622, and for acquisition by HENRY J. McNICHOLAS, also of Youngstown, Ohio, of control of such rights and property through the purchase. Applicants' attorney: Paul F. Beery, 88 East Broad Street, Columbus, Ohio 43215. Operating rights sought to be transferred: Under a certificate of registration, in Docket No. MC-99917 Sub 1, covering the transportation of property as a common carrier, in interstate commerce, within the State of Ohio. Vendee is authorized to operate as a *common carrier* in Ohio, Pennsylvania, West Virginia, New York, Indiana, Kentucky, Connecticut, Delaware, Maryland, Mississippi, Michigan, New Jersey, Rhode Island, Virginia, Wisconsin, Illinois, and the District of Columbia, and as a *contract carrier* in Ohio, District of Columbia, Delaware, Illinois, Indiana, Kentucky, Maryland, Michigan, Missouri, New Jersey, New York, Pennsylvania, Virginia, West Virginia, Wisconsin, North Carolina, Tennessee, Connecticut, and Massachusetts. Application has been filed for temporary authority under section 210a(b).

By the Commission.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[F.R. Doc. 70-13827; Filed, Oct. 13, 1970; 8:50 a.m.]

NOTICE OF FILING OF MOTOR CARRIER INTRASTATE APPLICATIONS

OCTOBER 9, 1970.

The following applications for motor common carrier authority to operate in intrastate commerce seek concurrent motor carrier authorization in interstate or foreign commerce within the limits of the intrastate authority sought, pursuant to section 206(a)(6) of the Interstate Commerce Act, as amended October 15, 1962. These applications are governed by Special Rule 1.245 of the Commission's rules of practice, published in the FEDERAL REGISTER, issue of April 11, 1963, page 3533, which provides, among other things, that protests and requests for information concerning the time and place of State Commission hearings or other proceedings, any subsequent changes therein, any other related matters shall be directed to the State Commission with which the application is filed and shall not be addressed to or filed with the Interstate Commerce Commission.

State Docket No. S-1843, filed October 2, 1970. Applicant: ABE YODER, doing business as YODER TRUCK LINE, Egeland, N. Dak. 58331. Applicant's representative: E. J. Hanson, Box 1177, Grand Forks, N. Dak. 58201. Certificate of public convenience and necessity sought to operate a freight service as follows: Transportation of *general commodities*, except petroleum products in bulk, in tank vehicles, to, from, and within all of Towner County south of North Dakota Highway No. 66 and all of Crocus Township adjacent to and immediately north of Highway No. 66 in Towner County, on the one hand, and points and places in North Dakota, on the other hand. Both intrastate and interstate authority sought.

HEARING: Date, time, and place not known. Requests for procedural information including the time for filing protests concerning this application should be addressed to the Public Service Commission, Bismarck, N. Dak. 58501, and should not be directed to the Interstate Commerce Commission.

State Docket No. MT-2494, filed September 28, 1970. Applicant: DICK'S AUTO EXPRESS, INC., 441 Pulaski Street, Syracuse, N.Y. 13204. Applicant's representative: Herbert M. Canter, 345 South Warren Street, Syracuse, N.Y. 13202. Certificate of public convenience and necessity sought to operate a freight service as follows: Transportation of general commodities, between the village of Newark, New York, and the city of Rochester, N.Y., via New York Highway 31, serving all intermediate points on said route. Applicant states that it proposes to tack with its present authority. Applicant further states that no duplicating authority is being sought. Both intrastate and interstate authority sought.

HEARING: To be hereafter assigned. Requests for procedural information including the time for filing protests concerning this application should be addressed to the State of New York Public Service Commission, 44 Holland Avenue, Albany, N.Y. 12208, and should not be directed to the Interstate Commerce Commission.

State Docket No. 7384 M, Extension Route No. 71, filed October 1, 1970. Applicant: FRANCIS J. GORRELL, doing business as TOPLIFF TRUCK LINE, 746 North Santa Fe, Salina, Kans. 67401. Applicant's representative: Harold Chase, Salina, Kans. Certificate of public convenience and necessity sought to operate a freight service as follows: Transportation of *general commodities*, except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading, from Beloit, Kans., to Norton, Kans., as follows: From Beloit, Kans., north over Highway K14 to the junction of said highway with U.S. Highway 36; thence west on said U.S. Highway 36 to Norton, Kans.; thence south over U.S. Highway 283 to the junction of said highway with Highway K9; thence east over said Highway K9 to Beloit, Kans., with service authorized in either direction from, to and between the intermediate and off-route points of Jewell, Mankato, Burr Oak, Otego, Esbon, Lebanon, Bellaire, Smith Center, Athol, Kensington, Agra, Gretna, Phillipsburg, Stuttgard, Prairie View, Almena, Calvert, Norton, Lenora, Edmond, Densmore, Logan, Speed, Glade, Kirwin, Claudell, Cedar, Gaylord, Harlan, Portis, Downs, Osborne, Cawker City, Glen Elder, and Beloit and from, to and between all points on this extension and all points now authorized to be served under the original certificate as previously extended. Both intrastate and interstate authority sought.

HEARING: November 17 and 18, 1970, at the Holiday Inn, Salina, Kans. Requests for procedural information including the time for filing protests concerning this application should be addressed to the State Corporation Commission, Fourth Floor, State Office Building, Topeka, Kans. 66612, and should not be directed to the Interstate Commerce Commission.

By the Commission.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[F.R. Doc. 70-13829; Filed, Oct. 13, 1970; 8:50 a.m.]

[Notice 168]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

OCTOBER 8, 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 30837 (Sub-No. 409 TA), filed October 6, 1970. Applicant: KENOSHA AUTO TRANSPORT CORPORATION, 4200 39th Avenue, Post Office Box 160, 53141, Kenosha, Wis. 53140. Applicant's representative: Albert P. Barber (same address as above). Authority sought to

operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *All terrain vehicles*, from Fort Dodge, Iowa, to points in the United States (except Hawaii), and the return of *damaged, rejected, undeliverable, repossessed and reassigned vehicles* to point of origin, for 150 days. Supporting shipper: Standard Engineering Co., Inc., Fort Dodge, Iowa 50501. (Joe Allen). Send protests to: District Supervisor Lyle D. Helfer, Interstate Commerce Commission, Bureau of Operations, 135 West Wells Street, Room 807, Milwaukee, Wis. 53203.

No. MC 42487 (Sub-No. 763 TA), filed October 2, 1970. Applicant: CONSOLIDATED FREIGHTWAYS CORPORATION OF DELAWARE, 175 Linfield Drive, Menlo Park, Calif. 94025. Applicant's representative: Robert M. Bowden, Post Office Box 3062, Portland, Oreg. 97208. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Benzaldehyde*, in bulk, in tank vehicles, from Kalama, Wash., to McIntosh, Ala., for 150 days. Supporting shipper: The Dow Chemical Co., Western Division, Post Office Box 351, Pittsburg, Calif. 94565. Send protests to: District Supervisor Claud W. Reeves, Interstate Commerce Commission, Bureau of Operations, 450 Golden Gate Avenue, Box 36004, San Francisco, Calif. 94102.

No. MC 106398 (Sub-No. 494 TA) (Correction), filed September 17, 1970, published FEDERAL REGISTER, issue of September 29, 1970, and republished as corrected this issue. Applicant: NATIONAL TRAILER CONVOY, INC., 1925 National Plaza, Box 51096, Dawson Station, Tulsa, Okla. 74151. Applicant's representative: Irvin Tull (same address as above). NOTE: The purpose of this republication is to show applicant's correct name, as shown above, in lieu of National *Trucking* Convoy, Inc., which was in error. The rest of the notice remains as previously published.

No. MC 106760 (Sub-No. 131 TA), filed October 2, 1970. Applicant: WHITEHOUSE TRUCKING, INC., 1925 National Plaza, Tulsa, Okla. 74151. Applicant's representative: Irvin Tull (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Wood fiberboard, wood fiberboard faced or finished with decorative and/or protective materials, and accessories and supplies* used in the installation thereof (except commodities in bulk), from the plant and warehouse sites of Evans Products Co., at or near Doswell (Hanover County), Va., to points in Alabama, Arkansas, Delaware, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maryland, Michigan, Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, District of Columbia, West Virginia, Wisconsin, Connecticut, Florida, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont, for 180 days. Supporting shipper: Evans Products Co., Allen K. Penttila, director of transportation, 2200 East Devon Avenue, Des Plaines, Ill. 60018. Send protests to: C. L. Phillips, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 240 Old Post Office Building, 215 Northwest Third, Oklahoma City, Okla. 73102.

No. MC 116073 (Sub-No. 137 TA), filed October 2, 1970. Applicant: BARRETT MOBILE HOME TRANSPORT, INC., Post Office Box 919, 1825 Main Avenue, Moorhead, Minn. 56560. Applicant's representative: Robert G. Tessar, Post Office Box 919, Moorhead, Minn. 56560. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Trailers*, designed to be drawn by passenger automobiles, in initial movements, from Pelican Rapids, Minn., to points in North Dakota, Montana, Wisconsin, Iowa, and South Dakota, for 180 days. Supporting shipper: ORD Corp., Box 358, Pelican Rapids, Minn. 56572. Send protests to: J. H. Ambs, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Post Office Box 2340, Fargo, N. Dak. 58102.

No. MC 118831 (Sub-No. 74 TA), filed October 6, 1970. Applicant: CENTRAL TRANSPORT, INCORPORATED, Post Office Box 5044 (Uwharrie Road) 27263, High Point, N.C. 27261. Applicant's representative: Richard E. Shaw, Post Office Box 5044, High Point, N.C. 27262. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Petroleum wax*, in bulk, from Chemway (Charlotte), N.C., to South Boston, Va., for 180 days. NOTE: Applicant does not believe that authority sought can be tacked with any now held. Supporting shipper: George R. Johansen, traffic analyst, U.S. Plywood-Champion Papers, Inc., Knightsbridge Drive, Hamilton, Ohio. Send protests to: Archie W. Andrews, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Post Office Box 26896, Raleigh, N.C. 27611.

No. MC 119531 (Sub-No. 147 TA), filed October 6, 1970. Applicant: DIECKBRADER EXPRESS, INC., 5391 Wooster Road, Cincinnati, Ohio 45226. Applicant's representative: Raymond C. Minks (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Glass bottles* from Rockdale, Ill., to Frankfort and Louisville, Ky., and *empty used pallets*, on return, for 150 days. Supporting shipper: University Glass Products Co., 936 Moen Avenue, Rockdale, Ill. 60436. Send protests to: Emil P. Schwab, District Supervisor, Interstate Commerce Commission, 5514-B Federal Building, 550 Main Street, Cincinnati, Ohio 45202.

No. MC 124078 (Sub-No. 457 TA), filed October 6, 1970. Applicant: SCHWERMAN TRUCKING CO., a corporation, 611 South 28th Street, Milwaukee, Wis. 53246. Applicant's representative: Richard H. Prevette (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting, *Granulated slag*, in bulk, from Hammond, Ind., to Chattanooga, Tenn. for 180 days. Supporting shipper: Combustion Engineering, Inc., Chattanooga Division, 911 West Main Street, Chattanooga, Tenn. 37402. (K. W. Goode, supervisor of traffic). Send protests to: District Supervisor Lyle D. Helfer, Interstate Commerce Commission, Bureau of Operations, 135 West Wells Street, Room 807, Milwaukee, Wis. 53203.

No. MC 133962 (Sub-No. 2 TA), filed October 6, 1970. Applicant: JAMES W. ALDRICH, 748 Northeast 15th Street, Ocala, Fla. 32670. Applicant's representative: Norman T. Bolinger, 1729 Gulf Life Tower, Jacksonville, Fla. 32207. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Carbon mix* in bulk, used in the manufacture of charcoal bricquets, from Jacksonville, Fla., to Stamford, N.Y.; *coal dust*, in bulk, used in the manufacture of charcoal bricquets, from Shamokin, Pa., to Jacksonville, Fla., service to be performed under a continuing contract or contracts with Timberland Products Co., Inc. Supporting shipper: Timberland Products Co., Inc., 11711 Industrial Area Drive, Jacksonville, Fla. 32205. Send protests to: District Supervisor G. H. Fauss, Jr., Bureau of Operations, Interstate Commerce Commission, Box 35008, 400 West Bay Street, Jacksonville, Fla. 32202.

No. MC 134068 (Sub-No. 6 TA), filed October 6, 1970. Applicant: KODIAK REFRIGERATED LINES, INC., 5243 San Feliciano Drive, Woodland Hills, Calif. 91364. Applicant's representative: D. Ackle, 521 South 14th Street, Post Office Box 80806, Lincoln, Nebr. 68501. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Canned goods*, from points in California to points in Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, and Tennessee, for 180 days. Supporting shippers: California Canners and Growers, 3100 Ferry Building, San Francisco, Calif. 94106; Tillie Lewis Foods, Inc., Subsidiary of The Ogden Corp., Post Office Drawer J, Stockton, Calif. 95201; Star Kist Foods, Inc., 582 Tuna Street, Terminal Island, Calif. 90731; Del Monte Corp., 215 Fremont Street, San Francisco, Calif. 94119; Gangi Packing Co., Post Office Box 518, Santa Clara, Calif.; Duffy-Mott Co., Pratt-Low Division, Bellomy and Campbekk Avenue, Post Office Box 238, Santa Clara, Calif. 95052. Send protests to: John E. Nance, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 7708 Federal Building, 300 North Los Angeles Street, Los Angeles, Calif. 90012.

No. MC 134964 TA, filed October 2, 1970. Applicant: PARK OIL COMPANY, INC., Post Office Box 363, Brownsville, Ky. 42210. Applicant's representative: Stephen J. Parsley (same address as above). Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Petroleum products* (except petrochemicals) in bulk, in tank vehicles, from the bulk storage facility of the Shell Oil Co., at or near Nashville, Tenn., to Aberdeen, Brownsville, and Park City, Ky., the site of Cross Roads Shell Service at intersection of U.S. Highway 31-W and Kentucky

Highway 259, and the site of Jerry Johnson's Shell Service on Kentucky Highway 255, near Park City, Ky. for 180 days. Supporting shipper: Luther Wells, President, Wells Oil Co., Inc., Brownsville, Ky., 42210. Send protests to: Wayne L. Merilatt, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 426 Post Office Building, Louisville, Ky. 40202.

By the Commission.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[F.R. Doc. 70-13826; Filed, Oct. 13, 1970; 8:50 a.m.]

[Notice 601]

MOTOR CARRIER TRANSFER PROCEEDINGS

OCTOBER 8, 1970.

Synopses of orders entered pursuant to section 212(b) of the Interstate Commerce Act, and rules and regulations prescribed thereunder (49 CFR Part 1132), appear below:

As provided in the Commission's special rules of practice any interested person may file a petition seeking reconsideration of the following numbered proceedings within 20 days from the date of publication of this notice. Pursuant to section 17(8) of the Interstate Commerce Act, the filing of such a petition will postpone the effective date of the order in that proceeding pending its disposition. The matters relied upon by petitioners must be specified in their petitions with particularity.

No. MC-FC-72345. By order of October 7, 1970, the Motor Carrier Board approved the transfer to Keith E. Schultz, doing business as B & W Wrecker Service, Post Office Box 1492, Boise, Idaho 83701, of the operating rights in certificate No. MC-111647 issued August 16, 1966, to Keith Schultz and Allen C. Lunt, a partnership, doing business as B & W Wrecker Service, Post Office Box 1492, Boise, Idaho 83701, authorizing the transportation of wrecked or disabled motor vehicles, between points in Baker, Malheur, and Harney Counties, Oreg., on the one hand, and, on the other, points in Washington, Payette, Gem, Canyon, Ada, and Elmore Counties, Idaho, and between points in Humboldt County, Nev., on the one hand, and, on the other, points in Ada County, Idaho.

No. MC-FC-72390. By order of October 6, 1970, the Motor Carrier Board approved the transfer to Doris R. Hilliker, doing business as Hilliker Moving and Storage, 13 Nason Street, St. Albans, Vt. 05478, of the operating rights in certificate No. MC-104453, issued by the Commission April 17, 1944, in the name of George E. Hilliker, authorizing the transportation of household goods, as defined in Practices of Motor Common Carriers of Household Goods, 17 M.C.C. 467, between St. Albans, Vt., on the one hand, and, on the other, points and places in Vermont, Maine, New Hampshire, Connecticut, Massachusetts, Rhode Island, and New York.

No. MC-FC-72400. By order of October 6, 1970, the Motor Carrier Board approved the transfer to Al Smith Moving and Furniture Co., Inc., 273 New York Avenue, Jersey City, N.J. 07303, of the operating rights in certificate No. MC-69099, issued September 9, 1940, to Alfred Smith, doing business as Al Smith Moving and Storage Co., 273 New York Avenue, Jersey City, N.J. 07307, authorizing the transportation of household goods between points in Hudson County, N.J., on the one hand, and, on the other, points in New York, Pennsylvania, and Connecticut.

No. MC-FC-72401. By order of October 6, 1970, the Motor Carrier Board approved the transfer to Roger G. Owens, Cumberland, Wis., of the operating rights in certificate No. MC-105366 issued February 19, 1957, to Melvin E. Lloyd, Cumberland, Wis., authorizing the transportation of livestock, between points in the townships of Bear Lake, Cumberland, Lakeland, and Stanfold, Barron County, Wis., on the one hand, and, on the other, South St. Paul and Newport, Minn., and feed and feed ingredients, from Minneapolis; St. Paul, South St. Paul, and Newport, Minn., to points in the townships of Bear Lake, Cumberland, Lakeland, and Stanfold, Barron County, Wis. A. R. Fowler, 2288 University Avenue, St. Paul, Minn. 55114, representative for applicants.

No. MC-FC-72408. By order of October 6, 1970, the Motor Carrier Board approved the transfer to Joseph F. Hughes, doing business as Mount Ephraim Storage Co., Camden, N.J., of the operating rights in certificates Nos. MC-7587 and MC-7587 (Sub-No. 2) issued March 27, 1959 and April 9, 1969, respectively, to John M. Duffy, Thomas J. Duffy, John M. Duffy, Jr., Joseph P. Duffy, and James J. Duffy, a partnership, doing business as John M. Duffy and P. Hughes & Son, Philadelphia, Pa., authorizing the transportation of various named commodities between specified points and areas in Pennsylvania, on the one hand, and, on the other, points in Delaware and New Jersey, and New York, N.Y. Howard Saul Marcu, 706 Dunwoody Drive, Springfield, Pa. 19064, attorney for applicants.

No. MC-FC-72412. By order of October 6, 1970, the Motor Carrier Board approved the transfer to Robert J. Erickson, doing business as Bob Erickson Trucking, Rush City, Minn., of the operating rights in permits Nos. MC-116884 (Sub-No. 1) and MC-116884 (Sub-No. 3) issued August 27, 1964, and July 24, 1969, respectively, to Arnold King, doing business as King Truck Line, Minneapolis, Minn., authorizing the transportation of ice cream, ice cream mixes, butter, and ice cream cones, from Minneapolis, Minn., to Ashland, Wis.; Sioux Falls, S. Dak.; and Fargo, Jamestown, and Mandan, N. Dak.; and ice cream, ice cream mixes, ice cream novelties, and ice cream cones, from Minneapolis, Minn., to Cedar Rapids, Des Moines, Fort Dodge, Hawarden, and Mason City, Iowa, A. R. Fowler, 2288 University Avenue, St. Paul, Minn. 55114, representative for applicants.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[F.R. Doc. 70-13824; Filed, Oct. 13, 1970; 8:50 a.m.]

[Notice 601A]

MOTOR CARRIER TRANSFER PROCEEDINGS

OCTOBER 8, 1970.

Application filed for temporary authority under section 210(a)(b) in connection with transfer application under section 212(b) and Transfer Rules, 49 CFR Part 1132:—

No. MC-FC-72432. By application filed October 5, 1970, DOROTHY R. ZUMMO, doing business as AIR DELIVERY SERVICE, Post Office Box 1102, Scranton, Pa. 18501, seeks temporary authority to lease the operating rights of SHELLY'S EXPRESS, INC., Post Office Box 98, Fort Washington, Pa. 19034, under section 210a(b). The transfer to DOROTHY R. ZUMMO, doing business as AIR DELIVERY SERVICE, of the operating rights of SHELLY'S EXPRESS, INC., is presently pending.

By the Commission.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[F.R. Doc. 70-13825; Filed, Oct. 13, 1970; 8:50 a.m.]

[Ex Parte No. MC-19 (Sub-No. 13)]

ALBERT SPARKS

Petition for Declaratory Order

OCTOBER 9, 1970.

By letter petition filed September 8, 1970, Dr. Albert Sparks seeks a declaratory order determining whether or not a shipper of household goods must pay a carrier's charges, in whole or in part, for services from origin to destination after the shipment is totally destroyed by fire in an accident.

Petitioner, as Laboratory Director of the Bureau of Commercial Fisheries of the Fish and Wildlife Service of the U.S. Department of the Interior, was transferred from Seattle, Wash., to the Galveston Biological Laboratory and in connection therewith was authorized to ship his household goods under the so-called "commuted rate" from Seattle to Galveston. It is alleged that Security Van Lines of Abilene, Tex. (a subsidiary of Wheaton Van Lines), picked up his household effects in Seattle on January 20, 1970; that on January 25, 1970, he was notified by the Customer Service Department of Wheaton Van Lines that the carrier's van was wrecked near Casa Grande, Ariz. (approximately 1,500 miles from Seattle) and that his entire shipment was destroyed by fire; that he submitted a claim of $20,018.47 for the loss of his goods; that the shipment was insured for only $11,445; and that a settlement check has been issued in this amount, but that the carrier has reduced

this amount by $1,597.08 which it claims would have been the cost to provide the service and deliver the shipment to the destination. Petitioner points out that the transportation was being performed pursuant to a contract which states in part that it "is subject to all the rules, regulations, rates, and charges in carrier's currently effective applicable tariffs on file with the Interstate Commerce Commission * * *" and specifically requests a determination as to whether under the described circumstances he is obligated to pay the charges assessed by the carrier.

Any person or persons desiring to participate in this proceeding (including petitioner) may, within 30 days from the date of this publication, file representations, consisting of an original and six copies, supporting or opposing the relief sought by petitioner. A copy of such statement should be served on petitioner through his representative, C. Brewster Chapman, Jr., whose address is C Street between 18th and 19th Streets NW., Washington, D.C. 20240, U.S. Department of the Interior, Fish and Wildlife Service.

Notice to the general public of the matters herein under consideration will be given by depositing a copy of this notice in the Office of the Secretary of the Commission for public inspection and by filing a copy thereof with the Director, Office of the Federal Register.

By the Commission.

[SEAL] ROBERT L. OSWALD,
Secretary.

[F.R. Doc. 70-13830; Filed, Oct. 13, 1970; 8:50 a.m.]

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FEDERAL REGISTER

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Wednesday, October 14, 1970 • Washington, D.C.

PART II

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

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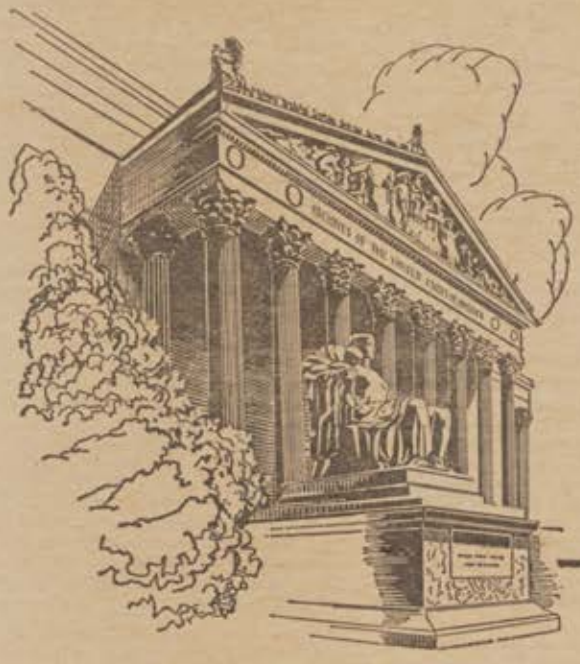
CIVIL RIGHTS CONTRACT COMPLIANCE PROGRAM

Notice of Proposed Rule Making



DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[49 CFR Part 23]

[OST Docket No. 28]

CIVIL RIGHTS CONTRACT COMPLIANCE PROGRAM

Notice of Proposed Rule Making

The Department of Transportation (DOT) is considering the addition of a new Part 23 to the Regulations of the Office of the Secretary of Transportation, as provided below. The purpose of the proposed new part is to set forth the Department's civil rights contract compliance program. In part, the proposed regulation would implement the regulations and orders of the Secretary of Labor adopted under Executive Order 11246 (30 F.R. 12319), as amended by Executive Order 11375 (32 F.R. 14303), which require the inclusion of an Equal Opportunity Clause in Federal contracts, federally assisted construction contracts, and subcontracts thereunder. In accordance with national policy and Constitutional prohibitions against discrimination and the DOT Act (80 Stat. 931, 49 U.S.C. 1651), the proposed regulation would also establish equal employment opportunity requirements for grant recipients and federally assisted supply contractors and subcontractors.

An informal draft of a proposed DOT order on the same subject was distributed to certain industry, State, and minority group representatives in June 1969. All comments received thereon have been carefully considered in the preparation of the proposed new part. Although rule-making with respect to public contracts, grants, and internal management is exempted from the procedural requirements of section 553 of title 5, United States Code, the Department has decided to issue a public regulation through public rulemaking procedures rather than to issue an internal Departmental order, because the proposal affects the general public as well as direct Government and federally assisted contractors, subcontractors, and grant recipients.

The proposal would establish a number of innovations in the Department's contract compliance program. The most important of these are as follows:

A grant recipient's employment policies and practices are now subject to the Equal Opportunity Clause required by Executive Order 11246, as amended,[1] only if the grant involves a federally assisted construction contract and the recipient himself participates in the construction work. The proposal would extend the Equal Opportunity Clause to a recipient's employment policies and practices whether or not any of the contracts involved are for construction work. Similarly, the employment policies and practices of a supplier under a grant agreement are now subject to the Equal Opportunity Clause only if the supplier is a subcontractor to a federally assisted construction contractor or subcontractor. The proposal would require equal opportunity compliance by suppliers who are either contractors or subcontractors with the recipient, regardless of whether the grant agreement involves any construction work.

Aside from this extension of equal opportunity coverage, the proposed regulation would supplement the standard Equal Opportunity Clause in certain cases with an Affirmative Action Special Provision. This Special Provision, set forth in Appendix I of the proposed regulation, would apply to nonexempt,[2] direct or federally assisted, DOT contracts and nonexempt DOT grant agreements with respect to which the Department anticipates having equal opportunity compliance responsibilities. It would also apply to nonexempt subcontracts for construction work let by direct or federally assisted DOT contractors.[3]

The Affirmative Action Special Provision is intended to spell out certain aspects of the employer's general affirmative action obligation under the Equal Opportunity Clause. The Special Provision details special commitments which the Department believes will be particularly helpful in promoting equal employment opportunity. For example, it prescribes in the paragraph on recruitment and promotion that at least one qualified minority group candidate be considered for each job opening, except to the extent that the employer affirmatively determines that no such candidate exists in the potential applicant population; compelling circumstances which could not reasonably have been anticipated exist, making it unreasonable to delay filling the opening; or the opening is in a job classification in which the minority group breakdown of employees currently approximates the minority group breakdown of the total qualified, potential applicant population. Similarly, in the paragraph on minority group enterprises the employer is required to solicit offers for certain contracts or subcontracts from those concerns, except to the extent that he affirmatively determines that minority group enterprises capable of satisfactorily performing the contract or subcontract do not exist within a reasonable area of solicitation or that compelling circumstances which could not reasonably have been anticipated exist, making it unreasonable to delay the award. The employer is required to keep a record of each affirmative determination he makes under the Special Provision, indicating the basis therefor.

In addition, the Affirmative Action Special Provision provides, in accordance with a Department of Labor policy (see, e.g., the Order of the Secretary of Labor, "Washington Plan," issued on June 1, 1970, section VI), that the employer is bound to assure compliance with all equal opportunity obligations regardless of any delegation of authority to another person or organization, including a union. The Special Provision also provides that the employer is responsible for promptly taking and completing corrective action whenever any violation of his equal opportunity obligations comes to his attention. "Corrective action" is defined generally to mean action to correct, compensate for, and remedy each violation in

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[1] The Equal Opportunity Clause provides in part: "The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin * * *." The clause also requires, among other things, that the contractor "comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor."

[2] The proposed regulation would apply the exemptions from the Equal Opportunity Clause now provided in the regulations of the Secretary of Labor, including, for example, an exemption for contracts and subcontracts of $10,000 or less, to all contracts, subcontracts, and grant agreements awarded under DOT auspices.

[3] Under the regulations and orders of the Secretary of Labor, Federal agencies are not necessarily responsible for equal opportunity compliance under their own contracts, subcontracts, and grant agreements. In general, the Department of Transportation has, and would continue to have under the proposed new part, compliance responsibilities with respect to its contracts and subcontracts for construction work; its grant agreements under which the recipient participates in construction work; and contracts and subcontracts of all Federal agencies in the ship and boat building and repair (inland only), water transportation (inland only), and air transportation industries. Thus, with the exception of nonconstruction subcontracts in one of those industries, the Affirmative Action Special Provision is intended to apply to all nonexempt DOT contracts, subcontracts, and grant agreements with respect to which the Department has compliance responsibilities. The reason for the exception is to ease the burden of DOT contractors and subcontractors in identifying subcontracts in which the Affirmative Action Special Provision is to be included. Nevertheless, those subcontracts would be the vast majority of DOT subcontracts with respect to which the Department has compliance responsibilities.

full and includes the payment of back pay in the case of intentional discrimination.

Although the Affirmative Action Special Provision would be in addition to other applicable equal opportunity obligations, it would not appear to be unduly burdensome on any employer. The Special Provision, in large measure, merely spells out what is already required pursuant to the Equal Opportunity Clause. This is true for example, of the validation rules for qualification requirements, tests, and other selection techniques. Compare paragraph (d) of Attachment I with the Order of the Secretary of Labor, "Employment Tests by Contractors and Subcontractors," issued on September 24, 1968 (33 F.R. 14392). Furthermore, for contractors and subcontractors who have 50 or more employees and a nonexempt contract or subcontract of $50,000 or more, the Special Provision, to a significant extent, simply makes mandatory certain of the techniques which are currently suggested by the Department of Labor for the development of required affirmative action programs. This is the case, for instance, with the requirement that a record be kept of the name and minority group identification of each minority group employee who is passed over for promotion, the date thereof, and the reasons therefor. Compare paragraph (h)(1)(v) of Appendix I with Title 41, Code of Federal Regulations, § 60–2.25 (f)(5). It would appear that techniques such as this should be uniformly applicable to each employer subject to the Affirmative Action Special Provision, regardless of the number of his employees or the amount of his contracts or subcontracts. In general, the burden of compliance for all equal opportunity obligations varies with the number of the employer's facilities or construction sites, employees, and job openings and thus would seem to be automatically commensurate with his size.

Another important aspect of the proposed new part is the requirement that a nonexempt contract or grant agreement may not be awarded to any person unless he (as well as any person to whom he is contractually obligated or otherwise committed to award a nonexempt subcontract or contract) is first determined to be responsible from an equal opportunity standpoint. Responsibility determinations are a standard procurement technique to reduce waste and inefficiency by assuring that the Government does not do business with those who are not able to perform. In requiring responsibility determinations for direct Government contracts, the Federal Procurement Regulations currently include a condition that the prospective contractor must "[a]ppear to be able to conform to the requirements of the Equal Opportunity Clause * * *." FPR § 1–1.310–5(a)(5) (2d Ed., Amendment No. 10, 1965). The Department of Labor regulations pursuant to Executive Order 11246, as amended, similarly establish an equal opportunity responsibility determination procedure for nonexempt direct supply contracts. See Title 41, Code of Federal Regulations, §§ 60–1.20(d) and 60–2.2. The innovations of the proposed regulation in this regard are to provide criteria emphasizing and elaborating on the prospective contractor's, subcontractor's, or recipient's ability to comply with his proposed equal opportunity obligations and to apply those criteria to federally assisted as well as direct procurements.[4] The specific criteria proposed are adapted from the standards now used under the Federal Procurement Regulations and the Armed Services Procurement Regulation to evaluate responsibility in general.

The responsibility determination procedures established in the proposed regulation would apply in the case of formally advertised procurements after bid opening and before contract award, but they would not constitute a "preaward" review program of the kind which the Comptroller General has stated to be contrary to competitive bidding principles. See 48 Comp. Gen. 326 (1968); 47 Comp. Gen. 666 (1968). The proposed regulation expressly provides that a responsibility determination may not be used to impose any equal opportunity requirement as a condition precedent to the award of a formally advertised contract, or subcontract thereunder, in addition to the equal opportunity obligations specifically set forth in the invitation for bids.

Another innovation of the proposed new part is the adoption of an enforcement procedure for nonexempt DOT grant agreements, nonexempt direct DOT contracts with respect to which the Department anticipates having compliance responsibilities, and nonexempt subcontracts for construction work let by direct DOT contractors. The new technique, set out in the Corrective Action Special Provision and paragraph (b) of the Recipient Special Provision in Appendices II and III respectively of the proposed regulation, would thus apply to contracts, subcontracts, and grant agreements which contain the Affirmative Action Special Provision with two exceptions. It would apply to nonexempt grant agreements even if they are not subject to DOT compliance supervision and, therefore, do not contain that Special Provision. This is because of the Department's interest in the enforcement of certain obligations which would be required of all nonexempt recipients under the proposed regulation. See paragraph (a) of the Recipient Special Provision in Appendix III. On the other hand, the new procedure would not govern any federally assisted contract or subcontract, including those containing the Affirmative Action Special Provision, because it would appear that the new technique should be tested before its suitability for federally assisted contracts and subcontracts is determined. The proposed regulation directs the Departmental Director of Civil Rights to prepare a report for the Secretary on the effectiveness of the new procedure and the feasibility and desirability of extending it to those procurements.

The new procedure is patterned after the standard "Changes," "Default," and "Disputes" clauses. Compare the Corrective Action Special Provision and paragraph (b) of the Recipient Special Provision with Federal Procurement Regulations, §§ 1–16.901–23A and 1–16.901–32 (2d Ed., Amendments Nos. 74 and 76, 1970). Under existing procedures, if a violation of equal opportunity obligations is discovered as part of a complaint investigation or postaward compliance review and efforts at conciliation are unsuccessful, the Government is required to provide the employer a hearing to determine whether a violation has, in fact, occurred before his contract or subcontract may be terminated for default. Under the proposed regulation, however, the Government would be authorized to issue to the employer a direction to correct EEO deficiencies specifying corrective actions that he must take. The employer, in turn, would be obliged to obey the direction on pain of default, unless the direction specifies a change not within the general scope of his equal opportunity obligations. However, he would be entitled to an equitable adjustment for any change which is not required by any applicable law providing relief for or requiring affirmative action against discrimination in employment. He would also be entitled to a termination for convenience or an equitable adjustment for any termination made when he was not subject to default. Thus, rather than having to proceed through a lengthy hearing first, the Government under the proposed regulation would be able to obtain immediate compliance. At the same time, the employer would be protected by being informed exactly what he must do before he may be subject to default and by being entitled to compensation in the event the Government exceeds valid requirements. Disputes under direct Government contracts and grant agreements with respect to the new procedure would generally be heard by the DOT Board of Contract Appeals.

Interested persons are invited to participate in the making of the proposed regulation by submitting written data, views, or arguments on the matter discussed in this Preamble and all other aspects of the new part. Comments should be submitted in triplicate to the Docket Clerk, Office of the General Counsel, Department of Transportation, 400 Seventh Street SW., Washington, D.C. 20590. All comments received by the close of business on November 30, 1970, will be considered before action is taken on the proposed regulation. All comments submitted will be available, both before and after the closing date for comments, in the Office of the General Counsel for examination by interested persons.

[4] The Department of Labor responsibility determination procedures formerly applied to both federally assisted and direct procurements. See Title 41, Code of Federal Regulations, § 60–1.6(d). Although that has now been changed, see 35 F.R. 10660 (July 1, 1970), it would appear that the technique is still desirable for both kinds of procurements under DOT auspices.

After a final draft of the proposed regulation has been prepared, it will be submitted to the Department of Labor for approval of those provisions implementing Executive Orders 11246 and 11375 in accordance with Title 41, Code of Federal Regulations, § 60–1.6(c). Approval will also be sought at that time for those deviations which the innovations of the new part entail from the regulations and orders of the Secretary of Labor.

Issued in Washington, D.C., on October 8, 1970.

JOHN A. VOLPE,
Secretary of Transportation.

Sec.
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AUTHORITY: The provisions of this Part 23 issued under Executive Order 11246 (30 F.R. 12319), Executive Order 11375 (32 F.R. 14303), and 41 CFR 60–1.6(c); and 49 U.S.C. Chapter 23.

§ 23.1 Applicability.

(a) This part applies to the Office of the Secretary, U.S. Coast Guard, Federal Aviation Administration, Federal Highway Administration, Federal Railroad Administration, Urban Mass Transportation Administration, National Highway Safety Bureau, St. Lawrence Seaway Development Corporation, and National Transportation Safety Board.

(b) Each DOT element shall prepare implementing instructions and procedures to this part and submit two copies of them within 40 days after the date of issuance of this part, and any amendments thereto, to the Departmental Director of Civil Rights for approval. No instructions and procedures, or amendment thereto, may become effective until approved by the Director. The Director may allow an exception to any requirement of this part: *Provided*, That the approval of the Director, Office of Federal Contract Compliance (OFCC), is obtained when the exception is to a provision implementing Executive Order 11246, as amended. The Assistant Secretary for Administration is responsible for preparing and submitting implementing instructions and procedures, or amendment thereto, for the Office of the Secretary.

§ 23.2 Definitions.

Unless the context requires otherwise, the following definitions apply in this part:

"Agreement" means a contract, subcontract, or grant agreement.

"Applicant" means an applicant for a grant agreement. As used in the Equal Opportunity Clause, the term means the recipient.

"Approving officer" means the officer passing on an application for, or supervising a recipient's performance under, a grant agreement, or that officer's successor.

"Cognizant contracting or approving officer" means the Federal Government contracting or approving officer for the bid, offer, application, or agreement in question.

"Compliance agency" means the Federal agency responsible for supervising compliance with equal opportunity obligations under Federal Procurement Regulations (FPR) § 1–12.802(d). When DOT would be compliance agency, the term means the part of the Department named in § 23.1(a) delegated compliance agency responsibilities under § 23.10(b)(1).

"Construction contract" means any contract for construction work, but does not include a supply contract.

"Construction site" means the general physical location of any building, highway, or other real property and any temporary location or facility at which a contractor or subcontractor performs, or meets a demand or performs a function relating to, any construction contract or subcontract for construction work thereunder.

"Construction work" means the construction, rehabilitation, alteration, conversion, extension, demolition, repair, or other change or improvement to a building, highway, or other real property, including a facility providing a utility service; it also means the supervision, inspection, or any other onsite function incidental to the actual construction.

"Contract" means any direct or federally assisted, construction or supply, contract and includes a contract undergoing modification, but does not include a contract in which the parties stand in the relationship of employer and employee.

"Contracting officer" means the officer responsible for taking, or directing the taking, of contract action with respect to a bid, offer, contract, or subcontract, or that officer's successor.

"Contractor" means any person who holds or has held a contract.

"Corrective action" means action to correct, compensate for, and remedy each violation in full, as specified in paragraph (g) of the Affirmative Action Special Provision (Appendix I of this part).

"Direct contract" means any contract entered into by the Federal Government, but does not include a contract for the sale of Government real or personal property or a federally assisted contract.

"DOT element concerned" means any part of the Department named in § 23.1(a), that is responsible for making a responsibility determination, has compliance responsibilities under § 23.10 (b) or (c), or is concerned directly or indirectly with performance of a nonexempt agreement or proposed agreement by a person whose compliance with his equal opportunity obligations or whose responsibility from an equal opportunity standpoint is in question.

"Employer" means any person who holds or has held an agreement.

"Equal Opportunity Clause" means: For a direct contract, the clause provided in Federal Procurement Regulations (FPR) § 1–12.803–2; for a federally assisted contract, the clause entitled "Equal Opportunity (Federally Assisted Construction)" in FPR § 1–12.803–4(a), but reentitled (wherever referred to) to read "Equal Opportunity (Federally Assisted)"; and for a grant agreement, the clause provided in FPR § 1–12.803–4, but with the clause in subsection (a) entitled "Equal Opportunity (Federally Assisted Construction)" reentitled (wherever referred to) to read "Equal Opportunity (Federally Assisted)" and the clause in subsection (b) revised to read:

> The applicant further agrees that it will be bound by the above Equal Opportunity (federally assisted) clause (not including subsection (g) thereof) with respect to its own employment practices. However, if the applicant is a State or local government, the clause is not applicable to any agency, instrumentality, or subdivision of the government which does not participate in work on or under the grant agreement. For the purpose of applying the clause to the applicant, the term "contract" means grant agreement and the term "Contractor" means "applicant."

"Equal opportunity obligations" means all obligations incorporated into any nonexempt agreement or otherwise made binding pursuant to Executive Order 11246, as amended, or pursuant to this part.

"Federally assisted contract" means any contract between a recipient and any person which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government or which is otherwise undertaken pursuant to a Federal program involving a grant, contract, loan, insurance, or guarantee; it also means any contract between a recipient and any person:

(a) For the furnishing of supplies (e.g., a purchase order) or services or for the use of real or personal property (e.g., a lease arrangement), which in whole or in part is necessary to the performance of any one or more of the recipient's grant agreements; or

(b) Under which any of the recipient's obligations under any one or more grant agreements is performed, undertaken, or assumed.

The term does not include a direct contract.

"Grant agreement" means a grant agreement of Federal assistance which may involve a nonexempt federally assisted contract, and includes a grant agreement undergoing modification.

"Including" means including, but not limited to.

"Minority group representation report" means any report providing a minority group breakdown as specified in paragraph (h) of the Affirmative Action Special Provision (Appendix I of this part).

"Modification" means any change in the terms or conditions of an agreement, including a supplemental agreement, amendment, or extension.

"Nonexempt" means not excused from all requirements of applicable equal opportunity obligations under § 23.5.

"Person" means any natural person, corporation, partnership, proprietorship, unincorporated association, group, State or local government, and any agency, instrumentality, or subdivision of that government.

"Recipient" means any person who holds or has held a grant agreement.

"Rules, regulations, and orders of the Secretary of Labor" means rules, regulations, and relevant orders of the Secretary of Labor, or his designee, issued pursuant to Executive Order 11246, as amended.

"Secretary" means the Secretary of Transportation.

"Services" includes the following services: Utility, transportation, research, insurance, training, and fund depositary.

"Subcontract" means any arrangement between a contractor or subcontractor and any person in which the parties do not stand in the relationship of employer and employee:

(a) For the furnishing of supplies (e.g., a purchase order) or services or for the use of real or personal property (e.g., a lease arrangement), which in whole or in part is necessary to the performance of any one or more contracts; or

(b) Under which any of the contractor's obligations under any one or more contracts is performed, undertaken, or assumed.

The term includes a subcontract undergoing modification.

"Subcontractor" means any person who holds or has held a subcontract, regardless of tier.

"Supply contract" means any contract for other than construction work, including a contract for the furnishing of supplies (e.g., a purchase order) or services or for the use of real or personal property (e.g., a lease arrangement).

§ 23.3 Required equal opportunity obligations for contracts, subcontracts, and grant agreements.

(a) *General*—(1) *Direct supply and construction contracts.* Each Invitation for Bids, Request for Proposals, Request for Quotations, or other solicitation expected to result in a nonexempt direct supply or construction contract shall include the appropriate notice required by FPR § 1–12.803–10 (concerning the certification of nonsegregated facilities), the Equal Opportunity Clause, and, if DOT or a DOT element is expected to have compliance responsibilities for any facility or construction site of the contractor under § 23.10 (b) or (c), Appendices I and II (containing the Affirmative Action and Corrective Action Special Provisions respectively). Each such contract shall include the appropriate clause concerning the certification of nonsegregated facilities required by FPR § 1–12.803–10, the Equal Opportunity Clause, and, if Appendices I and II were included in the invitation, request, or other solicitation, the Affirmative Action and Corrective Action Special Provisions in Appendices I and II respectively.

(2) *Federally assisted supply contracts.* Each Invitation for Bids, Request for Proposals, Request for Quotations, or other solicitation expected to result in a nonexempt federally assisted supply contract shall include the Equal Opportunity Clause and, if DOT or a DOT element is expected to have compliance responsibilities for any facility or construction site of the contractor under § 23.10 (b) or (c), Appendix I (containing the Affirmative Action Special Provision). Each such contract shall include the Equal Opportunity Clause and, if Appendix I was included in the invitation, request, or other solicitation, the Affirmative Action Special Provision in Appendix I.

(3) *Federally assisted construction contracts.* Each Invitation for Bids, Request for Proposals, Request for Quotations, or other solicitation expected to result in a nonexempt federally assisted construction contract shall include the appropriate notice required by FPR § 1–12.803–10 (concerning the certification of nonsegregated facilities), the Equal Opportunity Clause, and, if DOT or a DOT element is expected to have compliance responsibilities for any facility or construction site of the contractor under § 23.10 (b) or (c), Appendix I (containing the Affirmative Action Special Provision). Each such contract shall include the appropriate clause concerning the certification of nonsegregated facilities required by FPR § 1–12.803–10, the Equal Opportunity Clause, and, if Appendix I was included in the invitation, request, or other solicitation, the Affirmative Action Special Provision in Appendix I.

(4) *Grant agreements.* Each nonexempt grant agreement shall include any clause concerning the certification of nonsegregated facilities required by FPR § 1–12.803–10, the Equal Opportunity Clause, the Recipient Special Provision in Appendix III, and, if DOT or a DOT element is expected to have compliance responsibilities for any facility or construction site of the recipient under § 23.10 (b) or (c), the Affirmative Action Special Provision in Appendix I. Applicants shall be notified of these obligations and provided with copies of this part and Appendices I and III as necessary.

(5) *Adaptation of language and incorporation by reference.* FPR §§ 1–12.803–6 and 1–12.803–7 apply to both the Equal Opportunity Clause and applicable Special Provisions, except that the Departmental Director of Civil Rights may designate agreements other than those mentioned in § 1–12.803–7 in which Special Provisions may be incorporated by reference.

(6) *Incorporation by law.* By operation of Executive Order 11246, as amended, and this part, the Equal Opportunity Clause and appropriate Special Provisions shall be considered to be a part of every agreement which is required by or pursuant to the order, the regulations of the Secretary of Labor, or this part to include them, whether or not they are physically incorporated therein.

(b) *Representations concerning the filing of previously required reports.* In lieu of FPR § 1–12.805–4(b), each bidder or offeror for a nonexempt contract and any person to whom he is contractually obligated or otherwise committed to award a nonexempt subcontract thereunder shall fill out and sign a written representation prior to award substantially as follows:

> The [bidder, offeror, or proposed subcontractor] represents that he (1) ( ) has, ( ) has not, previously held a nonexempt agreement subject to Executive Orders 10925, 11114, or 11246, as amended, or Part 23 of the Regulations of the Office of the Secretary of Transportation; (2) ( ) has, ( ) has not, filed all reports which he has been required to file by or pursuant to any one of those authorities; and (3) ( ) has, ( ) has not, developed and maintained on file at each of his establishments affirmative action programs which he has been required to develop and maintain on file pursuant to Title 41, Code of Federal Regulations, Parts 60–1 and 60–2.

(c) *Changes to Special Provisions.* Any DOT element may change Special Provisions as appropriate for a particular kind of agreement, geographical area, or Federal-aid or equal opportunity compliance program or for a delegation of responsibility to a recipient under § 23.11, if the proposed change is specifically identified in the implementing instructions and procedures of this part, or amendment thereto, submitted to the Departmental Director of Civil Rights for approval and the Director approves thereof. Each DOT element, in coordination with the Departmental Director of Civil Rights, shall change Special Provisions as necessary to assure that equal employment opportunity is achieved and to accord with or complement any area special program that the Department of Labor may establish under Executive Order 11246, as amended. Any change to Special Provisions must be made in the invitation for bids in a formally advertised procurement.

(d) *Review of Corrective Action Special Provision.* The Departmental Director of Civil Rights shall undertake and direct a study of the effectiveness of the Corrective Action Special Provision as a means of enforcement of equal opportunity obligations and of the requirements for and desirability of insertion of that Special Provision into nonexempt federally assisted contracts and subcontracts thereunder. Within 18 months after the date this part is issued, the Director shall report to the Secretary the results of that study together with any recommendations relative thereto.

§ 23.4 Responsibility determinations.

(a) *General.* A "responsibility determination" is an evaluation made before the award of a nonexempt contract or grant agreement of a prospective contractor's, subcontractor's, or recipient's responsibility from an equal opportunity standpoint. It consists of an analysis of

his ability to comply with the equal opportunity obligations under the proposed agreement. The following provisions apply in lieu of FPR §§ 1–12.803–9 and 1–12.805–5(d).

(b) *Development of responsibility determination programs.* As part of the implementing instructions and procedures of this part to be submitted to the Departmental Director of Civil Rights for approval, each DOT element shall develop a program for making responsibility determinations in accordance with the following requirements.

(c) *Award of nonexempt contracts and grant agreements.* A nonexempt contract or grant agreement may not be awarded to any person unless the cognizant contracting or approving officer on the advice of a qualified civil rights specialist affirmatively determines that that person and any person to whom that person is contractually obligated or otherwise committed to award a nonexempt subcontract or contract respectively are each responsible from an equal opportunity standpoint. If the cognizant contracting or approving officer disagrees with the civil rights specialist's advice concerning the responsibility of a particular person, a higher official with supervisory responsibilities over both the specialist and the officer concerned shall make the final determination.

(d) *Criteria for responsibility*—(1) *General.* To qualify as responsible from an equal opportunity standpoint, a person must clearly be able to comply with the equal opportunity obligations under the proposed agreement. In particular, he must have—

(i) The necessary experience, organization, and technical qualifications to comply, or the ability to obtain them (acceptable evidence of "ability to obtain" such experience, organization, or qualifications consists normally of a firm commitment or arrangement for the acquisition thereof);

(ii) A satisfactory record of integrity and judgment in the equal opportunity area (a person whose current employment policies and practices are seriously inconsistent with the equal opportunity obligations under the proposed agreement is presumed, in the absence of evidence to the contrary, to be unable to fulfill this requirement); and

(iii) A satisfactory record of performance of equal opportunity obligations under past or current nonexempt agreements (a person who has been or is seriously deficient in equal opportunity performance under a past or current nonexempt agreement is presumed, in the absence of evidence to the contrary, to be unable to fulfill this requirement; failure to develop an acceptable affirmative action program as required is a serious deficiency).

(2) *State and local governments.* If the prospective contractor, subcontractor, or recipient is a State or local government or an agency, instrumentality, or subdivision thereof, the responsibility determination shall be based only on the ability of those agencies, instrumentalities, and subdivisions of the government which may reasonably be expected to participate in work on or under the proposed agreement to comply with the equal opportunity obligations thereunder.

(3) *Failure to submit previously required reports.* A person who has not filed a report which he was required to file by or pursuant to Executive Order 10925, 11114, or 11246, as amended, or this part is presumed not to be responsible from an equal opportunity standpoint unless he submits the required report or another report specified by the Departmental Director of Civil Rights or the Director, OFCC.

(e) *Information regarding responsibility.* The civil rights specialist shall base his advice concerning the responsibility of a particular person on sufficient information to satisfy himself whether that person currently meets the standards in paragraph (d) of this section. That information should include at least: Information from the prospective contractor, subcontractor, or recipient, including data contained in the bid or proposal and other written statements, such as the representation required by § 23.3(b) and minority group representation reports; other existing information within the DOT element concerned, including the list of debarred employers (see § 23.5(b)), postaward compliance review documentation, and other records concerning past performance; and information from each compliance agency having responsibility for one or more of the prospective contractor's, subcontractor's, or recipient's facilities or construction sites. If it is necessary to obtain additional responsibility information, the civil rights specialist shall initiate action for the conduct of a pre-award on-site evaluation. In any event, in the case of a nonexempt supply contract or subcontract thereunder of $1 million or more a pre-award on-site evaluation is required to provide responsibility information, unless a report is available of an onsite evaluation (preaward or postaward) conducted within the 12 months before award.

(f) *Preaward onsite evaluation.* A "preaward onsite evaluation" is an inspection of a prospective contractor's, subcontractor's, or recipient's facilities and construction sites and may include conferences with him, interviews with his employees, and analysis of employment and compliance records and reports. The DOT element concerned shall request the compliance agency or agencies to conduct, or shall itself conduct when it is compliance agency or no compliance agency exists, a preaward onsite evaluation required by paragraph (e) of this section.

(g) *Procedures*—(1) *Timing.* Compliance agencies are required to make written reports of preaward onsite evaluations within 30 days from request. Consistently with this, each responsibility determination shall be made as promptly as possible without any undue delay in the award of the agreement.

(2) *Documentation.* The cognizant contracting or approving officer and the civil rights specialist concerned shall document each responsibility determination and the basis therefor.

(3) *Compliance with competitive bidding principles.* A responsibility determination may not be used to impose any equal opportunity requirement as a condition precedent to the award of a formally advertised contract, or subcontract thereunder, in addition to the equal opportunity obligations specifically set forth in the invitation for bids.

(h) *Special procedures in case of nonresponsibility because of failure to develop an acceptable affirmative action program.* Whenever an employer is determined not to be responsible because of failure to have developed an acceptable affirmative action program as required, the DOT element concerned shall immediately notify the compliance agency and the Director, OFCC, of that fact. If a DOT element is compliance agency, it shall take the actions prescribed in § 23.6(e)(5) and, as applicable, the following paragraph of this section.

(i) *Initiation of debarment proceedings.* Each DOT element shall maintain lists of employers for whom it acts as compliance agency who are found nonresponsible from an equal opportunity standpoint and shall initiate debarment proceedings under § 23.8(b) whenever one such employer is more than once found nonresponsible.

§ 23.5 Exemptions and debarment.

(a) *Exemptions*—(1) *General.* FPR § 1–12.804 governs each agreement (including an agreement not referred to in that section) awarded by a DOT element or under a DOT contract or grant agreement. However, subparagraph (3) of this paragraph applies in lieu of FPR § 1–12.804–4.

(2) *Authority of the Departmental Director of Civil Rights.* The Departmental Director of Civil Rights may make and withdraw exemptions under FPR §§ 1–12.804–2, 1–12.804–3, and 1–12.804–5 as if he were the Director, OFCC, with respect to agreements which, but for this part, would not contain equal opportunity obligations governing the employer's employment practices.

(3) *Effect of exemption.* Exemption from compliance in whole or in part from the Equal Opportunity Clause constitutes exemption to the same extent from the Affirmative Action Special Provision. However, the exemption in FPR § 1–12.804–1(d) for State and local governments from the requirements of filing annual compliance reports provided for by § 1–12.805–4 and developing and maintaining written affirmative action compliance programs prescribed in § 1–12.810 does not affect the obligations of those agencies, instrumentalities, and subdivisions of those governments which participate in work on or under a nonexempt agreement to comply with the Affirmative Action Special Provision, including the records and reports requirements of paragraph (h) thereof. Notwithstanding the inclusion in any agreement of the Equal Opportunity Clause or the Affirmative Action Special

Provision or both, the employer is exempt from compliance therewith under the agreement to the extent that the latter is exempt.

(4) *Procedure.* A request for an exemption pursuant to FPR §§ 1–12.804–1(e), 1–12.804–2, or 1–12.804–3 or for withdrawal of an exemption pursuant to FPR § 1–12.804–5 shall be submitted, with complete justification, to the Departmental Director of Civil Rights for consideration and action or transmission, as appropriate, to the Secretary or the Director, OFCC.

(b) *Debarment*—(1) *General.* An employer may be debarred for violation of equal opportunity obligations, in accordance with § 23.8 (b) and (c). The Departmental Director of Civil Rights shall maintain a list of employers debarred for that reason and shall periodically provide each DOT element an updated copy.

(2) *Effect of debarment.* An agreement may not be awarded to an employer debarred for violation of equal opportunity obligations, unless the agreement is exempted under FPR §§ 1–12.804–1(e) or 1–12.804–2. In the case of the award of a subcontract this prohibition applies only to employers known to have been debarred.

(3) *Reinstatement of debarred employer.* FPR § 1–12.808 governs the reinstatement of an employer (including an employer not referred to in that section) debarred for violation of equal opportunity obligations.

§ 23.6 Postaward compliance reviews.

(a) *General.* A "postaward compliance review" is an in-depth comprehensive review of the employment policies and practices at a facility or construction site to assure that the employer at the facility or the employers at the site have been meeting their equal opportunity obligations. The review may include as part of the onsite inspection conferences with employers, interviews with their employees, and analysis of employment and compliance records and reports.

(b) *Development of postaward compliance review programs.* As part of the implementing instructions and procedures of this part to be submitted to the Departmental Director of Civil Rights for approval, each DOT element shall develop a program, in accordance with the following requirements, for conducting postaward compliance reviews of facilities and construction sites assigned to it under § 23.10 (b) or (c).

(c) *Scheduling of reviews*—(1) *General.* Before July 1, 1971, each DOT element shall take all steps necessary to be able to perform compliance reviews annually on at least 50 percent of the facilities and 50 percent of the construction sites assigned to it and to revisit those facilities and sites as may be necessary. In scheduling postaward compliance reviews to achieve this objective, each DOT element should give priority to facilities and construction sites—

(i) At which compliance with equal opportunity obligations is questionable;

(ii) Which are prominent in the industry or geographical area;

(iii) Which hold the greatest minority group employment potential, particularly those at which the better paid trades and occupations are employed;

(iv) Which are located in areas of high minority group unemployment or underemployment; and

(v) At which work is performed under agreements of a comparatively high total dollar value.

(2) *Suspected violations.* (i) Employers are or may be required under applicable Special Provisions to submit minority group representation reports and information on possible violations of equal opportunity obligations. Information obtained under Special Provisions may be used only in the administration and enforcement of Executive Order 11246, as amended, this part, the Civil Rights Act of 1964, the National Labor Relations Act, the Railway Labor Act, and other laws, Federal, State, and local, providing relief for or affirmative action against discrimination in employment.

(ii) If a minority group representation report or information on a possible violation of equal opportunity obligations raises a substantial question over an employer's compliance with his equal opportunity obligations or if for any reason a significant deficiency may reasonably be suspected in the fulfillment of an employer's equal opportunity obligations, the DOT element concerned shall promptly request the compliance agency to conduct, or shall itself conduct when it is compliance agency or no compliance agency exists, a compliance review as soon as possible for each facility and construction site indicated. Failure to submit a report or information, in the absence of evidence to the contrary, or failure to develop an acceptable affirmative action program as required is a significant deficiency for the purpose of this paragraph.

(d) *Roles of civil rights specialists and cognizant contracting or approving officers.* Qualified civil rights specialists of the DOT element concerned shall be responsible for scheduling postaward compliance reviews required by this part and for conducting those reviews to be performed by the DOT element itself. Cognizant contracting or approving officers or their authorized representatives may participate in the conduct of the latter reviews. However, any disagreement between a cognizant contracting or approving officer or his authorized representative and a civil rights specialist in charge of the conduct of a review shall be settled by a higher official with supervisory responsibilities over both the officer and the specialist concerned.

(e) *Conduct of postaward compliance reviews*—(1) *Conciliation.* (i) If the employer is found not in compliance with his equal opportunity obligations, reasonable efforts shall be made to obtain from him a satisfactory commitment to take corrective action. A satisfactory commitment must be made or confirmed in writing and include the precise actions to achieve compliance and dates for completion as soon as reasonably possible. The employer shall be informed that the acceptance of any commitment he makes does not preclude a future determination of noncompliance based on a finding that the commitment is not sufficient to achieve compliance. If the employer's equal opportunity obligations include the Corrective Action or Recipient Special Provisions, he shall also be informed that the attempt at conciliation does not constitute a direction to correct EEO deficiencies that may be the basis for an equitable adjustment and that a conciliation commitment should, therefore, be given only if it is not considered to be the basis for any claim or defense under any contract, subcontract, or grant agreement that he may hold.

(ii) The employer is entitled to a hearing as provided in FPR § 1–12.807–3 to determine whether the terms of an accepted conciliation commitment are required to achieve compliance with his equal opportunity obligations, if he complies, without a hearing and without the issuance of a direction to correct EEO deficiencies, with the commitment within the time provided for therein and mails to or files with the Departmental Director of Civil Rights a request for a hearing within 10 days following compliance. Such compliance does not constitute the basis for any equitable adjustment under the Corrective Action or Recipient Special Provisions.

(2) *Preparation of compliance evaluation report.* A report of each postaward compliance review shall be prepared, containing findings and conclusions, with supporting rationale, whether the employer was in compliance with his equal opportunity obligations and, if not in compliance, whether the noncompliance was considered significant. If any conciliation commitment was obtained (whether or not considered satisfactory), a copy of it shall be included in the report together with an evaluation of it.

(3) *Review of conciliation commitment.* If the employer was found not in compliance with his equal opportunity obligations, but a conciliation commitment considered satisfactory was obtained from him, the postaward compliance review shall be closed, unless the noncompliance was considered significant. In that case a copy of the compliance evaluation report shall be forwarded to the Departmental Director of Civil Rights for review and, as appropriate, transmission to the Director, OFCC. If the commitment is then disapproved, the Departmental Director of Civil Rights shall so notify the employer through the DOT element concerned and, in coordination with that element, provide for further attempts at conciliation, as appropriate, and conclusion of the postaward compliance review in accordance with this part.

(4) *Initiation of sanction action.* If the employer is not in compliance with his equal opportunity obligations and efforts at conciliation have failed within a reasonable period of time to produce a satisfactory commitment, as prescribed in subparagraph (1) of this paragraph,

the DOT element concerned shall forward a report to the Departmental Director of Civil Rights for appropriate action in accordance with § 23.8. The report shall contain—

(i) A copy of the compliance evaluation report;

(ii) If the employer's equal opportunity obligations include the Corrective Action or Recipient Special Provisions, a proposed direction to correct EEO deficiencies;

(iii) If action may be taken under both § 23.8(a) (1) and (2), a recommendation whether action should first be taken under one section or the other or both simultaneously;

(iv) A recommendation whether action should be taken under § 23.8(b);

(v) Supporting rationale; and

(vi) Any additional documentation deemed appropriate.

(5) *Special procedures in case of failure to develop an acceptable affirmative action program.* Whenever an employer is found not to have developed an acceptable affirmative action program as required, a "show cause" notice shall be issued in accordance with 41 CFR 60–2.2(c), and conciliation efforts shall be made or continued under subparagraph (1) or (3) of this paragraph for no more than 30 days. If these efforts are not successful, the DOT element concerned shall immediately initiate sanction action under subparagraph (4) of this paragraph.

(f) *Projected program activity.* Each DOT element shall indicate, in a report accompanying the implementing instructions and procedures of this part to be submitted to the Departmental Director of Civil Rights for approval, the number of postaward compliance reviews to be conducted on an annual basis after July 1, 1971, broken down by category of facility or construction site to be reviewed (identification of industry) and by identity of reviewing authority (geographic or other subdivision of the DOT element or, if a delegation of responsibility is to be made under § 23.11, name of recipient).

(g) *Conduct of postaward compliance reviews by the Departmental Director of Civil Rights.* After notifying DOT elements concerned, the Departmental Director of Civil Rights may, in an appropriate case, schedule and conduct a postaward compliance review as if he were providing for the investigation of a complaint under § 23.7(g) (1), (2), (4), and (5) and (h) (2) through (6).

§ 23.7 Complaints.

(a) *Filing of complaints.* Any employee or applicant for employment may, by himself or by an authorized representative, make a written complaint of discrimination in violation of an employer's equal opportunity obligations. The complaint must be mailed to or filed with the Federal Government or any of its authorized representatives within 180 days after the date of the alleged discrimination, unless the time for filing is extended by the Departmental Director of Civil Rights or the Director, OFCC, upon good cause shown.

(b) *Contents of complaint.* The complaint should include the name, address, and telephone number of the complainant, the name and address of the employer committing the alleged discrimination, a description of the acts considered to constitute the discrimination, and any other pertinent information which may assist in the investigation and resolution of the complaint. The complainant or his authorized representative must sign the complaint.

(c) *Initial processing.* Any DOT employee receiving a complaint of discrimination shall immediately forward the complaint directly to the Departmental Director of Civil Rights. The Director shall promptly send each DOT element concerned a copy of any complaint filed with or referred to DOT. If a Federal agency other than a DOT element is compliance agency, the Director shall promptly refer the complaint to OFCC for transmission to that agency. Otherwise, the Director shall provide for the processing of the complaint in accordance with this part.

(d) *Notification to OFCC.* The Departmental Director of Civil Rights shall assure that a copy of each complaint filed with DOT is transmitted to the Director, OFCC, within 10 days following receipt by the Department.

(e) *Complaints stating insufficient information or appearing nonmeritorious on their face.* If a complaint lacks sufficient information to initiate an investigation or appears nonmeritorious on its face, the Departmental Director of Civil Rights shall inform the complainant of this fact and the reasons therefor and that if the complainant fails to cure the defect within 60 days or such further time as the Director may allow on good cause shown, the complaint may be closed. If a complainant fails to cure the defect within the time allotted, the Departmental Director of Civil Rights may close the complaint by notifying the complainant, the Director, OFCC, and DOT elements concerned accordingly.

(f) *Identity of the complainant.* The identity of the complainant shall be kept confidential in all proceedings, unless and until disclosure of his identity is necessary to allow the respondent employer a fair opportunity for answering the charges against him or otherwise to carry out the purposes of this part.

(g) *Investigation*—(1) *Initiation of investigation.* If a complaint states sufficient information to initiate an investigation and does not appear nonmeritorious on its face, the Departmental Director of Civil Rights shall appoint a qualified civil rights specialist and such assistants as necessary to investigate the complaint.

(2) *Participation of DOT elements.* The civil rights specialist in charge of the investigation shall consult with appropriate officials of DOT elements concerned with regard to the complaint, and appropriate officials of those elements are entitled to participate in the complaint investigation.

(3) *Conduct of investigation.* The civil rights specialist in charge of the investigation shall assure that—

(i) The respondent employer is furnished a copy of the complaint or a statement of the charges;

(ii) The complainant, responsible officials of the respondent, and any identified witnesses are interviewed;

(iii) A thorough investigation is made of pertinent employment and compliance records and reports and personnel actions; and

(iv) Unless the civil rights specialist finds it to be unnecessary, a compliance review of the type described in § 23.6 is conducted of each of the respondent's facilities or construction sites involved.

(4) *Conciliation.* (i) If the civil rights specialist in charge of the investigation finds the respondent employer not in compliance with his equal opportunity obligations, the specialist shall make reasonable efforts to obtain from the respondent a satisfactory commitment to take corrective action. A satisfactory commitment must be made or confirmed in writing and include the precise actions to achieve compliance and dates for completion as soon as reasonably possible. The respondent must be informed that the acceptance of any commitment he makes does not preclude a future determination of noncompliance based on a finding that the commitment is not sufficient to achieve compliance. If the respondent's equal opportunity obligations include the Corrective Action or Recipient Special Provisions, he must also be informed that the attempt at conciliation does not constitute a direction to correct EEO deficiencies that may be the basis for an equitable adjustment and that a conciliation commitment should, therefore, be given only if it is not considered to be the basis for any claim or defense under any contract, subcontract, or grant agreement that he may hold.

(ii) The respondent is entitled to a hearing as provided in FPR § 1–12.807–3 to determine whether the terms of an accepted conciliation commitment are required to achieve compliance with his equal opportunity obligations, if he complies, without a hearing and without the issuance of a direction to correct EEO deficiencies, with the commitment within the time provided for therein and mails to or files with the Departmental Director of Civil Rights a request for a hearing within 10 days following compliance. Such compliance does not constitute the basis for any equitable adjustment under the Corrective Action or Recipient Special Provisions.

(5) *Preparation and submission of case record.* The civil rights specialist in charge of the investigation shall prepare a complete case record consisting of at least the following—

(i) An identification of at least one nonexempt agreement which the respondent employer held at the time of the alleged violation of his equal opportunity obligations;

(ii) The name and address of each person interviewed who provided pertinent information;

(iii) A summary of his statement;

(iv) Copies (or, if copies are not reasonably available, summaries) of pertinent documents;

(v) A narrative summary of the evidence discovered in the investigation and any compliance review as it relates to each violation alleged or found;

(vi) Conclusions with supporting rationale;

(vii) A copy of any conciliation commitment that was obtained (whether or not considered satisfactory), together with an evaluation of it; and

(viii) If the respondent's equal opportunity obligations include the Corrective Action or Recipient Special Provisions and if a conciliation commitment was requested, but denied, or if a commitment was considered unsatisfactory, a recommended direction to correct EEO deficiencies. Each additional participant in the complaint investigation may include dissenting views in the case record as a separate section at the end.

The civil rights specialist shall forward three copies of the case record to the Departmental Director of Civil Rights within 50 days after receipt of the complaint by DOT, and the Departmental Director of Civil Rights shall promptly send a copy to each DOT element concerned.

(h) *Disposition of complaint* — (1) *Notification of compliance.* If the Departmental Director of Civil Rights determines on the basis of the case record that the respondent employer has been in compliance with his equal opportunity obligations, he shall, with the approval of the Director, OFCC, notify the parties to the complaint accordingly.

(2) *Conciliation when the Departmental Director of Civil Rights disagrees with the civil rights specialist's conclusion of no violation.* If the Departmental Director of Civil Rights determines on the basis of the case record that, contrary to the civil rights specialist's conclusion, the respondent employer has not been in compliance with his equal opportunity obligation, he shall assure that reasonable efforts are made my such persons as he considers appropriate to obtain a satisfactory conciliation commitment, as prescribed in paragraph (g)(4) of this section, and shall provide for disposition of the complaint in accordance with this part.

(3) *Reinvestigation.* If the Departmental Director of Civil Rights finds that the case record is insufficient to determine whether the respondent employer has been in compliance with his equal opportunity obligations, he shall further investigation in accordance with this part by such persons as he considers appropriate.

(4) *Review of conciliation commitment*—(i) *Approval.* If the Departmental Director of Civil Rights determines on the basis of the case record that the respondent employer was not in compliance with his equal opportunity obligations, but that a conciliation commitment obtained from him is satisfactory, he shall, with the approval of the Director, OFCC, so notify the parties to the complaint and provide the complainant with a copy of the commitment.

(ii) *Disapproval.* If the Departmental Director of Civil Rights disapproves any conciliation commitment as unsatisfactory, he shall so notify the respondent employer and provide for further attempts at conciliation, as appropriate, and disposition of the complaint in accordance with this part.

(5) *Initiation of sanction action.* If the Departmental Director of Civil Rights determines on the basis of the case record that the respondent employer is not in compliance with his equal opportunity obligations and efforts at conciliation have failed within a reasonable period of time to produce a satisfactory commitment, as prescribed in paragraph (g)(4) of this section, he shall initiate appropriate action in accordance with § 23.8.

(6) *Notification to DOT elements.* The Departmental Director of Civil Rights shall assure that each DOT element concerned is kept informed of significant developments in the disposition of the complaint.

(7) *Notification to the Director, OFCC.* Within 60 days from receipt of the complaint by DOT, the Departmental Director of Civil Rights shall transmit to the Director, OFCC, a copy of the case record together with a statement of the current disposition of the complaint. The Departmental Director of Civil Rights shall also notify the Director, OFCC, of the final disposition of the complaint within DOT.

§ 23.8 Imposition of sanctions.

(a) *Termination*—(1) *Under OFCC procedures.* FPR §§ 1-12.805-9(b) and 1-12.807-3 govern the cancellation, suspension, and termination of any agreement (including an agreement not referred to in those sections) that does not contain the Corrective Action or Recipient Special Provisions. The Departmental Director of Civil Rights, in coordination with DOT elements concerned, is hereby directed to act as the designee of the Secretary under FPR § 1-12.805-9(b).

(2) *Under the Corrective Action or Recipient Special Provisions*—(i) *General.* An agreement containing the Corrective Action or Recipient Special Provisions may be terminated only by issuance of a notice of termination for default in the performance of a direction to correct EEO deficiencies, and no such direction or notice of termination may be issued unless the requirements of this subparagraph (2) are followed.

(ii) *Issuance of a direction to correct EEO deficiencies.* If an employer is not in compliance with his equal opportunity obligations and efforts at conciliation have failed within a reasonable period of time to produce a satisfactory commitment, as prescribed in § 23.6(e)(1) or § 23.7(g)(4), the Departmental Director of Civil Rights, in coordination with DOT elements concerned, may direct a cognizant contracting or approving officer to deliver or order delivered through the appropriate contractual tiers a direction to correct EEO deficiencies. A "direction to correct EEO deficiencies" is a notice to take corrective action and must be addressed to the employer concerned, set out the precise actions required for him to be in compliance with his equal opportunity obligations, and be identified as a direction to correct EEO deficiences. The direction must also set out dates for the completion of the actions required if more than 10 days is to be allowed. Finally, the direction should state that failure to comply with it within 10 days from receipt or such longer period provided for therein (except to the extent that the corrective action required is not within the general scope of the employer's equal opportunity obligations) is grounds for the termination in whole or in part for default of all nonexempt contracts, subcontracts, or grant agreements containing the Corrective Action or Recipient Special Provisions which the employer may hold.

(iii) *Termination of contractual relations for default.* If a direction to correct EEO deficiencies has been issued, the Departmental Director of Civil Rights, in coordination with DOT elements concerned, shall provide for determining whether the employer has complied with its provisions. This determination shall be made or confirmed in writing. If the employer has failed to comply with the direction within the time provided for therein, each agreement which the employer holds containing the Corrective Action or Recipient Special Provisions may, with the approval of the Director, OFCC, and the Secretary, be terminated in whole or in part. Cognizant contracting or approving officers shall effect a duly approved termination by delivering or ordering delivered through the appropriate contractual tiers a notice of termination. The notice shall identify the agreement and direction to correct EEO deficiencies in question, state that the termination is for default in the performance of that direction, and specify the extent to which performance under the agreement is terminated and the time at which that termination becomes effective.

(b) *Debarment and publication.* An employer may be debarred from receiving any agreement (except as provided in § 23.5(b)(2)), and this fact may be published, for violation of equal opportunity obligations. The procedures to be followed in effecting debarment are those prescribed in FPR §§ 1-12.805-9(c) and 1-12.807-3. The Departmental Director of Civil Rights, in coordination with DOT elements concerned, is hereby directed to act as the designee of the Secretary under FPR § 1-12.805-9(c).

(c) *Effect of violation of Special Provisions.* For the purposes of FPR §§ 1-12.805-9(b) and 1-12.805-9(c) violation of any equal opportunity obligation constitutes violation of the Equal Opportunity Clause.

§ 23.9 Disputes.

(a) *General.* The Secretary or his designee shall hear and decide any dispute, unless disposed of by agreement, concerning a question of fact arising

under the Corrective Action Special Provision or paragraph (b) of the Recipient Special Provision in a direct contract or grant agreement respectively. Failure to agree to any equitable adjustment or termination for convenience (or the equivalent thereof) claimed under those provisions constitutes such a dispute. The decision shall be impartial, fair, and just to the parties and supported by the record of the case and the law.

(b) *Settlement by agreement.* Any DOT element may, with the approval of the Departmental Director of Civil Rights, dispose of a dispute referred to in paragraph (a) of this section by agreement.

(c) *Appointment of designee.* The DOT Contract Appeals Board (DOT CAB) is hereby directed to hear and decide any dispute under paragraph (a) of this section as the Secretary's designee, unless the Secretary in a given case provides otherwise.

(d) *Procedures.* The rules of practice of the DOTCAB (see 41 CFR Chapter 12, Part 12–60) govern the hearing and decision of any dispute before the DOTCAB under paragraph (a) and (c) of this section, with the following modifications—

(1) *Definitions.* The following definitions apply in place of any conflicting definitions in the rules of practice—

(i) "Appeal" means a claim for an equitable adjustment or a termination for convenience (or the equivalent thereof) under the Corrective Action or Recipient Special Provisions.

(ii) "Appellant" means the contractor under a direct contract or the recipient, who has mailed to or filed with the cognizant contracting or approving officer a written notice of claim under the Corrective Action or Recipient Special Provisions.

(iii) "Contract" means a direct contract or grant agreement.

(iv) "Contracting Officer" means the cognizant contracting officer when a claim is made by a contractor under a direct contract; or the cognizant approving officer when a claim is made by a recipient.

(v) "Contracting officer's decision" means the issuance under this Part 23 of the Regulations of the Office of the Secretary of Transportation of a direction to correct EEO deficiencies; a notice of termination for default in the performance of such a direction; or an order to deliver, or have delivered through the appropriate contractual tiers, such a direction or notice to a subcontractor.

(2) *Submission of claims.* Section 12–60.202 of the rules of practice is amended by adding the following paragraph at the end thereof—

For the purposes of Part 23 of the Regulations of the Office of the Secretary of Transportation, the preceding paragraph of this section does not apply, and this paragraph applies in its place. An appeal on account of a contracting officer's decision is made by mailing to or filing with the contracting officer a written notice of appeal. The notice shall be mailed or filed within the time provided for within the contract. The contractor shall sign the notice, identify the contract and the decision involved, and state that he is appealing on account of that decision. A general letter of complaint objecting to some action taken may be considered not to be a notice of appeal. The notice should be in triplicate, should set forth the general nature, basis, and monetary extent of the claim, and should request a hearing before the Secretary of Transportation or his designee in regard thereto. The notice of election referred to in § 12–60.205, and the complaint referred to in § 12–60.208, may be filed with, or as part of, the notice of appeal.

(3) *Forwarding of claims.* Section 12–60.203 of the rules of practice is amended by adding the following paragraph at the end thereof—

For the purposes of Part 23 of the Regulations of the Office of the Secretary of Transportation, the preceding paragraph of this section does not apply, and this paragraph applies in its place. Upon receiving a notice of appeal, the contracting officer shall endorse on the original and the copies the date of mailing, or the date of receipt if otherwise filed. He shall immediately send the notice and one copy to the Board for docketing. The Board shall promptly advise the appellant and the contracting officer of the receipt of the original notice of an appeal (whether received from the contracting officer or otherwise), and shall furnish the appellant a copy of the rules in this part and § 23.9 of Part 23, and advise him of his option of procedures.

(4) *Duties of the Contracting Officer.* Section 12–60.204 of the rules of practice is amended by adding the following paragraph at the end thereof—

For the purposes of Part 23 of the Regulations of the Office of the Secretary of Transportation, the preceding paragraph of this section does not apply, and this paragraph applies in its place. Within 30 days after the first written notice to him that an appeal has been taken, the contracting officer shall send to the Board an appeal file consisting of the originals or true copies of the following—

(i) The direction to correct EEO deficiencies and any notice of termination involved;

(ii) Any responsibility determination or postaward compliance review documentation, case record, or determination under § 23.8(a)(2)(iii) of this part, containing information relevant to the issuance of the direction to correct EEO deficiencies or notice of termination involved;

(iii) The contract or grant agreement in question;

(iv) All correspondence between the parties and documents relating to the dispute;

(v) Transcripts of any testimony taken in connection with the dispute and any affidavit or statement of any witness which was considered in the issuance of the direction to correct EEO deficiencies or notice of termination involved; and

(vi) Any additional data that the contracting officer may consider pertinent.

The contracting officer shall retain a complete copy of the appeal file, except for any voluminous exhibits of which the appellant has identical copies or which the appellant has had the opportunity to inspect. At the time the file is sent to the Board he shall so notify the appellant, provide him with a listing of its contents, and advise him that he may examine it at the office of the contracting officer or the Board. As soon as possible the appellant should suggest to the Board any additional documentation he considers pertinent for inclusion in the appeal file. The Board may order the inclusion of the suggested material.

§ 23.10 Coordination and cooperation among DOT elements and other Federal agencies.

(a) *General*—(1) *Implementation of this part.* As the DOT Contract Compliance Officer, the Departmental Director of Civil Rights is responsible for the implementation of this part throughout the Department and for coordinating equal opportunity contract compliance activities among DOT elements and with other Federal agencies. He shall evaluate the implementation and effectiveness of this part and advise responsible officials and the Secretary as appropriate.

(2) *Assumption of jurisdiction.* As the DOT Contract Compliance Officer, the Departmental Director of Civil Rights may inquire into the status of any matter affecting or involving the DOT equal opportunity contract compliance program and, where he considers it appropriate for the achievement of the purposes of this part, assume jurisdiction over the matter and proceed in coordination with DOT elements concerned.

(3) *Assistance of DOT elements.* Each DOT element shall provide the Departmental Director of Civil Rights with the assistance of personnel which the Director may find necessary and shall otherwise appropriately assist and cooperate with him in the discharge of his duties under this part.

(b) *DOT element compliance agency responsibilities*—(1) *Delegation of compliance agency responsibilities*—(i) *U.S. Coast Guard and Federal Aviation Administration.* The U.S. Coast Guard and the Federal Aviation Administration are hereby delegated compliance agency responsibilities for facilities in the ship and boat building and repair and water transportation (inland only) industries and for facilities in the air transportation industry respectively, in accordance with Order No. 1 issued by the Director, OFCC, "Consolidation and Reassignment of Compliance Agency Responsibility," October 24, 1969.

(ii) *Delegations by the Departmental Director of Civil Rights.* Without derogation to subdivision (i) of this subparagraph, the Departmental Director of Civil Rights shall delegate to a DOT element compliance agency responsibilities for a particular facility or construction site when DOT would be compliance agency because of a designation by the Director, OFCC, or by operation of FPR § 1–12.802–(d)(1)–(2) and (4). The Departmental Director of Civil Rights shall promptly notify the Director, OFCC, and all DOT elements of each delegation he makes.

(iii) *Prime contractors and subcontractors involved in construction work.* Each DOT element is hereby delegated compliance agency responsibilities for each construction project which it funds when DOT is providing the largest dollar value within the meaning of FPR § 1–12.802(d)(3). When two or more DOT elements are funding such a project, the element providing the largest dollar value is hereby delegated compliance agency responsibilities.

(2) *Compliance agency responsibilities.* Each DOT element delegated compliance agency responsibilities is responsible for compliance with equal opportunity obligations at the facilities and construction sites for which it acts as compliance agency. The element shall cooperate fully with other Federal agencies and DOT elements, and shall keep them informed of significant developments, in its supervision of the compliance status at those facilities and construction sites. If a responsibility determination or compliance review is requested by another Federal agency or DOT element, the element shall make or conduct the determination or review in accordance with this part.

(c) *Assignment of additional compliance responsibilities*—(1) *General.* In addition to its compliance agency responsibilities, each DOT element is responsible for compliance with equal opportunity obligations by an employer awarded a nonexempt agreement concerning that element at the employer's facilities and construction sites for which no compliance agency exists. The Departmental Director of Civil Rights may establish procedures for the assignment of exclusive compliance responsibilities in this situation when the employer in question has or has had nonexempt agreements concerning two or more DOT elements.

(2) *Special requests.* A DOT element shall conduct a compliance review when requested by the Departmental Director of Civil Rights, regardless of whether any compliance agency exists for the facility or construction site concerned.

(d) *Cooperation of other Federal agencies in the enforcement of agreements containing Corrective Action or Recipient Special Provisions.* The Departmental Director of Civil Rights is responsible for informing other Federal agencies which may act as compliance agency in regard to any agreement containing the Corrective Action or Recipient Special Provisions of the requirements for enforcing equal opportunity obligations of that agreement and for requesting those agencies to take due regard of the provisions of this part so as to avoid generating claims by employers.

(e) *Referral to the Department of Justice or the Equal Employment Opportunity Commission.* The Departmental Director of Civil Rights may in an appropriate case recommend to the Director, OFCC, that action be taken under sections 209(a) (2) or (3) of Executive Order 11246, as amended.

§ 23.11 Delegation of responsibility to recipients.

(a) *Authority to delegate responsibility to recipients.* Notwithstanding any other provision of this part, any DOT element may delegate to any of its recipients, and require that recipient to perform, some or all of its responsibility determination and postaward compliance review responsibilities in regard to the recipient's contracts and subcontracts and the facilities and construction sites of the recipient's contractors and subcontractors, if—

(1) Binding assurances are obtained from the recipient to ensure the satisfactory performance by him of the responsibility determination and compliance review responsibilities delegated to him, in accordance with the requirements of §§ 23.4 and 23.6 (except that the civil rights specialists and cognizant contracting officers referred to may be civil rights specialists and contracting officers respectively employed by the recipient);

(2) An adequate system is devised for the DOT element to monitor and improve, as necessary, the performance by the recipient of the responsibility determination and compliance review responsibilities delegated to him; and

(3) The delegation program of the DOT element (including the assurances to be obtained and the monitoring system to be established) is submitted to the Departmental Director of Civil Rights for approval as part of the implementing instructions and procedures of this part, or amendment thereto, and the Director approves thereof.

(b) *Effect of delegation.* Any delegation of responsibility to a recipient hereunder does not affect the responsibility of the DOT element to make a responsibility determination or to conduct a postaward compliance review required by this part in regard to the recipient or any of his facilities or construction sites.

§ 23.12 Reports to Departmental Director of Civil Rights and the Director, OFCC.

(a) *General.* Each DOT element shall submit to the Departmental Director of Civil Rights within the time requested whatever information, reports, or copies of reports that the Director may from time to time request in the administration of this part.

(b) *Annual reports*—(1) *Compliance agency industry manpower reports.* The United States Coast Guard and the Federal Aviation Administration shall submit to the Departmental Director of Civil Rights by July 1 of each year a manpower report indicating current total employment broken down by minority group and job category for each industry for which they respectively act as compliance agency. The report may consist solely of a compilation of individual employer information reports EEO–1 (Standard Form 100) filed by employers in the industry concerned for the current year.

(2) *Construction manpower reports.* Each DOT element shall submit to the Departmental Director of Civil Rights by September 15 of each year a manpower report indicating current total employment by employers for whose construction site or sites it has compliance responsibilities. The report shall consist of a compilation of individual annual minority group representation reports filed by those employers for the current year under paragraph (h) (6) (iv) of the Affirmative Action Special Provision.

(c) *Semiannual reports.* Each DOT element shall submit to the Departmental Director of Civil Rights by July 30 for the first 6 months of the calendar year and by January 30 for the last 6 months of the previous calendar year reports indicating the total number of nonexempt contracts and grant agreements which it and its recipients have awarded, by category (direct supply contracts, direct construction contracts, federally assisted supply contracts, federally assisted construction contracts, and grant agreements), by dollar amount ($1 million or more; $500,000 to $1 million; $100,000 to $500,000; $50,000 to $100,000; and $10,000 to $50,000), and by identity of awarding authority (geographic or other subdivision of the DOT element or name of recipient).

(d) *Quarterly reports.* Each DOT element shall submit to the Departmental Director of Civil Rights by the 30th of the month following the close of each quarter (January 30, April 30, July 30, and October 30) reports in duplicate including the following data on activities during the preceding quarter.

(1) *Narrative summary of program activities.* Quarterly reports shall provide a narrative description of general equal opportunity contract compliance activities, including major accomplishments, significant problems encountered or resolved, new activities initiated, training programs developed, conducted, or reviewed, and significant organizational and personnel actions.

(2) *Statistical summary of program activities.* Quarterly reports shall indicate—

(i) The number of responsibility determinations made during the preceding quarter and the results of each (finding of responsibility or nonresponsibility);

(ii) The number of responsibility determinations involving onsite reviews and of postaward compliance reviews made or conducted during the preceding quarter and the scope (name of each facility or construction site visited) and results of each (finding of responsibility or nonresponsibility, or of compliance or noncompliance, and in the latter case remedial actions taken); and

(iii) The number and, to the extent scheduled, scope (name of facility or construction site to be visited) of postaward compliance reviews programmed for the current quarter.

The information shall be broken down by category of facility or construction site reviewed or to be reviewed (identification of industry) and by identity of reviewing authority (geographic or other subdivision of the DOT element or, if a delegation of responsibility has been or is to be made under § 23.11, name of recipient).

(e) *Reports to the Director, OFCC*—(1) *General.* The Departmental Director of Civil Rights shall promptly submit to the Director, OFCC, whatever information, reports, or copies of reports that the latter may from time to time request in the administration of Executive Order 11246, as amended.

(2) *Quarterly reports.* The Departmental Director of Civil Rights shall

submit to the Director, OFCC, by the 15th of the second month following the close of each quarter (February 15, May 15, August 15, and November 15) reports transmitting copies of quarterly reports submitted by DOT elements for the preceding quarter.

APPENDIX I

DEPARTMENT OF TRANSPORTATION NOTICE TO BIDDERS, OFFERORS, AND APPLICANTS NONEXEMPT AGREEMENTS

Bidders, offerors, and applicants are hereby notified that the following Affirmative Action Special Provision will be included in any nonexempt agreement resulting from this solicitation:

AFFIRMATIVE ACTION SPECIAL PROVISION

Without derogation to any other provision of this agreement, the following obligations apply:

(a) *General.* (1) Exemption from compliance in whole or in part from the Equal Opportunity Clause (see § 23.5(a) of Part 23) constitutes exemption to the same extent from this Special Provision.

(2) Violation of any equal opportunity obligation constitutes violation of the Equal Opportunity Clause.

(3) The employer will assist and cooperate actively with the Federal Government and its authorized representatives in meeting his equal opportunity obligations and will permit postaward compliance reviews and complaint investigations both during and after performance of this agreement.

(4) The employer will take all steps necessary to ensure that no employee, agent, or person subject to his control intimidates, threatens, coerces, or discriminates against any person for the purpose of interfering with the filing of a complaint, furnishing information, or assisting or participating in any manner in an investigation, compliance review, hearing, or any other activity related to the administration of Part 23 or any Federal, State, or local law providing relief for or requiring affirmative action against discrimination in employment.

(5) Notwithstanding any other provision of this agreement, it is not a violation of equal opportunity obligations for the employer to hire and employ employees or to admit to, or employ an individual in, any training program, on the basis of religion, sex, or national origin in those certain instances where religion, sex, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of the employer's particular business or enterprise. Similarly, nothing contained in any equal opportunity obligation applies to any business or enterprise on or near an Indian reservation with respect to any publicly announced employment practice of such business or enterprise under which a preferential treatment is given to any individual because he is an Indian living on or near a reservation.

(6) If this agreement is a contract or subcontract, the following provisions apply:

(i) The employer will not enter into a subcontract with any person known to have been debarred because of violation of equal opportunity obligations, unless an exemption is obtained as provided in § 23.5 of Part 23.

(ii) The employer will assure that this Special Provision is made binding upon each person to whom he awards a nonexempt subcontract for construction work hereunder by including it in each such subcontract.

(iii) The employer will use his best efforts to assure compliance with equal opportunity obligations in each nonexempt subcontract which he awards hereunder. If this agreement is a contract for construction work, this obligation shall extend to the employment policies and practices of all subcontractors at each construction site hereunder.

(iv) Without derogation to the preceding subparagraph (iii), the employer will take any action which the Federal Government or its authorized representative may direct as a means of enforcement of equal opportunity obligations of any subcontractor hereunder, including terminating a subcontract in whole or in part for noncompliance.

(b) *Nondiscrimination.* (1) Discrimination within the meaning of the Equal Opportunity Clause includes the continuance of any employment policy or practice which perpetuates the effects of past discrimination, regardless of the date of that discrimination.

(2) Guidelines concerning sex discrimination are set forth in Title 41, Code of Federal Regulations, Part 60-20 (35 F.R. 8888, June 9, 1970).

(3) This Special Provision is not intended and shall not be used to discriminate against any person.[1]

(c) *Recruitment and promotion.* (1) The employer will assure that there is a representative flow of minority group candidates for each job classification by affording persons in the potential applicant minority group population realistic notice of openings and opportunity to apply for them and by encouraging them to do so. A "representative flow" means a flow approximating over a reasonable period of time the minority group breakdown of the total qualified, potential applicant population.

(2) Without derogation to the preceding subparagraph (1), the employer will assure that at least one qualified minority group candidate is considered for each job opening, except to the extent that the employer affirmatively determines that:

(i) No such candidate exists in the potential applicant population;

(ii) Compelling circumstances which could not reasonably have been anticipated exist, making it unreasonable to delay filling the opening; or

(iii) The opening is in a job classification in which the minority group breakdown of employees currently approximates the minority group breakdown of the total qualified, potential applicant population.

(d) *Qualification requirements, tests, and other selection techniques.* (1) The employer will as soon as reasonably possible affirmatively determine that the following tests are valid for their intended purposes in accordance with the requirements of sections 2(b), 3, 5, and 6 of the Order of the Secretary of Labor, "Employment Tests by Contractors and Subcontractors," issued on September 24, 1968 (33 F.R. 14392) [hereinafter termed the Order of Sept. 24, 1968] or discontinue their use. These tests are those which the employer regularly uses to select from among or between candidates for hire, transfer, or promotion to other than a professional, technical, or managerial job classification (defined as occupation groups "0" or "1" in U.S. Employment Service, "Dictionary of Occupational Titles" (U.S. Government Printing Office, 3d Ed. (1965)) and for which he does not already keep available for inspection evidence of validity pursuant to that order.

(2) Notwithstanding the preceding subparagraph, the employer is not required to validate tests to the extent that he uses the testing services of a State Employment Service Office or Agency (hereinafter termed State Office). However, the employer may not use those testing services unless—

(i) The tests used by the State Office have been validated pursuant to the requirements of the Order of September 24, 1968, and the employer maintains on file the U.S. Employment Service certification of this fact, or

(ii) The tests used by the State Office have not been validated pursuant to the requirements of the order of September 24, 1968, but the employer cooperates with the State Office to effect validation of tests as they relate to his job requirements.

(3) The employer will assure that his qualification requirements and selection techniques other than tests (including unscored interviews, unscored application forms, and records of educational and work history) do not unfairly exclude any minority group candidates. Whenever there is evidence of unfair exclusion (e.g., a differential rate of rejection of candidates of a particular minority group, or an otherwise unexplained underrepresentation of persons of a particular minority group in a particular job classification), the employer will as soon as reasonably possible affirmatively determine that:

(i) Any qualification requirements for the job classification involved are consistent throughout his work force and are valid for actual work to be performed, and

(ii) Any selection technique other than a test regularly used to select from among or between candidates for hire, transfer, or promotion to the job classification involved is valid for its intended purposes, the evidence of validity being of the same type referred to in sections 2 and 3 of the order of September 24, 1968.

(4) The employer will not require any minority group candidate previously discriminated against in hiring, transfer, or promotion to qualify under any qualification requirement, test, or other selection technique which was not required of an incumbent hired, transferred, or promoted on or after the date of the discrimination into the department, job classification, or job progression line from which the candidate was previously excluded.

(e) *Minority group enterprises.* The employer will take the following actions to promote equal opportunity for minority group enterprises to compete for agreements hereunder:

(1) The employer will not discriminate against or unfairly exclude any person seeking an agreement hereunder, because of race, color, religion, sex, or national origin. Among other actions as necessary to accomplish this, the employer will affirmatively determine that any previously unvalidated qualification requirement which a minority group enterprise cannot satisfy is valid for its intended purposes before the enterprise's bid or offer is rejected.

(2) Consistently with the efficient performance of this agreement, the employer will arrange solicitations, time for the preparation of offers, quantities, specifications, and delivery and payment schedules so as to facilitate the participation of minority group enterprises.

(3) The employer will solicit offers for each uncommitted agreement from minority group enterprises, except to the extent that he affirmatively determines that minority group enterprises capable of satisfactorily performing the agreement do not exist within

[1] There is no inconsistency between affirmative action obligations and the obligation not to discriminate: "The hiring process, viewed realistically, does not begin and end with the employer's choice among competing applicants. The standards he sets for consideration of applicants, the methods he uses to evaluate qualifications, his techniques for communicating information as to vacancies, the audience to which he communicates such information, are all factors likely to have a real and predictable effect on the racial [and other minority group] composition of his work force." Opinion of the Attorney General to the Secretary of Labor, Sept. 22, 1969.

a reasonable area of solicitation or that compelling circumstances which could not reasonably have been anticipated exist, making it unreasonable to delay awarding the agreement. An "uncommitted" agreement is a negotiated agreement hereunder which the employer is not contractually obligated or otherwise committed to award a particular person as part of an on-going, bona fide business relationship predating the award of this agreement.

(4) The employer will afford minority group enterprises within a reasonable area of solicitation realistic notice of each prospective, formally advertised agreement hereunder and opportunity to bid for it and will encourage them to do so.

(5) The employer will provide technical guidance and counseling to any minority group enterprise which seeks or needs assistance in competing for an agreement hereunder. The employer will make known to the minority group community in the areas of solicitation referred to in the preceding subparagraph that these services are available.

(f) *Trade associations and unions.* (1) The employer may delegate full or partial responsibility to another person, including a trade association or union, to meet any equal opportunity obligation. However, no delegation diminishes or otherwise affects the employer's responsibility to assure satisfaction of all such obligations. Thus, the employer cannot, without violating his equal opportunity obligations, rely upon a union for referrals if the union discriminates against or unfairly excludes minority group persons in granting membership or effecting referrals or if the rate of minority group referrals to the employer from the union and any other sources of employees does not constitute a representative flow (as defined in paragraph (c)(1) above) and include at least one qualified minority group candidate for each job opening (except to the extent specified in paragraph (c)(2) above).

(2) Without derogation to the preceding subparagraph (1):

(i) The employer will use his best efforts to incorporate a clause into each of his union agreements to the effect that the union will admit, represent, and otherwise treat members and applicants for membership and make any referrals without regard to race, color, religion, sex, or national origin and will take affirmative action to assure the achievement of equal employment opportunity.

(ii) If a union which the contractor has recognized is, in violation of the Civil Rights Act of 1964, the National Labor Relations Act, or the Railway Labor Act, engaged in a pattern or practice of discriminating in admitting, representing, or otherwise treating members or applicants for membership or in effecting referrals, the contractor will promptly notify the Equal Employment Opportunity Commission thereof, file a complaint with the National Labor Relations Board for an appropriate remedy, seek other appropriate remedial legal action, or bring the case to the attention of the Departmental Director of Civil Rights, Department of Transportation, Washington, D.C.

(g) *Corrective action.* The employer will promptly take and complete corrective action whenever any violation of his equal opportunity obligations comes to his attention. "Corrective action" means action to correct, compensate for, and remedy each violation in full. It necessarily involves determination of the cause and scope of the violation, includes preventive action to assure that the same or a similar violation will not recur, and extends to all persons who have been adversely affected.

(i) In the case of a seniority system which perpetuates the effects of past discrimination, corrective action must permit employees who were discriminated against to move to their rightful place as quickly as possible, consistently with valid, corrected seniority and qualification requirements and without any diminution in pay rates or job security rights. Moreover, corrective action in this situation must include special training on the employer's time to qualify any employee who is unable to qualify for his rightful place because of the prior discrimination. If that employee is unable to qualify even with special training, he must be given a chance to qualify, with further special training as necessary, for at least one other department, job classification, or job progression line from which he was previously excluded.

(ii) Corrective action for intentional discrimination includes the payment of back pay less interim earnings or amounts earnable with reasonable diligence.[2]

(h) *Records and reports.* (1) The employer will make records indicating:

(i) The employer's job classifications, together with a description of duties and a statement of applicable rates of pay for each classification.

(ii) The total number of the employer's employees, broken down by minority group and job classification.

(iii) The total number of applicants, broken down by minority group and job classification, for each 30-day period following award of this agreement;

(iv) The names, addresses, and minority group identification of minority group applicants who are not hired, the dates thereof, and the reasons therefor, on a complete or statistically significant, random sampling basis.

(v) The name and minority group identification of each minority group employee who is passed over for promotion, the date thereof, and the reasons therefor.

(vi) Each affirmative determination required under paragraphs (c)(2), (d)(1), (d)(3), (e)(1), or (e)(3) of this Special Provision, the date thereof, and the basis therefor.

(2) The records required under subparagraphs (1) (i) and (ii) of this paragraph shall be updated annually and shall first be prepared within the first 30 days of award of this agreement, unless they have been prepared within the preceding 12 months.

(3) The employer will retain the records required to be made under this paragraph for a period of 3 years following their preparation and will make them available at reasonable times and places for inspection by any authorized representative of the Federal Government.

(4) The employer will comply with the requirements of the Joint Reporting Committee in regard to the filing of an annual employer information report EEO-1 (Standard Form 100).

(5) The employer will promptly submit to an authorized representative of the Federal Government upon request a minority group representation report, consisting of the employer's most recent records (in whole or in part as specified) required to be made and kept under subparagraphs (1)(i), (1)(ii), and (2) of this paragraph and indicating the time at which the data for those records were compiled. The employer will also promptly submit any other information regarding possible violations of the equal opportunity obligations of the employer or any subcontractor, which such authorized representative may reasonably request.

(6) If this agreement is a contract or subcontract for construction work, the following provisions apply:

(i) The records required under subparagraph (1)(ii) of this paragraph may be limited to the employer's work force not engaged in construction work.

(ii) The employer will submit to the Contracting Officer of the prime contract an interim minority group representation report, indicating the total number of employees, broken down by minority group and job classification, engaged in construction work hereunder as of the last payroll period before the respective due date of each report. A report is due 20, 60, and 100 days after the start of construction hereunder and thereafter promptly upon request.

(iii) The employer will promptly submit to an authorized representative of the Federal Government upon request a special minority group representation report, indicating the total number of employees, broken down by minority group and job classification, engaged in construction work other than under this agreement, as such representative may reasonably request.

(iv) The employer will submit an annual minority group representation report by August 15 of each year in which work is performed on or under this agreement to the Director of Civil Rights of the Administering Agency hereunder, Washington, D.C. That report shall indicate the total number of employees, broken down by minority group and job classification, engaged in construction work as of the last payroll period before the end of July. For the purpose of this subparagraph, the term "Administering Agency" means the element of the Department of Transportation (Office of the Secretary, U.S. Coast Guard, Federal Aviation Administration, Federal Highway Administration, Federal Railroad Administration, Urban Mass Transportation Administration, National Highway Safety Bureau, St. Lawrence Seaway Development Corporation, or National Transportation Safety Board) which has compliance responsibilities for this agreement under § 23.10 (b) or (c) of Part 23.

(i) *Definitions.* Notwithstanding any other provisions of this agreement, the definitions in § 23.2 of Part 23 apply to this Special Provision with the following additions and changes:

"Applicant" includes a referral from a union or other source of employees.

"Employee" means any person hired to work for the employer for compensation on a full- or part-time, permanent or temporary basis.

"Job classification" means a group or grade of employees who perform the same type of work under similar working conditions at the same location (or, for traveling employees, with headquarters at the same location) and exercise substantially equal skill, effort, and responsibility, such as engineers, accountants, stenographers, and guards at a particular plant; traveling salesmen or construction inspectors with headquarters at a particular facility; or trainees, apprentices, and journeymen (and any levels thereof) in a particular trade at a particular construction site.

"Minority group" means a group of persons of any race, color, religion, sex, or national

[2] The period of limitations for the award of back pay is: for sex discrimination, Oct. 13, 1968, or the date when the employer first became bound by the Equal Opportunity Clause if he can prove that date is later; and for other prohibited discrimination, Oct. 24, 1965, or the date when the employer first became bound by the Equal Opportunity Clause if he can prove that date is later.

origin which has been the subject of employment discrimination in the potential applicant population. Except for Orientals in Hawaii and Spanish-surnamed Americans in Puerto Rico, the term necessarily includes Negroes, American Indians, Orientals, Spanish-surnamed Americans (persons of Mexican, Puerto Rican, Cuban, or Spanish origin or ancestry), Alaskan natives in Alaska (Aleuts and Eskimos), and females, unless the Departmental Director of Civil Rights, Department of Transportation, or his designee has determined that the group is not the subject of employment discrimination in an area indicated and the employer has been so notified.

"Minority group enterprise" means any sole proprietorship, partnership, or corporation of which the proprietor, at least half of the partners, or at least half of the board of directors, officers, or those exercising effective control respectively are minority group members.

"Part 23" means Part 23 of the Regulations of the Office of the Secretary of Transportation, issued on October 8, 1970 (35 F.R. 16136; 49 CFR Part 23).

"Potential applicant population" means the group of people (including current employees) who, given the employment opportunities and location involved, may reasonably be expected to apply for an opening or openings if notified of and given the opportunity and encouragement to do so.

"Promotion" means an advancement, upgrading, or transfer to a higher or better job classification, such as a job classification which pays a higher basic, effective wage or salary or which may reasonably be expected to lead to such a job classification. The term "promotion by the employer" includes a promotion made in accordance with a union agreement or practice.

"Test" means any paper-and-pencil or performance measure used to judge qualifications for hire or promotion. The term includes a measure of general intelligence, mental ability, or learning ability; specific intellectual ability; mechanical, clerical, or other aptitude; knowledge or proficiency; occupational or other interest; or personality or temperament.

APPENDIX II

DEPARTMENT OF TRANSPORTATION NOTICE TO BIDDERS AND OFFERORS NONEXEMPT DIRECT CONTRACTS

Bidders and offerors are hereby notified that the following Corrective Action Special Provision will be included in any nonexempt direct contract resulting from this solicitation:

CORRECTIVE ACTION SPECIAL PROVISION

Notwithstanding any other provision of this contract: [1]

(a) The contractor will comply with any notice in writing addressed to him to take corrective action for violation of his equal opportunity obligations, identified as a direction to correct EEO deficiencies and delivered to him by an Authorized Contracting Officer, except to the extent that the corrective action required is not within the general scope of his equal opportunity obligations. Failure to comply with the direction within 10 days from receipt or such longer period as may be provided therein (except to the extent that the corrective action required is not within the general scope of the contractor's equal opportunity obligations) is grounds for the termination of this contract in whole or in part for default.

Except as provided herein, no order, statement, or conduct of an Authorized Contracting Officer or any other person may be treated as a direction to correct EEO deficiencies and entitle the contractor to an equitable adjustment under this paragraph (a).

If the direction specifies any change in the contractor's equal opportunity obligations and that change causes an increase in the contractor's cost of, or the time required for, performance of any part of this contract (whether changed or not changed by the direction), the contractor shall be entitled to an equitable adjustment and the contract shall be modified accordingly: *Provided*, That, in the case of the prime contract, the contractor mails to or files with the Contracting Officer, within 30 days after receipt of the direction and before final payment hereunder, a written notice of claim for such equitable adjustment in accordance with paragraph (g) of this Special Provision.

If the contractor holds more than one agreement containing the Corrective Action or Recipient Special Provisions pursuant to Part 23, the equitable adjustment under this paragraph (a) shall reflect an equitable allocation of the total adjustment due the contractor on account of the direction to correct EEO deficiencies in question.

(b) If on the order of an Authorized Contracting Officer a direction to correct EEO deficiencies is delivered to an employer who is a subcontractor hereunder and the direction specifies a change in the subcontractor's equal opportunity obligations, entitling the subcontractor to an equitable adjustment under paragraph (a) of the Corrective Action Special Provision in his subcontract hereunder and causing an increase in the contractor's cost of, or the time required for, performance of any part of this contract (whether changed or not changed by the direction), the contractor shall be entitled to an equitable adjustment and the contract shall be modified accordingly: *Provided*, That, in the case of the prime contract, the contractor mails to or files with the Contracting Officer, within 30 days after receipt of notice of delivery of the direction to the subcontractor and before final payment hereunder, a written notice of claim for such equitable adjustment in accordance with paragraph (g) of this Special Provision.

The equitable adjustment under this paragraph (b) shall reflect any equitable adjustment the contractor must make to a subcontractor hereunder and any additional expense equitably allocable to this contract and reasonably incurred by the contractor as a result of the Authorized Contracting Officer's order.

(c) If the contractor on the order of the Contracting Officer delivers, or orders delivered through the appropriate contractual tiers, to a subcontractor hereunder a notice of termination for default in the performance of a direction to correct EEO deficiencies when the subcontractor was not subject to default under the Corrective Action Special Provision in his subcontract hereunder, causing an increase in the contractor's cost of, or the time required for, performance of any part of this contract, the contractor shall be entitled to an equitable adjustment and the contract shall be modified accordingly, provided that, in the case of the prime contract, the contractor mails to or files with the Contracting Officer, within 30 days after receipt of the Contracting Officer's order and before final payment hereunder, a written notice of claim for such equitable adjustment in accordance with paragraph (g) of this Special Provision.

The equitable adjustment under this paragraph (c) shall reflect any equitable adjustment or termination for convenience (or the equivalent thereof) which the contractor must make or allow a subcontractor hereunder and any additional expense equitably allocable to this contract and reasonably incurred by the contractor as a result of carrying out the Contracting Officer's order.

(d) Notwithstanding any other provision of this Special Provision, a direction to correct EEO deficiencies shall be considered for the purposes of paragraphs (a) and (b) not to specify any change in the contractor's or subcontractor's equal opportunity obligations if the contractor or subcontractor respectively holds one agreement under which the direction does not specify a change. Furthermore, the contractor or subcontractor shall not be entitled to an equitable adjustment for any change which is required by the Civil Rights Act of 1964, the National Labor Relations Act, the Railway Labor Act, or any other applicable law, Federal, State, or local, providing relief for or requiring affirmative action against discrimination in employment.

Nothing provided in this Special Provision excuses the contractor from proceeding diligently with the performance of the contract and in accordance with any applicable direction to correct EEO deficiencies as provided in paragraph (a).

(e) Any termination for default in the performance of a direction to correct EEO deficiencies shall be effected by delivery of a notice of termination to the contractor by the Contracting Officer. The notice shall identify this contract and the direction to correct EEO deficiencies in question, state that the termination is for default in the performance of that direction, and specify the extent to which performance under this contract is terminated and the time at which that termination becomes effective.

Any clause in this contract providing for termination for default in the performance of the contract shall govern the rights and obligations of the parties if the contract is terminated for default in the performance of a direction to correct EEO deficiencies when the contractor was subject to default under this Special Provision.

(f) If, after notice of termination for default in the performance of a direction to correct EEO deficiencies, it is determined for any reason that the contractor was not subject to default under this Special Provision, the rights and obligations of the parties shall, if this contract contains a clause providing for termination for convenience or the equivalent thereof, be the same as if the termination had been effected pursuant to that clause, provided that, in the case of the prime contract, the contractor mails to or files with the Contracting Officer, within 30 days after receipt of the notice of termination for default, a written notice of claim for a termination for convenience (or the equivalent thereof) in accordance with paragraph (g) of this Special Provision.

If, after notice of termination for default in the performance of a direction to correct EEO deficiencies, it is determined for any reason that the contractor was not subject to default under this Special Provision, and if this contract does not contain a clause providing for termination for convenience or the equivalent thereof, the contractor shall

[1] Federal Procurement Regulations (FPR) §§ 1-12.805-9 (a)-(b) and 1-12.807-1 (a)-(c) do not govern this contract. However, the contractor may enter into a conciliation agreement with an authorized representative of the Federal Government as an informal resolution of violation of equal opportunity obligations. In that case, if the contractor complies with the agreement within the time provided for therein and mails to or files with the Departmental Director of Civil Rights, Department of Transportation, Washington, D.C., a request for a hearing within 10 days following compliance, he is entitled to a hearing as provided in FPR § 1-12.807-3 to determine whether the terms of the agreement are, in fact, required to achieve compliance with his equal opportunity obligations. The contractor's compliance with the agreement does not constitute the basis for any equitable adjustment under this Special Provision.

be entitled to an equitable adjustment to compensate for the termination and the contract shall be modified accordingly: *Provided*, That, in the case of the prime contract, the contractor mails to or files with the Contracting Officer, within 30 days after receipt of the notice of termination for default, a written notice of claim for such equitable adjustment in accordance with paragraph (g) of this Special Provision.

(g) In the case of the prime contract:

Any notice of claim mailed or filed under this Special Provision shall be signed by the contractor, shall identify the contract and direction to correct EEO deficiencies or notice of termination involved, and shall state that the contractor is filing a claim on account of that direction or notice. The notice of claim should be in triplicate, should set forth the general nature, basis, and monetary extent of the claim, and should request a hearing before the Secretary of Transportation or his designee in regard thereto.

The Contracting Officer may at any time before final payment under this contract, if he decides that the facts justify the action, extend the time for filing a notice of claim under paragraph (a), (b), or (c) of this Special Provision by furnishing the contractor upon request a written notice stating that the time for filing has been extended.

(h) In the case of the prime contract only:

The Secretary of Transportation or his designee shall decide any dispute, unless disposed of by agreement, concerning a question of fact arising under this Special Provision. Failure to agree to any equitable adjustment or termination for convenience (or the equivalent thereof) claimed by the contractor under this Special Provision constitutes such a dispute.

In this connection, the contractor shall be afforded an opportunity to be heard and to offer evidence in accordance with § 23.9 of Part 23. If the claim is for an equitable adjustment (except under paragraph (f) of this Special Provision), pending final decision the contractor shall proceed diligently with the performance of the contract and in accordance with any applicable direction to correct EEO deficiencies as provided in paragraph (a) of this Special Provision. The decision of the Secretary or his designee is final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. This paragraph (h) does not preclude consideration of law questions in connection with any decision called for, provided that nothing in this paragraph shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

(i) Except in the case of the prime contract, the contractor acknowledges that the Federal Government is not a party to this contract and agrees that any claim under this Special Provision may be asserted only against such a party.

(j) On the order of the Contracting Officer the contractor will deliver, or order delivered through the appropriate contractual tiers, to a subcontractor hereunder a direction to correct EEO deficiencies or a notice of termination for default in the performance of such a direction. The contractor will take this action only on the order of the Contracting Officer.

(k) The definitions in § 23.2 of Part 23 apply to this Special Provision with the following additions and changes:

"Authorized Contracting Officer" means any contracting officer for any agreement held by the contractor or subcontractor in question which contains the Corrective Action or Recipient Special Provisions pursuant to Part 23.

"Contracting Officer" means: for a grant agreement or a direct contract, the person who executed the grant agreement or contract on behalf of the Federal Government, or his successor; for a federally assisted contract, the person who executed the contract on behalf of the recipient, or the recipient's designee; and for a subcontract under a direct or federally assisted contract, the person who awarded the subcontract, or his delegee.

"Part 23" means Part 23 of the Regulations of the Office of the Secretary of Transportation, issued on October 8, 1970 (35 F.R. 16136; 49 CFR Part 23).

"Prime contract" means the contract entered into by the Federal Government.

"Subcontractor" means any person who holds a subcontract under this contract which contains the Corrective Action Special Provision pursuant to Part 23.

(l) The contractor will assure that this Special Provision is made binding upon each person to whom he awards a nonexempt subcontract for construction work hereunder by including it in each such subcontract. In so doing, the contractor may supplement this Special Provision with such additional terms and conditions as he considers appropriate, provided that they are consistent herewith.

APPENDIX III

DEPARTMENT OF TRANSPORTATION NOTICE TO APPLICANTS NONEXEMPT GRANT AGREEMENTS

Applicants are hereby notified that the following Recipient Special Provision will be included in any nonexempt grant agreement:

RECIPIENT SPECIAL PROVISION

Notwithstanding any other provision of this agreement:

(a) *Implementation of Part 23.* (1) The recipient will not award any nonexempt contract without compliance with § 23.3 (a) (2), (3), (5), and (6) and (b) of Part 23 so far as applicable, and without notification from the Approving Officer or his authorized representative that the prospective contractor and any party to whom that contractor is contractually obligated or otherwise committed to award a nonexempt subcontract are each responsible from an equal opportunity standpoint. If the Affirmative Action Special Provision is duly changed under § 23.3(c) of Part 23, the recipient will incorporate the Special Provision as changed, into any nonexempt contract as the Approving Officer may instruct.

(2) The recipient will use his best efforts to assure that each contractor and subcontractor comply with the equal opportunity obligations in his nonexempt contract and subcontract and will otherwise assist and cooperate actively with the Federal Government in achieving equal employment opportunity goals. The recipient will take the following actions, among others as necessary to accomplish the foregoing:

(i) If the recipient finds, or a contractor or subcontractor reports to him, a violation or equal opportunity obligations in any nonexempt contract or subcontract, the recipient will promptly notify the Approving Officer or his authorized representative thereof, unless the employer concerned takes corrective action.

(ii) The recipient will take any action which the Approving Officer may direct as a means of enforcing the equal opportunity obligations in a nonexempt contract or subcontract. That action may include terminating the contract, or ordering through the appropriate contractual tiers that the subcontract be terminated, in whole or in part for noncompliance.

(iii) The recipient will promptly request from a contractor or subcontractor any report or information which the Approving Officer or his authorized representative may direct and will promptly transmit to the Approving Officer or representative any report, information, or other submission by a contractor or subcontractor pursuant to Part 23. In addition, the recipient will promptly submit to the Approving Officer or representative upon request any information which the Federal Government may require in supervising compliance with equal opportunity obligations in one or more nonexempt contracts or subcontracts.

(b) *Corrective action.*[1] (1) The recipient will comply with any notice in writing addressed to him to take corrective action for violation of his equal opportunity obligations, identified as a direction to correct EEO deficiencies and delivered to him by an Authorized Contracting Officer, except to the extent that the corrective action required is not within the general scope of his equal opportunity obligations. Failure to comply with the direction within 10 days from receipt or such longer period as may be provided therein (except to the extent that the corrective action required is not within the general scope of the recipient's equal opportunity obligations) is grounds for the termination of this agreement in whole or in part for default.

Except as provided herein, no order, statement, or conduct of an Authorized Contracting Officer or any other person may be treated as a direction to correct EEO deficiencies and entitle the recipient to an equitable adjustment under this subparagraph (1).

If the direction specifies any change in the recipient's equal opportunity obligations and that change causes an increase in the recipient's cost of, or the time required for, performance of any part of this agreement (whether changed or not changed by the direction), the recipient shall be entitled to an equitable adjustment and the agreement shall be modified accordingly, provided that the recipient mails to or files with the Approving Officer, within 30 days after receipt of the direction and before final payment hereunder, a written notice of claim for such equitable adjustment in accordance with subparagraph (5) of this paragraph. The Approving Officer may at any time before final payment under this agreement, if he decides that the facts justify the action, extend the time for filing such a notice of claim by furnishing the recipient upon request a written notice stating that the time for filing has been extended.

If the recipient holds more than one agreement containing the Corrective Action or Recipient Special Provisions pursuant to Part 23, the equitable adjustment under this

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[1] Federal Procurement Regulations (FPR) §§ 1–12.805–9 (a)–(b) and 1–12.807–1 (a)–(c) do not govern this agreement. However, the recipient may enter into a conciliation agreement with an authorized representative of the Federal Government as an informal resolution of violation of equal opportunity obligations. In that case, if the recipient complies with that agreement within the time provided for therein and mails to or files with the Department Director of Civil Rights, Department of Transportation, Washington, D.C., a request for a hearing within 10 days following compliance, he is entitled to a hearing as provided in FPR § 1–12.807–3 to determine whether the terms of the agreement are, in fact, required to achieve compliance with his equal opportunity obligations. The recipient's compliance with the agreement does not constitute the basis for any equitable adjustment under this paragraph (b).

subparagraph (1) shall reflect an equitable allocation of the total adjustment due the recipient on account of the direction to correct EEO deficiencies in question.

Notwithstanding any other provision of this subparagraph (1), a direction to correct EEO deficiencies shall be considered not to specify any change in the recipient's equal opportunity obligations if he holds one agreement under which the direction does not specify a change. Furthermore, the recipient shall not be entitled to an equitable adjustment for any change which is required by the Civil Rights Act of 1964, the National Labor Relations Act, the Railway Labor Act, or any other applicable law, Federal, State, or local, providing relief for or requiring affirmative action against discrimination in employment.

Nothing provided in this paragraph (b) excuses the recipient from proceeding diligently with the performance of the agreement and in accordance with any applicable direction to correct EEO deficiencies as provided herein.

(2) Any termination for default in the performance of a direction to correct EEO deficiencies shall be effected by delivery of a notice of termination to the recipient by the Approving Officer. The notice shall identify this agreement and the direction to correct EEO deficiencies in question, state that the termination is for default in the performance of that direction, and specify the extent to which performance under this agreement is terminated and the time at which that termination becomes effective.

Any clause in this agreement providing for termination for default in the performance of the agreement shall govern the rights and obligations of the parties if the agreement is terminated for default in the performance of a direction to correct EEO deficiencies when the recipient was subject to default under this paragraph (b).

(3) If, after notice of termination for default in the performance of a direction to correct EEO deficiencies, it is determined for any reason that the recipient was not subject to default under this paragraph (b), the rights and obligations of the parties shall, if this agreement contains a clause providing for termination for convenience or the equivalent thereof, be the same as if the termination had been effected pursuant to that clause, provided that the recipient mails to or files with the Approving Officer, within 30 days after receipt of the notice of termination for default, a written notice of claim for a termination for convenience (or the equivalent thereof) in accordance with subparagraph (5) of this paragraph.

If, after notice of termination for default in the performance of a direction to correct EEO deficiencies, it is determined for any reason that the recipient was not subject to default under this paragraph (b), and if this agreement does not contain a clause providing for termination for convenience or the equivalent thereof, the recipient shall be entitled to an equitable adjustment to compensate for the termination and the agreement shall be modified accordingly, provided that the recipient mails to or files with the Approving Officer, within 30 days after receipt of the notice of termination for default, a written notice of claim for such equitable adjustment in accordance with subparagraph (5) of this paragraph.

(4) If this agreement provides for a sharing of costs between the Federal Government and the recipient, any equitable adjustment under this paragraph (b) shall reflect that proportion of the increased costs equitably allocable to this agreement as the Government's share of the costs is to bear to the total costs.

(5) Any notice of claim mailed or filed under this paragraph (b) shall be signed by the recipient, shall identify the agreement and direction to correct EEO deficiencies or notice of termination involved, and shall state that the recipient is filing a claim on account of that direction or notice. The notice of claim should be in triplicate, should set forth the general nature, basis, and monetary extent of the claim, and should request a hearing before the Secretary of Transportation or his designee in regard thereto.

(6) The Secretary of Transportation or his designee shall decide any dispute, unless disposed of by agreement, concerning a question of fact arising under this paragraph (b). Failure to agree to any equitable adjustment or termination for convenience (or the equivalent thereof) claimed by the recipient under this paragraph (b) constitutes such a dispute.

In this connection, the recipient shall be afforded an opportunity to be heard and to offer evidence in accordance with § 23.9 of Part 23. If the claim is for an equitable adjustment under subparagraph (1) of this paragraph, pending final decision the recipient shall proceed diligently with the performance of the agreement and in accordance with the direction to correct EEO deficiencies as provided therein. The decision of the Secretary or his designee is final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by subetantial evidence. This subparagraph (6) does not preclude consideration of law questions in connection with any decision called for, provided that nothing in this clause shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

(c) *Definitions.* The definitions in § 23.2 of Part 23 apply to this Special Provision with the following additions and changes:

"Approving Officer" means the person signing this agreement on behalf of the Federal Government, or his successor.

"Authorized Contracting Officer" means any contracting officer for any agreement held by the recipient which contains the Corrective Action or Recipient Special Provisions pursuant to Part 23.

"Contracting Officer" means: for a grant agreement or a direct contract, the person who executed the grant agreement or contract on behalf of the Federal Government, or his successor; for a federally assisted contract, the person who executed the contract on behalf of the recipient, or the recipient's designee; and for a subcontract under a direct or federally assisted contract, the person who awarded the subcontract, or his delegee.

"Part 23" means Part 23 of the Regulations of the Office of the Secretary of Transportation, issued on October 8, 1970 (35 F.R. 16136; 49 CFR Part 23).

For the purposes of paragraph (a) of this Special Provision, "contract" and "subcontract" mean a federally assisted contract under this grant agreement and a subcontract thereunder respectively. "Contractor" and "subcontractor" mean a person who holds or has held such a contract or subcontract respectively.

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