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Volume 83

UNITED STATES STATUTES AT LARGE

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1969

Contains laws and concurrent resolutions enacted by the Congress during 1969, reorganization plan, recommendations of the President, and Presidential proclamations. Also included are: numerical listings of bills enacted into public and private law, a guide to the legislative history of bills enacted into public law, tables of prior laws affected, and a subject index.

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PART 916—NECTARINES GROWN IN CALIFORNIA

Increase in Expenses for the 1970–71 Fiscal Period

Notice was published in the December 8, 1970, issue of the FEDERAL REGISTER (35 F.R. 18618) that consideration was being given to a proposal regarding an increase in the expenses previously approved for the fiscal period March 1, 1970, through February 28, 1971, pursuant to the marketing agreement, as amended, and Order No. 916, as amended (7 CFR 916), regulating the handling of Nectarines grown in California, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674).

The notice afforded interested persons an opportunity to submit written data, views, or arguments with respect to the proposal. None were submitted within the prescribed time.

After consideration of all relevant matters presented, including the proposal set forth in the aforesaid notice and the recommendation thereof which was submitted by the Nectarine Administrative (established pursuant to the said marketing agreement and order): *It is hereby ordered*, That the provisions pertaining to expenses in paragraph (a) of § 916.209 *Expenses and rate of assessment* (35 F.R. 11165) be, and hereby are, amended to read as follows:

§ 916.209 Expenses and rate of assessment.

(a) *Expenses.* Expenses that are reasonable and likely to be incurred during the fiscal period March 1, 1970, through February 28, 1971, will amount to $304,000.

* * * * *

It is hereby found that it is impracticable and contrary to the public interest to postpone the effective time hereof until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553) in that (1) the increase in the budget set forth does not involve an increase in the rate of assessment heretofore established by the Secretary (35 F.R. 11165); (2) the said committee has incurred expenses in excess of that previously thought likely to be incurred; and (3) it is essential that the specification of expenses herein provided be issued immediately so as that said committee can meet its obligations and perform its duties and functions within the fiscal period in accordance with the said marketing agreement and order.

Terms used in the marketing agreement and order shall, when used herein, have the same meaning as is given to the respective term in said marketing agreement and order.

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

Dated: December 23, 1970.

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

[F.R. Doc. 70-17488; Filed, Dec. 28, 1970; 8:52 a.m.]

PART 993—DRIED PRUNES PRODUCED IN CALIFORNIA

Administrative Rules and Regulations

On November 21, 1970, a notice on proposed rule making was published in the FEDERAL REGISTER (35 F.R. 17593) regarding a proposal to amend § 993.165(c) of the administrative rules and regulations (Subpart—Administrative Rules and Regulations; 7 CFR 993.101–993.174; 35 F.R. 5108; 11380; 12323). The subpart is operative pursuant to the marketing agreement, as amended, and Order No. 993, as amended (7 CFR Part 993), regulating the handling of dried prunes produced 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).

Paragraph (c) of § 993.165 sets forth noncompetitive outlets for reserve prunes. The amendment would include diced prunes for use as an ingredient in, or the manufacture of, food products for human consumption, other than for use in the manufacture of prune juice, prune concentrate, baby food, puree, butter, jam, chocolate coated prune pieces, and low moisture nuggets, granules, and powder. The amendment would also delete botanicals from the defintion of "noncompetitive outlets" in paragraph (c).

Interested persons were given opportunity to submit written data, views, or arguments with respect to the proposal. None were received.

After consideration of all relevant matter presented, including that in the notice, the information and recommendations submitted by the Prune Administrative Committee, and other available information, it is found that the Subpart—Administrative Rules and Regulations should be amended as hereinafter set forth.

Therefore, it is hereby ordered, That § 993.165(c) be amended by revising subdivisions (4) through (6) to include diced prunes for use in certain outlets among the "noncompetitive outlets" and to delete "botanicals" from the "noncompetitive outlets."

As so amended, § 993.165(c) reads as follows:

§ 993.165 Disposition of reserve prunes.

* * * * *

(c) *Noncompetitive outlets.* "Noncompetitive outlets" means (1) the U.S. Government or any agency thereof and any State or local government, except when such outlets are normally serviced through regular commercial trade channels, (2) any foreign government or any agency thereof, except any which normally is serviced through regular commercial trade channels, (3) any foreign country with an average of annual commercial imports of California prunes of less than 5 tons, based on imports during the most recent 5 years, (4) diced prunes for use as an ingredient in, or the manufacture of, food products for human consumption, other than for use in the manufacture of prune juice, prune concentrate, baby food, puree, butter, jam, chocolate coated prune pieces, and low moisture nuggets, granules, and powder, (5) charities, (6) research or educational activities, and (7) animal feed, distillation, and other salvage use.

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

Dated December 23, 1970, to become effective 30 days after publication in the FEDERAL REGISTER.

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

[F.R. Doc. 70-17489; Filed, Dec. 28, 1970; 8:52 a.m.]

Title 10—ATOMIC ENERGY

Chapter I—Atomic Energy Commission

PART 2—RULES OF PRACTICE

PART 50—LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

Miscellaneous Amendments

The Atomic Energy Commission has adopted several amendments to its Rules of Practice, 10 CFR Part 2, and its regulation, Licensing of Production and Utilization Facilities, 10 CFR Part 50, to reflect the enactment of Public Law 91–560 on December 19, 1970. That legislation amended the Atomic Energy Act of 1954, as amended, by, among other things, eliminating the requirement that the Commission make "a finding in writing that any type of utilization or production facility has been sufficiently developed to be of practical value for industrial or commercial purposes" before the

Commission may issue commercial licenses under section 103 of the Act for such facilities. Under Public Law 91-560, utilization or production facilities for commercial or industrial purposes must be licensed under section 103. Excepted from this requirement are such facilities the construction or operation of which has previously been licensed under section 104b of the Act, such facilities constructed and operated under the Cooperative Power Reactor Demonstration Program unless section 103 licensing is specifically required by applicable law, and such facilities for which section 104b licensing is specifically authorized by law.

The legislation also revises the provisions of section 105c of the Act pertaining to antitrust review of facility license applications, allows different qualifications for the membership of the atomic safety and licensing boards authorized by section 191 of the Act, and amends section 182c of the Act to provide for publication of an application for a section 103 license for a facility for the generation of commercial power in such trade or news publications as the Commission deems appropriate to give reasonable notice to municipalities, private utilities, public bodies and cooperatives which might have a potential interest in the facility.

Subsection 105c(3) of the Act as amended by Public Law 91-560 applies to holders of construction permits issued under section 104b before amendment. It permits any person who intervened or sought by timely written notice to the Commission to intervene in the construction permit proceeding for the facility to obtain a determination of antitrust considerations or to advance a jurisdictional basis for such determination to obtain an antitrust review of the operating license application by written request made within 25 days after the date of publication in the FEDERAL REGISTER of notice of filing of the application for an operating license or December 19, 1970, whichever is later. The Commission's regulations at present do not require the filing of a separate application as such for an operating license when the initial application is for a "license to construct and operate" a facility. As was contemplated when the legislation was pending, the amendments of Part 50 which follow will require a separate application for an operating license to be filed in conjunction with the final safety analysis report (§§ 50.30, 50.55(d)).

In pending cases in which the final safety analysis report has been filed and to which section 105c(3) of the Act is applicable, the Commission is publishing a notice of receipt of application for the operating license in the FEDERAL REGISTER, with the appropriate notice to intervenors and persons who sought intervention at the construction permit stage. These pending cases are: Vermont Yankee Nuclear Power Corporation, Docket No. 50-271; Boston Edison Company, Docket No. 50-293; Duke Power Company, Dockets Nos. 50-269, 50-270, 50-287; Philadelphia Electric Company, Dockets Nos. 50-277, 50-278; and Maine Yankee Atomic Power Company, Docket No. 50-309.

Holders of construction permits covered by subsection 105c(3) who have not yet filed a final safety analysis report should file the necessary application pursuant to amended § 50.30.

Pursuant to subsection 105c(8), provision has been made for the inclusion of a condition in construction permits issued under section 103 for which the application was pending on December 19, 1970. The condition will also be included in those operating licenses to be issued for those reactors described in subsection 105c(3) where intervention on antitrust grounds had been sought at the construction permit hearing. This condition is intended to assure that findings and orders of the Commission with respect to antitrust matters under section 105c of the Act made subsequent to the issuance of the permit or license will be given full force and effect. The condition will permit the issuance of permits and licenses in pending cases without undue delay while preserving the Commission's authority to impose appropriate antitrust conditions if, after such further proceedings as may be conducted as a result of the Attorney General's recommendation or the request of any party who properly raises an antitrust issue, the Commission determines such conditions to be appropriate. The condition will provide that the license shall be subject to an antitrust review by the Attorney General pursuant to section 105c of the Atomic Energy Act of 1954, as amended; that the licensee shall furnish to the Commission such information as the Attorney General determines to be appropriate for the conduct of the review and the rendering of his advice with respect to the license; that the Commission may hold a hearing on antitrust matters on the recommendation of the Attorney General or at the request of a party to the proceeding; and that the licensee shall comply with any order or license condition subsequently made by the Commission pursuant to section 105c of the Atomic Energy Act of 1954, as amended, with respect to the activities licensed therein.

Amendments to § 2.101 provide that the notice published in the FEDERAL REGISTER of receipt of the application for a facility license under section 103 of the Act, except for applications for operating licenses for facilities which were subject to antitrust review at the construction permit stage (unless the Commission deems such review advisable on the ground that significant changes in the licensee's activities or proposed activities have occurred subsequent to the issuance of the construction permit), will also state that persons who wish to have their views on the antitrust aspects of the application presented to the Attorney General for consideration shall submit such views to the Commission within sixty (60) days after publication of the notice. The notice published in the FEDERAL REGISTER of receipt of the application for a facility operating license under section 104b of the Act will, when appropriate, also state that any person who intervened or sought by timely written notice to the Commission to intervene in the construction permit proceeding for the facility to obtain a determination of antitrust considerations or to advance a jurisdictional basis for such determination may, within 25 days after the date of publication, submit a written petition for leave to intervene and a request for a hearing on the antitrust aspects of the application.

Amendments to § 2.102 of Part 2 provide that the Director of Regulation will refer and transmit a copy of each application for a construction permit or an operating license for a utilization or production facility under section 103 of the Act, and each request, in a proceeding for an operating license for a utilization or production facility under section 104b of the Act; by any person who intervened or sought by timely written notice to the Commission to intervene in the construction permit proceeding to obtain a determination of antitrust considerations or to advance a jurisdictional basis for such determination, for an antitrust review under section 105c of the application for an operating license, to the Attorney General as required by section 105c of the Act. Subsection 105c(1) provides that the Attorney General will, within a reasonable time but in no event to exceed 180 days after receipt, render such advice to the Commission as he determines to be appropriate in regard to the finding to be made by the Commission as to whether the activities under the license would create or maintain a situation inconsistent with the antitrust laws specified in section 105a of the Act. The requirements do not apply to an application for an operating license for a production or utilization facility under section 103 of the Act, for which the construction permit was also issued under section 103, unless the Commission determines such review is advisable on the ground that significant changes in the licensee's activities or proposed activities have occurred subsequent to the previous review by the Attorney General and the Commission under section 105c of the Act in connection with the construction permit.

The amendments to § 2.102 also provide that the Director of Regulation will publish the Attorney General's advice in the FEDERAL REGISTER promptly upon receipt, and will make such advice a part of the record in any proceeding on antitrust matters conducted in accordance with subsection 105c(5) and section 189a of the Act. The Director of Regulation will also publish in the FEDERAL REGISTER a notice that the Attorney General has not rendered any such advice. The notice published in the FEDERAL REGISTER will also include a notice of hearing, if appropriate, or will state that any person whose interest may be affected by the proceeding may file a petition for leave to intervene and request a hearing on the antitrust aspects of the application. The notice will state that petitions for leave to intervene shall be filed within 15 days after publication of the notice.

A new § 2.104(c) has been added to Part 2 to provide that, in the case of an

application for a construction permit or an operating license for a facility, on which a hearing is required by the Act or AEC regulations or in which the Commission finds that a hearing is required in the public interest for the consideration of the antitrust aspects of the application, the notice of hearing will, unless the Commission determines otherwise, state (1) a time of the hearing, which will be as soon as practicable after the receipt of the Attorney General's advice and compliance with section 189a of the Act and other provisions of Part 2; [1] (2) that the presiding officer will consider the issue of whether or not the activities under the proposed license would create or maintain a situation inconsistent with the antitrust laws as specified in section 105a of the Act; and (3) that matters of radiological health and safety and common defense and security, and matters raised under the National Environmental Policy Act of 1969, will be considered at another hearing for which a notice will be published pursuant to § 2.104 (a) and (b).

Changes have been made in §§ 2.721 and 2.787 to provide for three-member Atomic Safety and Licensing Boards and a three-member Atomic Safety and Licensing Appeal Board comprised of one member qualified in the conduct of administrative proceedings and two members who shall have such technical or other qualifications as the Commission deems appropriate to the issues to be decided, as permitted by the amendments to section 191 of the Act.

Amendments have been made to §§ 2.105, 2.714 and Appendix A of Part 2 to conform those provisions to the above-described changes in other sections of Part 2.

Sections 50.21, 50.22, and 50.41 of Part 50 have been amended to reflect the new definitions of section 103 and section 104 licenses in the Act. Section 50.24 has been deleted, since the substance thereof is now covered, pursuant to Public Law 91-560, in other sections.

Section 50.33 has been amended to reflect the amended provisions of section 182 of the Act (as has § 50.43). Under § 50.33, an applicant for a license for a facility for the generation of commercial power is required to identify the appropriate regulatory agencies having jurisdiction over the rates and services of the facility, and the trade and news publications in the area where the activity will be conducted which are appropriate to give notice to municipalities, private utilities, public bodies and cooperatives which might have a potential interest in the facility. It is expected that the information will be supplied after consultation with appropriate agencies.

Section 50.33, as amended, also requires the submission, with an application for a section 103 license (and a section 104 operating license as to which a person who intervened or sought by timely written notice to the Commission to intervene in the construction permit proceeding for the facility to obtain a determination of antitrust considerations or to advance a jurisdictional basis for such determination has requested an antitrust review under section 105 of the Act within 25 days after the date of publication in the FEDERAL REGISTER of notice of filing of the application for an operating license or Dec. 19, 1970, whichever is later) such information as the Attorney General determines to be appropriate for his antitrust review. It is anticipated that for pending applications, the information submitted to the Commission to establish financial qualifications under § 50.33(f) will form an adequate basis on which to start antitrust review. It is believed that experience with these cases will enable the Department of Justice to identify with more specificity what information should be required of applicants in future cases.

Section 50.42, which prescribes standards for the issuance of section 103 licenses, has been amended to provide that in any hearing on the antitrust aspects of the application, the Commission, if it finds that the proposed license would create or maintain a situation inconsistent with the antitrust laws as specified in subsection 105a of the Act, will consider, in determining whether a license should be issued or continued, such other factors as the Commission deems necessary to protect the public interest, including the need for power in the affected area.

A new § 50.55b has been added to Part 50, providing that the Commission may incorporate a condition in construction permits for section 103 facilities for which the application was pending on December 19, 1970, and operating licenses for section 104 facilities, as to which a person who intervened or sought by timely written notice to the Commission to intervene in the construction permit proceeding for the facility to obtain a determination of antitrust considerations or to advance a jurisdictional basis for such determination within 25 days after the date of publication in the FEDERAL REGISTER of notice of filing of the application for an operating license or December 19, 1970, whichever is later. The condition will provide that the license shall be subject to an antitrust review by the Attorney General pursuant to section 105c of the Atomic Energy Act of 1954, as amended; that the licensee shall furnish such information to the Commission as the Attorney General determines to be appropriate for the conduct of the review and the rendering of his advice with respect to the license; that the Commission may hold a hearing on antitrust matters on the recommendation of the Attorney General or at the request of a person whose interest may be affected by the proceeding and that on the basis of its findings made after such hearing, the Commission will continue, rescind or amend the license to include such conditions as the Commission deems appropriate; and that the licensee shall comply with any order or license condition made by the Commission pursuant to section 105c of the Atomic Energy Act of 1954, as amended, with respect to the licensed activities.

Section 50.80 of Part 50, which deals with transfer of licenses, has been amended to require that applicants for transfer of a license, if the license will be issued under section 103, shall furnish such information to the Commission as the Attorney General determines to be appropriate for his antitrust review.

Since the amendments which follow relate to matters of procedure and practice, or merely conform the Commission's regulations to new statutory provisions, the Commission has found that general notice of proposed rule making and public procedure thereon are unnecessary, and that good cause exists for making the amendments effective upon publication in the FEDERAL REGISTER.

Pursuant to the Atomic Energy Act of 1954, as amended, and sections 552 and 553 of title 5 of the United States Code, the following amendments to Title 10, Chapter 1, Code of Federal Regulations, Parts 2 and 50, are published as a document subject to codification to be effective upon publication in the FEDERAL REGISTER. The Commission invites all interested persons who desire to submit written comments or suggestions in connection with the amendments to send them to the Secretary of the Commission, U.S. Atomic Energy Commission, Washington, D.C. 20545, Attention: Chief, Public Proceedings Branch, within 60 days after publication of this notice in the FEDERAL REGISTER. Copies of comments received may be examined at the Commission's Public Document Room at 1717 H Street NW., Washington, DC.

1. Two sentences are added at the end of § 2.101(b) of 10 CFR Part 2 to read as follows:

§ 2.101 Filing of application.

* * * * *

(b) * * * The notice published in the FEDERAL REGISTER of receipt of the application for a facility license under section 103 of the Act, except for those applications described in § 2.102(d)(2), will also state that a person who wishes to have his views on the antitrust aspects of the application presented to the Attorney General for consideration shall submit such views to the Commission within

[1] As permitted by subsection 105c(8) of the Act, with respect to proceedings in which an application for a construction permit was filed prior to Dec. 19, 1970, and proceedings in which a written request for antitrust review of an application for an operating license to be issued under section 104b has been made by a person who intervened or sought by timely written notice to the Commission to intervene in the construction permit proceeding for the facility to obtain a determination of antirust considerations or to advance a jurisdictional basis for such determination within 25 days after the date of publication in the FEDERAL REGISTER of notice of filing of the application for an operating license or Dec. 19, 1970, whichever is later, the Commission may issue a construction permit or operating license in advance of consideration of, and findings with respect to, the antitrust aspects of the applications: *Provided*, That the permit or license so issued contains the condition described in new § 50.55b.

sixty (60) days after publication of the notice. The notice published in the FEDERAL REGISTER of receipt of the application for a facility operating license under section 104b of the Act will, when appropriate, also state that any person who intervened or sought, by timely written notice to the Commission, to intervene in the construction permit proceeding for the facility to obtain a determination of antitrust considerations or to advance a jurisdictional basis for such determination may, within 25 days after the date of publication, submit a written petition for leave to intervene and a request for a hearing on the antitrust aspects of the application.

2. A new paragraph (d) is added to § 2.102 of 10 CFR Part 2 to read as follows:

§ 2.102 Administrative review of application.

* * * * *

(d) (1) The Director of Regulation will refer and transmit a copy of each application for a construction permit or an operating license for a utilization or production facility under section 103 of the Act (and each request, in a proceeding for an operating license for a utilization or production facility under section 104b of the Act, by any person who intervened or sought by timely written notice to the Commission to intervene in the construction permit proceeding to obtain a determination of antitrust considerations or to advance a jurisdictional basis for such determination for an antitrust review under section 105c of the application for an operating license) to the Attorney General as required by section 105c of the Act.

(2) The requirements of subparagraph (1) of this paragraph (d) do not apply to an application for an operating license for a production or utilization facility under section 103 of the Act for which the construction permit was also issued under section 103, unless the Commission determines, after consultation with the Attorney General, that such review is advisable on the ground that significant changes in the licensee's activities or proposed activities have occurred subsequent to the previous review by the Attorney General and the Commission under section 105c of the Act in connection with the construction permit.

(3) The Director of Regulation will cause the Attorney General's advice received pursuant to subparagraph (1) of this paragraph (d) to be published in the FEDERAL REGISTER promptly upon receipt, and will make such advice a part of the record in any proceeding on antitrust matters conducted in accordance with subsection 105c(5) and section 189a of the Act. The Director of Regulation will also cause to be published in the FEDERAL REGISTER a notice that the Attorney General has not rendered any such advice. Any notice published in the FEDERAL REGISTER pursuant to this subparagraph will also include a notice of hearing, if appropriate, or will state that any person whose interest may be affected by the proceeding may, pursuant to and in accordance with § 2.714, file a petition for leave to intervene and request a hearing on the antitrust aspects of the application. The notice will state that petitions for leave to intervene and requests for hearing shall be filed within 15 days after publication of the notice.

3. In § 2.104 of 10 CFR Part 2, paragraph (c) is redesignated as paragraph (d), and a new paragraph (c) is added to read as follows:

§ 2.104 Notice of hearing.

* * * * *

(c) In the case of an application for a construction permit or an operating license for a facility on which a hearing is required by the Act or this chapter, or in which the Commission finds that a hearing is required in the public interest, for the consideration of the antitrust aspects of the application, the notice of hearing will, unless the Commission determines otherwise, state, in implementation of paragraph (a) (1) and (3) of this section,

(1) A time of the hearing, which will be as soon as practicable after the receipt of the Attorney General's advice and compliance with sections 105 and 189a of the Act and other provisions of this part; [1]

(2) That the presiding officer will consider the issue of whether or not the activities under the proposed license would create or maintain a situation inconsistent with the antitrust laws as specified in section 105a of the Act; and

(3) That matters of radiological health and safety and common defense and security, and matters raised under the National Environmental Policy Act of 1969, will be considered at another hearing for which a notice will be published pursuant to paragraphs (a) and (b) of this section, unless otherwise authorized by the Commission.

* * * * *

4. A new paragraph (f) is added to § 2.105 of 10 CFR Part 2 to read as follows:

§ 2.105 Notice of proposed action.

* * * * *

(f) Applications for facility licenses under section 103 of the Act and for facility operating licenses under section 104b of the Act as to which any person intervened or sought by timely written notice to the Commission to intervene in the construction permit proceeding to obtain a determination of antitrust considerations or to advance a jurisdictional basis for such determination are also subject to the provisions of §§ 2.101(b) and 2.102(d).

5. The first sentence in § 2.714 of 10 CFR Part 2 is amended to read as follows:

§ 2.714 Intervention.

(a) Any person whose interest may be affected by a proceeding and who desires to participate as a party shall file a written petition under oath or affirmation for leave to intervene not later than the time specified in the notice of hearing, or as permitted by the presiding officer, except as provided in § 2.102(d)(3). * * *

* * * * *

6. Paragraphs (a) and (b) of § 2.721 of 10 CFR Part 2 are amended to read as follows:

§ 2.721 Atomic safety and licensing boards.

(a) The Commission may from time to time establish one or more atomic safety and licensing boards, each comprised of three members, one of whom will be qualified in the conduct of administrative proceedings and two of whom shall have such technical or other qualifications as the Commission deems appropriate to the issues to be decided, to preside in such proceedings for granting, suspending, revoking, or amending licenses or authorizations as the Commission may designate.

(b) The Commission may designate an alternate qualified in the conduct of administrative proceedings, or an alternate having technical or other qualifications, or both, for an atomic safety and licensing board established pursuant to paragraph (a) of this section. If a member of a board becomes unavailable before the hearing commences, the Chairman of the Atomic Safety and Licensing Board Panel may constitute the alternate qualified in the conduct of administrative proceedings, or the alternate having technical or other qualifications, as appropriate, as a member of the board by notifying the Commission and the alternate who will, as of the date of such notification, serve as a member of the board.

* * * * *

7. Section 2.787 of 10 CFR Part 2 is amended to read as follows:

§ 2.787 Composition of Atomic Safety and Licensing Appeal Board.

The Atomic Safety and Licensing Appeal Board will be composed of either: the Chairman and Vice Chairman of the Atomic Safety and Licensing Board Panel and a third member of the panel who is technically qualified, designated by the Commission for each proceeding; or, in those proceedings involving antitrust considerations, the Chairman of the Atomic Safety and Licensing Board Panel and two members of the panel who have

[1] As permitted by subsection 105c(8) of the Act, with respect to proceedings in which an application for a construction permit was filed prior to Dec. 19, 1970, and proceedings in which a written request for antitrust review of an application for an operating license to be issued under section 104b has been made by a person who intervened or sought by timely written notice to the Commission to intervene in the construction permit proceeding for the facility to obtain a determination of antitrust consideration or to advance a jurisdictional basis for such determination within 25 days after the date of publication in the FEDERAL REGISTER of notice of filing of the application for an operating license or Dec. 19, 1970, whichever is later, the Commission may issue a construction permit or operating license in advance of consideration of, and findings with respect to, the antitrust aspects of the application: *Provided*, That the permit or license so issued contains the conditions specified in § 50.55b of this chapter.

qualifications deemed appropriate to the issues to be decided, designated by the Comimssion for each proceeding, as appropriate.

8. The sixth paragraph of the introductory statement in Appendix A of 10 CFR Part 2 is amended to read as follows:

Atomic safety and licensing boards are appointed from time to time by the Atomic Energy Commission to conduct hearings in licensing cases under the authority of section 191 of the Act. Section 191 authorizes the Commission to establish one or more atomic safety and licensing boards to conduct public hearings and to make intermediate or final decisions in administrative proceedings relating to granting, suspending, revoking or amending licenses or authorizations issued by the Commission. It requires that each board consist of one member who is qualified in the conduct of administrative proceedings and two members who have such technical or other qualifications as the Commission deems appropriate to the issues to be decided. Members for each board may be appointed by the Commission from a panel selected from private life, the staff of the Commission or other Federal agencies.

9. A new section VIII is added to Appendix A of 10 CFR Part 2 to read as follows:

VIII. PROCEEDINGS FOR THE CONSIDERATION OF ANTITRUST ASPECTS OF FACILITY LICENSE APPLICATIONS

(a) Under the Atomic Energy Act of 1954, as amended, the Commission is required, with respect to applications for construction permits or operating licenses for production and utilization facilities for industrial or commercial purposes licensed under section 103, which include power reactors subject to the mandatory hearing requirements of section 189a of the Act, and some facilities for industrial or commercial purposes licensed under section 104b of the Act under the "grandfather" clause of section 102b of the Act, to follow procedures for antitrust review in section 105 of the Act. This section outlines the procedures used by the Commission to implement that section.

(b) When an application for a construction permit or an operating license for a facility under section 103 of the Act subject to antitrust review under section 105 is received, the notice of receipt of application published in the FEDERAL REGISTER will state that persons who wish to have their views on the antitrust aspects of the application presented to the Attorney General for consideration shall submit such views to the Commission within sixty (60) days after publication of the notice. The notice published in the FEDERAL REGISTER of receipt of the application for a facility operating license under section 104b of the Act will, when appropriate, state that any person who intervened or sought, by timely written notice to the Commission, to intervene in the construction permit proceeding for the facility to obtain a determination of antitrust considerations or to advance a jurisdictional basis for such determination may, within 25 days after the date of publication, submit a written petition for leave to intervene and request for a hearing on the antitrust aspects of the application.

(c) (1) The Director of Regulation will refer and transmit a copy of each application for a construction permit or an operating license for a utilization or production facility under section 103 of the Act, and each request, in a proceeding for an operating license for a utilization or production facility under section 104b of the Act by any person who intervened or sought by timely written notice to the Commission to intervene in the construction permit proceeding to obtain a determination of antitrust considerations or to advance a jurisdictional basis for such determination, for an antitrust review under section 105c of the application for an operating license, to the Attorney General as required by section 105c of the Act. Under that section, the Attorney General will, within a reasonable time, but in no event to exceed 180 days after receipt, render such advice to the Commission as he determines to be appropriate in regard to the finding to be made by the Commission as to whether the activities under the license would create or maintain a situation inconsistent with the antitrust laws specified in section 105a of the Act.

(2) Such review is not required for applications for operating licenses for production or utilization facilities under section 103 of the Act for which the construction permit was also issued under section 103, unless the Commission determines, after consultation with the Attorney General, that such review is advisable on the ground that significant changes in the licensee's activities or proposed activities have occurred subsequent to the previous review by the Attorney General and by the Commission under section 105c of the Act in connection with the construction permit.

(d) The Director of Regulation will publish the Attorney General's advice in the FEDERAL REGISTER promptly upon receipt, and will make such advice a part of the record in any proceeding on antitrust matters conducted in accordance with subsection 105c(5) and section 189a of the Act. The Director of Regulation will also publish in the FEDERAL REGISTER a notice that the Attorney General has not rendered any such advice. The notice published in the FEDERAL REGISTER will also include a notice of hearing, if appropriate, or, if the Attorney General has not recommended a hearing, will state that any person whose interest may be affected by the proceeding may, pursuant to and in accordance with § 2.714, file a petition for leave to intervene and request a hearing on the antitrust aspects of the application. The notice will state that petitions for leave to intervene and requests for hearing shall be filed within 15 days after publication of the notice.

(e) If a hearing on antitrust aspects of the application is requested, or is recommended by the Attorney General, it will generally be held separately from the hearing held on matters of radiological health and safety and common defense and security described in sections I–VI of this appendix. The notice of hearing will fix a time for the hearing, which will be as soon as practicable after the receipt of the Attorney General's advice and compliance with section 189a of the Act and other provisions of this part. However, as permitted by subsection 105c(8) of the Act, with respect to proceedings in which an application for a construction permit was filed prior to December 19, 1970, and proceedings in which a written request for antitrust review of an application for an operating license to be issued under section 104b has been made by a person who intervened or sought by timely written notice to the Commission to intervene in the construction permit proceeding for the facility to obtain a determination of antitrust consideration or to advance a jurisdictional basis for such determination within 25 days after the date of publication in the FEDERAL REGISTER of notice of filing of the application for an operating license or December 19, 1970, whichever is later, the Commission may issue a construction permit or operating license, provided that the permit or license so issued contains the condition specified in § 50.55b of this chapter.

(f) Hearings on antitrust aspects will be conducted by atomic safety and licensing boards, each comprised of three members, one of whom will be qualified in the conduct of administrative proceedings and two of whom will have such technical or other qualifications as the Commission deems appropriate to the issues to be decided, or by a hearing examiner.

(g) When the Attorney General has advised that there may be adverse antitrust aspects and recommends that a hearing be held, the Attorney General or his designee may participate as a party in the proceedings.

(h) At the hearing, the board will give due consideration to the advice received from the Attorney General and to evidence pertaining to antitrust aspects received at the hearing.

(i) The board will, in its initial decision, make a finding as to whether the activities under the proposed license would create or maintain a situation inconsistent with the antitrust laws as specified in section 105a of the Act. If the board finds that such a situation would be created or maintained, it will consider, in determining whether the permit or license should be issued or continued, such other factors as the board in its judgment deems necessary to protect the public interest, including the need for power in the affected area. The concept of certainty of contravention of the antitrust laws or the policies clearly underlying these laws is not intended to be implicit in this standard; nor is mere possibility of inconsistency. It is intended that the finding be based on reasonable probability of contravention of the antitrust laws or the policies clearly underlying these laws. It is intended that, in effect, the board will conclude whether, in its judgment, it is reasonably probable that the activities under the license would, when the license is issued or thereafter, be inconsistent with any of the antitrust laws or the policies clearly underlying these laws.

(j) On the basis of its findings, the board may (i) authorize the issuance of the permit or license after favorable consideration of matters of radiological health and safety and common defense and security, and matters raised under the National Environmental Policy Act of 1969, at the hearing described in sections I–VI of this appendix; (ii) authorize the continuation of a permit or license already issued; (iii) direct the denial of the application for the permit or license, or the rescission of a permit or license already issued; or (iv) authorize the issuance of a permit or license subject to appropriate conditions, and subject to favorable consideration of matters of radiological health and safety and common defense and security, and matters raised under the National Environmental Policy Act of 1969 at the hearing decribed in section I–VI of this appendix.

10. Paragraph (b) of § 50.21 of 10 CFR Part 50 is revised to read as follows:

§ 50.21 Class 104 licenses; for medical therapy and research and development facilities.

A class 104 license will be issued, to an applicant who qualifies, for any one or more of the following: to transfer or receive in interstate commerce, manufacture, produce, transfer, acquire, possess, use, import, or export under the terms of an agreement for cooperation:

* * * * *

(b) (1) A production or utilization facility the construction or operation of which was licensed pursuant to subsection 104b of the Act prior to December 19, 1970;

(2) A production or utilization facility for industrial or commercial purposes constructed or operated under an arrangement with the Commission entered into under the Cooperative Power Reactor Demonstration Program, except as otherwise specifically required by applicable law; and

(3) A production or utilization facility for industrial or commercial purposes, when specifically authorized by law.

* * * * *

11. Section 50.22 of 10 CFR Part 50 is revised to read as follows:

§ 50.22 Class 103 licenses; for commercial and industrial facilities.

A class 103 license will be issued, to an applicant who qualifies, for any one or more of the following: To transfer or receive in interstate commerce, manufacture, produce, transfer, acquire, possess, use, import, or export under the terms of an agreement for cooperation, a production or utilization facility for industrial or commercial purposes.

§ 50.24 [Deleted]

12. Section 50.24 is deleted.

13. Paragraph (d) of § 50.30 of 10 CFR Part 50 is redesignated as paragraph (e) and a new paragraph (d) is added to read as follows:

§ 50.30 Filing of applications for licenses; oath or affirmation.

* * * * *

(d) The holder of a construction permit for a production or utilization facility shall, at the time of submission of the final safety analysis report, file an application for an operating license or an amendment to an application for a license to construct and operate a production or utilization facility for the issuance of an operating license, as appropriate. The application or amendment shall state the name of the applicant, the name, location and power level, if any, of the facility and the time when the facility is expected to be ready for operation, and may incorporate by reference any pertinent information submitted in accordance with § 50.33 with the application for a construction permit.

* * * * *

14. In § 50.33, paragraph (i) is amended and a new paragraph (k) is added to read as follows:

§ 50.33 Contents of applications; general information.

* * * * *

(i) If the proposed activity is the generation and distribution of electric energy under a class 103 license, a list of the names and addresses of such regulatory agencies as may have jurisdiction over the rates and services incident to the proposed activity, and a list of trade and news publications which circulate in the area where the proposed activity will be conducted and which are considered appropriate to give reasonable notice of the application to those municipalities, private utilities, public bodies, and cooperatives, which might have a potential interest in the facility.

* * * * *

(k) If the application is for a class 103 permit or license, or for a class 104 operating license as to which a person who intervened or sought by timely written notice to the Commission to intervene in the construction permit proceeding for the facility to obtain a determination of antitrust considerations or to advance a jurisdictional basis for such determination has requested an antitrust review under section 105 of the Act within 25 days after the date of publication in the FEDERAL REGISTER of notice of filing of the application for an operating license or December 19, 1970, whichever is later, such information as the Attorney General determines to be appropriate in regard to the finding to be made by the Commission as to whether the activities to be licensed would create or maintain a situation inconsistent with the antitrust laws specified in section 105a of the Act.

15. The note following § 50.41 of 10 CFR Part 50 is deleted and § 50.41(c) is revised to read as follows:

§ 50.41 Additional standards for class 104 licenses.

* * * * *

(c) An application for a class 104 operating license as to which a person who intervened or sought by timely written notice to the Commission to intervene in the construction permit proceeding for the facility to obtain a determination of antitrust considerations or to advance a jurisdictional basis for such determination has requested an antitrust review under section 105 of the Act within 25 days after the date of publication in the FEDERAL REGISTER of notice of filing of the application for an operating license or December 19, 1970, whichever is later, is also subject to the provisions of § 50.42(b).

16. Paragraph (b) of § 50.42 is amended to read as follows:

§ 50.42 Additional standards for class 103 licenses.

* * * * *

(b) Due account will be taken of the advice provided by the Attorney General, pursuant to subsection 105c of the Act, and to such evidence as may be provided during any proceedings in connection with the antitrust aspects of the application. For this purpose, the Commission will promptly transmit to the Attorney General a copy of the license application, and request such advice as the Attorney General determines to be appropriate in regard to the finding to be made by the Commission as to whether the proposed license would create or maintain a situation inconsistent with the antitrust laws, as specified in subsection 105a of the Act: *Provided*, That this requirement will not apply with respect to the types of class 103 licenses which the Commission, with the approval of the Attorney General, may determine would not significantly affect the applicant's activities under the antitrust laws: *And provided further*, That this requirement will not apply to an application for a license to operate a production or utilization facility for which a class 103 construction permit was issued unless the Commission, after consultation with the Attorney General, determines such review is advisable on the ground that significant changes in the licensee's activities or proposed activities have occurred subsequent to the previous review by the Attorney General and the Commission. Upon receipt of the Attorney General's advice, the Commission will cause such advice to be published in the FEDERAL REGISTER. After consideration of the antitrust aspects of the application, the Commission, if it finds that the license to be issued or continued, would create or maintain a situation inconsistent with the antitrust laws as specified in subsection 105a of the Act, will consider, in determining whether a license should be issued or continued, such other factors as the Commission in its judgment deems necessary to protect the public interest, including the need for power in the affected area.[1]

17. Paragraph (a) of § 50.43 is amended to read as follows:

§ 50.43 Additional standards and provisions affecting class 103 licenses for commercial power.

In addition to applying the standards set forth in §§ 50.40 and 50.42, in the case of a class 103 license for a facility for the generation of commercial power:

(a) The Commission will give notice in writing of each application to such regulatory agency as may have jurisdiction over the rates and services incident to the proposed activity; will publish notice of the application in such trade or news publications as it deems appropriate to give reasonable notice to municipalities, private utilities, public bodies, and cooperatives which might have a potential interest in such utilization or production facility; and will publish notice of the application once each week for 4 consecutive weeks in the FEDERAL REGISTER. No license will be issued by the Commission prior to the giving of such notices and until 4 weeks after the last publication in the FEDERAL REGISTER.

* * * * *

[1] As permitted by subsection 105c(8) of the Act, with respect to proceedings in which an application for a construction permit was filed prior to Dec. 19, 1970, and proceedings in which a written request for antitrust review of an application for an operating license to be issued under section 104b has been made by a person who intervened or sought by timely written notice to the Commission to intervene in the construction permit proceeding for the facility to obtain a determination of antitrust considerations or to advance a jurisdictional basis for such determination within 25 days after the date of publication in the FEDERAL REGISTER of notice of filing of the application for an operating license or Dec. 19, 1970, whichever is later, the Commission may issue a construction permit or operating license in advance of consideration of, and findings with respect to the antitrust aspects of the application, provided that the permit or license so issued contains the condition specified in § 50.55b.

18. Paragraph (d) of § 50.55 is amended to read as follows:

§ 50.55 **Conditions of construction permits.**

Each construction permit shall be subject to the following terms and conditions:

* * * * *

(d) At or about the time of completion of the construction or modification of the facility, the applicant will file any additional information needed to bring the original application for license up to date, and will file an application for an operating license or an amendment to an application for a license to construct and operate the facility for the issuance of an operating license, as appropriate, as specified in § 50.30(d).

19. A new § 50.55b is added to read as follows:

§ 50.55b **Conditions of construction permits and operating licenses pertaining to antitrust matters.**

The Commission may incorporate, in construction permits for production or utilization facilities of the type described in § 50.22 for which applications were on file on December 19, 1970, and in operating licenses for production or utilization facilities of a type described in §§ 50.22 and 50.21(b)(i), as to which a person who intervened or sought by timely written notice to the Commission to intervene in the construction permit proceeding for the facility to obtain a determination of antitrust considerations or to advance a jurisdictional basis for such determination within 25 days after the date of publication in the FEDERAL REGISTER of notice of filing of the application for an operating license or December 19, 1970, whichever is later, a condition to the effect that the license shall be subject to an antitrust review by the Attorney General pursuant to section 105c of the Atomic Energy Act of 1954, as amended; that the licensee shall furnish to the Commission such information as the Attorney General determines to be appropriate for the conduct of the review and the rendering of his advice with respect to the license; that the Commission may hold a hearing on antitrust matters on the recommendation of the Attorney General or at the request of any person whose interest may be affected by the proceeding; that on the basis of its findings made after such hearing, the Commission will continue, rescind, or amend the license to include such conditions as the Commission deems appropriate; and that the licensee shall comply with any order or license condition made by the Commission pursuant to section 105c of the Atomic Energy Act of 1954, as amended, with respect to the licensed activities.

20. The first sentence of § 50.80(b) is amended to read as follows:

§ 50.80 **Transfer of licenses.**

* * * * *

(b) An application for transfer of a license shall include as much of the information described in §§ 50.33 and 50.34 with respect to the identity and technical and financial qualifications of the proposed transferee as would be required by those sections if the application were for an initial license, and, if the license to be issued is a class 103 license, such information as the Attorney General deems appropriate in regard to the finding to be made by the Commission as to whether the transfer of the license would create or maintain a situation inconsistent with the antitrust laws. * * *

* * * * *

(Secs. 102, 103, 104, 105, 161, 182, 189, 68 Stat. 948, 953, 955, as amended, 84 Stat. 1472; 42 U.S.C. 2132-2135, 2201, 2233, 2239)

Dated at Washington, D.C., this 23d day of December 1970.

For the Atomic Energy Commission.

F. T. HOBBS,
Acting Secretary of the Commission.

[F.R. Doc. 70-17444; Filed, Dec. 28, 1970; 8:47 a.m.]

Title 12—BANKS AND BANKING

Chapter I—Bureau of the Comptroller of the Currency, Department of the Treasury

PART 8—ASSESSMENT OF FEES; NATIONAL BANKS, DISTRICT OF COLUMBIA BANKS

Semiannual Assessment, Filing Fees for Applications for Mergers and New Bank Charters

The Comptroller of the Currency has determined pursuant to the authority contained in R.S. 5240, as amended, 12 U.S.C. 482; section 3, 47 Stat. 1566, 26 D.C. Code 102, that the following revised assessments are necessary and hereby finds that public procedure thereon is impracticable, unnecessary, and contrary to the public interest. The amended assessments will become effective January 1, 1971.

Part 8, Chapter 1, Title 12 of the Code of Federal Regulations, is amended by revising §§ 8.2, 8.4, and 8.8 to read as follows:

§ 8.2 **Semiannual assessment.**

The semiannual assessment consists of a basic assessment of $200 plus 4½ cents per $1,000 of total assets and $50 for each branch. The expense of examination of banks is assessed semiannually as of the dates of the second and fourth reports of condition of each year and is based primarily on the total assets shown in such reports. Each bank subject to the jurisdiction of the Comptroller of the Currency on such dates is subject to the full assessment without proration for any reason.

§ 8.4 **Filing fee for applications for mergers.**

A filing fee of $3,000 is assessed for investigating and processing each application for a merger, consolidation, or purchase of assets and assumption of liabilities. When three or more banks are involved in each merger, consolidation, or purchase and assumption, the filing fee is $1,500 for each participating institution.

§ 8.8 **Filing fee for new bank charter applications.**

A filing fee of $2,500 is assessed for investigating and processing each application to organize a new national bank.

Dated: December 23, 1970.

[SEAL] WILLIAM B. CAMP,
Comptroller of the Currency.

[F.R. Doc. 70-17501; Filed, Dec. 24, 1970; 9:53 a.m.]

Chapter II—Federal Reserve System

SUBCHAPTER A—BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

[Regs. D, J, M, and Y]

MISCELLANEOUS AMENDMENTS TO SUBCHAPTER

Subchapter A of Chapter II of Title 12 is amended as follows:

PART 204—RESERVES OF MEMBER BANKS

1. Effective immediately Part 204 (Reg. D) is amended by changing the heading of § 204.5 to read as follows:

§ 204.5 **Reserve requirements.**

* * * * *

PART 210—COLLECTION OF CHECKS AND OTHER ITEMS BY FEDERAL RESERVE BANKS

2. In the revision of Part 210 (Reg. J) appearing at 32 F.R. 10912, July 26, 1967, the interpretations were erroneously omitted; §§ 210.101 and 210.102 read as follows:

INTERPRETATIONS

§ 210.101 **Domestic branch of foreign bank a "nonmember clearing bank."**

(a) The Board has been asked whether a branch in this country of a foreign bank is a "nonmember bank" within the meaning of section 13, paragraph 1, of the Federal Reserve Act (12 U.S.C. 342) and, therefore, an institution of the kind for which a Federal Reserve Bank may open and maintain a nonmember clearing account pursuant to the statute.

(b) According to the information before the Board, the foreign bank is an incorporated commercial banking institution. The branch is licensed by the bank supervisory authority of the State in which it is located. The business of the branch does not appear to differ essentially from that usually conducted by a commercial bank; and, under the law of the State, the branch is subject to regulation and supervision comparable in important respects to that applicable to State-chartered banks.

(c) The Board has concluded that such a branch, being a "bank" within the definition of that term in section 1, paragraph 2, of the Act (12 U.S.C. 221), but ineligible for membership in the

Federal Reserve System under section 9 of the Act (12 U.S.C. 321), is a "nonmember bank" to which nonmember clearing privileges may be made available in the discretion of the Federal Reserve Bank of the district pursuant to section 13, paragraph 1, of the Act.

§ 210.102 Private bank a "nonmember clearing bank".

(a) In connection with the matters covered under §§ 210.101 and 215.104 of this subchapter (Reg. J and Reg. O), the Board has been asked whether a private bank, as described below, may be properly regarded as a "nonmember bank" within the meaning of section 13, paragraph 1, of the Federal Reserve Act (12 U.S.C. 342) and, therefore, as a bank of the kind for which a Federal Reserve Bank may open and maintain a nonmember clearing account pursuant to the statute.

(b) Private banks are unincorporated and, therefore, ineligible for membership in the Federal Reserve System under section 9 of the Federal Reserve Act (12 U.S.C. 321). The private bank with respect to which the question arose operates pursuant to authority in the law of the State of its location, conducts a banking business similar to that of incorporated commercial banks, and maintains required reserves pursuant to State law. Such private bank is examined periodically by and submits reports of condition to the State authority responsible for its supervision pursuant to the law of the State wherein it maintains banking offices. It seems clear that the private bank conforms to the policy and terms set forth by Congress for engaging in the banking business, whether by individuals, firms, corporations, or other organizations, in section 21(a)(2) of the Banking Act of 1933, as amended (12 U.S.C. 378).

(c) The Board is of the opinion that, in view of the foregoing and in the light of its conclusion in § 210.101, any such private bank constitutes a "bank" within the definition of that term in section 1, paragraph 2, of the Federal Reserve Act (12 U.S.C. 221) and a "nonmember bank" under the language of section 13, paragraph 1, of the Act. Accordingly, a Federal Reserve Bank, in its discretion, may make available to any such private bank in the district nonmember clearing privileges as described in the statute.

(d) These views of the Board supersede the interpretation regarding private banks published at 1917 Federal Reserve Bulletin 693 and any other interpretations to the extent that they conflict with these views, and to that extent such interpretations are hereby revoked.

(Interprets or applies 12 U.S.C. 342)

PART 213—FOREIGN ACTIVITIES OF NATIONAL BANKS

3. In the revision of Part 213 (Reg. M) appearing at 32 F.R. 4399, March 23, 1967, § 213.101 was erroneously omitted; § 213.101 reads as follows:

§ 213.101 Loans to executive officers of foreign branches of national and State member banks.

For text of this interpretation, see § 215.103 of this subchapter.

(Interprets or applies 12 U.S.C. 604a)

4. Effective immediately, Part 213 (Reg. M) is amended as follows:

a. The reference to footnote 1 immediately following the title of Part 213 is deleted, and footnote 1 is deleted.

§ 213.1 [Amended]

b. The reference to footnote 1a in § 213.1 is redesignated as a reference to footnote 1, and footnote 1a is redesignated footnote 1.

c. In § 213.1, the reference to footnote 2 immediately following the words "the Federal Reserve Act" is deleted, and footnote 2 is deleted.

d. In § 213.1, a reference to footnote 2 is added immediately following the last word of that section, and footnote 2 is added to read: "[2] The subject matter of this part is in addition to that contained in 12 CFR Part 211 (Reg. K)."

PART 222—BANK HOLDING COMPANIES

§ 222.122 [Amended]

5. Effective immediately, Part 222 (Reg. Y) is amended by changing footnote 1 in § 222.122 to read as follows:

[1] Insofar as the 1958 interpretation referred to above suggested that the branch banking laws are an appropriate general test for determining the scope of the servicing exemption, such interpretation is hereby modified. In view of the different purposes to be served by the branch banking laws and by section 4 of the Bank Holding Company Act, the Board has concluded that basing determinations under the latter solely on the basis of determinations under the former is inappropriate.

6a. The purpose of these corrections and amendments is to include in the Code of Federal Regulations interpretations that were inadvertently deleted and to make editorial changes in headings and footnotes so as to make them current.

b. The requirements of section 553, title 5, United States Code, with respect to notice, public participation, and deferred effective date were not followed in connection with these amendments because they are editorial in nature and do not change any substantive rule.

By order of the Board of Governors, December 21, 1970.

[SEAL] KENNETH A. KENYON, *Deputy Secretary.*

[F.R. Doc. 70-17451; Filed, Dec. 28, 1970; 8:48 a.m.]

[Reg. Q]

PART 217—INTEREST ON DEPOSITS

Methods of Computing Simple Daily Interest

1. Effective January 1, 1971, § 217.3(e) is amended to read as follows:

§ 217.3 Interest on time and savings deposits.

* * * * *

(e) *Computation of interest.* In the computation of simple daily interest, the time factor should be expressed as a fraction in which the actual number of days the funds earn interest is the numerator, and the denominator is either 360, 365, or, in a leap year, 366. However, when a deposit matures in 1 month (or multiples thereof), the bank may use 30 days in the numerator (or corresponding multiples thereof).

* * * * *

2. Effective January 1, 1971, § 217.6(b) is amended to read as follows:

§ 217.6 Advertising of interest on deposits.

* * * * *

(b) *Percentage yields based on 1 year.* Where a percentage yield achieved by compounding interest during 1 year is advertised, the annual rate of simple interest shall be stated with equal prominence, together with a reference to the basis of compounding. No member bank shall advertise a percentage yield based on the effect of grace periods permitted in § 217.3(d).

* * * * *

3a. Notice of proposed rulemaking with respect to this amendment was published in the FEDERAL REGISTER on October 17, 1970 (35 F.R. 16324). The principal effect of this amendment is to authorize the use of a 360-day basis in computing simple daily interest for a deposit with any maturity. An accompanying interpretation indicates that a member bank may use the 360-day basis in compounding interest daily or continuously on time and savings deposits.

b. Effective date was deferred for less than the 30-day period referred to in section 553(d) of title 5, United States Code, because the effect of the amendment is to relax an existing rule and the Board believes that making the amendment effective at the beginning of a calendar year might facilitate administration of the regulation.

By order of the Board of Governors, December 22, 1970.

[SEAL] KENNETH A. KENYON, *Deputy Secretary.*

[F.R. Doc. 70-17462; Filed, Dec. 28, 1970; 8:50 a.m.]

[Reg. Q]

PART 217—INTEREST ON DEPOSITS

Payment and Computation of Interest

§ 217.151 Payment and computation of interest on time and savings deposits.

The Board has expressed the following views relating to the payment and computation of interest on deposits.

(a) The maximum rate of simple interest that a member bank may pay on a deposit is established by § 217.7 of Regulation Q. In January 1970, the Board established certain rates on deposits with a maturity of "1 year or more". To qualify for a rate that may be paid on such a deposit, the deposit must not mature before 1 full year—365 or 366 days as the case may be—from the date of deposit.[1]

(b) The formula for the computation of simple interest is $A=P(1+RT)$ where A is the final amount, P is the amount on which interest is computed, R is the annual rate of simple interest and T is the time period. Effective January 1, 1971, § 217.3(e) of Regulation Q was amended to authorize the use of 360 or 365 (or 366 in a leap year) as the denominator of a fraction in which the numerator is the actual number of days the deposit earns interest. For example, a bank would be permitted to consider the time factor on a 295-day deposit as $^{295}/_{365}$ or $^{295}/_{360}$. On a 360-day deposit, the fraction could be $^{360}/_{365}$ or $^{360}/_{360}$; it could not be $^{365}/_{360}$. Additionally, § 217.3(e) authorizes in the numerator of the time fraction the use of 30 days (or multiples thereof) for deposits of 1 month (or corresponding multiples thereof). For example, on a deposit made February 1 for 1 month, the time fraction could be stated as $^{30}/_{360}$ or $^{30}/_{365}$, or $^{28}/_{360}$ or $^{28}/_{365}$.

(c) Section 217.3(a) provides that the effects of compounding may be disregarded in determining whether a member bank is paying interest in excess of the rates established in § 217.7. The formula for continuous compounding is $A=Pe^{RT}$ where A is the final amount, P is the amount on which interest is compounded, e is the base for Napierian or natural logarithms, R is the annual rate of simple interest, and T is the time period. T may be expressed as a fraction in which the numerator is the actual number of days the funds earn interest and the denominator may be either 360, 365, or, in the case of a leap year, 366. As is permitted in simple interest calculations, a bank may consider each month as having 30 days.

(d) The formula for other than continuous compounding is $A=P(1+R/M)^N$ where A is the final amount, P is the amount on which interest is compounded, R is the annual rate of simple interest, M is the number of compounding periods in a year, and N is the actual number of periods for which interest is compounded. When compounding interest quarterly, $M=4$; compounding monthly, $M=12$; and compounding daily, $M=360$, 365, or 366. For example, a bank may compound 5 percent interest daily on a $10,000 deposit for 91 days in accordance with either of the following:

$$A=\$10{,}000\left(1+\frac{.05}{360}\right)^{91} \text{ or } \$10{,}127.18; \text{ or}$$

$$A=\$10{,}000\left(1+\frac{.05}{365}\right)^{91} \text{ or } \$10{,}125.43.$$

(Interprets and applies 12 U.S.C. 371b and 461.)

By order of the Board of Governors, December 22, 1970.

[SEAL] KENNETH A. KENYON,
Deputy Secretary.

[F.R. Doc. 70-17463; Filed, Dec. 28, 1970; 8:50 a.m.]

[1] In the area of consumer time deposits (deposits in denominations of less than $100,000), under § 217.7 in effect in December, 1970, a member bank may pay 5 per cent interest on a deposit that matures 3 months from the date of deposit. If the date of deposit is in February, such deposit will mature in 89 days. The Board regards this de minimis departure from the 90-day interval required for payment of interest at 5 per cent (12 CFR 217.144) as justified on the grounds of mathematical simplicity.

Title 15—COMMERCE AND FOREIGN TRADE

Chapter I—Bureau of the Census, Department of Commerce

PART 30—FOREIGN TRADE STATISTICS

Domestic Carriers' Participation in Procedures Permitting Waiver of Authentication of Shipper's Export Declarations for Selected Shipments

On September 10, 1970, a notice of proposed rule making was published in the FEDERAL REGISTER (35 F.R. 14267) stating that the Bureau of the Census was considering new regulations which would (1) permit participation in the NAR procedure by domestic air carriers delivering export cargo to an exporting air carrier at the port of export; (2) provide that exporting carriers have responsibility for the completeness and accuracy of selected items of information on the Shipper's Export Declaration, such as name and flag of carrier, port of loading, etc., whether or not such carriers were participants in the NAR procedure; and (3) provide that the Shipper's Export Declaration be in the possession of the exporting carrier prior to departure instead of prior to loading. Interested persons were afforded an opportunity to participate in the proposed rule making through the submission of written comments.

Changes (1) and (2) above as originally proposed in the Notice of Proposed Rule Making on September 10, 1970, and as set forth hereinafter are hereby adopted.

As a result of comments received, and to permit further consultation, no action is being taken at this time on the proposed change in regulations which would provide that the Shipper's Export Declaration be in the possession of the carrier prior to departure instead of prior to loading.

These regulations are issued under the authority of title 13, United States Code, section 302; and 5 U.S.C. 301; Reorganization Plan No. 5 of 1950, Department of Commerce Organization Order No. 35-2A, April 8, 1969, 34 F.R. 6703.

1. Section 30.22(c) is amended to read as follows:

§ 30.22 Requirements for the filing of Shipper's Export Declarations by departing carriers.

* * * * *

(c) The exporting carrier shall be responsible for the accuracy of the following items of information (where required) on the declaration: port of exportation, name and flag of vessel or air carrier, foreign port of unloading, method of transportation, and pier or airport where the goods are laden.

2. Section 30.42(a) is amended to read as follows:

§ 30.42 Authorization for waiver of the requirements for advance presentation and authentication of Shipper's Export Declarations.

(a) *General procedure*—(1) *Scope.* (i) Notwithstanding the provisions of Subparts A and B of this part, the procedures set forth in subparagraphs (1) through (5) of this paragraph may be utilized in lieu of the requirements relating to advance presentation and authentication of Shipper's Export Declarations for general license shipments made by air or water carriers and destined to Country Groups T, V, and X, as defined in Supplement No. 1 to Part 370 of the Export Control Regulations (Parts 368-399 of this title). Under this procedure Shipper's Export Declarations may be delivered to the exporting carrier or his shipping agent at the port of export, or to a domestic airline at or near the point of origin of the cargo for delivery to the exporting airline, without first having been authenticated by the Customs Office. (For purposes of this regulation a "domestic airline" is one that holds a certificate of public convenience and necessity issued by the Civil Aeronautics Board for scheduled service pursuant to section 401(d)(1) or 401(d)(2) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1371).)

(ii) Except as otherwise required by the Export Control Regulations, only two copies of the Shipper's Export Declaration need be prepared by the exporter or his agent and delivered to the exporting carrier before the shipment is loaded on board the exporting vessel or aircraft. In preparing Shipper's Export Declarations in accordance with this procedure exporters or their agents shall show in the upper right corner in the space provided for Customs Authentication Number, "NAR," which will signify that no authentication is required.

(2) *Direct delivery of the Shipper's Export Declaration to the exporting carrier.* (i) The exporting carrier shall

check the declaration for completeness (i.e., see that all appropriate spaces on the Shipper's Export Declaration are completed) of: Name of exporter, agent of exporter, ultimate consignee, intermediate consignee, foreign port of unloading, place and country of ultimate destination, marks and numbers, commodity description, number and kind of packages, general license symbol, destination control statement, shipping weight, indication of "D" or "F", Schedule B number, net quantity (when required), value at port of exportation, bill of lading or air waybill number(s), and signature, and see that such information is not inconsistent with other records or information as may be available to the carrier. If the declaration appears incomplete or inconsistent, except with respect to the items enumerated in the following sentence, the exporting carrier shall return it to the exporter or his agent to be checked, completed, or corrected, and returned to the exporting carrier before loading the cargo.

(ii) The exporting carrier shall be responsible for the accuracy of the following items of information on the declaration: port of exportation, name and flag of vessel or air carrier, foreign port of unloading, bill of lading or air waybill number(s), method of transportation, and pier or airport where the goods are laden.

(3) *Delivery of the Shipper's Export Declaration to a participating domestic air carrier for subsequent delivery to the exporting air carrier at the port of export.* (i) Where the Shipper's Export Declaration is delivered to a domestic air carrier participating in these procedures for delivery to an exporting air carrier at the port of export, the domestic air carrier shall have the same responsibilities for checking the declaration as set forth for exporting carriers in subparagraph (2) (ii) of this paragraph. If the declaration appears incomplete or inconsistent, with respect to any of the items except those enumerated in subparagraph (2) (ii) of this paragraph, the domestic carrier shall return it to the exporter or his agent to be checked, completed, or corrected and returned to the domestic carrier before delivery of the merchandise to the exporting carrier.

(ii) The domestic air carrier shall insert the airline and airport code (from the Official Airline Guide) immediately below the NAR designation in the Customs Authentication box on the shipper's Export Declaration to indicate the accepting airline and the airport at which the Shipper's Export Declarations were received and reviewed.

(iii) Two copies of the Shipper's Export Declaration shall be delivered by the domestic air carrier to the exporting air carrier.

(iv) Upon receipt from a domestic carrier the exporting air carrier shall complete or correct those items on the Shipper's Export Declaration peculiarly within its own knowledge (i.e., those items enumerated in subparagraph (2) (ii) of this paragraph) when, due to emergencies or other factors, the information has changed since review by the domestic air carrier, or where such information is otherwise determined to be incomplete or incorrect.

(4) In addition, exporting carriers will insure that the bill of lading or air waybill number shown on the manifest is inserted in the box provided on the Shipper's Export Declaration, before submission of the manifest and accompanying Shipper's Export Declarations to Customs.

(5) For shipments covered by unauthenticated Shipper's Export Declarations accepted by carriers under these provisions, manifests must show the notation "NAR" (no authentication required) and related bill of lading or air waybill number; and prior to submission of the manifest to Customs, such Shipper's Export Declarations shall be separated from those Shipper's Export Declarations which have been authenticated.

* * * * *

Effective date. The above regulations are effective 30 days from the date of publication.

GEORGE H. BROWN,
Director, Bureau of the Census.

I concur: November 18, 1970.

EUGENE T. ROSSIDES,
Assistant Secretary of the Treasury.

[F.R. Doc. 70-17475; Filed, Dec. 28, 1970; 8:50 a.m.]

Chapter III—Bureau of International Commerce, Department of Commerce

SUBCHAPTER B—EXPORT REGULATIONS

[13th Gen. Rev. of the Export Regs. (Amdt. 13)]

PART 386—EXPORT CLEARANCE

Presentation and Use of Validated License

Part 386 of the Code of Federal Regulations is amended as set forth below.

(Sec. 3, 63 Stat. 7; 50 U.S.C. App. 2023; E.O. 10945, 26 F.R. 4487, 3 CFR 1959–1963 Comp.; E.O. 11038, 27 F.R. 7003, 3 CFR 1959–1963 Comp.)

Effective date: December 21, 1970.

RAUER H. MEYER,
Director, Office of Export Control.

In § 386.2(e), subparagraph (1) is amended to read as set forth below.

§ 386.2 Presentation and use of validated license.

* * * * *

(e) *Simultaneous or subsequent shipment from another port—(1) Presentation of Declaration.* If part of the export is to be made from another port, the licensee shall present for authentication to the customs office at the port of export a duly executed Declaration with an additional copy to be forwarded by the customs or post office at the port of export to the customs office where the license is filed. The Declaration shall bear or be accompanied by the following certification:

This shipment is being made pursuant to validated Export License No. (validated export license number), filed at (location of customs office where license is filed), on (date licenses was filed). This license expires on (expiration date of license), and the unshipped balance remaining on this license is sufficient to cover the shipment described on this Declaration.

The customs office holding the license shall record on the back of the license the commodity and quantity shipped from each port of export, as reflected by the copy(ies) of the Declaration(s) forwarded by the port(s) of export.

* * * * *

[F.R. Doc. 70-17426; Filed, Dec. 28, 1970; 8:47 a.m.]

Title 35—PANAMA CANAL

Chapter I—Canal Zone Regulations

SUBCHAPTER E—EMPLOYMENT AND COMPENSATION IN THE CANAL ZONE

PART 253—REGULATIONS OF THE SECRETARY OF THE ARMY

Subpart D—Compensation and Allowances

TAX ALLOWANCE

Effective upon publication in the FEDERAL REGISTER, § 253.134 is amended as follows:

§ 253.134 Tax allowance.

A tax allowance is authorized in an amount equivalent to the excess of the income tax which the typical U.S. citizen employee normally would expect to pay to the U.S. Government on his salary including the tropical differential over the amount of income tax the typical Panamanian citizen employee would normally pay to the Panamanian Government on the same salary without the tropical differential. * * * The computation of the tax for U.S. citizens shall be based on the joint return for a family of four using the current standard deduction. * * * The Panamanian tax shall be computed on the basis of the "family" tax, disregarding the "bachelor" tax and by applying the deductions authorized for two minors. The amount of the tax allowance shall be recomputed as necessary to conform with any changes in the tax laws of either the Republic of Panama or the United States. The revised tax allowance and the revised base salary or wage rate directly attributable to the revised tax allowance shall be made effective at a date to be determined by the Board, except that it shall not be earlier than the date of the tax change nor later than 6 months thereafter.

Date signed: December 18, 1970.

STANLEY R. RESOR,
Secretary of the Army.

[F.R. Doc. 70-17453; Filed, Dec. 28, 1970; 8:49 a.m.]

Title 24—HOUSING AND HOUSING CREDIT

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

SUBCHAPTER B—NATIONAL FLOOD INSURANCE PROGRAM

PART 1914—AREAS ELIGIBLE FOR THE SALE OF INSURANCE

List of Designated Areas

Section 1914.4 is amended by adding in alphabetical sequence a new entry to the table, which entry reads as follows:

§ 1914.4 List of designated areas.

* * * * * * *

State	County	Location	Map No.	State map repository	Local map repository	Effective date of authorization of sale of flood insurance for area
* * *	* * *	* * *	* * *	* * *	* * *	* * *
Arkansas	Sebastian	Fort Smith	E 05 131 1370 01 through E 05 131 1370 07	Arkansas Soil and Water Conservation Commission, Room 151, State Capitol Bldg., Little Rock, AR 72201. Arkansas Insurance Department, 400 University Tower Bldg., Little Rock, AR 72204.	City Clerk's Office, Municipal Bldg., City of Fort Smith, Fort Smith, AR 72901.	Dec. 18, 1970.
California	Orange	Seal Beach	E 06 059 3558 01 E 06 059 3558 02	Department of Water Resources, Post Office Box 388, Sacramento, CA 95802. California Insurance Department, 107 South Broadway, Los Angeles, CA 90012, and 1407 Market St., San Francisco, CA 94103.	Seal Beach Administration Bldg., 211 8th St., Seal Beach, CA 90740.	Do.
Florida	Broward	Unincorporated areas.	E 12 011 0000 01	Department of Community Affairs, State of Florida, 309 Office Plaza, Tallahassee, FL 32301. State of Florida Insurance Department, Treasurer's Office, State Capitol, Tallahassee, FL 32304.	Broward County Engineering Department, Room 365, County Courthouse, Fort Lauderdale, FL 33301.	Do.
Ohio	Lucas	Toledo	E 39 095 8120 01 through E 39 095 8120 06	Ohio Department of Natural Resources Columbus, OH 43215. Ohio Department of Insurance, 115 East Rich St., Columbus, OH 43215.	Division of Engineering and Construction, City of Toledo, 565 Erie St., Toledo, OH 43624.	Do.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968), effective Jan. 28, 1969 (33 F.R. 17804, Nov. 28, 1968), as amended (secs. 408–410, Public Law 91–152, Dec. 24, 1969), 42 U.S.C. 4001–4127; and Secretary's delegation of authority to Federal Insurance Administrator, 34 F.R. 2680, Feb. 27, 1969)

Issued: December 29, 1970.

GEORGE K. BERNSTEIN,
Federal Insurance Administrator.

[F.R. Doc. 70–17391; Filed, Dec. 28, 1970; 8:45 a.m.]

PART 1915—IDENTIFICATION OF FLOOD-PRONE AREAS

List of Flood Hazard Areas

Section 1915.3 is amended by adding in alphabetical sequence a new entry to the table, which entry reads as follows:

§ 1915.3 List of flood hazard areas.

* * * * * * *

State	County	Location	Map No.	State map repository	Local map repository	Effective date of identification of areas which have special flood hazards
* * *	* * *	* * *	* * *	* * *	* * *	* * *
Arkansas	Sebastian	Fort Smith	T 05 131 1370 01 through T 05 131 1370 07	Arkansas Soil and Water Conservation Commission, Room 151, State Capitol Bldg., Little Rock, AR 72201. Arkansas Insurance Department, 400 University Tower Bldg., Little Rock, AR 72204.	City Clerk's Office, Municipal Bldg., City of Fort Smith, Fort Smith, AR 72901.	Dec. 29, 1970.
California	Orange	Seal Beach	T 06 059 3558 01 T 06 059 3558 02	Department of Water Resources, Post Office Box 388, Sacramento, CA 95802. California Insurance Department, 107 South Broadway, Los Angeles, CA 90012, and 1407 Market St., San Francisco, CA 94103.	Seal Beach Administration Bldg., 211 8th St., Seal Beach, CA 90740.	Do.
Florida	Broward	Unincorporated areas.	T 12 011 0000 01	Department of Community Affairs, State of Florida, 309 Office Plaza, Tallahassee, FL 32301. State of Florida Insurance Department, Treasurer's Office, State Capitol, Tallahassee, FL 32304.	Broward County Engineering Department, Room 365, County Courthouse, Fort Lauderdale, FL 33301.	Do.
Ohio	Lucas	Toledo	T 39 095 8120 01 through T 39 095 8120 06	Ohio Department of Natural Resources, Columbus, OH 43215. Ohio Department of Insurance, 115 East Rich St., Columbus, OH 43215.	Division of Engineering and Construction, City of Toledo, 565 Erie St., Toledo, OH 43624.	Do.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968), effective Jan. 28, 1969 (33 F.R. 17804, Nov. 28, 1968), as amended (secs. 408–410, Public Law 91–152, Dec. 24, 1969), 42 U.S.C. 4001–4127; and Secretary's delegation of authority to Federal Insurance Administrator, 34 F.R. 2680, Feb. 27, 1969)

Issued: December 29, 1970.

GEORGE K. BERNSTEIN,
Federal Insurance Administrator.

[F.R. Doc. 70–17392; Filed, Dec. 28, 1970; 8:46 a.m.]

Title 28—JUDICIAL ADMINISTRATION

Chapter I—Department of Justice

[Order No. 446-70]

PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

PART 9—REMISSION OR MITIGATION OF CIVIL FORFEITURES

Comprehensive Drug Abuse Prevention and Control Act of 1970

By virtue of the authority vested in me by 28 U.S.C. 509, 510, and 5 U.S.C. 301, and section 501 of the Comprehensive Drug Abuse Prevention and Control Act of 1970, 84 Stat. 1236, 1270, Chapter I of Title 28 of the Code of Federal Regulations is amended as follows:

1. Paragraph (c) of § 0.55 of Subpart K of Part 0 is amended by substituting a comma for the period after "Act" and adding the following: "the Controlled Substances Act, 84 Stat. 1242, and the Controlled Substances Import and Export Act, 84 Stat. 1285 (titles II and III of the Comprehensive Drug Abuse Prevention and Control Act of 1970)."

2. Paragraph (d) of § 0.55 is amended by inserting after the phrase "narcotics and dangerous drugs," the phrase "other controlled substances."

3. Section 9.1 of Part 9 is amended by inserting after the words "Contraband Transportation Act," the words "Comprehensive Drug Abuse Prevention and Control Act of 1970," and by deleting the word "narcotics" immediately after the words "laws relating to."

Dated: December 17, 1970.

JOHN N. MITCHELL,
Attorney General.

[F.R. Doc. 70-17439; Filed, Dec. 28, 1970; 8:48 a.m.]

Title 36—PARKS, FORESTS, AND MEMORIALS

Chapter IV—American Battle Monuments Commission

PART 401—PROCEDURES

PART 402—ERECTION OF WAR MEMORIALS IN FOREIGN COUNTRIES BY AMERICAN CITIZENS, STATES, MUNICIPALITIES, OR ASSOCIATIONS

Chapter IV of Title 36 is revised to read as follows:

§ 401.1 Erection of war memorials outside continental limits of United States.

Federal Government agencies, American citizens, States, municipalities, or associations desiring to erect war memorials outside the continental limits of the United States should proceed as follows:

(a) Submit general idea of the memorial to the American Battle Monuments Commission, with a request for the tentative allocation of the site desired.

(b) When site is provisionally allocated, prepare and submit the design of the memorial, together with the inscription, for approval. The design of the memorial will then be referred, in accordance with law, by the Commission to the National Commission of Fine Arts for its approval.

(c) After a site is allocated and the design and inscription are approved, the American Battle Monuments Commission will, if the sponsors so desire, consult with the foreign government concerning the question of securing approval for the erection of the memorial.

(d) When the approval of the foreign government is obtained, the Commission will cooperate, if the sponsors so desire, in obtaining the ground and erection of the memorial. Such cooperation may include construction of the memorial by the Commission, using funds provided by the sponsors, in which case user charges will be made in accordance with general Government policy.

(Sec. 3, 70 Stat. 640, 641; 36 U.S.C. 123-125; E.O. 6614, 5 U.S.C. 132 note, E.O. 9704, 11 F.R. 2675, 3 CFR, 1946 Supp., E.O. 10057, 10087, 14 F.R. 2585, 7287, 3 CFR, 1949 Supp.)

§ 402.1 Restrictions on erection.

(a) No administrative agency of the United States shall give assistance to American citizens, States, municipalities, or associations in erecting any war memorial outside the continental United States unless the plan has been approved in accordance with § 401.1 above.

(b) It is the opinion of the Commission that no battlefield memorial should be erected to any unit smaller than a division or comparable unit, or to an individual, unless the services of such unit or individual clearly were of such distinguished character as to warrant a separate memorial.

(c) It is the opinion of the Commission that, as a general rule, memorials should be erected to organizations rather than to troops from a particular locality of the United States.

(d) The policy of the Commission is to approve plans for memorials in foreign countries only in cases in which the sponsors make adequate and permanent arrangements for their maintenance. If the sponsors so desire, the Commission will maintain such memorials, including those previously existing which it deems worthy of preservation, using funds provided by the sponsors; in such cases it will make user charges in accordance with general Government policy.

(Sec. 3, 70 Stat. 640, 641; 36 U.S.C. 123, 125; E.O. 6614, 5 U.S.C. 132 note, E.O. 9704, 11 F.R. 2675, 3 CFR, 1946 Supp., E.O. 10057, 10087, 14 F.R. 2585, 7287, 3 CFR, 1949 Supp.)

WILLIAM E. RYAN, Jr.
LTC, ADA, Director of Operations and Finance.

[F.R. Doc. 70-17457; Filed, Dec. 28, 1970; 8:49 a.m.]

Title 50—WILDLIFE AND FISHERIES

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

SUBCHAPTER B—HUNTING AND POSSESSION OF WILDLIFE

PART 10—MIGRATORY BIRDS

Open Seasons, Bag Limits, and Possession of Certain Migratory Game Birds

F.R. Doc. 70-11566 appearing on page 14055 in the issue of Friday, September 4, 1970, is amended as follows:

1. In § 10.53, paragraph (e) on page 14056, the season dates for geese for Illinois in the counties of Alexander, Jackson, Union, and Williamson reading "Nov. 12-Dec. 23" should read "Nov. 12-Dec. 23, Jan. 2-Jan. 3."

Since this amendment relieves an existing restriction by permitting Canada goose hunting in the four named counties for 2 additional days without exceeding the established quota of 35,000, it is determined that notice and public procedure thereon are impracticable, unecessary, and contrary to the public interest and that this amendment will become effective upon publication in the FEDERAL REGISTER.

(40 Stat. 755; 16 U.S.C. 703 et seq.)

Effective date: Upon publication.

SPENCER H. SMITH,
Acting Director, Bureau of Sport Fisheries and Wildlife.

DECEMBER 23, 1970.

[F.R. Doc. 70-17458; Filed, Dec. 28, 1970; 8:49 a.m.]

Title 9—ANIMALS AND ANIMAL PRODUCTS

Chapter III—Consumer and Marketing Service (Meat Inspection), Department of Agriculture

SUBCHAPTER A—MEAT INSPECTION REGULATIONS

PART 331—SPECIAL PROVISIONS FOR DESIGNATED STATES AND TERRITORIES; AND FOR DESIGNATION OF ESTABLISHMENTS WHICH ENDANGER PUBLIC HEALTH AND FOR SUCH DESIGNATED ESTABLISHMENTS

Statement of considerations. The Federal Meat Inspection Act, as amended by the Wholesome Meat Act (21 U.S.C. 601 et seq.) requires the extension of certain Federal requirements to intrastate activities in any State (including the Commonwealth of Puerto Rico or any organized Territory), by designation of the

State under paragraph 301(c) of the Act, upon determination by the Secretary of Agriculture, in accordance with said paragraph, that the State has not, within the time allowed by the Act, developed and activated requirements at least equal to the requirements imposed under titles I and IV of the Act with respect to all establishments within such State (except certain classes of retail stores, restaurants and similar retail-type establishments) at which cattle, sheep, swine, goats or equines are slaughtered or their carcasses, or parts of products thereof, are prepared for use as human food, solely for distribution within such State, and the products of such establishments. Upon the expiration of 30 days after publication of such designation of any State in the FEDERAL REGISTER, the provisions of Titles I and IV of the Act shall apply to operations and transactions wholly within such jurisdiction and to persons, firms, and corporations engaged therein, to the same extent and in the same manner as if such operations and transactions were conducted in or for "commerce" as defined in the Act.

The regulations set forth herein provide a format for listing any States that are determined not to have developed and activated meat inspection programs that meet the requirements of paragraph 301(c) of the Federal Meat Inspection Act (21 U.S.C. 661(c)) and are designated as jurisdictions in which the provisions of titles I and IV of the Federal Meat Inspection Act apply to wholly intrastate activities; list the only jurisdiction currently designated; identify the provisions of the regulations in this subchapter that are applicable to such activities; and prescribe the methods of handling and disposing of uninspected meat and meat products, and State inspected meat and meat products, that are in the possession of wholly intrastate livestock slaughtering or processing plants or other distributors in those jurisdictions when such jurisdictions are designated.

Paragraph 301(c) of the Act also provides that when the Secretary of Agriculture determines that any establishment within a State (including the Commonwealth of Puerto Rico or an organized territory) is producing adulterated meat or meat food products for distribution within such jurisdiction which would clearly endanger the public health, he shall notify the Governor of the State and the appropriate Advisory Committee of such fact for effective action under State or local law and that, if the State does not take action to prevent such endangering of the public health within a reasonable time after such notice, the Secretary may forthwith designate such establishment as subject to the provisions of titles I and IV of the Act, and thereupon the establishment and operator thereof shall be subject to such provisions as though engaged in "commerce", until such time as the Secretary determines that the State has developed and will enforce the necessary requirements.

The policies and procedures followed in designating such establishments under paragraph 301(c) and the provisions of the regulations applicable to such establishments are also prescribed in the regulations set forth herein.

Sections 202, 203, and 204 of the Act impose record and related requirements and registration requirements for operators engaged in specified classes of business in or for "commerce" as defined in the Act, and restrict the handling in "commerce", or the importation, of dead, dying, disabled or diseased livestock or parts of the carcasses of livestock that died otherwise than by slaughter. Section 205 of the Act extends the authority of the Secretary of Agriculture under these sections to persons, firms and corporations engaged in the specified kinds of business but not in or for "commerce," in any State (including the Commonwealth of Puerto Rico or any organized Territory), when he determines after consultation with an appropriate Advisory Committee that the State does not have at least equal authority under its laws or is not exercising such authority in a manner to effectuate the purposes of the Act. The regulations set forth herein provide a format for listing any States with respect to which such a determination has been made and which are designated as jurisdictions in which the provisions of section 202, 203, or 204 of the Act apply to intrastate activities and identify the sections of the Act and the provisions of the regulations that would be applicable to such activities. However, no jurisdictions are currently listed for this purpose.

Sec.

AUTHORITY: The provisions of this Part 331 issued under sec. 21, 81 Stat. 584, 588, 592, 593, 21 U.S.C. 621; sec. 301, 81 Stat. 595, 21 U.S.C. 661.

§ 331.1 Definition of "State".

For purposes of this Part, the term "State" means any State (including the Commonwealth of Puerto Rico) or organized Territory.

§ 331.2 Designation of States under paragraph 301(c) of the Act.

Each of the following States has been designated, effective on the date shown below, under paragraph 301(c) of the Act, as a State in which the provisions of Titles I and IV of the Act shall apply to operations and transactions wholly within such State:

State	*Effective date of designation*
North Dakota	June 22, 1970

§ 331.3 States designated under paragraph 301(c) of the Act; application of regulations.

The provisions of the regulations in this subchapter apply to operations and transactions wholly within each State designated in § 331.2 under paragraph 301(c) of the Act, except as otherwise provided in this section. (The provisions of the regulations apply in all respects to operations and transactions in or for commerce.)

(a) Each establishment, located in such a designated State, which is granted inspection required under § 302.1(a)(2) of this subchapter, shall obtain approval of plant drawings as specified in § 304.2 of this subchapter within 18 months after the designation of the State becomes effective. The establishment, including its facilities shall be placed in compliance with the approved drawings as soon as possible, but not to exceed 36 months after such designation becomes effective. Failure to have drawings approved or to bring the establishment into compliance with such drawings within the time periods specified herein will result in the expiration of the grant of inspection. Inspection will be initially granted to any such establishments only if it is found, upon a combined evaluation of its premises, facilities and operating procedures, to be capable of producing products that are not adulterated or misbranded.

(b) Section 305.2 of this subchapter will apply to establishments required to have inspection under § 302.1(a)(2) of this subchapter, except that existing interconnections between official and unofficial establishments will be permitted if it is determined in specific cases that the interconnections are such that transfer of inedible product into the official establishment would be difficult or unusual, and any such transfers are strictly prohibited, except as permitted under other provisions of this subchapter. It is essential that separation of facilities be maintained to the extent necessary to assure that inedible product does not enter the official establishment contrary to the regulations in this subchapter.

(c) Section 308.4 of this subchapter shall apply to such establishments, except that separate toilet rooms for men and women workers will not be required when the majority of the workers in the establishment are related by blood or marriage, provided that this will not conflict with municipal or State requirements; and except that separation of toilet soil lines from house drainage lines to a point outside the buildings will not be required in existing construction when positive acting back-flow devices are installed.

(d) Section 314.2 of this subchapter shall apply to such establishments, except that a separate room or compartment need not be provided for inedible products if they can be handled so that they do not create insanitary conditions in any room or compartment used for edible products or otherwise render any edible products adulterated and do not interfere with the conduct of

inspection. For example, intestines, paunch contents, feet, and hides might be accumulated on the kill floor in clean, watertight drums with close fitting covers if there is sufficient space to store them out of the way until the close of the day's operation.

(e) Sections 316.7, 317.3, and 317.4 of this subchapter shall apply to such establishments, except as provided in this paragraph (e).

(1) The operator of each such establishment shall, prior to the inauguration of inspection, identify all labeling and marking devices in use, or proposed for use (upon the date of inauguration of inspection) to the officer in charge of the circuit in which the establishment is located. Temporary approval, pending formal approval under §§ 316.7, 317.3, and 317.4 of this subchapter, will be granted by the officer in charge for labeling and marking devices that he determines are neither false nor misleading, provided the official inspection legend bearing the official establishment number is applied to the principal display panel of each label, either by a mechanical printing device or a self-destructive pressure sensitive sticker, and provided the label shows the true product name, an accurate ingredient statement, the name and address of the manufacturer, packer, or distributor, and any other features required by paragraph 1(n) of the Act.

(2) The officer in charge will forward one copy of each item of labeling and a description of each marking device for which he has granted temporary approval to the Standards and Services Division and will retain one copy in a temporary approval file for the establishment.

(3) The operator of the official establishment shall promptly forward a copy of each item of labeling and a description of each marking device for which temporary approval has been granted by the officer in charge (showing any modifications required by the officer in charge) to the Washington, D.C. office of the Standards and Services Division, accompanied by the formula and details of preparation and packaging for each product. Within 90 days after inauguration of inspection, all labeling material and marking devices temporarily approved by the officer in charge must receive approval as required by §§ 316.7, 317.3, and 317.4, of this subchapter or their use must be discontinued.

(4) The officer in charge will also review all shipping containers to insure that they do not have any false or misleading labeling and are otherwise not misbranded. Modifications of unacceptable information on labeling material by the use of self-destructive pressure sensitive tape or by blocking out with an ink stamp will be authorized on a temporary basis to permit the maximum allowable use of all labeling materials on hand. All unacceptable labeling material which is not modified to comply with the requirements of this subchapter must be destroyed or removed from the official establishment.

(f) Sections 320.1, 320.2, 320.3, 320.4, 320.5, 325.20, and 325.21 apply to operations and transactions not in or for commerce in a State designated under paragraph 301(c) only if the State is also designated under section 205 of the Act and if such provisions are applicable as shown in § 331.6 of this part.

(g) Paragraph 321.1(a) of this subchapter will not apply to States designated under paragraph 301(c) of the Act.

(h) Parts 322 and 327 and §§ 325.3 and 325.12 of this subchapter relating to exports and imports do not apply to operations and transactions solely in or for intrastate commerce.

(i) Part 325 of this subchapter will apply to establishments required to have inspection under § 302.1(a)(2) of this subchapter and to operations and transactions solely in or for intrastate commerce, except as provided in paragraphs (h) and (j) of this section.

(j) Sections 325.4, 325.15, and 325.1(b) of this subchapter will not apply to require a certificate, or evidence thereof, for the distribution solely within any designated State of products that are U.S. inspected and passed and so marked.

§ 331.4 Control and disposal of non-federally-inspected products in States designated under paragraph 301(c) of the Act.

Upon the effective date of designation of a State under paragraph 301(c) of the Act, no products can be prepared within the State unless they are prepared under inspection pursuant to the regulations in this subchapter or are exempted from the requirement of inspection under § 303.1 of this subchapter, and no unexempted products which were prepared without any inspection can lawfully be distributed within the State. For a period of 90 days from the effective date of such designation, products which were prepared and inspected and passed under the supervision of a responsible State or local inspection agency can be distributed solely within the State, provided they are not adulterated or misbranded, except that the official inspection legend is not required. Within the 90-day period, products that have been inspected by the State or local inspection agency may be further prepared and otherwise handled in official establishments required to have inspection under § 302.1(a)(2) of this subchapter or at establishments exempted from the requirements of such inspection under § 303.1 of this subchapter, and may be distributed as provided in this section but otherwise shall be handled in accordance with § 305.4 of this subchapter. Such products shall not bear any [Federal] official inspection legends. After said 90-day period, only federally inspected and passed products may be distributed within the designated State, except as provided in § 303.1 of this subchapter.

§ 331.5 Criteria and procedure for designating establishments with operations which would clearly endanger the public health; disposition of products; application of regulations.

(a) An establishment preparing products solely for distribution within any State shall be designated as one producing adulterated products which would clearly endanger the public health, if:

(1) Any meat or meat food product prepared at the establishment is adulterated in any of the following respects:

(i) It bears or contains a pesticide chemical, food additive, or color additive, that is "unsafe" within the meaning of sections 408, 409, or 706 of the Federal Food, Drug, and Cosmetic Act or was intentionally subjected to radiation in a manner not permitted under section 409 of said Act; or if it bears or contains any other added poisonous or added deleterious substance which may render it injurious to health or make it unfit for human food; or

(ii) It consists in whole or in part of any filthy, putrid, or decomposed substance or is for any other reason unsound, unhealthful, or unwholesome or otherwise unfit for human food (for example, it was prepared from meat or other ingredients exhibiting spoilage characteristics; or it is, or was prepared from, a carcass affected with a disease transmissible to humans and its condemnation would be required under Part 309 or 310 of the Federal Meat Inspection regulations (9 CFR Parts 309, 310) at federally inspected establishments; or it is a ready-to-eat pork product which has not been treated to destroy trichinae as prescribed in § 318.10 of this subchapter for products at federally inspected establishments); or

(iii) It has been prepared, packed or held under insanitary conditions whereby it may have become contaminated with filth or may have been rendered injurious to health (for example if insects or vermin are not effectively controlled at the establishments, or insanitary water is used in preparing meat or meat food products for human food); or

(iv) It is, in whole or in part, the product of an animal that died otherwise than by slaughter; or

(v) Its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health; and

(2) Such adulterated articles are intended to be or are distributed from the establishment while capable of use as human food.

(b) When any such establishment is identified by a Program Inspector as one producing adulterated product, which would clearly endanger public health under the criteria in paragraph (a) of this section, the following procedure will be followed:

(1) The Program Inspector will informally advise the operator of the establishment concerning the deficiencies found by him and report his findings to the appropriate Regional Director for the Program. When it is determined by the Regional Director that any establishment preparing products solely for distribution within any State is producing adulterated products for distribution within such State which would clearly endanger the public health, written notification thereof will be issued to the appropriate State officials, including the Governor of the State and the appropriate Advisory Committee, for effective action under State or local law to prevent

such endangering of the public health. Such written notification shall clearly specify the deficiencies deemed to result in the production of adulterated products and shall specify a reasonable time for such action under State or local law.

(2) If effective action is not taken under State or local law within the specified time, written notification shall be issued by the Regional Director to the operator of the establishment, specifying the deficiencies involved and allowing him ten days to present his views or make the necessary corrections, and notifying him that failure to correct such deficiencies may result in designation of the establishment and operator thereof as subject to the provisions of titles I and IV of the Act as though engaged in commerce.

(3) Thereafter the Program Inspector shall survey the establishment and designate it if he determines, in consultation with the Regional Director, that it is producing adulterated products, which would clearly endanger the public health, and formal notice of such designation will be issued to the operator of the establishment by the Regional Director.

(c) Products on hand at the time of designation of an establishment under this section are subject to detention, seizure and condemnation in accordance with Part 329 of this subchapter: *Provided*, That products that have been federally inspected and so identified and that have not been further prepared at any non-federally-inspected establishment may be released for distribution if the products appear to be not adulterated or misbranded at the time of such release.

(d) No establishment designated under this section can lawfully prepare any products unless it first obtains inspection or qualifies for exemption under § 303.1 of this subchapter. All of the provisions of the regulations shall apply to establishments designated under this section, except that the exceptions provided for in § 331.3 of this part shall apply to such establishments.

§ 331.6 Designation of States under section 205 of the Act; application of sections of the Act and the regulations.

Each of the following States has been designated, effective on the date shown below, under section 205 of the Act, as a State in which the provisions of the sections of the Act and regulations specified below shall apply to operators engaged, other than in or for commerce, in the kinds of business indicated below:

Sections of Act and Regulations	*Classes of Operators*	*State*
Act, 202; § 320.1, 320.2, 320.3, 320.4	----------	------
Act, 203; § 320.5	----------	------
Act, 204; § 325.20 and 325.21	----------	------

The above provisions set forth interpretations, policies and procedures to implement the provisions in paragraph 301(c) and section 205 of the Federal Meat Inspection Act. It is essential that regulations be adopted for these purposes and published as soon as possible in order to afford time for the affected industries to adjust their programs and operations to comply with the applicable requirements. Therefore, under the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public rulemaking procedure on the foregoing regulations are impracticable and unnecessary and good cause is found for making the regulations effective less than 30 days after their publication in the FEDERAL REGISTER. Accordingly, these regulations shall become effective upon publication in the FEDERAL REGISTER.

Done at Washington, D.C., on December 23, 1970.

KENNETH M. MCENROE,
Deputy Administrator,
Meat and Poultry Inspection Programs.

[F.R. Doc. 70-17487; Filed, Dec. 28, 1970; 8:51 a.m.]

Proposed Rule Making

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR Part 1]

INCOME TAX

Amounts Representing Taxes and Interest Paid to Cooperative Housing Corporations

Notice is hereby given that the regulation set forth in tentative form in the attached appendix is proposed to be prescribed by the Commisioner of Internal Revenue, with the approval of the Secretary of the Treasury or his delegate. Prior to the final adoption of such regulation, consideration will be given to any comments or suggestions pertaining thereto which are submitted in writing, preferably in quintuplicate, to the Commissioner of Internal Revenue, Attention: CC:LR:T, Washington, D.C. 20224, within the period of 30 days from the date of publication of this notice in the FEDERAL REGISTER. Any written comments or suggestions not specifically designated as confidential in accordance with 26 CFR 601.601(b) may be inspected by any person upon written request. Any person submitting written comments or suggestions who desires an opportunity to comment orally at a public hearing of the proposed regulation should submit his request, in writing, to the Commissioner within the 30-day period. In such case, a public hearing will be held, and notice of the time, place, and date will be published in a subsequent issue of the FEDERAL REGISTER. The proposed regulation is to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

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

In order to conform the Income Tax Regulations (26 CFR Part 1) under section 216 (a) and (b) to the amendments of the Internal Revenue Code of 1954, made by section 913 of the Tax Reform Act of 1969 (83 Stat. 723), and to make certain clarifying changes to such regulations, such regulations are amended as follows:

PARAGRAPH 1. Section 1.216(b) is amended by adding at the end thereof the following new paragraph and by revising the historical note:

§ 1.216 Statutory provisions; deduction of taxes, interest, and business depreciation by cooperative housing corporation tenant-stockholder.

Sec. 216. *Deduction of taxes, interest, and business depreciation by cooperative housing corporation tenant-stockholder.* * * *

(b) *Definitions.* * * *

(4) *Stock owned by governmental units.* For purposes of this subsection, in determining whether a corporation is a cooperative housing corporation, stock owned and apartments leased by the United States or any of its possessions, a State or any political subdivision thereof, or any agency or instrumentality of the foregoing empowered to acquire shares in a cooperative housing corporation for the purpose of providing housing facilities, shall not be taken into account.

* * * * *

[Sec. 216 as amended by sec. 28, Revenue Act 1962 (76 Stat. 1068); sec. 913, Tax Reform Act 1969 (83 Stat. 723)]

PAR. 2. Section 1.216–1 is amended to read as follows:

§ 1.216–1 Amounts representing taxes and interest paid to cooperative housing corporation.

(a) *General rule.* An individual who qualifies as a tenant-stockholder of a cooperative housing corporation may deduct from his gross income amounts paid or accrued within his taxable year to a cooperative housing corporation representing his proportionate share of:

(1) The real estate taxes allowable as a deduction to the corporation under section 164 which are paid or incurred by the corporation before the close of the taxable year of the tenant-stockholder on the houses (or apartment building) and the land on which the houses (or apartment building) are situated, or

(2) The interest allowable as a deduction to the corporation under section 163 which is paid or incurred by the corporation before the close of the taxable year of the tenant-stockholder on its indebtness contracted in the acquisition, construction, alteration, rehabilitation, or maintenance of the houses (or apartment building), or in the acquisition of the land on which the houses (or apartment building) are situated.

(b) *Limitation.* The deduction allowable under section 216 shall not exceed the amount of the tenant-stockholder's proportionate share of the taxes and interest described therein. If a tenant-stockholder pays or incurs only a part of his proportionate share of such taxes and interest to the corporation, only the amount so paid or incurred which represents taxes and interest is allowable as a deduction under section 216. If a tenant-stockholder pays an amount, or incurs an obligation for an amount, to the corporation on account of such taxes and interest and other items, such as maintenance, overhead expenses, and reduction of mortgage indebtedness, the amount representing such taxes and interest is an amount which bears the same ratio to the total amount of the tenant-stockholder's payment or liability, as the case may be, as the total amount of the tenant-stockholder's proportionate share of such taxes and interest bears to the total amount of the tenant-stockholder's proportionate share of the taxes, interest, and other items on account of which such payment is made or liability incurred. No deduction is allowable under section 216 for that part of amounts representing the taxes or interest described in that section which are deductible by a tenant-stockholder under any other provision of the Code.

(c) *Tenant-stockholder's proportionate share*—(1) *General rule.* The tenant-stockholder's proportionate share is that proportion which the stock of the cooperative housing corporation owned by the tenant-stockholder is of the total outstanding stock of the corporation, including any stock held by the corporation. For taxable years beginning after December 31, 1969, if the cooperative housing corporation has issued stock to a governmental unit, as defined in paragraph (f) of this section, then in determining the total outstanding stock of the corporation, the governmental unit shall be deemed to hold the number of shares that it would have held, with respect to the apartments or houses it is entitled to occupy, if it has been a tenant-stockholder. That is, the number of shares the governmental unit is deemed to hold is determined in the same manner as if stock had been issued to it as a tenant-stockholder. For example, if a cooperative housing corporation requires each tenant-stockholder to buy one share of stock for each one thousand dollars of value of the apartment he is entitled to occupy, a governmental unit shall be deemed to hold one share of stock for each one thousand dollars of value of the apartments it is entitled to occupy, regardless of the number of shares formally issued to it.

(2) *Examples.* The provisions of this paragraph may be illustrated by the following examples:

Example (1). The X Corporation is a cooperative housing corporation within the meaning of section 216. In 1970, it acquires a building containing 40 category A apartments and 25 category B apartments, for $750,000. The value of each category A apartment is $12,500, and of each category B apartment is $10,000. X values each share of stock issued with respect to category A apartments at $125, and sells 4,000 shares of its stock, along with the right to occupy the 40 category A apartments, to 40 tenant-stockholders for $500,000. X also sells 1,000 shares of nonvoting stock to G, a State housing authority qualifying as a governmental unit under paragraph (f) of this section for $250,000. The purchase of this stock gives G the right to occupy all the category B apartments. G is deemed to hold the number of shares that it would have held if it had been a tenant-stockholder. G is therefore deemed to own 2,000 shares of stock in X. All stockholders are required to pay a specified part of the corporation's expenses. F, one of the tenant-stockholders, purchased 100 shares of the category A stock for $12,500 in order to obtain a right to occupy a category A apartment. Since there are 6,000 total shares deemed outstanding, F's proportionate share is 1/60 (100/6,000).

Example (2). The X Corporation is a cooperative housing corporation within the meaning of section 216. In 1960 it acquired a

housing development containing 100 detached houses, each house having the same value. X issued one share of stock to each of 100 tenant-stockholders, each share carrying the right to occupy one of the houses. In 1971 X redeemed 40 of its 100 shares. It then sold to G, a municipal housing authority qualifying as a governmental unit under paragraph (f) of this section, 1,000 shares preferred stock and the right to occupy the 40 houses with respect to which the stock had been redeemed. X sold the preferred stock to G for an amount equal to the cost of redeeming the 40 shares. G also agreed to pay 40 percent of X's expenses. For purposes of determining the total stock which X has outstanding, G is deemed to hold 40 shares of X.

(d) *Cooperative housing corporation.* In order to qualify as a "cooperative housing corporation" under section 216, the requirements of subparagraphs (1) through (4) of this paragraph must be met.

(1) *One class of stock.* The corporation shall have one and only one class of stock outstanding. However, a special classification of preferred stock, in a nominal amount not exceeding $100, issued to a Federal housing agency or other governmental agency solely for the purpose of creating a security device on the mortgage indebtedness of the corporation, shall be disregarded for purposes of determining whether the corporation has one class of stock outstanding and such agency will not be considered a stockholder for purposes of section 216 and this section. Furthermore, for taxable years beginning after December 31, 1969, a special class of stock issued to a governmental unit, as defined in paragraph (f) of this section, shall also be disregarded for purposes of this paragraph in determining whether the corporation has one class of stock outstanding.

(2) *Right of occupancy.* Each stockholder of the corporation, whether or not the stockholder qualifies as a tenant-stockholder under section 216(b)(2) and paragraph (e) of this section, must be entitled to occupy for dwelling purposes an apartment in a building or a unit in a housing development owned or leased by such corporation. The stockholder is not required to occupy the premises. The right as against the corporation to occupy the premises is sufficient. Such right must be conferred on each stockholder solely by reason of his ownership of stock in the corporation, that is, the stock must entitle the owner thereof either to occupy the premises or to a lease of the premises. The fact that the right to continue to occupy the premises is dependent upon the payment of charges to the corporation in the nature of rentals or assessments is immaterial.

(3) *Distributions.* None of the stockholders of the corporation may be entitled, either conditionally or unconditionally, except upon a complete or partial liquidation of the corporation, to receive any distribution other than out of earnings and profits of the corporation.

(4) *Gross income.* Eighty percent or more of the gross income of the corporation for the taxable year of the corporation in which the taxes and interest are paid or incurred must be derived from the tenant-stockholders. For purposes of the 80-percent test, in taxable years beginning after December 31, 1969, gross income attributable to any house or apartment which a governmental unit is entitled to occupy, pursuant to a lease or stock ownership, shall be disregarded.

(e) *Tenant-stockholder.* The term "tenant-stockholder" means an individual who is a stockholder in a cooperative housing corporation, as defined in section 216(b)(1) and paragraph (d) of this section, and whose stock is fully paid up in an amount at least equal to an amount shown to the satisfaction of the district director as bearing a reasonable relationship to the portion of the fair market value, as of the date of the original issuance of the stock, of the corporation's equity in the building and the land on which it is situated which is attributable to the apartment or housing unit which such individual is entitled to occupy.

(f) *Governmental unit.* For purposes of section 216(b) and this section, the term "governmental unit" means the United States or any of its possessions, a State or any political subdivision thereof, or any agency or instrumentality of the foregoing empowered to acquire shares in a cooperative housing corporation for the purpose of providing housing facilities.

(g) *Examples.* The application of section 216 (a) and (b) and this section may be illustrated by the following examples, which refer to apartments but which are equally applicable to housing units:

Example (1). The X Corporation is a cooperative housing corporation within the meaning of section 216. In 1970, at a total cost of $200,000, it purchased a site and constructed thereon a building with 15 apartments. The fair market value of the land and building was $200,000 at the time of completion of the building. The building contains five category A apartment units, each of equal value, and 10 category B apartment units. The total value of all of the category A apartment units is $100,000. The total value of all of the category B apartments is also $100,000. Upon completion of the building, the X Corporation mortgaged the land and building for $100,000, and sold its total authorized capital for $100,000. The stock attributable to the category A apartments was purchased by five individuals, each of whom paid $10,000 for 100 shares, or $100 a share. Each certificate for 100 shares of such stock provides that the holder thereof is entitled to a lease of a particular apartment in the building for a specified term of years. The stock attributable to the category B apartments was purchased by a governmental unit for $50,000. Since the shares sold to the tenant-stockholders are valued at $100 per share, the governmental unit is deemed to hold a total of 500 shares. The certificate of such stock provides that the governmental unit is entitled to a lease of all of the category B apartments. All leases provide that the lessee shall pay his proportionate part of the corporation's expenses. In 1970 the original owner of 100 shares of stock attributable to the category A apartments and to the lease to apartment No. 1 made a gift of the stock and lease to A, an individual. The taxable year of A and of the X Corporation is the calendar year. The corporation computes its taxable income on an accrual method, while A computes his taxable income on the cash receipts and disbursements method. In 1971, the X Corporation incurred expenses aggregating $13,800, including $4,000 for the real estate taxes on the land and building, and $5,000 for the interest on the mortgage. In 1972, A pays the X Corporation $1,380, representing his proportionate part of the expenses incurred by the corporation. The entire gross income of the X Corporation for 1971 was derived from the five tenant-stockholders and from the governmental unit. A is entitled under section 216 to a deduction of $900 in computing his taxable income for 1972. The deduction is computed as follows:

Stock of X Corporation owned by A		100
Shares of X Corporation owned by four other tenant-stockholders		400
Shares of stock of X Corporation deemed owned by governmental unit		500
Total share of stock of X Corporation outstanding		1,000
A's proportionate share of the stock of X Corporation (100/1,000)		1/10
Expenses incurred by X Corporation:		
Real estate taxes	$4,000	
Interest	5,000	
Other	4,800	
Total		$13,800
Amount paid by A		$1,380
A's proportionate share of real estate taxes and interest based on his stock ownership (1/10 of $9,000)		$900
A's proportionate share of total corporate expenses based on his stock ownership (1/10 of $13,800)		$1,380
Amount of A's payment representing real estate taxes and interest (900/1,380 of $1,380)		$900
A's allowable deduction		$900

Since the stock which A acquired by gift was fully paid up by his donor in an amount equal to the portion of the fair market value, as of the date of the original issuance of the stock, of the corporation's equity in the land and building which is attributable to apartment No. 1, the requirement of section 216 in this regard is satisfied. The fair market value at the time of the gift of the corporation's equity attributable to the apartment is immaterial.

Example (2). The facts are the same as in example (1) except that the building constructed by the X Corporation contained, in addition to the 15 apartments, business space on the ground floor, which the corporation rented at $2,400 for the calendar year 1971. The corporation deducted the $2,400 from its expenses in determining the amount of the expenses to be prorated among its tenant-stockholders. The amount paid by A to the corporation in 1972 is $1,140 instead of $1,380. More than 80 percent of the gross income of the corporation for 1971 was derived from tenant-stockholders. A is entitled under section 216 to a deduction of $743.48 in computing his taxable income for 1972. The deduction is computed as follows:

Expenses incurred by X Corporation	$13,800.00	
Less: Rent from business space	2,400.00	
Expenses to be prorated among tenant-stockholders		$11,400.00

Amount paid by A	1,140.00
A's proportionate share of real estate taxes and interest based on his stock ownership (1/10 of $9,000)	900.00
A's proportionate share of total corporate expenses based on his stock ownership (1/10 of $13,800)	1,380.00
Amount of A's payment representing real estate taxes and interest (900/1380 of $1,140)	743.48
A's allowable deduction	743.48

Since the portion of A's payment allocable to real estate taxes and interest is only $743.48, that amount instead of $900 is allowable as a deduction in computing A's taxable income for 1972.

Example (3). The facts are the same as in example (1) except that the amount paid by A to the X Corporation in 1972 is $1,000 instead of $1,380. A is entitled under section 216 to a deduction of $652.17 in computing his taxable income for 1972. The deduction is computed as follows:

Amount paid by A	$1,000.00
A's proportionate share of real estate taxes and interest based on his stock ownership (1/10 of $9,000)	900.00
A's proportionate share of total corporate expenses based on his stock ownership (1/10 of $13,800)	1,380.00
Amount of A's payment representing real estate taxes and interest (900/1380 of $1,000)	652.17
A's allowable deduction	652.17

Since the portion of A's payment allocable to real estate taxes and interest is only $652.17, that amount instead of $900 is allowable as a deduction in computing A's taxable income for 1972.

Example (4). The facts are the same as in example (1) except that X Corporation leases recreational facilities from Y Corporation for use by the tenant-stockholders of X. Under the terms of the lease, X is obligated to pay an annual rental of $5,000 plus all real estate taxes assessed against the facilities. In 1971 X paid, in addition to the $13,800 of expenses enumerated in example (1), $5,000 rent and $1,000 real estate taxes. In 1972 A pays the X Corporation $2,000, no part of which is refunded to him in 1972. A is entitled under section 216 to a deduction of $900 in computing his taxable income for 1972. The deduction is computed as follows:

Expenses to be prorated among tenant-stockholders	$19,800
Total amount paid by A	2,000
A's proportionate share of real estate taxes and interest based on stock ownership (1/10 of $9,000)	900
A's proportionate share of total corporate expenses based on his stock ownership (1/10 of $19,800)	1,980
Amount of A's payment representing real estate taxes and interest (900/1,980 of $1,980)	900
A's allowable deduction	900

The $1,000 of real estate taxes assessed against the recreational facilities constitutes additional rent and hence is not deductible by A as taxes under section 216. A's allowable deduction is limited to his proportionate share of real estate taxes and interest based on stock ownership and cannot be increased by the payment of an amount in excess of his proportionate share.

[F.R. Doc. 70-17436; Filed, Dec. 28, 1970; 8:48 a.m.]

[26 CFR Part 1]

INCOME TAX

Amortization of Pollution Control Facilities

Notice is hereby given that the regulations set forth in tentative form in the attached appendix are proposed to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury or his delegate. Prior to the final adoption of such regulations, consideration will be given to any comments or suggestions pertaining thereto which are submitted in writing, in quintuplicate, to the Commissioner of Internal Revenue, Attention: CC:LR:T, Washington, D.C. 20224, within the period of 30 days from the date of publication of this notice in the FEDERAL REGISTER. Any written comments or suggestions not specifically designated as confidential in accordance with 26 CFR 601.601(b) may be inspected by any person upon written request. Any person submitting written comments or suggestions who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his request, in writing, to the Commissioner within the 30-day period. In such case, a public hearing will be held, and notice of the time, place, and date will be published in a subsequent issue of the FEDERAL REGISTER. The proposed regulations are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

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

In order to conform the Income Tax Regulations (26 CFR Part 1) to reflect certain changes made by section 704 of the Tax Reform Act of 1969 (83 Stat. 667), relating to amortization of pollution control facilities, such regulations are hereby amended as set forth below. Section 1.169-4 of the regulations hereby adopted supersedes those provisions of § 13.0 of this chapter relating to section 169(b) of the Code, which were prescribed by T.D. 7032, approved March 9, 1970 (35 F.R. 4330).

PARAGRAPH 1. Section 1.169 is amended by deleting section 169 and adding a new section 169 and a historical note to read as follows:

§ 1.169 Statutory provisions; amortization of pollution control facilities.

Sec. 169. *Amortization of pollution control facilities*—(a) *Allowance of deduction.* Every person, at his election, shall be entitled to a deduction with respect to the amortization of the amortizable basis of any certified pollution control facility (as defined in subsection (d)), based on a period of 60 months. Such amortization deduction shall be an amount, with respect to each month of such period within the taxable year, equal to the amortizable basis of the pollution control facility at the end of such month divided by the number of months (including the month for which the deduction is computed) remaining in the period. Such amortizable basis at the end of the month shall be computed without regard to the amortization deduction for such month. The amortization deduction provided by this section with respect to any month shall be in lieu of the depreciation deduction with respect to such pollution control facility for such month provided by section 167. The 60-month period shall begin, as to any pollution control facility, at the election of the taxpayer, with the month following the month in which such facility was completed or acquired, or with the succeeding taxable year.

(b) *Election of amortization.* The election of the taxpayer to take the amortization deduction and to begin the 60-month period with the month following the month in which the facility is completed or acquired, or with the taxable year succeeding the taxable year in which such facility is completed or acquired, shall be made by filing with the Secretary or his delegate, in such manner, in such form, and within such time, as the Secretary or his delegate may by regulations prescribe, a statement of such election.

(c) *Termination of amortization deduction.* A taxpayer which has elected under subsection (b) to take the amortization deduction provided in subsection (a) may, at any time after making such election, discontinue the amortization deduction with respect to the remainder of the amortization period, such discontinuance to begin as of the beginning of any month specified by the taxpayer in a notice in writing filed with the Secretary or his delegate before the beginning of such month. The depreciation deduction provided under section 167 shall be allowed, beginning with the first month as to which the amortization deduction does not apply, and the taxpayer shall not be entitled to any further amortization deduction under this section with respect to such pollution control facility.

(d) *Definitions.* For purposes of this section—

(1) *Certified pollution control facility.* The term "certified pollution control facility" means a new identifiable treatment facility which is used, in connection with a plant or other property in operation before January 1, 1969, to abate or control water or atmospheric pollution or contamination by removing, altering, disposing, or storing of pollutants, contaminants, wastes, or heat and which—

(A) The State certifying authority having jurisdiction with respect to such facility has certified to the Federal certifying authority as having been constructed, reconstructed, erected, or acquired in conformity with the State program or requirements for abatement or control of water or atmospheric pollution or contamination; and

(B) The Federal certifying authority has certified to the Secretary or his delegate (i) as being in compliance with the applicable regulations of Federal agencies and (ii) as being in furtherance of the general policy of the United States for cooperation with the States in the prevention and abatement of water pollution under the Federal Water Pollution Control Act, as amended (33 U.S.C. 466 et seq.), or in the prevention and abatement of atmospheric pollution and contamination under the Clean Air Act, as amended (42 U.S.C. 1857 et seq.).

(2) *State certifying authority.* The term "State certifying authority" means, in the case of water pollution, the State water pollution control agency as defined in section 13(a) of the Federal Water Pollution Control Act and, in the case of air pollution, the air pollution control agency as defined in section 302(b) of the Clean Air Act. The term "State certifying authority" includes any interstate agency authorized to act in place of a certifying authority of the State.

(3) *Federal certifying authority.* The term "Federal certifying authority" means, in the case of water pollution, the Secretary of the Interior and, in the case of air pollution, the Secretary of Health, Education, and Welfare.

(4) *New identifiable treatment facility.* For purposes of paragraph (1), the term "new identifiable treatment facility" includes only tangible property (not including a building and its structural components, other than a building which is exclusively a treatment facility) which is of a character subject to the allowance for depreciation provided in section 167, which is identifiable as a treatment facility, and which—

(A) Is property—

(i) The construction, reconstruction, or erection of which is completed by the taxpayer after December 31, 1968, or

(ii) Acquired after December 31, 1968, if the original use of the property commences with the taxpayer and commences after such date, and

(B) Is placed in service by the taxpayer before January 1, 1975.

In applying this section in the case of property described in clause (i) of subparagraph (A), there shall be taken into account only that portion of the basis which is properly attributable to construction, reconstruction, or erection after December 31, 1968.

(e) *Profitmaking abatement works, etc.* The Federal certifying authority shall not certify any property under subsection (d)(1)(B) to the extent it appears that by reason of profits derived through the recovery of wastes or otherwise in the operation of such property, its costs will be recovered over its actual useful life.

(f) *Amortizable basis*—(1) *Defined.* For purposes of this section, the term "amortizable basis" means that portion of the adjusted basis (for determining gain) of a certified pollution control facility which may be amortized under this section.

(2) *Special rules.*—

(A) If a certified pollution control facility has a useful life (determined as of the first day of the first month for which a deduction is allowable under this section) in excess of 15 years, the amortizable basis of such facility shall be equal to an amount which bears the same ratio to the portion of the adjusted basis of such facility, which would be eligible for amortization but for the application of this subparagraph, as 15 bears to the number of years of useful life of such facility.

(B) The amortizable basis of a certified pollution control facility with respect to which an election under this section is in effect shall not be increased, for purposes of this section, for additions or improvements after the amortization period has begun.

(g) *Depreciation deduction.* The depreciation deduction provided by section 167 shall, despite the provisions of subsection (a), be allowed with respect to the portion of the adjusted basis which is not the amortizable basis.

(h) *Investment credit not to be allowed.* In the case of any property with respect to which an election has been made under subsection (a), so much of the adjusted basis of the property as (after the application of subsection (f)) constitutes the amortizable basis for purposes of this section shall not be treated as section 38 property within the meaning of section 48(a).

(i) *Life tenant and remainderman.* In the case of property held by one person for life with remainder to another person, the deduction under this section shall be computed as if the life tenant were the absolute owner of the property and shall be allowable to the life tenant.

(j) *Cross reference.* For special rule with respect to certain gain derived from the disposition of property the adjusted basis of which is determined with regard to this section, see section 1245.

[Sec. 169 as added by sec. 704, Tax Reform Act 1969 (83 Stat. 667)]

PAR. 2. Sections 1.169–1 through 1.169–8 are amended by deleting them and adding new §§ 1.169–1, 1.169–2, 1.169–3, and 1.169–4 to read as follows:

§ 1.169–1 Amortization of pollution control facilities.

(a) *Allowance of deduction*—(1) *In general.* Under section 169(a), every person, at his election, shall be entitled to a deduction with respect to the amortization of the amortizable basis (as defined in § 1.169–3) of any certified pollution control facility (as defined in § 1.169–2), based on a period of 60 months. Under section 169(b) and paragraph (a) of § 1.169–4, the taxpayer may further elect to begin such 60-month period either with the month following the month in which the facility is completed or acquired or with the first month of the taxable year succeeding the taxable year in which such facility is completed or acquired. Under section 169(c), a taxpayer who has elected under section 169(b) to take the amortization deduction provided by section 169(a) may, at any time after making such election and prior to the expiration of the 60-month amortization period, elect to discontinue the amortization deduction for the remainder of the 60-month period in the manner prescribed in paragraph (b)(1) of § 1.169–4. In addition, if on or before [the date of publication in the FEDERAL REGISTER of the regulations under section 169] an election under section 169(a) has been made, consent is hereby given to revoke such election without the consent of the Commissioner in the manner prescribed in (b)(2) of § 1.169–4.

(2) *Amount of deduction.* With respect to each month of such 60-month period which falls within the taxable year, the amortization deduction shall be an amount equal to the amortizable basis of the certified pollution control facility at the end of such month divided by the number of months (including the month for which the deduction is computed) remaining in such 60-month period. The amortizable basis at the end of any month shall be computed without regard to the amortization deduction for such month. The total amortization deduction with respect to a certified pollution control facility for a taxable year is the sum of the amortization deductions allowable for each month of the 60-month period which falls within such taxable year. If a certified pollution control facility is sold or exchanged or otherwise disposed of during 1 month, the amortization deduction (if any) allowable to the original holder in respect of such month shall be that portion of the amount to which such person would be entitled for a full month which the number of days in such month during which the facility was held by such person bears to the total number of days in such month.

(3) *Effect on other deductions.* (i) The amortization deduction provided by section 169 with respect to any month shall be in lieu of the depreciation deduction which would otherwise be allowable under section 167 or a deduction in lieu of depreciation which would otherwise be allowable under paragraph (b) of § 1.162–11 for such month.

(ii) If the adjusted basis of such facility as computed under section 1011 for purposes other than the amortization deduction provided by section 169 is in excess of the amortizable basis, as computed under § 1.169–3, such excess shall be recovered through depreciation deductions under the rules of section 167. See section 169(g).

(iii) See section 179 and paragraph (e)(1)(ii) of § 1.179–1 and paragraph (b)(2) of § 1.169–3 for additional first-year depreciation in respect of a certified pollution control facility.

(4) *Investment credit not to be allowed.* In the case of any property with respect to which an election has been made under section 169(a), so much of the adjusted basis of the property as constitutes the amortizable basis, as computed under § 1.169–3, shall not be treated as section 38 property within the meaning of section 48(a). See section 169(h).

(5) *Special rules.* (i) In the case of a certified pollution control facility held by one person for life with the remainder to another person, the amortization deduction under section 169(a) shall be computed as if the life tenant were the absolute owner of the property and shall be allowable to the life tenant during his life.

(ii) If the assets of a corporation which has elected to take the amortization deduction under section 169(a) are acquired by another corporation in a transaction to which section 381 (relating to carryovers in certain corporate acquisitions) applies, the acquiring corporation is to be treated as if it were the distributor or transferor corporation for purposes of this section.

(iii) For the right of estates and trusts to amortize pollution control facilities see section 642(f) and § 1.642(f)–1. For the allowance of the amortization deduction in the case of pollution control facilities of partnerships, see section 703 and § 1.703–1.

(6) *Depreciation subsequent to discontinuance or in the case of revocation of amortization.* A taxpayer which elects in the manner prescribed under paragraph (b)(1) of § 1.169–4 to discontinue amortization deductions or under paragraph (b)(2) of § 1.169–4 to revoke an election under section 169(a) with respect to a certified pollution control facility is entitled, if such facility is of a character subject to the allowance for depreciation provided in section 167, to a deduction for depreciation (to the extent allowable) with respect to such facility. In the case of an election to discontinue an amortization deduction, the deduction

for depreciation shall begin with the first month as to which such amortization deduction is not applicable and shall be computed on the adjusted basis of the property as of the beginning of such month (see section 1011 and the regulations thereunder). Such depreciation deduction shall be based upon the remaining useful life of the facility as determined, as of the first day of the first month as of which the amortization deduction is not applicable, by applying the rules contained in paragraph (b) of § 1.167(a)-1. If the taxpayer so elects to discontinue the amortization deduction under section 169(a), such taxpayer shall not be entitled to any further amortization deduction under this section and section 169(a) with respect to such pollution control facility. In the case of a revocation of an election under section 169(a), the deduction for depreciation shall begin as of the time such depreciation deduction would have been taken but for the election under section 169(a). See paragraph (b)(2) of § 1.169-4 for rules as to filing amended returns for years for which amortization deductions have been taken.

(b) *Examples.* This section may be illustrated by the following examples:

Example (1). On September 30, 1970, the X Corporation, which uses the calendar year as its taxable year, completes the installation of a pollution control facility which is certified in accordance with paragraph (c) of § 1.169-2. The cost of the facility is $120,000 and its useful life is 10 years. In accordance with the rules set forth in paragraph (a) of § 1.169-4, on its income tax return filed for 1970, X elects to take amortization deductions under section 169(a) with respect to the facility and to begin the 60-month amortization period with October 1970, the month following the month in which it was completed. The amortizable basis at the end of October 1970 (determined without regard to the amortization deduction under section 169(a) for that month) is $12,000. The allowable amortization deduction with respect to such facility for the taxable year 1970 is $6,000, computed as follows:

Monthly amortization deductions:	
October: $120,000 divided by 60	$2,000
November: $118,000 (that is, $120,000 minus $2,000) divided by 59	2,000
December: $116,000 (that is, $118,000 minus $2,000) divided by 58	2,000
Total amortization deduction for 1970	6,000

Example (2). Assume the same facts as in example (1). Assume further that on May 20, 1972, X properly files notice of its election to discontinue the amortization deductions with the month of June 1972. The adjusted basis of the facility as of June 1, 1972, is $80,000, computed as follows:

Yearly amortization deductions:	
1970 (as computed in example (1))	$6,000
1971 (computed in accordance with example (1))	24,000
1972 (for the first 5 months of 1972 computed in accordance with example (1))	10,000
Total amortization deductions for 20 months	40,000
Adjusted basis at beginning of amortization period	120,000
Less: Amortization deductions	40,000
Adjusted basis as of June 1, 1972	80,000

Beginning as of June 1, 1972, the deduction for depreciation under section 167 is allowable with respect to the property on its adjusted basis of $80,000.

§ 1.169-2 Definitions.

(a) *Certified pollution control facility*—(1) *In general.* The term "certified pollution control facility" means a "pollution control facility" described in subparagraph (2) of this paragraph (i) which is "a new identifiable facility" (as defined in paragraph (b) of this section) used in connection with a plant or other property in operation before January 1, 1969 (see subparagraphs (3), (4), and (5) of this paragraph) and (ii) which is certified in accordance with the rules prescribed in paragraph (c) of this section. See section 169(d). For profitmaking abatement works limitation, see paragraph (d) of this section.

(2) *Pollution control facility.* For purposes of subparagraph (1) of this paragraph, a "pollution control facility" is a facility used to abate or control water or atmospheric pollution or contamination by removing, altering, disposing, or storing of pollutants, contaminants, wastes, or heat. Determinations as to the meaning of the terms in the preceding sentence shall be made by the Federal certifying authority (see paragraph (c)(3) of this section).

(3) *In connection.* For purposes of subparagraph (1) of this paragraph, a pollution control facility is considered to be used in connection with a plant or other property if it is used in the process of abating or controlling pollution which the plant or other property would otherwise release into the atmosphere or water, regardless of whether such facility is affixed to such plant or other property.

(4) *Plant or other property.* As used in subparagraph (1) of this paragraph, the phrase "plant or other property" means any tangible property used in the trade or business or held for the production of income. Such term includes, for example, a papermill, a motor vehicle, or a furnace in an apartment house.

(5) *In operation before January 1, 1969.* (i) For purposes of subparagraph (1) of this paragraph and section 169(d), a plant or other property will be considered to be in operation before January 1, 1969, if prior to that date such plant or other property was actually performing the function for which it was constructed or acquired. For example, a papermill which is completed in July 1968, but which is not actually used to produce paper until 1969 would not be considered to be in operation before January 1, 1969. The fact that such plant or other property was only operating at partial capacity prior to January 1, 1969, or was being used as a standby facility prior to such date, shall not prevent its being considered to be in operation before such date.

(ii) A piece of machinery which replaces one which was in operation prior to January 1, 1969, and which was a part of the manufacturing operation carried on by the plant but which does not substantially increase the capacity of the plant will be considered to be in operation prior to January 1, 1969. However, an additional machine that is added to a plant which was in operation before January 1, 1969, and which represents an increase in the plant's capacity will not be considered to have been in operation before such date. In addition, if the replacement of equipment occurring after January 1, 1969, represents the replacement of a substantial portion of a manufacturing plant which had been in operation before such date, such replacement shall be considered to result in a new plant which was not in operation before such date. Thus, if a substantial portion of a plant which was in existence before January 1, 1969, is subsequently destroyed by fire and is replaced, such replacement property shall not be considered to have been in operation before January 1, 1969. In the case of a piece of equipment which is considered to have been in operation before January 1, 1969, see paragraph (b)(2)(iii) of this section for rules as to whether a pollution control device in such equipment is considered to be "separately identifiable as a treatment facility".

(b) *New identifiable facility*—(1) *In general.* For purposes of paragraph (a)(1) of this section, the term "new identifiable facility" includes only tangible property (not including a building and its structural components referred to in subparagraph (2)(i) of this paragraph, other than a building and its structural components which under subparagraph (2)(ii) of this paragraph is exclusively a treatment facility) which—

(i) Is of a character subject to the allowance for depreciation provided in section 167,

(ii) Is identifiable as a treatment facility (see subparagraph (2)(iii) of this paragraph),

(iii) (*a*) Is property the construction, reconstruction, or erection (as defined in subparagraph (2)(iv) of this paragraph) of which is completed by the taxpayer after December 31, 1968, or

(*b*) Is property acquired by the taxpayer after December 31, 1968, if the original use of the property commences with the taxpayer and commences after such date (see subparagraph (2)(iv) of this paragraph), and

(iv) Is placed in service (as defined in subparagraph (2)(v) of this paragraph) prior to January 1, 1975.

(2) *Meaning of terms.* (i) For purposes of subparagraph (1) of this paragraph, the terms "building" and "structural component" shall be construed in a manner consistent with the principles set forth in paragraph (e) of § 1.48-1. Thus, for example, the following rules are applicable:

(*a*) The term "building" generally means any structure or edifice enclosing a space within its walls, and usually

covered by a roof, the purpose of which is, for example, to provide shelter or housing, or to provide working, office, parking, display, or sales space. The term includes, for example, structures such as apartment houses, factory and office buildings, warehouses, barns, garages, railway or bus stations, and stores. Such term includes any such structure constructed by, or for, a lessee even if such structure must be removed, or ownership of such structure reverts to the lessor, at the termination of the lease. Such term does not include (*1*) a structure which is essentially an item of machinery or equipment, or (2) an enclosure which is so closely combined with the machinery or equipment which it supports, houses, or serves that it must be replaced, retired, or abandoned contemporaneously with such machinery or equipment, and which is depreciated over the life of such machinery or equipment. Thus, the term "building" does not include such structures as oil and gas storage tanks, grain storage bins, silos, fractioning towers, blast furnaces, coke ovens, brick kilns, and coal tipples.

(*b*) The term "structural components" includes, for example, chimneys, and other components relating to the operating or maintenance of a building. However, the term "structural components" does not include machinery or a device which serves no function other than the abatement or control of water or atmospheric pollution.

(ii) For purposes of subparagraph (1) of this paragraph, a building and its structural components will be considered to be exclusively a treatment facility if its only function is the abatement or control of air or water pollution. However, the incidental recovery of profits from wastes or otherwise shall not be deemed to be a function other than the abatement or control of air or water pollution. A building and its structural components which serve no function other than the treatment of wastes will be considered to be exclusively a treatment facility even if it contains areas for employees to operate the treatment facility, rest rooms for such workers, and an office for the management of such treatment facility. However, for example, a building, a portion of which is for the treatment of sewage and a portion of which is for the manufacture of machinery, would not be exclusively a treatment facility.

(iii) For purposes of subparagraph (1)(ii) of this paragraph, a facility shall be considered to be "identifiable as a treatment facility" if it meets the requirements referred to in paragraph (a) (2) of this section. However, the fact that certain costs can be specifically identified under cost accounting (including incremental cost) principles as being solely attributable to meeting State pollution control standards shall not be a basis for qualifying such costs, or any portion of the equipment to which such costs may be attributable, as an identifiable treatment facility.

(iv) For purposes of subparagraph (1) (iii) (*a*) and (*b*) of this paragraph (relating to construction, reconstruction, or erection after December 31, 1968, and original use after December 31, 1968) and paragraph (b)(1) of § 1.169–3 (relating to definition of amortizable basis), the principles set forth in paragraph (a) (1) and (2) of § 1.167(c)–1 and in paragraphs (b) and (c) of § 1.48–2 shall be applied. Thus, for example, the following rules are applicable:

(*a*) Property is considered as constructed, reconstructed, or erected by the taxpayer if the work is done for him in accordance with his specifications.

(*b*) The portion of the basis of property attributable to construction, reconstruction, or erection after December 31, 1968, consists of all costs of construction, reconstruction, or erection allocable to the period after December 31, 1968, including the cost or other basis of materials entering into such work (but not including, in the case of reconstruction of property, the adjusted basis of the property as of the time such reconstruction is commenced).

(*c*) It is not necessary that materials entering into construction, reconstruction or erection be acquired after December 31, 1968, or that they be new in use.

(*d*) If construction or erection by the taxpayer began after December 31, 1968, the entire cost or other basis of such construction or erection may be taken into account for purposes of determining the amortizable basis under section 169.

(*e*) Construction, reconstruction, or erection by the taxpayer begins when physical work is started on such construction, reconstruction, or erection.

(*f*) Property shall be deemed to be acquired when reduced to physical possession or control.

(*g*) The term "original use" means the first use to which the property is put, whether or not such use corresponds to the use of such property by the taxpayer. For example, a reconditioned or rebuilt machine acquired by the taxpayer after December 31, 1968, for pollution control purposes will not be treated as being put to original use by the taxpayer regardless of whether it was used for purposes other than pollution control by its previous owner. Whether property is reconditioned or rebuilt property is a question of fact. Property will not be treated as reconditioned or rebuilt merely because it contains some used parts.

(v) For purposes of subparagraph (1) (iv) of this paragraph (relating to property placed in service prior to Jan. 1, 1975), the principles set forth in paragraph (d) of § 1.46–3 are applicable. Thus, property shall be considered placed in service in the earlier of the following taxable years:

(*a*) The taxable year in which, under the taxpayer's depreciation practice, the period for depreciation with respect to such property begins or would have begun; or

(*b*) The taxable year in which the property is placed in a condition or state of readiness and availability for the abatement or control of water or atmospheric pollution.

Thus, if property meets the conditions of (*b*) of this subdivision in a taxable year, it shall be considered placed in service in such year notwithstanding that the period for depreciation with respect to such property begins or would have begun in a succeeding taxable year because, for example, under the taxpayer's depreciation practice such property is or would have been accounted for in a multiple asset account and depreciation is or would have been computed under an "averaging convention" (sec § 1.167(a)–(10), or depreciation with respect to such property would have been computed under the completed contract method, the unit of production method, or the retirement method. In the case of property acquired by a taxpayer for use in his trade or business (or in the production of income), property shall be considered in a condition or state of readiness and availability for the abatement or control of water or atmospheric pollution if, for example, equipment is acquired for the abatement or control of water or atmospheric pollution and is operational but is undergoing testing to eliminate any defects. However, materials and parts acquired to be used in the construction of an item of equipment shall not be considered in a condition or state of readiness and availability for the abatement or control of water or atmospheric pollution.

(c) *Certification*—(1) *In general.* For purposes of paragraph (a)(1) of this section, a pollution control facility is certified in accordance with the rules prescribed in this paragraph if—

(i) The State certifying authority (as defined in subparagraph (2) of this paragraph) having jurisdiction with respect to such facility has certified to the Federal certifying authority (as defined in subparagraph (3) of this paragraph) that the facility was constructed, reconstructed, erected, or acquired in conformity with the State program or requirements for the abatement or control of water or atmospheric pollution or contamination applicable at the time of such certification, and

(ii) The Federal authority has certified such facility to the Secretary or his delegate as (*a*) being in compliance with the applicable regulations of Federal agencies (such as, for example, the Atomic Energy Commission's regulations pertaining to radiological discharge (10 CFR Part 20)) and (*b*) being in furtherance of the general policy of the United States for cooperation with the States in the prevention and abatement of water pollution under the Federal Water Pollution Control Act, as amended (33 U.S.C.A. 1151–1175) or in the prevention and abatement of atmospheric pollution and contamination under the Clean Air Act, as amended (42 U.S.C.A. 1857 et seq.).

(2) *State certifying authority.* The term "state certifying authority" means—

(i) In the case of water pollution, the State water pollution control agency as defined in section 23(a) of the Federal Water Pollution Control Act, as amended (33 U.S.C.A. 1173(a)),

(ii) In the case of air pollution, the State air pollution control agency as defined in section 302(b) of the Clean Air Act, as amended (42 U.S.C.A. 1857h(b)), and

(iii) Any interstate agency authorized to act in place of a certifying authority of a State. See section 23(a) of the Federal Water Pollution Control Act, as amended (33 U.S.C.A. 1173(b)) and section 302(c) of the Clean Air Act, as amended (42 U.S.C.A. 1857h(c)).

(3) *Federal certifying authority.* The term "Federal certifying authority" means the Administrator of the Environmental Protection Agency (see Reorganization Plan No. 3 of 1970, 35 F.R. 15623).

(d) *Profitmaking abatement works, etc.*—(1) *In general.* Section 169(e) provides that the Federal certifying authority shall not certify any property to the extent it appears that, by reason of estimated profits to be derived through the recovery or reuse of wastes or otherwise (whether in the form of tangible materials or intangible pollutants or nonpollutants) in the operation of such property, its costs will be recovered over its actual useful life. For effect on computation of amortizable basis, see paragraph (c) of § 1.169–3.

(2) *Estimated profits.* For purpose of this paragraph, the term "estimated profits" means—

(i) In the case of tangible materials or intangibles sold, such as, for example, gases, minerals, compounds, or heat, the estimated gross receipts from such sale reduced by the sum of the (*a*) estimated average annual maintenance and operating expenses, including utilities and labor, allocable to that portion of the pollution control facility which produces the recovered waste from which the gross receipts are derived, and (*b*) estimated selling expenses. However, in determining expenses to be subtracted neither depreciation nor amortization of the pollution control facility is to be taken into account.

(ii) In the case of such tangible materials or intangibles reused, the estimated savings to the taxpayer because of such reuse. Such savings shall be estimated in accordance with generally accepted accounting principles used in the taxpayer's trade or industry. However, in determining expenses to be subtracted neither depreciation nor amortization of the pollution control facility is to be taken into account.

(3) *Special rules.* The estimates of cost recovery required by subparagraph (2) of this paragraph shall be based on the estimated useful life of the facility as that term is used in paragraph (b) of § 1.167(a)–1. Such estimates shall be made at the time the application for certification is made to the Federal certifying authority. There shall be no redetermination of estimated profits due to unanticipated fluctuations in the market price for wastes or other items, to an unanticipated increase or decrease in the costs of extracting them from the gas or liquid released, or to other unanticipated factors or events occurring after certification.

§ 1.169–3 **Amortizable basis.**

(a) *In general.* The amortizable basis of a certified pollution control facility for the purpose of computing the amoritzation deduction under section 169 is the adjusted basis of such facility for purposes of determining gain (see part II (section 1011 and following) subchapter O, chapter 1 of the Code), as modified by paragraphs (b), (c), and (d) of this section. For rules as to additions and improvements to such a facility, see paragraph (f) of this section.

(b) *Limitation to post-1968 construction, reconstruction, or erection.* (1) If the construction, reconstruction, or erection was begun before January 1, 1969, there shall be included in the amortizable basis only so much of the adjusted basis of such facility for purposes of determining gain (referred to in paragraph (a) of this section) as is properly attributable under the rules set forth in paragraph (b)(2)(iv) of § 1.169–2 to construction, reconstruction, or erection after December 31, 1968. See section 169(d)(4). For example, a certified pollution control facility with a useful life of 10 years and a cost of $500,000, of which $450,000 is attributable to construction after December 31, 1968, would have an amortizable basis of $450,000 (computed without regard to paragraphs (c) and (d) of this section). For depreciation of the remaining portion ($50,000) of the cost, see section 169(g) and paragraph (a)(3)(ii) of § 1.169–1. For the definition of the term "certified pollution control facility" see paragraph (a) of § 1.169–2.

(2) If the taxpayer elects to begin the 60-month amortization period with the first month of the taxable year succeeding the taxable year in which such facility is completed or acquired and a depreciation deduction is allowable under section 167 (including an additional first-year depreciation allowance under section 179) with respect to the facility for the taxable year in which it is completed or acquired, the amount determined under subparagraph (1) of this paragraph shall be reduced by an amount equal to (i) the amount of such allowable depreciation multiplied by (ii) a fraction the numerator of which is the amount determined under subparagraph (1) of this paragraph, and the denominator of which is its total cost. The additional first-year allowance for depreciation under section 179 will be allowable only for the year in which the facility is completed or acquired and only if the taxpayer elects to begin the amortization deduction under section 169 with the taxable year succeeding the taxable year in which such facility is completed or acquired. See paragraph (e)(1)(ii) of § 1.179–1.

(c) *Modification for profitmaking abatement works, etc.* If it appears that by reason of estimated profits to be derived through the recovery of wastes or otherwise (as determined by applying the rules prescribed in paragraph (d) of § 1.169–2) a portion or all of the total costs of the certified pollution control facility will be recovered over its actual useful life, its amortizable basis (computed without regard to this paragraph and paragraph (d) of this section) shall be reduced by an amount equal to (1) its amortizable basis (so computed) multiplied by (2) a fraction the numerator of which is such estimated profits and the denominator of which is its total cost. See section 169(e).

(d) *Useful life exceeding 15 years.* If a certified pollution control facility has an actual useful life in excess of 15 years (determined as of the first day of the first month for which a deduction is allowable under the election made under section 169(b) and paragraph (a) of § 1.169–4) the amortizable basis of such facility shall be an amount equal to (1) the portion of the adjusted basis of such facility which would be eligible for amortization but for the application of section 169(f)(2)(A) and this paragraph multiplied by (2) a fraction the numerator of which is 15 years and the denominator of which is the number of years of its actual useful life (so determined).

(e) *Example.* This section may be illustrated by the following example:

Example. The X Corporation, which uses the calendar year as its taxable year, began the installation of a pollution control facility with a useful life of 20½ years on November 1, 1968, and completed the installation on June 30, 1970, at a cost of $400,000 of which $40,000 is attributable to construction prior to January 1, 1969. The X Corporation elects to take amortization deductions under section 169(a) with respect to the facility and to begin the 60-month amortization period with January 1, 1971. The corporation takes a depreciation deduction under sections 167 and 179 of $10,000 (the amount allowable, of which $2,000 is for additional first year depreciation under section 179) for the last 6 months of 1970. It is estimated that over the actual useful life of the facility $80,000 in profits will be realized from the sale of wastes recovered in its operation. The amortizable basis of the facility for purposes of computing the amortization deduction as of January 1, 1971 is $210,000, computed as follows:

(1) Portion of $400,000 cost attributable to post-1968 construction, reconstruction, or erection		$360,000
(2) Reduction for portion of depreciation deduction taken for the taxable year in which the facility was completed:		
(a) $10,000 depreciation deduction taken for last 6 months of 1970 including $2,000 for additional first year depreciation under section 179	$10,000	
(b) Multiplied by the amount in line (1) and divided by the total cost of the facility ($360,000/$400,000)	0.9	$9,000

(3) Subtotal	$351,000
(4) Modification for profit making abatement works: Multiply line (3) by estimated profits through waste recovery ($80,000) and divide by total cost of facility ($400,000)	
(5) Reduction	$70,200
(6) Subtotal	$280,800
(7) Modification for useful life exceeding 15 years: Multiply by 15 years and divide by useful life (determined in accordance with paragraph (d) of this section) (20 years)	0.75
(8) Amortizable basis	$210,600

(f) *Additions or improvemtnts.* (1) If after the completion or acquisition of a certified pollution control facility further expenditures are made for additional construction, reconstruction, or improvements, the cost of such additions or improvements made prior to the beginning of the amortization period shall increase the amortizable basis of such facility, but the cost of additions or improvements made after the amortization period has begun shall not increase the amortizable basis. See section 169(f)(2)(B).

(2) If expenditures for such additional construction, reconstruction, or improvements result in a facility which is new and is separtely certified as a certified pollution control facility as defined in section 169(d)(1) and paragraph (a) of § 1.169-2, and, if proper election is new and is separately certified as a certo into account in computing under paragraph (a) of this section the amortizable basis of such new and separately certified pollution control facility.

§ 1.169-4 Time and manner of making elections.

(a) *Election of amortization*—(1) *In general.* Under section 169(b), an election by the taxpayer to take an amortization deduction with respect to a certified pollution control facility and to begin the 60-month amortization period (either with the month following the month in which the facility is completed or acquired, or with the first month of the taxable year succeeding the taxable year in which such facility is completed or acquired) shall be made by a statement to that effect attached to its return for the taxable year in which falls the first month of the 60-month amortization period so elected. Such statement shall include the following information:

(i) A description clearly identifying each certified pollution contro facility for which an amortization deduction is claimed;

(ii) The date on which such facility was completed or acquired (see paragraph (b)(2)(iv) of § 1.169-2);

(iii) The actual useful life of the facility as of the date the property is placed in service;

(iv) The date as of which the amortization period is to begin;

(v) The date the plant or other property to which the facility is connected began operating (see paragraph (a)(5) of § 1.169-2);

(vi) The total costs and expenditures paid or incurred in the acquisition, construction, and installation of such facility;

(vii) A description of any tangible materials or intangibles which the facility will recover during the course of its operation, and a reasonable estimate of the profits which will be realized by the sale or reuse of such tangible materials or intangibles, whether pollutants or otherwise, over the actual useful life of the facility. Such estimate shall include a schedule setting forth a detailed computation illustrating how the estimate was arrived at including every element prescribed in the definition of estimated profits in paragraph (d)(2) of § 1.169-2;

(viii) A computation showing the amortizable basis (as defined in § 1.169-3) of the facility as of the first month for which the amortization deduction provided for by section 169(a) is elected; and

(ix) A statement that the facility has been certified by the Federal certifying authority, together with a copy of such certification, and a copy of the application for certification which was filed with and approved by the Federal certifying authority.

(2) *Late certification.* If a pollution control facility has not been certified by the proper certifying authority within 90 days before the date on which the return described in this paragraph is due, the election may be made by a statement in an amended income tax return for the taxable year in which falls the first month of the 60-month amortization period so elected. The statement and amended return in such case must be filed not later than 90 days after the date the facility is certified by the Federal certifying authority. Amended income tax returns or claims for credit or refund must also be filed at this time for other taxable years which are within the amortization period and which are subsequent to the taxable year for which the election is made. Nothing in this paragraph should be construed as extending the time specified in section 6511 within which a claim for credit or refund may be filed.

(3) *Other requirements and considerations.* No method of making the election provided for in section 169(a) other than that prescribed in this section shall be permitted on or after [the date of publication in the FEDERAL REGISTER of the regulations under section 169]. A taxpayer which does not elect in the manner prescribed in this section to take amortization deductions with respect to a certified pollution control facility shall not be entitled to such deductions. In the case of a taxpayer which elects prior to [such date], the statement required by subparagraph (1) of this paragraph shall be attached to its income tax return for its taxable year in which [such date] occurs.

(b) *Election to discontinue or revoke amortization*—(1) *Election to discontinue.* An election to discontinue the amortization deduction provided by section 169(c) and paragraph (a)(1) of § 1.169-1 shall be made by a statement in writing filed with the district director, or with the director of the internal revenue service center, with whom the return of the taxpayer is required to be filed for its taxable year in which falls the first month for which the election terminates. Such statement shall specify the month as of the beginning of which the taxpayer elects to discontinue such deductions. Unless the election to discontinue amortization is one to which subparagraph (2) of this paragraph applies, such statement shall be filed before the beginning of the month specified therein. In addition, such statement shall contain a description clearly identifying the certified pollution control facility with respect to which the taxpayer elects to discontinue the amortization deduction and a copy of the certification by the Federal certifying authority. For purposes of this paragraph, notification to the Secretary or his delegate from the Federal certifying authority that the facility no longer meets the requirements under which certification was originally granted by the State or Federal certifying authority shall have the same effect as a notice from the taxpayer electing to terminate amortization as of the month following the month such facility ceased functioning in accordance with such requirements.

(2) *Revocation of elections made prior to [the date of publication in the Federal Register of the regulations under section 169].* If on or before [such date] an election under section 169(a) has been made, such election may be revoked (see paragraph (a)(1) of § 1.169-1) by filing on or before [the 90th day after the date] a statement of revocation of an election under section 169(a) in accordance with the requirements in subparagraph (1) of this paragraph for filing a notice to discontinue an election. If such election to revoke is for a period which falls within one or more taxable years for which an income tax return has been filed, amended income tax returns shall be filed for any such taxable years in which deductions were taken under section 169 on or before [such 90th day].

PAR. 3. Paragraph (e)(1) of §1.179-1 is amended to read as follows:

§ 1.179-1 Additional first-year depreciation allowance.

* * * * *

(e) *When allowance is available.* (1) * * *

(ii) In the case of property which the taxpayer elects to amortize under any provision listed in subdivision (iii) of this subparagraph and which property also qualifies as section 179 property, the additional first-year depreciation allowance is not available (except as provided in this subdivision) unless the taxpayer elects under the applicable provision to begin the amortization deductions under such provision with the succeeding taxable year. If the taxpayer elects to begin the amortization deductions with the month following the month in which the property was completed or acquired or was placed in service (as the case may be), and the property qualifies as

section 179 property, the additional first-year allowance is available only with respect to that portion of the property which is not amortizable under the applicable provision. If 100 percent of the property is amortizable under the applicable provision, and if the taxpayer elects under the applicable provision to begin the amortization deductions under such provision with such following month, no additional first-year allowance is available with respect to any portion of the property.

(iii) The provisions of subdivision (ii) of this subparagraph shall apply in the case of the following:

(*a*) An emergency facility which the taxpayer elects to amortize under the provisions of section 168.

(*b*) A certified pollution control facility which the taxpayer elects to amortize under the provisions of section 169.

* * * * *

PAR. 4. Section 1.642(f) is amended by revising section 642(f), and by adding a historical note. These amended and added provisions read as follows:

§ 1.642(f) Statutory provisions; estates and trusts; special rules for credits and deductions; amortization deductions.

Sec. 642. *Special rules for credits and deductions.* * * *

(f) *Amortization deductions.* The benefit of the deduction for amortization provided by sections 168, 169, 184, and 187 shall be allowed to estates and trusts in the same manner as in the case of an individual. The allowable deduction shall be apportioned between the income beneficiaries and the fiduciary under regulations prescribed by the Secretary or his delegate.

[Sec. 642(f) as amended by sec. 704(b)(2), Tax Reform Act 1969 (83 Stat. 669)]

PAR. 5. Section 1.642(f)–1 is amended to read as follows:

§ 1.642(f)–1 Amortization deductions.

An estate or trust is allowed amortization deductions with respect to an emergency facility as defined in section 168(d), with respect to a certified pollution control facility as defined in section 169(d), with respect to qualified railroad rolling stock as defined in section 184(d), and with respect to certified coal mine safety equipment as defined in section 187(d), in the same manner and to the same extent as in the case of an individual. However, the principles governing the apportionment of the deductions for depreciation and depletion between fiduciaries and the beneficiaries of an estate or trust (see sections 167(h) and 611(b) and the regulations thereunder) shall be applicable with respect to such amortization deductions.

PAR. 6. Section 1.1082 is amended by revising subparagraph (B) of section 1082(a)(2) and by adding a historical note. These revised and added provisions read as follows:

§ 1.1082 Statutory provisions; basis of property acquired in exchanges and distributions made in obedience to orders of the Securities and Exchange Commission.

Sec. 1082. *Basis for determining gain or loss*—(a) *Exchanges generally.* * * *

(2) *Exchanges subject to the provisions of section 1081(b).* * * *

(B) Property (not described in subparagraph (A)) with respect to which a deduction for amortization is allowable under sections 168, 169, 184, 185, or 187;

* * * * *

[Sec. 1082 as amended by sec. 704(b)(3), Tax Reform Act, 1969 (83 Stat. 669)]

[F.R. Doc. 70–17472; Filed, Dec. 28, 1970; 8:48 a.m.]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Part 75]

[Airspace Docket No. 70–WA–31]

AREA HIGH ROUTES

Proposed Designation; Extension of Comment Period

In a notice of proposed rule making published in the FEDERAL REGISTER on November 26, 1970 (35 F.R. 18125), and amended on December 3, 1970 (35 F.R. 18402), it was stated that the Federal Aviation Administration (FAA) proposed designation of four area high routes between New York City, N.Y., and Oakland, Calif./Los Angeles, Calif. In accordance with the terms of the notice, the time for public comment was to expire on December 26, 1970.

The Department of the Air Force has requested an extension of the comment period to establish a position relative to this proposal. The FAA considers that such an extension is justified. Accordingly, notice is hereby given that all comments received on Airspace Docket No. 70–WA–31 on or before January 11, 1971, will be considered by the Federal Aviation Administration before action is taken on the regulatory action proposed therein.

Communications should be submitted in triplicate to the Federal Aviation Administration, Office of the General Counsel, Attention: Rules Docket, 800 Independence Avenue SW., Washington, DC 20590.

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

Issued in Washington, D.C., on December 23, 1970.

T. MCCORMACK,
Acting Chief, Airspace and Traffic Rules Division.

[F.R. Doc. 70–17494; Filed, Dec. 28, 1970; 8:52 a.m.]

[14 CFR Part 152]

[Docket No. 10747; Notice 70–50]

AIRPORT DEVELOPMENT AID

Notice of Proposed Rule Making

The Federal Aviation Administration is considering the issue of regulations implementing the Airport Development Aid Program and Planning Grant Program under the Airport and Airway Development Act of 1970 (Public Law 91–258, 84 Stat. 219 et seq.). The determination of whether to publish a notice of proposed rule making where the matter relates to public grants, benefits, and contracts, is discretionary with the Administrator. This notice, however, is published in consonance with a policy of soliciting public participation in rule making where the change is of interest to the public.

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to: Federal Aviation Administration, Office of the General Counsel, Attention: Rules Docket, GC–24, 800 Independence Avenue SW., Washington, DC 20590. All communications received on or before March 1, 1971, will be considered by the Administrator before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

The Airport and Airway Development Act of 1970 authorizes the Secretary of Transportation to exercise the regulatory functions set forth in Part II of the Act (sections 11 through 27). The Secretary has delegated that authority to the Administrator of the Federal Aviation Administration (35 F.R. 17044), except with respect to certain provisions for approval, hearings, air and water quality, and airport site selection with respect to any project as to which opposition is stated, whether expressly or by proposed revision, by any Federal, State, or local government agency or by a substantial number of persons, other than one of those agencies.

Part 151 of the Federal Aviation Regulations prescribes the policies and procedures for administering the Federal-aid Airport Program under the Federal Airport Act. Until that program is completely phased out, Part 151 will continue to govern projects and grants made under that Act. Section 52(c) of the 1970 Act continues in effect all orders, determinations, rules, regulations, permits, contracts, certificates, licenses, grants, rights, and privileges issued, made, granted or allowed to become effective under the Federal Airport Act until appropriately terminated.

Regulations are now proposed to prescribe the policies and procedures for administering the provisions for the Planning Grant Program and the Airport Development Aid Program. The development program regulations in large part are the same as existing substantive provisions of Part 151.

Section 151.72 now provides for incorporation by reference of technical guidelines contained in certain advisory circulars as mandatory standards. The proposed regulations will likewise incorporate these mandatory standards, and

the circulars will be updated and properly referenced. The proposed regulations likewise will reflect any relevant proposal to amend Part 151 that is made before their issuance. Thus, Notice 70–13, issued March 11, 1970 (35 F.R. 4864) proposed requiring the sponsor of any project under the Federal-Aid Airport Program that includes lighting facilities to provide for installing an approach airport beacon if one is not already installed on the airport.

In view of the ready accessibility of Part 151 to all interested persons and the large volume of the new regulations that will include substantive provisions already printed in Part 151, the proposed regulations are not set forth in full here. A number of changes are required under the 1970 Act or will be made to reflect changes in, or extensions of, policy. Still other changes will be made for clarifying and certain other purposes. These changes are described in detail herein.

A. *Changes required under the 1970 Act.* The Airport and Airway Development Act of 1970 is in large measure patterned after the Federal Airport Act. There are parallel provisions for such matters as national planning of public airport development, grants for airport development, distribution of funds, submission and approval of projects, United States' share of project costs, project sponsorship, grant agreements, allowable project costs, payments under grant agreements, and performance of construction work.

Some departures, in the substantive provisions of the 1970 Act, from those in the prior Act now require the issuance of regulations that are changed from the Part 151 regulations. Reference is made, wherever pertinent, to the Part 151 section that will be used in changed form.

(1) Wherever appropriate (whether or not other changes are to be made) the new terminology of the 1970 Act will be used. Thus, the terms "Airport Development Aid Program," "Airport and Airway Development Act of 1970," and "National Airport System Plan" will be substituted for the terms "Federal-Aid Airport Program," "Federal Airport Act," and "National Airport Plan," respectively.

(2) The 1970 Act provides for two kinds of planning for development purposes. The first is designated "airport master planning," and it is concerned with the development for planning purposes of information and guidance to determine the extent, type, and nature of development needed at a specific airport. The second is designated "airport system planning," and it is concerned with the development for planning purposes of information and guidance to determine the extent, type, nature, location, and timing of airport development needed in a specific area.

Section 13 of the 1970 Act authorizes the grant of funds to planning agencies for airport system planning, and to public agencies for airport master planning, with specific limitations on the amount and apportionment of grants. The proposed regulations will fully implement this portion of the 1970 Act. Appropriate general provisions will incorporate the statutory limitations that a grant under the program may not exceed two-thirds of the cost incurred in the accomplishment of the planning project, and that not more than 7½ percent of the available funds in any fiscal year may be allocated for projects within a single State, Puerto Rico, the Virgin Islands, or Guam. The general provisions will also provide for charging of grants to States in proportion to the number of square miles the project encompasses in each of more than one State.

Appropriate regulations will cover sponsor eligibility. Here the legal, financial, and other eligibility criteria will be substantially the same as those for sponsor eligibility for an airport development project. However, one difference necessary under the language of the 1970 Act requires a sponsor to be a "planning agency" (as defined in the Act) in the case of a planning grant with respect to an airport system planning project. A sponsor of an airport master planning grant will, as in the case of an airport development project, be a "public agency," as defined.

The proposed regulations will include appropriate new provisions covering project eligibility and application procedures for each kind of planning grant, for grant agreements, for allowable costs, and for payments, accounting, and audit.

As to airport master planning, a project will be required to be one for a public airport location that is included in the current National Airport System Plan. It is anticipated that the following items will be eligible: Inventory of existing airport facilities and related data/plans; forecasts of aviation demand; demand/capacity analyses; facility requirement determinations; environmental impact studies; site selection; airport layout plans; land use plans; terminal area plans; airport access plans/studies; schedules of proposed/staged development; estimates of development costs; economic feasibility studies of proposed development; financial plans for development capital; and printing of master plans.

As to airport system planning, it is anticipated that the following items will be eligible: Inventories of existing airport facilities and related data/plans; review of land use and ground transportation planning and environmental/ecological considerations; aviation demand forecasts; airfield, terminal area, access capacity analyses; airspace analyses; facility requirement determinations; schedules of plan implementation; estimates of development costs; financial plans for development capital; and printing of system plans. The proposed regulations will specify that the master planning project elements for a specific airport will not be eligible for funding in the development of airport system plans.

Application procedures will be provided for each kind of planning grant, including new FAA forms for the purpose. Before submitting an application as to a planning project to be accomplished with its own personnel, the sponsor will be required to obtain the written consent of the appropriate FAA office, and in so doing the sponsor will be required to submit assurance that competent personnel are available to satisfactorily accomplish the proposed planning; a detailed schedule of costs and charges for professional, technical, and other personnel, and for equipment, material, and other relevant cost items; and a firm schedule for timely accomplishment of the project. As to airport master planning, the proposed regulations will require a request for a grant to be accompanied by the current airport layout plan if in existence, and by material showing the project scope and the basis for estimated costs. As to airport system planning, the proposed regulations will require a request for a grant to be accompanied by a study design or other similar material showing the scope of the planning project, and by material showing the basis for estimated costs.

The proposed regulations will provide that any change in the grant agreement for planning may not increase the maximum obligation of the United States under the grant agreement. In this respect, a difference will exist from the 10 percent increase allowable in the case of airport development that is specifically included in section 19 of the 1970 Act (as well as in the Federal Airport Act).

To be an allowable cost under a planning grant, under the proposed regulations a cost will be required to have been necessary to accomplish airport planning in conformity with an approved project and with the terms of the grant agreement for the project, to be reasonable in amount, to have been incurred after the execution of the grant agreement, and to be supported by satisfactory evidence. The proposed regulations on planning projects will be consistent with Bureau of the Budget Circular A–87 (Principles for determining costs applicable to grants and contracts with State and local governments), issued May 9, 1968. However, since most of the engineering work will be performed under third-party contracts, administrative costs will only be allowed in connection with force account work, which most have prior FAA approval.

As to payments for planning costs, the proposed regulations will provide for payments in the same manner as in the case of the Airport Development Aid Program. The final payment will be made, upon the sponsor's request, after the conditions of the planning grant agreement have been met; a showing of cost as to each item has been submitted; and an audit has been made of submitted material or of the sponsor's records, if the FAA considers this desirable. An appropriate FAA form will be made available for applications for grant payments. The proposed regulations will include appropriate provisions for required adequate accounting records, with segregated information affecting cost of developing airport system plans and cost of developing airport system plans; for a 3-year retention period as to invoices, cost estimates, payrolls, and evidence of payment of project costs; and for audits.

(3) Paragraph (a) of § 151.3—*National Airport Plan*, provides for the yearly preparation of a "National Airport Plan" for developing public airports in the United States, Puerto Rico, the Virgin Islands, and Guam. Section 12(a) of the Airport and Airway Development Act of 1970 provides instead for preparation within 2 years, and subsequent review and revision as necessary, of a "National Airport System Plan" for developing public airports in the United States. The proposed regulations will incorporate this change. In this connection, section 12(a) mentions only the United States. However, since section 12(a) also provides that the plan shall include all types of airport development eligible for Federal aid under section 14, and the latter section includes authority for grants for airport developments in Puerto Rico, the Virgin Islands, and Guam, it apparently is contemplated that the plan should encompass development of public airports in those areas as well as in the United States.

(4) Sections 8 and 9 of the Federal Airport Act includes provisions for "Advance Planning and Engineering Grants." These provisions are implemented by Subpart D of Part 151—*Rules and Procedures for Advance Planning and Engineering Proposals*. The Airport and Airway Development Act of 1970 does not provide for these grants, therefore the proposed regulations will not include provisions similar to these in Subpart D of Part 151. Accordingly, the limitation on projects to civil aviation needs in paragraph (b)—*Safe, useful, and usable unit*, in § 151.5 (*General policies*) will not encompass advance planning or engineering proposals. Instead, this paragraph will apply to projects for airport master planning (see item (2) above).

The general policies on grant of funds in paragraph (a) of § 151.7—*Compliance with sponsorship requirements*, now refer to airport planning and engineering, and in paragraph (b)(1) of § 151.7—*Small proposals and projects*, now exclude from the Federal-Aid Airport Program a project with an advance planning and engineering proposal involving no more than $1,000 of U.S. funds. The proposed general policies will not include these items.

(5) Section 151.65—*Memoranda and hearings*, responsive to the provisions of section 9(e) of the Federal Airport Act, provides that a person having a substantial interest in the disposition of any application by the Administrator may file a memorandum in support of, or in opposition to, the application, and that such person shall be accorded, upon request, a public hearing with respect to the location of any airport the development of which is proposed.

Section 16(d) of the 1970 Act prohibits the approval of an airport development project involving the location of an airport, an airport runway, or a runway extension unless the public agency sponsoring the project certifies that there has been afforded the opportunity for public hearing for the purpose of considering the economic, social, and environmental effects of the airport location and its consistency with the goals and objectives of such urban planning as has been carried out by the community. When hearings are held, the sponsor must submit a copy of the transcript to the Administrator upon request.

The proposed regulations will require an eligible sponsor to accompany his application for aid for eligible airport development with evidence to show he has complied with these hearing requirements, that are now directed to him, as set forth in full in the rules. The regulations will provide for published 2-week notice; for a hearing where requested by a person with a significant social, economic, or environmental interest in the matter; for a hearing procedure; and for submission of a transcript. They will also provide for review and evaluation of the transcript to assist the Administrator in making determinations for approval of projects found to have adverse effects on natural resources, after the required consultation with the Department of the Interior and the Department of Health, Education, and Welfare pursuant to section 16(c)(4) of the 1970 Act (see item A.8 below).

(6) The Airport and Airway Development Act of 1970 includes in its definition of "airport development" work with respect to navigation aids; safety equipment required by regulation for certification of the airport under the new section 612 of the Federal Aviation Act of 1958 (operating certificates for airports serving air carriers certificated by the Civil Aeronautics Board); and acquisition of land for future airport development. Accordingly, the proposed regulations will specifically include these three categories in airport development to which the rules and procedures for airport development projects and project programing standards will apply.

(7) Section 151.37—*Sponsor eligibility*, includes the United States or an agency thereof as an eligible sponsor, pursuant to the definition of "public agency" in the Federal Airport Act. The 1970 Act does not include the United States in its definition of "public agency," therefore the proposed rule will not provide for eligibility of the United States as a sponsor.

(8) As a provision that is not in the Federal Airport Act, section 16(c)(4) of the Airport and Airway Development Act of 1970 prohibits the approval of any airport development project involving airport location, a major runway extension, or runway location that is found to have an adverse effect on natural resources, including fish and wildlife, natural, scenic, and recreation assets, water and air quality, and other factors affecting the environment unless, after consultation with the Secretaries of the Interior and Health, Education, and Welfare, it is found that no feasible and prudent alternative exists and that all possible steps have been taken to minimize such adverse effect. Under the proposed regulations, this will be made a condition to the approval of the project.

(9) Also as a provision that is not in the Federal Airport Act, section 16(e) of the Airport and Airway Development Act of 1970 prohibits the approval of any project application for a project involving airport location, a major runway extension, or runway location unless the Governor of the State in which the project may be located certifies in writing that there is reasonable assurance that the project will be located, designed, constructed, and operated so as to comply with applicable air and water quality standards. Where such standards have not been approved or where they have been promulgated by the Secretary of the Interior or the Secretary of Health, Education, and Welfare, certification must be obtained from the appropriate Secretary. Under the proposed regulations approval of the project will be conditioned on receipt of certification and on compliance with the applicable air and water quality standards during construction and operation.

(10) Section 16(f) of the Airport and Airway Development Act of 1970 provides that in the case of a proposed new airport serving any area, which does not include a Metropolitan area, an airport development project may not be approved with respect to any proposed airport site that is not approved by the community or communities in which the airport is proposed to be located. The proposed regulations would reflect this provision.

(11) Section 10(d) of the Federal Airport Act provides that to the extent that the project costs of an approved project represent the cost of (1) land required for the installation of approach light systems, (2) in-runway lighting, (3) high intensity runway lighting, or (4) runway distance markers, the U.S. share may not exceed 75 percent of the allowable costs thereof. The parallel provision in section 17(d) of the Airport and Airway Development Act of 1970 differs from this in three respects. First, the second item is designated as "touchdown zone and centerline runway lighting." Second, the fourth item, runway distance markers, no longer appears. Third, the maximum U.S. share now is 82 percent of these allowable costs, instead of 75 percent. The proposed regulations accordingly will reflect these changes, both in implementing the policy that the project must provide for such of the three named landing aids as are determined to be needed for safe and efficient use of the airport by aircraft, and in the provision of U.S. share of project costs. Likewise, runway distance markers will be excluded from the list of eligible project items.

B. *Changes to reflect changes in, or extensions of, policy.* (1) Section 151.7—*Grant of funds: general policies*, requires, as a general policy for a grant of funds, that the sponsor has met or will meet the requirements established by existing and proposed agreements with the United States with respect to any airport that the sponsor owns or controls. Among these agreements are grant agreements made under the Federal-Aid Airport Program and conveyances made under section 16 of the Federal Airport Act. The proposed rules will require compliance with agreements made both under these

two provisions and under parallel provisions of the 1970 Act. Thus, compliance with continuing covenants made in a grant agreement under the earlier Act will be expected of a sponsor under the new Act.

(2) Section 151.9—*Runway clear zones; general*, defines "runway clear zone" as "an area at ground level which begins at the end of each primary surface defined in § 77.27(a) * * *." The proposed regulations will contain a definition of a runway clear zone having the same dimensions but oriented to begin at a point 200 feet from the runway threshold, rather than from the end of the primary surface. This proposal stems from a technological study made of the matter.

(3) Section 151.11—*Runway clear zones: requirements*, uses the phrase "runway or landing strip" in connection with the requirements for clear zones. Originally, all aircraft operated from relatively unimproved airfields. As aviation developed, the alignment of takeoff and landing paths became well defined and these paths became known as landing strips. Later, requirements of more advanced aircraft necessitated improving or paving the center portion of the landing strip. The term "landing strip" was retained to describe the graded area upon which the runway or improved surface was placed. Consequently, landing strips ceased to be designed primarily for the takeoff and landing of aircraft. Rather, the primary role of the landing strip changed to that of a safety area surrounding the runway. This area, when traversed unintentionally, should be capable of supporting aircraft without causing major damage or injury to the occupants of the aircraft. This change and other refinements in airport design associated with modern aircraft developments dictate the need for providing more accurate terminology. Accordingly, it is proposed to use the term "runway safety area" instead of the term "landing strip" in the new regulations.

(4) Section 151.13—*Federal-Aid Airport Program: Policy affecting landing aid requirements*, states that approval of a project for developing or improving an airport is conditioned upon acquiring or installing such of the four listed landing aids as the Administrator determines are needed for the safe and efficient use of the airport by aircraft considering the category of the airport and the type and volume of traffic using it. These required landing aids will be reduced to three in number under the 1970 Act (see item A.10 above). The criteria for approach lighting systems will be the same in the proposed regulations as in § 151.13, except for the addition of a need of assurance of full funding of the installation costs.

As to touchdown and centerline runway lighting, the criteria will be changed to provide that installation is required when the airport has a runway equipped or programed by the FAA to be equipped, with funds then available, with navigational aids that will allow Category II operations and these operations on the runway are reasonably assured.

As to high intensity runway edge lighting, the criteria in the proposed regulations will require it as part of a project (1) on a designated Category II runway when that runway is equipped or programed to be equipped with navigational aids that will allow Category II operations; (2) on a runway equipped with or programed for an ILS and RVR equipment within 5 years; or (3) on a runway equipped or programed for an ILS (and not for RVR) and planned for service by aircraft of 150,000 pounds or more within 5 years. Installation of touchdown zone lighting, centerline runway lighting, and high intensity edge lighting are necessary parts of the Category II installation to provide visual guidance in the last stages of the approach and landing. Without all of these systems the Category II operations cannot be authorized. In addition to its use on Category II runways, high intensity runway edge lighting is required on runways with ILS and RVR equipment or where the runway will be served by an ILS and used by aircraft of 150,000 pounds or more. The RVR equipment is a device for estimating the distance the pilot would see runway edge lighting and where installed RVR is based on the high intensity runway edge light system intensities. The larger aircraft (150,000 pounds or more) land at a higher speed and require more visual guidance from the runway than smaller aircraft.

These criteria for high intensity runway lighting required as part of a project, as well as those for touchdown and centerline runway lighting, are now part of the total system for Category II landing and, although installed and maintained by the sponsors, must be present for safety and regularity of traffic in low visibility weather. Accordingly, in the provision of the proposed regulations that will parallel § 151.43—*U.S. share of project costs*, the U.S. share of the costs of an approved project, representing the costs of any of the following, will be 82 percent:

(a) Acquiring land needed for installing, operating, and maintaining an ALS.

(b) Installing touchdown zone and centerline runway lighting on a designated Category II runway.

(c) Installing high intensity runway edge lighting on a designated Category II runway, or on a runway for which RVR equipment or service by aircraft of 150,000 pounds or more is programed within the next 5 years.

Section 151.87—*Lighting and electrical work*, provides project programing standards for lighting and electrical work. The parallel provisions in the proposed regulations will implement the above-described policy affecting landing aid requirements and provisions stating U.S. share of project costs with respect to installing touchdown zone and centerline runway lighting on a designated Category II runway, and high intensity runway edge lighting on a designated Category II runway for which RVR equipment or service by aircraft of 150,000 pounds or more is programed within the next 5 years.

These regulations also will provide for 50 percent Federal participation as to centerline runway lighting on a runway designated for takeoffs under Category II conditions at large hub airports. Centerline runway lighting is very useful on runways designated for Category II takeoffs since it will allow aircraft on the ground to take off that would otherwise be held in place or else be required to use the Category II landing runway. Here, 50 percent participation is considered reasonable. Fifty percent Federal participation (or the allowable percentage for public land States) also will be provided for high intensity runway edge lighting that is eligible for lighting but does not meet the requirements for 82 percent Federal participation if the runway is programmed to be a precision instrument landing runway within the next 5 years. It is expected that the aircraft of the future will be larger and land at higher speeds. Therefore, on ILS runways, it is considered appropriate to allow 50 percent participation in the costs of high intensity runway lighting to encourage sponsors to install this better lighting system and to avoid the possibility of necessary replacement when the larger aircraft seek to serve the airport.

The proposed regulations parallel to § 151.87 will, like that regulation, provide for eligibility of economy approach lighting aids for inclusion in a project at an airport that will not qualify within the next 3 years for approach lighting aids installed by the FAA under the Facilities and Equipment Program, but under more specific criteria. There are three types of economy approach lighting systems:

(a) Medium Intensity Approach Lighting System (MALS). This is used to correct visual problems on a nonprecision instrument runway. Identification problems are corrected by the use of three sequenced flashes on the approach end. The installation of MALS can result in a reduction in the landing minimums. This will be eligible on a runway with an assigned, or having the potential for, nonprecision instrument approach procedure where a visual problem exists on the approach. MALS with sequenced flashers (MALS) will be eligible where an identification problem exists on the approach.

(b) Runway End Identifier Light System (REILS). This is not used on the same end of the runway where MALS is installed. It enables the pilot to recognize the runway end from a distance on approach and reduce pilot difficulty in landing. It will be eligible where MALS is not installed, and where identification of runway ends is difficult.

(c) Visual Approach Slope Indicator (VASI). The two box VASI (VASI-2), formerly AVASI, provides visual approach slope guidance. On runways not provided with electronic guidance, the light signals are beneficial in aiding the pilot of an aircraft to determine his correct approach slope. The presence of objects in the approach area may involve a serious hazard if an aircraft descends below the normal path. The VASI-2 is useful for noise abatement purposes by providing a visual approach slope that eliminates the necessity for additional surges of power during final approaches

to land. The visual aiming point obtained with VASI-2 reduces the probability of undershoots or overshoots. The VASI-2 provides adequate guidance for nonjet aircraft.

The Simple Abbreviated Visual Approach Slope Indicator (SAVASI) gives the same guidance as the VASI-2, at less visual range.

The VASI-2 is mandatory with new construction of Medium Intensity Runway Lights (MIRL) on runways at utility airports. The VASI-2 is eligible for installation on runways with an approach slope deficiency and for retrofitting existing runways on utility airports that have MIRL installed. If the VASI-2 provides an excessive load in the electrical circuits at utility airports only, the installation of SAVASI, in conjunction with new MIRL construction, is mandatory. The SAVASI is eligible for retrofitting existing runways on utility airports that have MIRL installed.

(5) Section 151.25(c)(1)—*Procedures: application; information as to property interests*, includes a lease of not less than 20 years granted to the sponsor by another public agency with title, as an interest in real property that satisfies the property interest the sponsor must have or agree to obtain. Since the United States is not a public agency within the definition in the Airport and Airway Development Act of 1970, the proposed regulations at this place will refer to a lease of not less than 20 years granted to the sponsor by another public agency or by the United States or an agency thereof.

(6) Paragraph (f) of § 151.45—*Performance of construction work: general requirements*, provides for notification by the sponsor to the FAA Area Manager that engineering and construction supervision and inspection has been arranged for to insure that construction will conform with FAA approved plans and specifications, and that the sponsor has caused a review to be made of the qualifications of personnel who will perform that supervision and inspection and is satisfied that they are qualified to do so. This notification must precede commencement of work by a contractor or subcontractor, or of sponsor force account work. In order to strengthen control, the proposed regulations will also require that as to all contracts for engineering and planning services and force account work, proposals for those services must be submitted for FAA approval before execution of a new, or extension of an existing contract, or performance of force account services in any project for development of an airport master plan or airport system plan, or a project for airport development.

(7) Section 151.85—*Special treatment areas*, provides for the eligibility for inclusion in a project for special treatment for areas adjacent to pavement in cases where, due to the operation of turbine engine powered aircraft, it may be necessary to treat those areas adjacent to runway ends, holding aprons, and taxiways to prevent erosion from the blast effects of the turbine engine. This section states the dimensions of the areas affected. The dimensions so stated are obsolete. Under the proposed regulations, this matter will be covered by a mandatory advisory circular to be incorporated by reference that will provide updated dimensions. This will obviate the requirement to change regulations themselves as to the area dimensions from time to time as needed.

C. *Changes made for clarifying and certain other purposes.* (1) Paragraph (a) of § 151.5—*General policies*, provides that all airport development under the Federal-Aid Airport Program must be done in accordance with an approved airport layout plan. The proposed regulations will specifically provide also that development under the Airport Development Aid Program must be done at an FAA approved site. This requirement reflects the provision of section 16(a) of the 1970 Act that requires that proposed developments must be in accordance with established standards for site location, airport layout, etc. The same provision is in section 9(a) of the Federal Airport Act, but it was not in terms spelled out in Part 151. The same rationale applies to the proposed rule that, as a condition to approval of a project, the development be shown on an FAA approved airport layout plan and that the airport site is FAA approved.

(2) Part 15 of the Federal Aviation Regulations implemented section 601 of the Civil Rights Act of 1964. On June 10, 1970, the Secretary of Transportation added a new Part 21 to the Regulations of the Office of the Secretary of Transportation, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964," effective June 18, 1970 (35 F.R. 1080). Part 21 covers the subject for the entire Department of Transportation, including its operating administrations, and in terms supersedes Part 15. Accordingly, Part 15 was rescinded, effective August 11, 1970. Section 21.7 of Part 21 requires, as a condition to approval of an application for Federal aid, that the application include or be accompanied by an assurance that the airport or facility will be operated in compliance with all requirements imposed by or pursuant to Part 21. Although Part 21 is controlling, the proposed regulations will provide appropriate notice to sponsors in the counterparts of § 151.26(b)—*Procedures: applications; compatible land use information; consideration of local community interests; relocation of displaced persons*, and of § 151.39—*Project eligibility*. The requirement will apply as well to applications for development of airport master plans in the Planning Grant Program.

(3) Section 102(2)(C) of the National Environmental Policy Act of 1969 (Public Law 91-190) requires that the agency of the Federal government include in its recommendation or report on a proposal for a major action (which includes approval of a request for aid under the Airport Development Aid Program (ADAP)), a detailed statement by the responsible official on the environmental impact of the proposed action and related information.

Transportation Order 5610.1, implementing the provision, requires a sponsor of an ADAP project to submit a draft statement of the environmental statement or a negative declaration, as appropriate.

The proposed counterpart of § 151.21—*Procedures: application; general information*, will include the requirement for submitting the statement by the sponsor.

(4) Under §§ 151.37—*Sponsor eligibility*, and 151.33—*Cosponsorship and agency*, it may be implied that each cosponsor must be separately eligible. This is not the intended meaning. The new regulations will spell out the concept that if one cosponsor is separately eligible the other cosponsor need not be separately eligible, and that collective eligibility also is acceptable.

(5) Paragraph (b)(11) of § 151.39—*Project eligibility*, lists as eligible to be included in an airport development project "clearing, grading, and filling to allow the installing of landing aids." This provision has been considered to cover the work that is necessary to prepare the site to meet operational requirement only. The proposed regulations will make this clear in their parallel provisions.

(6) Section 151.39(b)—*Project eligibility*, and § 151.95(g)—*Fences; distance markers; navigational and landing aids; and offsite work*, respectively cover project programing standards that include (as eligible items of development) clearing, grubbing, filling and grading to allow the installing of landing aids, in the former, and clearing, grading, and grubbing to allow the installation of navigational aids in offsite areas, in the latter. It has been asserted that these sections should be construed to include the construction of a platform upon which to install the aid, and even to construction of an access road necessary to get to the site of the installation. The proposed regulations will make it clear that only clearing, grading, grubbing, and filling necessary to prepare the site to meet the operational requirements of the aid are eligible and do not include construction properly attributable to, and necessary for, installation of the aid itself.

(7) Regulations under section 204 of the Demonstration Cities and Metropolitan Development Act of 1966 and section 201 and title IV of the Intergovernmental Cooperation Act of 1968, issued under Bureau of the Budget Circular No. A-95 (July 24, 1969), provide for notification by a State or local government or individual to the appropriate planning and development clearinghouse, of its intent to apply for assistance under a Federal program (including airport planning and construction). The proposed regulations will specifically provide that a project for planning, construction or land acquisition may not be approved unless the project has been coordinated under Circular No. A-95; and that the sponsor must submit with its application any comments made by or through such a clearinghouse as a result of coordination under Circular No. A-95, along with a statement that those

comments have been considered before submission of the project application, or a statement that the required procedures have been followed and no comments received.

(8) Section 151.47(c)—*Procedure for the Secretary of Labor's wage determinations*, prescribes procedures for the sponsor to provide to the FAA the Secretary of Labor's wage determinations. However, nothing is specifically stated there relative to the use in an area of general wage determinations issued by the Secretary of Labor. The proposed regulations will clarify this by specifically including appropriate procedures for the use in an area of general wage determinations issued by the Secretary of Labor when he finds that the applicable statutory and regulatory standards are met, in a case where the wage patterns in the area in a particular type of construction are well settled and whenever it can be reasonably anticipated that there will be a large volume of procurement in that area for that type of construction.

(9) Section 151.51—*Performance of construction work force accounts*, provides rules for obtaining consent to performance of construction work with sponsor force account. However, no definition of sponsor force account appears in Part 151. A definition will be provided in the proposed regulations.

(10) In § 151.75—*Preparation of site*, reference is made to "complete clearance of runway clear zones" in connection with eligibility of site preparation in a project. This has been susceptible of the interpretation that removal of obstructions in the clear zone is mandatory. However, as the section heading indicates, the requirement for clearing obstructions from the clear zone is meant to apply to site preparation for a new or extended runway. This will be clarified by the proposed regulations, that will also specifically provide for eligibility of grading of the extended runway safety area.

In consideration of the foregoing, it is proposed to amend Title 14, Chapter I, of the Code of Federal Regulations by adding a new Part 152 as described herein.

These amendments are proposed under the authority of sections 11 through 27 of the Airport and Airway Development Act of 1970 (Public Law 91-258, 84 Stat. 219 et seq.), and § 1.47(g) of the Regulations of the Office of the Secretary of Transportation (35 F.R. 17044).

Issued in Washington, D.C., on December 22, 1970.

CHESTER G. BOWERS,
Director, Airports Service.

[F.R. Doc. 70-17482; Filed, Dec. 28, 1970; 8:51 a.m.]

National Highway Safety Bureau

[49 CFR Part 571]

[Docket No. 70-29; Notice 1]

NEW PNEUMATIC TIRES ON PASSENGER CARS

Proposed Motor Vehicle Safety Standard

The National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1381 et seq.) has been amended by the addition of section 206 (15 U.S.C. 1426), which directs the Secretary to "establish safety standards * * * setting limits on the age of tire carcasses which can be retreaded * * * based on the extent to which the carcass was designed and constructed to be retreaded, the rate of deterioration of the materials in such tire, and such other factors as he determines necessary" (Public Law 91-265, enacted May 22, 1970).

It is proposed that Standard No. 109, New Pneumatic Tires—Passenger Cars, be amended to require the manufacturer to label each tire with the statement that it may be retreaded either once or twice, or with the designation "Not To Be Retreaded". The standard would also be amended to specify more stringent tests for tires designed as suitable for retreading.

The proposed tests are referred to as the "high-speed structural adequacy" test and the "tire endurance structural adequacy" test. The high-speed structural adequacy test (proposed S5.6.1) is a combination of existing tests, in that it requires a particular tire to meet the present strength test (S5.3) after having been subjected to the high-speed performance test (S5.5). Similarly, the tire endurance structural adequacy test (proposed S5.6.2) requires a particular tire to meet the strength test after having been subjected to the tire endurance test (S5.4). Under the present requirements, which would be continued for tires marked "Not To Be Retreaded", a given tire is not required to meet these tests in sequence. The breaking energy values used would be the minimum value obtained in the tire strength test, rather than the average value presently used, in accordance with the proposed amendment to Standard No. 109 published November 10, 1970 (35 F.R. 17272).

In addition, two pending rulemaking actions will be affected by the proposed amendment: the proposed standard on "New Pneumatic Tires—Multipurpose Passenger Vehicles, Trucks, Trailers, Buses, and Motorcycles" (Docket No. 1-6), and the proposed standard on "Retreaded Pneumatic Tires—Passenger Cars" (Docket No. 1-8). It is anticipated that the former will incorporate requirements similar to those proposed in this notice, and the latter will be amended to provide for a 6-year limit for retreading tire casings and to require the retreader to brand an "X" each time the tire is retreaded, in a box provided for by the labeling requirements set forth in this notice.

A public meeting will be held on January 21, 1971, to discuss the proposed amendment. Notice of the meeting is published elsewhere in this issue (35 F.R. 19684).

Proposed effective date: January 1, 1972.

Interested persons are invited to submit data, views, and arguments concerning the proposed amendments. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Safety Bureau, Room 4223, 400 Seventh Street SW., Washington, DC 20591. It is requested, but not required, that 10 copies be submitted. All comments received before the close of business on March 1, 1971, will be considered, and will be available in the docket at the above address for examination both before and after the closing date. To the extent possible, comments filed after the above date will also be considered by the Bureau. However, the rulemaking action may proceed at any time after that date, and comments received after the closing date and too late for consideration in regard to the action will be treated as suggestions for future rulemaking. The Bureau will continue to file relevant material, as it becomes available, in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new materials.

In consideration of the foregoing, the National Highway Safety Bureau proposes an amendment of Standard No. 109 in 49 CFR 571.21, to read as set forth below. This notice of proposed rulemaking is issued under the authority of sections 103, 119, and 206 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1392, 1407 and 1426), and the delegations of authority at 49 CFR 1.51 (35 F.R. 4955) and 49 CFR 501.8 (35 F.R. 11126).

Issued on December 22, 1970.

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

Standard No. 109, New Pneumatic Tires, in § 571.21 of Title 49 CFR would be amended as follows:

(1) Revise S1. *Purpose and scope* to read:

S1. *Purpose and scope.* This standard specifies tire dimensions and laboratory test requirements for bead unseating resistance, strength, endurance, high-speed performance; defines tire load ratings; specifies labeling requirements; sets forth the limited conditions under which passenger car tires that are not certified as complying with this standard may be sold; and establishes criteria for determining the number of times tires may be retreaded.

(2) Add to S4.3 *Labeling requirements*, S4.3.2 to read as follows:

S4.3.2 Each tire manufactured after January 1, 1972, shall be conspicuously labeled with one of the following on both

sidewalls between the maximum section width and the bead, so that it will not be obstructed by the rib flange:

(a) "One Retread Allowed □"
(b) "Two Retreads Allowed □ □"
(c) "Not To Be Retreaded"

S4.3.2.1 Each tire marked "One Retread Allowed □" in accordance with S4.3.2.(a) shall be capable of meeting the minimum breaking energy specified in Table II when subjected to the endurance adequacy test (S5.6.1) and capable of meeting the minimum breaking energy specified in Table II when subjected to the high speed structural adequacy test S6.5.2. However, a particular tire need not be capable of meeting both tests performed in sequence.

S4.3.2.2 Each tire marked "Two Retreads Allowed □ □" in accordance with S4.3.2(b) shall be capable of exceeding by 10 percent the minimum breaking energy specified in Table II when subjected to the endurance structural adequacy test (S5.6.1), and capable of exceeding by 10 percent the minimum breaking energy specified in Table II when subjected to the high speed structural adequacy test (S5.6.2). However, a particular tire need not be capable of meeting both tests performed in sequence.

S4.3.2.3 Tires marked "Not To Be Retreaded" in accordance with S4.3.2(c) need not meet the requirements of the endurance structural adequacy test and the high speed structural adequacy test.

* * * * *

(3) Add to S5. Test procedures, S5.6 to read as follows:

S5.6 *Tire durability for retreading tests.*

S5.6.1 *Endurance structural adequacy.*

(a) After completion of the endurance test specified in S5.4, including removal of the tire from the test rim and inspecting the dismounted tire for conformity with the requirements of S4.2.2.5, remount the tire and inflate it to the appropriate pressure specified in Table III.

(b) Condition it at 70° F. for at least 3 hours.

(c) Readjust its pressure to that specified in Table III.

(d) Test the tire in accordance with the tire strength test procedure of S5.3.2.

S5.6.2 *High speed structural adequacy.*

(a) After completion of the high-speed test specified in S5.5, including removal of the tire from the test rim and inspecting the dismounted tire for conformity with the requirements of S4.2.2.6, remount the tire and inflate it to the appropriate pressure specified in Table III.

(b) Condition it at 70° F. for at least 3 hours.

(c) Readjust its pressure to that specified in Table III.

(d) Test the tire in accordance with the tire strength test procedure of S5.3.2.

[F.R. Doc. 70-17459; Filed, Dec. 28, 1970; 8:49 a.m.]

[49 CFR Part 571]

NEW PNEUMATIC TIRES ON PASSENGER CARS

Notice of Public Meeting

On January 21, 1971, the National Highway Safety Bureau will hold a public meeting beginning at 9 a.m. in Room 2230, 400 Seventh Street SW., Washington, DC, to discuss a proposed amendment to Motor Vehicle Safety Standard No. 109, published today in the FEDERAL REGISTER (35 F.R. 19683), concerning the establishment of criteria to determine the number of times tire casings may be retreaded. Interested persons are invited to attend the meeting and present oral and written comments to aid in the formulation of the proposed amendments as set forth in the notice of proposed rulemaking. Any person who wishes to present an oral comment longer than 5 minutes, or who requires special equipment such as projectors or screens, should submit an outline and time estimate of the materials to be presented and/or an equipment request to: Mr. Roger Compton, Director, Office of Operating Systems, National Highway Safety Bureau, Room 5301C, 400 Seventh Street SW., Washington, DC 20591 not later than the close of business on January 7, 1970.

An agenda will be available at the meeting room on the day of the meeting and an effort will be made to grant requests for particular hours of presentation.

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

[F.R. Doc. 70-17473; Filed, Dec. 28, 1970; 8:49 a.m.]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Federal Insurance Administration

[24 CFR Part 1910]

CRITERIA FOR LAND MANAGEMENT AND USE IN MUDSLIDE-PRONE AREAS

Notice of Proposed Rule Making

Pursuant to the National Flood Insurance Act of 1968 (82 Stat. 572, 42 U.S.C. 4001) as amended by sections 408-410 of Public Law 91-152, and the Secretary's delegation of authority to the Federal Insurance Administrator (34 F.R. 2680), the Administrator proposes to amend Part 1910 by adding criteria for land management and use in areas subject to mudslide hazards. The criteria for flood-prone areas previously adopted are not affected.

The purpose of these criteria is to encourage the adoption, where necessary, of adequate State and local land use and control measures in areas subject to flood and mudslide hazards. Flood insurance under this program; which also insures property owners against damage caused by mudslides, as defined under "flood" or "flooding" in 24 CFR Part 1909, may be made available only in States or areas (or subdivisions) that have evidenced a positive interest in securing such flood insurance and have given assurances that by December 31, 1971, adequate land use and control measures consistent with these criteria, with effective enforcement provisions, will be adopted. After December 31, 1971, no new flood insurance may be provided under this program in any area that has not adopted such measures.

Interested persons are invited to submit 3 copies of written comments or suggestions on the proposed criteria to the Federal Insurance Administrator, Department of Housing and Urban Development, Washington, D.C. 20410. Prior to adoption of mudslide criteria, consideration will be given to all relevant comments or suggestions received on or before February 1, 1971.

The proposed amendments are as follows:

1. The Table of Contents is amended by redesignating Subpart B as Subpart C and renumbering the sections; and by inserting a new Subpart B and §§ 1910.21-1910.28, as follows:

Subpart B—Criteria for Mudslide-Prone Areas

Sec.
1910.21 Purpose of criteria.
1910.22 State and local development goals.
1910.23 Planning considerations.
1910.24 State coordination.
1910.25 Local coordination.
1910.26 Land use and control measures.
1910.27 Subdivision planning requirements.
1910.28 Building and health code requirements.

Subpart C—General

1910.31 Purpose of Subpart C.
1910.32 Prerequisites for the sale of flood insurance.
1910.33 Priorities for the sale of insurance.
1910.34 Conditions for retention of flood insurance.

2. Section 1910.9 is amended to read as follows:

§ 1910.9 Revisions.

From time to time the criteria for land management and use for flood-prone and mudslide-prone areas of this part may be revised, after notice and opportunity for public comment. Such revisions will be based upon studies and investigations as provided in section 1361 of the Act.

3. Subpart B is redesignated as Subpart C, and §§ 1910.11 to 1910.14 are renumbered as §§ 1910.31 to 1910.34. (When the proposed criteria are adopted, Subpart C will be republished to reflect necessary editorial changes, but no substantive changes are contemplated.)

4. New Subpart B is added as follows:

Subpart B—Criteria for Mudslide-Prone Areas

§ 1910.21 Purpose of criteria.

In accordance with section 1361 of the Act, the purpose of the criteria set forth

in this subpart is to encourage, where necessary and within the framework of comprehensive land use and control measures, which, as a minimum, satisfy the requirements of the Uniform Building Code (sections 7001 through 7006 and sections 7008 through 7015, 1970 Edition), the adoption of State and local measures which will accomplish the following objectives:

(a) Discourage and restrict the inappropriate development of land exposed to mudslide hazards and guide improper land development and use away from such locations;

(b) Reduce mudslide hazards by requiring appropriate site exploration, investigation, design, grading, construction, filling, compacting, drainage, subdrainage, inspection, and maintenance procedures in areas exposed to mudslide hazards; and

(c) Otherwise improve the long-range land use management and development practices in areas exposed to mudslide hazards.

§ 1910.22 State and local development goals.

State and local land use and control measures for areas exposed to mudslide hazards should protect life, property, and the public welfare by:

(a) Diverting inappropriate development away from areas exposed to mudslide hazards or hillside instability;

(b) Encouraging local public and private mudslide prevention efforts designed for the wise development of sloping or unstable lands;

(c) Deterring the inappropriate development of public utilities and public facilities in areas exposed to mudslide hazards and hillside instability; and

(d) Requiring construction and land use practices which will prevent, insofar as feasible, subsequent damage from slope failures.

§ 1910.23 Planning considerations.

The planning and decision-making process for formulating overall community and areawide physical, social, and economic development goals, and for adopting land use and control measures for areas exposed to mudslide hazards, should include consideration of the following factors:

(a) *The existence and extent of the hazard.* (1) Potential adverse effects of inappropriate hillside development;

(2) Public and private costs, liabilities, and exposures, resulting from potential mudslide hazards;

(3) Availability of land not exposed to slope instability or mudslide hazards and the feasibility of developing such land as an alternative to further encroachment upon potentially unstable hillsides;

(4) Public acquisition of land easement and development rights in order to insure the proper development of hillsides, mountainsides, and palisades; and

(5) Possible use of areas exposed to mudslide hazards as open space.

(b) *The means of adjusting to the hazard.* (1) Establishment of appropriate site exploration, investigation, design, grading, construction, filling, compacting, drainage, subdrainage, inspection and maintenance standards in order to promote proper land use;

(2) Provision for drainage and subdrainage on private or public property, or both, that will avoid the aggravation of the hazard; and

(3) Coordination of land management activities with neighboring flood plain management and soil and water conservation programs.

(c) *The establishment of emergency procedures.* (1) Adoption of emergency warning, evacuation, abatement, and access procedures for earth failures; and

(2) Enactment of public measures and the initiation of private procedures to limit danger and damage resulting from future mudslides.

§ 1910.24 State coordination.

(a) A State may participate in furthering the objectives of these criteria by:

(1) Providing for the professional qualification and registration of engineers, engineering geologists, and others qualified in soil engineering and hydrology;

(2) Enacting legislation applicable to all jurisdictions within the State that establishes specific minimum requirements for site exploration, investigation, design, grading, construction, filling, compacting, drainage, subdrainage, inspection, and maintenance with appropriate enforcement procedures;

(3) Assigning the coordination of mudslide prevention activities to a specific State agency having persons qualified in engineering geology and soils engineering, hydrology, and seismology;

(4) Cooperating with Federal and local agencies and concerned professional groups by identifying areas exposed to mudslides and furnishing this information to the Federal Insurance Administrator;

(5) Guiding and assisting local agencies in developing land use, control, and management plans for areas exposed to mudslide hazards;

(6) Participating in emergency warning and preparedness programs;

(7) Advising appropriate public and private agencies, where necessary, that their projects might contribute to slope instability and making such advice or warning a matter of public record;

(8) Providing procedures to assure that all persons (including those subsequent to the first buyer) desiring to purchase real property are fully informed of existing or potential geologic, hydrologic, and soil hazards relating to the property being considered; and

(9) Encouraging and enabling the insurance industry to provide liability insurance, at reasonable rates, to qualified professionals engaged in the evaluation of soil, geologic, hydrologic, or similar hazards.

(b) For those States whose mudslide damage prevention programs substantially encompass the activities described in paragraph (a) of this section, the Administrator will:

(1) Give special consideration to State priority recommendations before selecting areas or communities for ratemaking studies from the register described in § 1910.33; and

(2) Seek State approval of local site exploration, investigation, design, grading, construction, filling, compacting, drainage, subdrainage, inspection, and maintenance provisions for areas exposed to mudslide hazards before accepting them as meeting the criteria established in this subpart.

§ 1910.25 Local coordination.

(a) Local land use and control measures, mudslide forecasting, mudslide emergency preparedness, and mudslide control and damage abatement programs should be coordinated with relevant Federal, State, and regional programs.

(b) Localities adopting land use and control measures pursuant to these criteria should coordinate their public information and education programs with similar State programs designed to promote public acceptance of land use and control measures in areas subject to mudslide hazards.

§ 1910.26 Land use and control measures.

(a) All appropriate State and local statutes, ordinances, and regulations should provide for proper site exploration, investigation, design, grading, construction, filling, compacting, drainage, subdrainage, inspection, and maintenance requirements based upon professional evaluation of the probable exposure to mudslide hazards. Such measures should apply to all areas of marginal stability, especially those identified as areas exposed to mudslide hazards.

(b) As appropriate, such measures should contain a clear and comprehensive statement indicating that they are intended:

(1) To encourage only that development of the identified mudslide-prone area which:

(i) Is appropriate in the light of the probability of mudslide damage; and

(ii) Represents an acceptable social and economic use of the land in relation to the hazards involved; and

(2) To discourage all other development.

(c) The measures specified in paragraph (a) of this section should:

(1) Prohibit inappropriate new construction or substantial improvements in areas subject to mudslide hazards;

(2) Control land uses for all new construction located in areas subject to mudslide hazards;

(3) Be based on competent evaluation of the potential mudslide hazard; and

(4) Be consistent with (i) existing soil conservation programs affecting the areas adjacent to the jurisdiction involved and (ii) applicable State standards.

(d) Such measures should, as a minimum, meet the requirements of the Uniform Building Code (sections 7001 through 7006 and sections 7008 through 7015, 1970 Edition), and take into account the nature and degree of the potential slope instability for the purpose of protecting structures and their contents from the damage which could result from a mudslide.

§ 1910.27 Subdivision planning requirements.

In addition to land use requirements outlined in § 1910.26, there should be such subdivision regulations as may be necessary to (a) prevent the inappropriate development of areas subject to mudslide hazards; (b) encourage the appropriate location of public utilities and facilities, such as streets, sewers, gas, electricity, and water systems; and (c) provide adequate protection so as to minimize exposure to mudslide hazards and to prevent the aggravation of mudslide hazards.

§ 1910.28 Building and health code requirements.

Applicable State and local building codes and health regulations should, as a minimum, satisfy the excavation and grading requirements of the Uniform Building Code (sections 7001 through 7006 and sections 7008 through 7015, 1970 Edition), and provide that proposals for the improvement and development of areas exposed to mudslide hazards shall contain provision which:

(a) Establish emergency procedures for avoiding the contamination of water conduits in the event of damage resulting from mudslides or related earth movements;

(b) Provide emergency procedures for the prevention of fire resulting from broken or disturbed gas or electric distribution facilities in the event of mudslide disaster;

(c) Provide emergency warning procedures and allow entry by appropriate public officials on private property located in areas exposed to mudslide hazards in the event of an impending mudslide disaster;

(d) Establish alternative vehicular access and escape routes to be utilized when normal routes are blocked or destroyed by mudslides; and

(e) Establish minimum site stability requirements which will enable schools, hospitals, nursing homes, penal institutions, fire stations, police stations, communications centers, water and sewage pumping stations and any other public or quasi-public institution located in the area subject to mudslides to withstand mudslide damage.

Issued in Washington, D.C. on December 31, 1970.

GEORGE K. BERNSTEIN,
Federal Insurance Administrator.

[F.R. Doc. 70-17478; Filed, Dec. 28, 1970; 8:51 a.m.]

ATOMIC ENERGY COMMISSION

[10 CFR Ch. I]

[Docket No. RM-102-2]

CERTAIN TYPES OF LIGHT WATER NUCLEAR POWER REACTORS

Consideration of Possible Statutory Finding of Practical Value; Termination of Rule Making Proceeding

On June 26, 1970, the Atomic Energy Commission published in the FEDERAL REGISTER (35 F.R. 10460) a notice of proposed rule making stating that the Commission had under consideration the question whether a statutory finding of practical value should be made pursuant to section 102 of the Atomic Energy Act of 1954, as amended, with respect to some type or types of light water, nuclear power reactors. In the same notice, the Commission also stated that it had under consideration the question whether the Commission's present regulations in 10 CFR 50.24 and 50.56 should be amended so that an operating license for a facility of the type for which a statutory practical value finding had been made would be issued under section 103 of the Act, even though the construction permit for that facility may have been issued under section 104b.

The Commission requested written comments or suggestions from interested persons and provided for a public rule making hearing to be held beginning on August 17, 1970. Subsequently, on August 12, 1970, the Commission published in the FEDERAL REGISTER (35 F.R. 12770) a notice postponing the date for the public rule making hearing to September 17, 1970. On September 9, 1970, the Commission published in the FEDERAL REGISTER (35 F.R. 14222) a notice naming the persons who would preside at the public rule making hearing. On September 17, 1970, the public rule making hearing was commenced and adjourned until a later date.

In the notice of June 26, 1970, the Commission stated that if prior to decision by the Commission on a finding of practical value, there was enacted into law an amendment to the Atomic Energy Act of 1954, as amended, eliminating the statutory finding of "practical value" then provided for in section 102 of the Act, the Commission would terminate the rule making proceeding.

Public Law 91-560 enacted on December 19, 1970, amends the Atomic Energy Act of 1954, as amended, by eliminating the statutory finding of "practical value" and makes other amendments to the Act. Accordingly, the notice of proposed rule making published on June 26, 1970, in the FEDERAL REGISTER is withdrawn and the rule making proceeding is terminated.

(Secs. 102, 161, 68 Stat. 948, 84 Stat. 1472; 42 U.S.C. 2132, 2201)

Dated at Washington, D.C., this 23d day of December 1970.

For the Atomic Energy Commission.

F. T. HOBBS,
Acting Secretary of the Commission.

[F.R. Doc. 70-17443; Filed, Dec. 28, 1970; 8:47 a.m.]

ENVIRONMENTAL PROTECTION AGENCY

[18 CFR Part 602]

CERTIFICATION OF FACILITIES

Notice of Proposed Rule Making

On June 10, 1970, notice of proposed rule making was published in the FEDERAL REGISTER (35 F.R. 8942) which set forth the text of regulations proposed to revise Part 602, relating to certification by the Secretary of the Interior of water pollution control facilities, to implement section 704 of the Tax Reform Act of 1969, Public Law 91-172.

On December 2, 1970, the functions of the Secretary of the Interior with regard to certification of water pollution control facilities, and the functions of the Secretary of Health, Education, and Welfare with regard to certification of air pollution control facilities, were transferred pursuant to Reorganization Plan No. 3 of 1970 to the Administrator, Environmental Protection Agency.

To insure consistency and uniformity, regulations pertaining to certification of air and water pollution control facilities have been combined. Interested persons are invited to submit, in quadruplicate, written data or arguments in regard to the proposed regulations to the Administrator, Environmental Protection Agency, Washington, D.C. 20460. All relevant material received no later than 45 days after publication of this notice will be considered.

Part 602 would be revised to read as follows:

PART 602—CERTIFICATION OF FACILITIES

Sec.
602.1 Applicability.
602.2 Definitions.
602.3 General provisions.
602.4 Notice of intent to certify.
602.5 Applications.
602.6 State certification.
602.7 General policy.
602.8 Requirements for certification.
602.9 Cost recovery.

AUTHORITY: The provisions of this Part 602 issued pursuant to sec. 301, 80 Stat. 378, 5 U.S.C. 301, and sec. 704 of the Tax Reform Act of 1969, 83 Stat. 667.

§ 602.1 Applicability.

The regulations of this part apply to certifications by the Administrator of water or air pollution control facilities for tax deduction purposes pursuant to section 169 of the Internal Revenue Code of 1954, as amended, 26 U.S.C. 169.

§ 602.2 Definitions.

As used in this part, the following terms shall have the meaning indicated below:

(a) "Act" means the Federal Water Pollution Control Act, as amended (33 U.S.C. 1151 et seq.) for water pollution control facilities, or the Clean Air Act, as amended (42 U.S.C 1857), for air pollution control facilities.

(b) "State certifying authority" means:

(1) For water pollution control facilities, the State health authority, except that, in the case of any State in which there is a single State agency, other than the State health authority, charged with responsibility for enforcing State laws relating to the abatement of water pollution, it means such other State agency; or

(2) For air pollution control facilities, the State health authority, except that, in the case of any State in which there is a single State agency, other than the State health authority, charged with responsibility for enforcing State laws relating to the abatement of air pollution, it means such other State agency.

(c) "Applicant" means any person who files an application with the Administrator for certification that a facility is in compliance with the applicable regulations of Federal agencies and in furtherance of the general policies of the United States for cooperation with the States in the prevention and abatement of water or air pollution under the Act.

(d) "Administrator" means the Administrator, Environmental Protection Agency.

(e) "Facility" means property comprising any new identifiable treatment facility which removes, alters, disposes of or stores pollutants, contaminants, wastes, or heat.

(f) "State" means the States, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands.

§ 602.3 General provisions.

(a) An applicant shall file an application in accordance with this part for each separate facility for which certification is sought.

(b) Applications shall be submitted by the taxpayer to the Administrator through the State certifying authority.

(c) A copy of each application submitted to a State certifying authority shall be forwarded by the applicant to the Administrator, Environmental Protection Agency, Washington, D.C. 20460, at the time such application is submitted to the State certifying authority.

(d) Applications may be filed prior or subsequent to the commencement of construction, acquisition, installation, or operation of the facility.

(e) An amendment to an application shall be submitted in the same manner as the original application and shall be considered a part of the original application.

(f) The application or amended application for certification of any facility must be accompanied by a certification from the State certifying authority.

(g) If the facility is certified by the Administrator, notice of certification will be issued to the Secretary of the Treasury and a copy of the notice shall be forwarded to the applicant and to the State certifying authority. If the facility is denied certification, the Administrator will advise the applicant and State certifying authority in writing of the reasons therefor.

(h) No certification will be made by the Administrator for any facility prior to the time it is placed in operation and the application, or amended application, in connection with such facility so states.

§ 602.4 Notice of intent to certify.

(a) On the basis of applications submitted prior to the construction, reconstruction, erection, acquisition, operation of a facility, the Administrator may notify applicants that such facility will be certified if:

(1) The Administrator determines that such facility, if constructed, acquired, installed, and operated in accordance with such application will be in compliance with requirements identified in section 602.8 of this part, and in furtherance of the general policies identified in section 602.7 of this part; and if

(2) The application is accompanied by a statement from the State certifying authority that such facility, if constructed, acquired, installed and operated in accordance with such application, will be in conformity with the State program or requirements for abatement or control of water or air pollution.

(b) Notice of actions taken under this section will be given to the appropriate State certifying authority.

§ 602.5 Applications.

Applications for certification under this part shall be submitted in such manner as the Administrator may prescribe, shall be signed by the applicant or agent thereof, and shall include the following information:

(a) Name, address, and Internal Revenue identifying number of the applicant;

(b) Type and narrative description of the new identifiable facility for which certification is (or will be) sought, including a copy of schematic or engineering drawings, and a description of the function and operation of such facility;

(c) Address (or proposed address) of facility location;

(d) A general description of the operation in connection with which such facility is (or will be) used and a description of the specific process or processes resulting in discharges or emissions which are (or will be) controlled by the facility;

(e) Description of the effect of such facility in terms of type and quantity of pollutants, contaminants, wastes or heat, removed, altered, stored, or disposed of by such facility;

(f) Date when such construction, reconstruction, or erection will be completed or when such facility was (or will be) acquired;

(g) Date when such facility is placed (or is intended to be placed) in operation;

(h) Identification of the applicable State and local water or air pollution control requirements and standards, if any;

(i) Expected useful life of facility;

(j) Cost of construction, acquisition, installation, operation, and maintenance of the facility;

(k) Estimated profits reasonably expected to be derived through the recovery of wastes or otherwise in the operation of the facility over its actual useful life; and

(l) Such other information as the Administrator deems necessary for certification.

§ 602.6 State certification.

The certification of the State certifying authority in accordance with 26 U.S.C. 169(d)(1)(A) that the facility described in such application has been consructed, reconstructed, erected, or acquired in conformity with the State program or requirements for abatement or control of water or air pollution shall be executed by an agent or officer authorized to act on behalf of the State certifying authority and accompanied by evidence of such authority.

§ 602.7 General policies.

(a) The general policies of the United States for cooperation with the States in the prevention and abatement of water pollution under the Act are: To enhance the quality and value of our water resources; to eliminate or reduce the pollution of interstate waters and tributaries thereof; to improve the sanitary condition of surface and underground waters; to conserve such waters for public water supplies, propagation of fish and aquatic life and wildlife, recreational purposes, and agricultural, industrial, and other legitimate uses; and to recognize, preserve, and protect the primary responsibilities and rights of the States in preventing and controlling water pollution.

(b) The general policy of the United States for cooperation with the States in the prevention and abatement of air pollution is to cooperate with and to assist the States and local governments in protecting and enhancing the quality of the Nation's air resources by the prevention and abatement of conditions which cause or contribute to air pollution which endangers the health or welfare of any persons.

§ 602.8 Requirements for certification.

(a) Except as provided in § 602.9, the Administrator will certify a facility if he determines that:

(1) The facility was constructed, reconstructed, erected or acquired to control the release of pollutants which, but for the facility, would be released into the environment.

(2) The facility is not necessary to the manufacturing process from which discharges or emissions are being controlled and is identifiable apart from the equipment used in such process.

(3) The facility is in compliance with the applicable regulations of Federal agencies.

(4) Such facility furthers the general policies of the United States for cooperation with the States in the prevention and abatement of pollution under the Act; and

(5) The applicant has complied with all the other requirements of this part.

(b) In determining whether a facility complies with applicable regulations of Federal agencies and the general policies of the United States for cooperation with the States in the prevention and abatement of water pollution, the Administrator shall consider whether such facility is consistent with and meets the requirements of the following factors, insofar as they are applicable to the waters which will be affected by the facility:

(1) Water quality standards, including water quality criteria and plans of implementation and enforcement established pursuant to section 10(c) of the Act.

(2) Recommendations issued pursuant to section 10 (e) and (f) of the Act:

(3) State water pollution control programs established pursuant to section 7 of the Act and regulations issued thereunder;

(4) Comprehensive water pollution control programs established pursuant to section 3 of the Act;

(5) State, interstate and local standards and requirements for the prevention, control and abatement of water pollution.

(c) In determining whether a facility complies with applicable regulations of Federal agencies and the general policies of the United States for cooperation with the States in the prevention and abatement of air pollution, the Administrator shall consider whether such facility is consistent with and meets the requirements of the following factors, insofar as they are applicable to the air which will be affected by the facility:

(1) Plans for the implementation, maintenance, and enforcement of ambient air quality standards adopted pursuant to section 108(c) of the Act.

(2) Recommendations issued pursuant to sections 103(e) and 108 of the Act which are applicable to facilities of the same type and located in the area to which the recommendations are directed.

(3) Local government requirements for control of air pollution, including emission standards.

(d) The Administrator will not certify any facility which does not meet the requirements of paragraph (a) of this section, even though it may be demonstrated by "incremental cost" or other accounting methods that certain expenses associated with such facility are required to meet water or air quality standards.

(e) The Administrator may certify a facility which removes elements or compounds from fuels which would be released as pollutants when such fuels are burned only if such facility is operated in connection with the process in which such fuels are burned, and otherwise meets the requirements of this part.

§ 602.9 Cost recovery.

Notwithstanding any other provisions of this part, the Administrator will not certify any facility to the extent it appears that, by reason of estimated profits to be derived through the recovery of wastes or otherwise in the operation of such facility, its costs will be recovered over its actual useful life.

WILLIAM D. RUCKELSHAUS,
Administrator,
Environmental Protection Agency.

DECEMBER 21, 1970.

[F.R. Doc. 70-17446; Filed, Dec. 28, 1970; 8:48 a.m.]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 73]

[Docket No. 16041; RM-571; FCC 70-1303]

TELEVISION NETWORK PROGRAMS NOT MADE AVAILABLE TO CERTAIN TELEVISION STATIONS

Notice of Proposed Rule Making

1. This proceeding, designed to make network television programs more generally available, was begun by notice of proposed rule making and notice of inquiry released June 9, 1965 (FCC 65-484). As set forth in this document, the proceeding has two parts: (1) Proposed rules designed to require the networks to make programs not cleared by their regular affiliates (uncleared programs) more readily available to other stations in the same community or market; and (2) a proposed rule, and the notice of inquiry, concerning the provision of network programs to "small market" or "overshadowed" stations, those at some distance from, but not entirely out of reception range of, large city stations (e.g., Ada, Okla., and Marion, Ind.).

2. Comments in response to this notice were filed late in 1965, and reply comments until January 3, 1966. On March 25, 1970 (released Mar. 26, FCC 70-309), the Commission issued a "Notice and Order Setting Oral Argument" concerning the first of the two parts of the proceeding. The oral argument was held April 30, 1970, as scheduled. Two parties availed themselves of the opportunity mentioned in this notice and order to file additional material, six participated in the oral argument, and five of these later filed additional material in response to requests made during the argument.

3. Because the two parts of the proceeding, though related, are separate and have received a different amount of attention, they are treated separately herein. Part I of this report and order relates to the first, or "uncleared program" portion of the proceeding; Part II relates to the "small market" matter.

PART I: MAKING "UNCLEARED PROGRAMS" AVAILABLE TO OTHER STATIONS

4. *The notice of proposed rule making.* The 1965 notice of proposed rule making concerning "uncleared programs", and the rather lengthy material filed in 1965 and 1966 in response to it, are digested in some detail in the appendix hereto.[1] Briefly, the notice was issued largely in response to a petition by WXIX, Inc., licensee of UHF Station WUHF-TV, Milwaukee, complaining about network programs not carried by the regular network affiliates in that market but not offered to WUHF-TV, chiefly NBC programs not taken by WTMJ-TV. However, as discussed in the appendix, WUHF-TV was carrying a substantial amount of NBC programing, at least by the time the proceeding was begun in 1965, and some of the problems between it and NBC were matters of the rate which WUHF-TV would be paid for carrying the program. One of the chief grounds of opposition to the proposal is that the Commission cannot appropriately get into the question of what are reasonable or suitable rates, and therefore there is really no substantial problem warranting Commission action. However, the notice also referred to instances of nonclearance of programs elsewhere, shown by the networks' responses to a Commission inquiry on this subject in December 1963, including instances of nonclearance, and no offer to an alternate station, in various markets having more than three stations (Milwaukee, Denver, Portland, Fresno, etc., and also markets where the alternate, independent station is in another city but permitted to identify itself with the larger city, such as Indianapolis-Bloomington, Ind., and Seattle-Tacoma, Wash.). The notice stated that "the picture with respect to programs not taken by regular affiliates is not a satisfactory one."

5. In order to improve this situation, the notice contained a number of proposals and alternative proposals, without the specific text of a proposed rule. A general requirement was proposed, that if a regular affiliate is ordered by an advertiser but does not offer clearance at a time acceptable to it, the network shall in good faith attempt to place the program on another station in the community, if the sponsor so chooses. More specific requirements to implement the general concept were advanced. Important among these were: (1) With respect to regularly scheduled programs beginning with the fall season (which was assumed to start roughly October 1), if by August 15 the network has not made arrangements with its affiliate or (privately) with another station in the market for acceptable clearance, a general "Notice of Non-Clearance" would be required, to the other stations in the market except regular network affiliates, informing them of this fact; (2) if by a month

[1] Filed as part of the original document.

later, or roughly September 15, arrangements for clearance in the market had still not been reached, the network would be required to make a general "Notice and Offer" to these other stations, on reasonable terms and in good faith. This offer could contain whatever conditions on advertiser acceptance are required in the circumstances. In this connection, the Commission stated that it certainly does not intend to become a rate arbiter, and that there are differences among stations which could of course be taken into account, such as differences in circulation and audience. Other criteria in this connection could be what other networks charge for a station's time, and how the network involved treats other stations similarly situated. The notice emphasized that, while comments were invited, there did not appear to be legitimate reasons for not offering a program to any station where other stations in the community have been offered it and failed to provide acceptable clearance arrangements.

6. Another firm proposal concerned recapture, the right of the network to remove the program from the alternate station when time becomes available on the regular affiliate. It was proposed that any offer under the rule must provide for no recapture on less than 56 days' notice (28 days was then, and is still, a common industry practice, except that ABC and CBS have recently adopted a policy of no recapture during the first 13 weeks of a program, as discussed below).

7. There were various alternative proposals advanced. The primary proposal was to limit the rule to regular program series; comments were invited on whether it should be extended to a series of four or six "spectaculars" during a season, or one-shot "specials" such as important sports events, and, if so, what time of notice and offer would be appropriate. Another area concerned what are "uncleared programs". The basic proposal was that this would include only programs which the regular affiliate had not cleared at all, not including programs it would clear on some nights of the week but not others, or in alternate weeks. Comments were invited on whether the rule should be expanded to include programs in the latter category. Comments were also invited on whether the times of notice and offer, mentioned above, are appropriate for programs beginning with the fall season, and what would be appropriate dates for programs beginning at other times (substitute programs), or where the regular affiliate cancels a program during a season.

8. The 1965–66 comments: As set forth in the appendix, three parties supported the Commission proposal in this area: a San Diego UHF permittee which has since gone into operation, a Waco, Tex., radio broadcaster which later received a UHF permit but has not yet commenced operation, and a Charlotte, N.C., UHF station (WCCB–TV) which has since become an ABC affiliate. The first two made general arguments concerning the advantages to be gained: Increased availability of attractive network programs to the public, and value to UHF stations in their development and overcoming the competitive superiority of VHF. The Charlotte station's comments, which were more specific, supported the rule but claimed it did not go far enough; the Commission should adopt a rule limiting the amount of programing a station could take from a "second" network, to 25 percent of the amount it takes from its primary network. This, it was said, would not force affiliation, nor limit a station at all with respect to its primary network or unreasonably as to its secondary network, but would provide "greater and fairer measure of opportunity" to independent UHF stations to get network programs. It was particularly concerned about recapture, under which it may (and in fact did) carry substantial amounts of programing but they are subject to withdrawal at any time, "depending on the will" of the VHF stations in the market. This, it was said, makes it impossible to plan the station's schedule, create confidence in advertisers as to the stability of the program structure, assure viewers of the need to get UHF sets in order to receive their favorite programs, or know from one month to the next how much money it will need for other programing.

9. Opposing comments: More parties opposed adoption of the rules as proposed, or, usually, any rule. These included the three networks (ABC, CBS, and NBC), the CBS and NBC Affiliates groups, and five television licensees, four of them multiple owners (of whom Storer Broadcasting Co. and Meredith Corp. filed lengthy oppositions). See appendix, paragraph 8.

10. As indicated in paragraph 11 of the appendix and the following material, the opposing parties among them made four general lines of argument against the proposal:

(a) There is no need for a rule, since the networks vigorously attempt to place those few programs which are not taken by regular affiliates, and the problems which exist concern the terms of availability such as rates, as shown by the WXIX petition, which are not appropriate for Commission determination but better left to negotiation. See appendix, paragraphs 12–14.

(b) In requiring a general offer on "reasonable terms", the rule would invite complaints and engage the Commission in a vast number of determinations involving the minutiae of network-station relations and a host of interacting factors, amounting to common-carrier regulation and an unwarranted intrusion into the free operation of the economic forces of the market place, and far beyond the Commission's manpower capacity or expertise, and unworkable. See appendix, paragraphs 15–17. For example, it was asserted that the notice itself listed four factors which might be involved (circulation, audience for the program in question, what other networks charge for the station's time and how the particular network treats other similar stations); and actually there are more, such as possible duplication of coverage, and the amount of promotional effort a station puts forth. NBC referred to the details of its controversy over rates with WUHF–TV, and both NBC and Meredith discussed the problem in determining the rate of compensation to the station, which is a fairly complex matter as to both affiliates and to nonaffiliates, including such matters as contribution to general network costs and interconnection costs, and "free hours."

(c) The rule would have very small benefit, at best, and substantial adverse consequences and developments in contravention of other Commission policies. The argument is that the amount of "uncleared" programing is so small, in markets where there are stations which could present it, that no substantial benefit would be gained; on the other hand, leading independent stations to rely on this will prevent the full impetus to the development of other program sources, such as a fourth network, which would otherwise exist. Another line of adverse impact asserted is that affiliates will be under pressure to clear network programs to an extent not now present, since otherwise they will face a greater prospect of having to compete with them on other stations, and this is in contravention of established Commission policies urging the exercise of licensee responsibility and local programing (the 1960 Program Policy Statement, the 1963 option time decision, various provisions of section 73.658 of the rules, etc.). It was urged that, contrary to the statement in the notice of proposed rule making, there may be legitimate reasons for not offering a program to a nonaffiliated station, for example: (1) Cases where the regular affiliate will clear for the program not immediately but within a short time; (2) occasions when the affiliate rejects a program because of an untypically bad "pilot" program but should be able to regain it when it becomes unexpectedly popular; (3) not building up an independent station's audience for adjacent time periods in competition with the network's program on the affiliate, by giving the independent a popular program; and (4) not placing a program on an independent which will compete with another program of the network running at the same time on the affiliate. There was objection to the "recapture" proposal, as unduly long and penalizing an affiliate and the public (which may have less access to the program if presented on an independent); and to the specific dates proposed, as too rigid and too short.[14] It was claimed that the rule

[14] Storer advanced an alternative proposal as to time of "Notice of Non-Clearance" which it believed preferable: where the offer or "order" to the affiliate is 12 weeks or more before the scheduled first broadcast, the "Notice of Non-Clearance" would be due 8 weeks before the broadcast if no arrangement had been made; if the offer or "order" to the affiliate is less than 12 but more than 4 weeks, the notice would be due 2 weeks after the order or 28 days before the first broadcast, whichever is later; and if the order to the affiliate is on shorter notice, the notice would be due 8 days after the order.

would be much too inelastic and inflexible, and that it would interfere with efficient and orderly network-affiliate relationships, resulting in a "pointless, arbitrary fragmetizing of network program schedules" to the detriment of the public and all other parties. Certain other problems were raised, such as the problem of a required simultaneous offer to two or more independent stations in a market and requiring an offer where the network knows that it will not be accepted, "idle motion". See paragraphs 18–24 of the appendix.

(d) The rule is illegal as beyond the Commission's authority, since it really involves direct regulation of networks (not of licensees) no matter what it is called, and also since (in requiring "reasonable" terms) it amounts to common carrier regulation in the broadcast area. It was also claimed that the rule illegally discriminates against the networks vis-a-vis other program suppliers, particularly those which are also television licensees as are the networks (e.g., Columbia Pictures-Screen Gems, Westinghouse, etc.) and that the "common carrier" regulation involved would be carried on without the traditional safeguards applied in that area, evidentiary rate hearings, etc. These arguments are discussed at some length in the appendix, paragraphs 25–30.

11. Reply comments: The reply comments filed early in 1966 are discussed in paragraph 31 of the appendix hereto; chiefly, they related to the Charlotte station's proposal mentioned above. We do not consider this herein; it has recently been proposed for consideration as an approach to the problem faced by UHF stations in "two-VHF-one UHF" markets which do not have network affiliations, in Docket 18927.

12. The 1970 Oral Argument: The March 1970 Notice and Order Setting Oral Argument invited parties to appear and also file written material, concerning the matters raised in the 1965 Notice of Proposed Rule Making, and in particular certain matters: (1) Whether programs should be regarded as "uncleared" by the regular affiliate, so as to require the general notice of nonclearance and later offer, where the regular affiliate accepts the program but only for delayed broadcast at a noncomparable time, such as a program presented by the network in prime time but accepted only for a lower time category; (2) whether, when a program is placed on a nonaffiliate, there should be any right of recapture during the season, or on a minimum notice; and whether this should be any different if the regular affiliate is seeking to regain the program for "live" broadcast, broadcast delayed but at a comparable time, or broadcast at a noncomparable time.

13. Six parties participated in the April 30, 1970, argument, including the three networks, CBS Affiliates, U.S. Communications, Inc. (a large independent UHF operator) and All-Channel Television Society, an association of UHF stations. CBS and CBS Affiliates submitted written material as contemplated by the notice of oral argument.

14. The arguments by ABC, CBS, NBC, and CBS affiliates were largely the same as those made earlier and outlined above and in the appendix hereto. It was urged that there is no need for a rule, with the networks making vigorous efforts to place uncleared programs on independent stations, particularly now that there are more of them and UHF circulation has substantially increased, offering such programs in all or the great majority of the cases where there is an independent station, except where an offer would clearly be futile, as where the independent is a Spanish-language station which does not use the "network" type of material. NBC asserted that almost 100 percent of its programs not taken by affiliates are in fact cleared over independent stations in markets where there are such stations. The lack of support for the Commission's proposal, it was said, demonstrates the lack of any need for a rule or of any real problem; therefore the Commission should not undertake regulation in an area where its authority is doubtful and where tremendous burdens would be involved, with the Commission regulating the day-to-day business of network operation for the first time, an "enormous and unfortunate thicket" to enter. It was urged again that the proposal would be much too inflexible, a "strait-jacket" on affiliates, who would not be able to work out whatever problems they have as they are now able to do. CBS Affiliates referred to the complex factors entering into decisions as to whether to clear or not: the total schedule "mix" and how a particular offered program fits into it, what the other stations in the market are doing, and how many of the programs offered by the network are new. CBS Affiliates and also ABC referred to the fact that many individual nonclearances by affiliates, or "preemptions", are on very short notice and it would be difficult to work any such situation into a fixed rule requirement. CBS Affiliates also emphasized again the matter of "pressure on affiliates to clear" which assertedly would be involved. NBC urged that the proposed rule requiring an offer is illegal confiscation—a "must sell" type of regulation.

15. ABC and CBS gave specific information as to their placement of uncleared programs. ABC asserted that for the 1969–70 season, its Philadelphia affiliate, WFIL–TV, did not clear 14 ABC programs (all weekend or daytime); 11 of these were placed on one Philadelphia UHF station and three on another. In New Orleans, its affiliate did not take 15 programs, including prime time and late programs as well as daytime, and the independent UHF station took 13 of these. CBS (in its written filing) stated that during the summer and early fall of 1969 it contacted a total of 78 independent stations concerning programs not taken by regular affiliates, totaling 201 programs and 233 weekly station hours. Many indicated an interest, and, during a week of October 1969, 29 nonaffiliated stations carried 149 CBS programs, totaling 226 weekly station hours. This included 138 weekly station hours in the top 50 markets (137 on independent UHF stations), and represented 43 percent of the uncleared CBS programs in these markets. As to the remaining 57 percent, counsel for CBS stated that he assumed they were offered if there was any chance of acceptance, or "essentially offered". Counsel for ABC and CBS stated that there are a number of reasons why independent station may not take network programs if offered, in their independent judgment: the network programs not taken by regular affiliates tend to be the less desirable ones, the independent may believe that carriage of these irregularly available programs is not the way to build a permanent audience, the station may be a specialized one not interested in this type of material, or there is no feasible way to get them, where off-air pickup is not available and they do not have "local loop" interconnection facilities (whose high cost is discussed below). The matter of rates also appears to be important, as noted below.

16. Recapture: With respect to the matter of recapture, specifically raised in the 1970 Notice of Oral Argument, ABC and CBS indicated that they had adopted or were about to start a policy of guaranteeing the independent taking their programs 13 weeks of broadcast before the program could be recaptured, and then recapture on 28 days notice. It was asserted that this gives the independent sufficient stability in planning its schedule and promoting the program, and more should not be required. It was asserted that no further restriction should be imposed, because the network seeks to maximize its audience, and therefore if recapture occurs it is so that the program will reach more people, for example on the VHF affiliate as opposed to the UHF independent. This, it was asserted, serves the public interest in making the program more generally available. It was urged by CBS that if the minimum recapture period is lengthened by rule beyond 28 days, together with the minimum of 13 weeks now guaranteed by CBS and ABC, this would tend to mean that the affiliate would lose the program for the entire year. It was urged that this would increase the pressure on affiliates to "clear the program or else". ABC asserted that this matter is largely theoretical; recapture is not too common anyhow.

17. "Live" clearance: The same type of argument was urged by ABC and CBS against any requirement that clearance be "live", both as to requiring the network to seek "live" clearance on an independent before taking a noncomparable time on its affiliate, and in connection with recapture. CBS Affiliates asserted that any such requirement would present problems and be much too inflexible. It was argued that the network is always trying to maximize its audience, and may well be better served by a lower-rated time on its affiliate than by "prime time" on a UHF alternate, for example 5 to 6

p.m. Saturday as compared to prime time on Wednesday. It was also asserted that there are other factors: the audience at the lower time on the affiliate may be more desirable to the advertiser even if no larger, the competing programs at the respective time slots, what the adjacent programs are on the two stations, and relative promotional efforts. It was pointed out that the 1957 "Barrow Report" (p. 267) did not regard delayed broadcast as necessarily inconsistent with the public interest. CBS stated that rarely does it recapture a program for delayed broadcast on an affiliate, only once in the last year and then where the independent was presenting it delayed.

18. Specific suggestions by ABC: If a rule is to be adopted, ABC made some specific suggestions, in addition to those concerning recapture and a "live" clearance requirement mentioned above. It was urged that the "market", rather than the community, be used as the standard, that the Commission get into the question of "reasonable rates" only if the treatment of the independent station is clearly arbitrary, and that the rule extend only to regular programs and complete nonclearance by the affiliate, not to one-shot "specials" or to occasional preemptions. It was argued that the rule would be difficult enough to apply as thus limited, without getting into the much more complicated area of single programs and the occasional preemption, often on very short notice.[3]

19. Arguments of ACTS and U.S. Communications: ACTS asserted that while a rule would have been beneficial when this proceeding was instituted, it is of questionable necessity and value now, with the networks attempting to place uncleared programs now that UHF has dramatically improved. It was stated that the only remaining problem is UHF broadcast in prime time whereas the affiliates often carry the program in "off hours", but even this is being resolved. The real problem, it was said, is the high cost of interconnection, a problem with A.T. & T. rates, which the Commission should consider in that context. ACTS urged that steps should be taken to provide a lower rate for UHF "fourth network" interconnection, similar to the lower tariff applicable to ETV interconnection. Thus, while the proposed rule would be acceptable, providing for notice and reasonable arrangements, it would be essentially diversionary from the real problem. It was said that UHF stations offered network programs and often carry them more or less as a public service, a feeling they should be presented in the market; otherwise, it is simply too costly in view of the high interconnection cost involved, and they are better off with less popular nonnetwork programs, no interconnection costs, and selling their own commercials.

20. The argument of Leonard B. Stevens, vice president of U.S. Communications, was to somewhat the same effect: In view of the extremely high telephone company charges for "local loop" service[5]—formerly $1,400 to $1,600 per month for black and white, but now approaching $3,000 per month—UHF stations generally lose money on the network programs they carry. Mr. Stevens stated that his company, which operates UHF stations in Philadelphia, Pittsburgh, San Francisco, Atlanta, and Newport, Ky. (Cincinnati), is currently reevaluating the desirability of carrying such material. It carries it partly as a sort of public service—these programs should be available in the market—and to improve the station's image and get a "foothold" in the market; but the programs definitely fall into the "loss leader" category.[6] He stated that attractive programing is essential to stations, particularly UHF; and that independent UHF stations, at least those of U.S. Communications, get uncleared network programs in substantial quantities, carrying 10 to 20 hours a week, with most regular programs being offered to them to the extent the network itself knows that they will not be carried by the affiliate (which sometimes preempts on short notice).[7] However, according to his statements there are certain respects in which the situation is described as undesirable or susceptible of improvement:

(a) The inadequacy of notice: According to Mr. Stevens, often network programs become available and are offered, but on too short notice to permit adequate promotion by the station, for example, the 14 to 18 days advance notice required by TV Guide for its listings. He blames this on the affiliates rather than the networks, asserting that the stations often know months in advance that they will not carry a program, but do not tell the network until a few days before the scheduled time. This, it is said, is unfair and should be changed.

(b) One-shot programs and "occasional" preemptions: According to Mr. Stevens, the networks often, or usually, do not offer independents "one-shot" programs, or programs which the affiliate usually clears but occasionally preempts. An example of the latter is said to be the weekend installment of the "Tonight" show on NBC, not carried by the Philadelphia affiliate but not offered to independent stations. He ascribed this to an apparent reluctance on the part of the networks to have such programs on a nonaffiliate.

(c) Time of clearance: Mr. Stevens asserted that the independent should be offered the program before the affiliate is accepted for a delayed broadcast; he stated that the public should have a program available at its accustomed time.

(d) Choice of alternate stations: Mr. Stevens asserted that the network should not be able to present an uncleared program over another network-affiliated station. He described this as anticompetitive and contrary to Commission policies to foster UHF and independent development.

(e) Compensation: Mr. Stevens expressed a belief that the compensation formula used by the networks, as to his station and as to affiliated stations, is unfair, resulting, assertedly, in his stations delivering 20 to 25 percent of the audience the VHF affiliate would deliver, but getting only 5 to 10 percent as much revenue from the network as the affiliate would receive if it carried the program. This was said to result, daytime, in $10 per half hour whereas the affiliate would get $100 to $150. This, it is said, is unfair to advertisers over the UHF station, since the network's advertisers get virtually a free ride. The station cannot sell its own spots in these network programs (two co-op "breaks" in daytime programs formerly available for local sale are no longer provided). The result is that carrying network programs is extremely costly in view of the high local interconnection charges. See below for more specific rate information.[8]

21. With respect to recapture, Mr. Stevens regarded the generally standard 28 days as satisfactory to U.S. Communications; occasionally it can get a longer, or even a full season, guarantee, and sometimes it gives up a program on less than 28 days' notice. A longer guarantee is, of course, desirable, but this was not regarded as a problem at least for his stations. However, he recognized that there are differences in the situations of independent stations, and perhaps some can work out more satisfactory terms than others. In general, he believed his company's position in network negotiations is improving. In conclusion, he stated that he did not believe adoption of rules as proposed in this proceeding is necessary.

22. Supplemental material: rates: During oral argument the networks were

[3] Some of the oral argument, particularly by CBS, consisted of opposition to the "prime time access" rule, or "Westinghouse proposal", whose adoption had been rumored and which was later adopted in the Docket 12782 decision. CBS stated that the objective here—which it supports—would be hurt by that regulation, since it would mean less newwork programing and thus less of it available to independent stations. CBS Affiliates also asserted that adoption of the proposal would mean less programing uncleared by affiliates.

[5] The "local loop" is the line between the telephone company test board in the city and the local station. Apparently the charge does not vary with the extent of use, so that the facility is much more expensive for occasional use by independents than for regular affiliates.

[6] Mr. Stevens expressed the hope that the Commission would make it a little less painful for the stations to carry network programs.

[7] Mr. Stevens expressed a dislike for preemptions by affiliates of network programs, because it often means that the affiliated station is presenting a nonnetwork program and selling time in direct competition with the independent, instead of relying on the network commercials. This is true, for example, of the network movie shows, frequently preempted by affiliates in favor of their own movies. However, the network programing thus made available is "useful and attractive", even though costly to carry.

[8] 20 hours a week, at $10 per half hour, would be $400 a week or roughly $1,800 a month, less than the "local loop" charges mentioned above.

asked to supply material concerning the rates and compensation paid VHF affiliates and UHF alternate stations. The material submitted in response is discussed in the next few paragraphs.

23. ABC: ABC submitted a showing as to the compensation paid two Philadelphia UHF stations for the 14 programs (one Monday–Friday daytime, the rest weekend daytime) not cleared by WFIL–TV for 1969–70, and the audience delivered by the UHF stations compared to that which would have been delivered by WFIL–TV as estimated by the ABC Research Department. Three of these programs were carried by WTAF–TV, which was given to advertisers as a "bonus"; WFIL–TV would have received some $11,386 for the last quarter of 1969. WTAF–TV, of course, received no compensation. In the case of WPHL–TV, the U.S. Communciations station which carried 11 of the programs, that station was paid, overall, about 8 percent of the compensation which WFIL–TV would have been paid ($4,542 compared to $56,245 for the quarter), roughly the same percentage as the respective prime time hourly network rates of $400 and $4,950. As to comparative audiences, ABC stated that overall the UHF was 15 percent of the potential VHF, 13,000 compared to 89,000; but this average was "weighted by the number of minutes sold". For the 14 programs listed, the individual audience figures were 15 percent or less in only three cases (two for WPHL–TV) and over 20 percent in seven (81 percent in one case), with an unweighted average of 29 percent for the 11 WPHL–TV programs covered. ABC ascribes the difference in compensation to the following factors: (1) WFIL–TV pays ABC each week 168 percent of its hourly rate, deducted from its compensation, whereas such a deduction is not made from the compensation paid WPHL–TV;[7] (2) UHF stations are particularly weak viewing-wise, comparatively, during certain times, notably weekday daytime, including some of the programs involved here; (3) WFIL–TV is the leading station in the market, and thus valuable as a premium to the ABC Network; (4) ABC asserts that the UHF station's relatively small audience does not generate revenues proportionate to the audience. This is because an advertiser, "buying" a large market such as Philadelphia, expects substantial audience, and therefore, if he can get only the small audience delivered by UHF, may have to supplement it with a national-spot VHF "buy." This deflates the value of the UHF station to the advertiser; (5) ABC experiences some sales resistance when it includes a UHF station in its lineup in a market as important as Philadelphia.

24. ABC also urged the same point in responding to a question as to whether the UHF clearance in Philadelphia improved the network's ability to charge a higher rate to the advertiser. It stated that in general every contribution to the network's audience is reflected in the rate the advertiser pays; but in the case of a UHF affiliate in a large market this is lessened by the fact that the advertiser has to supplement his network purchase by a national spot buy, so that the small UHF audience is not proportionately as valuable. ABC also responded to a question as to how its "independent" station rates are set, stating that this is approached on an ad hoc basis, without, so far, the development of definite guidelines. The matter is related basically to audience delivery as projected by its Research Department, also taking into account the extent to which the station is likely to be used, particularly during what parts of the day, and rates the other networks pay the station. It stated that it is presently considering up-dating its policies in this respect.

25. CBS: The CBS showing in this respect was confined to the Washington, D.C., market, where two prime time hour programs were carried first by the regular VHF affiliate and then by a UHF station. In audiences reached, the UHF station had 11 percent of the VHF audience for one program and 4 percent for the other; the compensation in both cases was 5 percent ($27 compared to $576). It was stated that the rates for both were established on the same general basis, average quarter-hour homes delivered during prime time according to the latest ARB survey. This resulted in a figure of 80.33 homes per dollar for the VHF station and 80 homes per dollar for the UHF, at prime time rates of $1,800 and $120 respectively.

26. NBC: NBC's showing in this connection was based on Boston, its regular VHF affiliate and UHF Station WSBK–TV, for which the respective prime-time hourly rates are $3,133 and $250. Under the different compensation formulas used, NBC estimated that the VHF station received $335.30 net per daytime hour compared to $21.88 for WSBK–TV, the latter being 6.5 percent of the former. While there were no programs carried by both stations to serve as a basis for audience comparison, the average of 9 Monday–Friday daytime series on VHF was 116,000 and of three such series on UHF was 7,000, or 6 percent of the VHF. A similar average for Saturday morning (four VHF programs, two UHF) showed the UHF audience 5 percent of the VHF (Nielsen figures were used).

27. U.S. Communications showing: U.S. Communications made a similar showing with respect to its Philadelphia station's carriage of ABC and NBC programs, in comparison with programs carried by the VHF affiliates, WFIL–TV and KYW–TV, in February–March 1970. It showed compensation received for eight Saturday and Sunday daytime ABC programs ranging from $0.08 to $0.19 per thousand homes delivered, compared to $0.66 received by WFIL–TV for four Saturday daytime ABC programs. For one Monday–Friday early afternoon ABC program the compensation to WPHL–TV represented $0.47 per thousand homes, compared to $0.31 per thousand to WFIL–TV for 8 Monday–Friday afternoon ABC programs. With respect to NBC programs, during the same period WPHL–TV carried three Monday–Friday half-hour shows between noon and 2 p.m., being compensated at rates of $0.14, $0.21, and $0.67 per thousand delivered homes, KYW–TV's average compensation for roughly similar weekday periods (10 a.m.–noon and 2–4:30) was $0.30 and $0.27.[8]

28. CBS Affiliates showing concerning preemptions: During the oral argument, CBS Affiliates was asked to supply information as to the preemption practices of its members in the cities of Kansas City, Seattle, Dallas, Atlanta, and Tucson, and, more generally, instances of preemption by CBS affiliates to present local news and public affairs programs. The showings submitted, confined to prime time, were as follows. As to regular noncarriage, the Tucson station carried all regular CBS programs at their scheduled times; the Seattle, Dallas, and Atlanta stations failed to carry two hour programs Wednesday evenings (3 of the 6 hours were carried in other, nonprime time); and the Kansas City station failed to carry three programs. The programs carried instead were local movies in the case of two stations, syndicated material in Dallas (sometimes preempted for network "specials") and, in Kansas City, a syndicated program, the station's movies instead of the CBS movie, and a local outdoors show. As to occasional preemptions, information was supplied as to eight affiliates, which showed numbers of prime time preemptions ranging from about one a month to a total of 46 for the year ending April 14, 1970 (Seattle). The latter included 16 for syndicated special programs, 10 for other nonlocal special programs, eight for feature movie specials, five for specialized network programs (Hughes network), four for local live basketball, and three for local public affairs.

CONCLUSIONS AND STATEMENT AS TO "UNCLEARED PROGRAMS"

29. Upon careful consideration of the matters set forth above, we are of the view that rules should not be adopted in this matter. We reach this conclusion essentially for two somewhat related reasons: first, the situation with respect to

[7] On the other hand, according to the ABC material, ABC pays all of the interconnection costs of WFIL–TV, including the "local loop", whereas it pays only the intercity portion for programs presented over WPHL–TV.

[8] The WFIL–TV compensation for other times of day is shown as $0.53 average per thousand homes for prime time, and $0.39 for the late evening weeknight Dick Cavett show. For KYW–TV and NBC, the average compensation was $0.62 for prime time, $0.94 for late evening, $0.56 for early weekday morning and $0.33 for Saturday morning.

As NBC points out in reply, the average of the three NBC Monday–Friday shows carried by WPHL–TV was $0.34, higher than the KYW–TV average for weekday daytime programs.

The U.S. Communications showing covered five of the same programs included in the ABC showing mentioned above, and showed substantially higher audience figures for WPHL–TV than those set forth by ABC. The U.S. Communications showing was based on 1970 ARB data; the source of ABC's figure for WPHL–TV audience is not indicated.

the offer and placement by networks of uncleared programs on independent stations appears to have improved substantially since this proceeding was begun, as it probably already had at that time as compared to the early 1960's. This is particularly true with respect to regularly scheduled network programs not carried at all by the affiliate, which were the only ones encompassed by the primary proposal in our 1965 notice, and are likely the only ones which lend themselves to treatment in a fixed general rule prescribing dates and procedures. Second, the adoption of a rule presents a number of substantial problems. We do not by any means view many of the problems urged by the opponents and noted above as insurmountable, and, indeed, some of them could hardly be taken seriously as reason for not adopting a requirement if it were otherwise appropriate.[9] But certainly the matter of "reasonable rates", perhaps the leading single problem area, does not lend itself to specific formulation in a rule, nor to day-to-day determination by an agency charged with broadcast regulation. In other respects, it appears that the proposed regulations, and likely any rule which could be formulated which goes beyond a general pronouncement, would destroy desirable flexibility in network-station relations and the clearance process. Therefore, since the situation has improved, no rules are adopted herein.

30. But this conclusion does not indicate, by any means, that we regard the present situation as satisfactory. Based on the material set forth above, we conclude that this is not the case, and that in some respects the public interest requires further improvement, both in the interest of having desirable network programs more readily available to the public, and in furtherance of the cause of UHF and other independent-station development. The particular areas, discussed in the next few paragraphs, are: (1) The compensation received by independent stations carrying network programs; (2) the adequacy of notice that network programs will be available to such stations; (3) increasing the availability of "one-shot" programs and those uncleared by affiliates only occasionally; and (4) recapture, at least to the extent that the present practice does not afford an adequate guarantee to the independent of enough broadcast time to serve as a basis for planning and promotion.

31. Adequate compensation to the independent: The U.S. Communications official asserted, as indicated above, that the UHF independent receives very low compensation for the network programs carried, less than the "local loop" line charges necessary to present them, and substantially less in relation to audience delivered than the VHF affiliates receives (5 to 10 percent of the compensation received by the VHF affiliate, whereas the UHF station delivers 20 to 25 percent of the audience which the VHF station delivers or would deliver). While the more specific material filed later does not establish that this degree of discrepancy always prevails, there appears to be, at least to some extent, a difference between the relative compensation level and the relative audience and circulation level, to the disadvantage of the independent UHF station. Especially when the return to the independent does not even cover the cost of the line charges necessary to present the program, this is not a satisfactory situation from the public interest standpoint and must be improved. This is obviously even more true in cases, such as that of WTAF-TV mentioned by ABC, where the independent carries the program with no compensation from the network, and yet must bear the line charges involved. Now that UHF has developed to a point where large-market UHF stations are in a position to deliver a fairly substantial audience, we must definitely question whether such a practice is justified. We also note the patent discrimination which is involved in a situation where, as with ABC in Philadelphia, the network pays the high "local loop" line costs of its regular affiliate, but contributes nothing toward such charges incurred by the other station carrying some of its programs, even when the amount carried is fairly substantial.[10]

32. It is quite apparent that discrimination against independent (particularly UHF) stations in these respects can, and does, work to frustrate the Commission's efforts to provide for a fully developed and competitive television industry, making a substantially efficient utilization of the channels we have provided for this service. Therefore, we expect that in the future the networks will take steps to increase the amount of compensation to the independent station (or take steps to decrease its costs), so that it can present desirable network programs with some degree of economic benefit. We point out that this does not necessarily mean adjustment of the "network rate", although this would be one means of getting the result. Other approaches which could be used to achieve the same end would be to increase the percentage of the network rate which is paid to the station, to permit the local sale of commercials during some network programs (which, it appears, was formerly true to a greater extent than now), or to pay or contribute to "local loop" costs, which ABC indicates it does with its regular Philadelphia affiliate although not with the independent stations when it uses them. Such discrimination is highly questionable.

33. We do not here suggest which of these approaches should be adopted; perhaps a combination of two or more would afford the most benefit. But—with television networking a highly profitable business, and the UHF independent stations chiefly involved here often in need both of desirable programming and economic relief—we do not believe that continuation of the present relative compensation levels is satisfactory. Certainly, as long as the UHF station has to pay the full amount of local line charges, we believe it should receive no less than compensation, relative to that paid to the affiliate, proportionate to the audiences delivered by the stations. We expect the networks to take measures to achieve these results. It is noted in this connection that UHF set penetration is steadily increasing—now estimated at 68 percent—and we have recently taken steps to achieve comparability of tuning. It is hoped that with these developments the actual comparative audience levels will be more nearly equal. With this, and if the UHF independent stations are compensated on a basis reflecting the audience delivered, it appears that these stations can afford to carry network programs when they are available to them, on a reasonably satisfactory economic basis. As discussed below, we will keep a careful watch over network remuneration practices, and require a report by June 1971 on the matter.

34. In making these observations, we have noted two arguments made by ABC and mentioned in paragraph 23, above: (1) That because of the small audience delivered by the UHF alternate station the advertiser often must supplement his network exposure with a national spot "buy" in the market, and thus the UHF's limited audience is less valuable to him; and (2) ABC encounters sales resistance when its lineup includes a UHF station in a market as important as Philadelphia. No specifics are furnished by ABC in support of these assertions, and in our view they can be given but little weight in the present connection. To the extent that advertising time is offered, evaluated and paid for on a "cost-per-thousand" basis, any VHF-UHF difference in circulation will of course be reflected in the difference in compensation referred to above, that based on difference in delivered audience. We are not aware that the rates which networks charge advertisers reflect the failure to

[9] Thus, the matter of a time schedule geared to an uncertain fall-season starting date could be resolved by adopting a time schedule similar to that proposed by Storer Broadcasting Co. and noted in footnote 1, above.

[10] While regulation of over-all rate levels might to some degree amount to entering the common-carrier field, this is by no means necessarily true of regulation to prevent discrimination by networks as between stations in the same city taking programs from them. The whole thrust of section 2 of the Clayton Act (15 U.S.C. § 13) is that, while a seller may charge any over-all prices he chooses, it is illegal for him to discriminate between customers, with respect to prices charged, amounts paid to the customers for services, or services furnished to them, where the result is to injure competitors of the seller or of the favored buyer (except to the extent the discrimination is justified by differences in cost or is practiced in good faith to meet competition). While the Clayton Act itself may not cover these situations (since broadcast time has been held not to be a "commodity" and it may be that no "sale" is involved), the same basic public-interest principles apply, and could well be used to support adoption of a Commission regulation in these situations.

deliver a VHF station in a given market, to any greater extent than what would correspond to the "cost-per-thousand" difference. Such solicitude appears unlikely. Moreover, advertisers may choose to supplement network exposure with national spot purchases under a number of circumstances, for various reasons, and we are not shown any specific connection between such a practice and network exposure in a given market on UHF rather than VHF. With respect to the matter of sales resistance, this could be a pertinent factor to the extent that the presence of a UHF alternate in an important market actually increases the network's "cost of selling"; but we are not aware that this is usually the case. The matter of "sales resistance" in connection with the placement of a particular program of course has ceased to be a factor by the time the question of compensation to the UHF station arises, since if any "sales resistance" had not been overcome the advertiser would not have ordered the station.

35. Adequate notice of program availability. Another area which appears to present problems and to be less than satisfactory is adequate notice to nonaffiliated stations that a program will not be cleared by the affiliate and therefore will be available to them. As described by the U.S. Communications official, this may not be entirely, or even primarily, the fault of the networks; it appears that sometimes they themselves do not know that an affiliate is not going to take a program, even though that station's decision not to clear was made well in advance. But whatever the reason, the situation appears to leave a good deal to be desired. As was stated in the argument, "It is of little use to the public or to an independent station to carry a network program that no one knows about." In our view, the public interest, both of the viewing public and of the independent stations, requires that sufficient notice of nonclearance by the affiliate be given so that the independent station can seek the program, and, if arrangements are made, adequately promote and publicize it in the trade and general press. Accordingly, except in those relatively few cases where the affiliate's decision to clear is made closer to broadcast time, we will expect them to communicate their nonclearance decisions to their network in time so that it can notify the independent station at least 3 weeks in advance of broadcast. We will expect the networks to adopt procedures with their affiliates to get such notice, and to notify the alternate station by the time mentioned.[11]

[11] We do not, of course, mean to indicate that an affiliate's decision must always be made this far in advance; preemptions on short notice may often serve the public interest, particularly in presenting fast-developing matters of special significance locally. But where the decision is made well in advance, we expect prompt notice to the network and by the network to the alternative station or stations.

36. Programs available on an irregular basis: "one-shot" programs and occasional preemptions. The record indicates that the situation is reasonably satisfactory with respect to the making available of regularly scheduled programs not cleared by the affiliate at all (leaving aside the matters of compensation and notice). But this does not appear to be true with respect to "one-shot" or "special" programs, or programs which the affiliates carry part but not all of the time. Certainly, if it is true, as the U.S. Communications official stated, that the weekend NBC "Tonight" show is not carried in Philadelphia by the NBC affiliate and is not offered to an independent station, this can hardly be regarded as consistent with the public interest. We cannot regard considerations of the stability of network-affiliate relations, or not "fragmentizing network schedules" as of substantial weight in this connection, in view of the importance of increased availability of desirable programing to the public and to independent stations. This is especially true when the networks place regularly scheduled programs on the independent station when the affiliate does not clear at all.

37. We realize that there are administrative problems involved, and late-developing instances where affiliates do not carry single programs and it may simply not be worth the effort to try to get alternate placement. Nonetheless, we believe that, in general, the networks should be expected to try in good faith to get placement carriage of all uncleared programs, both regular and one-shot or "special", to the extent that they are not taken by the regular affiliate. This is certainly true as to situations such as that mentioned (assuming it is true), where there is a regular course of affiliate nonclearance at a particular time of the week. We will expect the networks to act accordingly.

38. Recapture: The record herein indicates perhaps less of a problem than in the three areas just mentioned. This is perhaps particularly true in light of the fact that two of the three networks, ABC and CBS, have recently adopted policies guaranteeing the independent station 13 weeks of broadcast when it takes a program, to be followed by recapture on no less than 4 weeks' notice. In our judgment, this goes far to insure a degree of stability in the operation of these stations which was formerly lacking and which has been the subject of complaint, for example by the Charlotte, N.C., UHF station which filed comments herein in 1965.

39. We believe that such stability is important in furtherance of these station's development and to encourage them to carry network programs not taken by regular affiliates. We will expect NBC to adopt a similar policy, and the other two networks to adhere to that now adopted. We do not believe it appropriate to go further, since there appears to be some merit in the networks' contention that they should have some freedom to seek maximum audience. With the increasing development of UHF, the difference in audience will tend to diminish, so that it appears appropriate that the independent stations be given the degree of stability which a 13-week minimum "run" will provide.

40. Two other areas: Seeking "live" clearance and placement on independents rather than other affiliated stations: The U.S. Communications official mentioned also two other areas in which he believed the networks should follow certain policies: Seeking "live" clearance on an independent before accepting a delayed broadcast on the affiliate, and placing uncleared programs on independent stations rather than on stations affiliated with other networks. In these two respects, we believe that any Commission pronouncement can be no more than a general one; since there is merit in the contention that networks seek, and should have freedom of judgement in trying to achieve, maximum audience, which does not always mean "live" exposure on an independent as opposed to delayed broadcast on an affiliate, or placement on an independent as opposed to an affiliate of another network which may happen to be available. We hope that, with the increasing effectiveness of UHF stations, the networks in the exercise of their judgment will choose to seek "live" clearance on another station before taking a delayed broadcast at a less valuable time on the affiliate. We also hope that they will choose to place uncleared programs on independents rather than other networks' primary affiliates to the extent there is a choice. If there are complaints in this respect that the networks have acted unreasonably, the situation will be examined.

41. In sum, then, we are not now adopting any requirements. However, the performance of the three national television networks will be scrutinized closely in this area, including particularly in the four respects discussed above. We will expect the networks to make vigorous efforts to: (1) attempt to clear all "uncleared programs", including "one-shot" programs and those only occasionally not cleared by affiliates, and not to confine their efforts in this respect to regularly scheduled programs which the affiliate does not take at all; (2) give adequate notice of affiliate nonclearance and consequent program availability, at least 3 weeks except where that is not possible, and to take whatever steps are necessary to get from their affiliates notice as to decisions not to clear; (3) pay a reasonable amount of compensation to independent stations, sufficient to make their carriage of network programs not unattractive economically, and at least as much in comparison to the affiliate's compensation as to the comparative audience delivered by the stations; and (4) adopt recapture practices which afford a reasonable degree of stability to the independent, which appear to include the practice now followed by ABC and CBS of guaranteeing the independent 13 weeks of broadcast and then a minimum of 28 days' notice.

42. Relationship of this proceeding to the "prime time access" rule: Some observations are appropriate as to the relationship between this matter and our pronouncements above, on the one hand, and the limitation on network program carriage adopted in Docket 12782, the "prime time access" rule or "Westinghouse proposal." [18] While the two actions are designed to further different public interest objectives, and to a degree may look in different directions, they are by no means inconsistent nor in conflict. In the present matter, we seek to make desirable network programing more generally available to other stations when it is not carried in a market by the regular affiliate, thus benefiting these stations and the public. This includes both prime-time programing and other programing, and, in fact, most of the specific programs referred to in the latest submissions (paragraphs 23–27, above) are nonprime time. It also includes all markets, rather than only the top 50 covered by the "prime time access" rule. In the other action, we have sought to encourage the production of programs by independent sources through opening up to them a substantial economic base: A portion of prime time on the well established facilities (nearly all VHF) which are the network affiliates in the top 50 markets. The objective of the rule is not to work a reduction in network program schedules generally, since the networks may present their programs in many of these markets on independents where the regular affiliate is precluded from taking them, and since the networks may continue to program without limitation in markets outside of the top 50. CBS urges that the result of our action in that proceeding will be to prevent the achievement of the objective here, asserting that there will be less network programing and correspondingly less "uncleared" network programing available to independents. The "prime time access" rule of course does not require this result; and if it follows as a matter of fact that network schedules are cut back (which we assumed it would for the purpose of the decision on reconsideration in Docket 12782) we conclude that the public interest objectives which that rule is designed to advance outweigh whatever detriment may flow, in the present respect as in others. If network programing in fact is reduced in quantity, it becomes even more important that whatever amount of it is "uncleared" by regular affiliates be available on reasonable terms, and sufficient notice, to independents.

[18] In the matter of amendment of Part 73 of the Commission's Rules and Regulations with Respect to Competition and Responsibility in Network Television Broadcasting, Docket No. 12782, Report and Order adopted May 4, 1970, FCC 70–466. Memorandum Opinion and Order on Reconsideration adopted Aug. 7, 1970, FCC 70–872, 25 FCC 2d 318, 19 R.R. 2d 1869.

PART II: MAKING NETWORK PROGRAMS AVAILABLE TO "SMALL MARKET" STATIONS

43. The second part of this proceeding relates to making available network programs to "small market" stations at some distance from, but not completely out of range of, large-city affiliates, stations in places such as Ada, Okla., and Marion, Ind., 60 to 65 miles from Oklahoma City and Indianapolis. It was proposed in the 1965 notice to adopt a rule that when an affiliate in a city is carrying or about to carry a network program, and the advertiser wishes to place the program also on a station in another community, the network shall in good faith attempt to place the program on the other station. The notice of inquiry raised questions as to whether the networks should be required to affiliate with or furnish substantial amounts of programing to such stations, what standards would be appropriate for use in this connection (distance, location within signal-intensity contours, "duplicated" and "incremental" circulation, circulation of the large-city station in the home county of the small market station), and to what extent the standards should be different for sustaining programs, commercial programs where the advertiser or all advertisers involved wished to order the smaller market, and commercial programs where some but not all of the advertisers wanted to do so.

44. Three parties supported the proposal, all in brief comments. These included an individual named Walter B. Sitrick (not otherwise identified) in a very brief statement, the licensee of Station WTAF–TV, Marion, Ind. (which has since ceased operation), and a UHF permittee at Danville, Va. (previously operating but had suspended operation and permit has now been deleted). The Marion station urged the importance of network programs, asserting that national advertisers will "buy" the station if it presents them but not otherwise. The chief complaint was inability to get rebroadcast consent from Indianapolis and Fort Wayne stations to pick up the programs. It was urged that such stations should be required to give consent; and that there is no legitimate reason for not doing so where the advertiser is willing to "buy" the small-market as well as the large-city station. The Danville permittee emphasized the importance of network programing, as indispensable to successful operation in a small market (as it had discovered in its brief operating experience), and that it should be more readily available to help the development of UHF. Danville's "fringe" location was emphasized.

45. Most of the parties opposing the "uncleared program" rule, mentioned above, opposed Commission action in this respect also, including particularly the three networks, CBS and NBC affiliates, and Meredith. Many of the same arguments noted above were urged, including the undesirability of inflexible overall regulation and government "injection" into private business dealings. It was asserted that any rule is unnecessary, since the networks try to achieve coverage of all of the nation now, and CBS and NBC claim coverage of more than 95 percent of the nation's TV homes. This effort includes affiliation with, or furnishing numerous programs to, many stations in small markets, and many stations within the Grade B contours of other stations. It was urged that any further requirement in this regard would result in wasteful duplication of coverage—two stations bringing the same programs to the same audience—harmful to advertisers because it wastes their money, to the medium because it becomes inefficient, to both stations involved because it hurts the value of their service and thus ultimately their revenue, and to the public by providing less diversity of programming in what is, often, much the same area. It was also claimed that it would hurt the "large city" station being duplicated, not only by decreasing its audience for the particular program duplicated, but also for adjacent programs; and that to the extent some of the advertisers involved might not want to make the duplicating "buy", they would be hurt by having their money wasted. The networks asserted that often they do try to honor advertiser's requests for the small-market station, e.g., NBC in the one case where a network advertiser wanted to buy the Marion station.

46. With respect to the two situations specifically mentioned, it was pointed out that the Ada, Okla., station has been an ABC affiliate since going on the air in 1954 and also carries substantial amounts of NBC and CBS programs, with 23½ out of 24½ prime-time hours in 1964–65 devoted to network programs. As to the Marion situation, it was pointed out that while this station is some 60 miles from Indianapolis it is only about 45 miles from Fort Wayne, also with three network-affiliated stations, and less than 30 miles from Muncie, with one network affiliate. Thus, the Grade B contours of seven stations include part or all of the "home county".

47. NBC affiliates presented a study derived from the "Fisher Report" filed in 1964 in the CATV proceedings (Dockets 14895 and 15233). It was shown that of 487 operating stations in the continental United States at that time, only 48—roughly 10 percent—did not carry as much as 40 half-hours per week of prime-time network programing (80 percent of prime hours) in March 1964. Of the 48, 24 were independents in large markets where there are three network affiliates. Of the remaining 24, all but two carried at least 20 half-hours. The two, stations at Jonesboro, Ark., and Bowling Green, Ky. (both VHF), carried no network programing. It was claimed that the degree of overlap involved (with Memphis and Nashville, respectively) justified their not being offered network programs (both are within the Grade B contours of stations in these cities, and both put Grade B signals fairly close to the cities).

48. With respect to the present situation, the distribution of television network programs in the United States is widespread, and a substantial majority of U.S. television stations are network-affiliated, or else receive programs on a "per program" basis in substantial amount.[12] The two stations mentioned above as carrying no network programing in 1964, at Jonesboro, Ark., and Bowling Green, Ky., are now ABC affiliates. Of the "independent" stations in the United States, a large number are located in cities which also have three regular network affiliates, or are quite close to such cities, and therefore they would not be expected to present network programing to any substantial extent except as "alternate" stations dealt with in Part I of this report, above. Also, we are not primarily concerned here with the few remaining situations where there are two VHF affiliated stations in a city or market and one UHF station which has not yet been able to get an affiliation with one of the networks, such as Augusta, Ga., and Raleigh-Durham, N.C. These are under consideration in another proceeding, Docket 18927.

49. However, by no means all of the "independent" stations not presenting network programing in substantial amount fall into the above categories. For example, in the Marion situation mentioned, where that station had to cease operation in the spring of 1969, the city, former station location and county are within a number of outside Grade B contours, as mentioned above; but the city and former station location are not within any outside Grade A contours, and there was only a small area of "Grade A overlap" with one of the Indianapolis VHF stations (none with the other two, Fort Wayne or Muncie stations). There are other somewhat similar situations. In Muskegon, Mich., where a UHF station operated until recently, the city and station location are fairly close to Grand Rapids (35 miles) and quite close to the location of the Grand Rapids Channel 13 station; but it is over 50 miles to the location of the other two VHF stations in the Grand Rapids-Kalamazoo market (74 miles to Kalamazoo), and they put only a Grade B signal over Muskegon. In Modesto, Calif., while that city and its station are fairly close to Stockton (27 miles city-to-city, slightly more from the Modesto transmitter), it is roughly 50 miles from the city and station to the location of the Stockton and Sacramento VHF network stations, and some 70 miles to Sacramento. These stations provide Grade B or better signals to Modesto; two put a Grade A signal over Modesto and one over the Modesto station's location. Pocatello, Idaho, where an independent VHF station operates, is within the Grade A contours of two Idaho Falls stations but not within the Grade B contour of any other station. Fond du Lac, Wis., and its UHF station are within the Grade B contour of Milwaukee and Green Bay VHF stations, but within the Grade A contours of only one Green Bay network affiliate (it is about 54 miles between these cities, 39 miles between transmitters). Jamestown, N.Y., where a UHF station formerly operated, is within the Grade B contours of three Buffalo and three Erie stations, but within the Grade A contour of only the Erie VHF station (city-to-city distances are 43 miles to Erie and 57 miles to Buffalo). Other cases in which the city and station site are fairly far from the larger-city stations (although one or both are within three network Grade A contours) include Hickory, N.C., 41 miles to Charlotte; Salem, Oreg., 44 miles to Portland (more from the Salem station's site) and Canton, Ohio, 43 miles to Youngstown (less between sites) and 21 miles from Akron, with one net work affiliate.[13]

50. There are, of course, numerous cases in which the networks affiliate with stations fairly close together. This is particularly true where both are in large cities or markets, such as Washington-Baltimore (35 miles city-to-city), Boston-Providence/New Bedford (41 miles Boston-Providence), and ABC in Cleveland-Akron, Ohio (30 miles city-to-city, less than 25 miles between transmitters). It is also true to some extent where the markets are not so large; for example the UHF station at Anderson, S.C., has affiliation arrangements with ABC and CBS; the VHF station at Spartanburg, S.C. (in the Greenville-Spartanburg-Asheville market), is also a CBS affiliate, the distances being about 48 miles city-to-city and 50 miles between transmitters. NBC and CBS have secondary affiliations with a station in Tuscaloosa, Ala., some 50 miles from Birmingham. There are also a few cases where networks are regularly affiliated with two or more stations located close together and in the same market. For example, CBS is affiliated with three UHF stations in the Harrisburg-Lancaster-Lebanon-York (Pa.), market, with transmitters less than 30 miles apart; and NBC is affiliated with UHF stations at New Britain-Hartford and Waterbury, Conn., in the Hartford-New Haven market, with transmitters only about 16 miles apart. With NBC also affiliated in the nearby Springfield, Mass., market, this means three stations within about 40 miles presenting the same NBC programs.

51. Conclusions as to "small market" stations: Here, as with the "uncleared programs" portion of this proceeding, we conclude that no final action is warranted at this time. However, while the overall situation in this area is probably somewhat better than it is with respect to "uncleared programs," we conclude that it is not by any means completely satisfactory, and must be carefully studied in the near future.

52. It must be borne in mind that the stations involved here—such as those mentioned in the last few paragraphs—are generally the only ones in their communities, and thus their survival and continued operation is very much in the public interest, and must be of high concern to us, under our "307(b)" mandate to provide conditions favorable to the development of local outlets in as many communities of substantial size as possible. This has long been one of our basic allocations objectives, in television as in the radio broadcast services, as emphasized in the 1952 sixth report and order establishing the present basic television allocation framework. The public interest in the development and viability of these stations is probably higher, and certainly at least as high, as it is in the success of the independent UHF stations which have been the primary object of our concern in Part I of this proceeding, above.

53. In the sixth report and order of 1952, the Commission established a Table of Assignments for the licensing of UHF and VHF stations in the expectation that areas of "no service or inadequate service be kept at a minimum" and that the demonstrated desire for broadcasting stations to meet local needs and interests be met. Particularly, we indicated an expectancy that by fixing a channel reservation many communities which at the time could not support a station would ultimately be able to do so. It is obvious today that a network affiliation can be the sustenance of many otherwise marginal stations; network affiliation policies can make or break local television stations in moderately small cities. Our concern that network affiliation practices coincide with our efforts to encourage the establishment of a nationwide television system is evinced by our rule prohibiting efforts being made upon networks by their affiliates with regard to their affiliation with stations in other markets (§ 73.658). If, with or without outside influence, the network unreasonably denies programs to television stations serving areas otherwise without its service, that denial disserves the public and may spell the bankruptcy of the station as in Marion, or, at least, the cessation of operation as in other cases mentioned. CATV becomes the only recourse. The growth of CATV is generally ascribed to inadequacies of off-air signals in quantity and quality in extensive areas of the United States.

54. In light of these considerations, the unavailability of network programs to stations in places such as Marion, and

[12] According to the Commission's report TV Financial Data—1969 (Mimeo No. 53051), released July 24, 1970, of 598 regular (non-satellite) stations reporting, 516 were network-affiliated and 82 were independent.

[13] As to the small-city station's penetration of the larger city, the Canton station puts a Grade A signal over Akron and the Modesto station puts a Grade A signal over part of Stockton. The Fond du Lac and Salem stations provide a Grade B signal just beyond Green Bay and Portland respectively, the Jamestown station's Grade B contour included Erie but not Buffalo, and the Canton station provides a Grade B signal to part of Youngstown. Pocatello includes Idaho Falls (but no other station locations) within its Grade B contour. The Hickory and Muskegon stations do not, or did not, significantly penetrate the larger city. The Modesto station's Grade B contour does not include Sacramento or the sites of the stations in that market.

some of the others mentioned, must be regarded as unsatisfactory, and we must, and do, expect the networks to take steps to increase such availability. We recognize that this situation is a complex one, and we do not here say what such steps should be, whether they should involve a formal review and revision of affiliation procedures and criteria, or ad hoc exceptions. But, in our judgment, in at least some of the situations mentioned the present situation must be altered.

55. As indicated above, much of the discussion of the Marion and Ada situations, in the comments herein, was in terms of "Grade B contours", and how these stations' coverage areas (and cities and home counties) receive other Grade B signals. To the extent that this means the networks use "Grade B coverage" as a criterion determining affiliation vel non, we believe that an erroneous standard is being employed. In our judgment, use of the Grade B criterion, to the extent it is employed in this connection, has substantial deficiencies, resulting in fewer affiliated stations than there would be if more liberal standards prevailed, and thus fewer stations with the economic base so important to successful operation. The fact that a given community or area receives a "Grade B" signal does not, of course, mean that satisfactory reception is guaranteed; "Grade B" is defined as a signal intensity sufficient to provide expected service at 50 percent of the locations 90 percent of the time, and, in addition, it does not take into account cochannel or adjacent channel interference. Thus, to the extent it is used, reliance on this criterion results both in fewer stations obtaining programs so necessary to their operation, and less availability of the programs to the public. The criterion must be changed if the number of stations is to approach the opportunities therefor provided in the Table of Assignments.

56. Moreover, as indicated above, when the situation appears to warrant it, the networks affiliate with stations situated well within the Grade B contours of other stations, and, indeed, sometimes within the Grade A contours of other stations, as in the Washington-Baltimore, Cleveland-Akron, Pennsylvania, and Connecticut cases referred to above. If affiliation with two stations with this degree of proximity and overlap is desirable in these situations, we fail to see why it would not be in other situations such as Marion and others mentioned.

57. Overall, the performance of the networks in this area is not to be criticized too harshly; as mentioned, the distribution of their programs is fairly widespread, and we note that they provide programs to some stations in very small markets which are isolated from other stations (e.g., Flagstaff, Ariz., and Miles City, Mont.). Moreover, as noted above, we recognize that this subject is a complex one, and the formulation of appropriate standards might well be difficult. None of the stations mentioned above is situated so that there is no possibility of service in its city from existing affiliates of three networks (except Pocatello). Nonetheless, we find the unavailability of network programs in the Marion situation, and some of the other similar cases mentioned, an unsatisfactory situation which must be improved. We will expect the networks to review the policies and practices under which they enter into affiliation arrangements or otherwise furnish programs to stations, to keep attuned to the public need for an expanded television service. We will expect a report by June 1971, as discussed below.

58. Mention was made earlier, in connection with the "uncleared program" problem, of the compensation paid to UHF stations when the regular affiliate in the market does not clear the program, in which respect the situation does not appear satisfactory. The same is likely true in the present connection also, but this aspect of the matter appears of less importance.We recognize that in some of these "small market" situations the number of viewers which the station would add to the network lineup if included in it may be small, and therefore it may not be practical to expect a high level of remuneration from the networks in some cases. The emphasis in this part of the proceeding is rather on the availability of network programs, which can serve the station economically by helping it to sell adjacencies and building an audience and establishing a position, as well as through whatever compensation it may get from the network. However, it is noted that numerous small-market stations presently appear to receive little or nothing from the networks. According to the current network Standard Rate and Data Service, a number of stations listed as affiliates are not given a "network rate", and therefore presumably receive no compensation. Others have extremely low network rates, less than $100 per prime time hour. We hope that, to the extent these stations add value to the network's lineup, ways can be found to bring them increased compensation.

OVERALL CONCLUSIONS AND ORDER

59. As stated above, while the adoption of specific rules does not appear appropriate at this time, the situation with respect to the distribution of network programs appears unsatisfactory in a number of respects, and in our judgment must be improved if the public interest in increased television service and the development of UHF stations is to be furthered. Four of these relate to the placement of "uncleared" network programs, those not carried by regular affiliates in the market, and have been mentioned in paragraphs 30 and 41 above: (1) more vigorous efforts to place on alternate stations all "uncleared" programs, including those not taken by the regular affiliate only occasionally or part of the time, and "one-shot" programs; (2) adequate notice to alternate stations that a program will not be cleared by the affiliate and will thus be available to other stations; (3) a reasonable level of compensation to the independent stations carrying the program; and (4) recapture practices which afford a reasonable degree of stability to the independent, which appear to include the minimum of 13 weeks run without recapture now granted by ABC and CBS. The fifth matter, discussed in the immediately preceding paragraphs, is the availability of programs to "small-market" stations, an area where the networks' practices and policies appear to have been too restrictive so that numerous such stations are unable to obtain desirable program product and thus their survival is endangered or becomes impossible.

60. In our view, for reasons stated herein, the public interest requires an improvement in the networks' performance in these respects, and we expect it to be improved in the near future. While we are not now adopting any rules in these areas, we will require the networks to report in the near future, by June 30, 1971, a period some seven months hence, on their policies and practices in the respects mentioned above. This proceeding is being kept open for the receipt of this information and whatever subsequent consideration and action may be indicated.

61. In view of the foregoing: *It is ordered,* That the three national television networks, American Broadcasting Cos., Inc., Columbia Broadcasting System, Inc., and National Broadcasting Co., Inc., shall report to the Commission, on or before June 30, 1971, as to their policies and practices current at that time as to the five matters mentioned in paragraphs 30, 41, 51–57, and 58, hereinabove. This action is taken pursuant to sections 303 (g) and (i), and 403 of the Communications Act of 1934, as amended.

FEDERAL COMMUNICATIONS COMMISSION,[14]
[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 70-17460; Filed, Dec. 28, 1970; 8:50 a.m.]

[14] Commissioner Bartley absent; Commissioner Wells statement filed as part of original document.

Notices

DEPARTMENT OF THE TREASURY

Internal Revenue Service

EDWARD HARLAN CASTLE

Notice of Granting of Relief

Notice is hereby given that Edward Harland Castle, DBA, Cool Springs Park, Route 50, Rowlesburg, WV 26425, 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 January 12, 1966, in the United States District Court for the Northern District of West Virginia, Elkins, W. Va., of a crime punishable by imprisonment for a term exceeding 1 year. Unless relief is granted, it will be unlawful for Mr. Castle 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 Mr. Castle to receive, possess, or transport in commerce or affecting commerce, any firearm.

Notice is hereby given that I have considered Edward Harlan Castle'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 Edward Harlan Castle 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 14th day of December 1970.

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

[F.R. Doc. 70-17496; Filed, Dec. 28, 1970; 8:52 a.m.]

CHARLES E. FIELDS

Notice of Granting of Relief

Notice is hereby given that Charles E. Fields, Route 3, Box 220, Princeton, MN 55371, 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 March 15, 1956, in the Hennepin County District Court, Minneapolis, Minn., of a crime punishable by imprisonment for a term exceeding 1 year. Unless relief is granted, it will be unlawful for Charles E. Fields 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 Charles E. Fields to receive, possess, or transport in commerce or affecting commerce, any firearm.

Notice is hereby given that I have considered Charles E. Fields' 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 Charles E. Fields 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 16th day of December 1970.

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

[F.R. Doc. 70-17495; Filed, Dec. 28, 1970; 8:52 a.m.]

ROBERT FRANCIS MORSE

Notice of Granting of Relief

Notice is hereby given that Robert Francis Morse, 50 Carleton Avenue, Brockton, MA 02401, 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 February 11, 1942, in the Plymouth Superior Court, Plymouth, MA, of a crime punishable by imprisonment for a term exceeding 1 year. Unless relief is granted, it will be unlawful for Robert Francis Morse 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 Robert Francis Morse to receive, possess, or transport in commerce or affecting commerce, any firearm.

Notice is hereby given that I have considered Robert Francis Morse'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 Robert Francis Morse 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 14th day of December 1970.

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

[F.R. Doc. 70-17497; Filed, Dec. 28, 1970; 8:52 a.m.]

EDWARD PIEKARSKI

Notice of Granting of Relief

Notice is hereby given that Edward Piekarski, 29737 Westfield, Livonia, MI 48150, 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 January 12, 1944, in the Recorder's Court of the City of Detroit, Mich., of a crime punishable by imprisonment for a term exceeding 1 year. Unless relief is granted, it will be unlawful for Edward Piekarski 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 Edward Piekarski to receive, possess, or transport in commerce or affecting commerce, any firearm.

Notice is hereby given that I have considered Edward Piekarski'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 Edward Piekarski 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 16th day of December 1970.

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

[F.R. Doc. 70-17498; Filed, Dec. 28, 1970; 8:52 a.m.]

POST OFFICE DEPARTMENT

LOSSES IN THE MAILS

Limitation on Reimbursement Therefor by Postal Service

Effective January 1, 1971, the Postal Service will reimburse customers for losses through the mail service only to the extent of indemnity protection afforded by the registry and insurance systems.

Customers of the Postal Service using the mails to transmit currency or articles of value are offered the protection of registry and insurance systems provided by the Postal Service at reasonable fees. The Postal Service anticipates that its customers will utilize these services for protection of any articles of value entrusted to the mails.

(5 U.S.C. 301, 39 U.S.C. 501)

DAVID A. NELSON,
General Counsel.

[F.R. Doc. 70-17548; Filed, Dec. 28, 1970; 9:33 a.m.]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

CALIFORNIA

Notice of Filing of California State Protraction Diagrams

Notice is hereby given that effective February 1, 1971, the following protraction diagrams are officially filed and of record in the Sacramento Land Office. In accordance with Title 43, Code of Federal Regulations, these protractions will become the basic record for describing the land for all authorized purposes at and after 10 a.m. of the above date. Until this date and time, the diagrams have been placed in the open files and are available to the public for information only.

CALIFORNIA PROTRACTION DIAGRAM 93

Approved January 27, 1970

T. 15 N., R. 9 E., M.D.M.,
Sec. 36, NE¼, E½W½, N½SE¼, SW¼ SE¼.

CALIFORNIA PROTRACTION DIAGRAM 97

Approved February 24, 1970

T. 14 S., R. 31 E., M.D.M.,
Secs. 1 to 36, inclusive, all.
T. 15 S., R. 31 E., M.D.M.,
Sec. 4, W½;
Sec. 5, E½;
Sec. 10, S½;
Sec. 14, W½;
Sec. 15, N½, SE¼;
Sec. 16, S½;
Sec. 21, N½.
T. 13 S., R. 31½ E., M.D.M.,
Sec. 1, all;
Sec. 12, all;
Sec. 13, all;
Sec. 24, all;
Sec. 25, all;
Sec. 36, all.
T. 14 S., R. 31½ E., M.D.M.,
Sec. 1, all;
Sec. 12, all;
Sec. 13, all;
Sec. 24, all;
Sec. 25, all;
Sec. 36, all.
T. 12½ S., R. 32 E., M.D.M.,
Secs. 25 to 30, inclusive, S½;
Secs. 31 to 36, inclusive, all.
T. 13 S., R. 32 E., M.D.M.,
Secs. 1 to 36, inclusive, all.
T. 14 S., R. 32 E., M.D.M.,
Secs. 1 to 36, inclusive, all.
T. 15 S., R. 32 E., M.D.M.,
Secs. 1 to 36, inclusive, all.

CALIFORNIA PROTRACTION DIAGRAM 98

Approved February 24, 1970

T. 16 S., R. 29 E., M.D.M.,
Sec. 35, SE¼;
Sec. 36, S½.
T. 16 S., R. 30 E., M.D.M.,
Sec. 31, S½;
Sec. 32, S½.
T. 17 S., R. 30 E., M.D.M.,
Sec. 3, NW¼;
Sec. 4, N½;
Sec. 5, N½;
Sec. 6, N½;
Sec. 19, S½;
Sec. 30, N½.
T. 16 S., R. 31 E., M.D.M.,
Sec. 33, SE¼;
Sec. 34, SW¼.
T. 17 S., R. 31 E., M.D.M.,
Secs. 1 and 2, all;
Sec. 3, N½, SE¼;
Sec. 11, N½;
Sec. 12, N½.
T. 17 S., R. 32 E., M.D.M.,
Sec. 6, W½.

CALIFORNIA PROTRACTION DIAGRAM 112

Approved February 10, 1970

T. 7 S., R. 24 E., M.D.M.,
Sec. 10, S½;
Sec. 15, all;
Sec. 16, E½;
Sec. 21, E½;
Sec. 22, N½, SW¼.
T. 6 S., R. 25 E., M.D.M.,
Sec. 7, S½;
Sec. 18, all;
Sec. 19, N½.

CALIFORNIA PROTRACTION DIAGRAM 115

Approved February 2, 1970

T. 5 S., R. 22 E., M.D.M.,
Sec. 5, all;
Sec. 6, all.

CALIFORNIA PROTRACTION DIAGRAM 116

Approved February 2, 1970

T. 3 S., R. 20 E., M.D.M.,
Sec. 1, W½;
Sec. 2, E½.
T. 4 S., R. 20 E., M.D.M.,
Sec. 3, W½;
Sec. 4, E½;
Sec. 5, NW¼, S½;
Sec. 6, NE¼, S½;
Sec. 7, all;
Sec. 8, N½, SW¼.
T. 2 S., R. 21 E., M.D.M.,
Secs. 1 and 2, all;
Sec. 3, NE¼, S½;
Sec. 10, all;
Secs. 11, 12, and 15, fractional;
Secs. 30 and 31, fractional.
T. 2 S., R. 22 E., M.D.M.,
Secs. 1 to 4, inclusive, fractional;
Sec. 5, all;
Secs. 8, 9, 11, 12, and 36, fractional.

CALIFORNIA PROTRACTION DIAGRAM 117

Approved February 2, 1970

T. 1 N., R. 16 E., M.D.M.,
Sec. 3, W½NW¼;
Sec. 4, NE¼.
T. 1 S., R. 16 E., M.D.M.,
Sec. 1, NW¼;
Sec. 2, N½;
Sec. 3, N½;
Sec. 4, N½, SW¼;
Sec. 5, E½.

CALIFORNIA PROTRACTION DIAGRAM 118

Approved February 2, 1970

T. 2 N., R. 26 E., M.D.M.,
Secs. 13 and 24, fractional.
T. 1 N., R. 27 E., M.D.M.,
Sec. 28, S½;
Sec. 29, NW¼, S½;
Sec. 30, E½;
Sec. 31, E½;
Sec. 32, all;
Sec. 33, all;
Sec. 34, W½.
T. 2 N., R. 27 E., M.D.M.,
Secs. 18 and 19, fractional.
T. 1 N., R. 28 E., M.D.M.,
Secs. 1 to 2, inclusive, all;
Sec. 4, NE¼, S½;
Secs. 9 to 16, inclusive, all;
Secs. 21 to 28, all;
Sec. 33, N½, SE¼;
Secs. 34 to 36, inclusive, all.

CALIFORNIA PROTRACTION DIAGRAM 119

Approved February 2, 1970

T. 1 N., R. 25 E., M.D.M.,
Secs. 1 to 6, inclusive, all;
Secs. 9 to 12, inclusive, all;
Secs. 25 to 29, inclusive, all;
Secs. 31 to 36, inclusive, all.
T. 2 N., R. 25 E., M.D.M.,
Sec. 6, W½.

CALIFORNIA PROTRACTION DIAGRAM 120

Approved January 27, 1970

T. 3 N., R. 22 E., M.D.M.,
Secs. 1 to 6, inclusive, S½;
Secs. 7 to 36, inclusive, all.
T. 3 N., R. 23 E., M.D.M.,
Secs. 1 to 30, inclusive, all;
Secs. 31 to 36, inclusive, fractional.

CALIFORNIA PROTRACTION DIAGRAM 121

Approved January 27, 1970

T. 3 N., R. 19 E., M.D.M.,
Secs. 1 to 16, inclusive, all;
Secs. 21 to 28, inclusive, all;
Secs. 32 to 36, inclusive, all.
T. 3 N., R. 20 E., M.D.M.,
Sec. 1, NW¼, S½;
Secs. 2 to 36, inclusive, all.
T. 4 N., R. 20 E., M.D.M.,
Secs. 1 to 5, inclusive, S½;
Sec. 6, SW¼NW¼, S½;
Secs. 7 to 36, inclusive, all.
T. 3 N., R. 21 E., M.D.M.,
Secs. 1 to 6, inclusive, S½ all;
Secs. 7 to 36, inclusive, all.

CALIFORNIA PROTRACTION DIAGRAM 122

Approved January 27, 1970

T. 6 N., R. 20 E.,
Secs. 1 to 4, inclusive, all;
Sec. 5, SE¼;
Sec. 6, N½;
Sec. 7, NE¼, S½;
Secs. 8 to 18, inclusive, all;
Sec. 19, N½, SE¼;
Secs. 20 to 26, inclusive, all;
Sec. 27, N½, SE¼;
Sec. 28, N½N½;
Sec. 29, N½;
Sec. 35, NE¼, E½NW¼, SE¼;
Sec. 36, all.

T. 5 N., R. 21 E., M.D.M.,
Secs. 2 to 5, inclusive, all;
Sec. 6, E½;
Sec. 7, NE¼;
Secs. 8 to 11, inclusive, all;
Sec. 14, N½, SW¼;
Sec. 15, all;
Sec. 16, N½, SE¼;
Sec. 31, E½;
Sec. 32, W½;
Sec. 33, NE¼, S½;
Sec. 34, NW¼, S½;
Sec. 36, SE¼.
T. 6 N., R. 21 E., M.D.M.,
Secs. 1 to 36, inclusive, all.
T. 6 N., R. 22 E., M.D.M.,
Sec. 5, W½;
Sec. 6, E½.

CALIFORNIA PROTRACTION DIAGRAM 123

Approved January 27, 1970

T. 6 N., R. 17 E., M.D.M.,
Sec. 2, N½, SW¼;
Sec. 3, all;
Sec. 4, E½.
T. 7 N., R. 17 E., M.D.M.,
Sec. 1, N½, SW¼;
Sec. 2, N½, SE¼;
Sec. 3, N½;
Sec. 4, N½, SW¼;
Sec. 5, all;
Sec. 6, N½, SE¼;
Sec. 24, NE¼, S½;
Sec. 25, all;
Sec. 34, NE¼, S½;
Secs. 35 and 36, all.
T. 6 N., R. 18 E., M.D.M.,
Sec. 1, N½;
Secs. 2 to 5, inclusive, all;
Sec. 6, E½, SW¼SW¼;
Sec. 7, N½;
Sec. 8, N½;
Sec. 9, NW¼;
Secs. 10 and 11, N½;
Sec. 23, E½;
Sec. 24, W½, SE¼;
Sec. 25, all;
Sec. 26, NE¼, S½;
Sec. 27, SE¼;
Sec. 33, S½NE¼, SE¼;
Sec. 34, unsurveyed portion;
Secs. 35 and 36, all.
T. 6 N., R. 19 E., M.D.M.,
Sec. 5, NW¼, S½;
Sec. 6, N½, SE¼;
Sec. 7, NE¼;
Sec. 8, N½;
Sec. 19, S½;
Sec. 30, N½, SW¼;
Sec. 31, W½.
T. 7 N., 19 E., M.D.M.,
Sec. 1, all;
Sec. 2, E½;
Sec. 3, SW¼;
Sec. 4, NW¼, S½;
Sec. 5, E½;
Sec. 8, E½;
Sec. 9, all;
Sec. 10, NW¼, SE¼;
Sec. 11, NE¼, S½;
Secs. 12 to 15, inclusive, all;
Sec. 16, N½, SE¼;
Secs. 22 to 26, inclusive, all;
Sec. 27, N½, SE¼;
Sec. 35, N½, SE¼;
Sec. 36, all.

CALIFORNIA PROTRACTION DIAGRAM 124

Approved January 27, 1970

T. 8 N., R. 17 E., M.D.M.,
Secs. 1 to 3, inclusive, all;
Sec. 4, E½;
Secs. 10 to 15, inclusive, all;
Sec. 21, NE¼, S½;
Secs. 22 to 28, inclusive, all;
Sec. 31, NE¼, S½;
Secs. 32 to 36, inclusive, all.

T. 9 N., R. 17 E., M.D.M.,
Sec. 22, SE¼;
Sec. 23, SW¼, E½E½E½;
Sec. 26, all;
Sec. 27, NE¼, S½;
Secs. 34 and 35, all.
T. 8 N., R. 18 E., M.D.M.,
Secs. 1 to 23, inclusive, all;
Sec. 24, N½NE¼, W½;
Sec. 26, N½;
Sec. 27, N½;
Sec. 28, N½;
Sec. 29, N½, SW¼;
Secs. 30 and 31, all.
T. 9 N., R. 18 E., M.D.M.,
Sec. 3, NW¼, N½SW¼;
Sec. 4, N½, SW¼, N½SE¼;
Sec. 5, E½;
Sec. 7, NE¼, S½;
Sec. 8, all;
Sec. 9, W½NW¼, SE¼NW¼, S½, S½NE¼;
Sec. 10, S½N½, S½;
Sec. 11, S½NW¼, S½;
Sec. 13, all, except NE¼;
Secs. 14 to 24, inclusive, all;
Secs. 28 to 33, inclusive, all.
T. 8 N., R. 19 E., M.D.M.,
Secs. 1 and 2, all;
Sec. 11, N½, SE¼;
Sec. 12, all;
Sec. 18, W½;
Sec. 19, N½NW¼;
Sec. 35, NE¼, S½;
Sec. 36, all.

CALIFORNIA PROTRACTION DIAGRAM 126

Approved January 27, 1970

T. 8 N., R. 24 E., M.D.M.,
Secs. 5 and 6, fractional;
Sec. 7, all;
Secs. 8, 9, 15, and 16, fractional;
Secs. 17, 18, 19, 20, and 21, all;
Secs. 22, 23, 25, and 26, fractional;
Secs. 27 to 36, inclusive, all.
T. 9 N., R. 24 E., M.D.M.,
Sec. 31, fractional.
T. 8 N., R. 25 E., M.D.M.,
Sec. 31, fractional.
T. 6 N., R. 26 E., M.D.M.,
Sec. 4, fractional;
Sec. 5, fractional E½;
Sec. 9, fractional N½N½.

CALIFORNIA PROTRACTION DIAGRAM 133

Approved February 10, 1970

T. 5 S., R. 26 E., M.D.M.,
Secs. 1 to 36, inclusive, all.
T. 6 S., R. 26 E., M.D.M.,
Secs. 1 to 36, inclusive, all.
T. 5 S., R. 27 E., M.D.M.,
Secs. 1 to 36, inclusive, all.
T. 6 S., R. 27 E., M.D.M.,
Secs. 1 to 36, inclusive, all.
T. 6½ S., R. 27 E., M.D.M.,
Secs. 25 to 36, inclusive, all.

CALIFORNIA PROTRACTION DIAGRAM 147

Approved January 27, 1970

T. 4 N., R. 14 E., M.D.M.,
Sec. 36, S½NE¼, S½.
T. 4 N., R. 15 E., M.D.M.,
Sec. 31, NE¼, S½NW¼, S½;
Sec. 32, all;
Sec. 33, NW¼, S½.

CALIFORNIA PROTRACTION DIAGRAM 148

Approved February 2, 1970

T. 37 N., R. 15 E., M.D.M.,
Sec. 5, all except SE¼.

Copies of these diagrams are for sale at two dollars ($2.00) each by the Survey Records Office, Bureau of Land Management, Room E-2807, Federal Office

Building, 2800 Cottage Way, Sacramento, CA 95825.

JOHN E. CLUTE,
Chief,
Branch of Title and Records.

[F.R. Doc. 70-17363; Filed, Dec. 28, 1970; 8:45 a.m.]

Office of Hearings and Appeals

[Docket No. NORT 70-6]

SOUTHERN ELECTRIC GENERATING CO.

Petition for Modification of Mandatory Safety Standard

In accordance with the provisions of section 301(c) of the Federal Coal Mine Health and Safety Act of 1969 (Public Law 91-173, 83 Stat. 24), notice is given that the Southern Electric Generating Co. has filed a petition to modify the application of section 314(b) of the Act, as implemented by § 75.1403-7(o) of Title 30, Code of Federal Regulations, to its Segco Mine No. 2.

Section 314(b) of the Act provides:

(b) Other safeguards adequate. In the judgment of an authorized representative of the Secretary, to minimize hazards with respect to transportation of men and materials shall be provided.

Section 75.1403-7(o) of the regulations read as follows at the time when the petition was filed:

(o) Extraneous materials or supplies shall not be transported on top of equipment; however, materials and supplies that are necessary for or related to the operation of such equipment may be transported on top of such equipment if a hazard is not introduced. (35 F.R. 5251)

This regulation was recently amended, effective November 20, 1970, by the substitution of "should" for "shall". (35 F.R. 17924)

Petitioner avers that a similar provision existed in the old Federal Mine Safety Code, that it applied for an exemption in October 1964 and was granted one on December 1, 1964, and that the exemption has been in effect since that date. Petitioner indicates that the exemption was granted to permit the transporting of timbers and other materials to the working faces in the Segco No. 2 Mine on the top of locomotives (tractors) for the reason that this was the safest way possible.

Parties interested in this petition should file their answer or comments with the Office of Hearings and Appeals, Hearings Division, U.S. Department of the Interior, Ballston Tower No. 3, 4015 Wilson Boulevard, Arlington, VA 22203, within 30 days from the date of publication of this notice. Copies of the petition are available for inspection at the same address.

JAMES M. DAY,
Director,
Office of Hearings and Appeals.

DECEMBER 15, 1970.

[F.R. Doc. 70-17429; Filed, Dec. 28, 1970; 8:47 a.m.]

DEPARTMENT OF AGRICULTURE

Office of the Secretary

CONSUMER AND MARKETING SERVICE

Organization and Delegations

Pursuant to the authority contained in 5 U.S.C. 301 and Reorganization Plan No. 2 of 1953, section 110c of Secretary's order dated December 3, 1969 (34 F.R. 19474), is amended by adding a new subparagraph (26), which reads as follows:

(26) Agricultural Fair Practices Act (7 U.S.C. 2301-2306)

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

CLIFFORD M. HARDIN,
Secretary of Agriculture.

[F.R. Doc. 70-17448; Filed, Dec. 28, 1970; 8:48 a.m.]

ARKANSAS

Designation of Areas for Emergency Loans

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

ARKANSAS

Ashley.	Lee.
Clay.	Lincoln.
Conway.	Mississippi.
Craighead.	Monroe.
Crittenden.	Phillips.
Cross.	Randolph.
Desha.	St. Francis.
Greene.	White.
Independence.	Woodruff.
Lawrence.	

Emergency loans will not be made in the above-named counties under this designation after June 30, 1971, except subsequent loans to qualified borrowers who receive initial loans under this designation on or before that date.

Done at Washington, D.C., this 22d day of December 1970.

CLIFFORD M. HARDIN,
Secretary of Agriculture.

[F.R. Doc. 70-17490; Filed, Dec. 28, 1970; 8:52 a.m.]

NEW MEXICO

Designation of Area for Emergency Loans

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

NEW MEXICO

Chaves.

Emergency loans will not be made in the above-named county under this designation after June 30, 1971, except subsequent loans to qualified borrowers who receive initial loans under this designation on or before that date.

Done at Washington, D.C., this 22d day of December 1970.

CLIFFORD M. HARDIN,
Secretary of Agriculture.

[F.R. Doc. 70-17491; Filed, Dec. 28, 1970; 8:52 a.m.]

OKLAHOMA

Designation of Area for Emergency Loans

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

OKLAHOMA

Wagoner.

Emergency loans will not be made in the above-named county under this designaton after June 30, 1971, except subsequent loans to qualified borrowers who receive initial loans under this designation on or before that date.

Done at Washington, D.C., this 22d day of December 1970.

CLIFFORD M. HARDIN,
Secretary of Agriculture.

[F.R. Doc. 70-17492; Filed, Dec. 28, 1970; 8:52 a.m.]

TEXAS

Designation of Areas for Emergency Loans

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

TEXAS

Anderson.	Wharton.
Gaines.	

Emergency loans will not be made in the above-named counties under this

designation after June 30, 1971, except subsequent loans to qualified borrowers who receive initial loans under this designation on or before that date.

Done at Washington, D.C., this 22d day of December, 1970.

CLIFFORD M. HARDIN,
Secretary of Agriculture.

[F.R. Doc. 70-17493; Filed, Dec. 28, 1970; 8:52 a.m.]

Packers and Stockyards Administration

GAINESVILLE SALE BARN ET AL.

Deposting of Stockyards

It has been ascertained, and notice is hereby given, that the livestock markets named herein, originally posted on the respective dates specified below as being subject to the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 et seq.), no longer come within the definition of a stockyard under said Act and are, therefore, no longer subject to the provisions of the Act.

Name, location of stockyard, and date of posting

Gainesville Sale Barn, Gainesville, Mo., May 20, 1959.
Empire Livestock Marketing Cooperative, Inc., Bullville, N.Y., Aug. 8, 1960.
John F. Hobbs Stockyard, Inc., Goldsboro, N.C., Apr. 6, 1959.
The Dorset Livestock Auction, Inc., Dorset, Ohio, May 30, 1959.
Cleveland Livestock Auction Co., Cleveland, Tenn., May 5, 1959.
Dayton Livestock Auction Co., Dayton, Tenn., May 7, 1959.

Notice or other public procedure has not preceded promulgation of the foregoing rule since it is found that the giving of such notice would prevent the due and timely administration of the Packers and Stockyards Act and would, therefore, be impracticable and contrary to the public interest. There is no legal warrant or justification for not depositing promptly a stockyard which is no longer within the definition of that term contained in the Act.

The foregoing is in the nature of a rule granting an exemption or relieving a restriction and, therefore, may be made effective in less than 30 days after publication in the FEDERAL REGISTER. This notice shall become effective upon publication in the FEDERAL REGISTER.

(42 Stat. 159, as amended and supplemented; 7 U.S.C. 181 et seq.)

Done at Washington, D.C., this 21st day of December 1970.

G. H. HOPPER,
Chief, Registrations, Bonds, and Reports Branch, Livestock Marketing Division

[F.R. Doc. 70-17449; Filed, Dec. 28, 1970; 8:48 a.m.]

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. A-560]

JOSEPH W. KUNTZ, JR.

Notice of Loan Application

DECEMBER 22, 1970.

Joseph W. Kuntz, Jr., Box 642, Wrangell, AK 99929, has applied for a loan from the Fisheries Loan Fund to aid in financing the purchase of a used 39.2-foot registered length wood vessel to engage in the fishery for salmon and halibut.

Notice is hereby given, pursuant to the provisions of 16 U.S.C. 742c, Fisheries Loan Fund Procedures (50 CFR Part 250, as revised), and Reorganization Plan No. 4 of 1970, that the above-entitled application is being considered by the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce, Interior Building—Washington, D.C. 20235. Any person desiring to submit evidence that the contemplated operation of such vessel will cause economic hardship or injury to efficient vessel operators already operating in that fishery must submit such evidence in writing to the Director, National Marine Fisheries Service, within 30 days from the date of publication of this notice. If such evidence is received it will be evaluated along with such other evidence as may be available before making a determination that the contemplated operation of the vessel will or will not cause such economic hardship or injury.

JAMES F. MURDOCK,
Chief, Division of Financial Assistance.

[F.R. Doc. 70-17428; Filed, Dec. 28, 1970; 8:47 a.m.]

Office of the Secretary

SMALL CARPETS AND RUGS

Notice of Standard

On April 16, 1970, there was published in the FEDERAL REGISTER (35 F.R. 6212) a notice of finding that a flammability standard was needed for small carpets and rugs to protect the public against unreasonable risk of the occurrence of fire leading to death, injury, or significant property damage, arising from the hazards of rapid flash burning or continuous slow burning or smoldering. A proposed standard, which was preliminarily found to protect the public against the unreasonable risk, was published in the same FEDERAL REGISTER. It was also preliminarily found that the proposed standard was reasonable, technologically practicable and appropriate and stated in objective terms.

In deciding to issue the final standard on small carpets and rugs, there were reviewed and considered the comments received pursuant to the above-referenced publication of the proposed standard for small carpets and rugs, and the reports of the members of the National Advisory Committee for the Flammable Fabrics Act on that proposed standard. As a result of this review and consideration, the labeling requirements of the proposed standard were changed. Therefore, pursuant to my responsibilities and authority under the Flammable Fabrics Act, as amended, it is hereby found that the standard as set out in full at the end hereof:

(a) Is needed for small carpets and rugs to protect the public against unreasonable risk of the occurrence of fire arising from the hazards of rapid flash burning or continuous slow burning or smoldering and leading to death, personal injury, or significant property damage;

(b) Is reasonable, technologically practicable and appropriate and is stated in objective terms; and

(c) Is limited to small carpets and rugs which currently present the unreasonable risks specified in (a) above.

Intent of the Standard. There has heretofore existed no flammability standard for small carpets and rugs affording protection to the general public from an unreasonable risk of the occurrence of fire. This standard is particularly designed to protect the public from the occurrence of fire from small ignition sources, such as glowing fireplace embers or inadvertently discarded lighted matches. These sources will usually affect only the surface of the carpet or rug; hence, the standard is one for surface flammability of small carpets and rugs. The standard affords to the general public additional protection to that presently provided in the Standard for the Surface Flammability of Carpets and Rugs (DOC FF 1-70) recently published by the Secretary of Commerce in the FEDERAL REGISTER (35 F.R. 6211, Apr. 16, 1970), which does not include small carpets and rugs.

Standard. On the basis of comments received in response to the notice of proposed flammability standard for carpets and rugs (34 F.R. 19812, Dec. 18, 1969), it has been determined that the standard DOC FF 1-70 is not appropriate for small carpets and rugs (defined as having no dimension greater than 1.83 meters (6 feet) and an area not greater than 2.23 square meters (24 square feet)), but that nonetheless a labeling standard complementary to DOC FF 1-70 is needed to warn the consuming public against use of such small carpets and rugs in locations where their ignition could cause the spread of fire to other combustible interior furnishings.

Therefore, all small carpets and rugs no larger than the above size limits, and fabrics or related materials intended to be used, or which may reasonably be expected to be used, as small carpets and rugs, which fail to meet the acceptance criterion of the test method described in the appended standard, shall be provided with a permanent

label warning the public against the risk associated with the indiscriminate use of such small carpets and rugs.

Effective date. The appended standard, DOC FF 2-70, a Standard for the Surface Flammability of Small Carpets and Rugs (Pill Test), shall become effective 12 months from the date of its publication in the FEDERAL REGISTER, and all small carpets and rugs, as defined in the standard, and all materials which may reasonably be expected to be used as small carpets and rugs manufactured on or after that date shall comply with the standard. Small carpets and rugs, and materials which may reasonably be expected to be used as carpets and rugs, in inventory or with the trade as of the effective date shall be exempt from the standard. All concerned parties may be required to provide records proving that small carpets and rugs offered for sale after the effective date are eligible for the exemption.

Issued: December 22, 1970.

MAURICE H. STANS,
Secretary of Commerce.

SMALL CARPETS AND RUGS DOC FF 2-70

STANDARD FOR THE SURFACE FLAMMABILITY OF SMALL CARPETS AND RUGS (PILL TEST)

.1 Definitions.
.2 Scope and Application.
.3 General Requirements.
.4 Test Procedure.
.5 Labeling Requirement.

.1 *Definitions.* In addition to the definitions given in section 2 of the Flammable Fabrics Act, as amended (sec. 1, 81 Stat. 568; 15 U.S.C. 1191), and section 7.2 of the Procedures (33 F.R. 14642, Oct. 1, 1968), the following definitions apply for the purposes of this Standard:

(a) "Acceptance Criterion" means that at least seven out of eight individual specimens of a small carpet or rug shall meet the test criterion as defined in this Standard.

(b) "Test Criterion" means the basis for judging whether or not a single specimen of a small carpet or rug has passed test, i.e., the charred portion of a tested specimen shall not extend to within 2.54 cm. (1.0 in.) of the edge of the hole in the flattening frame at any point.

(c) "Small Carpet" means any type of finished product made in whole or in part of fabric or related material and intended for use or which may reasonably be expected to be used as a floor covering which is exposed to traffic in homes, offices, or other places of assembly or accommodation, and which may or may not be fastened to the floor by mechanical means such as nails, tacks, barbs, staples, adhesives, and which has no dimension greater than 1.83 m. (6 ft.) and an area not greater than 2.23 m^2. (24 sq. ft.). Products such as "Carpet Squares" with dimensions smaller than these but intended to be assembled, upon installation, into assemblies which may have dimensions greater than these, are excluded from this definition. They are, however, included in Standard DOC FF 1-70. Mats, hides with natural or synthetic fibers, and other similar products are included in this definition if they are within the defined dimensions, but resilient floor coverings such as linoleum, asphalt tile, and vinyl tile are not.

(d) "Small Rug" means, for the purposes of this Standard, the same as small carpet and shall be accepted as interchangeable with small carpet.

(e) "Traffic Surface" means a surface of a small carpet or rug which is intended to be walked upon.

(f) "Timed Burning Tablet" (pill) means the methenamine tablet, weighing approximately 0.149 grams (2.30 grains), sold as Product No. 1588 in Catalog No. 79, December 1, 1969, by the Eli Lilly Co. of Indianapolis, Ind. 46206, or an equal tablet.

(g) "Fire-Retardant Treatment" means any process to which a small carpet or rug has been exposed which significantly decreases the flammability of that small carpet or rug and enables it to meet the acceptance criterion of this Standard.

.2 *Scope and Application.* This Standard provides a test method to determine the surface flammability of small carpets and rugs when exposed to a standard small source of ignition under carefully prescribed draft-protected conditions. It is applicable to all types of small carpets and rugs used as floor covering materials regardless of their method of fabrication or whether they are made of natural or synthetic fibers or films, or combinations of, or substitutes for these.

One of a kind small carpet or rug, such as an antique, an Oriental or a hide, may be excluded from testing under this Standard pursuant to conditions established by the Federal Trade Commission.

.3 *General requirements—*

(a) *Summary of test method.* This method involves the exposure of each of eight conditioned, replicate specimens of a small carpet or rug to a standard igniting source in a draft-protected environment and measurement of the proximity of the charred portion to the edge of the hole in the prescribed flattening frame.

(b) *Test criterion.* A specimen passes the test if the charred portion does not extend to within 2.54 cm. (1.0 in.) of the edge of the hole in the flattening frame at any point.

(c) *Acceptance criterion.* At least seven of the eight specimens shall meet the test criterion in order to conform with this Standard.

.4 *Test procedure*—(a) *Apparatus*—(1) *Test chamber.* The test chamber shall consist of an open top hollow cube made of noncombustible material[1] with inside dimensions 30.48 x 30.48 x 30.48 cm. (12 x 12 x 12 in.) and a minimum of 6.35 mm. (¼ in.) wall thickness. The flat bottom of the box shall be made of the same material as the sides and shall be easily removable. The sides shall be fastened together with screws or brackets and taped to prevent air leakage into the box during use.

NOTE: A minimum of two chambers and two extra bottoms is suggested for efficient operation.

(2) *Flattening frame.* A steel plate, 22.86 x 22.86 cm. (9 x 9 in.), 6.35 mm. (¼ in.) thick with a 20.32 cm. (8 in.) diameter hole in its center is required to hold the specimen flat during the course of the test. It is recommended that one be provided for each test chamber.

(3) *Standard igniting source.* No. 1588 methenamine timed burning tablet or an equal tablet. These tablets shall be stored in a desiccator over a desiccant for 24 hours prior to use. (Small quantities of sorbed water may cause the tablets to fracture when first ignited. If a major fracture occurs, any results from that test shall be ignored, and it shall be repeated.)

(4) *Test specimens.* Each test specimen shall be a 22.86 x 22.86 cm. (9 x 9 in.) section of the small carpet or rug to be tested. Eight specimens are required.

(5) *Circulating air oven.* A forced circulation drying oven capable of removing the moisture from the specimens when maintained at 105° C. (221° F.) for 2 hours.[2]

(6) *Desiccating cabinet.* An airtight and moisturetight cabinet capable of holding the floor covering specimens horizontally without contacting each other during the cooling period following drying, and containing silica gel desiccant.

(7) *Gloves.* Nonhygroscopic gloves (such as rubber or polyethylene) for handling the sample after drying and raising the pile on specimens prior to testing.

(8) *Hood.* A hood capable of being closed and having its draft turned off during each test and capable of rapidly removing the products of combustion following each test. The front or sides of the hood should be transparent to permit observation of the tests in progress.

(9) *Mirror.* A small mirror mounted above each test chamber at an angle to permit observation of the specimen from outside the hood.

(10) *Vacuum cleaner.* A vacuum cleaner to remove all loose material from each specimen prior to conditioning. All surfaces of the vacuum cleaner contacting the specimen shall be flat and smooth.

(b) *Sampling*—(1) *Selection of samples.* Select a sample of the material representative of the lot and large enough to permit cutting eight test specimens 22.86 x 22.86 cm. (9 x 9 in.) free from creases, fold marks, delaminations or other distortions. The representative sample of material may require the use of more than one small carpet or rug. The test specimens should contain the most flammable parts of the traffic surface at their centers. The most flammable area may be determined on the basis of experience or through pretesting.

If the small carpet or rug has had a fire-retardant treatment, or is made of fibers which have had a fire-retardant treatment, the selected sample or oversized specimens thereof shall be washed, prior to cutting of test specimens, either 10 times under the washing and drying procedure prescribed in Method 124-1967 of the American Association of Textile Chemists and Colorists [washing procedure 6.2 (III) with a water temperature of 60±2.8° C (140±5° F), drying procedure 6.3.2(B), maximum load 3.6.4 kg (8 pounds)],[3] or such number of times under such other washing and drying procedures as shall previously have been found to be equivalent by the Federal Trade Commission. Alternatively, the selected sample or oversized specimens thereof may be washed, dry-cleaned, or shampooed 10 times, prior to cutting of test specimens, in such manner as the manufacturer or other interested party shall previously have established to the satisfaction of the Federal Trade Commission is normally used for that type of small carpet or rug in service.

(2) *Cutting.* Cut eight 22.86±0.64 cm (99 ± ¼ in.) square specimens of each small carpet or rug to be tested to comply with section .4(b)(1).

(c) *Conditioning.* Clean each specimen with the vacuum cleaner until it is free of all loose ends left during the manufacturing process and from any material that may have

[1] 6.35 mm. (¼ in.) cement asbestos board is a suitable material.

[2] Option 1 of ASTM D 2654-67T, "Methods of Test for Amount of Moisture in Textile Materials," describes a satisfactory oven. ("1969 Book of ASTM Standards," Part 24, published by the American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103.)

[3] Technical Manual of the American Association of Textile Chemists and Colorists, vol. 45, 1969, published by AATCC, Post Office Box 12215, Research Triangle Park, NC 27709.

been worked into the pile during handling.[4] Care must be exercised to avoid "fuzzing" of the pile yarn.

Place the specimens in the drying oven in a manner that will permit free circulation of the air at 105° C (221° F) around them for 2 hours.[5] Remove the specimens from the oven with gloved hands and place them horizontally in the desiccator with traffic surface up and free from contact with each other until cooled to room temperature, but in no instance less than 1 hour.

(d) *Testing.* Place the test chamber in the draft-protected environment (hood with draft off) with its bottom in place. Wearing gloves, remove a test specimen from the desiccator and brush its traffic surface with a gloved hand in such a manner as to raise its pile. Place the specimen on the center of the floor of the test chamber, traffic surface up, exercising care that the specimen is horizontal and flat. Place the flattening frame on the specimen and position a methenamine tablet on one of its flat sides in the center of the 20.32 cm. (8 in.) hole.

Ignite the tablet by touching a lighted match or an equivalent igniting source carefully to its top. If more than two minutes elapse between the removal of the specimen from the desiccator and the ignition of the tablet, the conditioning must be repeated.

Continue each test until one of the following conditions occur:

(1) The last vestige of flame or glow disappears. (This is frequently accompanied by a final puff of smoke.)

(2) The flaming or smoldering has approached within 2.54 cm. (1.0 in.) of the edge of the hole in the flattening frame at any point.

When all combustion has ceased, ventilate the hood and measure the shortest distance between the edge of the hole in the flattening frame and the charred area. Record the distance measured for each specimen.

Remove the specimen from the chamber and remove any burn residue from the floor of the chamber. Before proceeding to the next test, the floor must be cooled to normal room temperature or replaced with one that is normal room temperature.

(e) *Report.* The number of specimens of the eight tested in which the charred area does not extend to within 2.54 cm. (1.0 in.) of the edge of the hole in the flattening frame shall be reported.

(f) *Interpretation of results.* If the charred area does not extend to within 2.54 cm. (1.0 in.) of the edge of the hole in the flattening frame at any point for at least seven of the eight specimens, the small carpet or rug meets the acceptance criterion.

.5 *Labeling requirement.* (a) If a small carpet or rug does not meet the acceptance criterion, it shall, prior to its introduction into commerce, be permanently labeled, pursuant to rules and regulations established by the Federal Trade Commission, with the following statement: FLAMMABLE (FAILS U.S. DEPARTMENT OF COMMERCE STANDARD FF 2-70); SHOULD NOT BE USED NEAR SOURCES OF IGNITION.

(b) If a small carpet or rug has had a fire-retardant treatment or is made of fibers which have had a fire-retardant treatment, it shall be labeled with the letter "T" pursuant to rules and regulations established by the Federal Trade Commission.

[F.R. Doc. 70-17474; Filed, Dec. 28, 1970; 8:50 a.m.]

[4] The vacuum cleaning described is not intended to simulate the effects of repeated vacuum cleaning in service.

[5] If the specimens are moist when received, permit them to air-dry at laboratory conditions prior to placement in the oven. A satisfactory pre-conditioning procedure may be found in ASTM D 1776-67, "Conditioning Textiles and Textile Products for Testing." ("1969 Book of ASTM Standards," Part 24, published by the American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103).

[Dept. Organization Order 1-1]

MISSION AND ORGANIZATION

The following order was issued by the Secretary of Commerce on December 15, 1970. This material supersedes the material appearing at 34 F.R. 13284 of August 15, 1969 and 35 F.R. 473 of January 14, 1970.

SECTION 1. *Purpose.* This order sets forth the mission, functions, and organization of the Department of Commerce.

SEC. 2. *Mission, functions and authority.* .01 The historic mission of the Department is "to foster, promote and develop the foreign and domestic commerce" of the United States. This has evolved, as a result of legislative and administrative additions, to encompass broadly the responsibility to foster, serve and promote the Nation's economic development and technological advancement. The Department seeks to fulfill this mission through:

a. Participating with other Government agencies in the creation of national policy, through the President's Cabinet and its subdivisions.

b. Promoting progressive business policies and growth.

c. Assisting States, communities, and individuals toward economic progress.

d. Strengthening the international economic position of the United States.

e. Improving man's comprehension and uses of the physical environment and its oceanic life.

f. Assuring effective use and growth of the Nation's scientific and technical resources.

g. Acquiring, analyzing, and disseminating information concerning the Nation and the economy to help achieve increased social and economic benefit.

.02 The specific functions and programs of the Department that make up these broad activities are authorized by the Department's organic act (Act of Feb. 14, 1903, 32 Stat. 825) or by other legislation. They also include responsibilities transferred from other agencies by Presidential Reorganization Plans, as well as responsibilities assigned to the Secretary of Commerce or the Department by Executive order or other actions of the President. The Department's responsibilities include the Secretary's assigned function of coordinating and of providing guidance and policy direction to the Federal Cochairman of Regional Commissions and to the Chairman of the Federal Field Committee for Development Planning in Alaska.

.03 Functions (including powers, authorities, duties, and responsibilities) of the Department of Commerce are by law vested directly in the Secretary of Commerce, except for those vested by the Administrative Procedure Act in hearing examiners.

.04 The Secretary is vested by legislation (e.g., 5 U.S.C. 301) and Reorganization Plans with an authority to provide for the organization and general management of the Department. Reorganization Plan No. 5 of 1950, in particular, provides that:

> The Secretary of Commerce may from time to time make such provisions as he shall deem appropriate authorizing the performance by any officer, or by any agency or employee of the Department of Commerce of any function of the Secretary * * *.

.05 The principal organizational components and officers of the Department are established either by statute or Reorganization Plan, or by the Secretary pursuant to the authorities referred to above. The Secretary determines the functions that shall be carried out by the principal organizational components and the authorities that shall be exercised by the principal officers of the Department. These normally are prescribed by the Secretary in Department Organization Orders.

SEC. 3. *Organization structure.* The attached chart depicts the organization structure of the Department which has been established through Department Organization Orders issued for each of the principal organizational components or officers of the Department. (A copy of the organization chart is on file with original of this document with the Office of the Federal Register.) The chart reflects the following general organizational plan for the Department:

.01 *Office of the Secretary.* The Office of the Secretary is the general management arm of the Department and provides the principal support to the Secretary in formulating policy and in providing advice to the President. It provides program leadership for the Department's functions and exercises general supervision over the operating units. It also directly carries out program functions as may be assigned by the Secretary from time to time, and provides, as determined to be more economical or efficient, administrative and other support services for designated operating units.

a. The Office of the Secretary consists of the Secretary and the Secretarial Officers, designated staff immediately serving these officials, and a number of "Departmental offices" which have Department-wide functions or perform special program functions directly on behalf of the Secretary. The Secretarial Officers are:

Under Secretary.
Assistant Secretary for Domestic and International Business.
Assistant Secretary for Economic Affairs.
Assistant Secretary for Science and Technology.
Assistant Secretary for Economic Development.
Assistant Secretary for Maritime Affairs.
Assistant Secretary for Tourism.
Assistant Secretary for Administration.
General Counsel.

b. The Under Secretary serves as the principal deputy of the Secretary in all matters affecting the Department and

performs continuing and special duties as the Secretary may assign from time to time, including, as may be specified by the Secretary, the exercise of policy direction and general supervision over operating units not placed under other Secretarial Officers.

c. The Assistant Secretary for Administration and the General Counsel are the Secretary's principal assistants on administrative management and legal matters, respectively, of the Department.

d. The other Secretarial Officers (referred to as Program Secretarial Officers) are the Secretary's principal assistants on program matters, each being responsible for a particular program area of the Department. This responsibility may include exercising policy direction and general supervision over prescribed operating units charged with carrying out programs, or, instead, serving as the head of a primary operating unit.

.02 *Operating Units.* a. The operating units of the Department are organizational entities outside the Office of the Secretary charged with carrying out specified substantive functions (i.e. programs) of the Department. The heads of some operating units are Program Secretarial Officers; in other cases, they are separate officers who report and are responsible to a Program Secretarial Officer or directly to the Secretary or Under Secretary, as may be designated. The operating units constitute the components of the Department through which most of its substantive functions are carried out.

b. For Departmental management purposes, each operating unit is designated as being in one of the following two classes:

1. Primary operating units are organizations assigned broad substantive functions of the Department. The Secretary delegates directly to the heads of these units the authority necessary to carry out the functions of their units. Thus, the heads of primary operating units constitute the operating general managers of the Department.

2. Constituent operating units are organizations assigned limited substantive functions or support functions for designated operating units. Heads of constituent operating units may receive delegations of authority directly from the Secretary, or carry out these responsibilities under authorities delegated directly to a Secretarial Officer and subject to the latter's direct supervision.

SEC. 4. *Officers designated to perform the duties of the Secretary.* By law (15 U.S.C. 1503) the Under Secretary performs the duties of the Secretary of Commerce in case of absence, sickness, death, or resignation of the Secretary. Executive Order 11338 provides that during any period when by reasons of absence, disability, or vacancy in office, neither the Secretary of Commerce nor the Under Secretary of Commerce is available to exercise the powers or perform the duties of the office of Secretary, an Assistant Secretary of Commerce or the General Counsel of the Department of Commerce in such order as the Secretary of Commerce may from time to time prescribe, shall act as Secretary. If no such order of succession is in effect at that time, they shall act as Secretary in the order in which they shall have taken office as Assistant Secretaries or General Counsel.

SEC. 5. *Designations to perform the duties of Secretarial Officers.* .01 In the case of a vacancy in a Secretarial Officer position, and unless otherwise directed by the President, the Secretary will designate an individual to perform the duties of the position.

.02 In the absence of the Deputy Assistant Secretary designated by the Secretary to regularly serve for an Assistant Secretary during the latter's absence, each Secretarial Officer is hereby authorized to designate an official or officials who report directly to him or who are in some line of authority under his jurisdiction, to serve for him in his absence, and to perform the duties of the respective Secretarial Officer not inconsistent with the provisions of any law. This authority shall not include matters in which the personal signature of a Secretarial Officer is required under specific law, order, or regulation.

SEC. 6. *Updating Department Organization Chart.* As organizational changes are made affecting the organization chart attached to this order, the Assistant Secretary for Administration shall issue from time to time, over his signature, an updated chart replacing the attachment.

Effective date: December 15, 1970.

LARRY A. JOBE,
Assistant Secretary for Administration.

[F.R. Doc. 70-17411; Filed, Dec. 28, 1970; 8:45 a.m.]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of the Secretary

REHABILITATION SERVICES ADMINISTRATION

Statement of Organization, Functions and Delegations of Authority

Part 7 of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health, Education, and Welfare (34 F.R. 1279, Jan. 25, 1969, as amended) is hereby further amended to reflect the reorganization of the Rehabilitation Services Administration. For such purposes, section 7-B is amended as follows:

By striking out all that follows under the heading "Rehabilitation Services Administration" and inserting in lieu thereof the following:

Provides leadership in the planning, development and coordination of those SRS programs which provide services for the handicapped, including disabled social security applicants and beneficiaries, the developmentally disabled, the blind, and welfare applicants and recipients in accordance with the provisions of the Vocational Rehabilitation Act, as amended; title II of the Social Security Act, as amended; the Randolph-Sheppard Vending Stand Act, as amended; Parts B, C, and D of the Developmental Disabilities Services and Facilities Construction Act; and sections 301 and 303 of the Public Health Service Act. Within the authorities delegated to it, the Administration: Establishes program goals and objectives; develops standards, program policies, criteria, and guidelines; provides professional consultation to the regional offices' staff and assists them in the guidance and leadership of State and local organizations; collaborates in the conduct of research and demonstration programs to evolve new approaches toward more meaningful lives for the handicapped; directs and promotes a training program to provide skilled manpower for working with those who are handicapped or disabled; serves as a clearinghouse for information related to the problems of the handicapped; maintains relationships with a variety of Federal, State, and local organizations who serve or have an impact upon the handicapped; evaluates progress in meeting the needs of the handicapped and takes action to promote improvement; stimulates national action and recommends solution for the removal of architectural barriers; conducts administrative management, the review and preparation of legislative and administrative actions affecting agency programs and services, and public information operations; and coordinates its activities and programs with other concerned SRS organizations. The Rehabilitation Services Administration has assigned functional responsibilities to various offices and divisions as follows:

Office of Planning and Policy Development. Provides leadership, under the Commissioner, in policy formulation, program planning and program budgeting for the agency. Designs and directs evaluation activities of all agency programs and provides liaison and coordination of agency inputs to the rehabilitation and habilitation aspects of the SRS research and demonstration program. Provides direction in overall program planning, program budgeting, provision of information needs of the agency, coordination of agency programs and development of legislative initiatives. Conducts policy and legislative analyses and gives direction to the formulation of agency goals and regulations.

Division of Special Populations. Provides opportunities and mechanisms for the full development of projects, programs and services for individuals and groups who suffer from specific disabilities or who share common conditions or characteristics, medical or otherwise, which permit categorical identification. Reviews project grant applications as assigned to the Division of Special Populations, in accordance with agency guidelines, appropriate evaluative criteria, and central-regional office responsibilities. Assumes leadership for the

achievement of agency missions as assigned by the Commissioner on the basis of the division's particular expertise. Provides leadership and consultation to regional offices, State agencies, and grantees in the development and expansion of rehabilitation programs and services for all disability groups, including alcoholics, drug addicts, arthritics, epileptics, the blind, heart, cancer and stroke victims, those suffering communication disorders, etc. Develops and implements program strategies and approaches to reach public assistance recipients and the disabled residents of target poverty communities (e.g. migratory agricultural workers). Within assigned area of responsibility, collaborates with the Office of Planning and Policy Development and other appropriate agency staff in the development of guidelines, manual issuances and other directives for existing programs serving various disability groups and for those programs mandated by legislative amendment such as vocational education and juvenile delinquency. Develops appropriate methods to facilitate client participation in the formulation of program objectives within the agency and at the State agency and other grantee level.

Division of Developmental Disabilities. Provides leadership, coordination, and guidance for agency programs applicable to individuals with mental retardation and other developmental disabilities. Provides guidelines for and assists academic institutions, State agencies and local community organizations in the planning, administration, and delivery of services, construction of facilities, and in the operation and improvement of resources for the developmentally disabled through the use of specialized or the special adaptation of generic services directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual affected by such a disability. Provides a central point for information on developmental disabilities programs and services. Reviews State plans and project grant applications as assigned to the Division of Developmental Disabilities, in accordance with agency guidelines, appropriate evaluative criteria, and central regional office responsibilities. Provides leadership and consultation to regional offices, State agencies and other grantees in the development and expansion of programs and services for the developmentally disabled. Within assigned area of responsibility, collaborates with the Office of Planning and Policy Development and other appropriate agency staff in the development of guidelines, manual issuances and other directives for existing and new programs serving those with developmental disabilities. Assists the Division of Planning and Management Assistance in the development of comprehensive State agency planning methods and procedures which embrace services and programs for the developmentally disabled.

Division of Service Systems. Develops and supports the introduction of program approaches, techniques and methods leading to the establishment and improvement of service delivery mechanisms which are responsive to agency client needs. Reviews project grant applications as assigned to the Division of Service Systems, in accordance with agency guidelines, appropriate evaluative criteria, and central-regional office responsibilities. Assumes leadership for the achievement of agency missions assigned by the Commissioner on the basis of the division's particular expertise. Develops comprehensive agency programs, designs and models, and prepares manual chapters and standards to facilitate improved client service and to coordinate public and private programs. Assists the Division of Planning and Management Assistance in developing a program of technical consulation and assistance to other departments, regional offices, State agencies, and other grantees to accomplish the Division mission. Provides leadership in the development of new projects with industry under the legislative mandate and promotes employer interest in hiring the handicapped. Collaborates with the Office of Planning and Policy Development in deveolpment of demonstration programs to test concepts in community multiservice delivery, linkage development, and special purpose centers. Prepares pertinent inputs to the management information system maintained by the Division of Monitoring and Program Analysis. Provides consultative assistance in the architectural aspects and design of public and nonprofit facilities provided for the diagnosis, treatment, education, vocational training, care, and provision of maintenance services for the disabled. Within assigned area of responsibility, collaborates with the Office of Planning and Policy Development and other appropriate agency staff in the development of guidelines, manual issuances and other directives for existing and new programs for the support of service delivery system.

Division of Manpower Development. Provides and expands training opportunities and materials for professional, technical, and subprofessional persons to meet the manpower requirements of State and other agencies responsible for providing rehabilitation and habilitation services. Reviews project grant applications as assigned to the Division of Manpower Development, in accordance with agency guidelines, appropriate evaluative criteria, and central-regional office responsibilities. Assumes leadership for the achievement of agency missions as assigned by the Commissioner on the basis of the division's particular expertise. Develops guidelines and analytic procedures to measure the need for and progress in the training of all manpower training programs financed under agency appropriations. Works with State agencies and the Division of Planning and Management Assistance to assess requirements and develop plans and programs for training professional and paraprofessional staff to meet manpower needs in agency supported programs. Stimulates grant applications from educational and other institutions. Prepares and disseminates guidance materials for volunteers to serve in agency sponsored programs. Encourages the development of innovative instructional materials and methods. Plans and conducts short-term training courses for the purpose of generating new knowledge in program areas of high priority to the department and the agency.

Division of Planning and Management Assistance. Provides nonfinancial technical support and assistance to regional offices, State agencies and other grantees across agency programs. Develops planning and management procedures and methods of common application and implements such systems leading to improvement in overall program performance and goal achievement. Provides leadership in development of planning, operations, and management tools and methods to serve State agency and other grantee programs. With the assistance of divisions concerned with program development, designs and provides consultative assistance in implementation of new program techniques through manual chapter instructions, guide materials, and on-site visits. Provides staff support and assistance to facilitate decentralization of agency functions in cooperation with field operations staff. Evaluates and assists State agencies in the development of comprehensive State plans and planning activities, both short and long-term.

Division of Monitoring and Program Analysis. Develops and applies evaluative tools and indicators for the purpose of measuring State agency and other grantee program performance. Makes appropriate recommendations and reports leading to program changes, policy decisions, and legislative amendments. Designs and maintains information systems needed for management and program decisionmaking. Conducts statistical analysis and studies of individuals comprising the handicapped population and State agency program operations. Develops and implements a program monitoring system of all agency financial operations and services. Conducts analyses, makes reports and appropriate recommendations concerning State agency and other grantee program performance and goal achievement, including the Program Administrative Review (PAR). Conducts on-site evaluations and investigations of State agency programs and other grantee operations, including Research and Training Centers, university sponsored training programs, etc. Makes recommendations to up-grade and improve the agency data base and information systems. Provides leadership in conducting decision analyses and review of the essential data requirements of the agency leading to the design of management information systems. Collaborates with component agencies of SRS and the department in the development of data systems to meet the needs of other bureau executives and administrators. Provides direction in the administration and implementation of the agency program of data reduction, factor analysis and statistical reporting. Prepares data reports and publications for various departments, State agencies, and other user

groups, in cooperation with public information staff.

Division of Grant Administration. Provides grant administration and technical support services in financial management within RSA and to regional offices, State agencies, and other grantees across all agency programs. Consolidates the administration of agency grant programs. Assists the Budget Division in the formulation, justification and execution of the legislative budget, including the budgetary call for estimates from State agencies. In cooperation with the Division of Planning and Management Assistance, provides financial consultative support to regional offices, State agencies, and other grantees, including preparation of pertinent manual chapters, forms, and other assistance. Applies statutory formulae for allotment of funds across all agency appropriations. Makes analyses of and coordinates all audit reports and negotiates audit exceptions for the agency. Monitors the accuracy and timeliness of State agency and other grantee fiscal reports and financial data. Designs and develops systems for processing program financial data and reports with the assistance of the Division of Monitoring and Program Analysis. Develops and interprets administrative and fiscal policies and procedures governing the use of grant funds including the cost principles to be applied in the preparation of grant applications and budgets. Makes special studies of problem areas in the application of fiscal management policies, procedures and standards. Prepares uniform terminology standards of policies and procedures for grants administration and fiscal management. In support of the Office of Planning and Policy Development, reviews new legislation and legislative proposals relating to grants to determine their conformance with established grant policies and recommends policy revisions when necessary. Under the coordination of the Office of Planning and Policy Development, establishes and maintains working relationships with other Federal agencies, grantee institutions and State agencies in order to develop and coordinate grant policies and procedures. Establishes and maintains proper fiscal management, including the accountability of funds, for grant programs administered by RSA which are delegated to Regional Offices.

Budget Division. Provides budgetary services and assistance to the agency and maintains associated liaison services with the department and SRS. In conjunction with the Division of Grant Administration and in cooperation with the Office of Planning and Policy Development and other program units, formulates, justifies, and executes the legislative budget. Provides technical assistance in ensuring implementation of departmental budgetary directives. Assists the Division of Grant Administration in preparation of financial reports and summaries, and adoption of improved internal financial analysis procedures and methods. Cooperates with the Office of Planning and Policy Development and with other program units in the formulation of short and long term program financial planning methods.

Dated: December 19, 1970.

ELLIOT L. RICHARDSON,
Secretary.

[F.R. Doc. 70-17447; Filed, Dec. 28, 1970; 8:48 a.m.]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

REGIONAL COUNSELS AND CENTER COUNSELS

Notice of Redelegation of Authority To Approve Sufficiency of Title to Land

Section 355 of the Revised Statutes, as amended by Public Law 91-393, 84 Stat. 835 (40 U.S.C. 255) authorizes the Attorney General to delegate to other departments and agencies his authority to give written approval of the sufficiency of the title to land being acquired by the United States. The Attorney General has delegated to the Assistant Attorney General in charge of the Land and Natural Resources Division the authority to make delegations under that law to other Federal departments and agencies (35 F.R. 16084; 28 CFR 0.66). The Assistant Attorney General, Land and Natural Resources Division, has further delegated certain responsibilities in connection with the approval of the sufficiency of the title to land to the Department of Transportation as follows:

DELEGATION TO THE DEPARTMENT OF TRANSPORTATION FOR THE APPROVAL OF THE TITLE TO LANDS BEING ACQUIRED FOR FEDERAL PUBLIC PURPOSES

Pursuant to the provisions of Public Law 91-393, approved September 1, 1970, 84 Stat. 835, amending R.S. 355 (40 U.S.C. 255), and acting under the provisions of Order No. 440-70 of the Attorney General, dated October 2, 1970, the responsibility for the approval of the sufficiency of the title to land for the purpose for which the property is being acquired by purchase or condemnation by the United States for the use of your Department is, subject to the general supervision of the Attorney General and to the following conditions, hereby delegated to your Department.

This delegation of authority is further subject to:

1. Compliance with the regulations issued by the Assistant Attorney General on October 2, 1970, a copy of which is enclosed.

2. This delegation is limited to:

(a) The acquisition of land for which the title evidence, prepared in compliance with these regulations, consists of a certificate of title, title insurance policy, or an owner's duplicate Torrens certificate of title.

(b) The acquisition of lands valued at $100,000 or less, for which the title evidence consists of abstracts of title or other types of title evidence prepared in compliance with said regulations.

As stated in the above-mentioned act, any Federal Department or agency which has been delegated the responsibility to approve land titles under the Act may request the Attorney General to render his opinion as to the validity of the title to any real property or interest therein, or may request the advice or assistance of the Attorney General in connection with determinations as to the sufficiency of titles.

This 2d day of October 1970.

SHIRO KASHIWA,
Assistant Attorney General, Land and Natural Resources Division.

The above authority was delegated to the General Counsel of the Department of Transportation by Amendment 1-41 to Part 1 of Title 49, Code of Federal Regulations, 35 F.R. 17658, November 17, 1970.

Finally, the authority was delegated to the Chief Counsels of the operating administrations of the Department of Transportation, including the Federal Aviation Administration (35 F.R. 18412, Dec. 3, 1970).

In consideration of the foregoing and pursuant to the authority delegated to me as the chief counsel of the Federal Aviation Administration by the General Counsel of the Department of Transportation, the Regional Counsels and Center Counsels of the Federal Aviation Administration are hereby authorized to approve the sufficiency of the title to land being acquired by purchase or condemnation by the United States for the use of the Federal Aviation Administration. This delegation is subject to the limitations imposed by the Assistant Attorney General, Land and Natural Resources Division, in his delegation to the Department of Transportation. Redelegations of this authority may only be made by the Regional Counsels and Center Counsels to one attorney within their respective staffs.

Issued in Washington, D.C., on December 22, 1970.

GEORGE U. CARNEAL, Jr.,
General Counsel.

[F.R. Doc. 70-17483; Filed, Dec. 28, 1970; 8:51 a.m.]

STATE OF KENTUCKY

Notice of Transfer of Jurisdiction Relative to FAA Activities

Notice is hereby given that on or about January 1, 1971, administrative and program responsibility for all FAA field offices and facilities in the State of Kentucky will be transferred from the jurisdiction of the FAA Eastern Region Area Office at Cleveland, Ohio, to the FAA Southern Region at Atlanta, Ga.

All services in the State of Kentucky related to air traffic control, airspace procedures, flight service activities, maintenance of air navigation facilities, general aviation, and airport activities, and other allied services will be furnished by the FAA Southern Region. All air traffic control towers, flight service stations, airway facilities sectors and the general aviation district office will come under the jurisdiction of the FAA Southern Region. Correspondence and inquiries regarding these activities should be addressed to the cognizant field office or to:

Director, Southern Region, Federal Aviation Administration, Department of Transportation, Post Office Box 20636, Atlanta, GA 30320.

The following counties in Kentucky which had been rendered general aviation services by the General Aviation District Office, Cincinnati, Ohio, will now be furnished these services by the General Aviation District Office, Louisville, Ky.: Boone, Bracken, Campbell, Carter, Elliott, Fleming, Grant, Greenup, Kenton, Lewis, Mason, Pendleton, Robertson, and Rowan counties. All other counties in the State of Kentucky will continue to be serviced by the General Aviation District Office, Louisville, Ky.

Airport aid and development matters for the State of Kentucky which had been handled by the FAA Cleveland Area Office will now come under the jurisdiction of the FAA Southern Region Area Office at Memphis, Tenn. Correspondence and inquiries after January 1, 1971, relating to airports matters shall be addressed to:

Manager, Area Office, Federal Aviation Administration, Department of Transportation, Post Office Box 18097, Memphis TN 38118.

(Sec. 313(a), Federal Aviation Act of 1958, as amended; 49 U.S.C. 1354)

Issued in Washington, D.C., on December 21, 1970.

JOHN H. SHAFFER,
Administrator.

[F.R. Doc. 70-17484; Filed, Dec. 28, 1970; 8:51 a.m.]

ATOMIC ENERGY COMMISSION

[Docket No. 50-332]

ALLIED-GULF NUCLEAR SERVICES ET AL.

Notice of Issuance of Construction Permit

Notice is hereby given that, pursuant to the Initial Decision of the Atomic Safety and Licensing Board, dated December 18, 1970, the Acting Director of the Division of Materials Licensing has issued Construction Permit No. CPCSF-4 to Allied-Gulf Nuclear Services, Allied Chemical Nuclear Products, Inc., and Gulf Energy & Environmental Systems, Inc., for the construction of a fuel reprocessing plant. The facility, known as the Barnwell Nuclear Fuel Plant, will be located at the applicant's site in Barnwell County, S.C., located about 7 miles west of the town of Barnwell.

A copy of the Initial Decision is on file in the Commission's Public Document Room, 1717 H. Street NW., Washington, DC. Copies of Construction Permit No. CPCSF-4 are also on file in the Commission's Public Document Room or may be obtained upon request addressed to Director, Division of Materials Licensing, U.S. Atomic Engery Commission, Washington, D.C. 20545.

Dated at Bethesda, Md., this 18th day of December 1970.

For the Atomic Energy Commission.

LYALL JOHNSON,
Acting Director,
Division of Materials Licensing.

[F.R. Doc. 70-17435; Filed, Dec. 28, 1970; 8:48 a.m.]

[Docket No. 50-293]

BOSTON EDISON CO.

Notice of Receipt of Application for Facility Operating License

Please take notice that Boston Edison Co., 800 Boylston Street, Boston, MA 02199, pursuant to section 104b. of the Atomic Energy Act of 1954, as amended (the Act), has filed an application, in the form of a final safety analysis report, dated January 5, 1970, for a license to operate a nuclear power reactor at its site in Plymouth, Mass.

The nuclear power reactor is a boiling water reactor, designated by the applicant as the Pilgrim Station, designed for initial operation at approximately 1,998 thermal megawatts with a net electrical output of approximately 654 megawatts.

Pursuant to subsection 105c.(3) of the Act, any person who intervened or who sought by timely written notice to the Commission to intervene in the construction permit proceedings for the facility to obtain a determination of antitrust considerations or to advance a jurisdictional basis for such determination has the right to obtain an antitrust review under section 105c. of the Atomic Energy Act, of the application for an operating license for this facility upon written request to the Commission made within 25 days after the date of publication of this notice, which is the initial publication pursuant to subsection 105c.(3) of the Atomic Engery Act of 1954, as amended.

(Sec. 105c.(3), 84 Stat. 1472; 42 U.S.C. 2135(c)(3))

Dated at Bethesda, Md., this 23d day of December 1970.

For the Atomic Energy Commission.

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

[F.R. Doc. 70-17438; Filed, Dec. 28, 1970; 8:47 a.m.]

[Dockets Nos. 50-269, 50-270, and 50-287]

DUKE POWER CO.

Notice of Receipt of Application for Facility Operating License

Please take notice that Duke Power Co., 422 South Church Street, Charlotte, NC 28201, pursuant to section 104b. of the Atomic Energy Act of 1954, as amended, (the Act) has filed an application, in the form of a final safety analysis report, dated June 2, 1969, for a license to operate a three-unit nuclear power plant at its Oconee Nuclear Power Station located in eastern Oconee County, S.C.

The nuclear power plant consists of three pressurized water reactors, designated by the applicant as the Oconee Nuclear Station Units 1, 2, and 3, each of which is designed for initial operation at approximately 2,658 thermal megawatts with a net electrical output of approximately 886 megawatts.

Pursuant to subsection 105c.(3) of the Act, any person who intervened or who sought by timely written notice to the Commission to intervene in the construction permit proceedings for these facilities to obtain a determination of antitrust considerations or to advance a jurisdictional basis for such determination has the right to obtain an antitrust review under section 105c. of the Act, of the application for an operating license for these facilities, upon written request to the Commission made within 25 days after the date of publication of this notice, which is the initial publication pursuant to subsection 105c.(3) of the Atomic Energy Act of 1954, as amended.

(Sec. 105c.(3), 84 Stat. 1472; 42 U.S.C. 2135(c)(3))

Dated at Bethesda, Md., this 23d day of December 1970.

For the Atomic Energy Commission.

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

[F.R. Doc. 70-17439; Filed, Dec. 28, 1970; 8:47 a.m.]

[Docket No. 50-309]

MAINE YANKEE ATOMIC POWER CO.

Notice of Receipt of Application for Facility Operating License

Please take notice that Maine Yankee Atomic Power Co., 9 Green Street, Augusta, ME 04330, pursuant to section 104b. of the Atomic Energy Act of 1954, as amended (the Act) has filed an application, in the form of a final safety analysis report, dated August 31, 1970, for a license to operate a nuclear power reactor at its site located in Lincoln County, Maine.

The nuclear power reactor is a pressurized water reactor, designated by the applicant as the Maine Yankee Atomic Power Station, designed for initial operation at approximately 2,440 thermal megawatts with a net electrical output of approximately 790 megawatts.

Pursuant to subsection 105c.(3) of the Act, any person who intervened or sought by timely written notice to the Commission to intervene in the construction permit proceedings for the facility to obtain a determination of antitrust considerations or to advance a jurisdictional basis for such determination has the right to obtain an antitrust review under section 105c. of the Atomic Energy Act, of the application for an operating license for this facility, upon written request to

the Commission made within 25 days after the date of publication of this notice, which is the initial publication pursuant to subsection 105c.(3), of the Atomic Energy Act of 1954, as amended.

(Sec. 105c.(3) 84 Stat. 1472; 42 USC 2135(c)(3))

Dated at Bethesda, Md., this 23d day of December 1970.

For the Atomic Energy Commission.

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

[F.R. Doc. 70-17440; Filed, Dec. 28, 1970; 8:47 a.m.]

[Dockets Nos. 50-277 and 50-278]

PHILADELPHIA ELECTRIC CO.

Notice of Receipt of Application for Facility Operating License

Please take notice that Phildelphia Electric Co., 1000 Chestnut Street, Philadelphia, PA 19105, pursuant to section 104b. of the Atomic Energy Act of 1954, as amended (the Act), has filed an application, in the form of a final safety analysis report, dated August 31, 1970, for a license to operate two nuclear power reactors at its Peach Bottom Atomic Power Station located in Peach Bottom Township, Pa.

The nuclear power reactors are boiling water reactors, designated by the applicant as Peach Bottom Atomic Power Station Units No. 2 and No. 3, each of which is designed for initial operation at approximately 3,293 thermal megawatts with a net electrical output of approximately 1,098 megawatts.

Pursuant to subsection 105c.(3) of the Act, any person who intervened or who sought by timely written notice to the Commission to intervene in the construction permit proceedings for these facilities to obtain a determination of antitrust considerations or to advance a jurisdictional basis for such determination has the right to obtain an antitrust review under section 105c. of the Atomic Energy Act, of the application for an operating license for these facilities, upon written request to the Commission made within 25 days after the date of publication of this notice, which is the initial publication pursuant to subsection 105c.(3) of the Atomic Energy Act of 1954, as amended.

(Sec. 105c.(3), 84 Stat. 1472; 42 USC 2135(c)(3))

Dated at Bethesda, Md., this 23d day of December 1970.

For the Atomic Energy Commission.

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

[F.R. Doc. 70-17441; Filed, Dec. 28, 1970; 8:47 a.m.]

[Docket No. 50-271]

VERMONT YANKEE NUCLEAR POWER CORP.

Notice of Receipt of Application for Facility Operating License

Please take notice that Vermont Yankee Nuclear Power Corp., 77 Grove Street, Rutland, VT 05701, pursuant to section 104b. of the Atomic Energy Act of 1954, as amended (the Act) has filed an application, in the form of a final safety analysis report, dated January 5, 1970, for a license to operate a nuclear power reactor at its site in Vernon, Vt.

The power reactor is a boiling water reactor, designated by the applicant as the Vermont Yankee Nuclear Station, designed for initial operation at approximately 1,593 thermal megawatts with a net electrical output of approximately 513 megawatts.

Pursuant to subsection 105c.(3) of the Act, any person who intervened or who sought by timely written notice to the Commission to intervene in the construction permit proceedings for the facility to obtain a determination of antitrust considerations or to advance a jurisdictional basis for such determination has the right to obtain an antitrust review under section 105c. of the Act, of the application for an operating license for this facility, upon written request to the Commission made within 25 days after the date of publication of this notice, which is the initial publication pursuant to subsection 105c.(3) of the Atomic Energy Act of 1954, as amended.

(Sec. 105c.(3), 84 Stat. 1472; 42 U.S.C. 2135(c)(3))

Dated at Bethesda, Md., this 23d day of December 1970.

For the Atomic Energy Commission.

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

[F.R. Doc. 70-17442; Filed, Dec. 28, 1970; 8:47 a.m.]

[Docket No. 20993; Order 70-12-124]

CIVIL AERONAUTICS BOARD

INTERNATIONAL AIR TRANSPORT ASSOCIATION

Order Regarding Specific Commodity Rates

Issued under delegated authority, December 21, 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 the Joint Conferences of the International Air Transport Association (IATA). The agreement, which has been assigned the above-designated CAB Agreement number, was adopted by the 10th Meeting of the Joint Specific Commodity Rates Board held in Montreal, October 27 through 31, 1970.

As it applies in air transportation, the agreement is essentially limited to matters relating to transpacific specific commodity rates.[1] Certain specific commodity rates, previously approved by the Board for application on transpacific routes and implemented since the 9th Meeting of the Joint Specific Commodity Rates Board (held in Geneva, Apr. 8 through 13, 1970), would be extended for a further period of effectiveness. Additionally, the agreement names several rates to added points and cancels others under existing commodity descriptions, reduces a limited number of currently applicable rates, and proposes reduced rates under new commodity descriptions; and these are set forth in the attachment hereto.[2]

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 the subject agreement is adverse to the public interest or in violation of the Act, provided that approval thereof is conditioned as hereinafter ordered.

Accordingly, it is ordered, That:

Action on Agreement CAB 22096 be and hereby is deferred with a view toward eventual approval: *Provided,* That approval shall not constitute approval of the specific commodity descriptions contained therein for purposes of tariff publication: *Provided further,* That, insofar as air transportation as defined by the Act is concerned, tariff filings shall not be made to implement the agreement prior to eventual approval, and such tariff filings shall be marked to become effective on not less than 30 days' notice from the date of filing.

Persons entitled to petition the Board for review of this order, pursuant to the Board's economic 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. 70-17465; Filed, Dec. 28, 1970; 8:50 a.m.]

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[1] Matters relating to the North Atlantic specific commodity rate structure were deferred to the next meeting of the Joint Specific Commodity Rates Board, with currently effective rates to continue at the status quo. However, the North Atlantic description for commodity item number 3405 would be amended to read "Stoves and Ranges, Pans, Kettles, and Baking Tins, Complete Fondue Sets, Spatulas, Not Electrically Operated."

[2] Filed as part of the original document.

[Docket No. 20993; Order 70-12-125]

INTERNATIONAL AIR TRANSPORT ASSOCIATION

Order Regarding Specific Commodity Rates

Issued under delegated authority December 21, 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 Traffic Conference 1 of the International Air Transport Association (IATA). The agreement, which has been assigned the above-designated CAB Agreement number, was adopted by the 27th Meeting of the TC1 Specific Commodity Rates Board held in Montreal, October 26 and 27, 1970.

The agreement proposes revisions to the specific commodity rate structure currently applicable within the Western Hemisphere. As applicable in air transportation, and as reflected in the attachment hereto, these revisions include reduced rates under new commodity descriptions, the addition of several rates to added points and the cancellation of other rates under existing commodity descriptions, and increases in the majority of remaining rates currently effective.[1]

Pursuant to authority duly delegated by the Board in the Board's economic regulations, 14 CFR 385.14, it is not found, on a tentative basis, that the subject agreement is adverse to the public interest or in violation of the Act, provided that approval thereof is conditioned as hereinafter ordered.

Accordingly, it is ordered, That:

Action on Agreement CAB 22097 be and hereby is deferred with a view toward eventual approval, provided that approval shall not constitute approval of the specific commodity descriptions contained therein for purposes of tariff publication: *Provided further,* That, insofar as air transportation as defined by the Act is concerned, tariff filings shall not be made to implement the agreement prior to eventual approval, and such tariff filings shall be marked to become effective on not less than 30 days' notice from the date of filing.

Persons entitled to petition the Board for review of this order, pursuant to the Board's economic 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. 70-17466; Filed, Dec. 28, 1970; 8:50 a.m.]

[Docket No. 22576; Order 70-12-131]

FLYING TIGER AIR SERVICES, INC., AND OVERSEAS NATIONAL AIRWAYS, INC.

Order of Tentative Approval

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 22d day of December 1970.

By joint application filed September 21, 1970,[1] Flying Tiger Air Services, Inc. (Services) and Overseas National Airways, Inc. (ONA) request the Board to (1) disclaim jurisdiction over the sale and lease-back transaction more fully described below or, in the alternative, (2) approve the sale transaction without hearing, pursuant to section 408(b) of the Federal Aviation Act of 1958, as amended, (the Act) and consider the lease-back transaction as within the exemption from section 408 provided by Part 299 of the Board's economic regulations (14 CFR 299).

The subject of the sale and the lease-back arrangement is one DC-8-63F aircraft presently owned and operated by ONA, which ONA will sell for $9,250,000 to Services, a wholly owned subsidiary of The Flying Tiger Line, Inc. (FTL).[2] Services will pay $100,000 as a down payment and execute an unconditional promissory note, payable by April 1, 1971, in the amount of $9,150,000, bearing interest at the rate of 1 percent above the prime rate established by the Chase Manhattan Bank of New York. ONA will retain a security interest in the aircraft as security for the note.

Contemporaneously with the execution of the sale transaction, Services and ONA will enter into an agreement under which ONA will lease the aircraft for an initial term of 36 months, for a rental of $135,000 per month. The lease will contain options to extend the term thereof for a 13-month and for two 12-month periods with rental payments of $145,000 per month.

In support of their request for a disclaimer of jurisdiction, the joint applicants submit that the one DC-8-63 aircraft does not constitute a substantial part of the properties of ONA within the meaning of section 408(a)(2) of the Act.[3]

To support their alternative request for approval of the transaction pursuant to section 408(b) of the Act, the applicants state that the sale clearly will not result in an undesirable combination, restraint on competition, or conflict of interest; nor will it affect the control of a direct air carrier or result in the creation of a monopoly. The applicants also state that the sale and lease-back will enhance ONA's cash flow and operating capital and will result in marked improvement in ONA's balance sheet by disproportionately reducing the company's senior long-term debt through the application of its equity in the aircraft to the debt. For these reasons the applicants believe approval of the transaction to be in the public interest.

No comments in opposition to approval of the application have been received.

As heretofore noted, Services is a wholly owned subsidiary of FTL. In approving the establishment of Services by FTL pursuant to section 408 of the Act,[4] the Board considered the specific proposed activities of the former, none of which included the ownership and leasing of air carrier type aircraft, and noted that if Services confined its activities to those described, approval of the relationships would not be inconsistent with the public interest.[5] In light of this limited approval, it appears that Services may not without prior Board approval legally engage in the aircraft ownership and leasing activities contemplated by the transaction discussed herein. See Transcontinental and W. A. Inc., Further Control by Hughes Tool, 9 CAB 381, 382 (1948). The Board has been informed, however, that Services will act merely as a conduit for the ultimate purchase and ownership of the aircraft in question, subject to prior Board approval, by Tiger Leasing Corp. (Tiger Leasing), a subsidiary of FTL's parent, The Flying Tiger Corp. (FTC); and that, for the present, the acquisition by Services is merely a paper transaction. An application for approval of control relationships involving FTC and Tiger Leasing is currently pending in Docket 22768.

Under normal circumstances the Board would be disposed to disclaim jurisdiction pursuant to section 408 of the Act over the sale transaction on the ground that the one aircraft involves the acquisition of only slightly more than 10 percent of ONA's total lift capacity.[6] However, because of the limited approval granted FTL's acquisition of Services, we have decided to assume jurisdiction over the transaction. To do

[1] An across-the-board increase in southbound specific commodity rates (from the United States to Panama and countries on the mainland of South America except Venezuela) by 5 percent, rounded up to the next highest cent, is encompassed in the subject agreement; however, the Board by Order 70-12-87, dated Dec. 15, 1970, has already approved these increases, and these are therefore not included in the attachment which is filed as part of the original document.

[1] As supplemented Oct. 21, Nov. 17, and Dec. 16, 1970.

[2] Control relationships between FTL and Services were approved by Order E-24030, Aug. 2, 1966.

[3] In this respect the applicants indicate that the one DC-8-63 constitutes less than 10 percent in number (5.5 percent), less than 10 percent of the market value (9.9 percent), and slightly more than 10 percent (11.6 percent) of the total lift capacity of ONA's aircraft.

[4] See footnote 2, supra.

[5] According to the application in that proceeding, Services anticipated engaging in the operation of aircraft in contract, noncommon air carriage of cargo and personnel for governmental and commercial organizations overseas; the operation of ground properties and equipment; and the performance of ground services in support of its own air operations or the air operations of others.

[6] See, e.g., Allegheny Airlines, Inc., Order 70-11-14, Nov. 4, 1970; Frontier Airlines, Inc., Order 70-11-13, Nov. 4, 1970; and Braniff Airways, Inc., Order 70-11-140, Nov. 27, 1970.

otherwise would tend to indicate acceptance, without prior Board approval, of the engagement by Services in activities which go beyond those for which approval previously was granted.

Upon consideration of the application and all of the facts of record, it is concluded that the transaction may involve the acquisition by a person engaged in a phase of aeronautics (Services) of a substantial part of the properties of an air carrier (ONA) within the meaning of section 408 of the Act. However, the Board has concluded tentatively that the transaction does not affect the control of an air carrier engaged in air transportation, does not result in creating a monopoly and does not tend to restrain competition. Furthermore, no person disclosing a substantial interest in the proceeding is currently requesting a hearing, and it is found that the public interest does not require a hearing.

We do not find that the transaction will be inconsistent with the public interest or that the conditions of section 408 will be unfulfilled. The Board tentatively concludes that it should approve the purchase transaction without hearing pursuant to the third proviso of section 408(b) of the Act.[7]

In accordance with section 408(b) of the Act, this order, constituting notice of the Board's tentative findings, will be published in the FEDERAL REGISTER, and interested persons will be afforded an opportunity to file comments or requests a hearing on the Board's tentative decision.

Accordingly, it is ordered, That:

1. The purchase by Flying Tiger Air Services, Inc., of one Douglas DC-8-63F from Overseas National Airways, Inc., be and it hereby is tentatively approved for the limited purpose of enabling Flying Tiger Services, Inc., to transfer that aircraft to Tiger Leasing Corp. after the Board issues its final order in Docket 22768 and grants any necessary approvals under Order 70-6-119 for the intercompany transaction; [8]

2. Interested persons are hereby afforded a period of 5 days from the date hereof within which to file comments or request a hearing with respect to the Board's proposed action; [9] and

3. The Attorney General of the United States be furnished a copy of this order within 1 day of publication.

This order shall be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] HARRY J. ZINK,
Secretary.

[F.R. Doc. 70-17467; Filed, Dec. 28, 1970; 8:50 a.m.]

[7] In its final order the Board will retain jurisdiction over the transaction to take any further action that may be required in the public interest.

[8] This authorization encompasses permission for Services to execute a lease of the aircraft to Overseas National Airways, on condition that the lease be assigned to Leasing Corporation along with the aircraft after final Board action in Docket 22768 and pursuant to Order 70-6-119.

[9] Comments so filed shall conform to the requirements of the Board's rules of practice (14 CFR 302).

[Docket No. 22812; Order 70-12-108]

MANCHESTER AVIATION CO., INC.

Order To Show Cause Regarding Establishment of Service Mail Rates

Issued under delegated authority December 17, 1970.

On November 25, 1970, the Postmaster General filed a notice of intent, pursuant to 14 CFR Part 298, petitioning the Board to establish for Manchester Aviation Co., Inc. (Manchester), an air taxi operator, service rates for the transportation of mail over several routes previously served by Cutlass Aviation, Inc. (Cutlass).

The Postmaster General states that circumstances beyond the control of the parties involved cause service by Cutlass to be no longer available to the Postal Service. He states further that the routes for which rates are requested will be served by Manchester at the same points, on the same frequencies, using similar equipment, and at the same rates that have been in effect for Cutlass. These final rates which are petitioned for Manchester and are currently in effect for Cutlass were established as follows, based on the number of round trips per week indicated:

Docket	Order	Between	Round trips per week	Cents per mile
18848	E-20055	Providence, R.I., and Newark, N.J., via Windsor Locks, Conn., and Albany, N.Y.	5	55.0
21406	69-10-146	Rochester and Albany, N.Y.	6	58.0
21407	69-12-47	Buffalo and New York (LGA), N.Y.	6	51.5
21796	70-5-18	Portland, Maine, and Newark, N.J., via Manchester, N.H., and Albany, N.Y.	6	60.0
21797	70-11-57	Lebanon, N.H., and New York (LGA), N.Y., via Burlington, Vt. and Albany, N.Y.	6	58.0

No protest or objection was filed against the proposed services during the time for filing such objections. The Postmaster General states that the Postal Service and the carrier agree that the above rates are fair and reasonable rates of compensation for the proposed services. The Postmaster General believes these services will meet postal needs in the markets.

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

The fair and reasonable final service mail rates per great circle aircraft mile to be paid to Manchester Aviation Co., Inc., entirely by the Postmaster General pursuant to section 406 of the Act for the transportation of mail by aircraft, the facilities used and useful therefor, and the services connected therewith, based on the number of round trips per week indicated, shall be as follows:

Between	Round trips per week	Cents per mile
Providence, R.I., and Newark, N.J., via Windsor Locks, Conn., and Albany, N.Y.	5	55.0
Rochester and Albany, N.Y.	6	58.0
Buffalo and New York (LGA), N.Y.	6	51.5
Portland, Maine, and Newark, N.J., via Manchester, N.H., and Albany, N.Y.	6	60.0
Lebanon, N.H., and New York (LGA), N.Y., via Burlington, Vt., and Albany, N.Y.	6	58.0

[1] As this order to show cause is not a final action, it is not regarded as subject to the review provisions of 14 CFR Part 385. These provisions will apply to final action taken by the staff under authority delegated in § 385.16(g).

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

It is ordered, That:

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

2. Further procedures herein shall be in accordance with 14 CFR Part 302, as specified below; and

3. This order shall be served upon Manchester Aviation Co., Inc., the Postmaster General, Allegheny Airlines, Inc., American Airlines, Inc., Eastern Air Lines, Inc., Mohawk Airlines, Inc., Northeast Airlines, Inc., and United Air Lines, Inc.

This order will be published in the FEDERAL REGISTER.

[SEAL] HARRY J. ZINK,
Secretary.

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

2. If notice of objection is not filed within 10 days after service of this order, or if notice is filed and answer is not filed within 30 days after service of this order, all persons shall be deemed to have waived the

right to a hearing and all other procedural steps short of a final decision by the Board, and the Board may enter an order incorporating the findings and conclusions proposed therein and fix and determine the final rate specified therein;

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

[F.R. Doc. 70-17468; Filed, Dec. 28, 1970; 8:50 a.m.]

[Docket No. 22862; Order 70-12-127]

ROSS AVIATION, INC.

Order To Show Cause Regarding Establishment of Service Mail Rate

Issued under delegated authority December 22, 1970.

The Postmaster General filed a notice of intent December 9, 1970, pursuant to 14 CFR Part 298, petitioning the Board to establish for the above captioned air taxi operator, a final service mail rate of 39.84 cents per great circle aircraft mile for the transportation of mail by aircraft between Clarksburg, W. Va., and Pittsburgh, Pa., via Charleston and Parkersburg, W. Va., based on five round trips per week.

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

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

The fair and reasonable final service mail rate to be paid to Ross Aviation, Inc., in its entirety by the Postmaster General pursuant to section 406 of the Act for the transportation of mail by aircraft, the facilities used and useful therefor, and the services connected therewith, shall be 39.84 cents per great circle aircraft mile between Clarksburg, W. Va., and Pittsburgh, Pa., via Charleston and Parkersburg, W. Va., based on five round trips per week.

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

It is ordered, That:

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

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

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

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

5. This order shall be served upon Ross Aviation, Inc., the Postmaster General, Allegheny Airlines, Inc., Piedmont Aviation, Inc., and United Air Lines, Inc.

This order will be published in the FEDERAL REGISTER.

[SEAL] HARRY J. ZINK, *Secretary.*

[F.R. Doc. 70-17469; Filed, Dec. 28, 1970; 8:50 a.m.]

[1] This order to show cause is not a final action and is not regarded as subject to the review provisions of 14 CFR Part 385. These provisions will be applicable to final action taken by the staff under authority delegated in § 385.16(g).

[Docket No. 22123]

UNIVERSAL AIRLINES CO. ET AL.

Notice of Oral Argument

Universal Airlines Company, Universal Airlines, Inc., First Grant Corporation, and American Flyers Airline Corp.

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that oral argument in the above-entitled matter is assigned to be heard on January 20, 1971, at 10 a.m., e.s.t., in Room 1027, Universal Building, 1825 Connecticut Avenue NW., Washington, DC, before the Board.

Dated at Washington, D.C., December 22, 1970.

[SEAL] THOMAS L. WRENN, *Chief Examiner.*

[F.R. Doc. 70-17470; Filed, Dec. 28, 1970; 8:50 a.m.]

[Docket No. 22868]

OUT ISLAND AIRWAYS, LTD.

Notice of Prehearing Conference

Notice is hereby given that a prehearing conference in the above-entitled matter is assigned to be held on January 8, 1971, at 10 a.m., e.s.t., in Room 726, Universal Building, 1825 Connecticut Avenue NW., Washington, DC, before Examiner Richard M. Hartsock.

Dated at Washington, D.C., December 21, 1970.

[SEAL] THOMAS L. WRENN, *Chief Examiner.*

[F.R. Doc. 70-17471; Filed, Dec. 28, 1970; 8:50 a.m.]

COMMISSION ON GOVERNMENT PROCUREMENT

STATEMENT OF ORGANIZATION AND AVAILABILITY OF RECORDS

STATEMENT OF ORGANIZATION

AVAILABILITY OF RECORDS

(Secs. 1 to 19 are issued pursuant to the Act of Nov. 26, 1969 (83 Stat. 269; 41 U.S.C. 251, Note))

STATEMENT OF ORGANIZATION

SECTION 1. *Organization.* (a) The Commission on Government Procurement was established by the Act of November 26, 1969 (83 Stat. 269; 41 U.S.C. 251, note; Public Law 91-129), hereinafter referred to as the "organic statute" as amended from time to time, and is composed of 12 members, two of whom are selected by the members to serve as their Chairman and Vice Chairman. Appointments to the Commission are made as follows: Three of the members by the President of the Senate (two from the Senate who are not members of the same political party, and one from outside the Federal Government); three members by the Speaker of the House (two from the House of Representatives, who are not

members of the same political party, and one from outside the Federal Government); five members by the President of the United States (two from the Executive Branch of the Government and three from outside the Federal Government). The Comptroller General of the United States is a statutory member. Vacancies in the Commission are to be filled in the same manner as the original appointments.

(b) The principal members of the staff of the Commission are the Director of Commission Studies, the Executive Secretary, and the General Counsel.

SEC. 2. *Functions.* The functions of the Commission pursuant to the organic statute are to study and investigate the present statutes affecting Government procurement; the procurement policies, rules, regulations, procedures, and practices followed by the departments, bureaus, agencies, boards, commissions, offices, independent establishments, and instrumentalities of the Executive Branch of the Federal Government; and the organizations by which procurement is accomplished to determine to what extent these facilitate the policy of Congress as expressed in the "organic statute." The Commission is to make a final report of its findings and recommendations to the Congress within 2 years of enactment of its organic statute. Thus the Commission function is to conduct a study and submit a report to Congress.

AVAILABILITY OF RECORDS

SEC. 11. *Policy.* This and the following sections implement the policy of making the fullest possible public disclosure of the Commission's records consistent with its responsibilities as an independent activity reporting to the Congress. Since the responsibilities of the Commission are advisory in nature as indicated in section 2 above, it does not ordinarily render decisions or issue regulations affecting the rights of the general public. The written materials coming into possession of or created by the Commission are essentially preliminary and for the deliberation of the Commission, its staff and study efforts, and accordingly, "internal communications" within the meaning of 5 U.S.C. 552(b)(5). As such they are exempt from disclosure. From time to time the Commission may determine to permit inspection and copying of certain "available materials" in the public interest even though exempt from disclosure. Although the adopted policy of the Commission as expressed in these sections reflects the Public Information Section of the Administrative Procedure Act (5 U.S.C. 552), the mandatory application of the Act to the Commission is not to be inferred, nor should these sections be construed as conferring on any member of the public any right of access under that Act.

SEC. 12. *Definitions.* (a) Subject to the provisions of section 19 and as used herein, the term "records" means any interim report and the final report of the Commission to Congress which become such only after submission to Congress.

(b) Subject to the provisions of section 19 and as used herein, the term "available materials" means those selected materials which the Commission elects to make available in the public interest. The selected materials comprehend the following items of information: approved definitive charters of the Commission's study groups; unclassified Commission contracts; the records of the final votes of each Commissioner with respect to any interim or the final report of the Commission after their submission to the Congress; and such other materials as the Chairman and Vice Chairman may from time to time jointly authorize to be made available to the general public. The reports of the various study groups established by the Commission are considered preliminary staff papers for use of the Commission together with other studies and analyses. These reports will be subject to further detailed inquiry by the Commission through instructions for further study by the study group, through public meetings or hearings, or through other means. Consequently, submission of study group reports does not import approval or disapproval by the Commission. Except as otherwise determined by the Commission, these reports will become available to the general public upon the expiration of the life of the Commission but in no event prior to submission of the official final report of the Commission to the Congress.

SEC. 13. *Inspection and copying.* The records and available materials of the Commission may be inspected or copied unless the requested record or available materials fall within one of the exemptions set forth in section 19 below.

SEC. 14. *Applications for records and available materials.* Any person desiring to inspect or copy records or available materials known to be in the possession of the Commission shall apply in person or in writing to the Executive Secretary at the offices of the Commission, Room 900, 1717 H Street NW., Washington, DC 20006. Applications by personal visit may be made between the hours of 9 a.m. and 5 p.m. on weekdays (holidays excluded). The request should identify with specificity the desired document. An index identifying the subject matter of the records or available materials of the Commission is kept at the Commission offices for inspection on request.

SEC. 15. *Recovery of costs.* Except as otherwise provided in specific instances by the Commission, a fee shall be required for all searches for, or copies of, records or available materials. These fees shall be so computed as to obtain full cost recovery of searching and copying. To the extent that printed copies of reports or other written works are available, a charge shall also be made. Where written works have been published by the Government Printing Office or other Government printing activity, the Commission will direct the applicant to the appropriate sales office.

SEC. 16. *Records and available materials of other agencies.* Requests for records or available materials that have been originated by or are primarily the concern of another U.S. Department or Agency shall be forwarded to the particular department or agency involved, and the applicant notified.

SEC. 17. *Types of copying processes and standard of quality.* The Commission will provide copies of the requested records or available materials of the same type and quality which it would provide in the course of official business to personnel of a U.S. department or agency. It will not accept requests for special types of copying processes or for special standards of quality of reproduction.

SEC. 18. *Schedules of fees.* (a) A search for records or available materials involving no more than 15 minutes will be made without charge. For searches requiring more than 15 minutes the charge will be at the rate of $2 for each half hour or fraction thereof after the first 15 minutes.

(b) Copying service will be performed at the following rates: the fee for electrostat copying, including handling, will be at the rate of 25 cents per page.

(c) From time to time the Commission may hold public meetings or hearings of which transcripts may be prepared by reporters under contract. In such cases copies of material from such transcripts must be procured from the contract reporters.

(d) Certification of authenticity will be $2 for each certificate.

(e) The Chairman may revise the schedule of fees from time to time, without notice, to provide more accurately for the recovery of costs incurred by the Commission.

SEC. 19. *Records and documentary information that may be exempt from public disclosure.* (a) The policy of public disclosure of records and available materials of the Commission contemplated by these sections shall not apply to records, available materials or documentary information within any of the categories enumerated below except where in the judgment of the Chairman or Vice Chairman, the rights of any person would not be adversely affected and no significant purpose would be served by withholding the record, available materials or documentary information under the exemption.

(1) Documentary information specifically required by Executive Order to be kept secret in the interest of the national defense or foreign policy. An example of this category is a record classified under Executive Order 10501 (3 CFR, 1949—1953 Comp., p. 979), Safeguarding Official Information in the Interests of the Defense of the United States.

(2) Documentary information related solely to the internal personnel rules and practices of any agency. This category includes, in addition to internal matters of personnel administration, internal rules, and practices which cannot be disclosed without prejudice to the effective performance of the Commission's function.

(3) Documentary information specifically exempted from disclosure by statute. One of the many statutes restricting access to Government records is 18

U.S.C. 1905. For a general, but not exhaustive, compilation of relevant statutory provisions, see Federal Statutes on the Availability of Information, Committee Print, House Committee on Government Operations, 86th Congress, 2d Session, March 1960.

(4) Documentary information containing trade secrets and commercial or financial information obtained from any person and privileged or confidential. This exemption pertains to information which would not customarily be made public by the person from whom it was obtained by the Government. It includes, but is not limited to, business sales statistics, inventories, customer lists, scientific or manufacturing processess or developments; information subject to protection as privileged in a court or other proceeding, such as information protected by the doctor-patient, lawyer-client, or lender-borrower privilege; information submitted by any person to the Government in confidence or where the Government has obligated itself not to disclose information it received; formulae, designs, drawing, research data, and other records developed by or for the Government which are significant as items of valuable property.

(5) Documentary information containing interagency or intraagency memoranda or letters which would not be available by law to a private party in litigation with the Commission. This exemption covers internal communications which would not routinely be available to a party in litigation with the Commission, such as internal drafts, workpapers, memorandums between officials or agencies, opinions, and interpretations prepared by Commission staff personnel or consultants for the use of the Commission, and records of the deliberations of the Commission or staff groups. The exemption seeks to avoid the inhibiting of internal communications, and the premature disclosure of documents which would be detrimental to an agency function.

(6) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. This exemption excludes from disclosure all personnel and medical files, and all private or personal information contained in other files which, if disclosed to the public, would amount to a clearly unwarranted invasion of the privacy of any person. An example of such other files within the exemption are those compiled to evaluate candidates for security clearance.

(7) Investigatory files compiled for law enforcement purposes except to the extent available by law to a private party. This exemption protects from disclosure, except to litigants in accordance with law, investigatory files compiled to enforce all kinds of laws and is not limited to files compiled to enforce criminal statutes.

(8) Documentary information contained in or related to examinations, operating, or condition reports prepared by, on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions.

(9) Documentary information containing geological and geophysical information and data (including maps) concerning wells.

(b) In the application of the exemptions set forth in paragraph (a) of this section, there shall be considered the guidelines provided in the Attorney General's Memorandum on the Public Information Section of the Administrative Procedure Act, June 1967.

Dated: December 23, 1970.

E. PERKINS MCGUIRE,
Chairman.

[F.R. Doc. 70-17477; Filed, Dec. 28, 1970; 8:51 a.m.]

ENVIRONMENTAL PROTECTION AGENCY

JUDICIAL OFFICER, DEPARTMENT OF AGRICULTURE

Delegation of Authority

The Environmental Protection Agency was established on December 2, 1970 pursuant to Reorganization Plan No. 3 of 1970. Among other functions, those of the Secretary of Agriculture under the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. 135–135k) were transferred to the Administrator of the Environmental Protection Agency pursuant to the Reorganization Plan.

The Administrator has requested by letter dated December 11, 1970 that the Secretary of Agriculture make available to the Administrator, pursuant to the provisions of 31 U.S.C. 686 the services of the Judicial Officer of the U.S. Department of Agriculture to act as delegatee of the Administrator under section 4c of the Act (7 U.S.C. 135b(c)) in the case of In re; Stearns Electric Paste Co., I.F. & R. Docket No. 13. The Secretary of Agriculture by letter has complied with such request.

Therefore, pursuant to the authority vested in the Administrator of the Environmental Protection Agency by 5 U.S.C. 901–913 (63 Stat. 203) and section 3 of Reorganization Plan No. 3 of 1970, and the provisions in 31 U.S.C. 686, the Judicial Officer, Department of Agriculture, is hereby authorized to act as final deciding officer in the case of In re: Stearns Electric Paste Co., I.F. & R. Docket No. 13.

Done at Washington, D.C., this 22d day of December 1970.

WILLIAM D. RUCKELSHAUS,
Administrator,
Environmental Protection Agency.

[F.R. Doc. 70-17445; Filed, Dec. 28, 1970; 8:48 a.m.]

FEDERAL COMMUNICATIONS COMMISSION

[Dockets Nos. 19111, 19112; FCC 70-1323]

RANTOUL BROADCASTING CO. AND REGIONAL RADIO SERVICE

Order Designating Applications for Consolidated Hearing on Stated Issues

In regard applications of Rantoul Broadcasting Co., Rantoul, Ill., requests: 95.3 mc., No. 237; 3 kw.(H); 3 kw.(V); 300 feet, Docket No. 19111, File No. BPH–7166; and William R. Brown and Donald R. Williams, doing business as Regional Radio Service, Rantoul, Ill., requests: 95.3 mc., No. 237; 3 kw.(H); 3 kw.(V); 177 feet, Docket No. 19112, File No. BPH–7243; for construction permits.

1. The Commission has under consideration the above-captioned and described applications which are mutually exclusive in that operation by the applicants as proposed would result in mutually destructive interference.

2. According to its application, Rantoul Broadcasting would require $120,342 to construct and operate its proposed station for 1 year without reliance on revenues. This amount includes an estimate of the first year repayment costs, including principal and interest on the outstanding equipment balance, interest payments on a bank loan of $85,000, building and other miscellaneous costs, and a working capital requirement of $45,807. To meet this requirement, applicant has shown the availability of a bank loan of $85,000; existing capital of $13,867; and prepaid expenses of $9,133. However, applicant has failed to show that the principal stockholder has funds available to make a $13,000 loan he has tendered, and which the applicant requires, and so a financial issue will be specified.

3. Since no determination has yet been reached on whether the antenna proposed by Regional Radio would constitute a menace to air navigation, an issue regarding this matter is required.

4. Data submitted by the applicants indicate that there would be a significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, for the purposes of comparison, the areas and populations which would receive FM service of 1 mv/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue, for the purpose of determining whether a comparative preference should accrue to either of the applicants.

5. Regional Radio proposes 23 percent duplicated programing, while Rantoul Broadcasting proposes independent operation. Therefore, evidence regarding program duplication will be admissible under the standard comparative

issue. When duplicated programing is proposed, the showing permitted under the standard comparative issue will be limited to evidence concerning the benefits to be derived from the proposed duplication, and a full comparison of the applicants' program proposals will not be permitted in the absence of a specific programing inquiry, Jones T. Sudbury, 8 FCC 2d 360, FCC 67-614 (1967).

6. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. However, because the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

7. *It is ordered*, That, pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent order, upon the following issues:

(1) To determine whether Rantoul Broadcasting has available the additional $12,342 required for construction and first-year operation of its proposed station without reliance on revenues, to thus demonstrate its financial qualifications.

(2) To determine whether there is a reasonable possibility that the tower height and location proposed by Regional Radio would constitute a menace to air navigation.

(3) To determine which of the proposals would, on a comparative basis, better serve the public interest.

(4) To determine in the light of the evidence adduced pursuant to the foregoing issues, which, if either, of the applications for construction permit should be granted.

8. *It is further ordered*, That the Federal Aviation Administration is made a party to the proceeding.

9. *It is further ordered*, That to avail themselves of the opportunity to be heard, the applicants and party respondent herein, 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 fixed for the hearing and present evidence on the issues specified in this order.

10. *It is further ordered*, That the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 1.594 of the Commission's rules, give notice of the hearing, either individually or, if feasible and consistent with the rules, jointly, within the time and in the manner prescribed in such rule, and shall advise the Commission of the publication of such notice as required by § 1.594(g) of the rules.

Adopted: December 16, 1970.

Released: December 22, 1970.

FEDERAL COMMUNICATIONS COMMISSION,[1]

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

[F.R. Doc. 70-17413; Filed, Dec. 28, 1970; 8:45 a.m.]

[1] Commissioner Johnson absent.

[Dockets Nos. 18813, 18814; FCC 70R-443]

SENCLAND BROADCASTING SYSTEMS, INC., AND SEABOARD BROADCASTING CORP.

Memorandum Opinion and Order Enlarging Issues

In regard applications of SENCLand Broadcasting Systems, Inc., Jacksonville, N.C., for construction permit, Docket No. 18813, File No. BP-18649; and Seaboard Broadcasting Corp., Jacksonville, N.C., for renewal of license of station WLAS, Docket No. 18814, File No. BR-2961.

1. By its order to show cause and notice of apparent liability (FCC 69-507, released May 12, 1969), the Commission instituted a revocation proceeding against Seaboard Broadcasting Corp. (Seaboard), licensee of Station WLAS, Jacksonville, N.C. In a subsequent memorandum opinion and order, FCC 70-272, 18 RR 2d 849, released March 27, 1970, the Commission consolidated the revocation proceeding for hearing with Seaboard's application for renewal of Station WLAS's license and with the mutually exclusive application of SENCLand Broadcasting Systems, Inc. (SENCLand), for a construction permit for the same facilities.[1] Now before the Review Board is a petition to enlarge issues, filed August 6, 1970, by SENCLand.[2] Petitioner seeks to have three issues added against Seaboard: one, as to whether Seaboard has abused the Commission's processes since August 30, 1969; another, as to whether Seaboard has failed to comply with § 1.65 of the rules; and a third, as to whether Seaboard has engaged in deceptive advertising and unfair competition. SENCLand acknowledges the untimeliness of its petition but pleads that good cause exists for acceptance. Petitioner contends that the facts presented in support of its petition became known or supportable only after the receipt of certain affidavits. Petitioner further pleads that no affidavit was received until after July 3, 1970, and that some were not obtained until July 29, 1970.

2. In support of its request for an abuse of process and a § 1.65 issue, petitioner cites various pleadings filed by Seaboard with the Commission during the period August 30, 1969, to July 8, 1970.[3] Each of the cited documents was, according to SENCLand, signed or sworn to by a Seaboard principal, and each involves statements of fact critical to the revocation proceedings. However, continues SENCLand, the various cited documents contain inconsistent or flatly contradictory representations which specifically affect the resolution of such issues as the alleged knowledge and participation of Seaboard's principals in WLAS's quotidian affairs and the alleged double-billing practices of Seaboard. For example, urges petitioner, in Exhibit No. 12 to Seaboard's renewal application, Seaboard asserted that Jerry Popkin, its president, and Sidney Popkin, its vice president, were both full-time employees.[4] Yet, SENCLand indicates, both named principals stated under oath in a subsequent affidavit accompanying Seaboard's petition for reconsideration that they each maintained 12-hour daily work schedules at family-owned furniture stores. Similarly, advances petitioner, in an affidavit attached to Seaboard's petition for reconsideration, Ivins Popkin, a principal stockholder of Seaboard, testified as to the difficulty of obtaining local clerical help for his furniture store. Contrarily, stresses petitioner, in Seaboard's earlier-filed renewal application, Exhibit No. 4 presents the opposite and still unrepudiated view of the Manager of the Jacksonville Employment Security Commission that "there exists a surplus of skilled clerical workers." As yet another instance of Seaboard's misstatement, SENCLand alleges that Sidney Popkin, in his affidavit responding to SENCLand's Interrogatory No. 21,[5] reported no ownership interest in Financial Corp. of North Carolina although that corporation is the parent of the First National Bank of Eastern North Carolina, a WLAS advertiser, and in spite of the fact that Sidney Popkin is the record owner of over 2,000 shares of Financial Corp. stock. Furthermore, submits SENCLand, Sidney Popkin erroneously represented to the Review Board in Seaboard's petition to enlarge issues that, as of April 10, 1970, "no bid" existed for the stock of Financial Corp. and that ownership interests therein were consequently nonliquidable. To the contrary, asserts SENCLand, as of April 10, 1970, a bid price of $31.50 existed for Financial Corp.[6]

3. SENCLand alleges also that Seaboard failed to amend its pending application so as to reflect changes in its programing and entertainment format. Specifically, advances SENCLand, Seaboard represented in Exhibit No. 6 to

[1] By order, FCC 70-1245, released Dec. 1, 1970, the Commission terminated the revocation aspect of the proceeding (Docket No. 18549).

[2] Also before the Review Board are: (a) Petition for acceptance of late-filed petition to enlarge issues, filed Aug. 6, 1970, by SENCLand; (b) opposition, filed Aug. 18, 1970, by Seaboard; (c) reply to opposition, filed Aug. 26, 1970, by SENCLand; and (d) letter of opposition to portions of reply, filed Aug. 27, 1970, by Seaboard.

[3] The documents specifically adverted to by SENCLand are: (a) Seaboard's Renewal Application, filed Sept. 2, 1969; (b) Seaboard's petition for reconsideration (of the Commission's show cause order), filed Dec. 22, 1969; (c) Seaboard's petition to enlarge issues, filed Apr. 27, 1970; and (d) Seaboard's response to interrogatories, filed July 9, 1970.

[4] SENCLand observes that Seaboard's renewal application was signed by Jerry Popkin and that Exhibit No. 12 thereto was represented as prepared under the direction of Sidney Popkin.

[5] Interrogatory No. 21 reads as follows:

Other than Furniture Fair, Boomtown Furniture, Discount Furniture, Seaboard Broadcasting Corp., and Pete McMillan Furniture, state the ownership interest, if any, of—Sidney Popkin—in any purchaser of advertising broadcast by WLAS during the composite week.

[6] SENCLand attaches both a letter from M. H. Vaughan, a Wilmington, N.C., securities dealer, testifying as to the market for Financial Corp. during March and April of 1970, and a copy of the Daily Quotation Sheet—Eastern Section for Apr. 10, 1970.

its renewal application that the broadcasts "The Greater Jacksonville Chamber of Commerce" and "Dr. Norman Vincent Peale" were typical and illustrative of Seaboard's programing. Yet, states petitioner, principal Sidney Popkin disposed for the first time in his sworn response to SENCLand's Interrogatory No. 11, that the Chamber of Commerce program was temporarily discontinued and that the Dr. Peale program had been eliminated. Furthermore, submits petitioner, Seaboard's unamended renewal application describes an entertainment format for WLAS which is 45 percent contemporary popular music, 30 percent country and western, and 25 percent all-time standard favorities. SENCLand notes, too, that Seaboard's associated FM facility is said to have an "easy-listen" format. However, urges SENCLand, an advertisement in the July 13, 1970 edition of the Jacksonville Daily News indicates that WLAS has "gone country," and an article in the June 29, 1970, edition of Broadcasting reports that WLAS's companion FM facility, Station WXQR, has altered its format to "rock".

4. Finally, petitioner alleges that Seaboard's July 13, 1970, advertisement in the Jacksonville Daily News constitutes unfair competition and deceptive advertising. SENCLand contends that Seaboard laid claim to an "outer contour" coverage of 16 towns with a composite 1960 population of 127,536 people and an "inner contour" coverage of six towns with a composite population of 74,153 people when, in fact, Seaboard knew that WLAS's 0.5 mv/m contour encompassed none of the cited communities or populations. Petitioner refers to Seaboard's application for a nighttime facility (File No. BP-18203) pending at the time of the above-cited advertisement's publication. Figure 19 thereof, notes SENCLand, shows that WLAS's present contour does not cover any of the listed communities or populations, and that the protection WLAS must afford neighboring Station WIAM renders impossible any coverage of two listed communities: Williamston, N.C. (1960 population, 6,924) and Washington, N.C. (1960 population, 9,939). Petitioner construes Seaboard's advertisement as intended to deceive, especially in view of such phrases within the advertisement as "Five Times the Power" and "Big Country Giant" which would suggest extensive coverage of both town and country. Petitioner characterizes Seaboard's advertisement as the type condemned by the Commission in Universal Communications of Pittsburgh, Inc., 21 FCC 2d 542, 18 RR 2d 491 (1970), and insists that the public interest requires addition of a deceptive advertising issue with the burden of proof on Seaboard.

5. Seaboard opposes SENCLand's petition in the first instance on grounds that it presents matters properly dealt with by cross-examination at the hearing. Seaboard cites the Review Board's Memorandum Opinion and Order, 24 FCC 2d 254, 19 RR 2d 480 (1970), wherein the Board noted that matters raised by SENCLand in connection with its unsuccessful request for anticompetitive practices and overcommercialization issues could nonetheless be explored during the first part of the renewal phase of this proceeding. Seaboard next argues, however, that in response to paragraph 27, section IV-A, of its renewal application, it plainly stated that both Jerry Popkin and Sidney Popkin were employed "part-time" in the operation of WLAS. Furthermore, advances Seaboard, testimony by the manager of Jacksonville's Employment Security Commission that skilled clerical labor abounds does not contradict Ivins Popkin's claim that he is hardpressed to offer sufficient employee benefits so as to attract competent help willing to work long hours. Nor are claims as to the scarcity of local copywriting talent, urges Seaboard, impugned by assertions that bookkeepers or other clerical workers are readily available. As for Sidney Popkin's stock holdings in Financial Corp., advances Seaboard, they are "proportionately small" and Popkin is neither a director nor an officer of First National Bank, Financial Corp.'s progeny.[7] Seaboard insists that stock in Financial Corp. is nonliquidable as, for example, no ready market exists for the 7,355 shares of Financial Corp. owned, in aggregate, by SENCLand principals. Seaboard attaches one letter from securities dealer M. H. Vaughan asserting that his bid was good for only 100 shares of Financial Corp. and another letter from Charles A. Collicutt, a North Carolina securities trader, stating that he considered the stock of Financial Corp. to have "no real market in size."

6. In response to SENCLand's request for a section 1.65 issue, Seaboard contends that its discontinuation of the "Dr. Norman Vincent Peale Program" is not a significant change, as contemplated by the Commission in its report and order, Reporting of Changed Circumstances, FCC 64-1037, released November 13, 1964, 3 RR 2d 1623. Nonrenewal of the cited program, insists Seaboard, represents a change of 5 minutes per day, 5 days per week, or an unsubstantial 10.3 percent of "all other programs." Its change in entertainment format, continues Seaboard, was duly reported to the Commission. By letter dated June 11, 1970, avers Seaboard, Jerry Popkin advised the Commission that as of June 6, 1970, the entertainment format of Station WLAS had been made entirely "country and western". A similar notification of altered format, adds Seaboard, was filed by Station WXQR with the Commission on June 29, 1970. Seaboard claims full compliance with Commission policy, especially as has been enunciated in the Commission's report and order, AM-FM Program Forms, FCC 65-686, released August 12, 1965, 5 RR 2d 1773, and submits that the Commission's rules and regulations do not require the submission of a new section IV nor an amendment to the renewal application. In answer to SENCLand's allegations regarding deceptive advertising, Seaboard maintains that its July 13, 1970, advertising did not, first of all, claim the population computation set forth by SENCLand in its analysis of the advertisement. Secondly, urges Seaboard, its application reflects the 0.5 mv/m and 0.1 mv/m contours, both of which are recognized by the Commission as acceptable service gauges.[8] Finally, asserts Seaboard, the affidavit of its chief engineer, Edgar Hathaway, affirms that the contours of service represented in Seaboard's advertisement map reflect actual reception of Station WLAS in the areas shown, and the affidavit of consulting radio engineer Robert L. Purcell affirms that such contour maps (showing primary and secondary pales of coverage) are commonly prepared by engineers and used by radio stations for advertising purposes. Seaboard likewise asserts that, as sworn to by Sidney Popkin, Station WLAS is five times as powerful as the other Jacksonville AM stations on account of WLAS's kilowatt strength which is quintuple that of its competitors. Seaboard concludes its opposition with an affirmation that Universal Communications of Pittsburgh, Inc., supra, is inapposite owing to the factual dissimilarity of that case.

7. In reply, SENCLand reiterates its insistence that Seaboard has abused the Commission's processes by not accurately reporting either Sidney Popkin's ownership interest in First National Bank or the market for that institution's stock. SENCLand reaffirms its contention that Sidney Popkin owns at least $62,000 worth of a liquidable stock. Petitioner insists that a "bid" of $31.50 existed for First National's stock on April 10, 1970, and that Seaboard cannot controvert the existence of what, in common parlance, then constituted a market.[9] Referring to program changes allegedly effected by Seaboard, petitioner indicates that Seaboard has consistently ignored discontinuation of its 5-minute Chamber of Commerce program and that when Sidney Popkin (in Exhibit No. 6 to Seaboard's renewal application) asserted that Seaboard would broadcast the Dr. Peale program, the latter show had, according to Sidney Popkin's sworn response on July 8, 1970, to a SENCLand interrogatory, been discontinued at least as of May 9, 1969. Moreover, advances petitioner, a 90-minute show broadcast each weekday by Seaboard has changed its format from that of basically public affairs (as described in Seaboard's renewal application, Exhibit No. 6) to "country and western" with only intermittent news and public service pro-

[7] Seaboard notes, too, that the bank does not do cooperative advertising and thus SENCLand's efforts to discover alleged instances here of double-billing are pointless.

[8] Seaboard refers to §§ 73.11 and 73.182(e) of the Commission's rules.

[9] SENCLand observes that the question of how many shares could be disposed of on a single day without depressing the market is a question apart from whether a market existed for the shares to begin with.

grams.[10] SENCLand asserts that Seaboard's prior affirmation that only its entertainment format has been altered is thereby undermined. Petitioner reasons that such an extensive change in programing as is represented by 90 minutes each weekday substantially alters SENCLand's public affairs and community service showing.[11] Moreover, submits petitioner, such unreported change necessitates a § 1.65 inquiry. Finally, SENCLand urges that for purposes of business advertising, Seaboard enlarged, at least, its primary coverage showing. Comparison of WLAS's 0.5 mv/m contour as represented in Seaboard's pending application for a nighttime facility (File No. BP-18203)[12] with that shown in the cited advertisement, submits petitioner, reveals a discrepancy of not less than 74,153 people. SENCLand continues that examination of the affidavit submitted by Seaboard's chief engineer discloses his failure to comply with §§ 73.152 and 73.186 of the rules in calculating WLAS's 0.5 mv/m contour for purposes of advertising. Petitioner concludes that Seaboard has misrepresented its contour to advertisers since 1964, and that its methods of measurement are neither explained nor excused by the affidavit of consulting radio engineer Robert L. Purcell, nor by usual commercial practice.

8. With certain significant exceptions, the Review Board will grant the relief sought by SENCLand.[13] Although petitioner styles its first request as a plea for an abuse of process issue, the Board is of the view that the facts alleged more nearly support a misrepresentation issue. Seaboard has not convincingly reconciled the various and conflicting sworn statements which its principals have submitted to the Commission. In answer to question 27, section IV-A, of its renewal application, for instance, Seaboard describes Jerry and Sidney Popkin as being employed part-time in the operation of WLAS. Yet, in reply to question 30 of the same form, Jerry and Sidney Popkin are listed as full-time employees of the station. Still later, in reply to petitioner's interrogatories, both Jerry and Sidney Popkin attest to maintaining a 12-hour workday at their furniture stores. The Board is, consequently, at a loss to decide whether Sidney and Jerry Popkin have represented themselves to be full-time employees, part-time employees, or nonemployees of Station WLAS. An issue will therefore be specified to determine whether Jerry and Sidney Popkin have misrepresented their employment relationship with Station WLAS to the Commission.[14] The Board will decline, however, to specify an issue inquiring as to Sidney Popkin's failure to list his ownership interest in Financial Corp. when he replied to SENCLand's interrogatory. The Board is persuaded that the interest was not listed as the result of a good-faith and not unreasonable determination by Sidney Popkin that the interrogatory did not call for mention of such a proportionately small[15] and remote[16] investment. Similarly, the Board is unpersuaded that a substantial question has been raised as to whether Sidney Popkin intentionally misrepresented to the Commission the liquidity of Financial Corp.'s common stock. Without reaching a determination as to the meaning of "liquidable" or "nonliquidable", the Review Board would observe that although a "bid" price of $31.50 does seem to have existed for Financial Corp. as of April 10, 1970,[17] Seaboard could have not unreasonably maintained that the stock was not readily alienable. Various other factors, both cited here by Seaboard and adverted to previously by the Board in its Memorandum Opinion and Order, 24 FCC 2d 259, 19 RR 2d 538 (1970), could have supported Seaboard's insistence that the stock in question was nonliquidable. The Board is not disposed to launch an inquiry where no indication exists that any representation was made in bad faith or misled a party to its prejudice.

9. The Review Board will further decline to add an issue inquiring as to Seaboard's change of programing and its alleged failure to report an altered format to the Commission. The two instances of deleted or suspended programing cited by SENCLand in its petition do not represent the "major and out of the ordinary" changes which the Commission expressly directed to be reported "in order [that it might] reach a realistic decision." Reporting of Changed Circumstances, supra at 1625. In our view, neither change was so drastic as to require an amendment pursuant to § 1.65 of the rules.[18] The Review Board notes additionally that Seaboard swears to have advised the Commission by letter of the other alleged changes which it made in the entertainment format of WLAS.[19] Lastly, the Review Board will add an issue to determine whether Seaboard misrepresented the coverage area of Station WLAS to the public and to its advertisers. Comparison of Seaboard's advertising map with figures submitted to the Commission[20] discloses that the advertising map does not label WLAS's 0.1 mv/m and 0.5 mv/m contours; moreover, the map depicts an exaggerated primary service area and does not indicate losses in coverage resulting from interference which its operation receives from other stations. Additionally, the affidavit submitted by Seaboard's chief engineer reveals that the publicity map was based on measurements which were not taken in accordance with Commission requirements.[21] In fact, no measurement data at all was submitted to the Board by Seaboard. Seaboard's advertising map, in sum, appears not to comport with the standards of accuracy and disclosure expected of a Commission licensee. As was stated in Universal Communications of Pittsburgh, Inc., supra, "[f]ull disclosure as to both coverage and location is essential in conforming to the standard of candor required of licensees * * *. It is the [applicant's] obligation to show that the [map] contours were accurately portrayed."[22] 21 FCC 2d at 542, 18 RR 2d at 492.[23] Seaboard appears to have been remiss in this regard and the consequent issue will be added to explore this matter at the hearing.

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[10] Petitioner attaches the supporting affidavits of Deborah Ann Mattocks who swears to have monitored the show the week of Aug. 3, 1970.

[11] Petitioner notes that it could not find a copy of Seaboard's June 11, 1970, letter to the Commission in the latter's files; SENCLand therefore affirms that it cannot, of its own knowledge, state whether Seaboard notified the Commission of programing changes.

[12] Petitioner refers to Figure 19 of Seaboard's supporting Engineering Statement.

[13] Petitioner has adequately shown good cause for the delay in filing its request for enlargement, and the petition for acceptance of the petition to enlarge will therefore be granted.

[14] The Board is unpersuaded that any inconsistencies have been presented by the different statements of Seaboard concerning the local availability of clerical help. No misrepresentation is apparent to us in the varying and generalized assertions which have been made by Seaboard as to its beliefs regarding the labor situation in and near Jacksonville.

[15] Sidney Popkin is alleged to be record holder of no less than 2,000 shares out of 600,000 common shares issued in Financial Corp.

[16] Financial Corp. is a holding company for First National. Furthermore, avers SENCLand, the latter does not participate in cooperative advertising.

[17] Seaboard seems to have confused the "bid" price for the "asked" price. A quotation for the latter is missing from the Apr. 10, 1970 edition of the Daily Quotation Sheet—Eastern Section.

[18] Petitioner's supplementary charges regarding Seaboard's alleged modification of its 90-minute weekday presentation "The Paul Parker Show", are procedurally defective. In direct contravention of section 1.45 (b) of the rules, they raise new matter in a reply pleading and are unresponsive to Seaboard's opposition pleading. They will therefore be disregarded by the Review Board. Aljir Broadcasting Co., 12 FCC 2d 163, 12 RR 2d 986 (1968); Marbro Broadcasting Co., 2 FCC 2d 1030, 7 RR 2d 216 (1966).

[19] Furthermore, no impropriety is apparent to us in Seaboard's having (1) discontinued the 5-minute weekday show "Dr. Norman Vincent Peale," prior to its renewal filing; (2) thereafter asserting in its renewal application that it planned to broadcast the Dr. Peale show in the future; and (3) ultimately deciding to drop the show.

[20] See Figures 18, 19, and 32 in the engineering data submitted to the Commission in support of Seaboard's application for a nighttime facility (BP-18203).

[21] See §§ 73.152 and 73.186 of the Commission's rules.

[22] Also relevant was the Commission's further observation that "the map submitted by the licensee to replace the contested map and prepared with the use of field intensity measurements shows the 0.5 mv/m contour on the former map to be exaggerated." Id.

[23] Compare Home Service Broadcasting Corp., 23 FCC 2d 914, 19 RR 2d 315 (1970), where the Review Board denied a similar request.

10. *Accordingly, it is ordered*, That the petition for acceptance of late-filed petition to enlarge issues, filed August 6, 1970, by SENCLand Broadcasting Systems, Inc., is granted, and that the petition to enlarge issues, filed August 6, 1970, by SENCLand Broadcasting Systems, Inc., is granted to the extent indicated and is denied in all other respects; and

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

To determine whether Sidney Popkin and Jerry Popkin have misrepresented their employment relationship with Station WLAS to the Commission, and, in light of evidence adduced pursuant to the foregoing, whether Seaboard Broadcasting Corp. possesses the requisite qualifications to continue as a Commission licensee.

To determine whether Seaboard Broadcasting Corp. has misrepresented the coverage area and contours of Station WLAS to the public and its advertisers, and in light of evidence adduced pursuant to the foregoing, whether Seaboard Broadcasting Corp. possesses the requisite qualifications to continue as a Commission licensee; and

12. *It is further ordered*, That the burden of proceeding with the introduction of evidence under the issues added herein shall be on SENCLand Broadcasting Systems, Inc., and the burden of proof shall be on Seaboard Broadcasting Corp.

Adopted: December 17, 1970.

Released: December 22, 1970.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 70-17414; Filed, Dec. 28, 1970; 8:45 a.m.]

STANDARD BROADCAST APPLICATION READY AND AVAILABLE FOR PROCESSING

DECEMBER 21, 1970.

Notice is hereby given, pursuant to § 1.571(c) of the Commission's rules, that on February 2, 1971, the following application by Station KICO for increase in daytime power of its Class IV standard broadcast station, will be considered as ready and available for processing:

BP-18934 KICO, Calexico, Calif.
Charles R. Love.
Has: 1490 kc., 250 w., U.
Req: 1490 kc., 250 w., 1 kw-LS, U.

The purpose of this notice is not to invite applications which may conflict with the listed application, but to apprise any party in interest who desires to file pleadings concerning the application pursuant to section 309(d)(1) of the Communications Act of 1934, as amended, of the necessity of complying with § 1.580(i) of the Commission's rules governing the time of filing and other requirements relating to such pleadings.

Adopted: December 21, 1970.

Released: December 21, 1970.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 70-17412; Filed, Dec. 28, 1970; 8:45 a.m.]

FEDERAL MARITIME COMMISSION

THE 8900 LINES

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 Shiping 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 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:

A. J. Wassler, Secretary, The "8900" Lines, Room 1539, 26 Broadway, New York, NY 10004.

Agreement No. 8900-5, among the members to the "8900" Lines Rate Agreement, will revise the rate agreement by updating the terms of its self-policing provisions to include language required by the Commisson's General Order 7 (Revised).

Dated: December 22, 1970.

By order of the Federal Maritime Commission.

FRANCIS C. HURNEY,
Secretary.

[F.R. Doc. 70-17419; Filed, Dec. 28, 1970; 8:45 a.m.]

NORTH ATLANTIC FRENCH ATLANTIC FREIGHT CONFERENCE

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 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:

Charles J. Moran, Chairman, North Atlantic French Atlantic Freight Conference, Burlingham, Underwood, Wright, White & Lord, 25 Broadway, New York, NY 10004.

Agreement No. 7770-5 provides for:

(a) Extension of the coverage of the agreement to cargo moving under through bills of lading from U.S. North Atlantic ports to interior points in France; and

(b) Reduction of the necessary affirmative vote for action on freight rates and tariff rules from unanimous consent to three-fourths of those present.

Dated: December 22, 1970.

By order of the Federal Maritime Commission.

FRANCIS C. HURNEY,
Secretary.

[F.R. Doc. 70-17418; Filed, Dec. 28, 1970; 8:45 a.m.]

CALIFORNIA ASSOCIATION OF PORT AUTHORITIES

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 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. C. R. Nickerson, Executive Secretary, California Association of Port Authorities, 9 First Street, San Francisco, CA 94105.

Agreement No. 7345-14, between the members of the California Association of Port Authorities, modifies the basic agreement which provides for the establishment and maintenance of just and reasonable rates, rules and regulations at members' terminals at ports in the State of California. The purpose of the modification is to amend Article 3, subsection B, concerning proposed tariff changes.

Dated: December 22, 1970.

By order of the Federal Maritime Commission.

FRANCIS C. HURNEY,
Secretary.

[F.R. Doc. 70-17420; Filed, Dec. 28, 1970; 8:45 a.m.]

AMERICAN MAIL LINE, LTD., AND EVERETT ORIENT LINE

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 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 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. R. Purnell, District Manager, American Mail Line, Ltd., 601 California Street, Suite 610, San Francisco, CA 94111.

Agreement No. 9917 between the two carriers noted above provides for the through movement of general cargo between loading ports in Malaya and Singapore served by Everett Orient Line to discharge ports in Oregon, Washington, and Alaska served by American Mail with transshipment in either Hong Kong and Japan in accordance with the terms of the agreement.

Dated: December 22, 1970.

By order of the Federal Maritime Commission.

FRANCIS C. HURNEY,
Secretary.

[F.R. Doc. 70-17421; Filed, Dec. 28, 1970; 8:45 a.m.]

NORTH ATLANTIC FRENCH ATLANTIC FREIGHT CONFERENCE

Notice of Petition Filed

Notice is hereby given that the following petition has been filed with the Commission for approval pursuant to section 14b of the Shipping Act, 1916, as amended (75 Stat. 762, 46 U.S.C. 814).

Interested parties may inspect a copy of the current contract form and of the petition, reflecting the changes proposed to be made in the language of said contract, at the Washington office of the Federal Maritime Commission, 1405 I Street NW., Room 1202; or at the Field Offices located at New York, N.Y., New Orleans, La. and San Francisco, Calif. Comments with reference to the proposed changes and the petition, including a request for hearing, if desired, may be submitted to the Secretary, Federal Maritime Commission, 1405 I Street NW., Washington, DC 20573, within 20 days after publication of this notice in the FEDERAL REGISTER. Any person desiring a hearing on the proposed modification of the contract form and/or the approved contract system 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 petition (as indicated hereinafter), and the statement should indicate that this has been done.

Notice of agreement filed by:

Charles J. Moran, Chairman, North Atlantic French Atlantic Freight Conference, Burlingham, Underwood, Wright, White & Lord, 25 Broadway, New York, NY 10004.

Agreement No. 7770 D.R.-3 would extend the coverage of the Conference's Merchant's Freight Contract to cargo moving under through bills of lading from U.S. North Atlantic ports to interior points in France.

Dated: December 22, 1970.

By order of the Federal Maritime Commission.

FRANCIS C. HURNEY,
Secretary.

[F.R. Doc. 70-17422; Filed, Dec. 28, 1970; 8:45 a.m.]

FEDERAL POWER COMMISSION

[Docket No. E-7578]

COMMONWEALTH EDISON CO.

Notice of Proposed Rate Schedule Changes

DECEMBER 16, 1970.

Take notice that on November 23, 1970, Commonwealth Edison Co. (Commonwealth) filed rate schedule changes for service to the municipalities of Batavia, Geneva, Naperville, and St. Charles, Ill., and also, subject to certain special provisions, for service to the municipality of Rochelle, Ill.[1] The date on which the rate changes are proposed to become effective is February 1, 1971.

According to billing information submitted by Commonwealth, the rate changes proposed would increase the municipalities' rates by approximately $410,106 for the year ending January 1971, and $454,285 for the year ending January 1972.[2]

The rate changes proposed by Commonwealth and the reasons offered in support thereof include the following: (1) an increase in demand and energy

[1] Service to Rochelle, Ill., is the subject of an initial service agreement filed by Commonwealth on October 1, and supplemented Oct. 29, 1970.

[2] Because service to Rochelle, Ill., had not commenced at the time the subject filing was made these figures do not reflect data with respect to that municipality.

charges to provide a more adequate rate of return on its jurisdictional business, and to restore a more appropriate relationship between charges to its municipal and industrial customers following a recent rate increase authorized by the Illinois Commerce Commission; (2) the deletion of reference to the $50 monthly Minimum Demand Charge of Tariff Rate 78 as obsolete; (3) a revision in the terms and conditions dealing with its liability for interruptions in service to provide specific protection against liability in the event of an interruption of service to prevent disruption of its system or systems with which it is interconnected; and (4) a revision in the fuel adjustment clause of Tariff Rate 78 to conform its terms to those now applicable in Commonwealth's intrastate tariff, so that generation from new nuclear units coming on line as well as rising fuel costs would be recognized.

Copies of the filing have been served on the Illinois Commerce Commission and the affected municipalities.

Any person desiring to be heard or to make any protest with reference to the said application should on or before January 5, 1971, 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 the proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules of practice and procedure.

The application is on file with the Commission and available for public inspection.

GORDON M. GRANT,
Secretary.

[F.R. Doc. 70-17383; Filed, Dec. 28, 1970; 8:46 a.m.]

[Docket No. RP71-53]

GRAND VALLEY TRANSMISSION CO.

Notice of Proposed Change in Rate and Charge

DECEMBER 16, 1970.

Take notice that on December 7, 1970, Grand Valley Transmission Co. (Grand Valley) tendered for filing a proposed change in its FPC Gas Tariff, Original Volume No. 1. The filing, which is designated Supplement No. 4 to its Rate Schedule No. 1, would increase the rate from 17½ cents per Mcf to 18½ cents, to El Paso Natural Gas Co. Based on the 12-month period ended September 30, 1970, the proposed 1 cent change in rate would increase jurisdictional revenues by approximately $23,700. Grand Valley, pursuant to § 154.22 of the regulations under the Natural Gas Act, requests waiver of the notice requirments to permit the tendered tariff sheet to become effective as of December 16, 1970.

Grand Valley states that the sole reason for the filing is to track the increase in rates of its suppliers. Copies thereof were served upon El Paso Natural Gas Co.

Any person desiring to be heard or to make protest with respect to said filing should on or before December 31, 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 tender is on file with the Commission and available for public inspection.

GORDON M. GRANT,
Secretary.

[F.R. Doc. 70-17384; Filed, Dec. 28, 1970; 8:46 a.m.]

[Project No. 184]

PACIFIC GAS AND ELECTRIC CO.

Notice of Application for New License for Constructed Project

DECEMBER 17, 1970.

Public notice is hereby given that application for new license has been filed under section 15 of the Federal Power Act (16 U.S.C. 791a, 825r) by Pacific Gas and Electric Co. (correspondence to: J. F. Roberts, Jr., Vice President—Rates and Valuation, Pacific Gas and Electric Co., 245 Market Street, San Francisco, CA 94106) for its constructed El Dorado Project No. 184, located on South Fork American River and its tributaries, in the counties of El Dorado, Alpine, and Amador and affecting lands of the United States partly within the boundary of El Dorado National Forest.

The constructed El Dorado Project consists of:

(A) Lake Aloha (Medley Lake) (1) a main dam of rubble and masonry construction on Pyramid Creek with a maximum height of 20 feet above streambed and crest length of 113 feet; (2) 11 auxiliary dams ranging between 1 foot 4 inches and 8 feet 6 inches in height and between 9 feet and 140 feet in length including Dam No. 6 with a length of 92 feet and a maximum height of 6 feet which acts as the spillway together with the main dam; (3) reservoir with an area of 630 acres at elevation 8,114.3 feet and usable storage capacity of 5,180 acre feet. (B) Echo Lake (1) an earthfill cement masonry faced dam on Echo Creek, a tributary to the Truckee River, 320 feet long having a maximum height of 14 feet and a wave coping wall 2 feet high; (2) a spillway located on the left abutment of the dam having a width of 21 feet controlled by three 6 by 7 foot wooden gates; (3) a 1.16 miles of conduit with a capacity of 30 c.f.s. consisting of 0.49 mile of canal, 0.21 mile of tunnel, and 0.46 mile of 36 inch diameter steel pipe diverting water from Lower Echo Lake to South Form American River; (4) a reservoir having a surface area of 338 acres at elevation 7,411.5 feet and usable storage of 1,890 acre-feet. (C) Caples Lake (Twin Lakes) (1) a main dam on Caples Creek of earthfill 1,200 feet long with a maximum height of 84.5 feet having a 4.5-foot outlet conduit through the base of the dam and a fish ladder located at its left abutment; (2) an auxiliary dam with a concrete section and an earthfill section, the concrete section consisting of a combination of gravity and arch sections with a maximum height of 18 feet and a crest length of 300 feet and having a 131.5-foot spillway at crest elevation 7,943 feet topped with 3-foot flashboards; the earthfill section is a concrete core structure with a maximum height of 33 feet and a crest length of 237 feet; (3) a reservoir having a surface area of 600 acres at elevation 7,800.9 feet and a usable storage capacity of 21,581 acre-feet. (D) Silver Lake (1) a rock and earthfill dam on Silver Fork with a maximum height of 30 feet and a crest length of 280 feet with a spillway located on the left abutment consisting of a double outlet chute controlled by two radial gates; (2) a fish ladder adjacent to the spillway; (3) a reservoir having a surface area of 525 acres at elevation 7,261.1 feet and a usable storage capacity of 8,590 acre-feet. (E) Diversion dams, waterways, and forebay consisting of (1) El Dorado diversion dam, a rockfill timber crib structure 271 feet long and 20 feet high having a fish ladder and located on South Fork American River; (2) El Dorado conduit 22.3 miles long, from the diversion dam to the forebay, comprised of canal, flume, tunnel, and pipeline along with several intermediate feeder canals; (3) El Dorado forebay formed by an earthfill dam 91 feet high and 836 feet long and having a usable capacity of 200 acre-feet and a surface area of 22 acres at elevation 3,792.2 feet; (4) a wood stave and steel pipeline about 11,487 feet long extending from the forebay to the surge tank; (5) a 54 inch steel penstock, 3,443 feet long which bifurcates at the powerhouse. (F) El Dorado powerhouse located on South Fork American River containing two hydraulic turbines operated under a static head of about 1,900 feet, each directly connected to a 10,000 kw. generator. (G) Transmission facilities consisting of a double circuit 60 kv. transmission line about 9 miles long connecting El Dorado powerplant to P.G. & E. Co.'s interconnected transmission system. (H) Appurtenant facilities. Recreational facilities consisting of: (1) Five resorts providing cabins, rental boats, boat launching ramps, docks, and sanitary facilities; (2) a 14-acre day-camp commercial recreation area; (3) 5 group camps; (4) 4 public campgrounds; (5) 3 picnic areas; (6) riding stable; (7) fishing access at Caples Lake auxiliary dam; (8) benches and trash facilities along

the shore of El Dorado forebay; (9) Trails to Lake Aloha (Medler Lake); and access is available from Echo Summit on U.S. 50 and Carson Pass on State Highway 88. Future recreation development plans include a boat-access campground at Silver Lake's Treasure Island, a swimming beach at Sunday Cove, a fishing access sites at El Dorado forebay landscaping of a 3-acre area east of the Caples Lake Dam and enlarging or improving the two Silver Lake picnic sites and campgrounds.

According to the application: (1) The project power output is used in applicant's interconnected electric power system and to meet also the demands for domestic, industrial, and irrigation water requirements in the local area; (2) the estimated net investment in the project is about $6,156,000 as of December 31, 1968, which is less than applicant's estimated fair value; (3) the severence damages in the event of "takeover" by the United States is not furnished; and (4) annual taxes paid to State and local government agencies are estimated to amount to $292,000.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 3, 1971, 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. 70-17385; Filed, Dec. 28, 1970; 8:45 a.m.]

[Docket No. E-7582]

PACIFIC POWER & LIGHT CO.

Notice of Application

DECEMBER 16, 1970.

Take notice that on December 7, 1970, Pacific Power & Light Co. (applicant), a corporation organized under the laws of the State of Maine and qualified to transact business in the States of Oregon, Wyoming, Washington, California, Montana, and Idaho, with its principal business office at Portland, Oreg., filed an application with the Federal Power Commission, pursuant to section 204 of the Federal Power Act, seeking an order authorizing the issuance of $40 million in principal amount of its first mortgage bonds.

The new bonds are to be issued under and pursuant to applicant's presently existing mortgage and deed of trust dated as of July 1, 1947 to Morgan Guaranty Trust Company of New York and R. E. Sparrow, as Trustees, as supplemented and as proposed to be supplemented by a 23d supplemental indenture thereto. The new bonds will bear interest from February 1, 1971, at a rate per annum to be fixed by competitive bidding and will mature on February 1, 2001. Applicant proposes to sell the new bonds at competitive bidding in accordance with applicable requirements of § 34.1a of the Commission's regulations under the Federal Power Act.

The net proceeds from the issuance and sale of the new bonds are proposed to be applied to the prepayment of promissory notes outstanding under a credit agreement dated December 31, 1969, or outstanding commercial paper, or both, and to finance construction expenditures. Applicant's construction expenditures for 1971 are presently estimated at $120,467,000, most of which it is contemplated will be financed through cash to be internally generated, sale of additional bonds and equity securities later in 1971, and short-term borrowings.

Any person desiring to be heard or to make any protest with reference to said application should, on or before December 30, 1970, file with the Federal Power Commission, Washington, D.C. 20426, petitions or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). 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. 70-17386; Filed, Dec. 28, 1970; 8:46 a.m.]

[Docket No. E-7581]

PENNSYLVANIA POWER & LIGHT CO.

Notice of Application

DECEMBER 16, 1970.

Take notice that on December 4, 1970, Pennsylvania Power & Light Co. (applicant), 901 Hamilton Street, Allentown, PA 18101, filed an application with the Federal Power Commission pursuant to section 204 of the Federal Power Act seeking authority to issue short-term unsecured Promissory Notes including commercial paper notes.

Applicant is a Pennsylvania corporation principally engaged in the production, purchase, transmission, distribution, and sale of electricity in a service area of approximately 10,000 square miles in 29 counties of central eastern Pennsylvania with an estimated population of about 2.4 million persons.

The unsecured promissory notes are to be issued from time to time, prior to December 31, 1973, to lenders, brokers, dealers, or direct purchasers of unsecured promissory notes, including banks and institutional investors. Notes in the form of commercial paper will mature in no more than 270 days from the date of issue, and all other notes will have maturities of less than 1 year from the date of issue. The aggregate face amount of such notes to be outstanding at any one time is not to exceed (i) 25 percent of applicant's gross revenues during the preceding 12 months of operations, or (ii) $90 million, whichever is less.

The proceeds from the issuance of the notes will be used principally as interim financing of applicant's construction program, which will require approximately $582 million over the 1971–73 period.

Any person desiring to be heard or to make any protest with reference to said application should, on or before December 28, 1970, file with the Federal Power Commission, Washington, D.C. 20426, petitions or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). 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. 70-17387; Filed, Dec. 28, 1970; 8:46 a.m.]

[Docket No. E-7583]

SOUTH CAROLINA ELECTRIC & GAS CO.

Notice of Proposed Rate Schedule Changes

DECEMBER 16, 1970.

Take notice that on November 23, 1970, South Carolina Electric & Gas Co. (applicant) filed a Fuel Cost Adjustment Clause to be applicable to seven wholesale customers, effective January 23, 1971. The seven customers affected include three municipalities, and four rural electric cooperatives.

According to applicant, the effect of the proposed rate increase would be $274,185 or 11.4 percent based upon projections of sales and revenues for the 12 months immediately preceding, and $546,570 or 21.9 percent based upon projections of sales and revenues for the 12 months immediately succeeding January 23, 1971, the date on which the new fuel clause is proposed to become effective. Applicant further states that the proposed fuel cost adjustment clause will increase or decrease monthly bills

for service under the filed wholesale rate schedules as the cost of fossil fuels burned in the company's generating stations rises above or falls below 30 cents per million BTU.

As justification for the new clause, Applicant points to the rapid rise in the cost of fuel, comprising more than 50 percent of the company's total electric operation and maintenance expenses.

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 January 6, 1971, 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. 70-17388; Filed, Dec. 28, 1970; 8:46 a.m.]

[Docket No. CP71-158]

TRANSCONTINENTAL GAS PIPE LINE CORP. AND FLORIDA GAS TRANSMISSION CO.

Notice of Application

DECEMBER 16, 1970.

Take notice that on December 8, 1970, Transcontinental Gas Pipe Line Corp. (Transco), Post Office Box 1396, Houston, TX 77001, and Florida Gas Transmission Co. (Florida Gas), Post Office Box 44, Winter Park, FL 32789, filed in Docket No. CP71-158 a joint application pursuant to section 7(c) of the Natural Gas Act, seeking authorization for the exchange and delivery of natural gas pursuant to an agreement between the parties dated October 30, 1970, as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicants seek authorization for the exchange of natural gas at existing points of interconnection between the systems of the two companies in St. Helena and Vermilion Parishes, La., and at natural gas processing plants and other common points where both Transco and Florida Gas take or may in the future take delivery of gas from others. All deliveries will be made on a gas-for-gas basis.

Applicants do not presently propose to construct any additional facilities to carry out the exchange arrangement. However, Transco seeks permanent authorization for the construction and operation of an existing meter station and appurtenant equipment in Vermilion Parish, La., as a point of exchange. The application states that these facilities were constructed and operated under temporary certificate in Transco's Docket No. CP68-116 as a point of purchase from Florida Gas. Similarly, Florida Gas seeks permanent authorization for the construction and operation of the existing tap, valve and connecting facilities which it constructed at this location pursuant to temporary authorization in its Docket No. CP68-111.

Applicants state that the proposed exchange agreement is designed to serve as a protective measure to insure the continuity of delivery to customers served by both Transco and Florida Gas.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 5, 1971, 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 proceding 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. 70-17389; Filed, Dec. 28, 1970; 8:46 a.m.]

FEDERAL RESERVE SYSTEM

BOATMEN'S BANCSHARES, INC.

Order Approving Action To Become a Bank Holding Company

In the matter of the application of Boatmen's Bancshares, Inc., St. Louis, Mo., for approval of action to become a bank holding company through the acquisition of 80 percent or more of the voting shares of (1) Bank of Concord Village, St. Louis County, and (2) Manchester Community Bank, Ballwin, both in Missouri.

There has come before the Board of Governors, pursuant to section 3(a)(1) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(a)(1)) and § 222.3(a) of Federal Reserve Regulation Y (12 CFR 222.3(a)), an application by Boatmen's Bancshares, Inc., St. Louis, Mo., for the Board's prior approval of action whereby applicant would become a bank holding company through the acquisition of 80 percent or more of the voting shares of each of the following banks in Missouri: Bank of Concord Village, St. Louis County, and Manchester Community Bank, Ballwin. Applicant presently owns all but directors' qualifying shares of The Boatmen's National Bank of St. Louis, St. Louis, Mo.

As required by section 3(b) of the Act, the Board gave written notice of receipt of the application to the Commissioner of Finance for the State of Missouri and requested his views and recommendation. The Commissioner offered no objection to approval of the application.

Notice of receipt of the application was published in the FEDERAL REGISTER on October 17, 1970 (35 F.R. 16345), which provided an opportunity for interested persons to submit comments and views with respect to the proposed transaction. A copy of the application was forwarded to the U.S. Department of Justice for its consideration. The time for filing comments and views has expired and all those received have been considered by the Board.

It is hereby ordered, For the reasons set forth in the Board's Statement[1] of this date, that said application be and hereby is approved, provided that the action so approved shall not be consummated (a) before the 30th calendar day following the date of this order or (b) later than 3 months after the date of this order, unless such period is extended for good cause by the Board, or by the Federal Reserve Bank of St. Louis pursuant to delegated authority.

By order of the Board of Governors,[2] December 22, 1970.

[SEAL] KENNETH A. KENYON,
Deputy Secretary.

[F.R. Doc. 70-17452; Filed, Dec. 28, 1970; 8:49 a.m.]

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[1] Filed as part of the original document. Copies available upon request to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551, or to the Federal Reserve Bank of St. Louis. Dissenting Statement of Governor Robertson filed as part of the original document and available upon request.

[2] Voting for this action: Governors Mitchell, Daane, Maisel, Brimmer, and Sherrill. Voting against this action: Governor Robertson. Absent and not voting: Chairman Burns.

INTERAGENCY TEXTILE ADMINISTRATIVE COMMITTEE

CERTAIN COTTON TEXTILE PRODUCTS PRODUCED OR MANUFACTURED IN HAITI

Entry or Withdrawal From Warehouse for Consumption

DECEMBER 23, 1970.

On August 31, 1970, the United States Government requested the Government of the Republic of Haiti to enter into consultations concerning exports to the United States of cotton textile products in Category 39 produced or manufactured in the Republic of Haiti. In that request the United States Government indicated the specific level at which it considered that exports in this category from the Republic of Haiti should be restrained for the 12-month period beginning August 31, 1970 and extending through August 30, 1971. Since no solution has been mutually agreed upon the United States Government in furtherance of the objectives of, and under the terms of, the Long-Term Arrangement Regarding International Trade in Cotton Textiles done at Geneva on February 9, 1962, including Article 3, paragraph 3 and Article 6(c) which relates to nonparticipants, is establishing restraint at the level indicated in that request for the 12-month period beginning August 31, 1970 and extending through August 30, 1971. This restraint does not apply to cotton textile products in Category 39, produced or manufactured in the Republic of Haiti exported to the United States prior to the beginning of the designated 12-month period.

There is published below a letter of December 18, 1970, from the Chairman of the President's Cabinet Textile Advisory Committee to the Commissioner of Customs, directing that the amount of cotton textile products in Category 39, produced or manufactured in the Republic of Haiti, which may be entered or withdrawn from warehouse for consumption in the United States for the 12-month period beginning August 31, 1970, be limited to the designated level.

STANLEY NEHMER,
Chairman, Interagency Textile Administrative Committee, and Deputy Assistant Secretary for Resources.

THE SECRETARY OF COMMERCE
Washington, D.C. 20230

PRESIDENT'S CABINET TEXTILE ADVISORY COMMITTEE

COMMISSIONER OF CUSTOMS,
Department of the Treasury,
Washington, D.C. 20226.

DECEMBER 18, 1970.

DEAR MR. COMMISSIONER: Under the terms of the Long-Term Arrangement Regarding International Trade in Cotton Textiles done at Geneva on February 9, 1962, including Article 6(c) thereof relating to nonparticipants, and in accordance with the procedures outlined in Executive Order 11052 of September 28, 1962, as amended by Executive Order 11214 of April 7, 1965, you are directed to prohibit, effective as soon as possible, and for the 12-month period beginning August 31, 1970, and extending through August 30, 1971, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Category 39, produced or manufactured in the Republic of Haiti, in excess of a level of restraint for the period of 20,000 dozen pair.[1]

In carrying out this directive, entries of cotton textile products in Category 39 produced or manufactured in the Republic of Haiti and which have been exported to the United States from the Republic of Haiti prior to August 31, 1970, shall not be subject to this directive.

Cotton textile products which have been released from the custody of the Bureau of Customs under the provisions of 19 U.S.C. 1448(b) prior to the effective date of this directive shall not be denied entry under this directive.

A detailed description of Category 39, in terms of T.S.U.S.A. numbers was published in the FEDERAL REGISTER on January 17, 1968 (33 F.R. 582), and amendments thereto on March 15, 1968 (33 F.R. 4600).

In carrying out the above directions, entry into the United States for consumption shall be construed to include entry for consumption into the Commonwealth of Puerto Rico.

The actions taken with respect to the Government of the Republic of Haiti and with respect to imports of cotton textiles and cotton textile products from the Republic of Haiti have been determined by the President's Cabinet Textile Advisory Committee to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, being necessary to the implementation of such actions, fall within the foreign affairs exception to the notice provisions of 5 U.S.C. 553 (Supp. V, 1965–69). This letter will be published in the FEDERAL REGISTER.

Sincerely,

MAURICE H. STANS,
Secretary of Commerce, Chairman, President's Cabinet, Textile Advisory Committee.

[F.R. Doc. 70–17476; Filed, Dec. 28, 1970; 8:51 a.m.]

[1] This level has not been adjusted to reflect any entries made on or after Aug. 31, 1970.

INTERIM COMPLIANCE PANEL (COAL MINE HEALTH AND SAFETY)

WINDING GULF COALS, INC.

Application for Renewal Permit; Notice of Opportunity for Public Hearing

Application for Renewal Permit for Noncompliance with the Interim Mandatory Dust Standard (3.0 mg./m3) has been received as follows:

ICP Docket No. 10317, Winding Gulf Coals, Inc., Eccles No. 6 Mine, USBM ID No. 46 01514 0, Eccles, Raleigh County, W. Va., Section ID No. 002 (7 rt.—2 North).

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, DC 20006.

GEORGE A. HORNBECK,
Chairman,
Interim Compliance Panel.

DECEMBER 22, 1970.

[F.R. Doc. 70–17427; Filed, Dec. 28, 1970; 8:47 a.m.]

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–3421]

CONTINENTAL VENDING MACHINE CORP.

Order Suspending Trading

DECEMBER 21, 1970.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock, 10 cents par value of Continental Vending Machine Corp., and the 6 percent convertible subordinated debentures due September 1, 1976, being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

It is ordered, Pursuant to section 15(c)(5) of the Securities Exchange Act of 1934, that trading in such securities otherwise than on a national securities exchange be summarily suspended, this order to be effective for the period December 22, 1970 through December 31, 1970 both dates inclusive.

By the Commission.

[SEAL] ORVAL L. DUBOIS,
Secretary.

[F.R. Doc. 70–17431; Filed, Dec. 28, 1970; 8:47 a.m.]

[811–2007]

CORNERSTONE FUND, INC.

Notice of Filing of Application for Order Declaring That Applicant Has Ceased To Be an Investment Company

DECEMBER 21, 1970.

Notice is hereby given that Cornerstone Fund, Inc. (Applicant), 55 Broad Street, New York, NY 10004, a Delaware corporation registered as an open-end diversified investment company under the Investment Company Act of 1940 (Act) has filed an application pursuant to section 8(f) of the Act for an order of

the Commission declaring that Applicant has ceased to be an investment company as defined in the Act. All interested persons are referred to the application on file with the Commission for statements of the representations set forth therein which are summarized below.

Applicant registered under the Act on January 20, 1970. On the same date, Applicant filed a registration statement on Form S–5 (File No. 2–36034) under the Securities Act of 1933 for the purpose of publicly offering 2,500,000 shares of its capital stock. Subsequently, Applicant's officers and directors concluded that it was not advisable to make an offering of its securities and, therefore, filed an application with the Commission under the Securities Act for withdrawal of the registration statement on Form S–5.[1] Applicant has issued no securities and has no assets or shareholders.

Section 3(c)(1) of the Act states, as here pertinent, that any issuer whose outstanding securities (other than short-term paper) are beneficially owned by not more than 100 persons and which is not making and does not presently propose to make a public offering of its securities is not an investment company within the meaning of the Act.

Section 8(f) of the Act states, as here pertinent, that whenever the Commission upon application finds that a registered investment company has ceased to be an investment company, it shall so declare by order and upon the taking effect of such order the registration of such company shall cease to be in effect.

Notice is further given that any interested person may, not later than January 7, 1971, 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, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission should order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon Applicant at the address stated above. Proof of such service (by affidavit or in case of an attorney at law by certificate) shall be filed contemporaneously with the request. At any time after said date, as provided by Rule 0–5 of the rules and regulations promulgated under the Act, an order disposing of the application herein may be issued by the Commission upon the basis of the information stated in said application, unless an order for hearing 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. 70–17430; Filed, Dec. 28, 1970; 8:47 a.m.]

[1] The registration statement was withdrawn on Aug. 7, 1970.

[70–4537]

ROCKY RIVER REALTY CO. ET AL.

Supplemental Order Authorizing Nonutility Subsidiary of Registered Holding Company To Issue and Sell Additional Subordinated Notes to Parent Holding Company

DECEMBER 21, 1970.

The Rocky River Realty Co. (Rocky River), a nonutility subsidiary company of Northeast Utilities (Northeast), West Springfield, Mass., a registered holding company, The Connecticut Light and Power Co. (CL&P), Hartford, Conn., an electric utility subsidiary company of Northeast and an exempt holding company, have filed with this Commission certain post-effective amendments to their amended joint application-declaration in this matter pursuant to the provisions of sections 6, 7, 9, 10, 12 (b), (c), and (f), and 13(b) of the Public Utility Holding Company Act of 1935 (Act) and Rules 43, 87, and 88 promulgated thereunder regarding the following proposed transactions.

Rocky River was authorized by the Commission's order dated October 24, 1967 (Holding Company Act Release No. 15884) to engage in the business of acquiring, maintaining, and disposing of real property in connection with the utility and related operations of associate companies in the Northeast holding-company system. To provide the working capital required primarily to finance the acquisition from time to time of land and land rights for electric generating and transmission sites, Rocky River was authorized by the terms of the 1967 order to issue and sell to Northeast, and Northeast was authorized to acquire, up to a maximum principal amount of $1,500,000 to be at any one time outstanding of its 40-year unsecured notes bearing interest at a rate one-fourth of 1 percent above the commercial bank prime rate for short-term loans in Hartford, Conn. As of October 31, 1970, the outstanding capitalization and surplus of Rocky River, including short-term debt, consisted of $114,693 stated value of capital stock and surplus, $1,058,750 principal amount of 40-year notes and $2,045,000 principal amount of 5-year notes, all of which are owned by Northeast, $5,326,278 principal amount of noninterest bearing open account advances from CL&P and two associate electric utility companies, $2,067,000 aggregate principal amount of first mortgage bonds owned by institutional investors, $12,915,000 principal amount of other long-term debt held principally by commercial banks, and $635,000 principal amount of current maturities and sinking fund requirements on long-term debt. The open-account advances and the notes payable to Northeast are subordinated as to principal and interest to all debt securities heretofore issued and sold, or which may hereafter be issued and sold, by Rocky River to nonaffiliated persons, and the notes are additionally subordinated to the advances from the associate operating companies.

The applicants-declarants state that it is desired to extend Rocky River's real estate functions, particularly for acquisitions of land and land rights to accommodate future expansion of generating and transmission capacity. For this reason, applicants-declarants request that the authorization under the order of October 24, 1967, be increased from $1,500,000 to a maximum principal amount of $10,000,000 to be at any one time outstanding. The additional 40-year subordinated notes will carry the same terms and provisions as the notes heretofore authorized.

No State commission and no Federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Due notice of the filing of the said amended joint application-declaration has been given in the manner prescribed in Rule 23 promulgated under the Act (Holding Company Act Release No. 16927), and no hearing has been requested of or ordered by the Commission. Upon the basis of the facts in the record, it is hereby found that the applicable standards of the Act and the rules thereunder are satisfied and that no adverse findings are necessary; and that it is appropriate in the public interest and in the interest of investors and consumers that the said amended joint application-declaration be granted and permitted to become effective:

It is ordered, pursuant to the applicable provisions of the Act and rules thereunder, That the said amended joint application-declaration be, and it hereby is, granted and permitted to become effective forthwith, subject to the terms and conditions prescribed in Rule 24 promulgated under the Act.

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

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

[F.R. Doc. 70–17432; Filed, Dec. 28, 1970; 8:47 a.m.]

SMALL BUSINESS ADMINISTRATION

FIRST CUMBERLAND INVESTMENTS INC.

Notice of Application for a License as a Small Business Investment Company

Notice is hereby given concerning the filing of an application with the Small

Business Administration (SBA) pursuant to § 107.102 of the regulations governing small business investment companies (regulations) (33 F.R. 326, 13 CFR Part 107) under the name of First Cumberland Investments, Inc., 19 South Jefferson, Room 204, Cookeville, TN 38051, for a license to operate in the State of Tennessee as a small business investment company under the provisions of the Small Business Investment Act of 1958, as amended (Act) (15 U.S.C. 661 et seq.).

All of the applicant's capital stock will be owned by 20 banks in the 14-county Upper Cumberland District of Tennessee. Each of the banks own less than 10 percent of the voting securities of the applicant, except four banks which each own 10 percent. They are:

First National Bank of Livingston, 214 East Main St., Livingston, TN 38570.
First National Bank of Cookeville, Number 1 South Jefferson St., Cookeville, TN 38501.
Commerce Union Bank, Sparta Office, Sparta, Tenn. 38583.
Smith County Bank, Post Office Drawer 199, Carthage, TN 37030.

The officers and directors of the applicant are as follows:

Russell Pitchford, 506 East Jefferson Ave., Carthage, TN 37030, President and Director.
Jack P. Ray, 208 Hoyte Ave., Monterey, TN 38574, Vice President and Director.
Carsie K. Spry, R.F.D. 1, McMinnville, TN 37210, Secretary, Treasurer, and Director.
Clyde M. King, R.F.D. 1, Celina, TN 38551, Director.
Travis R. Anderson, 117 Goodpasture, Livingston, TN 38570, Director.
Harold B. Roney, 108 Post Rd., McMinnville, TN 37210, Director.
James L. Swain, 3541 Pleasant Valley Rd., Nashville, TN 37204, Director.
Alvin H. Huddeston, R.F.D. 5, Livingston, TN 38570, Director.
Joe R. Law, R.F.D. 2, Whitleyville, TN 38588, Director.
Edgar W. Evins, Route 7, Lebanon, TN 37087, Director.
Charles R. Miller, 693 Pickard Ave., Cookeville, TN 38501, Director.
U. L. (Tommy) Lynn, Jr., 805 Pickard Ave., Cookeville, TN 38501, Director.
Moses Elmo Lane Dorton, 904 Webb Ave., Crossville, TN 38555, Director.
Gayron W. Asberry, West Main St., Byrdstown, TN 38549, Director.
J. W. Taylor, 1303 Sylvan Dr., Lafayette, TN 37083, Director.
Odis E. Hull, Woodland Ave., Jamestown, TN 38556, Director.
Dayton A. Chitwood, Lafayette Rd., Red Boiling Springs, TN 37150, Director.
Charles B. Cowan, 704 Brown Ave., Cookeville, TN 38501, Director.
Richard E. Roberts, Fairlane Rd., Smithville, TN 37166, Director.
William M. Johnson, 122 Sims St., Sparta, TN 38583, Director.

The company will have an initial capitalization of $150,000 and will carry on its operations in the 14-county Upper Cumberland District of Tennessee and will restrict its investments to that area. It will not concentrate its investments in any particular industry.

Matters involved in SBA's consideration of the application include the general business reputation and character of the management and the probability of successful operation of the company under their management, including adequate profitability and soundness, in accordance with the Act and regulations.

Notice is further given that any interested person may, not later than ten (10) days after the date of publication of this notice, submit in writing, relevant comments on the proposed company to the Associate Administration for Investment, Small Business Administration, 1441 L Street NW., Washington, DC 20416.

A copy of this notice shall be published in a newspaper of general circulation in Nashville, Tenn.

JAMES THOMAS PHELAN,
Acting Associate Administrator for Investment.

DECEMBER 14, 1970.

[F.R. Doc. 70-17485; Filed, Dec. 28, 1970; 8:49 a.m.]

[License No. 01/01-5070]

NORTH AMERICAN MESBIC, INC.

Notice of Application for a License as a Minority Enterprise Small Business Investment Company

An application for a license to operate as a minority enterprise small business investment company (MESBIC) under the provisions of the Small Business Investment Act of 1958, as amended (15 U.S.C. 661 et seq.), has been filed by North American MESBIC, Inc. (applicant) with the Small Business Administration (SBA) pursuant to § 107.102 of the SBA Regulations governing small business investment companies (13 CFR Part 107; 33 F.R. 326).

The officers and directors of the applicant are as follows:

James D. Peters, 580 Cummins Highway, Apt. 1, Mattapan, MA 02126, President and Director.
Donald T. Ellis, 16 Suffolk Rd., Wellesley Hills, MA 02181, Director.
Howard N. Smith, Jr., 3 Reservoir Rd., Wayland, MA 01778, Treasurer and Director.
Russell G. Simpson, 76 Brook Hill Rd., Milton, MA 02186, Clerk—Secretary.

The applicant, a Massachusetts corporation with its principal place of business located at 114 State Street, Boston, MA 02109, will begin operations with $152,500 of paid-in capital, consisting of 1525 shares of common stock. All of the issued and outstanding stock will be owned by North American Development Corp., a Massachusetts corporation, with a place of business located at 114 State Street, Boston, MA 02109, and engaged in the acquisition and rehabilitation of low and moderate-income housing, and related manufacturing, industrial and commercial businesses.

Applicant will not concentrate its investments in any particular industry. According to the company's stated investment policy, its investments will be made solely in small business concerns which will contribute to a well-balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages.

Matters involved in SBA's consideration of the applicant include the general business reputation and character of the proposed owner and management, and the probability of successful operation of the applicant under their management, including adequate profitability and financial soundness, in accordance with the Small Business Investment Act and the SBA Regulations.

Any interested person may, not later than 10 days from the date of publication of this notice, submit to SBA, in writing, relevant comments on the proposed MESBIC. Any such communication should be addressed to the Associate Administrator for Investment, Small Business Administration, 1441 L Street NW., Washington, DC 20416.

A copy of this notice shall be published in a newspaper of general circulation in Boston, Mass.

JAMES THOMAS PHELAN,
Acting Associate Administrator for Investment.

DECEMBER 16, 1970.

[F.R. Doc. 70-17456; Filed, Dec. 28, 1970; 8:49 a.m.]

[Delegation of Authority No. 30-C (Region X) (Amdt. 3)]

REGIONAL DIVISION CHIEFS ET AL.

Delegation of Authority To Conduct Program Activities in Region X

Pursuant to the authority delegated to the Regional Director by Delegation of Authority No. 30-C, 35 F.R. 2840, as amended (35 F.R. 15033, 35 F.R. 17156), redelegated authority published in 35 F.R. 4574, as amended (35 F.R. 13809 and 35 F.R. 18766) is hereby amended by adding I. J. to read as follows:

I. *Regional Division Chiefs.* * * *

* * * * *

J. Chief, Procurement and Management Assistance Division. 1. To take all necessary actions in connection with the administration and management of grants, agreements, and contracts executed by the Associate Administrator for Procurement and Management Assistance under the authority granted in section 406 of the Economic Opportunity Amendments of 1967, except changes, amendments, modifications, or termination of the original grant, agreement, or contract.

* * * * *

Effective date: November 9, 1970.

FORBES M. BRUCE,
Regional Director, Region X.

[F.R. Doc. 70-17454; Filed, Dec. 28, 1970; 8:49 a.m.]

INTERSTATE COMMERCE COMMISSION

[Notice 217]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

DECEMBER 23, 1970.

The following are notices of filing of applications for temporary authority under section 210a(a) of the Interstate Commerce Act provided for under the new rules of Ex Parte No. MC-67 (49 CFR Part 1131) published in the FEDERAL REGISTER, issue of April 27, 1965, effective July 1, 1965. These rules provide that protests to the granting of an application must be filed with the field official named in the FEDERAL REGISTER publication, within 15 calendar days after the date of notice of the filing of the application is published in the FEDERAL REGISTER. One copy of such protests must be served on the applicant, or its authorized representative, if any, and the protests must certify that such service has been made. The protests must be specific as to the service which such protestant can and will offer, and must consist of a signed original and six copies.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in field office to which protests are to be transmitted.

MOTOR CARRIERS OF PROPERTY

No. MC 13806 (Sub-No. 38 TA), filed December 18, 1970. Applicant: VIRGINIA HAULING CO., Mail: Post Office Box 9525, Lakeside Station, Richmond, VA 23228, Office: Mountain Road, Glen Allen, VA 23060. Applicant's representative: Daniel B. Johnson, 716 Perpetual Building, 1111 E Street NW., Washington, DC 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Wood fibreboard, wood fibreboard faced or finished with decorative and/or protected material, and accessories and supplies used in the installation thereof* (except in bulk) from the plantsite warehouse and storage facilities of Evans Products Co., at or near Doswell, Hanover County, Va., to points in North Carolina, Virginia, West Virginia, District of Columbia, Maryland, Delaware, Pennsylvania, New Jersey, New York, Connecticut, Rhode Island, Massachusetts, and Ohio, for 180 days. Supporting shipper: Evans Products Co., 2200 East Devon Avenue, Des Plaines, IL 60018. Send protests to: Robert W. Waldron, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 10-502 Federal Building, Richmond, VA 23240.

No. MC 40270 (Sub-No. 10 TA), filed December 17, 1970. Applicant: CRABBS TRANSPORT, INC., Route No. 2, Post Office Box 3486, Enid, OK 73701. Applicant's representative: A. J. Crabbs (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Animal and poultry feed and feed ingredients*, from Chickasha, Okla., to Amarillo and Hereford, Tex., for 180 days. Supporting shipper: C. H. DeKesel, Manager of Transportation, Farmland Industries, Inc., Post Office Box 7305, Kansas City, MO 64116. Send protests to: C. L. Phillips, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 240, Old Post Office Building, 215 Northwest Third, Oklahoma City, OK 73102.

No. MC 74857 (Sub-No. 32 TA), filed December 16, 1970. Applicant: FULLER MOTOR DELIVERY CO., 802 Plum Street, Cincinnati, OH 45202 (Ohio corporation). Applicant's representative: John Wood II (same address as above). Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Salt, in bulk*, in dump vehicles, and in bags, for the account of Diamond Crystal Salt Co., from Portsmouth, Ohio, and Cincinnati, Ohio, to points in Bland, Buchanan, Dickenson, Grayson, Lee, Russell, Scott, Smyth, Tazewell, Washington, Wise, and Wythe Counties, Va., for 180 days. Supporting shipper: Diamond Crystal Salt Co., St. Clair, MI 48079. Send protests to: Emil P. Schwab, District Supervisor. Interstate Commerce Commission, Bureau of Operations, 5514-B Federal Building, 550 Main Street, Cincinnati, OH 45202.

No. MC 107295 (Sub-No. 476 TA), filed December 18, 1970. Applicant: PRE-FAB TRANSIT CO., Post Office Box 146, 100 South Main Street, Farmer City, IL 61842. Applicant's representative: Dale L. Cox (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Doors*, from Elkhart, Ind., to Ironwood, Mich., for 180 days. Supporting shipper: Schult Mobile Home Corp., Elkhart, Ind. Send protests to: Harold Jolliff, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 476, 325 West Adams Street, Springfield, IL 62704.

No. MC 114457 (Sub-No. 96 TA), filed December 18, 1970. Applicant: DART TRANSIT CO., a corporation, 780 North Prior Avenue, St. Paul, MN 55104. Applicant's representative: Robert P. Sack, Post Office Box 6010, West St. Paul, MN 55118. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Containers and ends*, metal, from Elwood, Ind., to Omaha, Nebr., for 180 days. Supporting shipper: Continental Can Co., Inc., Chicago, Ill. Send protests to: District Supervisor A. E. Rathert, Interstate Commerce Commission, Bureau of Operations, 448 Federal Building and U.S. Courthouse, 110 South Fourth Street, Minneapolis, MN 55401.

No. MC 117589 (Sub-No. 16 TA) filed December 16, 1970. Applicant: PROVISIONERS FROZEN EXPRESS, INC., 2535 Airport Way South, Seattle, WA 98134. Applicant's representative: George R. LaBissioniere, 1424 Washington Building, Seattle, WA 98101. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meat, meat products, and articles distributed by meat packinghouses* as described in Section A of Appendix I, to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766, and *pizza and pizza* products, from Denver, Colorado Springs, Greeley, and Fort Morgan, Colo., to points in Montana, Oregon, Idaho, and Washington, for 180 days. Supporting shippers: American Beef Packers, Inc., Post Office Box 881, Fort Morgan Colo., Foster Frosty Foods, Inc., 1421 Oneida Street, Denver, Colo. 80220, Hardee Products, Inc., 2462 West Second Avenue, Denver, Colo. 80223, Johnson Food Co., Post Office Box 1263, Colorado Springs, Colo. 80901, Montfort Packing Co., Box G, Greeley, Colo. 80631. Send protests to: E. J. Casey, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 6130 Arcade Building, Seattle, WA 98101.

No. MC 117883 (Sub-No. 145 TA) filed December 16, 1970. Applicant: SUBLER TRANSFER, INC., 791 East Main Street, Post Office Box 62, Versailles, OH 45380. Applicant's representative: Edward J. Subler (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen bakery goods*, from Lexington and Watertown, Mass., to points in Illinois, Indiana, Iowa, Kentucky, Kansas, Michigan, Minnesota, Missouri, Maryland, Ohio, Pennsylvania, West Virginia, Wisconsin, and Washington, D.C., for 180 days. Supporting shipper: Bakeri Products, Inc., 315 Marrett Road, Lexington, MA 02173. Send protests to: Emil P. Schwab, District Supervisor, Bureau of Operations, Interstate Commerce Commisison, 5514-B Federal Building, 550 Main Street, Cincinnati, OH 45202.

No. MC 124679 (Sub-No. 38 TA) filed December 16, 1970. Applicant: C. R. ENGLAND & SONS, INC., 228 West Fifth South, Salt Lake City, UT 84101. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Blood plasma*, human, from Salt Lake City, Utah, to Berkeley, Calif., for 180 days. Supporting shipper: Cutter Laboratories, Inc., Fourth and Parker Streets, Berkeley, CA 94710. (Lester T. Fitzsimmons, Traffic Manager.) Send protests to: John T. Vaughan, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 5239 Federal Building, Salt Lake City, UT 84111.

No. MC 125440 (Sub-No. 9 TA), filed December 18, 1970. Applicant: JULES TISCHLER and PAUL JOHNSON, doing business as RARITAN MOTOR EXPRESS, 129 Lincoln Boulevard, Middlesex, NJ 08846. Applicant's representative: Bert Collins, 140 Cedar Street, New York, NY 10006. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Prestressed concrete panels together with materials, supplies, and equipment*, for the account of Granite Research Industries, Inc., from Somerville, Mass., to New York, N.Y. Supporting shipper: Granite Research Industries, Inc., 26 Chestnut Street, Somerville, MA 02143.

Sent protests to: District Supervisor Robert S. H. Vance, Bureau of Operations, Interstate Commerce Commission, 970 Broad Street, Newark, NJ 02143.

No. MC 127871 (Sub-No. 2 TA) (Correction), filed December 1, 1970, and published FEDERAL REGISTER issue December 10, 1970, and republished as corrected this issue. Applicant: TRANSSUPPLY, INC., Post Office Box 210, 207 North Main Street, Mercersburg, PA 17236. Applicant's representative: Christain V. Graf, 407 North Front Street, Harrisburg, PA 17101. NOTE: The purpose of this partial republication is to show the duration of days (150 days) which was inadvertently omitted from previous publication. The rest of publication remains as previously published.

No. MC 128589 (Sub-No. 1 TA), filed December 16, 1970. Applicant: BEEGEE TRANSPORTATION CORP., 46–81 Metropolitan Avenue, Brooklyn, NY 11237. Applicant's representative: E. Bowes, 744 Broad Street, Newark, NJ 07102. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Pianos, electronic organs, electronic instruments and systems, and parts thereof*, from New York, N.Y., and the Gimbel Bros. Stores at Yonkers, Valley Stream, and Roosevelt Field, N.Y., and Paramus, N.J., to points in Connecticut, New Jersey, and Pennsylvania east of Route 15, for 180 days. Supporting shipper: The Wurlitzer Co., 120 West 42d Street, New York, NY 10036. Send protests to: Robert E. Johnson, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 26 Federal Plaza, New York, NY 10007.

No. MC 128909 (Sub-No. 15 TA) (Correction), filed December 4, 1970, and published FEDERAL REGISTER issue December 16, 1970, and republished as corrected this issue. Applicant: COMMODORE CONTRACT CARRIERS, INC., 8712 West Dodge Road, Suite 4000, Omaha, NE 68114. Applicant's representative: Donald L. Stern, 630 City National Bank Building, Omaha, NE 68102. NOTE: The purpose of this partial republication is to show the duration of days (180 days) which was inadvertently omitted in the previous publication, the rest of publication remains as previously published.

No. MC 129486 (Sub-No. 3 TA), filed December 18, 1970. Applicant: PAGE TRUCKING COMPANY, INC., Box 14, Hines, MN 56647. Applicant's representative: Gene P. Johnson, Van osdel, Foss, Johnson & Miller, 502 First National Bank Building, Fargo, ND 58102. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Such merchandise as is dealt in by retail and wholesale food and grocery business houses*, from Chester and Jacksonville, Ill., Sioux City, Iowa; Kenosha, Wis., St. Louis, Mo., Indianapolis, Ind., Crete, Nebr., Milburg, Mich., and Kansas City, Kans, to the facilities of L. B. Hartz Wholesale, Inc., at Thief River Falls, Minn., for 180 days. Supporting shipper: L. B. Hartz Wholesale, Inc., 120 South Arnold, Thief River Falls, MN 56701. Send protests to: J. H. Ambs, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Post Office Box 2340, Fargo, ND 58102.

No. MC 133725 (Sub-No. 6 TA), filed December 17, 1970. Applicant: SAME DAY TRUCKING CO., INC., 400 Newark Avenue, Piscataway, NJ 08854. Applicant's representative: Paul Keeler, Post Office Box 253, South Plainfield, NJ 07080. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Tailpipes, exhaust pipes, shock absorbers, brake parts, mufflers, and automotive parts and materials* used in the installation of such commodities, from North Brunswick, N.J., to points in the District of Columbia and points in Virginia on and east of Highway 15, for 150 days. Supporting shipper: Midas Inc., 1575 Jersey Avenue, North Brunswick, NJ 08902. Send protests to: District Supervisor, Robert S. H. Vance, Bureau of Operations, Interstate Commerce Commission, 970 Broad Street, Newark, NJ 07102.

No. MC 133796 (Sub-No. 5 TA), filed December 16, 1970. Applicant: GEORGE APPEL, 249 Carverton Road, Trucksville, PA 18708. Applicant's representative: Kenneth R. Davis, 999 Union Street, Taylor, PA 18517. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Polyethylene plastic pipe and tubing*, from Los Angeles, Calif., to Pennsauken and Elizabeth, N.J., Syracuse, Liverpool, Albany, and Spring Valley, N.Y., Hapeville, Ga., Greenburg, N.C., and Lakeland, Fla., for 180 days. Supporting shipper: The Flintkote Co., Post Office Box 60110, Terminal Annex, Los Angeles, CA 90060. Send protests to: Paul J. Kenworthy, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 309 U.S. Post Office Building, Scranton, PA 18503.

No. MC 135131 (Sub-No. 2 TA), filed December 16, 1970. Applicant: LONG BROTHERS TRUCKING, INC., 429 Josephine Drive, Billings, MT 59101. Applicant's representative: James T. Johnson, 1600 IBM Building, Seattle, WA 98101. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Buildings* in sections, including *doors, windows, hardware, and miscellaneous* in the same vehicle and as a part of the same shipment with the buildings in sections, from Chehalis, Wash., to points in Montana and Wyoming, for 180 days. Supporting shipper: West Coast Mills, Inc., Post Office Box 480, Chehalis, WA 98532. Send protests to: Paul J. Labane, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 251 U.S. Post Office Building, Billings, MT 59101.

No. MC 135152 (Sub-No. 1 TA), filed December 18, 1970. Applicant: CASKET DISTRIBUTORS, INC., Rural Route No. 2, Harrison, OH. Applicant's representative: Jack B. Josselson, Atlas Bank Building, Cincinnati, Ohio 45202. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Uncrated caskets, casket displays, funeral supplies, and crated caskets* in mixed loads with uncrated caskets; from Clarksburg, W. Va. to Santa Fe Springs, Calif., and Chicago, Ill. (return of *returned and rejected shipments* of said commodities, from above destinations to Clarksburg, W. Va.) and from points in Calhoun County, Ala., to points in Texas, Oklahoma, Louisiana, and Florida, and (return of *returned and rejected shipments* of said commodities, from above destinations to Calhoun County, Ala.) for 180 days. Supporting shippers: Wallace Metal Products, Inc., South Eighth and O Streets, Richmond, IN 47374, Clarksburg Casket Co., Clarksburg, W. Va. Send protests to: James W. Habermehl, District Supervisor, Interstate Commerce Commission, 802 Century Building, 36 South Pennsylvania Street, Indianapolis, IN 46204.

No. MC 135182 TA, filed December 17, 1970. Applicant: TRANS-WAYS CO., Moscow, PA 18444. Applicant's representative: George A. Olsen, 69 Tonnele Avenue, Jersey City, NJ 07306. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Materials, supplies, and products* used in or produced by the food processing industry, for the account of Welch Foods, Inc., between Erie and North East, Pa., Westfield, Dunkirk, Buffalo, and Newark, N.Y., on the one hand, and, on the other, points in New Jersey, New York, and Pennsylvania, for 150 days. Supporting shipper: Welch Foods, Inc., Westfield, N.Y. 14787. Send protests to: Paul J. Kenworthy, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 309 U.S. Post Office Building, Scranton, PA 18503.

No. MC 135185 TA, filed December 18, 1970. Applicant: COLUMBINE CARRIERS, INC., 2700 23d Avenue, Council Bluffs, IA 51501. Applicant's representative: David R. Parker, Post Office Box 82028, Lincoln, NE 68501. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products and meat byproducts, and articles distributed by meat packinghouses* as defined in sections A and C of appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766, from plantsite and storage facilities of Beefland International, Inc., at or near Council Bluffs, Iowa, and Omaha, Nebr., to points in Maine, Vermont, New Hampshire, Connecticut, Massachusetts, Rhode Island, New York, Pennsylvania, New Jersey, Maryland, Delaware, Washington, District of Columbia, and Virginia, restricted to traffic originating at the named origin points and destined to points in named States, for 180 days. Supporting shipper: Beefland International, Inc., Post Office Box 959, 2700 23d Avenue, Council Bluffs, IA 51501. Send protests to: Carroll Russell, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 705 Federal Office Building, Omaha, NE 68102.

No. MC 135186 TA, filed December 18, 1970. Applicant: CYLDE G. REYNOLDS, Coos County Cattle Co., Box 10, Catching Creek Route, Myrtle Point, OR 97458. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lumber*,

from Medford, Eugene, Roseburg, and Portland, Oreg., to points in Utah, Colorado, Wyoming, Nebraska, and Nevada; *cotton seed meal and alfalfa meal*, from California to points in Oregon and Washington; and *beet pulp pellets*, from points in Washington to Oregon, for 180 days. Supporting shippers: Round Prairie Lumber Co., Post Office Box 297, Dillard, OR 97432, Cedar Products Co., Roseburg, Oreg. 97470. Send protests to: District Supervisor A. E. Odoms, Bureau of Operations, Interstate Commerce Commission, 450 Multnomah Building, Portland, OR 97204.

By the Commission.

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

[F.R. Doc. 70-17479; Filed, Dec. 28, 1970; 8:51 a.m.]

[Rev. S.O. 994; I.C.C. Order 16; Amdt. 7]

PENN CENTRAL

Car Distribution

Upon further consideration of I.C.C. Order No. 16 (Penn Central) and good cause appearing therefor:

It is ordered, That:

I.C.C. Order No. 16 be, and it is hereby, amended by substituting the following paragraph (g) for paragraph (g) thereof:

(g) *Expiration date.* This order shall expire at 11:59 p.m., March 31, 1971, unless otherwise modified, changed, or suspended.

It is further ordered, That this amendment shall become effective at 11:59 p.m., December 31, 1970, and that this order 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 upon the American Short Line Railroad Association; and that it be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., December 22, 1970.

INTERSTATE COMMERCE COMMISSION,
[SEAL] R. D. PFAHLER, *Agent.*

[F.R. Doc. 70-17480; Filed, Dec. 28, 1970; 8:51 a.m.]

[Rev. S.O. 994; I.C.C. Order 49; Amdt. 1]

PENN CENTRAL TRANSPORTATION CO.

Car Distribution

Upon further consideration of I.C.C. Order No. 49 (Penn Central Transportation Co.) and good cause appearing therefor:

It is ordered, That:

I.C.C. Order No. 49 be, and it is hereby, amended by substituting the following paragraph (g) for paragraph (g) thereof:

(g) *Expiration date.* This order shall expire at 11:59 p.m., March 31, 1971, unless otherwise modified, changed, or suspended.

It is further ordered, That this amendment shall become effective at 11:59 p.m., December 31, 1970, and that this order 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 upon the American Short Line Railroad Association; and that it be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., December 22, 1970.

INTERSTATE COMMERCE COMMISSION,
[SEAL] R. D. PFAHLER, *Agent.*

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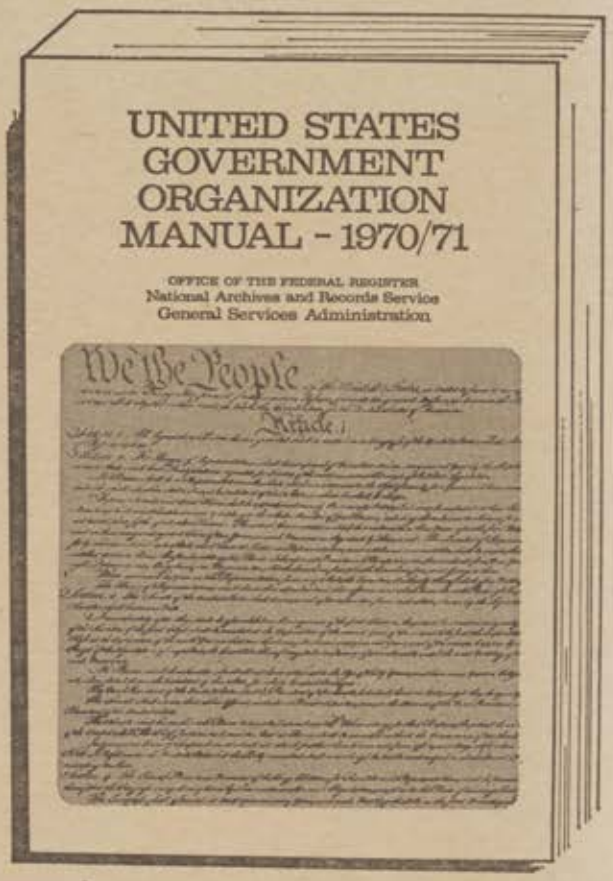

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