FEDERAL REGISTER

VOLUME 35 • NUMBER 253

Thursday, December 31, 1970 • Washington, D.C.

Pages 19971–20036

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Commodity Credit Corporation
Comptroller of the Currency
Consumer and Marketing Service
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Federal Aviation Administration
Federal Maritime Commission
Federal Power Commission
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FEDERAL REGISTER

Area Code 202 Phone 962-8626

Published daily, Tuesday through Saturday (no publication on Sundays, Mondays, or on the day after an official Federal holiday), by the Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408, pursuant to the authority contained in the Federal Register Act, approved July 26, 1935 (49 Stat. 500, as amended; 44 U.S.C., Ch. 15), under regulations prescribed by the Administrative Committee of the Federal Register, approved by the President (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

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On 35 F.R. 18961, published December 15, 1970, column 1, change "Order 415" to read "Order 416", as set forth above.

GORDON M. GRANT,
Secretary.

[F.R. Doc. 70-17554; Filed, Dec. 30, 1970; 8:45 a.m.]

Title 7—AGRICULTURE

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

[Navel Orange Reg. 217, Amdt. 1]

PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

Limitation of Handling

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 907, as amended (7 CFR Part 907, 35 F.R. 16359), regulating the handling of Navel oranges grown in Arizona and designated part of California, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and upon the basis of the recommendations and information submitted by the Navel Orange Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such Navel oranges, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this amendment until 30 days after publication thereof in the FEDERAL REGISTER (5 U.S.C. 553) because the time intervening between the date when information upon which this amendment is based became available and the time when this amendment must become effective in order to effectuate the declared policy of the act is insufficient, and this amendment relieves restrictions on the handling of Navel oranges grown in Arizona and designated part of California.

(b) *Order, as amended.* The provisions in paragraph (b)(1)(i), (ii), and (iii) of § 907.517 (Navel Orange Regulation 217, 35 F.R. 19101) are hereby amended to read as follows:

§ 907.517 Navel Orange Regulation 217.

* * * * *

(b) * * *

(1) * * *

(i) District 1: 720,000 cartons;

(ii) District 2: 95,000 cartons;

(iii) District 3: 80,000 cartons.

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

Dated: December 24, 1970.

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

[F.R. Doc. 70-17572; Filed, Dec. 30, 1970; 8:47 a.m.]

[Navel Orange Reg. 219]

PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

Limitation of Handling

§ 907.519 Navel Orange Regulation 219.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 907, as amended (7 CFR Part 907, 35 F.R. 16359), regulating the handling of Navel oranges grown in Arizona and designated part of California, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and upon the basis of the recommendations and information submitted by the Navel Orange Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such Navel oranges, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this section until 30 days after publication hereof in the FEDERAL REGISTER (5 U.S.C. 553) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The committee held an open meeting during the current week, after giving due notice thereof, to consider supply and market conditions for Navel oranges and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such meeting was held; the provisions of this section, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such Navel oranges; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period herein specified; and compliance with this section will not require any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on December 28, 1970.

(b) *Order.* (1) The respective quantities of Navel oranges grown in Arizona and designated part of California which may be handled during the period January 1, 1971, through January 7, 1971, are hereby fixed as follows:

(i) District 1: 776,000 cartons;

(ii) District 2: 145,000 cartons;

(iii) District 3: 24,000 cartons.

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

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

Dated: December 30, 1970.

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

[F.R. Doc. 70-17653; Filed, Dec. 30, 1970; 11:32 a.m.]

PART 987—DOMESTIC DATES PRODUCED OR PACKED IN A DESIGNATED AREA OF CALIFORNIA

Additional Product Outlets for Substandard Dates

The Date Administrative Committee has recommended that the provisions in § 987.156(a) of Subpart—Administrative Rules and Regulations which permit substandard dates to be disposed of by handlers for use, or used by them, in the

production of specified date products for human consumption be continued in effect through September 30, 1971. Such provisions, if not continued in effect, will, except for substandard dates used in the production of table syrup, terminate by their own terms on December 31, 1970. Section 987.156 is effective pursuant to § 987.56 of the marketing agreement, as amended, and Order No. 987, as amended (7 CFR Part 987), regulating the handling of domestic dates produced or packed in a designated area of California. The amended marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674).

The Date Administrative Committee (hereinafter referred to as the "Committee") met December 15, 1970, to consider the date supply and demand outlook. It is of the opinion that, to insure that the handler carryover, in the early part of the ensuing crop year, of dates for product outlets will be sufficient to meet early season product demand before new crop dates become available, the current authorized use of substandard dates should be continued into such crop year. The Committee has also estimated that producer returns would be further increased by such use of substandard dates in the production of the specified additional products for human consumption. Prior to October 21, 1970—the date of the most recent amendment of § 987.156—handlers incurred high sorting expenses on dates which were substandard because of an excess of edible defects and could not be used in the production of the additional date products. Since October 21, however, such high expenses were not incurred in connection with the use of substandard dates in the production of such products. The Committee is of the view, on the basis of the foregoing that the continued permission, through the early part of the ensuing crop year, to use substandard dates in the production of the specified additional products without the high expenses, would tend to increase producer returns, and effectuate the declared policy of the act. Therefore, the Committee recommended continuation of the current authority to dispose of substandard dates, inspected and certified as such, for use in the specified additional products for human consumption.

The action taken herein would continue to permit substandard dates to be used through September 30, 1971, in the production of additional date products for human consumption in the form of rings, chunks, pieces, butter, paste, or macerated dates. Thus, an additional supply of dates would be made available during such additional period for date products.

Therefore § 987.156 of Subpart—Administrative Rules and Regulations (7 CFR 987.100–987.174; 35 F.R. 5396, 6700, 14764, 16398), is hereby amended by substituting in paragraph (a) thereof, "October 21, 1970–September 30, 1971," for "October 21–December 31, 1970," and, as so amended, paragraph (a) of § 987.156 reads as follows:

§ 987.156 Disposition of substandard dates.

(a) *Specified product outlets.* Dates of any variety inspected and certified as substandard dates, as defined in § 987.15, may be disposed of by handlers for use, or used by them, in the production of table syrup. Dates of any variety that are inspected and certified as substandard dates, as defined in § 987.15, may be disposed of during the period October 21, 1970–September 30, 1971, by handlers for use, or used by them, in the production of date products for human consumption in the form of rings, chunks, pieces, butter, paste, or macerated dates.

* * * * *

It is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in public rulemaking procedure, and that good cause exists for making this action effective as hereinafter specified and for not postponing the effective time until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553) in that: (1) This action relieves restrictions subsequent to December 31, 1970, on the handling of dates by continuing in effect the currently available outlets for substandard dates and should become effective promptly to allow handlers to continue to utilize these outlets; (2) handlers are aware of the Date Administrative Committee's recommendation arrived at in an open meeting to consider the matter of further using substandard dates for products for human consumption and were afforded the opportunity to present their views at the meeting, and need no additional time or notice to adjust their operations thereto; (3) there is still a demand for the approved date products and handlers should be afforded the earliest opportunity to meet such demand thereby maximizing sales at higher prices therefor and thus tending to increase returns to producers; and (4) no useful purpose would be served by postponing the effective date hereof.

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

Dated: December 24, 1970, to become effective upon publication in the FEDERAL REGISTER.

PAUL A. NICHOLSON,
Acting Director,
Fruit and Vegetable Division.

[F.R. Doc. 70-17563; Filed, Dec. 30, 1970; 8:46 a.m.]

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

[Milk Order No. 40]

PART 1040—MILK IN THE SOUTHERN MICHIGAN MARKETING AREA

Order Suspending a Certain Provision

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

Notice of proposed rulemaking was published in the FEDERAL REGISTER (35 F.R. 18401) concerning a proposed suspension of a certain provision of the order. Interested persons were afforded the opportunity to file written data, views, and arguments thereon.

After consideration of all relevant matters presented, including the proposal set forth in the aforesaid notice, data, views, and arguments filed thereon, and other available information, it is hereby found and determined that for the months of January through June 1971 the following provision of the order does not tend to effectuate the declared policy of the Act:

In § 1040.12, which defines "fluid milk product", the provision "yogurt."

STATEMENT OF CONSIDERATION

This suspension will continue the classification of yogurt as a Class III product rather than as a Class I product. Milk used to produce yogurt has been classified and priced as Class III milk under successive suspensions since February 1, 1970. The current suspension expires on December 31, 1970.

Handlers who distribute a major portion of the producer milk under the Southern Michigan order requested that the suspension be continued through June 30, 1971. A major cooperative association that is a principal distributor of yogurt in the Southern Michigan market likewise requested an extension of the suspension for several months. Two other cooperative associations have expressly supported the continuation of the present suspension.

The marketing conditions which supported the previous suspensions warrant this extension for an additional 6 months. Southern Michigan handlers compete for yogurt sales with handlers in neighboring Federal order markets who pay only a surplus price for milk used in yogurt. Without this suspension, Southern Michigan handlers would be unable to compete for yogurt sales on a comparable cost basis.

A hearing was held recently on the classification of yogurt and other products in some of the markets in which Michigan handlers are distributing yogurt. Action on this hearing is still pending. A similar hearing for the Southern Michigan market should not be held until the outcome of the earlier hearing is known.

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

(a) This suspension is necessary to reflect current marketing conditions and to maintain orderly marketing conditions in the marketing area in that without the Class III pricing of milk used to produce yogurt, Southern Michigan handlers would be unable to compete for yogurt sales on a comparable cost basis with

handlers in neighboring Federal order markets who are required to pay only a surplus price for milk used in yogurt;

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

(c) Interested parties were afforded the opportunity to file written data, views or arguments concerning this suspension.

Therefore, good cause exists for making this order effective January 1, 1971.

It is therefore ordered, That the aforesaid provision of the order is hereby suspended for the months of January through June 1971.

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

Effective date: January 1, 1971.

Signed at Washington, D.C., on December 24, 1970

RICHARD E. LYNG,
Assistant Secretary.

[F.R. Doc. 70–17574; Filed, Dec. 30, 1970; 8:47 a.m.]

[Milk Order No. 125]

PART 1125—MILK IN THE PUGET SOUND, WASH., MARKETING AREA

Order Terminating Certain Provisions

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

It is hereby found and determined that the following provisions of the "Order relative to handling" of the order amending the order issued August 18, 1969 (34 F.R. 13463), no longer tend to effectuate the declared policy of the Act:

1. ", which are effective through December 31, 1969,"

2. "through December 31, 1970".

The Agricultural Act of 1970 became effective upon signature by the President on November 30, 1970. This Act amended and extended the authority for Class I base plans in milk marketing orders. It expressly ratified, legalized, and confirmed the Class I base plan in the Puget Sound order and authorized its extension through and including December 31, 1971.

The extension of the present Class I base plan in the Puget Sound order for 1 year provides opportunity for continuity in the operation of the base plan during the time needed to consider at a public hearing provisions which would amend the plan in accordance with the provisions of the Agricultural Act of 1970. A hearing on such proposed amendments will be held as soon as possible.

This termination order cancels the terminal date of December 31, 1970, which is now provided in the order for the present base provisions. This terminal date coincided with the expiration of the statutory authority for such provisions as provided prior to the enactment of the Agricultural Act of 1970.

This termination was requested by associations representing a substantial majority of the producers on the market.

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

(a) This termination is necessary to reflect current marketing conditions and to maintain orderly marketing conditions in the marketing area in that it is the only practical means of continuing the provisions of the present Class I base plan in the Puget Sound order until new provisions developed under the authority of the Agricultural Act of 1970 can be considered at a public hearing.

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

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

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

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

Effective date: Upon publication in the FEDERAL REGISTER.

Signed at Washington, D.C., on December 24, 1970.

RICHARD E. LYNG,
Assistant Secretary.

[F.R. Doc. 70–17573; Filed, Dec. 30, 1970; 8:47 a.m.]

[Milk Order No. 126]

PART 1126—MILK IN THE NORTH TEXAS MARKETING AREA

Order Suspending a Certain Provision

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

Notice of the proposed rulemaking was published in the FEDERAL REGISTER (35 F.R. 17954) concerning a proposed suspension of a certain provision of the order. Interested persons were afforded the opportunity to file written data, views, and arguments thereon.

After consideration of all relevant matters presented, including the proposal set forth in the aforesaid notice, data, views, and arguments filed thereon, and other available information, it is hereby found and determined that for the period beginning January 1, 1971, and through June 30, 1971, the following provision of the order no longer tends to effectuate the declared policy of the Act: In § 1126.7 *Plant*, the words "* * * if the milk transferred at such facilities can be identified as receipts from specific farmers until the milk is received at a plant."

STATEMENT OF CONSIDERATION

This suspension deletes from the definition of "plant" part of the language relating to reload points. Suspension of this provision was requested by cooperative associations representing more than two-thirds of the producers on the market.

The remaining language relating to reload points reads "Separate facilities used only as a reload point for transferring bulk milk from one tank truck to another shall not be a plant under this definition * * *". The suspension action thus precludes a reload point from being treated as a plant for the period January 1, 1971, through June 30, 1971.

A reload point may continue to be used for delivery of dairy farmers' milk as "producer milk" to a North Texas pool plant if the milk is identified as the milk of specific dairy farmers when delivered to the pool plant. Such delivery will be treated as direct delivery from farms to the pool plant for the purpose of qualifying the dairy farmers as producers.

The suspension action is needed because of the difficulty in applying the existing terms to all milk handled at reload points. As a matter of fact, in some instances, milk delivered from reload points in recent months could not be identified as milk from specific dairy farmers. Milk from such reload points was also delivered to plants regulated under other Federal orders and to a number of plants not regulated under any Federal order. In such circumstances the present terms of the order must be interpreted as to whether such reload points should be treated as plants and whether the facilities qualify as pool or nonpool plants. The question of pool or nonpool status would affect also the milk moved to other plant destinations as well as to the North Texas market.

The provision for "reload point" as part of the definition of "plant" was first included in the North Texas order as amended July 1, 1966 (31 F.R. 9114). The provision was designed for reload points primarily serving the North Texas market.

For the period this suspension order is effective, the modified order language will provide a more specific rule for the determination of producer status of dairy farmers whose milk is handled through a reload point and delivered to a pool plant. Such determination will depend on delivery of their milk to the plant in a manner to identify it as the milk of specific dairy farmers, and thus will avoid any application of the North Texas order to milk handled at the reload point intended to qualify as producer milk under other orders.

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

(a) This suspension is necessary to reflect current marketing conditions and to maintain orderly marketing conditions in the marketing area because of the need to clarify the status under the order of dairy farmers delivering milk

under conditions previously stated herein:

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

(c) Interested parties were afforded opportunity to file written data, views, or arguments concerning this suspension.

Therefore, good cause exists for making this order effective January 1, 1971, through June 30, 1971.

It is therefore ordered, That the aforesaid provision of the order is hereby suspended for the period January 1, 1971, through June 30, 1971.

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

Effective date: January 1, 1971.

Signed at Washington, D.C., on December 24, 1970.

RICHARD E. LYNG,
Assistant Secretary.

[F.R. Doc. 70–17575; Filed, Dec. 30, 1970; 8:47 a.m.]

Chapter XIV—Commodity Credit Corporation, Department of Agriculture

SUBCHAPTER B—LOANS, PURCHASES, AND OTHER OPERATIONS

[CCC Grain Price Support Regs., 1970 Crop Corn Supp., Amdt. 1]

PART 1421—GRAINS AND SIMILARLY HANDLED COMMODITIES

Subpart—1970 Crop Corn Loan and Purchase Program

MISCELLANEOUS AMENDMENTS

Correction

In F.R. Doc. 70–17239 appearing at page 19498 in the issue for Wednesday, December 23, 1970, the following changes should be made in § 1421.113:

1. The word "deuction" in the second line should read "deductions", and the word "Uniform" in the fifth line should read "Uniform".

2. In the table of storage start dates the entry reading "Sept. 13—Sept. 10, 1970", should read "Sept. 13—Oct. 10, 1970", and the entry reading "Feb. 29—Mar. 27, 1971", should read "Feb. 28—Mar. 27, 1971".

Title 12—BANKS AND BANKING

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

PART 4—DESCRIPTION OF OFFICE, PROCEDURES, PUBLIC INFORMATION

Miscellaneous Amendments

Part 4, Chapter I, Title 12 of the Code of Federal Regulations is amended as follows:

1. Paragraph (a) of § 4.1a by revising subparagraphs (3), (16), and (17); adding a new subparagraph (11); deleting existing subparagraph (21); and renumbering existing subparagraphs (11) through (20) as subparagraphs (12) through (21).

2. Paragraph (b) of § 4.1a by revising subparagraph (1).

3. Section 4.13 by revising paragraphs (a) and (b).

4. Section 4.14 by revising paragraph (b).

5. Paragraphs (a) and (b) of § 4.17 by substituting "Room 5128" for "Room 2206" in the address of the Special Assistant for Public Affairs.

These amendments are issued under authority of the national banking law (12 U.S.C. 1 et seq.) and 5 U.S.C. 552. Since the amendments are for clarification and codification of existing regulations only, notice and public procedure are found to be unnecessary and not in the public interest. Accordingly, the amendments will become effective upon publication. Changes in the text are as follows:

§ 4.1a Central and field organization; delegations.

(a) *Central office*—* * *

(3) *Administrative Assistant.* The Administrative Assistant to the Comptroller performs such activties as the Comptroller prescribes, including general supervision of all internal matters. He is assisted by Deputy Administrative Assistants for Fiscal Management and Personnel and Directors of Administrative Services, Internal Audit, and Management Services.

* * * * *

(11) *Director, Program Planning.* The Director evaluates bank examination procedures to assure their authority and effectiveness in a technologically expanding banking system throughout the fourteen regions. He reviews and recommends changes in accounting regulations (Part 18 of this title). He has overall responsibility for the planning of the curriculum and administration of the Comptroller's school for national bank examiners and he coordinates training programs to meet the needs of examining personnel for the Comptroller.

(12) *Special Assistant (Congressional Affairs).* * * *

(13) *Special Assistant (Public Affairs).* * * *

(14) *Special Assistant.* * * *

(15) *Bank Organization Director.* * * *

(16) *International Director.* * * *

(17) *Law Department.* The Law Department handles all legal matters in the Office of the Comptroller, including interpretation of national banking laws, related statutes and proposed legislation, implementation and development of regulations and rulings applicable to operations of national banks, corporate organization of national banks, branching, mergers, capital changes, and other matters of national bank corporate functions. Generally, it assists the Department of Justice in litigation involving the Comptroller's Office. It, however, represents the Comptroller in bank merger litigation.

(18) *Department of Banking and Economic Research.* The Department studies various banking problems and reports its findings to the Comptroller. It publishes monographs and books dealing with banking and monetary subjects.

(19) *Organization Division.* * * *

(20) *International Division.* * * *

(21) *Trust Division.* * * *

(b) *Field offices.* (1) Fourteen National Bank Regions cover the United States, Puerto Rico, and the Virgin Islands. The office address of and the geographical area covered by each is as follows:

Region number	Area within region	Office address
1	Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut.	J. F. Kennedy Federal Bldg., Room 1600, Boston, MA 02203.
2	New York, New Jersey, Puerto Rico, Virgin Islands.	33 Liberty St., Room 520, New York, NY 10005.
3	Pennsylvania, Delaware.	Three Parkway, Suite 1316, Philadelphia, PA 19107.
4	Indiana, Ohio, Kentucky.	One Erieview Plaza, Cleveland, OH 44114.
5	West Virginia, Maryland, Virginia, North Carolina, District of Columbia.	Federal Office Bldg., 400 North 8th St. Room 5215, Richmond, VA 23240.
6	South Carolina, Georgia, Florida.	1510 First National Bank Bldg., 2 Peachtree St. NW., Atlanta, GA 30303.
7	Illinois, Michigan.....	164 West Jackson Blvd., Room 718, Chicago, IL 60604
8	Arkansas, Tennessee, Louisiana, Mississippi, Alabama.	165 Madison Ave. Room 1900, Memphis, TN 38103.
9	North Dakota, South Dakota, Minnesota, Wisconsin.	822 Marquette Ave., Room 300, Minneapolis, MN 55402.
10	Nebraska, Kansas, Iowa, Missouri.	911 Main St., Suite 2616, Kansas City, MO 64105.
11	Oklahoma, Texas.....	1401 Elm St., Suite 4500, Dallas, TX 75202.
12	Wyoming, Colorado, Utah, New Mexico, Arizona.	1575 Sherman St., Room 524, Denver, CO 80203.
13	Washington, Oregon, Idaho, Montana, Alaska.	707 Southwest Washington St., Room 900, Portland, OR 97205.
14	California, Nevada, Hawaii.	555 California St., Suite 3039, San Francisco, CA 94104.

* * * * *

§ 4.13 Forms and instructions.

(a) *Numbered forms.* The following numbered forms of the Comptroller of the Currency are currently in use:

(1) Form CC 1400–OX: Officers Direct and Indirect Indebtedness to Own and/or Other Banks.

(2) Form CC 1425–OX: Report of Examination.

(3) Form CC 1425–BX: Report of Examination—Branch.

(4) Form CC 1425–FX: Report of Examination—Foreign Branch Supplemental Pages.

(5) Form CC 1440–OX: Report of Examination—Trust Department.

(6) Form CC 1450–OX: EDP Examination Report.

(7) Form CC 1455–OX: Report of Banks Receiving EDP Services.

(8) Form CC 1930–OX: Branch Application—Investigation Form.

(9) Form CC 1956–OX: Primary Organization—Investigation Report.

(10) Form CC 6046-01: Bond for Lost Receiver's Certificate.
(11) Form CC 6046-02: Bond for Lost Receiver's Certificate and in Lieu of Administration.
(12) Form CC 3046-03: Affidavit of Loss of Receiver's Certificate.
(13) Form CC 6046-04: Bond in Lieu of Administration.
(14) Form CC 6046-05: Affidavit Relative to Death of Claimant.
(15) Form CC 6046-07: Release.
(16) Form CC 6050-05: Form OR-1, Initial Statement of Beneficial Ownership of Securities.
(17) Form CC 6050-06: Form OR-2, Statement of Changes in Beneficial Ownership of Securities.
(18) Form CC 6055-04: Summary of Actions Subscription Form.
(19) Form CC 6055-05: Summary of Actions Subscription Renewal Notice.
(20) Form CC 6061-06: Change in Ownership of National Bank.
(21) Form CC 7021-04: Financial Report.
(22) Form CC 7021-05: Biographical Report.
(23) Form CC 7022-06: Official Signatures of Officers.
(24) Form CC 7022-07: Certificate of Payment of Capital Stock and Compliance with Legal Requirements.
(25) Form CC 7022-08: Joint Oath of Directors.
(26) Form CC 7022-09: Oath of Director.
(27) Form CC 7022-10: List of Directors.
(28) Form CC 7022-11: List of Interim Directors.
(29) Form CC 7022-12: Organization Certificate.
(30) Form CC 7022-13: Application to Convert a State Bank into a National Banking Association.
(31) Form CC 7022-14: Appointment of Agent.
(32) Form CC 7022-15: Supplement: Application to Organize a National Bank and Representation of Applicants.
(33) Form CC 7022-16: Application to Organize a National Bank and Representations of Applicant.
(34) Form CC 7022-17: Articles of Association (Conversion).
(35) Form CC 7022-18: Summary of Information to be Submitted to Office of the Comptroller of the Currency within 30 Days after the Filing of an Application to Organize a National Bank.
(36) Form CC 7022-19: Advice of Commencement of Business by National Bank.
(37) Form CC 7022-20: Authority for Conversion of State Bank.
(38) Form CC 7022-21: Organization Certificate (Conversion).
(39) Form CC 7022-22: Articles of Association.
(40) Form CC 7023-03: Certificate of Completed Changes in Outstanding Capital Notes.
(41) Form CC 7023-04: Amended Articles of Association.
(42) Form CC 7023-05: Application for an Increase in Capital by Sale of Additional Common Stock.
(43) Form CC 7023-06: Application for an Increase in Capital by Issuance of a Stock Dividend.
(44) Form CC 7023-07: Secretary's Certificate (Sale).
(45) Form CC 7023-08: Secretary's Certificate (Sale and Change in Par Value).
(46) Form CC 7023-09: Secretary's Certificate (Par Value).
(47) Form CC 7023-10: Secretary's Certificate (Authorized but Unissued Stock).
(48) Form CC 7023-11: Certificate of Payment for Additional Common Stock.
(49) Form CC 7023-12: Certificate of Payment for Additional Common Stock (For Assets).
(50) Form CC 7023-13: Certificate of Payment for Capital Debentures.
(51) Form CC 7023-14: Certificate of Conversion of Capital Notes.
(52) Form CC 7023-15: Issuance of Preferred Stock Certificate of Payment.
(53) Form CC 7023-16: Certificate of Declaration of Stock Dividend.
(54) Form CC 7023-17: Secretary's Certificate.
(55) Form CC 7023-18: Secretary's Certificate (Stock Dividend, Sale, and Change in Par Value) (Combination).
(56) Form CC 7023-19: Secretary's Certificate (Stock Dividend).
(57) Form CC 7023-20: Proxy Sheet.
(58) Form CC 7023-21: Certificate and Certification.
(59) Form CC 7023-22: Application for Authorized but Unissued Stock.
(60) Form CC 7023-23: Secretary's Certificate (Stock Dividend and Sale).
(61) Form CC 7023-24: Secretary's Certificate (Stock Dividend and Change in Par Value).
(62) Form CC 7023-25: Secretary's Certificate (Increase in Capital by a Change in Par Value).
(63) Form CC 7023-26: Secretary's Certificate (Sale and Authorized but Unissued Stock).
(64) Form CC 7023-27: Certificate of Approval (For Increase in Common Stock).
(65) Form CC 7023-28: Certification of Increase in Capital by a Change in Par Value.
(66) Form CC 7023-29: Certificate of Approval for Increase in Capital Stock.
(67) Form CC 7023-30: Ownership Change Card.
(68) Form CC 7024-01: Application for Permission to Establish a Branch.
(69) Form CC 7024-04: Proposed Branch Location Map.
(70) Form CC 7024-16: Approval for Change of Address of a Branch.
(71) Form CC 7024-18: Approval for Change of Location of a Branch.
(72) Form CC 7025-01: Secretary's Certificate (Merger § 1828(c)).
(73) Form CC 7025-02: Application for a Change in Location of Head Office or Branch.
(74) Form CC 7025-03: Bylaws.
(75) Form CC 7025-04: Publication of Notice of Liquidation.
(76) Form CC 7025-05: Notice of Proposed Bank Merger, Bank Consolidation, Acquisition of Bank Assets or Assumption of Liabilities.
(77) Form CC 7025-06: Notice of Meeting of Shareholders.
(78) Form CC 7025-09: Notice of Meeting of Shareholders (Merge, Consolidate, Purchase).
(79) Form CC 7025-10: Application for Approval to Merge, Consolidate, Purchase.
(80) Form CC 7025-11: General Information and Instructions for the Preparation of an Application for Approval to Effect a Consolidation, Merger, etc.
(81) Form CC 7025-12: Secretary's Certificate (Ratification).
(82) Form CC 7025-13: Agreement of Consolidation.
(83) Form CC 7025-14: Application for a Change of Title.
(84) Form CC 7025-15: Agreement to Merge.
(85) Form CC 7025-16: Report of Progress of Liquidation.
(86) Form CC 7025-17: Notice of Meeting of Shareholders (Voluntary Liquidation).
(87) Form CC 7025-18: Purchase Agreement.
(88) Form CC 7025-21: Affidavit of Publication of Charter.
(89) Form CC 7025-22: Resolution for Voluntary Liquidation.
(90) Form CC 7025-23: Resolutions for Voluntary Liquidation.
(91) Form CC 7025-24: Notice of Meeting of Shareholders (Purchase and Sale).
(92) Form CC 7500-01: Common Trust Fund Survey.
(93) Form CC 7510-01: Application of National Banks for Fiduciary Powers.
(94) Form CC 7510-02: Application of Converting Bank for Fiduciary Powers.
(95) Form CC 7510-03: Trust Department Annual Report.
(96) Form CC 8010-02: National Bank Defalcation.
(97) Form CC 8010-03: Violation of Law.
(98) Form CC 8010-04: Summary of Bank Shortages Reported to U.S. Attorney during the Year 19...
(99) Form CC 8022-01: Foreign Branch Report of Condition.
(100) Form CC 8022-04: Bank Liquidity Analysis.
(101) Form CC 8022-05: Consolidated Report of Condition (Domestic only).
(102) Form CC 8022-06: Consolidated Report of Condition (Domestic only).
(103) Form CC 8022-07: Instructions for the Preparation of Reports of Condition by National Banking Associations.
(104) Form CC 8022-08: Form Letter for Reporting Corrections on Bank's Report of Income and Dividends.
(105) Form CC 8022-10: Instructions for Preparation of Consolidated Reports of Income.
(106) Form CC 8022-11: Report of Reserve Held.
(107) Form CC 8022-12: Schedule K Memorandum Supplement to Domestic Office Report of Condition.
(108) Form CC 8022-14: Consolidated Report of Income (Including Domestic Subsidiaries).
(109) Form CC 8022-18: Consolidated Report of Condition (Including Domestic and Foreign Subsidiaries).
(110) Form CC 8022-19: Consolidated Report of Condition (Including Domestic and Foreign Subsidiaries).
(111) Form CC 8022-20: Report on Condition Schedule B Par Value of Securities Issued by the U.S. Treasury and by other U.S. Government Agencies.
(112) Form CC 8022-21: Acquisition Guidance Letter Consolidated Report of Income.
(113) Form CC 8022-22: Supplemental Information—Report of Condition (Form Letter).
(114) Form CC 9000-01: External Crimes Against National and District Banks.
(115) Form CC 9030-01: Report on Security Devices.
(116) Form CC 9030-02: Report of Crime.
(117) Form CC 9030-06: Report of Pledged National Bank Stock.
(118) Form CC 9030-07: Report of Officers' Borrowings at Other Banks.
(119) Form CC 9030-18: Emergency Preparedness Measures.
(120) Form CC 9030-21: Analysis Sheet.
(121) Form CC 9030-22: Liquidity Analysis Sheet.
(122) Form CC 9030-23: Regional Map (Large).
(123) Form CC 9030-24: Regional Map (Small).
(124) Form CC 9030-25: Transmitting Copy of Electronic Data Processing Report of Examination.

(b) *Unnumbered forms.* The following unnumbered forms of the Comptroller of the Currency are currently in use:

(1) Shareholders' Meeting Instructions.
(2) Instructions—Application to Exercise Fiduciary Powers.
(3) Instructions—Annual Financial Report of Collective Investment Funds.

* * * * *

§ 4.14 Publications available to public.

* * * * *

(b) *Other publications.* The following publications of the Comptroller of the Currency are available to the public:

(1) "Comptroller's Manual for National Banks."

(2) "Comptroller's Manual for Representatives in Trusts."

(3) "Duties and Liabilities of Directors of National Banks."

(4) "Shareholders' Meeting Instructions."

(5) "Fiduciary Powers of National Banks and Collective Investment Funds."

(6) "Annual Report of the Office of the Comptroller of the Currency."

(7) "Years of Reform: A Prelude to Progress," a reprint from the 1963 Annual Report.

(8) "The Banking Structure in Evolution: A Response to Public Demand," a reprint from the 1964 Annual Report.

(9) "Banking Competition and the Banking Structure," reprints of articles from the National Banking Review.

(10) "The National Banking Review."

(11) "National Banks and the Future."

(12) "Banking and Monetary Studies: In Commemoration of the Centennial of the National Banking System."

(13) "The Comptroller and Bank Supervision: A Historical Appraisal."

(14) "Commercial Bank Entry into Revenue Bond Underwriting."

(15) "World of Banking: The Challenges of a Career as a National Bank Examiner."

(16) "Directory, Office of the Comptroller of the Currency."

(17) "Summary of Actions," a monthly summary of actions taken upon all applications for new national bank charters, branches, mergers, consolidations, purchase of assets, assumption of liabilities, change of name or location of head office or branch, and conversion from State to national bank.

(18) "Examination of Automation in National Banks."

(19) "Criminal Assaults on Banks."

(20) "Staff Report Series: Bank Trusts: Investments and Performance."

(21) "Comptroller's Handbook of Examination Procedure."

The publications referred to in this paragraph are available for inspection at the office of each National Bank region and at—

The Treasury Library, Room 5030, Main Treasury Building, Washington, DC 20220.

To purchase or otherwise obtain a copy of publications referred to in subparagraphs (1) through (20) of this section, write to—

Publications Control Office, Administrative Services Division, Office of the Comptroller of the Currency, Washington, D.C. 20220.

* * * * *

§ 4.17 Obtaining access to public documents.

(a) *Central office.* A document of the Comptroller of the Currency or a portion thereof, available under §§ 4.15 and 4.16 for public inspection and copying, may be inspected and copied during regular business hours on regular business days at the Washington office of the Comptroller. A person requesting access to such a document, or portion thereof, shall submit such request in writing to the Special Assistant for Public Affairs, Room 5128, Main Treasury Building, Washington, D.C. 20220. The request shall state the full name and address of the person requesting access to a document and a description of the document sought that is sufficient to permit its identification without undue difficulty.

(b) *Field office.* If a document of the Comptroller, or a portion thereof, available under §§ 4.15 and 4.16 for public inspection and copying, is located at the office of a Regional Administrator of National Banks, the person requesting access to the same may, if he requests permission, have access at such location. Such request shall be submitted in writing to the Special Assistant for Public Affairs, Room 5128, Main Treasury Building, Washington, D.C. 20220. If the Comptroller grants such request, the Regional Administrator will be instructed to permit access at his office.

* * * * *

Dated: December 24, 1970.

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

[F.R. Doc. 70-17605; Filed, Dec. 30, 1970; 8:50 a.m.]

PART 14—CHANGES IN CAPITAL STRUCTURE

PART 15—REPORTS OF CHANGE IN CONTROLLING OWNERSHIP

PART 21—MINIMUM SECURITY DEVICES AND PROCEDURES FOR NATIONAL AND DISTRICT BANKS

Miscellaneous Amendments

Since the amendments are for clarification and codification of existing regulations only, notice and public procedure are found to be unnecessary and not in the public interest. Accordingly, the amendments will become effective upon publication.

Part 14, Chapter I, Title 12 of the Code of Federal Regulations, is amended by deleting § 14.1.

(R.S. 324 et seq., as amended, 12 U.S.C. 1 et seq.)

Part 15, Chapter I, Title 12 of the Code of Federal Regulations, is amended by revising paragraph (b) of § 15.1 and paragraph (a) of § 15.3 to read as follows:

§ 15.1 Scope and application.

* * * * *

(b) Any loan or loans made by a national bank and secured or to be secured by 25 per centum or more of the outstanding voting stock of an insured bank or insured savings and loan association shall be reported as specified in § 15.3.

§ 15.3 Report of loans secured by stock of other insured banks.

(a) Whenever a national bank makes a loan or loans, secured, or to be secured, by 25 per centum or more of the outstanding voting stock of an insured bank or insured savings and loan association, the president or other chief executive officer of the lending bank shall promptly report such fact to the Board of Governors of the Federal Reserve System where the shares of a member bank are pledged or to the Federal Deposit Insurance Corporation where the shares of a nonmember insured bank are pledged or to the Federal Savings and Loan Insurance Corporation where the shares of an insured savings and loan association are pledged. No report need be made in those cases where the borrower has been the owner of record of the stock for a period of 1 year or more, or the stock is that of a newly organized bank or savings and loan association.

* * * * *

(12 U.S.C. 1817(j) and R.S. 324 et seq., as amended, 12 U.S.C. 1 et seq.)

Part 21, Chapter I, Title 12 of the Code of Federal Regulations, is amended by substituting "Appendix B" for "Appendix E" in subparagraph (9) of § 21.4(b); "Form No. CC 9030-01" for "Form No. CC 9030-02" in paragraph (c) of § 21.5; and "Form No. CC 9030-02" for "Form No. CC 9030-01" in paragraph (d) of § 21.5.

(Secs. 3, 82 Stat. 295, 12 U.S.C. 1881 et seq.)

Dated: December 24, 1970.

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

[F.R. Doc. 70-17606; Filed, Dec. 30, 1970; 8:50 a.m.]

Title 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Administration, Department of Transportation

[Airworthiness Docket No. 70-WE-48-AD; Amdt. 39-1136]

PART 39—AIRWORTHINESS DIRECTIVES

Boeing Airplane Company Model 737

Amendment 39-1126 (35 F.R. 19170), AD 70-25-10, requires inspection and/or replacement of the horizontal stabilizer trim actuator on Boeing 737 airplanes. After issuing Amendment 39-1126, the agency determined that some aircraft were included in the AD that were not required to be included. Therefore, the AD is being amended to delete those aircraft not required to be included in the AD.

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

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (31 F.R. 13697), § 39.13 of Part 39 of the Federal Aviation Regulations, Amendment 39-1126 is amended as follows:

In the paragraph beginning with "To assure * * *," remove the words "equal to or" in the two places where it appears in that paragraph.

The amendment becomes effective January 5, 1971.

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

Issued in Los Angeles, Calif., on December 18, 1970.

LEE E. WARREN,
Acting Director,
FAA Western Region.

[F.R. Doc. 70-17594; Filed, Dec. 30, 1970; 8:49 a.m.]

[Airworthiness Docket No. 69-SW-70; Amdt. 39-1137]

PART 39—AIRWORTHINESS DIRECTIVES

Bell Model 47 Series Helicopters

Amendment 39-968 (34 F.R. 17963), AD 70-8-2, requires replacement of certain tail rotor drive shafts no later than January 1, 1971, with new shafts incorporating improved internal surface protection and other design features intended to minimize corrosion. Bell Helicopter Co. advised on December 18, 1970, that the supply of replacement parts had become depleted due to unexpected foreign and military orders and that the subcontractor of the parts had recently relocated its manufacturing facility and would be unable to furnish sufficient replacement parts in order for all operators to comply with the Airworthiness Directive by the compliance date.

Because the original date for compliance was based in part on the availability of replacement parts, there exists good cause for extending the compliance time and, since this relieves a restriction and imposes no additional burden on any person, notice and public procedure hereon are unnecessary and the amendment may be made effective in less than 30 days.

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (31 F.R. 13697), § 39.13 of Part 39 of the Federal Aviation Regulations, Amendment 39-968 (34 F.R. 17963), AD 70-8-2, is amended as follows:

Change the compliance date of "January 1, 1971" to "March 1, 1971".

This amendment becomes effective January 1, 1971.

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

Issued in Fort Worth, Tex., on December 22, 1970.

RICHARD R. STRYKER,
Acting Director, Southwest Region.

[F.R. Doc. 70-17595; Filed, Dec. 30, 1970; 8:49 a.m.]

[Docket No. 70-EA-109; Amdt. 39-1135]

PART 39—AIRWORTHINESS DIRECTIVES

DeHavilland Aircraft

The Federal Aviation Administration is amending § 39.13 of Part 39 of the Federal Aviation Regulations so as to issue an airworthiness directive applicable to the DeHavilland DHC-6 type airplane.

There have been reports of damage to the horizontal tailplane outboard hinge fittings which, if permitted to exist, can result in an inflight hazard associated with horizontal tail damage. Since this deficiency can exist or develop in other aircraft of similar type design, an airworthiness directive is being issued which will require periodic inspection of the affected horizontal tail area.

Since the foregoing requires expeditious adoption of the rule, notice and public procedure hereon are impractical and the rule may be made effective in less than 30 days.

In consideration of the foregoing and pursuant to the authority delegated to me by the Administrator, 14 CFR 11.89 (31 F.R. 13697), § 39.13 of Part 39 of the Federal Aviation Regulations is amended by adding the following new Airworthiness Directive:

DEHAVILLAND AIRCRAFT. Applies to all Type DHC-6 Twin Otter Airplanes certificated in all categories.

Compliance required as indicated.

To prevent hazards in flight associated with horizontal tail damage in airplanes which have accumulated at least 1,500 hours' time in service, accomplish the following:

(a) Within the next 50 hours' time in service after the effective date of this AD, unless already accomplished, and at intervals thereafter not to exceed 200 hours' time in service from the last inspection, employ the inspection procedure outlined in paragraph 1 of DeHavilland Service Bulletin No. 6/228 dated September 9, 1969. Replace damaged parts before further flight in accordance with the Bulletin with unused parts of the same part number or with equivalent parts approved by the Chief, Engineering and Manufacturing Branch, FAA, Eastern Region.

(b) The repetitive inspection required by (a) may be increased by the Chief, Engineering and Manufacturing Branch, FAA, Eastern Region upon receipt of substantiating data submitted through an FFA maintenance inspector.

This amendment is effective January 5, 1971.

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

Issued in Jamaica, N.Y., on December 17, 1970.

LOUIS J. CARDINALI,
Acting Director, Eastern Region.

[F.R. Doc. 70-17600; Filed, Dec. 30, 1970; 8:50 a.m.]

[Airspace Docket No. 70-SO-96]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

Designation of Transition Area

On November 20, 1970, a notice of proposed rule making was published in the FEDERAL REGISTER (35 F.R. 17860), stating that the Federal Aviation Administration was considering an amendment to Part 71 of the Federal Aviation Regulations that would designate the Bartow, Fla., transition area.

Interested persons were afforded an opportunity to participate in the rule making through the submission of comments. All comments received were favorable.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective 0901 G.m.t., March 4, 1971, as hereinafter set forth.

In § 71.181 (35 F.R. 2134), the following transition area is added:

BARTOW, FLA.

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the Bartow Municipal Airport (lat. 27°57'-00'' N., long. 81°47'00'' W.).

(Sec. 307(a), Federal Aviation Act of 1958, 49 U.S.C. 1348(a); sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c))

Issued in East Point, Ga., on December 23, 1970.

GORDON A. WILLIAMS, Jr.,
Acting Director, Southern Region.

[F.R. Doc. 70-17597; Filed, Dec. 30, 1970; 8:49 a.m.]

[Airspace Docket No. 70-CE-85]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

Alteration of Control Zone and Transition Area

On pages 17859 and 17860 of the FEDERAL REGISTER dated November 20, 1970, the Federal Aviation Administration published a notice of proposed rule making which would amend §§ 71.171 and 71.181 of Part 71 of the Federal Aviation Regulations so as to alter the control zone and transition area at Traverse City, Mich., and the transition area at Bellaire, Mich.

Interested persons were given 45 days to submit written comments, suggestions, or objections regarding the proposed amendments.

No objections have been received and the proposed amendments are hereby adopted without change and are set forth below.

These amendments shall be effective 0901 G.m.t., March 4, 1971.

(Sec. 307(a), Federal Aviation Act of 1958, 49 U.S.C. 1348; sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c))

Issued in Kansas City, Mo., on December 14, 1970.

DANIEL E. BARROW,
Director, Central Region.

(1) In § 71.171 (35 F.R. 2054), the following control zone is amended to read:

TRAVERSE CITY, MICH.

Within a 5-mile radius of Traverse City Municipal Airport (latitude 44°44'35" N., longitude 85°34'55" W.); and within 3 miles each side of the Traverse City VORTAC 158° and 338° radials, extending from the 5-mile-radius zone to 8 miles south of the VORTAC.

(2) In § 71.181 (35 F.R. 2134), the following transition areas are amended to read:

TRAVERSE CITY, MICH.

That airspace extending upward from 700 feet above the surface within a 10½-mile radius of Traverse City Municipal Airport (latitude 44°44'35" N., longitude 85°34'55" W.); within 4½ miles west and 9½ miles east of the Traverse City VORTAC 158° radial, extending from the 10½-mile-radius area to 18½ miles south of the VORTAC; and within 5 miles each side of the Traverse City VORTAC 344° radial, extending from the 10½-mile-radius area to 20 miles north of the VORTAC; and that airspace extending upward from 1,200 feet above the surface within a 19½-mile radius of the Traverse City VORTAC, extending from the Traverse City VORTAC 060° radial clockwise to the Traverse City VORTAC 129° radial; within a 25-mile radius of the Traverse City VOR TAC, extending from the Traverse City VOR TAC 268° radial clockwise to the Traverse City VORTAC 060° radial; and within 4½ miles north and 9½ miles south of the Traverse City ILS localizer east course, extending from the 19½-mile-radius area to 18½ miles east of the OM.

BELLAIRE, MICH.

That airspace extending upward from 700 feet above the surface within an 11-mile radius of Antrim County Airport (latitude 44°59'15" N., longitude 85°12'00" W.); and within 3 miles each side of the 198° bearing from Antrim County Airport, extending from the 11-mile-radius area to 14 miles south of the airport; and that airspace extending upward from 1,200 feet above the surface within 9½ miles west and 4½ miles east of the 198° bearing from the Antrim County Airport, extending from the airport to 25 miles south of the airport, excluding the portion which overlies the Traverse City, Mich., transition area.

[F.R. Doc. 70-17598; Filed, Dec. 30, 1970; 8:49 a.m.]

[Airspace Docket No. 70-CE-92]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

Designation of Transition Area

On pages 15935 and 15936 of the FEDERAL REGISTER dated October 9, 1970, the Federal Aviation Administration published a notice of proposed rule making which would amend § 71.181 of Part 71 of the Federal Aviation Regulations so as to designate a transition area at Kennett, Mo.

Interested persons were given 45 days to submit written comments, suggestions, or objections regarding the proposed amendment.

No objections have been received and the proposed amendment is hereby adopted without change and is set forth below.

This amendment shall be effective 0901 G.m.t., March 4, 1971.

(Sec. 307(a), Federal Aviation Act of 1958, 49 U.S.C. 1348; sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c))

Issued in Kansas City, Mo., on December 14, 1970.

DANIEL E. BARROW,
Acting Director, Central Region.

In § 71.181 (35 F.R. 2134), the following transition area is added:

KENNETT, MO.

The airspace extending upward from 700 feet above the surface within a 5-mile radius of the Kennett Memorial Airport (latitude 36°14'00" N., longitude 90°02'00" W.); and within 2 miles each side of the 346° radial of the Blytheville VOR extending from the 5-mile radius area to 13½ miles north of the VOR.

[F.R. Doc. 70-17599; Filed, Dec. 30, 1970; 8:49 a.m.]

Title 15—COMMERCE AND FOREIGN TRADE

Chapter III—Bureau of International Commerce, Department of Commerce

SUBCHAPTER B—EXPORT REGULATIONS

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

MISCELLANEOUS AMENDMENTS TO SUBCHAPTER

Parts 371, 374, 375, 376, 386, and 387 of the Code of Federal Regulations are 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 30, 1970.

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

PART 371—GENERAL LICENSES

In § 371.6, paragraphs (a) and (b)(1) are amended and a new (b)(4) is added to read as follows:

§ 371.6 General license baggage.

(a) *Scope.* A general license designated Baggage is established, authorizing subject to the provisions of this § 371.6, a person leaving the United States to take to any destination, as personal baggage, accompanied or unaccompanied, the classes of commodities listed in paragraphs (b)(1), (2), (3), and (4) of this section, provided the commodities are owned by such person or members of his immediate family; are intended for and necessary and appropriate for the use of such person or members of his immediate family; and are not intended for sale. Accompanied baggage is that taken by a person departing from the United States on the same carrier on which he departs. Unaccompanied baggage is baggage sent from the United States on a carrier other than that on which a person departs. Unaccompanied shipments under this general license shall be clearly marked "Baggage." Shipments of unaccompanied baggage may be made at the time of, or within a reasonable time prior to or after, departure of the consignee or owner from the United States. However, only commodities identified by the symbol "B" in the last column of the Commodity Control List may be taken out of the United States to Country Group S, W, Y, or Z under this general license. This general license may not be used by members of crews of vessels or aircraft (see § 371.11 for General License Crew).

(b) *Definitions*—(1) *Personal effects.* Usual and reasonable kinds and quantities of wearing apparel, articles of personal adornment, toilet articles, medicinal supplies, food, souvenirs, games, and similar personal effects, and their containers.

* * * * *

(4) *Tools of trade.* Usual and reasonable kinds and quantities of tools, instruments, or equipment and their containers for use in the trade, occupation, or employment of the traveler.

* * * * *

§ 371.7 [Deleted]

§ 371.7 is deleted, and this section number is reserved for future use.

§ 371.16 [Deleted]

§ 371.16 is deleted, and this section number is reserved for future use.

§ 371.17 [Amended]

In § 371.17, paragraphs (b) and (e) are deleted, and these paragraph numbers are reserved for future use.

A new § 371.22 is established to read as follows:

§ 371.22 General License GTE: temporary exports.

(a) *Scope.* A General License designated GTE, is established authorizing temporary exports subject to the conditions set forth below.

(b) *Temporary exports subject to General License GTE.* Exports described in paragraph (b) (1) through (5) of this section intended for temporary use abroad (including exports for use in international waters) and prompt return, in no case later than 1 year after the date of export, to the United States[1] may be made under the provisions of this general license, unless restricted by the exceptions set forth in paragraph (c) of this section:

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[1] The restriction of this general license to commodities to be returned to the United States does not apply if the commodities are to be consumed or destroyed in the course of their authorized use abroad.

(1) Usual and reasonable kinds and quantities of commodities for use by the exporter or his representative, agent, or employee in an enterprise or undertaking of the exporter approved by the Office of Export Control.

(2) Commodities for exhibition or demonstration in Country Group T, V, or X.

(3) Commodities to be inspected, tested, calibrated, or repaired abroad.

(4) Containers that would require a validated license for export unless exported under the provisions of this General License GTE.[4]

(5) Video tape containing program material recorded in the United States to be broadcast abroad and blank video tape (raw stock) for use in recording program material abroad.

(c) *Exception*—(1) *Destinations.* No commodity may be exported under the provisions of this General License to Country Group S or Z; and only commodities identified by the symbol "B" in the last column of the Commodity Control List may be exported to Country Group W or Y. These exceptions apply also to any vessel, aircraft, or extra-territorial point under ownership, control, lease, or charter by any of the countries mentioned in this § 371.22(c)(1) or to any national thereof.

(2) *Commodities.* The following commodities may not be exported to any destination under this general license:

(i) Commodities related to nuclear weapons, nuclear explosive devices, or nuclear testing, as described in § 378.1 of this subchapter;

(ii) Electronic, mechanical, or other devices, as described in § 376.13(a) of this subchapter, primarily useful for surreptitious interception of wire or oral communications;

(iii) Commodities listed in Supplement No. 1 to Part 373 of this subchapter.

(3) *Use or disposition.* No commodity may be exported under this general license with the intent to change the registration, sell, or otherwise dispose of the commodity abroad.

(d) *Registration*—(1) *Certification.* Before making the first export of a commodity under General License GTE, the exporter shall submit the following certification to the Office of Export Control, in duplicate, requesting registration as an exporter under the provisions of this General License GTE:

I(we) request registration under the provisions of § 371.22(b) (specify (1), (2), (3), etc., as appropriate) of General License GTE as an exporter of commodities for temporary use abroad. I(we) understand and will comply fully with the provisions of General License GTE, and the commodities exported will be returned promptly to the United States after their use abroad as authorized and in no case later than 1 year after the date of export, unless the Office of Export Control approves other disposition. I(we) will retain and make available for inspection by the Office of Export Control all records of each temporary export and of its return or other disposition.

(Date)	(Type or print name of U.S. exporter)
	(Signature of U.S. exporter)
	(Address)

NOTE: If exports are to be made under the provisions of § 371.22(b)(1), an attachment shall be submitted describing the proposed use of the commodities in detail.

(2) *Validation of certification.* The Office of Export Control will notify each registrant of his General License GTE Registration by returning to him a validated copy of his certification. The GTE Registration shall remain valid until specifically revoked by the Office of Export Control.

(3) *Notification to customs offices.* All customs offices shall be furnished a current list of exporters who have registered to use General License GTE. Customs Officers are authorized to require evidence of General License GTE Registration.

(e) *Request for authorization to sell or otherwise dispose of commodities abroad.* If the U.S. exporter wishes to sell or otherwise dispose of the commodities abroad or extend the retention of the commodities abroad, except as permitted by this general license, he shall request authorization therefor by letter to the Office of Export Control (Attn: 852), U.S. Department of Commerce, Washington, D.C. 20230, setting forth, the date the commodities were exported from the United States; Export Control Commodity Number(s); description, quantity, value, present location, and proposed disposition of the commodities; and the name, address, and identity of each party to the proposed transaction. Further, such request shall comply with any special provisions of the Export Control Regulations covering exports directly from the United States to the proposed destination, and shall be accompanied by any documents that would be required in support of any application for export license for shipment of the same commodities directly from the United States to the proposed destination. The Office of Export Control will advise the U.S. exporter of its action.

(f) *Records.* In accordance with the provisions of § 387.11, the exporter shall retain for 2 years and make available for inspection, upon demand, by the Office of Export Control all records of each export under this general license as well as the Customs Entry Number or any other evidence of the disposition of the commodities exported.

PART 374—REEXPORTS

In § 374.2, paragraph (a) is amended to read as follows:

§ 374.2 **Permissive reexports.**

* * * * *

(a) Reexports of any commodity that, at the time of the reexport, may be exported directly from the United States to the new country of destination (1) under General License G-DEST, or GTE or (2) where the value of the reexport does not exceed the GLV value on the Commodity Control List for the new country of destination.[5]

* * * * *

PART 375—DOCUMENTATION REQUIREMENTS

In § 375.2(e), paragraph (6) is amended to read as follows:

§ 375.2 **Ultimate consignee and purchaser statement.**

* * * * *

(e) * * *

(6) *Validity period.* The original of a single transaction statement shall be submitted to the Office of Export Control with the first applicable license application. The period within which the statement may be submitted to the Office of Export Control is limited to 90 days after it was signed by the consignee or purchaser, whichever date is later. There is no specific time limit for submitting the multiple transaction statement to the Office of Export Control, but such statement may not be used to support license applications filed after the termination date shown in Item 2. The consignee/purchaser may enter in Item 2 whatever termination date he chooses up through June 30 of the second year after he signs the Form FC-843. This is true even though, until a revised form is issued, the wording on the form calls for a date no later than June 30 of the first year after signing. As an example of a second year termination, an FC-843 signed by the consignee and purchaser any time between January 1, 1971, and December 31, 1971, could be used to support license applications filed on or before June 30, 1973, if June 30, 1973, is entered in Item 2.

* * * * *

PART 376—SPECIAL COMMODITY POLICIES AND PROVISIONS

§ 376.11 [Deleted]

In Part 376, § 376.11 is deleted and this number is reserved for future use.

PART 386—EXPORT CLEARANCE

In § 386.3(v), paragraph (1) is amended to read as follows:

§ 386.3 **Shipper's export declaration.**

* * * * *

[4] Authorization to export a container does not imply authorization to export its contents. If a validated license is required to export the container's contents an application for such license shall be submitted in the usual manner.

[5] The permissive reexport provisions set forth above relating to the reexport of commodities within the established GLV dollar value limits do not apply to exports, reexports, or distributions made under the Distribution License, Foreign-Based Warehouse, or Aircraft and Vessel Repair Station Procedures. (See §§ 373.3, 373.4, and 373.8 of this subchapter.)

(v) *Alternate procedure for filing Declaration*—(1) *Scope.* An alternate procedure[1] for filing Declarations covering general license shipments (other than temporary exports made under the provisions of General License GTE; § 371.22 of this subchapter) via aircraft or vessel to destinations in Country Group T, V, or X is established, under which such a Declaration may be delivered to the exporting carrier or his shipping agent at the port of export, or to a domestic airline[2] at or near the point of origin of the cargo, without first having been authenticated by the customs office.

* * * * *

PART 387—ENFORCEMENT

In § 387.11, paragraph (c) is amended to read as follows:

§ 387.11 Recordkeeping.

* * * * *

(c) *Records to be kept.* The records to be kept pursuant to this § 387.11 shall include memoranda, notes, correspondence, books, export control documents, and other written matter pertaining to the transactions described in paragraph (a) of this section, which may be made or obtained by a person described in paragraph (b) of this section. In addition to the records required to be kept by this § 387.11, the provisions of §§ 368.2, 371.22, 372.1, 372.5, 372.6, 373.3, 373.4, 373.5, 373.6, 373.7, 373.8, 374.7, 376.8, 376.10, 378.2, 379.4, 386.3, and 386.6 of the Export Control Regulations of this subchapter require certain records to be made and kept by persons in the United States or abroad in connection with export transactions. The revocation or revision of any such provision of the Export Control Regulations which requires the making and keeping of records shall not be retroactive in effect unless specifically provided and shall not affect the original requirement to keep such records for the prescribed period.

* * * * *

[F.R. Doc. 70-17590; Filed, Dec. 30, 1970; 8:49 a.m.]

[1] The alternate procedure does not apply when an inland shipper elects to have his Declaration authenticated under the port-of-origin procedure set forth in § 386.8.

[2] For purposes of this regulation an "exporting carrier" is defined as the office of either a steamship line or an airline at the port of export, or the shipping agent of a steamship line at the port of export. A "domestic airline" is one that (a) 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), and (b) carries cargo to a port of export for transfer to an international flight of the same or another airline.

Title 17—COMMODITY AND SECURITIES EXCHANGES

Chapter II—Securities and Exchange Commission

[Releases Nos. 33-5118, 34-9046, 35-16940, 39-288, IC-6297]

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

Assignment of Functions to Director of Division of Corporation Finance

The Securities and Exchange Commission has amended § 200.18 of Title 17 of the Code of Federal Regulations. This section relates to the assignment of function to the Director of the Commission's Division of Corporation Finance. The amendment authorizes that Division to institute injunctive proceedings arising under sections 12, 13, and 15(d) of the Securities Exchange Act of 1934 with the General Counsel retaining supervision over civil litigation. This has been done because it is believed that the Division of Corporation Finance by reason of its familiarity with the facts involved in a particular case is in a position to proceed expeditiously and efficiently with the institution and prosecution of injunctive proceedings. The change will also serve to lighten, somewhat, the workload of the Office of General Counsel. Section 200.18 has also been further amended to clarify the Division's functions with reference to sections 12(g), 14(c), and 15(c) of the Act.

The Commission reemphasizes the necessity for timely compliance by issuers and others with the periodic reporting requirements of the Securities Exchange Act.

Commission action. Section 200.18 of Chapter II of Title 17 of the Code of Federal Regulations is hereby amended as follows:

§ 200.18 Director of the Division of Corporation Finance.

* * * * *

(b) All matters, except those pertaining to investment companies registered under the Investment Company Act of 1940, arising under the Securities Exchange Act of 1934 in connection with:

(1) The registration of securities pursuant to section 12.

(2) The examination and processing of periodic reports filed pursuant to sections 13 and 15(d).

(3) The examination and processing of proxy soliciting material filed pursuant to section 14(a) and information material filed pursuant to section 14(c).

(4) The denial or suspension, pursuant to section 19(a)(2), of registration of securities registered on national securities exchanges pursuant to section 12(b) arising from failure to comply with the reporting provisions of the Act.

(5) The institution and prosecution of administrative and injunctive proceedings arising under sections 12, 13, 15(c)(4), and 15(d) and the determination of whether the available evidence supports the allegations in the proposed complaint.

(c) All matters relating to the examination and processing of statements of beneficial ownership of securities and changes in such ownership filed under section 16(a) of the Securities Exchange Act of 1934, section 17(a) of the Public Utility Holding Company Act of 1935 and section 30(f) of the Investment Company Act of 1940.

(d) The examination and processing of proxy and information material filed under the Public Utility Holding Company Act of 1935 and subject to Regulation 14A (sections 240.14a-1 to 240.14a-12 of this chapter) or Regulation 14C (sections 240.14c-1 to 240.14c-7 of this chapter) issued under the Securities Exchange Act of 1934.

(e) All matters, except those pertaining to investment companies registered under the Investment Company Act of 1940, arising under the Trust Indenture Act of 1939.

The Commission finds that the foregoing amendment involves matters of agency organization, procedure or practice and that notice and procedure pursuant to 5 U.S.C. 553 are not required.

By the Commission, December 21, 1970.

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

[F.R. Doc. 70-17558; Filed, Dec. 30, 1970; 8:46 a.m.]

[Releases Nos. 40-6295, 33-5120, 34-9049, AS-118]

PART 211—INTERPRETATIVE RELEASES RELATING TO ACCOUNTING MATTERS (ACCOUNTING SERIES RELEASES)

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

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

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

Accounting for Investment Securities by Registered Investment Companies

The Securities and Exchange Commission today announced the publication of its views relating to some of the more important questions concerning the accounting by registered investment companies for investment securities in their financial statements and in the periodic computations of net asset value for the purpose of pricing their shares. The questions relate both to the amounts at which

investment securities should be carried and to the circumstances under which individual securities may be included among the assets. This release discusses certain accounting matters in order to give additional guidance to the management of investment companies, as well as certain related auditing procedures which are considered appropriate for the guidance of independent accountants. A release was issued by the Commission on October 21, 1969[1] on the specific subject of the problems relating to so-called "restricted securities," i.e., those which must be registered under section 5 of the Securities Act of 1933 prior to public sales, and the discussion of valuation herein does not alter any of the special considerations applicable to such securities as discussed in that release.

The financial statements of registered investment companies appearing in registration statements, proxy statements, and annual reports filed with the Commission are governed by various provisions of the Investment Company Act of 1940 (the "Act"), the rules thereunder, and by Regulation S–X, Article 6 (17 CFR 210.6) of which sets forth accounting rules applicable to such companies. While Regulation S–X does not by its terms apply to periodic reports to stockholders, section 30(d) of the Act provides that such reports "shall not be misleading in any material respect in the light of the reports" (including annual reports) required to be filed under section 30 (a) and (b). To the extent that any provisions in an investment company's articles of incorporation, trust indenture or other governing legal instruments specify accounting procedures inconsistent with those required by Regulation S–X, the latter must be followed in accordance with Rule 6–02–1 (17 CFR 210.6–02–1) thereof.

Inclusion of securities in the portfolio. The statement of assets and liabilities of a registered investment company comprises, for the most part, not only investments in securities which are held by a custodian or are on hand, but also frequently includes securities as to which contracts to purchase have been entered into but which have not been received. Securities held by a custodian or on hand that have been contracted to be sold are excluded from the investments in such statement. In the ordinary transaction through a broker, recording the transaction on the date the broker advises the investment company that the securities have been purchased or sold (the "trade date"), rather than when delivery is made or due (the "settlement date"), is the established and acceptable practice in investment company accounting.

In the case of purchases or sales of securities other than in the usual brokerage transactions, the date on which the investment company obtains an enforceable right to demand the securities or the payment therefor—the date the transaction should be recorded—is sometimes difficult to determine. The considerations involved in determining such transaction date are similar to those discussed at page 3 of the aforementioned release on restricted securities. When a question arises as to the date an enforceable right is obtained by the investment company, an opinion of legal counsel as to when the right occurred should normally be obtained by the company's management and made available to the independent accountant. Such an opinion should be in writing, and a copy should be included in the accountant's working papers.

Where the propriety or validity of an investment in a security by an investment company is questionable because of particular provisions of the Act (or State law, or the company's investment policy or other representations as stated in its filings with the Commission, or legal obligations in respect of a contract or transaction, a written opinion of legal counsel should also be obtained by the company's management, made available to the independent accountant, and a copy included in the working papers. If the questions of propriety or validity are not satisfactorily resolved, the circumstances of the investment should be disclosed in the financial statements or notes thereto.

Securities held by the company or its custodian should be substantiated by the company's independent accountant in the course of an audit by inspection of such securities or by obtaining confirmation from a custodian which maintains the securities in custody pursuant to clause (1) of section 17(f) of the Act. When securities contracted to be purchased but not yet received are included in the statement of assets and liabilities, confirmation of the contract to purchase should be obtained from the bank, broker, or other person responsible for the delivery of such securities. Where satisfactory confirmation has been received, audit procedures normally need not be extended to obtain evidence of subsequent receipt of the securities by the company or its custodian unless additional substantiation is considered necessary by the independent accountant under the circumstances. Where satisfactory confirmation has not been received, subsequent receipt of such securities should be substantiated by other appropriate procedures.

In accordance with section 30(e) of the Act, the certificate of the company's independent accountant should include a brief statement concerning the substantiation of securities owned. Except for securities contracted to be purchased but not received, the certificate should state that the securities were either inspected by the independent accountant or, where the company's securities were maintained in custody pursuant to clause (1) of section 17(f) of the Act, were confirmed to him by the custodian. In the case of securities contracted to be purchased but not received by the company or its custodian, reference should be made to confirmation by banks, brokers, or others or to alternative procedures, as appropriate in the circumstances.

Valuation of securities. Under Rule 6–02–6 (17 CFR 210.6–02–6) of Regulation S–X, the statements of assets and liabilities of open-end investment companies must reflect all assets at value, showing cost parenthetically, while closed-end companies may elect to use either this basis or to reflect all assets at cost, showing value parenthetically.

"Value" is defined in section 2(a)(39) of the Act. For purposes of determining the amounts at which securities and other assets are carried in the statements of assets and liabilities included in annual and other reports and in registration statements filed by investment companies, "value" is defined in pertinent part as: "(i) With respect to securities for which market quotations are readily available, the market value of such securities; and (ii) with respect to other securities and assets, fair value as determined in good faith by the board of directors * * *." This definition is also used in Rule 2a–4 (17 CFR 270.2a–4) under the Act as the required basis for computing periodically the current net asset value of redeemable securities of investment companies for the purpose of pricing their shares.

In some circumstances value can be determined fairly in more than one way. Hence, the standards set forth below should be considered as guidelines, one or more of which may be appropriate in the circumstances of a particular case. These standards should be followed, and a company's stated valuation policies should be consistent with them. Any variation from the standards should be disclosed in the financial statements or notes thereto even though the variation is in accordance with the company's stated valuation policy. In addition, any deviation from a stated valuation policy, whether or not in conformity with the standards, should be disclosed in the financial statements or notes thereto.

Securities listed or traded on a national securities exchange. Ordinarily, little difficulty should be experienced in valuing securities listed or traded on one or more national securities exchanges, since quotations of completed transactions are published daily. If a security was traded on the valuation date, the last quoted sale price generally is used. In the case of securities listed on more than one national securities exchange the last quoted sale, up to the time of valuation, on the exchange on which the security is principally traded should be used or, if there were no sales on that exchange on the valuation date, the last quoted sale, up to the time of valuation, on the other exchanges should be used. With respect to the time of valuation Rule 22c–1 (17 CFR 270.22c–1) under the Act requires that current net asset value shall be computed not less frequently than once daily as of the time of the close of trading on the New York Stock Exchange.

If there was no sale on the valuation date but published closing bid and asked

[1] Investment Company Act Release No. 5847; Accounting Series Release No. 113. See also a supplementary release issued on Apr. 13, 1970, Investment Company Act Release No. 6026; Accounting Series Release No. 116. NOTE: Letter to the American Institute of Certified Public Accountants, attachment A filed as part of the original document.

prices are available, the valuation in such circumstances should be within the range of these quoted prices. Some companies as a matter of general policy use the bid price, others use the mean of the bid and asked prices, and still others use a valuation within the range considered best to represent the value in the circumstances; each of these policies is acceptable if consistently applied. Normally, it is not acceptable to use the asked price alone. Where, on the valuation date, only a bid price or an asked price is quoted or the spread between bid and asked prices is substantial, quotations for several days should be reviewed. If sales have been infrequent or there is a thin market in the security, further consideration should be given to whether "market quotations are readily available." If it is decided that they are not readily available, the alternative method of valuation prescribed by section 2(a)(39)—"fair value as determined in good faith by the board of directors"—should be used.

Over-the-counter securities. Quotations are available from various sources for most unlisted securities traded regularly in the over-the-counter market. These sources include tabulations in the financial press, publications of the National Quotation Bureau and the "Blue List" of municipal bond offerings, several financial reporting services, and individual broker-dealers. These quotations generally are in the form of inter-dealer bid and asked prices. Because of the availability of multiple sources, a company frequently has a greater number of options open to it in valuing securities traded in the over-the-counter market than it does in valuing listed securities. A company may adopt a policy of using a mean of the bid prices, or of the bid and asked prices, or of the prices of a representative selection of broker-dealers quoting on a particular security; or it may use a valuation within the range of bid and asked prices considered best to represent value in the circumstances. Any of these policies is acceptable if consistently applied. Normally, the use of asked prices alone is not acceptable.

Ordinarily, quotations for a security should be obtained from more than one broker-dealer, particularly if quotations are available only from broker-dealers not known to be established market-markers for that security, and quotations for several days should be reviewed. If the validity of the quotations appears to be questionable, or if the number of quotations is such as to indicate that there is a thin market in the security, further consideration should be given to whether "market quotations are readily available." If it is decided that they are not readily available, the security should be considered one required to be valued at "fair value as determined in good faith by the board of directors."

Securities valued "in good faith". To comply with section 2(a)(39) of the Act and Rule 2a-4 (17 CFR 270.2a-4) under the Act, it is incumbent upon the Board of Directors to satisfy themselves that all appropriate factors relevant to the value of securities for which market quotations are not readily available have been considered and to determine the method of arriving at the fair value of each such security. To the extent considered necessary, the board may appoint persons to assist them in the determination of such value, and to make the actual calculations pursuant to the board's direction. The board must also, consistent with this responsibility, continuously review the appropriateness of the method used in valuing each issue of security in the company's portfolio. The directors must recognize their responsibilities in this matter and whenever technical assistance is requested from individuals who are not directors, the findings of such individuals must be carefully reviewed by the directors in order to satisfy themselves that the resulting valuations are fair.

No single standard for determining "fair value * * * in good faith" can be laid down, since fair value depends upon the circumstances of each individual case. As a general principle, the current "fair value" of an issue of securities being valued by the Board of Directors would appear to be the amount which the owner might reasonably expect to receive for them upon their current sale. Methods which are in accord with this principle may, for example, be based on a multiple of earnings, or a discount from market of a similar freely traded security, or yield to maturity with respect to debt issues, or a combination of these and other methods. Some of the general factors which the directors should consider in determining a valuation method for an individual issue of securities include: (1) The fundamental analytical data relating to the investment, (2) the nature and duration of restrictions on disposition of the securities, and (3) an evaluation of the forces which influence the market in which these securities are purchased and sold. Among the more specific factors which are to be considered are: type of security, financial statements, cost at date of purchase, size of holding, discount from market value of unrestricted securities of the same class at time of purchase, special reports prepared by analysts, information as to any transactions or offers with respect to the security, existence of merger proposals or tender offers affecting the securities, price and extent of public trading in similar securities of the issuer or comparable companies, and other relevant matters.

This release does not purport to delineate all factors which may be considered. The directors should take into consideration all indications of value available to them in determining the "fair value" assigned to a particular security.[2] The information so considered together with, to the extent practicable, judgment factors considered by the board of directors in reaching its decisions should be documented in the minutes of the directors' meeting and the supporting data retained for the inspection of the company's independent accountant.

Auditing security valuations. In the case of securities for which market quotations are readily available, the independent accountant should independently verify all the quotations used by the company at the balance sheet date and satisfy himself that such quotations may properly be used under the standards stated above.

In the case of securities carried at "fair value" as determined by the Board of Directors in "good faith," the accountant does not function as an appraiser and is not expected to substitute his judgment for that of the company's directors; rather, he should review all information considered by the board or by analysts reporting to it, read relevant minutes of directors' meetings, and ascertain the procedures followed by the directors. If the accountant is unable to express an unqualified opinion because of the uncertainty inherent in the valuations of the securities based on the directors' subjective judgment, he should nevertheless make appropriate mention in his certificate whether in the circumstances the procedures appear to be reasonable and the underlying documentation appropriate.

When considering values assigned to securities by the company, the independent accountant should consider any investment limitations or conditions on the acquisition or holding of such securities which may be imposed on the company by the Act, by its certificate or bylaws, by contract, or by its filings with the Commission. If such restrictions are met by a narrow margin, the independent accountant may need to exercise extra care in satisfying himself that the evidence indicates that the security valuation determinations were not biased to meet those restrictions.

Investments in affiliates or affiliated persons. Various rules of Regulations S-X (17 CFR Part 210) require that the financial statements of an investment company state separately investments in, investment income from, gain or loss on sales of securities of, and management or other service fees payable to, (a) controlled companies and (b) other "affiliates." As stated in Rule 6-02-4 (17 CFR 210.6-02-4) of Regulation S-X, the term "affiliate" means an affiliated person as defined in section 2(a)(3) of the Act, and the term "control" has the meaning given in section 2(a)(9) of the Act. The term "affiliated person" is defined in section 2(a)(3) of the Act in such a manner as to encompass such control relationships and also the direct or indirect ownership of 5 percent or more of the outstanding voting securities of any issuer. An affiliated person as there defined also includes any officer, director, partner, copartner, or employee or, with respect to an investment company, any investment adviser or member of an advisory board thereof.

[2] With regard to restricted securities, consideration should be given to the discussion on pages 2 through 5 of the release on this subject (see Note 1 supra).

In ascertaining the existence of any such affiliations, the independent accountant should consider the facts obtained during the course of an audit and also make inquiries of the company's management; and his working papers should include written representations from the management as evidence of such inquiries. The representations should be in the form of a statement that the company, except to the extent indicated, (i) does not own any securities either of persons who are directly affiliated, or, to the best information and belief of management, of persons who are indirectly affiliated, (ii) has not received income from or realized gain or loss on sales of investments in or indebtedness of such persons, (iii) has not incurred expenses for management or other service fees payable to such persons, and (iv) has not otherwise engaged in transactions with such persons. Where there is a question as to the existence of an affiliation, a written opinion of legal counsel should be obtained by the company's management, made available to the independent accountant, and a copy included in the working papers. Regulation S–X (17 CFR Part 210) requires disclosure in the financial statements or notes thereto of details of such investments and transactions.

By the Commission, December 23, 1970.

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

[F.R. Doc. 70-17557; Filed, Dec. 30, 1970; 8:46 a.m.]

[Releases Nos. 40-5847, AS-113]

PART 211—INTERPRETATIVE RELEASES RELATING TO ACCOUNTING MATTERS (ACCOUNTING SERIES RELEASES)

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

Restricted Securities

The Securities and Exchange Commission today made public the following statement.

"Restricted securities". The Commission is aware that many investment companies have been acquiring substantial quantities of securities that cannot be offered to the public for sale without first being registered under the Securities Act of 1933 ("restricted securities"). For the year 1968, annual reports filed by registered investment companies indicate that open-end and closed-end companies together held in excess of $4.2 billion of restricted equity securities. Open-end companies—excluding exchange funds—accounted for about $3.2 billion of these restricted securities which represented 4.4 percent of their total net assets. The acquisition by investment companies of such securities raises certain problems under the securities laws of which shareholders, distributors, managements and directors of these companies should be aware. This statement discusses these problems. No inference should be drawn from publication of this statement, however, as to the desirability or merits of the acquisition of restricted securities by a registered investment company.

Problems for the seller. Section 4(2) of the Securities Act of 1933 exempts from the registration requirements of that Act "transactions by an issuer not involving any public offering." This is the so-called "private offering" provision in the Securities Act. The securities involved in transactions effected pursuant to this exemption are referred to as restricted securities because they cannot be resold to the public without prior registration. They are also sometimes referred to as "investment letter securities" because of the practice frequently followed by the seller in such a transaction, in order to substantiate the claim that the transaction does not involve a public offering, of requiring that the buyer furnish a so-called "investment letter" representing that the purchase is for investment and not for resale to the general public.

The private offering exemption of section 4(2) of the Securities Act is available only where the offerees do not need the protections afforded by the registration procedure. As the Court of Appeals for the Second Circuit recently stated in Katz v. Amos Treat & Co., CCH Fed'l. Sec. Law Rep. paragraph 92,409 (1969):

> The Supreme Court has instructed that the applicability of the exemption should turn on whether the particular class of persons affected need the protection of the Act. SEC v. Ralston Purina Co., 346 U.S. 119, 125 (1953).

The test of the availability of the section 4(2) exemption is whether the offerees are in such a position with respect to the issuer as to have access to the kind of information that would be made available in a registration statement filed pursuant to the Securities Act. This test is no different when the offeree is an investment company.

Problems for the buyer—1. The problems of valuation. It is critically important that an investment company properly value its portfolio securities. It is obvious, for example, that any distortion in the valuation of a restricted security held by an investment company will distort the price at which the shares of the investment company are sold or redeemed. It is also clear that investment managers who are compensated on the basis of net asset value or performance may be unduly compensated if a restricted security, purchased at a discount from the market quotation for unrestricted securities of the same class, is overvalued. In such a case, investors may also be misled by the reported performance of the investment company.

The acquisition of restricted securities by both open-end and closed-end investment companies creates serious problems of valuation. Section 2(a)(39) of the Investment Company Act of 1940 and Rule 2a–4 (17 CFR 270.2a–4) thereunder requires that in determining net asset value, "securities for which market quotations are readily available" must be valued at current market value while other securities and assets must be valued at "fair value as determined in good faith by the board of directors."

Readily available market quotations refers to reports of current public quotations for securities similar in all respects to the securities in question. No such current public quotations can exist in the case of restricted securities. For valuation purposes, therefore, restricted securities constitute securities for which market quotations are not readily available. Accordingly, their fair values must be determined in good faith by the board of directors and this obligation necessarily continues throughout the period these securities are retained in the company's portfolio.

Restricted securities should be included in the portfolio of a company and valued to determine current net asset value on the date that the investment company has an enforceable right to demand the securities from the seller.

Where the investment company negotiates the acquisition of the restricted securities directly with the owner of the securities, there are three significant dates. The first occurs when the investment company and the seller orally agree upon the price and the amount of the securities (the "handshake date"). At this point, there would not seem to be any enforceable right of the investment company to demand the securities from the seller since, in most States, particularly those which have adopted the Uniform Commercial Code, there is no enforceable right unless there exists some writing "sufficient to indicate that a contract has been made for sale of a stated quantity of described securities at a defined or stated price" (section 8–319(a) of the Uniform Commercial Code). If the terms of the oral understanding do not contemplate compliance with any condition by the seller, it is suggested that the investment company procure, from the seller, a signed memorandum setting forth the price and quantity of securities to be sold. Upon receipt of that memorandum, an enforceable right would be obtained. The securities should be valued as of that date.

In those situations where the oral understanding contemplates the execution of a formal contract of purchase and sale, no enforceable right exists until the time the formal contract is signed (the "contract date"). If the formal contract does not require compliance with any conditions by the seller, an enforceable right is then obtained, and the securities should be valued as of that date.

Where the formal contract requires compliance with stated conditions which the investment company believes should not be waived, no enforceable right is obtained until the stated conditions are satisfied. In that situation, the valuation date should be the date upon which the conditions are satisfied (the "closing date").

Restricted securities are often purchased at a discount, frequently substantial, from the market price of outstanding unrestricted securities of the same class. This reflects the fact that securities which cannot be readily sold in the public market place are less valuable than securities which can be sold, and also the fact that, by the direct sale of restricted securities, sellers avoid the expense, time and public disclosure which registration entails.

As a general principle, the current fair value of restricted securities would appear to be the amount which the owner might reasonably expect to receive for them upon their current sale. This depends upon their inherent worth, without regard to the restrictive feature, adjusted for any diminution in value resulting from the restrictive feature. Consequently, the valuation of restricted securities at the market quotations for unrestricted securities of the same class would, except for most unusual situations, be improper.[1] Further, the continued valuation of such securities at cost would be improper if, as a result of the operations of the issuer, change in general market conditions or otherwise, cost has ceased to represent fair value. In such circumstances, maintaining the value of the restricted securities at cost would mislead investors as to the value of the portfolio of the investment company which holds restricted securities.

Instead of valuing restricted securities at cost or at the market value of unrestricted securities of the same class, some investment companies value restricted securities held in their portfolio by applying either a constant percentage or an absolute dollar discount to the market quotation for unrestricted securities of the same class. The automatic valuation of restricted securities by such a method, however, would also not appear to satisfy the requirement of the Act that each security, for which a market quotation is not readily available, be valued at fair value as determined in good faith by the board of directors.

Thus it would be improper in valuing restricted securities automatically to maintain the same percentage discount (from the market quotation for unrestricted securities of the same class) that was received when the restricted securities were purchased, without regard to other relevant factors such as, for example, the extent to which the inherent value of the securities may have changed.

Furthermore, the valuation of restricted securities by reference to the market price for unrestricted securities of the same class assumes that the market price for unrestricted securities of the same class is representative of the fair value of the securities. This may not be the case when the market for the unrestricted securities is very thin, i.e., only a limited volume of shares are available for trading. With a thin market, the news of the investment company's purchase of the restricted securities may, by itself, have the effect of stimulating a public demand for the unrestricted securities, the supply of which has not been increased, and thus lead to a spiralling increase in the valuation of both the restricted and unrestricted securities.

Moreover, if in valuing restricted securities, the diminution in value attributable to the restrictive feature is itself affected by factors subject to change, such as the length of time which must elapse before the investment company may require the issuer to cause the securities to be registered for public sale, the valuation should reflect any such changes.

Some companies value restricted securities, acquired at prices below the market quotations for unrestricted securities of the same class, by automatically amortizing the difference over some chosen period on the assumption that it will be possible to sell them at the market price for unrestricted securities at the expiration of the time period. Under prevailing conditions, however, it cannot always be determined either that the securities will, in fact, be effectively registered at the expiration of that period or that their public sale will otherwise be possible. For example, the issuer may be unable or unwilling to register at the expiration of the estimated period, and public sale at the end of that period without registration may not be lawful. Consequently, the practice of automatically amortizing the discount over an arbitrarily chosen period creates the appearance of an appreciation in the value of the securities which has not, in fact, occurred, and, accordingly, is improper.

An undertaking by the issuer to register the securities within a specified time period would not dictate a different result. In view of the many factors that may alter the date of the proposed public offering, it is at best speculative to use such an undertaking alone as the basis for amortizing the discount.

Similarly, the possible adoption by the Commission of the more definite holding periods contained in proposed Rules 101, 160, 161, 162, 163, 164, and 180, Securities Act Release No. 4997 (dated Sept. 15, 1969) (34 F.R. 14228) would also not alter the conclusion that amortization of the discount may be improper. The more definite holding periods there proposed are available only if certain specified conditions are met.

In summary, there can be no automatic formula by which an investment company can value restricted securities in its portfolio to comply with section 2(a)(39) and Rule 2a-4 (17 CFR 270.2a-4). It is the responsibility of the board of directors to determine the fair value of each issue of restricted securities in good faith; and the data and information considered and the analysis thereof should be retained for inspection by the company's independent auditors. While the board may, consistent with this responsibility, determine the method of valuing each issue of restricted security in the company's portfolio, it must continuously review the appropriateness of any method so determined. The actual calculations may be made by persons acting pursuant to the direction of the board.

2. *The problems of portfolio management.* In addition to valuation, restricted securities present special problems of portfolio management.

The concept of the Securities Act exemption of a private placement of securities is premised on the belief that in such a situation the investor has such information concerning the issuer that he is able to fend for himself without need for the disclosures that would be provided by an effective registration statement. Correlatively, where the investor is a registered investment company, it would seem to be the fiduciary duty of the persons responsible for the investment decisions of the investment company to obtain, prior to purchase, the necessary information to make an independent analysis of the investment merits of the particular restricted securities.[2] Also, in order to enable the continuing valuation of such securities, the investment company should require the seller to undertake to provide, to the extent known to the seller, information on a continuing basis as to any subsequent private sales of the issuer's securities. The investment company should also assure itself that it is in the position to obtain the appropriate financial information at appropriate times. It is assumed that any public disclosures, such as that made in periodic reports filed pursuant to the Securities Exchange Act, are carefully considered by the investment company portfolio manager.

There is also the paradox of too much success to consider. For example, if restricted securities rapidly appreciate in value, perhaps because of an improvement in the business of the issuer, an investment company may find instead of having, for example, 5 percent of its assets invested in a particular company, it has instead, 25 percent of its assets in that company. The investment company to which this happens suffers a loss in diversification and may find that it has become overly sensitive to any adverse developments in the affairs of that particular portfolio company.

The foregoing factors in portfolio management relate to both open-end and closed-end management companies. There are additional special factors that relate only to open-end companies.

Section 2(a)(31), when read together with section 5(a), of the Investment Company Act requires that the holders of redeemable shares issued by an open-end investment company be entitled to receive approximately their proportionate share of the issuer's current net assets, or the cash equivalent thereof, upon presentation of the security to the issuer or to a person designated by the issuer. Section 22(e) of the Act provides that, absent specified unusual conditions, payment of the redemption price must

[1] See "Proposed Guidelines For The Preparation Of Form N8B-1 [17 CFR 274.11], Investment Company Act Release No. 5633, p. 21 (Mar. 11, 1969) (34 F.R. 5339).

[2] See The Value Line Fund v. Marcus (1964-66 Transfer Binder) CCH Fed'l., Sec. Law Rep. paragraph 91,523 at p. 94,970 (S.D. N.Y. 1965).

be made within 7 days after the tender of a redeemable security to an investment company or its agent designated for that purpose.

It is desirable that an open-end company retain maximum flexibility in the choice of portfolio securities which, on the basis of their relative investment merits, could best be sold where necessary to meet redemptions. To the extent that the portfolio consists of restricted securities, this flexibility is reduced.

Restricted securities may not be publicly sold—nor can they be distributed to redeeming shareholders as an in-kind redemption. While they may be sold privately, there may not be sufficient time to obtain the best price since the date of payment or satisfaction may not be postponed more than 7 days after the tender of the company's redeemable securities for redemption. A private sale within that period may result in the investment company receiving less than its carrying value of the restricted securities. This would result in a preference in favor of the redeeming shareholders and a diminution of the net asset value per share of shareholders who have not redeemed. Therefore, instead of arranging a private sale of restricted securities, an open-end company that is faced with redemptions may decide to sell unrestricted securities which it would otherwise have retained on the basis of comparative investment merit.

Significant holdings of restricted securities not only magnify the valuation difficulties but may also present serious liquidity questions. Because open-end companies hold themselves out at all times as being prepared to meet redemptions within 7 days, it is essential that such companies maintain a portfolio of investments that enable them to fulfill that obligation. This requires a high degree of liquidity in the assets of open-end companies because the extent of redemption demands or other exigencies are not always predictable. It has been with this in mind that the staff of the Commission has for several years taken the position that an open-end company should not acquire restricted securities when the securities to be acquired, together with other such assets already in the portfolio, would exceed 15 percent of the company's net assets at the time of acquisition. The Commission, however, is of the view that a prudent limit on any open-end company's acquisition of restricted securities, or other assets not having readily available market quotations, would be 10 percent.[5] When as a result of either the increase in the value of some or all of the restricted securities held, or the diminution in the value of unrestricted securities in the portfolios, the restricted securities come to represent a larger percentage of the value of the company's net assets, the same valuation and liquidity questions occur. Accordingly, if the fair value of restricted holdings increases beyond 10 percent, it would be desirable for the open-end company to consider appropriate steps to protect maximum flexibility. The Commission will reexamine appropriate limitations in this area in light of all the policy objectives of the Investment Company Act.

3. *The problem of disclosure.* Section 8(b)(1)(D) of the Investment Company Act requires that an investment company include, in its registration statement filed with the Commission under the Act, information as to its policy with respect to "engaging in the business of underwriting securities issued by other persons." Item 4(c) of Form N–8B–1 (17 CFR 274.11) requires that a registrant under the Act describe its policy or proposed policy with respect to "the underwriting of secuirties of other issuers." In response to this item, registrant's policy with respect to the acquisition of restricted securities should be disclosed.[6] In view of the fact that policies listed under Item 4 are fundamental policies which cannot be changed without prior shoreholder approval, the importance of adopting a clear policy with regard to such investments is apparent.

The prospectus of a registered investment company should also fully disclose the company's policy with respect to restricted securities.[8] It is also clear that an investment company which has a policy of acquiring restricted securities is responsible for full and adequate disclosure with respect to all matters relating to the valuation of such securities. Specifically, there should be included, in a note to the financial statements, (1) identification of any restricted securities and the date of acquisition, (2) disclosure of the methods used in valuing such securities both at the date of acquisition and the date of the financial statements, (3) disclosure of the cost of such securities and the market quotation for unrestricted securities of the same class both on the day the purchase price was agreed to (the so-called "handshake date"), and on the day the investment company first obtained an enforceable right to acquire such securities, and (4) a statement as to whether the issuer or the registrant will bear costs, including those involved in registration under the Securities Act, in connection with the disposition of such securities.

Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b–5 (17 CFR 241.10b–5) thereunder makes it unlawful, among other things, for any person, in connection with the purchase or sale of securities, to employ any device, scheme, or artifice to defraud or to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made not misleading, or engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any persons.

The offering price of securities issued by a management investment company is premised upon the net asset value of such shares as determined pursuant to section 2(a)(39) of the Act and Rule 2a–4 (17 CFR 270.2a–4) thereunder and is so represented in its prospectus. The improper valuation of restricted securities held by such a company would distort the net asset value of the shares being offered or, in the case of an open-end company, redeemed, and would therefore constitute a fraud and deceit within the meaning of section 10(b) and Rule 10b–5.

An open-end company, of course, represents to investors, in its prospectus, that it will, as required by section 22(e) of the Act, redeem its securities at approximate net asset value within 7 days after tender. To the extent a material percentage of the assets of an open-end company consist of restricted securities which cannot publicly be sold without registration under the Securities Act, the ability of the company to comply with the provisions of the Investment Company Act relating to redemption, and to fulfill the implicit representations made in its prospectus with respect thereto, may be adversely affected.[8] In any such situation, the investment company concerned and the persons responsible for the sale of its securities should give careful consideration to the possible application of the provisions of section 10(b) of the Exchange Act and Rule 10b–5 (17 CFR 241.10b–5) thereunder.

By the Commission, October 21, 1969.

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

[F.R. Doc 70-17555; Filed, Dec. 30, 1970; 8:45 a.m.]

[Releases Nos. 40-6026, AS-116]

PART 211—INTERPRETATIVE RELEASES RELATING TO ACCOUNTING MATTERS (ACCOUNTING SERIES RELEASES)

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

Disclosure Concerning "Restricted Securities"

On October 21, 1969, the Commission issued a statement (Investment Company Act Release No. 5847; Accounting Series Release No. 113) which discusses the

[5] The Commission is aware that certain open-end companies may have acquired restricted securities in excess of 10 percent of net assets. It is assumed that such companies will not undertake commitments, beyond any obligation existing on this date, to acquire restricted securities until, in the normal course of business, such holdings are not in excess of 10 percent of current net asset value.

[6] See "Proposed Guidelines For The Preparation of Form N–8B–1" (17 CFR 274.11), Investment Company Act Release No. 5633, p. 7 (Mar. 11, 1969) (34 F.R. 5339).

[8] See "Proposed Guidelines For The Preparation of Forms S–4 (17 CFR 239.14), and S–5 (17 CFR 239.15)", Investment Company Act Release No. 5634, pp. 11, 13 (Mar. 11, 1969) (34 F.R. 5339).

[8] See "Proposed Guidelines for the Preparation of Form N–8B–1" (17 CFR 274.11), Investment Company Act Release No. 5633, p. 7 (Mar. 11, 1969) (34 F.R. 5339).

problems created by purchasing and holding restricted securities by such companies. One section of this release deals with The Problem of Disclosure and enumerates specific information regarding these securities which should be included in the financial statements.[1]

Although the release refers only to disclosures to be made in a prospectus, the principle set forth in the release is also applicable to lists of portfolio securities contained in registration statements filed pursuant to section 8(b) of the Investment Company Act of 1940 ("Act"), reports filed with the Commission and reports mailed to shareholders pursuant to section 30 of the Act, sales literature distributed to existing and prospective investors under section 24(b) of the Act, and in proxy statements filed pursuant to section 20 of the Act. Consequently, the disclosure requirements set forth in its release of October 21, 1969, will be applied by the Commission to lists of portfolio securities set forth not only in registration statements, but also in reports to the Commission and to shareholders, in sales literature in proxy statements. Registered investment companies should act accordingly.

By the Commission, April 13, 1970.

[SEAL] ORVAL L. DUBOIS,
Secretary.

[F.R. Doc. 70-17556; Filed, Dec. 30, 1970; 8:46 a.m.]

Title 20—EMPLOYEES' BENEFITS

Chapter III—Social Security Administration, Department of Health, Education, and Welfare

[Regs. No. 5, further amended]

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED (1965——)

Subpart A—Hospital Insurance Benefits

ELECTION NOT TO USE LIFETIME RESERVE DAYS FOR INPATIENT HOSPITAL SERVICES

On August 15, 1970, there was published in the FEDERAL REGISTER (35 F.R. 13023) a Notice of Proposed Rule Making with proposed amendments to Subpart A of Regulations No. 5. The proposed amendments include the policies applicable to a beneficiary's right to elect not to use the lifetime reserve of 60 additional days, or a portion thereof, for inpatient hospital services furnished to him after he has been furnished 90 days of such services in a spell of illness. Interested persons were given the opportunity to submit within 30 days, data, views, or arguments with regard to the proposed amendments. No comments, other than one expressing approval, have been received. Accordingly, the amendments, as proposed, are adopted subject to the following changes. Proposed § 405.117 has been renumbered as "§ 405.118" and proposed § 405.118 has been changed to paragraph "(e)" under renumbered § 405.118. To conform to these changes, cross-references in § 405.110(a)(2) and renumbered § 405.118(a) have been changed.

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

Effective date. These amendments shall be effective upon publication in the FEDERAL REGISTER.

Dated: November 12, 1970.

ROBERT M. BALL,
Commissioner of Social Security.

Approved: December 24, 1970.

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

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

§ 405.110 Inpatient hospital services; scope of benefits.

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

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

(2) An additional 60 days of inpatient hospital services furnished to him during such spell of illness—less 1 day for each day of inpatient hospital services in excess of 90 received during any preceding spell of illness. Payment may be made for such additional days unless the provider furnishing such services has on record the individual's signed election not to have payment made for such services. The additional days are referred to in this subpart as lifetime reserve days. They are available with respect to inpatient hospital services furnished after December 31, 1967, even though the spell of illness started before 1968. (See §§ 405.118 and 405.119 for regulations relating to election not to use lifetime reserve days.)

* * * * *

2. Sections 405.118 and 405.119 are added to read as follows:

§ 405.118 Election not to use lifetime reserve days.

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

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

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

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

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

[1] The pertinent language of that release is: "It is also clear that an investment company which has a policy of acquiring restricted securities is responsible for full and adequate disclosure with respect to all matters relating to the valuation of such securities. Specifically, there should be included, in a note to the financial statements, (1) identification of any restricted securities and the date of acquisition, (2) disclosure of the methods used in valuing such securities both at the date of acquisition and the date of the financial statements, (3) disclosure of the cost of such securities and the market quotation for unrestricted securities of the same class both on the day the purchase price was agreed to (the so-called "handshake date"), and on the day the investment company first obtained an enforceable right to acquire such securities, and (4) a statement as to whether the issuer or the registrant will bear costs, including those involved in registration under the Securities Act, in connection with the disposition of such securities."

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

§ 405.119 Revocation of election.

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

[F.R. Doc. 70-17586; Filed, Dec. 30, 1970; 8:48 a.m.]

[Regs. No. 5, further amended]

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED (1965——)

Subpart E—Criteria for Determination of Reasonable Charges; Reimbursement for Services of Hospital Interns, Residents, and Supervising Physicians

DETERMINING PREVAILING CHARGES

Section 1839(b)(2) of the Social Security Act, as amended (42 U.S.C. 1395 et seq.), requires the Secretary of Health, Education, and Welfare to promulgate before the end of each year, the dollar amount which shall be applicable for supplementary medical insurance premiums for months occurring in the 12-month period commencing July 1 in each succeeding year. In determining the amount of the monthly premium, it is necessary that the method by which carriers will determine the prevailing charge limit for each medical service or procedure be established.

The Secretary of Health, Education, and Welfare has determined that carriers may recognize charges which fall within the 75th percentile of the customary charges made for similar services in the same locality during the calendar year preceding the start of the fiscal year in which the determination is made.

Because of the immediate need for determination and publication of the premium rate for the period beginning July 1971, and ending June 1972, and since such premium rate determination must take into consideration this amendment of the regulations, the Secretary finds that notice of rule making and public procedure with respect to the amendment to regulations set out below are impracticable and are therefore dispensed with, and also that such amendment shall be effective upon filing with the Office of the Federal Register.

Consideration will be given, however, to any data, views, or arguments pertaining to said amendment for the purpose of suggesting modifications or additions thereto, which are submitted in triplicate not later than February 1, 1971, to the Commissioner of Social Security, Department of Health, Education, and Welfare Building, Fourth and Independence Avenue SW., Washington, DC 20201.

Regulations No. 5 of the Social Security Administration, as amended (20 CFR 405.1 et seq.), are further amended as follows:

Paragraph (a) of § 405.504 is revised to read as follows:

§ 405.504 Determining prevailing charges.

(a) *Range of charges.* The term "prevailing charges" refers to those charges which fall within the range of charges most frequently and most widely used in a locality for particular medical procedures or services. The top of this range establishes, except as provided in § 405.506, an overall limitation on the charges which a carrier will accept as reasonable for a given medical procedure or service. Prevailing charges are derived from the overall pattern existing within a locality. For example, in a given locality the carrier may find that the charges most frequently and widely used by physicians for a particular medical procedure range from $150 to $175. If in another locality the carrier finds that the prevailing charges are different for the same procedure, then a different range of charges would be applied in making reasonable charge determinations for that locality. With respect to claims received by carriers on and after January 1, 1971, no charge may be determined to be reasonable if it exceeds the higher of (1) the prevailing charge limit that, on the basis of statistical data and methodology acceptable to the Secretary, would cover 75 percent of the customary charges made for similar services in the same locality during the calendar year preceding the start of the fiscal year in which the determination is made, or (2) the prevailing charge limit in effect on December 31, 1970, provided such prevailing charge limit had been found acceptable by the Secretary.

(Secs. 1102, 1842(b), and 1871, 49 Stat. 647, as amended, 79 Stat. 310, 79 Stat. 331; 42 U.S.C. 1302, 1395, et seq.)

Dated: December 18, 1970.

ROBERT M. BALL,
Commissioner of Social Security.

Approved: December 28, 1970.

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

[F.R. Doc. 70-17651; Filed, Dec. 30, 1970; 8:51 a.m.]

Title 21—FOOD AND DRUGS

Chapter I—Food and Drug Administration, Department of Health, Education, and Welfare

SUBCHAPTER A—GENERAL

PART 2—ADMINISTRATIVE FUNCTIONS, PRACTICES, AND PROCEDURES

Subpart M—Organization

MISCELLANEOUS AMENDMENTS

Under authority contained in the Federal Food, Drug, and Cosmetic Act (sec. 701(a), 52 Stat. 1055; 21 U.S.C. 371(a)) and delegated to the Commissioner of Food and Drugs (21 CFR 2.120), Part 2 is amended by deleting § 2.176 and revising §§ 2.171, 2.172, 2.173, and 2.175 to read as follows to reflect organizational changes:

§ 2.171 Washington headquarters.

The central organization of the Food and Drug Administration consists of the following: current locations and addresses of these units may be obtained from the Food and Drug Administration, Information Center, 200 C Street SW., Washington, DC 20204:

OFFICE OF THE COMMISSIONER

Commissioner of Food and Drugs.
Deputy Commissioner of Food and Drugs.
Associate Commissioner for Compliance.
Associate Commissioner for Medical Affairs.
Associate Commissioner for Science.
Assistant Commissioner for Administration.
Assistant Commissioner for Education and Information.
Assistant Commissioner for Field Coordination.
Assistant Commissioner for Planning and Evaluation.
Assistant Commissioner for Program Coordination.

BUREAU OF DRUGS

Office of Compliance.
Office of Pharmaceutical Research and Testing.
Office of Scientific Coordination.
Office of Scientific Evaluation.

BUREAU OF FOODS, PESTICIDES, AND PRODUCT SAFETY

This Bureau is undergoing a complete reorganization due to the transfer of product safety functions to the Bureau of Product Safety effective October 21, 1970, and the

tranafer of certain pesticides functions to the Environmental Protection Agency effective December 2, 1970.

BUREAU OF PRODUCT SAFETY

BUREAU OF VETERINARY MEDICINE

Division of Compliance.
Division of New Animal Drugs.
Division of Nutritional Sciences.
Division of Veterinary Medical Review.
Division of Veterinary Research.

§ 2.172 Food, Drug, and Environmental Health Division, Office of the General Counsel, Department of Health, Education, and Welfare.

Office of the Assistant General Counsel for Food, Drugs, and Environmental Health, Room 6-57, 5600 Fishers Lane, Rockville, Maryland 20852.
Hearing Clerk, Room 6-62, 5600 Fishers Lane, Rockville, Maryland 20852.

§ 2.173 Regional Offices.

The Regional Offices of the Food and Drug Administration are located as follows:

Atlanta: 60 Eighth Street, NE., Atlanta, Georgia 30309.
Boston: 585 Commercial Street, Boston, Massachusetts 02109.
Chicago: Room 1222, 433 West Van Buren Street, Chicago, Illinois 60607.
Dallas: 3032 Bryan Street, Dallas, Texas 75204.
Denver: 513 New Customhouse, Denver, Colorado 80202.
Kansas City: 1009 Cherry Street, Kansas City, Missouri 64106.
New York: 850 Third Avenue, Brooklyn, New York 11232.
Philadelphia: Room 1204, Second and Chestnut Streets, Philadelphia, Pennsylvania 19106.
San Francisco: Room 518, 50 Fulton Street, San Francisco, California 94102.
Seattle: Room 5003, 909 First Avenue, Seattle, Washington 98104.

§ 2.175 District Offices.

The District Offices of the Food and Drug Administration are located as follows:

Atlanta: 60 Eighth Street NE., Atlanta, Georgia 30309.
Baltimore: 900 Madison Avenue, Baltimore, Maryland 21201.
Boston: 585 Commercial Street, Boston, Massachusetts 02109.
Buffalo: 599 Delaware Avenue, Buffalo, New York 14202.
Chicago: Room 1222, 433 West Van Buren Street, Chicago, Illinois 60607.
Cincinnati: 1141 Central Parkway, Cincinnati, Ohio 45202.
Dallas: 3032 Bryan Street, Dallas, Texas 75204.
Denver: 513 New Customhouse, Denver, Colorado 80202.
Detroit: 1560 East Jefferson Avenue, Detroit, Michigan 48207
Kansas City: 1009 Cherry Street, Kansas City, Missouri 64106
Los Angeles: 1521 West Pico Boulevard, Los Angeles, California 90015
Minneapolis: 240 Hennepin Avenue, Minneapolis, Minnesota 55401
New Orleans: Room 222, 423 Canal Street, New Orleans, Louisiana 70130
New York: 850 Third Avenue, Brooklyn, New York 11232
Philadelphia: Room 1204, Second and Chestnut Streets, Philadelphia, Pennsylvania 19106
San Francisco: Room 518, 50 Fulton Street, San Francisco, California 94102
Seattle: 909 First Avenue, Room 5003, Seattle, Washington 98104

(Sec. 701(a), 52 Stat. 1055; 21 U.S.C. 371(a))

Dated: December 29, 1970.

JAMES D. GRANT,
Deputy Commissioner of Food and Drugs.

[F.R. Doc. 70-17624; Filed, Dec. 30, 1970; 8:51 a.m.]

Title 22—FOREIGN RELATIONS

Chapter I—Department of State

SUBCHAPTER M—INTERNATIONAL TRAFFIC IN ARMS

[Departmental Regulation 108.630]

MISCELLANEOUS AMENDMENTS TO SUBCHAPTER

Parts 121, 123, 124, and 125 of Title 22 of the Code of Federal Regulations are amended as set forth below.

PART 121—ARMS, AMMUNITION, AND IMPLEMENTS OF WAR

1. In Part 121, § 121.14 is revoked, and §§ 121.01, 121.08, and 121.13 are amended as follows:

§ 121.01 The U.S. munitions list.

* * * * *

CATEGORY VIII—AIRCRAFT, SPACECRAFT, AND ASSOCIATED EQUIPMENT

* * * * *

(d) Airborne equipment, including but not limited to airborne refueling equipment, specifically designed for use with the aircraft, spacecraft, and engines of the types in paragraphs (a), (b), and (c) of this category.

* * * * *

(h) Components, parts, accessories, attachments, and associated equipment specifically designed or modified for the articles in paragraphs (a) through (g) of this category, excluding propellors used with reciprocating engines and aircraft tires.

(i) Developmental aircraft components known to have a significant military application, excluding aircraft components concerning which Federal Aviation Agency certification is scheduled.

* * * * *

CATEGORY IX—MILITARY TRAINING EQUIPMENT

(a) Military training equipment includes but is not limited to attack trainers, radar target trainers, radar target generators, gunnery training devices, antisubmarine warfare trainers, target equipment, armament training units, flight simulation devices, operational flight trainers, flight simulators, radar trainers, instrument flight trainers and navigation trainers.

* * * * *

CATEGORY XIV—TOXICOLOGICAL AGENTS AND EQUIPMENT; RADIOLOGICAL EQUIPMENT

* * * * *

(b) Biological agents adapted for use in war to produce death or disablement in human beings or animals.

* * * * *

CATEGORY XV—[REVOKED]

* * * * *

§ 121.03 Chemical agents.

(a) (See Category XIV(a).) A chemical agent is a substance useful in war which by its ordinary and direct chemical action, produces a powerful physiological effect. The term "chemical agents" includes but is not limited to the following chemical compounds:

* * * * *

(6) Antiplant chemicals:

(a) Butyl 2-chloro-4-fluorophenoxyacetate (LNF).

* * * * *

§ 121.13 Aircraft and related articles.

* * * * *

(5) All observation aircraft bearing "O" designations and using reciprocating engines only.

§ 121.14 [Revoked]

PART 123—LICENSES FOR UNCLASSIFIED[1] ARMS, AMMUNITION, AND IMPLEMENTS OF WAR

2. In Part 123, § 123.36 is revoked, and § 123.12 is amended as follows (Footnote 1 to part heading remains unchanged.):

§ 123.12 Canadian shipments.

District directors of customs and postmasters may release unclassified Munitions List equipment (as defined in § 121.01 of this subchapter) to Canada without an export license with the following exceptions:

* * * * *

(b) [Revoked]

* * * * *

(g) Submersible and oceanographic vessels as defined in Category XX.

§ 123.36 [Revoked]

PART 124—MANUFACTURING LICENSE AND TECHNICAL ASSISTANCE AGREEMENTS

3. In Part 124, § 124.01 is amended, and § 124.20 is added, as follows:

§ 124.01 Manufacturing license and technical assistance agreements.

Proposed agreements and proposed amendments to existing agreements between persons in the United States and persons in foreign countries, private or governmental, for (a) the manufacture abroad (i.e., whereby an American person grants a foreign person a legal right or license to manufacture abroad) or (b) the furnishing abroad of technical assistance (i.e., the performance of functions and/or the conveyance of information involving the disclosure of technical data, as opposed to granting a right or license to manufacture) relating to arms, ammunition, and implements of war on the U.S. Munitions List, shall be submitted by letter to the Office of Munitions Control, Department of State, for approval from the standpoint of world peace, U.S. foreign policy and the security of the United States. Proposed agreements (or amendments thereto) shall not

take effect until Department of State approval has been obtained. (Sales representation agreements are not subject to Department of State approval.)

EXEMPTIONS

§ 124.20 Offshore procurement.

Notwithstanding the other provisions in Part 124, a U.S. person may conclude manufacturing arrangements for U.S. Munitions List equipment in a foreign country without prior Department of State approval provided:

(a) The arrangement calls for delivery of equipment only for use of the U.S. person in the United States or an agency of the U.S. Department of Defense;

(b) The technical data of U.S. origin to be used in the foreign manufacture is unclassified, and has been licensed for export by the Department of State or is subject to one of the exemptions in §§ 125.10, 125.11, or 125.12 of this subchapter;

(c) The foreign manufacture is pursuant to a contract between an agency of the U.S. Department of Defense and a U.S. prime contractor, or a domestic subcontract thereunder, and the article is to be manufactured in Canada or the Defense agency approves another country in which manufacture is to take place;

(d) The subcontract (or purchase order pursuant to a subcontract) between the United States and foreign persons:

(1) Limits the use of the technical data to that required by the contract between the U.S. person and the U.S. Defense agency;

(2) Prohibits the disclosure of the data to any other person except other duly qualified subcontractors for the equipment within the same country;

(3) Prohibits the acquisition of rights in the data by any foreign person without the prior approval of the Department of State; and

(4) Provides that any subcontracts between foreign persons in the approved country for manufacture of equipment for delivery under a U.S. Defense agency contract contain all the limitations of this paragraph (d); and

(e) The U.S. person provides the Office of Munitions Control, Department of State, with a copy of each subcontract (or Purchase Order) for offshore procurement at the time it is accepted by both persons. Each such subcontract or purchase order must clearly identify the article to be produced.

PART 125—UNCLASSIFIED TECHNICAL DATA AND CLASSIFIED INFORMATION (DATA AND EQUIPMENT)

4. In Part 125, the title is revised as set forth above, §§ 125.11(a)(4) and 125.12 are amended, and § 125.11(a)(12) is added, to read as follows:

§ 125.11 General exemptions.

(a) * * *

(4) If the export is in furtherance of a contract with an agency of the U.S. Government or a contract between an agency of the U.S. Government and foreign persons, provided the contract calls for the export of relevant unclassified technical data, and such data are being exported only by the prime contractor. Such data shall not disclose the details of development, engineering, design, production, or manufacture of any arms, ammunition, or implements of war on the U.S. Munitions List. (This exemption does not permit the prime contractor to enter into subsidiary technical assistance or manufacturing license agreements, or any arrangement which calls for the exportation of technical data without compliance with Part 124 of this subchapter.)

• • • • •

(12) If the export is directly related to classified information, the export of which has been previously authorized to the same recipient, and does not disclose the details of design, production, or manufacture of any arms, ammunition, or implements of war on the U.S. Munitions List.

• • • • •

§ 125.12 Canadian shipments.

District directors of customs and postal authorities are authorized to permit the export of unclassified technical data to Canada without an export license, except when such technical data relate to the following:

(a) Nuclear weapons strategic delivery systems and all specifically designed components, parts, accessories, attachments, and associated equipment therefor;

(b) Nuclear weapons design and test equipment defined in Category XVI;

(c) Naval nuclear propulsion equipment as defined in Category VI(e);

(d) Aircraft as defined in Category VIII(a); and

(e) Submersible and oceanographic vessels as defined in Category XX.

(This exemption does not authorize the foreign manufacture of any arms, ammunition, or implements of war on the U.S. Munitions List. See Part 124 of this subchapter.)

(Sec. 414, as amended, 68 Stat. 848; 22 U.S.C. 1934; secs. 101, 105, E.O. 10973, 26 F.R. 10469; sec. 6, Departmental Delegation of Authority No. 104, 26 F.R. 10608, as amended, 27 F.R. 9925; Redelegation of Authority No. 104-3-A, 28 F.R. 7231, Redelegation of Authority No. 104-7, 35 F.R. 3243; Redelegation of Authority No. 104-7-A, 35 F.R. 5423, 5424)

Effective date. These amendments are effective upon publication in the FEDERAL REGISTER, except that the revocation of Category XV in § 121.01, the revocation of §§ 121.14 and 123.36, and the removal from the U.S. Munitions List of helium, JATO units, airfield matting, propellors used on reciprocating aircraft engines, aircraft tires, butyl, 2,4-dichlorophenoxyacetate (LNA), 2,4,5-trichlorophenoxyacetate (LNF), and observation aircraft with reciprocating engines, shall not be effective until 42 days after these amendments appear in the FEDERAL REGISTER.

[SEAL] WILLIAM P. ROGERS,
Secretary of State.

DECEMBER 23, 1970.

[F.R. Doc. 70-17587; Filed, Dec. 30, 1970; 8:48 a.m.]

Title 25—INDIANS

Chapter I—Bureau of Indian Affairs, Department of the Interior

SUBCHAPTER T—OPERATION AND MAINTENANCE

PART 221—OPERATION AND MAINTENANCE CHARGES

Basic and Other Water Charges, Fort Hall Indian Irrigation Project, Fort Hall Indian Reservation, Idaho

On November 19, 1970, there was published in the daily issue of the FEDERAL REGISTER, Volume 35, Number 225, Page 17789, Notice of Intention to amend § 221.32, Subchapter T, Chapter I of the Code of Federal Regulations Title 25. This section deals with the operation and maintenance charges on assessable lands under the Fort Hall Indian Irrigation Project, Fort Hall Indian Reservation, Idaho. Interested persons were thereby given opportunity to participate in preparing the proposed amendment by submitting their views and data or argument in writing to Dale M. Baldwin, Area Director, within 30 days from the date of publication of the notice. One protest was filed on behalf of the Fort Hall Water Users Association. This protest voiced objection to mechanical weed control in the canals and ditches and the resultant higher cost as compared to chemical weed control. This protest was given full consideration. The Portland Area Office determined the need to change from chemical weed control to mechanical control resulted from an action (passage of an ordinance prohibiting introduction of chemicals into irrigation waters) independent of the proposed modification of § 221.32 *Basic and other water charges*, of Title 25, Code of Federal Regulations. Therefore, it was subsequently determined compliance with regulatory ordinances was mandatory and sufficient justification exists for the proposed rate increase and, accordingly § 221.32 of Title 25, Code of Federal Regulations, Chapter I, Subchapter T, is amended as follows:

§ 221.32 Basic and other water charges.

(a) In compliance with the provisions of the Acts of March 1, 1907 (34 Stat. 1024), and August 31, 1954 (68 Stat. 1026), the annual basic water charges for the operation and maintenance of the lands in non-Indian ownership and Indian-owned lands leased to a non-Indian or a nonmember of the Shoshone-Bannock Tribe of the Fort Hall Indian Reservation, Idaho, to which water can be delivered for irrigation are hereby

fixed for the calendar year 1971 and subsequent years until further notice as follows:

	Per Acre
(1) Fort Hall Project:	
Basic rate for all lands located within the boundaries of Fort Hall Reservation	$7.50
Basic rate for all lands lying off the Fort Hall Reservation	6.75
(2) Michaud Division, Fort Hall Reservation:	
Basic rate for all lands except Deep Well Units	11.50
Basic rate for Deep Well Units	9.00
Adidtional rate for sprinkler irrigation when pressure is supplied by the project	3.00
(3) Minor Units, Fort Hall Reservation:	
Basic rate	4.75

(b) In addition to the foregoing charges, there shall be collected a minimum charge of $5 for the first acre or fraction thereof on each tract of land for which operation and maintenance bills are prepared. The minimum bill issued for any area will, therefore, be the basic rate per acre plus $5.

DALE M. BALDWIN,
Area Director.

[F.R. Doc. 70-17610; Filed, Dec. 30, 1970; 8:50 a.m.]

Title 26—INTERNAL REVENUE

Chapter I—Internal Revenue Service, Department of the Treasury

SUBCHAPTER A—INCOME TAX

[T.D. 7081]

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Identification of Federal Book-Entry Securities

In order to modify the identification rules for purposes of determining basis and holding period of property in the case of certain Federal securities, paragraph (c)(7) of § 1.1012-1 of the Income Tax Regulations (26 CFR Part 1) is amended to read as follows:

§ 1.1012-1 Basis of property.

* * * * *

(c) *Sale of stock.* * * *

(7) *Book-entry securities.* (i) In applying the provisions of subparagraph (3)(i)(*a*) of this paragraph in the case of a sale or transfer of a book-entry security (as defined in subdivision (iii)(*a*) of this subparagraph) which is made after December 31, 1970, pursuant to a written instruction by the taxpayer, a specification by the taxpayer of the unique lot number which he has assigned to the lot which contains the securities being sold or transferred shall constitute specification as required by such subparagraph. The specification of the lot number shall be made either—

(*a*) In such written instruction, or

(*b*) In the case of a taxpayer in whose name the book entry by the Reserve Bank is made, in a list of lot numbers with respect to all book-entry securities on the books of the Reserve Bank sold or transferred on that date by the taxpayer, provided such list is mailed to or received by the Reserve Bank on or before the Reserve Bank's next business day.

This subdivision shall apply only if the taxpayer assigns lot numbers in numerical sequence to successive purchases of securities of the same loan title (series) and maturity date, except that securities of the same loan title (series) and maturity date which are purchased at the same price on the same date may be included within the same lot.

(ii) In applying the provisions of subparagraph (3)(i)(*b*) of this paragraph in the case of a sale or transfer of a book-entry security which is made pursuant to a written instruction by the taxpayer, a confirmation as required by such subparagraph shall be deemed made by—

(*a*) In the case of a sale or transfer made after December 31, 1970, the furnishing to the taxpayer of a written advice of transaction, by the Reserve Bank or the person through whom the taxpayer sells or transfers the securities, which specifies the amount and description of the securities sold or transferred and the date of the transaction, or

(*b*) In the case of a sale or transfer made before January 1, 1971, the furnishing of a serially numbered advice of transaction by a Reserve Bank.

(iii) For purposes of this subparagraph:

(*a*) The term "book-entry security" means—

(*1*) In the case of a sale or transfer made after December 31, 1970, a transferable Treasury bond, note, certificate of indebtedness, or bill issued under the Second Liberty Bond Act (31 U.S.C. 774 (2)), as amended, or other security of the United States (as defined in (*b*) of this subdivision (iii)) in the form of an entry made as prescribed in 31 CFR Part 306, or other comparable Federal regulations, on the records of a Reserve Bank, or

(*2*) In the case of a sale or transfer made before January 1, 1971, a transferable Treasury bond, note, certificate of indebtedness, or bill issued under the Second Liberty Bond Act, as amended, in the form of an entry made as prescribed in 31 CFR Part 306, Subpart O, on the records of a Reserve Bank which is deposited in an account with a Reserve Bank (*i*) as collateral pledged to a Reserve Bank (in its individual capacity) for advance by it, (*ii*) as collateral pledged to the United States under Treasury Department Circular No. 92 or 176, both as revised and amended, (*iii*) by a member bank of the Federal Reserve System for its sole account for safekeeping by a Reserve Bank in its individual capacity, (*iv*) in lieu of a surety or sureties upon the bond required by section 61 of the Bankruptcy Act, as amended (11 U.S.C. 101), of a banking institution designated by a judge of one of the several courts of bankruptcy under such section as a depository for the moneys of a bankrupt's estate, (*v*) pursuant to 6 U.S.C. 15, in lieu of a surety or sureties required in connection with any recognizance, stipulation, bond, guaranty, or undertaking which must be furnished under any law of the United States or regulations made pursuant thereto, (*vi*) by a banking institution, pursuant to a State or local law, to secure the deposit in such banking institution of public funds by a State, municipality, or other political subdivision, (*vii*) by a State bank or trust company or a national bank, pursuant to a State or local law, to secure the faithful performance of trust or other fiduciary obligations by such State bank or trust company or national bank, or (*viii*) to secure funds which are deposited or held in trust by a State bank or trust company or a national bank and are awaiting investment, but which are used by such State bank or trust company or national bank in the conduct of its business;

(*b*) The term "other security of the United States" means a bond, note, certificate of indebtedness, bill, debenture, or similar obligation which is subject to the provisions of 31 CFR Part 306 or other comparable Federal regulations and which is issued by (*1*) any department or agency of the Government of the United States, or (*2*) the Federal National Mortgage Association, the Federal Home Loan Banks, the Federal Land Banks, the Federal Intermediate Credit Banks, the Banks for Cooperatives, or the Tennessee Valley Authority;

(*c*) The term "serially-numbered advice of transaction" means the confirmation (prescribed in 31 CFR 306.116) issued by the Reserve Bank which is identifiable by a unique number and indicates that a particular written instruction to the Reserve Bank with respect to the deposit or withdrawal of a specified book entry security (or securities) has been executed; and

(*d*) The term "Reserve Bank" means a Federal Reserve Bank and its branches acting as Fiscal Agent of the United States.

* * * * *

Because this Treasury decision merely liberalizes the identification rules for purposes of determining basis and holding period in the case of certain securities, it is found that it is unnecessary to issue this Treasury decision with notice and public procedure thereon under 5 U.S.C. 553(b), or subject to the effective date limitation of 5 U.S.C. 553(d).

(Sec. 7805 of the Internal Revenue Code of 1954; 68A Stat. 917; 26 U.S.C. 7805)

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

Approved: December 26, 1970.

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

[F.R. Doc. 70-17583; Filed, Dec. 30, 1970; 8:48 a.m.]

[T.D. 7083]

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Feeder Organizations

On September 23, 1970, notice of proposed rule making with respect to the amendments of the Income Tax Regulations (26 CFR Part 1) under section 502 of the Internal Revenue Code of 1954 to conform the regulations to changes made by section 121(b)(7) of the Tax Reform Act of 1969 (83 Stat. 542) was published in the FEDERAL REGISTER (35 F.R. 14784). After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, the amendments of the regulations as proposed are hereby adopted.

(Sec. 7805 of the Internal Revenue Code of 1954; 68A Stat. 917; U.S.C. 7805)

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

Approved: December 29, 1970.

EDWIN S. COHEN,
Assistant Secretary of the Treasury.

In order to conform the Income Tax Regulations (26 CFR Part 1) under section 502 of the Internal Revenue Code of 1954 to section 121(b)(7) of the Tax Reform Act of 1969 (83 Stat. 542), such regulations are amended as follows:

PARAGRAPH 1. Section 1.502 is amended by revising subsection 502(a) and by adding a new subsection 502(b) and an historical note. These amended and added provisions read as follows:

§ 1.502 Statutory provisions; feeder organizations.

SEC. 502(a). *General rule.* An organization operated for the primary purpose of carrying on a trade or business for profit shall not be exempt from taxation under section 501 on the ground that all of its profits are payable to one or more organizations exempt from taxation under section 501.

(b) *Special rule.* For purposes of this section, the term "trade or business" shall not include—

(1) The deriving of rents which would be excluded under section 512(b)(3), if section 512 applied to the organization,

(2) Any trade or business in which substantially all the work in carrying on such trade or business is performed for the organization without compensation, or

(3) Any trade or business which is the selling of merchandise, substantially all of which has been received by the organization as gifts or contributions.

(Sec. 502 as amended by sec. 121(b)(7), Tax Reform Act 1969 (83 Stat. 542))

PAR. 2. Section 1.502–1 is amended by revising paragraph (a) and adding a new paragraph (d). These amended and added provisions read as follows:

§ 1.502–1 Feeder organizations.

(a) In the case of an organization operated for the primary purpose of carrying on a trade or business for profit, exemption is not allowed under section 501 on the ground that all the profits of such organization are payable to one or more organizations exempt from taxation under section 501. In determining the primary purpose of an organization, all the circumstances must be considered, including the size and extent of the trade or business and the size and extent of those activities of such organization which are specified in the applicable paragraph of section 501.

* * * * *

(d) *Exception*—(1) *Taxable years beginning before January 1, 1970.* For purposes of section 502 and this section, for taxable years beginning before January 1, 1970, the term "trade or business" does not include the rental by an organization of its real property (including personal property leased with the real property).

(2) *Taxable years beginning after December 31, 1969.* For purposes of section 502 and this section, for taxable years beginning after December 31, 1969, the term "trade or business" does not include—

(i) The deriving of rents described in section 512(b)(3)(A),

(ii) Any trade or business in which substantially all the work in carrying on such trade or business is performed for the organization without compensation, or

(iii) Any trade or business (such as a "thrift shop") which consists of the selling of merchandise, substantially all of which has been received by the organization as gifts or contributions.

For purposes of the exception described in subdivision (i) of this subparagraph, if the rents derived by an organization would not be excluded from unrelated business income pursuant to section 512(b)(3) and the regulations thereunder, the deriving of such rents shall be considered a "trade or business".

(3) *Cross references and special rules.* (i) For determination of when rents are excluded from the tax on unrelated business income see section 512(b)(3) and the regulations thereunder.

(ii) The rules contained in § 1.513–1(e)(1) shall apply in determining whether a trade or business is described in section 502(b)(2) and subparagraph (2)(ii) of this paragraph.

(iii) The rules contained in § 1.513–1(e)(3) shall apply in determining whether a trade or business is described in section 502(b)(3) and subparagraph (2)(iii) of this paragraph.

[F.R. Doc. 70–17613; Filed, Dec. 30, 1970; 8:51 a.m.]

[T.D. 7082]

PART 3—CAPITAL CONSTRUCTION FUND

Execution of Agreements and Deposits Made in a Capital Construction Fund

The following regulations relate to the application of section 607 of the Merchant Marine Act of 1936 (46 U.S.C. 1177) as amended by section 21(a) of the Merchant Marine Act of 1970 (84 Stat. 1026) and to the requirements of the execution of agreements relating to capital construction funds and deposits therein. The regulations set forth herein are temporary and are designed to provide transitional rules dealing with the execution of agreements relating to capital construction funds and deposits therein. The regulations are effective until the issuance of final regulations to be prescribed by the Commissioner of Internal Revenue and approved by the Secretary or his delegate and prescribed by the Secretary of Commerce or his delegate.

In order to provide such temporary regulations under section 21(a) of the Merchant Marine Act of 1970, the following regulations are added as Part 3 of 26 CFR Chapter I:

§ 3.1 Capital construction fund.

In the case of taxable years commencing after December 31, 1969, and on or before December 31, 1970, the rules governing the execution of agreements and deposits under such agreements shall be as follows:

(a) A capital construction fund agreement executed and entered into by a taxpayer on or prior to the due date, with extensions, for the filing of his Federal income tax return, will be deemed to have been effective on the date of the actual execution of the agreement or as of the close of business of the last regular business day of such taxable year, whichever day is earlier;

(b) Deposits made in a capital construction fund pursuant to such an agreement within 60 days after the actual date of execution of the agreement, or on or prior to the due date, with extensions, for the filing of his Federal income tax return, whichever date shall be later, shall be deemed to have been made on the date of the actual deposit or as of the close of business of the last regular business day of such taxable year, whichever date is earlier. Nothing in this paragraph shall alter the rules and regulations governing the timing of deposits with respect to existing capital and special reserve funds.

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

(Sec. 607, Merchant Marine Act of 1936, 46 U.S.C. 1177, as amended by section 21(a), Merchant Marine Act of 1970, 84 Stat. 1026, and authority contained in sec. 7805, Internal Revenue Code of 1954, 68A Stat. 917; 26 U.S.C. 7805)

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

A. E. GIBSON,
Assistant Secretary for Maritime Affairs/Maritime Administrator.

Approved: December 24, 1970.

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

[F.R. Doc. 70–17608; Filed, Dec. 30, 1970; 8:50 a.m.]

Title 28—JUDICIAL ADMINISTRATION

Chapter I—Department of Justice

PART 42—NONDISCRIMINATION; EQUAL EMPLOYMENT OPPORTUNITY; POLICIES AND PROCEDURES

Subpart D—Equal Employment Opportunity in Federally Assisted Programs and Activities

Part 42 is hereby amended to add subpart D as follows:

Sec.
42.201 Purpose and application.
42.202 Definitions.
42.203 Discrimination prohibited.
42.204 Assurances required.
42.205 Compliance information.
42.206 Conduct of investigation, procedures for effecting compliance hearings, decisions, and judicial review; forms, instruction.

AUTHORITY: The provisions of this Subpart D issued under 5 U.S.C. 301; and sec. 501 of the Omnibus Crime Control and Safe Streets Act of 1968, Public Law 90-351, 82 Stat. 197.

§ 42.201 Purpose and application.

(a) The purpose of this subpart is to enforce the provisions of the Fourteenth Amendment to the Constitution by eliminating discrimination on the grounds of race, color, creed, or national origin in the employment practices of State agencies or offices receiving financial assistance extended by this Department.

(b) The regulations in this subpart apply to the employment practices of planning agencies, law enforcement agencies, and other agencies or offices of States or units of general local government administering, conducting, or participating in any program or activity receiving Federal financial assistance extended under Title I of the Omnibus Crime Control and Safe Streets Act of 1968 (the Act). This subpart shall not apply to federally assisted construction contracts covered by Part III of Executive Order 11246, September 24, 1965; enforcement of nondiscriminatory employment practices under such contracts shall be effected pursuant to the Executive order.

§ 42.202 Definitions.

(a) The definitions set forth in § 42.102 of Subpart C, Part 42, Title 28, Code of Federal Regulations are, to the extent not inconsistent with this subpart, hereby made applicable to and incorporated in this subpart.

(b) As used in this subpart, the term "employment practices" means all practices relating to the screening, recruitment, selection, appointment, promotion, demotion and assignment of personnel, and includes advertising, hiring, assignments, classification, layoff and termination, upgrading, transfer, leave practices, rates of pay, fringe benefits, or other forms of pay or credit for services rendered and use of facilities.

(c) As used in this subpart, the terms "law enforcement," "State," and "unit of general local government" shall have the meanings set forth in section 601 of the Act.

§ 42.203 Discrimination prohibited.

No agency or office to which this subpart applies under section 42.201 shall discriminate in its employment practices against employees or applicants for employment because of race, color, creed, or national origin. Nothing contained in this subpart shall be construed as requiring any such agency or office to adopt a percentage ratio, quota system or other program to achieve racial balance or to eliminate racial imbalance.

§ 42.204 Assurances required.

(a) (1) Every application for Federal financial assistance to carry out a program to which this regulation applies shall, as a condition of approval of such application and the extension of any Federal financial assistance pursuant to such application, contain or be accompanied by an assurance that the applicant will comply with the requirements of this subpart, and will obtain such assurances from its subgrantees, contractors, or subcontractors to which this subpart applies, as a condition of the extension of Federal financial assistance to them.

(2) The responsible Department officials shall specify the form of the foregoing assurances. Such assurances shall be effective for the period during which Federal financial assistance is extended to the applicant or for the period during which a comprehensive law enforcement plan filed pursuant to the Act is in effect in the State, whichever period is longer, unless the form of the assurance as approved in writing by the responsible Department official specifies a different effective period.

(b) Assurances by States and units of general local government relating to employment practices of State and local law enforcement agencies and other agencies to which this subpart applies shall apply to the policies and practices of any other department, agency, or office of the same governmental unit to the extent that such policies or practices will substantially affect the employment practices of the recipient State or local planning unit, law enforcement agency, or other agency or office.

§ 42.205 Compliance information.

The provisions of section 42.106 of Part 42, Title 28, Code of Federal Regulations are hereby made applicable to and incorporated in this subpart.

§ 42.206 Conduct of investigations, procedures for effecting compliance, hearings, decisions and judicial review; forms, instruction and effect on other regulations.

(a) Each responsible Department official shall take appropriate measures to effectuate and enforce the provisions of this subpart; and shall issue and promptly make available to interested persons forms, instructions and procedures for effectuating this subpart as applied to programs for which he is responsible. Insofar as feasible and not inconsistent with this subpart, the conduct of investigations and the procedures for effecting compliance, holding hearings, rendering decisions and initiating judicial review of such decisions shall be consistent with those prescribed by §§ 42.107 through 42.111 of Subpart C, Part 42, Title 28, Code of Federal Regulations; provided, that where the responsible Department official determines that judicial proceedings (as contemplated by § 42.108(d)) are as likely or more likely to result in compliance than administrative proceedings (as contemplated by § 42.108(c)), he shall invoke the judicial remedy rather than the administrative remedy; and, provided further, that no recipient of Federal financial assistance or applicant for such assistance shall be denied access to the hearing or appeal procedures set forth in sections 510 and 511 of the Act for denial or discontinuance of a grant or withholding of payments thereunder resulting from the application of this subpart.

(b) If it is determined, after opportunity for a hearing on the record, that a recipient has engaged or is engaging in employment practices which unlawfully discriminate on the grounds of race, color, creed, or national origin, the recipient will be required to cease such discriminatory practices and to take such action as may be appropriate to eliminate present discrimination, to correct the effects of past discrimination, and to prevent such discrimination in the future.

(c) Nothing in this subpart shall be deemed to supersede any provision of Subparts A, B, and C of Part 42, Title 28, Code of Federal Regulations, or of any other regulation and instruction which prohibits discrimination on the ground of race, color, creed, or national origin in any program or situation to which this subpart is inapplicable, or which prohibits discrimination on any other ground.

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

Dated: November 25, 1970.

JOHN N. MITCHELL,
Attorney General.

Dated: November 6, 1970.

RICHARD W. VELDE,
Associate Administrator, Law Enforcement Assistance Administration.

Dated: November 9, 1970.

CLARENCE M. COSTER,
Associate Administrator, Law Enforcement Assistance Administration.

[F.R. Doc. 70-17612; Filed, Dec. 30, 1970; 8:50 a.m.]

Title 30—MINERAL RESOURCES

Chapter I—Bureau of Mines, Department of the Interior

PART 80—NOTIFICATION, INVESTIGATION, REPORTS AND RECORDS OF ACCIDENTS

Pursuant to the authority contained in section 508 of the Coal Mine Health and Safety Act of 1969 (Public Law 91-173) and in accordance with the provisions of sections 103(e) and 111 of the Act there was published in the FEDERAL REGISTER for August 12, 1970 (35 F.R. 12765), a notice of proposed rulemaking setting forth a new Part 80 of Title 30, Code of Federal Regulations—Notification, Investigation, Reports and Records of Accidents.

Interested parties were afforded a period of 30 days from the date of publication of the notice in which to submit written comments, suggestions, or objections. The period for submitting written comments, suggestions, or objections was subsequently extended to September 30, 1970, by a notice published in the FEDERAL REGISTER for September 5, 1970 (35 F.R. 14146).

The comments received from interested persons regarding these regulations were concerned primarily with the definitions of "Accidents" and "Injuries"—with some of the comments asserting that the proposed definitions are too broad and others asserting that they are not broad enough. The definition of an "accident" in section 3(k) of the Act is open-ended, and if it should be interpreted otherwise, the Bureau of Mines would be unable to obtain all of the information it needs with regard to accidents and injuries to carry out the intent and the provisions of the Act. Consequently, the definitions are being promulgated essentially as proposed but with some changes in language to clarify their meaning. These changes may be found in § 80.1 (b), (c), (f), and (g), and in § 80.11 (i) and (j).

Comments were also received concerning the categories of accidents required to be reported immediately to the Bureau of Mines, and the indication in the regulations that the Bureau proposes to be selective in its investigations. One suggestion was made that the regulations should include procedures for investigations conducted by the Bureau of Mines. The regulations, in these respects, are being promulgated as proposed because they will provide the Bureau with immediate notification when needed and enable the Bureau to utilize its investigative resources most effectively to achieve the purposes of the Act. Under the regulations, the Bureau will be informed of all accidents in coal mines, including all fatalities and all injuries other than first aid cases, but immediate notification is required only in the more critical accident categories.

Some comments were received concerning the proposed frequency of accident and injury reports, particularly the summary reports of injuries and employment required in § 80.34 of the regulations. These particular reports are required only for statistical summaries, and the proposed frequency is a continuation of present practice which is adequate for this purpose. Accident records and reports required in other sections of the regulations provide the needed current information to the Bureau concerning accidents and injuries.

FRED J. RUSSELL,
Acting Secretary of the Interior.

DECEMBER 28, 1970.

Subpart A—Definitions

Sec.
80.1 Definitions.

Subpart B—Notification of Accidents

80.10 Scope.
80.11 Notification by operator.
80.12 Investigation by Bureau of Mines.

Subpart C—Operator's Investigation and Records of Accidents

80.20 Scope.
80.21 Investigation.
80.22 Written record.
80.23 Maintenance of records.
80.24 Reporting of written records.

Subpart D—Operator's Reports to the Bureau of Mines

80.30 Scope.
80.31 Daily ledger.
80.32 Quarterly report.
80.33 Individual injury report.
80.34 Summary reports of injuries and employment.
80.35 Place to file reports; additional forms.

AUTHORITY: The provisions in this Part 80 are issued under sections 103(e), 111, and 508 of the Federal Coal Mine Health and Safety Act of 1969 (Public Law 91-173).

Subpart A—Definitions

§ 80.1 Definitions.

As used in this Part 80:

(a) "Coal mine" means an area of land and all structures, facilities, machinery, tools, equipment, shafts, slopes, tunnels, excavations, and other property, real or personal, placed upon, under, or above, the surface of such land by any person, used in, or to be used in, or resulting from, the work of extracting in such area bituminous coal, lignite, or anthracite from its natural deposits in the earth by any means or method, and the work of preparing the coal so extracted, and includes custom coal preparation facilities.

(b) "Accident" means (1) the death of, or any injury to, any person (whether or not time is lost); (2) a mine explosion, mine ignition, mine fire, or mine inundation; (3) an unintentional roof fall (except in abandoned panels or in areas which are inaccessible or unsafe for inspection); (4) any collapse of a highwall in an active working of a surface mine; (5) an unintentional or incomplete detonation of explosives, including blasting agents; (6) a coal outburst; (7) the entrapment of any person; (8) damage to shafts or ventilation facilities or to hoisting or haulage facilities; (9) an event at a mine which causes the death of, or bodily injury to, persons other than persons on the mine property; or (10) any other event that could have resulted in death or injury had any person been in the immediate area.

(c) "Injury" means any "fatal injury," "nonfatal injury," or "other injury" as defined in paragraphs (d), (e), and (g) of this § 80.1 or occupational disease suffered by a person which arises out of and in the course of his work.

(d) "Fatal injury" means any work injury resulting in death regardless of the time intervening between injury and death.

(e) "Nonfatal injury" means any work injury which does not result in death but which either results in any permanent impairment to the injured person or causes the injured person to lose one full day or more from work after the day of injury. As used in this definition "permanent impairment" means total incapacitation of the injured person for any gainful work, or total or partial loss of, or loss of use of, any member or function of the body.

(f) "Disabling injury" means either a nonfatal injury as defined in paragraph (e) of this section or a fatal injury.

(g) "Other injury" means a work injury other than a disabling injury which requires treatment by a physician, or hospitalization for observation, or assignment to another regularly established job, or restricts work or motion. However, "other injury" does not include any injury requiring only first aid treatment.

Subpart B—Notification of Accidents

§ 80.10 Scope.

Section 103(e) of the Federal Coal Mine Health and Safety Act of 1969 (30 U.S.C. 813(e)), requires that in the event of any accident occurring in a coal mine, the operator shall notify the Secretary of the Interior thereof and shall take appropriate measures to prevent the destruction of any evidence which would assist in investigating the cause or causes thereof. The regulations in this Subpart B provide for the immediate notification of the Bureau of Mines, Department of the Interior, of the occurrence of any accident described in § 80.11, in order to afford the Bureau an opportunity to conduct a prompt investigation. The submission of reports which are required by Subpart D of this part will constitute adequate notification of the Bureau with respect to accidents other than those described in § 80.11.

§ 80.11 Notification by operator.

The operator of a coal mine shall, using the fastest available means of communication, immediately notify the District or Subdistrict Coal Mine Safety Office of the Bureau of Mines of the District in which the mine is located of the occurrence of any of the following accidents:

(a) A fatal injury;

(b) A serious nonfatal injury that the operator or a medical officer believes could result in the death of the injured person;

(c) A death occurring on mine property;

(d) A mine fire not extinguished within 30 minutes;

(e) A mine explosion;
(f) An ignition of gas or dust or combination thereof;
(g) A mine inundation;
(h) A coal outburst of sufficient intensity that it appears likely that, had any persons been in the immediate area, death or injury could have occurred;
(i) A fall of roof, face, or rib of sufficient magnitude to affect ventilation or the passage of men on active working sections and a fall of roof at or above the anchorage zone when roof bolts are used for control of roof;
(j) Any collapse of a highwall in an active working of a surface mine;
(k) An unintentional or incomplete detonation of explosives, including blasting agents;
(l) The entrapment of any person;
(m) Damage to shafts and ventilation facilities;
(n) Damage to hoisting or haulage facilities used for the transportation of men, when such damage interferes with its use for the transportation of men; or
(o) Any physical event at a mine which causes death to persons other than persons on the mine property.

§ 80.12 Investigation by Bureau of Mines.

Following any notification received in accordance with § 80.11, the Coal Mine Health and Safety District or Subdistrict Manager shall determine whether an investigation of the accident will be conducted by the Bureau of Mines. If he determines that an investigation will be conducted, he shall promptly advise the operator of the approximate date and time of such investigation and instruct him, to the extent compatible with rescue and recovery work, to take appropriate measures to preserve any evidence which might assist in determining the cause or causes of the accident.

Subpart C—Operator's Investigation and Records of Accidents

§ 80.20 Scope.

Section 111(a) of the Federal Coal Mine Health and Safety Act of 1969 (30 U.S.C. 821(a)), requires that all accidents shall be investigated by the operator or his agent to determine the cause and the means of preventing a recurrence, and that records of such accidents and investigations shall be kept, and the information made available to the Secretary or his representative, and the appropriate State agency. Section 111(a) of the Act also requires that such records shall be open for inspection by interested persons and that the records shall include man-hours worked and shall be reported for periods determined by the Secretary of the Interior. The regulations in this Subpart C prescribe the nature and the extent of the information to be included in such records, and the period and manner in which reports of accidents so recorded shall be submitted to the Secretary.

§ 80.21 Investigation.

The operator's investigation shall develop sufficient information to pinpoint in detail the initiating cause and all subsequent or following events which contributed to or resulted in the accident. Whenever possible working notes made during the course of the investigation should be retained as a part of the record.

§ 80.22 Written record.

(a) The written record of each investigation of an accident shall contain:
(1) The identification number of the record of investigation entered in the first column of the "Daily Ledger: Coal-Mine Accidents" required to be maintained by § 80.31.
(2) The date and hour upon which the accident occurred.
(3) The date and hour the investigation was started.
(4) The name of the person or persons who made the investigation.
(5) The specific location of the accident and a description of the location.
(6) Names, occupation at the time of the accident, and pertinent occupational experience for all persons who received disabling injuries and other injuries.
(7) A narrative description of the accident, including all pertinent related events prior to the accident; measurements of any dimension or clearance; type of equipment or machinery; noise level, visibility, lighting (in general terms); any identifiable human behavioral factors contributing to the accident; or any other element contributing to or related to the accident.
(8) A description of the steps taken, or to be taken in the future to avoid a recurrence, including, where appropriate, suggestions for modification or improvement in operating rules and regulations, working rules and regulations, safety standards, modification of equipment, training of personnel, or any other changes needed to prevent recurrence of the accident.
(b) Additional records shall be kept as follows of all unintentional roof falls of a size that would restrict ventilation or the passage of men:
(1) A plot of the roof fall on a mine map.
(2) A rough sketch or sketches of suitable scale showing the dimensions of the fall, the type and location of the roof support used, the type and thickness of the strata above the coalbed, and a statement of the depth of overburden in the affected area. Abnormalities in the immediate roof structure also shall be located and described.

§ 80.23 Maintenance of records.

The written records of investigations of accidents required by this Subpart C shall be maintained at the mine for a period of 3 years from the date of the accident and shall be open for inspection by interested persons.

§ 80.24 Reporting of written records.

A report of the accidents recorded as required in this Subpart C shall be made to the Bureau of Mines in the manner described in Subpart D of this part.

Subpart D—Operator's Reports to the Bureau of Mines

§ 80.30 Scope.

Pursuant to section 111(b) of the Federal Coal Mine Health and Safety Act (30 U.S.C. 821(b)), the regulations in this Subpart D prescribe additional records of accidents to be maintained, the information to be recorded therein, and the time and manner in which information on accidents is to be reported to the Secretary of the Interior.

§ 80.31 Daily ledger.

(a) The operator of a coal mine shall maintain at the mine office a "Daily Ledger: Coal-Mine Accidents" (Form 6-1498) in which there shall be recorded for each accident, by date of occurrence, specified information with respect to the accident. The ledger form is organized to facilitate the compilation of summary data for the quarterly report required by § 80.32 of this subpart. A daily ledger shall be open for inspection by interested persons and shall be maintained at the mine for a period of 3 years from the date of the accident which constitutes the last entry in that ledger.
(b) The first copy of Form 6-1498 will be mailed to each operator. Additional copies may be obtained, as needed, from District and Subdistrict offices in the Coal Mine Health and Safety Districts of the Bureau of Mines.

§ 80.32 Quarterly report.

(a) For each calendar quarter, the operator of a coal mine shall prepare and submit to the Bureau of Mines a report on Form 6-1459Q, "Operator's Quarterly Report of Coal-Mine Accidents" containing man-hours worked and a summary of the information on all accidents recorded in the daily ledgers maintained as required by § 80.31. The report shall be filed with the Bureau on or before the 15th day of the month following the expiration of a quarter—that is, April 15, July 15, October 15, and January 15.
(b) A copy of Form 6-1459Q will be mailed to each operator at the end of each reporting period.

§ 80.33 Individual injury report.

The operator of a coal mine shall file individual injury reports with the Bureau of Mines as follows:
(a) Following any accident at a mine involving a fatal injury the operator shall immediately file a complete report of such injury on Form 6-1420 "Employer's Report of Coal Mine Injury" or by filing a complete report of such injury on a State compensation agency report form which would contain substantially the same information with respect to such injury.
(b) On or before the 15th day of each month the operator shall file a report on Form 6-1420 "Employer's report of Coal Mine Injury" with respect to each nonfatal injury that occurred at the mine during the immediately preceding month, or by filing a complete report of such injury on a State compensation

agency report form which would contain substantially the same information with respect to such injury.

(c) In the event the disability of an injured person extends beyond the end of the month in which the injury occurs, the operator shall report the termination of the injury either in Part A(2) of Form 6–1423AM, "Injuries and Employment, Bituminous Coal and Lignite Mines" or in Part A(2) of Form 6–1420 AM, "Injuries and Employment, Pennsylvania Anthracite Mines," whichever is appropriate, for the month when the injured person returns to work. (Section 80.34 covers reports on Form 6–1423AM and Form 6–1420AM.)

(d) Copies of Form 6–1420 will be mailed to each operator at least once a year.

§ 80.34 Summary reports of injuries and employment.

(a) On or before the 15th day of each month, the operator of a coal mine in which, during the operation of the mine, 20 men or more were employed on any calendar day shall file with the Bureau of Mines a report for the immediately preceding month either on Form 6–1423AM "Injuries and Employment, Bituminous Coal and Lignite Mines" or on Form 6–1420AM "Injuries and Employment, Pennsylvania Anthracite Mines," whichever is appropriate. Reports must be made for months during which the mine is idle. However, an operator need supply the general information required by Part C of Form 6–1423AM or of Form 6–1420AM only in the report for the month of December.

(b) On or before January 15 of each year, the operator of a coal mine who is not required to file monthly reports pursuant to paragraph (a) of this § 80.34 shall file a report for the preceding calendar year with the Bureau of Mines either on Form 6–1423AM "Injuries and Employment, Bituminous and Lignite Mines" or on Form 6–1420AM "Pennsylvania Anthracite Mines," whichever is appropriate.

(c) The reports referred to in paragraphs (a) and (b) of this section require summaries of fatal injuries and nonfatal injuries, and statistics on employment and production, and general mine information.

(d) A copy of Form 6–1423AM or of Form 6–1420AM will be mailed to each operator at the end of each reporting period.

§ 80.35 Place to file reports; additional forms.

Unless otherwise provided, all reports required by this Subpart D shall be filed with—

Bureau of Mines, Department of the Interior, Washington, D.C. 20240.

Additional copies of all forms referred to in this subpart may be obtained at the same address.

[F.R. Doc. 70–17577; Filed, Dec. 30, 1970; 8:47 a.m.]

Title 31—MONEY AND FINANCE: TREASURY

Chapter II—Fiscal Service, Department of the Treasury

SUBCHAPTER B—BUREAU OF THE PUBLIC DEBT

PART 306—GENERAL REGULATIONS WITH RESPECT TO UNITED STATES SECURITIES

Miscellaneous Amendments

Sections 306.115, 306.116, and 306.117 (b)(1), of Department of the Treasury Circular No. 300, Third Revision, dated December 23, 1964, as amended (31 CFR Part 306), are hereby further amended and revised, effective January 1, 1971, as follows:

§ 306.115 Definitions of terms.

In this subpart, unless the context otherwise requires or indicates:

(a) "Reserve Bank" means a Federal Reserve Bank and its branches acting as Fiscal Agent of the United States.

(b) "Treasury security" means a Treasury bond, note, certificate of indebtedness, or bill issued under the Second Liberty Bond Act, as amended, in the form of a definitive Treasury security or a book-entry Treasury security.

(c) "Definitive Treasury security" means a Treasury bond, note, certificate of indebtedness, or bill issued under the Second Liberty Bond Act, as amended, in engraved or printed form.

(d) "Book-entry Treasury security" means a Treasury bond, note, certificate of indebtedness, or bill issued under the Second Liberty Bond Act, as amended, in the form of an entry made as prescribed in this subpart on the records of a Reserve Bank.

(e) "Pledge" includes a pledge of, or any other security interest in, Treasury securities held as collateral for loans or advances or to secure deposits of public monies or the performance of an obligation.

(f) "Date of call" (see § 306.2) is "the date fixed in the official notice of call published in the FEDERAL REGISTER * * * on which the obligor will make payment of the security before maturity in accordance with its terms."

§ 306.116 Authority of Reserve Banks.

Each Reserve Bank is hereby authorized and directed, in accordance with the provisions of this subpart, to (a) issue book-entry Treasury securities by means of entries on its records which shall include the name of the depositor, the amount, the loan title (or series) and maturity date; (b) effect conversions between book-entry Treasury securities and definitive Treasury securities; (c) otherwise service and maintain book-entry Treasury securities; and (d) issue a confirmation of transaction in the form of a written advice (serially numbered or otherwise) which specifies the amount and description of any securities, that is, loan title (or series) and maturity date, sold or transferred and the date of the transaction.

§ 306.117 Scope and effect of book-entry procedure.

* * * * *

(b) (1) A Reserve Bank as Fiscal Agent of the United States may also apply the book-entry procedure provided for in this subpart to any Treasury securities which have been or are hereafter deposited for any purpose in accounts with it in its individual capacity under terms and conditions which indicate that the Reserve Bank will continue to maintain such deposit accounts in its individual capacity, notwithstanding application of the book-entry procedure to such securities. This paragraph is applicable, but not limited, to securities deposited:

(i) In connection with deposits in member banks of funds of States, municipalities, or other political subdivisions;

(ii) In connection with the performance of an obligation or duty under Federal, State, municipal, or local law, or judgments or decrees of courts; or

(iii) By member banks held for account of their customers. The application of the book-entry procedure under this paragraph shall not derogate from or adversely affect the relationships that would otherwise exist between a Reserve Bank in its individual capacity and its depositors concerning any deposits under this paragraph. Whenever the book-entry procedure is applied to such Treasury securities, the Reserve Bank is authorized to take all action necessary in respect of the book-entry procedure to enable such Reserve Bank in its individual capacity to perform its obligations as depositary with respect to such Treasury securities.

* * * * *

The foregoing amendments and revisions were adopted on December 28, 1970, under authority of section 22 of the Second Liberty Bond Act, as amended (40 Stat. 288, as amended; 31 U.S.C. 752, et seq.) and 5 U.S.C. 301. Notice and public procedures thereon are unnecessary as public property and contracts are involved.

Dated: December 28, 1970.

[SEAL] JOHN K. CARLOCK,
Fiscal Assistant Secretary.

[F.R. Doc. 70–17607; Filed, Dec. 30, 1970; 8:50 a.m.]

Title 38—PENSIONS, BONUSES, AND VETERANS' RELIEF

Chapter I—Veterans Administration

PART 1—GENERAL PROVISIONS

Copies of Records and Papers

In § 1.526(i), subparagraph (5) is amended to read as follows:

§ 1.526 Copies of records and papers.

* * * * *

(i) Schedule of fees:

* * * * *

(5) Abstracts or copies of medical and dental records furnished to insurance companies. Per request..... $4.00

* * * * *

(72 Stat. 1114; 38 U.S.C. 210)

This VA Regulation is effective the date of approval.

Approved: December 23, 1970.

By direction of the Administrator.

[SEAL] FRED B. RHODES,
Deputy Administrator.

[F.R. Doc. 70-17585; Filed, Dec. 30, 1970; 8:48 a.m.]

Title 46—SHIPPING

Chapter II—Maritime Administration, Department of Commerce

SUBCHAPTER K—REGULATIONS UNDER PUBLIC LAW 91-469

[General Order 109]

PART 390—CAPITAL CONSTRUCTION FUND

On December 24, 1970, the Commissioner of Internal Revenue and the Assistant Secretary of Commerce for Maritime Affairs/Maritime Administrator prescribed a joint regulation pursuant to section 607, Merchant Marine Act, 1936, as amended. This joint regulation appears under Title 26, Code of Federal Regulations, Part 3, of this issue of the FEDERAL REGISTER.

Accordingly, a new Subchapter K and a new Part 390 captioned above are hereby added to this title and chapter reading as set forth below:

§ 390.1 Deposits for taxable year 1970.

(a) In the case of taxable years commencing after December 31, 1969, and on or before December 31, 1970, the regulation governing the execution of agreements and deposits under such agreements shall be as follows:

(1) A Capital Construction Fund Agreement executed and entered into on or prior to the due date, with extensions, for the filing of the Federal income tax return, will be deemed to have been effective on the date of the actual execution of the agreement or as of the close of business of the last regular business day of such taxable year, whichever date is earlier; and

(2) Deposits made in a capital construction fund pursuant to such an agreement within 60 days after the actual date of execution of the agreement, or on or prior to the due date, with extensions, for the filing of the Federal income tax return, whichever date shall be later, shall be deemed to have been made on the date of the actual deposit or as of the close of business of the last regular business day of such taxable year, whichever date is earlier. Nothing in this paragraph shall alter the rules and regulations governing the timing of deposits with respect to existing capital and special reserve funds.

(Sec. 204, 49 Stat. 1987, as amended; 46 U.S.C. 1114; Public Law 91-469, 84 Stat. 1018; sec. 21(a), 84 Stat. 1026)

Dated: December 24, 1970.

By order of the Assistant Secretary of Commerce for Maritime Affairs/Maritime Administrator.

JAMES S. DAWSON, Jr.,
Secretary.

[F.R. Doc. 70-17609; Filed, Dec. 30, 1970; 8:50 a.m.]

Title 50—WILDLIFE AND FISHERIES

Chapter II—National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce

PART 280—YELLOWFIN TUNA

Restrictions Applicable to Fishing Vessels

A Notice of Proposed Rule Making was published November 13, 1970 (35 F.R. 17424) to amend Part 280, Title 50, Code of Federal Regulations, which are the regulations governing the eastern Pacific yellowfin tuna fishery. Interested persons were given the opportunity to participate through a public hearing at San Diego on November 30, 1970, and through submission of written material.

The proposed amendment would have required a radio report similar to that required in § 280.6(e)(2)(ii) when vessels are outside the regulatory area during the open season. However, upon an examination of the whole record, it appeared desirable to clarify the amendment by deleting any reference to § 280.6(e)(2)(ii), and instead preparing a new paragraph (g) to accomplish that purpose.

The telephone number listed in paragraphs (f) and (e)(2)(ii) of § 280.6 should be deleted and a new number "(714) 233-5511" be substituted therefor to comply with the notification provisions of subsection (g) in communicating with the Regional Director.

These amendments are adopted under authority contained in subsection (c) of section 6 of the Tuna Conventions Act of 1950 as amended (16 U.S.C. 955(e)) as modified by Reorganization Plan No. 4, effective October 3, 1970 (35 F.R. 15627).

Effective date. This amendment shall become effective on 0001 hours, January 1, 1971.

Issued at Washington, D.C., and dated December 24, 1970.

PHILIP M. ROEDEL,
Director.

The amendments are described below:

1. Subdivision (ii) of § 280.6(e)(2) is amended by changing the telephone number on line 21 and in the last line of this subdivision from "(213) 830-0411" to read "(714) 233-5511."

2. Paragraph (f) of § 280.6 is amended by changing the telephone number on the last line from "area code 213, telephone 830-0411" to read "area code 714, telephone number 233-5511."

3. A new paragraph is added to § 280.6, reading as follows:

(g) Each vessel fishing outside the regulatory area in the Pacific Ocean during the open season shall transmit a message between 1400 and 1800 hours California time on each even-numbered day of the month on one of the following frequencies: 16,565.0 KHz, 16,572.0 KHz, 12,421.0 KHz, 12,428.0 KHz, 8281.2 KHz, or 8284.4 KHz. The following message shall be transmitted to any station operated by a member of the tuna industry who shall be deemed to be an agent of the transmitting vessel for this purpose: "This message is being transmitted in compliance with the United States eastern tropical Pacific yellowfin tuna regulations, and it confirms that the vessel (name of reporting vessel) is fishing outside the eastern Pacific regulatory area as of this date (give date)." Any station receiving such message shall notify the Regional Director by calling telephone number (714) 233-5511 to report the receipt of such message on the same day it is received.

[F.R. Doc. 70-17564; Filed, Dec. 30, 1970; 8:46 a.m.]

Title 49—TRANSPORTATION

Subtitle A—Office of the Secretary of Transportation

[OST Docket No. 1; Amdt. 1-43]

PART 1—ORGANIZATION AND DELEGATION OF POWERS AND DUTIES

Delegation of Authority With Respect to the Rail Passenger Service Act of 1970

The purpose of this amendment is to delegate certain of the Secretary's functions under the Rail Passenger Service Act of 1970 (Public Law 91-518; 84 Stat. 1327) to the Federal Railroad Administrator.

Since this amendment relates to departmental management, procedures, and practices, notice and public procedure thereon is unnecessary and it may be made effective in less than 30 days after publication in the FEDERAL REGISTER.

In consideration of the foregoing, effective December 22, 1970, § 1.49 of Title 49, Code of Federal Regulations is amended by adding the following new paragraph (l) at the end thereof:

§ 1.49 Delegations to Federal Railroad Administrator.

* * * * *

(l) Carry out the functions vested in the Secretary by the Rail Passenger Service Act of 1970, except Title II and those functions relating to the Secretary's membership on the board of directors of the National Railroad Passenger Corporation (Public Law 91-518; 84 Stat. 1327).

This action is taken under the authority of section 9 of the Department of Transportation Act (49 U.S.C. 1657).

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

JOHN A. VOLPE,
Secretary of Transportation.

[F.R. Doc. 70-17643; Filed, Dec. 30, 1970; 8:51 a.m.]

Proposed Rule Making

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR Part 1]

INCOME TAX

Capital Expenditures

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, 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 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 the provisions of section 263 of the Internal Revenue Code of 1954 as amended by section 4(p) of the Interest Equalization Tax Extension Act of 1965 (79 Stat. 964), and section 706(a) of the Tax Reform Act of 1969 (83 Stat. 674), the following new sections are added immediately after § 1.263(c)-1:

§ 1.263(d) Statutory provisions; capital expenditures; reimbursement of interest equalization tax.

SEC. 263. *Capital expenditures.* * * *

(d) *Reimbursement of interest equalization tax.* The deduction allowed by section 162(a) or 212 (whichever is appropriate) shall include any amount paid or accrued in the taxable year or a preceding taxable year as tax under section 4911 (relating to imposition of interest equalization tax) to the extent that any amount attributable to the amount paid or accrued as tax is included in gross income for the taxable year. Under regulations prescribed by the Secretary or his delegate, the preceding sentence shall not apply with respect to any amount attributable to that part of the tax so paid or accrued which is attributable to an amount for which a deduction has been claimed for the taxable year under section 171 (relating to amortization of bond premium).

[Sec. 263(d) added by sec. 4, Interest Equalization Tax Extension Act 1965 (79 Stat. 963)]

§ 1.263(d)-1 [Reserved]

§ 1.263(e) Statutory provisions; capital expenditures; expenditures in connection with certain railroad rolling stock.

SEC. 263. *Capital expenditures.* * * *

(e) *Expenditures in connection with certain railroad rolling stock.* In the case of expenditures in connection with the rehabilitation of a unit of railroad rolling stock (except a locomotive) used by a domestic common carrier by railroad which would, but for this subsection, be properly chargeable to capital account, such expenditures, if during any 12-month period they do not exceed an amount equal to 20 percent of the basis of such unit in the hands of the taxpayer, shall be treated (notwithstanding subsection (a)) as deductible repairs under section 162 or 212.

[Sec. 263(e) added by sec. 706, Tax Reform Act 1969 (83 Stat. 674)]

§ 1.263(e)-1 Expenditures in connection with certain railroad rolling stock.

(a) *In general.* Under section 263(e), for taxable years beginning after December 31, 1969, certain expenditures described in paragraph (c) of this section in connection with the rehabilitation of a unit of certain railroad rolling stock (described in paragraph (b)(2) of this section) used by a domestic common carrier by railroad (described in paragraph (b) (3) and (4) of this section) shall be treated as deductible repairs under section 162 or 212 in the taxable year paid or incurred. However, the treatment provided for in section 263(e) shall not apply if under paragraph (d) of this section such rehabilitation expenditures exceed 20 percent of the basis (as defined in paragraph (b)(1) of this section) of the unit in the hands of the taxpayer during any period of 12 calendar months (described in paragraph (d) of this section).

(b) *Definitions*—(1) *Basis*—(i) In general, for purposes of section 263(e) the basis of a unit of railroad rolling stock shall be the adjusted basis of such unit determined without regard to the adjustments provided in paragraphs (1), (2), and (3) of section 1016(a). Thus, the basis of property would generally be its cost without regard to adjustments to basis such as for depreciation or for capital improvements. If the basis of a unit in the hands of a transferee is determined in whole or in part by reference to its basis in the hands of the transferor by reason of the application of, for example, section 362 (relating to basis to corporations), 374 (relating to gain or loss not recognized in certain railroad reorganizations), or 723 (relating to the basis of property contributed to a partnership), then the basis of such unit in the hands of the transferor for purposes of section 263(e) shall be its basis for purposes of section 263(e) in the hands of the transferee. Similarly, when the basis of a unit of railroad rolling stock in the hands of the taxpayer is determined in whole or in part by reference to the basis of another unit by reason of the application of, for example, section 1033 (relating to involuntary conversions), then the basis of the latter unit for purposes of section 263(e) shall be the basis for purposes of section 263(e) of the former unit. Thus, for example, if a unit of railroad rolling stock has a cost to M of $10,000 and because of depreciation adjustments of $4,000 and capital expenditures of $3,000, such unit has an adjusted basis in the hands of M of $9,000, the basis for purposes of section 263(e) of such unit in the hands of M is $10,000. For a further example, if M transfers such unit to N in a transaction in which no gain or loss is recognized such as, for example, a transaction to which section 351(a) (relating to a transfer to a corporation controlled by transferor) applies, the basis of such unit for purposes of section 263(e) is $10,000 in the hands of N. The question whether a capital expenditure in connection with a unit of railroad rolling stock results in the retirement of such unit and the creation of another unit of railroad rolling stock shall be determined without regard to rules under the uniform system of accounts prescribed by the Interstate Commerce Commission.

(2) *Railroad rolling stock.* For purposes of this section, the term "unit" or "unit of railroad rolling stock" means a unit of transportation equipment the expenditures for which are of a type chargeable (or in the case of property leased to a domestic common carrier by railroad, would be chargeable) to the equipment investment accounts in the uniform system of accounts for railroad companies prescribed by the Interstate Commerce Commission (49 CFR Part 1201), but only if (i) such unit exclusively moves on, moves under, or is guided by rail and (ii) such unit is not a locomotive. Thus, for example, a unit of railroad rolling stock includes a box car, a gondola car, a passenger car, a car designed to carry truck trailers and containerized freight, a wreck crane, and a bunk car. However, such term does not include equipment which does not exclusively move on, move under, or is not exclusively guided by rail such as, for example, a barge, a tugboat, a container which is used on cars designed to carry

containerized freight, a truck trailer, or an automobile. A locomotive is self-propelled equipment, the sole function of which is to push or pull railroad rolling stock. Thus, a self-propelled passenger or freight car is not a locomotive.

(3) *Domestic common carrier by railroad.* The term "domestic common carrier by railroad" means a railroad subject to regulations under Part I of the Interstate Commerce Act (49 U.S.C. 1 et seq.) or a railroad which would be subject to regulations under Part I of the Interstate Commerce Act if it were engaged in interstate commerce.

(4) *Use.* For purposes of this section, a unit of railroad rolling stock is not used by a domestic common carrier by railroad if it is owned by a person other than a domestic common carrier by railroad and (i) is exclusively used for transportation by the owner or (ii) is exclusively used for transportation by another person which is not a domestic common carrier by railroad. Thus, for example, a unit of railroad rolling stock which is owned by a person which is not a domestic common carrier by railroad and is leased to a manufacturing company by the owner is not a unit of railroad rolling stock used by a domestic common carrier by railroad.

(c) *Expenditures considered in connection with rehabilitation.* The question whether an expenditure is in connection with incidental repairs and maintenance of a unit, as distinguished from being in connection with the rehabilitation of a unit which would, but for section 263(e), be properly chargeable to capital account shall be determined in a manner consistent with the principles for classification of expenditures as between capital and expenses under the Internal Revenue Code. See, for example, §§ 1.162–4, 1.263(a)–1, 1.263(a)–2, and paragraph (a)(4) (ii) and (iii) of § 1.446–1. An expenditure shall be classified as capital or as expense without regard to its classification under the uniform systems of accounts prescribed by the Interstate Commerce Commission.

(d) *20-percent limitation*—(1) *In general.* No expenditure in connection with the rehabilitation of a unit of railroad rolling stock, which would, but for section 263(e), be properly chargeable to capital account shall be treated as a deductible repair by reason of the application of section 263(e) if, during any period of 12 calendar months in which the month the expenditure is included falls, all such expenditures exceed an amount equal to 20 percent of the basis (as defined in paragraph (b)(1) of this section) of such unit in the hands of the taxpayer. Solely for purposes of the 20-percent limitation in this paragraph, such expenditures shall be deemed to be included in the month in which a rehabilitation of the unit of railroad rolling stock is completed. For the requirement that expenditures treated as repairs solely by reason of section 263(e) be deducted in the taxable year paid or incurred, see paragraph (a) of this section.

(2) *12-month period.* For purposes of this section, any period of 12 calendar months shall consist of any 12 consecutive calendar months except that calendar months prior to the calendar month of January 1970, shall not be included in determining such period.

(3) *Period for certain corporate acquisitions.* If a unit of railroad rolling stock to which section 263(e) applies is sold, exchanged, or otherwise disposed of in a transaction in which its basis in the hands of the transferee is determined in whole or in part by reference to its basis in the hands of the transferor (see paragraph (b)(1) of this section), calendar months during which such unit is in the hands of the transferor and in the hands of such transferee shall both be included in the calendar months used by the transferor and the transferee to determine any period of 12 calendar months for purposes of section 263(e).

(4) *Deduction allowed in year paid or incurred.* If, based on the information available when the income tax return for a taxable year is filed, an expenditure paid or incurred in such taxable year would be deductible by reason of the application of section 263(e) but for the fact that it cannot be established whether the 20-percent limitation in subparagraph (1) of this paragraph will be exceeded, the expenditure shall be deducted for such taxable year. If by reason of the application of such 20-percent limitation it is subsequently determined that such expenditure is not deductible as a repair, an amended return shall be filed for the year in which such deduction was treated as a deductible repair and additional tax, if any, for such year shall be paid. Appropriate adjustment with respect to the taxpayer's tax liability for any other affected year shall be made. Nothing in this subparagraph shall be construed as extending the time specified in section 6511 within which a claim for credit or refund may be filed.

(e) *Recordkeeping requirements*—(1) *In general.* Such records as will enable the accurate determination of the expenditures which may be subject to the treatment provided in section 263(e) shall be maintained. No deduction shall be allowed under section 263(e) with respect to a unit unless the taxpayer substantiates by adequate records that expenditures in connection with such unit of railroad rolling stock meet the requirements and limitations of this section.

(2) *Separate Records.* A separate section 263(e) record shall be maintained for each unit. Such record shall—

(i) Identify the unit,

(ii) State the basis (as defined in paragraph (b)(1) of this section) and the date of acquisition of the unit,

(iii) Enumerate for each unit the amount of all expenditures incurred in connection with rehabilitation of such unit which would, but for section 263(e), be properly chargeable to capital account (including expenditures incurred by the taxpayer in connection with rehabilitation of such unit undertaken by a person other than the taxpayer) regardless of whether such expenditures during any 12-month period exceed 20 percent of the basis of such unit,

(iv) Describe the nature of the work in connection with each expenditure, and

(v) Specify the calendar month in which the rehabilitation is completed and the taxable year in which each expenditure is paid or incurred.

(3) *Itemization of certain expenditures.* Expenditures determined to be incidental repairs and maintenance (referred to in paragraph (c) of this section) shall not be entered in the section 263(e) record. However, each taxpayer shall maintain records to reflect that such expenditures are properly deductible.

(4) *Convenience rule.* In general, expenditures and information maintained in compliance with subparagraphs (1) and (2) of this paragraph shall be recorded in the section 263(e) record of the specific unit with respect to which such expenditures are incurred. However, when a group of units of the same type are rehabilitated in a single project and the expenditure for each unit in the project will approximate the average expenditure per unit for the project, expenditures for the project may be aggregated without regard to the unit in the project with respect to which each expenditure is connected, and an amount equal to the aggregate expenditures for the project divided by the number of units in the project may be entered in the section 263(e) account of each unit in the project.

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

Example (1). M Corporation, a domestic common carrier by railroad, uses the calendar year as its taxable year. M owns and uses several gondola cars. Gondola car #1 has a basis (defined in paragraph (b)(1)) of $10,000. No expenditures properly chargeable to the section 263(e) record are made on gondola car #1 in 1970 and 1971, except in January 1971. In January 1971, M at a cost of $1,500 replaced the side sheets and ends on gondola car #1. Such amount was properly entered in the section 263(e) record for gondola car #1. Since the expenditures in such record do not exceed an amount equal to 20 percent of the basis of gondola car #1 ($2,000) during any period of 12 calendar months in which January 1971 falls, the expenditures during January 1971 shall be treated as a deductible expense regardless of what the treatment would have been if section 263(e) had not been enacted.

Example (2). Assume the same facts as in example (1). Assume further that for 1970, 1971, and 1972, only the following expenditures in connection with rehabilitation which would, but for section 263(e), be properly chargeable to capital account were deemed included for gondola car #2:

(a) December 1970	$1,500
(b) November 1971	600
(c) December 1971	400
(d) January 1972	1,050

Assume further that gondola car #2 has a basis (as defined in paragraph (b)(1) of this section) equal to $10,000, that M files its tax return by September 15 following each taxable year, and that each rehabilitation was completed in the month in which expenditures in connection with it were incurred. Any expenditures in connection with

each gondola car (#1 or #2) have no effect on the treatment of expenditures in connection with the other gondola car. With respect to gondola car #2, the expenditures of December 1970 are treated as deductible repairs at the time M's income tax return for 1970 is filed because, based on the information available when the income tax return for 1970 is filed, such expenditure would be deductible by reason of application of section 263(e) but for the fact that it cannot be established whether the 20-percent limitation in paragraph (d)(1) of this section will be exceeded. Nevertheless, because such expenditures during the period of 12 calendar months including calendar months December 1970 and November 1971 exceed $2,000, the December 1970 rehabilitation expenditures are not subject to the provisions of section 263(e). Because such rehabilitation expenditures during the period of 12 calendar months including calendar months February 1971 and January 1972 exceed $2,000, rehabilitation expenditures in 1971 are not subject to the provisions of section 263(e). Similarly, the 1972 rehabilitation expenditures are not subject to the provisions of section 263(e).

[F.R. Doc. 70-17582; Filed, Dec. 30, 1970; 8:48 a.m.]

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

[33 CFR Part 209]

PERMITS FOR DISCHARGES OR DEPOSITS INTO NAVIGABLE WATERS

Proposed Policy, Practice, and Procedure

Notice is hereby given that the regulations set forth in tentative form below are proposed by the Secretary of the Army (acting through the Corps of Engineers). The proposed regulation prescribes the policy, practice, and procedure to be followed by all Corps of Engineers installations and activities in connection with applications for permits authorizing discharges or deposits into navigable waters of the United States or into any tributary from which discharged matter shall float or be washed into a navigable water (33 U.S.C. 407).

Prior to the adoption of the proposed regulation consideration will be given to any comments, suggestions, or objections thereto which are submitted in writing to the Office of the Chief of Engineers, Washington, D.C. 20314, Attention: ENGCW-ON, within a period of 45 days from the date of publication of this notice in the FEDERAL REGISTER.

Dated: December 23, 1970.

F. P. KOISCH,
Major General, U.S. Army,
Director of Civil Works.

§ 209.131 **Permits for discharges or deposits into navigable waters.**

(a) *Purpose and scope.* This regulation prescribes the policy, practice, and procedure to be followed by all Corps of Engineers installations and activities in connection with applications for permits authorizing discharges or deposits into navigable waters of the United States or into any tributary from which discharged matter shall float or be washed into a navigable water.

(b) *Law and executive order authorizing permits.* (1) Section 13 of the Act approved March 3, 1899 (33 U.S.C. 407), hereafter referred to as the "Refuse Act," provides in part that it is unlawful "to throw, discharge, or deposit, or cause, suffer, or procure to be thrown, discharged, or deposited either from or out of any ship, barge, or other floating craft of any kind, or from the shore, wharf, manufacturing establishment, or mill of any kind, any refuse matter of any kind or description whatever other than that flowing from streets and sewers and passing therefrom in a liquid state, into any navigable water of the United States, or into any tributary of any navigable water from which the same shall float or be washed into such navigable water * * * *And provided further*, That the Secretary of the Army, whenever in the judgment of the Chief of Engineers anchorage and navigation will not be injured thereby, may permit the deposit of any material above mentioned in navigable waters, within limits to be defined and under conditions to be prescribed by him, provided application is made to him prior to depositing such material; and whenever any permit is so granted the conditions thereof shall be strictly complied with, and any violation thereof shall be unlawful."

(2) Executive Order No. 11574 (dated December 23, 1970) directs the implementation of a permit program under the authority of the Refuse Act and provides for the cooperation of affected Federal agencies in the administration of the program.

(c) *Related legislation.* (1) Section 21 (b) of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1151 et seq.) (see particularly the Water Quality Improvement Act of 1970 (Public Law 91-224, 84 Stat. 108)), reflects the concern of the Congress with maintenance of applicable water quality standards and, subject to certain exceptions, requires any applicant for a Federal license or permit to conduct any activity including, but not limited to, the construction or operation of facilities which may result in a discharge into the navigable waters of the United States to provide with his application an appropriate certification that there is reasonable assurance that such activity will be conducted in a manner which will not violate applicable water quality standards. Hereafter, section 21(b) will be referred to as a section of the Water Quality Improvement Act of 1970.

(2) The concern of the Congress with the need to encourage the productive and enjoyable harmony between man and his environment and the need to promote efforts which will prevent or eliminate damage to the environment was manifested in the enactment of the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4347). Section 102 of that Act directs that:

to the fullest extent possible: (1) The policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this Act, and (2) all agencies of the Federal Government shall—

* * * * *

(B) Identify and develop methods and procedures, in consultation with the Council on Environmental Quality established by title II of this Act, which will insure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking along with economic and technical considerations * * *.

(3) The concern of the Congress with the conservation and improvement of fish and wildlife resources is indicated in the Fish and Wildlife Coordination Act (16 U.S.C. 661-666c), wherein consultation with the Department of the Interior is required regarding activities affecting the course, depth, or modification of a navigable waterway.

(d) *General policy.* (1) Except as otherwise provided in the Refuse Act (33 U.S.C. 407), all discharges or deposits into navigable waters of the United States or tributaries thereof are, in the absence of an appropriate Department of the Army permit, unlawful. The fact that official objection may not have yet been raised with respect to past or continuing discharges or deposits should not be interpreted as authority to discharge or deposit in the absence of an appropriate permit, and will not preclude the institution of legal proceedings in appropriate cases for violation of the provisions of the Refuse Act. Similarly, the mere filing of an application requesting permission to discharge or deposit into navigable waters or tributaries thereof will not preclude legal action in appropriate cases for Refuse Act violations.

(2) The decision as to whether a permit authorizing a discharge or deposit will or will not be issued under the Refuse Act will be based on an evaluation of the impact of the discharge or deposit on (i) anchorage and navigation, (ii) water quality standards, which under the provisions of the Federal Water Pollution Control Act, were established "to protect the public health or welfare, enhance the quality of water and serve the purposes" of that Act, with consideration of "their use and value for public water supplies, propagation of fish and wildlife, recreational purposes, and agricultural, industrial, and other legitimate uses," and (iii) in cases where the Fish and Wildlife Coordination Act is applicable (where the discharge for which a permit is sought impounds, diverts, deepens the channel, or otherwise controls or similarly modified the stream or body of water into which the discharge is made), the impact of the proposed discharge or deposit on fish and wildlife resources which are not directly related to water quality standards.

(3) Although the Refuse Act vests in the Secretary of the Army authority to determine whether or not a permit should or should not issue, it is recognized that responsibility for water quality improvement lies primarily with the States and, at the Federal level, with the

Environmental Protection Agency (EPA). Accordingly, EPA shall advise the Corps with respect to the meaning, content, and application of water quality standards applicable to a proposed discharge or deposit and as to the impact which the proposed discharge or deposit may or is likely to have on applicable water quality standards and related water quality considerations. Specifically, Regional Representatives of EPA will determine and advise District Engineers with respect to the following:

(i) The meaning and content of water quality standards which, under the provisions of the Federal Water Pollution Control Act, were established "to protect the public health or welfare, enhance the quality of water and serve the purposes" of that Act, with consideration of "their use and value for public water supplies, propagation of fish and wildlife, recreational purposes, and agricultural, industrial, and other legitimate uses.";

(ii) The application of water quality standards to the proposed discharge or deposit, including the impact of the proposed discharge or deposit on such water quality standards and related water quality considerations;

(iii) The permit conditions required to comply with water quality standards;

(iv) The permit conditions required to carry out the purposes of the Federal Water Pollution Control Act where no water quality standards are applicable;

(v) The interstate water quality effect of the proposed discharge or deposit.

(4) In any case where a District Engineer of the Corps has received notice that a State or other certifying agency has denied a certification prescribed by section 21(b) of the Federal Water Pollution Control Act or, except as provided in subparagraph (6) of this paragraph, where a Regional Representative has recommended that a permit be denied because its issuance would be inconsistent with his determination or interpretation with respect to applicable water quality standards and related water quality considerations, the District Engineer, within 30 days of receipt of such notice, shall deny the permit and provide notice of such denial to the Regional Representative of EPA.

(5) In the absence of any objection by the Regional Representative to the issuance of a permit for a proposed discharge or deposit, District Engineers may take action denying a permit only if:

(i) Anchorage and navigation will be impaired; or

(ii) Where the discharge for which a permit is sought impounds, diverts, deepens the channel, or otherwise controls or similarly modifies the stream or body of water into which the discharge is made, and after the consultations required by the Fish and Wildlife Coordination Act, the District Engineer determines that the proposed discharge or deposit will have a significant adverse impact on fish or wildlife resources.

(6) In any case where the District Engineer believes that following the advice of the Regional Representative with respect to the issuance or denial of a permit would not be consistent with the purposes of the Refuse Act permit program, he shall, within 10 days of receiving such advice, forward the matter through channels to the Secretary of the Army to provide the Secretary with the opportunity to consult with the Administrator. Such consultation shall take place within 30 days of the date on which the Secretary receives the file from the District Engineer. Following such consultation, the Secretary shall accept the findings, determinations, and conclusions of the Administrator as to water quality standards and related water quality considerations and shall promptly forward the case to the District Engineer with instructions as to its disposition.

(7) No permit will be issued in cases where the applicant, pursuant to 21(b)(1) of the Water Quality Improvement Act of 1970, is required to obtain a State or other appropriate certification that the discharge or deposit would not violate applicable water quality standards and such certification was denied. No permit will be issued for discharges or deposits of harmful quantities of oil, as defined in section 11 of the Federal Water Pollution Control Act since primary permit and enforcement authority for all oil discharges is contained in that Act.

(e) *Authority to issue permits.* The Refuse Act provides that, "the Secretary of the Army, whenever in the judgment of the Chief of Engineers that anchorage and navigation will not be injured thereby, may permit the deposit of any material * * * in navigable waters, within the limits to be defined and under conditions to be prescribed by him * * *." The Chief of Engineers, in the exercise of his judgment under the Act, has made the general determination that anchorage and navigation will not be injured when the discharge or deposit permitted will cause no significant displacement of water or reduction in the navigable capacity of a waterway. Except as otherwise provided in this regulation, the Secretary of the Army has authorized the Chief of Engineers and his authorized representatives to issue permits allowing discharges or deposits into navigable waters or tributaries thereof, if evaluation leads to the conclusion that (1), as determined by the Chief of Engineers, anchorage and navigation will not be injured thereby, and (2) issuance of a permit will not be inconsistent with the policy guidance prescribed in paragraph (d) of this section. Accordingly, within these limitations, District Engineers are authorized, except in cases which are to be referred to higher authority for decision (see paragraphs (d)(6) and (i)(7) of this section), to issue permits or to deny permit applications for discharges or deposits covered by the Refuse Act.

(f) *Relationship to other corps permits.* (1) Operators of facilities constructed in navigable waters under a valid construction permit issued pursuant to section 10 of the Rivers and Harbors Act approved March 3, 1899 (33 U.S.C. 403) must apply for and receive a new permit under the Refuse Act (33 U.S.C. 407) in order to lawfully discharge into or place deposits in navigable waters or tributaries thereof.

(2) Any person wishing to undertake work in navigable waters which may also result in a discharge or deposit into such navigable waters or tributaries thereof must apply for a permit under section 403 for such work and for a permit under section 407 to cover any proposed discharge or deposit. However, if the work proposed to be undertaken in navigable waters is limited to the construction of a minor outfall structure from which the proposed discharge or deposit will flow, District Engineers may, in their discretion and within the guidance provided in ER 1145-2-303, require a single permit application under this regulation (ER 1145-2-321). If a single permit is issued authorizing both work in navigable waters and a discharge or deposit, the permit should cite both sections 403 and 407 as authority for its issuance.

(g) *Information required with an application.* (1) An applicant for a permit involving a discharge or deposit in navigable waters or tributaries thereof must file the required form with the District Engineer. Until the required form is printed and made available to District Offices, applicants should provide a letter requesting that the permit be issued. The letter must bear the address of the applicant and the date, identify the waterway involved and the precise location of the proposed discharge or deposit and contain a statement as to whether the facility from which the proposed discharge or deposit will originate is within the corporate limits of a municipality. The applicant must also furnish information which will fully identify the character of the discharge or deposit and monitoring devices and procedures which will be used. Such information shall include, but need not be limited to, data pertaining to chemical content, water temperature differentials, toxins, sewage, amount and frequency of discharge or deposit and the type and quantity of solids involved, if any. If the discharge or deposit will include solids of any type, applicants must (i) identify the proposed method of instrumentation to determine the effect of the disposition of solids on the waterway, and (ii) either assume responsibility for the periodic removal of such solids by dredging or agree to reimburse the United States for costs associated with such dredging.

(2) An application submitted by a corporation must be signed by the principal executive officer of that corporation or by an official of the rank of corporate vice president or above who reports directly to such principal executive officer and who has been designated by the principal executive officer to make such applications on behalf of the corporation. In the case of a partnership or a sole proprietorship, the application must be signed by a general partner or the proprietor. Each

application must contain a certification by the person signing the application that he is familiar with the information provided and that to the best of his knowledge and belief such information is complete and accurate.

(h) *State certification.* (1) Section 21(b)(1) of the Water Quality Improvement Act of 1970 provides that "Any applicant for a Federal license or permit to conduct any activity including, but not limited to, the construction or operation of facilities, which may result in any discharge into the navigable waters of the United States, shall provide the licensing or permitting agency a certification from the State in which the discharge originates or will originate, or, if appropriate, from the interstate water pollution control agency having jurisdiction over the navigable waters at the point where the discharge originates or will originate, that there is reasonable assurance, as determined by the State or interstate agency that such activity will be conducted in a manner which will not violate applicable water quality standards * * *. No license or permit shall be granted until the certification required by this section has been obtained or has been waived" (as provided in a portion of section 21(b)(1) not quoted here). In cases where certification is required and no express notice of waiver has been received from the certifying agency, District Engineers should, as a general rule, provide the certifying agency with a full year within which to take action before determining that a waiver has occurred. If, however, special circumstances (as identified by either the District Engineer or the Regional Representative) require that action on a permit application under the Refuse Act be taken within a more limited period of time, the District Engineer shall determine a reasonable lesser period of time, advise the certifying agency of the need for action by a particular date, and that if certification is not received by the date established that it will be considered that the requirement for certification has been waived. Sections 21 (b)(7) and (b)(8) of the Act identify circumstances in which permits of limited duration may issue without the certification required by section 21(b)(1). See paragraph (n) of this section.

(2) In cases involving discharges or deposits from facilities the construction of which was not lawfully commenced prior to April 3, 1970, certification pursuant to 21(b)(1) is required. District Engineers may accept, but not fully process, any permit application until the applicant has provided the required certification. When persons who will eventually require a Department of the Army permit seek State or other certification they shall (i) provide the appropriate certifying agency with the information on the discharge or deposit required by paragraph (g)(1) of this section, and (ii) file a copy of the certification application with the District Engineer. These steps will facilitate the processing of any formal application which may later be filed with the District Engineer and will enable the District Engineer to determine if the certification required is being waived by inaction on the part of the certifying authority.

(3) In cases involving a discharge or deposit from a facility, the actual construction of which was lawfully commenced prior to April 3, 1970, it will be the policy of the Corps of Engineers to accept but not to fully process any permit application until the applicant or the State has provided a letter from the State describing the impact of the proposed discharge or deposit and indicating the view of the State on the desirability of granting a permit. If such a letter is not provided within 1 year or within such lesser reasonable period of time as the District Engineer may have determined this requirement shall be waived.

(i) *Processing of permit applications.* (1) When an application for a permit is received, care should be taken to assure that the applicant has provided all of the information required by this regulation. Copies of applications received and all other information received relating thereto will be promptly forwarded by the District Engineer to the Regional Representative of EPA.

(2) If all of the required information has been provided but the applicant has failed to provide, as appropriate, the required certification or other letter discussed in paragraph (h) of the section, the applicant should be advised that no action will be taken on his application until the required certification or letter is provided or until a year or such lesser reasonable period of time as the District Engineer may have determined shall have expired and that his application will be processed only to the extent of sending a copy of the application to the Regional Representative of EPA.

(3) When all of the required information has been provided and the applicant has also provided, as appropriate, the required certification or letter discussed in paragraph (h) of this section, together with assurances that the character of the discharge or deposit was fully described to the State agency prior to the issuance of the certification or letter, the applicant shall be advised that his application is in order and that it will be processed as expeditiously as possible.

(4) When the application is found to be in order the District Engineer shall promptly forward a complete copy of the application or such additional information as has not already been furnished to the Regional Representative of EPA. The Regional Representative of EPA will be asked to review the application and to (i) advise the District Engineer within 30 days whether the proposed discharge or deposit may affect the quality of waters of another State (as required by section 21(b)(2) of the Water Quality Improvement Act of 1970), and (ii) provide the other information identified in paragraph (d)(3) of this section within 45 days. If, however, additional time beyond said 45 days (or any extension thereof) is required to respond, the Regional Representative shall notify the District Engineer and shall advise him as to the additional period of time which will be required to provide such information. In cases where a Regional Representative does not provide such information and advice to a District Engineer within the time period specified herein (including any extensions of time required by the Regional Representative) the advice furnished by a State or other certifying authority shall be considered by the District Engineer to be the advice of the Regional Representative. In the event that the Regional Representative determines that the proposed discharge or deposit may affect the quality of the waters of any other State and so notifies the District Engineer, the matter should be reported to the Chief of Engineers, Attention: ENGGC–K. In such cases, special procedures are provided for in section 21(b)(2) of the Water Quality Improvement Act of 1970.

(5) At approximately the same time a completed copy of the permit application is furnished to the Regional Representative of EPA, a public notice, as described in paragraph (j) of this section, will be issued. Notice will also be sent to all parties known or believed to be interested in the application, including the appropriate Regional Director of the Department of the Interior, the National Oceanic and Atmospheric Administration of the Department of Commerce, navigation interests, State, county, or municipal authorities, adjacent property owners, the heads of State agencies having responsibility for water quality improvement and wildlife resources, and conservation organizations. Copies of the notice will be posted in post offices and other public places in the vicinity of the site of the proposed discharge or deposit. A copy of every notice issued will be sent to the Chief of Engineers, Attention: ENGCW–ON.

(6) If notice of the permit application evokes substantial public interest a public hearing may be held. Policy with respect to the holding and conduct of public hearings is discussed in paragraph (k) of this section.

(7) In the absence of objection by the Regional Representative of EPA or, in the cases involving the Fish and Wildlife Coordination Act, by the Regional Director of the Department of the Interior or the National Oceanic and Atmospheric Administration of the Department of Commerce, District Engineers may, consistent with the policy guidance contained in paragraph (d) of this section and, after considering all of the information developed with respect to the permit application, including written or oral information presented in response to a public notice or at a public hearing, issue a permit, with or without conditions. In the event that the District Engineer determines that issuance of the permit with or without conditions, is appropriate but there is objection to the issuance of the proposed permit by the Regional Representative of EPA or, in cases involving the Fish and Wildlife Coordination Act, by the Regional Director of the Department of the Interior or the National Oceanic and Atmospheric Administration of the Department of Commerce, the matter must be forwarded to higher authority for decision. Every effort should be made to resolve differences

at the District Engineer level before referring the matter to higher authority. In the event that differences cannot be resolved, District and Division Engineers will forward the application, copies of the public notice and addressees to whom sent, the comments of State and Federal agencies, a copy of the transcript of any public hearing held, a narrative report and recommendations to the Chief of Engineers, Attention: ENGCW-ON. In any case referred to the Secretary of the Army pursuant to paragraph (d)(6) of this section, consultation with the Administrator shall take place within 30 days of the date on which the Secretary receives the file from the District Engineer. Following such consultation, the Secretary shall accept the findings, determinations, and conclusions of the Administrator as to water quality standards and related water quality considerations and shall promptly forward the case to the District Engineer with instructions as to its disposition.

(j) *Public notice.* (1) As required by paragraph (i)(5) of this section a public notice will be issued after a permit application is determined to be in proper order. In cases where the permit applied for pertains to a discharge or deposit and does not involve construction or other work in navigable waters, the notice shall (i) state the name and address of the applicant, (ii) identify the waterway involved and provide a sketch showing the location of the proposed discharge or deposit, (iii) fully identify the character of the discharge, (iv) include any other information which may assist interested parties in evaluating the likely impact of the proposed discharge or deposit, if any, (v) provide 30 days within which interested parties may express their views concerning the permit application. All public notices involving a proposed discharge or deposit shall contain the following statement:

The decision as to whether a permit authorizing a discharge or deposit will or will not be issued under the Refuse Act will be based on an evaluation of the impact of the discharge or deposit on (1) anchorage and navigation, (2) water quality standards and related water quality considerations as determined by State authorities and the Environmental Protection Agency, and (3) in cases where the Fish and Wildlife Coordination Act is applicable (where the discharge for which a permit is sought impounds, diverts, deepens the channel, or otherwise controls or similarly modifies the stream or body of water into which the discharge is made), the impact of the proposed discharge or deposit on fish and wildlife resources.

(2) Comments received from interested parties within the period provided for in the public notice will be retained and will be considered in determining whether the permit applied for should be issued.

(3) When a response to a public notice has been received from a Member of Congress, either in behalf of a constituent or himself, the Division or District Engineer will inform the Member of Congress of the final action taken on the application.

(4) When objections to the issuance of a permit are received in response to a public notice, the Division or District Engineer will furnish the applicant with copies of the objections and afford him the opportunity to rebut or resolve the objections.

(k) *Public hearings.* (1) It is the policy of the Corps of Engineers to conduct the civil works program in an atmosphere of public understanding, trust, and mutual cooperation and in a manner responsive to the public interest. To this end, a public hearing may be helpful and will be held in connection with an application for a permit involving a discharge or deposit in navigable waters or tributaries thereof whenever, in the opinion of the District Engineer such a hearing is advisable. In considering whether or not a public hearing is advisable, consideration will be given to the degree of interest by the public in the permit application, requests by responsible Federal, State, or local authorities, including Members of the Congress, that a hearing be held, and the likelihood that information will be presented at the hearing that will be of assistance in determining whether the permit applied for should be issued. In this connection, a public hearing will not generally be held if there has been a prior hearing (local, State, or Federal) addressing the proposed discharge unless it clearly appears likely that the holding of a new hearing may result in the presentation of significant new information concerning the impact of the proposed discharge or deposit. The need for a hearing will be reported to the Division Engineer and his concurrence obtained. In certain circumstances a public hearing may be mandatory (see subparagraph (4) of this paragraph).

(2) The success of a public hearing depends upon the degree to which all interests are aware of the hearing and understand the issues involved. The following steps will be taken for each hearing:

(i) A public notice will be prepared and issued in clear, concise, objective style, stating the purpose of the hearing; details of time and place; description of the application involved; and identification of the proposed discharge or deposit. Care will be exercised to avoid creating any impression that the Corps is an advocate or adversary in the matter.

(ii) The Public Notice will be issued sufficiently in advance of the hearing, generally not less than 30 days, to allow time for interested persons to prepare for the hearing. It will be distributed to addressees on compiled lists and will include all known parties directly affected, all governmental entities concerned, all general public news media within the geographical area, appropriate specialized news media for reaching interested groups and organizations, and directly to the principal officers of such groups and organizations, including national offices of nationwide organizations.

(iii) As appropriate, supplementary informational matter, fact sheets, or more detailed news releases, will be distributed to the general or specialized news media, or other groups and interests involved.

(iv) Notification will be given to interested members of the Congress and Governors of the States involved.

(3) The hearing will be conducted in a manner that permits open and full advocacy on all sides of any issues involved. A transcript of the hearing, together with copies of relevant documents, will become a part of the permit application assembly.

(4) In addition to the hearings which may be required by the policy specified in the preceding paragraphs, hearings are required under sections 21(b)(2) and 21(b)(4) of the Water Quality Improvement Act of 1970 when (i) a State, other than the State of origin, objects to the issuance of a permit and requests a hearing on its objections or (ii) the Secretary of the Army proposes to suspend a Department of the Army permit upon notification by the certifying authority that applicable water quality standards will be violated. When a hearing is required pursuant to the Water Quality Improvement Act of 1970 the matter should be reported to the Chief of Engineers, Attention: ENGGC-K. The Chief of Engineers will provide additional guidance with respect to holding of such hearings.

(5) In any case, when a District Engineer intends to schedule a public hearing he shall notify the Regional Representative of EPA not less than 10 days in advance of the deadline for filing of comments by the Regional Representative upon the permit application so that the Regional Representative will be able to defer such comments until after the public hearing has been held.

(l) *Environmental impact statement.* (1) Section 102(2)(c) of the National Environmental Policy Act of 1969 requires all Federal agencies, with respect to major Federal actions significantly affecting the quality of the human environment, to submit to the Council on Environmental Quality a detailed statement on

(i) The environmental impact of the proposed action,

(ii) Any adverse environmental effects which cannot be avoided should the proposal be implemented,

(iii) Alternatives to the proposed action,

(iv) The relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and

(v) Any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

(2) Section 102(2)(c) statements will not be required in permit cases where it is likely that the proposed discharge will not have any significant environmental impact. Moreover, the Council on Environmental Quality has advised that such statements will not be required where the only impact of proposed discharge or deposit will be on water quality and related considerations. However, such statements may be required in connection with proposed discharges or deposits which may have a substantial environmental impact unrelated to water

quality. In cases in which a section 102 (2)(c) statement may be required, the report of the District Engineer accompanying any case referred to higher authority (see paragraphs (d)(3) and (i)(7) of this section) will contain a separate section addressing the environmental impact of the proposed discharge or deposit, if any, and, if issuance of a permit is recommended, a draft section 102(2)(c) statement should be attached.

(m) *Publicity.* District Engineers will, in consultation with Regional Representatives, establish and maintain a program to assure that potential applicants for permits are informed of the requirements of this regulation and of the steps required to obtain permits for discharges into navigable waters. Whenever the District Engineer becomes aware of plans being developed by either private or public entities who will require permits in order to implement the plans a letter will be sent to the potential permittee advising him of statutory requirements and the need to apply for a permit under this regulation.

(n) *Duration of permits issued.* (1) In cases where appropriate certification has been received indicating that there is reasonable assurance that the proposed discharge or deposit will not violate applicable water quality standards and issuance is otherwise proper, no permit may be issued which authorizes a discharge or deposit for more than 5 years without providing for revalidation of such permit.

(2) In cases involving a facility, the construction of which was lawfully undertaken prior to April 3, 1970, and it appears after evaluation that issuance of a permit would be appropriate although certification has not been provided, a permit may be issued provided (i) that the permit will expire on April 2, 1973, and (ii) that it is conditioned so as to require annual demonstration by the permittee that the discharge or deposit is in compliance with State water quality implementation schedules.

(o) *Permit conditions.* (1) Until a standard permit form is developed, every permit shall, as a minimum:

(i) Require compliance with applicable water quality standards, including implementing schedules adopted in connection with such standards;

(ii) Include provisions incorporating into the permit changes in water quality standards subsequent to the date of the permit, and requiring compliance with such changed standards;

(iii) Provide for possible suspension or revocation in the event that the permittee breaches any condition of the permit;

(iv) Provide for possible suspension, modification or revocation if subsequent to the issuance of a permit it is discovered that the discharge or deposit contains hazardous materials which may pose a danger to health or safety.

(2) Permits shall also be subject to conditions as determined by EPA to be necessary for purposes of insuring compliance with water quality standards or the purposes of the Federal Water Pollution Control Act. Such conditions may include but are not necessarily limited to:

(i) Requirements for periodic demonstrations of compliance with water quality criteria, established implementation schedules or prescribed levels of treatment;

(ii) Site and sampling accessibility,

(iii) Requirements for periodic reports as to the nature and quantity of discharges or deposits.

[F.R. Doc. 70-17584; Filed, Dec. 30, 1970; 8:48 a.m.]

DEPARTMENT OF THE INTERIOR

Bureau of Mines

[30 CFR Parts 18, 75]

ILLUMINATION IN UNDERGROUND COAL MINES AND ELECTRIC FACE EQUIPMENT

Notice of Proposed Rule Making

Notice is hereby given that pursuant to the authority vested in the Secretary under section 101 of the Federal Coal Mine Health and Safety Act of 1969 (Public Law 91-173), and in accordance with section 317(e) of the Act which requires the Secretary to promulgate proposed standards for the illumination of working places in underground coal mines, it is proposed that Part 75, Subchapter O of Chapter I, Title 30, Code of Federal Regulations be amended by adding §§ 75.1719 through 75.1719-6, as set forth below, which prescribe the illumination to be provided in the working places of underground coal mines. It is further proposed that Part 18, Subchapter D of Chapter I, Title 30, Code of Federal Regulations (Bureau of Mines Schedule 2G) be amended by adding §§ 18.23-1, 18.46-1, and 18.46-2, as set forth below, which prescribes the reflection efficiency of the surfaces on approved permissible electric face equipment and restrict the visual impedance and pulsation frequencies of lighting devices installed on such equipment.

Interested persons may submit written comments, suggestions, or objections to the Director, Bureau of Mines, Washington, D.C. 20240, no later than 45 days following publication of this notice in the FEDERAL REGISTER.

FRED J. RUSSELL,
Acting Secretary of the Interior.

DECEMBER 28, 1970.

Part 18, Subchapter D of Chapter I, Title 30, Code of Federal Regulations (Bureau of Mines Schedule 2G) would be amended by adding the following:

§ 18.23-1 Reflection efficiency of permissible face equipment.

The clean surfaces of all permissible electric driven face equipment shall have a reflection efficiency of not less than 0.55.

§ 18.46-1 Visual impedance; cut-off angles of lighting devices; requirements.

Lighting devices installed on electric driven face equipment which are used to illuminate working places shall have maximum cut-off angles of 85° from the nadir. In addition, where miners are required to move forward of any such lighting device, such devices shall be equipped with louvres or dipping devices which provide a cut-off of 5° down from the horizontal.

§ 18.46-2 Pulsation of light sources.

Lighting devices installed on electric driven face equipment which are used to illuminate working places shall not employ light sources which pulsate at frequencies between 5 and 100 Hz.

Part 75, Subchapter O of Chapter I, Title 30, Code of Federal Regulations would be amended by adding the following:

§ 75.1719 Illumination in working places.

(STATUTORY PROVISIONS)

On or before December 30, 1970, the Secretary shall propose the standards under which all working places in a mine shall be illuminated by permissible lighting within 18 months after the promulgation of such standards, while persons are working in such places.

§ 75.1719-1 Illumination standard.

(a) On and after September 30, 1972, each operator of an underground coal mine shall illuminate each working place in the mine with permissible lighting while miners are working in such places.

(b) The level of illumination in all working places shall be no less than 5 ft.-c. (foot-candles) and no more than 110 ft.-c. (foot-candles) when measured on the work surfaces (face, roof, rib, floor, and equipment surfaces) of the working place.

(c) Except as provided in paragraphs (d) and (e) of this section, the area in each working place required to be illuminated shall be the area within which equipment is employed during the cutting, mining, and loading of coal. The area to be illuminated shall be determined by measuring the distance in the room, entry, or crosscut between the face and the outby end of the machine furthest from the face at the time the level of illumination is measured.

(d) The area in each longwall working place required to be illuminated shall include the area from the face to the gob-side of the longwall roof support system, and the work areas occupied by the headpiece and tailpiece operator regardless of their location.

(e) The area in each working place where roof bolters are employed which is required to be illuminated shall be:

(1) An area on the roof which is centered about the location where the hole is to be drilled and which has a diameter equal to the height of the entry, room, or crosscut in which the roof bolter is working.

(2) An area in the working place which is occupied by the roof bolting equipment and the work area of the roof bolter when performing his normal duties.

§ 75.1719–2 Incident light measurement; test locations; time of testing.

Tests to determine the illumination level in each working place shall be taken at any work surface while coal is being cut, mined or loaded, or while roof-bolting operations are in progress.

§ 75.1719–3 Light intensity on work surfaces; distribution of light.

Illumination, when measured at a work surface, shall be of a uniform or gradually varying intensity. The intensity from the lighting device shall not vary more than 50 percent for each 10° of arc on the work surface, and the radius of the arc shall be the distance between the lighting device and the work surface.

§ 75.1719–4 Permissible lighting devices.

(a) Electric lamps approved as permissible under Part 26 of this chapter (Bureau of Mines Schedule 29A), Class 2 electric lamps approved under Part 20 of this chapter (Bureau of Mines Schedule 10C), and headlights installed on electric-driven mine equipment approved under Part 18 of this chapter (Bureau of Mines Schedule 2G) are approved lighting devices for the purposes of § 75.1719–1.

(b) Lighting systems or assemblies constructed by the operator of an underground coal mine for use in the working places of such mine which are constructed solely from permissible lighting devices approved under Part 18, Part 20, or Part 26 of this chapter (Bureau of Mines Schedules 2G, 10C, or 29A) are approved lighting devices for the purposes of § 75.1719–1 where such systems or assemblies have been determined to be permissible by the Health and Safety District Manager for the District in which the mine is located and approved by the District Manager for use in such mine.

§ 75.1719–5 Light measurement devices; incident light meters; intrinsic safety.

(a) Only incident light meters approved as intrinsically safe by the Bureau of Mines under Part 18 of this chapter (Bureau of Mines Schedule 2G) shall be employed in working places to measure incident light.

(b) Incident light meters employed in measuring incident light shall be cosine corrected for peak incident illumination at angles greater than 45° from normal.

(c) All incident light meters shall have a photopic correction filter over the sensor for correcting the instrument's sensitivity to that of a photopic response. The standard CIE Relative Photopic Efficiency $V\lambda$ or the y Tristimulus Coefficients shall be used for response calibration.

§ 75.1719–6 Availability of illumination studies.

The "Guidelines for Mine Lighting" prepared by the National Bureau of Standards under Bureau of Mines Agreement No. CA–M–70–001, and used as a basis for the illumination standards set forth above, will be available, upon written request from:

Deputy Director, Health and Safety, Bureau of Mines, Department of the Interior, Washington, D.C. 20240.

[F.R. Doc. 70–17578; Filed, Dec. 30, 1970; 8:47 a.m.]

DEPARTMENT OF AGRICULTURE

Consumer and Marketing Service

[7 CFR Parts 916, 917]

[Dockets Nos. AO–303–A2, AO–90–A5]

NECTARINES, AND FRESH PEARS, PLUMS, AND PEACHES GROWN IN CALIFORNIA

Supplemental Notice of Hearing With Respect to Proposed Further Amendment of Marketing Agreements and Orders

Notice was issued on December 18, 1970 and published in the FEDERAL REGISTER on December 24, 1970 (35 F.R. 19579) of a public hearing with respect to proposed further amendment of the marketing agreements and orders (7 CFR Parts 916 and 917), regulating respectively, the handling of nectarines grown in California and the handling of fresh pears, plums, and peaches grown in California.

Notice is hereby given that at this hearing evidence will also be received with respect to the proposal set forth below, and any appropriate modification thereof, which was proposed by the Plum Commodity Committee, established pursuant to the marketing agreement, as amended, and Order No. 917, as amended. Neither the proposal set forth below nor the proposals contained in the original notice of hearing have been approved by the Secretary of Agriculture. This proposal is to amend § 917.39 *Market research and development* to provide that marketing research and development projects with respect to plums may provide for any form of marketing promotion for plums including paid advertising. As proposed to be amended said § 917.39 would read as follows:

§ 917.39 Market research and development.

The committees, with the approval of the Secretary, may establish or provide for the establishment of marketing research and development projects designed to assist, improve, or promote the marketing, distribution, and consumption of fruit. Such projects, with respect to plums, may provide for any form of marketing promotion including paid advertising. The expenses of such projects shall be paid from funds collected pursuant to § 917.37.

Copies of this notice may be obtained from the Office of the Hearing Clerk, U.S. Department of Agriculture, Room 112, Administration Building, Washington, D.C. 20250, or the Sacramento Marketing Field Office, Fruit and Vegetable Division, Consumer and Marketing Service, 2800 Cottage Way, Room E–2713, Sacramento, CA.

Dated: December 28, 1970.

JOHN C. BLUM,
Deputy Administrator, Regulatory Programs.

[F.R. Doc. 70–17591; Filed, Dec. 30, 1970; 8:49 a.m.]

DEPARTMENT OF COMMERCE

Patent Office

[37 CFR Part 1]

EXTENSIONS OF TIME TO FILE APPEAL BRIEFS

Notice of Proposed Rule Making

Notice is hereby given that pursuant to the authority contained in section 6 of the Act of July 19, 1952 (66 Stat. 793, 35 U.S.C. 6), the Patent Office proposes to revise § 1.192 of Title 37, Code of Federal Regulations.

Interested persons are invited to submit their objections, recommendations, suggestions and other comments relating to the proposed changes to the Commissioner of Patents, Washington, D.C. 20231 on or before February 19, 1971, on which date a hearing will be held at 2:30 p.m., e.s.t., in Room 8C06 of Building 2, 2011 Jefferson Davis Highway, Arlington, Va. All persons wishing to be heard orally at the hearing are requested to notify the Commissioner of Patents of their intended appearance. Any written comments or suggestions may be inspected by any person upon written request a reasonable time after the closing date for submitting comments.

The Patent Office is planning to change the time at which jurisdiction of an appealed application passes from the Examining Corps to the Board of Appeals and the manner in which appeals are processed. After this change is effected, records of appealed cases would no longer be kept by the Board of Appeals until after a reply brief is filed or the time for filing has expired. Therefore, the authority to grant extensions of time for filing appeal briefs should no longer be restricted to the Board of Appeals and the proposed revision removes this limitation.

Revised § 1.192 will read as follows:

§ 1.192 Appellant's brief.

(a) The appellant shall, within 2 months from the date of the appeal, or within the time allowed for response to the action appealed from, if such time is later, file a brief, accompanied by the

requisite fee, of the authorities and arguments on which he will rely to maintain his appeal, including a concise explanation of the invention which should refer to the drawing by reference characters, and a copy of the claims involved, at the same time indicating if he desires an oral hearing. Two extra copies of the brief are required if an oral hearing is requested. Upon a showing of sufficient cause, the time for filing the brief may be extended to a date not later than 2 months after the original expiration date. Any longer or further extensions must be sought from the Commissioner. All requests for extensions must be filed prior to the expiration of the period sought to be extended.

(b) On failure to file the brief, accompanied by the requisite fee, within the time allowed, the appeal shall stand dismissed.

Approved: December 24, 1970.

WILLIAM E. SCHUYLER, Jr.,
Commissioner of Patents.

RICHARD O. SIMPSON,
Acting Assistant Secretary for Science and Technology.

[F.R. Doc. 70-17567; Filed, Dec. 30, 1970; 8:46 a.m.]

[37 CFR Part 1]

DISCOVERY DURING INTERFERENCE PROCEEDINGS

Notice of Proposed Rule Making

Notice is hereby given that, pursuant to the authority contained in section 6 of the Act of July 19, 1952 (66 Stat. 793; 35 U.S.C. 6), the Patent Office proposes to amend Title 37 of the Code of Federal Regulations by revising §§ 1.245 and 1.251 and by adding a new § 1.287.

All persons are invited to present their views, objections, recommendations, or suggestions in connection with the proposed changes to the Commissioner of Patents, Washington, D.C. 20231 on or before February 19, 1971, on which date a hearing will be held at 9 a.m., e.s.t., in Room 8C06, Building 2, 2011 Jefferson Davis Highway, Arlington, VA. All persons wishing to be heard orally at the hearing are requested to notify the Commissioner of Patents of their intended appearance. Any written comments or suggestions may be inspected by any person upon written request a reasonable time after the closing date for submitting comments.

The proposed amendments provide for discovery in interference proceedings during a period set for preparation for testimony. Under the amendments, the Board of Patent Interferences will maintain control over the scope and extent of discovery and the time alloted to discovery.

The amendments are intended to incorporate into interference proceedings the general principles embodied in the discovery provisions of the Federal Rules of Civil Procedure. However, they are designed, at the same time, to retain the advantages of an administrative proceeding, and also to take into account the basic ways in which an interference proceeding differs from conventional litigation.

The proposed amendments involve the following features:

1. The designation of a specific period for discovery and other preparation for the taking of testimony;

2. A provision requiring that, by a specified time in the period for preparation for testimony, a party who intends to take testimony serve on the other party or parties copies of documents and a list of things upon which he intends to rely, and a list of persons whose testimony he intends to take; and also authorizing the Board of Patent Interferences, upon motion by a party, to order additional discovery where the interest of justice so requires; and

3. Provision for sanctions by the Board of Patent Interferences where there is noncompliance with a requirement or an order by the Board for discovery;

The text of amended §§ 1.245 and 1.251 would read as follows:

§ 1.245 Extensions of time.

Extensions of time in any case not otherwise provided for may be had by stipulation of the parties, subject to approval, or on motion duly brought, sufficient cause being shown for such extension. A motion not timely made may be considered upon a showing of sufficient cause as to why such motion was not timely presented.

§ 1.251 Assignment of times for discovery and taking testimony.

(a) A period for preparation for testimony will be set in which all parties should complete discovery and other preparatory activities.

(b) Times will be assigned in which the junior party shall complete his testimony in chief, and in which the other party shall complete the testimony on his side, and a further time in which the junior party may take rebutting testimony, but he shall take no other testimony. If there be more than two parties to the interference, the times for taking testimony will be so arranged that each shall have an opportunity to prove his case against prior parties and to rebut their evidence, and also to meet the evidence of junior parties.

(c) Times for preparation of testimony, for compliance with § 1.287(a) and for taking of testimony will ordinarily be assigned in notices sent to the parties after motions under § 1.231 have been disposed of or, if no such motions have been filed, after the close of the motion period (§ 1.231).

(d) Testimony shall be taken during the times assigned in accordance with §§ 1.271 to 1.286.

(e) The date for final hearing will ordinarily be set in separate notices.

The text of new § 1.287 would read as follows:

§ 1.287 Discovery.

(a) Subject to paragraph (b) of this section, each party must, by the date set, not earlier than 15 days after the beginning of the period for preparation for testimony, serve on each opposing party who is entitled to take testimony, or who is senior to him, a copy of each document in his possession, custody, or control and upon which he intends to rely, a list of and a proffer of reasonable access to things in his possession, custody, or control and upon which he intends to rely, and a list giving the names and addresses of all persons whom he intends to call as witnesses and indicating the relationship of each such person to the invention in issue.

(b) Compliance with paragraph (a) of this section need not be made by a party who relies solely upon the filing date of a patent application in this or any other country, or by a junior party who is not allowed to take testimony in chief because of the dates alleged in his preliminary statement or his failure to file or serve a preliminary statement.

(c) Upon motion brought by a party during the period for preparation for testimony, and upon a showing that the interest of justice so requires, the Board of Patent Interferences may order additional discovery within the scope of the discovery rules of the Federal Rules of Civil Procedure, specifying the terms and conditions of such additional discovery. An order by the Board granting or denying a motion under this paragraph shall not be subject to review prior to a decision awarding priority.

(d) A party will not be permitted to rely on any document or thing in his possession, custody or control, or on any witness, not listed and served by that party as required by paragraph (a) of this section, except upon timely motion accompanied by the proposed additional documents or lists together with a showing of sufficient cause as to why they were not served by the date set pursuant to paragraph (a) of this section. Any failure to comply with an order under the provisions of paragraph (c) of this section may be considered by the Board of Patent Interferences as basis for applying appropriate restrictions against the party failing to comply, for holding certain facts to have been established, and in an appropriate case for awarding priority against him, or for taking such other action as may be deemed appropriate.

(e) Except by agreement of the parties, discovery will not be permitted prior to the period set for preparation for testimony.

WILLIAM E. SCHUYLER, Jr.,
Commissioner of Patents.

Approved: December 24, 1970.

RICHARD O. SIMPSON,
Acting Assistant Secretary for Science and Technology.

[F.R. Doc. 70-17566; Filed, Dec. 30, 1970; 8:46 a.m.]

[37 CFR Parts 1, 3]

CONFLICTING CLAIMS

Notice of Proposed Rule Making

Notice is hereby given that pursuant to the authority contained in section 6 of the Act of July 19, 1952 (66 Stat. 793,

35 U.S.C. 6), the Patent Office proposes to amend §§ 1.78 and 1.321 and add a new § 3.53.

Interested persons are invited to submit their objections, recommendations, suggestions, and other comments relating to the proposed changes to the Commissioner of Patents, Washington, D.C. 20231 on or before February 19, 1971, on which date a hearing will be held at 1 p.m., e.s.t., Room 8C06 of Building 2, 2011 Jefferson Davis Highway, Arlington, Va. All persons wishing to be heard orally at the hearing are requested to notify the Commissioner of Patents of their intended appearance. Any written comments or suggestions may be inspected by any person upon written request a reasonable time after the closing date for submitting comments.

The proposed rule changes are intended to provide: (1) a basis for requiring a determination of priority without an interference by the common owner of a plurality of applications, or patents and applications, containing conflicting claims, and (2) a basis for requiring inclusion of a common ownership clause in all terminal disclaimers filed to obviate a double patenting rejection.

The determination of priority under proposed § 1.78(c) between commonly owned applications by the common owner without interference proceedings will generally result in savings to both the owner and the Patent Office.

The proposed revision of § 1.321 and proposed new § 3.53 brings into the rules a current procedure not based on rule. This provision would prevent harassment of an alleged infringer by multiple parties due to subsequent different ownership of multiple patents granted as the result of filing a terminal disclaimer to overcome a double patenting rejection.

The language of proposed § 3.53 is substantially the form which met with the approval of the Court of Customs and Patent Appeals in footnote 5 of In re Griswold, 365 F. 2d 834; 150 USPQ 805; 53 CCPA 1565.

§ 1.78 [Amended]

It is proposed that § 1.78 be amended by deleting from paragraph (b) the expression "or owned by the same party," and by adding a new paragraph (c) which reads:

(c) Where two or more applications, or applications and a patent naming different inventors and owned by the same party, contain conflicting claims, the assignee may be called upon to state which named inventor is the prior inventor. If no statement of prior inventorship is filed, the inventor named in the application having the earliest filing date, or lowest serial number if filed the same day, will be presumed to be the prior inventor.

It is further proposed that § 1.321 be revised to read as follows:

§ 1.321 Statutory disclaimer.

A disclaimer under 35 U.S.C. 253 must identify the patent and the claim or claims which are disclaimed, and be signed by the person making the disclaimer, who shall state therein the extent of his interest in the patent. A disclaimer not a disclaimer of a complete claim or clams may be refused recordation. A notice of the disclaimer is published in the Official Gazette and attached to the printed copies of the specification. In like manner any patentee or applicant may disclaim or dedicate to the public the entire term, or any terminal part of the term, of the patent, granted or to be granted. A terminal disclaimer, when filed in an application to obviate a double patenting rejection, must include a provision that any patent granted on that application shall expire immediately if it ceases to be commonly owned with the application or patent which formed the basis for the rejection. See § 1.21 for fee.

Finally, it is proposed that a new § 3.53 be added to read as follows:

§ 3.53 Terminal disclaimers in applications.

To the Commissioner of Patents:

Your petitioner, ----------, residing at ---------- in the county of ---------- and State of ---------- represents that he is (here state exact interest of the disclaimant and, if he is an assignee, set out the liber and page or reel and frame where the assignment is recorded) of application No. ------, filed on the ------ day of ----------, 19-- for ----------. Your petitioner, ----------, hereby disclaims the terminal part of any patent granted on the above identified application, which would extend beyond the expiration date of Patent No. ---------- and hereby agrees that any patent so granted on the above identified application shall be enforceable only for and during such period that the legal title to said patent shall be the same as the legal title to U.S. Patent No. ------, this agreement to run with any patent granted on the above identified application and to be binding upon the grantee, its successors or assigns.

WILLIAM E. SCHUYLER, JR.,
Commissioner of Patents.

Approved: December 24, 1970.

RICHARD O. SIMPSON,
Acting Assistant Secretary for Science and Technology.

[F.R. Doc. 70-17565; Filed, Dec. 30, 1970; 8:46 a.m.]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Part 71]

[Airspace Docket No. 70-CE-107]

CONTROL ZONE AND TRANSITION AREA

Proposed Alteration

The Federal Aviation Administration is considering amending Part 71 of the Federal Aviation Regulations so as to alter the control zone and transition area at Waterloo, Iowa.

Interested persons may participate in the proposed rule making by submitting such written data, views, or arguments as they may desire. Communications should be submitted in triplicate to the Director, Central Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, Federal Building, 601 East 12th Street, Kansas City, MO 64106. All communications received within 45 days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendments. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Regional Air Traffic Division Chief. Any data, views, or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposals contained in this notice may be changed in the light of comments received.

A public docket will be available for examination by interested persons in the Office of the Regional Counsel, Federal Aviation Administration, Federal Building, 601 East 12th Street, Kansas City, MO 64106.

Since designation of controlled airspace at Waterloo, Iowa, the instrument approach procedures for Waterloo, Iowa, Municipal Airport have been amended. Accordingly, it is necessary to alter the Waterloo control zone and transition area to adequately protect aircraft executing the altered approach procedures.

In consideration of the foregoing, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations as hereinafter set forth:

(1) In § 71.171 (35 F.R. 2054), the following control zone is amended to read:

WATERLOO, IOWA

Within a 5-mile radius of Waterloo Municipal Airport (latitude 42°33'20" N., longitude 92°24'00" W.); within 2½ miles each side of the Waterloo, Iowa, VORTAC 078° radial extending from the 5-mile-radius zone to 6 miles east of the VORTAC; and within 2½ miles each side of the Waterloo, Iowa VORTAC 200° radial extending from the 5-mile-radius zone to 6½ miles south of the VORTAC.

(2) In § 71.181 (35 F.R. 2134), the following transition area is amended to read:

WATERLOO, IOWA

That airspace extending upward from 700 feet above the surface within a 9-mile radius of the Waterloo Municipal Airport (latitude 42°33'20" N., longitude 92°24'00" W.); within 3 miles each side of the Waterloo ILS localizer northwest course extending from the 9-mile radius area to 8 miles northwest of the OM; and within 5 miles each side of the Waterloo, Iowa, VORTAC 120° radial extending from the 9-mile radius area to 16 miles southeast of the VORTAC; that airspace extending upward from 1,200 feet above the surface within the arc of a 29-mile-radius circle centered on the Waterloo VORTAC, extending clockwise from a line 8 miles north of and parallel to the Waterloo VORTAC 096° radial to a line 8 miles east of and parallel to the Waterloo VORTAC 353° radial; within the arc of an 18-mile-radius circle centered on the Waterloo VORTAC extending clockwise from a line 8 miles east

of and parallel to the Waterloo VORTAC 353° radial to a line 8 miles north of and parallel to the Waterloo VORTAC 096° radial; and within 9½ miles north and 4½ miles south of the Waterloo VORTAC 078° radial extending from the VORTAC to 18½ miles east of the VORTAC; and that airspace extending upward from 3,500 feet MSL bounded on the southeast by V-161W, on the west by V-13E, on the north by V-100 and on the east by the arc of a 29-mile-radius circle centered on the Waterloo VORTAC.

These amendments are proposed under the authority of section 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348), and of section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Kansas City, Mo., on December 14, 1970.

DANIEL E. BARROW,
Acting Director, Central Region.

[F.R. Doc. 70-17601; Filed, Dec. 30, 1970; 8:50 a.m.]

[14 CFR Part 71]

[Airspace Docket No. 70-WE-69]

TRANSITION AREA

Proposed Alteration

The Federal Aviation Administration is considering an amendment to Part 71 of the Federal Aviation Regulations that would alter the description of the Moab, Utah, transition area.

Interested persons may participate in the proposed rulemaking by submitting such written data, views, or arguments as they may desire. Communications should be submitted in triplicate to the Chief, Airspace and Program Standards Branch, Federal Aviation Administration, 5651 West Manchester Avenue, Post Office Box 92007, Worldway Postal Center, Los Angeles, CA 90009. All communications received within 30 days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Regional Air Traffic Division Chief. Any data, views, or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

A public docket will be available for examination by interested persons in the office of the Regional Counsel, Federal Aviation Administration, 5651 West Manchester Avenue, Los Angeles, CA 90045.

A State-owned TVOR is being installed on the Canyonlands Airport, Moab, Utah. It is anticipated that the VOR will be commissioned approximately December 15, 1970.

Instrument holding and approach procedures have been developed utilizing the 326° T (311° M) radial of the VOR. It is proposed to alter the 700-foot portion of the transition area to provide sufficient controlled airspace for aircraft executing the prescribed instrument procedures while operating between 1,500 and 1,000 feet above the surface. The proposed 1,200-foot portion of the transition area is necessary to encompass the instrument holding and procedure turn areas for the existing special procedures for Frontier Airlines based upon the privately owned radio beacon.

In consideration of the foregoing, the FAA proposes the following airspace action.

In § 71.181 (35 F.R. 2134) the description of the Moab, Utah transition area is amended to read as follows:

MOAB, UTAH

That airspace extending upward from 700 feet above the surface within a 6-mile radius of Canyonlands Airport, Moab, Utah (latitude 38°45'40" N., longitude 109°44'50" W.); and within 7 miles northeast and 10.5 miles southwest of the Moab VOR (latitude 38°45'22" N., longitude 109°44'55" W.) 326° radial, extending from the VOR to 18.5 miles northwest of the VOR; that airspace extending upward from 1,200 feet above the surface within 7 miles north and 10.5 miles south of the Moab VOR 110° radial, extending from the VOR to 18.5 miles east of the VOR.

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

Issued in Los Angeles, Calif., on December 22, 1970.

LEE E. WARREN,
Acting Director, Western Region.

[F.R. Doc. 70-17602; Filed, Dec. 30, 1970; 8:50 a.m.]

[14 CFR Part 71]

[Airspace Docket No. 70-SO-105]

ALTERATION OF CONTROL ZONE AND TRANSITION AREA

Proposed Alteration

The Federal Aviation Administration is considering an amendment to Part 71 of the Federal Aviation Regulations that would alter the Fort Myers, Fla., control zone and transition area.

Interested persons may submit such written data, views, or arguments as they may desire. Communications should be submitted in triplicate to the Federal Aviation Administration, Area Manager, Miami Area Office, Air Traffic Branch, Post Office Box 2014, AMF Branch, Miami, FL 33159. All communications received within 30 days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Chief, Air Traffic Branch. Any data, views, or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official docket will be available for examination by interested persons at the Federal Aviation Administration, Southern Region, Room 724, 3400 Whipple Street, East Point, GA.

The Fort Myers control zone described in § 71.171 (35 F.R. 2054) would be redesignated as:

Within a 5-mile radius of Page Field (lat. 26°35'09" N., long. 81°51'51" W.); within 3 miles each side of Fort Myers VORTAC 126°, 213°, and 318° radials, extending from the 5-mile-radius zone to 8.5 miles southeast, southwest, and northwest of the VORTAC.

The Fort Myers transition area described in § 71.181 (35 F.R. 2134) would be redesignated as:

That airspace extending upward from 700 feet above the surface within an 8.5-mile radius of Page Field (lat. 26°35'09" N., long. 81°51'51" W.); within 3 miles each side of the 219° bearing from Fort Myers RBN, extending from the 8.5-mile-radius area to 8.5 miles southwest of the RBN; within 5 miles each side of Fort Myers VORTAC 126°, 213°, and 318° radials, extending from the 8.5-mile-radius area to 8.5 miles southeast, southwest, and northwest of the VORTAC.

The application of Terminal Instrument Procedures (TERPs) and current airspace criteria, together with the revision and establishment of instrument approach procedures for Fort Myers terminal area, requires the following actions:

Control Zone. 1. Revoke the extension predicated on the 039° bearing from Fort Myers RBN.

2. Increase the extension predicated on Fort Myers VORTAC 213° radial 2 miles in width and 0.5 mile in length.

3. Designate an extension predicated on Fort Myers VORTAC 126° and 318° radials 6 miles in width and 8.5 miles in length.

Transition Area. 1. Increase the basic radius circle predicated on Page Field from 8 to 8.5 miles.

2. Increase the extension predicated on the 219° bearing from Fort Myers RBN 2 miles in width and 0.5 mile in length.

3. Increase the extension predicated on Fort Myers VORTAC 213° radial 6 miles in width and 0.5 mile in length.

4. Designate extensions predicated on Fort Myers VORTAC 126° and 318° radials 10 miles in width and 8.5 miles in length.

The proposed alterations are required to provide controlled airspace protection for IFR operations at Fort Myers terminal.

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

Issued in East Point, Ga., on December 22, 1970.

JAMES G. ROGERS,
Director, Southern Region.

[F.R. Doc. 70-17603; Filed, Dec. 30, 1970; 8:50 a.m.]

[14 CFR Part 71]

[Airspace Docket No. 70-CE-112]

TRANSITION AREA

Proposed Alteration

The Federal Aviation Administration is considering amending Part 71 of the Federal Aviation Regulations so as to alter the transition area at Marshall, Minn.

Interested persons may participate in the proposed rule making by submitting such written data, views, or arguments as they may desire. Communications should be submitted in triplicate to the Director, Central Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, Federal Building, 601 East 12th Street, Kansas City, MO 64106. All communications received within 45 days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Regional Air Traffic Division Chief. Any data, views, or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

A public docket will be available for examination by interested persons in the Office of the Regional Counsel, Federal Aviation Administration, Federal Building, 601 East 12th Street, Kansas City, MO 64106.

Since designation of controlled airspace in Marshall, Minn., a new instrument approach procedure for Marshall Municipal Airport has been developed. In addition, the criteria for designation of transition areas have been changed. Accordingly, it is necessary to alter the Marshall, Minn., transition area to adequately protect aircraft executing the new approach procedure and to comply with the new transition area criteria.

In consideration of the foregoing, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations as hereinafter set forth:

In § 71.181 (35 F.R. 2134), the following transition area is amended to read:

MARSHALL, MINN.

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the Marshall Municipal Airport (latitude 44°26'50" N., longitude 95°49'10" W.); and that airspace extending upward from 1200 feet above the surface within 4½ miles northeast and 9½ miles southwest of the 323° and 143° bearings from the Marshall Municipal Airport, extending from 1½ miles southeast of the airport to 18½ miles northwest of the airport.

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

Issued in Kansas City, Mo., on December 14, 1970.

DANIEL E. BARROW,
Acting Director, Central Region.

[F.R. Doc. 70-17604; Filed, Dec. 30, 1970; 8:50 a.m.]

Notices

DEPARTMENT OF STATE

Agency for International Development

BULK PHARMACEUTICAL PRODUCTS

Determination of Commodity Eligibility

Pursuant to section 604(f) of the Foreign Assistance Act of 1961, as amended by section 301(a) of the Foreign Assistance Act of 1968, A.I.D. has stated in § 201.11(k) of Regulation 1, 22 CFR § 201.11(k), that each commodity "shall be approved in writing by A.I.D. for each sale transaction as eligible for A.I.D. financing." The statutory language in section 604(f) requires A.I.D. to approve each commodity "as eligible and suitable for financing."

It is current A.I.D. policy not to finance pharmaceutical products in finished dosage form. The Agency has, however, been financing most bulk (i.e. not in finished dosage form) pharmaceutical products. By means of this announcement, A.I.D. advises parties who may be interested in participating in sale transactions of bulk pharmaceutical products under A.I.D. financing that henceforth A.I.D. will apply the following criteria in determining whether, under regulatory and statutory standards, this Agency should find a product described on the Commodity Approval Application, AID Form 11, to be "eligible and suitable" for A.I.D. financing:

(1) A.I.D. will not finance from an authorized source country a bulk pharmaceutical product at an FAS price which exceeds by more than 10 percent the FAS price at which the product, by whatever description, is generally available from any other free world country. With respect to a product patented in the U.S., A.I.D. will compare FAS prices between the U.S. product and the identical product available in any free world country, provided such non-U.S. price was established by the patent holder or his licensee.

(2) A.I.D. will not finance from an authorized source country a bulk pharmaceutical product at an FAS price which exceeds the lowest FAS price at which the same product, by whatever description, is available from the same source country.

(3) A.I.D. will not finance from an authorized source country a bulk pharmaceutical product at a price which exceeds the price at which another lower-priced product can be obtained from any free-world source, if there is evidence that the lower-priced product, although of different generic description, is, for the purpose intended, pharmacologically a substantial equivalent to the higher-priced product for which A.I.D. approval is solicited. Items which A.I.D. has determined to be subject to this rule will be indicated in the implementing document issued by A.I.D. which authorizes the use of A.I.D. funds for the procurement of pharmaceutical products.

(4) A.I.D. will not finance a bulk pharmaceutical product at a price which exceeds the lowest price charged by the supplier in any export sale of the item to any country, whether or not such sale has taken place under A.I.D. financing. A supplier under this rule may exclude in his calculation of his lowest price, the lowest priced 5 percent of his sales volume within the most nearly relevant sales period. The "lowest price" shall take into account all sales by the supplier of the product in export, without regard to any trademark or other differentiation between items which are pharmacologically identical.

(5) With respect to any bulk pharmaceutical product for which A.I.D. does grant commodity approval under the foregoing special rules, a supplier shall continue to execute A.I.D. Form 282 which binds the supplier to the price tests set forth in Subpart G of A.I.D. Regulation 1. Upon postaudit, a supplier of any bulk pharmaceutical product shall be held to the price tests set forth in that subpart of the regulation.

A.I.D. expressly reserves its right to determine any product unsuitable for A.I.D. financing within the meaning of section 604(f) whether or not the price for the product complies with the foregoing special rules.

A.I.D. will endeavor to provide a supplier, upon request, preliminary advice as to whether the price, at which the supplier proposes to sell a product in export, will be eligible for approval under the foregoing special rules prior to his entering into a contract to sell. A.I.D. will not supply this type of advice unless the supplier provides with his request to A.I.D. an indication that the solicitation may reasonably result in an agreement to sell.

A.I.D. intends to coordinate its eligibility standards for bulk pharmaceutical products with the Food and Drug Administration and shall attempt to amend on a continuing basis its policy and regulations to reflect new evaluations concerning the safety and efficacy of pharmaceutical products which it finances. A.I.D. will continue to supply its Missions and aid-recipient governments with such various information as may become available to A.I.D. concerning the safety and efficacy of end-use products manufactured from ingredients eligible for A.I.D. financing.

Effective date: This Notice shall enter into effect upon publication in the FEDERAL REGISTER.

Dated: December 24, 1970.

MAURICE J. WILLIAMS,
Deputy Administrator.

[F.R. Doc. 70-17620; Filed, Dec. 30, 1970; 8:51 a.m.]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

CALIFORNIA

Notice of Proposed Withdrawal and Reservation of Lands

DECEMBER 18, 1970.

The Forest Service, U.S. Department of Agriculture, has filed an application, Serial No. S4106, for the withdrawal of the lands described below, subject to valid existing rights, from prospecting, entry, and patenting only under the mining laws (30 U.S.C., Ch. 2), but not from leasing under the mineral leasing laws.

The applicant desires the land for development of a campground to be completed within the next 5 years. The site lies along the Salmon River and is approximately 14 miles southeast of Somes Bar, Calif., on Forest Highway 93. It will serve the demands of the general public for recreational use and offers excellent salmon and steelhead fishing. For a period of 30 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management, U.S. Department of the Interior, Room E-2807, Federal Office Building, 2800 Cottage Way, Sacramento, CA 95825.

The Department's regulations in 43 CFR 2351.4(c), 35 F.R. 9557, dated June 13, 1970 (formerly 43 CFR 2311.1-3 (c)), provide that the authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the lands and their resources. He will also undertake negotiations with the applicant agency with the view of adjusting the application to reduce the area to the minimum essential to meet the applicant's needs, to provide for the maximum concurrent utilization of the lands for purposes other than the applicant's, to eliminate lands needed for purposes more essential than the applicant's, and to reach agreement on the concurrent management of the lands and their resources.

The authorized officer will also prepare a report for consideration by the Secretary of the Interior who will determine whether or not the lands will be withdrawn as requested by the applicant agency.

The determination of the Secretary on the application will be published in the FEDERAL REGISTER. A separate notice will be sent to each interested party of record.

If circumstances warrant, a public hearing will be held at a convenient time and place, which will be announced.

The lands involved in the application are:

HUMBOLDT MERIDIAN

KLAMATH NATIONAL FOREST

Nordheimer Flat Campground Site

T. 10 N., R. 7 E.,
Sec. 3, a portion of lot 2.
T. 11 N., R. 7 E.,
Sec. 34, a portion of SW¼SE¼.

The areas identified contain approximately 11.4 acres in Siskiyou County more particularly described by metes and bounds as follows:

Beginning at a point known as U.S. Bench Mark designated as Q241–1935, said bench mark lying N. 36° E., a distance of 320 feet from Corner No. 1 which is the true point of beginning; thence N. 65°30' E., a distance of 662 feet to Corner No. 2; thence N. 6° W., a distance of 575 feet to Corner No. 3; thence S. 68°30' W., a distance of 1,094 feet to Corner No. 4; thence S. 47° E., a distance of 646 feet to Corner No. 1, the true point of beginning.

JESSE H. JOHNSON,
Acting Chief,
Lands Adjudication Section.

[F.R. Doc. 70–17581; Filed, Dec. 30, 1970; 8:48 a.m.]

[OR 6860]

OREGON

Opening of Land Formerly in Project No. 853

DECEMBER 22, 1970.

1. In an order issued August 13, 1970, the Federal Power Commission vacated the withdrawal created pursuant to the filing of an amendatory application for preliminary permit for Project No. 853, for the following described land:

WILLAMETTE MERIDIAN

T. 39 S., R. 8 W.,
Sec. 9, lot 6.

(Approximately 20.01 acres.)

2. The land is revested Oregon and California Railroad Grant land located in Josephine County, Oreg.

3. Beginning at 10 a.m. on the land shall be open to such forms of disposition as may by law be made of such lands.

4. Inquiries concerning the land should be addressed to the Manager, Land Office, Portland, Oreg.

VIRGIL O. SEISER,
Chief, Branch of Lands.

[F.R. Doc. 70–17580; Filed, Dec. 30, 1970; 8:48 a.m.]

[Nevada Supp. to BLM Manual 1510]

NEVADA STATE DIRECTOR

Delegation of Authority; Contracts and Leases

A. Redelegation. Pursuant to the authority contained in Bureau Manual 1510.03B, 2d, the classes of employees listed are authorized procurement authority as designated:

1. Nevada State Office Chief, Division of Management Services. All Nevada District Managers, All District Administrative Officers, Nevada State Office Procurement Clerk.

a. Negotiated Contracts. May enter into negotiated contracts without advertising pursuant to section 302(c)(2) of the FPAS Act, as amended, for rental of equipment and aircraft covered by offer agreements and for supplies and services (except capitalized equipment) necessary for the purpose of emergency fire suppression; limited to not exceed $6,000.

b. Open Market Purchasing. May enter into contracts pursuant to section 302(c)(3) of the FPAS Act, as amended, for supplies and services, excluding capitalized property, not to exceed $2,500; and contracts for construction not to exceed $2,000; provided that the requirement is not available from established sources of supply.

c. Established sources of supply. May procure necessary supplies and services, except capitalized property, available from established sources of supply not to exceed $10,000.

2. Nevada State Office Fire Control Officer, Nevada District Fire Control Officers.

a. Negotiated Contracts. May enter into negotiated contracts without advertising pursuant to section 302(c)(2) of the FPAS Act, as amended, for rental of equipment and aircraft covered by offer agreements and for supplies and services (except capitalized equipment) necessary for the purpose of emergency fire suppression, limited to not exceed $2,000.

B. Limitations or Restrictions.

1. Requisitions for all capitalized personal property must be reviewed and approved by the State Office.

2. Order-Invoice-Voucher, Standard Form 44: Purchase through use of Standard Form 44 in accordance with BLM Manual 1511.22 and FPR 1–3.605, in the amounts not to exceed $300, may be redelegated to responsible field employees by their respective District Managers. The authorization shall be redelegated in writing by name designation and its use restricted to need when away from headquarters. The designated employee, State Office and the Division of Financial Management, DSC shall be furnished with a copy of all such redelegations.

3. Contracts or other procurements entered into under this authority must conform with applicable regulations and statutory requirements and are subject to the availability of appropriations.

4. All redelegated authority shall be exercised in accordance with the provisions of the Federal Property and Administrative Act of 1949, as amended, Bureau Manual 1511.

This publication supersedes publication of April 1, 1968, in the FEDERAL REGISTER, Vol. 33, No. 68, Saturday, April 6, 1968, on page 5467.

NOLAN F. KEIL,
State Director, Nevada.

[F.R. Doc. 70–17579; Filed, Dec. 30, 1970; 8:48 a.m.]

DEPARTMENT OF AGRICULTURE

Consumer and Marketing Service

POULTRY AND POULTRY PRODUCTS INSPECTION

Notice of Withdrawal of Designation of the State of New Jersey

Subsection 5(c) of the Poultry Products Inspection Act (21 U.S.C. 454(c)) requires the Secretary of Agriculture to designate after August 18, 1970, any State as one in which the requirements of sections 1–4, 6–10, and 12–22 of said Act shall apply to intrastate operations and transactions, and to persons engaged therein, with respect to poultry, poultry products, and other articles subject to the Act, if he determines after consultation with the Governor of the State, or his representative, that the State involved has not developed and activated requirements, at least equal to those under sections 1–4, 6–10, and 12–22, with respect to establishments within the State (except those that would be exempted from Federal inspection under paragraph 5(c)(2) of the Act) at which poultry are slaughtered or poultry products are processed for use as human food, solely for distribution within such State, and the products of such establishments. However, if the Secretary has reason to believe that the State will activate the necessary requirements by August 18, 1971, he may allow the State the additional year in which to activate such requirements.

On December 3, 1970, there was published in the FEDERAL REGISTER (35 F.R. 18410) a "Notice of Designation of Certain States," including the State of New Jersey, under paragraph 5(c)(1) of the Poultry Products Inspection Act (21 U.S.C. 454(c)(1)). However, after further consultation with the Governor of the State of New Jersey, the Secretary of Agriculture has reason to believe that the State will activate the necessary requirements by August 18, 1971. Accordingly, the notice of designation of the State of New Jersey is withdrawn, and, pursuant to the authority in paragraph 5(c)(1) of the Act, the determination with respect to the designation of the State will be delayed until August 18, 1971.

This withdrawal of designation shall become effective upon publication of this notice in the FEDERAL REGISTER.

Done at Washington, D.C., on December 29, 1970.

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

[F.R. Doc. 70–17647; Filed, Dec. 30, 1970; 8:51 a.m.]

MEAT INSPECTION

Notice of Termination of Designation of New Jersey

On December 3, 1970, there was published in the FEDERAL REGISTER (35 F.R.

18410) a Notice of Designation of the State of New Jersey under section 301 (c)(1) of the Federal Meat Inspection Act (21 U.S.C. 661(c)(1)). This designation was based on information received from the Governor of the State of New Jersey that the State would not be in a position to enforce State meat inspection requirements at least equal to those imposed under titles I and IV of the Federal Meat Inspection Act, with respect to establishments within the State at which cattle, sheep, swine, goats, or equines are slaughtered, or their carcasses, or parts or products thereof, are prepared for use as human food, solely for distribution within such State. However, the Governor of the State of New Jersey has requested the Secretary of Agriculture to terminate such designation since the State is now in a position to enforce such requirements. Upon a subsequent review by this Department of the meat inspection program of the State of New Jersey, it has been determined that the State has developed and will enforce State meat inspection requirements at least equal to those imposed under titles I and IV of the Act, with respect to operations and transactions within the State which would be regulated under section 301(c)(1) of the Act.

Accordingly, pursuant to the authority in section 301(c)(3) of the Act (21 U.S.C. 661(c)(3)), the designation of the State of New Jersey under section 301(c) of the Act is hereby terminated, effective upon publication of this notice in the FEDERAL REGISTER.

Done at Washington, D.C., on December 29, 1970.

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

[F.R. Doc. 70-17646; Filed, Dec. 30, 1970; 8:51 a.m.]

Food and Nutrition Service

NATIONAL SCHOOL LUNCH PROGRAM

Determining Eligibility for Free and Reduced Price Lunches

Amendments to the regulations governing the National School Lunch Program were published September 4, 1970 (35 F.R. 14061), following the publication of proposed rule-making (35 F.R. 11510). This statement summarizes the comments, suggestions, and objections received on the proposed regulations from interested persons and describes the principal changes which were made in the final regulations. Responses to the proposed regulations and to the related proposed regulations for Determining Eligibility for Free and Reduced Price Lunches (35 F.R. 11513) were received from a total of 106 organizations and individuals.

1. *State plan of child nutrition operations.* Section 11(h) of the National School Lunch Act, as amended by Public Law 91-248 (84 Stat. 212), requires State educational agencies to submit to the Secretary, not later than January 1 of each year, as a condition of receipt of Federal funds or donated commodities, a State plan of child nutrition operations for the following fiscal year. The comments received on the proposed new section (§ 210.4a) to implement this statutory requirement were about equally divided between those who thought that the content of the section should be expanded and those who thought that the content should be reduced. No substantial change was made. In the proposed regulations the order of the items constituting the minimum content of the plan was different from that set out in the statute. Some of the comments received were to the effect that the Department had changed the statutory priority. The final regulation has restored the statutory order although the statute does not, in the Department's view, effect a priority but lists items of equal importance.

2. *Reports.* It was suggested that the regulations should make it clear that the reports filed by States and schools, as well as the State plan of child nutrition operations and the data used by schools in making the March and October estimates of the number of children eligible for free and reduced-price lunches, should be available for public review "so that the public can learn how good or bad a job they are doing." Any such reports which are a part of the records of the Food and Nutrition Service will be available to the extent provided in the FNS regulations governing the availability of information (7 CFR Part 295) issued under the Freedom of Information Act (5 U.S.C. 552). Records kept at the State and school level will be available in accordance with State and local law.

3. *Competitive food services.* Section 10 of the Child Nutrition Act of 1966, as amended by Public Law 91-248 (84 Stat. 212), authorizes the issuance of regulations relating to the service of food in participating schools in competition with programs authorized under the National School Lunch Act and under the Child Nutrition Act of 1966. The proposed regulation provided that such extra food items served in schools should be restricted to items "having a recognized nutritional value." On the basis of the comments received, the Department concluded that it would be difficult to administer a provision referring to a "recognized nutritional value." Consequently, the final regulations provide that extra foods served "shall be restricted to those items recognized as making a contribution to, or permitted by the school to be served as a part of, a Type A lunch or a lunch meeting requirements prescribed * * * for commodity-only schools."

4. *Nutritional education and training—special developmental projects.* Some respondents commented upon the absence of any provision in the proposed regulations relating to funds authorized for nutritional training and education and for surveys and studies under section 6 of the National School Lunch Act, as amended, or relating to a reserve of funds to carry out special developmental projects as authorized by section 10 of the Child Nutritional Act of 1966, as amended. Before the issuance of any regulations relating to those matters, the Department desires to consult further with the States and other interested persons and agencies, including the National Advisory Council on Child Nutrition established by section 14 of the National School Lunch Act, as amended.

Regulations for the guidance of State educational agencies and school food authorities in determining the eligibility of children for free or reduced price lunches in school lunch programs were published September 4, 1970 (35 F.R. 14065), following the publication of proposed rule making (35 F.R. 11513). This statement summarizes the comments, suggestions, and objections received on the proposed regulations from interested persons and described the principal changes which were made in the final regulations. Responses to the proposed regulations and to the related proposed National School Lunch Program regulations (35 F.R. 11510) were received from a total of 106 organizations and individuals.

1. *Eligibility standards.* The principal comments and suggestions received on eligibility standards may be summarized as follows:

a. The proposed regulations did not prescribe a national income poverty guideline.

b. The proposed regulations did not make clear the basic requirement of the law that free or reduced-price lunches must be served to all children in schools participating under the National School Lunch Program who are determined to be unable to pay the full price of the lunch.

c. The provision that school authorities may include such additional criteria in their eligibility standards as they deem necessary to assure access to free or reduced-price lunches by children unable to pay the full price of the lunch was ambiguous and was subject to the interpretation that school authorities could exclude children who should be eligible for free or reduced-price lunches on the basis of income or family size.

d. The proposed regulations would permit variations in eligibility criteria among schools within a single district.

The income poverty guidelines prescribed by the Secretary pursuant to section 9 of the National School Lunch Act, as amended, were published August 7, 1970 (35 F.R. 12620). These guidelines were based on the latest statistics, as of July 1, 1970, on poverty levels in the Current Population Reports of the Bureau of the Census. Higher levels were provided for Hawaii and Alaska consistent with the variations established by the Office of Economic Opportunity in its Income Poverty Guidelines.

After consideration of the comments and suggestions received, the Department completely rewrote § 245.3 of the regulations. Section 245.3, as rewritten, restates the basic requirement of the law that free or reduced-price lunches shall be served to all children in participating

schools who are determined by local school authorities, in accordance with the law and the regulations, to be unable to pay the full price of the lunch. Such section prescribes the minimum criteria to be included in the standards of eligibility issued and used by schools in making such determinations and requires that specific criteria must be used for free and reduced-priced lunches, respectively. Such standards must be publicly announced and must be applied equally in all participating schools under the jurisdiction of a single school food authority. The term "school food authority" is defined in the National School Lunch Program regulations as "the governing body which is responsible for the administration of one or more schools and which has the legal authority to operate a lunch program therein." Section 245.3 provides that all children from a family meeting the eligibility standards and attending any participating school under the jurisdiction of the same school food authority shall be provided the same benefits.

Also, § 245.3 requires that the standards used by school food authorities on and after January 1, 1971, shall be such that any child in a participating school who is a member of a family which has an annual income not above the applicable family-size income level set forth in the income poverty guidelines prescribed by the Secretary shall be served lunch free or at a reduced price. This section provides that any criteria adopted by a school food authority in addition to the minimum criteria prescribed in the section shall relate to providing free or reduced-price lunches to children who would not be eligible for such lunches under such minimum criteria. In no event shall any such additional criteria be applied so as to deny free or reduced-price lunches to children who qualify for such lunches under the minimum eligibility criteria required by such section. A provision is included under which families who do not meet the eligibility criteria issued by school food authorities, but who believe that they are nevertheless unable to pay the full price of the lunch, may apply and receive consideration for a free or reduced-price lunch for their children.

2. *Applications for free and reduced-price lunches.* The principal comments and suggestions received were as follows:

a. The Department should prescribe an application form for use nationally by schools.

b. The application should be clear and simple and the information requested thereon should be limited to that necessary to determine whether the family's income level meets the criteria and eligibility standards for free or reduced-price lunches.

c. The school should not be permitted to request information extraneous to such eligibility criteria.

d. The regulations should make it clear that school food authorities may not use "alternative methods" of determining eligibility in lieu of an application so as to circumvent the self-certification procedure provided for by the statute.

As revised and issued in final form, § 245.6 is responsive to the principal comments and suggestions. The section specifies in detail the type of information which may be requested on the application form. Such information is limited to that necessary for a determination, on a certification basis, as to whether the family meets the eligibility criteria for free or reduced-price lunches for its children. The section requires that, if the information shown on the form indicates that the children are entitled to a free or reduced-price lunch, they must be provided such a lunch.

The regulations, as finally issued, permit the use of alternative methods for determining eligibility in lieu of an application only if such methods will expedite eligibility determinations and only to the extent that the school food authority determines that the children, or certain categories of children, automatically meet the school's eligibility standards. In such event, the school is required to inform the parents by written notice that the children are automatically eligible for a free or reduced-price lunch and that an application is not required.

3. *Hearing procedure for families and school food authorities.* The principal comments and objections with respect to the hearing procedure in the proposed regulations were as follows:

a. The procedure was not drafted with sufficient clarity and sufficient detail to assure the rights of the family to a fair hearing.

b. The procedure did not clearly recognize that the initial decision with respect to the eligibility of a child for free or reduced-price lunches should be made on the basis of the information supplied in the application without further independent verification by school food authorities.

Section 245.7 of the regulations was completely revised on the basis of the comments received and the desire of the Department to require a hearing procedure which will fully protect the rights of families which apply for free or reduced-price lunches for their children. The regulations require that the family have an opportunity to examine the documents and records presented to support the decision under appeal and that the family have full opportunity to present all documentary evidence and to question or refute any testimony or other evidence and to confront and cross-examine any adverse witnesses. The regulations also require that the hearing be conducted and the decision made by an impartial hearing official and that the decision be based on the oral or documentary evidence presented at the hearing and made a part of the hearing record. The regulations require that a school food authority must follow the required hearing procedure when it wishes to challenge the eligibility of a child for a free or reduced-price lunch when the application submitted on behalf of the child shows that it is entitled to such a lunch under the eligibility standards of the school. The regulations also require that, during the pendency of the challenge, the child shall continue to receive the free or reduced-price lunch to which he is entitled based upon the information supplied in the application made by the family.

4. *State educational agency criteria.* The final regulations provide, in § 245.11 (a), that any State educational agency (or Food and Nutrition Service Regional Office) may require school food authorities under its jurisdiction to establish eligibility criteria containing family size income levels above those in the income poverty guidelines prescribed by the Secretary. Such section also provides that a State educational agency may require that such authorities establish a maximum price for a reduced-price lunch at a level below the statutory maximum of 20 cents.

Dated: December 28, 1970.

RICHARD E. LYNG,
Assistant Secretary.

[F.R. Doc. 70-17592; Filed, Dec. 30, 1970; 8:49 a.m.]

Office of the Secretary

ALABAMA

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 Alabama natural disasters have caused a need for agricultural credit not readily available from commercial banks, cooperative lending agencies, or other responsible sources.

Alabama

Jackson Wilcox

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 24th day of December 1970.

CLIFFORD M. HARDIN,
Secretary of Agriculture.

[F.R. Doc. 70-17576; Filed, Dec. 30, 1970; 8:47 a.m.]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of the Secretary

SUPPLEMENTARY MEDICAL INSURANCE FOR THE AGED

Notice of Premium Rate

Title XVIII of the Social Security Act—Health Insurance for the Aged.

Pursuant to authority contained in section 1839(b)(2) of the Social Security Act (42 U.S.C. 1395r(b)(2)), as amended

by Public Law 90-248, I hereby determine and announce that the dollar amount which shall be applicable for premiums, for purposes of section 1839(b)(2) of the Act, as amended, shall be $5.60 for months in the 12-month period beginning July 1971 and ending June 1972.

Dated: December 28, 1970.

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

STATEMENT OF ACTUARIAL ASSUMPTIONS AND BASES EMPLOYED IN ARRIVING AT THE AMOUNT OF THE STANDARD PREMIUM RATE FOR THE SUPPLEMENTARY MEDICAL INSURANCE PROGRAM BEGINNING JULY 1971

This is a statement of actuarial assumptions and bases employed in arriving at the amount of the standard premium rate for the supplementary medical insurance program for the period July 1971 through June 1972. The standard premium rate is that rate which is payable by those who enroll in their initial enrollment period and by those who enroll in a general enrollment period that terminates less than 12 months after the close of their initial enrollment period.

The actuarial determination has been made on the basis of the actual operating experience under the program. Virtually complete operating-experience figures for July 1966 through December 1968 are now available, but because of the time-lag in the submission of bills for this program, figures for 1969 are not quite complete, and only partial data for 1970 are available.

ANALYSIS OF DATA ON A CASH BASIS

Current figures for cash expenditures under the program are available on a relatively complete basis through fiscal year 1970, but these figures taken alone are misleading because they do not take into account the liabilities arising from the delay in paying for benefits, which on the average are not made until well after the date that services were received. Such delay is due to the tendency of enrollees to accumulate a number of bills before submitting a claim, the delays by physicians, other suppliers of services, and enrollees in making requests for payment, and the time required by the carriers and intermediaries to adjudicate and pay claims.

The balances in the supplementary medical insurance trust fund at the end of each fiscal year since the inception of the program and the most recent available month are as follows:

Month:	*Balance in the trust fund (in millions)*
June 1967	$486
June 1968	307
June 1969	378
June 1970	57
October 1970	155

The liabilities outstanding on October 31, 1970, for claims incurred but not filed (or filed but not paid) are estimated to be $700 million, while the balance of the trust fund amounts to $155 million. On a cash basis, the fund is adequate to pay benefit claims and administrative expenses as they come due.

It is expected that the trust fund balance will continue to increase during the remainder of fiscal year 1971, because the premium rate of $5.30 per month which was promulgated in December 1969 has a margin of safety for severe adverse conditions. Current experience indicates that the income from the $5.30 premium rate together with equal matching from general revenues will not all be needed to cover costs. It is estimated that the trust fund balance will accumulate to over $200 million by the end of June 1971.

On the basis of claims and administrative expenses paid (cash basis), the average monthly per capita expenditures for the first 21 months of the program, July 1966 through March 1968, amounted to $5.12. Similarly, the average monthly per capita expenditures on a cash basis in the premium period, April 1968 through June 1969, amounted to $8.05. Finally, the average monthly per capita expenditures (cash basis) for the premium period, July 1969 through 1970, amounted to $8.59.

ANALYSIS OF DATA ON AN INCURRED BASIS

Under the law, the premium rate must be set on an accrual basis, rather than a cash basis. Thus, the cash figures must be adjusted for the estimated increase in liability for benefits to be paid for services rendered during the period (and the accompanying administrative expenses), but that will not have been filed or filed but not paid at the end of the period.

Estimates on an incurred basis for the 18 months involved in the first premium period (July 1966 through December 1967), when the combined rate of $6[1] applied, indicate that benefits and administrative expenses per capita exceeded income from premiums, interest, and matching Government contributions by $0.34 per month (i.e., 17 cents each), or by 6 percent relatively. During the extension of the premium period from January 1 through March 31, 1968, when the combined rate of $6 was continued by Congressional action, the cost per capita was $8.22 compared to income from premiums, matching contributions, and interest of $6.11.

Estimates on an incurred basis for the 15 months involved in the second premium period (April 1968 through June 1969) indicate a total per capita cost of $8.45 which exceeded income from premiums, interest, and matching Government contributions by $0.45 per month, or by 6 percent of the combined rate of $8. These estimates are based on virtually complete experience data.

Estimates on an incurred basis for the third premium period (July 1969 through June 1970) indicate that benefits and administrative expenses per capita were $9.33 on the combined rate basis. The interest earnings on the trust fund amounted to 5 cents per month. Although the combined rate for this period recommended by the actuaries was $8.80, the Secretary promulgated the continuation of the rate of $8.

Estimates for the fourth premium period (July 1970 through June 1971), based on a very limited experience of 4 months, indicate that the total cost per capita will be about $10.08 per month (i.e., $5.04 when divided equally between the beneficiary and the Government).

BASIC ESTIMATE OF FUTURE EXPERIENCE ON AN INCURRED BASIS

In estimating the cost of the program for July 1971 through June 1972, it is necessary to provide for the long-term trend toward greater utilization of medical services and the long-term upward trend of physicians' fees, higher costs for covered institutional and other services, and higher administrative expenses. In the estimates in this section, reasonable assumptions as to future increases have been made without allowing for the possibility of severe adverse events that might occur.

[1] $3 premium plus the matching Federal payment.

For the purpose of estimating the necessary premium rate for July 1971 through June 1972, the assumptions shown below were used.

Calendar year	Assumed increase over previous year: Physicians' fees *	Costs of other covered services	Utilization of physicians' services
	Percent	*Percent*	*Percent*
1970	2.5	14.5	2.5
1971	6.8	15	2
1972	6.5	15	2

* As recognized by the program.

The small increase of physicians' fees in 1970 over 1969 reflects the continued deferment of recognition of increases in physicians' fees for reimbursement purposes that was put into effect at the end of 1968.

The rates of increase for calendar year 1971 are based on the assumption that such deferment will be moved forward by 1 year on January 1, 1971, and the prevailing level will be moved back to the 75th percentile by regulation at the same time. Also, it is assumed that in the future, the deferment of recognition of increases in physicians' fees will be moved forward with an approximate average lag of 18 months.

It should also be noted that these assumed rates of increase take into account the fact that the costs of covered nonphysician services, such as hospital outpatient care and home health services, which represent only about 13 percent of the total cost of the program, have been increasing more rapidly than physicians' fees and have not been subject to a deferment of recognition of cost changes.

Administrative expenses are assumed to represent about 11½ percent of the benefit payments; this figure is based on the actual budget estimate for fiscal year 1972. The average interest rate on the invested assets of the trust fund is assumed to be about 7 percent.

It is estimated that the incurred monthly per capita total cost, on a calendar-year basis, would have been $8.98 for 1969 if there had not been the influenza epidemic in early 1969. This consists of $8.01 for benefits and $0.97 for administrative expenses. This approach has been taken in order to obtain a proper base on which to build estimates of future costs; the possibility of epidemics occurring is later taken into account by adding a contingency margin to the estimated costs for "normal" conditions.

On the basis of the foregoing assumptions, it is estimated that the monthly per capita benefit cost on a calendar-year basis will be $8.56 for 1970. The corresponding benefit-cost figures estimated for 1971 and 1972 are $9.48 and $10.51, respectively. To these must be added the monthly per capita costs for administrative expenses, which are estimated at $1.02 for 1970, $1.12 for 1971, and $1.21 for 1972. Thus, the monthly per capita total cost on an incurred basis is estimated at $9.58 for 1970, $10.60 for 1971, and $11.72 for 1972.

The monthly per capita total cost on an incurred basis for the premium period July 1971 through June 1972 is determined by averaging the corresponding total cost per capita for calendar years 1971 and 1972. This average is $11.16. When divided equally between the beneficiary and the Government, it supports a premium rate of $5.58 which under the law is rounded to the nearest 10 cents or $5.60. This methodology is used due to the fact that the estimated costs of this program can be properly determined only on a calendar year basis because of the deductible feature being on a calendar year basis.

EFFECT OF INTEREST EARNINGS ON THE CONTINGENCY MARGIN

In addition to the $0.04 contingency margin arising from the rounding procedure indicated above, the interest earnings of the trust fund are also available toward the margin for contingencies. If they are not needed to pay benefits and administrative expenses in the current period, they will reduce the unfunded liability for the past deficiency in the premium rate. Interest earnings for fiscal year 1972 are estimated to be the equivalent of about 8 cents per capita (i.e., 4 cents in terms of premium) in available income. Thus, the total contingency margin amounts to $0.12 per capita.

SUMMARY AND RECOMMENDATION

Based on all available evidence and analyses, the standard premium rate for fiscal year 1972 should be promulgated at $5.60 per month. This recommended premium rate contains an estimated $0.06 margin for contingencies—2 cents from the basic calculation and 4 cents from interest earnings. The rate is determined based on the assumptions that there will continue to be a deferment of recognition of increases in physicians' fees for reimbursement purposes and that this deferment will be advanced by 12 months on January 1, 1971, and thereafter maintain an approximate average lag of 18 months.

The explanation of the $0.30 increase in the standard monthly premium rate for the new premium period can be summarized as follows:

(a) The utilization of physicians' services is assumed to be higher in the new premium period than in the current period and so the program cost is higher—an increase of about 10 cents.

(b) The level of physicians' fees recognized by the program is assumed to be higher in the new premium period than in the current period, and so the program cost is higher—an increase of about 31 cents.

(c) The increase in unit cost and utilization of the institutional services covered by the program (13 percent of the total) is estimated to increase the cost of the program by 9 cents.

(d) The promulgated rate includes an allowance of 6 cents to provide a margin for contingencies, since the foregoing cost figures are based on reasonable cost projections and do not allow for any possible adverse morbidity experience (such as the influenza epidemic of 1968–69). The 6 cents for contingencies is a reduction of $0.18 from a planned contingency of $0.24 in the current $5.30 rate and a reduction of $0.20 from the $0.26 that is now estimated to be the actual margin over incurred costs during the current period. It is to be noted that this is the first period during which cost experience is expected to be more favorable than the estimates.

It should be noted that the $50 annual deductible in the program becomes a smaller proportion of the total incurred medical expenses for a beneficiary when there are increases in the unit price and utilization rate of covered services. Thus, the costs increases described in (a) and (b) above include an allowance for this fact and are higher than they would be if only the assumption of an increase in the utilization of services and an increase in the level of fees were considered.

[F.R. Doc. 70-17650; Filed, Dec. 30, 1970; 8:51 a.m.]

ATOMIC ENERGY COMMISSION

AGREEMENT BETWEEN ATOMIC ENERGY COMMISSION AND STATE OF MARYLAND

Discontinuance of Certain Commission Regulatory Authority and Responsibility Within the State

Notice is hereby given that Chairman Glenn T. Seaborg of the Atomic Energy Commission and the Honorable Marvin Mandel, Governor of the State of Maryland, have signed an Agreement for discontinuance by the Commission and assumption by the State of certain Commission regulatory authority. Chairman Seaborg and Governor Mandel also signed a Memorandum of Understanding reserving the respective rights of the State and the Atomic Energy Commission pending resolution of the jurisdictional issue raised by the Maryland Department of Water Resources "Surface Water Appropriation Permit No. C–70–SAP–1" issued to Baltimore Gas and Electric Co. The permit purports to impose limits upon radionuclide concentrations in liquid waste discharged by the Company's Calvert Cliffs nuclear power station being constructed at Calvert County, Md. The Agreement and Memorandum of Understanding are published below, in accordance with the requirements of Public Law 86–373 (section 274 of the Atomic Energy Act of 1954, as amended). The exemptions from the licensing requirements of Chapters 6, 7, and 8 of the Atomic Energy Act have been published in the FEDERAL REGISTER and are codified in 10 CFR Part 150.

Dated at Washington, D.C., this 24th day of December 1970.

For the Atomic Energy Commission.

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

AGREEMENT BETWEEN THE U.S. ATOMIC ENERGY COMMISSION AND THE STATE OF MARYLAND FOR DISCONTINUANCE OF CERTAIN COMMISSION REGULATORY AUTHORITY AND RESPONSIBILITY WITHIN THE STATE PURSUANT TO SECTION 274 OF THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

Whereas, the U.S. Atomic Energy Commission (hereinafter referred to as the Commission) is authorized under section 274 of the Atomic Energy Act of 1954, as amended (hereinafter referred to as the Act), to enter into agreements with the Governor of any State providing for discontinuance of the regulatory authority of the Commission within the State under Chapters 6, 7, and 8, and section 161 of the Act with respect to byproduct materials, source materials, and special nuclear materials in quantities not sufficient to form a critical mass; and

Whereas, the Governor of the State of Maryland is authorized under section 689 of Article 43 of the Annotated Code of Maryland, 1965 Replacement Volume, and 1968 Supplement, to enter into this Agreement with the Commission; and

Whereas, the Governor of the State of Maryland certified on September 30, 1970, that the State of Maryland (hereinafter referred to as the State) has a program for the control of radiation hazards adequate to protect the public health and safety with respect to the materials within the State covered by this Agreement, and that the State desires to assume regulatory responsibility for such materials; and

Whereas, the Commission found on December 14, 1970, that the program of the State for the regulation of the materials covered by this Agreement is compatible with the Commission's program for the regulation of such materials and is adequate to protect the public health and safety; and

Whereas, the State and the Commission recognize the desirability and importance of cooperation between the Commission and the State in the formulation of standards for protection against hazards of radiation and in assuring that State and Commission programs for protection against hazards of radiation will be coordinated and compatible; and

Whereas, the Commission and the State recognize the desirability of reciprocal recognition of licenses and exemptions from licensing of those materials subject to this Agreement; and

Whereas, this Agreement is entered into pursuant to the provisions of the Atomic Energy Act of 1954, as amended;

Now, therefore, it is hereby agreed between the Commission and the Governor of the State, acting in behalf of the State, as follows:

Article I

Subject to the exceptions provided in Articles II, III, and IV, the Commission shall discontinue, as of the effective date of this Agreement, the regulatory authority of the Commission in the State under Chapters 6, 7, and 8, and section 161 of the Act with respect to the following materials:

A. Byproduct materials;

B. Source materials; and

C. Special nuclear materials in quantities not sufficient to form a critical mass.

Article II

This Agreement does not provide for discontinuance of any authority and the Commission shall retain authority and responsibility with respect to regulation of:

A. The construction and operation of any production or utilization facility;

B. The export from or import into the United States of byproduct, source, or special nuclear material, or of any production or utilization facility;

C. The disposal into the ocean or sea of byproduct, source, or special nuclear waste materials as defined in regulations or orders of the Commission;

D. The disposal of such other byproduct, source, or special nuclear material as the Commission from time to time determines by regulation or order should, because of the hazards or potential hazards thereof, not be so disposed of without a license from the Commission.

Article III

Notwithstanding this Agreement, the Commission may from time to time by rule, regulation, or order, require that the manufacturer, processor, or producer of any equipment, device, commodity, or other product containing source, byproduct, or special nuclear material shall not transfer possession or control of such product except pursuant to a license or an exemption from licensing issued by the Commission.

Article IV

This Agreement shall not affect the authority of the Commission under subsection 161 b. or i. of the Act to issue rules, regulations, or orders to protect the common defense and

security, to protect restricted data or to guard against the loss or diversion of special nuclear material.

Article V

The Commission will use its best efforts to cooperate with the State and other agreement States in the formulation of standards and regulatory programs of the State and the Commission for protection against hazards of radiation and to assure that State and Commission programs for protection against hazards of radiation will be coordinated and compatible. The State will use its best efforts to cooperate with the Commission and other agreement States in the formulation of standards and regulatory programs of the State and the Commission for protection against hazards of radiation and to assure that the State's program will continue to be compatible with the program of the Commission for the regulation of like materials. The State and the Commission will use their best efforts to keep each other informed of proposed changes in their respective rules and regulations and licensing, inspection and enforcement policies and criteria, and to obtain the comments and assistance of the other party thereon.

Article VI

The Commission and the State agree that it is desirable to provide for reciprocal recognition of licenses for the materials listed in Article I licensed by the other party or by any agreement State. Accordingly, the Commission and the State agree to use their best efforts to develop appropriate rules, regulations, and procedures by which such reciprocity will be accorded.

Article VII

The Commission, upon its own initiative after reasonable notice and opportunity for hearing to the State, or upon request of the Governor of the State, may terminate or suspend this Agreement and reassert the licensing and regulatory authority vested in it under the Act if the Commission finds that such termination or suspension is required to protect the public health and safety.

Article VIII

This Agreement shall become effective on January 1, 1971, and shall remain in effect unless and until such time as it is terminated pursuant to Article VII.

Done at Washington, District of Columbia, in triplicate, this 14th day of December 1970.

FOR THE U.S. ATOMIC ENERGY COMMISSION,

(Signed) ----------
Chairman.

Done at Annapolis, State of Maryland, in triplicate, this 18th day of December 1970.

FOR THE STATE OF MARYLAND,

(Signed) ----------
MARVIN MANDEL,
Governor.

MEMORANDUM OF UNDERSTANDING BETWEEN THE STATE OF MARYLAND AND THE U.S. ATOMIC ENERGY COMMISSION

The State of Maryland (State) and the U.S. Atomic Energy Commission (Commission) have this date entered into an "Agreement between the United States Atomic Energy Commission and the State of Maryland for Discontinuance of Certain Commission Regulatory Authority and Responsibility within the State pursuant to Section 274 of the Atomic Energy Act of 1954, as Amended" ("274b. Agreement"), the effective date of which is January 1, 1971.

On July 10, 1970, the State's Department of Water Resources issued "Surface Water Appropriation Permit No. C-70-SAP-1" to Baltimore Gas and Electric Co. (Company). Among other things, that Permit purports to impose limits upon radionuclide concentrations in liquid waste discharged by the Company's Calvert Cliffs nuclear power station being constructed at Lusby, Calvert County, Md., under Construction Permits Nos. CPPR-63 and CPPR-64, issued by the Commission on July 7, 1969.

Whether a State may lawfully impose requirements, for purposes of protection against radiation hazards, on effluents discharged from a facility licensed by the Commission is currently an issue in litigation in a cause pending before the United States District Court for the District of Minnesota, styled Northern States Power Company v. State of Minnesota et al. (Civil Court File No. 3-69-185 Civil)

The purpose of this Memorandum of Understanding between the State and the Commission is to facilitate the parties' entry into the 274b. Agreement without prejudice to their respective legal positions on the question described in the preceding paragraph.

It is hereby agreed between the Commission and the Governor of the State acting on behalf of the State, as follows:

First: Nothing herein nor in the 274b. Agreement shall be construed as defining or affecting the respective rights and powers of the Commission or the State under the United States Constitution.

Second: Nothing herein nor in the 274b. Agreement shall in any manner affect or prejudice the position of either party with respect to the legal authority, or the lack thereof, of the State to impose requirements, for purposes of protection against radiation hazards, upon activities within the State licensed by the Commission.

Third: This Memorandum of Understanding shall be effective on January 1, 1971, and shall remain in effect so long as the 274b. Agreement remains in effect.

Done at Washington, District of Columbia, in triplicate, this 14th day of December 1970.

FOR THE U.S. ATOMIC ENERGY COMMISSION,

(Signed) ----------
Chairman.

Done at Annapolis, State of Maryland, in triplicate, this 18th day of December 1970.

FOR THE STATE OF MARYLAND,

(Signed) ----------
MARVIN MANDEL,
Governor.

[F.R. Doc. 70-17570; Filed, Dec. 30, 1970; 8:47 a.m.]

[Docket No. 50-247]

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.

Order Designating Place for Reconvening Conference Hearing

In the matter of Consolidated Edison Company of New York, Inc. (Indian Point Station Unit No. 2).

At the time of the recess taken in this proceeding on December 18, 1970, announcement was made that a formal order would be issued designating the place for reconvening the hearing on January 19, 1971, when the space available was determined.

With the permission of the Principal of the school, the Hendrik Hudson High School Auditorium, Albany Post Road, Montrose NY, will be available for further conference hearing in this proceeding. It is not expected that any evidence will be adduced or received at this conference hearing, which will be open to the public.

Wherefore, it is ordered, Pursuant to the Atomic Energy Act, as amended, and the rules of practice of the Commission, a conference hearing among the parties and their counsel, open to the public, shall convene at 10 a.m. on Tuesday, January 19, 1971, in the Auditorium of the Hendrik Hudson High School, Albany Post Road, Montrose, NY.

Issued: December 23, 1970, Germantown, Md.

ATOMIC SAFETY AND LICENSING BOARD,
SAMUEL W. JENSCH,
Chairman.

[F.R. Doc. 70-17571; Filed, Dec. 30, 1970; 8:47 a.m.]

FEDERAL MARITIME COMMISSION

INTER-AMERICAN 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:

David Orlin, Esquire, Casey, Lane and Mittendorf, 26 Broadway, New York, NY 10004.

Agreement No. 9648-A-4, among the member lines of the Inter-American

Freight Conference, petitions permanent approval of Agreement No. 9648–A, as amended, or, in the alternative, an 18-month extension thereof to August 16, 1972.

The basic agreement is now scheduled to terminate on February 16, 1971, pursuant to the terms of the Commission's extension of approval thereof for a duration of 18 months as set forth in its order served July 9, 1969.

Dated: December 28, 1970.

By order of the Federal Maritime Commission.

FRANCIS C. HURNEY,
Secretary.

[F.R. Doc. 70–17569; Filed, Dec. 30, 1970; 8:47 a.m.]

[Docket No. 70–52]

ATLANTIC CONTAINER LINE, LTD.

Publication of Discriminatory Rates; Order To Show Cause

Atlantic Container Line, Ltd. (ACL) is a common carrier by water in the foreign commerce of the United States operating, inter alia, in the trade between United States Atlantic Coast ports in the Eastport, Maine/Hampton Roads Range and Continental European ports in the Bordeaux-Hamburg range. A review of certain rates in the trade including the major moving commodities reveals that significant disparities exist between export and import rates of ACL (Attachment [1]). Despite the fact that ACL offers a transportation service in both directions of the United States North Atlantic/Continental European trade area, the lower rates are applicable to the commodities concerning only if they are carried in a westbound direction. Therefore this carrier charges significantly different rates for what appear in all respects to be like services differing only in directional movement. Thus shippers of like traffic will not enjoy the same or even approximately equivalent rates and, specifically, American exporters will be charged rates significantly higher than their European counterparts.

The Commission is aware of no transportation circumstances or conditions which would justify the maintenance by ACL of discriminatory rates in the manner described especially since they may very likely require that the American exporter compensate for any losses that may occur because of the decline in revenues accruing to the carrier.

Section 17 of the Shipping Act, 1916, provides in pertinent part that "* * * no common carrier by water in foreign commerce shall demand, charge, or collect any rate, fare, or charge which is unjustly discriminatory between shipper * * *. Whenever the Commission finds that any such rate, fare, or charge, is demanded, charged, or collected it may alter the same to the extent necessary to correct such unjust discrimination * * * and make an order that the carrier shall discontinue demanding, charging, or collecting any such unjustly discriminatory * * * rate, fare, or charge." Therefore, in the Commission's opinion, unless ACL can offer valid reasons which would justify these rates, ACL is charging rates which must be considered to be unjustly discriminatory between shippers in violation of section 17 of the Shipping Act, 1916, 46 U.S.C. 816.

Now therefore, it is ordered, Pursuant to sections 22 and 17 of the Shipping Act, 1916, that ACL be named respondent in this proceeding and that it be ordered to show cause why the Commission should not order the unjust discrimination existing in its export/import rate structures as set forth in the Attachment to be eliminated by increasing rates in its westbound services to the level of its eastbound rates, or by reducing the comparable rates charged by ACL in its eastbound services, or by changing rates in both directions so as to eliminate rate disparities on the commodities in question.

It is further ordered, That this proceeding shall be limited to the submission of affidavits and memoranda of law, replies, and oral argument. Should any party feel that an evidentiary hearing be required, that party must accompany any request for such hearing with a statement setting forth in detail the facts to be proven, their relevance to the issues in this proceeding, and why such proof cannot be submitted through affidavit. Requests for hearing shall be filed on or before January 22, 1971. Affidavits of fact and memoranda of law shall be filed by respondent and served upon all parties no later than the close of business January 22, 1971. Reply affidavits and memoranda shall be filed by the Commission's Bureau of Hearing Counsel and intervenors, if any, no later than close of business February 5, 1971. Oral argument will be scheduled at a later date.

It is further ordered, That a notice of this order be published in the FEDERAL REGISTER and that a copy thereof be served upon respondent.

It is further ordered, That persons other than those already party to this proceeding who desire to become parties to this proceeding and to participate therein shall file a petition to intervene pursuant to Rule 5(1) of the Commission's rules of practice and procedure (46 CFR 502.72) no later than close of business January 12, 1971.

It is further ordered, That all documents submitted by any party of record in this proceeding shall be directed to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, in an original and 15 copies as well as being mailed directly to all parties of record.

By the Commission.

[SEAL] FRANCIS C. HURNEY,
Secretary.

[F.R. Doc. 70–17593; Filed, Dec. 30, 1970; 8:49 a.m.]

[1] Filed as part of the original document.

CITY AND PORT OF PORTLAND

Notice of Assignment of Interest

The City of Portland (City) and the Port of Portland (Port) have been authorized by their respective voters to effect a consolidation of the functions and property of the City's Commission of Public Docks with the Port, and the Port will assume and pay, perform and discharge all debts, contracts, and obligations of the City relating to the properties and functions of the Commission of Public Docks.

The following agreements between the City and parties shown have previously been approved by the Federal Maritime Commission pursuant to section 15, Shipping Act, 1916:

F.M.C. No.	
8985	Cargill, Inc.
T–1806	Matson Navigation Co.
T–1863	Pacific Molasses Co.

Notice is hereby given that a consent to the assignment of the rights and obligations of the City to the Port has been duly executed and filed with the Federal Maritime Commission for each agreement listed.

Dated: December 28, 1970.

FRANCIS C. HURNEY,
Secretary.

[F.R. Doc. 70–17568; Filed, Dec. 30, 1970; 8:47 a.m.]

FEDERAL POWER COMMISSION

[Docket No. E–7584]

BANGOR HYDRO-ELECTRIC CO.

Notice of Proposed Rate Schedule Changes

DECEMBER 18, 1970.

Take notice that on December 4, 1970, Bangor Hydro-Electric Co. (applicant) filed a Fuel Cost Adjustment Clause to be applicable to six wholesale customers, effective December 1, 1970, subject to Commission Approval of Request for Waiver of Notice Requirement. The six customers affected include three rural electric cooperatives, one municipality, and two private utilities.

According to applicant, the fuel adjustment will be computed every month under the filed rate schedule and the resulting charge or credit will be applied to each customer's bill on the basis of kilowatt-hour use. The estimated total effect of this charge on the above-mentioned customers will be less than $50,000 annually.

As justification for the new clause, Applicant points to the fact that they have not heretofore utilized a fuel adjustment clause and since the company burns approximately 750,000 barrels of Bunker "C" oil per year and with the barrel price of this oil going from $1.95 to $3, the fuel adjustment clause was considered to be the best method to overcome this economic impact. It was also

felt that any further increases or decreases in oil prices would result in an automatic adjustment to the customer's bill through the use of this adjustment clause.

Copies of the filing have been served on the six customers.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 13, 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. 70-17550; Filed, Dec. 30, 1970; 8:45 a.m.]

[Docket No. CP71-159]

COLORADO INTERSTATE GAS CO.

Notice of Application

DECEMBER 23, 1970.

Take notice that on December 11, 1970, Colorado Interstate Gas Co., a division of Colorado Interstate Corp. (applicant), Post Office Box 1087, Colorado Springs, CO 80901, filed in Docket No. CP71-159 an application pursuant to section 7(c) of the Natural Gas Act and § 157.7(b) of the Commission's regulations thereunder for a certificate of public convenience and necessity authorizing the construction during the 12-month period from April 1, 1971, to April 1, 1972, and operation of various gas purchase facilities for the connection to its system of additional supplies of natural gas, all as more fully set forth in this application which is on file with the Commission and open to public inspection.

Applicant states that the purpose of this application is to enable applicant to act with reasonable dispatch in contracting for and connecting to its system new supplies of gas in various producing areas generally coextensive with said system.

Applicant states that the total estimated cost of the proposed facilities will not exceed $4 million with no single project to exceed $1 million. The proposed facilities will be financed from current working funds on hand, funds from operations, or short-term borrowings.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 15, 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 proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Acting Secretary.

[F.R. Doc. 70-17588; Filed, Dec. 30, 1970; 8:48 a.m.]

[Docket No. RP71-77]

CONSOLIDATED GAS SUPPLY CORP.

Notice of Proposed Changes in Rates and Charges

DECEMBER 22, 1970.

Take notice that on December 17, 1970, Consolidated Gas Supply Corp. (Consolidated) tendered for filing proposed changes in its FPC Gas Tariff, First Revised Volume No. 1 and Original Volume No. 2. The proposed rate changes, based on a cost of service study for the 12-month period ending September 30, 1970, as adjusted, would increase Consolidated's rates and charges by approximately $30,248,118 over the settlement rates in Docket No. RP69-19 et al., approved by Commission order issued September 18, 1970, in that docket, as adjusted to include a tracking increase which became effective November 1, 1970.

Consolidated states that the rate increase is required to compensate it for increased gas costs of approximately $15.9 million, increased cost of Consolidated's capital justifying an increase to a 9-percent rate of return, an increase in the annual depreciation rates for transmission and underground storage plant to 3.5 percent, and on other depreciable properties to a composite depreciation rate of 5 percent, increased operating expenses, normalization of liberalized depreciation for Federal and State income tax purposes, the use of a 5-year average for exploration and development expenses, and changes in Federal, State, and local taxes.

Consolidated's filing includes tariff sheets providing for new rate schedules applicable to small customers (under 5,000,000 Mcf annually) in Zone 4 under the provisions of the rate settlement in Docket No. RP69-19 et al. The company states that it proposes to request the Commission to make these tariff sheets effective at such time as the order approving the settlement in Docket No. RP69-19 becomes final and nonappealable. Consolidated's filing also contains a purchased gas cost adjustment provision. If the Commission should reject the tariff sheets containing the purchased gas cost adjustment pursuant to § 154.38 (d)(3) of the regulations under the Natural Gas Act, Consolidated requests such waiver of the Commission's rules as may be necessary to permit said clause to be filed or made the subject of hearings in this proceeding.

Consolidated also states that it intends to file revised tariff sheets on or about May 31, 1971, to reflect increases filed by its pipeline suppliers as a result of the Commission's order in Docket No. R-394, along with any other changes in cost of gas purchased which are not reflected in this filing but which become effective on or before July 1, 1971.

Copies of the filing were 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 15, 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 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. 70-17551; Filed, Dec. 30, 1970; 8:45 a.m.]

[Docket No. RI71-493, etc.]

GREGORY J. GALLAGHER ET AL.

Order Providing for Hearings on and Suspension of Proposed Changes in Rates [1]

DECEMBER 18, 1970.

The respondents named herein have filed proposed increased rates and

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

charges of currently effective rate schedules for sales of natural gas under Commission jurisdiction, as set forth in Appendix A hereof.

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

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

The Commission orders:

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

(B) Pending hearings and decisions thereon, the rate supplements herein are suspended and their use deferred until date shown in the "Date Suspended Until" column, and thereafter until made effective as prescribed by the Natural Gas Act.

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

(D) Notices of intervention or petitions to intervene may be filed with the Federal Power Commission, Washington, D.C. 20426, in accordance with the rules of practice and procedure (18 CFR 1.8 and 1.37(f)) on or before February 10, 1971.

By the Commission.

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

APPENDIX A

Docket No.	Respondent	Rate schedule No.	Supplement No.	Purchaser and producing area	Amount of annual increase	Date filing tendered	Effective date unless suspended	Date suspended until—	Cents per Mcf: Rate in effect	Cents per Mcf: Proposed increased rate	Rate in effect subject to refund in dockets Nos.
RI71-493..	Gregory J. Gallagher	1	4	Florida Gas Transmission Co. (Palacios Field, Matagorda County, Tex., RR. Dist. No. 3).	$875	11-23-70	12-24-70	5-24-71	16.0	[1] 19.5	
		2	2	Florida Gas Transmission Co. (Frick Unit, Palacios Field, Matagorda County, Tex., RR. District No. 3).	1,225	11-23-70	12-24-70	5-24-71	16.0	[1] 19.5	
RI71-494..	B. J. Brown	7	2	Arkansas Louisiana Gas Co. (Chismville Field, Logan County, Ark.).	280	11-19-70	12-20-70	5-20-71	15.0	16.0	
RI71-495..	Skelly Oil Co.	228	3	Lone Star Gas Co. (Stephens County, Oklahoma Other Area).	17,094	11-24-70	1-1-71	6-1-71	15.0	16.0	
		5	[2] 14	Tennessee Gas P/L Co., a division of Tenneco Inc., (Logansport Field, De Sota Parish, North Louisiana).	.....	11-24-70	12-25-70	[14] Accepted			
		5	15	.....do.....	16,624	11-24-70	12-25-70	5-25-71	[3] [15] 16.79407	[3] [15] 17.79407	RI70-270.
RI71-496..	Eason Oil Co.	26	3	Arkansas Louisiana Gas Co. (Kinta Field, Pittsburg County, Oklahoma Other Area).	1,240	11-23-70	12-24-70	5-24-71	[3] 15.0	[3] 16.0	
RI71-497..	Pan American Petroleum Corp.	460	3	Lone Star Gas Co. (North Durant Field, Bryan County, Oklahoma Other Area).	600	11-25-70	1-1-71	6-1-71	[4] 15.01025	[4] 16.01025	RI70-1414.
RI71-498..	J. A. LaFortune	3	3	Arkansas Louisiana Gas Co. (Kinta Field, Pittsburg County, Oklahoma Other Area).	155	11-25-70	12-26-70	5-26-71	[3] 15.0	[3] 16.0	
RI71-499..	Joseph S. Gruss	1	17	El Paso Natural Gas Co. (Spraberry Trend Area, Reagan, Glasscock and Midland Counties, Tex., RR.Districts Nos. 7-C and 8) (Permian Basin).	8,254	11-23-70	12-24-70	5-24-71	14.5	19.3278	
		2	14	El Paso Natural Gas Co. (Spraberry Trend Area, Reagan County, Tex.) (RR. District No. 7-C) (Permian Basin).	3,159	11-23-70	12-24-70	5-24-71	14.5	19.3278	
		3	13	.....do.....	195	11-23-70	12-24-70	5-24-71	14.5	19.3278	
		5	18	El Paso Natural Gas Co. (Spraberry Trend Area, Midland County, Tex.) (RR. District No. 8) (Permian Basin).	1,077	11-23-70	12-24-70	5-24-71	14.5	19.3278	
		6	5	.....do.....	332	11-23-70	12-24-70	5-24-71	14.5	19.3278	
		9	3	El Paso Natural Gas Co. (Spraberry Trend Area, Reagan County, Tex.) (RR. District No. 7-C) (Permian Basin).	1,063	11-23-70	12-24-70	5-24-71	14.5	19.3278	
RI71-500..	D. J. Simmons, Thelma Ford Simmons, Executrix.	4	6	El Paso Natural Gas Co. (Blanco Field, San Juan County, N. Mex.) (San Juan Basin).	4,784	11-20-70	12-21-70	[11] Accepted	[4] [13] 12.0	[4] [13] 13.0	
				.....do.....	4,334	11-20-70	12-21-70	5-21-71	[4] [13] 13.0	[4] [13] 14.0	
RI71-501..	Pan American Petroleum Corp.	415	5	Mountain Fuel Supply Co. (West Side Canal Unit, Carbon County, Wyo.).	10,100	11-20-70	1-1-71	6-1-71	[10] 15.15	[7] [13] 16.16	RI70-190.
RI71-502..	Gulf Oil Corp.	348	6	El Paso Natural Gas Co. (Bisti-Gallup Field, San Juan County, N. Mex.) (San Juan Basin).	(9)	11-23-70	1-1-71	6-1-71	[4] [13] 13.0	[7] [13] [15] 15.2869	
RI71-503..	Chevron Oil Co., Western Division.	4	7	Cascade Natural Gas Corp. (Mam Creek Area, Garfield County, Colo.).	438	11-23-70	12-24-70	5-24-71	[13] [15] 15.0	[13] 16.0	
RI71-504..	Gulf Oil Corp.	198	5	El Paso Natural Gas Co. (Red Wash Field, Uintah County, Utah).	780	11-23-70	12-24-70	5-24-71	[13] 19.5	20.5	

[1] Unless otherwise stated, the pressure base is 14.65 p.s.i.a.
[2] Two-step periodic increase.
[3] Subject to downward B.t.u. adjustment.
[4] Amendment dated Nov. 16, 1970, which provides for increased rate and extends term of contract until June 11, 1979.
[5] Buyer deducts 0.5 cent for dehydration and 2 cents for amortization of pipeline costs from rate shown. Rate includes 0.01025-cent tax reimbursement.
[6] Attributable to production from Pictured Cliffs Formation.
[7] Attributable to production below The Picture Cliffs Formation.
[8] Tax reimbursement portion of rate not applicable to production attributable to State and Federal royalty.
[9] Settlement rate.
[9] No current sales.
[10] Includes partial reimbursement for the full 2.55 percent New Mexico Emergency School Tax.
[11] Initial rate.
[12] Suspended in Docket No. RI71-17 until Dec. 19, 1970.
[13] Pressure base is 15.025 p.s.i.a.
[14] Accepted as a contract amendment effective as of the date set forth in the "Effective Date Unless Suspended" column. The proposed increased rate contained therein, however, is suspended as provided herein.
[15] Accepted as of Dec. 21, 1970 since the proposed increase does not exceed the applicable ceiling.

The proposed periodic increase of Pan American Petroleum Corp. (Pan American) includes a double amount of the contractually due reimbursement of the Wyoming severance tax, to provide for reimbursement of taxes applicable to future production as well as reimbursement for taxes applicable to past production, back to January 1, 1968. The proposed increase is suspended for 5 months upon expiration of statutory notice. After tax reimbursement applicable to past production has been recovered, Pan American shall file a rate decrease reducing the proposed rate so as to provide for tax reimbursement for future production only. Pan American will also be required to refund any reimbursement relating to the Wyoming tax collected in this proceeding in the event the tax is for any reason held invalid upon judicial review.

The proposed increase of Gulf Oil Corp. (Gulf) reflects partial reimbursement for the full 2.55 percent New Mexico Emergency School Tax. El Paso Natural Gas Co. (purchaser) is expected to protest such tax reimbursement. El Paso questions the right of the producer under the tax reimbursement clause to file a rate increase reflecting tax reimbursement computed on the basis of an increase in tax rate by the New Mexico Legislature in excess of 0.55 percent. While El Paso concedes that the New Mexico Legislature effected a higher rate of at least 0.55 percent, they claim there is controversy as to whether or not the new legislation effected an increased rate in excess of 0.55 percent. In view of the contractual problem presented, the hearing herein shall be concerned with the contractual basis for such rate filing, as well as the statutory lawfulness of the proposed increased rate.

Gulf proposes a rate increase from 19.5 cents to 20.5 cents for a sale of gas to El Paso Natural Gas Co. in the Red Wash Field, Vintah County, Utah, where no formal ceiling rates have been announced. Since the proposed rate exceeds the 13-cent increased rate ceiling for adjacent Colorado and Wyoming and the 15.384-cent initial rate certificated in Opinion No. 359 for sales in the Red Wash Field, the proposed rate is suspended for 5 months.

Gregory J. Gallagher, B. J. Brown, and Gulf Oil Corp. request effective dates for which adequate notice has not been given. Good cause has not been shown for granting any of these requests and they are denied.

All of the producers' proposed increased rates and charges exceed the applicable area price levels for increased rates as set forth in the Commission's statement of general policy No. 61–1, as amended (18 CFR 2.56).

[F.R. Doc. 70–17545; Filed, Dec. 30, 1970; 8:45 a.m.]

[Docket No. RI71–505]

JOSEPH S. GRUSS

Order Providing for Hearing on and Suspension of Proposed Change in Rate, and Allowing Rate Change To Become Effective Subject to Refund

DECEMBER 18, 1970.

Respondent named herein has filed a proposed change in rate and charge of a currently effective rate schedule for the sale of natural gas under Commission jurisdiction, as set forth in Appendix A hereof.

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

The Commission finds: It is in the public interest and consistent with the Natural Gas Act that the Commission enter upon a hearing regarding the lawfulness of the proposed change, and that the supplement herein be suspended and its use be deferred as ordered below.

The Commission orders:

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

(B) Pending hearing and decision thereon, the rate supplement herein is suspended and its use deferred until date shown in the "Date Suspended Until" column, and thereafter until made effective as prescribed by the Natural Gas Act: *Provided, however,* That the supplement to the rate schedule filed by respondent shall become effective subject to refund on the date and in the manner herein prescribed if within 20 days from the date of the issuance of this order respondent shall execute and file under its above-designated docket number with the Secretary of the Commission its agreement and undertaking to comply with the refunding and reporting procedure required by the Natural Gas Act and § 154.102 of the regulations thereunder, accompanied by a certificate showing service of a copy thereof upon the purchaser under the rate schedule involved. Unless respondent is advised to the contrary within 15 days after the filing of its agreement and undertaking, such agreement and undertaking shall be deemed to have been accepted.

(C) Until otherwise ordered by the Commission, neither the suspended supplement, nor the rate schedule sought to be altered, shall be changed until disposition of this proceeding or expiration of the suspension period.

(D) Notices of intervention or petitions to intervene may be filed with the Federal Power Commission, Washington, D.C. 20426, in accordance with the rules of practice and procedure (18 CFR 1.8 and 1.37(f)) on or before February 10, 1971.

By the Commission.

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

APPENDIX A

Docket No.	Respondent	Rate schedule No.	Supplement No.	Purchaser and producing area	Amount of annual increase	Date filing tendered	Effective date unless suspended	Date suspended until	Cents per Mcf*		Rate in effect subject to refund in dockets Nos.
									Rate in effect	Proposed increased rate	
RI71–505	Joseph S. Gruss	10	2	El Paso Natural Gas Co. (Ignacio-Blanco Mesa Verde Field, La Plata County, Colo.).	$990	11–23–70	12–24–70	12–25–70	13.0	14.0	

*Pressure base is 15.025 p.s.i.a.

The proposed increase of Joseph S. Gruss is dated after the date of issuance of the Commission's statement of general policy No. 61–1 issued September 28, 1960, and the proposed rate does not exceed the area initial service ceiling rate. Accordingly, the proposed increase is suspended for one day from December 24, 1970, the date of expiration of statutory notice.

[F.R. Doc. 70–17549; Filed, Dec. 30, 1970; 8:45 a.m.]

[Docket No. CP71–160]

NORTHERN NATURAL GAS CO.

Notice of Application

DECEMBER 23, 1970.

Take notice that on December 15, 1970, Northern Natural Gas Co. (applicant), 2223 Dodge Street, Omaha, NE 68102, filed in Docket No. CP71–160 an application pursuant to section 7(c) of the Natural Gas Act, as amended, for a certificate of public convenience and necessity authorizing the construction and operation of certain facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, applicant proposes to install the following facilities: (i) three 2,000-horsepower compressor units in the Lea County, N. Mex., gathering system; (ii) one 660-horsepower compressor unit in the Eunice, N. Mex., compressor station; (iii) two 1,000-horsepower compressor units in the Northrup, Tex., gathering system; and (iv) 11.1 miles of 30-inch loop north of Coyanosa, Tex. Applicant estimates that these facilities will cost approximately $5,892,900 and states that this cost will be financed from cash on hand and from funds generated through operations.

Applicant alleges that the proposed facilities are required to reduce gathering system line pressures in accordance with contractual obligations, to maintain supply system delivery capability, and to transport available volumes for use in meeting existing system requirements for the 1971–72 heating season. Applicant states that no additional salable capacity will result from the proposed facilities and no additional revenues will be derived therefrom.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 15, 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 proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Acting Secretary.

[F.R. Doc. 70-17589; Filed, Dec. 30, 1970; 8:48 a.m.]

[Docket No. RI71-517 etc.]

PAN AMERICAN PETROLEUM CORP. ET AL.

Order Providing for Hearings on and Suspension of Proposed Changes in Rates [1]

DECEMBER 22, 1970.

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

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

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

The Commission orders:

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

(B) Pending hearings and decisions thereon, the rate supplements herein are suspended and their use deferred until date shown in the "Date Suspended Until" column, and thereafter until made effective as prescribed by the Natural Gas Act.

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

(D) Notices of intervention or petitions to intervene may be filed with the Federal Power Commission, Washington, D.C. 20426, in accordance with the rules of practice and procedure (18 CFR 1.8 and 1.37(f)) on or before February 12, 1971.

By the Commission.

[SEAL] GORDON M. GRANT,
Secretary.

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

APPENDIX A

Docket No.	Respondent	Rate schedule No.	Supplement No.	Purchaser and producing area	Amount of annual increase	Date filing tendered	Effective date unless suspended	Date suspended until	Cent per Mcf*		Rate in effect subject to refund in dockets Nos.
									Rate in effect	Proposed increased rate	
RI71-517..	Pan American Petroleum Corp.	72	[2] 18	Tenneco Gas Pipeline Co., a division of Tenneco, Inc. (Carthage Field, Panola County, Tex., District No. 6).	.....	12- 1-70	1- 1-71	[10] Accepted	.....	.....	
			19	.....do.....	$209,536	12- 1-70	1- 1-71	6- 1-71	[1] [11] 15.0	[1] [11] 22.0	
RI71-518..	James A. Hunter.....	1	7	Mississippi River Transmission Corp. (Ruston Field, Lincoln Parish) (North Louisiana).	6,922	11-16-70	12-23-70	5-23-71	[1] [4] 14.603	[1] [3] 18.75	
RI71-519..	Ashland Oil, Inc.....	104	12	.....do.....	22,363	11-23-70	12-24-70	5-24-71	[1] [4] [8] 14.6039	[1] [3] [4] [8] 22.0582	R160-764.
RI71-520..	Franks Petroleum Inc.	7	6	United Gas P/L Co.....	2,000	[9] 11-25-70	12-26-70	5-26-71	[1] [8] 18.5	[1] [8] 20.0	
									[1] [8] 18.75	[1] [8] 20.0	

*Unless otherwise stated, pressure base is 15.025 p.s.i.a.
[1] Subject to downward B.t.u. adjustment.
[2] Unilaterally sets forth provisions for continuation of sale. Term of contract expires Dec. 31, 1970.
[3] Applicant filing unilateral rate increase pursuant to favored-nations provision which becomes effective upon expiration of primary term of contract. Hunter's filing includes letter from buyer concurring in rate.
[4] Includes 1.333-cent tax reimbursement.
[5] Includes 1.75-cent tax reimbursement.
[6] Includes 0.2249-cent dehydration charge paid by buyer.
[7] Primary term of contract expired on Oct. 1, 1970.
[8] Applicable to production from Hosston, Ferry Lake and Lower Pettit Zones.
[9] Filing completed on Dec. 9, 1970 by correction letter dated Dec. 7, 1970.
[10] Accepted as a contract amendment effective as of the date set forth in the "Effective Date Unless Suspended" column. The proposed increased rate contained therein, however, is suspended as provided herein.
[11] Pressure base is 14.65 p.s.i.a.

The acceptance, of course, of the agreement submitted by Pan American, designated as Supplement No. 18 to its FPC Gas Rate Schedule No. 72, does not constitute any authorization to abandon any acreage covered by the original contract which is not covered by the subject agreement.

All of the producers' proposed increased rates and charges exceed the applicable area price levels for increased rates as set forth in the Commission's statement of general policy No. 61-1, as amended (18 CFR 2.56).

[F.R. Doc. 70-17547; Filed, Dec. 30, 1970; 8:45 a.m.]

[Docket No. RI71-506 etc.]

UNION OIL COMPANY OF CALIFORNIA ET AL.

Order Providing for Hearings on and Suspension of Proposed Changes in Rates [1]

DECEMBER 22, 1970.

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

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

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

The Commission orders:

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

(B) Pending hearings and decisions thereon, the rate supplements herein are suspended and their use deferred until date shown in the "Date Suspended Until" column, and thereafter until made effective as prescribed by the Natural Gas Act.

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

(D) Notices of intervention or petitions to intervene may be filed with the Federal Power Commission, Washington, D.C. 20426, in accordance with the rules of practice and procedure (18 CFR 1.8 and 1.37(f)) on or before February 16, 1971.

By the Commission.

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

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

APPENDIX A

Docket No.	Respondent	Rate schedule No.	Supplement No.	Purchaser and producing area	Amount of annual increase	Date filing tendered	Effective date unless suspended	Date suspended until	Cents per Mcf: Rate in effect	Cents per Mcf: Proposed increased rate	Rate in effect subject to refund in dockets Nos.
RI71-506..	Union Oil Co. of California.	158	2	Trunkline Gas Co. (O'Brien Ranch, Gotlad County, Tex. RR. District No. 2).	$2,010	11-30-70	1-1-71	6-1-71	[3] 13.0468	[4] 14.0516	
RI71-507..	Amerada Hess Corp.....	95	7	Montana-Dakota Utilities Co. (Nesson Anticline Area, Burke, McKenzie, Mountrail, and Williams Counties, N. Dak.).	102,222	11-25-70	1-1-71	6-1-71	[5] 18.046	[5] 19.0442	RI66-212.
RI71-508..	Hondo Oil & Gas Co....	5	4	Transwestern Pipeline Co. (Bell Lake Field, Lea County, N. Mex.) (Permian Basin).	2,477	11-23-70	12-24-70	5-24-71	15.94	21.1015	
RI71-509..	Atlas Corp.....	7	2	El Paso Natural Gas Co. (Bisti Field, San Juan County, N. Mex.) (San Juan Basin).	16	11-27-70	12-28-70	5-28-71	[5] 13.0	[5] 15.0619	
		4	7	El Paso Natural Gas Co. (Aneth Field, San Juan County, Utah).	208	11-27-70	12-28-70	5-28-71	[5] 17.7	[5] 22.0	
RI71-510..	Alamo Petroleum Co....	1	6	El Paso Natural Gas Co. (Leases in San Juan County, N. Mex.) (San Juan Basin).	111	11-27-70	12-28-70	5-28-71	[6] [8] 14.0536	[6] [8] 14.2678	RI64-525.
		2	5	....do.....	165	11-27-70	12-28-70	5-28-71	[6] [8] 14.0577 [6] [8] 14.1536	[6] [8] 14.2678 [6] [8] 14.2678	RI64-462. RI64-525.
RI71-511..	Prenalta Corp.....	6	1	Colorado Interstate Gas Co. (Point of Rocks Field, Sweetwater County, Wyo.).	588	12-4-70	1-4-71	6-4-71	[9] 17.20	[9] 18.20	
RI71-512..	Joseph S. Gruss.....	14	3	El Paso Natural Gas Co. (Spraberry Trend Area, Upton County, Tex.) (RR. District No. 7-C) (Permian Basin).	968	11-30-70	12-31-70	5-31-71	14.5	19.3278	
		15	3	....do.....	1,442	11-30-70	12-31-70	5-31-71	14.5	19.3278	
		16	2	....do.....	646	11-30-70	12-31-70	5-31-71	14.5	19.3278	
		17	9	....do.....	16	11-30-70	12-31-70	5-31-71	14.5	19.3278	
		18	6	....do.....	5	11-30-70	12-31-70	5-31-71	14.5	19.3278	
RI71-513..	Evinar Oil Corp.....	1	6	El Paso Natural Gas Co. (Spraberry Trend Area, Glasscock County, Tex.) (RR. District No. 8) (Permian Basin).	26	11-23-70	12-24-70	5-24-71	14.5	19.3278	
		2	13	El Paso Natural Gas Co. (Spraberry Trend Area, Glasscock and Reagan Counties, Tex.) (RR. District Nos. 8 and 7-C) (Permian Basin).	67	11-23-70	12-24-70	5-24-71	14.5	19.3278	
		3	8	El Paso Natural Gas Co. (Spraberry Trend Area, Upton County, Tex.) (RR. District No. 7-C) (Permian Basin).	119	11-23-70	12-24-70	5-24-71	14.5	19.3278	

[2] Unless otherwise stated, pressure base is 14.65 p.s.i.a.
[3] Includes a 0.25 cent dehydration allowance.
[4] Not used.
[5] Not used.
[6] Includes 1 cent minimum guarantee for liquids.
[7] Tax reimbursement calculated on base rate of 13 cents plus the 1 cent minimum guarantee for liquids.
[8] Increase from 13 cents plus 1 cent minimum guarantee for liquids to 14 cents exclusive of the 1 cent minimum guarantee for liquids.
[9] Includes partial reimbursement for the full 2.55 percent New Mexico Emergency School Tax.
[10] Includes 2.2 cents upward B.t.u. adjustment.
[11] Not used.
[12] Not used.
[13] Not used.
[14] Pressure base is 14.73 p.s.i.a.
[15] Pressure base is 15.025 p.s.i.a.

The proposed increase of Amerada Hess Corp. is for a sale in North Dakota where no ceiling rates have been established. The highest certificated rate in North Dakota is 16 cents per Mcf. Since the proposed rate exceeds the highest certificated rates in the area, the proposed increase is suspended for 5 months.

The proposed increased rate of 22 cents per Mcf of Atlas Corp. is for a sale of gas in the Aneth Area of Utah where no formal ceiling rates have been announced. In accordance with prior requests for proposed increased rates filed at this level, the proposed increased rate of Atlas is suspended for 5 months.

The proposed increases of Alamo Petroleum Co. reflect partial reimbursement for the full 2.55 percent New Mexico Emergency School Tax. El Paso Natural Gas Co., the buyer, is expected to protest such tax reimbursement. El Paso questions the right of the producer under the tax reimbursement clause to file a rate increase reflecting tax reimbursement computed on the basis of an increase in tax rate by the New Mexico Legislature in excess of 0.55 percent. While El Paso concedes that the New Mexico Legislature effected a higher rate of at least 0.55 percent, they claim there is controversy as to whether or not the new legislation effected an increased rate in excess of 0.55 percent. In view of the contractual problem presented, the hearing herein shall be concerned with the contractual basis for such rate filings, as well as the statutory lawfulness of the proposed increased rates.

Prenalta Corp. requests an effective date for which adequate notice was not given. Good cause has not been shown for granting this request and it is denied.

All of the producers' proposed increased rates and charges exceed the applicable area price levels for increased rates as set forth in the Commission's statement of general policy No. 61–1, as amended (18 CFR 2.56).

[F.R. Doc. 70–17546; Filed, Dec. 30, 1970; 8:45 a.m.]

[Docket No. CP68–308]

UNITED GAS PIPE LINE CO. AND MID LOUISIANA GAS CO.

Notice of Application

DECEMBER 18, 1970.

Take notice that on December 9, 1970, United Gas Pipe Line Co. (United) and Mid Louisiana Gas Co. (Mid Louisiana), formerly Humble Gas Transmission Co. filed in Docket No. CP68–308 an application pursuant to section 7(c) of the Natural Gas Act requesting that the certificate of public convenience and necessity heretofore issued in this docket, as amended, be further amended: (i) To designate four additional exchange points in East Baton Rouge Parish, La.; (ii) to authorize the exchange of certain volumes of gas upon a regular basis; and (iii) to authorize the construction and operation of certain facilities; and Mid Louisiana asks that it be authorized to continue rendering certain services, all as more fully described in the application which is on file with the Commission and open to public inspection.

The only new facilities required to be constructed by United as a result of the proposed exchange are those to be located on United's Baton Rouge to New Orleans line at its intersection with Mid Louisiana's line at Hammond Highway in East Baton Rouge Parish, La., consisting of a tap on United's line, estimated to cost $830, and a meter and regulating station with connecting lines to be installed by Mid Louisiana at an estimated cost of $14,600.

The exchange points and the services proposed in the application would permit United and Mid Louisiana to make deliveries of natural gas to the other at locations which can assist the other in the operation of its system operations, thus providing increased flexibility of operation and continuity of service for the benefit of the customers of each.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 11, 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 proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

GORDON M. GRANT,
Secretary.

[F.R. Doc. 70–17553; Filed, Dec. 30, 1970; 8:45 a.m.]

[Docket No. CP67–286]

UNITED GAS PIPE LINE CO. AND TRANSCONTINENTAL GAS PIPE LINE CORP.

Notice of Petition To Amend

DECEMBER 22, 1970.

Take notice that on December 16, 1970, United Gas Pipe Line Co. (United), 1500 Southwest Tower, Houston, TX 77002, and Transcontinental Gas Pipe Line Corp. (Transco), Post Office Box 1396, Houston, TX 77001 (petitioners), filed in Docket No. CP67–286 a joint petition to amend the order of the Commission issued on July 24, 1967 (38 FPC 163), as amended on June 16, 1969 (41 FPC 806), so as to allow an increase from 70,000 Mcf per day to 150,000 Mcf per day in the quantities of natural gas that the petitioners are authorized to exchange, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

By order on July 24, 1967 (38 FPC 163), the Commission authorized petitioners, inter alia, to exchange up to 70,000 Mcf per day of natural gas. The amending order (41 FPC 806), did not change the authorized quantity of exchange gas.

Petitioners state that because of the very low level of gas stored by United in its Bistineau storage field in Northern Louisiana, exchanges between the Petitioners of volumes in excess of the 70,000 Mcf per day limitation have been made on an emergency basis. Further, petitioners state that the conditions which made the greater exchange volumes necessary and desirable from an operating standpoint will probably be present from time-to-time in the future. Consequently, petitioners request that the Commission amend its order issued July 24, 1967, so as to allow exchanges of up to 150,000 Mcf of gas per day between the parties.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before January 12, 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 proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

GORDON M. GRANT,
Secretary.

[F.R. Doc. 70–17552; Filed, Dec. 30, 1970; 8:45 a.m.]

SECURITIES AND EXCHANGE COMMISSION

[812–2869]

INVESTMENT/INDICATORS FUND

Notice of Application and Order Granting Temporary Relief

DECEMBER 22, 1970.

Notice is hereby given that Investment/Indicators Fund (Applicant), Post Office Box 808, San Francisco, CA 94101, a management, open-end, diversified investment company registered under the Investment Company Act of 1940 (Act) has filed an application for an order pursuant to section 22(e)(3) of the Act permitting (a) suspension of the right of redemption of its outstanding redeemable securities, and (b) suspension of payment for shares already submitted for redemption for which payment has not been made as of the date and time of the requested order, until either:

(1) Ten days after Applicant gives the Commission notice of intention to resume redemptions and payments therefor, or

(2) The Commission on its own initiative rescinds the order applied for herein.

All interested persons are referred to the application on file with the Commission for a statement of the representations made therein which are summarized below.

Applicant states that on December 16, 1970 the State of Texas issued a cease and desist order relating to the offer and sale of shares of Applicant to Texas residents. The order was issued on a finding, among others, that a large undisclosed contingent liability exists in that the Applicant has offered and sold its securities which were unregistered in Texas to Texas residents in violation of the law of Texas. Over 32,400 shares of the Applicant have been sold to approximately 296 Texas residents with none of said shares having been registered for sale in Texas. Applicant has refused to make rescission

upon the demand of at least one Texas resident who alleged that he purchased shares of Applicant at prices ranging from $9.60 to over $14 per share. The net asset value of such shares on December 17, 1970, was $6.35 per share.

Applicant represents that similar problems may exist in other States. As a result, Applicant may have a contingent liability to certain of its stockholders in an amount which is presently unascertainable.

Accordingly, Applicant states that until such time as it ascertains the amount of such contingent liability, if any, and determines the manner of satisfying any such liability, it is not reasonably practicable for Applicant fairly to determine the value of its net assets, thus creating a situation contemplated by subparagraphs (2) and (3) of section 22(e) of the Act.

Section 22(e)(3) provides that the Commission may by order permit, for the protection of the security holders of a registered investment company, the suspension of the right of redemption or postponement of the date of payment or satisfaction upon redemption.

The Commission has considered the matter and hereby finds, on the basis of information stated in the application, that an immediate emergency exists as a result of which it is not reasonably practicable for Applicant to determine the value of its net assets. Furthermore, the Commission finds that it is necessary for the protection of security holders of Applicant that there be issued together with the notice of the application a temporary order permitting the suspension of the right of redemption and postponement of payment until the further order of the Commission.

Accordingly, it is ordered, Pursuant to section 22(e)(3) of the Act, that Applicant be and is hereby permitted (1) to suspend the right of redemption of its outstanding redeemable securities, effective at the opening of business this date and (2) to suspend payment for shares already submitted for redemption and on which payment has not been made prior to this date, both suspensions to continue pending further order of the Commission.

Notice is further given that any interested person may, not later than January 12, 1971, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application as described above, accompanied by a statement as to the nature of his interest, the reasons for such request and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon Applicant at the address stated above. Proof of such service (by affidavit or in case of 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.

By the Commission.

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

[F.R. Doc. 70-17559; Filed, Dec. 30, 1970; 8:46 a.m.]

[31-704]

NORTH CAROLINA NATIONAL BANK AND BANKERS TRUST OF SOUTH CAROLINA

Notice of Filing of Application for Order Declaring Applicants Not To Be Electric Utility Companies

DECEMBER 23, 1970.

Notice is hereby given that North Carolina National Bank (NCNB), 200 South Tryon Street, Charlotte, NC 28202, and Bankers Trust of South Carolina (Bankers), Post Office Box 448, Columbia, SC 29202, have filed an application for an order declaring that neither NCNB or Bankers will become "an electric utility company" within the meaning of section 2(a)(3) of the Public Utility Holding Company Act of 1935 (Act) as a result of the transactions set forth in the application. All interested persons are referred to the application, which is summarized below, for a complete statement of the facts.

NCNB is a national banking association organized and existing under the national banking laws of the United States. All shares of its outstanding capital stock, except for qualifying shares owned by its directors, are owned by NCNB Corporation (the Corporation), a North Carolina corporation. Neither NCNB nor the Corporation nor corporations owned or controlled by the Corporation is presently a "holding company" or a "subsidiary company" of a "holding company," as defined in the Act. Bankers is a bank incorporated under the laws of South Carolina and is not a "holding company" or a "subsidiary company" of a "holding company," as defined in the Act. Although no arrangements to do so have presently been made, Bankers contemplate that it may at some time in the future become a subsidiary of a "one-bank" holding company.

Duke Power Company (Duke), a North Carloina corporation, is an electric utility company subject to the jurisdiction of the North Carolina Utilities Commission and the Public Service Commission of South Carolina. The Duke Endowment, which owns approximately 56.06 percent of the outstanding common stock of Duke, is a common law trust established under the laws of New Jersey for educational, charitable, and religious purposes and Duke is exempt from the status of a subsidiary company pursuant to Rule 12 promulgated under the Act.

Duke has entered into agreements with various manufacturers to supply to Duke 25 dual-fuel combustion turbines and related facilities (Equipment) having an aggregate installed cost to Duke of approximately $65,500,000. Duke proposes to transfer all of such Equipment to each of the banks as owners. NCNB is to acquire Equipment situated or to be situated in North Carolina, with Bankers acquiring Equipment situated or to be situated in South Carolina. The owners will lease such Equipment to Duke under separate net leases (the Leases), each having a basic term of approximately 26 years, with an option to Duke to renew each such Lease for three successive extended terms of 3 years each.

Each owner will acquire the Equipment transferred to it for its own account. Each owner will obtain all funds required to pay for the installed cost of the Equipment by issuing its certificates of interest (the Certificates of Interest) to DPC Equipment, Inc., a Delaware corporation organized for this purpose (DPC). All of DPC's authorized capital stock will be owned by Goldman, Sachs & Co., a New York partnership, which is a registered broker-dealer under the Securities Exchange Act of 1934, and a member of the New York Stock Exchange, or by one of its senior officers. Such Certificates of Interest will evidence cash advances to the owners equal to 100 percent of such installed costs and as security for these certificates each owner will assign to DPC its rights as lessor under the Leases pursuant to a Security Agreement.

Goldman, Sachs & Co. as agent will obtain for DPC the funds which DPC will advance to the owners. DPC will issue self-liquidating, fixed interest-bearing notes (the Notes) in aggregate principal amount up to $65,500,000, under a private placement with institutional lenders. The Notes will mature at the expiration of the basic term of the Leases and will be issued as provided in a collateral trust indenture (the Indenture) from DPC to Irving Trust Company, as trustee (the Trustee). The Notes will be secured under the Indenture by an assignment to the Trustee of (i) all the rights of DPC under the Certificates of Interest, including the right to receive all rents and other sums payable by Duke under the Leases, and (ii) all the rights of DPC under each of the Security Agreements mentioned above. The Notes will be further secured by Duke's agreement to pay DPC's taxes, if any, and its administrative and operating expenses, to furnish financial information to the holders of the Notes, to remove all liens, encumbrances or charges which interfere with required payments on the Notes, and to make all payments under the Leases directly to the Trustee to meet the obligations upon the Notes as provided in the Indenture. Under each

Lease Duke will be responsible for maintaining, operating, repairing, replacing, and insuring the Equipment and for paying all taxes and other costs arising out of the possession and use of such Equipment.

Bankers, NCNB or the Corporation will not receive any fee or other payments in connection with the transactions described above, except that (i) Bankers, NCNB and the Corporation will be entitled to receive from Duke reimbursement for and indemnification against any costs and expenses incurred by either of them in connection therewith, and (ii) after the Notes have been repaid and if Duke has not purchased the Equipment previously as provided in the Leases, the owners would be entitled to receive the proceeds of the sale of the Equipment if the Leases have not been renewed or further payment of rents if the Leases have been renewed in accordance with the terms therein specified.

Each of the Applicants states that it is a company primarily engaged in one or more businesses other than the business of an electric utility company and that it will not receive any revenues from the sale of electric energy by reason of the proposed transactions. Duke has applied to the North Carolina Utilities Commission and the Public Service Commission of South Carolina for orders authorizing the participation of Duke in the proposed transactions. The orders of the State Commissions will be supplied by amendment.

Notice is further given that any interested person may, not later than January 20, 1971, request in writing that a hearing be held in respect of the request for exemption, stating the nature of his interest and the reasons for such request, and the issues of fact or law which he desires to controvert; or he may request that he be notified should the Commission order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. At any time after said date the Commission may grant the exemption requested, or take such other action as it deems appropriate.

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

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

[F.R. Doc. 70-17560; Filed, Dec. 30, 1970; 8:46 a.m.]

[812-2147]

PAN AMERICAN SULPHUR CO.

Notice and Order for Hearing on Application for Order That Company Is Not an Investment Company, or, for Order Exempting Company, or in Alternative, Exempting Proposed Transaction

DECEMBER 22, 1970.

Notice is hereby given that Pan American Sulphur Co. (Applicant), 1700 Southwest Tower, Houston, TX 77002, a Delaware corporation, has filed an application for an order of the Commission pursuant to section 3(b)(2) of the Investment Company Act of 1940 (Act) declaring that Applicant is primarily engaged in a business or businesses other than that of investing, reinvesting, owning, holding, or trading in securities through controlled companies conducting similar types of businesses, or, for an order pursuant to section 6(c) of the Act exempting Applicant from all provisions of the Act, or, in the alternative, for an order exempting from the provisions of sections 17(a) and 21 of the Act a certain transaction incident to the granting of a secured loan, to The Susquehanna Corp. (Susquehanna), an affiliated person of Applicant. All interested persons are referred to the application on file with the Commission for a statement of the representations therein, which are summarized below.

Since its formation in 1947 Applicant has been actively engaged in the exploration, development, production, and sale of sulphur. From 1953 to June 30, 1967, substantially all sulphur exploration, development and production activities were carried on by Azufrera Panamericana, S.A. de C.V. (Azufrera), a Mexican corporation and wholly owned subsidiary of Applicant.

In January 1961, a new Mexican mining law became effective which imposed disadvantages against mining corporations unless controlled by Mexican nationals. With respect to sulphur concessions held by Mexican corporations, such as those held by Azufrera, the law requires that 66 percent of the capital stock of such corporations eventually must be held by Mexican nationals. On June 30, 1967, Applicant sold 66 percent of the outstanding stock of Azufrera to the Mexican government and a group of private Mexican investors for $49,500,000 payable in two notes of Nacional Financiera, S.A. As of June 28, 1968, both notes had been paid and the proceeds invested in certificates of deposit. The Mexican government now holds 43 percent of Azufrera's common stock, private Mexican investors own 23 percent, and Applicant has retained 34 percent of the common stock of Azufrera.

Under its amended Articles of Incorporation, Azufrera is required to distribute as dividends to shareholders a minimum of 75 percent of the net income remaining after amounts required for legal reserves. Any change in Azufrera's dividend policy must be approved by vote of 70 percent of its outstanding capital stock.

Three of Applicant's directors also serve as directors of Azufrera's nine-man Board. Under the provisions of Azufrera's amended Articles of Incorporation, the approval of Applicant is required as to virtually every significant activity of Azufrera. In addition, under the terms of a management assistance agreement entered into at the time of the sales, Applicant is the sole operator of Azufrera's sulphur operations and, under the terms of an employment contract, the chairman of the board of Applicant is the chief executive officer of Azufrera; both contracts are for a 5-year period. All but two offices of Azufrera are held by officers, employees, or persons designated by Applicant and Applicant's principal executive officers spend substantially all of their time on the business of Azufrera and its subsidiaries.

Applicant also owns 34 percent of the capital stock of Compania San Noe, S.A. de C.V. (San Noe), a Mexican corporation which was formed by Applicant and Banco Nacional De Mexico, S.A. in 1965 to explore for new sulphur deposits in Mexico. In addition, the Applicant owns 38.7 percent of the capital stock of Fertilizantes Fosfatodos Mexicanos, S.A. (FFM), a manufacturer of phosphate fertilizers. The remainder of the stock of FFM is owned by Kuhn Loeb & Co. (2 percent), Loeb Rhoades & Co. (2 percent), and Mexican Nationals (56.93 percent).

Applicant's principal assets on June 30, 1970 were as follows.

	(*Millions*)
Total assets	$77.1
Cash	.8
Other short-term investments	45.5
Other current items	2.2
Investments in affiliated Mexican companies	19.4
Azufrera 8 percent bonds due 1974	6.0
Property and equipment	3.1
Other assets	.1

On August 17, 1967, Applicant's board of directors resolved that it was applicant's policy to continue as an operating company either directly or through majority-owned subsidiaries and through controlled companies conducting similar types of businesses and, except for temporary investments in Government securities and certificates of deposit, to invest available cash in such businesses.

By order dated November 1, 1967, the Commission granted to the Company a temporary exemption from the provisions of section 7 of the Act until such time as the Commission should act on the application (Investment Company Act Release No. 5146). The principal effect of this order was that the company was to be treated as an investment company within the meaning of section 3(a)(3) of the Act, except that transactions between the company and its Mexican affiliates and subsidiaries were exempted from the applicable provisions of the Act.

As stated in Susquehanna's Schedule 13D filed on March 13, 1970 (amended Mar. 24, 1970), Susquehanna now owns over 50 percent of Applicant's common stock. At a meeting of Applicant's board of directors held on May 5, 1970, the president of Susquehanna was named chief executive officer of Applicant and chairman of its executive committee. In addition, two directors of Susquehanna and a former director were named to the Applicant's board, replacing directors of the Applicant who resigned. A total of five directors resigned. Six directors, officers, or former directors of Susquehanna are now members of the Applicant's 11-member board. At a meeting of the Applicant's board of directors on October 15, 1970, the president

of Susquehanna was named president of the Applicant and the executive vice president of Susquehanna was named senior executive vice president of the Applicant.

The board of directors of the Applicant on October 30, 1970 made an offer to lend Susquehanna $36, million at a rate of interest of 1¾ percent above the prime rate per annum with an option to the Applicant to purchase Susquehanna-Western, Inc. (Susquehanna-Western), a wholly owned subsidiary of Susquehanna, after 4 years, at a price of 20 times the average net income for said 4-year period. Susquehanna-Western is engaged in the production of uranium oxide. The outstanding stock of Susquehanna-Western, and the stock of the Applicant, now owned by Susquehanna, together having an estimated value of $85 million, will be pledged as security for the loan, and in no event shall the collateral be allowed to fall below a value of $50 million. Applicant will enter into a management contract with Susquehanna, pursuant to which the Applicant will assume immediate operation and control of Susquehanna-Western. Under the management contract the Applicant will receive, as compensation, an amount equal to the difference between the above noted interest payment and the net earnings of Susquehanna-Western, provided the latter is the higher amount. Susquehanna accepted this offer November 2, 1970.

Section 3(b)(2) provides that, notwithstanding section 3(a)(3), the term "investment company" does not include an issuer which the Commission finds and by order declares to be primarily engaged in a business or businesses other than that of investing, reinvesting, owning, holding, or trading in securities either directly or through majority-owned subsidiaries or through controlled companies conducting similar types of businesses.

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

Section 17(a) of the Act, as here pertinent, prohibits an affiliated person of a registered investment company from knowingly selling to or purchasing from, such registered company any securities or other property, or from borrowing money or other property from such registered company. Section 17(b) provides that the Commission, upon application, may grant an exemption from the provisions of section 17(a) after finding that the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned and that the proposed transaction is consistent with the policy of such registered investment company and with the general purposes of the Act.

Section 21(b) makes it unlawful for any registered management company to lend money to any person if such person controls, or is under common control, with such registered company.

Applicant contends that it is not, and has never been, an investment company, and further, that the terms of the proposed transaction are fair and reasonable and beneficial to it, that there has been no overreaching on the part of any person concerned, and that the proposed transaction is consistent with the investment policy of Applicant and with the general purposes of the Act.

It appears to the Commission that it is appropriate in the public interest and in the interest of investors that a hearing be held with respect to the application.

It is ordered, Pursuant to section 40(a) of the Act, that a hearing on the aforesaid application under the applicable provisions of the Act and of the rules of the Commission thereunder be held on the 13th day of January, 1971 at 10 a.m., in the offices of the Securities and Exchange Commission, 500 North Capitol Street NW., Washington, DC 20549. At such time the Hearing Room Clerk will advise as to the room in which such hearing will be held. Any person desiring to be heard or otherwise wishing to participate in this proceeding is directed to file with the Secretary of the Commission his application as provided by Rule 9(c) of the Commission's rules of practice, on or before the date provided in the rule, setting forth any issues of law or fact which he desires to controvert or any additional issues which he deems raised by this notice and order or by such application. Persons filing an application to participate or be heard will receive notice of any adjournment of the hearing as well as other actions of the Commission involving the subject matter of this proceeding.

It is further ordered, That any officer or officers of the Commission, designated by it for that purpose, shall preside at said hearing. The officer so designated is hereby authorized to exercise all the power granted to the Commission under sections 41 and 42(b) of the Act and to a hearing officer under the Commission's rules of practice.

The Division of Corporate Regulation having advised the Commission that it has made a preliminary examination of the application, and that upon the basis thereof the following matters and questions are presented for consideration, without prejudice to its specifying additional matters and questions upon further examination:

(1) Whether Applicant is engaged in a business or businesses other than that of investing, reinvesting, owning, holding, or trading in securities through controlled companies conducting similar types of businesses; or

(2) Whether it is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act to exempt Applicant from all provisions of the Act; or

(3) Whether the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned; or

(4) Whether the proposed transaction is consistent with the investment policy of Applicant as recited in its statement on file with the Commission; and

(5) Whether the proposed transaction is consistent with the general purposes of the Act.

It is further ordered, That at the aforesaid hearing attention be given to the foregoing matters.

It is further ordered, That the Secretary of the Commission shall give notice of the aforesaid hearing by mailing a copy of this notice and order by certified mail to Pan American Sulphur Co., at the address noted hereinabove and to the Susquehanna Corp., Shirley Highway at Edsall Road, Alexandria, VA 22314, and that notice to all other persons be given by publication of this notice and order in the FEDERAL REGISTER, and that a general release of this Commission in respect of this notice and order be distributed to the press and mailed to the mailing list for releases.

By the Commission.

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

[F.R. Doc. 70-17561; Filed, Dec. 30, 1970; 8:46 a.m.]

[70-4957]

SOUTHERN CO. ET AL.

Notice of Proposed Issue and Sale of Notes to Banks and to Dealer in Commercial Paper by Holding Company and Four of Its Subsidiary Companies, and Exemption From Competitive Bidding; and Proposed Issue and Sale of Common Stock by Four Subsidiary Companies and Acquisition Thereof by Holding Company

DECEMBER 24, 1970.

Notice is hereby given that The Southern Co. (Southern), 3390 Peachtree Road NE., Atlanta, GA 30326, a registered holding company, and four of its electric utility subsidiary companies, Alabama Power Co. (Alabama), Georgia Power Co. (Georgia), Gulf Power Co. (Gulf), and Mississippi Power Co. (Mississippi), have filed an application-declaration, and an amendment thereto with this Commission pursuant to the Public Utility Holding Company Act of 1935 (Act), designating sections 6(a), 6(b), 7, 9(a), 10, and 12(f) of the Act and Rules 43 and 50 promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the application-declaration, which is summarized below, for a complete statement of the proposed transactions.

Southern, Alabama, Georgia, Gulf, and Mississippi propose to issue and sell unsecured notes to banks and to dealers in commercial paper, from time to time prior to December 31, 1971, up to an aggregate principal amount of $120 million outstanding at any one time in the case of Southern and approximately $85 million, $125 million, $18 million, and $16 million respectively in the cases of Alabama, Georgia, Gulf, and Mississippi. The bank notes, to be dated as of the date of issue and to mature not more than 1 year thereafter in the case of Southern (but not later than Mar. 31, 1972) and 9 months in the cases of Alabama, Georgia, Gulf, and Mississippi, and will bear interest at the prime rate in effect at the lending bank. The notes may be prepaid, in whole or in part, without penalty or premium. Alabama, Georgia, Gulf, and Mississippi request that the exemption afforded by section 6(b) of the Act relating to the issuance of short-term notes be increased to permit issue and sale of the notes herein proposed.

Southern, Alabama, Georgia, Gulf, and Mississippi, also propose, from time to time prior to December 31, 1971, to issue and sell commercial paper in the form of short-term promissory notes to dealers in commercial paper (dealers). The commercial paper notes will be issued in denominations of not less than $50,000 and not more than $5 million with varying maturities not to exceed 270 days (but will not mature later than Mar. 31, 1972, in the case of Southern) and will not be prepayable prior to maturity. The commercial paper will be sold by the issuing company directly to the dealer at a discount which will not be in excess of the discount rate per annum prevailing at the date of issuance for prime commercial paper of comparable quality and of the particular maturity. No commercial paper notes will be issued having a maturity of more than 90 days at an effective interest cost which exceeds the effective interest costs at which the issuer could borrow from banks.

It is stated that except for a commission not to exceed one-eighth of 1 percent per annum payable to the dealer selling as agent, no commission or fee will be payable in connection with the issuance and sale of commercial paper. The dealers, as principal, will reoffer the commercial paper at a discount rate of one-eighth of 1 percent per annum less than the prevailing discount rate. The commercial paper of each company will be reoffered respectively, to not more than 200 customers of each dealer identified and designated for each company in a nonpublic list prepared in advance by the dealer. No additions will be made to such list of customers which is composed of institutional investors.

Southern states that it will issue shares of its common stock prior to March 31, 1972, and will apply the net proceeds thereof, together with funds generated internally, to pay in full, the principal amount of its notes then outstanding. Unless otherwise authorized by the Commission, any bank notes or commercial paper notes outstanding for the four subsidiary companies after December 31, 1971, will be retired from internal cash resources or from the proceeds of debt or equity financing.

Southern proposes to use the proceeds of the proposed bank loans and sales of commercial paper notes, together with treasury funds, to acquire, from time to time, additional common stock of its electric utility subsidiaries, to pay such bank loans or commercial paper notes due, and for other corporate purposes. The acquisitions proposed to be made in 1971 are as follows: $47 million for the purchase of 470,000 additional shares of the common stock of Alabama, $75 million for the purchase of 750,000 additional shares of the common stock of Georgia, $8 million for the purchase of 80,000 additional shares of the common stock of Gulf, and $7 million for the purchase of 70,000 additional shares of common stock of Mississippi, Alabama, Georgia, Gulf, and Mississippi each propose to issue and sell to Southern from time to time during 1971 additional shares of their respective common stocks as shown above. It is further proposed that Gulf will increase its authorized common stock from 992,717 shares to 1,072,717 shares; and that Mississippi will increase its authorized common stock from 1,130,000 shares to 1,191,000 shares.

The total estimated construction expenses of Alabama, Georgia, Gulf, and Mississippi for 1970 are $212,378,000, $359,254,000, $33,772,000, and $38,432,000, respectively. Alabama, Georgia, Gulf, and Mississippi will use the proceeds from the sale of their common stock as set forth above to reimburse their treasuries for part of the expenditures in connection with their 1970 construction programs to finance partially their 1971 construction programs, to pay short-term bank loans and commercial paper notes incurred for such purposes, and for other lawful purposes.

Applicants request an exception from the competitive bidding requirements of Rule 50 in connection with the sale of commercial paper notes pursuant to clause (a)(5)(B) thereof. It is stated, in this connection, that (a) all commercial paper which Applicants propose to issue and sell will have a maturity notes in excess of 270 days, (b) current rates for commercial paper for prime borrowers, such as applicants, are published daily in financial publications, and (c) it is not practical to invite invitations for bids for commercial paper.

The filing states that no commissions have been or will be paid in connection with the proposed transactions. Fees and expenses paid or incurred, or to be paid or incurred, directly or indirectly, in connection with the proposed transactions are estimated as follows:

	Southern	Alabama	Georgia	Gulf	Mississippi	Total
Legal fees	$1,500	$500	$500	$500	$500	$3,500
Miscellaneous	700	300	300	200	200	1,700
Total	2,200	800	800	700	700	5,200

It is further stated that the issuance and sale of additional shares of common stock by Alabama has been expressly authorized by the Alabama Public Service Commission; that the issuance and sale of additional shares of common stocks of Georgia and Gulf require the respective authorizations from the Georgia Public Service Commission and the Florida Public Service Commission; the issuance and sale by Alabama and Gulf of the notes to banks and its commercial paper have been expressly authorized by the Alabama Public Service Commission and the Florida Public Service Commission, respectively, and that no other State commission and no Federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Applicants request authority to file a certificate of notification under Rule 24 in respect of sales of its commercial paper notes as herein proposed within 30 days after the end of each calendar quarter.

Notice is further given that any interested person may, not later than January 18, 1971, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application-declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon the applicants-declarants at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as amended or as it may be further amended, may be granted and permitted to become effective as provided in Rule 23 of the general rules and regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

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

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

[F.R. Doc. 70-17562; Filed, Dec. 30, 1970; 8:46 a.m.]

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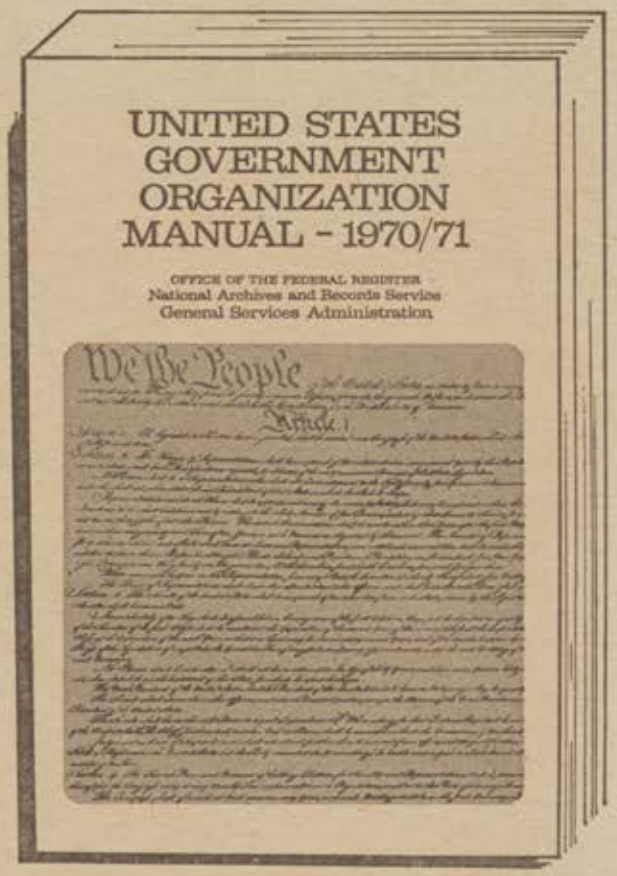

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