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Part I

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A cumulative guide is published separately at the end of each month. The guide lists the parts and sections affected by documents published since January 1, 1971, and specifies how they are affected.

Rules and Regulations

Title 7—AGRICULTURE

Chapter I—Consumer and Marketing Service (Standards, Inspections, Marketing Practices) Department of Agriculture

SUBCHAPTER C—REGULATIONS AND STANDARDS UNDER THE AGRICULTURAL MARKETING ACT OF 1946

PART 54—GRADING AND INSPECTION OF DOMESTIC RABBITS AND EDIBLE PRODUCTS THEREOF AND UNITED STATES SPECIFICATIONS FOR CLASSES, STANDARDS, AND GRADES WITH RESPECT THERETO

PART 70—GRADING AND INSPECTION OF POULTRY AND EDIBLE PRODUCTS THEREOF AND UNITED STATES CLASSES, STANDARDS, AND GRADES WITH RESPECT THERETO

Changes Related to Voluntary Inspection Service

Under authority contained in the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621 et seq.), the U.S. Department of Agriculture hereby amends the regulations governing the grading and inspection of domestic rabbits and edible products thereof and U.S. specifications for classes, standards, and grades with respect thereto (7 CFR Part 54), and the regulations governing the grading and inspection of poultry and edible products thereof and U.S. classes, standards, and grades with respect thereto (7 CFR Part 70) as set forth below:

Statement of considerations. Effective July 1, 1970, the voluntary programs covering the inspection of poultry and edible products thereof and domestic rabbits and edible products thereof, were transferred from the Poultry Division, C&MS, to the Meat and Poultry Inspection Program, C&MS. The grading aspects of these voluntary programs remained within the Poultry Division.

Inasmuch as there is an existing difference in the prevailing approved rates charged for such voluntary services being administered by the Poultry Division and the Meat and Poultry Inspection Program, it is necessary that the regulations relating to fees be amended to set out separately the rates to be charged by each of the programs. The amendments are as follows:

1. In § 54.101 paragraphs (b) and (c) are amended and new paragraphs (d) and (e) are added to read, respectively:

§ 54.101 On a fee basis.

* * * * *

(b) Fees for grading service will be based on the time required to perform such service for class, quality, quantity (weight test), or condition of ready-to-cook product. The hourly charge shall be $9.20 and shall include the time actually required to perform the work, waiting time, travel time, and any clerical costs involved in issuing a certificate.

(c) Grading services rendered on Saturdays, Sundays, or Government authorized holidays shall be charged for at the rate of $11.40 per hour. Information on Government authorized holidays is available from the Supervisor.

(d) The charges for inspection service will be based on the time required to perform such services. The hourly rate shall be $8.76 for base time and $8.80 for overtime or holiday work.

(e) Charges for any laboratory analysis or examination of rabbits under this part related to the inspection service shall be $9.28 per hour.

2. Section 54.107 is amended to read:

§ 54.107 Continuous inspection performed on a resident basis.

(a) Except as provided in paragraph (b) of this section, the charges for inspection of domestic rabbits and products thereof shall be those provided for in § 54.101(d) when the inspection service is performed on a continuous year-round resident basis and the services of an inspector or inspectors are required 4 or more hours per day. When the services of an inspector are required on an intermittent basis, the charges shall be at the hourly rate provided for in § 54.101 (d) plus the travel expense and other charges provided for in § 54.106.

* * * * *

1. In section 70.131 paragraphs (b) and (c) are amended and a new paragraph (d) is added to read, respectively:

§ 70.131 On a fee basis.

* * * * *

(b) Fees for grading services will be based on the time required to perform such services for class, quality, quantity (weight test), or condition, whether live, dressed, or ready-to-cook poultry is involved. The hourly charge shall be $9.20 and shall include the time actually required to perform the work, waiting time, travel time, and any clerical costs involved in issuing a certificate.

(c) Grading services rendered on Saturdays, Sundays, or Government authorized holidays shall be charged for at the rate of $11.40 per hour. Information on Government authorized holidays is available from the Supervisor.

(d) The charges for inspection services will be based on the time required to perform such services. The hourly rate shall be $8.76 for base time and $8.80 for overtime and holiday work.

2. Section 70.141 is amended to read:

§ 70.141 Charges for inspection service.

(a) Charges for rendering continuous inspection services on a year-round basis shall be at the hourly rates provided for in § 70.131(d) when such services are required 4 or more hours per day. When inspection services are performed on an intermittent basis, the charges shall be at the hourly rates provided for in § 70.131(d), plus the travel expense and other charges provided for in § 70.136.

(b) Surveys made pursuant to the regulations (Part 81 of this chapter) under the Poultry Products Inspection Act will be accepted for the purposes of § 70.44, otherwise the charge shall be at the rate specified in § 70.131, plus the travel expense.

* * * * *

Legislation requires that the fees and charges for inspection and grading services under the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621 et seq.), shall be reasonable and shall, as nearly as possible, cover the cost of such services.

The facts upon which are based the determination as to the level of fees and charges necessary to cover these costs are not available to the industry, but are peculiarly within the knowledge of the Department. Therefore, public rule making would not result in the Department receiving additional information on this matter.

Accordingly, pursuant to 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to the amendments are impracticable and unnecessary and good cause is found for making the amendments effective less than 30 days after publication in the FEDERAL REGISTER. Therefore, these amendments will become effective March 1, 1971.

Done at Washington, D.C., on February 25, 1971.

L. V. SANDERS,
Acting Deputy Administrator, Meat and Poultry Inspection Program.

[FR Doc.71-2757 Filed 2-26-71;8:50 am]

SUBCHAPTER D—REGULATIONS UNDER THE POULTRY PRODUCTS INSPECTION ACT

PART 81—INSPECTION OF POULTRY AND POULTRY PRODUCTS

Miscellaneous Amendments

Pursuant to the statutory authorities cited below, the fees relating to inspection are hereby amended to reflect increases in Federal employees salaries authorized by the Federal Pay Comparability Act of 1970 (Public Law 656), Executive Order 11576, approved January 8, 1971.

Sections 81.170, 81.171, and 81.172 are hereby amended by deleting the figure "$8.40" and substituting in lieu thereof "$8.80."

The Poultry Products Inspection Act, as amended (21 U.S.C. 451 et seq.), and the regulations promulgated thereunder require the cost of overtime and holiday inspection service be paid for by the applicant or user of the service. It has been determined that in order to cover these increased costs of the service, the hourly fee charges in connection with the performance of the services must be increased as soon as practicable as provided for herein. The need for the increase and the amount thereof are dependent upon facts within the knowledge of the Consumer and Marketing Service. Therefore, under 5 U.S.C. 553, it is found that notices and other public procedure with respect to this amendment are impracticable and unnecessary and good cause is found for making the amendment effective less than 30 days after its publication in the FEDERAL REGISTER.

This amendment shall become effective March 1, 1971, with respect to all Federal poultry inspection services rendered on and after that date.

Done at Washington, D.C., on February 25, 1971.

L. V. SANDERS,
Acting Deputy Administrator, Meat and Poultry Inspection Program.

[FR Doc.71-2756 Filed 2-26-71;8:50 am]

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

[Lemon Reg. 469]

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

Limitation of Handling

§ 910.769 **Lemon Regulation 469.**

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

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this section until 30 days after publication hereof in the FEDERAL REGISTER (5 U.S.C. 553) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The committee held an open meeting during the current week, after giving due notice thereof, to consider supply and market conditions for lemons and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such meeting was held; the provisions of this section, including its effective time, are identical with the aforesaid recommendation of the commitee, and information concerning such provisions and effective time has been disseminated among handlers of such lemons; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period herein specified; and compliance with this section will not require any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on February 23, 1971.

(b) *Order.* (1) The respective quantities of lemons grown in California and Arizona which may be handled during the period February 28, 1971, through March 6, 1971, are hereby fixed as follows:

(i) District 1: 17,000 cartons;
(ii) District 2: 183,000 cartons;
(iii) District 3: Unlimitied.

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

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

Dated: February 25, 1971.

FLOYD F. HEDLUND,
Director, Fruit and Vegetable Division, Consumer and Marketing Service.

[FR Doc.71-2833 Filed 2-26-71;8:50 am]

[Grapefruit Reg. 77]

Limitation of Handling

PART 912—GRAPEFRUIT GROWN IN INDIAN RIVER DISTRICT IN FLORIDA

LIMITATION OF HANDLING

§ 912.377 **Grapefruit Regulation 77.**

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 912, as amended (7 CFR Part 912), regulating the handling of grapefruit grown in the Indian River District in Florida, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and upon the basis of the recommendations and information submitted by the Indian River Grapefruit 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 grapefruit, 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 Indian River grapefruit, 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 Indian River grapefruit; 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 regulation 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 February 25, 1971.

(b) *Order.* (1) The quantity of grapefruit grown in the Indian River District which may be handled during the period March 1, 1971, through March 7, 1971, is hereby fixed at 200,000 standard packed boxes.

(2) As used in this section, "handled," "Indian River District," "grapefruit," and "standard packed box" 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: February 26, 1971.

FLOYD F. HUDLUND,
Director, Fruit and Vegetable Division, Consumer and Marketing Service.

[FR Doc.71-2855 Filed 2-26-71;11:44 am]

[Grapefruit Reg. 45]

PART 913—GRAPEFRUIT GROWN IN INTERIOR DISTRICT IN FLORIDA

Limitation of Handling

§ 913.345 Grapefruit Regulation 45.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 913, as amended (7 CFR Part 913), regulating the handing of grapefruit grown in the Interior District in Florida, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and upon the basis of the recommendations and information submitted by the Interior Grapefruit Marketing Committee, established under said marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such grapefruit, 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 Interior grapefruit, 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 Interior grapefruit; 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 February 25, 1971.

(b) *Order.* (1) The quantity of grapefruit grown in the Interior District which may be handled during the period March 1, 1971, through March 7, 1971, is hereby fixed at 200,000 standard packed boxes.

(2) As used in this section, "handled," "Interior District," "grapefruit," and "standard packed box" have the same meaning as when used in said marketing agreement and order.

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

Dated February 26, 1971.

FLOYD F. HUDLUND,
Director, Fruit and Vegetable Division, Consumer and Marketing Service.

[FR Doc.71-2857 Filed 2-26-71;11:44 am]

PART 914—HANDLING OF ORANGES GROWN IN THE INTERIOR DISTRICT IN FLORIDA

Method of Allocating Fixed Quantity

Notice was published in the FEDERAL REGISTER issue of February 5, 1971 (36 F.R. 2512), that the Department was giving consideration to proposed rules and regulations (§ 914.130 of this part), hereinafter designated as Subpart—Rules and Regulations, pursuant to the marketing agreement and Order No. 914 (7 CFR Part 914; 35 F.R. 17169), regulating the handling of oranges grown in the Interior District in Florida, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The aforesaid rules and regulations were proposed by the Interior Orange Marketing Committee established pursuant to the amended marketing agreement and order as the agency to administer the provisions thereof. No written data, views, or arguments were filed with respect to said proposal during the period specified therefor in the notice.

The rules and regulations provide a method for allocating the total quantity of oranges that may be handled during any week between early and midseason type oranges and late type oranges when both types of oranges are being shipped. The allocation as between the two types is desirable and necessary due to the different dates when the two types of oranges reach maturity. Such method is designed to enable the committee to estimate, on the basis of weekly shipments of such fruit in the previous three fiscal periods as provided in § 914.45(b), the probable proportions of the two types of oranges that will be shipped in the week for which volume regulation is recommended and also to serve as the basis for allocation during such week.

After consideration of all relevant matter presented, including that in the notice, it is hereby found that said rules and regulations, as hereinafter set forth, are in accordance with said marketing agreement and order and will tend to effectuate the declared policy of the act. Accordingly, such rules and regulations are as follows:

§ 914.130 Method of allocating fixed quantity.

(a) Whenever the Secretary has fixed the total quantity of oranges which may be handled during a particular week, the committee shall determine the allocation between early and midseason type oranges and late type oranges, if both types are being shipped, by matching the percentage of early and midseason type oranges in shipments of both types made during the first or second week (as provided in § 914.45(a)) preceding the week in which the committee meets to consider the need for regulation with the corresponding percentage in the left-hand column of the Table in paragraph (b) of this section, and then multiplying the percentage of such oranges in shipments made 2 or 3 weeks later, as applicable, by the quantity fixed for the particular week: *Provided*, That during the weeks of the period beginning with the first full week in January and ending with the first full week in May, allocation to either type of oranges shall not be less than 5 percent of the total quantity of oranges fixed by the Secretary for a particular week.

(b) The following Table shows the respective average decreases in the percentage of early and midseason type oranges in shipments of both types after 2 and 3 weeks based on shipments of such oranges during the previous three fiscal periods as prescribed in § 914.45:

TABLE

Early and midseason type oranges in shipments for a given week	Two weeks later	Three weeks later
Percent	*Percent*	*Percent*
99	76	48
98	70	42
97	66	38
96	62	35
95	58	33
94	54	31
93	50	29
92	48	27
91	46	26
90	44	25
89	43	24
88	41	23
87	39	22
86	38	21
85	36	20
84	35	19
83	34	18
82	33	17
81	31	17
80	30	16
79	30	15
78	29	14
77	28	14
76	28	13
75	27	13
74	26	13
73	26	12
72	25	12
71	24	11
70	23	11
69	23	11
68	22	10
67	22	10
66	21	9
65	21	9
64	20	9
63	20	8
62	19	8
61	19	8
60	18	8
59	18	7
58	18	7
57	17	7
56	17	6
55	16	6
54	16	6
53	15	6
52	15	5
51	15	5
50	14	5
49	14	5
48	14	4
47	13	4
46	13	4
45	13	4
44	12	4

TABLE

Early and midseason type oranges in shipments for a given week	Two weeks later	Three weeks later
Percent	*Percent*	*Percent*
43	12	4
42	11	4
41	11	4
40	10	4
39	10	3
38	9	3
37	9	3
36	8	3
35	8	3
34	7	3
33	7	3
32	6	2
31	6	2
30	5	2
29	5	2
28	5	2
27	4	2
26	4	2

It is hereby found that good cause exists for making the rules and regulations effective at the time hereinafter set forth and for not postponing the effective date hereof until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553) in that (1) shipments of early and midseason type oranges and late type oranges are currently in progress, (2) the procedure herein prescribed is essential to implement the regulatory provisions of this part, and to be of maximum benefit during the current season such procedure should be made available as hereinafter specified; (3) notice of proposed rulemaking relative to such procedure was published in the FEDERAL REGISTER (36 F.R. 2512), and no written data, views or arguments were filed with respect thereto, and (4) such procedure will not require of handlers any preparation that cannot be completed prior thereto.

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

Dated: February 23, 1971, to become effective upon publication in the FEDERAL REGISTER (2–27–71).

FLOYD F. HEDLUND,
Director, Fruit and Vegetable Division, Consumer and Marketing Service.

[FR Doc.71–2711 Filed 2–26–71;8:48 am]

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

[Milk Order No. 76]

PART 1076—MILK IN EASTERN SOUTH DAKOTA MARKETING AREA

Order Terminating Certain Provisions

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

Notice of proposed rulemaking was published in the FEDERAL REGISTER (36 F.R. 2629) concerning a proposed termination of certain provisions of the order. Interested persons were afforded opportunity to file written data, views, and arguments thereon. None were filed in opposition.

After consideration of all relevant material, 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 the following provisions of the order no longer tend to effectuate the declared policy of the Act:

1. In paragraph (b) of § 1076.72, the provision "except for the months of March through June and September through October,".

With such termination, § 1076.72(b) would read as follows:

§ 1076.72 Computation of uniform price.

* * * * *

(b) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (a) of this section. The result shall be known as the "weighted average price", and shall be the uniform price for milk received from producers.

* * * * *

2. In § 1076.72, the provisions (c), (d), (e), (f), and (g) in their entirety.

Statement of consideration. The termination would discontinue the "takeout—payback" plan of paying producers. The plan provides for withholding from the pool 15 cents per hundredweight of producer deliveries in the months of March through June for distribution to producers in September, October, and November according to their deliveries in these latter months.

Termination of the takeout—payback plan was requested by Land O'Lakes, Inc., a cooperative association representing the producers supplying the market. The basis of the request is that the termination of this plan of paying producers will result in a better seasonal alignment of uniform prices paid to producers in this and in adjacent Federal order markets, where no takeout—payback plans are provided. Without such price alignment, the cooperative association anticipates an uneconomic shifting of producers between other Federal orders in this area and the Eastern South Dakota order. Also, termination of the plan will assure that the relationship of uniform prices to pay prices of nearby manufacturing plants will not disrupt milk procurement at regulated plants.

The termination will affect neither total returns to producers nor the total cost of milk to handlers.

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

(a) This termination is necessary to reflect current marketing conditions and to maintain orderly marketing conditions in the marketing area in that it is the only practical means of removing the aforesaid provisions from the order prior to the date they otherwise would become effective.

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

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views, or arguments concerning this termination.

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

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

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

Effective date: upon publication in the FEDERAL REGISTER (2–27–71).

Signed at Washington, D.C., on February 24, 1971.

RICHARD E. LYNG,
Assistant Secretary.

[FR Doc.71–2741 Filed 2–26–71;8:50 am]

Title 5—ADMINISTRATIVE PERSONNEL

Chapter I—Civil Service Commission

PART 213—EXCEPTED SERVICE

Department of Transportation

Section 213.3394 is amended to show that the following positions in the Federal Aviation Administration are no longer excepted under Schedule C: Assistant Administrator for Congressional Liaison, Assistant to the Assistant Administrator for Congressional Liaison, Congressional Liaison Specialist, and Confidential Secretary (interdepartmental activities) to the Assistant Administrator for Congressional Liaison. This section is further amended to show that two additional positions of Congressional Liaison Officer in the Office of the Assistant Secretary for Public Affairs are excepted under Schedule C. Effective on publication in the FEDERAL REGISTER, subparagraphs (2), (3), (4), and (5) of paragraph (h) are revoked and subparagraph (17) of paragraph (a) under § 213.3394 is amended as set out below.

§ 213.3394 Department of Transportation.

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

(17) Seven Congressional Liaison Officers, Office of the Assistant Secretary for Public Affairs.

* * * * *

(h) *Federal Aviation Administration.* * * *

(2) [Revoked]

(3) [Revoked]
(4) [Revoked]
(5) [Revoked]

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

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

[FR Doc.71-2795 Filed 2-26-71;8:50 am]

Title 9—ANIMALS AND ANIMAL PRODUCTS

Chapter I—Agricultural Research Service, Department of Agriculture

SUBCHAPTER C—INTERSTATE TRANSPORTATION OF ANIMALS AND POULTRY

PART 78—BRUCELLOSIS

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

MODIFIED CERTIFIED BRUCELLOSIS AREAS

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

§ 78.13 Modified Certified Brucellosis Areas.

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

Alabama. The entire State;
Alaska. The entire State;
Arizona. The entire State;
Arkansas. The entire State;
California. The entire State;
Colorado. The entire State;
Connecticut. The entire State;
Delaware. The entire State;
Florida. The entire State;
Georgia. The entire State;
Hawaii. The entire State;
Idaho. The entire State;
Illinois. The entire State;
Indiana. The entire State;
Iowa. The entire State;
Kansas. The entire State;
Kentucky. The entire State;
Louisiana. Acadia, Allen, Ascension, Assumption, Beauregard, Bienville, Bossier, Caddo, Calcasieu, Caldwell, Cameron, Catahoula, Claiborne, Concordia, De Soto, East Baton Rouge, East Carroll, East Feliciana, Evangeline, Franklin, Grant, Iberia, Iberville, Jackson, Jefferson, Jefferson Davis, Lafayette, Lafourche, La Salle, Lincoln, Livingston, Madison, Morehouse, Natchitoches, Orleans, Ouachita, Plaquemines, Pointe Coupee, Rapides, Red River, Richland, Sabine, St. Bernard, St. Charles, St. Helena, St. James, St. John the Baptist, St. Landry, St. Martin, St. Mary, St. Tammany, Tangipahoa, Tensas, Terrebonne, Union, Vernon, Washington, Webster, West Baton Rouge, West Carroll, West Feliciana, and Winn Parishes;
Maine. The entire State;
Maryland. The entire State;
Massachusetts. The entire State;
Michigan. The entire State;
Minnesota. The entire State;
Mississippi. The entire State;
Missouri. The entire State;
Montana. The entire State;
Nebraska. The entire State;
Nevada. The entire State;
New Hampshire. The entire State;
New Jersey. The entire State;
New Mexico. The entire State;
New York. The entire State;
North Carolina. The entire State;
North Dakota. The entire State;
Ohio. The entire State;
Oklahoma. The entire State;
Oregon. The entire State;
Pennsylvania. The entire State;
Rhode Island. The entire State;
South Carolina. The entire State;
South Dakota. Aurora, Beadle, Bennett, Bon Homme, Brookings, Brown, Brule, Buffalo, Butte, Campbell, Charles Mix, Clark, Clay, Codington, Corson, Custer, Davison, Day, Deuel, Dewey, Douglas, Edmunds, Fall River, Faulk, Grant, Gregory, Haakon, Hamlin, Hand, Hanson, Harding, Hyde, Jackson, Jerauld, Jones, Kingsbury, Lake, Lawrence, Lincoln, Lyman, McCook, McPherson, Marshall, Meade, Mellette, Miner, Minnehaha, Moody, Pennington, Perkins, Potter, Roberts, Sanborn, Shannon, Spink, Stanley, Todd, Tripp, Turner , Union, Walworth, Washabaugh, Yankton, and Ziebach Counties; and Crow Creek Indian Reservation;
Tennessee. The entire State;
Texas. Anderson, Andrews, Angelina, Aransas, Archer, Armstrong, Atascosa, Austin, Bailey, Bandera, Bastrop, Baylor, Bee, Bell, Bexar, Blanco, Borden, Bosque, Bowie, Brazos, Brewster, Briscoe, Brooks, Brown, Burleson, Burnet, Caldwell, Calhoun, Callahan, Cameron, Camp, Carson, Cass, Castro, Chambers, Cherokee, Childress, Clay, Cochran, Coke, Coleman, Collin, Collingsworth, Colorado, Comal, Comanche, Concho, Cooke, Coryell, Cottle, Crane, Crockett, Crosby, Culberson, Dallam, Dallas, Dawson, Deaf Smith, Delta, Denton, Dickens, Dimmit, Donley, Duval, Eastland, Ector, Edwards, Ellis, El Paso, Erath, Falls, Fannin, Fayette, Fisher, Floyd, Foard, Freestone, Gaines, Garza, Gillespie, Glasscock, Goliad, Gray, Grayson, Gregg, Guadalupe, Hale, Hall, Hamilton, Hansford, Hardeman, Hardin, Harrison, Hartley, Haskell, Hays, Hemphill, Henderson, Hidalgo, Hill, Hockley, Hood, Houston, Howard, Hudspeth, Hutchinson, Irion, Jack, Jackson, Jasper, Jeff Davis, Jefferson, Jim Hogg, Jim Wells, Johnson, Jones, Karnes, Kaufmann, Kendall, Kent, Kerr, Kimble, King, Kinney, Knox, Lamar, Lamb, Lampasas, Lee, Leon, Limestone, Lipscomb, Live Oak, Llano, Loving, Lubbock, Lynn, McCulloch, McLennan, McMullen, Madison, Marion, Martin, Mason, Maverick, Medina, Menard, Midland, Milam, Mills, Mitchell, Montague, Montgomery, Moore, Morris, Motley, Nacadoches, Navarro, Newton, Nolan, Ochiltree, Oldham, Orange, Palo Pinto, Panola, Parker, Parmer, Pecos, Polk, Potter, Presidio, Rains, Randall, Reagan, Real, Red River, Reeves, Refugio, Roberts, Robertson, Rockwall, Runnels, Rusk, Sabine, San Augustine, San Jacinto, San Saba, Schleicher, Scurry, Shackelford, Shelby, Sherman, Smith, Somervell, Starr, Stephens, Sterling, Stonewall, Sutton, Swisher, Tarrant, Taylor, Terrell, Terry, Throckmorton, Tom Green, Travis, Trinity, Tyler, Upshur, Upton, Uvalde, Val Verde, Van Zandt, Ward, Washington, Webb, Wheeler, Wichita, Wilbarger, Williamson, Wilson, Winkler, Wise, Wood, Yoakum, Young, Zapata, and Zavala Counties;
Utah. The entire State;
Vermont. The entire State;
Virginia. The entire State;
Washington, The entire State;
West Virginia. The entire State;
Wisconsin. The entire State;
Wyoming. The entire State;
Puerto Rico. The entire area;
Virgin Islands of the United States. The entire area.

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

Effective date. The foregoing amendment shall become effective upon publication in the FEDERAL REGISTER. (2–27–71)

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

The amendment deletes the following area from the list of areas designated as Modified Certified Brucellosis Areas because it has been determined that such area no longer comes within the definition of § 78.1(i): Vermilion Parish in Louisiana.

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

Done at Washington, D.C., this 24th day of February 1971.

R. S. SHAVMAN,
Director, Animal Health Division, Agricultural Research Service.

[FR Doc.71-2740 Filed 2-26-71;8:49 am]

Chapter III—Consumer and Marketing Service, Department of Agriculture

SUBCHAPTER A—MEAT INSPECTION REGULATIONS

PART 307—FACILITIES FOR INSPECTION

PART 340—SPECIAL SERVICES RELATING TO MEAT AND OTHER PRODUCTS

SUBCHAPTER B—VOLUNTARY INSPECTION AND CERTIFICATION SERVICE

PART 355—CERTIFIED PRODUCTS FOR DOGS, CATS, AND OTHER CARNIVORA; INSPECTION, CERTIFICATION, AND IDENTIFICATION AS TO CLASS, QUALITY, QUANTITY, AND CONDITION

Miscellaneous Amendments

Pursuant to the statutory authorities cited below, the fees relating to inspection are hereby amended to reflect increases in Federal employees salaries authorized by the Federal Pay Comparability Act of 1970 (Public Law 91–656), Executive Order 11576, approved January 8, 1971.

Section 307.6 is amended to read as follows:

§ 307.6 Overtime work of Program inspectors.

(a) The management of an official establishment, an importer, or an exporter desiring to work under conditions which will require the services of a Program inspector on any Saturday, Sunday, or holiday, or for more than 8 hours on any other day, shall, sufficiently in advance of the period of overtime, request the officer in charge or his assistant to furnish inspection service during such overtime period, and shall pay the Administrator therefor $8.80 per hour per Program inspector to reimburse the Program for the cost of the inspection services so furnished. (81 Stat. 584; 46 Stat. 689; 19 U.S.C. 1306; 21 U.S.C. 621.)

* * * * *

Section 340.7(c) is amended to read as follows:

§ 340.7 Fees and charges.

The fees to be charged and collected for service under the regulations in this part shall be at the rate of $8.76 per hour for base time, $8.80 per hour for overtime including Saturdays, Sundays, and holidays, and $9.28 per hour for laboratory service, to cover the costs of the service and shall be charged for the time required to render such service, including but not limited to the time required for the travel of the inspector or inspectors in connection therewith during the regularly scheduled administrative work week. (Sec. 205, 60 Stat. 1090, as amended; 7 U.S.C. 1624.)

Section 355.12 is amended to read as follows:

§ 355.12 Charge for service.

The fees to be charged and collected by the Administrator shall be $8.76 per hour for base time, $8.80 per hour for overtime including Saturdays, Sundays, and holidays, and $9.28 per hour for laboratory service to reimburse the Service for the cost of the inspection services so furnished. (Sec. 205, 60 Stat. 1090, as amended; 7 U.S.C. 1624.)

It has been determined that in order to cover these increased costs of the service, the hourly fee charges in connection with the performane of the services must be increased as soon as practicable as provided for herein. The need for the increase and the amount thereof are dependent upon facts within the knowledge of the Consumer and Marketing Service. Therefore, under 5 U.S.C. 553, it is found that notices and other public procedure with respect to this amendment are impracticable and unnecessary and good cause is found for making the amendment effective less than 30 days after its publication in the FEDERAL REGISTER.

This amendment shall become effective March 1, 1971, with respect to all Federal meat inspection services rendered on and after that date.

Done at Washington, D.C., on February 25, 1971.

L. V. SANDERS,
Acting Deputy Administrator, Meat and Poultry Inspection Program.

[FR Doc.71-2755 Filed 2-26-71;8:50 am]

Title 17—COMMODITY AND SECURITIES EXCHANGES

Chapter II—Securities and Exchange Commission

[Release No. 34-9072]

PART 240, GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

Adoption of Rules Regarding Registration and Reporting by Successor Issuers

The Securities and Exchange Commission has adopted two new rules relating respectively to registration pursuant to section 12(g), and reporting pursuant to section 15(d), of the Securities Exchange Act of 1934 by certain successor issuers. Notice of the proposed action was published November 12, 1970, in Securities Exchange Act Release 9017 (35 F.R. 18208).

Where an issuer which has succeeded by merger, consolidation, exchange of securities or acquisition of assets, to another issuer which had securities registered pursuant to section 12(g) of the Act, or securities which would have been required to be so registered but for the succession, the successor is deemed to have assumed the duty to provide for such security holders a continuation of the benefits provided, or which would have been provided, by registration of the securities of the predecessor, unless upon consummation of the succession the securities are exempt from registration or all securities of the class are held of record by less than 300 persons.

Accordingly, one of the rules, Rule 12g–3 [17 CFR 240.12g–3] provides that where an issuer which has no securities registered pursuant to section 12 of the Act has issued equity securities to the holders of equity securities of the predecessor which were registered under section 12(g) and there are at least 300 holders of the class so issued, such class shall be deemed to be registered pursuant to that section. In such case, in lieu of filing a registration statement under section 12(g), the successor issuer is required to file a report pursuant to section 13 on Form 8–K [17 CFR 249.308] with respect to the transaction and thereafter to comply with all applicable provisions of the Act and rules and regulations thereunder.

Where the predecessor was required to register securities pursuant to that section but had not yet done so, the rule provides that the successor shall file a registration statement within the period of time the predecessor would have been required to file one, or within such extended period as the Commission may authorize.

The other rule, Rule 15d–5 [17 CFR 240.15d–5], provides that where an issuer which is not required to file reports pursuant to section 15(d) of the Act succeeds to an issuer which is required to file such reports, the successor issuer is deemed to have assumed the duty to file such reports and shall file the reports required by that section and the rules and regulations thereunder, unless it is exempt therefrom or the duty to file reports is suspended under the provisions of that section.

Commission Action: Part 240 of Chapter II of Title 17 of the Code of Federal Regulations has been amended by adding thereunder new §§ 240.12g–3 and 240.15d–5 which read as follows:

§ 240.12g–3 Registration of securities of successor issuers.

(a) Where in connection with a succession by merger, consolidation, exchange of securities or acquisition of assets, equity securities of an issuer, not previously registered pursuant to section 12 of the Act, are issued to the holders of any class of equity securities of another issuer which is registered pursuant to section 12(g), the class of securities so issued shall be deemed to be registered pursuant to section 12(g) of the Act unless upon consummation of the succession such class is exempt from such registration or all securities of such class are held of record by less than 300 persons.

(b) Where in connection with a succession by merger, consolidation, exchange of securities or acquisition of assets, equity securities of an issuer,

which are not registered pursuant to section 12 of the Act, are issued to the holders of any class of equity securities of another issuer which is required to file a registration statement pursuant to section 12(g) but has not yet done so, the duty to file such statement shall be deemed to have been assumed by the issuer of the class of securities so issued and such issuer shall file a registration statement pursuant to section 12(g) of the Act with respect to such class within the period of time the predecessor issuer would have been required to file such a statement, or within such extended period of time as the Commission may authorize upon application pursuant to § 240.12b–25 of this chapter, unless upon consummation of the succession such class is exempt from such registration or all securities of the class are held of record by less than 300 persons.

§ 240.15d–5 Reporting by successor issuers.

Where in connection with a succession by merger, consolidation, exchange of securities or acquisition of assets, equity securities of an issuer, which is not required to file reports pursuant to section 15(d) of the Act, are issued to the holders of any class of equity securities of another issuer which is required to file such reports, the duty to file reports pursuant to such section shall be deemed to have been assumed by the issuer of the class of securities so issued and such issuer shall after the consummation of the succession file reports in accordance with such section, and the rules and regulations thereunder unless such issuer is exempt from filing such reports or the duty to file such reports is suspended under said section.

The foregoing action which was taken pursuant to the Securities Exchange Act of 1934, particularly sections 12, 13, 15(d), and 23(a) thereof. The Commission finds that widespread dissemination of the foregoing rules having been given through publication in the FEDERAL REGISTER since November 12, 1970, in the exact form in which they have been adopted, and good cause existing for not delaying any further the effectiveness of said rules, further notice and procedures under 5 U.S.C. 535 are impracticable and unnecessary and, therefore said rules shall become effective on March 10, 1971.

(Secs. 12, 13, 15(d), and 23(a); 48 Stat. 892, 894, 895, and 901, as amended; 15 U.S.C. 78*l*, 78m, 78o(d), and 78w(a))

By the Commission, February 10, 1971.

ROSALIE F. SCHNEIDER,
Recording Secretary.

[FR Doc.71-2770 Filed 2-26-71;8:50 am]

Title 18—CONSERVATION OF POWER AND WATER RESOURCES

Chapter I—Federal Power Commission

[Docket No. R–414; Order No. 424]

PART 1—RULES OF PRACTICE AND PROCEDURE

Practice With Regard to Appearance and Service

FEBRUARY 23, 1971.

Under § 1.4(a)(5) of the rules of practice and procedure, a person intending to appear in a representative capacity for a participant in a hearing is required to file with the Commission a notice of appearance in the form prescribed by § 1.50 unless the person is named in the initial filing of the participant as a person to whom communications from the Commission are to be addressed. This has resulted in multiple service lists being prepared for each proceeding based upon notices of appearance, designations in initial filings or a combination of both. The Commission is of the view that these multiple lists are confusing and require a duplication of effort. Accordingly we are eliminating the request for service through notice of appearance and shall provide for the establishment of one official service list to be compiled by the Secretary from the initial pleading filed by each participant.

Section 1.17 of the rules of practice and procedure provides that service may be effected by mailing or delivering one copy of the document either to the participant or to the participant's attorney. We believe this single service has hindered those participants who are represented by outside counsel. This disadvantage has offset any benefits achieved by a reduction in the number of copies of filings required to be served. We shall therefore amend § 1.17 to permit participants to request service on both themselves and one attorney or other qualified representative. Service by the Commission and parties shall hereafter be required upon all persons who are designated on the official service list compiled by the Secretary from the initial filings of each participant.

Under § 1.17(b) of the rules of practice and procedure, protests filed with the Commission are required to show service upon all participants to the proceeding. However, § 1.10(a) provides that persons filing a protest need not effect service upon the parties. Since the filing of a protest does not make the protestant a party to the proceeding, we shall resolve this conflict by eliminating the requirement for service of protests upon all participants.

The Commission finds:

(1) The deletion of §§ 1.4(a)(5) and 1.50 and the amendment of §§ 1.17 and 1.51 of the Commission's rules of practice and procedure, as herein ordered, is necessary and appropriate to carry out the provisions of the Federal Power and Natural Gas Acts.

(2) Since these amendments involve matters of agency procedure and practice, the notice requirements of 5 U.S.C. 553 do not apply.

The Commission, acting pursuant to the Federal Power Act, as amended, particularly sections 308 and 309 thereof (49 Stat. 858; 16 U.S.C. 825g, 825h) and the Natural Gas Act, as amended, particularly sections 15 and 16, thereof (52 Stat. 829, 830; 15 U.S.C. 717u, 717o), orders:

§ 1.4 [Amended]

(A) Section 1.4, Subchapter A, Chapter I, Title 18 of the Code of Federal Regulations is amended by deleting paragraph (a)(5).

§ 1.50 [Deleted]

(B) Section 1.50, Subchapter A, Chapter I, Title 18 of the Code of Federal Regulations is deleted.

(C) Sections 1.17 and 1.51, Subchapter A, Chapter I, Title 18 of the Code of Federal Regulations are amended by revising paragraphs (a), (b), and (c) of § 1.17 and by revising § 1.51. As so amended, §§ 1.17 (a), (b), (c) and 1.51 read as follows:

§ 1.17 Service.

(a) *By the Commission.* Applications, complaints, petitions other than intervening petitions, orders and all forms of Commission action shall be served by the Secretary by mail, except when service by other method shall be specifically required by the Commission, by mailing a copy thereof addressed to each person designated on the official service list compiled by the Secretary in accordance with paragraph (c) of this section. When such service on any such person is not accomplished by mail, it may be effected by any one duly authorized by the Commission (1) by delivering a copy of the document to the person to be served or (2) by leaving a copy thereof at the principal office or place of business of the person to be served. The return post office receipt for said document or other paper when served by certified or registered mail, or the verified return by the person accomplishing service, setting forth the manner of said service, shall be proof of such service.

(b) *By parties.* Applications and petitions for amendment or modification of orders, answers, intervening petitions, supplements or amendments thereto or to

applications, complaints or petitions, motions, briefs, notices, testimony and exhibits, and all other papers, except depositions and protests, when filed or tendered to the Commission for filing in proceedings pending before the Commission upon its docket, shall certify service thereof upon each person designated on the official service list compiled by the Secretary in accordance with paragraph (c) of this section. Such service shall be made by delivering in person or by mailing, properly addressed with postage prepaid, one copy to each such person.

(c) *Persons entitled to service.* The initial document, pleading or communication filed by any person in any proceeding before the Commission shall specifically designate on the first page thereof the name and post office address of the persons upon whom service of pleadings, documents, or communications shall be made. If a participant is represented by an attorney or other qualified representative, the name and address of the representative may also be designated for service, but in no event shall a participant be entitled to receive service on more than two persons in any one proceeding. There shall be one official service list for each proceeding. It shall be compiled by the Secretary from the persons specifically designated in the initial pleading, document, or communication filed by each participant in that proceeding and shall include the Commission staff counsel participating in that proceeding. Any person filing a petition to intervene under § 1.8 shall be entitled to service until the Commission issues an order denying intervention to such person. If counsel or other qualified representative is changed, the participant shall designate the name and address of the substitute by serving written notice on the Commission and all persons on the service list. Copies of the official service list may be obtained from the Secretary.

* * * * *

§ 1.51 Certificate of service.[1]

(See § 1.17 of this chapter.)

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding in accordance with the requirements of § 1.17 of the Rules of Practice and Procedure.

Dated at ---------- this ------ day of ----------, 19--.

Signature

Of counsel for

(D) These amendments shall become effective upon the date of issuance of this order.

By the Commission.

[SEAL] KENNETH F. PLUMB,
Acting Secretary.

[FR Doc.71-2701 Filed 2-26-71;8:47 am]

[1] To be shown on the original when tendered for filing with the Commission of every paper as specified in § 1.17(b) of this chapter.

Title 21—FOOD AND DRUGS

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

SUBCHAPTER A—GENERAL

PART 8—COLOR ADDITIVES

Subpart—Provisional Regulations

POSTPONEMENT OF CLOSING DATES OF PROVISIONAL LISTING

The color additive amendments of 1960 (Public Law 86-618; 74 Stat. 404; 21 U.S.C. 376, note) authorize the Secretary of Health, Education, and Welfare to postpone the closing date of a provisional listing of a color additive on his own initiative or upon the application of an interested person. Requests have been received to postpone the closing dates of provisional listings for a number of color additives because scientific investigations and regulatory review necessary for listing these color additives under section 706 of the Federal Food, Drug, and Cosmetic Act have not been completed.

The Commissioner of Food and Drugs finds that postponement of the closing dates is consistent with the stated objective of completing the said scientific investigations and regulatory review thereof and with the objective of protecting the public health.

The requested extensions are granted on condition that, where applicable, progress reports be supplied on or before June 30, 1971.

Therefore, pursuant to the authority of the Federal Food, Drug, and Cosmetic Act (sec. 203(a)(2), Public Law 86-618; 74 Stat. 404; 21 U.S.C. 376, note), delegated to the Commissioner (21 CFR 2.120), Part 8 is amended as follows:

Section 8.501 *Provisional lists of color additives* is amended by changing the closing dates of all color additives listed therein to December 31, 1971.

Notice and public procedure and delayed effective date are unnecessary prerequisites to the promulgation of this order, and I so find, since section 203(a)(2) of Public Law 86-618 provides for this issuance.

Effective date. This order amending § 8.501 is effective as of January 1, 1971.

(Sec. 203(a)(2), Public Law 86-618; 74 Stat. 404; 21 U.S.C. 376, note)

Dated: February 22, 1971.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.71-2679 Filed 2-26-71;8:46 am]

SUBCHAPTER B—FOOD AND FOOD PRODUCTS

PART 121—FOOD ADDITIVES

Subpart F—Food Additives Resulting From Contact With Containers or Equipment and Food Additives Otherwise Affecting Food

ADHESIVES

The Commissioner of Food and Drugs, having evaluated the data in a petition (FAP 0B2544) filed by Union Carbide Corp., Post Office Box 65, Tarrytown, N.Y. 10591, and other relevant material, concludes that § 121.2520 of the food additive regulations should be amended by deleting the limitation on maximum molecular weight regarding polypropylene glycol as a component of food-packaging adhesives. Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(c)(1), 72 Stat. 1786; 21 U.S.C. 348(c)(1)) and under authority delegated to the Commissioner (21 CFR 2.120), § 121.2520(c)(5) is amended by revising the item "Polypropylene glycol (molecular * * *)" to read as follows:

§ 121.2520 Adhesives.

* * * * *

(c) * * *

(5) * * *

COMPONENTS OF ADHESIVES

Substances	*Limitations*
* * *	* * *
Polypropylene glycol (minimum molecular weight 150).	
* * *	* * *

Any person who will be adversely affected by the foregoing order may at any time within 30 days after its date of publication in the FEDERAL REGISTER file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 6-62, 5600 Fishers Lane, Rockville, Md. 20852, written objections thereto in quintuplicate. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof.

Effective date. This order shall become effective on its date of publication in the FEDERAL REGISTER (2-27-71).

(Sec. 409(c)(1), 72 Stat. 1786; 21 U.S.C. 348(c)(1))

Dated: February 19, 1971.

R. E. DUGGAN,
Acting Associate Commissioner for Compliance.

[FR Doc.71-2680 Filed 2-26-71;8:46 am]

PART 121—FOOD ADDITIVES

Subpart F—Food Additives Resulting From Contact With Containers or Equipment and Food Additives Otherwise Affecting Food

COMPONENT OF PAPER AND PAPERBOARD

The Commissioner of Food and Drugs, having evaluated the data in a petition (FAP 0B2503) filed by Buckman Laboratories, Inc., Memphis, Tenn. 38108, and other relevant material, concludes that § 121.2526 of the food additive regulations should be amended to provide for

the safe use of poly[oxyethylene(dimethyliminio) ethylene (dimethyliminio) ethylene dichloride] to improve the dry-strength of paper and paperboard and as a retention and drainage aid employed prior to the sheet-forming operation in the manufacture of paper and paperboard intended for use in contact with aqueous and fatty foods.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(c)(1), 72 Stat. 1786; 21 U.S.C. 348(c)(1)) and under authority delegated to the Commissioner (21 CFR 2.120), § 121.2526(a)(5) is amended by alphabetically inserting in the list of substances a new item, as follows:

§ 121.2526 Components of paper and paperboard in contact with aqueous and fatty foods.

* * * * *

(a) * * *

(5) * * *

List of Substances	*Limitations*
* * *	* * *
Poly [oxyethylene (dimethyliminio) ethylene (dimethyliminio) ethylene dichloride] produced by reacting equimolar quantities of *N,N,N',N'*-tetramethylethylenediamine and dichloroethyl ether to yield a solution of the solid polymer in distilled water at 25° C. with a reduced viscosity of not less than 0.15 deciliter per gram as determined by ASTM Method D 1243–66. The following formula is used for determining reduced viscosity: Reduced viscosity in terms of deciliters per gram $= \frac{t - t_s}{t_s \times C}$, where: t=Solution efflux time. t_s=Water efflux time. C=Concentration of solution in terms of grams per deciliter. * * *	For use only to improve dry-strength of paper and paperboard and as a retention and drainage aid employed prior to the sheet-forming operation in the manufacture of paper and paperboard and limited to use at a level not to exceed 0.1 percent by weight of the finished dry paper and paperboard fibers. * * *

Any person who will be adversely affected by the foregoing order may at any time within 30 days after its date of publication in the FEDERAL REGISTER file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 6–62, 5600 Fishers Lane, Rockville, Md. 20852, written objections thereto in quintuplicate. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof.

Effective date. This order shall become effective on its date of publication in the FEDERAL REGISTER (2–27–71).

(Sec. 409(c)(1), 72 Stat. 1786; 21 U.S.C. 348(c)(1))

Dated: February 19, 1971.

R. E. DUGGAN,
Acting Associate Commissioner for Compliance.

[FR Doc.71–2681 Filed 2–26–71;8:46 am]

PART 121—FOOD ADDITIVES

Subpart F—Food Additives Resulting From Contact With Containers or Equipment and Food Additives Otherwise Affecting Food

INDUSTRIAL STARCH-MODIFIED

The Commissioner of Food and Drugs, having evaluated the data in a petition (FAP 1B2574) filed by W. A. Scholten's Chemische Fabrieken N.V., Postbus 1, Foxhol, The Netherlands, and other relevant material, concludes that the food additive regulations should be amended to provide for the additional safe use of industrial starch modified by treatment with phosphoric acid, not to exceed 6 percent, and urea, not to exceed 20 percent, as surface sizing and coating for paper and paperboard. Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(c)(1), 72 Stat. 1786; 21 U.S.C. 348(c)(1)) and under authority delegated to the Commissioner (21 CFR 2.120), § 121.2506(a) is amended by revising the limitations of the last item "Phosphoric acid, * * *" in the table, as follows:

§ 121.2506 Industrial starch-modified.

* * * * * *

(a) * * *

List of reactants:	*Limitations*
* * *	* * *
Phosphoric acid, not to exceed 6 percent, and urea, not to exceed 20 percent.	Industrial starch modified by this treatment shall be used only as internal sizing for paper and paperboard intended for food packaging and as surface sizing and coating for paper and paperboard that contact food only of types IV–A, V, VII, VIII, and IX described in table 1 of § 121.2526(c).

Any person who will be adversely affected by the foregoing order may at any time within 30 days after its date of publication in the FEDERAL REGISTER file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 6–62, 5600 Fishers Lane, Rockville, Md. 20852, written objections thereto in quintuplicate. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof.

Effective date. This order shall become effective on its date of publication in the FEDERAL REGISTER (2–27–71).

(Sec. 409(c)(1), 72 Stat. 1786; 21 U.S.C. 348(c)(1))

Dated: February 19, 1971.

R. E. DUGGAN,
Acting Associate Commissioner for Compliance.

[FR Doc.71–2682 Filed 2–26–71; 8:46 am]

Title 32—NATIONAL DEFENSE

Chapter XIV—Renegotiation Board

SUBCHAPTER B—RENEGOTIATION BOARD REGULATIONS UNDER THE 1951 ACT

PART 1472—CONDUCT OF RENEGOTIATION

PART 1480—AVAILABILITY AND CONTROL OF RENEGOTIATION RECORDS AND INFORMATION

Miscellaneous Amendments

Part 1472 is amended by adding a new § 1472.7 to read as follows:

§ 1472.7 Performance information.

(a) Subject to the provisions of paragraphs (b) and (c) of this section, in any case in which a contractor has been invited to submit a statement under the statutory factors for the fiscal year under review (see § 1472.3), the contractor will be given a copy of each report to the Board or a Regional Board by a Department or other customer of the contractor with respect to his performance of any contract or subcontract in such fiscal year.

(b) Information pertaining to persons other than the contractor which is privileged or confidential will be deleted from the copy of the report furnished to the contractor. If a Department advises that certain information in its report, pertaining to matters other than performance, is confidential and may not be disclosed to the contractor, such information will also be deleted. A report that has been classified by the originating Department for reasons of national defense or foreign policy will not be furnished to the contractor without the consent of such Department.

(c) A report received by the Board or a Regional Board from a customer of the contractor other than a Department pursuant to request made prior to the effective date of this section, if solicited with the understanding that it would be held confidential, will not be given to the contractor without the consent of such customer.

§ 1480.5 [Amended]

Section 1480.5 *Public inspection of records; index* is amended in the following respects:

1. Paragraphs (a) and (b) are deleted in their entirety and the following is inserted in lieu thereof:

(a) *Records available for inspection.* Pursuant to 5 U.S.C. 552(a)(2), the Board will make available for public inspection and copying, the following records:

(1) Agreements determining excessive profits.

(2) Orders determining excessive profits.

(3) Statements of facts and reasons issued by the Board.

(4) Letters not to proceed.

(5) Clearances after assignment.

(6) Clearances without assignment (express Board action).

(7) Clearances without assignment (pursuant to delegation of authority).

(8) Decisions on applications for commercial exemption.

(9) Decisions on new durable productive equipment exemption.

(10) Decisions on applications for stock item exemption.

(11) Special accounting agreements.

(12) Interpretations.

(13) General Orders that affect the public.

(14) Administrative Orders that affect the public.

Without regard to the provisions of 5 U.S.C. Section 552(a)(2), the Board will also make available for public inspection and copying summaries of facts and reasons issued by the Board.

(b) [Reserved]

2. Paragraph (c) is amended by changing the heading thereof to read *"Deletion of exempt matter or identifying details"*, and adding at the end of subparagraph (1) thereof the following: "The Board will also delete from any such records any portion or portions thereof considered to be within the exemptions provided in § 1480.9."

Section 1480.9(b) *Certain records* is deleted in its entirety, and the following is inserted in lieu thereof:

§ 1480.9 Exemptions.

* * * * *

(b) [Reserved]

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

Dated: February 24, 1971.

LAWRENCE E. HARTWIG,
Chairman.

[FR Doc.71-2707 Filed 2-26-71;8:48 am]

Title 38—PENSIONS, BONUSES, AND VETERANS' RELIEF

Chapter I—Veterans Administration

PART 9—SERVICEMEN'S GROUP LIFE INSURANCE

Part 9 is revised to read as follows:

Sec.
9.1 Definitions.
9.2 Effective date.
9.4 Amount of insurance.
9.5 Coverage.
9.6 Waiver or reduction of coverage.
9.7 Extension of coverage based on disability.
9.8 Restoration of coverage.
9.10 Deductions from pay.
9.12 Payment for extra hazards.
9.14 Group life insurance fund.
9.16 Beneficiaries and options.
9.17 Taxation and exemption.
9.18 Payment of proceeds.
9.20 Assignments.
9.22 Administrative decisions.
9.24 Termination of coverage.
9.26 Conversion privilege.
9.27 Health standards.
9.28 Criteria for reinsurers and converters.
9.30 Reinsurance formula.
9.32 Actions on the policy.
9.34 Forfeiture.

AUTHORITY: The provisions of this Part 9 issued under 72 Stat. 1114; 79 Stat. 880, 84 Stat. 326; 38 U.S.C. 210, subchapter III, Chapter 19.

§ 9.1 Definitions.

(a) The term "member" means (1) A person on active duty, active duty for training, or inactive duty training in the uniformed services in a commissioned, warrant, or enlisted rank or grade;

(2) A member, cadet, or midshipman of the Reserve Officers Training Corps while attending field training or practice cruises; and

(3) A person whose coverage is extended after termination of duty under § 9.5(a) because of length of service or under § 9.7 (a) or (b) because of disability.

(b) The term "active duty" means (1) Full-time duty in the Armed Forces, other than active duty for training;

(2) Full-time duty (other than for training purposes) as a commissioned officer of the Regular or Reserve Corps of the Public Health Service; and

(3) Full-time duty as a commissioned officer of the National Oceanic and Atmospheric Administration.

(c) The term "Armed Forces" means the U.S. Army, Navy, Air Force, Marine Corps, Coast Guard and the Reserves thereof.

(d) The term "active duty for training" means (1) Full-time duty in the Armed Forces performed by Reserves for training purposes;

(2) Full-time duty for training purposes performed as a commissioned officer of the Reserve Corps of the Public Health Service;

(3) Full-time duty as a member, cadet, or midshipman of the Reserve Officers Training Corps while attending field training or practice cruises; and

(4) In the case of members of the Army National Guard or Air National Guard of any State, full-time duty under sections 316, 502, 503, 504, or 505 of title 32, United States Code.

(e) The term "inactive duty training" means (1) Duty (other than full-time duty) prescribed or authorized for Reserves (including commissioned officers of the Reserve Corps of the Public Health Service) which duty is scheduled in advance by competent authority to begin at a specific time and place; and

(2) In the case of a member of the Army National Guard or Air National Guard of any State, such term means duty (other than full-time duty) which is scheduled in advance by competent authority to begin at a specific time and place under sections 316, 502, 503, 504, or 505 of title 32, United States Code.

(f) The terms "active duty for training" and "inactive duty training" do not include duty performed as a temporary member of the Coast Guard Reserve, and the term, "inactive duty training" does not include (1) work or study performed in connection with correspondence courses, or (2) attendance at an educational institution in an inactive status.

(g) The term "uniformed services" means the Army, Navy, Air Force, Marine Corps, Coast Guard, including in each instance the corresponding Reserve and Reserve Officers Training Corps, if any, and in the case of the Army, including the Army National Guard and in the case of the Air Force, the Air National Guard. Also included are the commissioned corps of the Public Health Service and its Reserve Corps and the commissioned corps of the National Oceanic and Atmospheric Administration.

(h) The term "policy" means Group Policy No. G-32000, effective September 29, 1965, purchased pursuant to subchapter III of chapter 19, title 38, United States Code, from the insurer, which was executed and attested on December 30, 1965, and amended on June 25, 1970.

(i) The term "insurer" means the commercial life insurance company or companies selected under 38 U.S.C. 766 to provide insurance coverage specified in the policy.

(j) The term "office" means the Office of Servicemen's Group Life Insurance located at 212 Washington Street, Newark, NJ 07102, which is the administrative office established pursuant to 38 U.S.C. 766(b) by the insurer.

(k) The term "reinsurer" means any life insurance company, meeting established criteria as set forth in § 9.28 which reinsures a portion of the total amount of insurance covered by the policy and issues individual life insurance policies in accordance with § 9.26.

(l) The term "converter" means any life insurance company, meeting criteria set forth in § 9.28 which issues individual life insurance policies in accordance with § 9.26.

(m) The term "coverage" means Servicemen's Group Life Insurance payable

upon death occurring while the member is insured under the policy.

(n) The term "termination of duty" means: (1) In the case of active duty or active duty for training being performed under a call or order that does not specify a period of less than 31 days—discharge, release or separation from such duty.

(2) In the case of other duty—the member's release from his obligation to perform any duty in his uniformed service (active duty, or active duty for training or inactive duty training) whether arising from limitations included in a contract of enlistment or similar form of obligation or arising from resignation, retirement or other voluntary or involuntary action by which the obligation to perform such duty ceases.

(o) The term "waive" or "waiver" means an election in writing signed by a member and received by the uniformed service not to be insured under the policy.

(p) The term "break in service" means the situation(s) in which: (1) A member terminates duty or obligation to perform duty in one service and enters on duty or assumes the obligation to perform duty in another uniformed service, regardless of the length of time intervening.

(2) A member reenters on duty or resumes an obligation to perform duty as a Reserve in the same uniformed service and 1 calendar day or more has elapsed following termination of the prior period of duty or obligation to perform duty.

(q) The term "disability" means any type of injury or disease whether mental or physical.

(r) The term "total disability" means any impairment of mind or body which continuously renders it impossible for the insured to follow any substantially gainful occupation. Without prejudice to any other cause of disability, the permanent loss of the use of both feet, of both hands, or of both eyes, or of one foot and one hand, or of one foot and one eye, or of one hand and one eye, or the total loss of hearing of both ears, or the organic loss of speech shall be deemed to be total disability. Organic loss of speech will mean the loss of the ability to express oneself, both by voice and whisper, through the normal organs of speech if such loss is caused by organic changes in such organs. Where such loss exists, the fact that some speech can be produced through the use of an artificial appliance or other organs of the body will be disregarded.

(s) The term "basic coverage" refers to the coverage of members called or ordered to active duty or active duty for training under calls or orders that do not specify a period of less than 31 days.

(t) The term "reservist coverage" refers to the coverage of members performing active duty or active duty for training under calls or orders to duty that specify a period of less than 31 days and the coverage of members performing inactive duty training scheduled in advance by competent authority to begin at a specific time and place.

§ 9.2 **Effective date.**

(a) The effective date of coverage for each member then on active duty, active duty for training, or inactive duty training is June 25, 1970. The date is controlled by the local standard time of the member's then physical location.

(b) The effective date of coverage for each member entering on active duty, active duty for training, or inactive duty training after June 25, 1970, is the first day of such duty unless the member has elected in writing not to be covered.

§ 9.4 **Amount of insurance.**

Each member on duty on or after June 25, 1970, is automatically insured against death in the amount of $15,000 unless the member elects in writing (a) not to be insured or (b) to be insured in the amount of $10,000 or $5,000 as provided for in § 9.6 (a), (b), and (c).

§ 9.5 **Coverage.**

(a) *Basic coverage.* For a member performing active duty or active duty for training under a call or order which does not specify a period of less than 31 days, coverage is effective during the period of such duty and without further deductions from pay for 120 days following separation or release from such duty; and, if the member is totally disabled at time of separation or release, coverage may be extended up to 1 year under § 9.7(a).

(b) *Reservist coverage.* (1) For a member performing active duty or active duty for training under a call or order that specifies a period of less than 31 days, coverage is in effect from the first day of such duty through midnight local time of the last day of such duty; and, if the member is disabled, coverage may be extended for 90 days under § 9.7(b).

(2) For a member performing inactive duty training, coverage is in effect from the beginning of the scheduled training period through the end of the scheduled training period; and, if the member is disabled, coverage may be extended for 90 days under § 9.7(b).

(3) A member who, when authorized or required by competent authority, assumes an obligation to perform (for less than 31 days) active duty, or active duty for training, or inactive duty training scheduled in advance by competent authority and who is rendered uninsurable at standard premium rates according to good health standards approved by the Administrator, or dies within 90 days thereafter, from a disability, or aggravation of a preexisting disability, incurred by him while proceeding directly to or returning directly from such active duty, active duty for training, or inactive duty training, as the case may be, shall be deemed to have been on active duty, active duty for training, or inactive duty training, as the case may be; and to have been insured at the time such disability was incurred or aggravated; and if death occurs within 90 days thereafter as a result of such disability, to have been insured at the time of death. In determining whether or not such individual was so authorized or required to perform such duty and whether or not he was rendered uninsurable or died within 90 days thereafter from a disability so incurred or aggravated, there shall be taken into account the call or order to duty, the orders and authorizations of competent authority, the hour on which the member began to so proceed or to return, the hour on which he was scheduled to arrive for, or on which he ceased to perform such duty, the method of travel employed, his itinerary, the manner in which the travel was performed, and the immediate cause of disability or death. Whenever any claim is filed alleging that the claimant is entitled to benefits by reason of 38 U.S.C. 767(b), the burden of proof shall be on the claimant.

(c) *Arrest or confinement.* Arrest or confinement of a member covered under paragraph (a) of this section by military or civil authority does not terminate coverage, except as specified in § 9.24(a).

§ 9.6 **Waiver or reduction of coverage.**

(a) A member may waive his right to group coverage or elect to reduce the amount of insurance from $15,000 to $10,000 or $5,000 by filing a written notice with his uniformed service. In any case where a member's uniformed service receives a waiver or reduction prior to the date any group coverage would become effective, no insurance shall be placed in effect on the lives of those members who waive coverage and those who elect reduced coverage shall be insured for only $10,000 or $5,000, as the case may be, from the date coverage becomes effective.

(b) Basic coverage, § 9.5(a), in effect before a waiver or reduction is filed will terminate or be reduced at midnight of the last day of the month such notice is received by a member's uniformed service. Where a waiver or reduction is filed for basic coverage, it is effective for the entire period of active duty or active duty for training and for any period of time after termination of duty during which the coverage is or would be extended. If, following termination of duty, the member reenters duty (in the same or another uniformed service) the waiver or reduction will not apply to the subsequent period of duty.

(c) Reservist coverage, § 9.5 (b) (1) or (2), will terminate or be reduced at the end of the last day of the period of duty then being performed if the member is on active duty or active duty for training when the waiver or reduction is filed; at the end of the period of inactive duty training then being performed if the member is on inactive duty training when the waiver or reduction is filed; or on the date the waiver or reduction is received by his uniformed service if the member is not on active duty, active duty for training, or inactive duty training on the date the waiver or reduction is filed.

(1) When a member insured under reservist coverage, § 9.5(b) (1) or (2), waives his right to group coverage or elects a reduced amount of insurance, such waiver or election, unless changed, is effective throughout the period of the member's continuous reserve obligation

in the same uniformed service. If, following termination of duty, the member reenters duty or resumes the obligation to perform duty (in the same or another uniformed service), the waiver or reduction will not apply to the subsequent period of duty or obligation.

(2) If a reservist insured under reservist coverage, § 9.5(b) (1) or (2), is called or ordered to active duty or active duty for training under a call or order that does not specify a period of less than 31 days and is separated or released from such duty and then resumes his reserve obligation, any waiver or election of reduced coverage made while eligible for reservist coverage, unless changed, shall be effective throughout the entire period of reservist coverage, the active duty or active duty for training period and 120 days thereafter and the period of immediately resumed reserve obligation providing the period of active duty or active duty for training is 1 year or less.

(3) If a reservist having coverage performs continuous active duty or active duty for training for more than 1 year, any waiver or election of reduced coverage made during such period of active duty or active duty for training or the prior period of reservist duty shall cease to be effective at the end of 120 days following termination of such active duty or active duty for training, except that if such member's coverage is continued beyond 120 days following termination of duty under § 9.7(a), such waiver or election shall cease to be effective at the termination of such coverage.

(4) If a member, other than a member referred to in subparagraph (2) or (3) of this paragraph, upon termination of duty qualifying him for basic coverage under § 9.5(a) assumes an obligation to perform duty as a reservist, any waiver or election previously made by him shall not apply to coverage arising from his reservist obligation. Furthermore, during the 120 days following termination of such duty the basic coverage shall not be reduced by any waiver or election made by a member as a reservist.

(d) Members reentering on duty under paragraph (b) of this section or resuming a previously terminated obligation to perform duty under paragraph (c)(1) of this section or assuming an obligation to perform duty under paragraph (c)(4) of this section begin a new period of automatic coverage for $15,000 unless on or before the date of reentrance, resumption or assumption the member waives his right to automatic coverage or elects to be covered for only $10,000 or $5,000 for the new period of duty or obligation. Members having a continuing obligation to perform duty under the circumstances in paragraph (c)(3) of this section begin a new period of automatic coverage for $15,000 on the 121st day following separation or release from continuous active duty or active duty for training of more than 1 year unless on or before such 121st day the member waives his right to automatic coverage or elects to be covered for only $10,000 or $5,000 commencing on such 121st day. Coverage automatically provided or elected in a reduced amount in the situations referred to replaces any coverage in the same or a lesser amount in effect on the day before the first day of the new period of duty or obligation in paragraphs (b) and (c) (1) and (4) of this section or on the 120th day following separation or release in paragraph (c)(3) of this section. In no event will there be coverage for more than $15,000.

§ 9.7 Extension of coverage based on disability.

(a) Coverage of any member of the uniformed services on active duty or active duty for training on or after June 25, 1970, under a call or order to duty that does not specify a period of less than 31 days who is totally disabled at separation or release from such duty shall continue for 1 year after the date of separation or release from such duty, or until and including the date the insured ceases to be totally disabled, whichever is the earlier date, without further premium payments, but in no event shall such coverage cease prior to the expiration of 120 days after such separation or release. If a member insured under the provisions of law in effect prior to June 25, 1970, was separated or released from duty on or after February 25, 1970, but before June 25, 1970, and was totally disabled on the date of separation or release from such duty and such total disability continues beyond the 120-day period after separation or release the amount of coverage in effect at the time of separation or release from duty continues for 1 year after the date of separation or release from duty or until and including the date he ceases to be totally disabled, whichever is earlier.

(1) If a member whose coverage is extended under paragraph (a) of this section converts his group insurance (§ 9.26) to an individual policy which is effective before he ceases to be totally disabled or before the end of 1 year following termination of duty, whichever is earlier, and dies while group insurance would be in effect, except for such conversion, the group insurance will be payable, provided the individual policy is surrendered for a return of premiums and without further claim. When there is no such surrender, any amount of group insurance in excess of the amount of the individual policy will be payable.

(b) Coverage of any member on active duty, or active duty for training under a call or order to duty that specifies a period of less than 31 days, or on inactive duty training on or after June 25, 1970, who, while so covered incurs a disability or aggravation of a preexisting disability, is extended to death if the member dies within 90 days thereafter as the result of such disability, or for 90 days following the end of the duty period during which the disability was incurred or aggravated if such disability renders him uninsurable at standard premium rates under good health standards referred to in § 9.27.

§ 9.8 Restoration of coverage.

(a) Coverage is automatically restored without evidence of good health when subsequent to termination of all duty in his uniformed service, a member reenters on duty (in the same or another uniformed service) even when there is no break in service.

(b) Coverage that has been terminated under § 9.24 because of (1) absence without leave, (2) confinement by civil authorities under a sentence adjudged by a civilian court, or (3) confinement by military authorities under a court-martial sentence involving total forfeiture of pay and allowance shall be automatically revived, together with any beneficiary designation for such insurance as of the date the member is restored to active duty with pay or to active duty for training with pay.

(c) Subject to approval by the insurer, coverage is restored in the amount applied for ($15,000, $10,000, or $5,000) effective the date of receipt of application with evidence of good health by the uniformed service:

(1) For a member who previously waived the right to be covered or elected to be covered for only $10,000 or $5,000; or

(2) For a member who forfeited the right to be covered for one of the offenses listed in § 9.34 but who was restored to duty under conditions which, in effect, result in a remission of sentence.

§ 9.10 Deductions from pay.

(a) During any period in which a member, on active duty or active duty for training under a call or order to such duty that does not specify a period of less than 31 days, is insured under a policy of insurance purchased under 38 U.S.C. 766 there shall be deducted each month from his basic or other pay until separation or release from such duty an amount (which shall be the same for all such members) determined as the share of the cost attributable to insuring such member under such policy, less any costs traceable to the extra hazard of such duty in the uniformed service. The initial monthly amounts shall be $3 for $15,000 coverage, $2 for $10,000 coverage and $1 for $5,000 coverage.

(b) During any fiscal year, or portion thereof, that a member is on active duty or active duty for training under a call or order to such duty that specifies a period of less than 31 days, or is authorized or required to perform inactive duty training scheduled in advance by competent authority and is insured under a policy of insurance purchased by the Administrator under 38 U.S.C. 766, the Secretary concerned shall collect from him (by deduction from pay or otherwise) an amount (which shall be the same for all such members) determined as the share of the cost attributable to insuring such member under such policy, less any costs traceable to the extra hazard of such duty in the uniformed service. The initial annual amounts for each fiscal year shall be $1.80 for $15,000 coverage, $1.20 for

$10,000 coverage and $0.60 for $5,000 coverage.

(c) Any amount not deducted from the basic or other pay of an insured member, or collected from him by the Secretary concerned, if not otherwise paid, shall be deducted from the proceeds of any insurance thereafter payable. The initial monthly amount or fiscal year amount to be charged for insurance as set forth in paragraph (a) or (b) of this section may be continued from year to year, except that the Administrator may redetermine such monthly or fiscal year amounts from time to time in accordance with experience. No refunds will be made to any member of any amount properly deducted from his basic or other pay, or otherwise collected from him by the Secretary concerned, to cover the cost of the insurance granted.

§ 9.12 Payment for extra hazards.

For each month for which any member is insured under Group Policy No. G–32000 there shall be contributed from the appropriation made for active duty pay of the uniformed service concerned an amount determined by the Administrator and certified to the Secretary concerned to be the cost of such insurance which is traceable to the extra hazard of duty in the uniformed services. Effective January 1, 1970, such cost shall be determined by the Administrator on the basis of the excess mortality incurred by insured members and former members of the uniformed services above what their mortality would have been under peacetime conditions as such mortality is determined by the Administrator using such methods and data as he shall determine to be reasonable and practicable. The Administrator is authorized to make such adjustments regarding contributions from pay appropriations as may be indicated from actual experience.

§ 9.14 Group life insurance fund.

(a) All amounts deducted from the pay of insured members or otherwise paid and all contributions to cover extra hazard costs made from appropriations of the Departments of Defense; Commerce; Health, Education, and Welfare; and Transportation; together with any income derived from dividends or premium rate or extra hazard cost adjustment received from the insurer will be credited directly to a revolving fund in the Treasury of the United States, known as the Servicemen's Group Life Insurance Fund. All premium payments and extra hazard cost contributions on the policy and the administrative cost to the Veterans Administration will be paid directly from such fund.

(b) Administrative cost to the Veterans Administration properly allocable to Servicemen's Group Life Insurance will be determined from time to time and the amount representing such cost will be transferred from the Servicemen's Group Life Insurance Fund to the appropriation "General Operating Expenses," Veterans Administration.

§ 9.16 Beneficiaries and options.

(a) A member may designate any person, firm, corporation or legal entity (including the estate of the member), individually or as trustee, as beneficiary.

(b) A beneficiary designation or election of optional settlement will remain in effect, until properly changed by the member or automatically canceled, under the following rules:

(1) A designation of beneficiary or election of optional settlement made by an insured member performing full-time duty in a uniformed service (excluding a member of the Reserves, National Guard or ROTC) under a call or order to duty that does not specify a period of less than 31 days, unless changed, shall be effective throughout the period of such duty and for 120 days following release therefrom or for any period of extended coverage provided under § 9.7 (a), whichever is later, whereupon it terminates. If such member assumes a Reserve obligation, a new designation of beneficiary and optional settlement must be made with respect to coverage during the Reserve obligation. Any such beneficiary designation or optional settlement submitted before the end of 120 days following separation or release from such duty shall cancel any similar designation made prior thereto.

(2) A designation of beneficiary or election of optional settlement made by a member under reservist coverage, unless changed, is effective throughout the period of the member's continuous Reserve obligation in the same uniformed service.

(3) If a reservist having coverage is called or ordered to active duty or active duty for training under a call or order that does not specify a period of less than 31 days and is separated or released from such duty and then resumes his Reserve obligation, any designation of beneficiary or election of optional settlement made during the original period of Reserve obligation shall be effective, unless changed, throughout the entire period of active duty or active duty for training period and 120 days thereafter, and the period of immediately resumed Reserve obligation, except that in the case of a reservist performing such active duty or active duty for training for more than 1 continuous year, a designation of beneficiary or election of optional settlement made prior to termination of such active duty or active duty for training shall cease to be effective at the end of 120 days following such termination or at the end of any period of extended coverage provided under § 9.7(a), whichever is later.

(4) Termination of all duty or of the Reserve obligation to perform duty and reentrance on duty or resumption of a Reserve obligation will not automatically cancel the designation or election unless there was a break in service or in the Reserve obligation to perform duty, or, there is a resumption of a Reserve obligation under the exception set forth in subparagraph (3) of this paragraph.

(c) Any designation or change of beneficiary or election of optional settlement will take effect only if it is in writing, signed by the insured, and received, prior to the death of the member, by his uniformed service; or if executed during a period of coverage following separation or release from duty under § 9.5(a) or § 9.7 (a) or (b), by the Office of Servicemen's Group Life Insurance.

(d) A change of beneficiary may be made at any time and without the knowledge or consent of the previous beneficiary.

(e) No change or cancellation of beneficiary or election of optional settlement in a last will or testament, or in any other document shall have any force or effect unless such change is received by the appropriate uniformed service while the member is on duty or obligated to perform duty, or is received in the Office of Servicemen's Group Life Insurance during the period of coverage following separation or release from such obligation or duty under § 9.5(a) or 9.7 (a) or (b).

(f) Until and unless otherwise changed, a beneficiary designation and settlement option filed by a member with his uniformed service in effect on June 25, 1970, will be effective with respect to the increased amount of insurance authorized on June 25, 1970, by Public Law 91–291 (84 Stat. 326) and the insurance shall be settled in the same proportionate amount as the portion designated for such beneficiary or beneficiaries bore to the amount of insurance theretofore in effect.

(g) Any designation of beneficiary made by any member shall automatically cease to be effective (1) if his insurance under the group policy terminates following separation or release from all duty in a uniformed service, (2) if the member enters on duty in another uniformed service, (3) if the member reenters on duty in the same uniformed service more than 1 calendar day after separation or release from all duty in that uniformed service, or (4) in the case of a member insured under basic insurance (other than one called to continuous duty for 1 year or less as a reservist) when such insurance terminates. However subparagraphs (2) and (3) of this paragraph shall not apply to the basic insurance or portion thereof continued under the group policy during the 120 days after separation or release from duty which is not replaced because the member upon entry or reentry on duty in a uniformed service during that 120-day period did not reacquire insurance or reacquired a lesser amount of insurance.

(h) In any case in which a member separated or released from all obligation to perform duty in a uniformed service reenters on duty after a break in service while covered during the period of protection afforded under §§ 9.5 (a) or 9.7 (a) or (b) after termination of duty and waives coverage or elects coverage in the amount of $10,000 or

$5,000, an existing designation of beneficiary or election of optional settlement is not canceled with respect to any amount of insurance not replaced upon such reentry on duty.

(i) The insurance proceeds will be paid to the person or persons surviving the insured member in the following order of precedence:

(1) To the beneficiary or beneficiaries designated (see paragraph (c) of this section).

(2) If there be no such beneficiary, to the widow or widower. Notwithstanding the provisions of any other law, payment of matured Servicemen's Group Life Insurance benefits may be made directly to a minor widow or widower on his or her own behalf, and payment in such case shall be a complete acquittance to the insurer.

(3) If none of the above, to the child or children and descendents of deceased children by representation;

(4) If none of the above, to the parents or the survivor of them;

(5) If none of the above, to the executor or administrator of the estate of the insured; or

(6) If none of the above, to other next of kin in accordance with the laws of the State wherein the insured member was domiciled at date of death.

(j) The insured member may elect in writing that settlement of the insurance proceeds be made either in a lump sum or in 36 equal monthly installments. If no election is made or the member elects that payment be made in a lump sum, the beneficiary may elect at the time of the member's death either mode of settlement. An election to be effective must be received before the member's death (1) by the appropriate uniformed service while the member is on duty or obligated to perform duty, or (2) in the Office of Servicemen's Group Life Insurance during a period of coverage as provided for under § 9.5(a) or 9.7 (a) or (b) after termination of duty.

§ 9.17 Taxation and exemption.

Section 770(g), title 38, United States Code provides that payment of benefits due or to become due under Servicemen's Group Life Insurance made to, or on account of, a beneficiary shall be exempt from taxation, shall be exempt from the claims of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary. The preceding sentence shall not apply to (1) collection of amounts not deducted from the member's pay, or collected from him by the Secretary concerned under 38 U.S.C. 769(a), (2) levy under subchapter D of chapter 64 of the Internal Revenue Code of 1954 (relating to the seizure of property for collection of taxes), and (3) the taxation of any property purchased in part or wholly out of such payments.

§ 9.18 Payment of proceeds.

(a) Group life insurance benefits will be paid upon receipt of satisfactory proof of death and a valid claim by the Office of Servicemen's Group Life Insurance.

(b) If a person, otherwise entitled to payment of the insurance proceeds, does not make claim therefor within 1 year following the death of the insured, or if payment to such person within such period is prohibited by Federal law or regulation, payment may be made in the order of precedence as set forth in § 9.16 (i), as if the person had predeceased the insured. Payment to such person is a bar to recovery by another person.

(c) If, within 2 years after the death of the member, no claim has been made by any person entitled and neither the Veterans Administration nor the Office of Servicemen's Group Life Insurance has received any notice that such a claim will be made, payment may be made to any claimant that may be equitably entitled thereto as determined by the Veterans Administration; and such payment will be a bar to recovery by another person.

(d) If, within 4 years after the death of the member, no payment has been made, and no claim by any person entitled is pending, the amount payable will escheat to the credit of the Servicemen's Group Life Insurance Fund.

(e) If, at the death of the insured member, there survives more than one designated beneficiary, the shares of which had not been specified by the member, such beneficiaries will share equally. All rights and interests of any designated beneficiary are automatically terminated when he predeceases the member; and what would otherwise have been the share of the deceased beneficiary will, in the absence of a contrary specification by the member in his written designation, be distributed equally among the surviving beneficiaries, or paid in whole to the last such survivor. If there is no surviving designated beneficiary, proceeds will be paid in order of precedence set forth in § 9.16(i).

(f) If proceeds are to be paid in installments, the first installment will be payable as of the date of death. The amount of each installment will be computed so as to include interest on the unpaid balance at the effective rate of 5 percent per annum. This rate may be changed at the beginning of any policy year.

(g) If, following the death of an insured member who has designated both principal and contingent beneficiaries and elected to have payment made in 36 equal monthly installments, the principal beneficiary dies before all 36 installments have been paid, the remaining installments will be paid as they fall due to the contingent beneficiary. At the death of such a contingent beneficiary, and in other instances of a beneficiary's death, where there is no contingent beneficiary, the value of any unpaid installments, discounted to the date of his death at the same rate used for inclusion of interest in the computation of installments, will be paid, without further accrual of interest, in one sum to the estate of the beneficiary or contingent beneficiary last receiving payment.

(h) In instances where payment in installments is made at the election of the beneficiary, upon his request, the value of such installments as remain unpaid will be discounted to the date of payment at the same rate used for inclusion of interest in the computation of installments and paid to him in one sum.

§ 9.20 Assignments.

Servicemen's Group Life Insurance and benefits thereunder are not assignable.

§ 9.22 Administrative decisions.

(a) Determinations of the Veterans Administration are conclusive under the policy with respect to the following:

(1) The status of any person being within the term "member" and whether or not he is covered at any point of time under the policy including "travel time" under § 9.5(b)(3), and death within 90 days thereafter from a disability incurred or aggravated while on duty under § 9.7(b).

(2) The fact and date of a member's termination of active duty or active duty for training, and the fact, date and hours of a member's performance of inactive duty training.

(3) The fact and dates with respect to a member's absence without leave, confinement by civilian authorities under a sentence adjudged by a civil court, or confinement by military authorities under a court-martial sentence involving total forfeiture of pay and allowances.

(4) The operation of the forfeiture provision provided in 38 U.S.C. 773 and § 9.34 with respect to any member.

(5) The existence of total disability or insurability at standard premium rates under § 9.7 (a) and (b).

(b) When a determination is required on a claim that a member who waived coverage, or whose coverage was forfeited for one of the offenses listed in § 9.34 was in fact insured, or that a member who elected to be insured in the amount of $5,000 or $10,000 was insured for $10,000 or $15,000, as the case may be, and there is no record of an application to be insured or to increase the amount of insurance as required by § 9.8(c):

(1) The person making the claim will be required to submit all evidence available concerning the member's actions and intentions with respect to Servicemen's Group Life Insurance;

(2) Request will be made to the member's uniformed service and any other likely source of information considered necessary, for whatever evidence in the form of copies of payroll or personnel records, statements of persons having knowledge of the facts, etc., is essential to a decision in the matter.

Based on the evidence obtained, a formal determination will be made as to whether the member involved is deemed to have applied to be insured, or to be insured for $15,000 or $10,000 in lieu of $10,000 or $5,000. The determination will include a finding as to the member's health status for insurance purposes based on the evidence available.

(c) In making the determination required under paragraph (b) of this section, the following will be considered:

(1) The possibility that due to widespread geographic distribution, inadequate means of communication and the nature of the group insurance program, members may not be adequately and accurately informed, especially in time of war or military emergency, about the detailed requirements for obtaining insurance protection;

(2) Payroll deductions made without objection by a member, following waiver or termination of coverage, representing premiums for insurance or additional insurance, may, by virtue of continuity or the circumstances surrounding their initiation, be indicative that the member did apply. Such deduction without a formal application of record may be considered as evidence that the member's application was not in proper form or misplaced. They may also be considered as evidence that an application was not made solely because of erroneous or incomplete counseling or absence of counseling on the part of the responsible personnel of the uniformed service.

(d) Questions for determination under this section as well as those involving coverage of groups and classes of members and other questions are properly referable to the Director, Insurance Service. Authority to make any determinations required under this section is delegated to the Chief Benefits Director and/or Director, Insurance Service.

§ 9.24 Termination of coverage.

(a) The coverage of a member who is serving on active duty or active duty for training under a call or order that does not specify a period of less than 31 days is terminated at the end of the 31st day of absence without leave; confinement by civilian authorities under sentence adjudged by a civilian court; or confinement by military authorities under a court-martial sentence involving total forfeiture of pay and allowances.

(1) A member who, on June 25, 1970, has been so absent or confined for more than 31 days is not covered until and unless he is restored to active duty or active duty for training with pay.

(2) The coverage of a member who, on June 25, 1970, has been so absent or confined for less than 31 days terminates at the end of the 31st day of such continuous absence or confinement.

(b) If a member covered following termination of duty under § 9.7(a) converts group coverage to an individual policy which is effective prior to the end of the group coverage provided under § 9.7(a), an amount of group coverage equal to the amount of the individual policy terminates at the end of the day preceding the effective date of the individual policy unless, in case of the member's death, the individual policy is surrendered as provided in § 9.7(a)(1).

(c) If a member eligible to be insured under basic coverage, § 9.5(a), on the first day of eligibility, waives in writing all or any part of the insurance, the amount of coverage so waived terminates immediately upon receipt of such written waiver by his uniformed service.

(d) In the case of a member insured under basic coverage, § 9.5(a), who after the first day of eligibility waives in writing all or any part of the insurance, such waiver shall be effective at the end of the last day of the month in which the written waiver is received by his uniformed service.

(e) In the case of a member insured under reservist coverage, § 9.5(b) (1) or (2), who waives in writing all or any part of the insurance, such waiver shall be effective as follows:

(1) If such written waiver is submitted to his uniformed service at a time of reporting for or while performing active duty or active duty for training under a call or order to duty specifying a period of less than 31 days, or at the time of reporting for or while performing inactive duty training, the coverage so waived shall terminate at the end of such period of active duty, active duty for training or inactive duty training including travel time while returning directly from such duty.

(2) If such written waiver is submitted to his uniformed service by a member at a time other than when reporting for or performing active duty or active duty for training under a call or order to duty specifying a period of less than 31 days or inactive duty training, such waived coverage terminates immediately upon receipt by the uniformed service of the member's written waiver.

(f) Coverage of any member, unless continued beyond terminaton of duty under § 9.5(a) or 9.7 (a) or (b) ceases upon termination of duty.

(g) In the case of a member whose coverage is forfeited under 38 U.S.C. 773, § 9.34, coverage terminates at the end of the day preceding the day on which the act or omission forming the basis for such forfeiture occurred.

(h) In the event of discontinuance of the group policy, coverage terminates at the end of the day preceding the date of the discontinuance of the policy.

§ 9.26 Conversion privilege.

(a) An insured member has the right to convert the group coverage to an individual policy of life insurance without disability or other supplementary benefits with one of the eligible commercial life insurance companies as follows:

(1) With respect to a member on active duty or active duty for training under a call or order to duty that does not specify a period of less than 31 days, effective the 121st day after separation or release from such duty, or at any time thereafter such insurance is in effect as the result of total disability under § 9.7(a).

(2) With respect to a member on active duty or active duty for training under a call or order to duty that specifies a period of less than 31 days, and a member insured during inactive duty training scheduled in advance by competent authority, there shall be no right of conversion unless the insurance is continued in force under § 9.7(b) for 90 days following a period of such duty, as the result of a disability incurred or aggravated during such a period of duty, in which event the insurance may be converted effective the day after the end of such 90-day period.

(b) An insured eligible to convert insurance under 38 U.S.C. chapter 19, subchapter III, upon request to the Office of Servicemen's Group Life Insurance shall be furnished a list of life insurance companies participating in the program. Upon written application for conversion of Servicemen's Group Life Insurance made by an eligible insured to the participating company he selects and payment of the required premiums the insured shall be granted life insurance on a plan as provided in paragraph (c) of this section.

(1) No medical examination may be required of a member insured under basic coverage, § 9.5(a), who applies for conversion within 120 days of termination of duty. Medical examinations and evidence of qualifying health conditions may be required in any case where a former member alleges that coverage is continued under § 9.7 (a) or (b).

(c) The individual policy to which a member converts must be on a plan currently written by the company selected by the member, except term insurance, in an amount which does not exceed the amount of the member's group coverage at time application for conversion is made, and which does not provide for the payment of any sum less than the face value of the individual policy or for the payment of an additional amount of premiums if the member engages in the military service of the United States. The premium for such individual policy shall be the premium, as detemined by the company issuing the policy, applicable to the class of risk (other than health conditions and military service) to which the member belongs and to the form and amount of the individual policy at the member's attained age at date of issue.

(d) Term insurance as excluded by paragraph (c) of this section is any policy which does not provide for cash values. Otherwise, reinsurers or converters who are group insurers may follow their usual group conversion practices in processing conversions. Other reinsurers or converters should refer questions as to the acceptability of any plan to the insurer for resolution on a consistent basis.

(e) Term riders providing level or decreasing insurance for which an additional premium is charged may be attached to an eligible basic conversion policy, but the rider will be excluded from the conversion pool agreement under the policy. Such a rider may in no way affect basic conversion privileges.

(f) The insurer will establish a conversion pool in cooperation with the reinsurers and converters in accordance with the terms of the policy. Its purpose will be to provide for the determination and maintenance of appropriate charges arising from excess mortality under individual conversion policies issued in accordance with this section and provide for the appropriate distribution of the risk of loss due to such excess mortality among the reinsurers and converters.

§ 9.27 Health standards.

For the purpose of determining if a member who incurred a disability or aggravated a preexisting disability during a period of active duty or active duty for training under a call or order to duty specifying a period of less than 31 days or during a period of inactive duty was rendered uninsurable at standard premium rates, the underwriting criteria used by the insurer in determining good health for persons applying to it for life insurance in amounts not exceeding $15,000 will be used.

§ 9.28 Criteria for reinsurers and converters.

The following criteria will control eligibility for reinsuring and converting companies:

(a) The company must be a legal reserve life insurance company as classified by the insurance supervisory authorities of the State of domicile. Qualified fraternal organizations are included.

(b) The company must have been in the life insurance business for a continuous period of 5 years prior to October 1, 1965, or the December 31 preceding any redeterminations of the allocations. In the event of a merger, the 5-year requirement may be satisfied by either the surviving company or by one of the absorbed companies. Upon joint application by a subsidiary of a participating company, together with the parent company, the 5-year requirement may be waived provided such parent company owns more than 50 percent of the outstanding stock of the subsidiary and has been a legal reserve life insurance company for a period of 10 years or more.

(c) The company must be licensed to engage in life insurance in at least one State of the United States or the District of Columbia.

(d) The company will not be one (1) Certified by the Department of Defense as being under suspension for cause for purpose of allotment or on-base solicitation privileges.

(2) That solicits life insurance applications as conversion or other replacement of Servicemen's Group Life Insurance coverage in jurisdictions in which it is not licensed.

(3) That fails to take effective action to correct an improper practice followed by it or its agents within 30 days after written receipt of notice issued by the insurer or the Director, Insurance Service. Improper practice includes:

(i) The use for solicitation purposes of lists of names and addresses of former members without obtaining reasonable assurance that such lists have not been obtained contrary to regulations of the Department of Defense or other uniformed service;

(ii) Failure to reveal sources and copies of mailing lists upon proper request or to otherwise cooperate in an authorized investigation of a reported improper practice;

(iii) The use of written or oral representations which may mislead the person addressed as to the true role of the company or its representatives as one of the participating companies;

(iv) The use of written or oral representations which may mislead a person addressed as to rights, privileges, coverage, premiums, or similar matters under Servicemen's Group Life Insurance or any policy issued or proposed to be issued as a conversion or other replacement coverage;

(v) Violation of regulations of a uniformed service concerning solicitation of life insurance.

(e) Each reinsuring and converting company must agree to issue conversion policies to any qualified applicant regardless of race, color, religion, sex, or national origin, under terms and conditions established by the primary insurer.

§ 9.30 Reinsurance formula.

The allocation of insurance to the insurer and each reinsuring company will be based upon the sum of paragraphs (a) and (b) of this section:

(a) One-half of the exact, or a reasonable estimate of the volume of the company's life insurance in force, at some time between June 30, 1965, and November 15, 1965, on active-duty personnel of the U.S. Armed Forces, paid for by service allotments. The volume of insurance on active-duty personnel written through the medium of Service Membership Associations on an allotment basis is to be included.

(b) An amount of the remaining balance of the total life insurance in force under the policy in proportion to the company's total life insurance in force in the United States on December 31, 1964, where:

The first $100 million in force is counted in full,
The second $100 million in force is counted at 75 percent,
The third $100 million in force is counted at 50 percent,
The fourth $100 million in force is counted at 25 percent,
And any amount above $400 million in force is counted at 5 percent.

(c) The allocation will be redetermined at the beginning of each policy year for the primary insurer and the companies then reinsuring, with the portion as set forth in paragraph (b) of this section based upon the corresponding in force (excluding the Servicemen's Group Life Insurance in force) as of the preceding December 31.

(d) Any life insurance company, which is not initially participating in reinsurance or conversions, but satisfies the criteria set forth in § 9.28, may subsequently apply to the primary insurer to reinsure and convert, or to convert only. The participation of such company will be effective as of the beginning of the policy year following the date on which application is approved by the insurer.

§ 9.32 Actions on the policy.

Servicemen's Group Life Insurance will be payable in accordance with the group policy purchased by the Veterans' Administration. The Director, Insurance Service, will furnish the name and address of the insuring company upon written request of a member of the uniformed services or his beneficiary. Actions at law or in equity to recover on the policy, in which there is not alleged any breach of any obligation undertaken by the United States, should be brought against the insurer.

§ 9.34 Forfeiture.

(a) Any person guilty of mutiny, treason, spying, or desertion, or who, because of conscientious objections, refuses to perform service in the Armed Forces of the United States or refuses to wear the uniform of such force, shall forfeit all rights to Servicemen's Group Life Insurance.

(b) No insurance shall be payable for death inflicted as a lawful punishment for crime or for military or naval offense, except when inflicted by an enemy of the United States.

These VA regulations are effective the date of approval.

Approved: February 22, 1971.

[SEAL] DONALD E. JOHNSON,
Administrator.

[FR Doc.71-2699 Filed 2-26-71;8:47 am]

Title 42—PUBLIC HEALTH

Chapter I—Public Health Service, Department of Health, Education, and Welfare

SUBCHAPTER D—GRANTS

PART 51a—SPECIAL PROJECT GRANTS FOR FAMILY PLANNING SERVICES

Notice of proposed rule making, public rule making procedures, and delay in effective date have been omitted as unnecessary in the transfer of the regulations relating to grants for family planning services from Chapter II (Part 208) of Title 42 to Chapter I, redesignation as Part 51a, and amendments. The amendments reflect the transfer from the Social and Rehabilitation Service to the Health Services and Mental Health Administration of the functions under Title V of the Social Security Act, 34 F.R. 14700, September 23, 1969, and changes made largely for editorial and clarification purposes.

The following amendments to Title 42 shall become effective on the date of publication in the FEDERAL REGISTER.

Chapter I of Title 42 is amended by adding, after Part 51 thereof, the following new Part 51a:

Sec.
51a.1 Applicability.
51a.2 Definitions.
51a.3 Eligibility for grants.
51a.4 Application.
51a.5 Matching requirements.
51a.6 Personnel and facilities standards.
51a.7 Availability of services.
51a.8 Provision of services.

AUTHORITY: The provisions of this Part 51a issued under sec. 1102, 49 Stat. 647, 42 U.S.C. 1302; sec. 508, 81 Stat. 926, 42 U.S.C. 708.

§ 51a.1 Applicability.

The regulations in this part are applicable to the award of grants under section 508(a)(3) of the Social Security Act (42 U.S.C. 708(a)(3)) for projects for the provision of family planning services to ensure that individuals have available to them the freedom of choice to determine the spacing of their children and the size of their families, and to help improve the general health of mothers and children.

§ 51a.2 Definitions.

As used in this part:

(a) "Act" means section 508 of the Social Security Act as amended (42 U.S.C. 708).

(b) "State" means any of the several States, the District of Columbia, Puerto Rico, the Virgin Islands, and Guam.

(c) "Secretary" means the Secretary of Health, Education, and Welfare and any other officer or employee of the Department of Health, Education, and Welfare to whom the authority involved has been delegated.

§ 51a.3 Eligibility for grants.

In order to be eligible for a grant under this part, an applicant must be (a) the State health agency of any State; (b) with the consent of such State health agency, the health agency of a political subdivision of the State; or (c) any public or nonprofit private agency, institution, or organization.

§ 51a.4 Application.

(a) An application for a grant under this part shall be submitted to the Secretary in such form and manner and at such time as the Secretary may prescribe.[1] The application shall contain a budget and a narrative plan of the manner in which the applicant intends to conduct the project and carry out the requirements of this part.

(b) The application shall be executed by an individual authorized to act for the applicant and to assume on behalf of the applicant the obligations imposed by the terms and conditions of the grant award, including the regulations of this part and the policies and procedures prescribed by the Secretary for grants under this part.

(c) The applicant will be notified of action taken on his application.

(1) If a grant is made, the initial award will set forth the amount of funds granted and will specify the project period for which support is contemplated if the activity is satisfactorily carrier out and Federal funds are available. For continuation support, grantees must make separate application annually.

(2) Neither the approval of any project nor a grant award shall commit or obligate the United States in any way to make any additional, supplemental, continuation or other award with respect to any approved project or portion thereof, but this provision shall not preclude the Secretary from making upward adjustments to actual costs as to amounts awarded on a provisional basis as provided in subparagraph (1) of this paragraph.

§ 51a.5 Matching requirements.

Federal funds will be granted on the basis of project applications and may be used to meet not more than 75 percent of the cost of the project. The non-Federal participation may be derived from a variety of sources, including (a) new State or local appropriations or other new grantee funds, and (b) existing funds and time of personnel used for the ongoing activities of the grantee agency which are made a part of the project. Voluntary services or space donated to the project may not be included as a grantee contribution. Grantee funds or services derived from other Federal funds or used for matching any other Federal grant may not be used to match the Federal funds in this program except as otherwise specifically allowed by Federal statute.

§ 51a.6 Personnel and facilities standards.

The application shall describe the standards required for personnel and facilities utilized in the provision of services under the program. These standards for personnel and facilities must (a) be those which are found upon investigation by the grantee to be best adapted for the attainment of the specific purposes of the project, (b) assure a reasonably high standard of care, and (c) be in substantial accordance with national standards as accepted by the Secretary or standards prescribed by the Secretary. However, if a project is planned for an area in which it is not possible to meet standards accepted or prescribed by the Secretary, the best available resources must be used, and steps must be taken to improve the standard of care. In such case, the application must include a description of such proposed remedial action.

§ 51a.7 Availability of services.

Project services must be made available:

(a) Without any requirement for legal residence other than a requirement that the person or family to be served is currently residing in the project area;

(b) Upon referral from any source or upon the patient's own application;

(c) With respect for the dignity of the individual;

(d) With efficient administrative procedures for registration and delivery of services;

(e) Without regard to religion, family size, or marital status (see also section 51a.20); and

(f) Only to persons who because of low income or for other reasons beyond their control could not otherwise obtain services comparable to those provided under the project. However, if specific income standards are used, they must be applied flexibly, with due regard for total family needs in the particular case. Determinations of eligibility for services under the project shall be made by the project director or a member of the project staff designated by him, and shall be made in accordance with this section, the policies and procedures governing the project, and the project plan and budget as approved.

§ 51a.8 Provision of services.

(a) Acceptance of services provided under the project must be voluntary, and individuals must not be subjected to any coercion to receive services or to employ or not to employ any particular method of family planning. Acceptance of family planning services shall not be a prerequisite to eligibility for or receipt of any other services.

(b) Measures must be taken to promote community understanding of the objectives of the program, to make the availability of services known to the community, and to encourage and facilitate attendance in the program.

(c) The project must be coordinated with related services of local health and welfare departments, hospitals and related voluntary agencies, and health projects supported by the Office of Economic Opportunity. Where appropriate, there should be referral arrangements with local welfare departments for services to persons under the Aid to Families With Dependent Children Program.

(d) The program must include counseling, and interpretation to individuals of the service provided.

(e) Family planning medical services shall be under the direction and responsibility of a physician with special training or experience in family planning.

(f) Projects are to be designed to assure comprehensiveness and continuity in the health management and supervision of project patients with respect to family planning services.

(g) A variety of medically approved methods of family planning, including the rhythm method, must be available to persons to whom family planning services are offered and provided.

(h) Diagnostic and treatment services for infertility must be provided for in the family planning project.

§ 51a.9 Payment for services.

(a) Project plans shall set forth the methods utilized by the grantee in establishing the rates of payment for medical

[1] Applications and instructions may be obtained from the Regional Health Director of the Health Services and Mental Health Administration at the Regional Office of the Department of Health, Education, and Welfare for the region in which the project is to be conducted.

care, and in substantiating that the rates are reasonable and necessary to maintain standards relating to the provision of services established pursuant to § 51a.6. Grantees will maintain a schedule of rates for such services.

(b) All services purchased for project patients must be authorized by the project director or his designee on the project staff.

(c) No charge shall be made to any person or family for services under the project, except to the extent that payment will be made by a third party (including a government agency) which is authorized or is under legal obligation to pay such charges. Where the cost of care and services furnished by or through the project is to be reimbursed under Title XIX of the Social Security Act, a written agreement with this Title XIX agency is required. Reimbursement may be either to the project or directly to the provider.

§ 51a.10 Confidentiality of information.

All information as to personal facts and circumstances obtained by the project staff shall be treated as privileged communications, shall be held confidential, and shall not be divulged without the individual's consent except as may be necessary to provide services to the individual. Information may be disclosed in summary, statistical, or other form which does not identify particular individuals.

§ 51a.11 Project expenditures.

(a) Project funds (Federal and matching) are available for the direct costs of operating and maintaining the project approved in the plan and budget.

(b) Funds may not be used for the following:

(1) Construction of buildings;

(2) Depreciation of existing building or equipment;

(3) Dues to societies, organizations, or federations;

(4) Entertainment costs;

(5) General agency overhead;

(6) Fundraising material and activities;

(7) Consultants or other personnel paid from other Federal grant funds;

(8) Any other costs not approved in the plan and budget.

(c) Prior approval of revision of the budget and project plan is required whenever there is to be a significant change in the scope or nature of project activities.

§ 51a.12 Interest and other income.

(a) Pursuant to section 203 of the Intergovernmental Cooperation Act of 1968, 42 U.S.C. 4213, a State, as defined in section 102 of that Act, will not be held accountable for interest earned on grant funds, pending their disbursement for program purposes. A State, as defined in the Intergovernmental Cooperation Act, section 102, means any one of the several States, the District of Columbia, Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State, but does not include the governments of the political subdivisions of the State. All grantees other than a State, as so defined, must return to the Health Services and Mental Health Administration all interest earned on grant funds.

(b) All grantees must either return to the Health Services and Mental Health Administration that part of any other project income proportionate to the grant contribution to the support of the project, or use such income for the activities of the project.

§ 51a.13 Equipment.

Items of equipment purchased with project funds are to be used for the purposes of the project, and the grantee shall maintain a complete equipment inventory and property controls adequate for prompt identification and accountability.

§ 51a.14 Control of project funds or services.

Funds or services made available to the project for project purposes, whether or not utilized to meet the grantee's share of the costs, shall be under the control of the grantee and expended and utilized in accordance with this part, policies and procedures governing the project, and the project plan and budget as approved.

§ 51a.15 Effect of State or local law.

Except as otherwise authorized, where the grantee is a public agency, administrative provisions of State or local law applicable to the moneys appropriated to the public agency shall apply to the project funds.

§ 51a.16 Termination of grants or withholding of payments.

Whenever the Secretary finds that a grantee has failed in a material respect to comply with the Act or with the terms of the grant, including the regulations of this part, he may, on reasonable notice to the grantee, withhold further payments, and take such other action, including the termination of the grant, as he finds appropriate to carry out the purposes of the Act and regulations. Noncancellable obligations of the grantee properly incurred prior to the receipt of the notice of termination will be honored. The grantee shall be promptly notified of such termination in writing and given the reasons therefor.

§ 51a.17 Records, reports, inspection.

(a) *Records and reports.* Each grant awarded pursuant to this part shall be subject to the condition that the grantee shall maintain such progress and fiscal records, and file with the Secretary such progress and fiscal reports relating to the use of grant funds, as the Secretary may find necessary to carry out the purposes of the Act and the regulations. All records shall be retained for 3 years after the close of the budget period; or, if a Federal audit has not occurred within 3 years, (1) for 5 years after the close of the budget period or (2) until the grantee is notified of the completion of the Federal audit, whichever is earlier, except that where audit questions have arisen before the end of 5 years, records shall be retained until resolution of such questions.

(b) *Inspection and audit.* Any application for a grant under this part shall constitute the consent of the applicant to inspections at reasonable times by persons designated by the Secretary of the facilities, equipment and other resources of the applicant and to interviews with principal staff members to the extent that such resources and personnel are, or will be, involved in the project. In addition, the acceptance of any grant under this part shall constitute the consent of the grantee to inspections and fiscal audits by such persons of the supported activity and of progress and fiscal records relating to the use of grant funds.

§ 51a.18 Copyright.

The United States reserves a royalty-free, nonexclusive license to use and authorize others to use all copyrightable or copyrighted material resulting from a project.

§ 51a.19 Effect of payment.

Neither the approval of a project plan nor any certification of funds or payment to a grantee pursuant thereto shall be deemed to waive the obligation of the grantee to observe, before or after such action, any Federal requirements, or to waive the right of the Secretary to withhold funds for noncompliance with Federal requirements.

§ 51a.20 Nondiscrimination.

Attention is called to the requirements of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. 2000d et seq.) and in particular section 601 of such act which provides that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. A regulation implementing such Title VI, which applies to grants made under this part, has been issued by the Secretary of Health, Education, and Welfare with the approval of the President (45 CFR Part 80).

Dated: December 28, 1970.

VERNON E. WILSON,
Administrator, Health Services and Mental Health Administration.

Approved: February 19, 1971.

ELLIOT RICHARDSON,
Secretary.

[FR Doc.71-2559 Filed 2-26-71;8:45 am]

Title 45—PUBLIC WELFARE

Subtitle A—Department of Health, Education, and Welfare, General Administration

PART 30—CLAIMS COLLECTION

Delegation of Authority

In order to reflect the redelegation by the Department Claims Officer of additional authority to compromise, suspend, and terminate, pursuant to the Federal

Claims Collection Act of 1966 (31 U.S.C. 951–953) claims of more than $100, but less than $200, paragraph (b) of § 30.3 of Title 45 of the Code of Federal Regulations (33 F.R. 17292, Nov. 22, 1968) is hereby amended to read as follows:

§ 30.3 Delegation of authority.

* * * * *

(b) The appropriate office, local, regional, or headquarters, shall take all necessary administrative action required under the Act and Joint Regulations, except that, with respect to claims of $200 or more, no compromise of a claim shall be effected, nor collection action suspended or terminated except upon prior approval of the Department Claims Officer or upon his specific delegation.

Effective date. This amendment is effective February 5, 1971.

MANUEL B. HILLER,
Department Claims Officer.

[FR Doc.71-2718 Filed 2-26-71;8:48 am]

Title 49—TRANSPORTATION

Chapter V—National Highway Traffic Safety Administration, Department of Transportation

[Dockets Nos. 70-16, 70-17; Notice No. 2]

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

Air Brake Systems; Trucks, Buses, and Trailers

The purpose of this notice is to amend § 571.21 of Title 49, Code of Federal Regulations, by adding Motor Vehicle Safety Standard No. 121, Air Brake Systems—Trucks, Buses and Trailers. Notices of proposed rulemaking on this subject were published on June 25, 1970 (35 F.R. 10368) and June 26, 1970 (35 F.R. 10456). The comments received in response to the notices and information obtained at a technical conference held on October 20, 1970 (35 F.R. 14736, September 22, 1970) have been considered in the development of the final rule. The trailer requirements are joined with the truck and bus requirements in a single air brake systems standard.

The standard as adopted specifies requirements for the safe performance of air brake systems under normal and emergency conditions. It should be noted that the term "air brake system" as defined in the standard applies to the brake configuration commonly referred to as "air over hydraulic," in which failure of either medium can result in complete loss of braking ability.

The standard establishes a set of requirements to govern the braking behavior of a vehicle during application of the service brakes. Principal among these are stopping performance requirements that include a minimum stopping distance requirement for trucks and buses and lateral stability and wheel lockup requirements for all vehicles. To more accurately reflect the friction characteristics of a surface with a skid number of 75, the stopping distances for trucks and buses on a dry surface have been increased over those proposed in the notice. The required distance from 60 m.p.h. is now 245 feet rather than 216 feet and the distance from 20 m.p.h. is 33 feet rather than 29 feet. The stopping distance on a wet surface at 20 m.p.h., 54 feet, has been retained. Several comments indicated that there are no test facilities on which the 60 m.p.h. stop on a wet surface can be safely conducted. As a measure of brake efficiency, moreover, the 20 m.p.h. stop on a wet surface satisfactorily indicates the vehicle's behavior at higher speeds, and the standard therefore specifies only the 20 m.p.h. stopping distance test.

The requirement that the vehicle stay within a 12-foot-wide lane has been adopted as proposed. The proposed requirement that no wheel lock except momentarily has been modified to permit lockup to occur on the leading nonsteerable axle on vehicles having more than two nonsteerable axles. A review of available information indicates that satisfactory control of the vehicle can be maintained if lockup is avoided on two nonsteerable axles. The rule also permits lockup at speeds under 10 m.p.h. Such low speed lockup is not considered hazardous and allows greater flexibility in brake system designs.

Some comments stated that the requirement for a controlled stop without lockup favored one variety of stability-controlling device—the antilock device—over other systems such as load proportioning devices. Several comments seemed to assume that the proposal required antilock devices. The requirement that the vehicle stop without locking its wheels reflects the Administration's judgment that a vehicle with locked wheels, whatever its equipment, is unstable and uncontrollable in an emergency situation. The Administration recognizes the likelihood that manufacturers of some types of vehicles may have to incorporate proportioning or antilock devices into their systems in order to meet the stopping distance requirement. However, the manner in which lockup is prevented is not specified in the standard, and if a proportioning device or any other device can produce the desired result, it may be incorporated into the vehicle's braking system.

Although an antilock device is not required, if it is used on a vehicle it must conform to several requirements. A warning signal must be provided to warn of total system failure, a failed device must not interfere with the operation of the service brake, and electrical elements in the system must be powered through the vehicle's stop lamp circuit. Of these requirements, the first was the subject of comments that indicated some uncertainty as to the nature of a total system failure. The reason for the requirement is that a driver ought to be warned in the event that a system on which he has come to rely has stopped working altogether. Monitoring of each device separately would be difficult and costly, while monitoring of the shared elements of the system, such as the electrical circuitry, would be relatively simple. Although electrical problems would be the most likely cause of total failure, other components may also produce such failure and the language of the requirement has not been limited to a specific type of failure. A requirement that electrical power for antiskid devices on trailers must be provided through the stop lamp circuit has been added to insure the functioning of antilock systems in vehicle combinations in which the towed vehicle has an antilock system.

The requirements for actuation and release times, for brake retardation force, and for brake power have been modified somewhat in the light of information provided by the comments. The notice proposed timing curves for brake actuation and release, but subsequent review has indicated that adhesion to a timing curve is less significant than the basic ability to apply and release the brakes quickly. The curves have therefore been omitted in favor of a single application time of 0.25 second and a single release time of 0.50 second. These values are somewhat less stringent than those proposed in the notice, and reflect the judgment that a system that can meet the stopping distance requirements without lockup has less need for the rapid times originally proposed. Vehicles intended to tow other vehicles equipped with air brakes must still meet the actuation and release times with a 50-cubic-inch test reservoir attached to the service line outlet, but the requirements for pressurization of the test reservoir itself have been deleted.

The brake retardation force requirement was the subject of numerous comments, some to the effect that the retardation force was too high to permit safe operation of vehicle combinations in which new and old vehicles are mixed, and others to the effect that the forces were too high to be achieved with reliability by available friction materials. The Administration has determined that compatibility problems are substantially lessened if the vehicle has the ability to stop without lockup and that the retention of a relatively high retardation force requirement will not lead to significant compatibility problems. It has been determined, however, that the stopping distance requirements can be met by brakes having a somewhat lower retardation force capacity than proposed, and a lower force requirement is therefore adopted.

Comments regarding the proposed brake power requirements stated that the fade characteristics required of the linings might exceed the limits of existing technology and might not be compatible with the retardation force requirements. In the light of these comments and other information it has been determined that the brake power requirements should be reduced. Accordingly the standard as adopted requires 10 decelerations at a rate of 9 feet per second per second at intervals of 72 seconds with the air pressure at 90 p.s.i. or less, and a final deceleration at 14

f.p.s.p.s. from 20 m.p.h. with a service line air pressure of 108 p.s.i. or less. In the light of the diminished power requirements, the recovery requirements have been retained with a minor adjustment from 45 p.s.i. to 40 p.s.i. in the minimum air pressure required.

A series of alterations have been made in the equipment requirements in response to comments and as a result of reevaluation by the Administration. First among these is the alteration of the stop lamp switch requirement to permit use of a pneumatic switch. The requirements for compressor capacity have been modified to require it to increase air pressure in the reservoirs from 85 p.s.i. to 100 p.s.i. in not more than 25 seconds, in place of the proposed requirement of 0–85 p.s.i. in 2 minutes. The mandatory requirement for a supply reservoir has been removed, and the overall reservoir capacity for trucks and buses has been reduced to 12 times the combined brake chamber capacity. The drain valve requirement has been simplified, the tolerance on the air pressure gauge has been broadened to ±7 percent of the compressor cut-out pressure, and the low air pressure warning requirement has been modified to permit visible, nonaudible signals within the driver's forward field of view.

The notice proposed that each truck and bus have a split service brake system. It has been determined that the additional cost and greater complexity of a split system on vehicles equipped with air brakes are not accompanied by safety benefits great enough to justify requiring a split system. Accordingly, the requirement has been deleted. The remaining system with emergency capabilities is the parking brake system, and it has been determined that a parking brake system complying with the applicable requirements of the standard will provide a safe means of stopping the vehicle in the event of service brake failure.

Two aspects of the parking brake system were the subject of considerable comment. A number of comments stated that no maximum static retardation force should be specified, and several comments stated that the parking brakes should not apply automatically. The standard as adopted retains both the maximum retardation and the automatic application requirements. Each has a role in the safe operation of the parking brake system. If no maximum retardation force were specified, there would be considerable risk of lockup during emergency braking. The requirement as adopted, however, raises the upper limit on the quotient

$$\frac{\text{static retardation force}}{\text{GAWR}}$$

from 0.33 to 0.40.

Comments stated that automatic application of the brakes while the vehicle is in motion could induce hazardous instability, due to wheel lockup or to the unexpected nature of the braking. It has been determined that adequate safeguards exist in the standard to avoid such problems. The required low pressure warning signal must operate at a pressure well above the automatic application pressure so that the driver will have sufficient warning of incipient brake application. In addition, the limit on retardation force will act to prevent lockup under all but the most severe conditions. With respect to trailers, the automatic functioning of the parking brake system is further insured by the deletion of the proposed requirement for a check valve or similar device to protect the trailer's air pressure.

The parking brake controls have been considerably simplified by uniting in one control the manual on-off operation and the release-after-automatic-application function.

Many comments revealed a misunderstanding about the Administration's purpose in specifying test conditions. It should be understood that the standards are not instructions for, or descriptions of, manufacturer tests. For example, the condition that states that "(t)he wind velocity is zero," simply means that the vehicle must meet the applicable tests if (among other things) the air is still, that is, if the wind neither helps nor hinders the vehicle's performance. One way in which the manufacturer could check his vehicle's conformity with reference to the zero wind condition is to run the braking test with a resultant tailwind. With reference to another condition, such as the surface with a skid number of 75, the test could be run on a surface having a skid number lower than 75. Manufacturers are required to exercise due care to insure that their vehicles will meet the standard if tested by the Administration under the specified conditions, but they are at their own discretion in devising an appropriate testing program for that purpose.

A few changes have been made in the test conditions. The notice had proposed, in addition to the zero wind condition, that the vehicle stay in the roadway with a wind of 30 m.p.h. from any direction. On review, the 30-m.p.h. speed has been determined to be excessive and to unduly increase the problems of testing. In addition, most stability problems are controlled by preventing wheel lockup, as required by the standard, and the crosswind condition has therefore been deleted. In place of the "lightly loaded vehicle weight," a weight condition based on the vehicle's unloaded weight is used.

Effective date. Because of the development work and preparation for production that this standard will require, it is found that an effective date later than 1 year from the date of issuance is in the public interest. Accordingly, the standard is effective January 1, 1973.

In consideration of the above, § 571.21 of Title 49 of the Code of Federal Regulations is amended by adding Motor Vehicle Safety Standard No. 121 as set forth below. This standard is issued under the authority of sections 103 and 119 of the National Traffic and Motor Vehicle Safety Act, 15 U.S.C. 1392, 1407, and the delegation of authority by the Secretary of Transportation to the National Highway Traffic Safety Administrator, 49 CFR 1.51.

Issued on February 19, 1971.

DOUGLAS W. TOMS,
Acting Administrator, National Highway Traffic Safety Administration.

§ 571.21 **Federal motor vehicle safety standards.**

* * * * *

MOTOR VEHICLE SAFETY STANDARD NO. 121

AIR BRAKE SYSTEMS—TRUCKS, BUSES, AND TRAILERS

S1. *Scope.* This standard establishes performance and equipment requirements for braking systems on vehicles equipped with air brake systems.

S2. *Purpose.* The purpose of this standard is to insure safe braking performance under normal and emergency conditions.

S3. *Application.* This standard applies to trucks, buses, and trailers equipped with air brake systems.

S4. *Definitions.*

"Air brake system" means a system that uses air as a medium for transmitting pressure or force from the driver control to the service brake, but does not include a system that uses compressed air or vacuum only to assist the driver in applying muscular force to hydraulic or mechanical components.

"Antilock system" means a portion of a service brake system that automatically controls the degree of wheel slip at one or more road wheels of the vehicle during braking.

"Gross axle weight rating" (GAWR) means the value specified by the vehicle manufacturer as the loaded weight on a single axle measured at the tire-ground interfaces.

"Gross vehicle weight rating" (GVWR) means the value specified by the manufacturer as the loaded weight of a single vehicle.

"Skid number" means the frictional resistance of a pavement measured in accordance with American Society for Testing and Materials Method E–274–65T at 40 m.p.h., omitting water delivery as specified in paragraph 7.1 of that method.

"Unloaded vehicle weight" means the weight of a vehicle with maximum capacity of all fluids necessary for operation of the vehicle, but without cargo or occupants.

S5. *Requirements.* Each vehicle shall meet the following requirements under the conditions specified in S6. All test requirements shall be met without failure of any part of the brake or suspension systems.

S5.1 *Required equipment—trucks and buses.* Each truck and bus shall have the following equipment:

S5.1.1 *Air compressor.* An air compressor of sufficient capacity to increase air pressure in the service reservoirs from 85 pounds per square inch (p.s.i.) to 100 p.s.i. in not more than 25 seconds when the engine is operating at the manufacturer's maximum recommended r.p.m.

S5.1.2 *Reservoirs.* One or more service reservoirs, from which air is delivered to the brake chambers, and either an automatic condensate drain valve for each service reservoir or one or more supply reservoirs between the service reservoir and the source of air pressure.

S5.1.2.1 The combined volume of all service reservoirs and supply reservoirs shall be at least twelve times greater than the combined volume of all service brake chambers at maximum travel of the pistons or diaphragms.

S5.1.2.2 Each reservoir shall be capable of withstanding an internal hydrostatic pressure five times the compressor cut-out pressure.

S5.1.2.3 Each service reservoir shall be protected against loss of air pressure due to failure or leakage in the system between the reservoir and the source of air pressure by check valves or equivalent devices whose proper functioning can be checked without disconnecting any air line or fitting.

S5.1.2.4 Each reservoir shall have a condensate drain valve that can be manually operated.

S5.1.3 *Towing vehicle protection valve.* If the vehicle is intended to tow another vehicle equipped with air brakes, a valve to protect the air pressure in the towing vehicle from the effects of a loss of air pressure in the towed vehicle.

S5.1.3.1 The protection valve shall automatically close the air lines to the towed vehicle when the air pressure in the towing vehicle's service reservoir is less than the automatic closing pressure level. The automatic closing pressure level shall be between 20 and 45 p.s.i.

S5.1.4 *Pressure gauge.* A pressure gauge for a service reservoir in each service brake system, readily visible to a person seated in the normal driving position, that indicates the reservoir air pressure within ±7 percent of the compressor cut-out pressure.

S5.1.5 *Warning signal.* A signal that gives a continuous warning to a person in the normal driving position when the air pressure in a service reservoir is below 60 p.s.i. The signal shall be either visible within the driver's forward field of view, or both audible and visible.

S5.1.6 *Antilock warning signal.* A signal on each vehicle equipped with an antilock system that gives a person seated in the normal driving position a continuous audible and visible warning in the event of a total failure of the antilock system.

S5.1.7 *Service brake stop lamp switch.* A switch that lights the stop lamps when the service brake control is statically depressed to a point that produces a pressure of 6 p.s.i. or less in the service brake chambers.

S5.2 *Required equipment—trailers.* Each trailer shall have the following equipment:

S5.2.1 *Reservoirs.* One or more reservoirs to which the air is delivered from the towing vehicle.

S5.2.1.1 Total reservoir capacity shall be at least eight times greater than the combined volume of all service brake chambers at maximum travel of the pistons or diaphragms.

S5.2.1.2 Each reservoir shall be capable of withstanding an internal hydrostatic pressure of 500 p.s.i.

S5.2.1.3 Each reservoir shall have a condensate drain valve that can be manually operated.

S5.3 *Service brakes.* The service brake system on each truck and bus shall, under the conditions of S6.1, meet the requirements of S5.3.1, S5.3.3, and S5.3.4 when tested in sequence and without adjustments other than those specified in this standard. The service brake system on each trailer shall, under the conditions of S6.1, meet the requirements of S5.3.2, S5.3.3, and S5.3.4 when tested in sequence and without adjustments other than those specified in this standard. Each vehicle shall be capable of meeting the requirements of S5.3.1 or S5.3.2 both (a) when loaded to its gross vehicle weight rating, and (b) at its unloaded vehicle weight plus 500 pounds (including driver and instrumentation). Under the conditions of S6.2, each brake assembly shall meet the requirements of S5.3.5, S5.3.6, and S5.3.7 when tested in sequence and without adjustments other than those specified in this standard. A brake assembly on a vehicle that has undergone a road test need not meet the requirements of S5.3.5, S5.3.6, and S5.3.7.

S5.3.1 *Stopping distance—trucks and buses.* The service brakes shall be capable of stopping the vehicle from 60 m.p.h. and 20 m.p.h. on a surface with a skid number of 75 and from 20 m.p.h on a wet surface with a skid number of 30 in not more than the distances specified in Table I, measured from the point at which movement of the service brake control begins, without any part of the vehicle leaving the roadway and without lockup of any wheel at speeds above 10 m.p.h. except for momentary lockup allowed by an antilock system and except for lockup of wheels on nonsteerable axles other than the two rearmost nonsteerable axles. If the speed attainable in 5 miles is less than 60 m.p.h., the vehicle shall be capable of stopping from a speed in Table I that is 4 to 8 m.p.h. less than the speed attainable in 5 miles, in not more than the distance specified in Table I.

S5.3.2 *Stopping capability — trailers.* With a service line air pressure of 90 p.s.i., the service brakes shall be capable of stopping the vehicle from 20 and 60 m.p.h. on a surface with a skid number of 75 and from 20 m.p.h. on a wet surface with a skid number of 30, without any part of the vehicle leaving the roadway and without lockup of any wheel at speeds above 10 m.p.h., except for momentary lockup allowed by an antilock system and except for lockup of wheels on nonsteerable axles other than the two rearmost nonsteerable axles.

S5.3.3 *Brake actuation time.* With an initial service reservoir air pressure of 100 p.s.i., the air pressure in each brake chamber shall reach 60 p.s.i. in not more than 0.25 second measured from the first movement of the service brake control. A vehicle designed to tow a vehicle equipped with air brakes shall be capable of meeting the above actuation time requirement with a 50-cubic-inch test reservoir connected to the service line coupling. A trailer shall meet the above actuation time requirement with its brake system connected to the test rig shown in Figure 1.

S5.3.4 *Brake release time.* With an initial brake chamber air pressure of 95 p.s.i., the air pressure in each brake chamber shall fall to 5 p.s.i. in not more than 0.50 second measured from the first movement of the service brake control. A vehicle designed to tow another vehicle equipped with air brakes shall be capable of meeting the above release time requirement with a 50-cubic-inch test reservoir connected to the service line coupling. A trailer shall meet the above release time requirement with its brake system connected to the test rig shown in Figure 1.

S5.3.5 *Brake retardation force.* The retardation force exerted by the brakes on each axle shall be such that the qoutient

$$\frac{\text{brake retardation force}}{\text{GAWR}}$$

relative to brake chamber air pressure, shall have values not less than those shown in Table II. Retardation force shall be determined as follows:

S5.3.5.1 After burnishing the brake pursuant to S6.2.6, retain the brake assembly on the inertia dynamometer. With an initial brake temperature between 125° F. and 200° F., conduct a stop from 50 m.p.h., maintaining brake chamber air pressure at a constant 20 p.s.i. Measure the average torque exerted by the brake, and divide by the static loaded tire radius specified by the tire manufacturer to determine the retardation force. Repeat the procedure six times, increasing the brake chamber air pressure by 10 p.s.i. each time. After each stop, rotate the brake drum until the surface temperature of the brake falls to between 125° F. and 200° F.

S5.3.6 *Brake power.* When mounted on an interia dynamometer, each brake shall be capable of making 10 consecutive decelerations at a rate of at least 9 f.p.s.p.s. from 50 m.p.h. to 15 m.p.h., at equal intervals of 72 seconds, and shall be capable of decelerating to a stop from 20 m.p.h. at an average deceleration rate of 14 f.p.s.p.s. one minute after the 10th deceleration. The series of decelerations shall be conducted as follows:

S.5.3.6.1 With the brake temperature between 150° F. and 200° F. and the drum rotating at a speed equivalent to 50 m.p.h., apply the brake and decelerate at a minimum deceleration rate of 9 f.p.s.p.s. to 15 m.p.h. Upon reaching 15 m.p.h., accelerate to 50 m.p.h. and apply the brake for a second time 72 seconds after the start of the first application. Repeat the cycle until 10 decelerations have been made. The service line air pressure shall not exceed 90 p.s.i. during any deceleration.

S5.3.6.2 One minute after the end of the last deceleration required by S5.3.6.1 and with the drum rotating at a speed of 20 m.p.h., decelerate to a stop at an average deceleration rate of 14 f.p.s.p.s. The service brake line air pressure shall not exceed 108 p.s.i.

S5.3.7 *Brake recovery.* Two minutes after completing the tests required by S5.3.6, the brake shall be capable of making 20 consecuutive stops from 30 m.p.h. at an average rate of 12 f.p.s.p.s., at equal intervals of 1 minute measured from the start of each brake application. The service line air pressure needed to attain a rate of 12 f.p.s.p.s. shall not be less than 40 p.s.i. nor more than 75 p.s.i.

S5.3.8 *Antilock system failure.* On a vehicle equipped with an antilock system, the failure of any part of the antilock system shall not increase the actuation and release times of the service brakes.

S5.3.9 *Antilock system power—trailers.* On a trailer equipped with an antilock system that requires electrical power for operation, the power shall be obtained from the stop lamp circuit. Additional circuits may also be used to obtain redundant sources of electrical power.

S5.4 *Parking brake system.* Each vehicle shall have a parking brake system acting on each axle except steerable front axles that under the conditions of S6.1 meets the following requirements:

S5.4.1 *Static retardation force.* With all other brakes rendered inoperative, the static retardation force produced by the application of the parking brakes on an axle during a static draw bar pull in a forward direction shall be such that the quotient

$$\frac{\text{static retardation force}}{\text{GAWR}}$$

is between 0.28 and 0.40.

S5.4.2 *Application and holding.* The parking brakes shall be applied by an energy source that is not affected by air pressure loss in the service brake system. Once applied, the parking brakes shall be held in the applied position solely by mechanical means.

S5.4.3 *Automatic application.* The parking brakes shall be automatically applied when the air pressure in all service reservoirs is less than the automatic application pressure level. The automatic application pressure level shall be between 20 and 45 p.s.i.

S5.4.4 *Release after automatic application.* After automatic application, the parking brakes shall be releasable at least once by means of a parking brake control. The parking brakes shall be releasable only if they can be automatically reapplied and exert the force required by S5.4.1 immediately after release.

S5.4.5 *Manual operation.* The parking brakes shall be manually operable and releasable by a parking brake control when the air pressure is greater than the automatic application pressure.

S5.4.6 *Parking brake control—trucks and buses.* The parking brake control shall be located to the right of a vertical longitudinal plane tangent to the rightmost edge of the steering wheel and shall be operable by a person seated in the normal driving position. The control shall have a flat red octagonal knob with the word Stop in white letters on its face. The control shall further be identified by the following legend on its escutcheon plate Pull to Apply—Push to Release. The control shall apply the parking brakes when pulled and shall hold the brakes in the applied position until pushed. It shall release the parking brakes after automatic application when pushed and held and shall reapply the parking brakes when released if the air pressure is below the automatic application pressure.

S6. *Conditions.* The requirements of S5 shall be met under the following conditions. Where a range of conditions is specified, the vehicle must be capable of meeting the requirements at all points within the range.

S6.1 *Road test conditions.*

S6.1.1 Except as specified in S5.3, the vehicle is loaded to its gross vehicle weight rating, distributed proportionally to its gross axle weight ratings.

S6.1.2 Tire inflation pressure is as specified by the vehicle manufacturer for the gross vehicle weight rating.

S6.1.3 Unless otherwise specified, the transmission selector control is in neutral or the clutch is disengaged during all decelerations.

S6.1.4 All vehicle openings (doors, windows, hood, trunk, cargo doors, etc.) are in a closed position except as required for instrumentation purposes.

S6.1.5 The ambient temperature is between 32° F. and 100° F.

S6.1.6 The wind velocity is zero.

S6.1.7 Road tests are conducted on a 12-foot wide, level roadway having a skid number of 75, unless otherwise specified. The vehicle is aligned in the center of the roadway at the beginning of a stop.

S6.1.8 Brakes are burnished before testing as follows: With the transmission in the highest gear range, make 400 applications from 40 m.p.h. to 20 m.p.h. at 10 f.p.s.p.s. After each brake application accelerate to 40 m.p.h. and maintain that speed until making the next application at a point 1.5 miles from the point of the previous brake application. After burnishing, adjust the brakes as recommended by the brake manufacturer.

S6.2 *Dynamometer test conditions.*

S.6.2.1 The dynamometer inertia for each wheel is equivalent to the load on the wheel with the axle loaded to its gross axle weight rating.

S6.2.2 The ambient temperature is between 85° F. and 95° F.

S6.2.3 Air at ambient temperature is directed uniformly and continuously over the brake drum at a rate of 2,200 feet per minute.

S5.2.4 The brake temperature is measured by plug-type thermocouples installed according to SAE Recommended Practice J843a, June 1966.

S6.2.5 The rate of brake rotation on a dynamometer corresponding to the rate of rotation on a vehicle at a given speed is calculated by assuming a tire radius equal to the static loaded radius specified by the tire manufacturer.

S6.2.6 Brakes are burnished before testing as follows: Place the brake assembly on an inertia dynamometer and adjust the brake as recommended by the brake manufacturer. Make 200 stops from 40 m.p.h. at a deceleration of 10 f.p.s.p.s., maintaining a brake temperature on each stop of not less than 315° F. and not more than 385° F. Make 200 additional stops from 40 m.p.h. at a deceleration of 10 f.p.s.p.s. maintaining a brake temperature on each stop of not less than 450° F. and not more than 550° F. After burnishing, the brakes are adjusted as recommended by the brake manufacturer.

S6.2.7 The brake temperature is increased to a specified level by conducting one or more stops from 40 m.p.h. at a deceleration rate of 10 f.p.s.p.s. The brake temperature is decreased to a specified level by rotating the drum at a constant 30 m.p.h.

TABLE I—STOPPING DISTANCES IN FEET

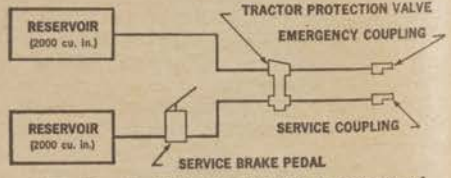
Vehicle speed (MPH)	Stopping distance	
	Skid No. 75	Wet skid No. 30
20	33	54
25	49	
30	68	
35	90	
40	108	
45	143	
50	174	
55	208	
60	245	

TABLE II—BRAKE RETARDATION FORCE

Brake Retardation Force GAWR	*Brake chamber pressure p.s.i.*
0.100	20
0.175	30
0.250	40
0.325	50
0.400	60
0.475	70
0.550	80
0.625	90

FIGURE 1

TRAILER TEST RIG



[FR Doc.71-2656 Filed 2-26-71;8:45 am]

Title 50—WILDLIFE AND FISHERIES

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

SUBCHAPTER C—THE NATIONAL WILDLIFE REFUGE SYSTEM

PART 33—SPORT FISHING

Blackwater National Wildlife Refuge, Md.

On page 1062 of the FEDERAL REGISTER of January 22, 1971, there was published a notice of a proposed amendment to 50 CFR 33.4. The purpose of this amendment is to provide sport fishing and crabbing on certain areas of the National Wildlife Refuge System, as legislatively permitted.

Interested persons were given 30 days in which to submit written comments, suggestions, or objections with respect to the proposed amendment. Since no comments, suggestions, or objections have been received, the proposed amendment is hereby adopted without change.

Since this amendment benefits the public by relieving existing restrictions on sport fishing and crabbing, it shall become effective upon publication in the FEDERAL REGISTER (2-27-71).

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

Section 33.4 is amended by the following addition:

§ 33.4 List of open areas; sport fishing.

* * * * *

MARYLAND

Blackwater National Wildlife Refuge.

* * * * *

FEBRUARY 24, 1971.

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

[FR Doc.71-2717 Filed 2-26-71;8:48 am]

Proposed Rule Making

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR Part 1]

INCOME TAX

Average Basis for Regulated Investment Company Stock

The proposed amendment to the regulations under section 1012 of the Internal Revenue Code of 1954, relating to average basis for regulated investment company stock appears in the FEDERAL REGISTER for December 3, 1970 (35 F.R. 18389).

A public hearing on the provisions of this proposed amendment to the regulations will be held on Monday, March 22, 1971, at 10 a.m., e.s.t., in Room 3313, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC.

The hearing is to be conducted under the rules of § 601.601(a)(3) of the Statement on Procedural Rules (26 CFR Part 601), which appeared in the FEDERAL REGISTER for October 24, 1970 (35 F.R. 16593). Copies of these rules will be furnished on request.

Under such § 601.601(a)(3) persons who desire to present oral comments (in addition to having submitted written comments or suggestions within the time prescribed in the notice of proposed rule making) should submit by March 10, 1971, an outline of the topics and the time they wish to devote to each topic. The outline should be submitted to the Commissioner of Internal Revenue, Attention: CC:LR:T, Washington, D.C. 20224.

Persons who plan to attend the hearings and persons who desire a copy (furnished only at the above address) of such written comments, suggestions, or outlines should notify the Commissioner at the above address or telephone 202-964-3935 by March 12, 1971.

JAMES F. DRING,
Director, Legislation and Regulations Division.

[FR Doc.71-2754 Filed 2-26-71;8:50 am]

[26 CFR Part 1]

INCOME TAX

Limitation on Tax Attributable to Certain Total Distributions From Qualified Plans

Notice is hereby given that the regulations set forth in tentative form below 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 section 72(n)(4) of the Internal Revenue Code of 1954 (relating to special rule for employees without regard to section 401(c)(1)), as added by section 515(b)(2) of the Tax Reform Act of 1969 (Public Law 91-172, 83 Stat. 645), such regulations are hereby amended as follows. Amendments to conform the Income Tax Regulations to the balance of the amendments made by section 515 of the Tax Reform Act of 1969 will be published in the FEDERAL REGISTER at a later date with a notice of proposed rule making.

PARAGRAPH 1. Section 1.72 is amended by revising so much of section 72(n) as precedes paragraph (2) thereof, by adding a new paragraph (4) to section 72(n), and by revising the historical note. These revised and added provisions read as follows:

§ 1.72 Statutory provisions; annuities; certain proceeds of endowment and life insurance contracts.

SEC. 72. *Annuities; certain proceeds of endowment and life insurance contracts* * * *

(n) *Treatment of total distributions*—(1) *Application of subsection*—(A) *General rule.* This subsection shall apply to amounts—

(i) Distributed to a distributee, in the case of an employees' trust described in section 401(a) which is exempt from tax under section 501(a), or

(ii) Paid to a payee, in the case of an annuity plan described in section 403(a),

if the total distributions or amounts payable to the distributee or payee with respect to an employee (including an individual who is an employee within the meaning of section 401(c)(1)) are paid to the distributee or payee within 1 taxable year of the distributee or payee, but only to the extent that section 402(a)(2) or 403(a)(2)(A) does not apply to such amounts.

(B) *Distributions to which applicable.* This subsection shall apply only to distributions or amounts paid—

(i) On account of the employee's death,

(ii) With respect to an individual who is an employee without regard to section 401(c)(1), on account of his separation from the service,

(iii) With respect to an employee within the meaning of section 401(c)(1), after he has attained the age of 59½ years, or

(iv) With respect to an employee within the meaning of section 401(c)(1), after he has become disabled (within the meaning of subsection (m)(7)).

(C) *Minimum period of service.* This subsection shall apply to amounts distributed or paid to an employee from or under a plan only if he has been a participant in the plan for 5 or more taxable years prior to the taxable year in which such amounts are distributed or paid.

(D) *Amounts subject to penalty.* This subsection shall not apply to amounts described in clauses (ii) and (iii) of subparagraph (A) of subsection (m)(5) (but, in the case of amounts described in clause (ii) of such subparagraph, only to the extent that subsection (m)(5) applies to such amounts).

* * * * *

(4) *Special rule for employees without regard to section 401(c)(1).* In the case of amounts to which this subsection applies which are distributed or paid with respect to an individual who is an employee without regard to section 401(c)(1), paragraph (2) shall be applied with the following modifications:

(A) "7 times" shall be substituted for "5 times", and "14¾ percent" shall be substituted for "20 percent".

(B) Any amount which is received during the taxable year by the employee as compensation (other than as deferred compensation within the meaning of section 404) for personal services performed for the employer in respect of whom the amounts distributed or paid are received shall not be taken into account.

(C) No portion of the total distributions or amounts payable (of which the amounts distributed or paid are a part) to which section 402(a)(2) or 403(a)(2)(A) applies shall be taken into account.

Subparagraph (B) shall not apply if the employee has not attained the age of 59½ years, unless he has died or become disabled (within the meaning of subsection (m)(7)).

* * * * *

[Sec. 72 as amended by sec. 4 (a), (b), Self-Employed Individuals Tax Retirement Act 1962 (76 Stat. 821); sec. 11(b), Rev. Act 1962 (76 Stat. 1005); sec. 232(b), Rev. Act 1964 (78 Stat. 110); sec. 809(d)(2), Excise Tax Reduction Act 1965 (79 Stat. 167); sec. 106(d)(2), Social Security Amendments 1965 (79 Stat. 337); sec. 1(b), Act of Mar. 8, 1966 (Public Law 89-365, 80 Stat. 32); sec. 515(b), Tax Reform Act 1969 (83 Stat. 644)]

PAR. 2. The following new section is added immediately after § 1.72-18:

§ 1.72-19 Computation of tax on certain total distributions.

(a) *In general*—(1) *Introduction.* Sections 402(a)(5) and 403(a)(2)(C) limit

the extent to which an averageable distribution may, under sections 402(a)(2) and 403(a)(2)(A), respectively, be treated as long-term capital gain. Under section 72(n)(1), the limitation provided in section 72(n)(2) applies, with the modifications specified in section 72(n)(4), in determining the tax on the portion of an averageable distribution which, by reason of section 402(a)(5) or 403(a)(2)(C), is income which is not treated as long-term capital gain. This section provides rules for determining the total tax imposed by section 1 or 3 for a taxable year for which an averageable distribution is included in gross income.

(2) *Computation of total tax.* The total tax imposed by section 1 or 3 for a taxable year in which an averageable distribution is included in gross income is the basic tax imposed by section 1 or 3, reduced (but not below zero) by the excess (if any) of—

(i) The portion of such basic tax which, under paragraph (b) of this section, is attributable to the ordinary income element of the averageable distribution, over

(ii) The limitation provided in paragraph (c) of this section on the tax on the ordinary income element of the averageable distribution.

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

(i) *Averageable distribution.* The term "averageable distribution" means an amount which is paid or distributed after December 31, 1969, with respect to an employee (including an individual who is an employee within the meaning of section 401(c)(1)) and which constitutes—

(*a*) The total distributions payable (as defined in paragraph (a)(6) of § 1.402(a)-1) with respect to such employee from a trust described in section 401(a) which is exempt under section 501(a), or

(*b*) The total amounts payable (as defined in paragraph (b) of § 1.403(a)-2) with respect to such employee under an annuity plan described in section 403(a).

(ii) *Ordinary income element.* The term "ordinary income element of an averageable distribution" means that portion of an averageable distribution which is includible in gross income and which, by reason of section 402(a)(5) or 403(a)(2)(C), is not treated as long-term capital gain under section 402(a)(2) or 403(a)(2)(A).

(iii) *Basic tax.* The term "basic tax imposed by section 1 or 3" means the tax that would be imposed by section 1 or 3 but for this section and section 72(n).

(b) *Tax attributable to ordinary income element.* For purposes of this section, the portion of the basic tax imposed by section 1 or 3 which is attributable to the ordinary income element of an averageable distribution is the greater of—

(1) Such basic tax, multiplied by a fraction, the numerator of which is such ordinary income element, and the denominator of which is adjusted gross income (without regard to the exclusions provided in section 72(n)(4)(B) and (C) and paragraph (c)(2) of this section), or

(2) The tax that would be imposed by section 1 if taxable income were the excess of such ordinary income element over the deductions allowed by section 151.

(c) *Limitation on tax on ordinary income element*—(1) *In general.* The limitation on the tax on the ordinary income element of an averageable distribution is the greater of—

(i) 7 times the increase in the tax imposed by section 1 or 3 which would result from including in gross income (determined in accordance with section 72(n)(4)(B) and (C) and subparagraph (2) of this paragraph) one-seventh of such ordinary income element, or

(ii) 7 times the tax that would be imposed by section 1 if taxable income were one-seventh of the excess of such ordinary income element over the deductions allowed by section 151.

(2) *Exclusions from gross income.* For purposes of computing the limitation provided in subparagraph (1)(i) of this paragraph, gross income does not include—

(i) Any averageable distribution, and

(ii) If the employee with respect to whom such averageable distribution is paid or distributed died or became disabled (within the meaning of section 72(m)(7) and paragraph (f) of § 1.72-17) before any portion of such averageable distribution is paid or distributed or has attained the age of 59½ years as of the close of the taxable year, any compensation (other than deferred compensation within the meaning of section 404 and the regulations thereunder) received during the taxable year by such employee for personal services performed as an employee for the employer (or a member of the affiliated group of corporations of which the employer is a member) who maintains the plan under which such averageable distribution is paid or distributed.

(3) *Special rule for computing taxable income.* In computing taxable income for purposes of the limitation provided in subparagraph (1)(i) of this paragraph, the deductions taken into account shall be the greater of the deductions referred to in section 63(b) or the deductions taken into account in determining the basic tax under section 1 or 3. However, any deduction which is limited in amount to or by a percentage of adjusted gross income shall be computed upon the basis of the adjusted gross income determined by reference to the amounts includible in gross income under subparagraph (1)(i) of this paragraph.

(d) *Self-employed individuals.* The total tax imposed by section 1 or 3 for a taxable year in which an averageable distribution with respect to a self-employed individual is included in gross income is the sum of—

(1) The tax determined under paragraph (d) of § 1.72-18 (without regard to section 72(n)(4) and this section) with respect to the portion of such distribution which is attributable to contributions made on behalf of the participant while he was self-employed (as defined in paragraph (b)(4) of § 1.72-18), and

(2) The total tax imposed by section 1 or 3, determined under paragraph (a)(2) of this section by excluding such portion of such distribution from gross income for purposes of paragraphs (a) and (b) of this section.

For purposes of subparagraph (2) of this paragraph, income from the trade or business which maintains the plan from which such distribution is made constitutes, for purposes of paragraph (c)(2)(ii) of this section, compensation for personal services to the extent such income constitutes earned income (as defined in section 911(b) and the regulations thereunder).

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

Example (1). (i) On June 25, 1980, A, an employee of B Corporation, retires at age 67 and receives a total distribution from an employees' trust described in section 401(a). A, a cash basis taxpayer, files a joint return with his wife, age 66, for the calendar year 1980. A has the following items of gross income and deduction for the year:

Total distribution:		
Ordinary income element	$14,000	
Capital gain element	30,000	$44,000
Salary (described in section 72(n)(4)(B))		8,000
Interest income		10,000
Charitable contribution		700
Real property taxes on personal residence		600

(ii) A's basic tax for 1980 is $13,100, determined in the following manner:

Gross income:		
Total distribution	$44,000	
Salary	8,000	
Interest income	10,000	$62,000
Less: Deduction allowed by section 1202		15,000
Adjusted gross income		47,000
Other deductions:		
Standard deduction	2,000	
Personal exemptions	3,000	5,000
Taxable income		42,000
Basic tax under section 1		13,100

(iii) The portion of the basic tax under section 1 attributable to the ordinary income element is $3,902, determined in the following manner:

(a) Computation under paragraph (b)(1) of this section.

Numerator of fraction (ordinary income element)	$14,000
Denominator of fraction (adjusted gross income ($62,000—$15,000))	$47,000
Fraction	0.29787
Tax attributable to ordinary income element (0.29787×$13,100)	$3,902

(b) Computation under paragraph (b)(2) of this section.

Ordinary income element	$14,000
Personal exemptions	3,000
Excess	11,000
Tax under section 1 on excess	2,040

Since the amount determined under paragraph (b)(1) of this section exceeds the amount determined under paragraph (b)(2) of this section, the portion of the basic

tax imposed by section 1 which, under paragraph (b) of this section, is attributable to the ordinary income element is $3,902.

(iv) The limitation on the tax on the ordinary income element is $2,261, determined in the following manner:

(*a*) *Computation under paragraph (c)(1)(i) of this section.*

Gross income without regard to averageable distribution and salary		$10,000
Deductions:		
Standard deduction	$1,500	
Personal exemptions	3,000	4,500
Taxable income		5,500
Tax under section 1 on $5,500		905

Gross income without regard to averageable distribution and salary	10,000	
One-seventh ordinary income element	2,000	
Total gross income		12,000
Deductions:		
Standard deduction	1,800	
Personal exemptions	3,000	4,800
Taxable income		7,200
Tax under section 1 on $7,200		1,228

Accordingly, the increase in the tax imposed by section 1 resulting from including one-seventh of the ordinary income element in gross income without regard to the averageable distribution and salary is $323 ($1,228 −$895). Thus, the limitation under paragraph (c)(1)(i) of this section is 7 times such increase, or $2,261.

(*b*) *Computation under paragraph (c)(1)(ii) of this section.*

Excess of ordinary income element over personal exemptions		$11,000
One-seventh excess		1,571
Tax under section 1 on one-seventh excess		226

Accordingly, the limitation under paragraph (c)(1)(ii) of this section is 7 times such tax, or $1,582. Since the amount determined under paragraph (c)(1)(i) of this section exceeds the amount determined under paragraph (c)(1)(ii) of this section, the limitation provided in paragraph (c) of this section on the ordinary income element is $2,261. Under paragraph (c)(3) of this section, because A elected the standard deduction for purposes of the basic tax, he must elect the standard deduction for purposes of the limitation under paragraph (c)(1)(i) of this section.

(v) Under paragraph (a)(2) of this section, the tax imposed by section 1 for 1980 is $11,459, that is the basic tax imposed by section 1 ($13,100), reduced by the excess of the portion of the basic tax attributable to the ordinary income element ($3,902) over the limitation on the tax on the ordinary income element ($2,261).

Example (2). (i) The facts are the same as in example (1), except that A has medical expenses of $1,800 and charitable contributions of $1,300.

(ii) A's basic tax for 1980 is $12,961, determined in the following manner:

Gross income (see subdivision (ii) of example (1))		$62,000
Less: Deduction allowed by section 1202		15,000
Adjusted gross income		47,000
Other deductions:		
Medical expenses	$1,800	
3 percent of adjusted gross income	$1,410	$390
Charitable contributions	1,300	
Real property taxes	600	
Personal exemptions	3,000	5,290
Taxable income		41,710
Basic tax under section 1		12,961

(iii) The portion of the basic tax under section 1 attributable to the ordinary income element determined under paragraph (b)(1) of this section is $3,861 (0.29787 (see subdivision (iii)(*a*) of example (1)) times $12,961 (the basic tax)). Accordingly, $3,861 is the portion of the basic tax imposed by section 1 attributable to the ordinary income element because it exceeds $2,040, the amount determined under paragraph (b)(2) of this section (see subdivision (iii)(*b*) of example (1)).

(iv) The limitation on the tax on the ordinary income element is $2,681, the amount determined under paragraph (c)(1)(i) of this section, since it exceeds $1,582, the amount determined under paragraph (c)(1)(ii) of this section (see subdivision (iv)(*b*) of example (1)). This limitation is determined in the following manner:

Gross income without regard to averageable distribution and salary			$10,000
Medical expenses	$1,800		
3 percent of adjusted gross income	300	$1,500	
Charitable contributions		1,300	
Real property taxes		600	
Personal exemptions		3,000	
Total deductions			6,400
Taxable income			3,600
Tax under section 1 on $3,600			552
Gross income without regard to averageable distribution and salary		$10,000	
One-seventh ordinary income element		2,000	
Total gross income			12,000
Medical expenses	$1,800		
3 percent of adjusted gross income	360	$1,440	
Charitable contributions		1,300	
Real property taxes		600	
Personal exemptions		3,000	
Total deductions			6,340
Taxable income			5,660
Tax under section 1 on $5,660			935

Accordingly, the increase in the tax imposed by section 1 resulting from including one-seventh of the ordinary income element in gross income without regard to the averageable distribution and salary is $383 ($935—$552). Thus, the limitation under paragraph (c)(1)(i) of this section is 7 times such increase, or $2,681.

(v) Under paragraph (a)(2) of this section, the tax imposed by section 1 for 1980 is $11,781, that is, the basic tax imposed by section 1 ($12,961), reduced by the excess of the portion of the basic tax attributable to the ordinary income element ($3,861) over the limitation on the tax on the ordinary income element ($2,681). However, if A elects the standard deduction in this case, the tax imposed by section 1 for 1980 is $11,459 (see subdivision (v) of example (1)). Under paragraph (c)(3) of this section, if A does not elect the standard deduction for purposes of the basic tax, he may not elect the standard deduction for purposes of the limitation under paragraph (c)(1)(i) of this section because the amount of itemized deductions is greater than the standard deduction.

Example (3). (i) The facts are the same as in example (1), except that A receives a total distribution from X partnership (a calendar year partnership). From January 10, 1964, to March 31, 1974, A was an employee of X partnership from April 1, 1974, to his retirement he was a partner in X partnership. A has no salary income but has $8,000 of earned income (as defined in section 911(b) and the regulations thereunder) from X partnership. A has the following items of gross income and deduction for the year:

Total distribution:			
Ordinary income element		$14,000	
Capital gain element		30,000	
Portion to which § 1.72–18 applies		20,000	$64,000
Earned income from X partnership			8,000
Interest income			10,000
Charitable contribution			700
Real property taxes on personal residence			600

(ii) The tax determined under paragraph (d) of § 1.72–18 (without regard to section 72(n)(4) and this section) is $9,800, computed in the following manner:

(*a*) Gross income:

Total distribution (exclusive of portion to which § 1.72–18 applies)		$44,000	
Earned income from partnership		8,000	
Interest income		10,000	$62,000
Less: Deduction allowed by section 1202			15,000
Adjusted gross income			47,000
Other deductions:			
Standard deduction		$2,000	
Personal exemptions		3,000	5,000
Taxable income			42,000
Tax on $42,000 under section 1			13,100

(*b*) Gross income:

Total distribtuion (exclusive of four-fifths of portion to which § 1.72–18 applies)		$48,000	
Earned income from X partnership		8,000	
Interest income		10,000	$66,000
Less: Deduction allowed by section 1202			15,000
Adjusted gross income			51,000
Other deductions:			
Standard deduction		$2,000	
Personal exemptions		3,000	5,000
Taxable income			46,000
Tax on $46,000 under section 1			15,060

(*c*) The tax determined under paragraph (d) of § 1.72–18 is the excess of the amount of tax under subdivision (*b*) of this subdivision (ii) ($15,060) over the amount of tax under subdivision (*a*) of this subdivision (ii) ($13,000), multiplied by 5, or $9,800.

(iii) A's total tax for 1980, is $21,259, which is the sum of the amount of tax determined under subdivision (ii) of this example ($9,800) and the amount of tax computed under example (1) ($11,459).

[FR Doc.71-2827 Filed 2-26-71;8:50 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Public Health Service

[42 CFR Part 37]

ROENTGENOGRAPHIC EXAMINATIONS OF COAL MINERS

Proposed Statements of General Policy

Pursuant to section 203 of the Federal Coal Mine Health and Safety Act of 1969 (30 U.S.C. 843), the Secretary proposes establishment of the following policies regarding chest roentgenograms not submitted pursuant to an approved plan. It is proposed to publish the policies as new §§ 37.40 and 37.41.

Any interested person may, within 30 days from the date of publication of this notice in the FEDERAL REGISTER, submit comments, views, and arguments concerning the proposal.

Part 37 would be amended by adding the following center heading and sections immediately following § 37.33:

STATEMENTS OF POLICY OR INTERPRETATION

§ 37.40 Roentgenograms provided by operator where no plan has been approved.

(a) Part 37 provides that unless operators conduct their chest roentgenogram programs pursuant to an approved plan, the Secretary will either give or make arrangements with an appropriate person, agency or institution to give the chest roentgenograms or supplemental examinations required under this subpart. The Department has contracted with appropriate persons, agencies, and institutions to give initial roentgenograms by June 30, 1971, and operators of mines are required to reimburse the Secretary for the actual cost of conducting each examination made at their respective mines.

(b) It has come to the attention of the Department that certain operators who have not submitted an approvable plan have nevertheless conducted a chest roentgenographic examination program in which the roentgenograms have been submitted to ALFORD.

(c) Where such roentgenograms have been taken, read, classified, and submitted in accordance with the applicable specifications and in the same manner as those under an approved operator's plan, the roentgenograms will be accepted for consideration by ALFORD, thereby avoiding additional radiation exposure to the miners. However, any operator who causes acceptable roentgenograms to be submitted but is not operating under an approved plan will be required to reimburse the Secretary for any damages sustained under the contract the Secretary has with the person, agency, or institution to give such roentgenograms at the operator's mine, plus any additional administrative expenses caused the Department by the submission.

§ 37.41 Roentgenographic examination at miner's expense.

(a) In implementing section 203 of the Act by the adoption of this subpart, the Department of Health, Education, and Welfare has established what it considers to be a reasonable procedure for assuring that every underground miner has the opportunity for an initial chest roentgenogram by June 30, 1971. In accordance with section 203(c) of the Act, the regulations provide that no payment may be required of any miner in connection with any examination or test given him under this subpart.

(b) It has come to the attention of the Department that a number of individual miners desire to obtain roentgenographic examinations at their own expense and have the roentgenograms submitted to ALFORD for its consideration and classification. The Act does not prohibit this activity, and the Department finds no justification for refusing to accept such roentgenograms provided they comply with the applicable specifications of this subpart.

(c) Accordingly, the Department will accept roentgenograms obtained at the expense of individual miners provided such roentgenograms are given in conformity with the specifications set forth in § 37.20 (b), (c), (d), and (e) and § 37.22; and are read, classified, and submitted in conformity with the specifications set forth in §§ 37.30 and 37.32. To assure confidentiality, forms ECA 108 and 116 shall bear in the upper right corner of each form submitted the notation "Taken at miner's expense".

Dated: February 22, 1971.

ELLIOT L. RICHARDSON,
Secretary.

[FR Doc.71-2705 Filed 2-26-71;8:48 am]

ENVIRONMENTAL PROTECTION AGENCY

[45 CFR Part 1201]

CONTROL OF AIR POLLUTION FROM NEW MOTOR VEHICLES AND NEW MOTOR VEHICLE ENGINES

Notice of Proposed Rule Making

On February 10, 1970 (35 F.R. 2791), advance notice was given of the Federal Government's intention to adopt an oxides of nitrogen standard applicable to 1973 and subsequent model year light-duty vehicles and engines.

On November 10, 1970, 45 CFR Part 45 was amended by the adoption of regulations, applicable to 1972 and subsequent model year light-duty vehicles and engines, which established a new mass-measurement analytical system and test procedure, adopted a dynamometer schedule representative of urban driving practices, and revised the hydrocarbon and carbon monoxide exhaust emission standards to reflect the changes in measurement procedures. Part 85 was redesignated as 45 CFR Part 1201 on December 18, 1970 (35 F.R. 19181).

It is now proposed to amend the regulations in 45 CFR Part 1201 in order to:

(a) Revise the analytical system to provide for the determination of oxides of nitrogen emissions from light-duty vehicles and engines.

(b) Establish an oxides of nitrogen exhaust standard and a mass measurement procedure applicable to the standard.

45 CFR Part 1201 as revised by the proposed amendments will become effective on republication and will be applicable to 1973 and subsequent model year light duty vehicles and engines. The current regulations which appear at 45 CFR Part 1201 will remain in effect for the purpose of their applicability to 1972 model year vehicles and engines.

Interested persons may submit written data, views, or arguments (in quadruplicate) in regard to the proposed regulations to the Administrator, Environmental Protection Agency, Attention: Air Pollution Control Office, 5600 Fishers Lane, Rockville, MD 20852. All relevant material received not later than 60 days after the publication of this notice will be considered.

This notice of proposed rule making is issued under the authority of section 202, Public Law 91-604 (sec. 6, 84 Stat. 1690).

Dated: February 22, 1971.

WILLIAM D. RUCKELSHAUS,
Administrator.

It is proposed that Part 1201 of Subtitle A, Title 45 of the Code of Federal Regulations be amended as follows:

1. In § 1201.1, a new subparagraph is added as follows:

§ 1201.1 Definitions.

(a) * * *

(32) "Oxides of Nitrogen" means the sum of the nitric oxide and nitrogen dioxide contained in a gas sample as if they were all in the form of nitrogen dioxide.

2. In § 1201.2, three new abbreviations are added as follows:

§ 1201.2 Abbreviations.

* * * * *

NO—Nitric Oxide.
NO_2—Nitrogen Dioxide.
NO_x—Oxides of Nitrogen.

* * * * *

3. Section 1201.21 is revised to read as follows:

§ 1201.21 Standards for exhaust emissions.

(a) Exhaust emissions from 1972 model year vehicles shall not exceed:

(1) Hydrocarbons—3.4 grams per vehicle mile.

(2) Carbon monoxide—39.0 grams per vehicle mile.

(b) Exhaust emissions from 1973 and 1974 model year vehicles (and 1975 for NO_x) shall not exceed:

(1) Hydrocarbons—3.4 grams per vehicle mile.

(2) Carbon monoxide—39 grams per vehicle mile.

(3) Oxides of Nitrogen—3 grams per vehicle mile.

(c) The standards set forth in paragraphs (a) and (b) of this section refer to the exhaust emitted over a driving schedule as set forth in the applicable sections of "Test Procedures for Vehicle Exhaust and Fuel Evaporative Emissions (Gasoline Fueled Light Duty Vehicles)" of this part and measured and calculated in accordance with those procedures.

4. In § 1201.70, paragraph (b) is revised to read as follows:

§ 1201.70 Introduction.

* * * * *

(b) The exhaust emission test is designed to determine hydrocarbon, carbon monoxide and oxides of nitrogen mass emissions while simulating an average trip in an urban area of 7.5 miles from a cold start. The test consists of engine startup and vehicle operation on a chassis dynamometer through a specified driving schedule, as described in Appendix A to this part. A proportional part of the diluted exhaust emissions is collected continuously, for subsequent analysis, using a constant volume (variable dilution) sampler.

* * * * *

5. In § 1201.76, paragraph (a) is revised to read as follows:

§ 1201.76 Dynamometer procedure.

(a) The vehicle shall be tested from a cold start. Engine startup and operation over the driving schedule make a complete test run. Exhaust emissions are diluted with air to a constant volume and a portion is sampled continuously during the entire test run. The composite sample, collected in a bag, is analyzed for hydrocarbon, carbon monoxide and oxides of nitrogen. A parallel sample of the dilution air is similarly analyzed.

* * * * *

6. In § 1201.81, paragraphs (a) and (c) are revised to read as follows:

§ 1201.81 Sampling and analytical system (exhaust emissions).

(a) *Schematic drawings.* The following figures (Figures 1a and 1b) are schematic drawings of the exhaust gas sampling and analytical systems which will be used for testing under the regulations in this part. Additional components such as instruments, valves, solenoids, pumps, and switches may be used to coordinate the functions of the component systems. In particular, the HC and CO instruments may be connected in parallel instead of in series.

* * * * *

(c) *Component description (exhaust gas analytical system).* The following components will be used in the exhaust gas analytical system for testing under the regulations in this part. The analytical system provides for the determination of hydrocarbon concentrations by flame ionization detector (FID) analysis, the determination of carbon monoxide concentrations by nondispersive infrared (NDIR) analysis and the determination of oxides of nitrogen concentration by chemiluminescence (CL) analysis in dilute exhaust samples. The chemiluminescence method of analysis requires that the nitrogen dioxide present in the sample be converted to nitric oxide before analysis. See Appendix E. Other types of analyzers may be used if shown to yield equivalent results and if approved in advance by the Administrator. See Figure 1b.

(1) Quick-connect leak-tight fitting (C3) to attach sample bags to analytical system.

(2) Filter (F3) to remove any residual particulate matter from the collected samples.

(3) Pump (P3) to transfer samples from the sample bags to the analyzers.

(4) Selector valves (V3, V4, V5, and V6) for directing samples, span gases or zeroing gas to the analyzers.

(5) Flow control valves (N3, N4, N5, N6, N7, N8, N9, and N10) to regulate the gas flow rates.

(6) Flowmeters (FL3 and FL4) to indicate gas flow rates.

(7) Manifold (M1) to collect the expelled gases from the analyzers.

(8) Pump (P4) to transfer expelled gases from the collection manifold to a vent external to the test room (optional).

(9) Analyzers to determine hydrocarbon, carbon monoxide and oxides of nitrogen concentrations.

(10) An oxide of nitrogen converter to convert any NO_2 present in the samples to NO before analysis. This may be separate from or integral with the nitric oxide analyzer.

(11) Recorders (R1, R2, and R3) to provide permanent records of calibration, spanning and samples measurements.

7. Figure 1b of § 1201.81 is revised as follows:

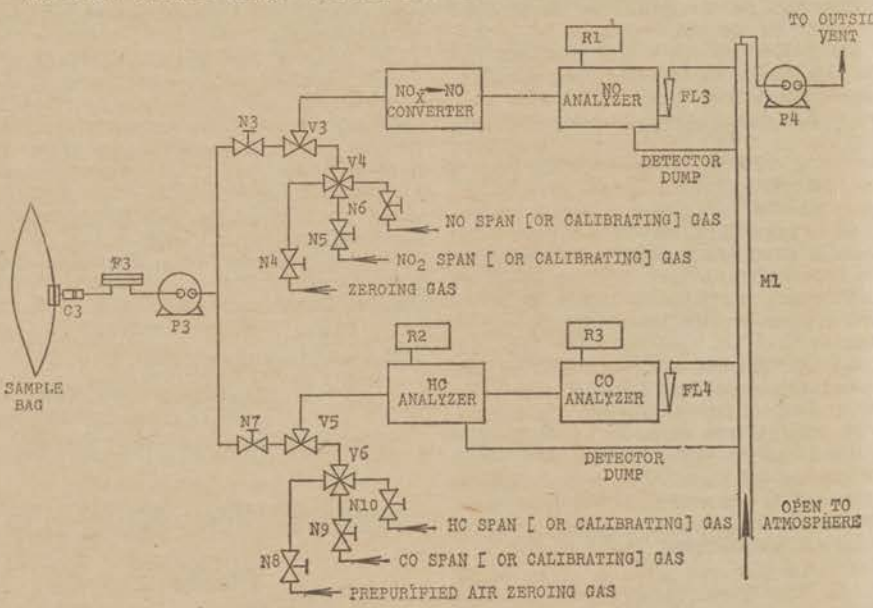


Figure 1b. Exhaust Gas Analytical System

8. Section 1201.84 is revised to read as follows:

§ 1201.84 Analytical system calibration and sample handling.

(a) Calibrate the analytical assembly at least once every 30 days. Use the same flow rate as when analyzing samples.

(1) Adjust analyzers to optimize performance.

(2) Zero on prepurified air, i.e., less than 6 p.p.m. carbon equivalent of hydrocarbon, 10 p.p.m. of carbon monoxide and 2 p.p.m. NO_x. Check each cylinder of prepurified air for contamination with hydrocarbons, carbon monoxide, and oxides of nitrogen.

(3) Set the CO analyzer gain to give the desired range. Select the desired attenuation scale of the HC analyzer and set the sample capillary flow rate, by adjusting the back pressure regulator, to give the desired range. Select the desired scale of the NO_x analyzer and adjust the phototube high voltage to give the desired range. The operating range of the analyzers shall be such that the analyzer deflection which indicates an emission level equivalent to the respective standard is in the upper two-thirds of the scale.

(4) Calibrate the HC analyzer with propane (prepurified air diluent) gases having nominal concentrations equivalent to 50 and 100 percent of full scale. Calibrate the CO analyzer with carbon monoxide (nitrogen diluent) gases which are equivalent to 10, 25, 40, 50, 60, 70, 85, and 100 percent of full scale. Calibrate the NO_x analyzer with nitric oxide (nitrogen diluent) and nitrogen dioxide (prepurified air diluent) gases having nominal concentrations equivalent to 50 and 100 percent of full scale. The purpose of calibrating with nitrogen dioxide is to insure that the NO_x to NO converter

is functioning properly. The actual concentrations should be known to within ±2 percent of the true values.

(5) Compare values obtained on the CO analyzer with previous calibration curves. Any significant change reflects some problem in the system. Locate and correct problem, and recalibrate. Use best judgment in selecting curves for data reduction.

(b) HC, CO, and NO_x measurements: Allow a minimum of 20 minutes warmup for the HC analyzer and 2 hours for the CO and NO_x analyzers. (Power is normally left on infrared and chemiluminescence analyzers; but when not in use, the chopper motor of the infrared analyzer is turned off and the phototube filament voltage of the chemiluminescence analyzer is placed in the standby position.) The following sequence of operations should be performed in conjunction with each series of measurements.

(1) Zero on prepurified air. Obtain a stable zero on the amplifier meter and recorder. Recheck after test.

(2) Introduce span gas and set the CO analyzer gain, the HC analyzer sample capillary flow rate, and the NO_x analyzer high voltage to match the calibration curves. In order to avoid corrections, span and calibrate at the same flow rates used to analyze the test samples. Span gases should have concentrations equivalent to approximately 80 percent of full scale. If gain has shifted significantly on the CO analyzer, check tuning. If necessary, check calibration. Recheck after test. Show actual concentrations on chart.

(3) Check zero, using prepurified air; repeat the procedure in subparagraphs (1) and (2) of this paragraph if required.

(4) Check flow rates and pressures.

(5) Measure HC, CO, and NO_x concentration of samples. Care should be exercised to prevent moisture from condensing in the sample collection bag.

(6) Check zero and span points.

(c) For the purposes of this paragraph, the term "prepurified air" includes artificial "air" consisting of a blend of nitrogen and oxygen with oxygen concentrations between 18- and 21-mole percent.

9. Section 1201.86 is revised to read as follows:

§ 1201.86 Chart reading.

(a) Determine the HC, CO, and NO_x concentrations of the dilution air and dilute exhaust sample bags from the instrument deflection or recordings making use of appropriate calibration charts.

(b) Determine the average dilute exhaust mixture temperature from the temperature recorder trace if a recorder is used.

10. Section 1201.87 is revised to read as follows:

§ 1201.87 Calculations (exhaust emissions).

The final reported test results shall be computed by use of the following formulae:

(a) For light duty vehicles, excluding off-road utility vehicles:

(1) Hydrocarbon Mass:

$$HC_{mass} = V_{mix} \times Density_{HC} \times \frac{HC_{conc}}{1{,}000{,}000}.$$

(2) Carbon Monoxide Mass:

$$CO_{mass} = V_{mix} \times Density_{CO} \times \frac{CO_{conc}}{100}.$$

(3) Oxides of Nitrogen Mass:

$$NOx_{mass} = V_{mix} \times Density_{NO_2} \times \frac{NOx_{conc}}{1{,}000{,}000} \times K_H.$$

(b) For off-road utility vehicles:

(1) $HC_{mass} = V_{mix} \times Density_{HC} \times \frac{HC_{conc} \times 0.85}{1{,}000{,}000}$.

(2) $CO_{mass} = V_{mix} \times Density_{CO} \times \frac{CO_{conc} \times 0.85}{100}$.

(3) $NOx_{mass} = V_{mix} \times Density_{NO_2} \times \frac{NOx_{conc}}{1{,}000{,}000} \times K_H$.

(c) Meaning of symbols:

HC_{mass} = Hydrocarbon emissions, in grams per vehicle mile.

$Density_{HC}$ = Density of hydrocarbons in the exhaust gas, assuming an average carbon to hydrogen ratio of 1:1.85, in grams per cubic foot at 68° F. and 760 mm. Hg pressure (16.33 gm./cu. ft.).

HC_{conc} = Hydrocarbon concentration of the exhaust mixture sample minus hydrocarbon concentration of the dilution air sample, in p.p.m. carbon equivalent (p.p.m. C.), i.e., equivalent propane × 3.

CO_{mass} = Carbon monoxide emissions, in grams per vehicle mile.

$Density_{CO}$ = Density of carbon monoxide in grams per cubic foot at 68° F. and 760 mm. Hg pressure (32.97 gm./cu. ft.).

CO_{conc} = Carbon monoxide concentration of the dilute exhaust sample minus the carbon monoxide concentration of the dilution air sample, in volume percent.

NOx_{mass} = Oxides of nitrogen emissions, in grams per vehicle mile.

$Density_{NO_2}$ = Density of oxides of nitrogen in the exhaust gas, assuming they are in the form of nitrogen dioxide, in grams per cubic foot at 68° F. and 760 mm. Hg pressure (54.16 gm./cu. ft.).

NOx_{conc} = Oxides of nitrogen concentration of the exhaust mixture samples in p.p.m.

V_{mix} = Total dilute exhaust volume in cubic feet per mile, corrected to standard conditions (528°R and 760 mm. Hg).

$$V_{mix} = K_1 \times V_o \times N \times \frac{P_p}{T_p}$$

where:

$$K_1 = \frac{528°R}{760 \text{ mm. Hg} \times 7.5 \text{ miles}} = 0.09263.$$

V_o = Volume of gas pumped by the positive displacement pump, in cubic feet per revolution. This volume is dependent on the pressure differential across the positive displacement pump.

N = Number of revolutions of the positive displacement pump during the test while samples are being collected.

P_p = Absolute pressure of the dilute exhaust entering the positive displacement pump, i.e., barometric pressure minus the pressure depression below atmospheric of the mixture entering the positive displacement pump.

T_p = Average temperature of dilute exhaust entering positive displacement pump during test while samples are being collected, in degrees Rankine.

K_H = Humidity correction factor.

$$K_H = \frac{1}{1 - 0.0047\,(H - 75)}$$

where:

H = Absolute humidity in grains of water per pound of dry air.

(d) Example calculation of mass emission values:

Assume $V_o = 0.265$ cu. ft. per revolution; $N = 20{,}250$; $H = 85$ grains per lb. of dry air; $P_p = 730$ mm. Hg; $T_p = 550°R$; $HC_{conc} = 160$ p.p.m. C; $CO_{conc} = 0.09\%$; and $NOx_{conc} = 70$ p.p.m.

Then:

$V_{mix} = (0.09263)\,(0.265)\,(730/550) = 659.8$ cu. ft. per mile.

$$K_H = \frac{1}{1 - 0.0047\,(85 - 75)} = 1.049.$$

(1) For a 1972 light-duty vehicle.

$$HC_{mass} = 659.8 \times 16.33 \times \frac{160}{1{,}000{,}000} = 1.72 \text{ gr. per mile.}$$

$$NO_{x\,mass} = 659.8 \times 54.16 \times \frac{70}{1{,}000{,}000} = 2.62 \text{ gr. per mile.}$$

(2) For a 1972 utility vehicle.

$$CO_{mass} = 659.8 \times 32.97 \times \frac{0.09 \times 0.85}{100} = 16.6 \text{ gr.}$$

$= 16.6$ gr. per mile.

11. In § 1201.92, paragraph (c)(1) is revised to read as follows:

§ 1201.92 Compliance with emission standards.

* * * * *

(c) * * *

(1) Separate emission deterioration factors shall be determined from the emission results of the durability data vehicles for each engine-system combination. A separate factor shall be established for the combination for exhaust HC, exhaust CO, exhaust NO_x, and fuel evaporative HC.

(i) The applicable results to be used in determining deterioration factors for each combination shall be:

(*a*) All emission data from the tests required under § 1201.91(b), except the zero mile tests. This shall include the official test results, as determined in § 1201.54, for all tests conducted on all durability vehicles of the combination selected under § 1201.89(c) (including all vehicles elected to be operated by the manufacturer under § 1201.89(c)(3)). Where the Administrator has agreed to

a mileage less than 50,000 miles in accordance with § 1201.91(b), the data for mileages greater than that actually run will be determined by extrapolating the test data generated at lesser mileages.

(b) All emission data from the tests conducted before and after the maintenance provided in §1201.90 (a)(1)(i).

(ii) All applicable results shall be plotted as a function of the mileage on the system, rounded to the nearest mile, and the best fit straight lines, fitted by the method of least squares, shall be drawn through these data points. The interpolated 4,000- and 50,000-mile points on this line must be within the standards provided in §§ 1201.21 and 1201.22 or the data will not be acceptable for use in calculation of a deterioration factor.

(iii) An exhaust emission deterioration factor shall be calculated for each combination as follows:

$$\text{factor} = \frac{\text{exhaust emissions interpolated to 50,000 miles}}{\text{exhaust emissions interpolated to 4,000 miles}}$$

(iv) An evaporative emission deterioration factor shall be calculated for combination by subtracting the evaporative emissions interpolated to 4,000 miles from the evaporative emissions interpolated to 50,000 miles.

* * * * *

12. A new appendix, Appendix E, is added as follows:

APPENDIX E

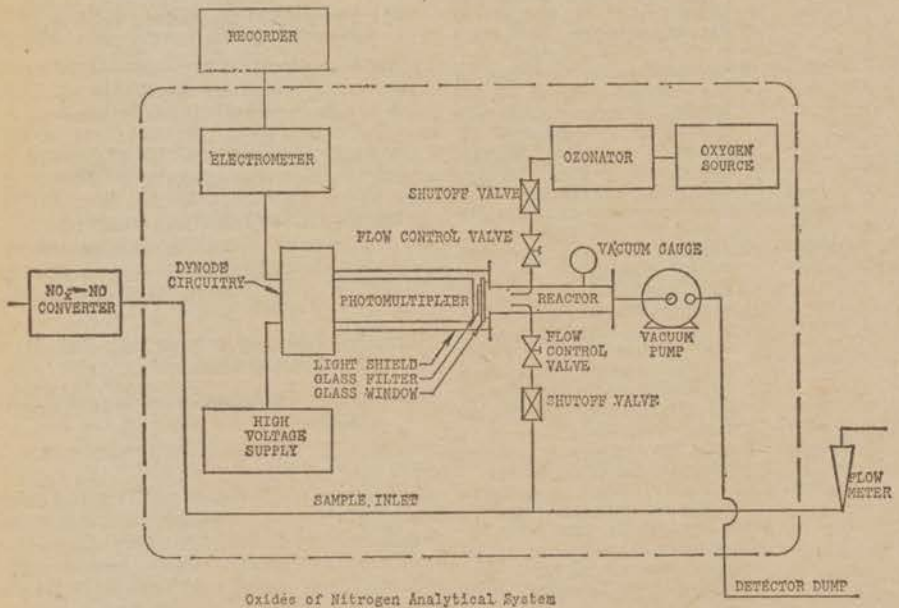
OXIDES OF NITROGEN ANALYTICAL SYSTEM

The chemiluminescence method utilizes the principle that nitric oxide (NO) reacts with ozone (O_3) to give nitrogen dioxide (NO_2) and oxygen (O_2). Approximately 10 percent of the NO_2 is electronically excited (NO_2^*). The transition of excited NO_2 to the ground state yields a detectable light emission (590–630 nanometer region) at low pressures. The intensity of this emission is proportional to the mass flow rate of NO into the reactor. The light emission can be measured utilizing a photomultiplier tube and associated electronics.

The method also utilizes the principle that the thermal decomposition of NO_2 ($2NO_2 \rightarrow 2NO + O_2$) is complete at about 600° C. The rate constant for the dissociation of NO_2 at 600° is approximately 10^6 (liters/mole-second).

The method permits continuous monitoring of NO_x concentrations over a wide range. Response time (2 to 4 seconds is typical) is primarily dependent on the mechanical pumping rate at the operating pressure of the reactor. The operating pressure of the reactor is generally less than 5 torr.

The following figure is a flow schematic illustrating one configuration of the major components required for the oxides of nitrogen analytical system.



Oxides of Nitrogen Analytical System

[FR Doc.71-2583 Filed 2-26-71;8:45 am]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 25]

[Docket No. 16495]

DOMESTIC COMMUNICATIONS-SATELLITE FACILITATED BY NON-GOVERNMENTAL ENTITIES

Establishment

Upon consideration of the "Motion for Extension of Time to File Applications" filed by Twin-County Trans-Video, Inc. (Twin County) on February 16, 1971,

It is hereby ordered, Pursuant to § 0.303 of the Commission's rules and regulations, That Twin County is granted leave to file on or before March 30, 1971, for consideration in this proceeding, an application for a receive-only earth station to operate with a domestic communications satellite system proposed by some other applicant.

Adopted: February 19, 1971.

Released: February 23, 1971.

[SEAL] BERNARD STRASSBURG,
Chief, Common Carrier Bureau.

[FR Doc.71-2723 Filed 2-26-71;8:48 am]

[47 CFR Part 74]

[Docket No. 19128]

COMMUNITY ANTENNA TELEVISION SYSTEMS

Maintenance of Program Logs for Cablecasting

1. On February 19, 1971, the National Cable Television Association filed a "Motion for Extension of Time" for filing comments and reply comments in Docket No. 19128. Comments and reply comments were scheduled to be filed on February 22, 1971, and March 4, 1971, respectively, and NCTA proposes that these dates be changed to April 2, 1971, and April 15, 1971.

2. In support of the requested extension, NCTA indicates that it has a standing committee which is accumulating data for and alternative program log proposal to be submitted in this proceeding, but that it is also heavily involved in preparing for the CATV en banc hearings scheduled for March 11–26, 1971. NCTA believes that the panel discussions and testimony presented at these hearings may provide further insight into the most suitable logging requirements for CATV systems which cablecast, and would require time for analysis after the hearings have concluded.

3. It appears that the public interest would be served by granting the requested extension of time. In particular, it appears that Topic (c) in the February 4, 1971 en banc hearing order in Docket No. 18397-A, FCC 71-103, ------ FCC 2d ------, concerns, in part, cablecasting, and may elicit information which would be useful in the preparation of alternative program log proposals or other comments. And time for reply comments should be extended to permit adequate analysis of any alternative proposals which may be filed.

4. *Accordingly, it is ordered,* Pursuant to § 0.289(c)(4) of the Commission's rules and regulations, That the "Motion for Extension of Time" filed February 19, 1971, is granted, and the times for filing comments and reply comments in the above-captioned proceeding are extended until April 2, 1971, and April 15, 1971, respectively.

Adopted: February 22, 1971.

Released: February 22, 1971.

SOL SCHILDHAUSE,
Chief,
Cable Television Bureau.

[FR Doc.71-2724 Filed 2-26-71;8:48 am]

NATIONAL CREDIT UNION ADMINISTRATION

[12 CFR Part 701]

SURETY BOND COVERAGE FOR FEDERAL CREDIT UNIONS

Minimum Bond Coverage Schedule

Notice is hereby given that the National Credit Union Administration, 73 Stat. 635, 12 U.S.C. 1766, proposes to revise § 701.20 (12 CFR 701.20) as set forth below.

Interested persons are invited to submit written comments, suggestions, or objections regarding the proposed revision to the National Credit Union under authority contained in section 21, Administration, 1325 K Street NW., Washington, DC 20456, within 30 days after date of publication of this notice in the FEDERAL REGISTER.

HERMAN NICKERSON, Jr.,
Administrator.

§ 701.20 Surety bond coverage for Federal credit unions.

(a) The board of directors of each Federal credit union shall at least semi-annually carefully review the bond coverage in force in order to ascertain its adequacy in relation to the exposure and to the minimum requirements fixed from time to time by the Administrator.

(b) All surety bonds must provide for faithful-performance-of-duty coverage for any officer or employee while performing any of the duties of the treasurer as prescribed in the Act, the bylaws, or rules and regulations of the Administration.

(c) No form of surety bond shall be used except as is approved by the Administrator. Credit Union Blanket Bond, Standard Form No. 23 of the Surety Association of America (revised to May 1950), plus Faithful Performance Rider (for use with this form to broaden Clause (A)) (revised to May 1950) shall be considered as the minimum coverage required and is hereby approved. Credit Union Blanket Bonds—NCUA Optional Forms 576, 577, and 578—are also approved. No other bond form may be used unless specifically approved in writing by the Administrator. No form of surety bond is approved for use by a Federal credit union having its office outside of the continental United States unless by the terms of the bond or by an appropriate rider attached thereto the provisions of the bond are made applicable within the jurisdiction in which the office of such Federal credit union is located.

(d) All sureties writing Federal credit union bonds must hold a certificate of authority from the Secretary of the Treasury under the act of Congress approved July 30, 1947 (6 U.S.C., secs. 6–13), as an acceptable surety on Federal Bonds in the State or jurisdiction concerned.

(e) The schedule of coverage set forth in paragraph (f) of this section shall not be deemed to cover cash funds of $1,000 or more. When the cash fund is $1,000 or more, additional coverage—to the full amount of the fund—will be required up to total surety bond coverage of $5 million.

(f) The following schedule shall be deemed as the minimum requirements only:

Assets:	*Minimum coverage*
$0,000 to $5,000	$1,000.
$5,001 to $10,000	$2,000.
$10,001 to $20,000	$4,000.
$20,001 to $30,000	$6,000.
$30,001 to $40,000	$8,000.
$40,001 to $50,000	$10,000.
$50,001 to $75,000	$15,000.
$75,001 to $100,000	$20,000.
$100,001 to $150,000	$30,000.
$150,001 to $200,000	$40,000.
$200,001 to $300,000	$50,000.
$30,001 to $400,000	$60,000.
$400,001 to $500,000	$70,000.
$500,001 to $750,000	$85,000.
$750,001 to $1,000,000.	$100,000.
$1,000,001 to $50,000,000.	$100,000 plus $50,000 for each million or fraction thereof of assets over $1,000,000.
$50,000,001 to $150,000,000.	$2,500,000 plus $25,000 for each million or fraction thereof of assets over $50,000,000.
Over $150,000,000	$5,000,000.

It shall be the duty of the board of directors of each Federal credit union to provide proper protection to meet any circumstances by obtaining adequate bond (and insurance) coverage in excess of the above minimum schedule.

(g) The Administrator may require additional coverage for any Federal credit union when, in his opinion, the surety bonds in force are insufficient to provide adequate surety coverage and it shall be the duty of the board of directors of the Federal credit union to obtain such additional coverage within 30 days after the date of written notice.

[FR Doc.71-2695 Filed 2-26-71;8:47 am]

SAINT LAWRENCE SEAWAY DEVELOPMENT CORPORATION

[33 CFR Part 401]

SEAWAY REGULATIONS AND RULES

Notice of Proposed Rule Making

I. In F.R. Doc. 71–1523, published at pages 2518–2520 in the issue dated Friday, February 5, 1971, the reference to "Newcaster" as a check point for upbound vessels, appearing in § 401.103–5, is incorrect and is hereby corrected to read "Newcastle".

II. In the above document, § 401.104–1 would be further amended by inserting the following note immediately below the reference to "South Shore, Beauharnois, Wiley Dondero, and Iroquois":

NOTE: The Seaway Entities are presently carrying out extensive studies directed towards the possible extension of the navigation season. Accordingly, where conditions warrant and other circumstances permit, the above dates may be modified in a Seaway Notice.

III. Also in the above document, § 401.104–1 would be further amended by striking the date "December 10" and inserting the date "December 12" in place thereof.

ST. LAWRENCE SEAWAY DEVELOPMENT CORPORATION,
[SEAL] DAVID W. OBERLIN,
Administrator.

[FR Doc.71-2698 Filed 2-26-71;8:47 am]

Notices

DEPARTMENT OF STATE

Agency for International Development

HOUSING GUARANTIES

Prescription of Rate

Pursuant to section 223(f) of the Foreign Assistance Act of 1961 as amended, and effective immediately, contracts of guaranty for loan investments in housing under sections 221 and 222 of that Act will be subject to the following restriction:

The interest allowed to an eligible U.S. investor at the time the relevant project is authorized may not exceed a rate of eight per centum (8 percent) per annum. Prior to the execution of the contract of guaranty, the Director of the Office of Housing may amend such rate at his discretion, consistent with the provisions of section 223(f) of the Act.

Dated: February 18, 1971.

STANLEY BARUCH,
Director, Office of Housing.

[FR Doc.71-2694 Filed 2-26-71;8:47 am]

DEPARTMENT OF THE TREASURY

Bureau of Customs

[T.D. 71-61; Customs Delegation Order No. 40]

AREA DIRECTORS, CUSTOMS DISTRICT OF NEW YORK CITY

Delegation of Authority

FEBRUARY 18, 1971.

Order of the Commissioner of Customs delegating functions, rights, privileges, powers, and duties to area directors in the Customs district of New York City, N.Y.

By virtue of the authority vested in me by Treasury Department Order No. 165, Revised (T.D. 53654, 19 F.R. 7241), all functions, rights, privileges, powers, and duties delegated to district directors of customs and to regional commissioners of customs by Customs Delegation Order No. 22 (T.D. 56470, 30 F.R. 11180) are hereby delegated also to area directors of customs for the Customs district of New York City, N.Y., effective on April 1, 1971.

This order supersedes Customs Delegation Orders No. 23 (T.D. 66-100, 31 F.R. 7150) and No. 24 (T.D. 66-113, 31 F.R. 7842).

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

[FR Doc.71-2742 Filed 2-26-71;8:50 am]

POST OFFICE DEPARTMENT

STANDBY INSTRUCTIONS ON MAIL SERVICE IN EVENT OF NATIONWIDE RAIL STRIKE

The following are excerpts from Regional Instructions No. 583-0-134, issued by the Operations Department under date of February 23, 1971:

I. *Purpose.* To include in one issuance standby instructions for guidance in adjusting postal service and the handling of both domestic and international mail during a nationwide railroad strike.

II. *Mail embargo.* In event of a nationwide railroad strike:

A. *Domestic mail.* 1. Shipments of second-, third- and fourth-class mail addressed for delivery beyond the third parcel post zone from the post office of origin will not be accepted. Regional Directors may publicize local exceptions for selective acceptance of mail beyond the third zone when adequate highway service is assured and the receiving region can handle such movements. Regional Directors are encouraged to maintain as much regular service as practical by contacts with highway contractors and common carriers.

2. The preceding restriction does not apply to the items which are given airlift service to or from military post offices overseas under the provisions of § 127.1(e) of title 39, CFR.

3. First-class and airmail will continue to be accepted without restrictions as to distance.

B. *International mail.* 1. General Procedures—Except as provided in paragraph B2 following, no international surface mail will be accepted other than surface letters and letter-packages and post cards. Airmail postal union mail and international air parcel post will continue to be accepted.

2. *Special instructions.* Post offices at port cities from which international surface mail is dispatched and post offices within the third parcel post zone from such port cities may accept all categories of international surface mail provided it is addressed to countries for which vessels leaving from the port city carry mail for the countries concerned. Also, all categories of mail for Canada and Mexico may be accepted at post offices along the Canadian and Mexican borders and at post offices within the third parcel post zone from such border cities.

III. *Timing of embargo.* The mail acceptance restrictions and service plans contained in this issuance will go into effect automatically when a strike becomes effective unless:

A. Information is received from a reliable source that the strike has been settled or postponed.

B. Specific instructions setting a different deadline are received from USPS Headquarters.

IV. *Traffic conditions.* If possible, all RPO service not scheduled to reach outer terminal of run by strike deadline time will be annulled. Contact railroads and terminal companies relative to their ability to operate terminal mail handling services. Set up alternative services if there is doubt about their continued operation. Regional Directors are authorized to procure emergency highway and related terminal services as required. Proposal and contract forms for emergency terminal services are available from regional counsels. No contract for emergency terminal services may be executed without prior legal review and approval by regional counsel. Make plans to identify any mail vans or cars in transit and set procedures to recover them from railroad custody and get mail involved into post office channels. Keep trailer and van loading and unloading as current as possible. Additional segments of airlift of FCM may be used where necessary for duration of the strike. Exceptional cases or problems should be referred to Traffic Management Division, Operations Department, by telephone.

* * * * *

VII. *Second-, Third-, Fourth-Class Mails—Exceptional Actions*—A. *Second-Class.* Arrangements may be made by publishers of second-class and controlled circulation publications to ship at their own expense and risk copies of their publications for designated areas to other centrally located post offices for acceptance in the mails under the following conditions:

1. The publisher must continue to pay the postage for the full mailing at the post office where the publication officially has original or additional entry. There will be no change in the method of paying postage. The postage will be computed at the regular rates applicable from the official entry office. The mailer will not be granted a rate reduction for transporting the copies at his expense to other mailing points.

2. The publisher will advise the postmaster at the office of entry of the special mailing points to which he desires to transport the publications and the approximate number of sacks for each special mailing point.

Each postmaster involved in an emergency exceptional dispatch must be advised in advance of the plan so that he will accept the mail—this notice can

go out as prestrike planning, to be followed by actual shipping notices on trailer shipments only—not on small lots. When a trailer load or more is involved, the mailer must notify the destination postmaster of the specific exceptional dispatch.

3. The special mailing points selected by a publisher must be sectional center or large post offices which have facilities for handling and transshipping the mail.

4. The copies transported to special mailing points must be for delivery at post offices not beyond the third parcel post zone from the place of mailing, or such additional service areas as regional directors authorize.

5. When the post office of original or additional entry has a request from a publisher with the information specified herein, the arrangement should be approved by the postmaster and notification sent to the other post offices involved. Reports need not be submitted to Headquarters.

B. *Third- and Fourth-Class.* 1. If third- or fourth-class mail is shipped by the mailer at his own expense and risk for mailing at a post office other than where he is located it will be accepted provided the mail is addressed for delivery at a post office not beyond the third parcel post zone for the mailing office and the postage is paid by:

a. Postage Stamps Affixed. It is not required that they be purchased at the place of mailing. The use of precanceled stamps of the office where the mailer is located will be permissible. The requirement for overprinting (39 CFR 142.2(e)) is waived.

b. Permit Imprints of the office accepting the mail. If the mailer does not have a permit at that office the required application and fee must be submitted.

c. Meter Stamps showing postmark of the accepting office. Arrangements may be made under the procedures in § 143.3 (b) of Title 39, CFR, for setting a meter for use on mail to be deposited at an office other than the one where the mailer is located. Postmasters are requested to expedite handling of these requests.

d. Meter Stamps showing the postmark of an office, where the meter is licensed for use, other than the office of deposit provided:

(1) Authority must be obtained through channels specified in § 143.3(c) of Title 39, CFR, for deposit of the mail at the alternate office of mailing.

(2) The postage paid is based on the zone from the office shown in the meter stamp to the post office of destination. Additionally, this postage must be at least equal to that required from office of deposit to destination.

C. *First-Class.* If postage is paid at the first-class rate on articles of the second-, third-, or fourth-class they will be accepted for mailing without distance limitation.

D. *Emergency movements of plant loaded mail.* 1. Any regularly scheduled plant loaded mail movements by highway will continue to operate regardless of distance. The contents of specific destination loads must be checked to insure that they are compatible with the delivery pattern at the destination point.

2. Any mail dispatches which are not sent as regular destination loads will have to be moved at mailer's expense to an exceptional dispatch point under preceding instructions. A unitized shipment regularly sent as mail by rail piggyback may be moved at mailer's initiative and expense to the normal destination. The U.S. Postal Service will consider designating such mailer as an emergency contractor and, upon billing, reimburse him the normal postal transport cost, or the mailer's cost, whichever is lower, less 3 percent for administrative costs. The load must be adjusted to meet the receiving point's service if necessary.

* * * * *

IX. *Instructions Superseded.* This supersedes Regional Instructions 86–0–13, filing No. 317–1 Rev., dated July 18, 1967, "Standby Instructions for Guidance During Nationwide Railroad Strikes".

The foregoing represents a restatement of existing instructions on the subject (32 F.R. 11483) without substantial changes, except as to a relaxation of restrictions relating to the outer limits for which second-, third-, and fourth-class mail will be accepted for delivery by the Postal Service in the event of a strike. Therefore, rulemaking procedures and a delayed effective date respecting these instructions are unnecessary. Accordingly, this document is effective upon publication in the FEDERAL REGISTER (2–27–71).

(5 U.S.C. 301, 39 U.S.C. 501)

DAVID A. NELSON,
General Counsel.

[FR Doc.71–2743 Filed 2–27–71;8:50 am]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

OREGON STATE OFFICE STAFF, EASTERN DISTRICT MANAGERS, ET AL.

Delegation of Authority Regarding Procurement

State Director, Oregon Supplement to Bureau of Land Management Manual 1510.

Redelegation of authority. Pursuant to the delegation of authority contained in Bureau Manual 1510.03C, the purchasing authorities delegated to the Oregon State Director in BLM 1510.03B2d are redelegated as follows:

1. *Negotiated contracts.* For emergency fire suppression the following classes of employees may enter into negotiated contracts pursuant to the section 302(c)(2) of the Federal Property and Administrative Services Act, as amended, for necessary procurements in the case of emergency fire suppression work for the rental of equipment and aircraft and the procurement of supplies and materials (excluding capitalized equipment) required in such operations:

District Managers, Eastern Oregon Districts.
Chief, Branch of Resource Services, State Office.
Chief, Division of Management Services, State Office.
Chief, Branch of Administrative Management, State Office.

2. *Open market purchasing.* The following classes of employees 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. The same classes of employees may procure necessary supplies and services, except capitalized property, available from established sources of supply regardless of amount. The classes of employees who may make such procurements are:

District Managers.
Chief, Division of Management Services, State Office.
Chief, Branch of Administrative Management, State Office.
Chief, Division of Administration, District Offices.

3. *Further redelegation for open market purchases.*—a. *Up to $300.* Any field employee, when specifically authorized in writing by the head of his office, when away from headquarters, may make open market purchases not to exceed $300 using the SF–44 Purchase Order-Invoice-Voucher form.

b. *Up to $2,000.* Any field employee when specifically authorized in writing by the head of his office, may make open market purchases not to exceed $2,000 using the SF–44 Purchase Order-Invoice-Voucher form. This authority is limited to emergency fire suppression use only.

4. *Limitation of restrictions.* Contracts or other procurements entered into under these authorities must conform with applicable regulations and statutory requirements and are subject to the availability of appropriations. The authority so redelegated shall be exercised in accordance with the applicable limitations in the Federal Property and Administrative Services Act of 1949, as amended, and in accordance with applicable policies, procedures and controls prescribed in the General Services Administration.

MURL W. STORMS,
Acting State Director.

[FR Doc.71–2688 Filed 2–26–71;8:46 am]

Office of the Secretary

ELLERTON E. WALL

Statement of Changes in Financial Interests

In accordance with the requirements of section 710(b)(6) of the Defense Production Act of 1950, as amended, and Executive Order 10647 of November 28, 1955, the following changes have taken place in my financial interests during the past 6 months:

(1) None.
(2) Standard Oil Company of California, 3,130, Eastman Kodak, 200, Honeywell, Inc., 300.
(3) None.
(4) None.

This statement is made as of February 2, 1971.

Dated: February 2, 1971.

E. E. WALL.

[FR Doc.71-2690 Filed 2-26-71;8:46 am]

DEPARTMENT OF COMMERCE

Bureau of International Commerce

[File No. 23(69)-24]

LUCIEN DAHDAH

Order Terminating Indefinite Denial Order

In the matter of Dr. Lucien Dahdah, Post Office Box 4747, and Bechara Chartouni Building, Beirut, Lebanon, respondent.

On June 30, 1970 (35 F.R. 11064, July 9, 1970), an order was entered against the above respondent and Middle East Media, as a related party, denying them, for an indefinite period, all privileges of participating in transactions involving commodities or technical data exported or to be exported from the United States because the respondent failed to answer interrogatories duly served in accordance with § 388.15 of the Export Control Regulations without showing good cause for such failure.

The respondent has applied for termination of the indefinite denial order. It is found that there is good cause for such termination.

Accordingly, it is ordered, The above mentioned order of June 30, 1970, be and the same hereby is terminated.

Dated: February 23, 1971.

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

[FR Doc.71-2716 Filed 2-26-71;8:48 am]

National Oceanic and Atmospheric Administration

[Docket No. S-542]

MAURICE W. BARSTAD

Notice of Loan Application

FEBRUARY 22, 1971.

Maurice W. Barstad, Star Route, Box 30, Bonneville, OR 97008, has applied for a loan from the Fisheries Loan Fund to aid in financing the purchase of a new 30-foot length overall fiber glass vessel to engage in the fishery for salmon and shad in the Oregon area.

Notice is hereby given, pursuant to the provisions of 16 U.S.C. 742c, Fisheries Loan Fund Procedures (50 CFR Part 250, as revised), and Reorganization Plan No. 4 of 1970, that the above entitled application is being considered by the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce, Interior Building, Washington, D.C. 20235. Any person desiring to submit evidence that the contemplated operation of such vessel will cause economic hardship or injury to efficient vessel operators already operating in that fishery must submit such evidence in writing to the Director, National Marine Fisheries Service, within 30 days from the date of publication of this notice. If such evidence is received it will be evaluated along with such other evidence as may be available before making a determination that the contemplated operation of the vessel will or will not cause such economic hardship or injury.

JAMES F. MURDOCK,
Chief,
Division of Financial Assistance.

[FR Doc.71-2673 Filed 2-26-71;8:45 am]

[Docket No. C-338]

JOHN BRANT GREENWOOD

Notice of Loan Application

FEBRUARY 22, 1971.

John Brant Greenwood, 1901 Shoreline Drive, No. 211, Alameda, CA 94501, has applied for a loan from the Fisheries Loan Fund to aid in financing the purchase of a new 52-foot length overall steel vessel to engage in the fishery for salmon, albacore, and Dungeness crab.

Notice is hereby given, pursuant to the provisions of 16 U.S.C. 742c, Fisheries Loan Fund Procedures (50 CFR Part 250, as revised), and Reorganization Plan No. 4 of 1970, that the above entitled application is being considered by the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce, Interior Building, Washington, D.C. 20235. Any person desiring to submit evidence that the contemplated operation of such vessel will cause economic hardship or injury to efficient vessel operators already operating in that fishery must submit such evidence in writing to the Director, National Marine Fisheries Service, within 30 days from the date of publication of this notice. If such evidence is received it will be evaluated along with such other evidence as may be available before making a determination that the contemplated operation of the vessel will or will not cause such economic hardship or injury.

JAMES F. MURDOCK,
Chief,
Division of Financial Assistance.

[FR Doc.71-2674 Filed 2-26-71;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

E. I. DU PONT DE NEMOURS & CO., INC.

Notice of Filing of Petition for Food Additives

Pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786; 21 U.S.C. 348(b)(5)), notice is given that a petition (FAP 1B2630) has been filed by E. I. du Pont de Nemours & Co., Inc., Wilmington, Del. 19898, proposing that § 121.2566 *Antioxidants and/or stabilizers for polymers* (21 CFR 121.2566) be amended to provide for the safe use of cuprous iodide and cuprous bromide of heat stabilizing nylon 66 resins complying with § 121.2502.

Dated: February 19, 1971.

R. E. DUGGAN,
Acting Associate Commissioner for Compliance.

[FR Doc.71-2683 Filed 2-26-71;8:46 am]

FINE ORGANICS, INC.

Notice of Filing of Petition for Food Additives

Pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786; 21 U.S.C. 348(b)(5)), notice is given that a petition (FAP 1B2619) has been filed by Fine Organics, Inc., 205 Main Street, Lodi, NJ 07644, proposing the issuance of a food additive regulation (21 CFR Part 121) to provide for the safe use of alpha phenyl indole as a heat stabilizer for rigid polyvinyl chloride articles intended for food-contact use.

Dated: February 19, 1971.

R. E. DUGGAN,
Acting Associate Commissioner for Compliance.

[FR Doc.71-2684 Filed 2-26-71;8:46 am]

[DESI 6340]

CERTAIN ANTIHISTAMINE-SYMPATHOMIMETIC COMBINATIONS

Drugs for Human Use; Drug Efficacy Study Implementation

The Food and Drug Administration has evaluated reports received from the National Academy of Sciences-National Research Council, Drug Efficacy Study Group, on the following antihistamine-sympathomimetic combination drugs for oral use:

1. Histadyl and Ephedrine Hydrochloride Pulvules No. 1 and No. 2, containing methapyrilene hydrochloride and

ephedrine hydrochloride; marketed by Eli Lilly and Co., Post Office Box 618, Indianapolis, Indiana 46206 (NDA 6-340).

2. Kryl Tablets, containing isothipendyl hydrochloride with aspirin, phenacetin, phenylephrine hydrochloride, and ascorbic acid; marketed by Ayerst Laboratories, Division of American Home Products Corp., 685 Third Avenue, New York, New York 10017 (NDA 11-536).

These drugs are regarded as new drugs. The effectiveness classification and marketing status are described below.

A. *Effectiveness classification.* The Food and Drug Administration has considered the Academy's reports, as well as other available evidence, and concludes that:

1. These drugs are possibly effective for hay fever and allergic rhinitis, nasal and sinus congestion, and the symptomatic relief of colds.

2. These drugs lack substantial evidence of effectiveness for the treatment of coughs, bronchial spasm, and for long range prophylaxis in those patients who tend to have repeated colds.

B. *Marketing status.* 1. Within 60 days of the date of publication of this announcement in the FEDERAL REGISTER, the holder of any previously approved new-drug application for a drug labeled with indications described in paragraph A2 above is requested to submit a supplement to his application to provide for revised labeling, as needed, which deletes those indications for which such drug has been classified as lacking substantial evidence of effectiveness. Such supplement should be submitted under the provisions of § 130.9 (d) and (e) of the new-drug regulations (21 CFR 130.9 (d) and (e)), which permit certain changes to be put into effect at the earliest possible time, and the revised labeling should be put into use within the 60-day period. Failure to do so may result in a proposal to withdraw approval of the new-drug application.

2. If any such preparation is on the market without an approved new-drug application, its labeling should be revised if it includes those claims for which substantial evidence of effectiveness is lacking as described in paragraph A2 above. Failure to delete such indications and put the revised labeling into use within 60 days after the date of publication hereof in the FEDERAL REGISTER may cause the drug to be subject to regulatory proceedings.

3. Holders of previously approved new-drug applications for any drug described in this announcement and any person marketing such drug without approval will be allowed 6 months from the date of publication of this announcement in the FEDERAL REGISTER to obtain and submit in a supplemental or original new-drug application data to provide substantial evidence of effectiveness for those indications for which the drug is regarded as possibly effective. To be acceptable for consideration in support of the effectiveness of a drug, any such data must be previously unsubmitted, well-organized, and include data from adequate and well-controlled clinical investigations (identified for ready review) as described in §130.12(a)(5) of the regulations published in the FEDERAL REGISTER of May 8, 1970 (35 F.R. 7250). Carefully conducted and documented clinical studies obtained under uncontrolled or partially controlled situations are not acceptable as a sole basis for the approval of claims of effectiveness, but such studies may be considered on their merits for corroborative support of efficacy and evidence of safety.

4. At the end of the 6-month period, any such data will be evaluated to determine whether there is substantial evidence of the effectiveness of the drug for such uses. After that evaluation, the conclusions concerning the drugs will be published in the FEDERAL REGISTER. If no studies have been undertaken or if the studies do not provide substantial evidence of effectiveness, procedures will be initiated to withdraw approval of the new-drug applications for these drugs pursuant to the provisions of section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)). Withdrawal of approval of the applications will cause any such drug on the market to be a new drug for which an approval is not in effect.

The above-named holders of the new-drug applications for these drugs have been mailed a copy of the NAS-NRC report. Any interested person may obtain a copy of these reports by writing to the office named below.

Communications forwarded in response to this announcement should be identified with the reference number DESI 6340, directed to the attention of the following appropriate office, and addressed (unless otherwise specified) to the Food and Drug Administration, 5600 Fishers Lane, Rockville, Maryland 20852:

Supplements (identify with NDA number): Office of Scientific Evaluation (BD-100), Bureau of Drugs.

Original new-drug applications: Office of Scientific Evaluation (BD-100), Bureau of Drugs.

All other communications regarding this announcement: Drug Efficacy Study Implementation Project Office (BD-5), Bureau of Drugs.

Requests for NAS-NRC reports: Press Relations Office (CE-200), Food and Drug Administration, 200 C Street, SW., Washington, D.C. 20204.

This notice is issued pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 502, 505, 52 Stat. 1050-53, as amended; 21 U.S.C. 352, 355) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 2.120).

Dated: January 28, 1971.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.71-2685 Filed 2-26-71;8:45 am]

TYROTHRICIN-NITROFURAZONE ADHESIVE BANDAGE

Drugs for Human Use; Drug Efficacy Study Implementation

The Food and Drug Administration has evaluated a report received from the National Academy of Sciences-National Research Council, Drug Efficacy Study Group, on Curad Medicated Adhesive Bandage containing tyrothricin and nitrofurazone; marketed by The Kendall Co., 309 West Jackson Boulevard, Chicago, Illinois 60606.

The Food and Drug Administration concludes that tyrothricin with nitrofurazone is possibly effective for use as a medicated bandage.

Preparations containing tyrothricin and nitrofurazone are subject to the antibiotic certification procedures under section 507 of the Federal Food, Drug, and Cosmetic Act. To allow applicants to obtain and submit data to provide substantial evidence of effectiveness of the drug in those conditions, either stated or implied in its labeling, for which it has been evaluated as possibly effective, batches of preparations containing tyrothricin and nitrofurazone which bear labeling with this indication will continue to be accepted for certification for a period of 6 months after publication of this announcement in the FEDERAL REGISTER.

To be acceptable for consideration in support of the effectiveness of a drug, any such data must be previously unsubmitted, well-organized, and include data from adequate and well-controlled clinical investigations (identified for ready review (as described in § 130.12(a)(5) of the regulations published in the FEDERAL REGISTER of May 8, 1970 (35 F.R. 7250). Carefully conducted and documented clinical studies obtained under uncontrolled or partially controlled situations are not acceptable as a sole basis for the approval of claims of effectiveness, but such studies may be considered on their merits for corroborative support of efficacy and evidence of safety.

At the end of the 6-month period, any such data will be evaluated to determine whether there is substantial evidence of effectiveness for such uses. After that evaluation, the conclusions concerning the drug will be published in the FEDERAL REGISTER. If no studies have been undertaken, or if the studies do not provide substantial evidence of effectiveness, such drug will not be eligible for release or certification.

A copy of the Academy's report has been furnished to the firm referred to above. Any other interested person may obtain a copy by request to the appropriate office named below.

Communications forwarded in response to this announcement should be identified with the reference number DESI 6898, directed to the following appropriate office, and addressed to the Food and Drug Administration, 5600 Fishers Lane, Rockville, Maryland 20852:

Amendments (identify with NDA number if known): Division of Anti-Infective Drug Products (BD-140), Office of Scientific Evaluation, Bureau of Drugs.

Requests for NAS-NRC report: Press Relations Office (CE-200), Food and Drug Administration, 200 C Street SW., Washington, D.C. 20204.

All other communications regarding this announcement: Drug Efficacy Study Implementation Project Office (BD-5), Bureau of Drugs.

This notice is issued pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 502, 507, 52 Stat. 1050-51, as amended; 59 Stat. 463, as amended; 21 U.S.C. 352, 357) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 2.120).

Dated: January 28, 1971.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.71-2686 Filed 2-26-71;8:46 am]

[DESI 11340]

CERUMINOLYTIC AGENT; TRIETHANOLAMINE POLYPEPTIDE OLEATE CONDENSATE

Drugs for Human Use; Drug Efficacy Study Implementation

In the FEDERAL REGISTER of October 15, 1970 (35 F.R. 16200), the Food and Drug Administration published conclusions regarding the effectiveness classification for the drug Cerumenex Drops, a ceruminolytic agent containing triethanolamine polypeptide oleate condensate, marketed by The Purdue Frederick Co., 99-101 Saw Mill River Road, Yonkers, N.Y. 10701 (NDA 11-340). In that an effective indication was inadvertently omitted in the publication on the drug, the Commissioner of Food and Drugs finds it appropriate to amend the announcement of October 15, 1970, by adding the following indication to the published "Indications" section: "For removal of cerumen."

Accordingly, the "Indications" section for this drug, set forth in the October 15, 1970, announcement is amended to read as follows:

INDICATIONS

For the removal of cerumen. For removal of impacted cerumen prior to ear examination, otologic therapy, and/or audiometry.

The date of publication of this notice in the FEDERAL REGISTER amending the previous notice shall be used to compute all time periods allowed, thus superseding the time periods previously announced in the FEDERAL REGISTER of October 15, 1970.

This notice is issued pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 502, 505, 52 Stat. 1050-53, as amended; 21 U.S.C. 352, 355) and under authority delegated to the Commissioner of Food and Drugs (22 CFR 2.120).

Dated: February 1, 1971.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.71-2687 Filed 2-26-71;8:46 am]

Office of the Secretary

OFFICE OF CHILD DEVELOPMENT

Statement of Organization, Functions, and Delegations of Authority

The Statement of Organization, Functions, and Delegations of Authority for the Office of Child Development reads as follows:

SEC. 1U03.00 *Mission.* The mission of the Office of Child Development is to advise the Secretary and HEW agencies on Department plans and programs related to early childhood development; to operate the Head Start day care and other related child service programs; and to provide leadership, advice and services which affect the general well-being of children and youth as mandated by the Act of April 9, 1912.

SEC. 1U03.10 *Organization.* A. The Director, Office of Child Development reports directly to the Assistant Secretary for Administration. The Director is also the Chief of the Children's Bureau.

B. The Office of Child Development, under the supervision of the Director, consists of:

1. Office of the Director.
2. Bureau of Head Start and Child Service Programs.
3. Children's Bureau.

SEC. 1U03.20 *Functions*—A. *Office of the Director.* Provides executive leadership, policy direction, and management strategy for the Children's Bureau and the Bureau of Head Start and Child Service Programs and other components of the Office of Child Development. Serves as advisor to the Secretary and heads of DHEW agencies administering programs which have a significant impact on the development of children and youth. Directs the development and implementation of the community coordinated child care (4-C) program; directs day care planning and the development of child care delivery systems.

1. *Office of Executive Assistant.* Assists the Director by providing coordination and direction of certain program and staff activities. These activities include the day-to-day relationships with the news media, program inspections, legislative liason, and interagency coordination. Provides leadership to the Board of Advisors on Child Development, the Interdepartmental Committee on Children and Youth, the Federal Panel on Early Childhood, and the National Advisory Committee on Child Development.

2. *Office of Program Analysis.* Provides advice and technical assistance to the headquarters program personnel in the design and review of strategic and operational plans. Designs and gives staff assistance in implementing key program management processes; prepares special program reports and analysis for the Director.

3. *Office of Regional Support.* Exercises leadership and direction for the Director on all matters relating to the management and operations of regional OCD activities. Directs the development and installation of regional work planning; develops and maintains a system of periodic reporting by Assistant Regional Directors to the Director on progress, opportunities, and problems in field operations. Ensures reflection of points of view in the field on program plans, policies, procedures, and guidelines which affect the activities of the regional offices. Conducts analysis of all OCD field activities.

4. *Office of Administration.* Provides management planning and administrative program guidance to the Office of the Director and other components of OCD. Provides centralized support services, including personnel management, manpower utilization, procurement, budget development and execution, fiscal and administrative analysis activities. Develops budget justifications, policies, and procedures; acts as liaison for the Director on budget matters with the Office of Assistant Secretary, Comptroller. Serves as central contact point for policy direction, technical guidance, and regulations governing contract and grant actions. Develops reporting requirements for grant processing and review activities and approves all proposed grant actions.

B. *Bureau of Head Start and Child Service Programs*—1. *Office of the Associate Director.* Plans, directs, and coordinates the activities of the staff of the Bureau. Directs the development and implementation of strategic and operational planning and management processes within the Bureau. Provides guidance to the Office of the Director and the regional offices in the effective utilization of Head Start resources.

2. *Program Management Division.* Provides a focal point for project management, and develops a plan for operational guidance, program analysis, and policy coordination for Head Start programs. Develops annual Head Start improvement plan, including managerial policies, standards, and guides for Head Start grantees. Assists program specialists in assessing the impact of policies and procedures on regional staff and Head Start grantees.

3. *Program Development and Innovation Division.* Provides leadership in experimentation and innovation in Head Start. Participates in the development of

technical policy, standards, guides, concepts, and models for enhancing the capacity of local institutions to deliver quality child care services. Directs the development of the Parent and Child Centers program and assists with the development of technical program evaluation standards; assesses technical evaluation findings for program impact and implications. Assists the Research and Evaluation Division in developing programs, reviewing and commenting on proposals, assessing results, and incorporating results in guidance materials for large-scale demonstrations and program operations.

4. *Indian and Migrant Division.* Reviews and recommends approval of grant applications for Head Start programs for Indians living on reservations and for migrants. Develops and recommends policies for and provides staff support to programs for Indians and migrants. Provides or arranges for technical assistance for Indian and migrant grantees and serves as a focal point within OCD for mobilizing resources in addition to Head Start for Indian and migrant programs. Provides assistance to the National Center for Child Advocacy in promoting the establishment of programs for Indians and migrants as appropriate.

5. *Career Development and Technical Assistance Division.* Develops, in conjunction with the Regional offices and the Head Start grantees, a strategy for serving the technical assistance and training needs of local Head Start programs. Provides guidance for the career development efforts of local grantees. Plans and conducts in-service training for OCD staff and provides leadership in developing a Department-wide child care training strategy.

C. *Children's Bureau*—1. *Office of the Associate Chief.* Plans, coordinates, and directs the activities of the Children's Bureau; reviews and analyzes the Bureau's performance. Establishes program goals and objectives for the Bureau and serves as a major advisor to the Office of Director on matters pertaining to conditions which affect the general well-being of children.

2. *National Center for Child Advocacy.* Provides leadership in the planning, development, and coordination of programs aimed at identifying problems and promoting improvements in conditions adversely affecting the growth and development of children and youth. Serves as a clearinghouse on information related to research and demonstrations and service programs in the area of child development; identifies and recommends actions to meet special needs of children at risk, such as minorities, emotionally and physically handicapped children; develops standards and policy guidelines for programs for children at risk; analyzes and responds to inquiries for information concerning child development.

3. *Research and Evaluation Division.* Administers section 426 and other OCD research and demonstration funds and assists with the development of a Department-wide early childhood research strategy. Administers the Head Start evaluation funds and coordinates the development of an OCD-wide evaluation strategy. Provides leadership to the Federal Interagency Panel for Early Childhood Development Research; collects, analyzes, and interprets research reports on child life studies and identifies promising models for service programs. Actively promotes the utilization of research funds.

4. *Public Education Division.* Provides leadership in the development and distribution of all OCD publications. Provides editorial and graphic support to program components and serves as a central contact point on matters related to the communications media, including the preparation of exhibits, films and appropriate public education materials.

Dated: February 11, 1971.

ELLIOT L. RICHARDSON,
Secretary.

[FR Doc.71-2719 Filed 2-26-71;8:48 am]

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. MC-14; Notice No. 71-2]

FIRE EXTINGUISHERS

Denial of Petitions for Rule Making

The American Trucking Associations, Inc., and the National Tank Truck Carriers, Inc., have filed petitions for reconsideration of the amendment to the Motor Carrier Safety Regulations relating to fire extinguishers that was published in the FEDERAL REGISTER on August 15, 1970 (35 F.R. 13018). The petitions were filed on November 5, 1970, and December 1, 1970, respectively. Because they were filed more than 30 days after publication of the rule to which they relate, the petitions have been treated as petitions for rulemaking in accordance with § 389.35 of the procedural regulations (49 CFR 389.35).

The Director of the Bureau of Motor Carrier Safety has concluded that neither petition contains matter that justifies rulemaking looking toward a change in the recent amendment. Accordingly, both petitions are denied.

Under the amendment, power units not used to transport hazardous materials must be equipped with either a 5 B:C extinguisher or two 4 B:C extinguishers by January 1, 1973. American Trucking Associations' petition seeks deletion of the January 1, 1973 deadline in order to permit the change from the 4 B:C units commonly carried today to the new 5 B:C units to be accomplished asks that the requirement for 10 B:C extinguishers on power units used to transport hazardous materials be changed so that only a 5 B:C unit will be required. The petition of the National Tank Truck Carriers also requests decreasing, from 10 B:C to 5 B:C, the capability of mandatory extinguishers on power units that transport hazardous materials. Alternatively, the NTTC asks for permission to substitute two 5 B:C extinguishers for a single 10 B:C one wherever the latter is required.

The evidence presented by the petitioners in support of their arguments is essentially identical to the material they presented to the Bureau during the rulemaking proceeding that led to issuance of the amended rule on fire extinguishers. That proceeding stemmed from a notice that was issued on Setember 17, 1969 (34 F.R. 14853). Although some 78 letters in support of the present petitions have been received from motor carriers, only 20 comments were filed in response to the invitation contained in the September 17, 1969, notice. Of the five motor carriers who filed comments at that time, two favored the proposal to require larger fire extinguishers on power units, two expressed opposition to the proposal, and one failed to comment on that aspect of the proposed rule.

The American Trucking Associations' petition argues that the Bureau should follow the standards of the National Fire Protection Association, which recommend that 5 B:C extinguishers be installed in trucks, but also recommend that 4 B:C units be replaced by normal attrition. When the National Fire Protection Association commented on the September 17, 1970, notice, however, it recommended that the Bureau require commercial motor vehicles to be equipped with 10 B:C and 20 B:C fire extinguishers. The NFPA has not withdrawn or modified that recommendation.

The American Trucking Associations claims that the changeover from 4 B:C to 5 B:C extinguishers in power units not transporting hazardous materials will cost the motor carrier industry more than $4.4 million. Aside from the broad generalization, the petition contains no evidence to support the thesis that the amendment imposes a cost penalty of that magnitude. Three of the nation's largest carriers, responding to the Bureau's informal inquiries, have indicated that large carriers normally replace approximately one-third of the small (4 B:C and 5 B:C) extinguishers in use each year. This high replacement rate is a function of thefts, losses, and the use of fire extinguishers. Moreover, carriers have been replacing older 4 B:C extinquishers with 5 B:C units for a substantial period of time, owing to the fact that the marketing of the smaller units ceased long before the August 1970 amendment to the fire extinguisher rule was issued. These data would appear to indicate that, even if the amendment had not been issued, the vast majority of the 4 B:C extinguishers would have been replaced with 5 B:C units by January 1, 1973. Furthermore, the amendment provides for installation of two 4 B:C extinguishers in lieu of a single 5 B:C extinguisher. This "doubling up" provision would seem to avoid obsoleting the few 4 B:C units that will remain in use as of that date. In this connection, it should be noted that the Director's

decision to permit "doubling up" was the result of efforts to mitigate the cost impact of the new rule.

As he indicated in the preamble to the recent amendment, the Director has concluded that installation of larger extinguishers on power units that transport hazardous materials is imperative. The bases for that conclusion are fully explained in the preamble and need not be restated here. The coordinate decision not to permit the use of two 5 B : C extinguishers in lieu of a single 10 B : C unit was not arrived at lightly. Comments submitted to the Bureau indicate that two 5 B : C extinguishers provide neither the convenience nor the actual firefighting capacity of one 10 B : C extinguisher. Furthermore, a number of carriers of hazardous materials, particularly those who transport petroleum products, equip their vehicles with extinguishers substantially larger than those required by the regulations. These carriers do so as a matter of prudent management policy.

The Director cannot agree with the contention that installation of 10 B : C extinguishers in power units transporting hazardous materials by July 1, 1971 will impose an undue cost burden. One carrier that submitted cost data to the Bureau indicated that it can purchase a 10 B : C unit for only $2.15 more than the cost of the 5 B : C unit it presently uses. Information received from another carrier indicates that, by the use of larger extinguishers, thefts of fire extinguishers can be reduced by at least 50 percent. In sum, the evidence simply does not support the argument that the cost of improved firefighting capability will be unreasonably burdensome.

It has been said that, because many carriers transport both hazardous and nonhazardous materials using the same power units, the effect of the new rule is to require installation of 10 B:C extinguishers in all power units. That is not the case, however, since nothing in the rule precludes carriers from issuing an extinguisher of the proper size to a driver when he is dispatched. Such a system might well reduce thefts by fixing responsibility for custody of an extinguisher upon the driver to whom it was issued. It would also allow a carrier's fleet to be equipped with extinguishers having the required capacity. Furthermore, there is some evidence, as the Director has noted, that overall costs might well be reduced by equipping every power unit with a larger, 10 B:C extinguisher.

The National Tank Truck Carriers Conference petition notes that the rate of commercial vehicle accidents has decreased in recent years, and that the rate of accidents involving fire has also decreased. As a recently published study of the Bureau of Motor Carrier Safety shows, however, the number of accidents involving fire remains substantial.[1] Hence, the Director cannot accept the position that fires are no longer a problem worth particular attention. He has concluded that the proper use of adequate hand portable fire extinguishers is a vital first line of defense against potential catastrophe.

The Director has, therefore, concluded that the petitions of American Trucking Associations, Inc., and the National Tank Truck Carriers, Inc., do not present sufficient information, arguments, or data to justify rulemaking. Accordingly, those petitions are denied.

This action is taken under the authority of section 204 of the Interstate Commerce Act, as amended (49 U.S.C. 304), section 6 of the Department of Transportation Act (49 U.S.C. 1655), and the delegations of authority by the Secretary of Transportation and the Federal Highway Administrator at 49 CFR 1.48 and 49 CFR 389.4 (35 F.R. 9209), respectively.

Issued on February 15, 1971.

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

[FR Doc.71-2696 Filed 2-26-71;8:47 am]

[1] 1969 Analysis of Accident Reports Involving Fire.

Hazardous Materials Regulations Board

[Docket No. HM-74]

DOT SPECIFICATIONS 3A, 3AA, AND 39 CYLINDERS MANUFACTURED OUTSIDE UNITED STATES

Notice of Continuation of Public Hearing

On January 19, 1971, the Hazardous Materials Regulations Board published Docket No. HM-74, a notice of Public Hearing (36 F.R. 838), on the subject of DOT Specifications 3A, 3AA, and 39 compressed gas cylinders manufactured outside the United States. The hearing convened, as announced, on February 23, 1971.

In response to several petitions for extension of time to prepare statements, the Board has continued the public hearing. The hearing will reconvene on March 16, 1971, at 10 a.m., in Room 10234, Nassif Building, 400 Seventh Street SW., Washington, DC.

Interested persons are invited to attend the hearing and present oral or written statements on the matter set for hearing. These statements will be a matter of public record. Any persons who wish to make an oral statement at the hearing should notify the Secretary of the Hazardous Materials Regulations Board by March 10, 1971, stating the approximate amount of time required for his initial statement. The Board will also receive written comments until March 30, 1971.

All communications concerning the hearing should be addressed to the Secretary, Hazardous Materials Regulations Board, Department of Transportation, 400 Sixth Street SW., Washington, DC 20590.

This notice is issued on behalf of the Hazardous Materials Regulations Board under the authority of sections 831-835 of title 18, United States Code, section 9 of the Department of Transportation Act (49 U.S.C. 1657).

Issued in Washington, D.C., on February 23, 1971.

ALAN I. ROBERTS,
Secretary.

[FR Doc.71-2697 Filed 2-26-71;8:47 am]

ATOMIC ENERGY COMMISSION

[Dockets Nos. 50-382, 50-383]

LOUISIANA POWER & LIGHT CO.

Notice of Receipt of Application for Construction Permits and Facility Licenses: Time for Submission of Views on Antitrust Matter

Louisiana Power & Light Co., 142 Delaronde Street, New Orleans, LA 70114, pursuant to section 103 of the Atomic Energy Act of 1954, as amended, has filed an application dated December 28, 1970, for two construction permits and facility licenses to authorize construction and operation of two pressurized water reactors on the applicant's approximately 100-acre part of the 3,600-acre site on the west bank of the Mississippi River near the town of Taft, La. The site is located in St. Charles Parish, about 20 miles west of New Orleans, La.

The proposed reactors are designated by the applicant as the Waterford Steam Electric Station, Units 3 and 4. Unit No. 3 is designed for a maximum expected output of 3,580 megawatts (thermal) with a net output of about 1,165 megawatts (electrical). The final decision to construct Unit No. 4 has not been made with any supplier or engineering consultant.

Any person who wishes to have his views on the antitrust aspects of the application presented to the Attorney General for consideration shall submit such views to the Commission within sixty (60) days after February 13, 1971.

A copy of the application is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the office of the President of St. Charles Parish Police Jury, Hahnsville, La.

Dated at Bethesda, Md., this 10th day of February 1971.

For the Atomic Energy Commission.

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

[FR Doc.71-2084 Filed 2-12-71;8:50 am]

[Dockets Nos. 50-348, 50-364]

ALABAMA POWER CO.

Notice of Receipt of Application for Construction Permits and Facility Licenses: Time for Submission of Views on Antitrust Matter

Alabama Power Co., 600 North 18th Street, Birmingham, AL 35203, pursuant to the Atomic Energy Act of 1954, as amended, filed an application dated October 10, 1969, and an application Amendment No. 1 dated June 26, 1970 for

authorization to construct first one then a second, pressurized water nuclear reactor, designated as the Joseph M. Farley Nuclear Plant, Unit No. 1 and No. 2, respectively, on the applicant's site in Houston County, Ala.

The site is located on the west side of the Chattahoochee River located about 16½ miles east of Dothan, Ala.

The proposed nuclear plant will be comprised of two pressurized water nuclear reactors, which are each to have a net electrical capacity of about 829 megawatts electrical.

Any person who wishes to have his views on the antitrust aspects of the application presented to the Attorney General for consideration shall submit such views to the Commission within sixty (60) days after February 20, 1971.

A copy of the application and Amendment No. 1 is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the office of the Honorable A. A. Middleton, Chairman, Houston County Commission, City of Dothan, Houston County, Ala.

Dated at Bethesda, Md., this 11th day of February 1971.

For the Atomic Energy Commission.

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

[FR Doc.71-2262 Filed 2-19-71;8:45 am]

[Dockets Nos. 50-361, 50-362]

SOUTHERN CALIFORNIA EDISON CO. AND SAN DIEGO GAS AND ELECTRIC CO.

Notice of Receipt of Application for Construction Permit and Facility License; Time for Submission of Views on Antitrust Matter

The Southern California Edison Co., 601 West Fifth Street, Los Angeles, CA 90053, and the San Diego Gas and Electric Co., 101 Ash Street, San Diego, CA 92112, pursuant to the Atomic Energy Act of 1954, as amended, have filed an application, dated May 28, 1970, for authorization to construct two pressurized water nuclear reactors, designated as the San Onofre Nuclear Generating Station Units 2 and 3, on the applicants' site located at Camp Pendleton, San Diego County, Calif.

The site is located on the west coast of Southern California, approximately 62 miles southeast of Los Angeles, approximately 51 miles northwest of San Diego, and is within the U.S. Marine Corps Base, Camp Pendleton.

Southern California Edison Co. (SCE) and San Diego Gas and Electric Co. (San Diego) are joint applicants for the construction permit for the San Onofre Nuclear Generating Station Units 2 and 3. The ownership for the two units will be shared in the proportion of 80 percent by SCE and 20 percent by San Diego. SCE, as project manager for the utilities, will have responsibility for the technical adequacy of the design and construction of the San Onofre plant.

Any person who wishes to have his views on the antitrust aspects of the application presented to the Attorney General for consideration shall submit such views to the Commission within sixty (60) days after February 20, 1971.

The proposed nuclear power plants which will be located adjacent to San Onofre Nuclear Generating Station, Unit 1, will consist of two pressurized water nuclear reactors, each of which is designed for initial operation at approximately 3,390 thermal megawatts with a net electrical output of approximately 1,140 megawatts.

A copy of the application is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC.

Dated at Bethesda, Md., this 12th day of February 1971.

For the Atomic Energy Commission.

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

[FR Doc.71-2263 Filed 2-19-71;8:45 am]

[Docket No. 50-322]

LONG ISLAND LIGHTING CO.

Schedule and Procedures for Hearing

In the matter of Long Island Lighting Co. (Shoreham Nuclear Power Station).

The Hearing in the captioned matter will be continued on Monday, March 15, 1971, at 10 a.m., local time, at the Holiday Inn, 4089 Nesconset-Port Jefferson Highway, Centereach, Long Island, NY 11720.

Intervenor, the Center for Responsive Law, will furnish in written form the testimony which it proposes for its case in chief, together with summaries of professional qualifications of its proposed witnesses, to the Board and the parties by Friday, March 26, 1971.

Each party will furnish the Board and the other parties their proposed testimony in written form and summaries of professional qualifications of their proposed witnesses for the Rebuttal portion of this proceeding by Friday, April 2, 1971.

Dated at Washington, D.C., this 23d day of February 1971.

ATOMIC SAFETY AND LICENSING BOARD,
JAMES R. YORE,
Chairman.

[FR Doc.71-2672 Filed 2-26-71;8:45 am]

[Docket No. 50-271]

VERMONT YANKEE NUCLEAR POWER CORP.

Notice of Hearing on Application for Operating License

In the matter of Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Station); Docket No. 50-271.

Pursuant to the Atomic Energy Act of 1954, as amended (the Act), and the regulations in Title 10, Code of Federal Regulations, Part 50, "Licensing of Production and Utilization Facilities," and Part 2, "Rules of Practice," notice is hereby given that a hearing will be held at a time and place to be set in the future by the atomic safety and licensing board designated herein, in the vicinity of Vernon, Vt., to consider the application filed under section 104b of the Act by the Vermont Yankee Nuclear Power Corp. (applicant) for an operating license which would authorize the operation of a boiling water reactor (facility), known as the Vermont Yankee Nuclear Station, at steady-state power levels up to 1,593 megawatts (thermal) at the applicant's site in Vernon, Vt. The Atomic Energy Commission (Commission) has determined that this public hearing should be held in view of the substantial public interest.

The hearing will be conducted by an atomic safety and licensing board (board) designated by the Commission, consisting of Dr. David B. Hall, Los Alamos, N. Mex.; Dr. Ira F. Zartman, Annapolis, Md.; and Samuel W. Jensch, Esq., Washington, D.C., Chairman. Dr. Abel Wolman, Baltimore, Md., has been designated as a technically qualified alternate, and Nathaniel H. Goodrich, Esq., Chevy Chase, Md., has been designated as an alternate qualified in the conduct of administrative proceedings.

Construction of the Vermont Yankee Nuclear Station was authorized by Provisional Contruction Permit CPPR-36 issued by the Commission on December 11, 1967, following a public hearing.

A prehearing conference will be held by the board in the Vermont National Guard Armory, 207 Main Street, Brattleboro, VT, on Tuesday, April 13, 1971, at 10 a.m., local time, to consider pertinent matters in accordance with the Commission's rules of practice, 10 CFR Part 2, including section II of Appendix A. The date and place of the hearing will be set at or after the prehearing conference and notice thereof will be published in the FEDERAL REGISTER.

The issues to be considered at the hearing will be the following:

1. Whether construction of the facility has been substantially completed in conformity with the construction permit and the application as amended, the provisions of the Act, and the rules and regulations of the Commission;

2. Whether the facility will operate in conformity with the application as amended, the provisions of the Act, and the rules and regulations of the Commission;

3. Whether there is reasonable assurance (i) that the activities authorized by the operating license can be conducted without endangering the health and safety of the public, and (ii) that such activities will be conducted in compliance with the regulations of the Commission;

4. Whether the applicant is technically and financially qualified to engage in the

activities authorized by the operating license in accordance with the regulations of the Commission;

5. Whether the applicable provisions of 10 CFR Part 140, "Financial Protection Requirements and Indemnity Agreements," of the Commission's regulations have been satisfied; and

6. Whether the issuance of the license will be inimical to the common defense and security or to the health and safety of the public.

In addition, any party may, in accordance with paragraph 11 of Appendix D of 10 CFR Part 50, raise as an issue in the proceeding whether the issuance of the license would be likely to result in a significant, adverse effect on the environment. If such a result were indicated, in accordance with the declaration of national policy expressed in the National Environmental Policy Act of 1969, the atomic safety and licensing board will give consideration to the need for the imposition of requirements for the preservation of environmental value consistent with other essential considerations of national policy, including the need to meet on a timely basis requirements for electrical power in the affected region. These issues do not include (i) radiological effects or (ii) matters of water quality covered by section 21(b) of the Federal Water Pollution Control Act. If any party raises any such issue, the board will make findings of fact on, and resolve, the matters in controversy among the parties with regard to those issue. With respect to those aspects of environmental quality for which environmental quality standards and requirements have been established by authorized Federal, State, and regional agencies, proof that the applicant is equipped to observe and agrees to observe such standards and requirements will be considered a satisfactory showing that there will not be a significant, adverse effect on the environment. Certification by the appropriate agency that there is reasonable assurance that the applicant for the permit or license will observe such standards and requirements will be considered dispositive for this purpose.

While the matter of the full power license is pending before the atomic safety and licensing board, the board may, upon motion in writing, consider and act upon such request as the applicant may make for an operating license authorizing fuel loading and low power testing (operation at not more than one percent of full power for the testing of the facility). Any request for authorization for fuel loading and low power testing will be expeditiously considered and acted upon when it is made. Any such action by the atomic safety and licensing board shall be taken with due regard to the rights of all parties to the proceeding including the rights of any party to be heard to the extent that his contentions are relevant to the activity to be authorized. Prior to taking any such action, the atomic safety and licensing board shall, with respect to any contested activity to be authorized, make appropriate findings in the form of an initial decision on the issues specified in this notice of hearing. If no party opposes the motion, the board will issue an order pursuant to 10 CFR 2.730(e) of the Commission's rules of practice, authorizing the Director of Regulation to make appropriate findings on the matters specified in this notice of hearing and to issue a license for the requested operations.

As they become available, the application, the proposed operating license, the applicant's summary of the application, the report of the Commission's Advisory Committee on Reactor Standards (ACRS), the Safety Evaluation by the Commission's regulatory staff, the applicant's Environmental Report, the AEC's Detailed Statement on Environmental Considerations, and the transcripts of the prehearing conference and of the hearing, will be placed in the Commission's Public Document Room, 1717 H Street NW., Washington, DC, where they will be available for inspection by members of the public. Copies of those documents will also be made available at the Brooks Memorial Library, 224 Main Street, Brattleboro, VT, for inspection by members of the public between the hours of 9 a.m. and 9 p.m. Monday through Friday and 9 a.m. through 6 p.m. on Saturday. Copies of the proposed operating license, the ACRS report, the regulatory staff's Safety Evaluation and the AEC's Detailed Statement on Environmental Considerations may be obtained, when available, by request to the Director of the Division of Reactor Licensing, United States Atomic Energy Commission, Washington, D.C. 20545.

Any person who wishes to make an oral or written statement in this proceeding setting forth his position on the issues specified, but who does not wish to file a petition for leave to intervene, may request permission to make a limited appearance pursuant to the provisions of 10 CFR 2.715 of the Commission's rules of practice. Limited appearances will be permitted at the time of the hearing in the discretion of the board, within such limits and on such conditions as may be fixed by the board. Persons desiring to make a limited appearance are requested to inform the Secretary of the Commission, U.S. Atomic Energy Commission, Washington, D.C. 20545, by March 31, 1971.

Any person whose interest may be affected by the proceeding who does not wish to make a limited appearance and who wishes to participate as a party in the proceeding must file a petition for leave to intervene.

Petitions for leave to intervene, pursuant to the provisions of 10 CFR 2.714 of the Commission's rules of practice, must be received in the Office of the Secretary of the Commission, U.S. Atomic Energy Commission, Washington, D.C. 20545, Attention: Chief, Public Proceedings Branch, or the Commission's Public Document Room, 1717 H Street NW., Washington, DC, not later than March 31, 1971. The petition shall set forth the interest of the petitioner in the proceeding, how that interest may be affected by Commission action, and the contentions of the petitioner in reasonably specific detail. A petition which sets forth contentions relating only to matters outside the Commission's jurisdiction will be denied. A petition for leave to intervene which is not timely filed will be denied unless, in accordance with 10 CFR 2.714, the petitioner shows good cause for failure to file it on time.

A person permitted to intervene becomes a party to the proceeding, and has all the rights of the applicant and the regulatory staff to participate fully in the conduct of the hearing. For example, he may examine and cross-examine witnesses. A person permitted to make a limited appearance does not become a party, but may state his position and raise questions which he would like to have answered to the extent that the questions are within the scope of the hearing as specified in the issues set out above. A member of the public does not have the right to participate unless he has been granted the right to intervene as a party or the right of limited appearance.

An answer to this notice, pursuant to the provisions of 10 CFR 2.705 of the Commission's rules of practice, must be filed by the applicant on or before March 19, 1971.

Papers required to be filed in this proceeding may be filed by mail or telegram addressed to the Secretary of the Commission, U.S. Atomic Energy Commission, Washington, D.C. 20545, Attention: Chief, Public Proceedings Branch, or may be filed by delivery to the Commission's Public Document Room, 1717 H Street NW., Washington, D.C.

Pending further order of the board, parties are required to file, pursuant to the provisions of 10 CFR 2.708 of the Commission's rules of practice, an original and 20 conformed copies of each such paper with the Commission.

With respect to this proceeding, the Commission has delegated to the Atomic Safety and Licensing Appeal Board the authority and the review function which would otherwise be exercised and performed by the Commission. The Commission has established the Appeal Board pursuant to 10 CFR 2.785 of the Commission's rules of practice, and has made the delegation pursuant to paragraph (a)(1) of this section. The Appeal Board is composed of the Chairman and Vice Chairman of the Atomic Safety and Licensing Board Panel and a third member who is technically qualified and designated by the Commission. The Commission has designated Dr. Lawrence Quarles, Dean of the School of Engineering and Applied Science, The University of Virginia, as this third member.

Dated at Washington, D.C., this 24th day of February 1971.

UNITED STATES ATOMIC ENERGY COMMISSION,
F. T. HOBBS,
Acting Secretary of the Commission.

[FR Doc.71-2737 Filed 2-26-71;8:49 am]

FEDERAL COMMUNICATIONS COMMISSION

[Report 532]

COMMON CARRIER SERVICES INFORMATION [1]

Domestic Public Radio Services Applications Accepted for Filing [2]

FEBRUARY 22, 1971.

Pursuant to §§ 1.227(b)(3) and 21.30 (b) of the Commission's rules, an application, in order to be considered with any domestic public radio services application appearing on the list below, must be substantially complete and tendered for filing by whichever date is earlier: (a) The close of business 1 business day preceding the day on which the Commission takes action on the previously filed application; or (b) within 60 days after the date of the public notice listing the first prior filed application (with which subsequent applications are in conflict) as having been accepted for filing. An application which is subsequently amended by a major change will be considered to be a newly filed application. It is to be noted that the cutoff dates are set forth in the alternative—applications will be entitled to consideration with those listed below if filed by the end of the 60-day period, only if the Commission has not acted upon the application by that time pursuant to the first alternative earlier date. The mutual exclusivity rights of a new application are governed by the earliest action with respect to any one of the earlier filed conflicting applications.

The attention of any party in interest desiring to file pleadings pursuant to section 309 of the Communications Act of 1934, as amended, concerning any domestic public radio services application accepted for filing, is directed to § 21.27 of the Commission's rules for provisions governing the time for filing and other requirements relating to such pleadings.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Secretary.

[2] The above alternative cutoff rules apply to those applications listed below as having been accepted in Domestic Public Land Mobile Radio, Rural Radio, Point-to-Point Microwave Radio, and Local Television Transmission Services (Part 21 of the rules).

[1] All applications listed in the appendix are subject to further consideration and review and may be returned and/or dismissed if not found to be in accordance with the Commission's rules, regulations, and other requirements.

APPLICATIONS ACCEPTED FOR FILING

DOMESTIC PUBLIC LAND MOBILE RADIO SERVICE

4299-C2-P-71—Charles L. Escue (New), C.P. for a new 1-way station to be located near Warton Lookout Tower, on 81st Street, Birmingham, AL, to operate on 158.70 MHz.

4303-C2-P-71—Two Way Radio of Carolina, Inc. (KIY754), C.P. to replace the repeater transmitter operating on 459.05 MHz, at location No. 1: Northeast of Highway No. 211, 2.7 miles southeast of Aberdeen, N.C.

4304-C2-P-71—Vegas Instant Page (New), C.P. for a new 1-way station to be located 225 East Bridger Avenue, Las Vegas, NE, to operate on frequency 158.70 MHz.

4305-C2-P-71—South Jersey Communications Co. (New), C.P. for a new 2-way station to be located at 1.2 miles southwest of Roadstown, adjacent Chestnut Macanippuck Run, Stone Creek Township, N.J., to operate on frequency 454.025 MHz.

4306-C2-P-71—General Telephone Co. of California (KMA609), C.P. to change the antenna system operating on frequencies 152.66, 152.75, and 454.65 MHz at location No. 1: 28220 Highridge Road, Rolling Hills, CA.

4307-C2-AL-71—Connecticut Mobile Telephone Co. Consent to assignment of license from Connecticut Mobile Telephone Co., Assignor, to: Phone Depots, Inc., doing business as Mobilfone Radio System, Assignee, Station KCA748, Stamford, Conn.

4308-C2-P-71—Lebanon Mobilefone (New), C.P. for a new 2-way station to be located at 133 South Ninth Street, Lebanon, PA, to operate on 152.09 MHz.

4309-C2-P-71—Gerard T. Uht (KGH857), C.P. for additional facilities to operate on frequency 152.060 MHz located at WSEE (TV) Tower, 5 miles south of Erie, PA.

4314-C2-P-71—Relay Communications Corp. (KFL579), C.P. to change the antenna system operating on 152.06 MHz, at location No. 2: On Route 58, Riverhead, N.Y.

4315-C2-P(2)71—General Telephone Co. of the Southwest (KFL875), C.P. for additional facilities to operate on frequencies 454.575 and 454.650 MHz at Shady Oaks Drive, Denton, Tex.

4317-C2-TC-71—Tovey Services, Inc., Consent to transfer of control from Alfred W. Tovey and Vera Kent Tovey, Transferors to: Peter Wonson and Gerda Wonson, Transferees, Station KCC482, Pembroke, N.H.

4362-C2-P-71—Radiofone Corp. of New Jersey (KGI778), C.P. for additional facilities to operate on 454.275 MHz at a new site described as location No. 2: East Cathbert and McArthur Boulevard, Camden, N.J.

4376-C2-P-(3)71—Northwestern Bell Telephone Co. (New), C.P. for a new 2-way station to operate on frequencies 152.63 and 152.75 MHz base at location No. 1: 1.5 miles north of Mandan, N. Dak., and frequencies 157.89 and 158.01 MHz for test facilities at location No. 2: 225 Fifth Street North, Bismarck, N.D.

RURAL RADIO SERVICE

4378-C1-P-71—Texas Telephone & Telegraph Co. (New), C.P. for a new rural subscriber station to be located at Lowe's Creek Marina, Route 2, approximately 7.5 miles northeast of Hemphill, Tex., to operate on 158.07 MHz communicating with Station KLB767, Hemphill, Tex.

4379-C1-P-71—Texas Telephone & Telegraph Co. (New), Same as above except, to be located at Carmichael's Marina, Bayou Route, approximately 14 miles southeast of Hemphill, Tex.

POINT-TO-POINT MICROWAVE RADIO SERVICE (TELEPHONE CARRIER)

4297-C1-P-71—Rochester Telephone Corp. (New), C.P. for a new station to be located at 95 North Fitzhugh Street, Rochester, NY. Frequency: 10,795 MHz toward Henrietta, N.Y.

4310-C1-P-71—The Norfolk & Carolina Telephone & Telegraph Co. (New), C.P. for a new station to be located 10 miles west of Hertford, N.C. Frequencies: 5967.4 and 6086.0 MHz toward Hertford, N.C.

4311-C1-P-71—The Norfolk & Carolina Telephone & Telegraph Co. (KSV96), C.P. to add 6219.5 and 6338.1 MHz toward Welch, N.C. a new point of communication. Station location: West Grubb Street, Hertford, NC.

4312-C1-P-71—The Norfolk & Carolina Telephone & Telegraph Co. (KJG96), C.P. to change power, and antenna system and replace transmitter. Station location: 103 South Road Street, Elizabeth City, N.C.

4313-C1-P-71—The Norfolk & Carolina Telephone & Telegraph Co. (KJJ67), C.P. to change power and antenna system and replace transmitters. Station location: Battlefield Boulevard, Hickory, City of Chesapeake, VA.

4381-C1-P-71—Pacific Northwest Bell Telephone Co. (New), C.P. for a new station to be located at Main Street, Bly, OR. Frequencies: 11,425 and 11,665 MHz toward Medicine Mountain, Ore., via passive reflector.

4382-C1-MP-71—Pacific Northwest Bell Telephone Co. (KYS79), Modification of C.P. to add frequencies 10,775 and 11,015 MHz toward Bly, Ore. Station location: Medicine Mountain, 3 miles southeast of Beatty, Ore.

4383-C1-MP-71—Pacific Northwest Bell Telephone Co. (KPB50), Modification of C.P. to add frequencies 11,285 and 11,525 MHz toward Klamath Falls, Oreg. Station location: Haymaker, 4.2 miles southwest of Keno, Oreg.

4384-C1-P-71—Pacific Northwest Bell Telephone Co. (KTF99), C.P. to add frequencies 10,835 and 11,075 MHz toward Haymaker, Oreg., via passive reflector Station location: 120 North Eighth Street, Klamath Falls, OR.

4385-C1-P-71—Pacific Northwest Bell Telephone Co. (KTF22), C.P. to change frequency 5937.8 MHz to 11,055 MHz toward Haymaker, Oreg. Station location: 4.4 miles east-southeast of Malin, Oreg.

POINT-TO-POINT MICROWAVE RADIO SERVICE (TELEPHONE CARRIER)—continued

4386–C1–P–71—Pacific Northwest Bell Telephone Co. (KPZ75), C.P. to add frequencies 10,855 and 11,095 MHz toward Long Butte, Oreg. Station location: 100 Kearney Street, Bend, OR.

4387–C1–MP–71—Pacific Northwest Bell Telephone Co. (KYS74), Modification of C.P. to add frequencies 11,265 and 11,505 MHz toward Bend, Oreg. Station location: Long Butte, 3.2 miles northeast of Tumalo, Oreg.

4388–C1–MP–71—Pacific Northwest Bell Telephone Co. (KYS75), Modification of C.P. to change emission designator for frequencies 6063.8 and 10,755 MHz toward Long Butte, Oreg. Station location: Spring River, 16 miles south-southwest of Bend, Oreg.

4389–C1–MP–71—Pacific Northwest Bell Telephone Co. (KYS76), Modification of C.P. to change emission designator to 28000F9 for frequencies 6315.9 and 11,405 MHz toward Spring River, Oreg., and 6197.2 and 11,685 MHz toward Welch Butte, Oreg. Station location: Crescent Butte, 1 mile southeast of Gilchrist, Oreg.

4390–C1–MP–71—Pacific Northwest Bell Telephone Co. (KYS77), Modification of C.P. to change emission designator for frequencies 6063.8 and 10,755 MHz toward Crescent Butte, Oreg., and 5945.2 and 10,955 MHz toward Cave Mountain, Oreg., to 28000F9. Station location: Welch Butte, 8.9 miles south-southwest of Chemult, Oreg.

4391–C1–MP–71—Pacific Northwest Bell Telephone Co. (KYS78), Modification of C.P. to change emission designator to 28000F9 for frequencies 6315.9 and 11,405 MHz toward Welch Butte, Oreg., and 6197.2 and 11,685 MHz toward Medicine Mountain, Oreg. Station location: Cave Mountain, 3 miles northeast of Chiloquin, Oreg.

American Telephone & Telegraph Co., C.P.'s (39) to construct additional Type TH and Type TH–3 radio relay telephone channels and initial Type TL–2 and Lenkurt, 74B–1 plant maintenance channels on existing routes.

4392–C1–P–71—American Telephone & Telegraph Co. (KOB26), C.P. to add 6093.9 MHz toward Pratts Pass, Utah, at its station 3100 Kennedy Drive, Salt Lake City, UT.

4393–C1–P–71—American Telephone & Telegraph Co. (KOB27), C.P. to add 6315.9 MHz toward Salt Lake City and Wasatch, Utah, at 6.5 miles northwest of Gorgoza, Utah.

4394–C1–P–71—American Telephone & Telegraph Co. (KOB28), C.P. add 6063.8 MHz toward Pratts Pass, Utah, and Evanston, Wyo., at 9.5 miles northeast of Castle Rock, Utah.

4395–C1–P–71—American Telephone & Telegraph Co. (KOB29), C.P. add 6315.9 MHz toward Wasatch, Utah, and Church Butte, Wyo., at Evanston, 5.5 miles southwest of Leroy, Wyo.

4396–C1–P–71—American Telephone & Telegraph Co. (KOB61), C.P. add 6063.8 MHz toward Evanston and Green River, Wyo., at Church Butte, 10 miles south of Verne, Wyo.

4397–C1–P–71—American Telephone & Telegraph Co. (KOB62), C.P. to add 6315.9 MHz toward Church Butte and Rock Springs, Wyo., at its station 3.5 miles southwest of Green River, Wyo.

4398–C1–P–71—American Telephone & Telegraph Co. (KOB63), C.P. add 6063.8 MHz toward Green River and Bitter Creek, Wyo., at its station Rock Springs, 1.5 miles northeast of Lionkol, Wyo.

4399–C1–P–71—American Telephone & Telegraph Co. (KOB64), C.P. add 6315.9 MHz toward Rock Springs and Creston, Wyo., at 11 miles north of Bitter Creek, Wyo.

4400–C1–P–71—American Telephone & Telegraph Co. (KOB65), C.P. add 6063.8 MHz toward Bitter Creek and North Rawlins, Wyo., at 5 miles northwest of Creston, Wyo.

4401–C1–P–71—American Telephone & Telegraph Co. (KOB66), C.P. add 6315.9 MHz toward Creston and Hanna, Wyo., at North Rawlins, 5.5 miles northwest of Rawlins, Wyo.

4402–C1–P–71—American Telephone & Telegraph Co. (KOB67), C.P. add 6063.8 MHz toward North Rawlins and Rock River, Wyo., at 2 miles northeast of Hanna, Wyo.

4403–C1–P–71—American Telephone & Telegraph Co. (KOB68), C.P. add 6315.9 MHz toward Hanna and Crow Creek, Wyo., at 4 miles west of Rock River, Wyo.

4404–C1–P–71—American Telephone & Telegraph Co. (KOB69), C.P. add 6063.8 MHz toward Rock River, Wyo., and Buckhorn Mountain, Colo., at Crow Creek Hill, 8.5 miles southeast of Laramie, Wyo.

4405–C1–P–71—American Telephone & Telegraph Co. (KAC61), C.P. add 6315.9 MHz toward Crow Creek Hill, Wyo., and Greeley, Colo., at Buckhorn Mountain, 8 miles west of Bellvue, Colo.

POINT-TO-POINT MICROWAVE RADIO SERVICE (TELEPHONE CARRIER)—continued

4406–C1–P–71—American Telephone & Telegraph Co. (KAM69), C.P. add 6063.8 MHz toward Buckhorn Mountain and Prospect Valley, Colo., at 9 miles southeast of Greeley, Colo.

4407–C1–P–71—American Telephone & Telegraph Co. (KAB26), C.P. add 6315.9 MHz toward Greeley and Strasburg, Colo., at 6.5 miles east of Prospect Valley, Colo.

4408–C1–P–71—American Telephone & Telegraph Co. (KAM70), C.P. add 6063.8 MHz toward Prospect Valley and Limon, Colo., at 3.2 miles southeast of Strasburg, Colo.

4409–C1–P–71—American Telephone & Telegraph Co. (KAR52), C.P. to add 6315.9 MHz toward Strasburg and Hugo, Colo., at its station 9.5 miles southeast of Limon, Colo.

4410–C1–P–71—American Telephone & Telegraph Co. (KAR51), C.P. add 6063.8 MHz toward Limon and Wild Horse, Colo., at its station 5 miles south of Hugo, Colo.

4411–C1–P–71—American Telephone & Telegraph Co. (KAR50), C.P. add 6315.9 MHz toward Hugo and Eads, Colo., at 3 miles south-southeast of Wild Horse, Colo.

4412–C1–P–71—American Telephone & Telegraph Co. (KAR49), C.P. add 6063.8 MHz toward Wild Horse and Lamar, Colo., at 1 mile northeast of Eads, Colo.

4413–C1–P–71—American Telephone & Telegraph Co. (KAR48), C.P. add 6315.9 MHz toward Eads and Hartman, Colo., at 6 miles northeast of Lamar, Colo.

4414–C1–P–71—American Telephone & Telegraph Co. (KAR47), C.P. add 6063.8 MHz toward Lamar, Colo., and Syracuse, Kans., at 1 mile south of Hartman, Colo.

4415–C1–P–71—American Telephone & Telegraph Co. (KAR46), C.P. add 6315.9 MHz toward Hartman, Colo., and Lakin, Kans., at 8.5 miles southwest of Syracuse, Kans.

4416–C1–P–71—American Telephone & Telegraph Co. (KAR45), C.P. add 6063.8 MHz toward Syracuse and Holcomb, Kans., at 7 miles southwest of Lakin, Kans.

4417–C1–P–71—American Telephone & Telegraph Co. (KAR44), C.P. add 6315.9 MHz toward Lakin and Pierceville, Kans., at 3 miles northeast of Holcomb, Kans.

4418–C1–P–71—American Telephone & Telegraph Co. (KAR43), C.P. add 6063.8 MHz toward Holcomb and Dodge City Junction, Kans., at 5 miles south-southeast of Pierceville, Kans.

4419–C1–P–71—American Telephone & Telegraph Co. (KBT49), C.P. add 6078.6 MHz toward Dodge City Junction, Kans., at 6.2 miles southeast of Minneola, Kans.

4420–C1–P–71—American Telephone & Telegraph Co. (KAM47), C.P. change frequencies 6197.2 and 6315.9 MHz to 6212.0 and 6330.7 MHz toward Mullinville, change 11,035 MHz to 6241.7 MHz toward Minneola, add 6315.9 MHz toward Pierceville, and add 6197.2 and 6315.9 MHz toward Montezuma, Kans., at Dodge City Junction, 0.5 mile northwest of Dodge City, Kans.

4421–C1–P–71—American Telephone & Telegraph Co. (KAM48), C.P. to change frequencies 5945.2 and 6063.8 MHz to 5960.0 and 6078.6 MHz toward Dodge City Junction at its station 3 miles south of Mullinville, Kans.

4422–C1–P–71—American Telephone & Telegraph Co. (KAM46), C.P. to add 5945.2 and 6063.8 MHz toward Dodge City Junction and Sublette, Kans., at its station 2.5 miles northwest of Montezuma, Kans.

4423–C1–P–71—American Telephone & Telegraph Co. (KAM45), C.P. add 6197.2 and 6315.9 MHz toward Montezuma and Liberal, Kans., at 1 mile southwest of Sublette, Kans.

4424–C1–P–71—American Telephone & Telegraph Co. (KAM44), C.P. add 5945.2 and 6063.8 MHz toward Sublette, Kans., and Hooker, Okla., at 5 miles north of Liberal, Kans.

4425–C1–P–71—American Telephone & Telegraph Co. (KKU92), C.P. add 6197.2 and 6315.9 MHz toward Liberal, Kans., and add 6375.2 MHz toward Gruver, Tex., at 12 miles southeast of Hooker, Okla.

4426–C1–P–71—American Telephone & Telegraph Co. (KKU91), C.P. add 5945.2 MHz toward Hooker, Okla., and add 6123.1 MHz toward Pringle, Tex., at 9 miles northeast of Gruver, Tex.

4427–C1–P–71—American Telephone & Telegraph Co. (KKU90), C.P. add 6197.2 MHz toward Gruver, Tex., and add 6375.2 MHz toward Borger, Tex., at 2 miles north of Pringle, Tex.

4428–C1–P–71—American Telephone & Telegraph Co. (KKU89), C.P. add 5945.2 MHz toward Pringle and add 6123.1 MHz toward Ady, Tex., at 16 miles southwest of Borger, Tex.

4429–C1–P–71—American Telephone & Telegraph Co. (KZI66), C.P. add 6197.2 MHz toward Borger and add 6375.2 MHz toward Vega, Tex., at 8.5 miles south-southeast of Ady, Tex.

4430–C1–P–71—American Telephone & Telegraph Co. (KKO38), C.P. add 5945.2 MHz toward Ady, Tex., at 12 miles southeast of Vega, Tex.

Major Amendment

987–C1–P–71—Southern Bell Telephone & Telegraph Co. (New), Change frequency directed toward Lantana from 6050 MHz to 6330.7 MHz. All other particulars same as reported in Public Notice Report No. 506 dated Aug. 24, 1971.

The following renewal applications received for licenses expiring Feb. 1, 1971. Term: Feb. 1, 1971, to Feb. 1, 1976.

Ponderosa Telephone Co.
KNL20—O'Neels, Calif.
KNL21—Big Creek, Calif.
KNL22—Near south boundary of Shaver Lake, Calif.
KNL23—South edge of Auberry, Calif.

Virgin Island Telephone Corp.
WWT57—St. Thomas, V.I.
WWT60—Crown Mountain, V.I. (St. Thomas).
WWY43—Christiansted, V.I. (St. Croix).

POINT-TO-POINT MICROWAVE RADIO SERVICE (NONTELEPHONE)

4332–C1–ML–71—Frank K. Spain, doing business as Microwave Service Co. (WAD21), Modification of license to pickup and transmit, via audio subcarrier, the programing of the St. Louis Cardinal Baseball Network.

4331–C1–ML–71—Frank K. Spain, doing business as Microwave Service Co. (KLN74), Modification of license to deliver, via audio subcarrier, the programing of the St. Louis Cardinal Baseball Network to Radio Station WELO in Tupelo, Miss.

Major Amendments

3654–C1–P–71—Midwestern Relay Co. (New), Change frequencies 10,855 and 10,935 MHz to read 10,735 and 11,135 MHz on azimuth 301°05′.

3656–C1–P–71—Midwestern Relay Co. (New), Change frequencies 10,815, 10,935, 11,055, 11,135, and 11,175 MHz to read: 11,265, 11,505, 11,425, 11,625, and 11,665 MHz on azimuth 273°45′ and frequency 11,505 MHz to read: 11,345 MHz on azimuth 121°05′ and frequency 11,265 MHz to read: 11,585 MHz on azimuth 70°10′.

3657–C1–P–71—Midwestern Relay Co. (New), Change coordinates to read latitude 41°54′31″ N., longitude 88°06′45″ W., and change frequencies 11,265, 11,345, 11,425, 11,505, and 11,585, MHz to read 11,055, 10,855, 10,815, 11,095, and 11,135 MHz on azimuth 338°10′ and frequencies 11,225 and 11,465 MHz to read 11,175 and 10,935 MHz on azimuth 93°45′.

3658–C1–P–71—Midwestern Relay Co. (New), Change frequencies 10,855 and 11,095 MHz to read 11,305 and 11,545 MHz on azimuth 158°10′.

3659–C1–P–71—Midwestern Relay Co. (New), Change frequency 6212.0 MHz to read 6226.9 MHz on azimuth 0°33′ and add frequency 6271.4 MHz on azimuth 171°13′.

3660–C1–P–71—Midwestern Relay Co. (New), Change frequency 6019.3 MHz to read 6078.6 MHz on azimuth 62°30′, change frequencies 5989.7, 6019.3, and 6167.6 MHz to read 10,895, 11,135, and 10,815 MHz on azimuth 278°15′, change frequencies 5989.7, 6019.3, 6108.3, and 6137.9 MHz to read 5974.8, 6034.2, 6093.5, and 6152.8 MHz on azimuth 8°45′, and change frequencies 5960.0 MHz and 6167.6 MHz to read 6019.3 and 6123.1 MHz on azimuth 180°33′.

3662–C1–P–71—Midwestern Relay Co. (New), Change frequencies 6197.2, 6226.9, and 6375.2 MHz to read 6182.4, 6212.0, and 6301.0 MHz on azimuth 10°25′.

3663–C1–P–71—Midwestern Relay Co. (New), Change frequency 5978.8 MHz to read 5974.8 MHz on azimuth 348°15′.

3666–C1–P–71—Midwestern Relay Co. (New), Change frequencies 6212.0, 6241.7, 6330.7, and 6360.3 MHz to read 11,665, 11,425, 11,585, and 6182.4 MHz on azimuth 278°20′, and change frequency 6301.0 MHz to read 6375.2 MHz on azimuth 98°15′.

3667–C1–P–71—Midwestern Relay Co. (New), Change frequencies 5945.2, 5974.8, and 6004.5 MHz to read 10,775, 10,735, and 11,175 MHz on azimuth 139°40′, frequencies 5974.8, 6004.5, and 6063.8 MHz to read 10,775, 11,015, and 11,175 MHz on azimuth 257°05′, and frequencies 5945.2, 5974.8, 6004.5, 6063.8, and 6123.1 MHz to read 10,775, 11,175, 10,975, 11,015, and 10,735 MHz on azimuth 309°05′.

3668–C1–P–71—Midwstern Relay Co. (New), Delete frequencies 6212.0 and 6256.5 MHz and add frequency 11,345 MHz on azimuth 10°50′, and change frequencies 6226.9, 6256.5, 6286.2, and 6345.5 MHz to read 6315.9, 11,345, 11,505, and 11,265 MHz on azimuth 304°50′, frequencies 6226.9 and 6404.8 MHz to read 6241.7 and 6330.7 MHz on azimuth 129°05′.

3669–C1–P–71—Midwestern Relay Co. (New), Change frequency 5945.2 MHz to read 5974.8 MHz on azimuth 16°33′.

3671–C1–P–71—Midwestern Relay Co. (New), Change frequency 5945.2 MHz to read 6004.5 MHz on azimuth 2°25′.

3672–C1–P–71—Midwestern Relay Co. (New), Change frequencies 5945.2, 5974.8, 6004.5, 6063.8, and 6123.1 MHz to read 6137.9, 6108.3, 6078.6, 6019.3, and 5989.7 MHz on azimuth 245°28′, and frequencies 5945.2 and 6063.8 MHz to read 6137.9 and 6167.6 MHz on azimuth 124°50′.

3673–C1–P–71—Midwestern Relay Co. (New), Change frequencies 6226.9, 6345.5, and 6375.2 MHz to read 6360.3, 6241.7, and 6182.4 MHz on azimuth 320°30′, and frequency 6315.9 MHz to read 6375.2 MHz on azimuth 65°28′.

3674–C1–P–71—Midwestern Relay Co. (New), Change frequencies 5989.7, 6019.3, 6078.6, 6108.3, and 6167.6 MHz to read 11,425, 11,585, 11,305, 11,545, and 11,225 MHz on azimuth 300°45′, frequency 6137.9 MHz to read 6152.8 MHz on azimuth 140°30′, frequencies 6108.3 and 6167.6 MHz to read 11,305 and 11,585 MHz on azimuth 260°30′, frequencies 6019.3 and 6108.3 MHz to read 11,225 and 11,305 MHz on azimuth 264°35′. Add frequency 11,545 MHz on azimuth 260°30′ and 264°35′.

3675–C1–P–71—Midwestern Relay Co. (New), Change frequencies 6197.2, 6286.2, 6345.5, and 6404.8 MHz to read 11,135, 10,815, 11,055, and 6301.0 MHz on azimuth 263°50′, and frequency 6241.7 MHz to read 6182.4 MHz on azimuth 120°45′.

3676–C1–P–71—Midwestern Relay Co. (New), Change frequencies 6004.5 and 6123.1 MHz to read 6019.3 and 6137.9 MHz on azimuth 83°50′, and frequencies 6049.0, 6078.6, and 6108.3 MHz to read 11,345, 11,505, and 11,265 MHz on azimuth 311°15′.

3678–C1–P–71—Midwestern Relay Co. (New), Change frequencies 6241.7, 6271.4, 6301.0, 6360.3, and 6390.0 MHz to read 6404.8, 10,775, 11,015, 11,175, and 11,095 MHz on azimuth 311°15′, frequency 6301.0 MHz to read 6404.8 MHz on azimuth 151°15′.

3679–C1–P–71—Midwestern Relay Co. (New), Change frequencies 5945.2, 5974.8, and 6034.2 MHz to read 11,425, 11,585, and 11,505 MHz on azimuth 338°45′, frequencies 6004.5 and 6063.8 MHz to read 6137.9 and 11,585 MHz on azimuth 131°15′.

3680–C1–P–71—Midwestern Relay Co. (New), Change frequencies 11,265 and 11,505 MHz to read 11,015 and 10,855 MHz on azimuth 208°30′, frequency 6301.1 MHz to read 6301.0 on azimuth 158°45′, frequencies 6212.0, 6241.7, 6330.7, and 6360.3 MHz to read 6184.2, 11,015, 11,175, and 11,095 MHz on azimuth 356°45′, and frequencies 11,345, 11,425, 11,505, and 11,585 MHz to read 10,775, 10,935, 11,095, and 10,855 MHz on azimuth 228°00′.

3681–C1–P–71—Midwestern Relay Co. (New), Change frequencies 10,855 and 10,935 MHz to read 11,265 and 11,505 MHz on azimuth 226°15′.

3682–C1–P–71—Midwestern Relay Co. (New), Change frequencies 6108.3 and 6167.6 MHz to read 6019.3 and 6123.1 MHz on azimuth 11°45′.

3683–C1–P–71—Midwestern Relay Co. (New), Change frequencies 6271.4, 6330.7, and 6390.0 MHz to read 6286.2, 6345.5, and 6404.8 MHz on azimuth 42°30′, and frequency 6301.0 MHz to read 6271.4 MHz on azimuth 191°45′.

3684–C1–P–71—Midwestern Relay Co. (New), Change frequency 6049.0 MHz to read 6137.9 MHz on azimuth 222°30′.

3685–C1–P–71—Midwestern Relay Co. (New), Change coordinates to read latitude 46°47′13″ N., longitude 92°07′17″ W. All other particulars same as reported on Public Notice dated Jan. 18, 1971.

[FR Doc.71–2642 Filed 2–26–71;8:45 am]

[FCC 71–157]

AVAILABILITY OF LOCALLY MAINTAINED RECORDS FOR INSPECTION BY MEMBERS OF THE PUBLIC

FEBRUARY 23, 1971.

The Commission has received complaints from members of the public concerning the availability for public inspection of the records which § 1.526 of the rules requires licensees, permittees, and applicants to maintain in their communities. The complaints indicate that some licensees may not fully understand the scope of the Commission's public inspection requirements. Some licensees have stated as justification for not making records available upon request that they were too busy or that there was no one on duty at the station who could make the records available. One complainant stated that when he asked to see the public records file the licensee stated that "* * * he had no time and I should make an appointment with his secretary."

Section 1.526(d) of the Commission's rules provides as follows:

> The file shall be maintained at the main studio of the station, or at any other accessible place (such as a public registry for documents or an attorney's office) in the community to which the station is or is proposed to be licensed, and shall be available for public inspection at any time during regular business hours.

The rule does not require members of the public to make an appointment to review a licensee's public records, nor does it require that members of the public examine such records only at times most convenient to the licensee or his staff.

The Commission reminds all licensees, permitees, and applicants that the records specified in § 1.526 must be made available for public inspection during the regular business hours of the station and any requirement that a member of the public make an appointment in advance or return at another time is a violation of § 1.526(d) of the Commission's rules.

The Commission notes with interest a memorandum sent to the NAB Membership by the NAB Legal Department which suggests that stations set aside an area with a table at which the public may inspect the records specified in § 1.526. The Commission considers this suggestion to be in keeping with the spirit of the Commission's public inspection requirements.

Action by the Commission February 17, 1971.[1a]

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Secretary.

[FR Doc.71-2726 Filed 2-26-71;8:49 am]

[Docket No. 18888; FCC 71R-62]

CENTREVILLE BROADCASTING CO.

Memorandum Opinion and Order Enlarging Issues

In regard application of Centreville Broadcasting Co., Centreville, Va., File No. BP-17564, for construction permit.

1. The application of Centreville Broadcasting Co. (hereinafter referred to as applicant) for a construction permit to build a daytime-only Class II standard broadcast station (1,000 kHz, 1 k.w., DA) in Centreville, Va., was designated for hearing under various issues by Commission memorandum opinion and order, FCC 70-656, 23 FCC 2d 845, released June 30, 1970. The Review Board now has before it a motion to enlarge issues, filed July 23, 1970,[1] by O. K. Broadcasting Corp. hereinafter referred to as WEEL or petitioner), a party respondent in this proceeding, seeking the addition of issues against the applicant to determine whether: (1) Centreville is a "community" within the purview of § 73.37(b); (2) the application complies with the Commission's coverage requirements of § 73.188(b); (3) the proposal is actually designed to serve the larger communities of Fairfax and Manassas, Va.; (4) the applicant conducted a bona fide Suburban survey in the Centreville area before filing its application; (5) the applicant complied with § 1.526(a)—maintenance of local public file; and (6) the applicant is financially qualified. The Review Board will consider these requests seriatim.

Section 73.37(b) issue. 2. In support of its request for a § 73.37(b) issue, petitioner submits that while a § 73.30 issue was specified against the applicant in the designation Order to determine whether Centreville is a community within the meaning of that rule, the Commission failed to specify a similar issue as to whether Centreville qualifies as a "community" as that term is used in § 73.37(b).[2] According to WEEL, Centreville[3] has no significant community attributes such as local government or defined boundaries and is, in fact, an integral part of Fairfax County, which provides all governmental services for the area. Referring to an earlier-filed pleading, petitioner points out that, in 1967, the Director of Planning and Zoning for the Fairfax County Planning Department advised that his department did not consider Centreville to be a separate community. In addition, WEEL notes that had the applicant specified either Fairfax or Manassas, each of which is already assigned an AM facility, as its proposed station location, such proposal would have been dismissed for noncompliance with § 73.37(b) due to interference within its 0.5 mv/m contour. According to the petitioner, there is substantial evidence that the applicant expects its facility to serve the needs and interests of Fairfax City and Manassas.[4] Finally, WEEL asserts that even if Centreville is found to be coterminous with the "Centreville Magisterial District,"[5] and is thereafter found to be a community within the meaning of § 73.30, the applicant's proposal would still not comply with § 73.37 inasmuch as standard broadcast Station WHRN is already assigned to Herndon, Va. In its comment, the Broadcast Bureau suggests that the § 73.37(b)(2) issue already specified by the Commission could be construed to permit an inquiry into whether the Centreville area meets the requirements of § 73.37(b) here pertinent, i.e., that Centreville is a community which does not have an AM facility. Alternatively, the Bureau also suggests that the Board may want to specify a separate issue in order to resolve any doubts in this regard.

3. In opposition to the instant request, the applicant charges that the same question was before the Commission when it designated this proceeding for hearing, and that, therefore, Board consideration of the § 7337(b) issue is effectively precluded. With regard to the merits of the request, the applicant submits exhibits which purportedly establish that Centreville is a separate community and that Centreville and the Centreville Magisterial District are not the same entity. The applicant contends that the best evidence of these claims is the "Bull Run Planning District Comprehensive Plan" presented by the Fairfax County Planning Commission to the County's Board of Supervisors on July 9, 1969, portions of which are reproduced as attachments to the applicant's responsive pleading. In the applicant's view, the fact that the planning authorities have promulgated different plans for the Bull Run Planning District, the Fairfax Planning District and the Manassas-Manassas Park area is significant since the Centreville and the Bull Run Planning District are completely separate and apart from Fairfax City Manassas and Manassas Park. The applicant asserts htat an examination of the material presented makes it "abundantly clear" that Centreville is a community for purposes of § 73.37 in that Centreville has all the indicia of a community, such as residential, commercial, and industrial areas, schools, fire protection facilities, a library and a planned hospital. In addition, the applicant cites reports to the effect that the long-range population of Centreville and the surrounding area could vary from 50,000 to 100,000 if the Bull Run Planning District becomes a reality. Based on this showing, the applicant seeks denial of the requested § 73.37(b) issue.

4. In reply, WEEL contends that the applicant never addressed itself to petitioner's charge that the "community" question should be considered in the context of both §§ 73.30 and 73.37(b). Instead, petitioner claims that the applicant, in effect, is asking the Board to rule that Centreville is a community, as that term is used in § 73.37(b), even though the Commission has already specified an issue to determine whether Centreville is a community within the meaning of § 73.30.

5. The Review Board does not share petitioner's view that a separate "community" issue based on § 73.37(b) is required in this proceeding. Initially, we note that, in a petition for reconsideration or to deny, filed on February 23,

[1a] Commissioners Burch (Chairman), Bartley, Robert E. Lee, Johnson, H. Rex Lee, Wells and Houser.

[1] Also before the Board for consideration are: (a) Comment, filed Aug. 10, 1970, by the Broadcast Bureau; (b) opposition, filed Aug. 28, 1970, by the applicant; (c) reply, filed Sept. 8, 1970, by petitioner; (d) letter to the Review Board, dated Oct. 2, 1970, from petitioner; (e) motion for leave to file attached supplement to motion to enlarge issues and supplement, filed Oct. 9, 1970, by petitioner; (f) opposition to (e), filed Oct. 14, 1970, by the applicant; (g) comment on (e), filed Oct. 16, 1970, by the Bureau; and (h) reply to (f) and (g), filed Oct. 28, 1970, by petitioner.

[2] However, the Commission did specify an issue to determine whether the existing 0.50 mv/m contour of Station WIOO, Carlisle, Pa., would overlap the proposed 1 mv/m contour in violation of § 73.37(b)(2).

[3] Petitioner claims that "Centreville" is the name given to the area around the intersection of Routes 28 and 29/211 in Western Fairfax County and that the intersection is located approximately 5 miles from Fairfax City and Manassas. Moreover, WEEL notes that the Centreville area is located in one of the few remaining portions of Fairfax County not included in the Washington, D.C. Urbanized Area.

[4] WEEL refers to its showing in support of its request for a Suburban Community issue, which will be developed infra.

[5] Petitioner claims that the Centreville Magisterial District is the only political subdivision with the name "Centreville" and is a subdivision of Fairfax County whose boundaries include the Centreville crossroads area and the towns of Herndon, Vienna, and Clifton.

1967, WEEL contended that Centreville is not a community within the meaning of § 73.37(b) and supported that contention with essentially the same factual allegations now urged before the Board. In response to WEEL's claim, the Commission specified a "community" issue based on § 73.30, although it did note that there is no hard and fast rule by which it can be determined whether a particular population grouping has sufficient community attributes so as to be classified a community for assignment purposes. While WEEL now argues that a separate "community" issue based on § 73.37(b) is needed, the petitioner has not demonstrated any differences in the meaning of "community" as that term is used in §§ 73.30 and 73.37(b) other than to suggest that the latter's adoption at a later date assumes some significance. However, the Commission's report and order in Docket No. 15084, FCC 64–609, 2 RR 2d 1658 (1964), and its discussion of the rationale for the first local service exception to the prohibited overlap rules at paragraph 19 thereof offer no support for petitioner's claim. In the Board's view, if Centreville qualifies as a "community" within the meaning of § 73.30, then it can also be considered as a "community" for the purposes of the exception to the overlap rules contained in § 73.37(b). Moreover, it can be expected that, pursuant to the § 73.30 issue specified by the Commission, evidence adduced thereunder will establish what constitutes the Centreville community and that, at that time, it should be readily determinable whether Centreville constitutes a community for the purposes of § 73.37(b). Since § 73.37(b) requisites for the first local service exception are subsumed within the pending § 73.37(b)(2) issue and since the size, extent and other characteristics of the specified station location will be developed under the § 73.30 issue, addition of the issue now requested would serve no useful purpose.[6] In this regard, we note that the applicant has refuted WEEL's claim that Centreville is, in effect, the Centreville Magisterial District, which includes the town of Herndon and an existing AM facility.

Section 73.188 issue. 6. In support of this requested issue, petitioner asserts that if the Centreville Magisterial District is found to be the applicant's community of assignment, then the proposal would violate § 73.188(b) inasmuch as the applicant's proposed 5 mv/m contour does not cover the northern portion of the District, near Herndon.[7] The Board concurs in the Bureau's suggestion that the instant request should be denied since there is no indication that the applicant's community of license is the Centreville Magisterial District and since it would be improper to hold the applicant to an engineering standard based on a community which it has not specified. As noted above, the applicant takes exception to petitioner's claim that Centreville is, in effect, the Centreville Magisterial District; moreover, in its opposition pleading, the applicant submits an engineering showing which purportedly demonstrates that: (1) a 25 mv/m contour is placed over the business and industrial areas of Centreville; and (2) a 5 mv/m contour is placed over the entire Bull Run Planning District, of which Centreville is the main part.[8] In regard to the instant request, we also note that WEEL made essentially the same arguments before the Commission in its February 23, 1967, petition for reconsideration or to deny about the applicant's alleged violation of § 73.188(b), but that the Commission did not specify a coverage issue as a result thereof. However, since there is a § 73.30 issue in this proceeding and since evidence adduced thereunder concerning the size and extent of the Centreville community could conceivably establish a basis for a coverage issue, our denial of petitioner's request is without prejudice to its subsequent refiling if circumstances so warrant.

Suburban community issue. 7. In support of its request for a Suburban Community issue, petitioner alleges that the applicant's 5 mv/m contour encompasses all of the City of Fairfax, all of Manassas Park and approximately 50 percent of Manassas; that the population of Centreville is considerably smaller than the aforementioned communities;[9] that the bulk of the applicant's anticipated revenues ($72,000 estimated for first-year operation) will have to be sought in the communities noted; that the applicant proposes power of 1,000 watts, or four times the minimum power at which Class II–D facilities can operate (§ 73.21(a)(iii)); and that the applicant has failed to identify the separate needs and interests of Centreville. According to WEEL, the Commission has indicated that its Policy Statement on section 307(b) Considerations for Standard Broadcast Facilities Involving Suburban Communities, 2 FCC 2d 190, 6 RR 2d 1901 (1965), is not to be limited to substandard facilities proposing 5 mv/m or better service to communities with a population of 50,000 or more. Citing Harry D. Stephenson and Robert E. Stephenson, 15 FCC 2d 335, 14 RR 2d 945 (1968), for the latter proposition, petitioner submits that there is stronger evidence to support the addition of an issue concerning the applicant's "actual community of interest" in this case than in Stephenson, especially since such evidence bears upon the question of whether the applicant is entitled to the first local service exception of § 73.37. In this regard, the petitioner also points out that § 73.37(b) would have barred the applicant's proposal if Fairfax City or Manassas had been specified as the community of assignment. In the Broadcast Bureau's view, petitioner has alleged sufficient facts to warrant an appropriate response by the applicant; in the absence thereof, the Bureau would support the addition of a Suburban Community issue.[10]

8. The applicant opposes the instant request on both procedural and substantive grounds. Initially, the applicant argues that since the same request by WEEL based on identical factual allegations was before the Commission in the predesignation phase of this proceeding, the Board should not consider the merits of the instant request. In any event, it is the applicant's position that petitioner has not met its burden of demonstrating that a substandard central city station is proposed, citing the Board's action in Radio Collinsville, Inc., 14 FCC 2d 1058, 14 RR 2d 559 (1968). The applicant maintains that the factual assertions set forth in its response to the request for a § 73.37(b) issue show that Centreville is a "substantial community," is growing very rapidly, and is separate and distinct from Fairfax City, Manassas and Manassas Park.[11] Again citing Radio Collinsville, the applicant contends that petitioner has failed to establish that Cen-

[6] The overlap issue specified by the Commission (see note 2, supra) necessarily assumes that Centreville constitutes a community for the purpose of § 73.37(b). However, if it should develop that evidence adduced under the § 73.30 issue concerning Centreville's status as a "community" undermines that assumption, then the applicant should be aware of its obligation to demonstrate the proposal's compliance with those provisions supporting the exception to the overlap rules in addition to its obligation to meet the § 73.37(b)(2) issue already specified.

[7] Section 73.188(b) requires that an applicant provide a signal intensity of at least 25 mv/m to the business or factory areas of its community of assignment and an intensity of at least 5 mv/m to the most distant residential section. WEEL points out that the applicant has never identified the limits of the Centreville area and notes that the area may be coextensive with—or lesser or greater than—the area encompassed within the Centreville Magisterial District.

[8] As noted by the applicant in its opposition pleading, Fairfax City, Manassas, and Manassas Park are not included in the Bull Run Planning District.

[9] Petitioner claims that the preliminary 1970 U.S. Census estimate for Fairfax City is 21,855; according to WEEL, 1970 estimates for Manassas and Manassas Park are not yet available. Although petitioner contends that the Centreville area is undefined and its present population unknown, it offers its earlier 1967 estimates to the effect that the residential population in the Centreville crossroads area was 100 and that the population within 1½ miles of the crossroads was about 1,000.

[10] The Bureau points out that petitioner, in its petition to deny, alleged the same facts in support of a Suburban Community issue. However, since there was no thorough consideration of the particular question in the designation order, the Bureau is of the view that substantive consideration by the Board is appropriate, citing Atlantic Broadcasting Company (WUST), 5 FCC 2d 717, 8 RR 2d 991 (1966).

[11] The applicant bases this latter assertion on the fact that none of these communities is located within the Bull Run Planning District.

treville is a suburb of these other communities or is dependent on them. The applicant explains that Centreville was chosen as the community of assignment and a power of 1 kw. was proposed since Centreville is the center of the Bull Run Planning District, which "is growing at an incredible pace," and since it was considered desirable "to place a 5 mv/m contour over the entire * * * district."[12] In regard to assertions made by the Bureau concerning the absence of information about the separate and distinct needs of Centreville, the applicant notes that an April 29, 1969, amendment to its application set forth in detail some of Centreville's community needs and how the applicant proposed to meet those needs. In response to the question raised by the Bureau as to whether broadcast revenues would be sought outside of Centreville, the applicant states that just as petitioner solicits revenue outside of its community of license, it, too, hopes to garner revenue from nearby communities. In support of this position, the applicant reasons that "[c]ertainly, the Commission does not expect an applicant to ascertain community problems outside its community of license and seek to meet these problems [pursuant to the Commission's Primer on Ascertainment of Community Problems by Broadcast Applicants, FCC 69–1402, 20 FCC 2d 880], and not permit an applicant to obtain revenue from these communities."

9. In reply, the petitioner charges that the applicant has failed to deal with the factual allegations in support of the Suburban Community issue. Moreover, in petitioner's view, the applicant's proposal meets one of the most important criteria for the addition of this issue as articulated in the case principally relied on by the applicant (Radio Collinsville), i.e., Fairfax City was part of the Washington, D.C. Urbanized Area in 1960, but Centreville was immediately outside of it. Even though the applicant refers to Centreville as a "substantial community," petitioner points out that the only population figure for Centreville in the material submitted by the applicant is a December, 1969 estimate of 600, or about three percent of Fairfax City's population. The fact that the applicant intends to place a 5 mv/m contour over the Bull Run Planning District is deemed insignificant by the petitioner, who labels the planning district as an "arbitrary study area" and a proposal that may not be adopted. With regard to the applicant's April 29, 1969, amendment, petitioner contends that a review of that amendment will show that the applicant conducted a "program preference survey which identified not a single distinctive Centreville problem which the applicant might rely upon to support a contention of Centreville distinctiveness."

10. In the Board's view, a substantial question has been raised as to whether the applicant will realistically serve primarily a community or communities other than its "specified community," and, therefore, the requested Suburban Community issue will be specified.[13] In adopting its Suburban Community Policy Statement, supra, the Commission was mindful of the fact that the 5 mv/m—50,000 population test was not meant to serve as an inflexible standard. V. W. B., Inc., 8 FCC 2d 744, 10 RR 2d 563 (1967); Babcom, Inc., 12 FCC 2d 306, 12 RR 2d 998 (1968). It is well established that, upon a proper "threshold showing," a Suburban Community issue will be specified even though, as here, the circumstances of the case do not fit precisely within the standards which raise the presumption formulated in the Policy Statement. See Harry D. Stephenson and Robert E. Stephenson, supra; Summit Broadcasting, 18 FCC 2d 470, 16 RR 2d 733 (1969). As noted in the Stephenson and V. W. B. cases, the burden a petitioner must carry under these circumstances is not a light one. A Suburban Community issue will not be specified merely because an applicant intends to place a strong signal over a somewhat larger community; to do so would serve only to disrupt Commission processes and to delay the establishment of competitive broadcast facilities. See Childress Broadcasting Corporation of West Jefferson (WKSK), FCC 70–1032, 20 RR 2d 335; V. W. B., Inc., supra; and Babcom, Inc., supra. In the instant case, petitioner has made the requisite threshold showing warranting the requested issue. In reaching this conclusion, we have given consideration to a number of relevant factors. For example, there appears to be a great disparity in population between Centreville and the communities of Fairfax City and Manassas (including Manassas Park).[14] The applicant's proposed power is four times the minimum power for a Class II–D facility (§ 73.21(a)(2)(iii)), and its explanation for the 1 kw. proposal (see note 12, supra) does not satisfactorily demonstrate the inadequacies of lower power. The applicant's proposed 5 mv/m contour encompasses not only the entire Bull Run Planning District, but also all of the City of Fairfax and Manassas Park and about one-half of Manassas. See, e.g., V. W. B., Inc., supra; compare Childress Broadcasting Corporation of West Jefferson, supra. Additionally, we note that the applicant would not have been able to qualify for the first local service exception of § 73.37(b) if it had specified either Fairfax City or Manassas as its community of assignment. Babcom, Inc., supra; compare Durgin Associates, Inc., 10 FCC 2d 24, 11 RR 2d 205 (1967). The Board is also of the opinion that a substantial question has been raised as to whether there are sufficient advertising sources to support the applicant's estimate of $72,000 in first-year revenues without heavy reliance upon revenues garnered from larger nearby communities like Fairfax City, Manassas, and Manassas Park. Moreover, the applicant has not sufficiently demonstrated that its proposed programing is designed to serve the separate and distinct needs of Centreville.[15] Therefore, in view of these factors and in light of the fact that a substantial question exists concerning Centreville's independent existence as a community, we are convinced that an adequate threshold showing has been made to support the specification of an issue to determine whether the applicant will provide a realistic transmission service for Centerville or for another larger community (or other larger communities).

Community needs survey—candor issue. 11. Petitioner contends that applicant's proposal, which was allegedly prepared in haste only 3 days before it was filed on December 19, 1966,[16] fails to identify any person who was contacted by the applicant during its prefiling community survey. Because of its own doubts about the applicant's survey efforts in 1966, WEEL points out that it contacted some 31 people who live in or work near the Centreville crossroads area in February of 1967, and that, with but one exception (the then-owner of the Centreville Circle Pharmacy and the holder of the applicant's public file), all individuals indicated that they had not been interviewed by the applicant. According to petitioner, the application is devoid of

[12] According to an attached statement of the applicant's consulting engineer, a minimum power of 1 kw. is necessary in order to accomplish contour placement consistent with existing protection requirements and to overcome power line interference. The engineer states that the "placement of the 5 mv/m contour over the City of Fairfax is incidental to the proposal" and that "in the near future the Fairfax City population will be completely overtaken by the planned population increase in Centreville." He also notes that Station WEEL operates with a daytime power of 5 kw. and has a signal superiority within Fairfax City of 10 to 1 over the applicant's proposal.

[13] We agree with the Bureau's position (note 10, supra) that substantive consideration of petitioner's request is appropriate in the circumstances.

[14] The preliminary 1970 U.S. Census estimate for Fairfax City is 21,855 people. The 1960 U.S. Census indicated that Manassas had a population of 3,555 and that Manassas Park contained 5,342 people. Estimates by the parties herein for Centreville's population range from 100 to 1,000. The population projections for the Centreville area contained in the Bull Run Planning District study are entirely too speculative to be of any assistance in determining the present size of the specified community.

[15] In the designation Order herein, the Commission specified a Suburban issue against the applicant to determine its awareness of and responsiveness to local community needs and interests. In addition, we note that, in Exhibit 4 of its original application, the applicant indicated an intention to serve the following communities: Centreville, Chantilly, Manassas, Vienna, Fairfax City, and other communities near Centreville.

[16] For example, WEEL notes that the applicant's articles of incorporation and bylaws were certified as true and correct on December 16th; that an agreement among the applicant's stockholders dealing with the company's financial plan was dated December 16th, as was an equipment credit letter; and that an engineering affidavit in support of the application was dated December 17th.

any information concerning the identification (by name, occupation or otherwise) of any person contacted by the applicant during this alleged prefiling survey, and the applicant does not reveal a single view about "existing radio programming" or about what programming should be broadcast on a Centreville station. While these facts were made known to the applicant in WEEL's petition to deny, petitioner submits that it has received only vague generalizations about the applicant's survey efforts.[17] In view of the applicant's failure to identify its survey contacts in response to WEEL's challenge, petitioner requests that an issue be specified to determine whether a bona fide survey was made by the applicant before the filing of its application.

12. The Review Board concurs in the position taken by the Bureau and the applicant to the effect that petitioner has not set forth sufficient allegations of fact to support the addition of the requested issue.[18] The fact that petitioner has randomly contacted 31 individuals in the Centreville area and has discovered that only one was interviewed by the applicant is insufficient to support a candor issue; at most, WEEL's investigation in 1967 indicates that 30 persons in the Centreville area were not contacted by the applicant in its 1966 prefiling survey. Moreover, the Board finds no statement in Centreville Broadcasting Co.'s application or in the applicant's response to WEEL's petition to deny which renders suspect the applicant's initial survey efforts. In this regard, we also note that, on October 9, 1970, petitioner filed a supplement to its motion to enlarge issues,[19] seeking to augment its showing in support of the requested candor issue with information and documents derived from deposition sessions held on September 17 and 18, 1970. However, this supplementary information appears to establish that the applicant did conduct some survey efforts as evidenced by survey contact sheets, dated December 15, 1966. While such survey efforts are clearly insufficient in terms of Commission requirements, a Suburban issue has already been specified to inquire into this aspect of the applicant's proposal. Furthermore, petitioner has not challenged the applicant's April 29, 1969, amendment to its survey efforts and program proposal which reflects the results of interviews with 17 named community leaders. For these reasons, we agree with the Broadcast Bureau that an inquiry into the applicant's candor concerning its prefiling survey efforts is not warranted.

Section 1.526 issue. 13. Noting that § 1.526 requires all applicants for new facilities to maintain for public inspection a file in the community to which the station is proposed to be licensed, petitioner alleges that, on three separate occasions in July of 1970, its representative attempted to review the applicant's public file at the Centreville Circle Pharmacy, the designated depository, but that, on each occasion, the file was not available or was not produced for inspection. Eventually, on July 21, 1970, petitioner's representative, who supplies an affidavit in support of the requested § 1.526 issue, inspected the applicant's file and found that it contained numerous documentary omissions. On this basis, WEEL contends that the applicant, whose majority owners are experienced communications specialists, failed to maintain a proper public file in accordance with Commission requirements and that, therefore, an appropriate issue is required to determine the effect of this failure on the applicant's qualifications. The Broadcast Bureau is of the view that WEEL's factual allegations clearly raise a substantial question of applicant's compliance with § 1.526, citing North American Broadcasting Company, Inc., 15 FCC 2d 984, 15 RR 2d 367 (1969).

14. In opposition to the instant request, the applicant primarily relies on the attached affidavit of Mr. Irving Beller, the proprietor of the Centreville Pharmacy, who explains that, after he purchased the drugstore in May of 1967, store personnel became somewhat lax in the maintenance of the file due to the lack of inquries concerning the file and that eventually the file was misplaced. Mr. Beller also states that, at about the time of the inquiries by WEEL's representative, the applicant contacted him to ascertain the file's status and that, upon learning of the situation, the applicant provided him with replacement material. The applicant contends that the file is now up-to-date and that, in view of the fact that no member of the public has apparently been prejudiced by the file's unavailability, substantial compliance with § 1.526 has been achieved. Citing Media, Inc., 22 FCC 2d 875, 18 RR 2d 1175 (1970), the applicant argues that there is no reasonable basis for addition of the requested issue.

15. The request for specification of a Rule 1.526 issue will be granted. The applicant has, in effect, conceded that its local public file was not available for public inspection at the designated depository on the relevant dates in July 1970. Its attempt to explain away this failure to comply with Commission requirements can hardly be credited; the applicant cannot delegate its responsibility to maintain such a file to the custodian involved. See *Marvin C. Hanz*, 22 FCC 2d 147, 18 RR 2d 830 (1970). Moreover, the applicant has not effectively responded to the claim that, once the file was made available for public inspection, it did not contain all required materials. Since we are unable to agree with the applicant's characterization of its efforts in this regard as constituting "substantial compliance" with § 1.526, and since the applicant's noncompliance cannot be viewed as "minor" in scope, addition of the requested issue is appropriate. North American Broadcasting Company, Inc., supra; compare Media, Inc., supra.

Financial qualifications issue. 16. Although, in the designation Order, an issue was specified as to the ability of two of the applicant's stockholders (Laurence Levitan and Paul H. Weinstein) to meet their respective commitments to the applicant,[20] petitioner submits that the Commission failed to note that, by an amendment, filed December 24, 1969, the applicant substantially revised its financial proposal.[21] Petitioner argues that, as a result of this revision, there is no way to determine the applicant's estimated prosecution and construction costs or the ability of its five stockholders to meet such costs and that, therefore, appropriate enlargement and modification of issues is warranted. In addition, WEEL claims that the applicant's cost estimates are outdated and underestimated. On the basis of supporting affidavits from its consulting engineer and corporate president, petitioner submits that the funds allocated by the applicant for the proposed transmitter, studio technical equipment, building construction and "other items" are seriously inadequate. The Bureau, as well as petitioner, notes that the December, 1969, amendment places the applicant's financial proposal

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[17] Petitioner notes that, in an affidavit attached to the applicant's Apr. 13, 1967, opposition to WEEL's petition for reconsideration or to deny, Laurence Levitan, the then-President of the applicant, stated that he had personally conducted the prefiling survey and that petitioner's canvass of individuals who had not been contacted by him (Levitan) did not render suspect the applicant's representation in Exhibit 4 to the application that a survey of persons in the Centreville area had been conducted.

[18] Even though petitioner's allegations were before the Commission at the time of designation for hearing and a Suburban issue was specified, the Commission did not specifically address itself to the question of the bona fides of the applicant's 1966 survey efforts. Therefore, the Board is not precluded from considering the instant request. Atlantic Broadcasting Company, supra.

[19] Although the applicant, in opposition to the supplement, argues at length about petitioner's misuse of discovery proceedings to support the requested candor issue, we can see nothing wrong in WEEL's pursuit of matters relevant to the Suburban issue and in bringing such matters to our attention.

[20] The issue, as specified by the Commission, reads as follows:

5. To determine, with respect to the financial portion of the Centreville Broadcasting proposal:

(a) Whether Laurence Levitan and Paul H. Weinstein have sufficient liquid assets available to meet their $90,000 loan commitment;

(b) The terms of repayment of the $90,000 loan;

(c) The amount of funds required to construct and operate the station for 1 year without revenues; and

(d) Whether, in light of the evidence adduced pursuant to (a), (b), and (c), above, the applicant is financially qualified.

[21] Originally, Levitan and Weinstein proposed to furnish the funds required for the applicant's proposal in the form of a $90,000 loan. By its Dec. 24, 1969, amendment, the applicant indicated that it intended to rely primarily on Messrs. Morton L. Berfield, Lewis I. Cohen, and Serge Bergen for financing the costs of prosecuting the application and constructing the station. No individual balance sheets were submitted with the amendment.

in a state of uncertainty since it appears that Levitan and Weinstein no longer intend to finance the proposal and since, although other stockholders (Morton L. Berfield, Lewis I. Cohen, and Serge Bergen) are now obligated to provide over 80 percent of the corporation's financing, no current information has been submitted to demonstrate their ability to meet their respective commitments. The Bureau agrees that substantial questions concerning aspects of the applicant's financial proposal have been raised and that addition of the requested issues is warranted unless the applicant supplies additional information which would obviate the need for such issues.

17. In response to the instant request, the applicant submits a copy of a petition for leave to amend, which it filed before the Hearing Examiner concurrently with its opposition pleading.[22] The amendment consists of an updated section III to the application,[23] including a new equipment letter from Gates Radio Company, a commitment from Weinstein to lend the applicant up to $125,000 to finance the construction and initial operation of the proposed facility and Weinstein's August 1, 1970, balance sheet. The amendment also contains a letter from Messrs. Weinstein and Levitan who agree to lease to the corporate applicant at its fair market value land sufficient for the transmitter location; the letter provides that no lease payments will be required until the station has been operational for at least 1 year. Based on this further revision in the applicant's financial proposal, Centreville Broadcasting Co. claims that petitioner's instant request should be denied.

18. In reply, petitioner charges that the applicant has failed to meet all of the objections to the claimed deficiencies in the latter's cost estimates; for example, WEEL points out that the applicant has provided no estimate for the cost of a site-access road and has not claimed that it has or can obtain authority for access rights to its proposed site. In addition, petitioner notes that the applicant has not supplied any studio construction or lease cost estimates and has not shown how it can finance the additional staff cost inherent in a two-site operation.[24] Furthermore, petitioner points out that there has been no delineation of the land that is proposed to be leased to the applicant by Weinstein and Levitan, and that the land has not even been identified as an asset of Weinstein's in his August 1, 1970, balance sheet. Finally, WEEL suggests that, in the circumstances, the Board should modify the existing financial issue (see note 20, supra) to provide for an inquiry into the amount of funds required to construct and operate the proposed station for 1 year and the sources of all proposed funding, the terms of such funding and the ability of all sources to provide the necessary funds.

19. It does appear that the Commission overlooked the applicant's December 24, 1969, amendment when it specified the limited financial qualifications issue in this proceeding. As indicated in note 21, supra, the amendment worked a substantial revision in the applicant's financial proposal. Although, as petitioner correctly points out, that revision raised questions concerning the ability of the applicant's stockholders to meet their respective commitments which could be the subject of hearing issues, the applicant has attempted to meet the infirmities in the December 1969, proposal by a further revision of its financial plan. Pursuant to its August 28, 1970, amendment, which was accepted by the Examiner, Paul H. Weinstein now agrees to lend the corporate applicant up to $125,000 to finance construction and initial operation of the proposed Centreville station. According to Weinstein's commitment letter of August 25, 1970, the loan will be for a 5-year period and will carry an interest charge at the level of 1 percent over the prime rate; no payment of interest or principal will be quired until the station has been operational for at least 1 year. Weinstein also submits a partial balance sheet, as of August 1, 1970, which reflects net liquid assets in excess of the $125,000 commitment. In such circumstances and since the original specification of a financial issue against the applicant was based on a factual error and since there have been no hearing sessions in this proceeding, we believe that the better course would be to delete the existing availability of funds issue on our own motion.[25] We take this somewhat unusual course because of the unique factual situation raised here and because the existing issue has no viability of its own in light of the overlooked predesignation amendment and the subsequent post-designation revision of the applicant's financial plan. While we are mindful of our practice of refraining from the deletion of hearing issues on the basis of post-designation pleadings or revisions in an applicant's proposal,[26] we are faced here with an apparent oversight on the Commission's part in the predesignation stage and with a modified financial proposal which has already been accepted by the Examiner. See Harry D. Stephenson and Robert E. Stephenson, 18 FCC 2d 337, 16 RR 2d 678 (1969); Salter Broadcasting Company, 8 FCC 2d 212, 10 RR 2d 14 (1967). Our action however, is not meant to foreclose the parties from seeking additional issues if the financial plan of the applicant should undergo further revisions which raise substantial questions about the applicant's basic qualifications.

20. With regard to petitioner's claims of inadequate or outdated cost estimates, we are of the opinion that the applicant, through its most recent financial revision, has effectively answered all substantial questions. For example, the applicant has submitted an August 26, 1970, equipment credit letter from Gates Radio Co., which indicates that equipment charges will total some $34,956, including provision for a 1,000-watt broadcast transmitter. This letter satisfactorily meets the contention made by the petitioner that 1966 estimates for necessary technical equipment are outdated. In response to WEEL's additional claim that studio-transmitter building construction costs will total at least $15,000, the applicant has allocated some $15,000 for that purpose in its revised section III; in response to questions raised about its transmitter site, the applicant has also indicated that the site will be leased from two of its stockholders who will not require lease payments until the station has been operational for at least 1 year.[27] The revised financial plan also allocates some $10,000 for engineering costs, $7,000 for installation costs and $10,000 for other miscellaneous costs, which estimates appear reasonable, and provides that stock is to be issued for legal services rendered. Furthermore, the proposal, as amended, shows an available cushion of some $4,425[28] in addition to the $10,000 allocation for other miscellaneous costs with which to meet unexpected expenses. See Jay Sadow (WRIP), ------ FCC 2d ------, 20 RR 2d 1171 (1971); Snake River Valley Television, Inc., 18 FCC 2d 70, 16 RR 2d 442 (1969). In such circumstances, an issue inquiring into the applicant's costs of

[22] The amendment to the application was accepted by the Hearing Examiner by Order, FCC 70M-1291, released Sept. 18, 1970.

[23] The applicant estimates its total costs for construction and first-year operation at $136,955, balaneed against total available funds of $141,314 (consisting of Weinstein's $125,000 loan and $16,314 in net deferred credit).

[24] WEEL assumes that two sites will be required since the applicant, in its opposition pleading, only refers to the land needed for a transmitter site.

[25] As indicated in note 20, supra, existing Issue 5 includes subissue (c), which requires a determination of the funds required to construct and operate the proposed station for 1 year without revenues and which was specified by the Commission only because the repayment terms of the $90,000 Levitan-Weinstein loan had been omitted by the applicant and those terms could affect total first-year costs. However, as noted above, the proposed $90,000 loan has been superseded, and Weinstein's new commitment specifically identifies its terms, including the provision for no repayments during the first year of station operation.

[26] See, e.g., Viking Television, Inc., 16 FCC 2d 1015, 15 RR 2d 968 (1969).

[27] The Board deems petitioner's arguments with respect to the lease of the transmitter site (see paragraph 18, supra) to be specious. Although the land is not listed as an asset in Weinstein's balance sheet, petitioner has not established that Weinstein and Levitan do not, in fact, own the land; moreover, we note that Weinstein's statement is a partial balance sheet which does not identify all of his assets. In this regard, we also note that, in Weinstein's Oct. 1, 1966, balance sheet submitted to the Commission, numerous real property holdings are listed under assets. In any event, if petitioner entertained any doubts concerning the location and availability of the site, it should have more appropriately sought specific site issues.

[28] The applicant estimates its first-year construction and operating costs at $120,575. This figure is based on the availability of a net deferred credit for technical equipment of $16,314.

construction will not be specified by the Board.[29]

21. *Accordingly, it is ordered,* That the motion for leave to file supplement to motion to enlarge issues, filed October 9, 1970, by O. K. Broadcasting Corp. (WEEL), is granted, and the attached supplement is accepted; and

22. *It is further order,* That the motion to enlarge issues, filed July 23, 1970, by O. K. Broadcasting Corp. (WEEL), as supplemented, is granted to the extent indicated herein, and is denied in all other respects; and

23. *It is further ordered,* That, on the Review Board's own motion, the Commission's Memorandum Opinion and Order, FCC 70-656, 23 FCC 2d 845, released June 30, 1970, is modified by the deletion of Issue 5; and

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

(a) To determine whether the proposal of Centreville Broadcasting Co. will realistically provide a local transmission facility for its specified station location or for another larger community, in light of all the relevant evidence, including but not limited to, evidence showing:

(1) The extent to which the specified station location has been ascertained by the applicant to have separate and distinct programming needs;

(2) The extent to which the needs of the specified station location are being met by existing standard broadcast stations;

(3) The extent to which the applicant's program proposal will meet the specific unsatisfied programing needs of its specified station location; and

(4) The extent to which the projected sources of the applicant's advertising revenues within its specified station location are adequate to support its proposal, as compared with its projected sources from all other areas.

(b) To determine, in the event it is concluded pursuant to the foregoing issue (a) that the proposal will not realistically provide a local transmission service for its specified station location, whether such proposal meets all of the technical provisions of the Rules for standard broadcast stations assigned to the most populous community for which it is determined that the proposal will realistically provide a local transmission service.

(c) To determine whether Centreville Broadcasting Co. failed to comply with the provisions of § 1.526(a) of the Commission's rules concerning the maintenance of a local file for public inspection, and, if so, the effect thereof on the qualifications of the applicant to be a Commission licensee.

25. *It is further ordered,* That the burden of proceeding with the introduction of evidence and the burden of proof under issues (a) and (b) added herein shall be upon Centreville Broadcasting Co.; and that the burden of proceeding with the introduction of evidence under issue (c) added herein shall be upon O. K. Broadcasting Corp. (WEEL), and the burden of proof under issue (c) shall be upon Centreville Broadcasting Co.

Adopted: February 19, 1971.

Released: February 23, 1971.

FEDERAL COMMUNICATIONS COMMISSION,[30]
[SEAL] BEN F. WAPLE,
Secretary.

[FR Doc. 71-2728 Filed 2-26-71;8:49 am]

[Dockets Nos. 18912, 18913; FCC 71R-63]

FOLKWAYS BROADCASTING CO., INC., AND HARRIMAN BROADCASTING CO.

Memorandum Opinion and Order Amending Issues

In regard applications of Folkways Broadcasting Co., Inc., Harriman, Tenn., Docket No. 18912, File No. BPH-5495; and, F. L. Crowder, trading as Harriman Broadcasting Co., Harriman, Tenn., Docket No. 18913, File No. BPH-5537; for construction permits.

1. The mutually exclusive applications of Folkways Broadcasting Co., Inc. (Folkways), and F. L. Crowder, trading as Harriman Broadcasting Co. (Harriman), for a construction permit to establish a new FM broadcast station in Harriman, Tenn., were designated for hearing by Commission Order, FCC 70-736, released July 14, 1970. Among the issues specified was a financial qualifications issue against Harriman. Presently before the Review Board is a petition to enlarge issues, filed December 24, 1970, by Folkways, seeking the addition of § 1.65, misrepresentation, lack of candor, and requisite character qualifications issues against Harriman.[1]

2. The basis for Folkways' petition is a law suit filed in the U.S. District Court for the Eastern District of Tennessee on November 23, 1970, by Commercial Credit Corp. (Commercial Credit) against F. L. Crowder (Harriman's sole owner), Crowder's wife, and Crowder Chrysler-Plymouth, Inc., for $38,656.45 allegedly owed plaintiff for financing automobiles.[2] According to Folkways, this amount represents the difference between the original price of the cars and the amount received by Commercial Credit after a foreclosure and auction sale held on May 2, 1970, at the premises of Crowder Chrysler-Plymouth, Inc., in Harriman, Tenn. Institution of the suit, claims petitioner, has brought to light several apparent violations of Commission Rule 1.65: (1) Crowder delayed almost 2 years before amending his application to report his ownership interest in the automobile dealership;[3] (2) Crowder failed to report a guaranty agreement signed by him on January 9, 1968, by which he gave Commercial Credit his personal guarantee for the loan (which Folkways estimates is in excess of $135,000); (3) he failed to amend his application to reflect his personal liability following the May 1970, foreclosure and sale of the automobiles; (4) he failed to report institution of the civil action on November 23, 1970; and (5) he has not amended his application to reflect the effect these matters have on the value of the assets of Crowder Chrysler-Plymouth. These facts take on greater importance, insists Folkways, because a financial qualifications issue has already been designated against Harriman to determine whether it has an additional $20,000 for construction and first-year operating costs, and the suit would directly affect the $50,000 claimed by Crowder in his August 31, 1969, balance sheet as the value of his stock in the automobile dealership. Thus, petitioner concludes, these failures require the addition of a Rule 1.65 issue. Regarding the requested misrepresentation issue, petitioner asserts that the concealment by Crowder of this financial information demonstrates that more than a Rule 1.65 violation is involved here, and that Crowder has not been candid or come forth with the required information in the instant application. The Broadcast Bureau supports addition of the requested issues; it is of the opinion that Crowder has not timely or fully advised the Commission regarding his business interests thereby necessitating full exploration of these matters at the hearing.

3. In opposition, Harriman asserts that the principal allegation of the petition, i.e., the failure to report the institution of the civil suit, cannot support Folkways' request for a § 1.65 issue. Respondent, supported by Crowder's affidavit, submits that the civil action did not have to be reported because it does not substantially affect its financial status; according to Harriman, the proposed FM station's construction and operating costs are to be financed entirely by an $85,000 loan from the First National Bank of Harriman, which is allegedly fully aware of Crowder's relationship with Commercial Credit.[4] Moreover, asserts Harriman, Crowder's balance sheet, dated August 31,

[29] As indicated in note 25, supra, the limited costs issue which had been specified by the Commission was based on the originally proposed $90,000 loan from Levitan and Weinstein and was not intended to permit an exploration of the bases for the applicant's estimated construction and operating costs. In fact, in the designation order, the Commission found that $83,499 would be required to construct and operate the proposed station for 1 year without revenues, assuming that no loan repayments would be required during the period. 23 FCC 2d at 846.

[30] Board Members Slone and Pincock absent.

[1] Also before the Board for consideration are: (a) Support, filed Jan. 6, 1971, by the Broadcast Bureau; (b) opposition, filed Jan. 18, 1971, by Harriman; and (c) reply, filed Jan. 28, 1971, by Folkways.

[2] A copy of the complaint is attached to the petition.

[3] Harriman's application was filed on Sept. 1, 1966; and the automobile dealership began operating in January 1968. The dealership, which is 100 percent owned by Crowder, was not reported to the Commission until Dec. 9, 1969.

[4] Until Jan. 8, 1971, Harriman was relying, in part, on Crowder's personal assets to finance the proposed FM station. On that date, the Hearing Examiner accepted an amendment to Harriman's application to reflect the new financial plan (FCC 71M-35).

1969, reflects a net worth of over $333,000; thus, even if Commercial Credit's claim is reduced to judgment, a decrease of $38,656.45 in Crowder's net worth would not seriously impair his available resources. Regarding its failure to report the guarantee instrument and the foreclosure, Harriman avers, as to the former, that such a contract is part of normal business practice and, being a contingent agreement, does not have to be reported to the Commission. As to the letter, Harriman claims that Commercial Credit repossessed the automobiles from third persons and that Crowder was never served with foreclosure papers; therefore, this cannot be considered a foreclosure of the automobile agency's assets. Finally, Harriman claims that Folkways' assertion that Crowder waited for 2 years to report his ownership of the dealership is untimely, as it had amended its application to reflect such ownership in 1969. Harriman, in conclusion, asserts that Folkways has not shown good cause for its untimely request seeking an issue based on the alleged failure to report the ownership interest in the Crowder Chrysler-Plymouth agency, that the personal obligation between Crowder and Commercial Credit is a routine business transaction, contingent in nature, and that the suit, even if successful, does not represent a substantial decrease in the assets of the corporation [5] or in Crowder's net worth.

4. In reply, Folkways emphasizes that prior to November 17, 1970, when Harriman amended its application to reflect an $85,000 bank loan, its financial proposal for construction of the FM station was based partly on Crowder's commitment of his personal resources. See note 4, supra. Thus, Crowder's financial position was important in determining the financial qualifications of Harriman, and, petitioner maintains, neither the contingent liability nor the fixing of the liability following the sale of the security on May 8, 1970, was reported to the Commission. Folkways asserts that Crowder was certainly aware of his financial disability on May 8th when the security was sold and it clearly affected his then pending financial proposal until November 17th when the new bank loan was reported. The filing of the financial amendment to show an enlarged bank loan and the argument that even if the suit is reduced to judgment it would not adversely affect the applicant's financial ability, cannot, insist Folkways, diminish the seriousness of the prior concealments, misrepresentations and § 1.65 violations. Moreover, petitioner asserts, even the recent amendment does not set forth any of this information on Crowder's personal balance sheet. Finally, petitioner disputes the actual value of the assets of Crowder Chrysler-Plymouth since of the $21,036.42 of receivables claimed, $11,225.79 is due from Commercial Credit and Crowder's answer to the law suit does not claim a setoff for this amount. Therefore, concludes Folkways, these allegations go to the heart of Crowder's application to be a permittee and thus require addition of the requested issues.

5. The Review Board is of the opinion that a Rule 1.65 issue is warranted to explore Harriman's failure to notify the Commission of the guaranty agreement; the foreclosure [6] and sale of the mortgaged automobiles and the apparent liability of Crowder for the deficiency; and the institution of the civil suit. Before amending its application in November 1970, to reflect a proposed bank loan to fully cover construction and first-year operating costs, Harriman was relying on Crowder's resources to aid in financing the proposed station; yet, the respondent made no attempt to inform the Commission of his personal guarantee of a substantial loan to one of his corporations and his alleged liability to Commercial Credit. As to the reporting of Crowder's "contingent liability," the Board has held that, not only are such liabilities required to be particularized, but that where, as here, a wholly owned corporation is involved, it is incumbent upon the applicant to show that the debt could be repaid without a substantial impact on its principal's financial position. Louis Vander Plate, FCC 68R390, 14 RR 2d 309. Equally important is Crowder's failure to report the foreclosure and sale; certainly there cannot be a difference of opinion as to the possible consequence of a potential liability of over $38,000 on this applicant's financial status. See 1400 Corp. (KMBI), 14 FCC 2d 281, 13 RR 2d 1198 (1968). These omissions take on even greater significance after the financial issue was designated against Harriman (July 1970), and it still failed to report the agreement and foreclosure. Harriman's argument that the foreclosure proceedings were brought against third parties and that Crowder never was served with foreclosure papers is irrelevant to Crowder's knowledge, which Harriman does not deny, that the automobiles were sold and that he might be liable for the deficiency. If Harriman had such knowledge, the relevant facts should have been disclosed to the Commission. See United Television Co., Inc. (WFAN–TV), 19 FCC 2d 1060, 17 RR 2d 467 (1970).

6. Regarding the law suit, although it is true that even a judgment of $38,000 against Crowder would now have no decisional signficance since Harriman no longer relies on Crowder's personal assets, when the suit was filed on November 23, 1970, Harriman's application still reflected reliance on Crowder's assets. Respondent's amendment, while filed 6 days before the suit, was not accepted by the Hearing Examiner until January 8, 1971; [7] therefore, at least technically, the institution of the law suit on November 23, 1970, was of decisional significance. However, even if we assume that Harriman's application was amended to include the bank letter when its petition was filed (on November 17), a §1.65 issue would still be warranted. Although it is well established that an applicant need not report every civil suit filed against it or its principals, an applicant must report those suits which may be of decisional significance. Royal Broadcasting Co., Inc. (KHAI), 4 FCC 2d 857, 8 RR 2d 639 (1966). See also Lorain Community Broadcasting Co. 18 FCC 2d 686, 16 RR 2d 946 (1969). Here, the bank is committing $85,000 on Crowder's signature alone and there exists a distinct possibility that the institution of the suit could affect the bank's willingness to lend the money. Crowder's allegations that the bank, when it made the commitment, was aware of his relationship with Commercial Credit does not detract from a possible violation of § 1.65. Thus, a substantial question has been raised as to whether Crowder failed to report changes of decisional significance; an appropriate issue will threfore be added. Compare Mace Broadcasting Co., 25 FCC 2d 621, 19 RR 2d 1135 (1970). Since, from the pleadings, we are unable to determine whether this liability was intentionally concealed, we will specify the issue on a disqualifying basis. See Sumiton Broadcasting Co., 20 FCC 2d 669, 17 RR 2d 1038 (1969). We do agree with Harriman that the 1.65 issue should not include an inquiry into the reporting of Crowder's ownership of Crowder Chrysler-Plymouth nearly 2 years late. Harriman amended its application in 1969, and the proceeding was designated for hearing in July 1970; therefore, Folkways has not shown good cause for its late request in regard to this matter.[8] Cf. Lamar Life Broadcasting Co., —— FCC 2d ——, 20 RR 2d 1162 (1971).

7. *Accordingly, it is ordered,* That the petition to enlarge issues, filed December 24, 1970, by Folkways Broadcasting Co., Inc., is granted to the extent indicated above, and is denied in all other respects; and

8. *It is further ordered,* That the issues in this proceeding are enlarged to include the following issue:

To determine whether F. L. Crowder, trading as Harriman Broadcasting Co. has complied with the provisions of § 1.65 of the Commission's rules by keeping the Commission advised of substantial changes in matters specifically referred to in this memorandum opinion and order, and, if not, to determine the effect of such noncompliance on the basic and comparative qualifications of F. L. Crow-

[5] Harriman claims that the value of Crowder's stock in Crowder Chrysler-Plymouth has not substantially changed from the $50,000 previously reported.

[6] Crowder, in his affidavit, states that the liens on the automobiles were not foreclosed, but that the automobiles were "repossessed"; such a distinction appears to be irrelevant to the requests now before us.

[7] See note 4, supra.

[8] Petitioner's request for a misrepresentation issue will be denied; Folkway's allegations are insufficient to warrant an inquiry into this area. Cf. United Television Co., Inc. (WFAN–TV), supra. However, the general question of Crowder's candor may be examined under the issue being specified herein.

der, trading as Harriman Broadcasting Co. to be a Commission licensee.

9. *It is further ordered*, That the burden of proceeding with the introduction of evidence under the issue added herein, shall be upon Folkways Broadcasting Co., Inc., and the burden of proof shall be upon F. L. Crowder, trading as Harriman Broadcasting Co.

Adopted: February 22, 1971.

Released: February 23, 1971.

FEDERAL COMMUNICATIONS COMMISSION,[9]
[SEAL] BEN F. WAPLE,
Secretary.

[FR Doc.71-2729 Filed 2-26-71;8:49 am]

CIVIL AERONAUTICS BOARD

[Docket No. 22362]

ON-ROUTE CHARTER AUTHORITY OF FOREIGN AIR CARRIER PERMITS

Notice of Hearing

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that the hearing in the above-entitled proceeding will be held on March 9, 1971, in Room 726, Universal Building, 1825 Connecticut Avenue NW., Washington, DC, beginning at 2 p.m.

For information concerning the issues involved and other details in this proceeding, interested persons are referred to the prehearing conference report served on January 19, 1971, and other documents which are in the docket of this proceeding on file in the Docket Section of the Civil Aeronautics Board.

Dated at Washington, D.C., February 23, 1971.

[SEAL] GREER M. MURPHY,
Hearing Examiner.

[FR Doc.71-2738 Filed 2-26-71;8:49 am]

[Docket No. 22301; Order 71-2-103]

PIEDMONT AVIATION, INC.

Order Granting Motion To Consolidate

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 24th day of February 1971.

By Order 70-8-90, August 21, 1970, the Board set for hearing the application of Piedmont Aviation, Inc. (Piedmont), in Docket 22301 for an amendment of its certificate to delete the point Southern Pines/Pinehurst/Aberdeen.

Southern Pines and Pinehurst, N.C., have filed a motion to consolidate their petition in Docket 23057, which petition seeks to amend Piedmont's certificate for Route 87 by deleting condition 12(b). The latter condition provides that Piedmont shall serve Southern Pines/Pinehurst/Aberdeen, N.C., only during the period between October 1 and April 30.

In support of its motion, Southern Pines contends, in pertinent part, that Piedmont does not serve the community when service is most needed, i.e., May 1 through September 30 of each year, and that grant of the motion will not substantially broaden the issues or otherwise substantially delay the proceeding.

The Bureau of Operating Rights filed an answer supporting the motion to consolidate. Piedmont filed an answer opposing the motion to consolidate. In support of its answer, Piedmont alleges, inter alia, that the traffic at Southern Pines will be far less during the off-season and it is obvious that there is no need to provide year-round service to the point. Consequently, according to Piedmont there is no justification for trying such an issue. In addition, Piedmont contends that consolidation of Southern Pines' application would unduly expand the issues.

Upon consideration of the pleadings and all the relevant facts, we have decided to grant the motion to consolidate Docket 23057 with the instant proceeding, thus expanding the issues to consider whether Piedmont should be authorized and required to provide year-round service to Southern Pines. We note that the two proceedings involve the same parties and issues which are closely related, and we find that consolidation will be conducive to the proper dispatch of the Board's business and to the ends of justice, and will not unduly delay the proceedings.

Accordingly, it is ordered, That:

1. The motion to consolidate filed by Southern Pines and Pinehurst, N.C., be and it hereby is granted; and

2. The petition of Southern Pines and Pinehurst, Docket 23057, be and it hereby is consolidated for hearing and decision with the proceeding in Docket 22301.

This order shall be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] HARRY J. ZINK,
Secretary.

[FR Doc.71-2739 Filed 2-26-71;8:49 am]

FEDERAL MARITIME COMMISSION

[Docket No. 71-17]

FUEL SURCHARGES ON MILITARY SEALIFT COMMAND RATES

Order to Show Cause

Violations of sections 14 fourth, 16 first and 17, Shipping Act, 1916, in the nonassessment of fuel surcharges on military sealift command (MSC) rates under the MSA request for rate proposals (RFP) bidding system.

Beginning in the fall of 1970, common carriers in the foreign commerce of the United States began filing in their tariffs bunker surcharges to offset increases in the cost of fuel. A comparison of bunker fuel costs from April 1, 1970 through January 1, 1971 showing the upward trend of prices is attached as Attachment A.[1] These surcharges range from $1 per freight ton to as high as 5 percent of the applicable rate. However, most of the surcharges are published as either a $2 or $3 per freight ton or a 2 or 3 percent increase in the applicable freight rate. To this date all the surcharges have been assessed solely against commercial and nonmilitary government cargoes.

The American flag common carriers who transport most military cargoes (under the cargo preference laws) have not assessed similar surcharges against military traffic. The military cargo moving via these lines under shipping and container agreements, which are filed with the Commission in lieu of tariffs, moves in the same vessels at the same time that commercial cargoes are moving. It thus appears that any increase in the cost of fuel which necessitates the carrier to assess a surcharge against commercial cargoes would also necessitate the assessment of a surcharge against those military cargoes carried having the same general characteristics.

The failure to impose a similar surcharge on military cargo, which constitutes a large share of cargo carried, results in a prima facie violation of sections 14 Fourth, 16 First, and 17 of the Shipping Act, 1916.

Section 14 Fourth prohibits common carriers by water from making any unjustly discriminatory contract with any shipper based on volume of freight. The fact that the shipping and container agreements do not allow the carriers the right to assess additional charges thereunder, even as a result of the unexpected cumulative increase experienced in regard to bunker fuel costs, results in a prima facie violation of section 14 Fourth.

Section 16 First makes it unlawful for any common carrier by water to give any unreasonable preference or advantage to any description of traffic. Thus the failure to impose a bunker surcharge on military cargo while commerical cargo has to pay for the increased bunker costs would also create a prima facie violation of section 16 First.

Also, section 17 forbids common carriers from charging or collecting any rate or charge which is unjustly discriminatory between shippers. As the commercial shippers are being charged a bunker surcharge, while a large portion of cargo is not similarly assessed a surcharge, this also results in a prima facie violation of section 17.

Therefore it is ordered, Pursuant to section 22 of the Shipping Act, 1916, that the carriers who participate in the carriage of military cargo through shipping and container agreements show cause why the failure to impose a bunker fuel surcharge on military cargo, while at the same time a similar surcharge is imposed on commercial cargo, is not in violation of sections 14 Fourth, 16 First and 17 of the Shipping Act, 1916.

It is further ordered, That there appearing to be no material issues of fact in dispute that this proceeding shall be limited to the submission of affidavits

[9] Board Member Slone absent; Board Member Berkemeyer dissenting in part and voting to add misrepresentation issue.

[1] Filed as part of the original document.

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 March 10, 1971. Affidavits of fact and memorandum of law shall be filed by respondents, and any interested intervenor in favor of continuing the existing practices, and served upon all parties no later than the close of business March 10, 1971. Reply affidavits and memorandum shall be filed by the Commission's Bureau of Hearing Counsel and other intervenors, if any, no later than close of business March 17, 1971. An original and 15 copies of affidavits of fact, memorandum of law, and replies are required to be filed with the Secretary, Federal Maritime Commission, Washington, D.C. 20573. Copies of any papers filed with the Secretary should also be served upon all parties hereto. Time and date of oral argument if requested and/or deemed necessary by the Commission will be announced at a later date.

It is further ordered, That all carriers who participate in the carriage of military cargo through shipping and container agreements be made respondents in this proceeding. A list of respondents appears as Attachment B.

Is is further ordered, That notice of this order be published in the FEDERAL REGISTER and a copy thereof be served upon the respondents.

It is further ordered, That any person other than those named as respondents herein who desires to become a party to this proceeding and participate therein, shall file a petition to intervene in accordance with Rule 5(1) (46 CFR 502.72) of the Commission's rules of practice and procedure.

It is further ordered, That all future notices issued by or on behalf of the Commission in this proceeding, shall be mailed directly to all parties of record.

By the Commission.

[SEAL] FRANCIS C. HURNEY,
Secretary.

ATTACHMENT B—RESPONDENT CARRIERS

American Export Isbrandtsen Lines, Inc., 26 Broadway, New York, NY 10004.
American Mail Line, Ltd., 601 California Street, San Francisco, CA 94108.
American President Lines, Ltd., 601 California Street, San Francisco, CA 94108.
American Union Transport, Inc., 15 East 26th Street, New York, NY 10010.
Central Gulf Steamship Corp., Suite 2700, International Trade Mart, No. 2 Canal Street, New Orleans, LA 70150.
Columbia Steamship Co., Inc., 2300 Southwest First Avenue, Portland, OR 97201.
Global Bulk Transport, Inc., High Ridge Park, Post Office Box 1540, Stamford, CT 06904.
Gulf & South American Steamship Co., Inc., Commerce Building, Post Office Box 50938, New Orleans, LA 70150.
Isthmian Lines, Inc., High Ridge Park, Post Office Box 1540, Stamford, CT 06904.
Lykes Bros. Steamship Co., Inc., 821 Gravier Street, New Orleans, LA 70112.
Matson Navigation Co., 100 Mission Street, San Francisco, CA 94105.
Moore-McCormack Lines, Inc., Two Broadway, New York, NY 10004.
Pacific Far East Line, Inc., 141 Battery Street, San Francisco, CA 94111.
Prudential-Grace Lines, Inc., One Whitehall Street, New York, NY 10004.
Sea-Land Service, Inc., Corbin & Fleet Streets, Post Office Box 1050, Elizabeth, NJ 07207.
Seatrain Lines, Inc., Port Seatrain, Weehawken, NJ 07087.
States Marine International, Inc., High Ridge Park, Post Office Box 1540, Stamford, CT 06904.
States Steamship Co., 320 California Street, San Francisco, CA 94104.
United Fruit Co., 321 St. Charles Avenue, Post Office Box 61150, New Orleans, LA 70160.
United States Lines, Inc., 1 Broadway, New York, NY 10004.
Waterman Steamship Corp., 61 St. Joseph Street, Post Office Box 231, Mobile, AL 36601.

[FR Doc.71-2730 Filed 2-26-71;8:49 am]

MARYLAND PORT AUTHORITY AND CONSOLIDATED STEVEDORING CORP.

Notice of Agreement Filed

Notice is hereby given that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1405 I Street NW., Room 1202; or may inspect the agreement at the Field Offices located at New York, N.Y., New Orleans, La., and San Francisco, Calif. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 20 days after publication of this notice in the FEDERAL REGISTER. Any person desiring a hearing on the proposed agreement shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the statement should indicate that this has been done.

Notice of agreement filed by:

Mr. Philip G. Kraemer, Director of Transportation, Maryland Port Authority, Pier 2 Pratt Street, Baltimore, MD 21202.

Agreement No. T-2485, between the Maryland Port Authority (Authority) and Consolidated Stevedoring Corp. (Consolidated), provides for the 1 year use of portions of Transit Shed 2 and preferential berthing rights at Dundalk, Md. Consolidated will pay the Authority $100,000 annually as rental for the premises plus all taxes and assessments arising out of its operations as well as all taxes on improvements placed on premises by Consolidated. The Authority will be entitled to the prevailing tariff charges in connection with the premises, except that no demurrage will be assessed on cargo held within the leased area.

By order of the Federal Maritime Commission.

Dated: February 24, 1971.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.71-2733 Filed 2-26-71;8:49 am]

SUN LINE GREECE SPECIAL SHIPPING CO., INC.

Notice of Issuance of Casualty Certificate

Security for the protection of the public; financial responsibility to meet liability incurred for death or injury to passengers or other persons on voyages.

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of section 2, Public Law 89-777 (80 Stat. 1356, 1357) and Federal Maritime Commission General Order 20, as amended (46 CFR Part 540):

Sun Line Greece Special Shipping Co., Inc., 21 Karageorgi Servias Street, Athens 125, Greece.

Dated: February 24, 1971.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.71-2731 Filed 2-26-71;8:49 am]

SUN LINE GREECE SPECIAL SHIPPING CO., INC.

Notice of Issuance of Performance Certificate

Security for the protection of the public; indemnification of passengers for nonperformance of transportation.

Notice is hereby given that the following have been issued a certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of section 3, Public Law 89-777 (80 Stat. 1357, 1358) and Federal Maritime Commission General Order 20, as amended (46 CFR Part 540):

Sun Line Greece Special Shipping Co., Inc., 2 Karageorgi Servias Street, Athens 125, Greece.

Dated: February 24, 1971.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.71-2732 Filed 2-26-71;8:49 am]

FEDERAL POWER COMMISSION

[Docket No. E-7605]

COMMUNITY PUBLIC SERVICE CO.

Notice of Proposed Stock Dividend

FEBRUARY 17, 1971.

Take notice that on February 3, 1971, an application was filed with the Federal Power Commission, pursuant to section 204 of the Federal Power Act, by Community Public Service Co., which is incorporated in the State of Texas and domesticated in the State of New Mexico, with its principal place of business at Fort Worth, Tex. The applicant proposes to issue and deliver to its stockholders, a maximum amount of 123,188 shares of common capital stock as a stock dividend at the rate of one share for each 10 shares held on the record date.

Stockholders entitled to a fractional-share interest will receive, in lieu of fractional shares, order forms whereby the fractional shareholder may, for a limited period, sell such fractional share interest or purchase sufficient additional fractional share interest to make up one full share of stock. The price at which such fractional share interest will be sold or purchased will be based on the closing sale price of the common capital stock of applicant on the American Stock Exchange on the record date (close of business on March 17, 1971), reduced by 9.09 percent, or the mean between the closing bid and asked prices on such date if there is no sale.

Applicant contends the purpose for which the securities are to be issued is to increase the marketability of the common capital stock by making more shares available for trading purposes which will aid the applicant in future equity financings by reason of broadened investor interest in the stock.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 8, 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.

KENNETH F. PLUMB,
Acting Secretary.

[FR Doc.71-2675 Filed 2-26-71;8:45 am]

[Docket No. CP71-197]

HAMPSHIRE GAS CO.

Notice of Application

FEBRUARY 16, 1971.

Take notice that on February 4, 1971, Hampshire Gas Co. (applicant), 1100 H Street, NW., Washington, DC 20005, filed in Docket No. CP71-197 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain facilities and the rendition of natural gas storage service for Washington Gas Light Co. (Washington), 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 construct and operate a 1,640 horsepower compressor station and appurtenant facilities to be used for injecting natural gas into its storage reservoirs. Pursuant to the storage service agreement between applicant and Washington, applicant is to receive natural gas from Atlantic Seaboard Corp. (Atlantic), for and on behalf of Washington, at a new delivery point to be constructed near Atlantic's Lost River Compressor Station in Hardy County, W. Va. This gas is to be transported 25 miles to the storage field through a pipeline owned by United Fuel Gas Co. and stored by applicant in the Whip Cove Anticline, Hampshire County, W. Va.

Applicant further states that Washington and Atlantic have entered into an exchange agreement whereby applicant is to deliver up to 35,000 Mcf of natural gas per day, from the storage field, during the months of October through April, to Atlantic at a point near Atlantic's Lost River Compressor Station. Atlantic will redeliver this same amount to Washington at points of delivery in Washington's market area near the District of Columbia.

Applicant states that the estimated cost of the facilities proposed herein, including royalty payments on recoverable native gas and the cost of cushion gas, will be $2,120,000, which cost is to be provided by Washington, applicant's parent company, through open account advances.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 8, 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.

[FR Doc.71-2676 Filed 2-26-71;8:45 am]

NATIONAL GAS SURVEY ADVISORY COMMITTEES

Order Authorizing Establishment and Prescribing Procedures

FEBRUARY 23, 1971.

The Federal Power Commission has determined that a National Gas Survey is necessary and appropriate to the purposes of the Natural Gas Act, 15 U.S.C. 717(a) et seq. As carried out, the survey will serve the interests of all who are, and may be, dependent upon or affected by the use and further development of the Nation's natural gas resources. Within the areas to be studied, the Commission contemplates detailed analyses inter alia of factors of demand, supply and alternate fuel sources, facility expansion, economic and environmental considerations, inflation, interfuel competition, import-export relationships and policies, and regulatory considerations—Federal, State, and local. Other matters will be studied as appropriate.

To accomplish the objectives of the Natural Gas Act, in providing for the ultimate consumer an adequate and reliable supply of natural gas at a reasonable price and the Nation a vital energy resource base, the Commission will direct the conduct of the Survey through the members of the Commission and its staff.

To assist the actions of the Commissioners and Commission staff, the Commission will use various advisory committees which shall be conducted under the general direction of the Commission and in accordance with the provisions of Executive Order No. 11007, February 26, 1962 (27 F.R. 1875). Currently, the Commission contemplates these advisory committees will include a National Gas Survey Executive Advisory Committee, a General Technical Advisory Committee and a number of Regional Advisory Committees. Others may be established. All will be conducted pursuant to the general requirements as set forth in this order. The Commission contemplates the issuance of specific order or orders from time-to-time establishing each committee and denominating its membership and chairmanship.

The advice of all committees shall be limited to matters relating solely to the planning and carrying out of the National Gas Survey. The Commission will have complete responsibility for the National Gas Survey with respect to its

conduct, scope, the ultimate recommendations and the acceptance of the final report. In discharging these responsibilities, the Commission will approve the Survey's objectives, scope of work, organization and schedule of performance, make any required policy determinations and give its advice directed toward the coordination and cooperation between the Survey and any intergovernmental, State, industry, agency or representative, including any other expertise as required.

1. *Purpose.* The committees shall advise and make recommendations to the Commission in planning and carrying out the Commission's proposed National Gas Survey.

2. *Selection of committee members.* All committee members, alternates and persons designated to act as committee chairmen shall be selected and designated by the Chairman of the Commission with the approval of the Commission.

3. *Conduct of meetings.* The Chairman of the Commission, or in his absence, the Vice Chairman of the Commission, or any full-time salaried officer or employee of the Commission designated by the Chairman of the Commission, who shall act as chairman of a committee, shall be responsible for opening, conducting and adjourning committee meetings when, in his judgment, adjournment is in the public interest. When a committee is chaired by a person, designated by the Chairman of the Commission as chairman of that committee, who is not a full-time salaried officer or employee of the Commission, no meeting of such committee shall be held except at the call of, or with the advance approval of, a full-time salaried officer or employee of the Commission designated by the Chairman of the Commission, and with an agenda formulated or approved by such officer or employee; and all such meetings shall be conducted in the presence of such full-time salaried officer or employee of the Commission, who shall be responsible for opening the meeting, assisting in the conduct thereof, and for adjourning any meeting whenever he considers adjournment to be in the public interest.

4. *Minutes.* The Chairman of the Commission having made a finding that maintenance of a verbatim transcript would be impracticable and not in the public interest, there shall be kept by the secretary of each committee, in lieu thereof, a record of persons present, a description of matters discussed and conclusions reached, and copies of all reports received, issued, or approved by each committee.

5. *Secretary of the committee.* The Chairman of the Commission shall appoint a secretary of each commitee from among the members of the Commission staff who shall be responsible for preparing summary minutes of all committee meetings, preparing agenda, notifying members of the meetings, and maintaining all records related to organization, membership and operations of the committee. The secretary shall be present during all meetings and shall certify the accuracy of all minutes.

6. *Location and time of meetings.* Unless otherwise directed, committee meetings will convene at the call of the Chairman of the Commission at the Office of the Federal Power Commission, located at 441 G Street NW., Washington, D.C. 20426, or at such place and time as may be designated by the chairman of the committee with the approval of the Chairman of the Commission. Ordinarily, these meetings will be held during the regular working hours of the Federal Power Commission.

7. *Advice and recommendations offered by the committee.* The advice and recommendations of the members of the committees may be presented to the Commission at committee meetings either orally or in written form. The advice of all committees shall be limited to matters relating solely to the planning and carrying out of the National Gas Survey and ultimate decisions based on the committees' advice or recommendations are reserved to the Federal Power Commission.

8. *Duration of the committee.* All committees shall terminate not later than 2 years subsequent to their date of establishment, unless the Commission determines in writing, not more than 60 days prior to the expiration of such 2-year period, that continued existence of a committee is in the public interest. A like determination by the Commission shall be required not more than 60 days prior to the end of each subsequent 2-year period to continue the existence of each committee thereafter.

The Secretary of the Commission shall cause prompt publication of this order to be made in the FEDERAL REGISTER in accordance with the provisions of the Office of Management and Budget Circular No. A-63.

By the Commission.

[SEAL] KENNETH F. PLUMB,
Acting Secretary.

[FR Doc.71-2702 Filed 2-26-71;8:47 am]

FEDERAL RESERVE SYSTEM

FIRST ARKANSAS BANKSTOCK CORP.

Order Disapproving Acquisition of Bank Stock by Bank Holding Company

In the matter of the application of First Arkansas Bankstock Corp., Little Rock, Ark., for approval of acquisition of 80 percent or more of the voting shares of The Stephens Security Bank, Stephens, Ark.

There has come before the Board of Governors, pursuant to section 3(a)(3) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(a)(3)) and § 222.3 (a) of Federal Reserve Regulation Y (12 CFR 222.3(a)), an application by First Arkansas Bankstock Corp., Little Rock, Ark., the only registered bank holding company in Arkansas, for the Board's prior approval of the acquisition of 80 percent or more of the voting shares of The Stephens Security Bank, Stephens, Ark.

As required by section 3(b) of the Act, the Board gave written notice of receipt of the application to the State Commissioner of Banking, and requested his views and recommendation. The Commissioner recommended approval unless legislation were to be approved prohibiting holding company expansion.

Notice of receipt of the application was published in the FEDERAL REGISTER on December 9, 1970 (35 F.R. 18699) providing an opportunity for interested persons to submit comments and views with respect to the proposal. Subsequent to the filing of the application, on February 5, 1971, the State of Arkansas enacted legislation prohibiting the formation and expansion of multi-bank holding companies (Act 47 of the 68th General Assembly of the State of Arkansas). Pursuant to section 7 of the Bank Holding Company Act of 1956 (12 U.S.C. 1846), and the case of Whitney National Bank v. Bank of New Orleans, 379 U.S. 411 (1965), the Board is precluded from approving acquisitions by holding companies in those States in which such acquisitions are prohibited by State legislation. Due to this conclusion, the Board has neither reached nor considered the merits of the application and expresses no view thereon.

It is hereby ordered, For the reasons set forth above, that said application be and hereby is denied.

By order of the Board of Governors,[1] February 22, 1971.

[SEAL] KENNETH A. KENYON,
Deputy Secretary.

[FR Doc.71-2712 Filed 2-26-71;8:48 am]

FIRST FLORIDA BANCORPORATION

Order Approving Acquisition of Bank Stock By Bank Holding Company

In the matter of the application of First Florida Bancorporation, Tampa, Fla., for approval of acquisition of 80 percent or more of the voting shares of Bank of Tavares, Tavares, Fla.

There has come before the Board of Governors, pursuant to section 3(a)(3) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(a)(3)) and § 222.3 (a) of Federal Reserve Regulation Y (12 CFR 222.3(a)), an application by First Florida Bancorporation, Tampa, Fla. (Applicant), a registered bank holding company, for the Board's prior approval of the acquisition of 80 percent or more of the voting shares of Bank of Tavares, Tavares, Fla. (Tavares Bank).

As required by section 3(b) of the Act, the Board gave written notice of receipt of the application to the Commissioner

[1] Voting for this action: Chairman Burns and Governors Robertson, Mitchell, Daane, Maisel, Brimmer, and Sherrill.

of Banking for the State of Florida, and requested his views and recommendation. The Commissioner recommended approval of the application.

Notice of receipt of the application was published in the FEDERAL REGISTER on January 6, 1971 (36 F.R. 189), providing an opportunity for interested persons to submit comments and views with respect to the proposed transaction. A copy of the application was forwarded to the U.S. Department of Justice for its consideration. The time for filing comments and views has expired and all those received have been considered by the Board.

The Board has considered the application in the light of the factors set forth in section 3(c) of the Act, including the effect of the proposed acquisition on competition, the financial and managerial resources and prospects of the Applicant and the banks concerned, and the convenience and needs of the communities to be served and finds that:

Applicant presently controls 17 banks with aggregate deposits of approximately $347 million, representing 2.8 percent of all deposits of commercial banks in Florida. (All banking data are as of June 30, 1970, adjusted to reflect holding company acquisitions approved by the Board through December 31, 1970.) Upon acquisition of Tavares Bank ($13 million deposits), Applicant would remain the sixth largest registered bank holding company in Florida. On the basis of deposits, Tavares Bank ranks sixth among the ten banking organizations in Lake County, which approximates the relevant market, and controls 9.3 percent of market deposits. It appears that there is no significant competition between Tavares Bank and any of Applicant's present subsidiary banks, of which the nearest to Tavares Bank are two banks in Seminole County and one in Orange County, about 35 miles distant. A number of banks are located in each of the intervening areas between Applicant's subsidiaries and Tavares Bank. Branch banking is not permitted under Florida law, and there appears to be little likelihood that Applicant would establish a de novo office in Lake County. Thus, it appears that consummation of this proposal would not eliminate significant existing competition nor foreclose potential competition. Affiliation with Applicant may enhance the ability of Tavares Bank to compete with the larger banks in its area without having any adverse effect on the smaller banks located there.

On the basis of the record before it, the Board concludes that consummation of the proposed acquisition would not have an adverse effect on competition in any relevant market. The financial condition, managements and prospects of Applicant, its subsidiaries, and Tavares Bank are regarded as satisfactory. Applicant proposes to make specialized services available to customers of Tavares Bank. Thus, considerations concerning community convenience and needs lend some support to approval of the application. It is the Board's judgment that the proposed transaction would be in the public interest, and that the application should be approved.

It is hereby ordered, For the reasons in the findings summarized above, that said application be and hereby is approved: *Provided,* That the acquisition so approved shall not be consummated (a) before the 30th calendar day following the date of this order or (b) later than 3 months after the date of this order, unless such period is extended for good cause by the Board, or by the Federal Reserve Bank of Atlanta pursuant to delegated authority.

By order of the Board of Governors,[1] February 22, 1971.

[SEAL] KENNETH A. KENYON,
Deputy Secretary.

[FR Doc.71-2677 Filed 2-26-71;8:45 am]

TRUST COMPANY OF GEORGIA

Order Approving Application for Acquisition of Assets and Assumption of Liabilities Under Bank Merger Act

In the matter of the application of Trust Company of Georgia, Atlanta, Ga., for approval of acquisition of assets and assumption of liabilities of Peachtree Bank and Trust Co., Chamblee, Ga.

There has come before the Board of Governors, pursuant to the Bank Merger Act (12 U.S.C. 1828(c)), an application by Trust Company of Georgia, Atlanta, Ga. (Trust Company), a member State bank of the Federal Reserve System, for the Board's prior approval of the merger of that bank with Peachtree Bank and Trust Co., Chamblee, Ga. (Peachtree Bank), by means of the purchase of assets and assumption of liabilities of Peachtree Bank. As an incident to the merger, the two offices of Peachtree Bank would become branches of Trust Company. Notice of the proposed merger, in form approved by the Board, has been published as required by said Act.

In accordance with the Act, the Board requested reports on the competitive factors involved from the Attorney General, the Comptroller of the Currency, and the Federal Deposit Insurance Corporation. The Board has considered all relevant material contained in the record in the light of the factors set forth in the Act, including the effect of the proposal on competition, the financial and managerial resources and prospects of the banks concerned, and the convenience and needs of the communities to be served, and finds that:

Trust Company (deposits $470 million) and six banks (aggregate deposits $284 million), which it controls through its wholly owned subsidiary registered bank holding company, hold about 11 percent of the deposits of commercial banks in Georgia. Together they comprise the second largest banking organization in the State. (All banking data are as of June 30, 1970.) Consummation of the proposed merger would not substantially increase the concentration of banking resources in the State.

Trust Company operates 20 offices, all within the city limits of Atlanta. Peachtree Bank (deposits $15 million) operates its two offices in De Kalb County, about 3 to 5 miles northeast of the city limits of Atlanta. Trust Company was instrumental in organizing Peachtree Bank in 1960, and the banks have been closely associated since that time. Trust Company has furnished three chief executive officers to Peachtree Bank, as well as other officers and employees. In addition, Trust Company provides credit services for Peachtree Bank, assists it with its investments, and serves as its principal correspondent. In view of the close relationship which has existed between Trust Company and Peachtree Bank since the inception of the latter, it may be reasonably concluded that present and potential competition would neither be foreclosed by approval of the application nor encouraged by its denial.

The Board concludes that consummation of the proposed merger would not have a substantially adverse effect on competition in any relevant area. Considerations relating to the financial and managerial resources and prospects of the banks involved are regarded as consistent with approval of the application. Customers of Peachtree Bank will benefit through more convenient access to a full range of banking services. Therefore, considerations relating to convenience and needs lend some support to approval of the application. Based upon the foregoing, it is the Board's judgment that consummation of the proposed merger would be in the public interest, and that the application should be approved.

It is hereby ordered, On the basis of the findings summarized above, that said application be and hereby is approved: *Provided,* That the merger so approved shall not be consummated (a) before the 30th calendar day following the date of this order or (b) later than 3 months after the date of this order, unless such period is extended for good cause by the Board, or by the Federal Reserve Bank of Atlanta pursuant to delegated authority.

By order of the Board of Governors,[1] February 22, 1971.

[SEAL] KENNETH A. KENYON,
Deputy Secretary.

[FR Doc.71-2713 Filed 2-26-71;8:48 am]

TRUST COMPANY OF GEORGIA

Order Approving Application for Acquisition of Assets and Assumption of Liabilities Under Bank Merger Act

In the matter of the application of Trust Company of Georgia, Atlanta, Ga.,

[1] Voting for this action: Chairman Burns and Governors Robertson, Mitchell, Daane, Maisel, Brimmer, and Sherrill.

[1] Voting for this action: Chairman Burns and Governors Robertson, Mitchell, Daane, Maisel, and Sherrill. Absent and not voting: Governor Brimmer.

for approval of acquisition of assets and assumption of liabilities of Trust Company of Georgia Bank of Sandy Springs, Sandy Springs, Ga.

There has come before the Board of Governors, pursuant to the Bank Merger Act (12 U.S.C. 1828(c)), an application by Trust Company of Georgia, Atlanta, Ga. (Trust Company), a member State bank of the Federal Reserve System, for the Board's prior approval of the merger of that bank with Trust Company of Georgia Bank of Sandy Springs, Sandy Springs, Ga. (Sandy Springs Bank), by means of the purchase of assets and assumption of liabilities of Sandy Springs Bank. As an incident to the merger, the sole office of Sandy Springs Bank would become a branch of Trust Company. Notice of the proposed merger, in form approved by the Board, has been published as required by said Act.

In accordance with the Act, the Board requested reports on the competitive factors involved from the Attorney General, the Comptroller of the Currency, and the Federal Deposit Insurance Corporation. The Board has considered all relevant material contained in the record in the light of the factors set forth in the Act, including the effect of the proposal on competition, the financial and managerial resources and prospects of the banks concerned, and the convenience and needs of the communities to be served, and finds that:

Trust Company (deposits $470 million) and six banks (aggregate deposits $284 million), which it controls through its wholly owned subsidiary registered bank holding company, hold about 11 percent of the deposits of commercial banks in Georgia. Together they comprise the second largest banking organization in the State. (All banking data are as of June 30, 1970.) Consummation of the proposed merger would not increase substantially the concentration of banking resources in the State.

Trust Company operates 20 offices, all within the city limits of Atlanta. Sandy Springs Bank (deposits $4 million) operates its sole office in Fulton County, about 3 miles north of the city limits of Atlanta and 4.5 miles from the nearest office of Trust Company. Trust Company sponsored the organization of Sandy Springs Bank in 1966, and the banks have been closely associated since that time. Trust Company has furnished two chief executive officers and other officers to Sandy Springs Bank. In addition, Trust Company provides credit services for Sandy Springs Bank, assists it in its investments, and serves as its principal correspondent. In view of the close relationship which has existed between Trust Company and Sandy Springs Bank since the inception of the latter, it may be reasonably concluded that present and potential competition would neither be foreclosed by approval of the application nor encouraged by its denial.

The Board concludes that consummation of the merger would not have a substantially adverse competitive effect in any relevant area. The financial and managerial resources and prospects of the banks are regarded as consistent with approval of the application. Customers of Sandy Springs Bank would benefit from the more convenient access to certain banking services. Considerations relating to the convenience and needs factors, therefore, lend some support to approval of the application. It is the Board's judgment that consummation of the proposed merger would be in the public interest, and that the application should be approved.

It is hereby ordered, on the basis of the findings summarized above, that said application be and hereby is approved: *Provided*, That the merger so approved shall not be consummated (a) before the 30th calendar day following the date of this order or (b) later than 3 months after the date of this order, unless such period is extended for good cause by the Board, or by the Federal Reserve Bank of Atlanta pursuant to delegated authority.

By order of the Board of Governors,[1] February 22, 1971.

[SEAL] KENNETH A. KENYON,
Deputy Secretary.

[FR Doc.71-2714 Filed 2-26-71;8:48 am]

OTTO BREMER FOUNDATION

Notice of Application for Approval of Acquisition of Shares of Bank

Notice is hereby given that application has been made, pursuant to section 3(a)(3) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(a)(3)), by the Otto Bremer Foundation, which is a bank holding company located in St. Paul, Minn., for prior approval by the Board of Governors of the acquisition by applicant of voting shares of American Bancorporation, Inc., a bank holding company located in St. Paul, Minn., that holds more than 80 percent of the voting shares of (1) American National Bank and Trust Co., and (2) Commercial State Bank, both located in St. Paul, Minn. The acquisition, if consummated, would increase the shareholding of the Otto Bremer Foundation in American Bancorporation, Inc., to 10 percent of the latter's voting shares. Otto Bremer Foundation presently owns approximately 7 percent of the shares of American National Bank and Trust Co. and proposes to exchange such shares for the shares of American Bancorporation, Inc., that are the subject of the present application.

Section 3(c) of the Act provides that the Board shall not approve:

(1) Any acquisition or merger or consolidation under section 3 which would result in a monopoly, or which would be in furtherance of any combination or conspiracy to monoplize or to attempt to monoplize the business of banking in any part of the United States, or

(2) Any other proposed acquisition or merger or consolidation under section 3 whose effect in any section of the country may be substantially to lessen competition, or to tend to create a monopoly, or which in any other manner would be in restraint of trade, unless the Board finds that the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served.

Section 3(c) further provides that, in every case, the Board shall take into consideration the financial and managerial resources and future prospects of the company or companies and the banks concerned, and the convenience and needs of the community to be served.

Not later than thirty (30) days after the publication of this notice in the FEDERAL REGISTER, comments and views regarding the proposed acquisition may be filed with the Board. Communications should be addressed to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The application may be inspected at the office of the Board of Governors or the Federal Reserve Bank of Minneapolis.

By order of the Board of Governors, February 22, 1971.

[SEAL] KENNETH A. KENYON,
Deputy Secretary.

[FR Doc.71-2678 Filed 2-26-71;8:45 am]

[1] Voting for this action: Chairman Burns and Governors Robertson, Mitchell, Daane, Maisel, and Sherrill. Absent and not voting: Governor Brimmer.

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area 806]

OREGON

Declaration of Disaster Loan Area

Whereas, it has been reported that during the month of January 1971, because of the effects of certain disasters, damage resulted to residences and business property located in Clatsop and Tillamook Counties, Oreg.;

Whereas, the Small Business Administration has investigated and has received other reports of investigations of conditions in the areas affected;

Whereas, after reading and evaluating reports of such conditions, I find that the conditions in such areas constitute a catastrophe within the purview of the Small Business Act, as amended.

Now, therefore, as Administrator of the Small Business Administration, I hereby determine that:

1. Applications for disaster loans under the provisions of section 7(b)(1) of the Small Business Act, as amended, may be received and considered by the office below indicated from persons or firms whose property situated in the aforesaid counties, and areas adjacent thereto, suffered damage or destruction resulting from floods occurring on January 22, 1971.

OFFICE

Small Business Administration District Office, 700 Pittock Block, Portland, OR 97205.

2. Applications for disaster loans under the authority of this Declaration will not be accepted subsequent to August 31, 1971.

Dated: February 18, 1971.

THOMAS S. KLEPPE,
Administrator.

[FR Doc.71-2692 Filed 2-26-71;8:47 am]

[Declaration of Disaster Loan Area 800; Amdt. 1]

WASHINGTON

Amendment to Declaration of Disaster Loan Area

Declaration of Disaster Loan Area 800 dated February 9, 1971, is hereby amended as follows:

1. By adding "and Counties adjacent thereto" immediately after "Counties" in paragraph No. 1.

Dated: February 18, 1971.

THOMAS S. KLEPPE,
Administrator.

[FR Doc.71-2691 Filed 2-26-71;8:47 am]

[Delegation of Authority No. 4.4-1 (Region VII) For Designated Disasters, Amdt. 1]

REGIONAL DIVISION CHIEFS, ET AL.

Delegation of Financial Assistance

Delegation of Authority No. 4.4-1 (Region VII) for Designated Disasters (36 F.R. 2835), published February 10, 1971, is hereby amended by revising Items 1, 2, 3, 4, and 5, to read as follows:

1. a. Chief and Assistant Chief, Regional Financing Division, for the following disasters:

(1) Iowa, all areas affected, Disaster No. 787.

(2) Iowa, Fort Dodge area, Disastser No. 797.

b. District Director and Chief, District Financing Division, Des Moines, Iowa, for the following disasters:

(1) Iowa, all areas affected, Disaster No. 787.

(2) Iowa, Fort Dodge area, Disaster No. 797.

2. a. Chief and Assistant Chief, Regional Financing Division, for the following disasters:

(1) Iowa, all areas affected, Disaster No. 787.

(2) Iowa, Fort Dodge area, Disaster No. 797.

b. District Director, Des Moines, Iowa, for the following disasters:

(1) Iowa, all areas affected, Disaster No. 787.

(2) Iowa, Fort Dodge area, Disaster No. 797.

3. a. Chief, District Financing Division, Des Moines, Iowa, for the following disasters:

(1) Iowa, al areas affected, Disaster No. 787.

(1) Iowa, all areas affected, Disaster No. 797.

4. a. Regional Supervisory Loan Officer (Financing Division), for the following disasters:

(1) Iowa, all areas affected, Disaster No. 787.

(2) Iowa, Fort Dodge area, Disaster No. 797.

5. a. Chief and Assistant Chief, Regional Financing Division, for the following disasters:

(1) Iowa, all areas affected, Disaster No. 787.

(2) Iowa, Fort Dodge area, Disaster No. 797.

b. District Director, Des Moines, Iowa, for the following disasters:

(1) Iowa, all areas affected, Disaster No. 787.

(2) Iowa, Fort Dodge area, Disaster No. 797.

Effective date: January 22, 1971.

C. I. MOYER,
Regional Director, Region VII, Kansas City, Mo.

[FR Doc.71-2693 Filed 2-26-71;8:47 am]

INTERSTATE COMMERCE COMMISSION

[Section 5a Application 7, Amdt. 5]

ASSOCIATION OF AMERICAN RAILROADS

Per Diem, Mileage, Demmurage and Storage; Agreement

FEBRUARY 19, 1971.

The Commission is in receipt of an application in the above-entitled proceeding for approval of amendments to the agreement therein approved.

Filed February 5, 1971, by Mr. Gregory S. Prince, Attorney-in-fact, American Railroads Building, 1920 L Street NW., Washington, DC 20036.

The amendments involve: Changes in the agreement so as to (1) reduce the membership of the General Committee from 20 to 17 members; and (2) show Stephen Ailes as president of Association and attorney-in-fact for the member carriers, in lieu of Thomas M. Goodfellow.

The application is docketed and may be inspected at the Office of the Commission in Washington, D.C.

Any interested person desiring to protest and participate in this proceeding shall notify the Commission in writing within 20 days from the date of publication of this notice in the FEDERAL REGISTER. As provided by the general rules of practice of the Commission, persons other than applicants should fully disclose their interests, and the position they intend to take with respect to the application. Otherwise, the Commission, in its discretion may proceed to investigate and determine the matters without public hearing.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.71-2734 Filed 2-26-71;8:49 am]

FOURTH SECTION APPLICATIONS FOR RELIEF

FEBRUARY 24, 1971.

Protests to the granting of an application must be prepared in accordance with Rule 1100.40 of the general rules of practice (49 CFR 1100.40) and filed within 15 days from the date of publication of this notice in the FEDERAL REGISTER.

LONG-AND-SHORT HAUL

FSA No. 42137—*Beet or cane sugar to points in Minnesota.* Filed by Southwestern Freight Bureau, agent (No. B-215), for interested rail carriers. Rates on sugar, beet or cane, in carloads, as described in the application, from Bayport, Houston, and Sugar Land, Tex., to Austin, Minneapolis, Minn., Transfer, and St. Paul, Minn.

Grounds for relief—Market competition and rate relationship.

Tariff—Supplement 28 to Southwestern Freight Bureau, agent, tariff ICC 4886.

FSA No. 42138—*Liquid caustic soda from LeMoyne, Ala.* Filed by O. W. South, Jr., agent (No. A6228), for and on behalf of the Southern Railway Co. Rates on sodium (soda), caustic (sodium hydroxide), in tank carloads, as described in the application, from LeMoyne, Ala., to Graniteville, S.C.

Grounds for relief—Market competition.

Tariff—Supplement 23 to Southern Freight Association, agent, tariff ICC S-938.

FSA No. 42139—*Perlite from Antonito, Colo.* Filed by Western Trunk Line Committee, agent (No. A-2638), for interested rail carriers. Rates on perlite, other than crude, in carloads, as described in the application, from Antonito, Colo., to points in southern territory.

Grounds for relief—Market competition, short-line distance formula and grouping.

Tariff—Supplement 252 to Western Trunk Line Committee, agent, tariff ICC A-4620.

FSA No. 42140—*Alcohol from Tuscola, Ill.* Filed by Illinois Freight Association, agent (No. 365), for and on behalf of the Illinois Central Railroad Co. Rates on alcohol (other than denatured or wood alcohol), in tank carloads, as described in the application, from Tuscola, Ill., to Good Hope, La.

Grounds for relief—Rate relationship.

Tariff—Supplement 169 to Illinois Freight Association, agent, tariff ICC 1044.

By the Commission.

[SEAL] ROBERT L. OSWALD,
Secretary.

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PART II

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

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Social and Rehabilitation Service

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PUBLIC ASSISTANCE PROGRAMS

Title 45—PUBLIC WELFARE

Chapter II—Social and Rehabilitation Service (Assistance Programs), Department of Health, Education, and Welfare

PUBLIC ASSISTANCE PROGRAMS

Notice of proposed rule making was published in the FEDERAL REGISTER on June 5, 1970 (35 F.R. 8780), setting forth, for transfer from the Handbook of Public Assistance Administration to the Code of Federal Regulations, requirements and provisions for the public assistance programs under the Social Security Act. After consideration of the views presented by interested persons, certain changes have been made.

1. The requirements for annual review of the State plan (§ 205.5(a)) and for an annual multiyear program and financial plan (§ 205.6) have been deleted;

2. The policy on safeguarding information (§ 205.50) has been clarified and strengthened;

3. The standard of promptness for determining eligibility and furnishing assistance (§ 206.10(a)(3)) now applies to the period from the filing of the application to the mailing of the first check;

4. Changes are made in the advance notice policy (§ 206.10(a)) for consistency with proposed fair hearings regulations;

5. The policy on determination of disability (§§ 233.80 and 248.80) is changed to clarify when "homemaking"—rather than gainful employment—is the appropriate test. (Other changes in this policy are under consideration for issuance as proposed rule making.)

6. Factors specific to AFDC (§ 233.90) now include the definition of parent, previously published as § 203.1;

7. A new optional group for title XIX (Medicaid) coverage, based on the cost of child care, is added to § 248.10.

In addition, notice of proposed rule making was published on December 3, 1970 (35 F.R. 18402), to provide that applicants for and recipients of public assistance may be accompanied by other individuals in their contacts with the agency, if they so wish. After consideration of comments received, minor clarifying and editorial changes have been made.

Accordingly, the following amendments are made to Chapter II of Title 45 of the Code of Federal Regulations:

PART 203—DEPRIVATION OF PARENTAL SUPPORT OR CARE

1. Part 203 is vacated and reserved. The content of § 203.1 has been transferred to and incorporated as § 233.90(a) of Part 233.

PART 204—GENERAL ADMINISTRATION—SOCIAL AND REHABILITATION SERVICE GRANT PROGRAMS

2. Part 204 is added as follows:

§ 204.1 Submittal of State plans for Governor's review.

A State plan under title I, IV–A, IV–B, X, XIV, XVI, or XIX of the Social Security Act, section 5 or 15 of the Vocational Rehabilitation Act, title I of the Mental Retardation Facilities and Community Mental Health Centers Construction Act, title III of the Older Americans Act, or title I of the Juvenile Delinquency Prevention and Control Act of 1968, must be submitted to the State Governor for his review and comments, and the State plan must provide that the Governor will be given opportunity to review State plan amendments and long-range program planning projections or other periodic reports thereon. This requirement does not apply to periodic statistical or budget and other fiscal reports. Under this requirement, the Office of the Governor will be afforded a specified period in which to review the material. Any comments made will be transmitted to the Social and Rehabilitation Service with the documents.

(Sec. 1102, 49 Stat. 647, 42 U.S.C. 1302; sec. 7(b), 68 Stat. 658, 29 U.S.C. 37(b); sec. 139, 84 Stat. 1323, 42 U.S.C. 2677b; sec. 101 et seq., 79 Stat. 218–226, 42 U.S.C. 3001 et seq.; and secs. 131 and 401, 82 Stat. 466, 471, 42 U.S.C. 3841, 3881)

PART 205—GENERAL ADMINISTRATION — PUBLIC ASSISTANCE PROGRAMS

3. Part 205 is amended to add the following sections:

§ 205.5 Plan amendments.

(a) *State plan requirements.* A State plan under title I, IV–A, X, XIV, XVI, or XIX of the Social Security Act must provide that the plan will be amended whenever necessary to reflect new or revised Federal statutes or regulations, or material change in any phase of State law, organization, policy or State agency operation.

(b) *Federal financial participation.* Except where otherwise provided, Federal financial participation is available in the additional expenditures resulting from an amended provision of the State plan as of the first day of the calendar quarter in which an approvable amendment is submitted or the date on which the amended provision becomes effective in the State, whichever is later.

§ 205.30 Methods of administration.

State plan requirements: A State plan under title I, IV–A, X, XIV, XVI, or XIX of the Social Security Act must provide for such methods of administration as are found by the Secretary to be necessary for the proper and efficient operation of the plan.

§ 205.40 Quality control system.

State plan requirements: A State plan under title I, IV–A, X, XIV, XVI, or XIX of the Social Security Act must provide for a system of quality control in accordance with Federal specifications. Under this requirement:

(a) The State agency's system of quality control must be implemented through:

(1) Application of one of the sampling methods prescribed by the Social and Rehabilitation Service;

(2) Use of federally prescribed schedules and instructions, or schedules which provide for identical information as a minimum;

(3) Field investigations, including a personal interview in all cases which fall within the sample of the active caseload and, as necessary, with persons who have been denied assistance or whose assistance has been terminated;

(4) Use of qualified staff under appropriate direction;

(5) Reporting to the Federal Government as prescribed.

(b) The State agency must submit to the Social and Rehabilitation Service, in accordance with Federal instructions:

(1) A brief description of the State's sampling plan including the system of selecting the sample;

(2) The State's plan for use of staff; and

(3) The plan for analysis of and action on findings.

§ 205.50 Safeguarding information.

(a) *State plan requirements.* A State plan under title I, IV–A, X, XIV, XVI, or XIX of the Social Security Act, except as provided in paragraph (b) of this section, must provide that:

(1) Pursuant to State statute which imposes legal sanctions:

(i) The use or disclosure of information concerning applicants and recipients will be limited to purposes directly connected with the administration of the program. Such purposes include establishing eligibility, determining amount of assistance, and providing services for applicants and recipients.

(ii) The State agency has authority to implement and enforce the provisions for safeguarding information about applicants and recipients;

(iii) Publication of lists or names of applicants and recipients will be prohibited.

(2) The agency will have clearly defined criteria which govern the types of information that are safeguarded and the conditions under which such information may be released or used. Under this requirement:

(i) Types of information to be safeguarded include but are not limited to:

(*a*) The names and addresses of applicants and recipients and amounts of

assistance provided (unless excepted under paragraph (b) of this section);

(b) Information related to the social and economic conditions or circumstances of a particular individual;

(c) Agency evaluation of information about a particular individual;

(d) Medical data, including diagnosis and past history of disease or disability, concerning a particular individual.

(ii) The release or use of information concerning individuals applying for or receiving financial or medical assistance is restricted to persons or agency representatives who are subject to standards of confidentiality which are comparable to those of the agency administering the financial and medical assistance programs.

(iii) The family or individual is informed whenever possble of a request for information from an outside source, and permission is obtained to meet the request. In an emergency situation when the individual's consent for the release of information cannot be obtained, he will be notified immediately thereafter.

(iv) In the event of the issuance of a subpoena for the case record or for any agency representative to testify concerning an applicant or recipient, the court's attention is called, through proper channels to the statutory provisions and the policies or rules and regulations against disclosure of information.

(v) The same policies are applied to requests for information from a governmental authority, the courts, or a law enforcement official as from any other outside source.

(3) The agency will publicize provisions governing the confidential nature of information about applicants and recipients, including the legal sanctions imposed for improper disclosure and use, and will make such provisions available to applicants and recipients and to other persons and agencies to whom information is disclosed.

(4) All materials sent or distributed to applicants, recipients, or medical vendors, including material enclosed in envelopes containing checks, will be limited to those which are directly related to the administration of the program and will not have political implications. Under this requirement:

(i) Specifically excluded from mailing or distribution are materials such as "holiday" greetings, general public announcements, voting information, alien registration notices;

(ii) Not prohibited from such mailing or distribution are materials in the immediate interest of the health and welfare of applicants and recipients, such as announcements of free medical examinations, availability of surplus food, and consumer protection information;

(iii) Only the names of persons directly connected with the administration of the program are contained in material sent or distributed to applicants, recipients, and vendors, and such persons are identified only in their official capacity with the State or local agency.

(b) *Exception.* In respect to a State plan under title I, IV–A, X, XIV, or XVI of the Social Security Act, exception to the requirements of paragraph (a) of this section may be made by reason of the enactment or enforcement of State legislation, prescribing any conditions under which public access may be had to records of the disbursement of funds or payments under such titles within the State, if such legislation prohibits the use of any list or names obtained through such access to such records for commercial or political purposes.

§ 205.60 Reports and maintenance of records.

State plan requirements: A State plan under title I, IV–A, X, XIV, XVI, or XIX of the Social Security Act must provide that:

(a) The State agency will maintain or supervise the maintenance of records necessary for the proper and efficient operation of the plan, including records regarding applications, determination of eligibility, the provision of financial or medical assistance or social services, and administrative cost; and statistical, fiscal and other records necessary for reporting and accountability required by the Secretary; and will retain such records for such periods as are prescribed by the Secretary. Under this requirement, individual records are kept which contain pertinent facts about each applicant and recipient and include information as to the date of application and date and basis of its disposition; facts essential to determination of initial and continuing eligibility, need for, and provision of financial or medical assistance or social services, and basis for discontinuing assistance or services.

(b) The State agency will make such reports in such form and containing such information, as the Secretary may from time to time require, and comply with such provisions as he may from time to time find necessary to assure the correctness and verification of such reports.

§ 205.100 Single State agency.

(a) *State plan requirements.* A State plan under title I, IV–A, X, XIV, XVI, or XIX of the Social Security Act must:

(1) Except as provided in paragraph (b) of this section, provide for the establishment or designation of a single State agency with authority to administer or supervise the administration of the plan.

(2) Include a certification by the attorney general of the State identifying the single State agency and citing the legal authority under which such agency administers, or supervises the administration of, the plan on a statewide basis including the authority to make rules and regulations governing the administration of the plan by such agency or rules and regulations that are binding on the political subdivisions, if the plan is administered by them.

(3) In the event the single State agency responsible for the plan for MA is other than the State agency responsible for the plan for OAA or for AABD (insofar as it relates to the aged), provide:

(i) That determination of eligibility for medical assistance under the plan will be made by the State or local agency administering such plan for OAA or for AABD (insofar as it relates to the aged) in accordance with standards, rules, regulations, and policies established by the single State agency responsible for the MA program, and

(ii) That there is a written agreement between the two State agencies, showing the relationships and respective responsibilities of the two agencies. Such agreement should include provision for employment by the OAA or AABD agency of sufficient personnel with appropriate skills to cary out effectively the responsibilities and relationships covered by the agreement.

(b) *Exceptions.* (1) A State plan for AABD may provide for the designation of a separate State agency to administer or supervise the administration of the plan which relates to blind individuals, but only if, on January 1, 1962, and on the date of the submittal of the plan for AABD, such separate agency was responsible for the plan for AB and was different from the State agency responsible for the plans for OAA and APTD. In such case, the requirements and conditions of this section must be met by each such agency.

(2) A State plan for MA may provide for the designation of a separate State agency to administer or supervise the administration of the plan which relates to blind individuals, but only if, on January 1, 1965, and on the date of the submittal of the plan for MA, such separate agency was responsible for the plan for AB or for AABD (insofar as it relates to the blind) and was different from the State agency responsible for the plan for OAA or for AABD (insofar as it relates to the aged). In such case, the requirements and conditions of this section must be met by each such agency.

(c) *Conditions for implementing the requirements of paragraph (a) of this section.* (1) The State agency will not delegate to other than its own officials its authority for exercising administrative discretion in the administration or supervision of the plan, including the issuance of policies, rules, and regulations on program matters.

(2) In the event that any rules and regulations or decisions of the single State agency are subject to review, clearance, or other action by other offices or agencies of the State government, the requisite authority of the single State agency will not be impaired.

(3) In the event that any services are performed for the single State agency by other State or local agencies or offices, such agencies and offices must not have authority to review, change, or disapprove any administrative decision of the single State agency, or otherwise substitute their judgment for that of the agency as to the application of policies,

rules, and regulations promulgated by the State agency.

§ 205.101 Organization for administration.

(a) A State plan under title I, IV–A, X, XIV, XVI, or XIX of the Social Security Act shall include a description of the organization and functions of the single State agency and an organizational chart of the agency.

(b) A State plan under title XIX of the Act must:

(1) Provide for the establishment of a medical assistance unit in the single State agency which shall include the program director and other appropriate staff for participation in the development, analysis, and evaluation of the State's medical assistance program,

(2) Include a description of the organization and functions of the medical assistance unit and an organizational chart of the unit, and

(3) Include a description of the kinds and numbers of professional medical personnel and supporting staff that will be used in the administration of the plan and of the responsibilities they will have.

(c) Where applicable, a State plan under title I, IV–A, X, XIV, or XVI of the Act shall identify the organizational unit within the State agency which is responsible for operation of the plan, and shall include a description of its organization and functions and an organizational chart of the unit. (See also Part 220 of this Chapter for requirements concerning the organization for administration of the service programs under title IV–A and title IV–B of the Act.)

§ 205.120 Statewide operation.

State plan requirements: A State plan under title I, IV–A, X, XIV, XVI, or XIX of the Social Security Act must provide that:

(a) It shall be in operation, through a system of local offices, on a statewide basis in accordance with equitable standards for assistance and administration that are mandatory throughout the State;

(b) If administered by political subdivisions of the State, the plan will be mandatory on such political subdivisions;

(c) The State agency will assure that the plan is continuously in operation in all local offices or agencies through:

(1) Methods for informing staff of State policies, standards, procedures and instructions; and

(2) Regular planned examination and evaluation of operations in local offices by regularly assigned State staff, including regular visits by such staff; and through reports, controls, or other necessary methods.

§ 205.130 State financial participation.

State plan requirements:

(a) A State plan under title I, IV–A, X, XIV, XVI, or XIX of the Social Security Act must provide that:

(1) State (as distinguished from local) funds will be used in both assistance and administration; and

(2) State and Federal funds will be apportioned among the political subdivisions of the State on a basis consistent with equitable treatment of individuals in similar circumstances throughout the State.

(b) A State plan under title I, IV–A, X, XIV, or XVI of the Act must provide further that State funds will be used to pay a substantial part of the total costs of the assistance programs.

(c) A State plan under title XIX of the Act must provide further that State funds will be used to pay not less than 40 percentum of the non-Federal share of the total expenditures under the plan and either:

(1) State funds will be used to pay all of the non-Federal share of the total expenditures under the plan, or

(2) If there is local financial participation, there will be a method of apportioning State and Federal funds among the political subdivisions of the State on an equalization or other basis that will assure that lack of funds from local sources does not result in lowering the amount, duration, scope, or quality of care and services or level of administration under the plan in any part of the State.

§ 205.145 Fiscal policies and accountability.

State plan requirements: A State plan under title I, IV–A, X, XIV, XVI, or XIX of the Social Security Act must provide that the State agency, in discharging its fiscal accountability, will maintain an accounting system and supporting fiscal records adequate to assure that claims for Federal funds are in accord with applicable Federal requirements. Under this requirement, State and, where applicable, local agencies are required to maintain accounting records, identifiable for each of the above titles of the Act, for a period of 3 years after the end of the Federal fiscal year if audit by or on behalf of the Department has occurred by that time. If such audit has not occurred, the records must be retained until audit or until 5 years following the end of the Federal fiscal year, whichever is earlier. However, in all cases, records shall be retained until resolution of audit questions.

§ 205.150 Cost allocation.

State plan requirements: A State plan under title I, IV–A, X, XIV, XVI, or XIX of the Social Security Act must provide that the State agency will establish and maintain methods and procedures for properly charging the costs of activities under the plan to the program in accordance with Federal requirements (Bureau of the Budget Circular A–87 and Department and Social and Rehabilitation Service regulations and instructions). Such methods and procedures and revisions of them are subject to approval by the Department; revisions must be submitted promptly and in no case later than 12 months following the effective date of the change. The State's methods and procedures must include a description of the method for:

(a) Allocating all administrative costs of the State department in which the State agency is located between Federal and non-Federal programs;

(b) Identifying, of the costs applicable to more than one of the Federal programs, those applicable to each of the separate programs, in accordance with program classifications specified by the Secretary; and

(c) Segregating costs in paragraph (b) of this section by service and income maintenance functions, where applicable, and such other classifications as are found necessary by the Secretary.

§ 205.170 State standards for office space, equipment, and facilities.

State plan requirements: A State plan under title I, IV–A, X, XIV, XVI, or XIX of the Social Security Act must provide that:

(a) The State agency will establish and maintain standards for office space, equipment, and facilities that will adequately and effectively meet program and staff needs. Under this requirement, offices must be well marked and clearly identifiable in the community as a public service.

(b) The State agency will assure that the standards are continuously in effect in all State and local offices or agencies, including agency suboffices, and special centers through:

(1) Making information about the standards available to State and local staff and other appropriate persons;

(2) Regular planned evaluation of housing and facilities by regularly assigned staff through visits, reports, controls and other necessary methods;

(3) Methods for enforcement when necessary to secure compliance with State standards.

§ 205.190 Standard-setting authority for institutions.

(a) *State plan requirements.* If a State plan under title I, X, XIV, XVI, or XIX of the Social Security Act includes financial or medical assistance to or in behalf of individuals in institutions as defined in § 233.60(b) (1) and (2) of this chapter, the plan must:

(1) Provide for the designation of a State authority or authorities which shall be responsible for establishing and maintaining standards for such institutions;

(2) Provide that the State agency will keep on file and make available to the Social and Rehabilitation Service upon request:

(i) A listing of the types or kinds of institutions in which an individual may receive financial and/or medical assistance;

(ii) A record naming the State authority(ies) responsible for establishing and maintaining standards for such types of institutions;

(iii) The standards to be utilized by such State authority(ies) for approval or licensing of institutions including, to the extent applicable, standards related to the following factors:

(a) Health (continuing physician and nursing services, dietary standards, drug controls, and accident prevention);

(b) Humane treatment;
(c) Sanitation;
(d) Types of construction;
(e) Physical facilities, including space and accommodations per person;
(f) Fire and safety;
(g) Staffing, in number and qualifications, related to the purposes and scope of services of the institution;
(h) Patient records;
(i) Admission procedures;
(j) Administrative and fiscal records;
(k) The control by the individual, or his guardian or protective payee, of the individual's personal affairs.

A plan under title XIX must describe these standards.

(3) Provide for cooperative arrangements with the standard-setting authority(ies) in the development of standards directed toward assuring adequate quality of care; in upgrading of institutional programs and practice; in actions necessary to close institutions that mistreat or are hazardous to the safety of the patients; and in planning so that institutions may be geographically located in accordance with need.

(b) *Federal financial participation.* (1) Federal financial participation is available in staff and related costs of the State or local agency that are necessary to discharge the responsibilities of the State agency under this section, including such costs for staff:

(i) Participating with other agencies and community groups in activities to set up the authority(ies) and to advise on the formulation of policy for the establishment and maintenance of standards;

(ii) On loan for a time limited period to work with the standard-setting authority(ies) in upgrading institutional care;

(iii) Engaged in the function of coordination in States where there is more than one authority; and

(iv) Engaged in adjusting complaints and making reports and recommendations to the standard-setting authority(ies) on conditions which appear to be in violation of such standards.

(2) Federal financial participation is not available in the costs incurred by the standard-setting authority(ies) in establishing and maintaining standards for institutions.

§ 205.200 Standards of personnel administration.

(a) A State plan under title I, IV–A, X, XIV, XVI, or XIX of the Social Security Act must provide that methods of personnel administration will be established and maintained in the State agency administering or supervising the State plan and in local agencies administering the State plan in conformity with the Standards for a Merit System of Personnel Administration, 45 CFR Part 70. Under this requirement, laws, rules, regulations, and policy statements effectuating such methods of personnel administration are a part of the State plan. Statements of acceptance of these standards by all official local agencies included in the State plan must be obtained and methods must be established by the State to assure compliance by local jurisdictions. These statements and citations of applicable State laws, rules, regulations, and policies which provide assurance of conformity to the standards in 45 CFR Part 70 must be submitted to the Department of Health, Education, and Welfare for determination as to adequacy. Copies of the materials cited and of similar local materials maintained by a State official responsible for compliance by local jurisdictions must be furnished to the Department on request.

(b) The Secretary of Health, Education, and Welfare shall exercise no authority with respect to the selection, tenure of office, or compensation of any individual employed in accordance with such methods.

§ 205.202 Staff development.

(a) *State plan requirements.* A State plan under title I, IV–A, X, XIV, XVI, or XIX of the Social Security Act must provide for a staff development program for personnel in all classes of positions and for volunteers, to improve the operation of the State program and to assure a high quality of service, including:

(1) An orientation program for new staff;

(2) A program of continuing training opportunities held under expert leadership at suitable intervals;

(3) Provision for paid educational leave to enable subprofessional, technical, and professional staff to improve their performance and to advance to more responsible positions.

(b) *Conditions for staff development programs.* A staff development program under paragraph (a) of this section shall:

(1) If it includes educational leave for employees in a worker-in-training classification, provide that the tenure of such employees will be limited to the period of education and that such persons will be promoted to the appropriate regular classification upon successful completion of the education;

(2) If it includes educational grants for persons preparing for employment, provide for

(i) The use of criteria for selection of candidates, and

(ii) Conditions under which such grants are to be made;

(3) If it includes teaching grants to educational institutions, provide that such grants are made only to establish or expand educational programs necessary to prepare persons for the administration of the agency's program, and only to institutions accredited by the appropriate accrediting body.

(c) *Federal financial participation.* (1) For the State plan under title IV–A of the Act, Federal financial participation is available at 75 percent for training and staff development costs.

(2) For the State plans under titles I, X, XIV, and XVI of the Act, Federal financial participation is available at 75 percent for training and staff development costs if the plan provides for social services in accordance with the regulations in Part 222, Subparts A and B of this chapter. Otherwise, Federal financial participation in such costs is available at 50 percent.

(3) Costs which may be claimed under titles I, IV–A, X, XIV, and XVI of the Act are the following:

(i) *State and local staff development personnel.* Payment of personal services for staff development personnel, including clerical and other staff, and all other expenses, e.g., travel, per diem, rent, postage, communications, equipment, etc. Only personnel who are assigned at least half time to staff development or who are detailed to staff development activities for at least 4 consecutive weeks may be considered staff development personnel.

(ii) *Agency session planned to train staff in content dealing with public assistance.* (a) Costs of operating training centers, including personal services and travel of staff, equipment, rental of space, and other expenses of operating the center.

(b) Payment of personal services, travel, per diem and training expenses of staff while attending full-time training sessions which are for four or more consecutive work weeks

(c) Payment of travel, per diem and educational expenses of staff while attending training sessions which are for less than 4 consecutive work weeks.

(d) Payment for purchase and development of necessary teaching materials and equipment: e.g., books, audiovisual aids, and technical devices.

(e) Costs of maintaining and operating the agency library as an essential resource to the agency's in-service training program. If the library is maintained as a general reference library for total agency operations, the staff development director and the librarian will recommend the appropriate proportion of library costs to be charged to the training program.

(f) Payment to outside experts employed to conduct special courses, including personal services, travel, and per diem.

(g) Payment of the costs of special courses developed outside the agency, in collaboration with staff development personnel, as a special part of the agency's organized in-service training program.

(h) Costs of rental of space attributable to training activities.

(iii) *Persons preparing for employment in public assistance.* Payments made directly to an individual, or to an educational institution on behalf of such individual, for costs of education in preparing for employment in public assistance.

(iv) *Education for work in public assistance.* (a) Costs of field instruction in public assistance for graduate social work students, field experience for undergraduate social welfare students, and student training programs including: rental of space, salaries, travel to and from field work units, clerical assistance, teaching materials and equipment, such as books and audiovisual aids

necessary for effective instruction, and salaries of persons participating in summer student training programs in social work and related professional assignments.

(b) Grants to graduate schools of social work or to undergraduate colleges offering a social welfare sequence for classroom instruction or for other purposes related to the needs of the public assistance programs including: salaries, clerical assistance, necessary travel, teaching material and equipment necessary for effective instruction, such as books, and audiovisual aids.

(v) *Educational leave.* (a) Direct payments to employees on educational leave in an amount not to exceed salary plus the additional costs of obtaining the education.

(1) Payment of personal services, travel, per diem, costs of education and educational expenses of persons granted full-time educational leave, and for those on work-study leave.

(2) Payment of travel, per diem, costs of education and expenses other than personal services of persons granted part-time educational leave or of persons on work-study plan with more than one-half of work load.

(b) Payments covering some or all of the items, in (a) of this subdivision (v), made directly to an educational institution on behalf of an employee on educational leave.

(vi) *Training leave.* (a) Payment of personal services, travel, per diem and training expenses of staff granted training leave for attendance at sessions of four or more consecutive workweeks.

(b) Payment of travel, per diem, and other training expenses of staff granted training leave for attendance at sessions of less than 4 workweeks.

(vii) *Special leave.* Direct payments to employees on special leave in an amount not to exceed salary, plus such additional costs of the educational program as may be agreed upon by the agency and the staff member.

(viii) *Agency membership in other organizations.* Payment for costs of State or local agency membership in organizations for the advancement of education or training when such membership primarily is attributable to the agency's staff development program needs.

(4) (i) For the State plan under title XIX of the Act, Federal financial participation is available at 75 percent for training and educational leave, with respect to title XIX, of skilled professional medical personnel, and staff directly supporting such personnel, of the State agency or any other public agency in the administration of the medical assistance program at the State or local level. In addition. Federal financial participation in expenditures for training personnel who are working both under title XIX and under title I, IV–A, X, XIV, or XVI may be claimed under such other title at applicable rates. Any other expenditures are matchable at 50 percent.

(ii) Costs which may be claimed as training and staff development expenditures for Federal financial participation under title XIX of the Act are those specified in subparagraph (3) of this paragraph, under subdivision (i) for State and local staff development personnel; under subdivision (ii) for agency sessions planned to train staff in content dealing with medical assistance; under subdivision (v) (a) for educational leave; under subdivision (vi) for training leave; and under subdivision (vii) for special leave; and, in addition, the costs of field instruction in medical assistance for graduate students, field experience for undergraduate students, and student training programs.

(Sec. 1102, 49 Stat. 647, 42 U.S.C. 1302)

PART 206—APPLICATION, DETERMINATION OF ELIGIBILITY AND FURNISHING ASSISTANCE—PUBLIC ASSISTANCE PROGRAMS

4. Part 206 is added as follows:

§ 206.10 Application, determination of eligibility and furnishing of assistance.

(a) *State plan requirements.* A State plan under title I, IV–A, X, XIV, XVI, or XIX of the Social Security Act must provide that:

(1) Each individual wishing to do so will have the opportunity to apply for assistance without delay. Under this requirement: (i) the agency accepts application from the applicant himself, his designated representative, or someone acting responsibly for him, in person, by mail or by telephone; (ii) an applicant may be assisted, if he so desires, by an individual(s) of his choice (who need not be a lawyer) in the various aspects of the application process and the redetermination of eligibility, and may be accompanied by such individual(s) in contacts with the agency; (iii) individuals eligible for financial assistance are eligible for medical assistance without a separate application.

(2) Applicants will be informed about the eligibility requirements and their rights and obligations under the program. Under this requirement individuals are given information in written form, and orally as appropriate, about coverage, conditions of eligibility, scope of the program, and related services available, and the rights and responsibilities of applicants for and recipients of assistance. Specifically developed bulletins or pamphlets explaining the rules regarding eligibility and appeals in simple, understandable terms, are publicized and available in quantity.

(3) A decision will be made promptly on applications, pursuant to reasonable State-established time standards not in excess of 30 days for OAA, AFDC, and AB (and in AABD and MA as to the aged and blind) and 60 days in APTD (and in AABD and MA as to the disabled). Under this requirement, the applicant is informed of the agency's time standard in acting on applications, which covers the time from date of application to the date that the assistance check, or notification of denial of assistance or change of award, or the eligibility decision with respect to medical assistance, is mailed to the applicant or recipient. The State's time standards apply except in unusual circumstances (e.g., where the agency cannot reach a decision because of failure or delay on the part of the applicant or an examining physician, or because of some administrative or other emergency that could not be controlled by the agency, in which instances the case record shows the cause for the delay. The agency's standards of promptness for acting on applications or redetermining eligibility may not be used as a basis for denial of an application or for terminating assistance.

(4) Written notice will be sent to applicants and recipients to indicate that assistance has been authorized (including the amount, if financial assistance) or that it has been denied or terminated for a specified reason and the agency policy on which the decision is based. Under this requirement, the notice must include the right to request a fair hearing about the decision (see section 205.10 of this chapter).

(5) Financial assistance and medical care and services included in the plan will be furnished promptly to eligible individuals without any delay attributable to the agency's administrative process, and will be continued regularly to all eligible individuals until they are found to be ineligible. Under this requirement there must be arrangements to assist applicants and recipients in obtaining medical care and services in emergency situations on a 24-hour basis, 7 days a week.

(6) Entitlement will begin as specified in the State plan, which (i) for financial assistance must be no later than the date of authorization of payment and, for purposes of Federal financial participation, may be as early as the first of the month in which an application has been received and the individual meets all the eligibility conditions, and (ii) for medical assistance must be no later than the date of application for either financial or medical assistance, and may be as early as the third month prior to the month of application if the individual was eligible in that month.

(7) In cases of any proposed action to terminate, suspend, or reduce assistance, the agency will give timely and adequate notice. See § 205.10(a)(5) of this chapter.

(8) Each decision regarding eligibility of ineligibility will be supported by facts in the applicant's or recipient's case record. Under this requirement each application is disposed of by a finding of eligibility or ineligibility unless:

(i) The applicant voluntarily withdraws his application, and there is an entry in the case record that a notice has been sent to confirm the applicant's notification to the agency that he does not desire to pursue his application; or

(ii) There is an entry in the case record that the application has been disposed of because the applicant died or could not be located.

(9) Where an individual has been determined to be eligible, eligibility will be reconsidered or redetermined:

(i) When required on the basis of information the agency has obtained previously about anticipated changes in the individual's situation;

(ii) Promptly, within 30 days, after a report is obtained which indicates changes in the individual's circumstances may affect the amount of assistance to which he is entitled or may make him ineligible; and

(iii) Periodically, within agency-established time standards, but not less frequently than every 6 months in AFDC, and every 12 months in the other categories, including medical assistance, on eligibility factors subject to change.

(10) Standards and methods for determination of eligibility will be consistent with the objectives of the programs, will respect the rights of individuals under the United States Constitution, the Social Security Act, title VI of the Civil Rights Act of 1964, and all other relevant provisions of Federal and State laws, and will not result in practices that violate the individual's privacy or personal dignity, or harass him or violate his constitutional rights. Under this requirement, the agency especially guards against violations of legal rights and common decencies in such areas as entering a home by force, or without permission, or under false pretenses; making home visits outside of working hours, and particularly making such visits during sleeping hours; and searching in the home, for example, in rooms, closets, drawers, or papers, to seek clues to possible deception.

(11) With respect to title XIX, policies and procedures will assure that eligibility for medical assistance will be determined in a manner consistent with simplicity of administration and the best interests of the applicant or recipient.

(12) In determining initial and continuing eligibility:

(i) Applicants and recipients will be relied upon as the primary source of information in making the decision about their eligibility.

(ii) The agency will help applicants and recipients provide needed information, as necessary, or will obtain the information for them if, because of physical, mental, or other difficulties, they themselves are unable to provide it.

(iii) Verification of circumstances pertaining to eligibilty will be limited to what is reasonably necessary to ensure the legality of expenditures under this program.

Under the requirements of this subparagraph:

(*a*) The agency takes no steps in the exploration of eligibility to which the applicant or recipient does not agree. It obtains specific consent for outside contacts, gives a clear explanation of what information is desired, why it is needed, and how it will be used;

(*b*) If other procedures are followed in an exceptional situation, they are consistent with subparagraph (10) of this paragraph, and the case record specifies what procedures were followed and why they were needed;

(*c*) When information available from the applicant or recipient is inconclusive and does not support a decision of eligibility, the agency explains to the individual what questions remain and how he can resolve or help to resolve them, what actions the agency can take to resolve them and the need for their resolution if eligibility is to be established or reconfirmed. If the individual is unwilling to have the agency seek verifying information, the agency, unable to determine that eligibility exists, denies or terminates assistance;

(*d*) If a simplified method is used in the determination and redetermination of eligibility, the requirements of § 205.20 of this chapter apply.

(13) The State agency will establish and maintain methods by which it will be kept currently informed about local agencies' adherence to the State plan provisions and to the State agency's procedural requirements for determining eligibility, and it will take corrective action when necessary.

(b) *Definitions.* For purposes of this section:

(1) "Applicant" is a person who has, directly, or through someone acting responsibly for him, requested public assistance from the agency administering the program, and whose application has not been terminated.

(2) "Application" is an action by which an individual indicates to the agency administering public assistance his desire to receive assistance. The relative with whom a child is living or will live ordinarily makes application for the child for AFDC. An application is distinguished from an inquiry, which is simply a request for information about eligibility requirements for public assistance. Such inquiry may be followed by an application.

(Sec. 1102, 49 Stat. 647, 42 U.S.C. 1302)

PART 208—ASSISTANCE TO AGED INDIVIDUALS IN INSTITUTIONS FOR MENTAL DISEASES

5. Part 208 is added as follows:

§ 208.1 Assistance to individuals 65 years of age or older in institutions for mental diseases.

(a) *State plan requirements.* A State plan under title I, XVI, or XIX of the Social Security Act which includes assistance to or in behalf of individuals 65 years of age or older who are patients in institutions for mental diseases must provide for:

(1) Having in effect written agreements with the State authority (or authorities) concerned with mental diseases, and with those individual institutions not under the jurisdiction of such State authorities, in which assistance is provided, which clearly set forth the respective responsibilities of the State agency and the State authorities or institutions, with respect to the individuals to whom or on whose behalf payments are made, including arrangements for:

(i) Joint planning and for development of alternate methods of care;

(ii) Immediate readmittance to the institutions when needed for individuals in alternate methods of care;

(iii) Access by appropriate representatives of the State agency to the medical facility, the patient, and the patient's records as necessary for carrying out the State agency's responsibilities;

(iv) Necessary recording, reporting, exchange of medical and social information, and other procedures.

(2) A recorded individual plan of treatment and care to assure that the institutional care provided serves the best interest of each patient, i.e., maintains the patient at or restores him to the greatest possible degree of health and independent functioning, including:

(i) Initial and periodic review of his medical, psychiatric and social needs. In fulfilling this requirement initial reviews shall be conducted for each patient not later than 90 days after approval of the State plan, and for each recipient-patient subsequently included, not later than 30 days after payments are initiated in his behalf;

(ii) Appropriate medical treatment within the institution;

(iii) Periodic determination of his need for continued treatment in the institution and for alternate care arrangements. In fulfilling this requirement such determinations shall be conducted at least quarterly;

(iv) Appropriate social services.

(3) The development of alternate plans of care, making maximum utilization of available resources, for recipients 65 years of age or older who would otherwise need care in such institutions, to meet their medical, social, and financial needs.

(4) Making available social services referred to in section 3(a)(4)(A) (i) and (ii) or section 1603(a)(4)(A) (i) and (ii) of this Act which are appropriate for such recipients.

(5) Methods of determining the reasonable cost of institutional care for such patients in compliance with § 250.30 of this chapter.

(6) Methods of administration necessary to assure that the responsibilities of the State agency under the State plan with respect to such recipients and such patients will be effectively carried out.

(7) If the State plan includes patients in public institutions for mental diseases, showing that the State is making satisfactory progress toward developing and implementing a comprehensive mental health program for all age groups, through appropriate mental health and public welfare resources, including provision for utilization of community mental health centers, nursing homes and other alternatives to care in public institutions; for arrangements for joint planning with the State authority(ies) for this purpose; and for annual reports showing the progress made. In fulfilling this requirement such annual reports are to be submitted within three months after the close of each fiscal year in which the State has a program of assistance to individuals 65 years of age or

older in public institutions for mental diseases.

(b) *Federal financial participation.* (1) Federal payments under this section for any quarter shall be made only to the extent that total expenditures in the State from Federal, State, and local sources for mental health services for such quarter exceed the average of the total expenditures for such services for each quarter of the fiscal year ending June 30, 1965. As a basis for determination of the proper amount of Federal payments, the State agency shall submit to the Secretary annual reports which show total expenditures from Federal, State and local sources for mental health services (including payment to or in behalf of individuals with mental health problems) under State and local public health and public welfare programs including total expenditures for each quarter of the fiscal year ending June 30, 1965, and total expenditures for each quarter in which the State has received Federal financial participation in making payments in behalf of individuals 65 years of age or over in institutions for mental diseases; and which show for each quarter all assistance payments and administrative costs incurred in behalf of individuals 65 years of age or older in institutions for mental diseases, and of Federal shares of such payments and such costs. In fulfilling this requirement such reports should be submitted not later than 3 months after the close of the fiscal year.

(2) For purposes of this section, an institution for mental diseases is one that meets the definition contained in § 249.10(b)(14)(iv) of this chapter.

(Sec. 1102, 49 Stat. 647, 42 U.S.C. 1302)

PART 233—COVERAGE AND CONDITIONS OF ELIGIBILITY IN FINANCIAL ASSISTANCE PROGRAMS

6. Part 233 is amended to add the following sections:

§ 233.10 General provisions regarding coverage and eligibility.

(a) *State plan requirements.* A State plan under title I, IV–A, X, XIV, or XVI, of the Social Security Act must:

(1) Specify the groups of individuals, based on reasonable classifications, that will be included in the program, and all the conditions of eligibility that must be met by the individuals in the groups. Under this requirement:

(i) States have substantial latitude and corresponding responsibility for determining the coverage, nature and scope of their public assistance programs. Although the public assistance titles define the coverage in which the Federal Government will participate financially, a State may provide coverage on a broader or more limited basis. However, it may not impose any eligibility condition that is prohibited under the Social Security Act.

(ii) The groups selected for inclusion in the plan and the eligibility conditions imposed must not exclude individuals or groups on an arbitrary or unreasonable basis, and must not result in inequitable treatment of individuals or groups in the light of the provisions and purposes of the public assistance titles of the Social Security Act.

(iii) There must be clarity as to what groups are included in the plan, and which are within, and which are outside, the scope of Federal financial participation.

(iv) Eligibility conditions must be applied on a consistent and equitable basis throughout the State.

(v) A plan under title XVI must have the same eligibility conditions and other requirements for the aged, blind, and disabled, except as otherwise specifically required or permitted by the Act.

(vi) Eligibility conditions or agency procedures or methods must not preclude the opportunity for an individual to apply and obtain a determination of eligibility or ineligibility.

(vii) Methods of determining eligibility must be consistent with the objective of assisting all eligible persons to qualify.

(2) Provide that the State agency will establish methods for identifying the expenditures for assistance for any groups included in the plan for whom Federal financial participation in assistance may not be claimed.

(3) In addition, a State plan under title IV–A, X, XIV, or XVI of the Act, must: Provided that no aid or assistance will be provided under the plan to an individual with respect to a period for which he is receiving aid or assistance under a State plan approved under any other of such titles or under title I of the Act.

(b) *Federal financial participation.* (1) The provisions which govern Federal financial participation in assistance payments are set forth in the Social Security Act, throughout this chapter, and in other policy issuances by the Secretary. Where indicated, State plan provisions are prerequisite to Federal financial participation with respect to the applicable groups and payments. In general, State plan provisions on need also determine the limits of Federal financial participation. Questions of Federal financial participation are raised regarding assistance payments in which the State refuses to participate because of the failure of a local authority to apply State requirements. With these exceptions, the Federal agency does not ordinarily determine, for purposes of financial participation, whether State plan provisions which are not required by the Federal Act, regulations, or policies have been met.

(2) The following is a summary statement regarding the groups for whom Federal financial participation is available. (More detailed information is given elsewhere.)

(i) OAA—for needy individuals under the plan who are 65 years of age or older.

(ii) AFDC—for:

(*a*) Needy children under the plan who are:

(*1*) Under the age of 18, or under 21 if regularly attending a school, college, or university, or regularly attending a course of vocational or technical training;

(*2*) Deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent, or unemployment of a father; and

(*3*) Living in the home of a parent or of certain relatives specified in the Act, or in foster care under certain conditions.

(*b*) The parent or other caretaker relative of a dependent child and, in certain situations, the parent's spouse.

(iii) AB—for needy individuals under the plan who are blind.

(iv) APTD—for needy individuals under the plan who are 18 years of age or older and permanently and totally disabled.

(v) AABD—for needy individuals under the plan who are aged, blind, or 18 years of age or older and permanently and totally disabled.

(3) Federal financial participation is available for assistance payments for the entire month if for any portion of the month the individual met all of the eligibility conditions imposed by Federal requirements.

(4) Federal financial participation is available in assistance payments which are continued, in accordance with the State plan, for a temporary period during which the effects of an eligibility condition are being overcome, e.g., blindness in AB, disability in APTD, physical or mental incapacity, continued absence of a parent, or unemployment of a father in AFDC.

§ 233.30 Age.

(a) *Condition for plan approval.* A State plan under title I or XVI of the Social Security Act may not impose any age requirement of more than 65 years.

(b) *Federal financial participation.* (1) Federal financial participation is available in financial assistance provided to otherwise eligible persons who were, for any portion of the month for which assistance is paid:

(i) In OAA or AABD with respect to the aged, 65 years of age or over;

(ii) In AFDC, under 18 years of age; or under 21 years of age if a student regularly attending a school, college, or university, or regularly attending a course of vocational or technical training designed to fit him for gainful employment;

(iii) In AB or AABD with respect to the blind, any age;

(iv) In APTD or AABD with respect to the disabled, 18 years of age or older.

(2) Federal determination of whether an individual meets the age requirements of the Social Security Act will be made according to the common-law method (under which a specific age is attained the day before the anniversary of birth), unless the State plan specifies that the popular usage method (under which an age is attained on the anniversary of birth), is used.

(3) The State agency may adopt an arbitrary date such as July 1 as the point from which age will be computed in all instances where the month of an individual's birth is not available, but the year can be established.

§ 233.50 Citizenship.

Conditions for plan approval:

(a) A State plan under title, I, X, XIV, XVI of the Social Security Act may not exclude an otherwise eligible citizen of the United States, regardless of how (by birth or by naturalization), or when, citizenship was obtained.

(b) A State plan may include all persons without regard to citizenship status. Where there is an eligibility requirement applicable to noncitizens, a State plan may, as an alternative to excluding all noncitizens, provide for qualifying noncitizens, otherwise eligible, who have resided in the United States for a specified number of years.

§ 233.60 Institutional status.

(a) *Federal financial participation.* (1) Federal financial participation under Title I, X, XIV, or XVI of the Social Security Act is not available in payments to or in behalf of any individual who is an inmate of a public institution except as a patient in a medical institution.

(2) (i) Federal financial participation under title X or XIV of the Social Security Act is not available in payments to or in behalf of any individual who is a patient in an institution for tuberculosis or mental diseases.

(ii) Federal financial participation under title XVI of the Social Security Act is not available in payments to or in behalf of any individual who has not attained 65 years of age and who is a patient in an institution for tuberculosis or mental diseases.

(3) For purposes of this paragraph:

(i) Federal financial participation is available in payments for the month in which an individual (if otherwise eligible) became an inmate of a public institution, or a patient in an institution for tuberculosis or mental diseases;

(ii) Whether an institution is one for tuberculosis or mental diseases will be determined by whether its overall character is that of a facility established and maintained primarily for the care and treatment of individuals with tuberculosis or mental diseases (whether or not it is licensed);

(iii) An institution for the mentally retarded is not an institution for mental diseases;

(iv) An individual on conditional release or convalescent leave from an institution for mental diseases is not considered to be a patient in such institution.

(b) *Definitions.* For purposes of Federal financial participation under paragraph (a) of this section:

(1) "Institution" means an establishment which furnishes (in single or multiple facilities) food and shelter to four or more persons unrelated to the proprietor, and in addition, provides some treatment or services which meet some need beyond the basic provision of food and shelter.

(2) "In an institution" refers to an individual who is admitted to participate in the living arrangements and to receive treatment or services provided there which are appropriate to his requirements.

(3) "Public institution" means an institution that is the responsibility of a governmental unit or over which a governmental unit exercises administrative control.

(4) "Inmate of a public institution" means a person who is living in a public institution. An individual is not considered an inmate when:

(i) He is in a public educational or vocational training institution, for purposes of securing education or vocational training, or

(ii) He is in a public institution for a temporary emergent period pending other arrangements appropriate to his needs.

(5) "Medical institution" means an institution which:

(i) Is organized to provide medical care, including nursing and convalescent care;

(ii) Has the necessary professional personnel, equipment, and facilities to manage the medical, nursing, and other health needs of patients on a continuing basis in accordance with accepted standards;

(iii) Is authorized under State law to provide medical care;

(iv) Is staffed by professional personnel who have clear and definite responsibility to the institution in the provision of professional medical and nursing services including adequate and continual medical care and supervision by a physician; sufficient registered nurse or licensed practical nurse supervision and services and nurse aid services to meet nursing care needs; and appropriate guidance by a physician(s) on the professional aspects of operating the facility.

(6) "Institution for tuberculosis" means an institution which is primarily engaged in providing diagnosis, treatment, or care of persons with tuberculosis, including medical attention, nursing care, and related services.

(7) "Institution for mental diseases" means an institution which is primarily engaged in providing diagnosis, treatment or care of persons with mental diseases, including medical attention, nursing care, and related services.

(8) "Patient" means an individual who is in need of and receiving professional services directed by a licensed practitioner of the healing arts toward maintenance, improvement, or protection of health, or alleviation of illness, disability, or pain.

§ 233.70 Blindness.

(a) *State plan requirements.* A State plan under title X or XVI of the Social Security Act must:

(1) Contain a definition of blindness in terms of ophthalmic measurement. The following definition is recommended: An individual is considered blind if he has central visual acuity of 20/200 or less in the better eye with correcting glasses or a field defect in which the peripheral field has contracted to such an extent that the widest diameter of visual field subtends an angular distance of no greater than 20°.

(2) Provide that, in any instance in which a determination is to be made whether an individual is blind according to the State's definition, there will be an examination by a physician skilled in the diseases of the eye or by an optometrist, whichever the individual may select. Under this requirement, no examination is necessary when both eyes are missing.

(3) Provide that each eye examination report will be reviewed by a State supervising ophthalmologist who is responsible for making the agency's decision that the applicant or recipient does or does not meet the State's definition of blindness, and for determining if and when reexaminations are necessary.

(b) *Federal financial participation.*— (1) *Assistance payments.* Federal financial participation is available in assistance provided to or in behalf of any otherwise eligible person who is blind. Blindness may be considered as continuing until an examination by a qualified examiner establishes the fact that the recipient's vision has improved beyond the State's definition of blindness.

(2) *Administrative expenses.* Federal financial participation is available in any expenditures incident to the eye examination necessary to determine whether an individual is blind.

§ 233.80 Disability.

(a) *State plan requirements.* A State plan under title XIV or XVI of the Social Security Act must:

(1) Contain a definition of permanently and totally disabled, showing that:

(i) "Permanently" is related to the duration of the impairment or combination of impairments; and

(ii) "Totally" is related to the degree of disability

The following definition is recommended:

"Permanently and totally disabled" means that the individual has some permanent physical or mental impairment, disease, or loss, or combination thereof, this substantially precludes him from engaging in useful occupations within his competence, such as holding a job.

Under this definition:

"Permanently" refers to a condition which is not likely to improve or which will continue throughout the lifetime of the individual; it may be a condition which is not likely to respond to any known therapeutic procedures, or a condition which is likely to remain static or to become worse unless certain therapeutic measures are carried out, where treatment is unavailable, inadvisable, or is refused by the individual on a reasonable basis; "permanently" does not rule out the possibility of vocational rehabilitation or even possible recovery in light of future medical advances or changed prognosis; in this sense the term refers to a condition which continues indefinitely, as distinct from one which is temporary or transient;

"Totally" involves considerations in addition to those verified through the medical findings, such as age, training, skills, and work experience, and the probable functioning of the individual in his particular situation in light of his impairment; an individual's disability would usually be tested in relation to ability to engage in remunerative employment; the ability to keep house or to

care for others would be the appropriate test for (and only for) individuals, such as housewives, who were engaged in this occupation prior to the disability and do not have a history of gainful employment; eligibility may continue, even after a period of rehabilitation and readjustment, if the individual's work capacity is still very considerably limited (in comparison with that of a normal person) in terms of such factors as the speed with which he can work, the amount he can produce in a given period of time, and the number of hours he is able to work.

(2) Provide for the review of each medical report and social history by technically competent persons—not less than a physician and a social worker qualified by professional training and pertinent experience—acting cooperatively, who are responsible for the agency's decision that the applicant does or does not meet the State's definition of permanent and total disability. Under this requirement:

(i) The medical report must include a substantiated diagnosis, based either on existing medical evidence or upon current medical examination;

(ii) The social history must contain sufficient information to make it possible to relate the medical findings to the activities of the "useful occupation" and to determine whether the individual is totally disabled, and

(iii) The review physician is responsible for setting dates for reexamination; the review team is responsible for reviewing reexamination reports in conjunction with the social data, to determine whether disabled recipients whose health condition may improve continue to meet the State's definition of permanent and total disability.

(3) Provide for cooperative arrangements with related programs, such as vocational rehabilitation services.

(b) *Federal financial participation*—(1) *Assistance payments.* Federal financial participation is available in payments to or in behalf of any otherwise eligible individual who is permanently and totally disabled. Permanent and total disability may be considered as continuing until the review team establishes the fact that the recipient's disability is no longer within the State's definition of permanent and total disability.

(2) *Administrative expenses.* Federal financial participation is available in any expenditures incident to the medical examinations necessary to determine whether an individual is permanently and totally disabled.

§ 233.90 Factors specific to AFDC.

(a) *State plan requirement.* A State plan under title IV–A of the Social Security Act must provide that the determination whether a child has been deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent, or (if the State plan includes such cases) the unemployment of his father, will be made only in relation to the child's natural or adoptive parent, or in relation to the child's stepparent who is ceremonially married to the child's natural or adoptive parent and is legally obligated to support the child under State law of general applicability which requires stepparents to support stepchildren to the same extend that natural or adoptive parents are required to support their children. Under this requirement, the inclusion in the family, or the presence in the home, of a "substitute parent" or "man-in-the-house" or any individual other than one described in this paragraph is not an acceptable basis for a finding of ineligibility or for assuming the availability of income by the State. In establishing financial eligibility and the amount of the assistance payment, only such net income as is actually available for current use on a regular basis will be considered, and the income only of the parent described in the first sentence of this paragraph will be considered available for children in the household in the absence of proof of actual contributions.

(b) *Condition for plan approval.* A child may not be denied AFDC either initially or subsequently "because of the conditions of the home in which the child resides", or because the home is considered "unsuitable", unless "provision is otherwise made pursuant to a State statute for adequate care and assistance with respect to such child". (Section 404(b) of the Social Security Act.)

(c) *Federal financial participation.* (1) Federal financial participation under title IV–A of the Social Security Act in payments with respect to a "dependent child", as defined in section 406(a) of the Act, is available within the following interpretations:

(i) *Needy child deprived by reason of.* The phrase "needy child * * * deprived * * * by reason of" requires that both need and deprivation of parental support or care exist in the individual case but does not require an affirmative showing that a causal relationship exists in the individual case. The phrase encompasses the situation of any child who is in need and otherwise eligible, and whose parent—father or mother—either has died, has a physical or mental incapacity, or is continually absent from the home. This interpretation is equally applicable whether the parent was the chief breadwinner or devoted himself or herself primarily to the care of the child, and whether or not the parents were married to each other. The determination whether a child has been deprived of parental support or care is made in relation to the child's natural parent or, as appropriate, the adoptive parent or stepparent described in paragraph (a) of this section.

(ii) *Death of a parent.* If either parent of a child is deceased, the child is deprived of parental support or care, and may, if he is in need and otherwise eligible, be included within the scope of the program.

(iii) *Continued absence of the parent from the home.* Continued absence of the parent from the home constitutes the reason for deprivation of parental support or care when the parent is out of the home, the nature of the absence is such as either to interrupt or to terminate the parent's functioning as a provider of maintenance, physical care, or guidance for the child, and the known or indefinite duration of the absence precludes counting on the parent's performance of his function in planning for the present support or care of the child. If these conditions exist, the parent may be absent for any reason, and he may have left only recently or some time previously.

(iv) *"Physical or mental incapacity".* "Physical or mental incapacity" of a parent may be deemed to exist when one parent has a physical or mental defect, illness, or disability, whatever its cause, degree, or duration, or accompanying factors.

(v) *"Living with [a specified relative] in a place of residence maintained * * * as his * * * own home".* (*a*) A child may be considered to meet the requirement of living with one of the relatives specified in the Act if his home is with a parent or a person in one of the following groups:

(*1*) Any blood relative, including those of half-blood, and including first cousins, nephews, or nieces, and persons of preceding generations as denoted by prefixes of grand, great, or great-great:

(2) Stepfather, stepmother, stepbrother, and stepsister.

(3) Persons who legally adopt a child or his parent as well as the natural and other legally adopted children of such persons, and other relatives of the adoptive parents in accordance with State law.

(*4*) Spouses of any persons named in the above groups even after the marriage is terminated by death or divorce.

(*b*) A home is the family setting maintained or in process of being established, as evidenced by assumption and continuation of responsibility for day to day care of the child by the relative with whom the child is living. A home exists so long as the relative exercises responsibility for the care and control of the child, even though either the child or the relative is temporarily absent from the customary family setting. Within this interpretation, the child is considered to be "living with" his relative even though

(*1*) He is under the jurisdiction of the court (e.g., receiving probation services or protective supervision); or

(2) Legal custody is held by an agency that does not have physical possession of the child.

(vi) *"Regularly attending a school, college, or university, or regularly attending a course of vocational or technical training designed to fit him for gainful employment."* A child may be considered in regular attendance at school or a training course in months in which he is not attending because of official school or training program vacation, illness, convalescence, or family emergency, and for the month in which he completes or discontinues his school or training program.

(2) Federal financial participation is available in:

(i) Initial payments made on behalf of a child who goes to live with a relative specified in section 406(a)(1) of the Social Security Act within 30 days of the receipt of the first payment, provided payments are not made for a concurrent period for the same child in the home of another relative or as AFDC–FC;

(ii) Payments with respect to an unborn child when the fact of pregnancy has been determined by medical diagnosis;

(iii) Payments made for the entire month in the course of which a child leaves the home of a specified relative, provided payments are not made for a concurrent period for the same child in the home of another relative or as AFDC–FC; and

(iv) Payments made to persons acting for relatives specified in section 406(a)(1) of the Act in emergency situations that deprive the child of the care of the relative through whom he as been receiving aid, for a temporary period necessary to make and carry out plans for the child's continuing care and support.

(3) Federal financial participation (at the 50 percent rate) is available in any expenses incurred in establishing eligibility for AFDC, including expenses incident to obtaining necessary information to determine the existence of incapacity of a parent or pregnancy of a mother.

7. Part 233 is further amended by revising § 233.110 to read as follows:

§ 233.110 AFDC foster care.

(a) *State plan requirements.* A State plan under title IV–A of the Social Security Act must:

(1) Provide that aid will be given in the form of foster care for each otherwise eligible child:

(i) Who was removed after April 30, 1961, from the home of a relative specified in the AFDC plan, as a result of a judicial determination that continuance in the home of the relative would be contrary to his welfare, for any reason, and who has been placed in foster care as a result of such determination; and

(ii) (*a*) Who, in or for the month in which that court action was initiated, was receiving AFDC, or would have received AFDC if application had been made, or

(*b*) Who lived with a relative specified in the AFDC plan within 6 months prior to the month in which that court action was initiated, and who would have received AFDC in or for such month if in such month he had been living with (and removed from the home of) such a relative and application had been made for him; and

(iii) Whose placement and care are the responsibility of the State agency administering or supervising the administration of the AFDC plan, or, if the State so elects, are the responsibility of any other public agency, or type or types of public agencies specified in the plan, with whom the State agency has a currently effective agreement that provides for development of a plan satisfactory to the State agency for AFDC–FC children in accordance with subparagraph (2) of this paragraph and that contains other provisions necessary to achieve the objectives of the State's AFDC plan.

(2) Provide for development of a plan for each child described in subparagraph (1) of this paragraph, so that:

(i) He will be placed in a foster family home or a child care institution in accordance with his needs;

(ii) His need for and the appropriateness of his care and services in such placement will be reviewed not less frequently than every 6 months;

(iii) Services will be provided to improve the conditions in the home from which he was removed or to make possible his placement in the home of another relative under the State's AFDC plan. (See § 220.19 of this chapter.)

(3) Provide that maximum use will be made of the services of employees of the State public welfare agency responsible for the plan for child-welfare services under title IV–B of the Act or of any local agency participating in the administration of such plan.

(4) Specify:

(i) In what types of child care institutions (private nonprofit, or public, or both), in addition to foster family homes, placement will be made; and

(ii) Whether payments will be made to foster homes and institutions only or also to other agencies.

(5) Provide that there will be specific criteria for determining the amount of payment for foster care in foster family homes and in child care institutions. In establishing rates of payment to institutions, only those items included for care in foster family homes will be included, and overhead costs of the institution will be excluded.

Under the requirements of this paragraph, provision must be made for both foster family care and institutional care in accordance with the individual child's needs; public institutions may be used, without Federal financial participation, to discharge the institutional obligation in whole or in part; and the use of institutions outside the State will also meet the requirement for the provision of institutional care.

(b) *Federal financial participation.* (1) Federal financial participation is available, effective January 1, 1968, in AFDC–FC payments not to exceed an average of $100 per month per recipient, made on behalf of children as specified in section 408 of the Social Security Act, who are included in the approved State AFDC plan and who are placed in a foster family home, or nonprofit private child-care institution, licensed or approved by the agency which is responsible for licensing or approval of such facilities in the State where it is situated. The maximum of $100 average per month per recipient may be disregarded when the State claims Federal funds under the provisions of section 1118 of the Act.

(2) Federal financial participation is available in AFDC–FC payments made to an individual providing care in a foster family home, to a private nonprofit child care institution, or to a cooperating public or nonprofit private child placement or child-care agency.

(Sec. 1102, 49 Stat. 647, 42 U.S.C. 1302)

PART 235—ADMINISTRATION OF FINANCIAL ASSISTANCE PROGRAMS

8. Part 235 is added as follows:

Sec.
235.70 Notice to law enforcement officials.
235.110 Fraud.

AUTHORITY: The provisions of this Part 235 issued under sec. 1102, 49 Stat. 647, 42 U.S.C. 1302.

§ 235.70 Notice to law enforcement officials.

State plan requirements: A State plan under title IV–A of the Social Security Act must provide that:

(a) The appropriate law enforcement officials will be notified in writing promptly as soon as AFDC has been furnished in respect to a child who is believed to have been deserted or abandoned by a parent. This requirement has no effect upon the determination of eligibility. It is a requirement upon the agency, and is fulfilled by providing the following information after a family has been found eligible and been granted assistance: A statement that AFDC has been furnished (date) to relative (name and address) in behalf of children (name and ages) in his home, who appear to have been deserted or abandoned by their parent(s) (name and address, if known). Under this requirement, the appropriate law enforcement officials are those responsible for initiating actions in cases of desertion or abandonment, as those terms are defined under State law.

(b) Criteria will be established for the selection of cases in which notice is given to law enforcement officials that AFDC has been furnished in respect to a dependent child believed to have been deserted or abandoned by a parent. In fulfilling this requirement, the criteria will include instructions for identification of the classes of persons who, under State law, are defined as parents responsible for support of minor children, and against whom legal action may be taken under such laws for desertion or abandonment.

(c) All applicants affected by the reporting requirement will be informed as early as possible during the application process, and each applicant will be afforded the opportunity to withdraw his application, if he wishes, before payment is issued and the required notice sent to the law enforcement officials.

§ 235.110 Fraud.

State plan requirements: A State plan under title I, IV–A, X, XIV, or XVI of the Social Security Act must provide:

(a) That the State agency will establish and maintain:

(1) Methods and criteria for identifying situations in which a question of fraud in the program may exist, and

(2) Procedures developed in cooperation with the State's legal authorities for referring to law enforcement officials situations in which there is valid reason to suspect that fraud has been practiced.

The definition of fraud for purposes of this section will be determined in accordance with State law.

(b) For methods of investigation of situations in which there is a question of fraud, that do not infringe on the legal rights of persons involved and are consistent with the principles recognized as affording due process of law.

(c) For the designation of official position(s) responsible for referral of situations involving suspected fraud to the proper authorities.

PART 246—STATE ORGANIZATION—MEDICAL ASSISTANCE PROGRAMS

9. Part 246 is added as follows:

§ 246.10 State medical care advisory committees.

(a) *State plan requirements.* A State plan for medical assistance under title XIX of the Social Security Act must provide that:

(1) There will be an advisory committee to the State agency director on health and medical care services, appointed by the director of the State agency or a higher State authority. Appointments to the committee will provide for rotation and continuity.

(2) The medical care advisory committee will include:

(i) Board certified physicians and other representatives of the health professions who are familiar with the medical needs of low income population groups and with the resources available and required for their care;

(ii) Members of consumers' groups including title XIX recipients, and consumer organizations such as labor unions, cooperatives, consumer-sponsored prepaid group practice plans, and others; and

(iii) The director of the public welfare department or of the public health department, whichever does not head the single State agency for the title XIX plan.

(3) The medical care advisory committee will have adequate opportunity for meaningful participation in policy development and program administration, including the furtherance of recipient participation in the program of the agency.

(4) The medical care advisory committee will be provided such staff assistance from within the agency and such independent technical assistance as are needed to enable it to make effective recommendations, and will be provided with financial arrangements, where necessary, to make possible the participation of recipients in the work of the committee.

(b) *Federal financial participation.* Federal financial participation of 50 percent is available for the activities of the medical care advisory committee.

(Sec. 1102, 49 Stat. 647, 42 U.S.C. 1302)

PART 248—COVERAGE AND CONDITIONS OF ELIGIBILITY FOR MEDICAL ASSISTANCE

10. Part 248 is amended to add the following sections:

§ 248.10 Coverage and conditions of eligibility for medical assistance.

(a) *Definitions.* When used in this part:

(1) The term "categorically needy" refers to an individual who is receiving financial assistance under the State's approved plan under title I, IV–A, X, XIV, or XVI of the Social Security Act, or is in need under the State's standards for financial eligibility in such plan. (See § 233.20 of this chapter.)

(2) The term "medically needy" refers to an individual whose income and resources equal or exceed the State's standards under the appropriate financial assistance plan but are insufficient to meet his costs for medical insurance premiums and for necessary medical and remedial care and services recognized under State law but not encompassed in the State plan for medical assistance, plus his costs for medical and remedial care and services included in the State plan.

(b) *State plan requirements.* A State plan under title XIX of the Social Security Act must:

(1) Provide that medical assistance will be available to the following groups of "categorically needy" persons:

(i) All individuals receiving aid or assistance under the State's approved plans under titles I, IV–A, X, XIV, and XVI of the Act; this includes all individuals who (*a*) are essential persons under the State plan and (*b*) could be recipients, if the State plan were as broad as permitted for Federal financial participation;

(ii) All individuals under 21 who are, or would be, except for age of school attendance requirements, dependent children under the State's approved AFDC plan;

(iii) All persons who would be eligible for aid or assistance under one of the other approved State plans except for any eligibility condition or other requirement in such plan that is specifically prohibited in a program of medical assistance under title XIX of the Act.

(2) Specify any other groups of "categorically needy" individuals (not covered by subparagraph (1) of this paragraph), that will be included in the program. These may include:

(i) Persons who meet all the conditions of eligibility, including financial eligibility, of one of the State's other approved plans, but have not applied for such assistance.

(ii) Persons in a medical facility—skilled nursing home, hospital, institution for tuberculosis, or mental disease—who, if they left such facility, would be eligible for financial assistance under another of the State's approved plans. This includes persons in medical facilities who have enough income to meet their personal needs while in the institution, but not enough to meet their needs outside the facility according to the appropriate State plan.

(iii) Persons who would be eligible for financial assistance under another State public assistance plan, except that the State plan imposes eligibility conditions more stringent than, or in addition to, those required under the Social Security Act. For example, persons who are needy and 18 years of age or older and permanently and totally disabled under the Federal definition of permanent and total disability, but who are excluded from APTD under the State's more restricted definition of disability; or persons who would be eligible for AFDC if the State's program covered families with children deprived of parental support or care to the full extent permitted under title IV–A of the Act, including AFDC for families with unemployed fathers.

(iv) All individuals under 21 who qualify on the basis of financial eligibility, but do not qualify as dependent children under a State's AFDC plan; or groups of such individuals if based on reasonable classifications. Children in foster homes or private institutions for whom public agencies are assuming financial responsibility, in whole or in part, constitute a reasonable classification. The additional inclusion of children placed in foster homes or private institutions by private, nonprofit agencies would also be considered reasonable.

(v) Caretaker relatives enumerated in section 406(a)(1) of the Act who have in their care one or more children under 21 who, except for age or school attendance requirements, would be dependent children under the State's AFDC plan.

(vi) Individuals who would be eligible for financial assistance if their work related child care costs were paid out of earnings rather than as a service expenditure by the agency, provided the State plan for financial assistance otherwise recognizes child care costs in determining the amount of the payment.

(3) Specify, if the plan includes the medically needy, that it covers all medically needy groups that correspond to the covered categorically needy groups. Exception: coverage of "essential" spouses of recipients of OAA, AB, APTD, or AABD does not require coverage of essential spouses of nonmoney payment recipients, either categorically needy or medically needy.

(4) Specify all conditions of eligibility that must be met by members of all optional groups included in the plan.

(5) If the plan includes groups of individuals for whose medical care and services Federal financial participation is not available, specify such groups, and provide that the State agency will establish methods for identifying the expenditures for medical care and services in which Federal financial participation may not be claimed.

(c) *Conditions for plan approval.* (1) All groups the State elects to include in the program are based on reasonable classifications, that is, they do not result in arbitrary or inequitable treatment of individuals or groups, or result in exclusion of groups or persons on the basis of any classification that is arbitrary or unreasonable, or is otherwise

inconsistent with the broad objectives of title XIX of the Act.

(2) There is clarity as to what groups are included, and which are within the scope, and which are outside the scope, of Federal financial participation in the cost of medical assistance provided.

(3) Except for need, the conditions of eligibility that are imposed on elective groups (including any groups for whose medical care and services Federal financial participation is not available) are not more stringent or more numerous than those imposed on individuals receiving aid or assistance under any of the approved State plans.

(4) No age, residence, citizenship, or other requirement is imposed that is prohibited by title XIX of the Act.

(5) No person unrelated to the applicant or recipient is held financially responsible for him; nor is any condition of eligibility imposed that holds a relative responsible who is not the spouse of the individual who needs medical care or services, or the parent of such individual, who is under 21, or is blind, or is permanently and totally disabled.

(d) *Federal financial participation*—(1) *Administrative costs.* Federal financial participation is available in the administrative costs of providing medical care and services to all persons covered under the plan, including those in the cost of whose medical care and services the Federal Government does not share, provided all other provisions of the approved State plan are applicable to them.

(2) *Medical assistance.* Federal financial participation is available, pursuant to part 250 of this chapter, in payments for medical care and services provided under the State plan to any financially eligible individual who is:

(i) Under the age of 21; or

(ii) A parent or other caretaker relative specified in section 406(a)(1) of the Act (see § 233.90(c)(1)(v)(*a*) of this chapter with whom a child under the age of 21 is living, if such relative is eligible or would, except that the child is not regularly attending school or a course of vocational training, and except for need, be eligible to receive payments within the scope of Federal financial participation under title IV–A of the Act; only one such parent or other caretaker relative, plus the spouse of such parent (who meets the conditions specified in section 406(b)(1) of the Act (see § 237.50(b) (3) (4) of this chapter)), are within the scope of Federal financial participation under title IV–A of the Act; or

(iii) 65 years of age or older; or

(iv) Blind; or

(v) 18 years of age or older and permanently and totally disabled; or

(vi) The spouse of a recipient of OAA, AB, APTD, or AABD who is considered "an essential person" (see § 248.11 of this part);

but excluding any such care or services provided to any individual who is an inmate of a public institution (except as a patient in a medical institution), or who is under age 65 and a patient in an institution for tuberculosis or mental diseases. See § 248.60.

(3) Federal financial participation is available in medical assistance provided to individuals who were eligible therefor in the month in which the medical care or services were provided.

(4) Federal financial participation is available in medical assistance for individuals, in accordance with the State plan, during a temporary period while the effects of certain eligibility conditions such as blindness, disability, continued absence or incapacity of a parent, or unemployment of a father, are being overcome.

11. Part 248 is further amended by revising § 248.21 to read as follows:

§ 248.21 Financial eligibility—medical assistance programs.

(a) *State plan requirements.* A State plan under title XIX of the Social Security Act must:

(1) With respect to the categorically needy:

(i) Specify that the financial eligibility conditions of the pertinent financial assistance plan will apply;

(ii) Provide for the application of income first to maintenance costs.

(2) With respect to both the categorically needy and, if they are included in the plan, the medically needy:

(i) Provide that only such income and resources as are actually available will be considered and that income and resources will be reasonably evaluated;

(ii) Provide that financial responsibility of any individual for any applicant or recipient of medical assistance will be limited to the responsibility of spouse for spouse and of parents for children under age 21, or blind, or permanently and totally disabled;

(iii) Specify the extent to which the financial responsibility of any such relatives is taken into account.

(3) With respect to the medically needy, if they are included in the plan:

(i) Provide levels of income and resources for maintenance, in total dollar amounts, as a basis for establishing financial eligibility for medical assistance. Under this requirement:

(*a*) Such income levels must be comparable as among individuals and families of varying sizes;

(*b*) The income levels for maintenance must be, as a minimum, at the levels of the most liberal money payment standard used by the State, at any time on or after January 1, 1966, as a measure of financial eligibility in any categorical money payment program in the State, or at the level for which Federal financial participation is available pursuant to paragraph (b) of this section, whichever is less. Where a State imposes any deduction, cost sharing, enrollment fee, premium, or similar charge under the plan with respect to any medical assistance furnished to an individual thereunder, such charge may not be imposed to the extent that it would reduce the individual's income below the most liberal money payment standard referred to in the preceding sentence;

(*c*) A lower income level for maintenance must be used for individuals not living in their own homes but receiving care in nursing homes, institutions for tuberculosis or mental diseases or other medical facilities providing long-term care. This lower income level must be reasonable in amount for clothing and personal needs for such individuals. When such an individual's home is maintained for a spouse or other dependents, the appropriate income level for such dependents, plus the individual's income level for maintenance in a long-term care facility, is applicable;

(*d*) Resources which may be held must, as a minimum, be at the most liberal level used in any money payment program in the State on or after January 1, 1966, and the amount of liquid assets which may be held must increase with an increase in the number of individuals in the family. There must be separate levels established for resources.

(ii) Provide that there will be a flexible measurement of available income which will be applied in the following order of priority:

(*a*) First, for maintenance, so that any income in an amount at or below the established level will be protected for maintenance;

(*b*) Next, income in excess of that needed for maintenance will be applied to costs incurred for medical insurance premiums and for necessary medical or remedial care recognized under State law and not encompased within the State plan for medical assistance. States may set reasonable limits on such medical services for which excess income may be applied.

(*c*) All of the remaining excess income will be applied to costs of medical assistance included in the State plan.

(iii) Provide that all income and resources (after all State policies governing the disregard, or setting aside for future needs, of income and resources in the State's approved plans under titles I, IV–A, X, XIV, and XVI have been applied) will be considered in establishing eligibility, and in the flexible application of income to medical costs not in the State plan, and payment toward the medical assistance costs.

(iv) Provide that only such income and resources will be considered as will be "in hand" within a period, preferably of not more than 3 months, but not in excess of 6 months, ahead, including the month in which medical services were rendered, for which payment would be made under the plan.

(b) *Federal financial participation.* (1) Federal financial participation is available in payments made in behalf of categorically needy individuals.

(2) Payments in behalf of medically needy individuals are subject to Federal financial participation only to the extent that they are made for a member of a family the annual income of which is within the income levels established in the following:

(i) In the case of any State, the applicable income levels with respect to periods after December 31, 1969 are 133⅓ percent of the amounts specified in subdivision (ii) of this subparagraph. Any total yearly income levels established by applying the above percentage which

are not multiples of $100 shall be rounded to the next higher multiple of $100. Federal financial participation is available for a person whose annual income exceeds this level to the extent that medical expenses exceed the income excess (see subdivision (ii) (c) of this subparagraph).

(ii) The amounts to be applied in calculating the income levels referred to in subdivision (i) of this subparagraph are the highest amounts which would ordinarily be paid to a family of the same size without any income or resources in the form of money payments, under the approved AFDC plan of the State, subject to the following modifications:

(a) In the case of a single individual the amount of the income level shall be reasonably related to the amounts payable under such plan to families consisting of two or more individuals who are without income or resources.

(b) If the amounts established under such plan are subject to a maximum family limit, the income level for families which exceed such limit will be determined by adding an amount for each member of the family to such limit. The amounts to be added shall be reasonably related to those established under the plan for families which are within the maximum family limit.

(c) In computing a family's or individual's income for purposes of subdivisions (i) and (ii) of this subparagraph, there shall be excluded any costs (whether in the form of insurance premiums or otherwise) incurred by such family or individual for medical care or for any other type of remedial care recognized under State law.

(3) If a State furnishes medical assistance on the basis of income levels which are higher than those specified in this section, the State agency must submit to the Department of Health, Education, and Welfare for its approval income levels which are calculated on the basis provided in this section, and must establish procedures to assure that claims for Federal financial participation are limited accordingly.

12. The following sections are also added:

§ 248.30 Age.

(a) *Conditions for plan approval.* A State plan under title XIX of the Social Security Act may not impose:

(1) Any age requirement of more than 65 years;

(2) Any age requirement which excludes any individual who has not attained the age of 21 and is or would, except for the provisions of section 406(a)(2) of the Act (regarding attendance at school or a training course), be a dependent child under the State's AFDC plan; or

(3) Age requirements more stringent than are imposed in the State's approved plans for financial assistance.

(b) *Federal financial participation.* (1) Federal financial participation is available in medical assistance provided to otherwise eligible persons who were, for any portion of the month in which they received medical care or services, under 21 years of age, or 65 years of age or over, or 18 years of age or over and permanently and totally disabled. There is no Federal requirement as to age for blind persons.

(2) Federal determination of whether an individual meets the age requirements of the Social Security Act will be made according to the common-law method (under which a specific age is attained the day before the anniversary of birth), unless the State plan specifies that the popular usage method (under which an age is attained on the anniversary of birth) is used.

(3) The State agency may adopt an arbitrary date such as July 1 as the point from which age will be computed in all instances where the month of an individual's birth is not available, but the year can be established.

§ 248.50 Citizenship.

Conditions for plan approval:

(a) A State plan under title XIX of the Social Security Act may not exclude an otherwise eligible citizen of the United States, regardless of how (by birth or by naturalization), or when, citizenship was obtained.

(b) A State plan which includes the medically needy must include all otherwise eligible individuals, regardless of citizenship status, unless all of the State's approved financial assistance plans require citizenship as a condition of eligibility.

(c) A State plan may include persons without regard to citizenship status, even though all of the State's financial assistance plans contain such a requirement.

§ 248.60 Institutional status.

(a) *Federal financial participation.* (1) Federal financial participation under title XIX of the Social Security Act is not available in medical assistance for any individual who is an inmate of a public institution except as a patient in a medical institution.

(2) Federal financial participation under title XIX of the Social Security Act is not available in medical assistance for any individual who has not attained 65 years of age and who is a patient in an institution for tuberculosis or mental diseases.

(3) For purposes of this paragraph:

(i) Federal financial participation is available in the costs of medical assistance for the month in which an individual (if otherwise eligible) became an inmate of a public institution, or a patient in an institution for tuberculosis or mental diseases;

(ii) Whether an institution is one for tuberculosis or mental diseases will be determined by whether its overall character is that of a facliity established and maintained primarily for the care and treatment of individuals with tuberculosis or mental diseases (whether or not it is licensed);

(iii) An institution for the mentally retarded is not an institution for mental diseases;

(iv) An individual on conditional release or convalescent leave from an institution for mental diseases is not considered to be a patient in such institution.

(b) *Definitions.* For purposes of Federal financial participation under paragraph (a) of this section: (1) "Institution" means an establishment which furnishes (in single or multiple facilities) food and shelter to four or more persons unrelated to the proprietor, and in addition, provides some treatment or services which meet some need beyond the basic provision of food and shelter.

(2) "In an institution" refers to an individual who is admitted to participate in the living arrangements and to receive treatment or services provided there which are appropriate to his requirements.

(3) "Public institution" means an institution that is the responsibility of a governmental unit or over which a governmental unit exercises administrative control.

(4) "Inmate of a public institution" means a person who is living in a public institution. An individual is not considered an inmate when:

(i) He is in a public educational or vocational training institution, for purposes of securing education or vocational training, or

(ii) He is in a public institution for a temporary emergent period pending other arrangements appropriate to his needs.

(5) "Medical institution" means an institution which:

(i) Is organized to provide medical care, including nursing and convalescent care;

(ii) Has the necessary professional personnel, equipment, and facilities to manage the medical, nursing, and other health needs of patients on a continuing basis in accordance with accepted standards;

(iii) Is authorized under State law to provide medical care;

(iv) Is staffed by professional personnel who have clear and definite responsibility to the institution in the provision of professional medical and nursing services including adequate and continual medical care and supervision by a physician; sufficient registered nurse or licensed practical nurse supervision and services and nurse aid services to meet nursing care needs; and appropriate guidance by a physician(s) on the professional aspects of operating the facility.

(6) "Institution for tuberculosis" means an institution which is primarily engaged in providing diagnosis, treatment, or care of persons with tuberculosis, including medical attention, nursing care, and related services.

(7) "Institution for mental diseases" means an institution which is primarily engaged in providing diagnosis, treatment or care of persons with mental diseases, including medical attention, nursing care and related services.

(8) "Patient" means an individual who is in need of and receiving professional services directed by a licensed

practitioner of the healing arts toward maintenance, improvement or protection of health, or alleviation of illness, disability, or pain.

§ 248.70 Blindness.

(a) *State plan requirements.* A State plan under title XIX of the Social Security Act must:

(1) Contain a definition of blindness in terms of ophthalmic measurement. The following definition is recommended: An indviidual is considered blind if he has central visual acuity of 20/200 or less in the better eye with correcting glasses or a field defect in which the peripheral field has contracted to such an extent that the widest diameter of visual field subtends an angular distance of no greater than 20°.

(2) Provide that, in any instance in which a determination is to be made whether an individual is blind according to the State's definition, there will be an examination by a physician skilled in the diseases of the eye or by an optometrist, whichever the individual may select. Under this requirement, no examination is necessary when both eyes are missing.

(3) Provide that each eye examination report will be reviewed by a State supervising ophthalmologist who is responsible for making the agency's decision that the applicant or recipient does or does not meet the State's definition of blindness, and for determining if and when reexaminations are necessary.

(b) *Federal financial participation*—(1) *Assistance payments.* Federal financial participation is available in medical assistance provided to any otherwise eligible person who is blind. Blindness may be considered as continuing until an examination by a qualified examiner establishes the fact that the recipient's vision has improved beyond the State's definition of blindness.

(2) *Administrative expenses.* Federal financial participation is available in any expenditures incident to the eye examination necessary to determine whether an individual is blind.

§ 248.80 Disability.

(a) *State plan requirements.* A State plan under title XIX of the Social Security Act must:

(1) Contain a definition of permanently and totally disabled, showing that:

(i) "Permanently" is related to the duration of the impairment or combination of impairments; and

(ii) "Totally" is related to the degree of disability.

The following definition is recommended:

"Permanently and totally disabled" means that the individual has some permanent physical or mental impairment, disease, or loss, or combination thereof, that substantially precludes him from engaging in useful occupations within his competence, such as holding a job.

Under this definition:

"Permanently" refers to a condition which is not likely to improve or which will continue throughout the lifetime of the individual; it may be a condition which is not likely to respond to any known therapeutic procedures, or a condition which is likely to remain static or to become worse unless certain therapeutic measures are carried out, where treatment is unavailable, inadvisable, or is refused by the individual on a reasonable basis; "permanently" does not rule out the possibility of vocational rehabilitation or even possible recovery in light of future medical advances or changed prognosis; in this sense the term refers to a condition which continues indefinitely, as distinct from one which is temporary or transient;

"Totally" involves considerations in addition to those verified through the medical findings, such as age, training, skills, and work experience, and the probable functioning of the individual in his particular situation in light of his impairment; an individual's disability would usually be tested in relation to ability to engage in remunerative employment; the ability to keep house or to care for others would be the appropriate test for (and only for) individuals, such as housewives, who were engaged in this occupation prior to the disability and do not have a history of gainful employment; eligibility may continue, even after a period of rehabilitation and readjustment, if the individual's work capacity is still very considerably limited (in comparison with that of a normal person) in terms of such factors as the speed with which he can work, the amount he can produce in a given period of time, and the number of hours he is able to work.

(2) Provide for the review of each medical report and social history by technically competent persons—not less than a physician and a social worker qualified by professional training and pertinent experience—acting cooperatively, who are responsible for the agency's decision that the applicant does or does not meet the State's definition of permanent and total disability. Under this requirement:

(i) The medical report must include a substantiated diagnosis, based either on existing medical evidence or upon current medical examination;

(ii) The social history must contain sufficient information to make it possible to relate the medical findings to the activities of the "useful occupation" and to determine whether the individual is totally disabled; and

(iii) The review physician is responsible for setting dates for reexamination; the review team is responsible for reviewing reexamination reports in conjunction with the social data, to determine whether disabled recipients whose health condition may improve continue to meet the State's definition of permanent and total disability.

(b) *Federal financial participation*—(1) *Assistance payments.* Federal financial participation is available in medical assistance provided to any otherwise eligible individual who is permanently and totally disabled. Permanent and total disability may be considered as continuing until the review team establishes the fact that the recipient's disability is no longer within the State's definition of permanent and total disability.

(2) *Administrative expenses.* Federal financial participation is available in any expenditures incident to the medical examination necessary to determine whether an individual is permanently and totally disabled.

(Sec. 1102, 49 Stat. 647, 42 U.S.C. 1302)

PART 249—SERVICES AND PAYMENT IN MEDICAL ASSISTANCE PROGRAMS

13. Part 249 is amended to add the following sections:

§ 249.70 Liens and recoveries.

State plan requirements: A State plan under title XIX of the Social Security Act must provide that:

(a) No lien or encumbrance of any kind will be required from or be imposed against the property of any individual prior to his death because of medical assistance paid or to be paid on his behalf or at any time if he was under 65 years of age when he received such assistance (except pursuant to the judgment of a court on account of benefits incorrectly paid on behalf of such individual).

(b) There will be no adjustment or recovery of medical assistance correctly paid, except from the estate of an individual who was 65 years of age or older when he received such assistance, and then only after the death of his surviving spouse, if any, and only at a time when he has no surviving child who is under age 21 or is blind or permanently and totally disabled.

Under this regulation, the term "property" includes not only the homestead but all other personal and real property in which the recipient has a legal interest; and a money payment under another program may not be reduced as a method of recovery for vendor payments incorrectly paid under title XIX of the Act.

§ 249.82 Contracts with health insurance organizations, fiscal agents, and private nonmedical institutions.

(a) *Definitions.*—(1) *Arrangement with health-insuring organization.* A health-insuring arrangement is present where the contractor agrees to pay the costs of benefits provided under the contract in consideration of an amount called a premium, paid by the State agency for each eligible individual. Under this arrangement, the State agency would be obligated to pay for eligible individuals a monthly premium for each month for which coverage of the medical care and services provided for in the contract is to be made available, whether or not such individuals needed such care and services. Such payment might be made in advance of the coverage period or shortly thereafter. Also, the State agency would not pay for any loss incurred by the contractor from claims exceeding premiums paid or from increases in administrative costs of the contractor during the covered period, and, normally, the State agency would not be charged separately for the administrative functions performed by the contractor since these functions are a coordinate part of the health insurance agreement.

(2) *Arrangement with fiscal agent.* A fiscal agent type arrangement is present

where the contractor agrees to process and audit vendor claims for payment and may perform certain other functions which would otherwise be performed by the State agency in providing medical care and services to recipients for an amount sufficient to cover his costs of performing the agreed-upon functions. Under this arrangement, the State agency assumes liability for vendor claims for medical care and services rendered eligible recipients, and frequently pays a separate charge to the contractor for costs incurred in performing the agreed-upon functions.

(3) *Arrangement with private nonmedical institution.* An arrangement with a private nonmedical institution, such as a child-care institution or maternity home, is present where the contractor agrees to provide specified medical services through its own salaried medical personnel or to provide such services through contracts or other arrangements with medical providers. Under this arrangement, the State agency would be obligated to pay for eligible individuals a monthly capitation amount for each month for which coverage of the medical care and services provided for in the contract is to be made available, whether or not such individuals needed such care and services. Such payment might be made in advance of the coverage period or shortly thereafter.

(b) *State plan requirements.* (1) A State plan under title XIX of the Social Security Act which provides part or all of its medical assistance through arrangement with health-insuring organizations must provide that, as a minimum, the contract will:

(i) Identify the amount of the premium to be paid, when it is to be paid, and the coverage group and period;

(ii) Specify the amount, duration, and scope of medical care and services to be provided, and the fee schedule or other basis on which the contractor will make payment;

(iii) Provide that the premium payment constitutes full discharge of all responsibility by the State for costs of covered medical care and services provided to covered eligible recipients during the contract period;

(iv) Provide for periodic renegotiation of the premium rate and/or medical care and services furnished under contract;

(v) Provide that the contractor shall maintain and provide such records as are necessary for the State to meet the requirements for reporting placed on the State by the Federal agency, and provide that the contractor shall furnish such other reports as required by the State or local agency; and

(vi) Include the period of time the contract will be in effect, together with provisions for termination.

(2) A State plan under title XIX of the Act which provides part or all of its medical assistance through arrangement with fiscal agents must provide that, as a minimum, the contract will:

(i) Identify the type of functions to be performed by the contractor, the amount to be paid the contractor for performing the functions, the basis for the amount, when payment is to be made, and the coverage group;

(ii) Provide that the contractor will make payments for medical care in accordance with the rules and regulations established by the State agency;

(iii) Provide that the contractor shall maintain and provide such records as are necessary for the State to meet the requirements for reporting placed on the State by the Federal agency, and provide that the contractor shall furnish such other reports as required by the State or local agency;

(iv) Provide for periodic renegotiation of the amount paid in relation to the costs of service provided; and

(v) Include the period of time the contract will be in effect together with provisions for termination.

(3) A State plan under title XIX of the Act which provides part of its medical assistance through arrangement with private nonmedical institutions must provide that, as a minimum, the contract will:

(i) Identify the capitation amount to be paid, when it is to be paid, and the coverage group;

(ii) Specify the amount, duration and scope of medical care and services to be provided;

(iii) Specify the basis for payment to the provider for authorized service;

(iv) Provide for periodic renegotiation of the amount paid in relation to the costs of services provided;

(v) Provide that the contractor shall maintain and provide such records as are necessary for the State to meet the requirements for reporting placed on the State by the Federal agency, and provide that the contractor shall furnish such other reports as required by the State or local agency; and

(vi) Include the period of time the contract will be in effect, together with provisions for termination.

(c) *Conditions for Federal financial participation.* (1) The total amount paid to the health-insuring organization (pursuant to paragraph (b)(1) of this section) for carrying out the provisions of the contract will be regarded as assistance costs for Federal financial participation even if the contract provides for a separate charge for the contractor's administrative costs.

(2) The total amount paid to the private nonmedical institution (pursuant to paragraph (b)(3) of this section) for carrying out the provisions of the contract will be limited to cost of medical care and services and will be regarded as assistance costs for Federal financial participation.

(3) Under contracts with fiscal agents, the amount paid to the supplier of medical care will be considered for Federal financial participation as assistance costs, and the amount paid to the contractor for performing the agreed-upon functions will be considered as administrative costs.

(4) For Federal financial participation, the State agency must submit the contract to the Social and Rehabilitation Service not later than the end of the first quarter for which Federal financial participation will be claimed for expenditures made thereunder.

(Sec. 1102, 49 Stat. 647, 42 U.S.C. 1302)

Effective date. This revision shall become effective on the date of its publication in the FEDERAL REGISTER (2-27-71).

Dated: January 21, 1971.

JOHN D. TWINAME,
Administrator, Social and Rehabilitation Service.

Approved: February 22, 1971.

ELLIOT L. RICHARDSON,
Secretary.

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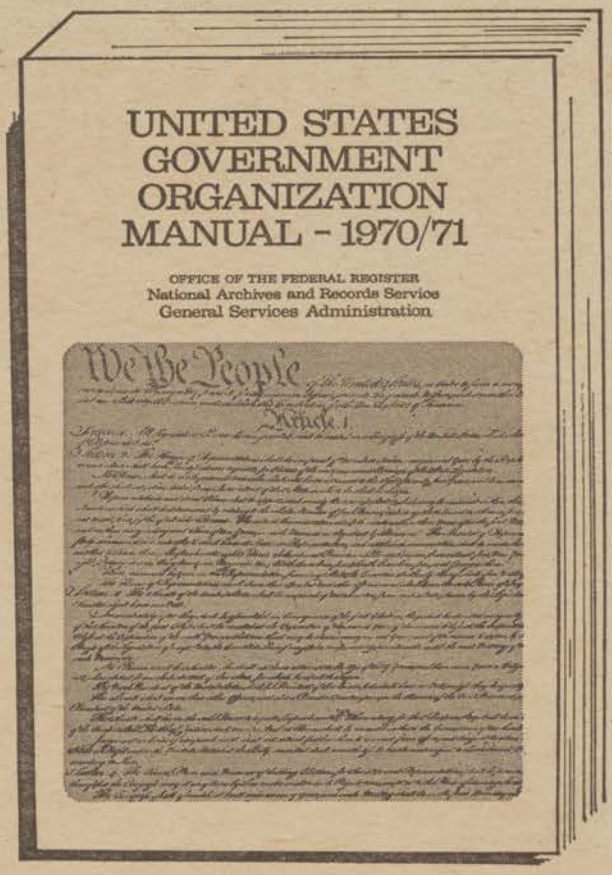

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