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Part I

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Agencies in this issue—

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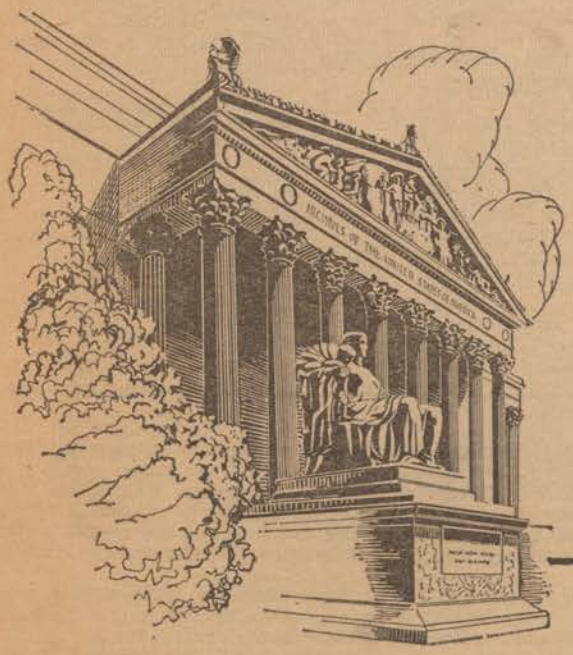

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List of CFR Parts Affected

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

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

Rules and Regulations

Title 7—AGRICULTURE

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

SUBCHAPTER B—FARM MARKETING QUOTAS AND ACREAGE ALLOTMENTS

PART 722—COTTON

Subpart—Base Acreage Allotments for 1971, 1972, and 1973 Crops of Upland Cotton

The provisions of §§ 722.401 to 722.450 are issued pursuant to the Agricultural Adjustment Act of 1938, as amended (7 U.S.C. 1281 et seq.). These provisions govern the establishment of base acreage allotments for the 1971 and succeeding crops of upland cotton and related program provisions under sections 344a and 350 of the act as amended by the Agricultural Act of 1970. (Public Law 91-524, 84 Stat. 1358, approved November 30, 1970.)

This subpart supersedes the regulations for Acreage Allotments for 1968 and Succeeding Crops of Upland Cotton (33 F.R. 895, as amended). However, such superseded regulations shall remain effective with respect to the 1968, 1969, and 1970 crops of upland cotton and the establishment of the preliminary allotment for 1971.

Since farmers and local State and county ASC committees need to know the provisions of the program for the 1971 crop as soon as possible, it is essential that this subpart be made effective immediately. Accordingly, this subpart shall be effective upon filing of this document with the Director, Office of the Federal Register. The provisions of 5 U.S.C. 553 regarding rulemaking are not applicable since the base acreage allotment program for upland cotton falls within the exception in subsection (a)(2) thereof.

GENERAL

AUTHORITY: The provisions of this subpart issued under secs. 301, 344a, 350, 375, 52 Stat. 38, as amended, 79 Stat. 1197, as amended, 79 Stat. 1193, as amended, 52 Stat. 66, as amended; 7 U.S.C. 1301, 1344b, 1350, 1375.

GENERAL

§ 722.401 Applicability.

The provisions of this subpart apply to the establishment of base acreage allotments for upland cotton for the 1971, 1972, and 1973 crops, the transfer of base acreage allotments by sale, lease, or by owner, and related program provisions.

§ 722.402 Recording base acreage allotments.

Farm base acreage allotments shall be rounded to tenths of acres in accordance with the provisions of Part 793 of this chapter.

§ 722.403 Expiration of time limitations.

The provisions of Part 720 of this chapter concerning the expiration of time limitations shall apply to this subpart.

§ 722.404 Definitions.

In determining the meaning of this subpart, unless the context indicates otherwise, words imparting the singular include and apply to several persons or things, words imparting the plural include the singular, words imparting the masculine gender include the feminine as well, and words used in the present tense include the future as well as the present.

(a) *General terms.* Definitions in Part 719 of this chapter shall apply to this subpart.

(b) *Act.* Agricultural Adjustment Act of 1938 (7 U.S.C. 1281 et seq.).

(c) *Conservation programs.* Programs under which acreage removed or diverted from the production of cotton is eligible for acreage history under the terms of the statute establishing such program or under the general authority granted under 7 U.S.C. 1838(g).

(d) *Extra long staple cotton.* American-Pima, Sea Island, Sealand, and all other varieties of the Barbadense species of cotton and any hybrid thereof, and any other cotton in which one or more of these varieties predominate, produced in an area designated by the Secretary.

(e) *Farm base acreage allotment.* Cotton base acreage allotment established for a farm.

(f) *History acreage of cotton on the farm.* (For use in establishing farm base acreage allotments; acreage devoted to production of extra long staple cotton shall be excluded.) History acreage of cotton on the farm for 1971, 1972, and 1973 shall be credited in the amount of the farm base acreage allotment including any portion transferred by temporary adjustment (see paragraph (i) of this section) from the farm but excluding any portion transferred by temporary adjustment to the farm. Such history acreage shall be adjusted in certain cases as follows:

(1) If less than 90 percent of the farm base acreage allotment before temporary adjustments is planted or considered as planted to cotton the history acreage shall be the acreage planted or considered as planted to cotton. Acreage planted or considered as planted to cotton shall be the sum of the following:

(i) Acreage planted to cotton on the farm in the current year. For purposes of this subdivision:

(*a*) The acreage seeded to cotton plus stub cotton acreage on the farm in the current year, excluding acreage which the county committee determines was planted or cared for in an unworkmanlike manner without the expectation of producing a normal crop under usual conditions.

(*b*) If the farm operator fails to file a certification of acreage in a certification county, the acreage planted to cotton shall be considered to be zero for history acreage purposes in lieu of the rule prescribed in item (*a*) of this subdivision.

(ii) Acreage transferred by temporary adjustment from the farm. (See paragraph (i).)

(iii) Acreage on which the planting of cotton was prevented because of a natural disaster as determined by the county committee.

(iv) Acreage considered as planted under conservation programs or practices.

(v) Allotment acreage in the eminent domain pool under Part 719 of this chapter.

(vi) Acreage not planted because of the payment limitation under Part 795 of this chapter.

(vii) Acreage not planted because of a quarantine imposed by the county, State, or Federal Government prohibiting the planting of cotton in an area.

(viii) Acreage planted to wheat in excess of the wheat allotment and acreage planted to feed grains in excess of one-half of the feed grain base when requested by the producer and approved by the county committee.

(2) No adjustment in history acreage under subparagraph (1) of this paragraph shall be made for a farm if:

(i) The farm is owned by the Federal Government with a restrictive lease prohibiting the planting of cotton, or

(ii) The cotton base acreage allotment is established in the eminent domain pool under Part 719 of this chapter.

(g) *New cotton farm.* Farm for which a cotton base acreage allotment is established in the current year and for which there is no history acreage in the 3-year farm base period.

(h) *Old cotton farm.* Farm having acreage history in any one of the 3 base years excluding history for released acreage before 1971 (but including history for acreage transferred due to a natural disaster).

(i) *Temporary adjustment of base acreage allotment.* Includes acreage temporarily transferred by owner, lease, release, and reapportionment.

(j) *Upland cotton.* Any cotton other than extra long staple cotton.

FARM BASE ACREAGE ALLOTMENTS

§ 722.405 Establishment of preliminary allotments.

(a) *Preliminary allotments for 1971.* The preliminary allotment for the 1971 crop shall be established in accordance with the regulations for acreage allotments for 1968 and succeeding crops of upland cotton (33 F.R. 895, as amended).

(b) *Acreage planted or considered planted to cotton.* For purposes of this section the acreage planted or considered planted to cotton shall be determined as provided in the second sentence of § 722.404(f)(1).

(c) *Preliminary allotments for 1972 and 1973 crops.*—(1) *When 90 percent or more of the farm base acreage allotment is planted.* The preliminary allotment shall be the preceding year's base acreage allotment after any permanent adjustment to or from the farm but before any temporary adjustment to or from the farm when 90 percent or more of such farm base acreage allotment is planted or considered planted to cotton.

(2) *When less than 90 percent of the farm base acreage allotment is planted.* The preliminary allotment shall be determined as follows:

(i) *Old cotton farm in the preceding year.* In the case of a farm that was an old cotton farm in the preceding year, the preliminary allotment shall be the larger of the acreage planted and considered planted to cotton in the preceding year or 80 percent of the base acreage allotment for the preceding year after any permanent adjustment to or from the farm but before any temporary adjustment to or from the farm.

(ii) *New cotton farm in the preceding year.* In the case of a farm that was a new cotton farm in the preceding year, the preliminary allotment shall be the acreage planted and considered planted to cotton.

§ 722.406 Establishment of farm base acreage allotments.

(a) *Factored base acreage allotments for old cotton farms.* The adjusted county base acreage allotment shall be apportioned among old cotton farms as provided in this paragraph. Factored base acreage allotments for such farms shall be determined by multiplying the preliminary allotment by the county base acreage allotment factor. Such county factor shall be determined by dividing the total of the preliminary allotments for the current year for all farms into the adjusted county allotment. The factored allotment shall not exceed the cropland on any farm.

(b) *Use of county reserve.* The county reserve shall be used by the county committee to adjust factored farm base acreage allotments. Farms covered by contracts under the conservation programs shall receive the same consideration as other comparable farm in the county. The county reserve shall not be used to reflect new cropland brought into production after November 30, 1970. The county reserve shall be used by the county committee as follows:

(1) *Determination of acreage needed for new cotton farms.* If any part of the State reserve or the county reserve is to be used for establishing base acreage allotments for new cotton farms, the county committee, with the assistance of the community committees, may estimate from county office records and other available sources of information the number of new cotton farms in the county and an estimate may be made of the cropland on new cotton farms. Such estimates may be used by the State and county committees as a basis for determining the acreage, if any, that will be allocated for establishing base acreage allotments for new cotton farms. In determining the acreage, if any, from the county reserve which is to be used for establishing base acreage allotments for new cotton farms, the county committee shall take into consideration the acreage, if any, to be made available from the State reserve for establishing base acreage allotments for new cotton farms.

(2) *Adjustments in farm base acreage allotments to correct inequities and to prevent hardship.* The county committee shall determine the acreage required from the county reserve to supplement any aereage allocated to the county from the State reserve to correct inequities in farm base acreage allotments and to prevent hardship. Such reserves may also be used for establishing and adjusting farm base acreage allotments as provided in paragraph (c) of this section and to provide fair and reasonable base acreage allotments where the county committee had insufficient information to make proper adjustments at the time the original base acreage allotment for the farm was established. Any acreage from the county reserve and any allocation to the county from the State reserve to correct inequities and prevent hardship may be used by the county committee for making adjustments in farm base acreage allotments to correct inequities and to prevent hardship. Such adjustments shall be made so as to establish base acreage allotments which are fair and reasonable in relation to the base acreage allotments established for similar farms in the community taking into consideration for the farm the acreages planted to cotton in the farm base years; the land, labor, and equipment available for the production of cotton; crop-rotation practices; the soil and other physical facilities affecting the production of cotton; and abnormal conditions of production.

(3) *Base acreage allotments for missed farms and correction of errors.* The remainder of the acreage in the county reserve, after meeting or determining the requirements under subparagraphs (1) and (2) of this paragraph and the acreage allocated by the State committee from the State reserve for this purpose shall be used by the county committee (i) for establishing base acreage allotments for old cotton farms for which base acreage allotments were not established at the time base acreage allotments were orignially established for old cotton farms in the county because of oversight on the part of the county committee, and (ii) for correcting errors in farm base acreage allotments.

(c) *Equitable adjustments from State reserve for all old cotton farms.* Under the conservation programs, acreage diverted from the production of cotton shall be considered acreage devoted to cotton for purposes of establishing future State, county, and farm base acreage allotments. In order to prevent inequitable allotments on farms included in such programs, the State reserve for categories other than new farms shall not be larger than that acreage required to give all old cotton farms equal consideration, whether the farm history resulted from actual seeding of cotton or from acreage history required by law.

(d) *Limitation on adjustments for farms transferring base acreage allotments.* If acreage was transferred from the farm by sale, lease, or by owner in the current or prior year, the county committee may adjust farm base acreage allotments for such farms with reserve acreage only in exceptional cases including but not limited to cases where the transferor will not benefit from the adjustment, or the transfer was temporary and allotment has been returned to the farm for the current year. Any such adjustment shall be subject to the approval of a representative of the State committee.

§ 722.407 Base acreage allotments for new cotton farms.

(a) *Closing date.* The closing date for filing an application for a new cotton

farm base acreage allotment with the county committee shall be February 15 of the current year. Such closing date and the amount of reserve available in the county for new cotton farms shall be posted in the county office and, to the extent practicable, such information shall be given publicity in the county.

(b) *Eligibility of a new cotton farm for a cotton base acreage allotment.* A cotton base acreage allotment for a new cotton farm may be established by the county committee if each of the following conditions is met:

(1) An application for a cotton base acreage allotment is filed by the farm owner or operator with the county committee by the closing date.

(2) Neither the farm operator nor the farm owner owns or operates any other farm in the United States for which a cotton base acreage allotment is established for the current year.

(3) The available land, type of soil, and topography of the land is suitable for the production of cotton, and such production ordinarily will not result in an undue erosion hazard under continuous production.

(4) The farm operator shall own, or otherwise have readily available, adequate equipment and the other facilities of production (including irrigation water in irrigated areas) necessary to produce cotton on the farm.

(5) The farm operator (each partner where the farm operator is a partnership) expects to obtain during the current year more than 50 percent of his income from the production of agricultural commodities or products from farming excluding the estimated income from the production of cotton requested for the farm. Where the farm operator is a corporation, it must have no major corporate purpose other than operation, and ownership where applicable, of such farms, and the officers and general manager of the corporation must expect to obtain during the current year more than 50 percent of their income, whether dividends or salary, from the production of agricultural commodities or products from farming, excluding the estimated income from the production of cotton requested for the farm. Where the farm operator is a trustee under a trust arrangement for a farm, the trustee and the beneficiary of the trust each must expect to obtain during the current year more than 50 percent of his income from the production of agricultural commodities or products from farming excluding the estimated income from the production of cotton requested for the farm. In estimating the income of the farm operator from farming, the estimated value of home gardens, livestock and livestock products, poultry, or other agricultural products produced for home consumption or other use on the farm shall be included. Such 50 percent of income requirement shall be applicable unless the county committee, with the approval of a representative of the State committee, determines that the income of the applicant from farming, or otherwise, will not provide a reasonable standard of living for the applicant and his family. In making such determination, the county committee shall consider such factors as size and type of farming operations, estimated net worth, estimated gross family farm income, estimated family off-farm income, number of dependents, and other factors affecting the applicant's ability to provide a reasonable standard of living for himself and his family.

(6) A farm which includes land acquired by an agency having the right of eminent domain for which the entire cotton base acreage allotment was pooled pursuant to Part 719 of this chapter which is subsequently returned to agricultural production shall not be eligible for a new cotton farm base acreage allotment for a period of 3 years from the date the former owner was displaced from the acquired farm.

(7) In case of transfer of the entire farm allotment under §§ 722.417 to 722.422, the farm shall not be eligible for a new farm cotton base acreage allotment for a period of 5 years.

(c) *Establishment of base acreage allotments for new cotton farms.* If the applicant's farm is eligible for a cotton base acreage allotment, such base acreage allotment shall be established by the county committee on the basis of land, labor, and equipment available for the production of cotton; crop-rotation practices; and the soil and other physical facilities affecting the production of cotton. The allotment so determined for any such farm shall not exceed the smaller of (1) the factored base acreage allotments established pursuant to § 722.406 for old cotton farms in the county which are similar except for the acreage planted to cotton during the farm base years, or (2) the base acreage allotment requested by the applicant. The sum of the base acreage allotments determined by the county committee for new cotton farms shall not exceed the reserves available for such farms in the county. The base acreage allotments for new cotton farms shall be subject to review and approval by a representative of the State committee.

(d) *Reduction or cancellation of new cotton farm base acreage allotments for misrepresentation.* If a new cotton farm base acreage allotment is established under paragraph (c) of this section and it is later determined by the county committee or State committee, or the deputy administrator, that the new farm base acreage allotment was obtained by misrepresentation by or on behalf of the farm operator or owner, the new farm base acreage allotment established for the farm shall be cancelled if the farm is not eligible for a new cotton farm base acreage allotment or reduced to the amount which would be proper on the basis of the facts and a notice of revised allotment shall be issued. Any reduction or cancellation of a new cotton base acreage allotment by the county committee shall be subject to the approval of the State committee. A cotton base acreage allotment established for a farm in any year subsequent to the establishment of a new cotton farm base acreage allotment for such farm shall be revised to reflect any reduction or cancellation of the new farm base acreage allotment and a notice of revised allotment shall be issued.

§ 722.408 Release and reapportionment of cotton base acreage allotment.

(a) *Conditions under which farm base acreage allotments cannot be released.* The following farm base acreage allotments shall not be released in whole or in part:

(1) Base acreage allotments for new cotton farms.

(2) The base acreage allotment for an old cotton farm which is owned by the Federal Government and which was leased by an agency of the Federal Government as lessor on condition that no land on the farm shall be planted to cotton.

(3) The base acreage allotment for any farm for which the farm owner has filed a written objection at the office of the county committee prior to the release.

(4) Allotments pooled under Part 719 of this chapter for which an application for transfer has been filed.

(5) The base acreage allotment covered by a conservation program contract.

(b) *Base acreage allotments which may be released and reapportioned—*(1) *Release of base acreage allotments for the current year only.* Except as provided otherwise in paragraph (a) of this section, all or any part of any farm base acreage allotment for the current year for an old cotton farm, which will not be used may be voluntarily released in writing to the county committee by the farm operator by the applicable closing date, except that base acreage allotments pooled under Part 719 of this chapter may be released only by the displaced owner. Released acreage shall be deducted from the base acreage allotment and a revised notice of farm base acreage allotment shall be issued.

(2) *Permanent release of base acreage allotment.* Except as provided otherwise in paragraph (a) of this section and except for pooled base acreage allotment, all or any part of any farm base acreage allotment for the current year for an old cotton farm may be permanently released in writing to the county committee by the owner and operator by the applicable closing date. Released acreage shall be deducted from the farm base acreage allotment and a revised notice of farm base acreage allotment shall be issued.

(3) *Application for reapportioned base acreage allotment.* A written request by the farm operator or owner shall be filed with the county committee by the applicable closing date as a condition of eligibility for consideration by the county committee to have released acreage reapportioned to the farm. In any case where an oral request by the farm operator or owner is made to the county committee by the applicable closing date and the county committee finds that the applicant was prevented by conditions beyond his control from timely filing a written request, such oral request may be

considered as timely filed upon filing of a written request within a reasonable period after the closing date. As a condition for the approval of an application for reapportioned base acreage allotment, the application must contain the operator or owner's agreement that the farm will be in compliance with the set-aside requirements of the upland cotton program.

(4) *Standards and guidelines for reapportionment.* The State committee shall establish standards and guidelines to include the limitations in subdivisions (i), (ii), and (iii) of this subparagraph to assure uniform application of the basic factors of past acreages of cotton, land, labor, and equipment available for the production of cotton; crop-rotation practices; and soil and other physical facilities affecting the production of cotton. Standards and guidelines established by the State committee shall be made available to interested parties.

(i) The farm base acreage allotment for any farm to which released base acreage allotment is reapportioned shall not exceed the larger of 33 acres or 75 percent of the cropland for the farm, but in no event shall such farm base acreage allotment exceed the cropland for the farm.

(ii) Base acreage allotments reapportioned to all farms in the county owned, operated or controlled by a member of the community committee or county committee, or an employee of the county committee, for which applications are filed under subparagraph (3) of this paragraph, shall be approved on an individual basis by a representative of the State committee only upon a determination that the distribution is fair and equitable, considering acreage allocated to other farms and the acreage requested on such other farms.

(iii) Base acreage allotment may not be reapportioned to a farm from which base acreage allotment was transferred by sale, lease, or by owner in the current or prior year except in exceptional cases including but not limited to cases where the transferor will not benefit from the reapportioned base acreage allotment, or the transfer was temporary and base acreage allotment has been returned to the farm for the current year. Any such reapportionment by the county committee shall be subject to approval of a representative of the State committee.

(5) *Reapportionment by county committee.* Released base acreage allotments shall be reapportioned by the county committee not later than the applicable closing date to other farms receiving farm base acreage allotments in the same county for which timely application is filed in amounts determined by the county committee to be fair and reasonable pursuant to the applicable standards and guidelines under subparagraph (4) of this paragraph.

(6) *Surrender of released base acreage to the State committee.* If all the released acreage in a county is not needed, the county committee may surrender, except for released acreage from pooled base acreage allotments, the unused released base acreage to the State committee for reapportionment of counties. The State committee shall reapportion such surrendered acreage to counties on the basis of abnormal conditions adversely affecting plantings or to correct inequities in farm base acreage allotments and to prevent hardships. Such surrendered acreage shall be reapportioned by the receiving county committee subject to the provisions of subparagraphs (3), (4), and (5) of this paragraph.

(7) *Closing dates.* The State committee shall establish the following closing dates for the entire State or for areas consisting of one or more counties in the State taking into consideration the normal planting dates within the State.

(i) The closing date for release of base acreage allotments shall be no later than the date on which planting of cotton normally becomes general on farms in the State, area, or county.

(ii) The closing date for requests for reapportionment of base acreage allotments shall be the same as the closing date for release of base acreage allotments established under subdivision (i) of this subparagraph.

(iii) The closing date for reapportionment of base acreage allotments to other farms shall be 1 month following the closing date for release of base acreage allotments established under subdivision (i) of this subparagraph.

(iv) In accordance with this subparagraph the following dates are established by the State committees:

State (1)	Closing date for release and requests for reapportionment (2)	Final date for reapportionment (3)
Alabama	March 15	1 month following applicable closing dates for release and requesting reapportionment.
Arizona	March 15	Do.
Arkansas	April 9	Do.
California (Imperial and Riverside Counties)	March 15	Do.
California all other counties	April 1	Do.
Florida	March 9	Do.
Georgia	March 31	Do.
Illinois	April 18	Do.
Kansas	April 1	Do.
Kentucky	April 17	Do.
Louisiana	March 31	Do.
Mississippi	March 31	Do.
Missouri	April 18	Do.
Nevada	March 1	Do.
New Mexico	March 1	Do.
North Carolina	March 22	Do.
Oklahoma	March 15	Do.
South Carolina	March 10	Do.
Tennessee	April 9	Do.
Virginia	April 9	Do.
Texas (Zone I)[1]	March 1	Do.
Texas (Zone II):		
All counties not listed in Zones I and III	April 1	Do.
Texas (Zone III)[2]	May 3	Do.

[1] Counties: Aransas, Atascosa, Austin, Bee, Bexar, Brazoria, Brooks, Caldwell, Calhoun, Cameron, Colorado Comal, DeWitt, Dimmit, Duval, Fort Bond, Frio, Galveston, Goliad, Gonzales, Guadalupe, Harris, Hays, Hidalgo, Jackson, Jim Hogg, Jim Wells, Karnes, Kenedy, Kinney, Kleberg, LaSalle, Lavaca, Live Oak, McMullen, Matagorda, Maverick, Medina, Nueces, Refugio, San Patricio, Starr, Uvalde, Val Verde, Victoria, Waller, Webb, Wharton, Willacy, Wilson, Zapata, Zavala.

[2] Counties: Archer, Armstrong, Bailey, Baylor, Briscoe, Carson, Castro, Childress, Cochran, Collingsworth, Cottle, Crosby, Dallam, Deaf Smith, Dickens, Donley, Floyd, Foard, Gray, Hale, Hall, Hansford, Hardeman, Hartley, Haskell, Hemphill, Hockley, Hutchinson, Kent, King, Knox, Lamb, Lipcomb, Lubbock, Moore, Motley, Ochiltree, Oldham, Parmer, Potter, Randall, Roberts, Sherman, Stonewall, Swisher, Throckmorton, Wheeler Wichita, Wilbarger.

(8) *Acreage history.* For the purpose of determining future State and county base acreage allotments, released base acreage allotments will be credited to the State and county in which such base acreage allotments were released. In determining future farm base acreage allotments, the planting in the current year of reapportioned base acreage allotments shall not be considered. Any farm base acreage allotment released for the current year only shall in determining future farm cotton base acreage allotments, be regarded as having been planted on the farm from which such base acreage allotment was released.

(9) *Public notice.* The county committee shall post in the county office the applicable closing dates and the amount of released base acreage allotments available in the county for reapportionment and, to the extent practicable, such information shall be given general publicity in the county.

§ 722.409 Base acreage allotments for special farms.

(a) *Where the farm owner is displaced by a Federal, State, or other agency having the right of eminent domain.* Farm base acreage allotments for such acquired land and determination of other farm allotments for such owner shall be governed by Part 719 of this chapter.

(b) *Base acreage allotments for farms operated by publicly-owned agricultural experiment stations.* A farm base acreage allotment shall be established pursuant to the provisions of § 722.406 for a farm operated by a publicly-owned agricultural experiment station.

§ 722.410 Extra long staple cotton.

The provisions of this subpart relating to upland cotton shall not apply to extra long staple cotton.

NOTICES OF BASE ACREAGE ALLOTMENT

§ 722.411 Notices of farm base acreage allotment.

(a) *Initial notice of farm base acreage allotment.* (1) The county committee shall mail a written notice of farm base acreage allotment to the operator of each old cotton farm and each new cotton farm for which a farm base acreage allotment for the current year is established and approved as soon as possible after the farm base acreage allotment is established.

(2) If application for a new cotton farm base acreage allotment is made but the county committee determines that no new farm base acreage allotment shall be established, the county committee shall mail a written notice of "None" as the farm base acreage allotment to the operator of such farm.

(3) If an old cotton farm loses eligibility for a farm base acreage allotment as an old cotton farm for the current year, the county committee shall mail a written notice of "None" as the farm base acreage allotment to the operator of such farm showing the reason no farm base acreage allotment was established for the farm.

(b) *Revised notice of farm base acreage allotment.* (1) The county committee shall mail a written notice of revised farm base acreage allotment to the operator of the farm as soon as possible after the county committee determines that a revision is required (i) under this subpart or the regulations governing reconstitution of farms, allotments, and bases in Part 719 of this chapter, (ii) to correct errors commited by the county committee, or (iii) to correct errors caused by fraud or misrepresentation of facts by or on behalf of the producers on the farm.

(2) Such revised notice shall be issued prior to the date when planting of cotton normally becomes general on farms in the county if at all possible, but if not possible to do so, such revised notice shall be issued after such date.

(c) *Notice to operator constitutes notice to other persons.* (1) Each notice shall contain a statement substantially as follows: "To all persons who as operator, landlord, tenant, or sharecropper will for the crop year shown be interested in the upland cotton produced on the farm for which this base acreage allotment is established." Notice so given shall constitute notice to all such persons.

(2) A copy of each notice showing the date of mailing to the operator shall be kept among the records of the county committee. Upon request, a certified copy shall be furnished without charge to any person who as an operator, landlord, tenant, or sharecropper is interested in the cotton produced on the farm in the year for which the notice is issued.

(d) *Effectiveness of notice.* Each notice shall bear the actual or facsimile signature of a member of the county committee. The facsimile signature may be affixed by the county committeeman or an employee of the county office. Farm base acreage allotments shall not become effective unless the notice is properly signed, approved, and mailed in accordance with this section.

(e) *Farm operator obligation to inform county committee of changes.* The farm operator shall immediately inform the county committee of any change in the ownership, operation, or control of the farm, or any part thereof, and any change in the total land in the farm for a farm with a current farm base acreage allotment.

(f) *Request for reconsideration of farm base acreage allotment.* Each notice shall contain a brief statement of the procedure for filing a request for reconsideration of county committee determinations regarding farm base acreage allotments according to Part 780 of this chapter.

§ 722.412 Availability of farm base acreage allotment records.

(a) The State and county committee shall make available for inspection by owners or operators of farms receiving cotton base acreage allotments, all records pertaining to cotton base acreage allotment, including (1) the allocations to the county from the State reserve, and (2) the total amount and distribution of the county reserve.

(b) The State committee shall keep on file at the State office, available for examination by any interested cotton producers: (1) The amount of State reserve and authorized uses thereof, and (2) the formula, if any, and data developed and used to apportion State reserve for trends and abnormal conditions.

(c) The provisions of Part 798 of this chapter concerning the availability of information to the public shall be applicable to cotton program records.

MISCELLANEOUS PROVISIONS

§ 722.413 Determination of acreages.

Part 718 of this chapter shall govern the determination of acreages.

§ 722.414 No credit for overplanting the farm base acreage allotment.

Any acreage planted to cotton in the current year in excess of the farm base acreage allotment shall not be taken into account in establishing State, county, and farm base acreage allotments for subsequent crops of cotton.

§ 722.415 Approval of determinations and additional authority for determination of farm base acreage allotments.

(a) *Approval of State reserves, county base acreage allotments, and county reserves.* Determination of State reserves, county base acreage allotments, and county reserves shall be subject to review and approval by the Administrator, ASCS.

(b) *Approval of county committee determinations.* No official notice of farm base acreage allotment shall be mailed to a farm operator of an old or new cotton farm until a representative of the State committee has reviewed and approved the farm base acreage allotment. The representative of the State committee may revise or require revisions of any determination made under this subpart. Such prior review shall not be required for revised farm base acreage allotments resulting from: (1) Reconstitution of farms, (2) release of base acreage allotments, and (3) reapportionment of base acreage allotment, except as provided in § 722.408(b)(4)(ii) of this subpart, and except that the State committee may require prior approval by its representative before notices are issued.

(c) *Additional authority for determination of farm base acreage allotments.* In addition to the authority established in this subpart for determination of farm base acreage allotments for both old and new farms, including revised base acreage allotments to correct errors, such determinations may be made by the Secretary, Undersecretary, Administrator of ASCS, or the Deputy Administrator. A notice conforming to the requirements of § 722.411 executed by any of the foregoing officials and mailed to the operator of the farm shall be deemed to meet the requirements of § 722.411.

(d) *Supervisory authority of State committee.* The State committee may take any action required to be taken by the county committee which the county committee fails to take and the State committee may correct or require the county committee to correct any action taken by such committee which is not in accordance with this subpart. The State committee may also require the county committee to withhold taking any action which is not in accordance with this subpart.

NATURAL DISASTER TRANSFERS

§ 722.416 Transfer of farm cotton acreage affected by a natural disaster.

(a) *General authority.* The Deputy Administrator shall determine for any year those counties affected by a natural disaster, or a condition beyond the control of producers within the meaning of section 350(h) of the act which prevents the timely planting or replanting of a portion of the farm cotton base acreage allotments in the county. A condition beyond the control of producers is a quarantine imposed by the county, State, or Federal Government which prohibits the planting of cotton. The county committee shall post in the county office a notice of any such determination affecting the county and, to the extent practicable, shall give general publicity in the county to such determination.

(b) *Application for transfer.* The owner or operator of a farm in a county designated for any year under paragraph (a) of this section may file a written application for transfer of cotton acreage within the farm cotton base acreage allotment for such year to another farm in the same county or in an adjoining county in the same or another State if such acreage cannot be timely planted or replanted because of the natural disaster or a condition beyond the control of producers determined for such year. The application shall be filed with the county committee for the county in

which the farm affected by such disaster or condition is located. If the application involves a transfer to an adjoining county, the county committee for the adjoining county shall be consulted before action is taken by the county committee receiving the application.

(c) *Amount of transfer.* The acreage to be transferred shall not exceed the smaller of (1) the farm base acreage allotment established under this subpart less such acreage planted to cotton and not destroyed by the natural disaster, or (2) the acreage requested to be transferred.

(d) *County committee approval.* The county committee shall approve the transfer if it finds that the following conditions have been met:

(1) All or part of the farm base acreage allotment for the farm from which the acreage is to be transferred could not be timely planted or replanted because of the natural disaster or the condition beyond the control of producers and planting was not prohibited by the lease in case of lands owned by the Federal Government.

(2) One or more producers of cotton on the farm from which the acreage is to be transferred will be a bona fide producer engaged in the production of cotton on the farm to which the acreage is to be transferred and will share in the crop or in the proceeds of the cotton. Such sharing shall be in the manner customary in the area in order to establish the status of such producer as a bona fide producer on the farm to which the acreage is to be transferred.

(e) *Cancellation of transfers.* If a transfer is approved under this section and it is later determined that the conditions in paragraph (d) of this section have not been met, the county committee, State committee or the deputy administrator may cancel such transfer. Action by the county committee to cancel a transfer shall be subject to the approval of the State committee or its representative.

(f) *Acreage history credits and eligibility as an old cotton farm.* Any acreage transferred under this section shall be deemed planted on the farm from which transferred for purposes of acreage history credit and of determining eligibility as an old cotton farm, whether or not such acreage was actually planted.

(g) *Closing dates.* The closing date for filing applications for transfers with the county committee shall be the end of the normal planting period as determined by the State committee. Notwithstanding such closing date requirement, the county committee may accept applications filed after the closing date upon a determination by the county committee that the failure to timely file an application was the result of conditions beyond the control of the applicant and a representative of the State committee approves such determination.

TRANSFER OF BASE ACREAGE ALLOTMENTS—SALES, LEASE, OR BY OWNER

§ 722.417 General explanation of transfer of base acreage allotments.

Transfers of base acreage allotments are authorized for 1971, 1972, and 1973. All or part of a farm base acreage allotment may be transferred. Transfers by sale are permanent transfers of base acreage allotment and related history from one farm to another farm. Transfers by lease are temporary transfers from one farm to another farm for the term of the lease (which may not extend beyond 1973 except for temporary transfers approved during the years 1966 through 1970 for a term of years extending beyond 1973), and the related history is maintained to support the leased base acreage allotment on the farm and in the county from which leased. Transfers by an owner to any other farm owned or controlled by him in the same State would be either permanent transfers of base acreage allotment or transfers for a term of years designated by the owner (which may not extend beyond 1973 except for temporary transfers approved during the years 1966 through 1970 for a term of years extending beyond 1973) and related history would be transferred on a permanent basis or, in case of transfer for a term of years, in a manner similar to lease transfers. Transfers by sale and lease may be made only to farms in the same county except as provided in § 722.418. Transfers by owner may be made to farms in the same State.

§ 722.418 Transfers by sale or lease across county lines.

Transfers by sale or lease across county lines within the same State may be authorized by the county committee of the county from which the allotment is to be transferred if the committee (1) finds that a demand for such base acreage allotment no longer exists in such county, and (2) approves any transfers of base acreage allotments to farms outside such county. The county committee shall make a determination whether transfers by sale or lease may be made at the time the original notices of cotton base acreage allotments are mailed to farm operators each year. If the determination is not to permit transfers by sale or lease to other counties, the determination shall be reconsidered by the county committee on a date 30 days following the original determination (except that for 1971, the date for reconsideration shall be Feb. 1, 1971) or on such later date as may be approved by the deputy administrator. To the extent practicable, the county committee shall give general publication to determinations under this section. In making its finding upon initial consideration and upon reconsideration whether a demand for base acreage allotments no longer exists in the county, the county committee should consider any factor reasonably related to such a demand. A strong indication that such demand no longer exists would be (1) that a majority of the producers voting in the last transfer referendum voted to approve transfers from the county, or (2) that released acreage was surrendered to the State committee in a recent year.

§ 722.419 Applications for transfer.

(a) *Persons eligible to file applications for transfers.*—(1) *Sale or lease.* The owner and operator of any old cotton farm for the current year for which an upland cotton base acreage allotment is or will be established for the year in which the transfer is to take effect is eligible to file an application for sale or lease of all or part of such base acreage allotment to any other owner or operator of an old cotton farm for which a current year base acreage allotment is established for transfer to such farm. If the owner and operator of the farm from which transfer by sale or lease is to be made are different persons, both such persons shall execute the application.

(2) *By owner.* The owner of any old cotton farm, for which an upland cotton base acreage allotment is or will be established for the year in which the transfer is to take effect is eligible to file an application to transfer such base acreage allotment from the farm to another farm in the same State owned or controlled by such owner. The county committee shall approve a transfer under this subparagraph requested on a nonpermanent basis to a farm controlled but not owned by the applicant only if such applicant will be the operator of the farm to which transfer is to be made for each of the years for which the transfer is requested. However, if the county committee determines that the applicant is prevented from remaining the operator of such farm for which such transfer has been approved due to conditions beyond his control, the transfer shall remain in effect. Conditions beyond his control shall include, but are not limited to, death, illness, incompetency, or bankruptcy of such person.

(b) *When applications to be filed.* Applications for transfer may be filed during the period beginning on the date original notices of base acreage allotment are mailed to farm operators and ending on the date established by the State committee as the closing date for release and requests for reapportionment of base acreage allotment according to § 722.408(b). The State committee may authorize an application for transfer to be filed after the closing date upon a finding that the producer was prevented from filing for reasons beyond his control.

(c) *Where applications to be filed.* Applications shall be filed with the county committee of the county where the farm to which the base acreage allotment is to be transferred is located, but the county office of the county where the farm from which the base acreage allotment is to be transferred is located is hereby authorized to receive applications on behalf of such county committee and shall forward a copy of each application to such county committee.

§ 722.420 Amount of base acreage allotment transferable.

(a) *General.* All or part of the upland cotton base acreage allotment established for a farm may be transferred to another farm.

(b) *Productivity adjustments.* For the purpose of the adjustments in this paragraph, the word "yield" means the finally determined payment yield (projected yield) established for the farm for the

year preceding the year the transfer is to take effect. If the yield for the farm to which transfer is made differs from the yield for the farm from which transfer is made by more than 10 percent, the base acreage allotment so transferred shall be increased or decreased for differences in farm productivity. The county committee shall determine the amount of base acreage allotment to be transferred by sale, lease, and by owner, where productivity adjustment is required under this paragraph as follows:

(1) Divide the yield of the receiving farm by the yield of the transferring farm, then

(2) Divide the base acreage allotment to be transferred by the percentage quotient so obtained. The amount of base acreage allotment so transferred from a farm shall be the original amount and the amount of base acreage allotment so transferred to a farm shall be the adjusted amount. In the case of temporary transfers of base acreage allotment for 1 or more years by lease or by owner, the productivity adjustment and amount of base acreage allotment so transferred shall be redetermined by the county committee each year the transfer remains in effect.

(c) *No transfer of reapportioned acreage.* No transfer of base acreage allotment under section 344a of the act shall be made of base acreage allotment reapportioned to a farm under section 350(f) of the act.

(d) *No transfer of new farm base acreage allotment.* No transfer of base acreage allotment under section 344a of the act shall be made from a farm which received a new farm base acreage allotment in the current year or within the 3 immediately preceding crop years.

(e) *Transfer of pooled allotments.* Base acreage allotments established for a farm as pooled allotment under section 378 of the act may be transferred under section 344a of the act on a permanent basis during the 3-year life of the pooled allotment or for a term of years not to exceed the remaining number of crop years of such 3-year period.

§ 722.421 Additional conditions and limitations.

(a) *Same State.* No transfer under section 344a of the act shall be made from a farm to a farm in another State or to a person for use in another State.

(b) *Consent of lienholder.* No transfer under section 344a of the act shall be made from a farm subject to a mortgage or other lien unless the transfer is agreed to in writing by the lienholder.

(c) *New farm eligibility.* Any farm from which the entire farm base acreage allotment is transferred under section 344a of the act shall not be eligible for a new cotton farm base acreage allotment during the 5 years following the year in which such transfer is made.

(d) *Farms in conservation programs.* Transfer by sale or lease from a farm covered by a conservation reserve contract, cropland conversion agreement, or other similar land utilization agreement shall be made subject to an appropriate adjustment in the rates of payment under such contract or agreements but no adjustment shall be made in such contract or agreements on the farm to which transfer by sale or lease is made.

(e) *Subleasing prohibited.* No transfer by lease shall be made from a farm receiving base acreage allotment under a transfer by lease for the term of the latter lease.

(f) *Limitation on transfers to and from a farm in the same year.* No transfer of base acreage allotment under section 344a of the act for any year shall be made (1) from a farm receiving base acreage allotment by transfer under section 344a of the act for such year, or (2) to a farm which has had base acreage allotment transferred from it under section 344a of the act for such year.

(g) *Transfer of acreage history.* Transfer of base acreage allotment under section 344a of the act shall have the effect of transferring the acreage history attributable to such base acreage allotment, except that in the case of transfer by lease, the amount of base acreage allotment so transferred shall be determined for each year of the lease on the basis of the county factor of the county from which transferred and upon the expiration of the lease the transferred base acreage allotment shall be considered for purposes of establishing future base acreage allotments to have been planted on the farm from which such base acreage allotment is transferred.

(h) *Federally-owned land.* No transfer by sale or lease under section 344a of the act shall be made from any land owned by the United States, or any agency or instrumentality wholly owned by the United States.

(i) *Set-aside requirements.* As a condition for approval of a request for transfer of base acreage allotment, the operator or owner of the farm to which the base acreage allotment is to be transferred must agree to comply with the set-aside requirements of the upland cotton program.

§ 722.422 County committee action.

(a) *Approval of transfers.* The county committee shall approve transfers of base acreage allotment only if it determines that a timely filed application has been received and that the transfer complies with the requirements of §§ 722.417 to 722.421 and this section. If the transfer is made between counties, the approval of both county committees shall be required. No transfer under section 344a of the act shall be effective until approval as provided under this paragraph is obtained.

(b) *Notice of revised base acreage allotments.* The county committee shall issue revised notice of base acreage allotment for each farm affected by the transfer of base acreage allotment.

(c) *Cancellation, withdrawal, or revision of transfer agreement*—(1) *Cancellation.* If the county committee determines that the conditions applicable to any transfer of base acreage allotments under §§ 722.417 to 722.421 and this section have not been met, the county committee shall cancel the transfer and issue revised notices of base acreage allotment showing the reason for cancellation.

(2) *Withdrawal or minor revisions.* Where the county committee determines that it is clearly in the best interest of all the producers and that effective operation of the program will not be impaired, the county committee may permit withdrawal or minor revisions of transfers upon written request by all parties to the transfer, provided that: (i) Temporary transfers may be withdrawn or revised during any year of the agreement before cotton is planted, and (ii) permanent transfers may be withdrawn or revised only during the first year of the agreement before cotton is planted.

§§ 722.423 to 722.450 [Reserved]

The recordkeeping and reporting requirements of these regulations have been approved by, and subsequent recordkeeping and reporting requirements will be subject to the approval of the Office of Budget and Management in accordance with the Federal Reports Act of 1949.

Effective date: Upon filing of this document with the Director, Office of the Federal Register.

Signed at Washington, D.C., on March 10, 1971.

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

[FR Doc.71-3550 Filed 3-10-71;3:35 pm]

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

[Lemon Reg. 471]

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

Limitation of Handling

§ 910.771 Lemon Regulation 471.

(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 committee, 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 March 9, 1971.

(b) *Order.* (1) The respective quantities of lemons grown in California and Arizona which may be handled during the period March 14, through March 20, 1971, are hereby fixed as follows:

(i) District 1: 9,000 cartons;

(ii) District 2: 192,000 cartons;

(iii) District 3: Unlimited.

(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: March 11, 1971.

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

[FR Doc.71-3616 Filed 3-12-71;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, Lefourche, 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, Vermilion, Vernon, Washington, Webster, West Baton Rouge, West Carroll, West Feliciana, and Winn Parishes;
Maine. The entire State;
Maryland. The entire State;
Massachusetts. The entire State;
Michigan. The entire State;
Minnesota. The entire State;
Mississippi. The entire State;
Missouri. The entire State;
Montana. The entire State;
Nebraska. The entire State;
Nevada. The entire State;
New Hampshire. The entire State;
New Jersey. The entire State;
New Mexico. The entire State;
New York. The entire State;
North Carolina. The entire State;
North Dakota. The entire State;
Ohio. The entire State;
Oklahoma. 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, Frio, Gaines, Galveston, 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, Hunt, Hutchinson, Irion, Jack, Jackson, Jasper, Jeff Davis, Jefferson, Jim Hogg, Jim Wells, Johnson, Jones, Karnes, Kaufman, Kendall, Kent, Kerr, Kimble, King, Kinney, Knox, Lamar, Lamb, Lampasas, Lee, Leon, Limestone, Lipscomb, Live Oak, Llano, Loving, Lubbock, Lynn, McCullouch, 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, Walker, 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; and
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 (3–13–71).

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): Frio, Galveston, Hunt, and Walker Counties in Texas.

Vermilion Parish in Louisiana was deleted from the list of Modified Certified Brucellosis Areas on February 27, 1971. Since said date, it has been determined that such parish again comes within the definition of § 78.1(i); and, therefore, it has been redesignated as a Modified Certified Brucellosis Area.

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 10th day of March 1971.

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

[FR Doc.71-3558 Filed 3-12-71;8:49 am]

Title 10—ATOMIC ENERGY

Chapter I—Atomic Energy Commission

PART 50—LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

Availability of Guides

The Atomic Energy Commission has adopted an amendment of 10 CFR Part 50 which adds to § 50.34(b)(6)(iii) the information that the Commission has developed documents entitled "Guide for the Planning of Preoperational Testing Programs" and "Guide for the Planning of Initial Startup Programs" to help applicants for facility operating licenses establish adequate plans for such programs. That subdivision requires an applicant for a license to operate a production or utilization facility to include in the Final Safety Analysis Report, the plans for preoperational testing and initial operations.

Because this amendment relates to a minor, nonsubstantive matter, the Commission has found that good cause exists for omitting notice of proposed rule making and public procedure thereon as unnecessary, and for making the amendment effective upon publication in the FEDERAL REGISTER.

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and sections 552 and 553 of title 5 of the United States Code, the following amendment of 10 CFR Part 50 is published as a document subject to codification to be effective upon publication in the FEDERAL REGISTER (3-13-71).

Section 50.34(b)(6)(iii) is revised to read as follows:

§ 50.34 Contents of application: technical information.

* * * * *

(b) *Final safety analysis report.* * * *

(6) * * *

(iii) Plans for preoperational testing and initial operations. The Commission has developed documents entitled "Guide For The Planning Of Preoperational Testing Programs" and "Guide For The Planning Of Initial Startup Programs"[1] to help applicants establish adequate plans pursuant to this subsection.

(Sec. 161, 68 Stat. 948; 42 U.S.C. 2201)

Dated at Germantown, Md., this 26th day of February 1971.

For the Atomic Energy Commission.

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

[FR Doc.71-3534 Filed 3-12-71;8:47 am]

Title 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Administration, Department of Transportation

[Docket No. 71-SO-29; Amdt. 39-1169]

PART 39—AIRWORTHINESS DIRECTIVES

Maule M-4-180C and M-4-220C Series Airplanes

There have been instances of the front seats on Maule M-4-180C and M-4-220C airplanes separating from the seat track guides, allowing the seat and pilot to move aft, away from the airplane controls. Since this condition is likely to exist or develop in other airplanes of the same type design, an airworthiness directive is being issued to require inspection of the seat track and guides on Maule M-4-180C and M-4-220C airplanes equipped with front bucket seats.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

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

MAULE. Applies to M-4-180C Serial Nos. 3001C through 3004C and M-4-220C Serial Nos. 2044C through 2060C.

Compliance required within the next 10 hours' time in service after the effective date of this AD, unless already accomplished.

To detect seat track and seat track guide spacing that could allow the seat to become free from the guides, accomplish the following:

a. Remove front bucket seats.

b. Determine the distance between the inner edges of the horizontal flanges of the seat tracks for each front seat (measure at front and rear of tracks and use maximum dimension). The seat tracks are the L-shaped flanges welded to the bottom of the seat frame.

c. Determine the distance between the outside edges of the vertical flanges of the seat track guides. The seat track guides are the L-shaped clips welded to the fuselage.

d. If the distances measured in b. and c. differ by 3/32" or less, no further action is required.

e. If the difference in these dimensions is greater than 3/32", accomplish one of the following:

1. Bend one of the seat tracks inward so that the above distance requirement is satisfied. A vertical cut must be made adjacent to the front end piece of the seat track to allow the necessary bending. After bending, secure in place and reweld on the inside of track, using at least 3/4-inch welds at the three existing tack welds attaching the track to seat frame. Also, reweld the saw cut and check for the proper dimensions.

2. Weld an extension strip to the full length of the seat track to meet the above distance requirement using 4130 steel, Condition N sheet, 0.060 inches thickness and check for proper dimensions. The minimum strip width must be one-eighth-inch.

3. Any other FAA-approved equivalent method.

f. A seat which has to be modified in accordance with (e) above is to be reported to the Chief, Engineering and Manufacturing Branch, SO-210, FAA Southern Region, Post Office Box 20636, Atlanta, GA 30320. The report should include the airplane serial number and the distances determined in (b) and (c). (Reporting approved by the Bureau of the Budget under BOB No. 04-RO174.)

The checks required by this AD in paragraphs (a), (b), (c), and (d) may be performed by the pilot.

Maule Service Letter No. 21 pertains to this same subject.

This amendment becomes effective March 16, 1971.

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

Issued in East Point, Ga., on March 2, 1971.

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

[FR Doc.71-3553 Filed 3-12-71;8:49 am]

[Airworthiness Docket No. 71-WE-7-AD; Amdt. 39-1171]

PART 39—AIRWORTHINESS DIRECTIVES

Boeing Model 747 Series Airplanes

There has been leakage in the potable water system and/or waste water system malfunction which could result in ice formation and restriction of the aileron cables. Since this condition is likely to exist or develop in other airplanes of the same type design, an airworthiness directive is being issued to require sealing of the floor beam and the elbow retaining nut of the potable water system pressurization line bulkhead elbow after inspection of the elbow to protect the aileron control cables on Boeing 747 airplanes.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and good

[1] The Guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., and copies may be obtained by addressing a request to the Director of Regulation, U.S. Atomic Energy Commission, Washington, D.C. 20545.

cause exists for making this amendment effective in less than 30 days.

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

BOEING. Applies to Boeing Model 747 series airplanes certificated in all categories.

Compliance required as indicated.

To prevent possible restriction of the aileron cables due to ice accumulation, accomplish the following:

Within the next 300 hours' time in service after the effective date of this AD, unless already accomplished, seal the floor beam at LBL 57.50 and apply sealant around the elbow retaining nut of the potable water system pressurization line bulkhead elbow after a check of the elbow for proper installation, per Boeing Service Bulletin 27-2049, Revision 1, dated February 19, 1971, or later FAA-approved revision, or an equivalent procedure approved by the Chief, Aircraft Engineering Division, FAA Western Region.

This amendment becomes effective April 3, 1971.

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

Issued in Los Angeles, Calif., on March 3, 1971.

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

[FR Doc.71-3554 Filed 3-12-71;8:49 am]

[Airspace Docket No. 70-PC-2]

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

Alteration of Control Zone

On December 30, 1970, a Notice of Proposed Rule Making was published in the FEDERAL REGISTER (35 F.R. 19796) stating that the Federal Aviation Administration was considering an amendment to Part 71 of the Federal Aviation Regulations that would alter the Kwajalein Island, Marshall Islands control zone.

Interested persons were afforded an opportunity to participate in the proposed rule making through the submission of comments. No comments were received.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective 0901 G.m.t., May 27, 1971, as hereinafter set forth.

In § 71.171 (36 F.R. 2055) the Kwajalein Island Control Zone is amended to read as follows:

KWAJALEIN ISLAND, MARSHALL ISLANDS

Within a 5-mile radius of the Bucholz AAF (lat. 08°43'32" N., long. 167°44'03" E.); within 2.5 miles each side of the Kwajalein TACAN 248° radial, extending from the 5-mile radius zone to 6 miles west of the TACAN; and within 3.5 miles each side of the 078° bearing from the Kwajalein RBN, extending from the 5-mile radius zone to 11 miles east of the RBN.

(Sec. 307(a), 1110, Federal Aviation Act of 1958, 49 U.S.C. 1348(a), 1510, Executive Order 10854, 24 F.R. 9565, sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c))

Issued in Washington, D.C., on March 5, 1971.

H. B. HELSTROM,
Chief, Airspace and Air Traffic Rules Division.

[FR Doc.71-3556 Filed 3-12-71;8:49 am]

[Airspace Docket No. 71-SO-2]

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

Alteration and Revocation of Federal Airway Segments; Correction

On February 20, 1971, F.R. Doc. 71-2353 was published in the FEDERAL REGISTER (36 F.R. 3262) effective April 29, 1971.

This document amended Part 71 of the Federal Aviation Regulations, in part, by realigning VOR Federal airway No. 49. In the realignment of this airway segment, reference was made to Birmingham, Tenn., whereas it should have referred to Birmingham, Ala. Accordingly, action is taken herein to correct this typographical error.

Since this amendment is editorial in nature and no substantive change in the regulation is effected, notice and public procedure thereon is unnecessary.

In consideration of the foregoing, effective upon publication in the FEDERAL REGISTER, F.R. Doc. 71-2353 is amended as hereinafter set forth.

In Item a. "Birmingham, Tenn.;" is deleted and "Birmingham, Ala.;" is substituted therefor.

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

Issued in Washington, D.C., on March 9, 1971.

H. B. HELSTROM,
Chief, Airspace and Air Traffic Rules Division.

[FR Doc.71-3557 Filed 3-12-71;8:49 am]

[Airspace Docket No. 70-WE-93]

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

PART 73—SPECIAL USE AIRSPACE

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

Designation of Restricted Area and Jet Routes, Revocation of Restricted Area, and Alteration of Continental Control Area

On February 3, 1971, a notice of proposed rule making was published in the FEDERAL REGISTER (36 F.R. 1911) stating that the Federal Aviation Administration was considering amendments to Parts 71, 73, and 75 of the Federal Aviation Regulations that would designate a restricted area, revoke a restricted area, designate two jet routes and alter the Continental Control Area.

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

In consideration of the foregoing, Parts 71, 73, and 75 of the Federal Aviation Regulations are amended as hereinafter set forth.

1. Effective 0901 G.m.t., April 15, 1971, Parts 71 and 73 are amended as follows:

a. In § 71.151 (35 F.R. 2043 and 36 F.R. 2045) "R-6411 Hanksville, Utah" is deleted and "R-6413 Green River, Utah" is added.

b. In § 73.64 (30 F.R. 4534 and 36 F.R. 2360) the Hanksville, Utah, Restricted Area, R-6411, is revoked, and the Green River, Utah, Restricted Area is designated as follows:

R-6413 GREEN RIVER, UTAH

Boundaries. Beginning at latitude 38°57'-00" N., longitude 110°09'40" W.; thence to latitude 38°46'03" N., longitude 110°06'00" W.; to latitude 38°31'30" N., longitude 109°-57'00" W.; to latitude 38°31'30" N., longitude 109°51'00" W.; to latitude 38°33'27" N., longitude 109°46'00" W.; to latitude 38°49'15" N., longitude 109°57'02" W.; to latitude 38°-58'02" N., longitude 110°05'33" W.; thence to point of beginning.

Designated altitudes: Surfaced to unlimited.

Time of designation: From April 15, 1971, to June 30, 1971, unless canceled sooner by Notices to Airmen. All subsequent firing periods would be designated by a rule published in the FEDERAL REGISTER.

Controlling agency: Federal Aviation Administration, Denver ARTC Center.

Using agency: Air Force Special Weapons Center, Air Force Systems Command, Kirtland AFB, N. Mex.

2. Effective April 29, 1971, § 75.100 (36 F.R. 2371) is amended by designating two jet routes as follows:

a. Jet Route No. 130 (Wilson Creek, Nev., to Grand Junction, Colo.) From Wilson Creek, Nev., via INT Wilson Creek 067° and Grand Junction, Colo., 274° radials to Grand Junction.

b. Jet Route No. 164 (Bryce Canyon, Utah, to Grand Junction, Colo.) From Bryce Canyon, Utah, via INT Bryce Canyon 090° and Grand Junction, Colo., 232° radials to Grand Junction.

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

Issued in Washington, D.C., on March 10, 1971.

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

[FR Doc.71-3568 Filed 3-12-71;8:50 am]

[Docket No. 10901; Amdt. No. 746]

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

Miscellaneous Amendments

This amendment to Part 97 of the Federal Aviation Regulations incorporates by reference therein changes and

additions to the Standard Instrument Approach Procedures (SIAPs) that were recently adopted by the Administrator to promote safety at the airports concerned.

The complete SIAPs for the changes and additions covered by this amendment are described in FAA Forms 3139, 8260-3, 8260-4, or 8260-5 and made a part of the public rule making dockets of the FAA in accordance with the procedures set forth in Amendment No. 97-696 (358 F.R. 5610).

SIAPs are available for examination at the Rules Docket and at the National Flight Data Center, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20590. Copies of SIAPs adopted in a particular region are also available for examination at the headquarters of that region. Individual copies of SIAPs may be purchased from the FAA Public Document Inspection Facility, HQ-405, 800 Independence Avenue SW., Washington, DC 20590, or from the applicable FAA regional office in accordance with the fee schedule prescribed in 49 CFR 7.85. This fee is payable in advance and may be paid by check, draft or postal money order payable to the Treasurer of the United States. A weekly transmittal of all SIAP changes and additions may be obtained by subscription at an annual rate of $125 per annum from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

Since a situation exists that requires immediate adoption of this amendment, I find that further notice and public procedure hereon is impracticable and good cause exists for making it effective in less than 30 days.

In consideration of the foregoing, Part 97 of the Federal Aviation Regulations is amended as follows, effective on the dates specified:

1. Section 97.23 is amended by establishing, revising, or canceling the following VOR-VOR/DME SIAPs, effective April 8, 1971.

Decatur, Ala.—Pryor Field; VOR Runway 18, Amdt. 5; Revised.
Galeton, Pa.—Cherry Springs Airport; VOR-A, Amdt. 3; Revised.
Gulfport, Miss.—Gulfport Municipal Airport; VOR Runway 31, Amdt. 7; Revised.
Huntsville, Ala.—Huntsville-Madison County Jetport/Carl T. Jones Field; VOR-A, Amdt. 4; Revised.
Huntsville, Ala.—Huntsville-Madison County Jetport/Carl T. Jones Field; VOR-B, Amdt. 3; Revised.
Manchester, N.H.—Grenier Field/Manchester Municipal Airport; VOR Runway 35, Amdt. 6; Revised.
Muscle Shoals, Ala.—Muscle Shoals Airport; VOR Runway 29, Amdt. 20; Revised.
New Castle, Pa.—New Castle Municipal Airport; VOR Runway 4, Orig.; Established.
New Castle, Pa.—New Castle Municipal Airport; VOR Runway 22, Orig.; Established.
Pine Mountain, Ga.—Gardens-Harris County Airport; VOR-A, Amdt. 1; Revised.
Wilmington, N.C.—New Hanover County Airport; VOR-1, Amdt. 7; Canceled.
Manchester, N.H.—Grenier Field/Manchester Municipal Airport; VOR/DME Runway 17, Amdt. 4; Revised.
Muscle Shoals, Ala.—Muscle Shoals Airport; VOR/DME Runway 11, Orig.; Established.
Wilmington, N.C.—New Hanover County Airport; VORTAC-A Orig.; Established.

2. Section 97.25 is amended by establishing, revising or canceling the following LOC-LDA SIAPs, effective April 8, 1971.

Dothan, Ala.—Dothan Airport; LOC Runway 31, Orig.; Established.
Huntsville, Ala.—Huntsville-Madison County Jetport/Carl T. Jones Field; LOC (BC) Runway 36L, Amdt. 5; Revised.
Muscle Shoals, Ala.—Muscle Shoals Airport; LOC Runway 29, Orig.; Established.

3. Section 97.27 is amended by establishing, revising or canceling the following NDB/ADF SIAPs, effective April 8, 1971.

Barnwell, S.C.—Barnwell County Airport; NDB-A, Amdt. 1; Revised.
Huntsville, Ala.—Huntsville Madison County Jetport/Carl T. Jones Field; NDB Runway 18R, Amdt. 6; Revised.
Manassas, Va.—Manassas Municipal (Harry P. Davis Field); NDB-A, Amdt. 2; Revised.
Manchester, N.H.—Grenier Field/Manchester Municipal Airport; NDB Runway 35, Amdt. 4; Revised.
New York, N.Y.—LaGuardia Airport; NDB Runway 4, Amdt. 31; Revised.
New York, N.Y.—LaGuardia Airport; NDB Runway 22, Amdt. 5; Revised.
Pine Mountain, Ga.—Gardens-Harris County Airport; NDB Runway 9, Amdt. 3; Revised.

4. Section 97.29 is amended by establishing, revising, or canceling the following ILS SIAPs, effective March 4, 1971.

Anchorage, Alaska.—Anchorage International Airport; ILS Runway 6L, Amdt. 18; Revised.

5. Section 97.29 is amended by establishing, revising, or canceling the following ILS SIAPs, effective April 8, 1971.

Augusta, Ga.—Bush Field; ILS Runway 35, Amdt. 16; Revised.
Huntsville, Ala.—Huntsville-Madison County Jetport/Carl T. Jones Field; ILS Runway 18R, Amdt. 8; Revised.
Manchester, N.H.—Grenier Field/Manchester Municipal Airport; ILS Runway 35, Amdt. 3; Revised.

6. Section 97.31 is amended by establishing, revising, or canceling the following Radar SIAPs, effective April 8, 1971.

Decatur, Ala.—Pryor Field; Radar-1, Orig.; Established.
Huntsville, Ala.—Huntsville-Madison County Jetport/Carl T. Jones Field; Radar-1, Orig.; Established.

(Secs. 307, 313, 601, 1110, Federal Aviation Act of 1958; 49 U.S.C. 1438, 1354, 1421, 1510, sec. 6(c) Department of Transportation Act, 49 U.S.C. 1655(c) and 5 U.S.C. 552(a)(1))

Issued in Washington, D.C., on March 4, 1971.

R. S. SLIFF,
Acting Director,
Flight Standards Service.

NOTE: Incorporated by reference provisions in §§ 97.10 and 97.20 (35 F.R. 5610) approved by the Director of the Federal Register on May 12, 1969.

[FR Doc.71-3473 Filed 3-12-71;8:45 am]

[Docket No. 10905; Amdt. No. 127-24]

PART 127—CERTIFICATION AND OPERATIONS OF SCHEDULED AIR CARRIERS WITH HELICOPTERS

Clarification of Proving Test Requirements

The purpose of this amendment of § 127.73 of the Federal Aviation Regulations is to clarify the requirement that proving tests be performed under the observation of the Administrator.

Section 127.73 now states that in addition to aircraft certification tests, an aircraft must have a set minimum number of proving test hours under the observation of the Administrator before an air carrier may operate the aircraft. The present wording of this section, read in light of the preamble to Amendment 127-8 (issued on July 12, 1968, and published in the FEDERAL REGISTER on July 19, 1968 (33 F.R. 10329)), indicates that an FAA inspector must be on board the aircraft before the flight hours can be credited toward the proving test requirement.

However, prior to Amendment 127-8, the FAA did not actually observe every flight. In the usual proving test procedure, an operator proposing to conduct a proving test submits a program detailing the tests and procedures to be demonstrated. The inspector then reviews the program for compliance with appropriate requirements and meets with the operator's personnel to discuss establishment of a proving test program.

The nature of the factors to be evaluated govern the demonstrations comprising each program. In the case of a helicopter not before proven, the tests are primarily required to demonstrate helicopter reliability, while in the case of a helicopter having substantial air carrier service, but new to the operator concerned, the proving tests are essentially a demonstration of the operator's competence to handle the helicopter. In either event, the tests are conducted in accordance with a program submitted by the air carrier and acceptable to the Administrator. Under this procedure an FAA inspector determines which tests require his presence on board the helicopter as an observer in order for them to be acceptable to the Administrator, as well as those tests which are acceptable without being observed by the FAA.

Therefore, § 127.73 is being amended to delete the requirement that all proving flights must be observed by the Administrator, thereby making it possible for the FAA to administer the rule in a manner consistent with established procedures. To accomplish this, the words "acceptable to the Administrator" have been substituted for the words "under the Administrator's observation" in all places where they appear in the rule.

Amendment 127-8 inadvertently omitted the word "unnecessary" after the word "compliance" in § 127.73(b)(2). This amendment corrects that omission.

Since this amendment is clarifying in nature and does not impose a burden on the public, I find that notice and public procedure thereon are unnecessary and that the amendment may become effective on less than 30 days notice.

In consideration of the foregoing, § 127.73 of the Federal Aviation Regulations is amended, effective March 13, 1971, as follows:

1. By striking out the words "under the Administrator's observation" in paragraph (a) and inserting the words "acceptable to the Administrator" in place thereof.

2. By striking out the words "as determined by the Administrator" in paragraph (a).

3. By amending subparagraphs (b)(1) and (2) to read as follows:

§ 127.73 Proving tests.

* * * * *

(b) * * *

(1) The aircraft has had at least 50 hours of tests acceptable to the Administrator, including a representative number flights into en route heliports; or

(2) The Administrator specifically authorizes deviations when special circumstances make full compliance unnecessary in a particular case.

* * * * *

(Sec. 313(a), 601, 604, Federal Aviation Act of 1958, 49 U.S.C. 1354(a), 1421, 1424, sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c))

Issued in Washington, D.C., on March 5, 1971.

J. H. SHAFFER,
Administrator.

[FR Doc.71-3555 Filed 3-12-71;8:49 am]

Chapter III—National Transportation Safety Board

[NTSB Reg. PR-2 Amdt. 4]

PART 430—RULES PERTAINING TO THE NOTIFICATION AND REPORTING OF AIRCRAFT ACCIDENTS, INCIDENTS, AND OVERDUE AIRCRAFT, AND PRESERVATION OF AIRCRAFT WRECKAGE, MAIL, CARGO, AND RECORDS

Miscellaneous Amendments

Concurrently herewith, Part 431 of the Board's regulations is being revised to consolidate into a single regulation all of the Board's procedures governing the conduct of aircraft accident inquiries. Since some of the provisions being incorporated into revised Part 431 derive from current Part 430, it is necessary to also revise the latter regulation to coordinate the transfer. The provisions being transferred from current Part 430 pertain to the investigation itself, and include §§ 430.11, 430.20, and 430.25. Accordingly, the revision to Part 430 involves the deletion of these sections, plus amendments to the table of contents and the "Applicability" section to reflect said deletions. In addition, the title is revised to be more descriptive of the contents of new Part 430.

Since the revision effected herein is procedural in nature, notice and public procedure thereon are unnecessary. Accordingly, the National Transportation Safety Board hereby amends Part 430 of its regulations as follows, effective 30 days after publication in the FEDERAL REGISTER:

1. The title of Part 430 is amended to read as set forth above.

2. Section 430.1 is amended by revising paragraph (b) and deleting paragraph (c):

§ 430.1 Applicability.

* * * * *

(b) Preservation of aircraft wreckage, mail, cargo, and records involving all civil aircraft in the United States, its territories or possessions.

(c) [Deleted]

3. The heading of Subpart C is revised to read, "Subpart C—Preservation of Aircraft Wreckage, Mail, Cargo, and Records."

4. In § 430.10(a), the reference to "§ 430.11" is changed to "§ 431.14."

5. Section 430.11 is deleted.

6. Subpart E (§§ 430.20 and 430.25) is deleted.

(Sec. 5 (b) and (k) of the Department of Transportation Act of 1966, 80 Stat. 935, 49 U.S.C. 1954)

By the National Transportation Safety Board.

[SEAL] JOHN H. REED,
Chairman.

MARCH 3, 1971.

[FR Doc.71-3522 Filed 3-12-71;8:46 am]

[NTSB Reg. PR-3, Amdt. 1]

PART 431—RULES OF PRACTICE IN AIRCRAFT ACCIDENT INQUIRIES

At the present time, the Board's procedures with respect to aircraft accident inquiries (including hearings) are set forth in two regulations, Parts 430 and 431. The revision effectuated herein is designed to incorporate into Part 431 those provisions of Part 430 which pertain to the inquiry itself rather than to notification and reporting of accidents, and to preservation of wreckage.[1] In addition, Part 431 is being expanded to include provisions governing the field investigation and report phases of an inquiry which are not currently contained in any regulation. It should be emphasized, however, that these new regulatory provisions do not prescribe new procedures, but merely codify procedures which the Board has followed for some time.

In sum, the purpose of revised Part 431 is to consolidate into a single regulation, the Safety Board's rules of practice in the conduct of aircraft accident inquiries.[2] Thus, the regulation outlines the procedure followed in all stages of an inquiry, from the time a Board representative takes custody of the wreckage, through the field investigation and public hearing (if one is held), and until the Board's report is ultimately issued.

In terms of structure, the revised regulation has been divided into five subparts. The first contains background materials as well as provisions which apply to an inquiry generally rather than to any particular phase thereof. The succeeding three subparts pertain to the different phases of an inquiry—namely, the field investigation, the hearing, and the Board's report. The fifth and final subpart deals with the public record of the inquiry.

Since its inception in 1967, the Board has received a number of suggestions from a variety of sources recommending changes in the Board's procedures, particularly with respect to those provisions governing participation of parties in field investigations, hearings, and preparation of reports. After carefully examining these recommendations, the Board has concluded that the current procedures, as codified herein, provide for a degree of party participation which assures the effective utilization of all qualified non-Board personnel, promotes the overall efficiency of the inquiry, and remains consistent with our statutory mandate.

There is set forth below a summary of the provisions of revised Part 431, with particular emphasis on those procedures which constitute an amendment of, or addition to, practices contained in current regulations.

General provisions. Section 431.1 describes the scope of the regulation, while § 431.2 sets forth the responsibility of the Board with respect to aircraft accident inquiries. Section 431.3 defines the authority of the Director, Bureau of Aviation Safety, to order inquiries, special studies, and investigations. This section was derived from § 430.25, which has been altered only to remove those aspects of the Director's authority also set forth in other regulations and to limit the authority in § 431.3 to the Director, rather than also including the Deputy Director, to accord with § 400.25. Section 431.4 delineates the role and authority of the Accident Inquiry Manager in the overall direction of the inquiry. Section 431.5 describes the nature of an inquiry. The traditional restriction on party representation (i.e., against persons also representing claimants or insurers) is expanded from the hearing phase to also include field investigations, and the role

[1] See document amending Part 430, printed concurrently in this issue of the FEDERAL REGISTER.

[2] In accord with Annex 13 to the Convention on International Civil Aviation, the term "inquiry," rather than "investigation," is utilized in the regulation when referring to the entire process leading to determination of the probable cause of an aircraft accident.

of the Federal Aviation Administration as a party is specified (§ 431.6). Section 431.7, concerning requests to withhold information, is derived from current § 431.24. Section 431.8 sets forth the right of a witness to be represented while being interrogated during any phase of the inquiry. Section 431.9 is new and extends to all accident inquiries the right to submit recommendations to the Board prior to its determination of probable cause.

Field investigation. Section 431.10 delineates the scope of the field investigation, and § 431.11 describes the authority of the Investigator-in-Charge. The provision summarizing the authority of Board representatives (§ 431.12), as well as the provision governing access to and release of wreckage (§ 431.14), have been taken intact from Part 430. Section 431.13 sets forth the basis upon which parties will be designated to participate in the field investigation. Finally, § 431.15 outlines the manner in which accident information will be released to the public and disseminated within the investigative team.

Public hearings. The provisions of this section are largely taken intact from current Part 431, with the following noteworthy exceptions:

1. The determination to hold a hearing will be made by the Chairman, NTSB, rather than by the Director, Bureau of Aviation Safety. (§ 431.21)

2. If the Board Member who is acting as Chairman of the Board of Inquiry should be absent, his designee will act in his place, and not automatically the Hearing Officer. (§ 431.22)

3. Designation of parties to the hearing will be accomplished by the Chairman of the Board of Inquiry. (§ 431.27 (a))

4. The fact that an organization has an employee, function, activity, or product involved in the accident will no longer, by itself, qualify that organization as a party to the hearing. Rather, parties to the hearing will be designated from those organizations which have participated in the field investigation or whose special knowledge and aeronautical skills will contribute to the development of pertinent evidence. However, participation as a party to the field investigation will not automatically warrant designation as party to the hearing. (§ 431.27(a))

5. Recommendations by interested persons may be submitted within the time specified by the presiding officer at the close of the hearing (versus 30 days after the hearing under the current procedure) and a copy of recommendations submitted by a party to the hearing shall be served on the remaining parties. (§ 431.31)

Board report. Section 431.35 briefly describes the Board aircraft accident reports, detailed narrative and otherwise, and the circumstances under which they will be issued. Section 431.36 sets forth the procedures governing petitions for reconsideration or modification of the Board's findings.

Public record. Section 431.40 describes the contents of the docket, along with when and how it becomes available to the public. Section 431.41, which is taken intact from the current regulation, provides that inquiries are always kept open for the submission of new and pertinent evidence.

CROSS REFERENCE OF REVISION OF PART 431 TO FORMER PARTS 430 AND 431

New	*Former regulation*
GENERAL PROVISIONS	
431.1	New
431.2	New
431.3	430.25
431.4	New
431.5	New
431.6	431.16(b)
431.7	431.24
431.8	New
431.9	New
FIELD INVESTIGATION	
431.10	New
431.11	New
431.12	430.20
431.13	New
431.14	430.11
431.15	New
PUBLIC HEARINGS	
431.20	431.2
431.21	431.5
431.22	431.9
431.23	431.15
431.24	431.6
431.25	431.8
431.26	431.7
431.27	431.16
431.28	431.17
431.29	431.18
431.30	431.19
431.31	431.20
431.32	431.21
BOARD REPORT	
431.35	New
431.36	New
PUBLIC RECORD	
431.40	431.22
431.41	431.23

Since the revision effected herein is procedural in nature, notice and public procedure thereon are unnecessary. Accordingly, the National Transportation Safety Board hereby revises Part 431 of its regulations (14 CFR 431) to read as follows, effective 30 days after publication in the FEDERAL REGISTER.

GENERAL PROVISIONS

AUTHORITY: The provisions of this Part 431 issued under 72 Stat. 781, et seq., 49 U.S.C. 1441, et seq., and sec. 5, 80 Stat. 931, et seq., 49 U.S.C. 1651, et seq. Interpret or apply secs. 5, 6(d), and 12, 80 Stat. 931, et seq., 49 U.S.C. 1651 et seq., and secs. 407, 701, 1004, and 1104, 72 Stat. 737, et seq., 49 U.S.C. 1301, et seq.

GENERAL PROVISIONS

§ 431.1 Applicability of part.

Unless otherwise specifically ordered by the Safety Board, the provisions of this part shall govern all aircraft accident inquiries, including the field investigation, public hearing, and report phases thereof, conducted under the authority of title VII of the Federal Aviation Act of 1958, as amended, and section 5 of the Department of Transportation Act of 1966.

§ 431.2 Responsibility of Board.

(a) The Safety Board is solely responsible for the inquiries into all accidents involving civil aircraft, or civil and military aircraft, within the United States, its possessions and territories. It is also responsible for inquiries into those accidents involving U.S. civil aircraft, or civil and military aircraft, which occur outside the United States, its territories and possessions to the extent such inquiries are permitted by international policy and agreements.

(b) The organization, conduct, and control of all accident inquiries within the Board's jurisdiction shall be solely the responsibility of the Board. Certain field investigations are conducted by the Federal Aviation Administration acting under authority delegated by the Board (see § 400.45 of this chapter),[1] however, determination of the probable cause of such accidents shall be made by the Board. Under no circumstances shall inquiries conducted by the Board be considered joint inquiries in the sense of sharing responsibility. However, in the case of accidents involving civil aircraft

[1] The authority of a representative of the Federal Aviation Administration during the field investigation of a delegated accident shall be the same as that of a Board investigator under this part.

of U.S. registry or manufacture where the foreign state is not bound by the provisions of Annex 13 to the Chicago Convention of ICAO, the conduct of the inquiry shall be controlled by any agreement entered into between the United States and the foreign state.

§ 431.3 Authority of Director.

The Director, Bureau of Aviation Safety, subject to the provisions of § 431.2, shall have the authority: (a) To order an inquiry into any accident involving a civil aircraft; (b) to order a special study or investigation on matters pertaining to safety in air navigation; and (c) to designate an Accident Inquiry Manager, when considered appropriate in view of the nature of the accident, and a Hearing Officer and Technical Panel, when a public hearing has been ordered.

§ 431.4 Accident Inquiry Manager.

The Accident Inquiry Manager is the Bureau of Aviation Safety project manager responsible for the overall direction of inquiries into major aircraft accidents (catastrophic air carrier accidents or other accidents involving unique public or official attention). Such inquiries will be conducted by a team of Washington-based and/or field office personnel, may include a public hearing, and will be culminated by the issuance of a detailed narrative accident report.

§ 431.5 Nature of inquiry.

Aircraft accident inquiries are conducted by the Board in order to determine the facts, conditions, and circumstances relating to each accident and the probable cause thereof and to ascertain measures which will best tend to prevent similar accidents in the future. The inquiry is the overall process leading to causal determination and shall include the field investigation, report preparation, and, where ordered, the public hearing.

§ 431.6 Parties to field investigations and parties to hearings.

(a) No party to the field investigation designated under § 431.13 or party to the hearing phase of an accident inquiry designated under § 431.27, shall be represented by any person who also represents claimants or insurers. Failure to comply with this provision shall result in loss of status as a party.

(b) Section 701(g) of the Federal Aviation Act of 1958 provides for the appropriate participation of the Administrator in Board investigations. Thus, the FAA will normally be a party to field investigations and a party to hearings conducted under this subpart and have the same rights and privileges and be subject to the same limitations as other parties.

§ 431.7 Request to withhold information.

Any person may make written objection to the public disclosure of information contained in any report or document filed, or of information obtained by the Board, pursuant to this part or the provisions of the Federal Aviation Act of 1958 or the Department of Transportation Act of 1966, stating the grounds for such objection. The Board, on its own motion or whenever such objection is made, shall order such information withheld from public disclosure when, in its judgment, a disclosure of such information would adversely affect the interests of any person and is not required in the interest of the public.

§ 431.8 Right of representation.

Any person interrogated by an authorized representative of the Board during the field investigation, or who appears to testify at a public hearing, shall be accorded the right to be accompanied, represented, or advised by counsel or by any other duly qualified representative.

§ 431.9 Recommendations.

In any accident inquiry under this subpart, any person, government agency, company, or association whose employees, functions, activities or products were involved in the accident may submit to the Board, prior to its determination of probable cause, recommendations as to the proper conclusion to be drawn from the evidence produced during the course of the accident inquiry.

FIELD INVESTIGATION

§ 431.10 Scope of field investigation.

The field investigation consists of all factfinding activities exclusive of those associated with the hearing and report phases of the inquiry or special studies conducted in connection with the inquiry.

§ 431.11 Investigator-in-Charge.

The designated Investigator-in-Charge is authorized to organize, conduct, and control the on-site investigation. He shall assume responsibility for the supervision and coordination of all resources and of the activities of all personnel, both Board and non-Board, involved in the on-site investigation.

§ 431.12 Authority of Board representatives.

Upon demand of an authorized representative of the Board and presentation of credentials issued to such representative, any government agency, air carrier, airman, or person engaged in air commerce or in any phase of aeronautics, and any other person having possession or control of any aircraft, aircraft engine, propeller, appliance, air navigation facility, equipment, or any pertinent records and memoranda, including all documents, papers, and correspondence now or hereafter existing and kept or required to be kept, shall forthwith permit inspection, photographing, or copying thereof by such authorized representative for the purpose of investigating an aircraft accident, overdue aircraft, study, or investigation pertaining to safety in air navigation or the prevention of accidents. Authorized representatives of the Board may interrogate any person having knowledge relevant to an aircraft accident, overdue aircraft, study, or investigation.

§ 431.13 Parties to the field investigation.

(a) The Investigator-in-Charge may, on behalf of the Director, Bureau of Aviation Safety, designate parties to participate in the field investigation. Parties to the field investigation shall include those persons, Government agencies, companies and associations whose employees, functions, activities, or products were involved in the accident and who can provide suitably qualified personnel who will actively assist in the field investigation.

(b) Participants in the field investigation shall be responsive to the direction of the appropriate Board representative and may be relieved from participation if they do not comply with their assigned duties or if they conduct themselves in a manner prejudicial to the investigation.

§ 431.14 Access to and release of aircraft wreckage, records, mail, and cargo.

(a) Only the Board's accident investigation personnel and persons authorized by the Investigator-in-Charge or the Director, Bureau of Aviation Safety, to participate in any particular investigation, examination or testing shall be permitted access to aircraft wreckage, records, mail, or cargo which is in the Board's custody.

(b) Aircraft wreckage, records, mail, and cargo in the Board's custody shall be released by an authorized representative of the Board when it is determined that the Board has no further need of such wreckage, mail, cargo, or records.

§ 431.15 Flow and dissemination of accident information.

(a) Release of information during the field investigation, particularly at the accident scene, will be limited to factual developments, and will be made only through the Board member present at the accident scene, the Office of Public Affairs representative, or the Investigator-in-Charge.

(b) All information concerning the accident obtained by any personnel participating in the field investigation shall be passed to the Investigator-in-Charge through appropriate channels. Upon approval of the Investigator-in-Charge, parties to the investigation may relay to their respective organization information which is necessary for purposes of prevention or remedial action. Under no circumstances should accident information be released to, or discussed with, unauthorized persons whose knowledge thereof might adversely affect the investigation.

PUBLIC HEARINGS

§ 431.20 Nature of hearing.

A public hearing may be held by the Board following the field investigation for the purpose of creating a public record of the facts, conditions, and circumstances relating to the accident. Such hearings are purely factfinding proceedings, and there are no formal pleadings or issues and no adverse parties. Aircraft accident hearings are not

adjudicatory hearings and therefore are not subject to the provisions of the Administrative Procedure Act.

§ 431.21 Determination to hold hearing.

The Chairman, National Transportation Safety Board, or his designee, may order a hearing as part of an accident inquiry whenever he deems it necessary in the public interest.

§ 431.22 Board of Inquiry.

The Board of Inquiry shall consist of a Member of the Board who, when present, will be Chairman of the Board of Inquiry, the Hearing Officer, the Director of the Bureau of Aviation Safety or his designee, and the General Counsel or his designee. In the absence of the Chairman, a Member of the Board of Inquiry designated by him shall act as chairman. It shall be the duty of the Board of Inquiry to secure in the form of a public record all known facts pertaining to the accident and surrounding circumstances and conditions from which probable cause may be determined and recommendations of corrective action formulated.

§ 431.23 Powers of Chairman of Board of Inquiry.

The Board Member acting as Chairman of the Board of Inquiry, or, in the absence of the Board Member, his designee, shall have the following powers as the presiding officer:

(a) To designate parties to the hearing and to revoke such designations;

(b) To open, continue, or adjourn the hearing;

(c) To determine the admissibility of and to receive evidence and to regulate the course of the hearing;

(d) To dispose of procedural requests or similar matters; and

(e) To take any other action necessary or incident to the orderly conduct of the hearing.

§ 431.24 Hearing Officer.

The Hearing Officer, upon designation by the Director, Bureau of Aviation Safety, shall have the following powers:

(a) To give notice concerning the time and place of hearing;

(b) To administer oaths and affirmations to witnesses; and

(c) To issue subpenas requiring the attendance and testimony of witnesses and the production of documents.

§ 431.25 Technical Panel.

The Director, Bureau of Aviation Safety, shall designate members of the Board's Technical Panel who shall participate in the hearing in order to develop the testimony of the witnesses.

§ 431.26 Notice of hearing.

The Hearing Officer shall designate a time and place for the hearing which meets the needs of the Board and gives due consideration to the convenience of the witnesses. The time and place of the hearing shall be published in the Notices Section of the FEDERAL REGISTER prior to the date of the hearing, unless such notice is impractical or unnecessary.[2]

§ 431.27 Parties to the hearing.

(a) The Chairman of the Board of Inquiry may designate parties to the hearing from among those persons, Government agencies, companies, and associations who participated in the field investigation or whose special knowledge and aeronautical skills will contribute to the development of pertinent evidence. Participation as party to the field investigation shall not automatically qualify a person, agency, company, or association as a party to the hearing.

(b) Prior to the prehearing conference, provided by § 431.28, the parties to the hearing will be furnished copies of the available exhibits to be offered in evidence at the hearing, a list of the witnesses to be examined at the hearing and a statement of the areas in which each witness will be examined. At a time specified by the Hearing Officer prior to the prehearing conference, the parties may request of the Hearing Officer any amendment, correction, or addition to the exhibits that they propose be made or furnish such officer with copies of additional exhibits they proposed to have in the record, as well as a list of any additional witnesses they propose to examine and a statement of the areas in which they propose to examine such witnesses.

(c) A party who has failed to request the Hearing Officer to amend or correct proposed exhibits, or to advise him of additional exhibits he proposes to offer in evidence, or additional witnesses he proposes to examine, as required by § 431.27(b), will be precluded from having such evidence or testimony introduced at the hearing unless the presiding officer determines that for good cause shown such evidence or testimony should be admitted.

§ 431.28 Prehearing conference.

The Chairman of the Board of Inquiry or his designee will hold a prehearing conference with the Board of Inquiry, the parties to the hearing, and the Technical Panel at a convenient time and place prior to the hearing. At such conference, the conferees will review the witnesses to be called at the hearing, the areas in which they will be examined and the exhibits to which the witnesses will be referred during their examination. Parties will be precluded during the hearing from exceeding the scope of inquiry delineated for each witness at the prehearing conference, unless permission to do so is granted by the Chairman of the Board of Inquiry.

[2] The Board ordinarily gives personal notice to all known interested persons and also publicizes the hearing by a press release to aviation trade journals and local newspapers near the scene of the accident.

§ 431.29 Examination of witnesses.

(a) Each witness will be initially examined by the Technical Panel, following which the parties to the hearing will be given an opportunity to question the witness.

(b) Materiality, relevancy, and competency of witnesses' testimony, exhibits, or physical evidence will not be the subject of legal objections for record purposes by a party to the hearing or any other person. However, parties may bring to the attention of the presiding officer any line of questioning which lies outside of the designated area for questioning or which is clearly irrelevant, immaterial, or incompetent. Such matters will be controlled by rulings of the officer presiding on his own motion, or on request of any party to the hearing. If the examination of a witness by a party to the hearing is interrupted by a ruling of the officer presiding, opportunity will be given to show materiality, relevancy, or competency of the testimony sought to be elicited from the witness.

§ 431.30 Evidence.

The officer presiding shall receive all evidence which might be of aid in determining the cause of the accident. He may exclude any testimony or exhibits which are not pertinent to the inquiry or which are merely cumulative, as well as evidence which a party is precluded from introducing by § 431.27 or § 431.28, unless he determines that for good cause shown such evidence should be admitted.

§ 431.31 Recommendations to the Board.

Any person, particularly parties to the field investigation and parties to the hearing, may submit recommendations as to the proper conclusions to be drawn from the testimony and exhibits submitted at the hearing. Fifteen (15) copies of such recommendations shall be submitted within the time specified by the presiding officer at the close of the hearing, and shall be made a part of the docket. Copies of recommendations submitted to the Board by a party to the hearing shall be served upon each of the remaining parties to the hearing. The specified period for submitting recommendations will be extended by the Chairman of the Board of Inquiry only if he deems it necessary in the public interest.

§ 431.32 Stenographic transcript.

A verbatim transcript of the hearing shall be taken. Copies of the transcript may be obtained from the official reporter upon payment of the fees fixed therefor.

BOARD REPORT

§ 431.35 Aircraft accident report.

(a) The Board will issue a detailed narrative accident report in connection with the inquiry into those aircraft accidents which the Board determines to warrant such a report. The report will

set forth the facts, conditions, and circumstances relating to the accident and the probable cause thereof, along with any appropriate recommendations formulated on the basis of the inquiry,

(b) The probable cause and facts, conditions, and circumstances of all other aircraft accidents will be reported in a manner and form prescribed by the Board.

§ 431.36 Requests for reconsideration or modification.

(a) Requests for reconsideration or modification of the Board's determination of probable cause by parties to an investigation or hearing or other persons having a direct interest in the accident inquiry will be entertained only if based on the discovery of new evidence or on a showing that the Board's findings, as to the facts, conditions, and circumstances of the accident, are erroneous. Such requests shall be in writing. Requests which are repetitious of recommendations made pursuant to § 431.9 or § 431.31, or of positions previously advanced, and requests by parties to the hearing who fail to submit recommendations pursuant to § 431.31, will not be entertained. Any such requests based on the discovery of new matter shall identify the new matter; shall contain affidavits of prospective witnesses, authenticated documents, or both, or an explanation of why such substantiation is unavailable; and shall state why such new matter was not available prior to the Board's adoption of its findings. Requests based on erroneous findings shall set forth in detail the grounds relied upon.

(b) If a request for reconsideration or modification is filed by a party to a hearing, designated under § 431.27, copies of such request along with any supporting documentation shall be served on all other parties similarly designated.

PUBLIC RECORD

§ 431.40 Public docket.

(a) The public docket shall include all factual information concerning the accident except information which the Board has ordered withheld from public disclosure pursuant to § 431.7. With respect to an inquiry which includes a hearing, the docket shall contain the transcript of hearing, exhibits, and all other factual information. Recommendations submitted pursuant to § 431.9 or § 431.31 by interested persons, and requests for reconsideration and modification submitted pursuant to § 431.36, and the Board's rulings thereon, shall be placed in the public docket.

(b) The docket shall be established as soon as practicable following the accident and material shall be added thereto as it becomes available. Where a hearing is held, the exhibits will be introduced into the record at the hearing.

(c) A copy of the docket shall be made available to any person for review at the Washington office of the Safety Board. Copies of the material in the docket may be obtained from the Documents Branch of the Board upon payment of the cost of reproduction.

§ 431.41 Inquiry to remain open.

Accident inquiries are never officially closed but are kept open for the submission of new and pertinent evidence by any interested person. If the Board finds that such evidence is relevant and probative, it shall be made a part of the docket and, where appropriate, parties will be given an opportunity to examine such evidence and to comment thereon unless the Board orders it to be withheld from public disclosure.

By the National Transportation Safety Board.

[SEAL] JOHN H. REED, *Chairman.*

MARCH 3, 1971.

[FR Doc.71-3523 Filed 3-12-71;8:46 am]

Title 15—COMMERCE AND FOREIGN TRADE

Subtitle A—Office of the Secretary of Commerce

PART 4—PUBLIC INFORMATION

Miscellaneous Amendments

This amendment to Part 4 of Subtitle A of Title 15 of the Code of Federal Regulations reflects the relocation of the centralized facility in the Department of Commerce at which a revised list of participating operating units of the Department make available to the public the materials specified in 5 U.S.C. 552 (a)(2), and to which the public may request and obtain identifiable records under 5 U.S.C. 552(a)(3). Citations to applicable Department Orders are also made current.

The provisions of this Part 4 are issued pursuant to 5 U.S.C. 552, 553; 5 U.S.C. 301; Reorganization Plan No. 5 of 1950; other authorities vested by law in the Secretary of Commerce applicable to the dissemination of records and other information of the Department, including charges therefor; and Department Administrative Order 205-12 (formerly Department Order 64) 32 F.R. 9734, July 4, 1967, as amended 35 F.R. 6601, April 24, 1970.

Part 4 of Subtitle A of Title 15 of the Code of Federal Regulations is amended as follows:

1. Section 4.1 is revised as follows:

§ 4.1 Scope and purpose.

(a) This part contains the rules whereby the materials specified in 5 U.S.C. 552(a)(2), and the identifiable records requested under 5 U.S.C. 552(a)(3), are to be made publicly available by the following organizations in the Department of Commerce and organizations associated with the Department of Commerce:

(1) Organizations in the Department of Commerce:

(i) All components of the Office of the Secretary of Commerce.

(ii) The Office of Business Economics.

(iii) The U.S. Travel Service.

(iv) The National Bureau of Standards.

(v) The Bureau of Domestic Commerce.

(vi) The Bureau of International Commerce.

(vii) The Office of Administration for Domestic and International Business.

(viii) The Office of Export Control, Bureau of International Commerce.

(ix) The Office of Textiles.

(x) The Office of Import Programs.

(xi) The Office of Foreign Direct Investment.

(xii) The Office of Minority Business Enterprise.

(xiii) The Office of Telecommunications.

(xiv) The Office of Product Standards.

(xv) The National Technical Information Service.

(xvi) The National Industrial Pollution Control Council Staff.

(2) Organizations associated with the Department of Commerce:

(i) The President's Cabinet Textile Advisory Committee,

(ii) The Foreign-Trade Zones Board.

* * * * *

2. Section 4.2 is amended to read as follows:

§ 4.2 Policies.

Policies and other factors to be considered in issuing these rules are set forth in Department Administrative Order 205-12 (formerly Department Order 64) 32 F.R. 9734, July 4, 1967 as amended, 35 F.R. 6601, April 24, 1970.

3. Section 4.3(b) is amended to read as follows:

§ 4.3 Definitions.

* * * * *

(b) The terms "Office of the Secretary" and "operating unit" are defined in Department Organization Order 1-1, 35 F.R. 19704, December 29, 1970.

4. In § 4.5, paragraphs (d) and (e) are revised to read as follows:

§ 4.5 Availability of materials for inspection and copying.

* * * * *

(d) The materials described in paragraph (a) of this section may be inspected in the Central Reference and Records Inspection Facility, Room 7043, Commerce Building, 14th Street between Constitution Avenue and E Street NW., Washington, DC 20230. This facility is open to the public Monday through Friday of each week, except on official Federal holidays, between the hours of 8:30 a.m. and 5 p.m. There are no fees or formal requirements for such inspections. Coin-operated equipment for making copies of these materials is available for use by the public.

(e) Correspondence concerning the materials available in the facility should be sent to the above address. The tele-

phone number of the facility is 967–5511; Area Code 202.

5. In §§ 4.7(b), 4.10(c), and 4.11, the term "Department Order 64" is deleted and in lieu thereof the term "Department Administrative Order 205–12" is inserted.

LARRY A. JOBE,
Assistant Secretary for Administration.

[FR Doc.71-3535 Filed 3-12-71;8:47 am]

Title 21—FOOD AND DRUGS

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

SUBCHAPTER C—DRUGS

PART 148y—METHACYCLINE

Effective on publication in the FEDERAL REGISTER (3–13–71), Part 148y is republished as follows to incorporate editorial and nonrestrictive technical changes. This order revokes all prior publications.

Sec.
148y.1 Methacycline hydrochloride.
148y.2 Methacycline hydrochloride capsules.
148y.3 Methacycline hydrochloride syrup.

AUTHORITY: The provisions of this Part 148y issued under sec. 507, 59 Stat. 463, as amended; 21 U.S.C. 357.

§ 148y.1 Methacycline hydrochloride.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Methacycline hydrochloride is the hydrochloride salt of the 6-methylene homolog of oxytetracycline or a mixture of two or more such salts. It is so purified and dried that:

(i) Its potency is not less than 832 micrograms of methacycline per milligram on an "as is" basis.

(ii) It passes the safety test.

(iii) Its moisture content is not more than 2 percent.

(iv) Its pH in an aqueous solution containing 10 milligrams per milliliter is not less than 2.0 nor more than 3.0.

(v) Its absorptivity at the absorption maximum of 345 nanometers is 92.4±4 percent of the methacycline standard similarly treated.

(vi) It gives a positive result to the identity test for methacycline hydrochloride.

(vii) It is crystalline.

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 148.3(b) of this chapter.

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 146.2 of this chapter, each such request shall contain:

(i) Results of tests and assays on the batch for potency, safety, moisture, pH, absorptivity, identity, and crystallinity.

(ii) Samples of the batch: 10 packages, each containing 300 milligrams.

(b) *Tests and methods of assay*—(1) *Potency.* Proceed as directed in § 141.111 of this chapter, preparing the sample for assay as follows: Dissolve an accurately weighed sample in sufficient 0.01*N* methanolic hydrochloric acid (solution 13) to obtain a concentration of 1 milligram of methacycline per milliliter. Further dilute with 0.1*M* potassium phophate buffer, pH 4.5 (solution 4), to the reference concentration of 0.06 microgram of methacycline per milliliter (estimated).

(2) *Safety.* Proceed as directed in § 141.5 of this chapter.

(3) *Moisture.* Proceed as directed in § 141.502 of this chapter.

(4) *pH.* Proceed as directed in § 141.503 of this chapter, using an aqueous solution containing 10 milligrams of methacycline per milliliter.

(5) *Absorptivity.* Determine the absorbance of the sample and standard solutions in the following manner: Dissolve approximately 50 milligrams each of the sample and standard in 100 milliliters of 0.01*N* methanolic hydrochloric acid. Transfer a 10-milliliter aliquot to a 250-milliliter volumetric flask and dilute to volume with 0.01*N* methanolic hydrochloric acid. Using a suitable spectrophotometer and 0.01*N* methanolic hydrochloric acid as the blank, scan the absorption spectrum between the wavelengths of 250 and 400 nanometers. Determine the absorbance of each solution at the maxima, ca. 345 nanometers. Determine the percent absorptivity of the sample relative to the absorptivity of the standard using the following calculations:

$$\text{Percent relative absorptivity} = \frac{\text{Absorbance of sample} \times \text{weight in milligrams of standard} \times \text{potency of standard in micrograms per milligram}}{\text{Absorbance of standard} \times \text{weight in milligrams of sample} \times 10}$$

(6) *Identity.* The absorption spectrum between the wavelength of 250 and 400 nanometers, determined as directed in subparagraph (5) of this paragraph, compares qualitatively with that of the methacycline standard.

(7) *Crystallinity.* Proceed as directed in § 141.504(a) of this chapter.

§ 148y.2 Methacycline hydrochloride capsules.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Methacycline hydrochloride capsules are composed of methacycline hydrochloride and one or more suitable and harmless lubricants and diluents enclosed in a gelatin capsule. Each capsule contains methacycline hydrochloride equivalent to either 70 milligrams of methacycline, 140 milligrams of methacycline, or 280 milligrams of methacycline. Its potency is satisfactory if it is not less than 90 percent and not more than 120 percent of the number of milligrams of methacycline that it is represented to contain. The moisture content is not more than 5.0 percent. The methacycline hydrochloride used conforms to the standards prescribed by § 148y.1 (a) (1).

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 148.3 of this chapter.

(3) *Requests for certification; samples.* In addition to the requirements of § 146.2 of this chapter, each such request shall contain:

(i) Results of tests and assays on:

(*a*) The methacycline hydrochloride used in making the batch for potency, safety, moisture, pH, absorptivity, identity, and crystallinity.

(*b*) The batch for potency and moisture.

(ii) Samples required:

(*a*) The methacycline hydrochloride use in making the batch: 10 packages, each containing approximately 300 milligrams.

(*b*) The batch: A minimum of 30 capsules.

(b) *Tests and methods of assay*—(1) *Potency.* Proceed as directed in § 141.111 of this chapter, preparing the sample for assay as follows: Blend a representative number of capsules in a high-speed glass blender with 0.01*N* methanolic hydrochloric acid (solution 13) and further dilute with 0.1*M* potassium phosphate buffer, pH 4.5 (solution 4), to the reference concentration of 0.06 microgram of methacycline per milliliter (estimated).

(2) *Moisture.* Proceed as directed in § 141.502 of this chapter.

§ 148y.3 Methacycline hydrochloride syrup.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Methacycline hydrochloride syrup contains methacycline hydrochloride and one or more suitable and harmless buffers, dispersants, diluents, colorings, flavorings, and preservatives. It contains metacycline hydrochloride equivalent to 14 milligrams of methacycline per milliliter. Its potency is satisfactory if it is not less than 90 percent and not more than 125 percent of the number of milligrams of methacycline that it is represented to contain. Its pH is not less than 6.5 nor more than 8.0. The methacycline hydrochloride used conforms to the standards prescribed by § 148y.1(a) (1).

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 148.3 of this chapter.

(3) *Requests for certification; samples.* In addition to the requirements of § 146.2 of this chapter, each such request shall contain:

(i) Results of tests and assays on:

(*a*) The methacycline hydrochloride used in making the batch for potency, safety, moisture, pH, absorptivity, identity, and crystallinity.

(*b*) The batch for potency and pH.

(ii) Samples required.

(*a*) The methacycline hydrochloride used in making the batch: 10 packages, each containing approximately 300 milligrams.

(*b*) The batch: A minimum of 5 immediate containers.

(b) *Tests and methods of assay*—(1) *Potency.* Proceed as directed in § 141.111 of this chapter, preparing the sample for assay as follows: Remove an appropriate

aliquot of the syrup with a suitable syringe and dissolve with 0.01*N* methanolic hydrochloric acid (solution 13). Further dilute with 0.1*M* potassium phosphate buffer, pH 4.5 (solution 4), to the reference concentration of 0.06 microgram of methacycline per milliliter (estimated).

(2) *pH.* Proceed as directed in § 141.503 of this chapter using the undiluted sample.

(Sec. 507, 59 Stat. 463, as amended; 21 U.S.C. 357)

Dated: March 2, 1971.

H. E. SIMMONS,
Director, Bureau of Drugs.

[FR Doc.71-3512 Filed 3-12-71;8:45 am]

Title 22—FOREIGN RELATIONS

Chapter I—Department of State

[Departmental Reg. 108.634]

PART 51—PASSPORTS

Subpart E—Limitation on Issuance or Extension of Passports

LIMITATION OF PASSPORTS IN EXTRADITION CASES

Section 51.70(a) is amended by adding subparagraph (4) to read as follows:

§ 51.70 Denial of passports.

(a) * * *

(4) The applicant is the subject of a request for extradition or provisional arrest for extradition which has been presented to the government of a foreign country.

* * * * *

(Sec. 1, 44 Stat. 887, sec. 4, 63 Stat. 111, as amended; 22 U.S.C. 211a, 2658, E.O. 11295; 3 CFR, 1966 Comp.)

Effective date. This revision shall be effective 60 days after publication in the FEDERAL REGISTER.

For the Secretary of State.

BARBARA M. WATSON,
Administrator, Bureau of Security and Consular Affairs.

Dated: March 2, 1971.

[FR Doc.71-3543 Filed 3-12-71;8:48 am]

Title 25—INDIANS

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

SUBCHAPTER J—FISCAL AND FINANCIAL AFFAIRS

PART 111—REIMBURSEMENT OF THE UTE TRIBE OF THE UINTAH AND OURAY RESERVATION, UTAH

Adjudication of Claims of Former Mixed-Blood Members

MARCH 8, 1971.

This notice is published in the exercise of rule-making authority delegated by the Secretary of the Interior to the Commissioner of Indian Affairs by 230 DM 2 (32 F.R. 13928). The authority to issue regulations on Indian affairs is vested in the Secretary of the Interior by sections 161, 463, and 465 of the Revised Statutes (5 U.S.C. 301; 25 U.S.C. 2 and 9).

Section 3 of the Act of September 18, 1970 (84 Stat. 843) provides for payment to be made by the Secretary of the Interior, notwithstanding any other provision of law, to those persons whose names appear on the final roll of mixed-blood members that was prepared pursuant to section 8 of the Act of August 27, 1954 (68 Stat. 868), or to their heirs or legatees, under such rules as the Secretary may prescribe. The authority of the Secretary of the Interior under the Act of September 18, 1970 (84 Stat. 843) was delegated to the Commissioner of Indian Affairs in section 30(a)(49) of Secretarial Order 2508, published at page 229 of the January 7, 1971, issue of the FEDERAL REGISTER (36 F.R. 229).

Subchapter J, Chapter I, of Title 25 of the Code of Federal Regulations is amended by adding a new Part 111, Reimbursement of the Ute Tribe of the Uintah and Ouray Reservation, Utah. This new part contains the rules under which payment will be made to former mixed-blood members of the Ute Tribe of the Uintah and Ouray Reservation, Utah.

Since the rules contained in this new part provide the means for conveying benefits on the former mixed-blood members of the Ute Tribe, advance notice and public procedure thereon would delay considerably the conveying of such benefits and has been deemed contrary to the public interest. Therefore, advance notice and public procedure are dispensed with under the exception provided in subsection (b)(B) of 5 U.S.C. 553 (Supp. V, 1965–69).

Section 3 of the Act of September 18, 1970 (84 Stat. 843) provides that all claims for payment by mixed-bloods shall be filed not later than 3 years from the date of the Act. If the rules contained in this new part were published with a 30-day deferred effective date, it would decrease the amount of time available for former mixed-blood members of the Ute Tribe to file their claims. Therefore, the 30-day deferred effective date is deemed contrary to the public interest and is dispensed with under the exception provided in subsection (d)(3) of 5 U.S.C. 553 (Supp. V, 1965–69).

Subchapter J, Chapter I, of Title 25 of the Code of Federal Regulations is amended by adding a new Part 111, reading as follows:

ADJUDICATION OF CLAIMS OF FORMER MIXED-BLOOD MEMBERS

Sec.
111.1 Definitions.
111.2 Purpose.
111.3 Eligibility for reimbursement.
111.4 Information required from claimant.
111.5 Burden of proof.
111.6 Appeals.
111.7 Action by the Secretary.
111.8 Special instruction.

AUTHORITY: The provisions of this Part 111 issued under sec. 3, 84 Stat. 843.

ADJUDICATION OF CLAIMS OF FORMER MIXED-BLOOD MEMBERS

§ 111.1 Definitions.

As used in this part—

(a) "Secretary" means the Secretary of the Interior or his authorized representative.

(b) "Commissioner" means the Commissioner of Indian Affairs.

(c) "Financial Management Officer" means the Chief of the Division of Financial Management, Post Office Box 127, 500 Gold Avenue SW., Albuquerque, NM 87103.

(d) "Heirs" means those persons entitled to inherit under State law from a person whose name appears on the final roll of mixed-blood Indians that was prepared pursuant to section 8 of the Act of August 27, 1954 (68 Stat. 868).

(e) "Legatee" means those persons entitled to personality or reality under a valid will of a person whose name appears on the final roll of mixed-blood Indians that was prepared pursuant to section 8 of the Act of August 27, 1954 (68 Stat. 868).

§ 111.2 Purpose.

The rules in this part are to govern payment to be made by the Secretary pursuant to section 3 of the Act of September 18, 1970, to those persons whose names appear on the final roll of mixed-blood Indians that was prepared pursuant to section 8 of the Act of August 27, 1954 (68 Stat. 868) or to their heirs or legatees.

§ 111.3 Eligibility for reimbursement.

Each person whose name appears on the final roll of mixed-blood Indians that was prepared pursuant to section 8 of the Act of August 27, 1954 (68 Stat. 868) or their heirs or legatees may obtain a copy of the form for Claim for Reimbursement Due as provided by Public Law 91-403, approved September 18, 1970, by request directed to the Financial Management Officer, Bureau of Indian Affairs, Post Office Box 127, 500 Gold Avenue SW., Albuquerque, NM 87103. The completed claim must be filed with the Financial Management Officer at the same address not later than September 18, 1973.

§ 111.4 Information required from claimant.

Each Claim for Reimbursement shall contain the following information:

(a) The name and address of the claimant, and if the claimant is a minor or mental incompetent, the name, address, and representative capacity of the person executing the claim on behalf of the minor or mental incompetent.

(b) The roll number if the claimant is an enrollee on the roll of mixed-blood Indians prepared pursuant to section 8 of the Act of August 27, 1954 (68 Stat. 868).

(c) The name and roll number of the deceased enrollee through which a legatee is claiming and the place and date of the deceased enrollee's death. A certified copy of the decree of distribution or

other final order of the probate court should be submitted with the Claim for Reimbursement.

(d) The name and roll number of the deceased enrollee through which an heir is claiming, the place and date of the deceased enrollee's death and the relationship of the claimant to the deceased enrollee accompanied by copies of birth or marriage certificates or other evidence proving the relationship.

§ 111.5 Burden of proof.

The burden of proof rests upon the claimant to establish that he or she is entitled to reimbursement as an enrollee, heir, or legatee.

§ 111.6 Appeals.

Any person whose claim for reimbursement is rejected may appeal by filing such appeal in writing with the Financial Management Officer not more than thirty (30) days from receipt of the notice of rejection. The claimant must submit with his appeal any supporting data not previously furnished. When upon review of the evidence submitted by the appellant, the Financial Management Officer is satisfied that the claimant has established his right for reimbursement, the appellant shall be so notified. In any case where the Financial Management Officer determines the claimant ineligible, the Financial Management Officer shall forward the appeal together with the complete record and his recommendation thereon to the Commissioner for transmittal to the Secretary.

§ 111.7 Action by the Secretary.

The decision by the Secretary on an appeal shall be final and the claimant shall be given written notice of the decision.

§ 111.8 Special instruction.

To facilitate the work of the Financial Management Officer, the Commissioner may issue special instruction not inconsistent with the rules of this part.

LOUIS R. BRUCE,
Commissioner.

[FR Doc.71-3548 Filed 3-12-71;8:49 am]

Title 26—INTERNAL REVENUE

Chapter I—Internal Revenue Service, Department of the Treasury

SUBCHAPTER A—INCOME TAX

[T.D. 7095]

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

Percentage To Be Used by Foreign Life Insurance Companies in Computing Income Tax for the Taxable Year 1970 and Estimated Tax for the Taxable Year 1971

Section 819 of the Internal Revenue Code of 1954 provides for the determination of a percentage to be used in determining a "minimum figure" for each foreign corporation carrying on a life insurance business. Where this minimum figure exceeds such a corporation's surplus held in the United States, the amount of the "policy and other contract liability requirements" (determined under section 805 without regard to section 819), and the amount of the "required interest" (determined under section 809(a) without regard to section 819), must each be reduced by an amount determined by multiplying such excess by the "current earnings rate" (as defined in section 805(b)(2)). Accordingly, it is hereby determined that for purposes of computing the 1970 income tax for foreign corporations carrying on a life insurance business a percentage of 13.8 shall be used in determining the "minimum figure" under section 819.

It is presently anticipated that the data with respect to domestic life insurance companies for 1970 required for the computation of the percentage to be used by foreign corporations carrying on a life insurance business in computing their estimated tax for the taxable year 1971 will not be available in time for the filing of the declaration of estimated tax for such taxable year. Accordingly, it is hereby determined that for purposes of computing the estimated tax for the taxable year 1971 and payments of installments thereof by such corporation a percentage of 13.8 (the percentage applicable for 1970) shall be used in determining the minimum figure under section 819. No additions to tax shall be made because of any underpayment of estimated tax for the taxable year 1971 which results solely from the use of this percentage.

Because the percentage announced in this Treasury decision is computed from information contained in the income tax returns of domestic life insurance companies for the year 1969, which are not open to public inspection, the public accordingly cannot effectively participate in the determination of such figure. Therefore, it is found that it is unnecessary to issue this Treasury decision with notice and public procedure thereon under section 553(b) of title 5 of the United States Code (Public Law 89-554, 80 Stat. 383), or subject to the effective date limitation of subsection (d) of such section.

[SEAL] EDWIN S. COHEN,
Assistant Secretary of the Treasury.

MARCH 11, 1971.

[FR Doc.71-3587 Filed 3-12-71;8:50 am]

[T.D. 7093]

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

Consolidated Return Regulations

On February 6, 1971, notice of proposed rule making with respect to the amendment of the Income Tax Regulations (26 CFR Part 1) under section 1502 of the Internal Revenue Code of 1954 to provide rules for computation of the income tax surcharge in cases where a corporation is a member of an affiliated group of corporations for less than the entire year was published in the FEDERAL REGISTER (36 F.R. 2569). After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, the amendment of the regulations as proposed is hereby adopted.

(Secs. 1502 and 7805 of the Internal Revenue Code of 1954; 68 Stat. 367, 917; 26 U.S.C. 1502, 7805)

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

Approved: March 11, 1971.

EDWIN S. COHEN,
Assistant Secretary of the Treasury.

The Income Tax Regulations (26 CFR Part 1) under section 1502 of the Internal Revenue Code of 1954 are amended as follows to provide rules for computation of the income tax surcharge in cases where a corporation is a member of an affiliated group of corporations for less than the entire year:

§ 1.1502-2 [Amended]

PARAGRAPH 1. There is inserted at the end of § 1.1502-2 the following sentence: "For amount of tax surcharge, see section 51 and § 1.1502-7."

PAR. 2. There is inserted after § 1.1502-6 the following:

§ 1.1502-7 Tax surcharge.

(a) *Part-year affiliate.* If—

(1) A group files a consolidated return for any taxable year which includes any portion of the period beginning January 1, 1970, and ending June 30, 1970, and

(2) Any corporation (referred to in paragraph (b) of this section as a "part-year affiliate") which joins in the filing of such return is not a member of the group for each day during any such taxable year, the surcharge liability of the group under section 51 shall be determined under paragraph (b) of this section.

(b) *Amount of surcharge.* If paragraph (a) of this section applies, the surcharge liability imposed by section 51 on consolidated taxable income shall be the sum of—

(1) The surcharge which would be imposed under section 51(a)(1)(B) or (2) if that portion of the consolidated tax liability allocable to any part-year affiliate were excluded from the consolidated tax liability of the group, and

(2) The surcharge which would be imposed under section 51(a)(2) on any part-year affiliate if such part-year affiliate filed a separate return for the period for which its income was included in the consolidated return and if the tax imposed by this chapter for such period was the portion of consolidated tax liability allocable to such corporation.

Consolidated tax liability under subparagraphs (1) and (2) shall be determined under § 1.1502-2 without regard to

the tax surcharge imposed by section 51, the minimum tax imposed by section 56, any increase in tax under section 47(a), relating to early dispositions of investment credit property, or under section 614(c)(4)(C), relating to an election to aggregate certain mineral interests.

(c) *Allocation of tax liability.* For purposes of this section, the portion of consolidated tax liability allocable to a member shall be determined under the method used in allocating the tax liability of the group under the provisions of section 1552(a).

§§ 1.1502-8 to 1.1502-10 [Reserved]

[FR Doc.71-3596 Filed 3-12-71;8:50 am]

[T.D. 7094]

PART 13—TEMPORARY INCOME TAX REGULATIONS UNDER THE TAX REFORM ACT OF 1969

Extension of Time for Section 170(b)(1)(E)(ii) Organizations

The following regulations relate to the application of section 170(b)(1)(E)(ii) of the Internal Revenue Code of 1954, as added by section 201(a) of the Tax Reform Act of 1969 (83 Stat. 552) with respect to the requirements for compliance with the provisions of section 170(b)(1)(E)(ii).

The regulations set forth herein are temporary and are intended to extend the period of time during which an organization seeking classification under section 170(b)(1)(E)(ii) may meet the requirements of that section.

In order to provide such temporary regulations under section 170(b)(1)(E)(ii) of the Internal Revenue Code of 1954, the following regulations are adopted:

§ 13.15 Extension of time for section 170(b)(1)(E)(ii) organizations.

(a) *In general.* A private foundation described in section 170(b)(1)(E)(ii), as referred to in section 170(b)(1)(A)(vii) and (e)(1)(B)(ii), is, in effect, a private nonoperating foundation which distributes an amount equal to all contributions received not later than the 15th day of the third month after the close of the foundation's taxable year in which such contributions were received and which maintains adequate records with respect to such distributions.

(b) *Extension of period.* For purposes of section 170(b)(1)(A)(vii) and (e)(1)(B)(ii), in the case of a taxable year ending in either 1970 or 1971, the period referred to in section 170(b(1)(E)(ii) for making certain distributions shall not expire before the 30th day after final regulations under section 170(b)(1)(E)(ii) are published in the FEDERAL REGISTER.

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

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

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

Approved: March 11, 1971.

EDWIN S. COHEN,
Assistant Secretary of the Treasury.

[FR Doc.71-3586 Filed 3-12-71;8:50 am]

Title 32—NATIONAL DEFENSE

Chapter I—Office of the Secretary of Defense

SUBCHAPTER M—MISCELLANEOUS

PART 262—POLICIES GOVERNING THE CONTRIBUTION OF FEDERAL FUNDS TO THE STATES UNDER CHAPTER 133, TITLE 10, UNITED STATES CODE—FACILITIES FOR RESERVE COMPONENTS

The following revision to Part 262 was approved by the Deputy Secretary of Defense on February 11, 1971:

Sec.
262.1 Purpose.
262.2 Applicability and scope.
262.3 Policies and procedures.
262.4 Authority of DOD agencies.
262.5 Background information relating to 10 U.S.C. 133.

AUTHORITY: The provisions of this Part 262 issued under sec. 301, 80 Stat. 379; 5 U.S.C. 301.

§ 262.1 Purpose.

(a) This part updates and expands the policies established to implement section 2233(a)(2), (3), and (4) of chapter 133, title 10, United States Code which contains authority to provide facilities for the training of all Reserve components of the Armed Forces and authorizes contributions of Federal funds to the several States of the United States, Puerto Rico, and the District of Columbia (hereinafter referred to collectively as the States), as the Secretary of Defense shall determine to be necessary:

(1) To expand, rehabilitate, or convert facilities owned by such State to the extent required for the joint utilization of such facilities;

(2) To expand, rehabilitate, or convert facilities owned by such State to the extent made necessary, or to acquire, construct, expand, rehabilitate, or convert such additional facilities as he shall determine to have been made essential, by any conversion, redesignation, or reorganization of a unit or units of the Army National Guard of the United States or the Air National Guard of the United States, requested or authorized by the Secretary of the Army or the Secretary of the Air Force, respectively;

(3) To acquire, construct, expand, rehabilitate, or convert by such State such additional facilities that have been made essential by any increase in the strength of the Army National Guard of the United States or the Air National Guard of the United States.

(b) It establishes criteria under which Federal funds may be contributed to the States to provide training facilities for the above Reserve components.

§ 262.2 Applicability and scope.

The provisions of this part apply to the Military Departments and encompass the Army National Guard of the United States and the Air National Guard of the United States, respectively (hereinafter referred to as "Reserve components").

§ 262.3 Policies and procedures.

In carrying out the provisions of this part, the Secretaries of the Military Departments will comply with the following:

(a) Each project toward which a contribution is granted by the Federal Government under the authority contained in chapter 133, 10 U.S.C. shall be covered by an agreement between the United States and the State. The purpose of such agreement is to delineate the equities and obligations involved and assure not only a clear understanding of these obligations but definitely to establish these equities.

(b) The following policies are to be used as a guide in negotiating and executing agreements with States in the implementation of clauses (2), (3), and (4) of section 2233(a) of chapter 133, 10 U.S.C.:

(1) All work authorized pursuant to clauses (2), (3), and (4) of section 2233(a) of chapter 133, 10 U.S.C. shall be done in accordance with the laws of the State in which the project is located, and under the supervision of officials of such State, subject to inspection and approval by the Secretary of Defense or his delegate.

(i) Provisions definitive of such inspection and approval shall be included in said agreement, to accomplish the purpose of assuring that the work performed toward which the Federal contribution is made complies with the plans, specifications, criteria, and standards approved for the project by the Secretary of Defense or his delegate.

(ii) Except for supervision of a project, which function is reserved by law to State officials, the services of the Chief of Engineers or the Chief of the Naval Facilities Engineering Command may be utilized to the extent mutually agreed by the State and the Military Department concerned.

(2) A separate agreement shall be entered into between the State and the Federal Government for each project covering the terms, conditions, equities, and obligations of the parties.

(3) The State, as defined in section 2232(1) of chapter 133, 10 U.S.C. shall certify that it has the legal authority and the necessary funds to accomplish its share of the project, that it will furnish evidence satisfactory to the Department of Defense of a perfected title to, or

other adequate property interest in, acceptable and suitable real estate, and that such real estate is located in an area appropriate, under local laws and ordinances relating to location and construction, to the use for which the facilities are intended.

(4) Plans, specifications and cost estimates shall be approved by the Federal Government.

(5) Unless terminated under the provisions of subparagraph (18) of this paragraph, the agreement shall remain in full force and effect for the fixed term of years which represents the estimated useful life of the facility.

(6) When a facility is to be jointly used by two (2) or more Reserve Components, the agreement shall:

(i) Identify the space, both within and outside the building or buildings, which is to be maintained and reserved for the exclusive use of those Reserve components that are designed by the Federal Government;

(ii) Identify the space, both within and outside the building or buildings, which is to be used in common by all Reserve components assigned to the facility;

(iii) Prescribe the extent of collaboration between the State and the Federal Government in the selection of the site location and the orientation of the facilities to be jointly and exclusively utilized by those Reserve components which are designated by the Federal Government;

(iv) Prescribe the costs to be borne by the Federal Government and by the State in maintaining the common use space, both within and outside the building or buildings, and in general administrative expense for janitorial and similar service. Each such agreement shall take cognizance of the net proceeds derived from leasing the facility or other arrangements and other income in accordance with section 2236(c)(2) of chapter 133, 10 U.S.C.

(v) Prescribe generally for the time and extent of the use by the various components, and prescribe the method of resolving conflicts in schedules for use of the facilities.

(7) Insofar as it is determined at the time the Federal contribution is made that it is impracticable for the State and the Federal Government to delineate the extent of the spaces to be jointly and exclusively utilized by those Reserve components designated by the Federal Government, the agreement shall contain a covenant on the part of the State substantially as follows:

To make such facility available for joint utilization to the extent that the State shall hereafter deem it to be practicable.

(8) In the event it is necessary to apply the concept of a "master agreement" contemplating future individual agreements with respect to specific projects, such "master agreement" shall contain an affirmative covenant on the part of the State in substantially the following form:

A the time each contribution is made by the Government, to negotiate concerning the extent to which the facility covered thereby will be made available for joint use by units of two or more of the Reserve components of the Armed Forces.

(9) At no time during the term of the agreement shall such State permit any disposition or use to be made of such facility which will interfere with its use for the administration and training of units of the Reserve components of the Armed Forces of the United States, or in time of war or national emergency of other units of the Armed Forces of the United States or any other use by the Federal Government.

(10) The State shall take necessary action to the extent of its power or authority, to prohibit use of the facility by outside interests (such as adjacent land owners, public utility corporations, etc.) that would interfere with its use for its intended purpose.

(11) The State shall be required to maintain and preserve the facility in a state of good repair except that the Federal Government may contribute to the cost of maintenance to an extent commensurate with the joint use of the facility by those Reserve components which are designated by the Federal Government. Each such agreement shall take cognizance of the net proceeds derived from leasing the facility or other arrangements and other income in accordance with section 2236(c)(2) of chapter 133, 10 U.S.C.

(12) Where the State accomplishes the project by contract, the State shall let such contract in accordance with the laws of such State, and under those regulations within the Armed Services Procurement Regulation which are applicable to federally assisted programs insofar as the application of such regulations by supervisory officials of the State is not precluded by nor inconsistent with the State laws. All contracts, subcontracts, and change orders shall be subject to prior approval by the Federal Government.

(13) The Federal Government shall determine what costs incurred or to be incurred by the State are allowable under the terms and conditions of the agreement. When so requested by the State, such determination shall be made prior to the execution of any contract by the State, and the State shall be advised thereof in writing, subject to conformance with applicable Department of Defense military construction policies and criteria.

(14) The State shall be required to maintain an accounting system which is acceptable to the Federal Government with respect to the construction work, as well as to the subsequent maintenance and operation of those facilities toward which the Federal Government contributes or will contribute funds for such maintenance and operation, including those facilities to be jointly used by other Reserve components.

(15) The contributions of funds by the Federal Government to the State shall be in accordance with a system whereby the Federal Government maintains adequate control of the expenditure of such funds until payment is due the contractor for work already completed. Payment, however, may be made periodically as work progresses, and the Federal share of the funds will be obligated upon the approval of the construction contract by the Federal Government, and will be made available in accordance with established fiscal procedures.

(16) The appropriate legal authority of the State shall certify that in his opinion the agreement is legal and binding and that its execution is duly authorized, and upon request of the Federal Government, the State shall furnish evidence of its authority to enter into the agreement.

(17) The agreement shall contain other clauses, which in the opinion of the cognizant Military Department and State, are required to more specifically delineate the equities and obligations of both the State and Federal Government and which are not in conflict with the policies enumerated herein.

(18) The agreement shall contain a clause and existing agreements may be amended to include a clause providing for termination of the agreement, subject to the approval of the Secretary of Defense or his designee, prior to expiration of the fixed term: *Provided,* That:

(i) The facility is replaced in kind without any further contribution by the Federal Government and the State executes an agreement on the replacement facility for the unexpired term of the agreement to be terminated, or

(ii) The State agrees to reimburse the Federal Government for its equity in the asset which shall be computed as that proportion of the Federal contribution or grant as the unexpired term of the agreement bears to the full term of the agreement.

§ 262.4 Authority of DOD agencies.

The provisions of DOD Directive 5100.10, subject: "Delegation of Authority With Respect to Reserve Forces Facilities," dated August 20, 1962 (published at 27 F.R. 8630, Aug. 29, 1962), which delegates certain authorities with respect to Reserve Forces Facilities vested in the Secretary of Defense by the Act, as amended (chapter 133 title 10, United States Code), to certain officials in the Department of Defense, apply specifically in the implementation of this Directive.

§ 262.5 Background information relating to 10 U.S.C. 133.

(a) It is recognized that many existing State-owned or State-controlled facilities contain certain types of space, such as drill halls, which were not being fully utilized because of limited support (administrative) space, locker rooms, etc. Contributions of Federal funds to the State for the expansion of these facilities to provide this additional space will insure maximum fiscal economy through the full and joint utilization of common space to the maximum extent practicable.

(b) It is also recognized that many existing State-owned or State-controlled facilities cannot physically accommodate certain equipment involved upon conversion, redesignation, or reorganization of the organizational units previously assigned to those facilities. A provision of chapter 133, 10 U.S.C. (see § 262.1(b)) will relieve the States of the inequitable burden of financing the cost of physical changes in existing facilities made necessary by such organizational changes requested or authorized by the Federal Government.

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

[FR Doc.71-3525 Filed 3-12-71;8:47 am]

Title 49—TRANSPORTATION

Chapter III—Federal Highway Administration, Department of Transportation

SUBCHAPTER B—MOTOR CARRIER SAFETY REGULATIONS

[Docket No. MC-16; Notice No. 71-4]

PART 397—TRANSPORTATION OF HAZARDOUS MATERIALS; DRIVING AND PARKING RULES

The Director of the Bureau of Motor Carrier Safety is issuing a major revision of the rules in the Motor Carrier Safety Regulations pertaining to the safe transportation of hazardous materials by carriers who engage in interstate or foreign commerce. This revision is part of a broad Federal program of increased efforts towards reducing the level of risks involved in the movement of hazardous materials. Many fatal—and sometimes catastrophic—accidents have occurred in recent years. The result has been renewed program emphasis on eliminating unsafe practices and regulations that permit them to exist. In the recent Hazardous Materials Transportation Control Act of 1970 (Public Law 91-458), Congress again made it clear that the Department of Transportation has primary responsibility for ensuring that the hazards of transporting dangerous commodities are reduced to the lowest possible level.[1] The recent adoption of revised regulations pertaining to reporting of serious accidents involving transportation of hazardous materials (35 F.R. 16836) was a step aimed at carrying out that responsibility.

This revision of Part 397 is another such step. Taken in conjunction with programed increases in enforcement and educational activities, it should result in a significant increase in the level of safety with which hazardous substances are moved over the Nation's highways.

Features of the revised rules were first proposed as long ago as 1961, however, the immediate genesis of this revision of Part 397 is a notice of proposed rule making which the Federal Highway Administrator issued on December 11, 1969 (34 F.R. 20214). In that Notice, the Administrator set forth the text of the proposed new regulations and invited interested persons to comment upon them. Twenty-five parties responded to that invitation. In addition, the views of other Federal agencies which have duties relating to hazardous materials were received and considered. As a result of the Bureau's study of the available information and views, the following actions have been taken:

1. Section 397.1(a)(1), as proposed, would have obligated every supervisory employee or officer of a motor carrier to know and obey the rules in Part 397. In response to contentions that the application of those duties was stated too broadly, the Director has limited the duties so that they apply only to carrier officers or employees who perform supervisory duties related to transportation of hazardous materials. Carrier personnel on the operating level, i.e., those who operate or are in charge of vehicles containing hazardous materials, are obligated to know and comply with the regulations under § 397.1(a)(2).

2. The issue of compliance with State and local laws dealing with transportation of hazardous materials caused considerable controversy. In § 397.3 of the proposal, the Administrator provided that motor vehicles containing hazardous materials must be operated in accordance with those laws to the extent that they impose a more affirmative obligation or restraint than applicable Department of Transportation regulations. Some persons who filed comments asked the Director to preempt all State and local laws, pointing to the benefits that would flow from uniform Federal regulations having universal application and eliminating the burdens of special local law or regulation. Some respondents argued against any reference to State and local laws at all; these persons saw the proposal as placing carriers in double jeopardy and requiring them and their drivers to make fine jurisdictional distinctions. The Director has decided that neither of these positions is valid, and that § 397.3 should be adopted in its proposed form. The request for total Federal preemption vastly overstates the existing authority or capability of this, or any other Federal agency to establish rules governing all phases of the operation of motor vehicles, regardless of the nature of the commerce. Establishment and enforcement of those rules has historically been based on the character of the commerce, and the tradition is too far along to be broken in the context of an administrative rulemaking proceeding. Consequently, Federal regulations must continue to play a leading, but not exclusive role in the totality of law governing motor vehicle operations. Restated § 397.3 merely applies to vehicles transporting hazardous materials, a rule which has been in force for interstate carriers generally for many years. (See 49 CFR 392.3.) No undue burdens appear to have resulted from requiring those same carriers to obey local and State laws. The only novelty in restating the rule in Part 397 is that it will now apply to intrastate movements of hazardous materials by interstate carriers. The claim that this action will impose new and unbearable obligations appears to be an overstatement.

3. Under § 397.5(a) of the proposal, a motor vehicle transporting Class A or Class B explosives or Poison Class A would have been subject to a continuous attendance requirement. There were many objections to extending the requirement to Class A poisons. The Director has concluded that these objections are meritorious, particularly so because the Hazardous Materials Regulations Board has issued a notice which may result in a broad expansion of the number of substances classified as Poison Class A (Docket No. HM-51, 35 F.R. 8831). Consequently, the reference to Poison Class A has been dropped from § 397.5(a) and from a number of other rules designed to cover the more dangerous hazardous materials. However, this subject will remain open pending the final rule issued in HM-51.

4. Section 397.5(b) contains the exceptions to the general rule that vehicles containing Class A or Class B explosives must be continuously attended. The purpose of these exceptions is to permit motor carriers to develop so-called "safe havens," parking areas constructed so that, in the event the contents of a vehicle explode, the danger to the public in the vicinity will be minimized. The proposal was design-oriented in this respect. It specified that the parking area must be surrounded by hills, timber, or other natural features or by an earthen revetment. Comments indicated that, in this respect, the specification was too restrictive, and did not allow for development of new methods of assuring the protection of the public. Therefore, the Director has eliminated this feature of the proposal. Under the revised rule, the "safe haven" must be an area that has been approved by competent governmental authorities as appropriate for parking vehicles containing dangerous explosives. Other prerequisites of the "safe haven" concept, as set forth in the proposed rule, remain unchanged: except for vehicles containing small quantities of explosives at construction or survey sites, the explosive-laden vehicles must be on property of the carrier, a shipper, or consignee, and the person in charge of the cargo must be aware of its nature and of appropriate steps to follow in emergencies. Finally, it should be noted that neither § 397.5 nor any other provision of the revised Part purports to cover commodities or vehicles once the commodities have been accepted at their final destinations. This is the case because, as a jurisdictional matter,

[1] The responsibility is shared to some extent with other Federal and State agencies. The Department of Defense is the largest shipper of hazardous materials. The Interstate Commerce Commission issues certificates to for-hire carriers of those materials. In a recent decision (111 MCC 575) the Commission said that despite the transfer to the Department of Transportation of responsibility for prescribing routes over which hazardous commodities may be transported, the Commission remains empowered to prohibit authorized carriers from deviating from the routes specified in their certificates. There is, therefore, a coordinate responsibility for safety of operations among all these Federal agencies.

the scope of the regulations is limited to activities which occur during the flow of commerce.

5. The sole change in § 397.5(c), which deals with attendance of vehicles containing hazardous materials other than Class A or Class B explosives, is the elimination of a provision which would have limited to 15 minutes the length of time a driver may leave such a vehicle unattended on a public street or highway. The contents of several comments indicated that the 15-minute limitation would prove unduly rigid and unfeasible in many instances. It has, therefore, been deleted. However, the Director has left intact a provision that permits those vehicles to be left unattended only while the drivers are performing duties incident and necessary to their duties as vehicle operators, and this exception will be narrowly construed.

6. The major change in the rules relating to parking of motor vehicles containing hazardous materials has been deletion of vehicles carrying Poison Class A from the category of vehicles within the prohibition against on-street parking, parking on private property without the consent of the property's custodian, or long-term parking near buildings and other structures likely to be occupied by large numbers of people. Section 397.7 now subjects only vehicles containing Class A or Class B explosives to those prohibitions. Vehicles carrying other hazardous materials are also prohibited from being parked on or near a street or highway. However, in light of comments that such a ban, if absolute, would preclude loading and off-loading in areas where no off-street parking is available, the Director has added an exception to cover this situation. Several comments argued for abandoning any proscription against parking vehicles containing hazardous materials in certain locations. The argument is that these prohibitions would penalize drivers and carriers whose vehicles break down. That is not the case. Since violators of the rule may be punished only if they act "knowingly", those in charge of vehicles that come to rest in a dangerous location because of mechanical failure do not risk culpability for events beyond their control—at least if they used due care to begin the journey with sound equipment. The objective of the rule is to avoid, as much as is possible, the exposure of parked vehicles carrying dangerous cargoes to accidents when they are parked, particularly on or near high-speed highways.

7. For many years, the Motor Carrier Safety Regulations have specified that vehicles containing hazardous materials must, whenever possible, be routed so as to avoid congested places and other locations where fire, explosion, or escape of those materials could have catastrophic results. Nevertheless, recent years have seen a number of near disasters resulting from vehicles leaving safe routes for other and more hazardous ones. The Director has concluded, therefore, that the rules must be made more specific and less ambiguous. At the same time, he recognizes that routing of hazardous cargoes often requires compromises between population density in a corridor in which a highway is located and the expeditious manner with which the vehicle can pass through that corridor. Thus, § 397.9(a) is essentially unchanged from the version that appeared in the proposal. What is really necessary, to assure maximum safety, is increased attention to the matter of routing by managers and dispatchers of property motor vehicles, with routes being planned in advance for the purpose of minimizing risks and drivers being educated and required to follow the plans. The motion of a written routing plan for vehicles carrying Class A or Class B explosives is not novel, for it was proposed by the Interstate Commerce Commission in 1961 (26 F.R. 8040). It should help to eliminate unnecessary exposure of those vehicles to situations in which an otherwise run-of-the-mill accident may become a catastrophe. The concept of a written route plan has therefore, been written into § 397.9(b). It need not be burdensome, since formal guidelines and forms have not been imposed. Results are the true test of the effectiveness of compliance with the rules.

8. In response to comments, § 397.15 has been changed so that, even though someone must be in control of fueling a vehicle containing hazardous materials, he may use a fueling device having an automatic cutoff mechanism. On the other hand, the Director has declined to adopt the contention that there is no need to promulgate a special rule on fueling which includes vehicles powered by diesel fuel. It was argued that diesel fuel, in contrast to gasoline, involves a negligible risk of fire, and hence that vehicles using it ought to be exempted. The evidence does not warrant concluding that the hazards associated with fueling diesel vehicles are so low as to justify exemption them from the rule. In a notice issued in February 1970, it was noted that "accident investigations by the Bureau of Motor Carrier Safety indicate that diesel fuel, although less volatile than gasoline, creates a substantial risk of fire in some accident situations." (35 F.R. 3177). No evidence substantiating a contrary view has been received. Therefore, the Director has decided to issue a rule applicable to both gasoline-powered vehicles and those using diesel fuel.

9. Section 397.17, dealing with tires, was easily the most controversial provision in the notice of proposed rule making. It proposed mandatory, periodic, en route inspection of tires on certain vehicles equipped with dual tires and immediate replacement of tires found to be damaged or overheated. The comments addresed themselves to three issues: (1) The application of the rule to vehicles using tubeless tires; (2) the period specified for en route inspections (every two hours or 100 miles, whichever is less); and (3) the remedial action to be taken by the driver. On the first point, several comments argued that tire fires in tubeless tires are nonexistent. In looking into this matter, the Bureau of Motor Carrier Safety conducted a study of tire fire accidents that were reported to it under the requirement of Part 394. It found nine instances in which tubeless tires had caught fire. These nine cases are a relatively small proportion of the 98 tire fire accidents reported. Nevertheless, their existence refutes the allegations of the filings that such fires do not occur and further enforces the position for the need for mandatory periodic inspection of all tires while vehicles containing hazardous materials are engaged in long trips.

Comments on the specified period for en route inspections were quite diverse. Some persons argued for different timetables, others contended that no inspection at all ought to be required, while a third group said that pretrip inspection programs, coupled with improved driver education efforts, would suffice. Some comments supported the benefits of en route inspections but suggested that no precise intervals be specified, on the ground that the 100-mile/2-hour rule did not give drivers sufficient leeway in selecting a location at which to stop. Accident investigations and compliance checks by the Bureau demonstrate the need for pretrip and en route mandatory inspection requirements. The data make it abundantly clear that, at present, drivers of vehicles transporting hazardous materials are not making proper pretrip inspections of those vehicles. There appear to be several reasons why this is so. Some drivers refuse to expend the time needed to perform an adequate inspection. Others have not been trained to check their vehicles properly. Furthermore, tire manufacturers have agreed that periodic en route inspections are the best method of preventing tire fires. Their views are borne out by accident experience. For these reasons, the Director has decided, in view of the serious consequences flowing from tire fires and the risks they entail, to require inspection of tires by drivers of vehicles containing hazardous materials at the outset of each trip, whenever the vehicle is parked and, in any event, at least once during each 2 hours or 100 miles of travel. The inability of drivers to perform tire inspections precisely every 2 hours or at the 100-mile point is recognized. Therefore these two alternative criteria are written as maxima. Here again, advance planning is desirable and prudent, so that the process of route selection will include choices of preplanned stopping points for inspection of tires.

When a tire is found to be flat, leaking, or improperly inflated—though not dangerously hot—it may often be safer to move the vehicle to a position of safety than to attempt to perform on-the-spot repairs. In recognition of this consideration, which was the subject of some comments, the Director has agreed to permit such a vehicle to be driven to "the nearest safe place to perform the required repair, replacement, or inflation." Several comments asked how a driver is supposed to ascertain when a

tire is "improperly inflated". These words were not intended to require drivers to carry gauges and to ensure that each tire's inflation pressure is precisely at the mark called for in its manufacturer's specifications. They must be read in the context of the dominant objective of the rule—prevention of tire fires. The Director expects that any well-trained and well-qualified driver will be able to tell, upon visual or physical inspection, whether a tire is so grossly underinflated as to be likely to overheat to the point of combustion.

Once an overheated tire is discovered, prudence dictates that the vehicle should not be moved at all until the tire has been removed and the cause of the overheating has been corrected. Experience demonstrates that an overheated tire frequently presents latent hazards that are difficult to predict or control. It was suggested that if an asbestos blanket were carried on a vehicle, the need for periodic en route inspection of its tires would diminish. Asbestos blankets may serve a useful purpose in controlling tire fires. However, they have their disadvantages. If a tire has become overheated, covering it with an asbestos blanket does not eliminate the heat that has built up in it and may only delay the tire's ignition. In these circumstances, the Director has decided to adhere to the rule that overheated tires must be removed from a vehicle before that vehicle is moved.

10. Section 397.19 of the proposal, dealing with instructions and documents that must be given to drivers of certain vehicles carrying hazardous materials, has been extensively modified. For reasons noted above, the application of this section has been restricted to drivers of vehicles transporting Class A or Class B explosives. Section 397.19(a)(2) of the proposal, as construed by many persons who commented, would have required a driver to be supplied with, and to carry, the text of the laws relating to the transportation of hazardous materials in every jurisdiction in which his vehicle is operated. The Director agrees with those who argued that an on-board encyclopedia of statutes, ordinances, and regulations, would have little utility. The provision has, therefore, been redrafted so that carriers can furnish drivers with summary information about the operative rules of laws written in a manner that will enable each driver readily to understand what is expected of him. Paragraph (c) has been changed to require drivers to be familiar with those documents that must be in their possession. One such document is the written route plan required under § 397.9(b). Although some persons objected to this requirement on the ground that it tended to increase paperwork, others, particularly State and local regulatory agencies, supported it. The support of those agencies was grounded in accident experience in the localities to which their jurisdiction extends. On balance, the Director has decided that the benefits of having a written route plan in the driver's possession outweigh any additional administrative burdens they might entail.

In consideration of the foregoing, Chapter III of Title 49, CFR is amended by revising Part 397 of Subchapter B to read as set forth below.

Effective date. This revision of Part 397 is effective on June 1, 1971.

This revision of Part 397 of the Motor Carrier Safety Regulations is issued under the authority of 18 U.S.C. 834, 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 at 49 CFR 1.48 and 49 CFR 389.4.

Issued on March 5, 1971.

ROBERT A. KAYE,
Director,
Bureau of Motor Carrier Safety.

Sec.
397.1 Application of the rules in this part.
397.3 State and local laws, ordinances, and regulations.
397.5 Attendance and surveillance of motor vehicles.
397.7 Parking.
397.9 Routes.
397.11 Fires.
397.13 Smoking.
397.15 Fueling.
397.17 Tires.
397.19 Instructions and documents.

AUTHORITY: The provisions of this Part 397 issued under 18 U.S.C. 834, sec. 204 of the Interstate Commerce Act, as amended (49 U.S.C. 304), sec. 6 of the Department of Transportation Act (49 U.S.C. 1655), and the delegation of authority by the Secretary of Transportation in 49 CFR 1.4(c).

§ 397.1 Application of the rules in this part.

(a) The rules in this part apply to each motor carrier engaged in the transportation of hazardous materials by a motor vehicle which must be marked or placarded in accordance with § 177.823 of this title and to—

(1) Each officer or employee of the carrier who performs supervisory duties related to the transportation of hazardous materials; and

(2) Each person who operates or who is in charge of a motor vehicle containing hazardous materials.

(b) Each person designated in paragraph (a) of this section must know and obey the rules in this part.

§ 397.3 State and local laws, ordinances, and regulations.

Every motor vehicle containing hazardous materials must be driven and parked in compliance with the laws, ordinances, and regulations of the jurisdiction in which it is being operated, unless they are at variance with specific regulations of the Department of Transportation which are applicable to the operation of that vehicle and which impose a more stringent obligation or restraint.

§ 397.5 Attendance and surveillance of motor vehicles.

(a) Except as provided in paragraph (b) of this section, a motor vehicle which contains Class A or Class B explosives must be attended at all times by its driver or a qualified representative of the motor carrier that operates it.

(b) The rules in paragraph (a) of this section do not apply to a motor vehicle which contains Class A or Class B explosives if all the following conditions exist—

(1) The vehicle is located on the property of a motor carrier, on the property of a shipper or consignee of the explosives, or, in the case of a vehicle containing 50 pounds or less of either Class A or Class B explosives, on a construction or survey site; and

(2) The lawful bailee of the explosives is aware of the nature of the explosives the vehicle contains and has been instructed in the procedures he must follow in emergencies; and

(3) The vehicle is within the bailee's unobstructed field of view, or is located in an area specifically approved in writing by local, State, or Federal governmental authorities for the parking of vehicles containing Class A or Class B explosives.

(c) A motor vehicle which contains hazardous materials other than Class A or Class B explosives and which is located on a public street or highway or the shoulder of a public highway must be attended by its driver. However, the vehicle need not be attended while its driver is performing duties which are incident and necessary to his duties as the operator of the vehicle.

(d) For purposes of this section—

(1) A motor vehicle is attended when the person in charge of the vehicle is on the vehicle, awake, and not in a sleeper berth, or is within 100 feet of the vehicle and has it within his unobstructed field of view.

(2) A qualified representative of a motor carrier is a person who—

(i) Has been designated by the carrier to attend the vehicle;

(ii) Is aware of the nature of the hazardous materials contained in the vehicle he attends;

(iii) Has been instructed on the procedures he must follow in emergencies; and

(iv) Is authorized to move the vehicle and has the means and ability to do so.

(e) The rules in this section do not relieve a driver from any obligation imposed by law relating to the placing of warning devices when a motor vehicle is stopped on a public street or highway.

§ 397.7 Parking.

(a) A motor vehicle which contains Class A or Class B explosives must not be parked—

(1) On or within 5 feet of the traveled portion of a public street or highway;

(2) On private property (including premises of a fueling or eating facility) without the knowledge and consent of the person who is in charge of the property and who is aware of the nature of the hazardous materials the vehicle contains; or

(3) Within 300 feet of the bridge, tunnel, dwelling, building, or place where people work, congregate, or assemble, except for brief periods when the necessities of operation require the vehicle to be parked and make it impracticable to park the vehicle in any other place.

(b) A motor vehicle which contains hazardous materials other than Class A or Class B explosives must not be parked on or within five feet of the traveled portion of public street or highway except for brief periods when the necessities of operation require the vehicle to be parked and make it impracticable to park the vehicle in any other place.

§ 397.9 Routes.

(a) Unless there is no practicable alternative, a motor vehicle which contains hazardous materials must be operated over routes which do not go through or near heavily populated areas, places where crowds are assembled, tunnels, narrow streets, or alleys. Operating convenience is not a basis for determining whether it is practicable to operate a motor vehicle in accordance with this paragraph.

(b) Before a motor carrier requires or permits a motor vehicle containing Class A or Class B explosives to be operated, he must prepare a written plan of a route that complies with the rules in paragraph (a) of this section for that vehicle and must furnish a copy of the written plan to the vehicle's driver.

§ 397.11 Fires.

(a) A motor vehicle containing hazardous materials must not be operated near an open fire unless its driver has first taken precautions to ascertain that the vehicle can safely pass the fire without stopping.

(b) A motor vehicle containing hazardous materials must not be parked within 300 feet of an open fire.

§ 397.13 Smoking.

No person may smoke or carry a lighted cigarette, cigar, or pipe on or within 25 feet of—

(a) A motor vehicle which contains explosives, oxidizing materials, or flammable materials; or

(b) An empty tank motor vehicle which has been used to transport flammable liquids or gases and which, when so used, was required to be marked or placarded in accordance with the rules in § 177.823 of this title.

§ 397.15 Fueling.

When a motor vehicle which contains hazardous materials is being fueled—

(a) Its engine must not be operating; and

(b) A person must be in control of the fueling process at the point where the fuel tank is filled.

§ 397.17 Tires.

(a) If a motor vehicle which contains hazardous materials is equipped with dual tires on any axle, its driver must stop the vehicle in a safe location at least once during each 2 hours or 100 miles of travel, whichever is less, and must examine its tires. The driver must also examine the vehicle's tires at the beginning of each trip and each time the vehicle is parked.

(b) If, as the result of an examination pursuant to paragraph (a) of this section, or otherwise, a tire if found to be flat, leaking, or improperly inflated, the driver must cause the tire to be repaired, replaced, or properly inflated before the vehicle is driven. However, the vehicle may be driven to the nearest safe place to perform the required repair, replacement, or inflation.

(c) If, as the result of an examination pursuant to paragraph (a) of this section, or otherwise, a tire is found to be overheated, the driver shall immediately cause the overheated tire to be removed and placed at a safe distance from the vehicle. The driver shall not operate the vehicle until the cause of the overheating is corrected.

(d) Compliance with the rules in this section does not relieve a driver from the duty to comply with the rules in §§ 397.5 and 397.7.

§ 397.19 Instructions and documents.

(a) A motor carrier that transports Class A or Class B explosives must furnish the driver of each motor vehicle in which the explosives are transported with the following documents:

(1) A copy of the rules in this part;

(2) A document containing summary information about the laws, ordinances, and regulations pertaining to transportation of explosives of each State (including the District of Columbia) in which the vehicle will be operated; and

(3) A document containing instructions on procedures to be followed in the event of accident or delay. The documents must include the names and telephone numbers of persons (including representatives of carriers or shippers) to be contacted, the nature of the explosives being transported, and the precautions to be taken in emergencies such as fires, accidents, or leakages.

(b) A driver who receives documents in accordance with paragraph (a) of this section must sign a receipt for them. The carrier must retain the receipt in its files for one year at its principal place of business or at such regional or terminal offices as the Director of the Bureau of Motor Carrier Safety may approve.

(c) A driver of a motor vehicle which contains Class A or Class B explosives must have in his possession and be familiar with—

(1) The documents specified in paragraph (a) of this section;

(2) The documents specified in § 177.817 of Chapter I of this title; and

(3) The written route plan specified in § 397.9(b).

[FR Doc.71-3515 Filed 3-12-71;8:46 am]

Title 19—CUSTOMS DUTIES

Chapter I—Bureau of Customs, Department of the Treasury

PART 153—ANTIDUMPING

Ferrite Cores (of the Type Use in Consumer Electronic Products) From Japan

MARCH 11, 1971.

Section 201(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)), gives the Secretary of the Treasury responsibility for determination of sales at less than fair value. Pursuant to such authority the Secretary of the Treasury has determined that ferrite cores (of the type used in consumer electronic products) from Japan are being, or are likely to be, sold at less than fair value within the meaning of section 201(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)). (Published in the FEDERAL REGISTER of October 29, 1970 (35 F.R. 16745, F.R. Doc. 70-14594).)

Section 201(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)), gives the U.S. Tariff Commission responsibility for determination of injury or likelihood of injury. The U.S. Tariff Commission has determined, and on January 28, 1971, it notified the Secretary of the Treasury that an industry in the United States is being injured by reason of the importation of ferrite cores (of the type used in consumer electronic products) from Japan sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended. (Published in the FEDERAL REGISTER of February 3, 1971 (36 F.R. 1934, F.R. Doc. 71-1446).)

On behalf of the Secretary of the Treasury, I hereby make public these determinations, which constitute a finding of dumping with respect to ferrite cores (of the type used in consumer electronic products) from Japan.

Section 153.43 of the Customs Regulations is amended by adding the following to the list of findings of dumping currently in effect:

Merchandise	Country	T.D.
Ferrite Cores (of the type used in consumer electronic products).	Japan	71-84

(Secs. 201, 407, 42 Stat. 11, as amended, 18; 19 U.S.C. 160, 173.)

[SEAL] EUGENE T. ROSSIDES,
Assistant Secretary of the Treasury.

[FR Doc.71-3648 Filed 3-12-71;9:15 am]

Proposed Rule Making

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Parts 25, 29, 37, 91, 121, 123, and 135]

[Docket No. 10915; Notice No. 71-7]

EMERGENCY LOCATOR TRANSMITTERS

Notice of Proposed Rule Making

The Federal Aviation Administration is considering amending Parts 25, 29, 37, and 91 of the Federal Aviation Regulations to implement Section 31 of Public Law 91-596, achieve uniformity in terminology used, and update requirements and standards for the manufacture, installation, airworthiness, and operation of emergency locator transmitters required on airplanes operated in air commerce. In addition, it is proposed to update current requirements in Part 121, which also apply to air travel clubs operating under Part 123, for emergency signaling devices required for extended overwater operations and operation over uninhabited terrain, and added to Part 135 a requirement for an emergency locator transmitter for extended overwater operation.

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to: Federal Aviation Administration, Office of the General Counsel, Attention: Rules Docket, GC-24, 800 Independence Avenue SW., Washington, DC 20590. All communications received on or before May 12, 1971, will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments in the Rules Docket for examination by interested persons.

During the past 3 years, the FAA has been concerned with the need for an emergency signaling device on aircraft to facilitate search and rescue efforts in locating downed aircraft. Accordingly, the agency issued advance notice of proposed rule making 68-4 (33 F.R. 3643) in February 1968 soliciting comments concerning the type of device needed, the power required, and the types of operations which should be covered. As a result of the information gained from that Notice, the FAA issued notice of proposed rule making 69-11 (34 F.R. 5442) on March 17, 1969, which proposed that a "crash locator beacon" be required on all aircraft in operations conducted by air taxi and commercial operators under Part 135, including air taxi operations conducted with large aircraft, and that "survival radio equipment" be carried aboard such aircraft when engaged in extended overwater operations.

Comments on these notices were voluminous and indicated a great interest in the subject. However, before the agency completed its rulemaking action, Congress in 1970, enacted a law (section 31, Public Law 91-596) which amended section 601 of the Federal Aviation Act of 1958 to require the installation of "emergency locator beacons" on U.S. registered civil airplanes used in air commerce, with certain specified exceptions.

As we construe the exceptions specified in section 31 of Public Law 91-596, the beacon requirement does not apply to turbojet engine powered (pure jet) airplanes, or to airplanes of domestic and flag air carriers certificated under Part 121 while being operated by those air carriers in other than charter flights. In addition, that law excludes military airplanes, an airplane used solely for training purposes not involving flights more than 20 miles from its base, and airplanes used for agricultural aircraft operations governed by Part 137 of the Federal Aviation Regulations.

The compliance dates established by Public Law 91-596 for U.S. registered civil airplanes subject to the beacon requirement are December 30, 1971, for those manufactured or imported after that date, and December 30, 1973, for all others. However, it will be noted that for airplanes used by air taxi operators or commercial operators in operations pursuant to Part 135, it is proposed herein to require compliance within 1 year after the effective date of the rule.

The Radio Technical Commission for Aeronautics (RTCA) has developed minimum performance standards for various types of airborne emergency locator transmitters. This notice proposes to amend Part 37 of the Federal Aviation Regulations to incorporate by reference the standards and terminology established by the RTCA for various types of emergency locator transmitters. In addition to the standards established by RTCA, it is proposed to require additional performance standards in keeping with the intent of Public Law 91-596.

It should be clearly understood that the enactment of Section 31 of Public Law 91-596, and the adoption of implementing regulations by the FAA under the authority of the Federal Aviation Act of 1958, as amended, will provide complete Federal regulation regarding emergency locator transmitter requirements for aircraft operating in air commerce, to the exclusion of any State regulation regarding such devices.

This proposal would implement Public Law 91-596 by adding to Part 91 of the Federal Aviation Regulations a new § 91.52 entitled "Emergency locator transmitters." Proposed § 91.52 sets forth those operations for which the law requires an airplane to have an emergency locator transmitter and specifies the type of transmitter required for the particular operation by reference to the provisions of § 37.200 of Part 37. In addition, it is proposed to require, in § 91.52 as well as in §§ 121.339, 121.353, and 135.163, that the transmitter battery be replaced after the transmitter has been used in an emergency and also when 50 percent of it useful life has expired. In either case, the new expiration date for the replacement battery would have to be legibly marked on the outside of the transmitter. "Useful life", as defined in proposed § 37.200(g)(2), means the length of time, after its date of manufacture, that the battery may be stored on the shelf under normal environmental conditions without losing its ability to meet the power supply requirements prescribed in the applicable performance standards of § 37.200. The FAA considers this proposal necessary to assure that the transmitter power source will be capable of effective operation when needed.

Section 37.200 is a new section that would be added to Part 37 and titled "Emergency locator transmitters—TSO-C91." As proposed, § 37.200 would establish performance standards for five types of emergency locator transmitters. Three of these consist of automatic types which are divided into three categories, namely, fixed, portable, and deployable. The other two types are categorized as a personnel type and a survival type. However, as previously indicated, it is proposed to add to the RTCA standards: (1) a requirement that personnel type transmitters be automatically operated; (2) a requirement that each transmitter (irrespective of type) be equipped with a manually operated test circuit to determine whether the transmitter is operative; (3) a requirement that the transmitter battery be marked with its date of manufacture; and (4) a requirement that the electrical connections to the battery be corrosion resistant and positive in action.

The FAA is aware that some persons affected by this notice may have already purchased, in anticipation of proposed State requirements, emergency locator transmitter equipment which may, in all respects other than the test circuit, comply with the proposals made in this notice. Accordingly, it is proposed herein to permit use of such equipment without the test circuit if the equipment

was purchased prior to the date of publication of this notice.

The basic performance standards for each of the five types of transmitter are set forth in RTCA Documents Nos. DO–138, DO–145, DO–146, and DO–147, which will be incorporated by reference in § 37.200. These documents are available for examination at each FAA Regional, District, and Area Office.

Subject to the exceptions previously mentioned, § 91.52 would require an automatic emergency locator transmitter to be attached to each airplane used in operations governed by: (1) The supplemental air carrier and commercial operator rules of Part 121; (2) the domestic and flag air carrier charter flight rules of Part 121; (3) the air travel club rules of Part 123; and (4) the air taxi rules of Part 135. The automatic transmitter could be a fixed, portable or deployable type, as specified in § 37.200. The automatic fixed type is attached to the airplane permanently. The portable type is attached in such a manner that it can be removed easily from its mounting, whereas, the deployable type is so attached to the airplane that it can be deployed either automatically or manually.

For general aviation airplane operations governed by Part 91, proposed § 91.52 would require an emergency locator transmitter, identified in § 37.200 as an automatic type or a personnel type, to be attached to the airplane. As previously indicated, this proposal would require (among other things) that the personnel type of transmitter be automatically operable.

It should be noted that RTCA standards for the emergency locator transmitters, other than the survival type, would require a peak effective radiated power of at least 75 milliwatts. This power output level has been proposed because it would provide a useful emergency signal for a range of 50 nautical miles even when conditions at the downed-aircraft site are unfavorable. An adverse antenna orientation, for example, may sharply reduce the power radiated in useful directions; the terrain may absorb power or significantly distort the radiation pattern; and the weather may weaken the signal. The FAA is aware that the weight, size, and cost of emergency locator transmitters are related to output power, and that each of these factors would decrease in some measure if the 75 milliwatt power requirement were reduced. However, a reduction in power would mean (if all other factors remained unchanged) a reduction in the range at which the signal could be picked up by search and rescue aircraft, thereby limiting the usefulness of the transmitter as a safety device. Comments are specifically requested on whether the proposed 75 milliwatt power requirement is in fact reasonable for the purpose and, if not, what value would be more appropriate, and why.

In addition to the foregoing, this notice proposes to amend Parts 25, 29, 121, and 135 to achieve uniformity in terminology and update requirements for certain signaling devices. Specifically, the current ditching certification requirement in §§ 25.1415(d) and 29.1415 (d) for an "approved long range signaling device" for use in one life raft would be amended by this proposal to require a "survival type emergency locator transmitter" that meets the performance standards prescribed in new § 37.200 for that type of transmitter. These are portable, self-buoyant, water-resistant, independently powered devices (generally attached to a life raft) that transmit signals on emergency frequencies. Devices currently in use that meet the standards of current § 37.166 (TSO–C61a) would be acceptable until the effective date of the proposals made herein.

In §§ 121.339(a)(4) and 121.353(b) the requirement for an "emergency signaling device" would be replaced by a requirement for a "survival type emergency locator transmitter" that meets the performance standards prescribed in new § 37.200.

Section 135.163 does not presently require any emergency signaling device for extended overwater operations. This proposal would amend § 135.163 by adding in paragraph (b) thereof a requirement that there be attached to one of the required life rafts a "survival type emergency locator transmitter" that meets the requirements of new § 37.200.

As proposed, compliance with the new requirement for a survival type emergency locator transmitter in Parts 121 and 135 that meets the requirements of § 37.200 would be 1 year after the effective date of the amendment.

It should be noted that certain of the requirements of the Federal Communications Commission (FCC) would be applicable to the emergency locator transmitters discussed herein. Accordingly, affected persons should consult the Federal Communications Commission Regulations as part of their examination of the proposals made herein.

In consideration of the foregoing, it is proposed to amend the Federal Aviation Regulations as follows:

1. By amending § 25.1415(d) to read as follows:

§ 25.1415 Ditching equipment.

* * * * *

(d) There must be a survival type emergency locator transmitter that meets the applicable requirements of § 37.200 of this chapter for use in one life raft.

* * * * *

2. By amending § 29.1415(d) to read as follows:

§ 29.1415 Ditching equipment.

* * * * *

(d) There must be a survival type emergency locator transmitter that meets the applicable requirements of § 37.200 of this chapter for use in one life raft.

3. By adding a new section to Part 37 to read as follows:

§ 37.200 Emergency locator transmitters—TSO–C91.

(a) *Applicability.* This technical standard order prescribes the minimum performance standards that airborne emergency locator transmitters must meet in order to be identified with the applicable TSO marking. Emergency locator transmitters which are to be so identified must meet the requirements set forth in paragraphs (b) and (c) of this section.

(b) *Basic performance standards.* Basic performance standards are hereby established for the following types of emergency locator transmitters:

(1) *Type ELT(P), (Personnel type).* Personnel type emergency locator transmitters must meet the standards set forth in Radio Technical Commission for Aeronautics Document No. DO–145 titled "Minimum Performance Standards—Personnel Type Emergency Locator Transmitters, ELT(P), operating on 121.5 and 243.0 Megahertz," dated November 5, 1970.

(2) *Type ELT(AF), (Automatic fixed type).* Automatic fixed type emergency locator transmitters must meet the standards for Automatic Fixed (AF) Type equipment set forth in Radio Technical Commission for Aeronautics Document No. DO–147 titled "Minimum Performance Standards—Automatic Fixed, Automatic Portable and Automatic Deployable Type Emergency Locator Transmitters ELT(AF)(AP)(AD), operating on 121.5 and 243.0 MegaHertz," dated November 5, 1970.

(3) *Type ELT(AP), (Automatic portable type).* Automatic portable type emergency locator transmitters must meet the standards for Automatic Portable (AP) Type equipment set forth in Radio Technical Commission for Aeronautics Document No. DO–147 titled "Minimum Performance Standards—Automatic Fixed, Automatic Portable and Automatic Deployable Type Emergency Locator Transmitters, ELT(AF)(AP)(AD), operating on 121.5 and 243.0 MegaHertz," dated November 5, 1970.

(4) *Type ELT(AD), (Automatic deployable type).* Automatic deployable type emergency locator transmitters must meet the standards for Automatic Deployable (AD) Type equipment set forth in Radio Technical Commission for Aeronautics Document No. DO–147 titled "Minimum Performance Standards—Automatic Fixed, Automatic Portable and Automatic Deployable Type Emergency Locator Transmitters, ELT(AF)(AP)(AD), operating on 121.5 and 243.0 Megahertz," dated November 5, 1970.

(5) *Type ELT(S), (Survival type).* Survival type emergency locator transmitters must meet the standards set forth in Radio Technical Commission for Aeronautics Document No. DO-146 titled "Minimum Performance Standards—Survival Type Emergency Locator Transmitters, ELT(S), operating on 121.5 and 243.0 Megahertz," dated November 5, 1970.

(c) *Additional performance standards.* In addition to meeting the basic performance standards (as applicable) set forth in paragraph (b) of this section—

(1) Each personnel type emergency locator transmitter must, when installed

in accordance with the manufacturer's instructions—

(i) Be automatically activated when subjected to a force of 5.0±2.0 g and greater for a duration of 11 milliseconds and greater in the direction of the longitudinal axis of the aircraft;

(ii) Not be activated under conditions less severe than those prescribed in subparagraph (b) (1) (i); and

(iii) After activation, remain activated when subsequently subjected to shock forces in any direction of up to 50 g and having durations up to 11 milliseconds.

(2) Each personnel, automatic, and survival type emergency locator transmitter must be equipped with a manually-activated test circuit to determine whether it is operative. The test circuit must receive all its indicating energy from radiated power. However, the radiated field associated with the test circuit may not exceed 15 microvolts per meter at a distance of 1 foot, free space, irrespective of direction.

(3) Each personnel, automatic, and survival type emergency locator transmitter must have its battery permanently and legibly marked with the date (month and year) of the battery's manufacture. In addition, the electrical connections to the battery must be corrosion resistant and positive in action. Connections relying on spring force alone are not acceptable.

(d) *Environmental standards.* Unless otherwise stated in RTCA documents referenced in paragraphs (b) and (c) of this section, environmental testing must be done in accordance with RTCA Document No. DO–138 titled "Environmental Conditions and Test Procedures for Airborne Electronic/Electrical Equipment and Instruments," dated June 27, 1968.

(e) *Availability of documents.* RTCA Documents Nos. DO–138, DO–145, DO–146, and DO–147 are incorporated herein in accordance with 5 U.S.C. 552(a) (1) and § 37.23 of this part and are available as indicatd in § 37.23. Additionally, these RTCA documents may be examined at any FAA Regional Office of the Chief, Engineering and Manufacturing Branch (or, in the case of the Western Region, the Chief, Aircraft Engineering Division). The above documents may be obtained from the RTCA Secretariat, Suite 655, 1717 H Street NW., Washington, DC 20006.

(f) *Marking.* (1) In addition to the markings specified in § 37.7(d) of this part, the equipment must be permanently and legibly marked with its type designation as set forth in paragraph (b) of this section, and must be legibly marked with the date on, or before, which the battery must be replaced to comply with the useful life limitation prescribed in paragraph (g) (2) of this section.

(2) Each separate component of the equipment (antenna, transmitter, or other) must be permanently and legibly marked with at least the manufacturer's name and the TSO number.

(g) *Data requirements.* In accordance with § 37.5 of this part, the manufacturer must furnish to the Chief, Engineering and Manufacturing Branch, Flight Standards Division (or, in the case of the Western Region, to the Chief, Aircraft Engineering Division), Federal Aviation Administration, in the region in whch the manufacturer is located, one copy of the following technical data, except that additional copies must be furnished upon request by the FAA:

(1) Manufacturer's operating instructions and equipment limitations, containing a statement identifying the type designation of the equipment as prescribed in paragraph (b) of this section.

(2) Installation instructions, including applicable schematic diagrams, wiring diagrams, procedures, and specifications. The specifications must set forth all limitations, restrictions, or other conditions, pertinent to the installation. The limitations must include a limitation on the use of the battery beyond 50 percent of its useful life, as established by the transmitter manufacturer. For the purpose of this subparagraph, the useful life of the battery (established by the transmitter manufacturer) is the length of time, after its date of manufacture, that the battery may be stored on the shelf under normal environmental conditions without losing its ability to meet the power supply requirements prescribed in the applicable performance standards of paragraph (b) of this section.

(3) List of components (by part number) that make up the equipment system complying with the applicable standards prescribed in this section.

(4) Manufacturer's test report.

(5) Equipment data sheets specifying the equipment's actual performance with respect to each performance factor prescribed in the applicable standard, and the ranges of environmental factors (temperature, altitude, etc.) within which that performance can be attained.

(h) *Data furnished with each manufactured unit.* A copy of the installation instructions prescribed in paragraph (g) (2) of this section, and of the equipment data sheets prescribed in paragraph (g) (5) of this section, must be furnished with each emergency locator transmitter manufactured under this TSO.

4. By adding a new section to Part 91 to read as follows:

§ 91.52 Emergency locator transmitters.

(a) Except as provided in paragraphs (e), (f), and (g) of this section:

(1) After December 30, 1971, no person may operate a U.S. registered civil airplane manufactured or imported after that date unless it meets the applicable requirements of paragraphs (b), (c), and (d) of this section.

(2) After (date one year after the effective date of this amendment) for operations (with airplanes not subject to paragraph (a) (1) of this section) governed by Part 135 of this chapter, and after December 30, 1973, for all other operations, no person may operate a U.S. registered civil airplane unless it meets the applicable requirements of paragraphs (b), (c), and (d) of this section.

(b) To comply with paragraph (a) of this section, each U.S. registered civil airplane must be equipped as follows:

(1) For operations governed by the supplemental air carrier and commercial operator rules of Part 121 of this chapter, or the air travel club rules of Part 123 of this chapter, there must be attached to the airplane an automatic type emergency locator transmitter that is in operable condition and meets the applicable requirements of § 37.200 of this chapter;

(2) For charter flights governed by the domestic and flag air carrier rules of Part 121 of this chapter, there must be attached to the airplane an automatic type emergency locator transmitter that is in operable condition and meets the applicable requirements of § 37.200 of this chapter;

(3) For operations governed by Part 135 of this chapter, there must be attached to the airplane an automatic type emergency locator transmitter that is in operable condition and meets the applicable requirements of § 37.200 of this chapter; and

(4) For operations other than those specified in subparagraphs (1), (2), and (3) of this paragraph, there must be attached to the airplane a personnel type or an automatic type emergency locator transmitter that is in operable condition and meets the applicable requirements of § 37.200 of this chapter.

(c) Each emergency locator transmitter required by paragraphs (a) and (b) of this section must be attached to the airplane in such a manner that the probability of damage to the transmitter, in the event of crash impact, is minimized. Fixed and deployable automatic type transmitters must be attached to the airplane as far aft as practicable.

(d) Batteries used in emergency locator transmitters required by paragraphs (a) and (b) of this section must be replaced after the transmitter has been used in an emergency and must also be replaced when 50 percent of their useful life (as established by the transmitter manufactured under § 37.200 (g) (2) of this chapter) has expired. The new expiration date for the replacement battery must be legibly marked on the outside of the transmitter.

(e) Notwithstanding paragraphs (a) and (b) of this section, a person may—

(1) Ferry a newly acquired airplane from the place where possession of it was taken to a place where the emergency locator transmitter is to be installed; and

(2) Ferry an airplane with an inoperative emergency locator transmitter from a place where repairs or replacement cannot be made to a place where they can be made.

No persons other than required crewmembers may be carried aboard an airplane being ferried pursuant to paragraph (e) of this section.

(f) Paragraphs (a) and (b) of this section do not apply to—

(1) Turbojet engine powered airplanes;

(2) Scheduled operations (other than charter flights) conducted by a domestic or flag air carrier certificated under Part 121 of this chapter;

(3) Training flights conducted within a 20-mile radius of the airport from which the flight began; or

(4) Agricultural aircraft operations governed by Part 137 of this chapter.

(g) The emergency locator transmitter required by paragraphs (a) and (b) of this section need not meet the manually-operated test circuit requirement in § 37.200(c)(2) if the operator shows that he had purchased the transmitter prior to (date of publication of this notice in the FEDERAL REGISTER.

5. By amending § 121.339 (a)(4) and (b) to read as follows:

§ 121.339 Equipment for extended overwater operations.

(a) * * *

(4) A survival type emergency locator transmitter that after (date 1 year after the effective date of this amendment) meets the applicable requirements of § 37.200 of this chapter. The transmitter must be attached to one of the required life rafts. Batteries used in this transmitter must be replaced after the transmitter has been used in an emergency and must also be replaced when 50 percent of their useful life (as established by the transmitter manufacturer under § 37.200(g)(2) of this chapter) has expired. The new expiration date for the replacement battery must be legibly marked on the outside of the transmitter.

(b) The required life rafts, life preservers, and survival type emergency locator transmitter must be easily accessible in the event of a ditching without appreciable time for preparatory procedures. This equipment must be installed in conspicuously marked, approved locations.

6. By amending § 121.353(b) to read as follows:

§ 121.353 Equipment for operations over uninhabited terrain areas: flag and supplemental air carriers and commercial operators.

* * * * *

(b) A survival type emergency locator transmitter that after (date 1 year after the effective date of this amendment) meets the applicable requirements of § 37.200 of this chapter. Batteries used in this transmitter must be replaced after the transmitter has been used in an emergency and must also be replaced when 50 percent of their useful life (as established by the transmitter manufacturer under § 37.200(g)(2) of this chapter) has expired. The new expiration date for the replacement battery must be legibly marked on the outside of the transmitter.

7. By amending § 135.163 to read as follows:

§ 135.163 Emergency equipment: extended overwater operations.

(a) No person may operate an aircraft in extended overwater operations unless it carries enough life rafts (with proper buoyancy) to carry all occupants of the aircraft, and unless there is attached to each life raft, and clearly marked for identification, at least—

(1) One canopy (for sail, sunshade, or for rain catcher);

(2) One radar reflector (or similar device);

(3) One life raft repair kit;

(4) One bailing bucket;

(5) One signaling mirror;

(6) One police whistle;

(7) One raft knife;

(8) One CO_2 bottle for emergency inflation;

(9) One inflation pump;

(10) Two oars;

(11) One 75-foot retaining line;

(12) One magnetic compass;

(13) One dye marker;

(14) One flashlight;

(15) At least one pyrotechnic signaling device;

(16) A two-day supply of emergency food rations supplying at least 1,000 calories a day for each person;

(17) One sea water desalting kit for each two persons the raft is rated to carry, or two pints of water for each person;

(18) One fishing kit; and

(19) One book on survival appropriate for the area in which the aircraft is operated.

(b) After (date 1 year after the effective date of this amendment) no person may operate an aircraft in extended overwater operations unless there is attached to one of the liferafts required by paragraph (a) of this section a survival type emergency locator transmitter that meets the applicable requirements of § 37.200 of this chapter. Batteries used in this transmitter must be replaced after the transmitter has been used in an emergency and must also be replaced when 50 percent of their useful life (as established by the transmitter manufacturer under § 37.200(g)(2) of this chapter) has expired. The new expiration date for the replacement battery must be legibly marked on the outside of the transmitter.

These amendments are proposed under the authority of sections 313(a), 601, and 604 of the Federal Aviation Act of 1958 (49 U.S.C. 1354, 1421, and 1424), and section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Washington, D.C., on March 10, 1971.

JAMES F. RUDOLPH,
Director, Flight Standards Service.

[FR Doc.71-3546 Filed 3-12-71;8:48 am]

[14 CFR Parts 71, 73]

[Airspace Docket No. 70-AL-5]

DESIGNATION OF RESTRICTED AREA AND ALTERATION OF FEDERAL AIRWAY AND CONTINENTAL CONTROL AREA

Notice of Proposed Rule Making

The Federal Aviation Administration (FAA) is considering amendments to Parts 71 and 73 of the Federal Aviation Regulations that would designate a restricted area at Chatanika, Alaska, and a west alternate to VOR Federal airway No. 438 between Fairbanks, Alaska, and Fort Yukon, Alaska. Also, the Continental control area would be altered to include the proposed restricted area.

Interested persons may participate in the proposed rule making by submitting such written data, views, or arguments as they may desire. Communications should identify the airspace docket number and be submitted in triplicate to the Director, Alaskan Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, 632 Sixth Avenue, Anchorage AK 99501. All communications received within 30 days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendments. The proposals contained in this notice may be changed in the light of comments received.

An official docket will be available for examination by interested persons at the Federal Aviation Administration, Office of the General Counsel, Attention: Rules Docket, 800 Independence Avenue SW., Washington, DC 20590. An informal docket also will be available for examination at the office of the Regional Air Traffic Division Chief.

The FAA proposes the following airspace actions:

1. The Chatanika, Alaska, restricted area would be designated as follows:

Boundaries. Within a 1½-mile radius circle centered at lat. 65°07'45" N., long. 147°29'30" W., and within a line drawn from the northerly tangent of the 1½-mile radius circle to lat. 65°15'00" N., long. 146°19'00" W., thence to lat. 64°59'40" N., long. 146°19'00" W., thence to the southerly tangent of the 1½-mile radius circle.

Designated Altitudes. Surface to unlimited.

Time of Designation. From 0930 to 1030 a.m. local time for a period of 2 years beginning July 1, 1971.

Controlling Agency. Federal Aviation Administration, Fairbanks ARTC Center.

Using Agency. U.S. Army Electronics Command, Fort Huachuca, Ariz.

2. V-438 would be altered by adding a standard west alternate between the Fairbanks, Alaska, VORTAC and the Fort Yukon, Alaska, VOR.

3. The continental control area would be altered by adding the Chatanika restricted area.

The proposed restricted area is needed as a part of a worldwide network of meteorological rocket sounding stations to

gather atmospheric data above 100,000 feet.

The proposed west alternate to V–438 would provide a bypass between Fairbanks and Fort Yukon route during periods of activation of the restricted area.

These amendments are proposed under the authority of sec. 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348(a)) and sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Washington, D.C., on March 8, 1971.

H. B. HELSTROM,
Chief, Airspace and Air Traffic Rules Division.

[FR Doc.71–3552 Filed 3–12–71;8:49 am]

CIVIL AERONAUTICS BOARD

[14 CFR Part 239]

[Docket No. 23173; EDR–197]

REPORTING DATA PERTAINING TO FREIGHT LOSS AND DAMAGE CLAIMS BY CERTAIN AIR CARRIERS AND FOREIGN ROUTE AIR CARRIERS

Notice of Proposed Rule Making

MARCH 10, 1971.

Notice is hereby given that the Civil Aeronautics Board has under consideration the enactment of a new part (Part 239) of the economic regulations to establish a system of reporting of freight loss and damage claims by certain air carriers and foreign route air carriers. This system is designed to enable the Board and numerous other organizations, both public and private, to be informed of current trends or problems relating to air freight loss and damage and to provide data whereby the Board may take appropriate action.

The principal features of the proposed part are described in the attached Explanatory Statement and the proposed part is set forth in the attached rule. The part is proposed under the authority of sections 204(a), 402, and 407 of the Federal Aviation Act of 1958, as amended, 72 Stat. 743, 757, 766; 49 U.S.C. 1324, 1372, 1377.

Interested persons may participate in the proposed rule making through submission of twelve (12) copies of written data, views, or arguments pertaining thereto, addressed to the Docket Section, Civil Aeronautics Board, Washington, D.C. 20428. All relevant material received on or before May 13, 1971, will be considered by the Board before taking final action on the proposed rule. Copies of such communications will be available for examination by interested persons in the Docket Section of the Board, Room 712, Universal Building, 1825 Connecticut Avenue NW., Washington, DC, upon receipt thereof.

By the Civil Aeronautics Board.

[SEAL] HARRY J. ZINK,
Secretary.

Explanatory statement. By Order 68–7–126, July 25, 1968, the Board approved, subject to conditions, an agreement (CAB 20374) between various air carriers and foreign air carriers to establish an Airport Security Council to take action against crime and pilferage at airports in the New York Metropolitan area. Also, the Board by Order 68–8–18, August 6, 1968, authorized carrier discussions of specific tariff rules and related practices on liability, valuation, and claims. These orders pertained to common problems; however, adequate data relating to these problems are not presently available to the Board. Additionally, Congress has recently shown an interest in mitigating the problem of air freight loss and damage.[1]

Moreover, the Flying Tiger Line, Inc., recently filed a petition for rule making (Docket 22661) to require the reporting of air freight loss and damage data.[2] Flying Tiger asserts that the domestic industry's claim-to-revenue ratio has risen from 0.903 percent in 1964 to 1.751 percent in 1969.[3] However, this carrier states that it decreased its claim-to-revenue ratio from 1.5 percent in 1968 to 1.1 percent in 1970, a reduction which it attributes to its ability to define problem areas and to take appropriate corrective action based upon its analysis of periodic statistical reports. These reports show, inter alia, aggregate losses in dollars classified by terminal, by shipper, and by rate-weight code, as well as dollar losses by origin terminal, by destination terminal, and by commodity.

Further progress toward resolution of this problem is reflected in two recent Board orders. In Order 70–7–116, dated July 24, 1970, the Board approved several other agreements adopted by the members of the Airport Security Council[4] which established certain procedures for recording thefts, pilferage, and losses in air cargo operations covered by the Airport Security Council. Second, various agreements filed on behalf of the domestic carriers which revised certain tariff rules concerning air freight liability and claims matters, have been approved by the Board pending an investigation of certain of these agreements.[5]

In order that more reliable data may be available with respect to air cargo losses, the Board has for some time been working informally with the domestic carriers to develop meaningful loss and damage reports. As a result, a number of domestic carriers are now providing quarterly reports showing claim payments in various categories. These reports are, however, incomplete in numerous respects, and the report forms proposed herein are intended to correct these deficiencies.

Throughout the foregoing period, the Board's staff has maintained close liaison with the staff of the Interstate Commerce Commission which has recently proposed a claims reporting system for motor carriers.[6] This coordination will be continued to insure comparability and compatibility of air and surface data reporting as to freight property loss and damage.

As noted above, the current reports are limited to domestic certificated route carriers. The Board does not have data for other classes of air carriers and is herein proposing to require such data from air freight forwarders and international air freight forwarders under Parts 296 and 297, respectively, commuter air carriers under Part 298, supplemental air carriers and foreign-flag route air carriers. Further, to enable the Board, the industry and individual carriers to utilize the developed data to the greatest extent possible, we shall require that the losses be identified by commodities as well as by causal factors. Even though a uniform commodity coding system is not available throughout the industry, there is a need for claim revenue and other statistical data by commodity.[7] Different commodities have varying transport characteristics and varying exposure to risk; in some cases this is a function of value, in others, a function of physical characteristics. Accurate and reasonable analysis is not possible without recognition and measurement of these factors.

The Board is also proposing to monitor the various types and causes of loss and damage, i.e., theft, pilferage and robbery. These data should assist the carriers in their efforts to improve cargo security. The proposed data on concealed as well

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[1] Several bills were introduced in the 91st Congress such as S.J. Res. 929, S. 3595 and H.R. 18243, among others, which related to cargo loss and damage. For example, S. 3595 and H.R. 18243 entitled "To establish a Commission on Security and Safety of Cargo" are designed to cope with the cargo security problem. They would establish a Commission on Security and Safety of Cargo to investigate and recommend methods for achieving security and safety for cargo of all modes of transportation. The Commission's duties would include an evaluation of methods to deter cargo theft; the development of a uniform loss-reporting system by all modes of transportation; an evaluation of the adequacy of the present carrier liability limitations; and the development of physical facility security standards.

[2] The issues in Docket 22661 are embraced in this rule making proceeding. Therefore, that docket is consolidated herein.

[3] For the first quarter of 1970, the reported ratio increased to 1.96 percent.

[4] Agreements CAB 20374–A2 through A7, particularly Agreement CAB 20374–A3.

[5] Agreements CAB 19891–A4, 20746–A1, and A2 and 21288, approved by the Board subject to conditions by Order 70–7–121 dated July 24, 1970. The carriers have not, however, filed in their tariffs the major rules changes approved by the Board.

[6] Notice of proposed rule making, 49 CFR Part 1249, served Nov. 27, 1970, No. 35345, 35 F.R. 18402.

[7] See Appendix A which is filed as part of the original document.

as visible damage should be useful in monitoring the effectiveness of the procedures used to control such losses. Data as to claim payments vis-a-vis the actual losses to shippers will, for the first time, establish the true "cost" to the shipper for loss or damage in air transportation.

In addition, the air movement (airport-to-airport) has been separated from the ground portion to identify the respective claim experience. Similarly, international and domestic traffic have been separated to reflect the current differences in domestic and international (Warsaw) property liability limits.[8] In both of these areas, the rule asks for the same type of claim information.

This reporting system should give to the Board more adequate and complete data with respect to the problem of cargo loss. These data should be useful to law enforcement and other government authorities in recognizing problem areas and in taking corrective action where appropriate. They should give both shipper and carrier a better comprehension of their common problems and varying responsibilities. Whether the loss is due to theft or damage of goods in transit, the ultimate loss must be borne by the public. The knowledge gained from the attached reports should aid in reducing cargo loss and damage which should in turn result in reduced overall transportation costs to the public.

PART 239—REPORTING DATA PERTAINING TO FREIGHT LOSS AND DAMAGE CLAIMS BY CERTAIN AIR CARRIERS AND FOREIGN ROUTE AIR CARRIERS

Sec.

§ 239.1 Definitions.

As used in this part, unless the context otherwise requires—

Actual shipper loss means the total dollar amount on each claim actually suffered by claimant because of loss, damage, delay, etc., based on the invoice value (per pound, per unit, etc.) at destination, or origin invoice value plus freight charges. For claims involving shipments where no invoices exist, such as personal effects and household goods, the actual loss to the shipper shall be the negotiated settlement, or the amount claimed less reasonable depreciation based upon prior use and age, whichever is greater.

Air movement means airport-to-airport.

Concealed damage means physical damage to freight discovered after delivery of shipment to consignee in apparent good order without evidence of irregularity.

Ground movement means pickup and delivery, and/or connecting or joint motor carrier service pursuant to interline air-surface agreements.

Operations, domestic means traffic between the 50 States of the United States and the District of Columbia.

Operations, international means traffic between the 50 States of the United States and the District of Columbia, on the one hand, and all points outside the United States, on the other hand.

Other means damage not elsewhere classified.

Robbery means all stealing, including hijacking, with use of force or threat of force.

Shortage means failure to deliver all or part of shipment to consignee for unknown reasons.

Theft or pilferage means all known stealing without use of force or threat of force.

Visible damage means delivery of shipment reflecting open damage observable by consignee at time of delivery.

§ 239.2 Applicability and CAB Form 239 filing requirements.

(a) This part applies to all certificated route carriers and certificated supplemental air carriers, commuter air carriers under Part 298 of the Board's economic regulations in this chapter (14 CFR Part 298), air freight forwarders and international air freight forwarders under Parts 296 or 297 of the Board's economic regulations in this chapter, respectively (14 CFR Parts 296, 297), and foreign route air carriers.

(b) CAB Form 239 entitled "Report of Freight Loss and Damage Claims," consisting of the certification and the following schedules, shall be filed by the classes of carriers designated in paragraph (a) of this section in accordance with the filing frequency specified below:

	Filing frequency
(1) Certification	Quarterly.
(2) Schedule A—Report of Freight Loss and Damage Claims Paid	Do.
(3) Schedule B—Analysis of Theft	Do.
(4) Schedule C—Analysis of Claims Processed	Do.
(5) Schedule D—Summary of Freight Loss and Damage Claims Paid	Annually.

(c) Schedules A and C shall be filed by each certificated route air carrier whose annual scheduled gross air freight revenues exceed three million dollars ($3,000,000) for the year ending on the same date as the quarter covered by the report; by each air freight forwarder or international air freight forwarder whose total annual air forwarding revenues exceed $3 million; and by each foreign route air carrier.[9]

(d) Schedules B and D shall be filed by all certificated route air carriers, certificated supplemental air carriers, commuter air carriers, air freight forwarders and international air freight forwarders and foreign route air carriers.[10]

(e) The report shall be completed in duplicate and addressed to the Civil Aeronautics Board, Washington, D.C. 20428, Attention: Bureau of Accounts and Statistics. It shall be filed so as to be received by the Civil Aeronautics Board within 30 days after the termination of each reporting period.

(f) Dollar amounts reported on all schedules of CAB Form 239 shall be rounded to the nearest whole number, omitting cents.

§ 239.3 Extension of filing time.

If circumstances prevent the filing of a report within the prescribed time limit, consideration will be given to the granting of an extension upon receipt of a written request therefor. Such a request must give good and sufficient reason to justify granting the extension, must set forth the date when the report can be filed, and be submitted sufficiently in advance of the due date to permit ample time for consideration and communication to the air carrier of the action taken. Except in cases of emergency, no such request will be entertained which is not received in sufficient time to enable the Board to pass thereon before the prescribed due date. If a request is denied, the air carrier remains subject to the filing requirements to the same extent as if no request for extension of time had been made.

§ 239.4 Certification.

The certificate of an officer of the reporting carrier shall be executed in duplicate, and shall accompany each Form 239 filed with the Board. This certificate is the cover sheet of Form 239 and applies to all schedules and documents filed therewith.

§ 239.5 List of commodity descriptions and codes for use in reporting on CAB Form 239.

The list of commodity descriptions in Schedule A attached hereto shall be used in reporting on CAB Form 239. This list was derived from the Standard Transportation Commodity Code (STCC) and represents those articles which are believed to be subjected to the greatest risk of loss or damage between pickup and delivery. In the event that no claims exist during a given reporting period

[8] The Warsaw property liability limit is $7.52 per pound of shipment. The domestic liability limit is typically 50 cents per pound or $50 per shipment, whichever is greater. See Order 70-7-121, July 24, 1970.

Proposed rule. The Board proposes a new Part 239 of the economic regulations to read as follows:

[9] Only foreign route air carriers serving the United States are required to file CAB Form 239. Data called for in the report shall relate only to freight traffic from and/or to the United States and claims relating thereto.

[10] Ibid.

with respect to one or more of the particular commodities, such entry or entries may be omitted.

§ 239.6 Schedule A—Report of Freight Loss and Damage Claims Paid.

(a) This schedule shall be prepared for each quarter ending March 31, June 30, September 30 and December 31 of each calendar year.

(b) The data reported on this schedule shall relate to scheduled service only. For the purposes of this schedule, forwarders shall be considered scheduled carriers regardless of underlying transportation.

(c) Separate reports of this schedule shall be filed for domestic and international operations. Check the appropriate box provided on the form.

(d) Freight forwarders should report only those claims made by their customers against the forwarder, not claims by the forwarder against a direct air carrier.

(e) Direct air carrier interline traffic and claim data—

(1) *Domestic.* Each direct air carrier participating in an interline movement and sharing in the settlement shall separately report as to its own dollar portion of interline claims. For purposes of the "Number" columns in Schedule A, each interline carrier participating in the claim settlement shall count each claim on a percentage basis, as follows:

NUMBER OF CARRIERS PARTICIPATING IN SETTLEMENT

	2	3	4	5
Claim-paying carrier	0.50	0.34	0.25	0.20
2d carrier	.50	.33	.25	.20
3d carrier		.33	.25	.20
4th carrier			.25	.20
5th carrier				.20

(2) *International.* If all carriers participating in the interline movement are certificated route air carriers, or foreign route carriers serving the United States, each such carrier shall report its own portion of interline claims, as for Domestic in subparagraph (1) of this paragraph; if any carrier participating in the interline movement is a foreign route air carrier not serving the United States, the certificated route air carrier or foreign route air carrier which originated the shipment in the United States (outbound), or which effected delivery in the United States (inbound), shall report the entire claim settlement and other data as required by this part.

(f) Columns (1) and (2)—Show each commodity for which loss and damage claims were paid during the reporting quarter. Use the commodity codes and descriptions provided for in Appendix A.[9]

(g) Column (3)—For each commodity listed in column (2), show separately the amounts paid for claims relating to shipments while moving by air and while moving on the ground by inserting the letters "A" and "G", respectively, and "T" representing the total of these two modes.

(h) Columns (4) through (15) plus (18)—For each line reported in column (3), show the number of claims paid and related dollar amounts on which claims were paid, broken down among the various reasons which resulted in the payments.

(i) Columns (16) and (17)—Show in column (16) the total number of claims paid reported in columns 4, 6, 8, 10, 12, and 14 and in column (17) show the total dollar amounts reported in columns 5, 7, 9, 11, 13, and 15.

(j) Column (18)—For each total reported in column (17), show the dollar amounts of the actual losses incurred by the shipper.

(k) Column (19)—Show the gross revenue received during the reporting quarter for each commodity listed in column (2).

(l) Following the last entry made on this schedule, show the grand totals for each of columns (4) through (17). Also, immediately below the grand totals, insert data for the two lines reading: "Claims presented by forwarders" and "Claims presented by other than forwarders," and complete columns (4) through (17) for each of these lines.

§ 239.7 Schedule B—Analysis of Theft.

(a) This schedule shall be prepared for the quarters ending March 31, June 30, September 30, and December 31 of each calendar year.

(b) Separate reports of this schedule shall be filed for domestic and international operations. Check the appropriate box provided on the form.

(c) Columns (1) and (2)—List individually by commodity each claim payment during the reporting period in the amount of $100 or more as the result of theft. Use the commodity code numbers provided in Appendix A,[9] but the commodity descriptions inserted should be those shown on the airbill or airwaybill.

(d) Columns (3) and (4)—For each claim reported in column (2), show the dollar amounts attributable to "Theft or Pilferage" and "Robbery."

(e) Column (5)—Identify the airport where the theft occurred using the three-letter airport codes shown in the Official Airline Guide. If the airport is not known, allocate claim amount in same proportion as used to allocate to other airports involved in the transportation of the shipment. For example, if Los Angeles and Philadelphia alone were involved, a single commodity entry would show 50 percent of the claim against each * * * $_____ LAX; * * * $_____ PHL.

§ 239.8 Schedule C—Analysis of Claims Processed.

(a) This schedule shall be prepared for the quarters ending March 31, June 30, September 30 and December 31 of each calendar year.

(b) The data reported on this schedule shall relate to scheduled service only. For the purposes of this schedule, forwarders shall be considered scheduled carriers regardless of underlying transportation.

(c) Separate reports of this schedule shall be filed for domestic and international operations. Check the appropriate box provided on the form.

(d) Items 1, 2 and 3—The carrier receiving the claim shall show, respectively, the number of claims on hand at the beginning of the reporting quarter, the number of claims received during the quarter and the total number of claims to be processed during the reporting quarter, distributed according to the columnar headings. In column (4) show horizontal totals of the number of claims reported in columns (1), (2), and (3), and in column (5) show the related total dollar value of these claims.

(e) Item 4(a)—Show the number and dollar amounts of claims paid during the reporting quarter, distributed according to the columnar headings.

(f) Item 4(b)—Show the number and dollar amounts of all claims denied or otherwise closed during the reporting quarter, distributed according to the reasons specified for denial (Items 4(b), 1–4). The number of claims and dollar amounts thereof reported in Item 4 should balance both vertically and horizontally.

(g) Item 5—Amounts reported should be carried forward as Item 1 in the next quarterly report; any differences should be explained in detail under "Remarks."

(h) Items 6 through 10—Self-explanatory.

(i) Item 11—Show the gross air freight revenue received during the reporting quarter. For certificated route air carriers this figure should agree with the amounts reported separately for domestic and international operations in account 3906 on Schedules P–1.1 or P–1.2 of CAB Form 41; for air freight forwarders and international air freight forwarders this figure refers to amounts reported separately for domestic and overseas/foreign operations in Item 4 on Schedule P of CAB Form 244 (however, Schedule P of CAB Form 244 calls for a semiannual report whereas the subject item is reported quarterly).

(j) Item 12—Show as a percentage carried to two decimal places.

(k) Item 13—Retrospective insurance refunds from premiums should be offset against amounts reported in Item 13, in the quarter in which received, and a footnote to that effect should be made under "Remarks."

§ 239.9 Schedule D—Summary of Freight Loss and Damage Claims Paid.

(a) This schedule shall be prepared for each calendar year as of December 31.

(b) Data reported on this schedule shall separately cover domestic and international scheduled and nonscheduled operations, but shall exclude military contract operations.

[9] Filed as part of the original document.

[9] Filed as part of the original document.

(c) For the purposes of this schedule, forwarders shall be considered scheduled carriers regardless of underlying transportation.

(d) Freight forwarders should report only those claims made by their customers against the forwarder, not claims by the forwarder against a direct air carrier.

[FR Doc.71-3566 Filed 3-12-71;8:50 am]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Parts 2, 74]

[Docket No. 19130]

AURAL BROADCAST STL OPERATIONS, INTERCITY RELAY STATIONS, AND CERTAIN LOW POWER BROADCAST AUXILIARY STATIONS

Order Extending Time for Filing Comments

In the matter of amendment of Parts 2 and 74 to permit Aural Broadcast STL operations in the band 2150-2160 MHz and to accommodate STL, Intercity Relay Stations and certain low power broadcast auxiliary stations within the frequency band 947-952 MHz.

1. A notice of proposed rule making and notice of inquiry (36 F.R. 1425, January 29, 1971) was adopted in the above matter on January 20, 1971, setting the dates for filing comments and reply comments as March 2, 1971, and March 12, 1971, respectively. The Commission has before it now a request by the National Association of FM Broadcasters (NAFMB) to extend the comment date to April 19, 1971, so that the matter may be taken up at its annual convention in the latter part of March.

2. In as much as the FM broadcasting industry is directly affected by the proposals herein, the views of its national association would be helpful to the Commission. We believe that good cause has been shown for the requested extension and that such extension would not unduly delay the proceeding.

3. *Accordingly, it is ordered,* Pursuant to § 0.281(b) of the rules and regulations, that the time for filing comments in this proceeding is extended to April 19, 1971, and, although not requested, the time for filing reply comments is extended to April 29, 1971.

Adopted: March 8, 1971.

Released: March 9, 1971.

[SEAL] RICHARD E. WILEY,
General Counsel.

[FR Doc.71-3559 Filed 3-12-71;8:49 am]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR Part 1]

DEPRECIATION ALLOWANCES USING ASSET DEPRECIATION RANGE SYSTEM

Notice of Hearing on Proposed Regulations

Proposed amendments to the regulations under section 167 of the Internal Revenue Code of 1954, relating to depreciation, appear in this issue of the FEDERAL REGISTER (36 F.R. 4885).

A public hearing on the provisions of these proposed amendments to the regulations will be held on May 3, 1971, at 10 a.m., e.d.s.t., in Room 3313, Internal Revenue Service Building, 1111 Constitution Avenue NW., Washington, DC 20224. If necessary the hearing will be continued through Tuesday, May 4, 1971, and Wednesday, May 5, 1971.

The rules of § 601.601(a)(3) of the Statement of Procedural Rules (26 CFR Part 601) shall apply with respect to such public hearing. 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 by April 23, 1971, submit an outline of the topics and the time they wish to devote to each topic. Such outlines shall be submitted to the Commissioner of Internal Revenue, Attention: CC:LR:T, Washington, D.C. 20224.

Persons who plan to attend the hearing and persons who desire a copy (furnished only at the above address) of such written comments or suggestions or outlines should notify the Commissioner at the above address or telephone (Washington, D.C.) 202-964-3935 by April 28, 1971.

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

[FR Doc.71-3646 Filed 3-12-71;9:15 am]

[26 CFR Part 1]

DEPRECIATION ALLOWANCES USING ASSET DEPRECIATION RANGE SYSTEM

Notice of Proposed Rule Making

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. A public hearing will be held, and notice of the time, place, and date of the public hearing is simultaneously published herewith. The proposed regulations are to be issued under the authority contained in section 167 of the Internal Revenue Code of 1954 (26 U.S.C. 167) and section 7805 of the Internal Revenue Code of 1954 (26 U.S.C. 7805).

RANDOLPH W. THROWER,
Commissioner of Internal Revenue.

The Income Tax Regulations (26 CFR Part 1) are amended as follows:

Paragraph 1. The following new section is added immediately after § 1.167(a)-10, to read as follows:

§ 1.167(a)-11 Depreciation based on asset depreciation ranges for property placed in service after December 31, 1970.

(a) *In general.* This section provides an asset depreciation range system for determining the reasonable allowance for depreciation of designated classes of assets placed in service after December 31, 1970. The system is designed to minimize disputes between taxpayers and the Internal Revenue Service as to the useful life of property, and as to salvage value, repairs, and other matters. The system is optional with the taxpayer. The taxpayer has an annual election. Generally, an election for a taxable year will apply to all additions of eligible property during the taxable year of election, but does not apply to additions of eligible property in any other taxable year. The taxpayer's election, made with the return for the taxable year, may not be revoked or modified for any property included in the election. Generally, the taxpayer must establish vintage accounts for all eligible property included in the election, must determine the allowance for depreciation of such property in the taxable year of election, and in subsequent taxable years, on the basis of the period of years (within the asset depreciation range) specified in the election, and must apply the first-year convention specified in the election to determine the allowance for depreciation of

such property. This section also contains special provisions for the treatment of salvage value, retirements, and the cost of the repair, maintenance, rehabilitation and improvement of such property. A taxpayer may not apply any provision of this section unless he makes an election and thereby consents to, and agrees to apply, all the provisions of this section. For the meaning of certain terms used in this section, see paragraphs (b)(2) ("eligible property"), (b)(3) ("vintage account"), (b)(4) ("asset depreciation range" and "asset guideline class"), (b)(5)(iii)(*a*) ("used property"), (b)(6)(i) ("public utility property"), (c)(1)(v) ("original use"), (c)(1)(vi) ("unadjusted basis" and "adjusted basis"), (c)(2)(ii) ("modified half-year convention"), (c)(2)(iii) ("half-year convention"), (d)(1)(i) ("salvage value"), (d)(2)(ii) ("repair allowance"), (d)(2)(iv) ("excluded addition"), (d)(2)(v) ("property improvement"), (d)(3)(ii) ("ordinary retirement" and "extraordinary retirement"), and (e)(1) ("first placed in service") of this section.

(b) *Reasonable allowance using asset depreciation ranges*—(1) *In general.* The allowance for depreciation of eligible property (as defined in subparagraph (2) of this paragraph) to which the taxpayer elects to apply this section will be determined as provided in paragraph (c) of this section and shall constitute the reasonable allowance for depreciation of such property under section 167(a).

(2) *Definition of eligible property.* For purposes of this section, the term "eligible property" means property which is subject to the alowance for depreciation provided by section 167(a) but only if—

(i) An asset guideline class and period are in effect for such property for the taxable year of election (see subparagraph (4) of this paragraph);

(ii) The property is tangible personal property, or is other tangible property (not including a building or its structural components) which (*a*) is used as an integral part of manufacturing, production, or extraction or of furnishing transportation, communications, electrical energy, gas, water, or sewage disposal services, or (*b*) constitutes research or storage facilities used in connection with any of the activities described in (*a*) of this subdivision (but see subparagraph (6) of this paragraph for special rule for certain public utility property as defined in section 167(l)(3)(A));

(iii) The property is first placed in service (as described in paragraph (e)(1) of this section) by the taxpayer after December 31, 1970 (but see subparagraph (7) of this paragraph for special rule where there is a mere change in the form of conducting a trade or business);

(iv) During the taxable year of election, the property is predominantly used (within the meaning of paragraph (g)(1)(i) and (iii) of § 1.48–1) within the United States (as defined in section 7701 (a)(9)), or meets the requirements of paragraph (g)(2) of § 1.48–1 (relating to exceptions to the requirement of predominant use). See subparagrap h(5)(v) of this paragraph for special rule in the case of change in predominant use.

The language used in subdivision (ii) of this subparagraph shall have the same meaning as when used in section 1245 (a)(3)(A) and (B). The term "eligible property" includes any property which meets the requirements of this subparagraph, whether such property is new property, "used property", or is a "property improvement" (as described in paragraph (d)(2)(v) of this section). For the treatment of expenditures for the repair, maintenance, rehabilitation or improvement of property in a vintage account, see paragraph (d)(2)(v) of this section.

(3) *Requirement of vintage accounts*—(i) *In general.* For purposes of this section, a "vintage account" is a closed-end depreciation account containing eligible property to which the taxpayer elects to apply this section, first placed in service by the taxpayer during the taxable year of election. The "vintage" of an account refers to the taxable year during which the eligible property in the account is first placed in service by the taxpayer. Such an account will consist of an asset, or a group of assets, within a single asset guideline class established pursuant to subparagraph (4) of this paragraph and may include only eligible property. Each item of eligible property (except a property improvement as described in paragraph (d)(2)(v) of this section) to which the taxpayer elects to apply this section, first placed in service by the taxpayer during the taxable year of election, shall be placed in a vintage account of the taxable year of election. For special rules regarding property improvements, see paragraph (d)(2)(v) of this section. Any number of vintage accounts of a taxable year may be established. More than one account of the same vintage may be established for different assets of the same asset guideline class.

(ii) *Special vintage accounts.* Property the original use of which does not commence with the taxpayer may not be placed in a vintage account which contains property the original use of which commences with the taxpayer. Property described in section 167(f)(2) may not be placed in a vintage account with property not described in section 167(f)(2). Property described in section 179(d)(1) may not be placed in a vintage account with property not described in section 179(d)(1). Property which qualifies for treatment under section 263(e) may not be placed in a vintage account with property which does not qualify for treatment under section 263(e). For special rule for property acquired in a transaction to which section 381(a) applies, see paragraph (e)(3)(i) of this section. For additional rules with respect to accounting for eligible property, see paragraph (e) of this section.

(4) *Asset depreciation ranges*—(i) *Selection of asset depreciation period.* An election shall specify for each vintage account of the taxable year of election the period selected by the taxpayer from the asset depreciation range for the assets in such account. For purposes of this section the term "asset guideline class" means a category of assets (including any subcategory of assets) for which a separate guideline period is in effect as provided in subdivision (ii) of this subparagraph. Any period within the asset depreciation range for the assets in a vintage account which is a whole number of years, or a whole number of years plus a half year, may be selected. The lower limit of the asset depreciation range for a vintage account is 80 percent of the asset guideline period established for the assets in the account, and the upper limit of such range is 120 percent of such asset guideline period, determined in each case by rounding any fractional part of a year to the nearer of the nearest whole year or the nearest half year.

(ii) *Establishment of asset guideline classes and periods.* The asset guideline classes and periods in effect for any taxable year beginning before the effective date of the first supplemental asset guideline classes and periods established pursuant to this section are set forth in Part I of Revenue Procedure 62–21, 1962–2 C.B. 418 (as supplemented in 1963–2 C.B. 740, 1964–1 C.B. 639, and 1964–1 C.B. 640). Other asset guideline classes and periods will from time to time be established, supplemented and revised with express reference to this section. These asset guideline classes and periods will be published in the Internal Revenue Bulletin. The asset guideline classes, the asset guideline periods, and the asset depreciation ranges determined from such periods in effect on the first day of a taxable year of election shall apply to all vintage accounts of such taxable year, and the reasonable allowance for depreciation of property in such accounts shall not be changed to reflect any subsequent supplement or revision of the asset guideline classes or periods.

(iii) *Examples.* The principles of this subparagraph may be illustrated by the following examples:

Example (1). Corporation X purchases a bulldozer for use in its construction business. The bulldozer is first placed in service in 1972. Since the bulldozer is tangible personal property, predominantly used within the United States, for which an asset guideline class and period have been established, the bulldozer is eligible property. The bulldozer is covered under asset guideline class 2(a) of Group Two under Revenue Procedure 62–21, and the asset guideline period is 5 years. Thus, the asset depreciation range is 4–6 years.

Example (2). In 1972 Corporation Y first places in service a factory building. Although an asset guideline class and period are in effect for the property and it is predominantly used within the United States, it is not eligible property, since it does not meet the requirements of subparagraph (2)(ii) of this paragraph.

(5) *Requirements of election*—(i) *In general.* Except as otherwise provided in paragraph (d)(2) of this section dealing with property improvements, no provision of this section shall apply to any property other than eligible property to which the taxpayer elects, in accordance with this section, to apply this section. For the time and manner of election, see paragraph (f) of this section. Except as otherwise provided in subdivisions (iv) and (v) of this subparagraph, a taxpayer's election to apply this section may not be revoked or modified after the last day prescribed for filing the election. Thus, for example, after such day, a taxpayer may not cease to apply this section to property included in the election, establish different vintage accounts for the taxable year of election, select a different period from the asset depreciation range for any such account, or adopt a different first-year convention for any such account.

(ii) *Property required to be included in election.* Except as otherwise provided in subdivision (iii) of this subparagraph dealing with certain used property, in subdivision (iv) of this subparagraph dealing with property subject to special depreciation or amortization, and in paragraph (e)(3)(i) of this section dealing with transactions to which section 381(a) applies, if the taxpayer elects to apply this section to any eligible property first placed in service by the taxpayer during the taxable year of election, the election shall apply to all such eligible property, whether placed in service in a trade or business or held for production of income.

(iii) *Special 10 percent used property rule.* (*a*) If the unadjusted basis of eligible "used property" first placed in service by the taxpayer during the taxable year of election exceeds 10 percent of the unadjusted basis of all eligible property first placed in service during the taxable year of election, the taxpayer may exclude all (but not less than all) the eligible used property from the election to apply this section. For the purposes of this section, the term "used property" means property the original use of which does not commence with the taxpayer.

(*b*) Solely for the purpose of determining whether the 10 percent rule of this subdivision is satisfied, (*1*) used property first placed in service during the taxable year and subject to special depreciation or amortization provisions described in subdivision (iv) of this subparagraph and (*2*) property acquired during the taxable year in a transaction to which section 381(a) applies, shall all be treated as used property regardless of whether such property would be treated as new property under section 167(c) and the regulations thereunder.

(iv) *Property subject to special method of depreciation or amortization.* (*a*) An election to apply this section shall not include any eligible property in an asset guideline class if for the taxable year of election the taxpayer computes depreciation under the unit of production, retirement or machine hour method or any other method not described in section 167(b) (1), (2), or (3) for any eligible property first placed in service during the taxable year in such asset guideline class. In addition, an election to apply this section shall not include eligible property for which, for the taxable year of election, the taxpayer computes depreciation under section 167(k), or computes amortization under sections 169, 184, 185, 187, or paragraph (b) of § 1.162–11.

(*b*) If the taxpayer has elected to apply this section to eligible property described in section 167(k), 169, 184, 185, or 187 and the taxpayer thereafter computes depreciation or amortization for such property for any taxable year in accordance with section 167(k), 169, 184, 185, or 187, then the election to apply this section to such property shall terminate as of the beginning of the taxable year for which depreciation or amortization is computed under such section. Application of this section to such property for any period prior to the termination date will not be affected by the termination. The unadjusted basis of the property shall be removed as of the termination date from the unadjusted basis of the vintage account. The depreciation reserve established for the account shall be reduced by the depreciation allowable for the property, computed in the manner prescribed in paragraph (c)(1)(vi)(*b*) of this section for determination of the adjusted basis of the property and shall be further adjusted in the manner prescribed in paragraph (d)(3)(vi) of this section. See paragraph (d)(3)(vii)(*d*) of this section for treatment of salvage value when property is removed from a vintage account.

(v) *Change in predominant use of eligible property.* If eligible property in a vintage account ceases to meet the requirements of paragraph (g)(1) (i) and (iii) or (g)(2) of § 1.48–1 (relating to requirement of predominant use within the United States) for a taxable year, the election to apply this section to such property shall terminate as of the beginning of such taxable year. The application of this section to such property for a period prior to the termination date will not be affected. The unadjusted basis of the property shall be removed as of the termination date from the unadjusted basis of the vintage account. The depreciation reserve established for the account shall be reduced by the depreciation allowable for the property, computed in the manner prescribed in paragraph (c)(1)(vi)(*b*) of this section for determination of the adjusted basis of the property and shall be further adjusted in the manner prescribed in paragraph (d)(3)(vi) of this section. See paragraph (d)(3)(vii)(*d*) of this section for treatment of salvage value when property is removed from a vintage account.

(6) *Special rule for certain public utility property*—(i) *Requirement of normalization in certain cases.* Under section 167(l), in the case of public utility property (as defined in section 167(l)(3)(A)), if the taxpayer—

(*a*) Is entitled to use a method of depreciation other than a "subsection (l) method" of depreciation (as defined in section 167(l)(3)(F)) only if it uses the "normalization method of accounting" (as defined in section 167(l)(3)(G)) with respect to such property, or

(*b*) Is entitled to use only a "subsection (l) method" of depreciation, such property shall be eligible property (as defined in subparagraph (2) of this paragraph) only if the taxpayer normalizes the tax deferral resulting from the election to apply this section.

(ii) *Normalization.* The taxpayer will be considered to normalize the tax deferral resulting from the election to apply this section only if it computes its tax expense for purposes of establishing its cost of service for rate making purposes and for reflecting operating results in its regulated books of account using a depreciation period no less than the lesser of—

(*a*) 100 percent of the asset guideline period as described in subparagraph (4)(ii) of this paragraph, or

(*b*) The period for computing its depreciation expense to reflect operating results on its regulated books of account, and makes adjustments to a reserve to reflect the deferral of taxes resulting from an election to apply this section. A determination whether the taxpayer is considered to normalize (within the meaning of the preceding sentence) the tax deferral resulting from an election to apply this section shall be made in a manner consistent with the principles for determining whether a taxpayer is using the "normalization method of accounting" (within the meaning of section 167(l)(3)(G)).

(iii) *Failure to normalize.* If the taxpayer has elected to apply this section to any eligible public utility property in accordance with subdivision (i) of this subparagraph and the taxpayer thereafter fails to normalize the tax deferral resulting from the election to apply this section, the election to apply this section to such property shall terminate as of the beginning of the taxable year for which the taxpayer fails to normalize the tax deferral resulting from the election to apply this section. Application of this section to such property for any period prior to the termination date will not be affected by the termination. The unadjusted basis of the property shall be removed as of the termination date from the unadjusted basis of the vintage account. The depreciation reserve established for the account shall be reduced by the depreciation allowable for the property, computed in the manner prescribed in paragraph (c)(1)(vi)(*b*) of this section for determination of the adjusted basis of the property and shall be further adjusted in the manner prescribed in paragraph (d)(3)(vi) of this section. See paragraph (d)(3)(vii)(*d*) of this section for treatment of salvage

value when property is removed from a vintage account.

(7) *Mere change in form of conducting a trade or business.* Property which was first placed in service by the transferor before January 1, 1971, shall not be eligible property if such property is first placed in service by the transferee after December 31, 1970, by reason of a mere change in the form of conducting a trade or business in which such property is used. A mere change in the form of conducting a trade or business in which such property is used will be considered to have occurred if—

(i) The transferor (or in a case where the transferor is a partnership, estate, trust, or corporation, the partners, beneficiaries, or shareholders) of such property retains a substantial interest in such trade or business, or

(ii) The basis of such property in the hands of the transferee is determined in whole or in part by reference to the basis of such property in the hands of the transferor.

This subparagraph shall not apply to a transfer of property to which paragraph (e)(3)(i) (relating to transfers to which section 381(a) applies) applies. For purposes of this subparagraph, a transferor (or in a case where the transferor is a partnership, estate, trust, or corporation, the partners, beneficiaries, or shareholders) shall be considered as having retained a substantial interest in the trade or business only if, after the change in form, his (or their) interest in such trade or business is substantial in relation to the total interest of all persons in such trade or business. This subparagraph shall apply to property first placed in service prior to January 1, 1971, held for the production of income (within the meaning of section 167(a)(2)) as well as to property held in a trade or business.

(c) *Manner of determining allowance*—(1) *In general*—(i) *Computation of allowance.* The allowance for depreciation of property in a vintage account shall be determined in the manner specified in this paragraph by using the method of depreciation adopted by the taxpayer for the account and a rate based upon the period for the account selected by the taxpayer from the asset depreciation range. (For limitations on methods of depreciation permitted with respect to property, see section 167(c) and subdivision (v) of this subparagraph.) In applying the method of depreciation adopted by the taxpayer, the annual allowance for depreciation of a vintage account shall be determined without adjustment for the salvage value of the property in such account except that no account may be depreciated below the reasonable salvage value of the account. (For rules regarding estimation and treatment of salvage value, see paragraphs (d)(1) and (3)(vii) of this section.) Regardless of the method of depreciation adopted by the taxpayer, the depreciation allowable for a taxable year with respect to a vintage account may not exceed the amount by which (as of the beginning of the taxable year) the unadjusted basis of the account exceeds (*a*) the reserve for depreciation established for the account plus (*b*) the salvage value of the account. The unadjusted basis of a vintage account is defined in subdivision (vi) of this subparagraph. The adjustments to the depreciation reserve are described in subdivision (ii) of this subparagraph. The annual allowance for depreciation of a vintage account using the straight line method of depreciation shall be determined by dividing the unadjusted basis of the vintage account (without reduction for salvage value) by the number of years in the asset depreciation period selected for the account. See subdivision (iii) of this subparagraph for the manner of computing the depreciation allowance following a change from the declining balance method or the sum of the years-digits method to the straight line method. In the case of the sum of the years-digits method, the annual allowance for depreciation of a vintage account shall be computed by multiplying the unadjusted basis of the vintage account (without reduction for salvage value) by a fraction, the numerator of which changes each year to a number which corresponds to the years remaining in the asset depreciation period selected for the account (including the year for which the allowance is being computed) and the denominator of which is the sum of all the years digits corresponding to the asset depreciation period selected for the account. The annual allowance for depreciation of a vintage account using a declining balance method is determined by applying a uniform rate to the excess of the unadjusted basis of the vintage account over the depreciation reserve established for that account. The rate under the declining balance method may not exceed twice the straight line rate based upon the asset depreciation period for the vintage account. The allowance for depreciation under this paragraph (including any depreciation allowed under section 179) constitute the amount of depreciation allowable for all purposes of this section.

(ii) *Establishment of depreciation reserve.* The taxpayer must establish a depreciation reserve for each vintage account. The amount of the depreciation reserve for a vintage account must be stated on each income tax return on which depreciation with respect to such account is determined under this section. The depreciation reserve for a vintage account consists of the accumulated depreciation allowable with respect to the vintage account, increased by the adjustments for ordinary retirements prescribed by paragraph (d)(3)(iii), by the adjustments for property improvements prescribed by paragraph (d)(3)(vi), and by the adjustments for reduction of the salvage value of a vintage account prescribed by paragraph (d)(3)(vii)(*c*) of this section, and decreased by the adjustments for property improvements prescribed by paragraph (d)(2)(v) of this section, by the adjustments for extraordinary retirements and certain special retirements as prescribed by (d)(3)(iv) and (v) of this section, by the adjustments for the amount of the reserve in excess of the unadjusted bases of a vintage account prescribed by paragraph (d)(3)(viii)(*a*), and by the adjustments for property removed from a vintage account prescribed by paragraph (b)(5)(iv) (*b*) and (v) and paragraph (b)(6)(iii) of this section. The adjustments to the depreciation reserve for the cost of property improvements paid or incurred during the taxable year and for ordinary retirements during the taxable year shall be made as of the beginning of the taxable year. The adjustments to the depreciation reserve for extraordinary retirements shall be made as of the date the retirement is treated as having occurred in accordance with the first-year convention (described in subparagraph (2) of this paragraph) adopted by the taxpayer for the vintage account. The adjustment to the depreciation reserve for property removed from a vintage account in accordance with paragraph (b)(5)(iv) and (v) and paragraph (b)(6)(iii) of this section shall be made as of the beginning of the taxable year. The depreciation reserve of a vintage account may not be decreased below zero.

(iii) *Consent to change in method of depreciation.* During the asset depreciation period for a vintage account, the taxpayer is permitted to change under this section from a declining balance method of depreciation or the sum of the years-digits method of depreciation to the straight line method of depreciation with respect to such account. The provisions of § 1.167(e)–1 shall not apply to such change. The change in method applies to all property in the vintage account and must be adhered to for the entire taxable year of the change. When the change is made, the annual allowance for depreciation of the vintage account shall be determined by dividing the adjusted basis of the vintage account (without reduction for salvage value) by the number of years remaining (at the time as of which the change is made) in the asset depreication period selected for the account. However, the depreciation allowable for any taxable year following such a change may not exceed an amount determined by dividing the unadjusted basis of the vintage account (without reduction for salvage value) by the number of years in the asset depreciation period selected for the account. The taxpayer shall furnish a statement setting forth the vintage accounts for which the change is made with the income tax return filed for the taxable year of the change.

(iv) *Limitation of annual allowance after expiration of the asset depreciation period.* The annual allowance for depreciation for any taxable year beginning after the end of the asset depreciation period selected for the vintage account shall be determined by dividing the unadjusted basis of the vintage account (without reduction for salvage value) by

the number of years in the asset depreciation period selected for the account. However, the depreciation allowable for any such taxable year may not exceed the amount by which (as of the beginning of the taxable year) the unadjusted basis of the vintage account exceeds (*a*) the reserve for depreciation established for such account plus (*b*) the salvage value of the account.

(v) *Limitations on methods.* The same method of depreciation must be adopted for all property in a single vintage account. Generally, the method of depreciation which may be adopted is subject to the limitations contained in section 167(c). In the case of a vintage account for which the taxpayer has selected an asset depreciation period of 3 years or more and which contains property the original use of which commences with the taxpayer, any method of depreciation described in section 167(b) (1), (2), or (3) may be adopted. If the vintage account contains property the original use of which does not commence with the taxpayer, or if the asset depreciation period for the account selected by the taxpayer is less than 3 years, a method of depreciation described in section 167(b) (2) or (3) may not be adopted for the account. However, the declining balance method using a rate not in excess of 150 percent of the straight line rate based upon the asset depreciation period for the vintage account may be adopted for the account even if the original use of the property does not commence with the taxpayer provided the asset depreciation period for the account selected by the taxpayer is at least 3 years. The term "original use" means the first use to which the property is put, whether or not such use corresponds to the use of such property by the taxpayer. (See § 1.167(c)-1.)

(vi) *Unadjusted and adjusted basis.* (*a*) For purposes of this section, the unadjusted basis of an asset is its costs or other basis without any adjustment for depreciation, amortization, or a property improvement (as defined in paragraph (d) (2) (v) of this section), but with other adjustments required under section 1016 or other applicable provisions of law. The unadjusted basis of a property improvement (as defined in paragraph (d) (2) (v) of this section) is its cost or other basis without adjustment for depreciation or amortization, but with other adjustments required under section 1016 or other applicable provisions of law. The unadjusted basis of a vintage account is the total of the unadjusted bases of all the assets in the account.

(*b*) The adjusted basis of a vintage account is the amount by which the unadjusted basis of the account exceeds the reserve for depreciation established for the account. The adjusted basis of an asset (other than a property improvement the cost or other basis of which was subtracted from the depreciation reserve) in a vintage account is the amount by which the unadjusted basis of the asset exceeds the amount of depreciation allowable for the asset computed by using the method of depreciation and the rate (including any depreciation allowed under section 179 for the asset) applicable to the account. The adjusted basis of a property improvement the cost of which was subtracted from the depreciation reserve for a vintage account is the amount by which the unadjusted basis of the property improvement exceeds the amount of depreciation allowable for the property improvement computed by using the method of depreciation and the rate applicable to the account beginning with the taxable year in which the cost of the property improvement is paid or incurred. For purposes of this subdivision, the depreciation allowable for an asset shall include, to the extent identifiable, the amount of proceeds previously added to the depreciation reserve in accordance with paragraph (d) (3) (iii) of this section upon the retirement of any portion of such asset.

(vii) *Example.* Principles of this section may be illustrated by the following example:

Example. (*a*) Taxpayer A has a multiple asset vintage account with an unadjusted basis of $1,000 and an estimated salvage value of $100. (See paragraph (d) (1) (i) of this section for determination of salvage value for an account after application of section 167(f).) A adopts the straight line method of depreciation with respect to the account and selects a 10-year asset depreciation period. Assume that A does not follow a practice of reducing the salvage value for the account in the amount of salvage value attributable to each retired asset in accordance with paragraph (d) (3) (vii) of this section. The depreciation allowance for each of the first 4 years is $100, that is one-tenth multiplied by the unadjusted basis of $1,000, without reduction for salvage.

(*b*) In the fifth year of the asset depreciation period, three assets are sold in an ordinary retirement for $600. Thus, under paragraph (d) (3) (iii) of this section, the proceeds of the retirement are added to the depreciation reserve as of the beginning of the fifth year. Accordingly, the reserve, as of the beginning of the fifth year is $1,000, that is, $400 of depreciation as of the beginning of the year plus $600 from ordinary retirements. The salvage value is reduced to zero, since the proceeds of the ordinary retirement increase the depreciation reserve up to the unadjusted basis (see paragraphs (d) (1) (i) and (d) (3) (iii) of this section) and no depreciation is allowed for the fifth year.

(*c*) In the sixth year, another asset is sold in an ordinary retirement for $50. The full amount ($50) is reported as gain, without regard to the adjusted basis of the asset, and is subject to section 1245 (see paragraph (d) (3) (viii) of this section). No depreciation is allowable for the sixth year, since the depreciation reserve ($1,000) plus the salvage value (zero) equals the unadjusted basis ($1,000).

(*d*) In the seventh year the taxpayer makes a property improvement, which reduces the depreciation reserve by $300, and sells another asset in an ordinary retirement for $40. The $300 property improvement reduces the reserve as of the beginning of the year (see paragraph (c) (1) (ii) of this section) and the $40 proceeds from the ordinary retirement increase the reserve as of the beginning of the year. Thus, the reserve is reduced as of the beginning of the seventh year to $740 (that is, $1,000 minus $300 plus $40) and accordingly $100 of depreciation (that is, one-tenth multiplied by $1,000, the unadjusted basis of the account) is allowed for the seventh year. The $100 of depreciation allowed for the seventh year increases the reserve to $840 as of the close of the seventh year.

(*e*) In the eighth year, asset *X* is sold in an extraordinary retirement for $30 and gain or loss is recognized. Under the convention used by the taxpayer, the unadjusted basis of *X*, $100, is removed from the unadjusted basis of the vintage account as of the beginning of the eighth year and the depreciation reserve as of the beginning of such year is reduced to $770 by removing the depreciation applicable to asset *X*, $70 (see paragraph (d) (3) (iv)). The depreciation which is allowable under the straight line method for the eighth year is $90, that is one-tenth multiplied by $900 (the unadjusted basis of the account, $1,000, reduced by the unadjusted basis of *X*, $100). The depreciation allowed ($90) increases the depreciation reserve to $860.

(*f*) In the ninth year, an asset is sold in an ordinary retirement for $60. This increases the reserve to $920, and $20 is reported as gain without regard to the adjusted basis of the asset and is subject to section 1245. (See paragraph (d) (3) (viii) of this section.) No depreciation is allowable in the ninth year, since the sum of the depreciation reserve, $900, plus the estimated salvage value, zero, equals the unadjusted basis of the account, $900.

(*g*) In the tenth year, the taxpayer makes a $200 property improvement which decreases the reserve to $700. The depreciation allowance in the tenth and eleventh year is $90, that is, one-tenth multiplied by $900, the unadjusted basis of the account.

(*h*) At the beginning of the twelfth year, the depreciation reserve is $880. In the twelfth year, the depreciation allowable is only $20, that is, the difference between the unadjusted basis of the account ($900) and the depreciation reserve ($880), plus salvage value (zero).

(2) *Conventions applied to additions and retirements*—(i) *In general.* The allowance for depreciation of a vintage account (whether an item account or a multiple asset account) shall be determined by applying one of the conventions described in subdivision (ii) and (iii) of this subparagraph. (For the manner of applying a convention in the case of taxable years beginning before and ending after December 31, 1970, see subparagraph (3) of this paragraph.) The same convention must be adopted for all vintage accounts of a taxable year, but the same convention need not be adopted for the vintage accounts of another taxable year. An election to apply this section must specify the convention adopted. (See paragraph (f) of this section for information required in making the election.) The convention adopted by the taxpayer is a method of accounting for purposes of section 446, but the consent of the Commissioner will be deemed granted to make an annual adoption of either of the conventions described in subdivision (ii) and (iii) of this subparagraph.

(ii) *Modified half-year convention.* The depreciation allowance for a vintage account for which the taxpayer adopts the "modified half-year convention"

shall be determined by treating: (*a*) all property in such account which is placed in service during the first half of the taxable year as placed in service on the first day of the taxable year; and (*b*) all property in such account which is placed in service during the second half of the taxable year as placed in service on the first day of the second half of the taxable year. The depreciation allowance for a vintage account for a taxable year in which there is an extraordinary retirement (as defined in paragraph (d)(3)(ii) of this section) is determined by treating all extraordinary retirements from such account during the first half of the taxable year as occurring on the first day of the taxable year and all extraordinary retirements from such account during the second half of the taxable year as occurring on the first day of the last half of the taxable year. Thus, the depreciation allowance for such account for the taxable year will consist of an amount based on: the unadjusted basis of the account for the first half of the taxable year after adjustment for extraordinary retirements during the first half of the taxable year, plus the unadjusted basis of the account for the second half of the taxable year after adjustment for extraordinary retirements during the second half of the taxable year. This convention may also be applied by assuming, with respect to all vintage accounts of a taxable year, that all additions occur on the first day of the second quarter of the taxable year and that all extraordinary retirements occur on the first day of the second quarter of the taxable year.

(iii) *Half-year convention.* The depreciation allowance for a vintage account for which the taxpayer adopts the "half-year convention" shall be determined by treating all property in the account as placed in service on the first day of the second half of the taxable year and by treating all extraordinary retirements (as defined in paragraph (d)(3)(ii) of this section) from the account as occurring on the first day of the second half of the taxable year.

(iv) *Rules of application.* The first-year convention adopted for a vintage account must be consistently applied to all additions to and all extraordinary retirements from such account. See paragraph (d)(3)(ii) and (iii) for definition and treatment of ordinary retirements. For purposes of this subparagraph, the second half of a taxable year shall be deemed to commence on the beginning of the first day of a calendar month which is the closest such first day to the middle of the taxable year. The first half of the taxable year shall be deemed to expire at the close of the last day of a calendar month which is the closest such last day to the middle of the taxable year. Rules consistent with the preceding two sentences shall apply for purposes of determining the commencement of the second quarter of the taxable year and the expiration of the first quarter of the taxable year. If a taxable year consists of a period which includes only 1 calendar month, the first half of the taxable year shall be deemed to expire on the first day which is nearest to the midpoint of the month, and the second half of the taxable year shall begin the day after the expiration of the first half of the month.

Asset	Placed in service	Unadjusted basis
W	April 1, 1971	$5,000
X	June 30, 1971	8,000
Y	July 15, 1971	12,000
Z	December 20, 1971	60,000

(3) *Taxable years beginning before and ending after December 31, 1970.* In the case of a taxable year which begins before January 1, 1971, and ends after December 31, 1970, property first placed in service after December 31, 1970, but treated as first placed in service before January 1, 1971, by application of a convention described in subparagraph (2) of this paragraph shall be treated as provided in this subparagraph. The depreciation allowed (or allowable) for the taxable year shall consist of the depreciation allowed (or allowable) for the period before January 1, 1971, determined without regard to this section plus the amount allowable for the period after December 31, 1970, determined under this section. However, neither the modified half-year convention described in subparagraph 2(ii) of this paragraph, nor the half-year convention described in subparagraph 2(iii) of this paragraph may be applied with respect to property placed in service after December 31, 1970, to allow depreciation for any period prior to January 1, 1971, unless such application is consistent with the convention applied by the taxpayer with respect to property placed in service in such taxable year prior to January 1, 1971.

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

Example (1). Taxpayer A, a calendar year taxpayer, places new property in service in a trade or business as follows:

(i) Taxpayer A adopts the modified half-year convention described in subparagraph (2)(ii) of this paragraph. Assets *W*, *X*, and *Y* are placed in a multiple asset account for which the asset depreciation range is 8 to 12 years. *A* selects 8 years, the minimum asset depreciation period with respect to such assets, and adopts the declining balance method of depreciation using a rate twice the straight line rate (computed without reduction for salvage). The annual rate under this method using a period of 8 years is 25 percent. The depreciation allowance for assets *W* and *X* for 1971 is $3,250, a full year's depreciation under the modified half-year convention (that is, basis of $13,000 (unreduced by salvage) multiplied by 25 percent). The depreciation allowance for asset *Y* is $1,500, a half year's depreciation under the modified half-year convention (that is, basis of $12,000 (unreduced by salvage) multiplied by 25 percent, then multiplied by one-half since the property is entitled to only a half year's depreciation).

(ii) The taxpayer places asset *Z* in an item account and adopts the sum of the years-digits method. The asset depreciation range for such asset is 4 to 6 years and the taxpayer selects an asset depreciation period of 5 years. The depreciation allowance for asset *Z* in 1971 is $10,000 (that is, basis of $60,000 (unreduced by salvage) multiplied by five-fifteenths, the appropriate fraction using the sum of the years-digit method, then multiplied by one-half since only one half year's depreciation is allowable under the convention).

Example (2). The facts are the same as in example (1), except that the taxpayer adopts the half-year convention described in subparagraph (2)(iii) of this paragraph. The depreciation allowances in example (1) with respect to assets *Y* and *Z* are not affected. However, assets *W* and *X* are entitled to a depreciation allowance for only a half year. Thus, the depreciation allowance for assets *W* and *X* for 1971 is $1,625 (that is, one-half of the $3,250 allowance computed in example (1)).

Example (3). The taxpayer during his taxable year which begins April 1, 1970, and ends March 31, 1971, places new property in service in a trade or business as follows:

Assets:	*Placed in service*
A	April 30, 1970.
B	December 15, 1970.
C	January 1, 1971.

The taxpayer had used a convention with respect to assets placed in service in prior taxable years whereby assets placed in service during the first half of the year are treated as placed in service on the first day of such year and assets placed in service in the second half of the year are treated as placed in service on the first day of the following year. If the taxpayer selects the modified half-year convention, 1 year's depreciation is allowable on asset *A* determined without regard to this section. No depreciation is allowable for asset *B*. No depreciation is allowable for asset *C* for the period prior to January 1, 1971, but one-fourth year's depreciation is allowable on asset *C* determined under this section.

Example (4). Assume the same facts as in Example (3) except that the taxpayer had used a convention with respect to assets placed in service in prior taxable years whereby such assets are treated as placed in service at the midpoint of the year. If the taxpayer selects the modified half-year convention, one-half year's depreciation is allowable for asset *A* determined without regard to this section. One-half year's depreciation is allowable for asset *B* determined without regard to this section. One-fourth year's depreciation is allowable for asset *C* determined without regard to this section and one-fourth year's depreciation is allowable for asset *C* determined under this section.

Example (5). The taxpayer during his taxable year which begins August 1, 1970, and ends July 31, 1971, places new property in service in a trade or business as follows:

Asset:	*Placed in Service*
A	August 1, 1970.
B	January 15, 1971.
C	June 30, 1971.

The taxpayer had used a convention with respect to assets placed in service in prior taxable years whereby assets placed in service during the first half of the year are treated as placed in service on the first day of such year and assets placed in service in the second half of the year are treated as placed in service on the first day of the following year. If the taxpayer selects the modified half-year convention, one full year's depreciation is allowable for asset *A* determined without regard to this section. Five months

depreciation is allowable for asset *B* determined without regard to this section and seven months depreciation is allowable for asset *B* determined under this section. One-half year's depreciation is allowable for asset *C* determined under this section. The taxpayer may not apply the modified half-year convention by assuming all additions occurring the first day of the second quarter of the taxable year since such application is not consistent with the convention applied with respect to assets placed in service in prior taxable years.

Example (6). Assume the same facts as in example (5) except that the taxpayer applies a convention with respect to assets placed in service prior to January 1, 1971, whereby such assets are treated as placed in service at the mid-point of the year. If the taxpayer selects the modified half-year convention and applies such convention by treating all additions as occurring on the first day of the second quarter of the taxable year, one-half year's depreciation is allowable for asset *A* determined without regard to this section, seven months depreciation is allowable for asset *B* determined under this section, and seven months depreciation is allowable for asset *C* determined under this section.

Example (7). (i) Taxpayer *B* reports income on the basis of a taxable year ending March 31. *B* adopts the declining balance method of depreciation using a rate twice the straight-line rate (computed without reduction for salvage) with respect to new property, which is first placed in service by *B* in the taxable year ending March 31, 1971, as follows:

Asset	Placed in service	Unadjusted basis
W	May 15, 1970	$8,000
X	November 1, 1970	3,000
Y	January 20, 1971	4,000
Z	March 10, 1971	16,000

(ii) B's depreciation deduction with respect to assets W and X for the taxable year ending March 31, 1971, will be determined without regard to this section, since assets W and X are not eligible property. Assume that B adopts for assets W and X a convention under § 1.167(a)-10 which treats assets placed in service during the first half of the year as placed in service on the first day of such year, and which treats assets placed in service during the second half of the year as placed in service on the first day of the following year. Using this convention, B computes a full year's depreciation for asset W and no depreciation for asset X. Assets W and X have a guideline life of 10 years and no salvage value. The depreciation allowance for asset W is $1,600 (that is, 20 percent multiplied by basis of $8,000). No depreciation is allowed for asset X in the taxable year ending March 31, 1971.

(iii) Assets Y and Z are eligible property and B makes an election under this section. B selects an asset depreciation period of 8 years from an asset depreciation range of 8 to 12 years. B adopts the modified half-year convention described in subparagraph (2)(ii) of this paragraph. Thus, assets Y and Z would be treated as placed in service on October 1, 1970 (that is, the first day of the second half of the taxable year), but for the special limitation in subparagraph (3) of this paragraph. The selection of an 8-year asset depreciation period only applies for the portion of the taxable year after December 31, 1970. Further, no depreciation is allowable for assets Y and Z for the period prior to January 1, 1971, since B selected a convention for assets W and X which treats assets placed in service during the second half of the year as placed in service on the first day of the following year. The depreciation allowance for the period from January 1, 1971, through March 31, 1971, is computed using a rate based upon the asset depreciation period of 8 years selected by the taxpayer, and the depreciation allowance for assets Y and Z for such period is $1,250 (that is, basis of $20,000, multiplied by 25 percent then multiplied by one-fourth, the portion of the taxable year to which the election under this section applies).

(d) *Special rules for salvage, repairs, and retirements*—(1) *Salvage value*—(i) *In general.* For purposes of this section the term "salvage value" means gross salvage value (that is, the amount expected to be realized, without reduction for the cost of removal, dismantling, demolition, or similar operations) less the amount, if any, by which the gross salvage value taken into account is reduced by application of section 167(f). The gross salvage value of each vintage account of the taxable year of election shall be estimated by the taxpayer at the time the election is made, upon the basis of all the facts and circumstances existing at the close of the taxable year of election. The taxpayer shall specify the amount, if any, by which gross salvage value taken into account is reduced by application of section 167(f). See paragraph (f)(2) of this section for requirement that the election specify the estimated salvage value for each vintage account of the taxable year of election. The salvage value estimated by the taxpayer will not be redetermined merely as a result of fluctuations in price levels. Salvage value for a vintage account need not be established or increased as a result of a property improvement as described in subparagraph (2)(v) of this paragraph. Generally, gross salvage value is the amount which is estimated will be realized upon a sale or other disposition of the property in the vintage account when it is no longer useful in the taxpayer's trade or business or in the production of his income and is to be retired from service. If a taxpayer customarily sells or otherwise disposes of property at a time when such property is still in good operating condition, the gross salvage value of such property is the amount expected to be realized upon such sale or disposition, and under certain circumstances, as where such propery is customarily sold at a time when it is still relatively new, the gross salvage value may constitute a relatively large proportion of the unadjusted basis of such property. In no case may a vintage account be depreciated below a reasonable salvage value after taking into account any reduction in salvage value permitted by section 167(f). Generally, as provided in section 167(f), a taxpayer may reduce the amount of gross salvage value of a vintage account by an amount which does not exceed 10 percent of the unadjusted basis of the personal property (as defined in section 167(f)(2)) in the account. See paragraph (b)(3)(ii) of this section for requirement of separate vintage accounts for personal property described in section 167(f)(2).

(ii) *Limitation on adjustment of salvage.* The taxpayer's estimate of the salvage value for a vintage account will be deemed to be reasonable and will not be adjusted unless there is a final determination of an amount of salvage value for the account which exceeds the taxpayer's estimate of salvage value for the vintage account by an amount greater than 10 percent of the unadjusted basis of the account at the close of the taxable year in which the account is established. If there is a final determination of an amount of salvage value for a vintage account which does exceed the taxpayer's estimate of the salvage value for the account by more than 10 percent, or if the taxpayer follows the practice of understating his estimates of salvage value to take advantage of this subdivision, an adjustment will be made by increasing the taxpayer's estimated salvage value of the account by an amount equal to the difference between the salvage value as finally determined and the taxpayer's estimated salvage value. For purposes of this subdivision, the Commissioner's determination of the reasonable salvage values of an account shall constitute the final determination unless there is a determination within the meaning of section 1313(a)(1).

(iii) *Examples.* The principles of this subparagraph may be illustrated by the following examples in which it is assumed that the taxpayer has not followed a practice of understating his estimates of salvage value:

Example (1). Taxpayer B elects to apply this section to assets Y and Z, which are placed in a multiple asset vintage account for which the taxpayer selects an asset depreciation period of 8 years. The unadjusted basis of asset Y is $50,000 and the unadjusted basis of asset Z is $30,000. B estimates a gross salvage value of $55,000. The property qualifies under section 167(f)(2) and B reduces the amount of gross salvage taken into account by $8,000 (that is, 10 percent of $80,000) under section 167(f). Thus, B establishes a salvage value of $47,000 for the account. There is no basis for determining a gross salvage value for the account greater than $60,000 (which would result in a salvage value for the account of $52,000 after applying section 167(f)). Since the difference between $52,000 and $47,000 does not exceed 10 percent of the unadjusted basis of the account ($8,000), no adjustment will be made in the salvage value for the account.

Example (2). The facts are the same as in Example (1) except that B estimates a gross salvage value of $50,000. The difference between the taxpayer's estimated salvage value of $42,000 (that is, estimated gross salvage value, $50,000, minus the $8,000 reduction under section 167(f)), and the salvage value as finally determined, $52,000 (that is, gross salvage $60,000, minus the $8,000 reduction under section 167(f)), is $10,000. This difference exceeds 10 percent of the unadjusted basis of the vintage account, $8,000. In this case, the salvage value will be redetermined to be $52,000 that is the gross salvage value, $60,000, minus the $8,000 reduction under section 167(f).

(2) *Treatment of repairs*—(i) *In general.* Sections 162 and 263 provide general rules for the treatment of certain expenditures for the repair, maintenance, rehabilitation, and improvement

of property. In general, under those sections, expenditures which appreciably prolong the life of an asset, or materially increase its value or adapt it to a different use are capital expenditures. If an expenditure is treated as a capital expenditure under section 162 or 263, it is subject to the allowance for depreciation. On the other hand, in general, expenditures which do not appreciably prolong the life of an asset or materially increase it value may be deducted as an expense in the taxable year in which paid or incurred. Such expenditures, or a series of such expenditures, may have characteristics both of deductible expenses and capital expenditures. This subparagraph provides a simplified procedure for determining whether such expenditures with respect to property in a vintage account are to be treated as deductible expenses or capital expenditures.

(ii) *Repair allowance for vintage accounts.* For purposes of this section, the term "repair allowance" for a vintage account means, for each taxable year, an amount determined by dividing the unadjusted basis (as of the beginning of the taxable year) of the vintage account (without reduction for salvage value) by the number of years in the asset depreciation period selected for the account.

(iii) *Application of repair allowance.* Except as otherwise provided in subdivision (vi) of this subparagraph, if the taxpayer pays or incurs any expenditures during a taxable year for the repair, maintenance, rehabilitation, or improvement of property in a vintage account (other than for an "excluded addition" as described in subdivision (iv) of this subparagraph), the taxpayer must either—

(*a*) Treat an amount of all such expenditures in such taxable year with respect to property in a vintage account which does not exceed in total the repair allowance for that account as deductible repairs, and treat the excess of such expenditures in the manner described in subdivision (v) of this subparagraph, or

(*b*) Treat each of such expenditures in such taxable year as either a capital expenditure or as deductible repair in accordance with the principles of section 162 or 263, and treat the amount which would be required to be capitalized under section 162 or 263 in the manner described in subdivision (v) of this subparagraph.

The treatment of expenditures under this subparagraph for a taxable year for the accounts of all vintages shall be specified in the tax return filed for such taxable year. The treatment specified for a taxable year may not be changed after the time prescribed under paragraph (f) of this section for filing an election under this section for such taxable year. Except as otherwise provided in subdivision (vi) of this subparagraph, if the taxpayer treats any expenditures for repair, maintenance, rehabilitation, or improvement of property in a vintage account of a particular vintage under subdivision (iii)(*a*) of this subparagraph, he must apply this treatment to all such expenditures with respect to all accounts of that vintage. However, the taxpayer may treat expenditures under subdivision (iii)(*a*) of this subparagraph with respect to accounts of one particular vintage and treat expenditures under subdivision (iii)(*b*) of this subparagraph with respect to accounts of some other vintage. In addition, the taxpayer may treat expenditures with respect to accounts of a particular vintage under subdivision (iii)(*a*) of this subparagraph in one taxable year, and treat expenditures with respect to accounts of that vintage under subdivision (iii)(*b*) of this subparagraph in another taxable year.

(iv) *Definition of excluded addition.* The term "excluded addition" generally means (*a*) an expenditure for an additional identifiable unit of property, (*b*) an expenditure which substantially increases the productivity or capacity of an existing identifiable unit of property over its productivity or capacity when first acquired by the taxpayer, or (*c*) an expenditure which modifies an existing identifiable unit of property for a subture is distinguished from an expenditure for replacement of a part in an existing identifiable unit of property which does not substantially increase its productivity or capacity over its productivity or capacity when first acquired by the taxpayer or modify it for a substantially different use and which is paid or incurred in connection with the repair, maintenance, rehabilitation, or improvement of such property. For example, in the case of a vintage account of five automobiles, each automobile constitutes an identifiable unit of property. If the transmission of an automobile is replaced in order to repair, maintain, or rehabilitate the automobile, the new transmission is not an excluded addition. However, the addition of an air conditioner to the automobile is an excluded addition unless the air conditioner is a replacement of an existing air conditioner in the automobile. The replacement of one of the automobiles in the vintage account is an excluded addition. Further, for example, an expenditure for the replacement of a truck body with a substantially greater capacity than the body for which it was substituted on an existing truck chassis is also an excluded addition.

(v) *Treatment of property improvements.* The term "property improvement" means the amount of any expenditure for the repair, maintenance, rehabilitation, or improvement (other than for an excluded addition) of property in a vintage account which either: (*a*) exceeds the repair allowance (if the taxpayer treats such expenditures under subdivision (iii)(*a*) of this subparagraph); or (*b*) is treated as a capital expenditure under section 162 or 263 if the taxpayer treats such expenditures under subdivision (iii)(*b*) of this subparagraph. The amount of any property improvement paid or incurred during the taxable year with respect to the property in a vintage account shall be subtracted from the reserve for depreciation established for such vintage account, but the reserve for depreciation established for the vintage account shall not thereby be reduced below zero. The amount of any property improvement which is not subtracted from the reserve for depreciation under the preceding sentence shall be capitalized and recovered through the allowance for depreciation. If the amount of any property improvement is not subtracted from the reserve for depreciation in a taxable year, such amount shall be capitalized in a vintage account of the taxable year in which paid or incurred if the taxpayer elects to apply this section for the taxable year.

(vi) *Relationship to section 263(e).* Under section 263(e), certain expenditures which would otherwise be chargeable to capital account are treated as deductible repairs. A taxpayer may, for any taxable year, treat expenditures under subdivision (iii)(*a*) of this subparagraph and exclude from such treatment expenditures with respect to property in vintage accounts to which section 263(e) applies. See paragraph (b)(3)(ii) for requirement of separate vintage accounts for property which qualifies for treatment under section 263(e). If, however, the taxpayer for any taxable year treats any expenditures with respect to property in vintage accounts to which section 263(e) would apply under subdivision (iii)(*a*) of this subparagraph, section 263(e) shall not apply for such taxable year with respect to any such expenditures with respect to any such vintage accounts. If the taxpayer for any taxable year treats any expenditures with respect to property in vintage accounts to which section 263(e) applies under subdivision (iii)(*b*) of this subparagraph, then the amount which is treated as a deductible repair under section 162 or 263 shall be determined without regard to this section and will include the amount deductible under section 263(e). The term "property improvement" does not include any amount deducted under section 263(e).

(vii) *Records required.* The taxpayer must maintain records of all expenditures in connection with the repair, maintenance, rehabilitation, or improvement of property in each vintage account. No deduction will be allowed under the repair allowance rule of subdivision (iii)(*a*) of this subparagraph unless the taxpayer maintains records containing the following information:

(*a*) The vintage of the account,

(*b*) The unadjusted basis of the account and each asset in such account,

(*c*) The depreciation reserve for the account,

(*d*) The asset depreciation period selected for the account,

(*e*) The estimated gross salvage value for the account, and if the estimated gross salvage has been reduced by application of section 167(f), the amount of such reduction,

(*f*) An enumeration of the amount of all expenditures in connection with the vintage account either individually or by

some reasonable groupings or classifications, a brief indication of the nature of such expenditures or groupings or classifications and some reasonable indication of the times at which such expenditures were paid or incurred.

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

Example (1). Taxpayer A elects to apply this section to assets X and Y which are placed in a multiple asset vintage account for which A selects an asset depreciation period of 10 years. The unadjusted basis of asset X is $55,000 and the unadjusted basis of asset Y is $65,000. A adopts the straight line method of depreciation with respect to the account. A estimates a salvage value of zero and the salvage value as finally determined is zero. A elects to treat expenditures for the repair, maintenance, rehabilitation, and improvement of such assets under subdivision (iii) (*a*) of this subparagraph. The depreciation allowance for the first year is $12,000, that is, 1/10 of the unadjusted basis of $120,000. In year two, A incurs an expenditure of $20,000 for the rehabilitation of assets X and Y. An amount of $12,000 will be deductible in year two as a repair allowance and $8,000 will be subtracted from the depreciation reserve for the account as of the beginning of year two. Accordingly, the reserve as of the close of the second year is $16,000, that is, the $12,000 reserve at the beginning of year two, minus the $8,000 subtracted from the reserve as a property improvement, plus the $12,000 of depreciation allowed in year two. Assuming no further expenditures with respect to the account, and no retirements from the account, the taxpayer will be allowed $12,000 as a depreciation deduction in each of years three through ten. The balance of the reserve at the end of year ten will be $112,000, that is, $16,000 (the balance of the reserve at the end of year two) plus $96,000 ($12,000 per year for years three through ten). A depreciation deduction of $8,000 will be allowed in year 11 and in the absence of any other facts, no depreciation will be allowed after year 11 since the sum of the reserve ($120,000) and the salvage value (zero) at that time equals the unadjusted basis.

Example (2). Assume the same facts as in Example (1) except that the expenditure in the second year of the asset depreciation period with respect to the rehabilitation of assets X and Y is $50,000. An amount of $12,000 of such expenditure is deductible in year two as a repair allowance. An amount of $38,000 of such expenditure is a property improvement. An amount of $12,000 of such property improvement is subtracted from the reserve for depreciation for the account as of the beginning of year two, reducing the reserve to zero, and an amount of $26,000 of such property improvement is required to be capitalized under subdivision (v) of this subparagraph. If A elects to apply this section for year two the property improvement will be capitalized in a vintage account of year two.

Example (3). Assume the same facts as in Example (1) except that no rehabilitation expenditure was incurred in year two and in the 10th year of the asset depreciation period, A incurs an expenditure of $50,000 with respect to the rehabilitation of assets X and Y. The depreciation allowance for each of the first 9 years of the asset depreciation period is $12,000. Accordingly, the depreciation reserve as of the beginning of the 10th year is $108,000. In year 10, $12,000 of the $50,000 rehabilitation expense will be deductible as a repair allowance, the remaining $38,000 will be subtracted as of the beginning of year 10 from the reserve as a property improvement, and $12,000 of depreciation will be allowed for the year. At the end of year 10, the reserve for depreciation will be $82,000, that is $108,000 plus $12,000 minus $38,000. In the absence of other facts, in each of years 11 through 13 the depreciation allowance will be $12,000. In the 14th year $2,000 of depreciation will be allowed. No depreciation will be allowed in the 15th year since the sum of the depreciation reserve ($120,000) and the salvage value, zero, at that time equals the unadjusted basis of the account.

(3) *Treatment of retirement*—(i) *In general.* The rules of this subparagraph specify the treatment of all retirements from vintage accounts. The rules of § 1.167(a)-8 shall not apply to any retirement from a vintage account. An asset in a vintage account is retired when such asset is permanently withdrawn from use in a trade or business or in the production of income by the taxpayer. A retirement may occur as a result of a sale or exchange, by other act of the taxpayer amounting to a permanent disposition of an asset, by physical abandonment of an asset, or by transfer of an asset to supplies (for cannibalization) or scrap. A physical abandonment occurs only if it appears that the property will neither be restored to use in the taxpayer's trade or business or in the production of income, nor retrieved for sale, exchange, or other disposition.

(ii) *Definitions of ordinary and extraordinary retirements.* The term "ordinary retirement" means any retirement from a vintage account which is not treated as an "extraordinary retirement "under this subdivision. The retirement of an asset from a vintage account in a taxable year is an "extraordinary retirement" if the asset is not a property improvement as described in subparagraph (2) (v) of this paragraph and if—

(*a*) The asset is retired as the direct result of fire, storm, shipwreck, or other casualty; or

(*b*) (*1*) The asset is retired (other than by transfer to supplies or scrap) in a taxable year as the direct result of a cessation, termination, curtailment, or disposition of a business, manufacturing, or other income producing process, operation, facility or unit, and (*2*) the unadjusted basis of all the assets so retired (other than a property improvement) in such taxable year from such account as a direct result of the event described in (*b*) (*1*) of this subdivision exceeds 20 percent of the unadjusted basis of such account immediately prior to such event. For this purpose, all accounts of the same vintage for which the same asset depreciation period has been selected, and from which a retirement as a direct result of such event occurs within the taxable year, shall be treated as a single vintage account.

(iii) *Treatment of ordinary retirements.* No loss shall be recognized upon an ordinary retirement. Gain shall be recognized only to the extent specified in this subparagraph. All proceeds from ordinary retirements shall be added to the depreciation reserve of the vintage account from which the retirement occurs. See subdivision (viii) of this subparagraph for recognition of gain when the depreciation reserve exceeds the unadjusted basis of the vintage account. The amount of salvage value for a vintage account shall be reduced (but not below zero) as of the beginning of the taxable year by the excess of (*a*) the depreciation reserve for the account, after adjustment for depreciation allowable for such taxable year and all other adjustments prescribed by this section (other than the adjustment prescribed by subdivision (viii) of this subparagraph), over (*b*) the unadjusted basis of the account less the amount of salvage value for the account before such reduction. Thus, in the case of a vintage account with the unadjusted basis of $1,000 and a salvage value of $100, to the extent that proceeds from ordinary retirements increase the depreciation reserve above $900, the salvage value is reduced. If the proceeds increase the depreciation reserve for the account to $1,000, the salvage value is reduced to zero. The unadjusted basis of the asset retired in an ordinary retirement is not removed from the account and the depreciation reserve for the account is not reduced by the depreciation allowable for the retired asset. The previously unrecovered basis of the retired asset will be recovered through the allowance for depreciation with respect to the vintage account. See subdivision (v) of this subparagraph for treatment of ordinary retirements on which gain or loss is not recognized in whole or in part.

(iv) *Treatment of extraordinary retirements.* Unless the transaction is governed by a special nonrecognition section of the Code such as 1031 or 337, gain or loss shall be recognized upon an extraordinary retirement in the taxable year in which such retirement occurs subject to section 1231 and all other applicable provisions of law such as section 1245. The unadjusted basis of the retired asset shall be removed from the unadjusted basis of the vintage account. The depreciation reserve established for the account shall be reduced by the depreciation allowable for the retired asset computed in the manner prescribed in paragraph (c) (1) (vi) (*b*) of this section for determination of the adjusted basis of the asset.

(v) *Special rule for certain retirements.* In the case of an ordinary retirement on which gain or loss is in whole or in part not recognized because of a special nonrecognition section of the Code, such as 1031 or 337, the unadjusted basis of the asset (other than a property improvement the cost of which was subtracted from the depreciation reserve) shall be removed from the unadjusted basis of the vintage account. The depreciation reserve for the vintage account shall be adjusted for property improvements the costs of which were subtracted from the depreciation reserve and which are the subject of such a retirement, as provided in subdivision (vi) of this subparagraph. The depreciation reserve

established for the account shall be reduced by the depreciation allowable for the asset (including depreciation allowable for any property improvement the cost of which was subtracted from the depreciation reserve) computed in the manner prescribed in paragraph (c)(1)(vi)(*b*) of this section for determination of the adjusted basis of the asset (or property improvement).

(vi) *Special adjustments to depreciation reserve for retirement of property improvements.* If the cost of a property improvement is subtracted from the depreciation reserve estabilshed for a vintage account, and if the property improvement is thereafter removed from the vintage account in accordance with paragraph (b)(5)(iv) or (v) or paragraph (b)(6)(iii) of this section or is retired from the vintage account in a retirement described in subdivision (v) of this subparagraph, such reserve shall be increased by the amount of the property improvement previously subtracted from the reserve.

(vii) *Reduction in the salvage value of a vintage account.* (*a*) A taxpayer may apply this section without reducing the salvage value for a vintage account in accordance with this subdivision. See subdivision (iii) of this subparagraph for reduction of salvage value in certain circumstances in the amount of proceeds from ordinary retirements. However, except in the case of a property improvement, the taxpayer may in addition follow the consistent practice of reducing, as retirements occur, the salvage value for a vintage account by the amount of salvage value attributable to the retired asset, or the taxpayer may consistently follow the practice of so reducing the salvage value for a vintage account as extraordinary retirements occur while not reducing the salvage value for the account as ordinary retirements occur. If the taxpayer does not reduce the salvage value for a vintage account as retirements occur, the taxpayer may be entitled to a loss in the taxable year in which the last asset is retired from the account in accordance with subdivision (viii)(*b*) of this subparagraph.

(*b*) For purposes of this subdivision, the portion of the salvage value for a vintage account attributable to a retired asset may be determined by multiplying the salvage value for the account by a fraction, the numerator of which is the unadjusted basis of the retired asset and the denominator of which is the unadjusted basis of the account, or by any other reasonable method which is consistently applied if such method is adequately identified in the taxpayer's books and records.

(*c*) If the taxpayer reduces the salvage value for a vintage account as ordinary retirements occur, in the case of an ordinary retirement the taxpayer may follow the consistent practice of reducing the salvage value for the account by the amount of salvage value attributable to the retired asset and considering the basis of the asset as zero. In the alternative, in the case of an ordinary retirement the taxpayer may follow the consistent practice of reducing the salvage value for the account by the amount of salvage value attributable to the retired asset and adding the same amount to the depreciation reserve for the account (up to an amount which does not increase the depreciation reserve to an amount in excess of the unadjusted basis of the account) and considering the basis of the retired asset as the amount added to the depreciation reserve for the account. Thus, for example, in the case of an ordinary retirement by transfer of an asset to supplies or scrap, the basis of the asset in the supplies of scrap account would either be zero or the amount added to the depreciation reserve of the vintage account from which the retirement occurred. When the depreciation reserve for the account equals the unadjusted basis of the account no further adjustment to salvage value for the account will be made.

(*d*) In the event of a removal of property from a vintage account in accordance with paragraph (b)(5)(iv) or (v) or paragraph (b)(6)(iii) of this section, the salvage value for the account may be reduced by the amount of salvage value attributable to the asset removed determined as provided in (*b*) of this subdivision.

(vii) *Recognition of gain or loss in certain situations.* (*a*) If at the end of any taxable year after adjustment for depreciation allowable for such taxable year and all other adjustments prescribed by this section, the depreciation reserve established for a vintage account exceeds the unadjusted basis of the account, the entire amount of such excess shall be recognized as gain in such taxable year. Such gain shall—

(*1*) Constitute gain to which section 1245 applies to the extent that it does not exceed the total amount of depreciation allowances in the depreciation reserve for all years at the end of such taxable year, reduced by gain recognized pursuant to this subdivision with respect to the account previously treated as gain to which section 1245 applies, and

(*2*) Constitute gain to which section 1231 applies to the extent that it exceeds such total amount as so reduced.

In such event, the depreciation reserve shall be reduced by the amount of gain recognized, so that after such reduction the amount of the depreciation reserve is equal to the unadjusted basis of the account. Thus, for example, in the case of a vintage account with an unadjusted basis of $1,000 and a depreciation reserve of $700 (of which $600 represents depreciation allowances), if $500 is realized during the taxable year from ordinary retirements of assets from the account, the reserve is increased to $1,200, gain is recognized to the extent of $200 (the amount by which the depreciation reserve before further adjustment exceeds $1,000) and the depreciation reserve is then decreased to $1,000. The $200 of gain constitutes gain to which section 1245 applies. If the amount realized from ordinary retirements during the year had been $1,100 instead of $500, the gain of $800 would have consisted of $600 of gain to which section 1245 applies and $200 of gain to which section 1231 applies.

(*b*) If at the end of the taxable year during which the last asset in a particular vintage account is retired the unadjusted basis of the account exceeds the depreciation reserve for the account (after all adjustments prescribed by this section), the entire amount of such excess shall be recognized in such taxable year as a loss subject to section 1231.

(ix) *Dismantling cost.* The cost of dismantling, demolishing, or removing an asset in the process of a retirement from a vintage account shall be treated as an expense deductible in the year paid or incurred, and such cost shall not be subtracted from the depreciation reserve for the account.

(e) *Accounting for eligible property*—(1) *Definition of first placed in service.* Property is "first placed in service" when first placed in a condition or state of readiness and availability for a specifically assigned function, whether in the taxpayer's trade or business, in the production of income, in a tax-exempt activity, or in a personal activity. The provisions of paragraphs (d)(1)(ii) and (d)(2) of § 1.46-3 shall apply for the purpose of determining the date on which property is first placed in service. A property improvement as described in paragraph (d)(2)(v) of this section is first placed in service when its cost is paid or incurred. For special rule for subtraction of the cost of a property improvement from the depreciation reserve as of the beginning of the taxable year in which paid or incurred, see paragraph (c)(1)(ii) of this section. The date on which depreciation begins under a convention used by the taxpayer or under a particular method of depreciation, such as the unit of production method or the retirement method, shall not determine the date on which the property is first placed in service. See paragraph (c)(2) of this section for application of a first-year convention to determine the allowance for depreciation of property in a vintage account.

(2) *Special rules for transferred property.* If eligible property is first placed in service by the taxpayer during a taxable year of election, and the property is disposed of before the end of the taxable year, the election for such taxable year shall include such property unless such property is excluded in accordance with paragraph (b)(5)(iii) of this section.

(3) *Special rules in the case of certain transfers*—(i) *Transaction to which section 381(a) applies.* If the distributor or transferor corporation (including any distributor or transferor corporation of any distributor or transferor corporation) has made an election to apply this section to eligible property transferred in a transaction to which section 381(a) applies, the acquiring corporation is treated as if it were the distributor or

transferor corporation with respect to such property. The acquiring corporation must segregate such eligible property (to which the distributor or transferor corporation elected to apply this section) into vintage accounts as nearly coextensive as possible with the vintage accounts created by the distributor or transferor corporation identified by reference to the year the property was first placed in service by the distributor or transferor corporation. The asset depreciation period for each vintage account selected by the distributor or transferor corporation from the asset depreciation range must be used by the acquiring corporation. The method of depreciation adopted by the distributor or transferor corporation, shall be used by the acquiring corporation unless such corporation obtains the consent of the Commissioner to use another method of depreciation in accordance with paragraph (e) of § 1.446–1, changes to the straight line method of depreciation under paragraph (b) of § 1.167(e)–1 or changes to the straight line method under paragraph (c)(1)(iii) of this section. Thus, the acquiring corporation may apply this section to the property so acquired only if the distributor or transferor corporation elected to apply this section to such property.

(ii) *Partnerships, trusts, estates, donees, and corporations.* Except as provided in subdivision (i) of this subparagraph with respect to transactions to which section 381(a) applies, if eligible property is placed in service by an individual, trust, estate, partnership or corporation, the election to apply this section shall be made by the individual, trust, estate, partnership, or corporation placing such property in service. For example, if a partnership places in service property contributed to the partnership by a partner, the partnership may elect to apply this section to such property. If the partnership does not make the election, this section will not apply to such property. See paragraph (b)(7) of this section for special rule for certain property where there is a mere change in the form of conducting a trade or business.

(iii) *Leased property.* The asset depreciation range and the asset depreciation period for eligible property subject to a lease shall be determined without regard to the period for which such property is leased, including any extensions or renewals of such period. See paragraph (b)(5)(iv) of this section for exclusion of property amortized under paragraph (b) of § 1.162–11 from an election to apply this section.

(f) *Election with respect to eligible property*—(1) *Time and manner of election.* An election to apply this section to eligible property shall be with the income tax return filed for the taxable year in which the property is first placed in service (see paragraph (e)(1) of this section) by the taxpayer. An election to compute the allowance for depreciation under this section is a method of accounting but the consent of the Commissioner will be deemed granted to make an annual election. For election by a partnership see section 703(b) and paragraph (e)(3)(ii) of this section. If the taxpayer does not file a timely return (taking into account extensions of the time for filing) for the taxable year in which the property is first placed in service, the election shall be filed at the time the taxpayer files his first return for that year. The election may be made with an amended return only if such amended return is filed no later than the time prescribed by law (including extensions thereof) for filing the return for the taxable year of election. If an election is not made within the time and in the manner prescribed in this paragraph, no election may be made (by the filing of an amended return or in any other manner) with respect to any eligible property placed in service in the taxable year.

(2) *Information required.* The election under this section must specify:

(i) That the taxpayer makes such election and consents to, and agrees to apply, all the provisions of this section;

(ii) The asset depreciation range for the property and the date the property was first placed in service by the taxpayer;

(iii) The asset depreciation period selected by the taxpayer for each vintage account;

(iv) The first-year convention adopted by the taxpayer for the taxable year of election;

(v) The basis and estimated gross salvage value for each vintage account, and if such salvage value has been determined b yapplication of section 167(f), the amount by which gross salvage value was decreased under section 167(f);

(vi) Whether the special 10 percent used property rule described in paragraph (b)(5)(iii) of this section has been applied to exclude used property from the election and the separate depreciable basis of the new and used property first placed in service during the taxable year;

(vii) The amount of any property improvements (as defined in paragraph (d)(2)(v) of this section) and the date the costs of such property improvements were paid or incurred;

(viii) A reasonable description of any eligible property for which the taxpayer was not required or permitted to make an election because of the special rules of paragraph (b)(5) or (6) or paragraph (e)(3)(i) of this section; and

(ix) Such other information as may be required.

Forms will be provided for submission of the information required and an election to apply the section will not be rendered invalid under this subparagraph so long as there is substantial compliance with the requirements of this subparagraph.

(3) *Irrevocable election.* An election to apply this section to eligible property for any taxable year may not be revoked or changed after the time for filing the election prescribed under subparagraph (1) of this paragraph has expired.

(g) *Relationship to other provisions*—(1) *Useful life.* An election to apply this section to eligible property constitutes an agreement under section 167(d) and this section to treat the period selected by the taxpayer for each vintage account as the useful life of the property in such account for all purposes of the Code, including sections 46, 47, 48, 57, 163(d), 167(c), 167(f), 179, 312(m), 514(a), and 4940(c). For example, since section 167(c) requires a useful life of at least 3 years and the asset depreciation period selected is treated as the useful life for purposes of section 167(c), the taxpayer may adopt a method of depreciation described in section 167(b)(2) or (3) for an account only if the asset depreciation period selected for the account is at least 3 years.

(2) *Section 167(d) agreements.* If the taxpayer has, prior to January 1, 1971, entered into a section 167(d) agreement which applies to any eligible property, the taxpayer will be permitted to withdraw the eligible property from the agreement provided that an election is made to apply this section to such property. The statement of intent to withdraw eligible property from such an agreement must be made in an election filed for the taxable year in which the property is first placed in service. The withdrawal, in accordance with this subparagraph, of any eligible property from a section 167(d) agreement shall not affect any other property covered by such an agreement.

(3) *Relationship to the straight line method*—(i) *In general.* For purposes of determining the amount of depreciation which would be allowable under the straight line method of depreciation, such amount shall be computed with respect to any property in a vintage account using the straight line method in the manner described in paragraph (c)(1)(i) of this section and a rate based upon the period for the vintage account selected from the asset depreciation range. Thus, for example, section 57(a)(3) requires a taxpayer to compute an amount using the straight line method of depreciation if the taxpayer uses an accelerated method of depreciation. For purposes of section 57(a)(3), the amount for property in a vintage account shall be computed using the period for the vintage account selected from the asset depreciation range. In the case of property to which the taxpayer does not elect to apply this section, such amount computed by using the straight line method shall be determined under § 1.167(b)–1 without regard to this section.

(ii) *Examples.* The principles of this subparagraph may be illustrated by the following examples:

Example (1). (a) Corporation *X* places a new asset in service to which it elects to apply this section. The cost of the asset is $200,000 and the estimated salvage value is zero. The taxpayer selects 9 years from the applicable asset depreciation range of 8 to 12 years. Corporation *X* adopts the double declining balance method of depreciation and thus the rate of depreciation is 22.2 percent (twice the applicable straight-line rate). The depreciation allowance in the

first year would be $44,400, that is, 22.2 percent of $200,000.

(b) Assume that the provisions of section 57(a)(3) apply to the property. The amount of the tax preference would be $22,200, that is, the excess of the depreciation allowed under this section ($44,400) over the depreciation which would have been allowable if the taxpayer had used the period selected from the asset depreciation range and the straight line rate ($22,200).

Example (2). (a) The facts are the same as in example (1) except that corporation *X* does not elect to apply this section. The depreciation allowance is based on a guideline life of 10 years and thus the rate under the double declining balance method is 20 percent. The depreciation allowance is $40,000, that is, $200,000 multiplied by 20 percent.

(b) Assume that the provisions of section 57(a)(3) apply to the property. The amount of the tax preference under that section would be $20,000, that is, the excess of the amount allowed under the double declining balance method, as determined in (a) of this example, $40,000, over the amount which would have been allowable if the taxpayer had used the straight line method, $20,000.

PAR. 2. The following new section is added immediately after § 1.167(l)–4, to read as follows:

§ 1.167(l)–5 Public utility property; election to use asset depreciation range system.

(a) *Application of section 167(l) to certain property subject to asset depreciation range system.* If the taxpayer elects to compute depreciation under the asset depreciation range system described in § 1.167(a)–11 with respect to certain public utility property placed in service after December 31, 1970, see § 1.167(a)–11(b)(6).

[FR Doc.71-3647 Filed 3-12-71;9:15 am]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR Parts 150, 151, 152]

MANUFACTURE OF OPIUM FOR SMOKING PURPOSES; REGULATORY TAXES ON NARCOTIC DRUGS AND MARIHUANA

Proposed Rescission

CROSS REFERENCE: For a document proposing the rescission and replacement of Parts 150, 151, and 152, of Title 26, see Department of Justice, Bureau of Narcotics and Dangerous Drugs, in Part II of this issue.

Notices

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice 336; Delegation of Authority No. 122]

INTERNATIONAL FISHERIES COMMISSIONS

Delegation of Authority To Approve Recommendations

By virtue of the authority vested in me by section 4 of the Act of May 26, 1949 (63 Stat. 111; 22 U.S.C. 2658), as amended, I hereby delegate to the Coordinator of Ocean Affairs and Special Assistant to the Secretary for Fisheries and Wildlife the following:

1. The functions vested in the Secretary of State by section 6 of the Tuna Conventions Act of 1950 (16 U.S.C. 955);

2. The functions vested in the Secretary of State by sections 6 of the Northwest Atlantic Fisheries Act of 1950 (16 U.S.C. 985);

3. The functions vested in the Secretary of State by section 4 of the Whaling Convention Act of 1949 (16 U.S.C. 916b);

4. The authority delegated to the Secretary of State by Executive Order No. 11467 of May 1, 1969, to perform those functions vested in the President by section 6(a) of the North Pacific Fisheries Act of 1954 (16 U.S.C. 1025(a)) and to perform those functions vested in the President by Article III, paragraph 2, of the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the North Pacific Ocean and Bering Sea (5 U.S.T.5; TIAS 2900).

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

MARCH 3, 1971.

[FR Doc. 71-3597 Filed 3-12-71;8:50 am]

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

ASSISTANT SECRETARY OF DEFENSE (INSTALLATIONS AND LOGISTICS)

Delegation of Authority Regarding Provision of Family Housing

The Deputy Secretary of Defense approved the following delegation of authority:

Refs.:

(a) Public Law 91-511, "Military Construction Authorization Act, 1971," Oct. 26, 1970.

(b) DOD Directive 4165.21, "Delegation of Authority for Development of Family Housing Under Title IV of the Housing Amendments of 1955," May 1, 1957 (hereby canceled).

(c) DOD Directive 4165.29, "Acquisition of Wherry Family Housing Projects," June 18, 1962 (hereby canceled).

(d) DOD Directive 4165.30, "Taxes on Wherry Housing Projects," Apr. 22, 1958 (hereby canceled).

(e) DOD Directive 5126.39, "Delegation of Authority—Provision of Family Housing," Apr. 20, 1964 (hereby canceled).

I. *Delegation of authority.* A. Pursuant to the authority vested in the Secretary of Defense by section 133(d) of title 10, United States Code, there is hereby delegated to the Assistant Secretary of Defense (Installations and Logistics) the authority of the Secretary of Defense to:

1. Construct family housing and trailer court facilities;

2. Accomplish alterations, additions, expansions or extensions of family housing;

3. Enter into rental guaranty agreements;

4. Lease housing facilities for assignment as public quarters;

5. Determine requirements for units containing more than three bedrooms;

6. Exempt inadequate quarters from the requirements for disposition;

7. Enter into agreements with the Secretary of Housing and Urban Development;

8. Perform such functions as may be authorized in connection with the acquisition of Wherry projects;

9. Perform such functions as may be authorized in connection with section 809 projects;

10. Perform such functions as may be authorized in connection with section 810 projects; and

11. Take such actions for the provision of family housing which are authorized by reference (a) and as have been previously authorized or may be hereafter authorized by annual military construction authorization acts.

B. These and other such authorities may be redelegated, with such guidance and authority to further redelegate as may be appropriate.

C. The authority to determine deductions from taxes on Wherry projects which have not been acquired and to administer Capehart projects is hereby delegated to the Secretaries of the Military Departments.

II. *Cancellation.* References (b), (c), (d), and (e) are hereby superseded and cancelled.

III. *Effective date.* This Directive is effective immediately.

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

[FR Doc.71-3524 Filed 3-12-71;8:46 am]

DEPARTMENT OF THE INTERIOR

National Park Service

ROCK CREEK PARK, NATIONAL CAPITAL PARKS

Notice of Intention To Extend Concession Contract

Pursuant to the provisions of section 5, of the Act of October 9, 1965; (79 Stat. 969; 16 U.S.C. 20) public notice is hereby given that thirty (30) days after the date of publication of this notice, the Department of the Interior, through the Director of the National Park Service, proposes to extend the concession contract with Edgewater Riding Academy, Inc., authorizing it to provide concession facilities and services for the public within Rock Creek Park, National Capital Parks, for a period of two (2) years from January 1, 1970 through December 31, 1971.

The foregoing concessioner has performed its obligations under the expired contract to the satisfaction of the National Park Service, and therefore, pursuant to the Act cited above, is entitled to be given preference in the renewal of the contract and in the negotiation of a new contract. However, under the Act cited above, the Secretary is also required to consider and evaluate all proposals received as a result of this notice. Any proposal to be considered and evaluated must be submitted within thirty (30) days after the publication date of this notice.

Interested parties should contact the Chief, Office of Concessions Management, National Park Service, Washington, D.C. 20240, for information as to the requirements of the proposed contract.

THOMAS FLYNN,
Director,
National Park Service.

[FR Doc.71-3513 Filed 3-12-71;8:45 am]

DEPARTMENT OF AGRICULTURE

Packers and Stockyards Administration

ANNISTON LIVESTOCK, INC., ET AL.

Deposting of Stockyards

It has been ascertained, and notice is hereby given, that the livestock markets named herein, originally posted on the respective dates specified below as being subject to the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181

et seq.), no longer come within the definition of a stockyard under said Act and are, therefore, no longer subject to the provisions of the Act.

Name, and location of stockyard, date of posting

Anniston Livestock, Inc., Oxford, Ala. May 3, 1959.
Allen Auction Company, Harrison, Ark. Mar. 31, 1970.
Mountain View Livestock Auction, Mountain View, Ark. Feb. 19, 1959.
Cornwell & Ochsner Community Sale, Yukon, Okla. Feb. 28, 1961.
Gallatin Stockyards, Gallatin, Tenn. Sept. 9, 1965.

Notice or other public procedure has not preceded promulgation of the foregoing rule since it is found that the giving of such notice would prevent the due and timely administration of the Packers and Stockyards Act and would, therefore, be impracticable and contrary to the public interest. There is no legal warrant or justification for not depositing promptly a stockyard which is no longer within the definition of that term contained in the Act.

The foregoing is in the nature of a rule granting an exemption or relieving a restriction and, therefore, may be made effective in less than 30 days after publication in the FEDERAL REGISTER. This notice shall become effective upon publication in the FEDERAL REGISTER.

(42 Stat. 159, as amended and supplemented; 7 U.S.C. 181 et seq.).

Done at Washington, D.C., this 8th day of March 1971.

G. H. HOPPER,
Chief, Registrations, Bonds, and Reports Branch, Livestock Marketing Division.

[FR Doc.71-3521 Filed 3-12-71;8:46 am]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

BROWN FIELD AIR TRAFFIC CONTROL TOWER

Notice of Commissioning

Notice is hereby given that on or about April 19, 1971, the Airport Traffic Control Tower at Brown Field Municipal Airport, Chula Vista, Calif., will be operationally commissioned. This information will be reflected in the FAA Organization Statement the next time it is reissued. Communications to the Brown Field Airport Traffic Control Tower should be addressed as follows:

Brown Field Airport Traffic Control Tower, Department of Transportation, Federal Aviation Administration, Otay Mesa Road, Chula Vista, CA 92011.

Issued in Los Angeles, Calif., on February 25, 1971.

LEE E. WARREN,
Acting Director, Western Region.

[FR Doc.71-3551 Filed 3-12-71;8:49 am]

Federal Railroad Administration

[FRA-Petition-No. 23]

TEXAS-NEW MEXICO RAILWAY CO.

Petition Seeking Exemption From Fourteen Hours-of-Service Limitation

Petition seeking exemption from the fourteen hours-of-service-limitation in Public Law 91-169.

The hearing in this proceeding, now scheduled for March 17, 1971, is hereby postponed to a date and place to be hereinafter fixed.

A further notice will be served, publicizing the date and place of the hearing when it is rescheduled.

Dated this 8th day of March 1971 in Washington, D.C.

ROBERT P. BOYD,
Director, Office of Hearings & Proceedings and Hearing Examiner.

[FR Doc.71-3519 Filed 3-12-71;8:46 am]

OFFICE OF EMERGENCY PREPAREDNESS

NEBRASKA

Amendment to Notice of Major Disaster

Notice of Major Disaster for the State of Nebraska, dated February 26, 1971, and published March 5, 1971 (36 F.R. 4450) is hereby amended to include the following counties among those counties determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of February 23, 1971:

The counties of:

Boone.	Sarpy.
Douglas.	Saunders.

Dated: March 9, 1971.

G. A. LINCOLN,
Director, Office of Emergency Preparedness.

[FR Doc.71-3551 Filed 3-12-71;8:49 am]

ATOMIC ENERGY COMMISSION

[Docket Nos. 50-348, AD 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]

[Docket Nos. 50-361, 50-362]

SOUTHERN CALIFORNIA EDISON CO. AND SAN DIEGO GAS AND ELECTRIC COMPANY

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 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. 50-172]

LOCKHEED AIRCRAFT CORP.

Notice of Issuance of Amended Facility License

The Atomic Energy Commission (the Commission) has issued, effective as of the date of issuance, Amendment No. 10 to Facility License No. R-86 dated July 20, 1962. The facility license as previously issued authorized Lockheed to possess and operate a heterogeneous pressurized water-type nuclear reactor in Dawson County, Ga. The amendment authorizes Lockheed to possess, but not to operate, the deactivated facility and incorporates revised Technical Specifications in the amended license.

The Radiation Effects Reactor has been shutdown and further operation is not planned. The fuel has been unloaded and is stored in the storage pool in authorized criticality-safe containers. Radiation monitoring of the facility will be maintained. The Lockheed Aircraft Corp. will submit to the Division of Reactor Licensing a plan for dismantling of the reactor.

The Commission has found that the application for the amendment complies with the requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations published in 10 CFR Chapter I. The Commission has made the findings required by the Act and the Commission's regulations which are set forth in the amendment, and has concluded that the issuance of the amendment will not be inimical to the common defense and security or to the health and safety of the public. The Commission has also found that prior public notice of this amended license is not required since the amendment does not present significant hazards considerations different from those previously evaluated.

Within 15 days from the date of publication of this notice in the FEDERAL REGISTER, the applicant may file a request for a hearing, and any person whose interest may be affected by the issuance of this amended license may file a petition for leave to intervene. Requests for a hearing and petitions to intervene shall be filed in accordance with the provisions of the Commission's rules of practice, 10 CFR Part 2. If a request for a hearing or a petition for leave to intervene is filed within the time prescribed in this notice, the Commission will issue a notice of hearing or an appropriate order.

For further details with respect to this amended facility license, see (1) the application dated August 14, 1970, and supplement dated January 29, 1971, and (2) the amended facility license, all of which are available for public inspection in the Commission's Public Document Room, 1717 H Street NW., Washington, DC.

Dated at Bethesda, Md., this 1st day of March 1971.

For the Atomic Energy Commission.

ROBERT J. SCHEMEL,
Acting Assistant Director for Reactor Operations, Division of Reactor Licensing.

[FR Doc.71-3508 Filed 3-12-71;8:45 am]

[Docket No. 50-142]

REGENTS OF THE UNIVERSITY OF CALIFORNIA

Notice of Issuance of Facility License Amendment

The Atomic Energy Commission (the Commission) has issued, effective as of the date of issuance, Amendment No. 9 to Facility License No. R-71. The license presently authorizes The Regents of the University of California to possess, use, and operate the Argonaut-type nuclear reactor located on its campus in Los Angeles, Calif., at power levels up to 100 kilowatts (thermal). The amendment incorporates Technical Specifications in the license and extends the expiration date of the license to March 30, 1980, in accordance with the University's application amendment dated February 20, 1970, as revised October 8 and December 22, 1970. The amendment also restates the license in its entirety to delete the record keeping, reporting requirements, and certain operating conditions that are now contained in the Technical Specifications, and to consolidate in current licensing form all pertinent provisions of amendments issued previously.

The Commission has found that the application for the amendment complies with the requirements of the Atomic Energy Act of 1954 as amended (the Act), and the Commission's regulations published in 10 CFR Chapter I. The Commission has made the findings required by the Act and the Commission's regulations which are set forth in the amendment, and has concluded that the issuance of the amendment will not be inimical to the common defense and security or to the health and safety of the public. The Commission has also found that prior public notice of proposed issuance of this amended license is not required since the operation of the facility in accordance with the terms of the amended license does not involve significant hazards considerations different from those previously evaluated.

Within 15 days from the date of publication of the notice in the FEDERAL REGISTER, the applicant may file a request for a hearing and any person whose interest may be affected by this proceeding may file a petition for leave to intervene. Requests for a hearing and petitions to intervene shall be filed in accordance with the Commission's rules of practice in 10 CFR Part 2. If a request for a hearing or a petition for leave to intervene is filed within the time prescribed in this notice, the Commission will issue a notice of hearing or an appropriate order.

For further details with respect to this amendment, see (1) the licensee's application for license amendment dated February 20, 1970, and revisions thereto dated October 8 and December 22, 1970, and (2) the amendment to the facility license (including the Technical Specifications), both of which are available for public inspection at the Commission's Public Document Room at 1717 H Street NW., Washington, DC. Copies of item (2) above may be obtained upon request sent to the U.S. Atomic Energy Commission, Washington, D.C. 20545, Attention: Director, Division of Reactor Licensing.

Dated at Bethesda, Md., this 1st day of March 1971.

For the Atomic Energy Commission.

DONALD J. SKOVHOLT,
Assistant Director for Reactor Operations, Division of Reactor Licensing.

[FR Doc.71-3507 Filed 3-12-71;8:45 am]

[Docket No. 50-202]

UNIVERSITY OF NEVADA

Notice of Issuance of Facility License Amendment

The Atomic Energy Commission (the Commission) has issued, effective as of the date of issuance, Amendment No. 1 to Facility License No. R-91 dated September 20, 1963. The license presently authorizes the University of Nevada to possess, use and operate the L-77 solution-type nuclear reactor located on its campus in Reno, Nevada, at power levels up to 10 watts (thermal). The amendment incorporates Technical Specifications in the license for operation of the reactor in accordance with the University's application amendment dated October 20, 1969, and revision thereto dated December 17, 1970. The amendment also

restates the license in its entirety, in current license format, to delete the record-keeping, reporting requirements, and certain operating conditions which are now included in the Technical Specifications.

The Commission has found that the application for the amendment complies with the requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations published in 10 CFR Chapter I. The Commission has made the findings required by the Act and the Commission's regulations which are set forth in the amendment, and has concluded that the issuance of the amendment will not be inimical to the common defense and security or to the health and safety of the public. The Commission has also found that prior public notice of proposed issuance of this amended license is not required since the operation of the facility in accordance with the terms of the amended license does not involve significant hazards considerations different from those previously evaluated.

Within 15 days from the date of publication of the notice in the FEDERAL REGISTER, the applicant may file a request for a hearing and any person whose interest may be affected by this proceeding may file a petition for leave to intervene. Requests for a hearing and petitions to intervene shall be filed in accordance with the Commission's rules of practice in 10 CFR Part 2. If a request for a hearing or a petition for leave to intervene is filed within the time prescribed in this notice, the Commission will issue a notice of hearing or an appropriate order.

For further details with respect to this amendment, see (1) the licensee's application for license amendment dated October 20, 1969, and revision thereto dated December 17, 1970, and (2) the amendment to facility license (including the Technical Specifications), both of which are available for public inspection at the Commission's Public Document Room at 1717 H Street NW., Washington, DC. Copies of item (2) may be obtained upon request sent to the U.S. Atomic Energy Commission, Washington, D.C. 20545, Attention: Director, Division of Reactor Licensing.

Dated at Bethesda, Md., this 24th day of February 1971.

For the Atomic Energy Commission.

DONALD J. SKOVHOLT,
Assistant Director for Reactor Operations, Division of Reactor Licensing.

[FR Doc.71-3506 Filed 3-12-71;8:45 am]

CIVIL AERONAUTICS BOARD

[Docket 20227; Order 71-3-17]

SEDALIA, MARSHALL, BOONVILLE STAGE LINE, INC.

Order To Show Cause

Issued under delegated authority March 2, 1971.

A final service mail rate of 53.54 cents per great circle aircraft mile for the transportation of mail by aircraft, established by Order 70-10-113, October 23, 1970, in this docket, is currently in effect for the above-captioned air taxi, operating under 14 CFR Part 298. This rate is based on five round trips per week between Sheldon and Des Moines, Iowa, via Spencer and Fort Dodge, Iowa.

On January 8, 1971, Sedalia filed a petition requesting that the Board fix a new final service mail rate of 54.89 cents per great circle aircraft mile for this service. On February 18, 1971, the Postmaster General filed a reply supporting Sedalia's petition. The Postmaster General stated that it was in agreement with Sedalia that the proposed rate is fair and reasonable because of increased costs experienced by Sedalia which are necessary to the performance of the service and were not known or reasonably foreseeable at the time the rate was set.

The Board finds it in the public interest to fix and determine the fair and reasonable rate of compensation to be paid by the Postmaster General for the transportation of mail by aircraft between the aforesaid points. Upon consideration of the petition and other matters officially noticed, it is proposed to issue an order [1] to include the following findings and conclusions:

1. The fair and reasonable final service mail rate to be paid on and after January 8, 1971, to Sedalia, Marshall, Boonville Stage Line, Inc., pursuant to section 406 of the Act for the transportation of mail by aircraft, the facilities used and useful therefor, and the services connected therewith, shall be 54.89 cents per great circle aircraft mile between Sheldon and Des Moines, Iowa, via Spencer and Fort Dodge, Iowa.

2. This final rate, to be paid entirely by the Postmaster General, is based on five round trips per week flown with Piper PA-23-250 aircraft.

Accordingly, pursuant to the Federal Aviation Act of 1958, and particularly sections 204(a) and 406 thereof, and regulations promulgated in 14 CFR Part 302, 14 CFR Part 298, and 14 CFR 385.16(f).

It is ordered, That:

1. Sedalia, Marshall, Boonville Stage Line, Inc., the Postmaster General, Ozark Air Lines, Inc., and all other interested persons are directed to show cause why the Board should not adopt the foregoing proposed findings and conclusions and fix, determine, and publish the final rate specified above for the transportation of mail by aircraft, the facilities used and useful therefor, and the services connected therewith as specified above as the fair and reasonable rate of compensation to be paid to Sedalia, Marshall, Boonville Stage Line, Inc.;

2. Further procedures herein shall be in accordance with 14 CFR Part 302, as specified in the appendix below; and

3. This order shall be served upon Sedalia, Marshall, Boonville Stage Line, Inc., the Postmaster General, and Ozark Air Lines, Inc.

This order will be published in the FEDERAL REGISTER.

[SEAL] HARRY J. ZINK,
Secretary.

1. Further procedures related to the attached order shall be in accordance with 14 CFR Part 302, and notice of any objection to the rate or to the other findings and conclusions proposed therein, shall be filed within 10 days, and if notice is filed, written answer and supporting documents shall be filed within 30 days after service of this order;

2. If notice of objection is not filed within 10 days after service of this order, or if notice is filed and answer is not filed within 30 days after service of this order, all persons shall be deemed to have waived the right to a hearing and all other procedural steps short of a final decision by the Board, and the Board may enter an order incorporating the findings and conclusions proposed therein and fix and determine the final rate specified therein;

3. If answer is filed presenting issues for hearing, the issues involved in determining the fair and reasonable final rate shall be limited to those specifically raised by the answer, except insofar as other issues are raised in accordance with Rule 307 of the rules of practice (14 CFR 302.307).

[FR Doc.71-3565 Filed 3-12-71;8:50 am]

[1] As this order to show cause is not a final action, it is not regarded as subject to the review provisions of 14 CFR Part 385. These provisions will apply to final action taken by the staff under authority delegated in § 385.16(g).

ENVIRONMENTAL PROTECTION AGENCY

CHEMAGRO CORP.

Notice of Withdrawal of Petition Regarding Pesticide Chemical

Pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 408 (d)(1), 68 Stat. 512; 21 U.S.C. 346a(d)(1)), the following notice is issued.

In accordance with § 420.8 *Withdrawal of Petitions Without Prejudice* of the pesticide procedural regulations (21 CFR 420.8), Chemagro Corp., Post Office Box 4913, Kansas City, MO 64120 has withdrawn its petition (PP 0F0934), notice of which was published in the FEDERAL REGISTER of February 4, 1970 (35 F.R. 2539) proposing the establishment of tolerances (21 CFR Part 420) for residues of the insecticide *O,O*-diethyl-*S*-[4-oxo-1,2,3-benzotriazin-3(4H)-ylmethyl] phosphorodithioate in or on the raw agricultural commodities cottonseed and potatoes at 0.1 part per million.

Dated: March 10, 1971.

R. E. JOHNSON,
Acting Commissioner, Pesticide Office.

[FR Doc.71-3540 Filed 3-12-71;8:48 am]

CITIES SERVICE CO.

Notice of Filing of Petition Regarding Pesticide Chemicals

Pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 408 (d)(1), 68 Stat. 512; 21 U.S.C. 346a(d)(1)), notice is given that a petition (PP 1F1073) has been filed by the Cities Service Co., Post Office Drawer 8, Cran-

bury, NJ 08512, proposing the establishment of an exemption from requirement of a tolerance (21 CFR Part 420) for residues of copper in water resulting from use of the herbicide copper sulfate pentahydrate to control algae in impounded waters, lakes, ponds, and reservoirs.

The analytical method proposed in the petition for determining residues of the herbicide is the bathocuproine method described on pages 120–1 of "Standard Methods for the Examination of Water and Wastewater", American Public Health Association, Inc., 1960.

Dated: March 10, 1971.

R. E. JOHNSON,
Acting Commissioner,
Pesticides Office.

[FR Doc.71-3541 Filed 3-12-71;8:48 am]

STAUFFER CHEMICAL CO.

Notice of Filing of Petition Regarding Pesticide Chemicals

Pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 408 (d)(1), 68 Stat. 512; 21 U.S.C. 346(a)(d)(1)), notice is given that a petition (PP 1F1129) has been filed by Stauffer Chemical Co., 1200 47th Street, Richmond, CA 94804, proposing the establishment of a tolerance (21 CFR Part 420) for negligible residues of the insecticide *S*-(*p*-chlorophenylthiomethyl) *O,O*-dimethyl phosphorodithioate in or on the raw agricultural commodity cottonseed at 0.1 part per million.

The analytical method proposed in the petition for determining residues is a gas chromatographic procedure using a phosphorus-specific thermionic detector for the sulfones of the insecticide and its oxygen analog.

Dated: March 10, 1971.

R. E. JOHNSON,
Acting Commisioner,
Pesticide Office.

[FR Doc.71-3542 Filed 3-12-71;8:48 am]

FARM CREDIT ADMINISTRATION

[Farm Credit Administration Order No. 745]

DEPUTY GOVERNOR AND DIRECTOR OF COOPERATIVE BANK SERVICE ET AL.

Authority and Order of Precedence

MARCH 9, 1971.

1. The Deputy Governor and Director of Cooperative Bank Service shall, subject to the jurisdiction and control of the Governor of the Farm Credit Administration, execute and perform all functions, powers, authority, and duties relative to cooperative banks and to matters incidental thereto, and the administration of the provisions of law relative to banks for cooperatives.

2. In the event that the Deputy Governor and Director of Cooperative Bank Service, Farm Credit Administration, is absent or is not able to perform the duties of his office for any other reason, the officer who is the highest on the following list and who isc available to act is hereby authorized to exercise and perform all functions, powers, authority, and duties pertaining to the office of Deputy Governor and Director of Cooperative Bank Service:

(1) Noel G. Stocker, Deputy Director, Cooperative Bank Service.

(2) Earl R. Kittredge, Loan and Operations Officer, Cooperative Bank Service.

(3) Samuel E. Davis, Loan and Operations Officer, Cooperative Bank Service.

3. This order shall be and become effective on the date above written and supersedes Farm Credit Administration Order No. 735 (35 F.R. 7620).

E. A. JAENKE,
Governor,
Farm Credit Administration.

[FR Doc.71-3539 Filed 3-12-71;8:48 am]

FEDERAL COMMUNICATIONS COMMISSION

[FCC 71-205]

LICENSEE RESPONSIBILITY TO REVIEW RECORDS BEFORE BROADCAST

MARCH 5, 1971.

A number of complaints received by the Commission concerning the lyrics of records played on broadcasting stations relate to a subject of current and pressing concern: The use of language tending to promote or glorify the use of illegal drugs such as marijuana, LSD, "speed", etc. This notice points up the licensee's long-established responsibilities in this area.

Whether a particular record depicts the dangers of drug abuse, or, to the contrary, promotes such illegal drug usage is a question for the judgment of the licensee. The thrust of this Notice is simply that the licensee must make that judgment and cannot properly follow a policy of playing such records without someone in a responsible position (i.e., a management level executive at the station) knowing the content of the lyrics. Such a pattern of operation is clearly a violation of the basic principle of the licensee's responsibility for, and duty to exercise adequate control over, the broadcast material presented over his station. It raises serious questions as to whether continued operation of the station is in the public interest, just as in the case of a failure to exercise adequate control over foreign-language programs.[1]

In short, we expect broadcast licensees to ascertain, before broadcast, the words or lyrics of recorded musical or spoken selections played on their stations. Just as in the case of the foreign-language broadcasts, this may also entail reasonable efforts to ascertain the meaning of words or phrases used in the lyrics. While this duty may be delegated by licensees to responsible employees, the licensee remains fully responsible for its fulfillment.

Thus, here as in so many other areas, it is a question of responsible, good faith action by the public trustee to whom the frequency has been licensed. No more, but certainly no less, is called for.

Action by the Commission February 24, 1971.[2]

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Secretary.

[FR Doc.71-3560 Filed 3-12-71;8:50 am]

[Dockets Nos. 19168–19170; FCC 71-237]

COWLES FLORIDA BROADCASTING, INC. AND CENTRAL FLORIDA ENTERPRISES, INC.

Order Designating Applications for Consolidated Hearing on Stated Issues

In regard applications of Cowles Florida Broadcasting, Inc. (WESH–TV), Daytona Beach, Fla., Docket No. 19168, File No. BRCT–354; for renewal of license; Cowles Florida Broadcasting, Inc. (WESH–TV), Daytona Beach, Fla., Docket No. 19169, File No. BPCT–4158; for modification of authorized facilities; Central Florida Enterprises, Inc., Daytona Beach, Fla., Docket No. 19170, File No. BPCT–4346, for a construction permit.

1. Now under consideration are the applications of Cowles Florida Broadcasting, Inc. (Cowles), one (BRCT–354) seeking renewal of the license of television broadcast station WESH–TV, Channel 2, Daytona Beach, Fla., and the other (BPCT–4158) seeking authority to modify station WESH–TV's facilities; a competing application (BPCT–4346) for a new commercial television broadcast station to operate on Channel 2, Daytona Beach, filed by Central Flori-

[1] See Public Notice concerning Foreign Language Programs adopted Mar. 22, 1967, FCC 67-368, 9 R.R. 2d 1901.

[2] Commissioners Burch (Chairman), Wells, and Robert E. Lee with Commissioner Lee issuing a statement, Commissioners H. Rex Lee and Houser concurring and issuing statements, Commissioner Johnson dissenting and issuing a statement, and Commissioner Bartley abstaining from voting. Statement filed as part of the original document.

da Enterprises, Inc. (Central);[1] informal objections filed pursuant to section 1.587 of the Commission's rules by the Association of Maximum Service Telecasters, Inc. (AMST) directed against the latter two applications; and related pleadings.[2]

2. Station WESH–TV presently operates with an effective radiated visual power of 100 kw., with an antenna height above average terrain of 940 feet, at a site that is approximately 21 miles southwest of Daytona Beach and 25 miles north of Orlando. Section 73.610(b) of the Commission's rules specifies that cochannel stations located in Zone III, which encompasses station WESH–TV, maintain a 220-mile separation between their respective transmitter locations. However, on September 9, 1959, the Commission, upon a showing that the public interest would be served by a waiver of the rules, granted the application (BPET–215) of The Board of Public Instruction of Dade County, licensee of educational television broadcast station WTHS–TV, Channel 2, Miami, Fla. That application specified a site that is only 215 miles from the existing transmitter location of station WESH–TV, so that there now exists a short-spacing of 5 miles between the two stations. In the present application (BPCT–4158), Cowles seeks authority to change station WESH–TV's facilities so as to operate with an effective radiated visual power of 85.1 kw. (DA), an antenna height above average terrain of 1,470 feet, at a site that is approximately 22 miles south and slightly west of Daytona Beach and 21 miles northeast of Orlando. That site is approximately 205 miles from the site of station WTHS–TV, so that the stations would be 15 miles short-spaced, decreasing the existing spacing by 10 miles. Cowles also proposes to suppress radiation in the direction of station WTHS–TV, and to install precise offset frequency equipment at both stations for the purpose of providing "equivalent protection."

3. Cowles advances essentially two reasons in support of its waiver request: increasing the total coverage of station WESH–TV and improving service in its "primary service area."[3] The first reason is a plus factor to be considered. However, AMST notes that there will be some areas that will lose station WESH–TV's signal, which is prima facie inconsistent with the public interest, Hall v. FCC, 237 F. 2d 567, 14 RR 2009 (D.C. Cir. 1956). However, Cowles has made the following representation:

> Cowles will purchase and install, without expense to the homeowner, an antenna cut specifically for Channel 2 in order to retain the service that is presently being received by an individual in the area affected. This program will be undertaken in advance of the construction of the new facility and before program test authority is received from the Commission. It will be widely advertised throughout the area by means of billboard, over the facilities of WESH–TV, and by personal contact throughout the area.
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> Specifically, Cowles will insure that no one who is presently receiving the service will loose (sic) it as a result of the move. If retention of service cannot be accomplished by the specifically designed antenna for Channel 2, then Cowles will install and operate a translator to serve any community that is involved in the area.

Thus, while we think it necessary to ascertain the gains and losses, it is appropriate to permit Cowles to submit evidence as to the extent its plans can ameliorate or eliminate any losses.[4]

4. As to improving the station's service in its "primary service area," it appears that there will be no significant improvement in the area of Daytona Beach. Cowles makes no allegations in this respect. It is apparent, therefore, that the prime consideration in Cowles' view is the improvement of the station's signal in the direction of Orlando.[5] Since the station's primary obligation is to Daytona Beach, we must consider whether, on balance, our spacing requirements should be further eroded to permit better service in the direction of Orlando.[6] We believe that our decision in balancing these considerations should be based on the full record afforded by a hearing. Accordingly, appropriate issues have been specified.

5. Central first proposed to negotiate for the use of Cowles' facilities. However, after Cowles' negative response, Central amended its application to specify an effective radiated visual power of 77.6 kw. (DA) an antenna height above average terrain of 1,470 feet, at a site that is about 23 miles south and slightly west of Daytona Beach and 21 miles northeast of Orlando. That site is about 206 miles from the transmitter site of Station WTHS–TV, a shortage of approximately 14 miles. In support of its waiver request, Central states that its choice of sites was based upon "a balance of interests," including the proposed area to be served, tower height and air navigation considerations, and locating suitable acreage. Central also states that case precedent requires a grant of its waiver request.

6. We do not believe it necessary to discuss each case cited by Central. In general, we were able to find in those cases public interest considerations warranting waiver of the rules. We do not find such considerations here. Two cases heavily relied upon by Central merit brief comment. The first, The Outlet Company, 11 FCC 2d 528, 12 RR 2d 387 (1968), involved a move of transmitter site from a location already short-spaced 4.7 miles, to another location 6 miles short. Clearly, the greater the deviation from the rules, the greater showing required to waive the particular rule. Thus, a move of 1.3 miles to a site that is 6 miles short is not "precedent" for approval of a site that is 14 miles short. The second case cited by Central, WTCN Television, Inc., 14 FCC 2d 870, 14 RR 2d 485 (Rev. Bd. 1968), was a decision issued after hearing and clearly does not stand for Central's proposition; i.e., that the applicant's balancing of conflicting interests warrants a 14-mile waiver of our spacing requirements without hearing. Accordingly, an appropriate issue will be specified. Since operating as proposed may result in a loss area, as compared with the area now served by Station WESH–TV, we will also specify an issue as to gains and losses. In the event that there

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[1] Central's application was accepted for filing by the Commission in Central Florida Enterprises, Inc., 22 FCC 2d 260, 18 RR 2d 883 (1970). Cowles, by letter dated May 4, 1970, takes the position that judicial review of the acceptance of Central's application is not ripe at this time. If it does not prevail on the merits, Cowles indicates that it may question in court the acceptance of Central's application.

[2] The pleadings associated with BPCT–4346 are: AMST's objections filed May 19, 1970; Central's opposition, filed June 4, 1970, as amended June 5, 1970; and AMST's reply, filed June 16, 1970. The pleadings associated with BPCT–4158 are: AMST's objections filed Dec. 23, 1968; Cowles' opposition filed Jan. 31, 1969; and AMST's reply, filed June 25, 1969. Cowles also filed comments on AMST's reply on July 10, 1969. This additional pleading has been neither requested nor authorized by the Commission, as required by § 1.45(c) of the Commission's rules. Consequently, it will not be considered.

[3] Cowles also offers in support of its waiver request the argument that a grant of its application, by virtue of its proposed equivalent protection, will reduce interference with station WTHS–TV. Since interference could be reduced from Cowles' present site by installing the same precise frequency offset equipment and suppressing radiation in the appropriate direction at the present site, the argument does not support a mileage waiver request. Moreover, equivalent protection, by itself, does not support requests for waiver of our spacing standards. "Equivalent protection is not a substitute for our spacing requirements. Rather, it is a means of reducing interference when other public interest considerations have been shown that warrant waiver of the spacing requirements." Carolina Broadcasting Company, 18 FCC 2d 482, 484, 18 RR 2d 801, 804 (1969).

[4] As to the use of translators, the Commission has accepted proposals to cover loss area with translators in circumtances where the area is relatively small, or the population clusters are relatively few. However, the use of translators for wide-area coverage is undesirable as an inefficient use of the spectrum, The Outlet Company, 11 FCC 2d 528, 12 RR 2d 387 (1968), and the practice is to be discouraged.

[5] In Cowles' opposition, the affidavit of Kear & Kennedy states, "* * * the basic reason for the improvement in facilities is the improvement in service to Orlando."

[6] Cowles explicitly does not rely upon a competitive disadvantages to justify a waiver of the rules. The Commission has already indirectly afforded Cowles a degree of economic aid by waiving the station identification requirements to permit a Daytona Beach-Orlando identification.

is a loss area, Central will be able to submit evidence as to any plans for ameliorating or eliminating actual losses, as Cowles has been permitted to do. AMST will be made a party to the proceeding to aid in developing the record on the waiver requests.

7. In the event that Cowles, after hearing, is found not to have met its burden as to the short-spacing issue, it can continue to operate from its presently authorized facilities. Central does not have any existing facilities to fall back on, and a denial of its application solely on the spacing question would be a harsh result. To avoid this result, we will provide that in the event Central does not establish that waiver of the spacing requirements is warranted, but would otherwise be the preferred applicant, its application will be granted subject to the condition that it find a transmitter location that does not lessen the existing spacing between Stations WESH–TV and WTHS–TV. This would permit Central's negotiation for the existing facilities of Station WESH–TV.

8. AMST also alleges that a grant of an application proposing a move in the direction of Orlando would result in an adverse UHF impact. A review of the engineering affidavit submitted by AMST and the Commission's records indicate that a grant of either Cowles' application for modification of facilities or Central's application would increase or create Grade B overlap with two operating UHF Stations (WTOG–TV, Channel 44, Tampa; and WTVX–TV, Channel 34, Fort Pierce) and two authorized UHF Stations (WTSS–TV), Channel 28, Tampa, and WSUN–TV, Channel 38, St. Petersburg); that the area where there will be overlap receives a minimum of two VHF signals (WDBO–TV, Channel 6, Orlando, and WFTV, Channel 9, Orlando); and that the new or increased areas of overlap caused by a grant of either Cowles' or Central's application constitutes a relatively small percentage of the total area covered by the respective UHF stations. With these factors in mind, we must require more than unsupported conclusions to warrant an adverse UHF impact issue. See, for example, VHF Channel Assignment, Mount Vernon, Illinois, 34 F.R. 18036, 17 RR 2d 1620 (1069). Finding only unsupported allegations in AMST's pleadings, we conclude no UHF impact issue is warranted. In this regard, we think it significant that no authorized UHF station has filed petitions or objections to the present application.

9. The exact amount needed to construct and operate Central's proposed station for 3 months without revenues[7] cannot be determined on the basis of the information contained in Central's application. However, approximately $1,888,406 will be needed, as follows: Down payment on equipment, $465,750;[8] 14 interest payments on equipment, $97,808; two principal payments on equipment, $58,218; land, $16,662; building lease, $105,000; interest on bank loan, $10,000; 3-month operating expenses, $358,598; and miscellaneous expenses, $776,400. To meet this requirement, Central claims the availability of the following funds: Cash, $240,000; debentures to be purchased by stockholders, $420,000; stock subscription, $250,000; loan from the Commercial Bank of Daytona Beach of $100,000; interest on deposits, $25,000; and annual revenues of $1,900,000.

10. Central has established the availability of the $240,000 cash. However, the materials in the application do not show that all the $420,000 from the sale of debentures to stockholders will be realized. The showing that must be submitted from those proposing to provide funds to an applicant, hereby the purchase of debentures, is set forth in paragraph 4(b), section III, FCC Form 301. That paragraph provides that a person must submit a balance sheet or financial statement showing current and liquid assets in excess of current liabilities in sufficient amount to enable them to meet their commitment. If the person lacks such funds, he may submit a showing as to the manner in which nonliquid assets can be used to provide funds. He may, as has been done by several of Central's stockholders, submit a loan commitment from a financial institution or other source in sufficient amount to enable him to meet his commitment. Liquid assets include, as defined by paragraph 4(b), cash, the loan value of insurance, government bonds, and publicly traded securities. "Stocks traded on major exchanges at market" is an adequate identification as to the latter. However, such words or phrases as "stocks," "stocks and bonds," and "marketable securities" are not specific enough to determine that such securities are, in fact, liquid. Paragraph 4 (b) also requires that current liabilities and long-term liabilities be segregated. A general category of "liabilities" will be assumed to be current.

11. There follows a list of those proposing to buy debentures from the applicant. If the person has not shown that he has sufficient funds to meet his entire commitment, a brief description of the deficiency will be indicated. The amount that each person has shown available to meet his commitment is given. Those who have signed an agreement to purchase debentures are: David W. Goddard, $21,000; Jeanne M. Goddard, $21,000; W. Warren Cole, Jr., $21,000; W. J. Taylor, Jr., $21,000; Ray A. Chambers, $21,000; Robert D. May, $10,500; Donald P. Zima, $10,500; Norwood A. Lockett, $10,500; Robert C. Elston, $10,500; E. William Crotty, $10,500; James R. Stephen, $10,500; H. Clinton Dunn (no balance sheet); James W. Clower, $4,000 (stocks and bonds); O. L. White (current liabilities exceed liquid assets); Louis P. Samuels, $10,000 (stock and bonds); Jos. A. Guernsey (cash and marketable securities); J. Hyatt Brown, $3,000 (stocks and bonds); George W. Engram (no balance sheet); William H. Cleveland (no balance sheet); Arthur F. Jones, $20,000 (liquid assets do not exceed current liabilities in sufficient amount to enable him to completely meet his commitment); J. C. Adams, Jr. (current liabilities exceed liquid assets); Fletcher G. Rush (cash and marketable securities); George P. Schanck, $3,000 (stock and bonds); and Thomas Staed, $10,000 (liquid assets do not exceed current liabilities in sufficient amount to enable him to completely meet his commitment). Thus, it appears that only $218,000 will be available to Central from the sale of debentures.

12. Mr. E. William Crotty has demonstrated the availability of sufficient funds to enable him to meet his $125,000 subscription agreement. However, the balance sheet submitted by Mr. James R. Stephen, another $125,000 stock subscriber, discloses liquid assets in excess of current liabilities of $40,000. Since $10,500 of that amount has been included as available for the purchase of debentures, only $29,500 remains for the purchase of stock. Therefore, Central has shown the availability of $154,500 in stock subscriptions.

13. The $100,000 loan from the Commercial Bank of Daytona Beach requires that the loan be "endorsed by individuals now known to us to be the organizers of this corporation." We have no indication that these individuals have agreed to accept this obligation. Moreover, the bank letter does not contain the terms, conditions, or security for the loan as required by paragraph 4(e), section III, FCC Form 301. Thus, we can not determine that the loan will be available to Central. If the loan is, in fact, available, the funds required by Central will have to be adjusted to reflect the actual interest and principal payments due within the first year of operation.

14. As to the $25,000 in interest earned on deposits, since there will be a declining balance throughout the prosecution of the application, and since no showing has been submitted, we can not determine how much interest will be available

[7] Where stations with an established history of revenues are involved, a 3-month operating expense requirement is used, Orange Nine, Inc., 7 FCC 2d 788, 9 RR 2d 1157 (1967), rather than the 1-year requirement specified in Ultravision Broadcasting Co., 1 FCC 2d 544, 5 RR 2d 343 (1965).

[8] Our computations indicate a total equipment cost of $1,772,000 (transmitter, $153,000; antenna system, $495,000; monitoring and testing equipment, $35,000; and studio equipment, $1,089,000), so that a one-fourth down payment of $443,000 is required. Central indicates a down payment of $465,750 or a total equipment cost of $1,863,000. The discrepancy of $91,000 may possibly represent certain auxiliary equipment ($36,000 for STL equipment; auxiliary power equipment, $30,000; and news department equipment, $25,000) described in Central's narrative description of its financial plan, but which Central has included in the $776,400 allotted for miscellaneous expenses. If that is the case, Central's down payment figure is correct, but miscellaneous expenses, which are not subject to a deferred credit plan, would have to be decreased to $685,400. Since the matter is not clear, and since the discrepancy may be due to other factors, we have used the higher figure in each case; that is, $465,750 down payment on equipment, and $776,400 miscellaneous expenses.

to the applicant. Nor can we find that there will be any revenues available during the first 3 months of operation. As noted in footnote 8, above, applicants for new facilities are required to show sufficient funds to construct and operate for one year. However, in cases where an applicant seeks the facilities of an existing station with an established pattern of revenues, the applicant need show only sufficient funds to construct and operate for three months without revenues. The 3-month requirement is retained in recognition of the fact that there will be a delay between the time advertising is broadcast and the time sufficient revenues to assure continued operation are received. Since no showing has been submitted to the contrary, we assume no significant revenues will be available to the applicant during the first 3 months of operation.

15. We also note that Central proposes to lease its studio and transmitter buildings from 749 Volusia, Inc., which will construct those buildings to order. While Central states that the annual lease expense will be $105,000, no lease or construction agreement has been submitted. In fact, a letter from the construction corporation is in terms of "expressing interest" in the project. We also lack any indication as to whether 749 Volusia, Inc., is financially qualified to meet this commitment.

16. In sum, we find that there are several areas where precise figures are unavailable to us. The applicant has demonstrated the availability of $612,500 to meet a commitment that appears to be somewhere near $1,888,136. Accordingly, appropriate financial issues have been specified.

17. Under section 1.539(a) of the Commission's rules, a renewal applicant is required to file his application at least 90 days prior to the expiration date of his license. In this case, Cowles had to be on file by November 3, 1969. This was prior to the issuance of our tentative Primer on the ascertainment of community problems by broadcast applicants, 20 FCC 2d 880, Docket No. 18774, released December 19, 1969. However, Cowles has amended its application attempting to comply with that document. Although Central generally alleges that Cowles' showing is defective, no particular aspect of that amended showing has been challenged. The only criticism we can find is that Cowles has failed to submit a study as to the composition of the community. This requirement was not clear in the tentative Primer. However, on February 23, 1971, we released the revised Primer which makes clear that a showing as to the composition of the community is required. In adopting the Primer we stated that applicants in hearing cases may amend their applications within 90 days to comply with its requirements, and that prior to designation for hearing, applicants may amend their applications as a matter of right. Cowles technically falls in the latter category. However, in view of the short period of time between the release of the Primer and our action here, and our desire to avoid further delay in designating these applications for hearing, we shall permit Cowles, on the facts presented, to amend as a matter of right after designation. If, after an amendment, Central believes that a significant group has been omitted, it may submit an appropriate showing in a petition to enlarge issues.

18. As to the remaining portions of Cowles' showing, we find that it has consulted with community leaders who are identified by name and organization. Members of the general public have been consulted on a generally random basis. The members of the general public and community leaders are geographically distributed throughout the area served by the station. The comments of those consulted have been listed and programs to meet the problems ascertained in those consultations have been proposed. Thus, we can not conclude, as Central has generally asserted, that Cowles' showing, which, except as noted, complies with the revised Primer, is defective.

19. There are several important questions raised by the Primer to be considered in reviewing an applicant's programing showing. These include: whether those community leaders consulted reflect the composition of the area to be served; whether those members of the general public who were consulted were selected on a generally random basis; and whether the consultations were designed to elicit information as to the significant problems, needs and interests of the area. Thus, if it is determined that the community leaders consulted do reflect the composition of the area, it is of little significance that one applicant has spoken to more community leaders than another, or that one applicant has used a more sophisticated procedure for selecting community leaders to be consulted. With this in mind, we note that Central has consulted with approximately 240 community leaders and 400 members of the general public. Cowles has consulted with roughly one-half that number in each category.[9] Since we are of the view that each applicant has substantially complied with the proposed Primer, we do not consider the differences in number to be significant and will raise no programing issue. Specifically, no issue as to "comparative efforts" will be raised.

20. In pleadings filed February 16, 1970, in conjunction with the acceptance of its application, Central makes several allegations concerning Cowles' operation of Station WESH-TV.[10] We need not discuss all those allegations here. In our Policy Statement on Comparative Hearings Involving Regular Renewal Applicants, 22 FCC 2d 424, 18 RR 2d 1901 (1970), we stated:

> * * * if the applicant for renewal of license shows in a hearing with a competing applicant that its program service during the preceding license term has been substantially attuned to meeting the needs and interests of its area (footnote omitted) and that the operation of the station has not otherwise been characterized by serious deficiences, he will be preferred over the newcomer and his application for renewal will be granted. (22 FCC 2d at 425, 18 RR 2d at 1904).

Therefore, Cowles' stewardship of the frequency will undergo thorough scrutiny in determining whether its performance has been "substantially attuned", or has been characterized by "serious deficiences."

21. In addition to going to the question of being "substantially attuned," some of Central's allegations raise a different issue. Central alleges, among other things, that only 18 of Cowles' 84 employees work in the Daytona Beach studio, the remainer working in the Orlando studio; that only 25 minutes per day of the locally originated programing emanates from the Daytona Beach studio[11] and that the "key personnel of the station work in the Orlando area. These allegations raise a question as to whether Cowles has moved its main studio from Daytona Beach to Orlando[12] without prior Commission approval in violation of section 308 of the Communications Act. A main television studio is not as precisely defined as a main radio studio. See §§ 73.30, 73.210, and 73.613 of the Commission's rules. Nonetheless, the word "main" itself denotes something that is more than of secondary importance. The factors considered in determining what constitutes a main studio have been known for some time. See, for

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[9] Under Answer 15 of the proposed Primer, consultations for use in an application should be made within 6 months of the filing of the application. Thus, Cowles' numerous consultations prior to March of 1969 are not considered in this context. Such consultations may, of course, be used in its showing on the question of being "substantially attuned."

[10] Central also raises questions concerning certain of Cowles' other activities not connected with WESH-TV. Except as indicated in paragraph 24, below, these matters are not relevant here. In Wichita-Hutchinson Company, Inc., 19 FCC 2d 433, 17 RR 2d 192 (1969), the ultimate issue was whether a transfer of control of a licensee from a company in which Cowles had interests to another corporation should be granted. There were no issues specified that would bring into question the operation of the station. The questions raised with respect to stations WCCO-AM-FM-TV have been resolved, Midwest Radio-Television, Inc., 24 FCC 2d 625, 19 RR 2d 861 (1970).

[11] The composite week submitted by Cowles in its renewal application indicates 15 hours, 28 minutes of local originations. This would give a breakdown, if Central's allegations are correct, of 2 hours, 55 minutes of local originations per week emanating from Daytona Beach as compared to 12 hours, 33 minutes from Orlando.

[12] The studios are actually in Winter Park and Holly Hill, small communities adjacent to Orlando and Daytona Beach, respectively.

example, Gulf Television Company, KGUL–TV, 20 FCC 734, 755, 12 RR 447, 470m (1956). Furthermore, in cases of doubt, a licensee is free to request a declaratory ruling under section 1.2 of the Commission's rules. See Nationwide Communications, Inc., 18 FCC 2d 171, 16 RR 2d 544 (1969), reconsideration denied, 19 FCC 2d 861, 17 RR 2d 471 (1969).

22. If Central's allegations are true, a main studio move has occurred without prior Commission approval. Such a move would appear to constitute a "serious deficiency" under the renewal-new applicant policy statement, above. Therefore, if the Hearing Examiner finds an unauthorized studio move, and that such a move constitutes a "serious deficiency," Cowles would not be afforded the protection given the renewal applicant under that policy statement. We shall also specify an issue to determine, in the event that an unauthorized move is established, whether Cowles has the requisite qualifications to be a licensee of the Commission, or whether it should be given a comparative demerit.

23. Central has also raised questions as to two other matters which might be considered separately from the "substantially attuned" test. However, its position is so broadly and generally stated, without specific factual allegations supporting that position, that we shall not raise issues. Thus, Central has alleged that Cowles has made misrepresentations to the Commission by improperly logging certain programs. The Today Show is given as an example. However, the logs submitted by Cowles for the composite week log that program as a network commercial program, broken down into news, entertainment, public affairs, and instructional programing. Cowles states that this is the breakdown provided by the network. Since this is in keeping with the network practice,[13] and is similar to that breakdown provided by other stations, we will raise no issue on the general allegation that the program has been "misclassified." Central has also alleged that Cowles violated the fairness doctrine by permitting Governor Kirk to explain his stand on filing a brief with the U.S. Supreme Court seeking delay of desegregation of the Florida schools. However, it appears that the other side of that question has been presented, including the presentation of the opposing view of the State Education Commissioner. Lacking more specific allegations, therefore, we shall raise no issue in this regard.

24. Two of the principal factors going to the question of de facto reallocation of a channel are proximity and main studio location. Since there is a question as to where Cowles' main studio is, and since its application for changes does specify a site closer to Orlando than to Daytona Beach, we will specify an issue to determine whether a grant of Cowles' application would constitute a de facto reallocation of channel 2 from Daytona Beach to Orlando. Since Central has specified a main studio in Daytona Beach, the same question is not presented as to it.

25. Cowles' 100 percent parent, Cowles Communications, Inc., is involved in two proceedings raising questions about certain of its activities. One involves a complaint by the State of Wisconsin in which the parent is alleged to have engaged in unfair trade practices and unfair competition in violation of § 100.20(1) of the state statutes. A second proceeding involves a complaint initiated May 29, 1970, by the Federal Trade Commission in which several publishers including Cowles' parent corporation, are alleged to have used deceptive means to get long-term subscription contracts.[14] Accordingly, the grant of either of Cowles' applications will be subject to the condition that it is without prejudice to whatever action we may deem appropriate as a result of those proceedings. In addition, Cowles Communications, Inc., and five of its subsidiaries, paid $50,000 in fines and pleaded no contest to 50 criminal counts of mail fraud. We believe it is appropriate to permit evidence as to this matter to be introduced under the qualifications issue.

26. Except as indicated below, Cowles Florida Broadcasting, Inc., is qualified to own, operate, and construct the proposed changes for television broadcast station WESH–TV. Except as indicated below, Central Florida Enterprises, Inc., is qualified to construct, own and operate a new television broadcast station on channel 2, Daytona Beach, Fla. The applications are, however, mutually exclusive in that operation by both applicants as proposed would result in mutually destructive interference. We are, therefore, unable to make the statutory finding that a grant of the applications would serve the public interest, convenience and necessity, and they must be designated for hearing in a consolidated proceeding on the issues set forth below. Since this is a renewal-new applicant proceeding, it will be governed by our Policy Statement on Comparative Hearings Involving Regular Renewal Applicants, above. In this connection, pre-hearing discovery, pursuant to §§ 1.311–1.325 of the Commission's rules, for the purposes of making a comparative evaluation of the competing applications should await a determination as to whether Cowles Florida Broadcasting, Inc.'s program service has been substantially attuned to meeting the problems, needs, and interests of its area, or whether its operation of the station has been characterized by serious deficiencies.

27. *Accordingly, it is ordered,* That pursuant to section 309(e) of the Communications Act of 1934, as amended, the captioned applications of Cowles Florida Broadcasting, Inc., and Central Florida Enterprises, Inc., are designated for hearing in a consolidated proceeding at a time and place to be specified in a subsequent order, on the following issues:

(1) With respect to the application of Central Florida Enterprises, Inc., to determine:

a. The areas and populations which may be expected to gain or lose television coverage by the proposed operation, as compared to the service now provided by Station WESH–TV, and the other television broadcast services available to such areas;

b. To the extent that there may be a loss area, what plans are proposed to ameliorate or eliminate actual losses and the efficacy of those plans;

c. Whether circumstances exist that warrant a waiver of § 73.610(b) of the Commission's rules, and, if so, to determine the necessary conditions to be met to assure that equivalent protection is provided to Station WTHS–TV, channel *2, Miami, Fla;

d. Whether the following subscribers to debentures of the applicant have sufficient current and liquid assets in excess of current liabilities in sufficient amount to enable them to fully meet their commitments; H. Clinton Dunn, James W. Clower, O. L. White, Louis P. Samuels, Jos. A. Guernsey, J. Hyatt Brown, George W. Engram, William H. Cleveland, Arthur F. Jones, J. C. Adams, Jr., Fletcher G. Rush, and George P. Schanck;

e. Whether Mr. James R. Stephen has current and liquid assets in excess of current liabilities, in sufficient amount to enable him to meet his stock subscription commitment to the applicant;

f. Whether the applicant will have available a $100,000 loan from the Commercial Bank of Daytona Beach, and, if so, its terms and conditions;

g. Whether the applicant will have available studio and transmitter buildings by lease from 749 Volusia, Inc., and, if so, the terms and conditions of that lease;

h. What items will be covered by the equipment supplier's deferred credit;

i. Whether the applicant will have available, additional sources of funds to meet its requirements, and, if so, the terms and conditions under which those funds will be available;

j. In light of the evidence adduced under issues "f"–"i", what the applicant's cost of construction and 3-month operating expenses are;

k. In light of the evidence adduced under issues "d"–"j", whether the applicant is financially qualified.

(2) With respect to the applications of Cowles Florida Broadcasting, Inc., to determine:

a. The areas and populations which may be expected to gain or lose television coverage by operating as proposed in its

[13] The licensee's reliance on the network's classification is specifically permitted by the Commission. See Instruction 8, Section IV–B, FCC Form 303.

[14] Both Cowles and Central have noted Cowles' parent corporation's involvement in a suit raising possible Clayton and Sherman Act antitrust violations. On June 1, 1970, the U.S. Court of Appeals for the Fifth Circuit resolved that case favorably to the parent corporation.

application for changes, and other television broadcast services available to such areas.

b. To the extent that there may be a loss area, the efficacy of the applicant's plans to ameliorate or eliminate actual losses;

c. Whether circumstances exist that warrant a waiver of § 73.610(b) of the Commission's rules, and, if so, to determine the necessary conditions to be met to assure that equivalent protection is provided to station WTHS–TV, Channel *2, Miami, Fla.;

d. Whether the applicant has moved its main studio without prior Commission approval;

e. The facts and circumstances surrounding the purported criminal mail fraud by the applicant's parent Corporation, Cowles Communications, Inc.;

f. In light of the evidence adduced under issues "d" and "e", whether the applicant has the requisite qualifications to be a licensee of the Commission, or whether it should be given a comparative demerit or demerits;

g. Whether a grant of the application for changes would constitute a de facto reallocation of Channel 2 from Daytona Beach to Orlando, Fla.

(3) To determine which of the proposals would better serve the public interest.

(4) To determine, in light of the evidence adduced pursuant to the above issues, which of the applications, if any, should be granted.

28. *It is further ordered,* That, in the event Central Florida Enterprises, Inc., does not establish that waiver of the spacing requirements is warranted, but does establish that it would otherwise be the preferred applicant, its application will be granted subject to the following conditions:

That the applicant shall submit within ninety (90) days an application specifying a site that does not further decrease the existing spacing to station WTHS–TV, Channel *2, Miami, Fla.

29. *It is further ordered,* That, in the event of a grant of the applications of Cowles Florida Broadcasting, Inc., its applications will be subject to the following condition: That the grant of this application is without prejudice to whatever action the Commission may deem appropriate as a result of the pending proceedings involving Cowles Communications, Inc., instituted by the Federal Trade Commission and the State of Wisconsin.

30. *It is further ordered,* That, the Association of Maximum Service Telecasters, Inc., is made a party to this proceeding.

31. *It is further ordered,* That, to avail themselves of the opportunity to be heard, pursuant to § 1.221(c) of the Commission's rules, the applicants, in person or by attorney, shall file with the Commission in triplicate, within twenty (20) days of the mailing of this order, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this order.

32. *It is further ordered,* That, the applicants, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 1.594 of the Commission's rules, shall give notice of the hearing within the time and in the manner prescribed in that rule, and shall advise the Commission of the publication of such notice as required by § 1.594(g) of the rules.

Adopted: March 3, 1971.

Released: March 10, 1971.

FEDERAL COMMNUICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Secretary.

[FR Doc.71–3561 Filed 3–12–71;8:50 am]

[Docket No. 19006, etc.; FCC 71R–77]

MARITIME COMMUNICATIONS SERVICE ET AL.

Memorandum Opinion and Order Amending Issues

In the matter of application of Loren R. McQueen, doing business as Maritime Communications Service for a construction permit for a new public Class III–B coast station to be located at Mount Umunhum near Almaden, Calif., Docket No. 19006, File No. 4900–M–P–48; Application of Western California Telephone Co. for a construction permit for a new public Class III–B coast station to be located near Santa Cruz, Calif., Docket No. 19008, File No. 5427–M–P–98; Application of Salinas Valley Radio Telephone Co. for a construction permit for a new public Class III–B coast station to be located near Pebble Beach, Calif., Docket No. 19009, File No. 770–M–L–40.

1. This proceeding, involving the above captioned applications for authority to operate new Class III–B public coast stations,[1] was designated for hearing by the Commission on various issues by order, FCC 70–1012, released October 7, 1970.[2] Loren R. McQueen doing business as Maritime Communications Service Point near Half Moon Bay, from a site near Almaden, Calif. Presently before the (MCS) proposes to serve boats operating in the South San Francisco Bay Area and in coastal waters of the Pacific Ocean in an area extending approximately 75 miles from Monterey north past Pidgeon Review Board is a motion to enlarge issues, filed October 29, 1970, by the Pacific Telephone and Telegraph Co. (Pacific), which requests modification and addition of issues to adduce evidence as to alleged overlap and cochannel interference between MCS's proposed station and Pacific's existing station KGW 464; and a related motion to enlarge issues, filed December 28, 1970, by MCS.[3]

2. In support of its motion, Pacific recites the following circumstances. On May 31, 1968, it filed a petition to deny the application of MCS, alleging that the proposed station would duplicate service of Pacific's station KMH 828, Oakland, Calif., within the most important portions of the latter's service area.[4] On January 6, 1969, Pacific was licensed to operate station KGW 464, Vacaville, Calif., on the distress, safety and calling frequency 156.8 MHz and on the working frequency 162.00 MHz, a public correspondence channel. By virtue of a May 29, 1968, amendment to MCS's application, Pacific alleges, MCS also proposes to operate on the public correspondence working frequency of 162.00 MHz, from a location near Almaden, Calif. Pacific alleges that if MCS's proposed 162.00 MHz operation is authorized, its reliable service area[5] would overlap the reliable service area of station KGW 464 (162.00 MHz), duplicating in part, service now

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[1] This class of station provides ship-shore radiotelephone common carrier (public correspondence) service, primarily of a local character, on VHF channels. See rule 81.3.

[2] The application of Francis I. Lambert and Harry L. Brock, Jr., doing business as Advanced Communications Co., for a construction permit for a new public Class III–B coast station to be located at Mount Toro near Monterey, Calif., was designated for hearing along with the above applications; however, by Order released Jan. 25, 1971, the Examiner, at the applicant's request, dismissed this application with prejudice. By order, released Feb. 12, 1971, the Examiner accepted an amendment filed by MCS indicating that the applicant is now a partnership consisting of Loren R. McQueen, Ronald E. Matteson, and Arthur W. Brothers.

[3] Also before the Board are the following pleadings: (a) Opposition, filed Nov. 20, 1970, by MCS, (b) comments, filed Nov. 13, 1970, by the Safety and Special Radio Services Bureau; (c) reply, filed Dec. 14, 1970, by Pacific; (d) motion for leave to file further reply and further reply, filed Jan. 4, 1971, by Pacific and (e) opposition to motion to enlarge issues, filed Jan. 6, 1971, by Pacific.

[4] The Commission agreed that Pacific's petition raised substantial questions and designated, inter alia, the following issues:

d. To determine the area in which station KMH–828 can satisfactorily exchange communications with vessels, and the extent, if any, to which such area would be overlapped by the stations proposed.

e. To determine in light of the evidence adduced on issue (d), whether overlap, if any, would result in an economic climate which would adversely affect the ability of the existing station to adequately serve the public.

f. To determine the nature and extent of cochannel interference, if any, that would arise from simultaneous operation of the stations listed in paragraph 4 above with an alphabetic designator, and whether such interference would be tolerable or mutually destructive.

[5] Reliable service area is defined in the Commission's notice of proposed rule making in Docket No. 18944, adopted Aug. 26, 1970. See paragraph 14 of the designation order.

provided by station KGW 464; [6] and that mutually destructive cochannel interference would arise from simultaneous operation of the two stations. Petitioner also notes that it is currently handling through station KGW 464 a much lower volume of traffic than it is capable of handling. Accordingly, petitioner requests that a new issue (i) be added and that issues (e) and (f) be modified as follows:

3. Petitioner also alleges that MCS proposes to locate its station 3,380 feet above sea level, high enough so as to encompass a reliable service area covering many widely separated communities. Several of these communities and areas, Pacific notes, are currently serviced by station KGW 464, and by station KMH 828 located near Oakland, Calif. The effect of the high elevation and geographic location of MCS's station, petitioner asserts, would be to preclude interference-free reuse of MCS's proposed public correspondence channel frequency at the indicated communities and areas. Accordingly, Pacific requests that new issue (j) be added as follows:

To determine whether a public class III–B coast station should be located at such a high elevation and in such geographic location as to preclude reuse of its public correspondence channel frequency by other coast stations to serve other communities that require VHF maritime mobile services and that are located long distances from the first coast station.

Petitioner attaches to its pleading substantiating affidavits of two engineers.

[6] Rule 81.303 reads:

Duplication of facilities:

A public coast station shall not be authorized to provide a very high frequency maritime mobile service by the use of any frequency assignment above 100 Mc/s solely to any geographic area in which such service is already provided, or for which a valid construction permit or permits has or have been issued for the establishment of a station or stations to provide such service in that area, unless the applicant shall make an affirmative showing that the public interest, convenience or necessity would be served by such a grant, and among other things, that there is a need for such additional facilities in the area involved, that the authorized facilities in that area are not, or will not be, adequate to meet the very high frequency communication needs in the area, and that that the applicant's proposed facilities involving a frequency assignment above 100 Mc/s will serve the very high frequency communcation needs in such area.

4. In opposition, MCS first argues that Pacific has been aware of the possible impact of MCS's proposal for some 2½ years because the MCS application was filed prior to grant of a construction permit to station KGW 464; yet, MCS notes, in its May 31, 1968 petition to deny the MCS application, Pacific did not refer to its KGW 464 station. Moreover, MCS states, also on May 31, 1968, Pacific filed a petition to deny another application [7] on grounds of alleged duplication with both stations KMH–828 and KGW–464. Thus, MCS argues, Pacific's claim of destructive interference is undercut. Furthermore, MCS argues that Pacific's motion is defective in not supplying supporting engineering detail; thus, MCS notes, Pacific does not indicate the nature, extent or location of overlap or interference, nor other details. MCS notes that its consulting engineer cannot accurately depict the service area and interference contour of station KGW 464 because average terrain and antenna pattern data are not supplied by Pacific. However, based on aeronautical charts and topographic maps, MCS states its engineering consultant finds that Pacific's 17 dbu service area would be severely limited by mountainous terrain, and that MCS's proposed operation, because widely separated from Pacific's proposed operation, would "complement" station KGW 464. In view of the distance and terrain factors allegedly involved, MCS argues that objectionable interference is unlikely. MCS attaches to its pleading the affidavit of its consulting engineer. MCS also opposes proposed issue "(j)", on the grounds that the request is not supported by engineering data, that its wording is vague and unclear and that standards for elevation, geographic location and distances are not offered by Pacific. Furthermore, MCS argues, as stated in the attached engineering statement, the restriction in height of a VHF marine station would be contrary to good enigneering practice and would be particularly bad in light of the limitation on transmitter power of such stations to 50 watts. MCS argues that its proposal complies with rules regarding location and antenna height and was chosen to be centrally located to service the areas in question. If such an issue is added, however, MCS requests that it apply as well to Pacific's proposal and that Pacific carry the burden of proof. Finally, however, MCS submits that the request, which could apply to all such applicants, is more properly one for rule-making and not appropriate in a specific adjudicatory proceeding.

5. In its comments, the Safety and Special Radio Services Bureau also notes that Pacific was on notice for 2½ years of the MCS proposal and of its possible impact upon station KGW 464's operation; yet, at no time prior to designation for hearing did Pacific raise the issues it now requests. The Bureau argues that the Commission did not include station KGW 464 in the proceeding because it is located some 75 miles due north of the MCS proposed site and because the transmitter sites are separated by mountainous terrain. Furthermore, the Bureau notes that no supporting engineering detail is offered. However, the Bureau concludes that it would have no objection to requested issues (e), (f), and (i) if Pacific submits an engineering showing, prepared in light of the engineering stipulations agreed to at a November 6, 1970, prehearing conference, which justifies enlargement of the issues. As presently drafted, the Bureau would oppose issue (j) because it is a policy matter more properly acted on in a rule-making proceeding. However, the Bureau would not oppose the issue if it were redrafted and limited to the following:

[W]hether an applicant or applicants in this proceeding should be allowed to have their transmitter sites located at such a high elevation and in such a geographic location as to preclude reuse of its public correspondence channel frequency by other coast stations to serve other communities that require VHF maritime mobile service,

6. In reply, Pacific denies that it was aware at the time it filed its petition to deny MCS's application in May 1968, of any possible impact on station KGW 464; Pacific points out that it mailed its petition to deny on May 29, the same day the Commission gave public notice of an amendment to MCS's application changing its proposed working frequency to 162.0 MHz. Furthermore, Pacific argues, it was not until the issuance of the hearing order in this case that the Commission established standards for determining coverage of VHF class III–B public coast stations or for determination of destructive cochannel interference between such stations. Until the designation order, Pacific claims, its only knowledge of MCS's proposed coverage derived from information contained in contour maps submitted in MCS's application, which contours showed overlap within the service area of station KMH 828 and not KGW 464. Pacific argues that calculations made pursuant to the information contained in the designation order showed substantial overlap and destructive cochannel interference. The approximately 80 miles distance between MCS's proposed station and station KGW 464 would not deter a finding of interference, Pacific avers, because the Commission on its own initiative added such an issue to the hearing when greater distances were involved with two other stations.[8] Pacific also denies that its opposition to the Stockton application is significant because, it claims, it was apparent from information contained in the Stockton application that by any practical standard the Commission might choose for determination of VHF coast station coverage

e. To determine, in light of the evidence adduced on issues (d) and (i), whether overlap, if any, would result in an economic climate which would adversely affect the ability of the existing stations to adequately serve the public.

f. To determine the nature and extent of co-channel interference, if any, that would arise from simultaneous operation of station KGW 464 and of the stations listed in paragraph 4 above with an alphabetic designator, and whether such interference would be tolerable or mutually destructive.

[7] Stockton Mobilphone, Inc., had applied for a new public Class III–B coast station; this application was dismissed with prejudice at the applicant's request on Aug. 8, 1969.

[8] Pacific's station KGW 828 and the proposed station of Advanced Communications Co.

that the Stockton proposal would substantially duplicate the primary service area of station KGW 464. In response to the Bureau, Pacific also submits a detailed engineering statement in support of its claims of overlap and destructive cochannel interference. The station site coordinates used are those supplied to Pacific's engineer by telephone by MCS's consulting engineer. Regarding requested issue (j), Pacific makes clear that it did not propose a broad policy inquiry, but states that the issue was directed at MCS's proposed station site. Pacific argues that MCS's use of the 162.0 MHz channel frequency at the proposed location would prevent repeated use of that channel from lower elevations and different locations to serve diverse and separated boating areas. Accordingly, Pacific requests that proposed issue (j), as modified by the Bureau so as to apply only to the application of MCS, be added.

7. In the Board's opinion, petitioner's allegations adequately support addition of requested issue (i) and modification of issues (e) and (f). Evaluation of Pacific's engineering showing contained in its reply pleading [9] convinces us that substantial questions of overlap and service duplication have been raised; [10] in addition, based on the information before us, we believe that the possibility of disruptive electrical cochannel interference resulting from a grant of the MCS application warrants appropriate inquiry. The arguments in opposition regarding timeliness of the instant request are insubstantial and have been adequately rebutted by petitioner. We conclude, therefore, that the issues are warranted.[11] However, in the Board's view, the questions Pacific seeks to raise under requested issue (j) may be adequately explored within the confines of the issues already designated by the Commission. Thus, issue (a) inquiries into the areas served; issue (c) is designed to determine the needs for VHF public coast services in the area in question and how those needs can best be filled; issue (f) is directed toward determining the interference involved; and issue (g) is designed to determine whether the stations proposed in this proceeding should be established in light of existing services or services that may be established. In our view, evidence adduced under the foregoing issues would be broad enough to encompass the inquiry, as modified, which petitioner seeks to undertake; and as indicated by the Bureau and MCS, the general question of antenna height and location, which is not presently covered in the Commission's Rules, would be more appropriately raised in a rule-making proceeding. Accordingly, requested issue (j) shall be denied.

8. MCS requests, should the Board grant Pacific's motion to enlarge issues, that the following issue be added as well: To determine, in light of the above issue (i), if it would be in the public interest to order a reduction of power and/or alteration of antenna pattern of station KGW 464 should Docket No. 19006 be granted. The burden of proof for any such change to KGW 464 shall be on MCS.

Conceding that its motion is late-filed, MCS requests that it be considered nevertheless because Pacific allegedly refused informal discussions to resolve the question. MCS concludes that addition of Pacific's requested issues requires enlargement to consider compliance by the latter with rules regarding reduction of power. The Board will deny the requested issue. As pointed out by Pacific in its opposition pleading, MCS has made no effort whatever to support its request with any specificity; for example, MCS's motion does not indicate in what manner the antenna pattern of station KGW 464 should be altered nor why it should be so altered. Furthermore, Pacific avers that the transmitter RF power output of Station KGW 464 is, in fact, limited to 50 watts in compliance with § 81.134(d). Finally, apart from the above Rule, we are cited to no Commission authority to indicate that an existing public coast station could be required to alter power or antenna pattern in order to avoid possible overlap and interference resulting from proposed operation of another facility. Under these circumstances, the requested issue is unwarranted.

9. *Accordingly, it is ordered,* That the motion to enlarge issues, filed October 29, 1970, by the Pacific Telephone and Telegraph Co., is granted to the extent indicated below, and is denied in all other respects; and

10. *It is further ordered,* That existing issues e. through h. are redesignated issues f. through i. respectively; and that the issues in this proceeding are enlarged and modified as follows:

e. To determine the area in which station KGW 464 can satisfactorily exchange communications with vessels, and the extent, if any, to which such area would be overlapped by the stations proposed.

f. To determine, in light of the evidence adduced on issues d. and e., whether overlap, if any, would result in an economic climate which would adversely affect the ability of the existing stations to adequately serve the public.

g. To determine the nature and extent of cochannel interference, if any, that would arise from simultaneous operation of station KGW 464 and of the stations listed in paragraph 4 above with an alphabetic designator, and whether such interference would be tolerable or mutually destructive.

11. *It is further ordered,* That the burdens of proceeding with the introduction of evidence and proof on issue e. herein added shall be on Pacific Telephone and Telegraph Co.; and

12. *It is further ordered,* That the motion to enlarge issues, filed December 28, 1970, by Loren R. McQueen doing business as Maritime Communications Service, is denied; and

13. *It is further ordered,* That the motion for leave to file further reply, filed January 4, 1971, is dismissed.

Adopted: March 5, 1971.

Released: March 9, 1971.

FEDERAL COMMUNICATIONS COMMISSION,[12]
[SEAL] BEN F. WAPLE,
Secretary.

[FR Doc.71-3562 Filed 3-12-71;8:50 am]

[Dockets Nos. 19157-19159; FCC 71-189]

PETTIT BROADCASTING CO. ET AL.

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

In regard application of Claud M. Pettit and Margaret E. Pettit, doing business as Pettit Broadcasting Co., Brush, Colo., Docket No. 19157, File No. BP-18125, Requests: 1190 kc., 5 kw., Day; A. V. Bamford, Colorado Springs, Colo., Docket No. 19158, File No. BP-18467, Requests: 1190 kc., 50 kw., DA, Day; Enid C. Pepperd and Dona B. West, doing business as Brocade Broadcasting Co., Boulder, Colo., Docket No. 19159, File No. BP-18470, Requests: 1190 kc., 1 kw., Day; for construction permits.

1. The Commission has before it the above-captioned applications which are mutually exclusive in that simultaneous operation of the stations as proposed would result in prohibited overlap of contours as defined by § 73.37 of the Commission's rules.

2. According to information in the application, A. V. Bamford would require $159,350 to construct and operate his proposed station. Bamford plans to finance this amount with his own funds. Although he appears to have a sufficient net worth to do so, his balance sheet shows only $18,000 in liquid assets. Accordingly, a financial issue will be specified.

3. Boulder is located 16 miles from the northernmost city limits of Denver, Colo.

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[9] We do not approve or condone the practice of submitting supporting engineering details in a reply pleading. However, since engineering affidavits accompanied Pacific's original general allegations, and since the Bureau supports addition of the issues as subsequently substantiated, and finally because we believe substantial questions are raised which require resolution in the public interest, we have considered the reply pleading. Finally, although MCS indicated in its opposition that it might wish to request permission to respond to a subsequent engineering elaboration contained in Pacific's reply pleading, we note that no such request has been filed and that counsel for MCS which filed its pleading in opposition has since withdrawn from the proceeding.

[10] See footnote 5 supra.

[11] In its motion for leave to file further reply and in its further reply pleading, Pacific alleges that MCS has, in a pleading before the Examiner, withdrawn opposition to issue (i) but continued in opposition to the other issues; and asserts that such opposition is illogical in light of this concession. In our view, this question and the request to receive the additional pleadings are mooted by our disposition herein; therefore, we need not rule upon the request.

[12] Review Board member Berkemeyer abstaining.

The centers of the cities are approximately 25 miles apart. The 1970 census figures place Denver's population at 514,678 and Boulder's at 66,870. Since Brocade Broadcasting's proposed 5 mv/m contour pentrates the geographical limits of Denver, a presumption that Brocade Broadcasting is realistically proposing to serve the larger city is raised under the Commission's Policy Statement on section 307(b) Considerations for Standard Broadcast Facilities Involving Suburban Communities, 2 FCC 2d 190, 6 RR 2d 1901. Brocade Broadcasting, however, has submitted considerable data in an effort to establish that Boulder has its own distinct community needs and is autonomous from Denver. After examination of this data, together with the Commission's own study, the Commission finds that the policy statement presumption has been effectively rebutted and that for 307(b) purposes Brocade Broadcasting should be considered as proposing a local transmission service to Boulder. Boulder is the largest city in Boulder County as well as its county seat. Boulder has its own government independent of the local government of Denver and has been operating autonomously with a city manager form of government since 1918. Moreover, it has its own school system which, again, is in no way connected with the school system of Denver. This system consists of 21 elementary, 5 junior high and 2 high schools as well as 3 parochial schools. In addition to being the home of the University of Colorado, there is a vocational and technical center for post-high school education and training. Boulder has its own municipal airport and its own transportation facilities. It is also noted that Boulder has three aural broadcast stations licensed or under construction and a daily newspaper—The Boulder Daily Camera. In addition to numerous stores, restaurants and various business establishments, major companies and institutions located in the Boulder area include Ball Brothers Research Corp., Beech Aircraft Corp., Dow Chemical Co., and International Business Machines. Thus, it appears that Boulder is both politically and economically independent of Denver[1] Brocade Broadcasting proposes to locate its transmitter and antenna system 0.45-mile south of the Boulder city limits in a direction towards Denver. The area and population involved in the 5 mv/m contour penetration into Denver amounts to 8.36 percent and 41,300, respectively. According to Brocade Broadcasting, the pentration involved is a direct result of its inability to locate a site from which it could avoid 5 mv/m pentration of Denver and, at the same time, meet the coverage requirements for Boulder. Brocade Broadcasting has enumerated factors which restrict the site location, which are: (a) Interference considerations with respect to Environmental Sciences Services Administration (ESSA) located to the north of Boulder; (b) an airport northeast of Boulder; (c) the Rocky Mountains rise very abruptly to the west of Boulder; (d) zoning restrictions in built-up areas around Boulder; and (e) the unwillingness of landowners to the east and southeast to sell a piece of land for the transmitter site. In support of its allegations, Brocade Broadcasting has submitted letters from the local realtors describing unsuccessful efforts to obtain tracts of land suitable for a transmitter site.

4. Engineering factors have been afforded decisional significance in most of those cases in which the Commission found, prior to hearing, that the aforementioned presumption had been effectively rebutted, e.g., Clay Broadcasters, Inc., 4 FCC 2d 932, 8 RR 2d 687; Du Page County Broadcasting, Inc., 5 FCC 2d 557, 8 RR 2d 930; Donnelly C. Reeves, 6 FCC 2d 531, 9 RR 2d 448; Major Market Stations, Inc. (KREL), 8 FCC 2d 13, 9 RR 2d 1368; Woods and Watkins, FCC 68–56, released January 23, 1968, 12 RR 2d 97; KACY, INC. (KACY), 15 FCC 2d 33, 14 RR 2d 618; and Howard L. Burris, et al., FCC 2d _____, FCC 71–17, released January 12, 1971. Upon examination of the applicant's showing, the Commission finds, as alleged by Brocade, that the 5 mv/m penetration is not occasioned by a desire to serve the larger city, but is a direct result of the necessity of meeting the coverage requirements for Boulder. In this connection, Commission studies indicate that one kilowatt is needed from the proposed site to place a 25 mv/m contour over the business district of Boulder as required by § 73.188. If a transmitter site could have been acquired on any side of Boulder other than to the south, at a distance of about only 2.5 miles from the proposed site, 5 mv/m penetration could have been avoided. This fact lends convincing support to the applicant's assertions regarding the unavailability of a site to the north, east or west of Boulder and leads us to conclude, as a practical matter, that the 5 mv/m penetration is due to technical considerations beyond the applicant's control. Thus, we find that Brocade Broadcasting has effectively rebutted the aforementioned presumption and that for 307(b) purposes should be considered as proposing a local transmission service for Boulder.

5. Since no determination has yet been reached on whether the antenna proposed by A. V. Bamford would constitute a hazard to air navigation, an issue regarding this matter is required.

6. The Colorado Springs and Boulder proposals, although for different communities, would serve substantial areas in common. Consequently, in addition to determining, pursuant to section 307(b) of the Communications Act of 1934, as amended, which of the three proposals would better provide a fair, efficient and equitable distribution of radio service, a contingent comparative issue will also be specified.

7. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

8. *Accordingly, it is ordered,* That, pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent order, upon the following issues:

1. To determine the areas and populations which would receive primary service from the applicants and the availability of other primary aural (1 mv/m or greater in the case of FM) service to such areas and populations.

2. To determine with respect to the application of A. V. Bamford:

(a) How the applicant will obtain sufficient additional funds to construct and operate the proposed station for 1 year without revenue; and

(b) Whether in light of the evidence adduced pursuant to (a), above, the applicant is financially qualified.

3. To determine whether there is a reasonable possibility that the tower height and location proposed by A. V. Bamford would constitute a hazard to air navigation.

4. To determine, in the light of section 307(b) of the Communications Act of 1934, as amended, which of the proposals would best provide a fair, efficient and equitable distribution of radio service.

5. To determine, in the event it is concluded that a choice between the applications should not be based solely on considerations relating to section 307(b), which of the operations proposed in the above-captioned applications would best serve the public interest.

6. To determine, in the light of the evidence adduced pursuant to the foregoing issues which, if any, of the applications should be granted.

9. *It is further ordered,* That, the Federal Aviation Administration is made a party to the proceeding.

10. *It is further ordered,* That, to avail themselves of the opportunity to be heard, the applicants and party respondent herein, pursuant to § 1.221(c) of the Commission's rules, in person or by attorney, shall, within 20 days of the mailing of this order, file with the Commission in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this order.

11. *It is further ordered,* That the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 1.594 of the Commission's rules, give notice of the hearing, either individually or, if feasible and consistent with the rules, jointly, within the time and in the manner prescribed in

[1] Standard Rate and Data Service estimates total retail sales for Boulder and Boulder County to be approximately $150 million and $300 million, respectively. Thus, it appears there is sufficient broadcast revenue potential to support Brocade's operation without reliance on revenue from Denver.

such rule, and shall advise the Commission of the publication of such notice as required by § 1.594(g) of the rules.

Adopted: February 24, 1971.

Released: March 9, 1971:

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Secretary.

[FR Doc.71-3563 Filed 3-12-71;8:50 am]

[Docket No. 19167; FCC 71-230]

RADIO STATION WSNT, INC.

Memorandum Opinion and Order Designating Application for Hearing on Stated Issues

In regard application of Radio Station WSNT, Inc., Sandersville, Ga., for renewal of license of station, Docket No. 19167, File No. BR-3268.

The Commission has before it for consideration: (1) The above-captioned application for renewal of license of station WSNT, Sandersville, Ga.; (2) a petition to deny renewal of license (Petition) filed by Arnold Hayes as an individual and as an agent for the Southern Christian Leadership Conference (SCLC), and by Richard Turner, as an individual and as an agent for the Black Youth Club of Sandersville, Ga.; (3) an opposition to the petition to deny renewal (Opposition) filed by applicant; and (4) a reply to the opposition to petition to deny renewal of license (Reply) submitted by the original Petitioners.

1. Petitioners predicate their standing as parties in interest on the grounds that they "represent the interest of a substantial portion of the listening audience of WSNT," that the Black Youth Club, an affiliate of the SCLC, has "significant roots in the community," and that the individual petitioner-affiants have personal knowledge of the facts underlying the petition.[1] In addition, the pleadings filed substantiate the fact of residency of the individual petitioners in the community of license, as well as their representation of the two petitioning organizations. The Commission is thus satisfied that Petitioners have sufficient standing to file their petition.[2]

2. Radio Station WSNT is the only broadcast facility licensed to Sandersville, Ga. Petitioners allege that of Sandersville's 5,425 citizens (1960 census) approximately 60 percent are black, and that Washington County, in which Sandersville is located, is approximately 65 percent black.

3. According to Petitioners since about September of 1969, the Movement, "a broadly based coalition of citizens and residents of Sandersville * * * spearheaded by and organized around the Black Youth Club, an affiliate of the Southern Christian Leadership Conference," has campaigned for greater opportunities and better treatment for blacks in both the public and private sectors. The Movement has employed "lawful picket-lines, parades, rallies, demonstrations and selective buying campaigns," and "there have been up to 2,500 persons (almost one-half of the city's population) involved in these activities." Petitioners further state that the efforts of the Movement have resulted in considerable violence, including shootings and bombings attempts; and that the intensity of the developing attrition between the black and white communities was sufficiently newsworthy to warrant reporting by the national media. However, "save for one isolated blurb several months ago," Petitioners claim that WSNT has carried no news whatsoever of these events. These allegations were not denied by Applicant.

4. Petitioners charge that the station's admitted policy of abstention from broadcasting any news of the Movement's activities and the consequences thereof is racially motivated, that the policy was instituted "because the Movement is a black movement." Petitioners aver that upon inquiring of James Whaley, the station manager, petitioner Turner was informed that implementation of the questioned news policy resulted from a desire to remain neutral, to avoid "taking sides."

5. Petitioners allege that the station's expressed desire to remain neutral is in no way relevant to its obligation to inform listeners of significant local events, and directly contravenes its duty to help alleviate community problems.[3] Further, it is asserted that the station has not maintained its claimed neutrality. The Department of Health, Education, and Welfare ordered the integration of the public school faculties of Washington County, Ga., by February 1, 1970. Governor Lester Maddox presented a speech in Washington County advocating resistance to the integration order, and station WSNT carried the speech live. In contrast, the station failed to broadcast news of a petition supporting the integration order signed by 106 black teachers, as well as the fact that a large number of black demonstrators opposed to Governor Maddox's position was restrained by state troopers from entering the Washington County High School auditorium where the governor was presenting his speech. In addition, in their reply, Petitioners allege that, but for one incident in which a white man was injured (having been shot on petitioner Turner's front porch) all violence has been directed toward blacks, and so the station's professed impartiality is in fact discriminatory.

7. In its Opposition, Applicant takes issue with these allegations, although, as stated above, it does not contest the factual claims of Petitioners. Applicant refers generally to the "close cooperation between the management of the radio station and the black community," and states that its policy of withholding from the air news of the local racial conflict derives from the Applicant's firm belief that it thus better serves the cause of peace and harmony. As stated in the affidavit of WSNT manager James Whaley, attached to the Opposition as Exhibit 1:

> When the Black Youth Club and Southern Christian Leadership Conference began marching and demonstrating in the city of Sandersville it was decided by the management of WSNT that news coverage of these events would not serve any good purpose but would tend to contribute to the cause of violent confrontations between the races. It was felt by the management that any announcements and news coverage of these marches and demonstrations would invite outside agitators both black and white to take part and would serve to promote discord and violence among the citizens of the community.
>
> As to the broadcast of prior notice of these events, it was my fear that the advance publicity would serve to increase the hostile opposition to the event, either black or white, and that the possibility of violence would be greatly increased. With the (sic) regard to the broadcast of the events as they were occurring, keeping in mind the length of the demonstrations and the instantaneous discrimination aspects of the broadcast media, my beliefs that persons who were not yet involved either in the demonstration or the opposition, both black and white, might be induced to participate or observe and thereby compounding the problems in increasing the possibility that a thoughtless word or deed might lead to further violence.
>
> It is my belief that rumors, inability to accurately check the facts in the hostile

[1] In its Opposition applicant challenges the timeliness of the filing of the Petition, as it was filed on Mar. 2, 1970, and the supporting affidavits were filed on Mar. 4, 1970. However, as Mar. 1, 1970, was a Sunday, the filing of the Petition on the next business day is deemed timely, in accordance with §§ 1.4(d) and 1.4(i) of the Commission's rules and regulations. The filing of the supporting affidavits to 2 days subsequent thereto in no way prejudiced the rights of Applicant.

[2] Sec. 309(d)(1) of the Communications Act of 1934, as amended; Office of Communication of the United Church of Christ et al. v. Federal Communciations Commission, 359 F. 2d 994 (D.C. Cir. 1966).

[3] In Office of Communication of the United Church of Christ et al. v. F.C.C., 359 F. 2d 994, 1004 (D.C. Cir. 1966), the court states "In a community served by only one outlet, the public interest focus is perhaps sharper and the need for airing complaints often greater than where, for example, several * * * exist." Further, in Red Lion Broadcasting Co., Inc. v. Federal Communications Commission, 395 U.S. 367 (1969) the Supreme Court emphasizes the power of the Commission "to treat licensees * * * as proxies for the entire community, obligated to give suitable time and attention to matters of great public concern. To condition the granting or renewal of licenses on a willingness to present representative community views on controversial issues is consistent with [the First Amendment]. Congress need not stand idly by and permit those with licenses to ignore the problems which beset the people * * * ." The Court also refers to the "two-fold duty laid down by the FCC's decisions" that a "broadcaster must give adequate coverage to public issues * * * and coverage must be fair in that it accurately reflects the opposing views * * *. Moreover, the duty must be met by programming obtained at the licensee's own initiative if available from no other source."

atmosphere and the wide dissemination of news contributes (sic) to a general atmosphere of fear, hostility, and confrontation, and there were instances of news reporting by the national media, and by some of the newspapers, that was either distored or not factual.

This policy was applied equally to the blacks and to the whites, and as the station did not publicize black marches and demonstrations, so it did not publicize white counter marches, for the same reasons * * *

(After describing the explosive atmosphere of fear, hatred, and inclination to violence) It is my belief that this policy helped to defuse a very tense situation, and has contributed in establishing an atmosphere for the resolution of the issues. Sandersville, while suffering violence and intimidation on both sides, was not subjected to the arson, riots, and loss of life that has characterized similar confrontations between groups of citizens in other parts of the country.

8. In support of its argument, Applicant attaches to its Opposition affidavits of J. Euree Curry, Sheriff of Washington County, and James Radney, "a member of the Police Department of Sandersville, Georgia," who was "in charge of the police force during the recent periods of violence." Both affiants refer to the seriousness of the problem, and state their opinion that publicity of the violence might well have led to more violence. Both also claim that the news reports of the national media were exaggerated.

9. As the only station licensed to serve Sandersville, WSNT has a particular responsibility to air major local problems for the benefit of the community. Applicant cannot simply refrain from taking any action, thereby effectively ignoring the situation. Further, if in fact the national media exaggerated and distorted news of the racial conflict in Sandersville, as alleged by Applicant in its Opposition, it appears to us that the station has a greater obligation to attempt to provide accurate coverage. In addition, the station's argument that broadcasting news of the racial situation would induce nonparticipants "both black and white * * * to participate or observe * * * thereby increasing the possibility that a thoughtless word or deed might lead to further violence," is dubious justification for its inaction, particularly since the gravity of the situation indicates that few residents of the station's service area could have remained unaware of the situation. We recognize that in the midst of disorder a licensee must exercise its judgment as to the advisability of broadcasting news of the event, in light of the attendant possibility of attracting crowds of curious spectators whose presence might compound the problems of the authorities. However, we are here concerned with Applicant's general practice of suppressing news of significant local events, and the question of whether Applicant's absolute silence could serve the public interest.

10. These matters raise questions both with regard to whether applicant is meeting its obligation to serve the public by presenting important local news, and whether Applicant has failed to comply with the Commission's Fairness Doctrine (as ratified by Congress in section 315 of the Communications Act of 1934, as amended) which imposes upon a licensee the obligation to afford a reasonable opportunity for the discussion of conflicting views on issues of public importance. The Federal order raised a controversial issue of public importance in the community, and the station's broadcasting only the governor's point of view raises the question of whether the station has violated the Fairness Doctrine.

11. As further indications of Applicant's alleged discriminatory practices and failure generally to serve the community, Petitioners refer to the survey of community needs and interests submitted with the above-captioned application for renewal of license. Despite the gravity of Sandersville's racial conflict, only one interviewee made any direct reference to it (Mrs. Corine Cuby advocated more jobs for Negroes);[4] and, further, according to Petitioners, the four blacks who were consulted (of a total of 26 interviewed) do not represent the views of the black community. In addition, "despite the Movement's broad base in the Community," it is stated that the licensee made no effort to interview any of its members.[5] We cannot discern from the pleadings whether in fact Applicant did make any good-faith effort to identify those leaders who truly represent the black citizens of Sandersville and the surrounding area. We are not suggesting that the licensee is bound to consult with all who claim to be the principal representatives of community groups. Obviously a licensee must have broad discretion, and the only question that could arise in this regard is whether the licensee made a good-faith effort to ascertain and consult the principal leaders of representative groups.

12. Petitioners also charge that the station at one time carried news of the Black Youth Club as a public service but that it has ceased doing so since the club became involved in the movement. Also, contrary to Applicant's representation in its renewal application that it follows a policy of making time available to local groups for discussion of important matters, and that it has notified community leaders of this fact, Petitioners aver that "it has not made time available to the movement, a group that speaks for over half of Sandersville's population." Further, it is claimed, Applicant has expressly refused to provide time requested by black leaders with the explanation that it does not want to "take sides." Petitioners conclude their argument by emphasizing that WSNT broadcasts basketball and football games of "virtually all white" Washington County High School, but that the sporting events of Thomas J. Elder Comprehensive High School, "the black high school," are not broadcast, despite the predominance of blacks in Sandersville and Washington County; and Petitioners claim that this further demonstrates the station's discriminatory policies. Applicant attaches to its Opposition a letter from C. Williams, principal of Thomas J. Elder Comprehensive High School (described as "integrated" by Applicant and "the black high school" by Petitioners) expressing appreciation for the service provided by WSNT, and stating, "Your treatment of the community activities over the past several months contributed to the calminess (sic) and rationality of community people."[6] Additional supporting documents include a statement of one Rogers Peeler, "President of the Washington County Chapter of the NAACP," who writes, "I have not been refused by WSNT to run any announcement that I have brought in"; and the affidavit of Gilbert Dean, "a [presumably black] minister and educator in Sandersville," who acknowledges the "good cooperation" of the station in providing him much air time. In support of its position Applicant also attaches to its

[4] Apparently related references by those interviewed are: "interviewing some of those who have been intimidated," "communication," "open forums," "communications * * * by informing the people in the community of the real facts," "fuller coverage of local news," editorializing "on community affairs and problems * * * gathering and broadcasting factual information," "to cover local news more closely * * * giving more details on local stories." In its evaluation of "local and area needs" Applicant lists as seventh (and last) that there is a "need for better human relations and communications between the races in this area."

[5] The Commission requires that an applicant consult "a representative range of groups and leaders to give the applicant a better basis for determining the total needs of the community." FCC Form 303, section IV-A, page 8.

[6] Applicant also attaches to its opposition copies of two newspaper articles which describe the tense climate of Sandersville from different points of view. An article from the Swainsboro, Ga., The People's Voice of Jan. 29, 1970, refers to "the organized guerrillas of the S.C.L.C." who are part of "the Communist conspiracy," while an article from the Atlanta Journal and Constitution Magazine of Feb. 1, 1970, is milder in tone and more detailed in its description of events. Applicant states, "Neither article is used to establish any of the facts contained in the articles, and the station expressly disclaims any intent to adopt the views of the respective reporters."

Opposition a list of "Announcements Requested by and Made in Behalf of Negro Citizens" from August 1969 through March 1970.[7]

13. In their Reply Petitioners reiterate their contention that the station totally fails in its responsibility to serve its community of license by following its alleged racially discriminatory policies. Petitioners take issue with most of the particulars offered by the applicant in defense of its practices. First, Petitioners dispute the claim in James Whaley's affidavit that he and petitioner Turner had never discussed the station's news policy, contrary to information contained in the Petition. Petitioners state that, upon hearing WSNT broadcast news of the prosecution in Atlanta of Hosea Williams, a prominent SCLC official, for driving while intoxicated, Turner called Whaley to inquire why WSNT would carry a news item which presented Mr. Williams in an unfavorable light, whereas it refused to broadcast any news of the activities of local blacks. The Reply continues that Turner then requested that the station announce a forthcoming Movement meeting and mass demonstration, but was told again that the station could not take sides. Relative to this incident, Petitioners allege that the statement in the Opposition that the station has continued to serve the Black Youth Club is false. According to Petitioners WSNT refused to announce, among others, a mass meeting in December of 1969, and "because of the station's pattern of refusing to carry the news and announcements of the Movement * * * the Petitioners abandoned the futile gesture of making requests." As set out in paragraph 7 above, James Whaley, the station manager, contends that refusal to carry news of future events is justified by the possibility of intensified hostility and violence. In addition, Petitioners charge Applicant with filing false information in that its reported announcement of a Black Youth Club dance on November 14, 1969, coincides with no such function of the Club on or about that date.

14. Further, among the many announcements listed by WSNT as having been broadcast on behalf of local blacks are two "Stay in School" announcements of January 6 and 7, 1970, by Gilbert Dean. Petitioners assert that Dean is the truant officer of "black" Thomas J. Elder Comprehensive High School, that the Movement had called for a school boycott on those particular days, and that Dean's "announcements clearly represent one side of the issue," so that the station again violated its claimed neutrality.

15. In response to Petitioners' original charge with reference to the station's broadcasting athletic events of the "white" high school only, Applicant filed as an exhibit to its Opposition the aforementioned letter dated March 19, 1970, from C. Williams, principal of the "black" high school, which contains the following: "We appreciate your offer to broadcast our football and basketball games, as of the school term 1968–69, whenever we make the necessary arrangements with our sponsers."[8] In their Reply Petitioners suggest that this is further evidence of the station's pattern of racial discrimination, for presumably sponsorship of the "white" high school events was arranged by James Whaley, the station manager, while the burden of securing sponsorship for Thomas J. Elder events appears to lie with the school itself. Thus, the pleadings raise the question of whether Applicant has failed to provide service to its whole community.

16. Based on the foregoing it appears that substantial and material questions of fact have been raised relative to whether Applicant has served the public interest, convenience and necessity of its community of license. The pleadings raise substantial questions regarding Applicant's performance with reference to its obligation to keep the public informed of important local news and to promote discussion of substantial local issues, especially bearing in mind that WSNT is the only broadcast facility licensed to Sandersville. Additional issues raised include the adequacy of Applicant's survey of community needs and interests, whether Applicant has engaged in a pattern of racial discrimination in its programing, and whether Applicant has failed to meet the responsibilities imposed by the Fairness Doctrine to afford a reasonable opportunity for the discussion of conflicting views on issues of public importance. We conclude that an evidentiary hearing is required to insure the development of a full record.

17. *Accordingly, it is ordered,* That, pursuant to section 309(e) of the Communications Act of 1934, as amended, the above-captioned application is designated for hearing to be held at Sandersville, Ga., at a time to be specified in a subsequent order, upon the following issues:

(1) To determine whether Applicant has made a meaningful effort to ascertain the needs and interests of the public served by its station;[9]

(2) To determine whether Applicant has followed a racially discriminatory policy in its overall programming, thereby failing to serve the substantial black community in its service area;

(3) To determine whether Applicant has failed to serve the needs and interests of its community of license with respect to its policy of suppressing news coverage of local events;

(4) To determine whether Applicant has complied with the Fairness Doctrine by affording a reasonable opportunity for the discussion of conflicting views on controversial issues of public importance to its community;

(5) To determine whether Applicant has afforded reasonable opportunity for the use of its broadcasting facilities by the significant groups comprising the community of its service area;

(6) To determine whether in light of all the evidence a grant of the application for renewal of license of Station WSNT would serve the public interest, convenience and necessity.

18. *It is further ordered,* That the petition of Arnold Hayes, Richard Turner, the Southern Christian Leadership Conference, and the Black Youth Club of Sandersville, Ga., insofar as it seeks a hearing on the application herein is granted.[10]

19. *It is further ordered,* That petitioners Arnold Hayes, Richard Turner, the Southern Christian Leadership Conference and the Black Youth Club of Sandersville, Ga., be made parties to the hearing.

20. *It is further ordered,* That in accordance with section 309(e) of the Act the burden of going forward with the evidence in the first instance shall be on Petioners as to issues (1), (2), (3), (4), and (5), with the Broadcast Bureau following with evidence in its possession relevant to those issues. Applicant has the ultimate burden of establishing that it possesses the requisite qualifications to be a licensee and that a grant of its application for renewal of license would serve

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[7] Applicant attaches to its opposition written requests from the Black Youth Club (for announcements regarding the movie commemorating the life of Dr. Martin Luther King, Jr.), dated Mar. 13, 1970; and from Gilbert Dean (for time to present programs dealing with children's problems), dated Mar. 11, 1970. In each case Station WSNT responded in the affirmative. In addition, as cited in paragraph 15 of this order, the principal of the Thomas J. Elder Comprehensive High School, C. Williams, submitted a letter dated Mar. 19, 1970, wherein he acknowledged the station's offer to broadcast the school's football and basketball games. Having occurred subsequent to the filing of the petition, these matters are entitled to no weight. In the Matter of Revocation of the Licenses of Asheboro Broadcasting Co. for Broadcast Stations WGWR–AM–FM, Asheboro, N.C., 20 FCC 2d 1 (1969).

[8] It is presumed that the intended dates are 1970–71, not 1968–69.

[9] The phrase "needs and interests" is deemed to be generally synonymous with "community problems."

[10] Furthermore, it is noted that on Sept. 1, 1970, petitioners filed a Supplemental Pleading to their Apr. 17, 1970, Reply to the licensee's Opposition to their petition to deny. Since the Commission's determination herein renders any ruling on the supplemental pleading unnecessary, no useful purpose would be served by setting forth in detail the arguments delineated in the supplemental pleading at this time. However, it is noted that petitioners assert that WSNT's license renewal application should be denied or designated for hearing in view of the Commission's August 5, 1970, letter to Gary Soucie, Friends of the Earth (FCC 70–862), wherein it was stated that licensees cannot ignore "burning issues." Also, pursuant to three consecutive joint motions filed by Petitioners and Applicant, the Commission withheld action in this matter to allow the parties an opportunity to negotiate their differences. However, documents filed separately by Petitioners and Applicant indicate that negotiations have been terminated and that no agreement has been reached. We also have before us an amendment to its application filed by Applicant on Feb. 16, 1971, which reflects proposed changes in its news, public service, public affairs, and employment policies.

the public interest, convenience and necessity.

21. *It is further ordered,* That to avail themselves of the opportunity to be heard, Applicant and Petitioners herein, pursuant to § 1.221(e) of the Commission's rules and regulations, in person or by attorney, shall within twenty (20) days of the mailing of this order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date set for the hearing and present evidence on the issues specified in this order.

22. *It is further ordered,* That Applicant shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 1.594 of the Commission's rules and regulations, give notice of the hearing within the time and in the manner prescribed in said rule, and shall advise the Commission of the publication thereof as required by § 1.594 of the Commission's rules and regulations.

Adopted: March 3, 1971.

Released: March 11, 1971.

FEDERAL COMMUNICATIONS COMMISSION,[11]

[SEAL] BEN F. WAPLE,
Secretary.

[FR Doc.71-3564 Filed 3-12-71;8:50 am]

FEDERAL MARITIME COMMISSION

ASSOCIATION OF WEST COAST STEAMSHIP COMPANIES

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:

E. Adema, Secretary, The Association of West Coast Steamship Companies, Post Office Box 5097, Cristobal, Canal Zone.

Agreement No. 3302-9, between the member lines of The Association of West Coast Steamship Companies, modifies the self-policing system of the conference to conform to the requirements of the Commission's General Order 7 (Revised).

Dated: March 9, 1971.

By Order of the Federal Maritime Commission.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.71-3536 Filed 3-12-71;8:48 am]

TMT TRAILER FERRY, INC., AND BERWIND LINES, INC.

Notice of Agreement Filed

Notice is hereby given that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1405 I Street NW., Room 1202; or may inspect the agreement at the Field Offices located at New York, N.Y., New Orleans, La., and San Francisco, Calif. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 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. William C. Rebenack, Traffic Manager, TMT Trailer Ferry, Inc., 215 South Georgia Street, Post Office Box 4787, Jacksonville, FL 32201.

Agreement No. DC-51, between TMT Trailer Ferry, Inc. (TMT), and Berwind Lines, Inc (Berwind), provides for the transportation of cargo under through bills of lading between U.S. South Atlantic ports and ports in the Virgin Islands with transshipment at San Juan, Puerto Rico. The through rates and terms of transportation will be combination rates of those separately published by TMT between U.S. South Atlantic ports and Puerto Rico and those separately published by Berwind between San Juan and the Virgin Islands. All shipments moving pursuant to this agreement will be interchanged at Berwind's terminal in San Juan. Either party may terminate this agreement upon 30 days' notice to the other party. The agreement will become effective upon approval of the Commission pursuant to section 15, Shipping Act, 1916.

Dated: March 10, 1971.

By order of the Federal Maritime Commission.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.71-3537 Filed 3-12-71;8:48 am]

UNITED STATES ATLANTIC & GULF-VENEZUELA AND NETHERLANDS ANTILLES CONFERENCE

Notice of Agreement Filed

Notice is hereby given that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1405 I Street NW., Room 1202; or may inspect the agreement at the Field Offices located at New York, N.Y., New Orleans, La., and San Francisco, Calif. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 20 days after publication of this notice in the FEDERAL REGISTER. Any person desiring a hearing on the proposed agreement shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the statement should indicate that this has been done.

[11] Dissenting Statement of Commissioner Robert T. Bartley and Concurring Statement of Commissioner Nicholas Johnson filed as part of the original document.

Notice of agreement filed by:

C. D. Marshall, Agent, United States Atlantic & Gulf-Venezula and Netherlands Antilles Conference, 11 Broadway, New York, NY 10004.

Agreement No. 6870–13, among the member lines of the United States Atlantic & Gulf-Venezuela and Netherlands Antilles Conference (Oil Companies Contract Agreement—Proprietary Cargo), modifies (1) the self-policing provisions pursuant to General Order 7 (Revised), by cancelling the existing Articles 9 and 10 and substituting therefore Articles 9 through 12, and (2) Article 15(a) to clarify that the time and place of all meetings shall be subject to the call of the Chairman of the United States Atlantic and Gulf-Venezula and Netherlands Antilles Conference (Agreement No. 6190, as amended), as Agent for the parties.

Dated: March 9, 1971.

By order of the Federal Maritime Commission.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.71-3538 Filed 3-12-71;8:48 am]

[Docket No. 71-21]

HONOLULU FREIGHT SERVICE

Order of Investigation and Suspension

Honolulu Freight Service has filed with the Federal Maritime Commission 6th Revised Page No. 32 to its Tariff FMC–F No. 1 to become effective March 15, 1971. This page increases the rate and minimum charges on Freight, All Kinds, between U.S. Pacific Coast ports and ports in the Hawaiian Islands.

Upon consideration of said tariff page, the Commission is of the opinion that the above designated tariff matter should be made the subject of a public investigation and hearing to determine whether it is unjust, unreasonable or otherwise unlawful under section 18(a) of the Shipping Act, 1916, and/or sections 3 and 4 of the Intercoastal Shipping Act, 1933, and good cause appearing therefore;

It is ordered, That pursuant to the authority of section 22 of the Shipping Act, 1916, and sections 3 and 4 of the Intercoastal Shipping Act, 1933, an investigation is hereby instituted into the lawfulness of said increased rates and charges with a view to making such findings and orders in the premises as the facts and circumstances warrant. In the event the matter hereby placed under investigation is further changed, amended or reissued, such matter will be included in this investigation;

It is further ordered, That pursuant to section 3, Intercoastal Shipping Act, 1933, 6th Revised Page 32 to Tariff FMC–F No. 1 is suspended and the use thereof deferred to and including July 14, 1971, unless otherwise ordered by this Commission;

It is further ordered, That there shall be filed immediately with the Commission by Honolulu Freight Service a consecutively numbered supplement to the aforesaid tariff which supplement shall bear no effective date, shall reproduce the portion of this order wherein the suspended matter is described and shall state that the aforesaid matter is suspended and may not be used until July 15, 1971, unless otherwise authorized by the Commission; and the rates and charges heretofore in effect, and which were to be changed by the suspended matter shall remain in effect during the period of suspension, and neither the matter suspended, nor the matter which is continued in effect as a result of such suspension, may be changed until this proceeding has been disposed of or until the period of suspension has expired, unless otherwise ordered by the Commission;

It is further ordered, That copies of this order shall be filed with the said tariff schedules in the Bureau of Compliance of the Federal Maritime Commission;

It is further ordered, That the provisions of Rule 12 of the Commission's rules of practice and procedure which require leave of the Commission to take testimony by deposition or by written interrogatory if notice thereof is served within 20 days of the commencement of the proceeding, are hereby waived for this proceeding inasmuch as the expeditious conduct of business so requires. The provision of Rule 12(h) which requires leave of the Commission to request admissions of fact and genuineness of documents if notice thereof is served within 10 days of commencement of the proceeding, is similarly waived;

It is further ordered, That Honolulu Freight Service be named as respondent in this proceeding;

It is further ordered, That this proceeding be assigned for public hearing before an examiner of the Commission's Office of Hearing Examiners and that the hearing be held at a date and a place to be determined and announced by the presiding examiner;

It is further ordered, That (1) a copy of this order shall forthwith be served on the respondent herein and published in the FEDERAL REGISTER; and (2) the said respondent be duly served with notice of time and place of the hearing.

All persons (including individuals, corporations, associations, firms, partnerships, and public bodies) having an interest in this proceeding and desiring to intervene therein, should notify the Secretary of the Commission promptly and file petitions for leave to intervene in accordance with Rule 5(l) of the Commission's rules of practice and procedure (46 CFR 502.72) with a copy to all parties to this proceeding.

By the Commission.

[SEAL] FRANCIS C. HURNEY,
Secretary.

[FR Doc.71-3549 Filed 3-12-71;8:49 am]

FEDERAL POWER COMMISSION

[Docket Nos. RI70-892, etc.]

MARATHON OIL COMPANY, ET AL.

Order Providing for Hearing on and Suspension of Proposed Changes in Rates, and Allowing Rate Changes To Become Effective Subject to Refund [1]

MARCH 5, 1971.

Respondents have filed proposed changes in rates and charges for jurisdictional sales of natural gas, as set forth in appendix A hereof.

The proposed changed rates and charges may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is in the public interest and consistent with the Natural Gas Act that the Commission enter upon hearings regarding the lawfulness of the proposed changes, and that the supplements herein be suspended and their use be deferred as ordered below.

The Commission orders:

(A) Under the Natural Gas Act, particularly sections 4 and 15, the regulations pertaining thereto (18 CFR Ch. I), and the Commission's rules of practice and procedure, public hearings shall be held concerning the lawfulness of the proposed changes.

(B) Pending hearings and decisions thereon, the rate supplements herein are suspended and their use deferred until date shown in the "Date Suspended Until" column. Each of these supplements shall become effective, subject to refund, as of the expiration of the suspension period without any further action by the Respondent or by the Commission. Each Respondent shall comply with the refunding procedure required by the Natural Gas Act and § 154.102 of the regulations thereunder.

(C) Unless otherwise ordered by the Commission, neither the suspended supplements, nor the rate schedules sought to be altered, shall be changed until disposition of these proceedings or expiration of the suspension period, whichever is earlier.

By the Commission.

[SEAL] KENNETH F. PLUMB,
Acting Secretary.

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[1] Does not consolidate for hearing or dispose of the several matters herein.

APPENDIX A

Docket No.	Respondent	Rate schedule No.	Supplement No.	Purchaser and producing area	Amount of annual increase	Date filing tendered	Effective date unless suspended	Date suspended until—	Cents per Mcf*		Rate in effect subject to refund in dockets Nos.
									Rate in effect	Proposed increased rate	
R170-892	Marathon Oil Co. et al	5	[1] 10	El Paso Natural Gas Co. (Blinebry-Tubb Gas Pool, Lea County, N. Mex.) (Permian Basin).	$1,376	2-8-71	3-11-71	[21] Accepted	[20] 17.6398	[20] 17.9023	R170-892.
R170-893	Marathon Oil Co	6	[1] 9	El Paso Natural Gas Co. (Jalmat Gas Pool, Lea County, N. Mex.) (Permian Basin).	273	2-8-71	3-11-71	[21] Accepted	[20] 17.6398	[20] 17.9023	R170-893.
R169-388	do	96	[1] 4	El Paso Natural Gas Co. (Argo No. 1 Well, San Juan Area, San Juan County, N. Mex.) (San Juan Basin).	22	2-8-71	3-11-71	[21] Accepted	14.0578	14.2678	R169-388.
R171-141	Phillips Petroleum Co	279	19	El Paso Natural Gas Co. (Hogsback Area, Sublette and Lincoln Counties) (Wyoming).	(8,337)	2-8-71	2-8-71	[22] Accepted	19.7925	[2] 19.6463	R171-141.
R169-432	Northern Natural Gas Producing Co.	30	6	El Paso Natural Gas Co. (Basin Dakota Field, San Juan County, N. Mex.) (San Juan Basin).	117	2-8-71	3-11-71	[21] Accepted	14.0505	14.2343	R169-432.
R169-431	Mobil Oil Corp	166	10	El Paso Natural Gas Co. (Bisti Field, San Juan County, N. Mex.) (San Juan Basin).	13	2-8-71	3-11-71	[21] Accepted	15.0541	15.2510	R169-431.
R169-431	do	200	8	El Paso Natural Gas Co. (Blanco Field, San Juan County, N. Mex.) (San Juan Basin).	20	2-8-71	3-11-71	[21] Accepted	14.0578	14.2343	R169-431.
R169-431	do	360	11	El Paso Natural Gas Co. (Angel Peak and Huerfanito Area, San Juan County) (New Mexico) (San Juan Basin).	96	2-8-71	3-11-71	[21] Accepted	13.0536	13.2175	R169-431.
R169-430	Mobil Oil Corp. et al	361	11	El Paso Natural Gas Co. (Gallegos Canyon Field) (San Juan County, N. Mex.) (San Juan Basin).	45	2-8-71	3-11-71	[21] Accepted	14.0578	14.2343	R169-430.
R169-360	Marathon Oil Co	24	7	El Paso Natural Gas Co. (La Plata Area, Blanco Field; San Juan County, N. Mex.) (San Juan Basin).	428	2-8-71	3-11-71	[21] Accepted	14.0578	14.2678	R169-360.
R169-541	do	25	11	El Paso Natural Gas Co. (Jicarilla Area; Rio Arriba County, N. Mex.) (San Juan Basin).	1,104	2-8-71	3-11-71	[21] Accepted	13.0536	13.2486	R169-541.
R170-803	do	27	9	El Paso Natural Gas Co. (Eumont Field; Lea County, N. Mex.) (Permian Basin).	17	2-8-71	3-11-71	[21] Accepted	[20] 17.1896	[20] 17.4454	R170-803.
R169-462	Marathon Oil Co., et al	55	7	El Paso Natural Gas Co. (Kutz Canyon & Jicarilla Areas) (Dakota Formation) (San Juan and Rio Arriba Counties, N. Mex.) (San Juan Basin).	4,284	2-8-71	3-11-71	[21] Accepted	14.0578	14.2678	R169-462.
R168-647	Texaco, Inc., et al	188	16	Cimarron Transmission Co. Southwest Enville Field, Love County) (Oklahoma Other Area).	840	2-8-71	3-11-71	[21] Accepted	[20] 17.85	[20] 17.8675	R168-647.
R171-798	Phillips Petroleum Co	239	11	Mississippi River Transmission Corp. (Hico-Knowles Field) (Lincoln Parish) (Northern Louisiana).	16,460	2-4-71	3-7-71	4-7-71	[3] [4] 14.603	[3] [4] 22.833	
R171-799	Pennzoil Producing Co.[1]	252	17	United Gas Pipe Line Co. (Strauch-Wilcox et al. Fields, Bee County, Tex. RR. District No. 2		2-4-71	3-7-71	[23] Accepted	([20])	([20])	R170-282.
		252	18		15,029	2-4-71	3-27-71	4-7-71	[20] 17.2176	[20] 24.25	R170-282.
R171-800	Suburban Propane Gas Corp.	8	5	Tennessee Gas Pipeline Co., a division of Tenneco, Inc. (LeBlanc Field, Allen Parish) (Southern Louisiana).	30,500	2-3-71	3-6-71	3-21-71	21.8	[7] [8] 22.588	R165-317.
R171-801	Humble Oil & Refining Co	17	10	Tennessee Gas Pipeline Co., a division of Tenneco, Inc. (Mariposa Field, Brooks County, Tex., RR. District No. 4).		2-3-71	3-6-71	[24] Accepted	([20])	([20])	
R171-802	Continental Oil Co. et al	364	11	Tennessee Gas Pipeline Co., a division of Tenneco, Inc. (Grand Isle Block 63) (Offshore Louisiana).	60,757	2-3-71	3-6-71	4-6-71	[26] 15.0555	[20] 24.25	R170-426.
			1		53,856	2-8-71	3-11-71	3-26-71	17.0	[9] 26.0	R170-1629.
									18.5		
		183	[10] [11] 22	Tennessee Gas Pipeline Co., a division of Tenneco, Inc. (Grand Isle Block 47 Field) (Offshore Louisiana).	[12] 3,080	2-8-71	3-11-71	3-26-71	[12] 19.0	[9] 23.50	
R171-803	Mobil Oil Corp	41	22	Trunkline Gas Co. (Clear Creek, Beauregard Parish) (Southern Louisiana).	[13] 4,196				[12] 20.67	[9] 23.50	R170-1446.
					26	2-8-71	3-11-71	3-26-71	19.7	[9] 20.5	R167-272.
R171-804	Mobil Oil Corp. et al	123	16	Texas Eastern Transmission Corp. (San Manuel Field, Hidalgo County, Tex., RR. District No. 4).	1,113	2-8-71	3-11-71	4-11-71	[26] 16.8735	[20] 17.0744	R171-37.
R171-805	Sun Oil Co	129	6	South Texas Natural Gas Gathering Co. (Yeary and Riviera Beach, Kleberg County, Tex., RR. District No. 4).	8,007	2-8-71	3-11-71	4-11-71	[20] 18.0675	[20] 19.07125	R165-445.
R171-806	Gas Gathering Corp	2	22	Transcontinental Gas Pipe Line Corp. (Sherburne Field, Pointe Coupee Parish) (Southern Louisiana).	141,000	2-8-71	[14] 3-11-71	3-26-71	22.0	[4] 23.5	R168-135.

See footnotes at end of document.

APPENDIX A—Continued

Docket No.	Respondent	Rate schedule No.	Supplement No.	Purchaser and producing area	Amount of annual increase	Date filing tendered	Effective date unless suspended	Date suspended until—	Cents per Mcf*		Rate in effect subject to refund in dockets Nos.
									Rate in effect	Proposed increased rate	
R171-807..	An-Son Corp	(15)	(17)	Southern Natural Gas Co. (Bayou Postillion Field) (Iberia Parish, Southern Louisiana).	17,010	2-4-71	3- 7-71	3-22-71	19.5	23.550	
			(18)	do	6,875	2-4-71	3- 7-71	3-22-71	20.0	21.250	
R171-808..	Mountain States Petroleum Corp.	(19)		Transwestern Pipeline Co. (Atoka Penn Field, Eddy County, N. Mex., Permian Basin).	109,899	2-3-71	3- 6-71	4- 6-71	[20] 16.5831	[20] 28.7942	

* Unless otherwise stated, the pressure base is 15.025 p.s.i.a.
[1] Applicable to gas treated as not exempt from the New Mexico Emergency School Tax prior to Apr. 1, 1963.
[2] Rate decrease reflecting recovery of Wyoming severance tax applicable to past production back to Jan. 1, 1968.
[3] Base rate subject to downward B.t.u. adjustment.
[4] Includes 1.333-cent tax reimbursement.
[5] Both buyer and seller are wholly owned subsidiaries of Pennzoil United, Inc.
[6] Agreement dated Jan. 20, 1971 provides for extension of contract term to Mar. 27, 1971, and provides for renegotiated rates specified therein.
[7] Inclusive of upward B.t.u. adjustment.
[8] Agreement dated Jan. 13, 1971, provides among other things extension of contract term until Feb. 21, 1983, and for renegotiated rates specified therein.
[9] Increase resulting from termination of moratorium in Southern Louisiana issued Oct. 27, 1970 in Order No. 413.
[10] Pertains to gas produced from the "KD" and "KJ" Sand Reservoirs and to gas previously shown to qualify for third vintage prices per Opinion No. 567.
[11] Includes well completion report and letter of concurrence from buyer as required by Opinion No. 567.
[12] Casinghead gas.
[13] Gas well gas.
[14] Or 1 day from the date of initial delivery, whichever is later.
[15] Includes letter agreement dated Jan. 10, 1971, which provides for the proposed composite rate, effective on the date of first delivery of gas to Transco from the section 28 Field, St. Martin Parish, La.
[16] Applicant issued a small producer certificate in CS69-77 covering the subject sale.
[17] Pertains to acreage acquired from California Co. and dedicated to contract dated Nov. 8, 1957, as ratified Apr. 16, 1969.
[18] Pertains to acreage dedicated to contract dated Feb. 15, 1969.
[19] Applicant issued a small producer certificate in Docket No. CS71-16.
[20] The pressure base is 14.65 p.s.i.a.
[21] Accepted, effective as of the date set forth in the "Effective Date Unless Suspended" column, subject to refund in the existing suspension proceeding.
[22] Accepted for filing to be effective as of the date of filing subject to refund in the existing rate proceeding.
[23] Accepted to become effective on the dates shown in the "Effective Date" column.
[24] Accepted as a contract amendment, effective as of the date set forth in the "Effective Date Unless Suspended" column, subject to the conditions prescribed elsewhere in this order.

Under the provisions of the Commission's order issued October 27, 1970, in Docket No. AR69-1, producers in the southern Louisiana area were able to file for higher contractually authorized rates within 30 days from such order (by November 27, 1970) and were permitted to collect such increased rates subject to refund after 75 days had passed (as of January 10, 1971). The 75-day period applies to those filings made by producers within 30 days of the issuance of the October 27, 1970 order. Producer filings made after November 27, 1970, however, were to be subject to normal Commission suspension procedures. The order, however, left open the question of the appropriate suspension period for filings made after November 27, 1970.

The increases involved here were filed after the November 27, 1970, deadline. In view of the action taken in the procedural order in Docket No. AR69-1 accompanying Order No. 413, we believe it appropriate to suspend and permit an increase filed after November 27, 1970, to become effective subject to refund on the date from January 10, 1971, that corresponds to the number of days that the filing was made after November 27, 1970. This order so provides.

The proposed increases of Marathon Oil Co., Northern Natural Gas Producing Co., Mobil Oil Co., and Texaco, Inc., are tax reimbursement increases from rates currently in effect subject to refund. With the exception of Texaco's rate increase these increases reflect partial reimbursement for the full 2.55 percent New Mexico Emergency School Tax whereas Respondents had been collecting partial reimbursement of only the 0.55 percent portion of the tax. The proposed tax reimbursement increases are accepted for filing to be effective as of the dates of expiration of the 30-day notice period subject to refund in the existing rate proceedings.

The proposed decreased rate of Phillips Petroleum Co. reflects a decrease in the reimbursement of the Wyoming severance tax. Phillips had been collecting a double amount of the contractually due tax reimbursement to provide for reimbursement of taxes on past production back to January 1, 1968, as well as on future production. Phillips now proposes to collect the tax reimbursement on future production only. The proposed decreased rate is accepted for filing to be effective as of the date of filing subject to refund in the existing rate proceeding.

The other proposed increases are suspended for a period ending 61 days from the date of filing thus according them the same treatment as will be accorded those producers filing pursuant to Order No. 423.

The agreement filed by Humble in addition to providing for a proposed increased rate also provides for future escalations to any higher area ceiling or settlement rate prescribed by the Commission. The provisions relating to the area rate do not conform with § 154.93(b-1) of the Commission's regulations. Consistent with Commission action taken on similar filings not in conformity with § 154.93(b-1), the agreement is accepted for filing upon expiration of statutory notice with the condition that the provisions relating to the area rate will only apply upon the Commission's approval of a just and reasonable rate, or settlement rate, in an applicable area rate proceeding, for gas of comparable quality and vintage.

Certain Respondents request waiver of statutory notice and certain other Respondents have requested effective dates for which adequate notice was not given. Good cause has not been shown for granting these requests and they are denied.

All of the producers' proposed increased rates and charges exceed the applicable area price levels for increased rates as set forth in the Commission's Statement of General Policy No. 61-1, as amended (18 CFR, Ch. I, Part 2, Section 2.56).

[FR Doc.71-3393 Filed 3-12-71;8:45 am]

[Docket No. CP71-212]

CONSOLIDATED GAS SUPPLY CORP. ET AL.

Notice of Application

MARCH 8, 1971.

Take notice that on March 1, 1971, Consolidated Gas Supply Corp. (Consolidated), 445 West Main Street, Clarksburg, WV 26301, Texas Eastern Transmission Corp. (Texas Eastern), Post Office Box 2521, Houston, TX 77001, and Transcontinental Gas Pipe Line Corp. (Transco), Post Office Box 1396, Houston, TX 77001 (applicants) filed in Docket No. CP71-212 a joint 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 facilities for the development and operation of natural gas storage fields, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Consolidated owns an undivided one-half interest, and Texas Eastern and Transco each own an undivided one-fourth interest in the properties and facilities known as the Leidy Pool and the Tamarack Pool, located in Clinton and Potter Counties, Pa. Applicants intend to develop a top storage capacity of 6,000,000 Mcf in the Tamarack Pool and, upon completion of this development, to increase Consolidated's share of top storage capacity in the Leidy and Tamarack Pools from 24,000,000 Mcf to 30,000,000 Mcf.

To develop and utilize this additional storage capacity, applicants propose to recomplete six existing wells and drill five new wells in the Tamarack Pool; to construct approximately 4 miles of 12-inch gathering line and related well lines; to add engine controls and various other equipment at the Leidy Station; and to inject approximately 4,000,000 Mcf of natural gas as base gas. Applicants state that there is 1,000,000 Mcf of native gas in the Tamarack Pool.

The estimated cost of the construction proposed herein is $5,414,500, which cost is to be shared by applicants in relation to their ownership interests. The estimated cost of the base gas is $1,116,000, which cost is to be shared equally by Texas Eastern and Transco.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 29, 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 if 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 Applicants to appear or be represented at the hearing.

KENNETH F. PLUMB,
Acting Secretary.

[FR Doc.71-3510 Filed 3-12-71;8:45 am]

FEDERAL RESERVE SYSTEM

AMERICAN BANCSHARES, INC.

Notice of Application for Approval of Acquisition of Shares of Banks

Notice is hereby given that application has been made, pursuant to section 3(a)(1) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(a)(1)), by American Bancshares, Inc., for prior approval by the Board of Governors of action whereby applicant would become a bank holding company through the acquisition of 80 percent or more of the voting shares of each of the following banks: The Second National Bank of North Miami, North Miami; Second National Bank of North Miami Beach, North Miami Beach; and The National Bank of St. Petersburg, St. Petersburg, all located in the State of Florida.

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 monopolize or to attempt to monopolize 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 Atlanta.

By order of the Board of Governors, March 8, 1971.

[SEAL] KENNETH A. KENYON,
Deputy Secretary.

[FR Doc.71-3533 Filed 3-12-71;8:47 am]

MERRILL BANKSHARES CO.

Order Approving Acquisition of Bank Stock by Bank Holding Company

In the matter of the application of Merrill Bankshares Co., Bangor, Maine, for approval of acquisition of at least 80 percent of the voting shares of Federal Trust Co., Waterville, Maine.

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 Merrill Bankshares Co., Bangor, Maine, a registered bank holding company, for the Board's prior approval of the acquisition of at least 80 percent of the voting shares of Federal Trust Co., Waterville, Maine.

As required by section 3(b) of the Act, the Board gave written notice of receipt of the application to the Bank Commissioner of the State of Maine, and requested his views and recommendation. The Commissioner responded that he had no objection to approval of the application.

Notice of receipt of the application was published in the FEDERAL REGISTER on December 2, 1970 (35 F.R. 18347), which provided an opportunity for interested persons to submit comments and views with respect to the proposed transaction. A copy of the application was forwarded to the U.S. Department of Justice for its consideration. The time for filing comments and views has expired and all those received have been considered by the Board.

It is hereby ordered, For the reasons set forth in the Board's statement[1] of this date, that said application be and hereby is approved: *Provided,* That the 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 Boston pursuant to delegated authority.

By order of the Board of Governors,[2] March 8, 1971.

[SEAL] KENNETH A. KENYON,
Deputy Secretary.

[FR Doc.71-3532 Filed 3-12-71;8:47 am]

[1] Filed as part of the original document. Copies available upon request to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551, or to the Federal Reserve Bank of Boston. Dissenting Statement of Governors Robertson, Maisel, and Brimmer also filed as part of the original document and available upon request.

COMMERCE BANCSHARES, INC.

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 Commerce Bancshares, Inc., which is a bank holding company located in Kansas City, Mo., for prior approval by the Board of Governors of the acquisition by Applicant of more than 80 percent of the voting shares of The Willard Bank, Willard, Mo.

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 monopolize or to attempt to monopolize 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

[2] Voting for this action: Chairman Burns and Governors Mitchell, Daane, and Sherrill. Voting against this action: Governors Robertson, Maisel, and Brimmer.

office of the Board of Governors or the Federal Reserve Bank of Kansas City.

By order of the Board of Governors, March 8, 1971.

[SEAL] KENNETH A. KENYON,
Deputy Secretary.

[FR Doc.71-3511 Filed 3-12-71;8:45 am]

FEDERAL TRADE COMMISSION

LAWS ADMINISTERED

Statement of Organization

Notice is hereby given that the Statement of Organization published June 30, 1970 (35 F.R. 10627) is revised to indicate amendment of the Truth in Lending Act, and addition of the Fair Credit Reporting Act.

Section 4 is revised to read as follows:

SEC. 4. *Laws administered.* The Commission exercises enforcement and administrative authority under the Federal Trade Commission Act (38 Stat. 717, as amended; 15 U.S.C. 41–58), the Clayton Act (38 Stat. 730, as amended; 15 U.S.C. 12–27), the Export Trade Act (40 Stat. 516, as amended; 15 U.S.C. 61–65), the Packers and Stockyards Act (42 Stat. 159, as amended; 7 U.S.C. 181–229), the Wool Products Labeling Act (54 Stat. 1128, as amended; 15 U.S.C. 68–68j), the Trade Mark Act (60 Stat. 427, as amended; 15 U.S.C. 1051–72), the Fur Products Labeling Act (65 Stat. 175, as amended; 15 U.S.C. 69–69j), the Flammable Fabrics Act (67 Stat. 111, as amended; 15 U.S.C. 1191–1204), the Textile Fiber Products Identification Act (72 Stat. 1717, as amended; 15 U.S.C. 70–70k), the Federal Cigarette Labeling and Advertising Act (79 Stat. 282, as amended; 15 U.S.C. 1331–39), the Fair Packaging and Labeling Act (80 Stat. 1296; 15 U.S.C. 1451–61), the Truth in Lending Act (82 Stat. 146, as amended; 15 U.S.C. 1601 et seq.), the Fair Credit Reporting Act (84 Stat. 1128, 15 U.S.C. 1681 et seq.), and other Federal statutes.

By direction of the Commission dated March 9, 1971.

[SEAL] CHARLES A. TOBIN,
Secretary.

[FR Doc.71-3517 Filed 3-12-71;8:46 am]

OFFICE OF THE EXECUTIVE DIRECTOR

Statement of Organization

Notice is hereby given that the Statement of Organization published June 30, 1970 (35 F.R. 10627) is revised to reflect the reorganization of the Office of the Executive Director by the establishment of three Assistant Executive Director positions in lieu of the two current positions of Deputy Executive Director for Operations and Deputy Executive Director for Management.

Section 10 is revised to read as follows:

SEC. 10. *Office of the Executive Director.* The Executive Director, under the direction of the Chairman, is the chief operating official. He exercises executive and administrative supervision over all the offices, bureaus, and staff of the Commission, and, in coordination with the Office of Policy Planning and Evaluation, resolves problems concerning priorities in case handling. Immediately under his direction are the Assistant Executive Director for Legal Coordination, the Assistant Executive Director for Field Management and the Assistant Executive Director for Administration.

(a) The Assistant Executive Director for Legal Coordination functions as advisor and principal assistant to the Executive Director on all substantive legal matters pertaining to Commission programs; assists the Executive Director in planning, coordinating, and reviewing the full range of antitrust and consumer protection functions performed by the operating bureaus and field offices; and acts for the Executive Director in coordinating the legal case work of the Bureau of Consumer Protection, Bureau of Competition, Bureau of Economics and FTC field offices.

(b) The Assistant Executive Director for Field Management functions as staff advisor to the Executive Director in the effective and efficient management of the Commission's field offices; functions as principal assistant to the Executive Director in all matters concerning supervision and line management of the eleven field offices, guides and directs the activities of the field offices in the fields of antitrust law, consumer protection and consumer education, including investigations, trial of cases and industry and consumer counseling.

(c) The Assistant Executive Director for Administration functions as staff advisor to the Executive Director in all aspects of administrative management; provides administrative policy guidance to agency management and provides general supervision to the programs of management analysis and organization, personnel, budget and finance, data processing, and administrative service activities; initiates and develops long-range plans to assure that the Commission acquires and effectively utilizes the manpower, financial resources, physical facilities and management tools necessary to accomplish its mission.

By direction of the Commission dated March 8, 1971.

[SEAL] CHARLES A. TOBIN,
Secretary.

[FR Doc.71-3516 Filed 3-12-71;8:46 am]

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket S-546]

BARNEY HILL

Notice of Loan Application

MARCH 5, 1971.

Barney Hill, Box 223, South Bend, WA 98586, has applied for a loan from the Fisheries Loan Fund to aid in financing the purchasing of a used 45-foot length overall wood vessel to engage in the fishery for salmon, albacore, and Dungeness crab off the coast of Oregon and Washington.

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.71-3509 Filed 3-12-71;8:45 am]

SECURITIES AND EXCHANGE COMMISSION

[812-2900]

BOSTON CAPITAL CORP.

Notice of Filing of Application

MARCH 8, 1971.

Notice is hereby given that Boston Capital Corp. (Boston Capital), 535 Boylston Street, Boston, MA 02116, registered as a closed-end, nondiversified, management investment company under the Investment Company Act of 1940 (Act) has filed an application pursuant to section 17(d) of the Act and Rule 17d-1 thereunder for an order granting said application pursuant to Rule 17d-1 with respect to the proposed participation by Boston Capital and Sea World, Inc. (Sea World), a California corporation, in a public offering of shares of Sea World. All interested persons are referred to the application, which is on file with the

Commission, for a statement of the representations therein which are summarized below.

Boston Capital owns 169,512 shares (approximately 19 percent) of the outstanding voting shares of Sea World. As a result thereof Sea World is an affiliated person as defined in section 2(a)(3) of the Act of a registered investment company (Boston Capital).

Sea World and Boston Capital (the latter as a selling shareholder) propose to offer and sell to the public through various underwriters a total of approximately 400,000 shares of Sea World common stock. Of such amount, 230,488 shares and 169,512 shares are to be offered and sold by Sea World and Boston Capital, respectively. Such offering is to be made through various underwriters, represented by E. F. Hutton & Co., Inc.

The application indicates that Boston Capital determined the portion of its holdings of Sea World stock to be included in the proposed offering pursuant to an unrestricted opportunity to offer to sell such shares.

The application states that Sea World will pay all expenses of registration except underwriting discounts, fees of Boston Capital's counsel, stock transfer taxes and Boston Capital's share of expenses, allocated on a pro rata or other basis more favorable to Boston Capital; and that Boston Capital and Sea World are paying underwriting discounts at the same rate.

Rule 17d–1, adopted under section 17(d) of the Act, provides, as here pertinent, that no affiliated person of any registered investment company shall, acting as principal, participate in, or effect any transaction in connection with, any joint enterprise or other joint arrangement in which such registered company, or a company controlled by a registered company, is a participant, unless an application regarding such joint enterprise or arrangement has been filed with the Commission and has been granted by order, and that in passing upon such application the Commission will consider whether the participation of the registered or controlled company in the joint enterprise or arrangement is consistent with the provisions, policies and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants.

Boston represents that its participation in the offering is not on a basis less advantageous to it than to Sea World.

Notice is further given that any interested person may, not later than March 16, 1971, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of such request shall be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon applicant at the address set forth above. Proof of such service (by affidavit or in case of an attorney at law by certificate) shall be filed contemporaneously with the request. At any time after said date, as provided by Rule 0–5 of the rules and regulations promulgated under the Act, an order disposing of the application herein may be issued by the Commission upon the basis of the information stated in said application unless an order for hearing upon said application shall be issued upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

[SEAL] ROSALIE F. SCHNEIDER,
Recording Secretary.

[FR Doc.71–3526 Filed 3–12–71;8:47 am]

[70–4992]

CONNECTICUT GAS CO. AND CONNECTICUT LIGHT AND POWER CO.

Notice of Proposed Issue and Sale by Subsidiary Company and Acquisition Thereof by Parent of Long-Term Unsecured Notes

MARCH 9, 1971.

Notice is hereby given that The Connecticut Light and Power Co. (CL&P), Post Office Box 2010, Hartford, CT 06117, an electric utility subsidiary company of Northeast Utilities (Northeast), a registered holding company, and its wholly owned gas utility subsidiary company, The Connecticut Gas Co. (Connecticut Gas), have filed an application-declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 (Act), designating sections 6, 7, 9, 10, 12(b), and 12(f) of the Act and Rule 43 promulgated thereunder as applicable to the proposed transactions.

Connecticut Gas presently has outstanding demand notes aggregating $425,000 which were issued to and acquired by CL&P before Northeast became a registered holding company. By orders dated June 22, 1966 and June 21, 1968 (Holding Company Act Releases Nos. 15855 and 16097), the Commission authorized Connecticut Gas to issue and CL&P to acquire an aggregate amount of $475,000 long-term notes. Connecticut Gas presently has authority to issue and sell, and CL&P has authority to acquire, an additional $150,000 of long-term notes pursuant to Holding Company Act Release No. 16097. Connecticut Gas now proposes to issue and sell, and CL&P proposes to acquire, from time to time, up to an additional $550,000 of long-term notes (the Notes) to meet its capital requirements. The aggregate amount of all notes at any one time outstanding will not exceed $1,600,000.

The Notes will mature 10 years from the date the first such note is issued, will bear interest at a rate equal to the commercial bank prime rate for short-term loans in effect from time to time in Hartford, Conn., and may be repaid at any time without premium. The funds derived from the issue and sale of the Notes will be applied by Connecticut Gas for construction expenditures. Connecticut Gas' 1971 construction program contemplates gross construction expenditures of approximately $386,000 for the replacement of gas transmission lines, improvements to a gate station and miscellaneous projects.

There are no fees, commission, and expenses paid or incurred, or to be paid or incurred, directly or indirectly, in connection with the proposed issuance of the notes. Incidental services estimated to be approximately $500 will be performed at cost by Northeast Utilities Service Co., an affiliated service company.

The application-declaration states that no consent or approval of any State commission or any Federal commission, other than this Commission, is required for the proposed transactions, except approval of the Connecticut Public Utilities Commission. A copy of an application to that Commission and its order thereon will be filed by amendment.

Notice is further given that any interested person may, not later than April 5, 1971, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application-declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon the applicants-declarants at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective as provided in Rule 23 of the general rules and regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

[SEAL] ROSALIE F. SCHNEIDER,
Recording Secretary.

[FR Doc.71–3527 Filed 3–12–71;8:47 am]

[70-4988]

CONNECTICUT LIGHT AND POWER CO.

Notice of Proposed Amendment of Certificate of Incorporation and Increase in Permitted Short-Term Unsecured Indebtedness, and Order Authorizing Solicitation of Proxies

MARCH 9, 1971.

Notice is hereby given that the Connecticut Light and Power Co. (CL&P), Selden Street, Berlin, CT 06037, a public-utility subsidiary company of Northeast Utilities, a registered holding company, has filed a declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 (Act), designating sections 6(a), 7, and 12(e) thereof and Rules 62 and 65 promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transactions.

CL&P proposes to submit proposals to the holders of its outstanding preferred stock, $50 par value, at a special meeting to be held April 12, 1971. The first proposal is to amend the company's Certificate of Incorporation (Charter) to increase its authorized preferred stock from 3 million to 3,500,000 shares. Of the presently authorized shares, 2,100,000 shares, divided into nine series, are now outstanding. The declaration states that the company will require substantial additional funds during the next few years to finance its continuing construction program and expects to raise most of such funds through the sale of additional first mortgage bonds and preferred stock.

The second proposal is to permit the issuance by the company of short-term unsecured indebtedness in excess of the 10 percent limitation thereon now set forth in the Charter. The terms of the preferred stock as set forth in the Charter provide that, except as voted by said stock, the unsecured indebtedness of the company having maturities of less than 10 years shall not exceed 10 percent of the sum of the principal amount of all bonds and other secured indebtedness and the capital, premium, and surplus of the company. With respect to the proposed increase, it is provided that (i) such indebtedness shall be issued within 3 years from the date of the order of this Commission under the Act making effective this declaration, (ii) such indebtedness shall have a maturity not more than 4 years from the date of such order, and (iii) the 20 percent limitation on all unsecured indebtedness of the company shall remain in effect. The actual issue and sale of securities related to such proposed increase in short-term indebtedness will be subject to further authorization by this Commission. It is stated that adoption of the second proposal will permit greater flexibility in the timing of bond and preferred stock issues to take advantage of favorable market conditions and may also be important in permitting the company to meet the coverage requirements of its mortgage indenture and preferred stock provisions on future bond and preferred stock issues.

The first proposal requires approval of holders of at least two-thirds of the outstanding shares of preferred stock and of common stock, each voting as a separate class. The second proposal requires the approval of holders of at least a majority of the outstanding preferred stock voting as a class. The Charter further provides that if holders of one-third of said preferred stock vote against proposal 2, it will not be adopted.

It is stated that the expenses to be incurred in connection with the proposed transactions are estimated at $6,500. It is further stated that no State commission and no Federal commission, other than this Commission, has jurisdiction over the proposed transactions.

CL&P has requested that the effectiveness of its declaration with respect to the solicitation of proxies from the holders of its preferred stock be accelerated as provided in Rule 62.

Notice is further given that any interested person may, not later than March 30, 1971, request in writing that a hearing be held with respect to the proposed amendment of Connecticut's Charter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon the declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as filed or as it may be amended, may be permitted to become effective as provided in Rule 23 of the general rules and regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

It appearing that the declaration regarding the proposed solicitation of proxies should be permitted to become effective forthwith pursuant to Rule 62:

It is ordered, That the declaration regarding the proposed solicitation of proxies be, and it hereby is, permitted to become effective forthwith pursuant to Rule 62 and subject to the terms and conditions prescribed in Rule 24 under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

[SEAL] ROSALIE F. SCHNEIDER,
Recording Secretary.

[FR Doc.71-3528 Filed 3-12-71;8:47 am]

[70-4987]

HARTFORD ELECTRIC LIGHT CO.

Notice of Proposed Amendment of Certificate of Incorporation and Increase in Permitted Short-Term Unsecured Indebtedness, and Order Authorizing Solicitation of Proxies

MARCH 9, 1971.

Notice is hereby given that the Hartford Electric Light Co. (Hartford), 176 Cumberland Avenue, Wethersfield, CT 06109, a public-utility subsidiary company of Northeast Utilities, a registered holding company, has filed a declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 (Act), designating sections 6(a), 7, and 12(e) thereof and Rules 62 and 65 promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transactions.

Hartford proposes to submit proposals to the holders of its outstanding preferred stock, $50 par value, at a special meeting to be held April 12, 1971. The first proposal is to amend the company's Certificate of Incorporation (Charter) to increase its authorized preferred stock from $2 million to 2,200,000 shares. Of the authorized shares, 1,124,000 shares, divided into seven series, are now outstanding. The declaration states that the company will require substantial additional funds during the next few years to finance its continuing construction program and expects to raise most of such funds through the sale of additional first mortgage bonds and preferred stock.

The second proposal is to permit the issuance by the company of short-term unsecured indebtedness in excess of the 10 percent limitation thereon now set forth in the Charter. The terms of the preferred stock as set forth in the Charter provide that, except as voted by said stock, the unsecured indebtedness of the company having maturities of less than 10 years shall not exceed 10 percent of the sum of the principal amount of all bonds and other secured indebtedness and the capital, premium, and surplus of the company. With respect to the proposed increase, it is provided that (i) such indebtedness shall be issued within 3 years from the date of the order of this Commission under the Act making effective this declaration, (ii) such indebtedness shall have a maturity not more than 4 years from the date of such order, and (iii) the 20 percent limitation on all unsecured indebtedness of the

company shall remain in effect. The actual issue and sale of securities related to such proposed increase in short-term indebtedness will be subject to further authorization by this Commission. It is stated that adoption of the second proposal will permit greater flexibility in the timing of bond and preferred stock issues to take advantage of favorable market conditions and may also be important in permitting the company to meet the coverage requirements of its mortgage indenture and preferred stock provisions on future bond and preferred stock issues.

The first proposal requires approval of holders of at least two-thirds of the outstanding shares of preferred stock and of common stock, each voting as a separate class. The second proposal requires the approval of holders of at least a majority of the outstanding preferred stock voting as a class. The Charter provides that if holders of one-third of said preferred stock vote against proposal 2, it will not be adopted.

It is stated that the expenses to be incurred in connection with the proposed transactions are estimated at $4,200. It is further stated that no State commission and no Federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Hartford has requested that the effectiveness of its declaration with respect to the solicitation of proxies from the holders of its preferred stock be accelerated as provided in Rule 62.

Notice is further given that any interested person may, not later than March 30, 1971, request in writing that a hearing be held with respect to the proposed amendment of the Charter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon the declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as filed or as it may be amended, may be permitted to become effective as provided in Rule 23 of the general rules and regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

It appearing that the declaration regarding the proposed solicitation of proxies should be permitted to become effective forthwith pursuant to Rule 62:

It is ordered, That the declaration regarding the proposed solicitation of proxies be, and it hereby is, permitted to become effective forthwith pursuant to Rule 62 and subject to the terms and conditions prescribed in Rule 24 under the Act.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

[SEAL] ROSALIE F. SCHNEIDER,
Recording Secretary.

[FR Doc.71-3529 Filed 3-12-71;8:47 am]

[811-1925]

HIGHTEC FUND, INC.

Notice of Filing of Application for Order Declaring That Company Has Ceased To Be an Investment Company

MARCH 9, 1971.

Notice is hereby given that the Hightec Fund, Inc. (Applicant), 8121 Georgia Avenue, Silver Spring, MD 20910, a Delaware corporation registered as a management closed-end diversified investment company under the Investment Company Act of 1940 (Act), has filed an application pursuant to section 8(f) of the Act for an order of the Commission declaring that Applicant has ceased to be an investment company as defined in the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations set forth therein which are summarized below.

Applicant registered under the Act on August 20, 1969. Applicant subsequently determined not to proceed with a proposed public offering of its securities and its registration statement under the Securities Act of 1933 was withdrawn on March 5, 1971. Applicant also represents that its securities are held by fewer than 100 persons.

Section 3(c)(1) of the Act states, among other things, that any issuer whose outstanding securities (other than short-term paper) are beneficially owned by not more than 100 persons and which is not making and does not presently propose to make a public offering of its securities is not an investment company within the meaning of the Act.

Section 8(f) of the Act provides, in pertinent part, that when the Commission, upon application, finds that a registered investment company has ceased to be an investment company, it shall so declare by order, and upon the taking effect of such order the registration of such company shall cease to be in effect.

Notice is further given that any interested person may, not later than March 29, 1971, at 5:30 p.m., submit to the Commission in writing request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission should order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon Applicant at the address stated above. Proof of such service (by affidavit or in case of an attorney at law by certificate) shall be filed contemporaneously with the request. At any time after said date as provided by Rule 0-5 of the rules and regulations promulgated under the Act, an order disposing of the application herein may be issued by the Commission upon the basis of the information stated in said application, unless an order for hearing upon said application shall be issued upon request or upon the Commission's own motion. Persons who request a hearing or advice as to whether a hearing is ordered will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

[SEAL] ROSALIE F. SCHNEIDER,
Recording Secretary.

[FR Doc.71-3530 Filed 3-12-71;8:47 am]

[70-4996]

JERSEY CENTRAL POWER & LIGHT CO.

Notice of Proposed Sale of Assets

MARCH 9, 1971.

Notice is hereby given that Jersey Central Power & Light Co. (JCP&L), Madison Avenue at Punch Bowl Road, Morristown, NJ 07960, a public-utility subsidiary company of General Public Utilities Corp., a registered holding company, has filed a declaration, pursuant to the Public Utility Holding Company Act of 1935 (Act), designating section 12(d) of the Act and Rule 44 promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transaction.

JCP&L proposes to grant and convey to Texas Eastern Transmission Corporation (Texas), a Delaware corporation, for cash, an easement for, among other things, the construction of a 36-inch diameter subterranean pipeline for the transmission of natural gas in lands in New Jersey comprising JCP&L's Raritan-Traynor electrical transmission line right of way and to give to Texas its consent, so far as it has the right to do so, to the construction of such pipeline in lands comprising such right of way wherein JCP&L has less than a fee interest. The pipeline is to occupy JCP&L's right-of-way extending approximately 50,977 feet from a point in Piscataway Township to a point in Passaic Township. The proposed consideration for the rights to be granted and for the consent to be given

is $137,629. This amount was agreed upon following negotiations on the basis of $7 per lineal foot on fee owned land and $1 per lineal foot on easements.

The Board of Public Utility Commissioners of the State of New Jersey has jurisdiction over the proposed sale by JCP&L. No other State commission and no Federal commission, other than this Commission, has jurisdiction over the proposed transaction. The total fees and expenses, all of which are to be paid by JCP&L, are estimated at $1,700, including $1,500 for legal fees.

Notice is further given that any interested person may, not later than March 31, 1971, request the Commission in writing that a hearing be held on such matter stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the declaration which he desires to controvert, or may request that he be notified if the Commission should order a hearing thereon. Any such request shall be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon each declarant at the above-stated address, and proof of service (by affidavit, or in the case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as filed or as it may be amended, may be permitted to become effective as provided in Rule 23 of the general rules and regulations promulgated under the Act, or the Commission may grant exemption from its rules as provided in Rules 20(a) and 100, or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

[SEAL] ROSALIE F. SCHNEIDER,
Recording Secretary.

[FR Doc.71-3531 Filed 3-12-71;8:47 am]

INTERSTATE COMMERCE COMMISSION

FOURTH SECTION APPLICATION FOR RELIEF

MARCH 10, 1971.

Protests to the granting of an application must be prepared in accordance with § 1100.40 of the general rules of practice (49 CFR 1100.40) and filed within 15 days from the date of publication of this notice in the FEDERAL REGISTER.

LONG-AND-SHORT HAUL

FSA No. 42149—*Potatoes from points in New Brunswick, Canada.* Filed by Traffic Executive Association-Eastern Railroads, agent (E.R. No. 2997), for interested rail carriers. Rates on potatoes, fresh or green, other than sweet, not cold packed or frozen, in carloads, as described in the application, from points in New Brunswick, Canada, to points in official (including Illinois) territory.

Grounds for relief—Rate relationship and grouping.

Tariff—Supplement 59 to Traffic Executive Association-Eastern Railroads, agent, tariff ICC N-12.

By the Commission.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.71-3544 Filed 3-12-71;8:48 am]

[Notice 661]

MOTOR CARRIER TRANSFER PROCEEDINGS

MARCH 10, 1971.

Synopses of orders entered pursuant to section 212(b) of the Interstate Commerce Act, and rules and regulations prescribed thereunder (49 CFR Part 1132), appear below:

As provided in the Commission's special rules of practice any interested person may file a petition seeking reconsideration of the following numbered proceedings within 20 days from the date of publication of this notice. Pursuant to section 17(8) of the Interstate Commerce Act, the filing of such a petition will postpone the effective date of the order in that proceeding pending its disposition. The matters relied upon by petitioners must be specified in their petitions with particularity.

No. MC-FC-72524. By order of March 3, 1971, the Motor Carrier Board approved the transfer to Pacific Inland Transport Co., a corporation, Seattle, Wash., of a portion of the operating rights in certificate No. MC-52005 issued September 21, 1949 to Oregon-Washington Transport, a corporation, Portland, Oreg., authorizing the transportation of heavy machinery, building and road contractor's equipment, and supplies, the transportation of which requires special equipment, between points in Oregon and Washington. George R. LaBissoniere, 1424 Washington Building, Seattle, WA 98101, attorney for applicants.

No. MC-FC-72561. By order of February 18, 1971, the Motor Carrier Board approved the transfer to G. R. Kirk Co., a corporation, 615 East Pioneer Avenue, Puyallup, Wash. 98371, of the operating rights in permit No. MC-128419 issued July 28, 1967, to Andy Kichinko, 2244 Sixth Avenue South, Seattle, WA 98134, authorizing the transportation of artificial flowers, artificial foliage, artificial floral designs, artificial sprays, artificial wreaths, and artificial holiday decorations, and commodities the transportation of which would otherwise be exempt from economic regulation pursuant to the provisions of section 203(b)(6) of the Interstate Commerce Act, when transported in mixed loads with the commodities specified above, from Puyallup and Chehalis, Wash., Newport, Myrtle Point, and Port Oxford, Oreg., to Abilene, Dallas, Fort Worth, Lubbock, and San Antonio, Tex., and points in the United States (except points in Hawaii, Alaska, Washington, Oregon, Idaho, Montana, Nevada, North Dakota, South Dakota, Arizona, Maine, Vermont, New Hampshire, California, New Mexico, Louisiana, Mississippi, and Texas other than Abilene, Dallas, Fort Worth, Lubbock, and San Antonio, Tex.), with no transportation for compensation on return, except as otherwise authorized. The operations authorized herein are limited to a transportation service to be performed, under a continuing contract, or contracts, with G. R. Kirk Co. of Puyallup, Wash.

No. MC-FC-72583. By order of February 23, 1971, the Motor Carrier Board approved the transfer to Yellow Cab Company of Philadelphia, Inc., doing business as Yellow Cab Company of Philadelphia and Yellow Limousine Service, Inc., Philadelphia, Pa. of the operating rights in certificates Nos. 93396 and MC-93396 (Sub-No. 4) issued July 9, 1954 and September 20, 1963 respectively to Yellow Limousine Service, Inc., Philadelphia, Pa., authorizing the transportation of passengers and their baggage, subject to certain restrictions, between the Philadelphia International Airport at Philadelphia, Pa., and Atlantic City, N.J., and passengers and their baggage, in charter operations, subject to certain restrictions, between Philadelphia, Pa., on the one hand, and, on the other, New York, N.Y., and points in New Jersey, Delaware, and Maryland. S. Harrison Kahn, Suite 733 Investment Building, Washington, D.C., attorney for applicants.

No. MC-FC-72621. By order of February 23, 1971, the Motor Carrier Board approved the transfer to Shorty's Express, Inc., Syracuse, N.Y., of the operating rights in certificate No. MC-52832 and certificate of registration No. MC-52832 (Sub-No. 2), issued September 29, 1949 and March 26, 1964, respectively, to John F. Klabinski, doing business as Shorty's Express, Syracuse, N.Y., authorizing the transportation of general commodities and various specified commodities between specified points in New York. John J. Caswell, 715 Low Building, Syracuse, NY 13202, attorney for applicants.

No. MC-FC-72628. By order of February 18, 1971, the Motor Carrier Board approved the transfer to F. A. Long, Inc., 1 Contact Court, Baltimore, MD 21220, of the operating rights in permit No. MC-133465 issued December 22,

1969, to Freddie A. Long, 1 Contact Court, Baltimore, MD, authorizing the transportation of such merchandise as dealt in by wholesale and other specified business houses between points in specified parts of Delaware, Pennsylvania, and Virginia.

No. MC–FC–72644. By order of February 16, 1971, the Motor Carrier Board approved the transfer to Elmsford Taxi, Inc. Elmsford, N.Y., of that portion of the operating rights in certificate No. MC–133873, issued August 14, 1970, to Thomas Walsh, doing business as Thomas Trucking, West Haverstraw, N.Y., authorizing the transportation of medical laboratory machinery and other specified commodities from Tarrytown, N.Y., to specified points in New York, New Jersey, and Connecticut, subject to certain restrictions. George A. Olsen, 69 Tonnele, Avenue, Jersey City, NJ 07306, representative of applicant.

No. MC–FC–72674. By order of February 19, 1971, the Motor Carrier Board approved the transfer to Dory Express, Ltd., Waverly, N.Y., of the operating rights in permit No. MC–123888 (Sub-No. 10) issued February 17, 1966, to Cana Transport Co., Inc., Endicott, N.Y., authorizing the transportation of glass containers between specified points in New York and those in Delaware, Maryland, New Jersey, Pennsylvania, District of Columbia, and a specified portion of West Virginia, Virginia, New York, and Ohio; empty cartons and ingredients used in the manufacture of glassware from points in Pennsylvania and New Jersey and specified portions of Ohio and New York to Olean and Elmira, N.Y.; and pallets, platforms, and skids used in the manufacture of glass containers from specified portions of New York and Ohio and those in Pennsylvania, Delaware, Maryland, New Jersey and District of Elmira and Horseheads, N.Y. Donald C. Carmien, Esq., 500 O'Neill Building, Binghamton, NY 13901, attorney for transferee.

No. MC–FC–72676. By order of February 18, 1971, the Motor Carrier Board approved the transfer to Schmidt, Inc., doing business as Hollstein Transfer, Baltimore, Md., of the operating rights in certificate No. MC–36603 issued July 5, 1941, to The Hollstein Transfer Co., a corporation, Baltimore, Md., authorizing the transportation of office equipment, building and construction equipment materials and supplies between Baltimore, Md., on the one hand, and, on the other, Washington, D.C. William J. Little, 1513 Fidelity Building, Baltimore, MD 21201, attorney for applicants.

No. MC–FC–72677. By order of February 18, 1971, the Motor Carrier Board approved the transfer to W. J. Plumby, Inc., Somerton, Ohio, of the operating rights in permits Nos. MC–101117 (Sub-No. 1) and MC–101117 (Sub-No. 2), issued July 8, 1953, and December 10, 1968, respectively, to W. J. Plumby, Somerton, Ohio, authorizing the transportation of new and used mine cars and parts thereof, between Brownsville, Ohio, on the one hand, and, on the other, points in six specified States. Earl N. Merwin, 85 East Gay Street, Columbus, OH 43215, attorney for applicants.

No. MC–FC–72687. By order of February 23, 1971, the Motor Carrier Board approved the transfer to Mije Corp., doing business as Jerry Land and Sons Delivery Service, North Miami Beach, Fla., of the operating rights in certificate No. MC–121120 (Sub-No. 2), issued August 4, 1969, to Rapid Delivery Service, Inc., Miami, Fla., authorizing the transportation of general commodities, with the usual exceptions, between specified points in Florida. Alan B. Brody, 10800 Southwest Colonial Drive, Miami, FL 33157, attorney for applicants.

No. MC–FC–72692. By order of February 23, 1971, the Motor Carrier Board approved the transfer to Sam Lowenstein and Stanley Lowenstein, a partnership, doing business as Super M. Foods Delivery, New York, N.Y., of the operating rights in permit No. MC–7832, issued January 13, 1971, to Super M. Foods Delivery, Inc., Linden, N.J., collectively authorizing the transportation of such merchandise as dealt in by specified food business houses from, to or between specified points in New York, New Jersey, and Connecticut, restricted to the account of specified shippers. Bert Collins, 140 Cedar Street, New York, NY 10006, representative of applicants.

No. MC–FC–72694. By order of February 22, 1971, the Motor Carrier Board approved the transfer to Northways, Inc., Worcester, Mass., of the operating rights in certificate No. MC–72758, issued April 13, 1951, to Chew Express Co., a corporation, Worcester, Mass., authorizing the transportation of general commodities, with exceptions, between Monroe Bridge, Mass., and Readsboro, Vt., on the one hand, and, on the other, Albany, N.Y., and points in Massachusetts; and specified commodities between Monroe Bridge, Mass., on the one hand, and, on the other, specified points in New Hampshire, Vermont, and New Jersey and points in Connecticut and a specified area of New York. Francis P. Barrett, 60 Adams Street, Milton, MA 02187, Arthur A. Wentzell, 539 Hartford Pike, Shrewsbury, MA 02151, representatives for applicant.

No. MC–FC–72698. By order of February 23, 1971, the Motor Carrier Board approved the transfer to Stanton Farm Services, Inc., Fairbury, Nebr., of the operating rights in certificate No. MC–96441 issued December 23, 1970, to Geraldine Seifert, doing business as Seifert Trucking, Fairbury, Nebr., authorizing the transportation of brick, tile, cement, mortar, sand, and gravel, lubricating oils, in containers, binder twine, agricultural implements, farm machinery and parts, feeds, hay and fodder, livestock and emigrant movables from and to specified points in Nebraska, Iowa, Missouri, and Kansas. Einar Viren, 904 City National Bank Building, Omaha, NE 68102, and Tom Hampton, Box 207, Salina, KS 67401, attorneys for applicants.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.71–3545 Filed 3–12–71;8:48 am]

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PART II

DEPARTMENT OF JUSTICE

Bureau of Narcotics and Dangerous Drugs

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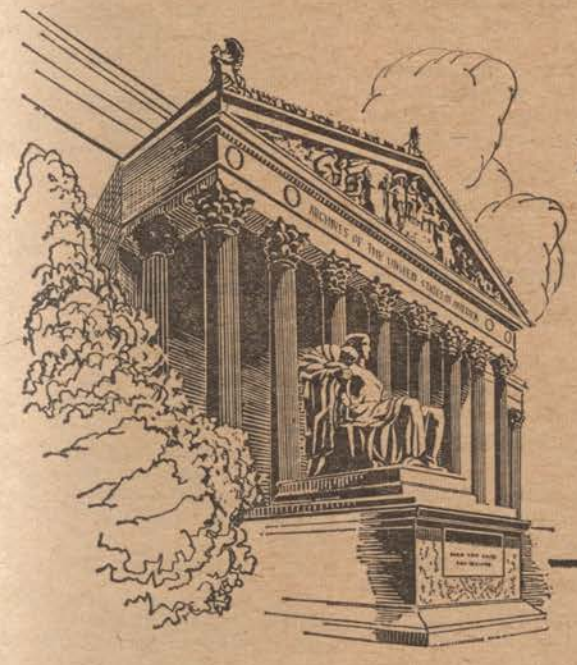

Proposed Regulations Implementing the Comprehensive Drug Abuse Prevention and Control Act of 1970

DEPARTMENT OF JUSTICE

Bureau of Narcotics and Dangerous Drugs

[21 CFR Parts 301, 302, 303, 304, 305, 306, 307, 308, 311, 312, 316]

REGULATIONS IMPLEMENTING THE COMPREHENSIVE DRUG ABUSE PREVENTION AND CONTROL ACT OF 1970

Notice of Proposed Rule Making

Under the authority vested in the Attorney General by sections 201(g), 202(d), 301, 302(f), 305, 306(f), 307, 308, 501(b), 704(c), 705, 1006, 1007(b), and 1008(e) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and redelegated to the Director, Bureau of Narcotics and Dangerous Drugs, by section 0.100 of Title 28, of the Code of Federal Regulations, the Director hereby proposes that Parts 301, 302, 303, 305, 306, 307, 315, 319, and 320 of Title 21 of the Code of Federal Regulations, and Parts 150, 151, and 152 of Title 26 of the Code of Federal Regulations, be rescinded and replaced with the following:

PART 301—REGISTRATION OF MANUFACTURERS, DISTRIBUTORS, AND DISPENSERS OF CONTROLLED SUBSTANCES

GENERAL INFORMATION

§ 301.01 Scope of Part 301.

Procedures governing the registration of manufacturers, distributors, and dispensers of controlled substances pursuant to sections 301 through 304 of the Act (21 U.S.C. 821–824) are set forth generally by those sections and specifically by the sections of this part.

§ 301.02 Definitions.

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

(a) The term "Act" means the Controlled Substances Act (84 Stat. 1242; 21 U.S.C. 801).

(b) The term "basic class" means, as to controlled substances listed in schedules I and II:

(1) each of the opiates, including its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation, listed in 21 CFR 308.11(b);

(2) Each of the opium derivatives, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation, listed in 21 CFR 308.11(c);

(3) Each of the hallucinogenic substances, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation, listed in 21 CFR 308.11(d);

(4) Each of the following substances, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(i) Opium, including raw opium, opium extracts, opium fluid extracts, powdered opium, granulated opium, deodorized opium and tincture of opium;

(ii) Apomorphine;

(iii) Codeine;

(iv) Ethylmorphine;

(v) Hydrocodone;

(vi) Hydromorphine;

(vii) Metopon;

(viii) Morphine;

(ix) Oxycodone;

(x) Oxymorphone;

(xi) Thebaine;

(xii) Mixed alkaloids of opium listed in § 308.12(b)(2) of this chapter;

(xiii) Cocaine; and

(xiv) Ecgonine;

(5) Each of the opiates, including its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation, listed in § 308.12(c) of this chapter; and

(6) Methamphetamine, including its salts, isomers, and salts of isomers, when contained in any injectable liquid.

(c) The term "Bureau" means the Bureau of Narcotics and Dangerous Drugs.

(d) The term "Director" means the Director of the Bureau. The Director has been delegated authority under the Act by the Attorney General (28 CFR 0.100).

(e) The term "hearing" means any hearing held pursuant to this Part for the granting, denial, revocation, or suspension of a registration pursuant to sections 303 and 304 of the Act (21 U.S.C. 823–824).

(f) The term "person" includes any individual, corporation, government or governmental subdivision, or agency, business trust, partnership, association, or other legal entity.

(g) The term "presiding officer" means a hearing examiner qualified and appointed as provided in the Administrative Procedure Act (5 U.S.C. 556).

(h) The terms "register" and "registration" refer only to registration required and permitted by section 303 of the Act (21 U.S.C. 823).

(i) Any term not defined in this section shall have the definition set forth in section 102 of the Act (21 U.S.C. 802).

§ 301.03 Information; special instructions.

Information regarding procedures under these rules and instructions supplementing these rules will be furnished upon request by writing to the Registration Branch, Bureau of Narcotics and Dangerous Drugs, Department of Justice, Post Office Box 28083, Central Station, Washington, D.C. 20005.

§ 301.04 Inspection of record.

(a) The record bearing on any registration, except for material described in subsection (b) of this section, shall be available for public inspection and copying during office hours in the office of the Registration Branch, Bureau of Narcotics and Dangerous Drugs, Department of Justice, Washington, D.C. 20537, or in the office of the Hearing Clerk, Bureau of Narcotics and Dangerous Drugs, Department of Justice, Washington, D.C. 20537, if such record is part of a hearing in progress.

(b) The following material shall not be available for inspection as part of the record bearing on a registration:

(1) A research protocol filed with an application for registration to conduct research with controlled substances listed in schedule I, pursuant to § 301.32(a)(3), if the applicant requests that the protocol be kept confidential;

(2) An outline of a production or manufacturing process filed with an application for registration to manufacture a new narcotic controlled substance, pursuant to § 301.33, if the applicant requests that the outline be kept confidential;

(3) Any confidential and trade secret information disclosed in conjunction with an application for registration, or in reports filed while registered, or acquired in the course of an investigation, entitled to protection under subsection 402(a)(8) of the Act (21 U.S.C. 842(a)(8)) or any other law restricting public disclosure of information; and

(4) Any material contained in any investigatory report, memorandum, or file, or case report.

FEES FOR REGISTRATION AND REREGISTRATION

§ 301.11 Fee amounts.

(a) For each registration or reregistration to manufacture controlled substances, the registrant shall pay a fee of $50.

(b) For each registration or reregistration to distribute controlled substances, the registrant shall pay a fee of $25.

(c) For each registration or reregistration to dispense, or to conduct research or instructional activities with, controlled substances listed in schedules II through V, the registrant shall pay a fee of $5.

(d) For each registration or reregistration to conduct research or instructional activities with a controlled substance listed in schedule I, the registrant shall pay a fee of $5.

(e) For each registration or reregistration to conduct chemical analysis with controlled substances listed in any schedule, the registrant shall pay a fee of $5.

§ 301.12 Time of payment; refund.

Registration and reregistration fees shall be paid at the time when the application for registration or reregistration is submitted for filing. In the event that the application is not accepted for filing or is denied, the payment shall be refunded to the applicant.

§ 301.13 Persons exempt from fee.

(a) The Director shall exempt from payment of a fee for registration or reregistration the following persons:

(1) Any official of the U.S. Army, Navy, Air Force, Coast Guard, Veterans' Administration or Public Health Service who is authorized to procure or purchase controlled substances for official use; and

(2) Any official, employee or other civil officer of the United States, of any State, or any political subdivision or agency thereof, who is authorized to purchase controlled substances, to obtain such substances from official stocks, to dispense to administer such substances, to conduct research, instructional activities, or chemical analysis with such substances, or any combination thereof, in the course of his official duties or employment.

(b) In order to claim exemption from payment of a registration or reregistration fee, the registrant shall have completed the certification on the appropriate application form, wherein the registrant's superior certifies to the status and address of the registrant and to the authority of the registrant to acquire, possess, or handle controlled substances.

(c) Exemption from payment of a registration or reregistration fee does not relieve the registrant of any other requirements or duties prescribed by law.

REQUIREMENTS OF REGISTRATION

§ 301.21 Person required to register.

Every person who manufactures, distributes, or dispenses any controlled substance or who proposes to engage in the manufacture, distribution, or dispensing of any controlled substance shall obtain annually a registration unless exempted by law or pursuant to §§ 301.25–301.27. Only persons actually engaged in such activities are required to obtain a registration; related or affiliated persons who are not engaged in such activities are not required to be registered. (For example, a stockholder, or parent corporation of a corporation manufacturing controlled substances is not required to obtain a registration.)

§ 301.22 Separate registration for independent activities.

(a) The following eight groups of activities are deemed to be independent of each other:

(1) Manufacturing controlled substances;

(2) Distributing controlled substances;

(3) Dispensing narcotic and nonnarcotic, and conducting research with nonnarcotic, and conducting instructional activities with narcotic and nonnarcotic, controlled substances listed in schedules II through V;

(4) Conducting research with narcotic controlled substances listed in schedules II through V;

(5) Conducting research and instructional activities with controlled substances listed in schedule I;

(6) Conducting chemical analysis with controlled substances listed in any schedule;

(7) Importing controlled substances; and

(8) Exporting controlled substances listed in schedules I through IV.

(b) Every person who engages in more than one group of independent activities shall obtain a separate registration for each group of activities, except that registration to manufacture or import any controlled substance or basic class of substances shall include authorization to distribute that substance or class, but no other substance not authorized for manufacture or importation, and except that registration to manufacture any controlled substance shall include authorization to conduct preclinical research with narcotic and nonnarcotic controlled substances listed in those schedules which he is authorized to manufacture.

(c) One or more controlled substances listed in schedules II through V may be included in a single registration to engage in any independent activity. Only one basic class of controlled substance listed in schedule I, and no controlled substances listed in any other schedule, may be included in a single registration, except that a registration to conduct chemical analysis with basic classes of controlled substances listed in schedule I may include more than one such basic class and also controlled substances listed in any other schedule.

§ 301.23 Separate registrations for separate locations.

(a) A separate registration is required for each principal place of business or professional practice at one general physical location where controlled substances are manufactured, distributed, or dispensed by a person.

(b) The following locations shall be deemed not to be places where controlled substances are manufactured, distributed, or dispensed:

(1) A warehouse where controlled substances are stored by or on behalf of a registered person, unless such substances are distributed directly from such warehouse to registrants other than the registered person or to persons not required to register by virtue of subsection 302(c)(2) of the Act (21 U.S.C. 822(c)(2));

(2) An office used by agents of a registrant where sales of controlled substances are solicited, made, or supervised but which neither contains such substances (other than substances for display purposes or lawful distribution as samples only) nor serves as a distribution point for filing sales orders; and

(3) An office used by a practitioner (who is registered at another location) where controlled substances are prescribed but neither administered nor otherwise dispensed as a regular part of the professional practice of the practitioner at such office, and where no supplies of controlled substances are maintained.

§ 301.24 Registration of affiliated practitioners.

Every practitioner who dispenses controlled substances shall obtain annually a registration to so dispense, except that a practitioner who is an agent or employee of another practitioner who is registered to dispense may be covered by the registration for activities which he performs as such agent or employee, in lieu of being registered himself. (For example, a pharmacist employed by a pharmacy need not be registered individually to dispense controlled substances if the pharmacy is so registered.)

§ 301.25 Exemption of certain military and other personnel.

(a) The requirement of registration is waived for any official of the U.S. Army, Navy, Air Force, Coast Guard, or Public Health Service who is authorized to prescribe, dispense, or administer, but not to procure or purchase, controlled substances in the course of his official duties. Such officials shall follow procedures set forth in Part 306 of this chapter regarding prescriptions, but shall use the corps and jacket or serial number of the issuing official in lieu of the registration number required on prescription forms.

(b) If any official exempted by this section also engages as a private individual in any activity or group of activities for which registration is required, such official shall obtain a registration for such private activities.

§ 301.26 Exemption of law enforcement officials.

(a) The requirement of registration is waived for the following persons in the circumstances described in this section:

(1) Any officer or employee of the Bureau, any officer of the U.S. Bureau of Customs, any officer or employee of the United States Food and Drug Administration, and any other Federal officer who is lawfully engaged in the enforcement of any Federal law relating to controlled substances, drugs or customs, and is duly authorized to possess controlled substances in the course of his official duties; and

(2) Any officer of any State, or any political subdivision or agency thereof, who is engaged in the enforcement of any State or local law relating to controlled substances and is duly authorized to possess controlled substances in the course of his official duties.

(b) Any official exempted by this section may, when acting in the course of his official duties, possess any controlled substance and distribute any such substance to any other official who is also exempted by this section and acting in the course of his official duties.

(c) Any official exempted by this section may procure from any registered person a sample of any controlled substances. Such official shall furnish the registrant a receipt for the sample obtained. Any such receipt for the procurement of a controlled substance listed in schedule I or II shall be treated by the registrant in the same manner as an order form.

(d) For purposes of this section, the conducting of chemical analysis with controlled substances shall not be deemed to be part of the enforcement of any laws relating to controlled substances. Any official referred to in this section who desires to conduct chemical analysis with controlled substances shall be required to obtain annually a registration for such activity.

§ 301.27 Exemption of civil defense officials.

(a) The requirement of registration is waived for any official of a civil defense or disaster relief organization who, in the course of his official duties, is authorized to:

(1) Maintain, and distribute for such maintenance, controlled substances held for emergency use; or

(2) Procure controlled substances for the purpose of maintaining supplies for emergency use, provided that all of such procurement is from the U.S. General Services Administration and in accordance with the rules of the U.S. Office of Emergency Preparedness.

(b) The requirement of registration is waived for any official of a civil defense or disaster relief organization during a state of emergency or disaster within his jurisdiction proclaimed by the President or by a concurrent resolution of the Congress, which official, in the course of his official duties, during such emergency or disaster, is authorized to:

(1) Dispense controlled substances; or

(2) Procure or distribute controlled substances, provided that all such procurement is on a special "Civil Defense Emergency Order Form," as described in this section.

(c) Civil Defense Emergency Order Forms shall be furnished by the U.S. Office of Emergency Preparedness and will contain the name of the civil defense or disaster relief organization. Such forms may be used and are valid only during a state of emergency or disaster proclaimed by the President or by a concurrent resolution of the Congress for the area in which the organization using such forms has civil defense or disaster relife jurisdiction, who shall state his position and the nature and legal designation of the emergency or disaster. Such forms may be filed by any person registered under the Act. The organization shall, upon the execution of a Civil Defense Emergency Order Form, be deemed to be registered under the Act for purposes of recordkeeping pursuant to Part 304 of this chapter.

§ 301.28 Registration regarding ocean vessels.

(a) Controlled substances may be held in medicine chests and dispensaries maintained on board any vessel engaged in international trade or in trade between ocean ports of the United States (including a merchant vessel belonging to the United States) if such substances are purchased by and stored and dispensed under the supervision of:

(1) The medical officer of the owner of the vessel, which officer is (i) Either (*a*) A physician licensed in a State or (*b*) A retired commissioned medical officer of the U.S. Army, Navy, Air Force, Coast Guard, or Public Health Service, and (ii) Is registered under the Act; or

(2) If no medical officer is employed by the owner of such vessel, the master of the vessel, who shall not be registered under the Act and who shall purchase controlled substances only with the approval of, and upon special order forms provided by, a commissioned medical officer of the U.S. Public Health Service.

(b) A medical officer described in paragraph (a) of this section shall obtain registration at the location of the principal office of the owner of the vessel. If he serves as the medical officer for more than one owner of vessels, he shall obtain a separate registration at the location of the principal office of each subowner. Any medical officer shall, in addition to complying with all requirements and duties prescribed for registrants generally, prepare an annual report as of the date on which his registration expires, which report shall give in detail an accounting for any controlled substances purchased, dispensed or disposed of during the year on behalf of each owner by whom he is employed. The medical officer shall maintain this report with other records required to be kept under the Act and, upon request, deliver a copy of the report to the Director.

(c) Owners of vessels described in in this section shall not be deemed to possess or dispense any controlled substance purchased, stored and dispensed in accordance with this section.

§ 301.29 Registration regarding commercial aircraft.

(a) Controlled substances may be held for stocking, and be maintained in, medicine chests and first-aid packets on board any aircraft operated by an air carrier under a certificate or permit issued pursuant to the Federal Aviation Act of 1958 (49 U.S.C. 1301) if such substances are purchased by and are stored and dispensed under the supervision of the medical officer of the air carrier, which officer is employed by such air carrier and is registered as a dispenser under the Act. Any air carrier which has more than one principal base of operations and desires to have a medical officer at each such base may, but is not required to, designate more than one medical officer.

(b) Any medical officer described in this section shall, in addition to complying with all requirements and duties prescribed for registrants generally, prepare an annual report as of the date on which his registration expires, which report shall give in detail an accounting for any controlled substances purchased, dispensed or disposed of during the year. The medical officer shall maintain this report with other records required to be kept under the Act and, upon request, deliver a copy of the report to the Director.

(c) Air carriers operating aircraft described in this section shall not be deemed to possess or dispense any controlled substance purchased, stored and dispensed in accordance with this section.

APPLICATIONS FOR REGISTRATION

§ 301.31 Time for application for registration; expiration date.

(a) Any person who is required to be registered and who is not so registered may apply for registration at any time. No person required to be registered shall engage in any activity for which registration is required until the application for registration is granted and a certificate of registration is issued by the Director to him.

(b) Any person who is registered may apply to be reregistered not more than 60 days before the expiration date of his registration.

(c) At the time any person is first registered, he shall be assigned to one of 12 groups, which shall correspond to the months of the year. The expiration date of the registrations of all persons within any group will be the last day of the month designated for that group. In assigning any person to a group, the Bureau may select a group the expiration date of which is less than 1 year from the date such person was registered. If the person is assigned to a group which has an expiration date less than 3 months from the date on which the person is registered, the registration shall not expire until 1 year from that expiration date; in all other cases, the registration shall expire on the expiration date first following the date on which the person is registered.

§ 301.32 Application forms; contents; signature.

(a) If any person is required to be registered, and is not so registered and is applying for registration:

(1) To manufacture or distribute controlled substances, he shall apply on BND Form 225;

(2) To dispense narcotic or nonnarcotic, or to conduct research with nonnarcotic, or to conduct instructional activities with narcotic or nonnarcotic, controlled substances listed in schedules II through V, he shall apply on BND Form 224;

(3) To conduct research with narcotic controlled substances listed in schedules II through V, he shall apply on BND Form 225.

(4) To conduct research with a controlled substance listed in schedule I, he shall apply on BND Form 225, with two copies of a reseach protocol describing the research project attached to the Form;

(5) To conduct instructional activities with a controlled substance listed in schedule I, he shall apply as a researcher on BND Form 225 with two copies of a statement describing the nature, extent, and duration of such instructional activities attached to the Form;

(6) To conduct chemical analysis with controlled substances listed in any schedule, he shall apply on BND Form 225.

(b) If any person is registered and is applying for reregistration:

(1) To manufacture or distribute controlled substances, he shall apply on BND Form 227;

(2) To dispense narcotic or nonnarcotic, or to conduct research with nonnarcotic, or to conduct instructional activities with narcotic or nonnarcotic, controlled substances listed in schedules II through V, he shall apply on BND Form 226;

(3) To conduct research with narcotic controlled substances listed in schedule II through V, he shall apply on BND Form 227;

(4) To continue to conduct research with a controlled substance listed in schedule I under an approved research protocol, he shall apply on BND Form 227;

(5) To continue to conduct instructional activities with controlled substance listed in schedule I under an approved instructional statement, he shall apply as a researcher on BND, Form 227; and

(6) To conduct chemical analysis with controlled substances listed in any schedule, he shall apply on BND Form 227.

(c) BND Forms 224 and 225 may be obtained at any regional office of the Bureau or by writing to the Registration Branch, Bureau of Narcotics and Dangerous Drugs, U.S. Department of Justice, Post Office Box 28083, Central Station, Washington, D.C. 20005. BND Forms 226 and 227 will be mailed, as applicable, to each registered person approximately 60 days before the expiration date of his registration; if any registered person does not receive such forms within 45 days before the expiration date of his registration, he must promptly give notice of such fact and request such forms by writing to the Registration Branches of the Bureau at the foregoing address.

(d) Each application for registration to handle any basic class of controlled substance listed in schedule I (except one conduct chemical analysis with such classes), and each application to manufacture, or to conduct research or instructional activities with, any controlled substance listed in schedule II, shall include the Bureau controlled substance code number for each substance to be covered by such registration.

(e) Each application shall include all information called for in the form, unless the item is not applicable, in which case this fact shall be indicated.

(f) Each application, attachment, or other document filed as part of an application, shall be signed by the applicant, if an individual; by a partner of the applicant, if a partnership; or by an officer of the applicant, if a corporation, association, trust or other entity.

§ 301.33 Application to manufacture a new narcotic controlled substance.

Any application for registration to manufacture a narcotic controlled substance subject to section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) after May 1, 1971, where the manufacturing process involves chemical synthesis (whether from narcotic materials or not) shall be accompanied by an outline of the process of synthesis on BND Form 130, identifying the substances from which the substance is to be made and the substances resulting from each successive stage of the process and indicating in each instance whether the substance is isolated and weighed to measure or remains in solution in a continuing process of manufacture. The applicant need not disclose any technical detail of the process which he regards as a trade secret but must identify each substance used in or resulting from successive stages of manufacture in order to notify the Bureau of narcotic precursors and byproducts. BND Form 130 will, if requested by the applicant, be treated as confidential and subject to the protection provided in section 402(a)(8) of the Act (21 U.S.C. 842(a)(8)).

§ 301.34 Filing of application; joint filings.

(a) All applications for registration shall be submitted for filing to the Registration Branch, Bureau of Narcotics and Dangerous Drugs, U.S. Department of Justice, Post Office Box 28083, Central Station, Washington, DC 20005. The appropriate registration fee and any required attachments must accompany the application.

(b) Any person required to obtain more than one registration should submit all applications in one package. Each application must be complete and should not refer to any accompanying application for required information.

§ 301.35 Acceptance for filing; defective applications.

(a) Applications submitted for filing are dated upon receipt. If found to be complete, the application will be accepted for filing. Applications failing to comply with the requirements of this part will not generally be accepted for filing. In the case of minor defects as to completeness, the Director may accept the application for filing with a request to the applicant for additional information. A defective application will be returned to the applicant within 10 days following its receipt with a statement of the reason for not accepting the application for filing. A defective application may be corrected and resubmitted for filing at any time; the Director shall accept for filing any application upon resubmission by the applicant, whether complete or not.

(b) Accepting an application for filing does not preclude any subsequent request for additional information pursuant to § 301.36 and has no bearing on whether the application will be granted.

§ 301.36 Additional information.

The Director may require an applicant to submit such documents or written statements of fact relevant to the application as he deems necessary to determine whether the application should be granted. The failure of the applicant to provide such documents or statements within a reasonable time after being requested to do so shall be deemed to be a waiver by the applicant of an opportunity to present such documents or facts for consideration by the Director in granting or denying the application.

§ 301.37 Amendments to and withdrawal of applications.

(a) An application may be amended or withdrawn without permission of the Director at any time before the date on which the applicant receives an order to show cause pursuant to § 301.48, or before the date on which a notice of hearing on the application is published pursuant to § 301.43, whichever is sooner. An application may be amended or withdrawn with permission of the Director at any time where good cause is shown by the applicant or where the amendment or withdrawal is in the public interest.

(b) After an application has been accepted for filing, the request by the applicant that it be returned or the failure of the applicant to respond to official correspondence regarding the application, when sent by registered or certified mail, return receipt requested, shall be deemed to be a withdrawal of the application.

Action on Applications for Registration: Revocation or Suspension of Registration

§ 301.41 Administrative review generally.

The Director may inspect, or cause to be inspected, the establishment of an applicant or registrant, pursuant to Subpart A of Part 316, of this chapter. The director shall review the application for registration and other information gathered by the Bureau regarding an applicant in order to determine whether the applicable standards of section 303 of the Act (21 U.S.C. 823) have been met by the applicant.

§ 301.42 Applications for research in schedule I substances.

(a) In the case of an application for registration to conduct research with controlled substances in schedule I, the Director shall refer such application to the Secretary, who shall determine the qualifications and competency of the applicant as well as the merits of the research protocol. The Secretary, in determining the merits of a research protocol, shall consult with the Director as to effective procedures to safeguard adequately against diversion of such controlled substances from legitimate medical or scientific use. If the Secretary finds the applicant qualified and competent and the research protocol meritorious and adequately safeguarded, he shall so notify the Director, and the Director shall register the applicant unless he finds registration should be denied on a ground specified in section 304(a) of the Act.

(b) If the Secretary is unable to find the applicant qualified or the Director finds that grounds exist for the denial of the application, the Director shall issue an order to show cause pursuant to § 301.48 and, if requested by the applicant, hold a hearing on the application pursuant to § 301.51.

§ 301.43 Application for bulk manufacture of schedule I and II substances.

In the case of an application for registration or reregistration to manufacture in bulk a basic class of controlled substance listed in schedule I or II, the Director shall, upon the filing of such application, publish in the FEDERAL REGISTER a notice naming the applicant and stating that such applicant has applied to be registered as a bulk manufacturer of a basic class of narcotic or nonnarcotic controlled substance, which class shall be identified. A copy of said notice shall be mailed simultaneously to each person registered as a bulk manufacturer of that basic class and to any other applicant therefor. Any such person may, within 30 days from the date of publication of the notice in the FEDERAL REGISTER, file with the Director written comments on or objections to the issuance of the proposed registration, and may, at the same time, file a written request for a hearing on the application. If a hearing is requested, the Director shall hold a hearing on the application pursuant to § 301.51. Notice of the hearing shall be published in the FEDERAL REGISTER and shall be mailed simultaneously to the applicant and to all persons to whom notice of the application was mailed. Notice of the hearing shall contain a summary of all comments and objections filed regarding the application and shall state the time and place for the hearing, which shall not be less than 30 days after the date of publication of such notice in the FEDERAL REGISTER. A hearing pursuant to this section may be consolidated with a hearing held pursuant to § 301.44 or § 301.45.

(b) In order to provide adequate competition, the Director shall not be required to limit the number of manufacturers in any basic class to a number less than that consistent with maintenance of effective controls against diversion solely because a smaller number is capable of producing an adequate and uninterrupted supply.

(c) This section shall not apply to the manufacture of basic classes of controlled substances listed in schedule I as an incident to research authorized pursuant to § 301.42.

§ 301.44 Certificate of registration; denial of registration.

(a) The Director shall issue a certificate of registration (BND Form 223) to an applicant if the issuance of registration or reregistration is required under the applicable provisions of section 303 of the Act (21 U.S.C. 823). In the event that the issuance of registration or reregistration is not required, the Director shall deny the application. Before denying any application, the Director, shall issue an order to show cause pursuant to § 301.48 and, if requested by the applicant, shall hold a hearing on the application pursuant to § 301.51.

(b) The certificate of registration (BND Form 223) shall contain the name, address, and registration number of the registrant, the activity authorized by the registration, the schedules and/or controlled substances which the registrant is authorized to handle, and the expiration date of the registration. The registrant shall prominently display the certificate of registration at the registered location.

§ 301.45 Suspension or revocation of registration.

(a) The Director may suspend any registration pursuant to section 304(a) of the Act (21 U.S.C. 824(a)) for any period of time he determines.

(b) The Director may revoke any registration pursuant to section 304(a) of the Act (21 U.S.C. 824(a)).

(c) Before revoking or suspending any registration, the Director shall issue an order to show cause pursuant to § 301.48 and, if requested by the registrant, shall hold a hearing pursuant to § 301.51. Notwithstanding the requirements of this section, however, the Director may suspend any registration pending a final order pursuant to § 301.46.

(d) Upon service of the order of the Director suspending or revoking registration, the registrant shall immediately deliver his certificate of registration and any order forms in his possession to the nearest office of the Bureau. The suspension or revocation of a registration shall suspend or revoke any quota fixed for the registrant pursuant to 21 CFR Part 303. Also, upon service of the order of the Director revoking registration, the registrant shall, as instructed by the Director,

(1) Deliver all controlled substances in his possession to the nearest office of the Bureau or to authorized agents of the Bureau; or

(2) Place all controlled substances in his possession under seal as described in section 304(f) of the Act (21 U.S.C. 824(f)).

(e) In the event that revocation or suspension is limited to a particular controlled substance or substances, the registrant shall be given a new certificate of registration for all substances not affected by such revocation or suspension. The registrant shall deliver the old certificate of registration and, if appropriate, any order forms in his possession to the nearest office of the Bureau. Also, the registrant shall, as instructed by the Director,

(1) Deliver to the nearest office of the Bureau or to authorized agents of the Bureau all of the particular controlled substance or substances affected by the revocation or suspension which are in his possession; or

(2) Place all of such substances under seal as described in section 304(f) of the Act (21 U.S.C. 824(f)).

§ 301.46 Suspension of registration pending final order.

(a) The Director may suspend any registration simultaneously with or at any time subsequent to the service upon the registrant of an order to show cause why such registration should not be revoked or suspended, in any case where he finds that there is an imminent danger to the public health or safety. If the Director so suspends, he shall serve with the order to show cause pursuant to § 301.48 an order of immediate suspension which shall contain a statement of his findings regarding the danger to public health or safety.

(b) Upon service of the order of immediate suspension, the registrant shall promptly return his certificate of registration and any order forms in his possession to the nearest office of the Bureau. The suspension of any registration under this section shall suspend any quota fixed for the registrant pursuant to 21 CFR Part 303. Also, upon service of the order of the Director immediately suspending registration, the registrant shall, as instructed by the Director,

(1) Deliver all affected controlled substances in his possession to the nearest office of the Bureau or to authorized agents of the Bureau; or

(2) Place all of such substances under seal as described in section 304(f) of the Act (21 U.S.C. 824(f)).

(c) Any suspension shall continue in effect until the conclusion of all proceedings upon the revocation or suspension, including any judicial review thereof, unless sooner withdrawn by the Director or dissolved by a court of competent jurisdiction. Any registrant whose registration is suspended under this section may request a hearing on the revocation or suspension of his registration at a time earlier than specified in the order to show cause pursuant to § 301.48, which request shall be granted by the Director, who shall fix a date for such hearing as early as reasonably possible.

§ 301.47 Extension of registration pending final order.

In the event that an applicant for reregistration (who is doing business under a registration previously granted and not revoked or suspended) has applied for reregistration at least 45 days before the date on which the existing registration is due to expire, and the Director has issued no order on the application on the date on which the existing registration is due to expire, the existing registration of the applicant shall automatically be extended and continue in effect until the date on which the Director so issues his order. The Director may extend any other existing registration under the circumstances contemplated in this section even though the registrant failed to apply for reregistration at least 45 days before expiration of the existing registration, with or without request by the registrant, if the Director finds that such extension is not inconsistent with the public health and safety.

§ 301.48 Order to show cause.

(a) If, upon examination of the application for registration from any applicant and other information gathered by the Bureau regarding the applicant, the Director is unable to make the determinations required by the applicable provisions of section 303 of the Act (21 U.S.C. 823) to register the applicant, the Director shall serve upon the applicant an order to show cause why the registration should not be denied.

(b) If, upon information gathered by the Bureau regarding any registrant, the Director determines that the registration of such registrant is subject to suspension or revocation pursuant to section 304 of the Act (21 U.S.C. 824), the Director shall serve upon the registrant an order to show cause why the registration should not be revoked or suspended.

(c) The order to show cause shall call upon the applicant or registrant to appear before the Director at a time and place stated in the order, which shall not be less than 30 days after the date of receipt of the order. The order to show cause shall also contain a statement of the legal basis for such hearing and for the denial, revocation, or suspension of registration and a summary of the matters of fact and law asserted.

(d) Upon receipt of an order to show cause, the applicant or registrant must, if he desires a hearing, file a request for a hearing pursuant to § 301.55. If a hearing is requested, the Director shall hold a hearing at the time and place stated in the order, pursuant to § 301.51.

(e) When authorized by the Director, any agent of the Bureau may serve the order to show cause.

HEARINGS

§ 301.51 Hearings generally.

(a) In any case where the Director shall hold a hearing on any registration or application therefor, the procedures for such hearing shall be governed generally by the adjudication procedures set out in the Administrative Procedure Act (5 U.S.C. 551–559) and specifically by sections 303 and 304 of the Act (21 U.S.C. 823–824) and §§ 301.52–301.73.

(b) Any hearing under this part shall be independent of, and not in lieu of, criminal prosecutions or other proceedings under the Act or any other law of the United States.

§ 301.52 Purpose of hearing.

If requested by a person entitled to a hearing, the Director shall hold a hearing for the purpose of receiving factual evidence regarding the issues involved in the denial, revocation, or suspension of any registration, and the granting of any application for registration to manufacture in bulk a basic class of controlled substance listed in schedule I or II. Extensive argument should not be offered into evidence but rather presented in opening or closing statements of counsel or in memoranda or proposed findings of fact and conclusions of law.

§ 301.53 Waiver or modification of rules.

The Director or the presiding officer (with respect to matters pending before him) may modify or waive any rule in this part by notice in advance of the hearing, if he determines that no party in the hearing will be unduly prejudiced and the ends of justice will thereby be served. Such notice of modification or waiver shall be made a part of the record of the hearing.

§ 301.54 Filings; address; hours.

Documents required or permitted to be filed in, and correspondence relating to, hearings governed by the regulations in this part shall be filed with the Hearing Clerk, Bureau of Narcotics and Dangerous Drugs, U.S. Department of Justice, Washington, D.C. 20537. This office is open Monday through Friday from 9 a.m. to 5:30 p.m. eastern standard or daylight saving time, whichever is effective in the District of Columbia at the time, except on national legal holidays. Documents shall be dated and deemed filed upon receipt by the Hearing Clerk.

§ 301.55 Request for hearing or appearance; waiver.

(a) Any person entitled to and desiring a hearing pursuant to §§ 301.42–301.45 shall, within 30 days after the date of receipt of the order to show cause (or the date of publication of notice of the application for registration in the FEDERAL REGISTER in the case of § 301.43), file with the Director a written request for a hearing.

(b) Any person entitled to and desiring to participate in a hearing pursuant to § 301.43 shall, within 30 days of the date of publication of notice of the hearing in the FEDERAL REGISTER, file with the Director a written notice of his intention to participate in such hearing.

(c) Any persons entitled to a hearing or to participate in a hearing pursuant to §§ 301.42–301.45 may, within the period permitted for filing a request for a hearing or a notice of appearance, file with the Director a waiver of an opportunity for a hearing or to participate in a hearing, together with a written statement regarding his position on the matters of fact and law involved in such hearing. Such statement, if admissible, shall be made a part of the record and shall be considered in light of the lack of opportunity for cross-examination in determining the weight to be attached to matters of fact asserted therein.

(d) If any person entitled to a hearing or to participate in a hearing pursuant to §§ 301.42–301.45 fails to file a request for a hearing or a notice of appearance, or if he so files and fails to appear at the hearing, he shall be deemed to have waived his opportunity for the hearing or to participate in the hearing, unless he shows good cause for such failure.

(e) If all persons entitled to a hearing or to participate in a hearing waive or are deemed to waive their opportunity for the hearing or to participate in the hearing, the Director may cancel the hearing, if scheduled, and issue his final order pursuant to § 301.72 without a hearing.

§ 301.56 Appearance; representation; authorization.

(a) Any applicant or registrant may appear in person or by a representative in a hearing on his registration or application and may be heard with respect to matters relevant to the issues under consideration. In the case of any application for registration to manufacture in bulk a basic class of any controlled substance listed in schedule I or II, any persons registered as a bulk manufacturer of that basic class and any other applicant therefor may appear in person or by a representative in a hearing on the application and may be heard with respect to matters relevant to the issues under consideration.

(b) A representative must be either an employee of the applicant or registrant or an attorney at law who is a member of the bar in good standing of any State and admitted to practice before the highest court of that jurisdiction. Any representative may be required by the Director or the presiding officer to present a notarized power of attorney showing his authority to act in such representative capacity and/or an affidavit or certificate of admission to practice.

§ 301.57 Burden of proof.

(a) At any hearing on an application to manufacture any controlled substance listed in schedule I or II, the applicant shall have the burden of proving that the requirements for such registration pursuant to section 303(a) of the Act (21 U.S.C. 823(a)) are satisfied. Any other person participating in the hearing pursuant to § 301.43 shall have the burden of proving any propositions of fact or law asserted by him in the hearing.

(b) At any other hearing for the denial of a registration, the Bureau shall have the burden of proving that the requirements for such registration pursuant to section 303 of the Act (21 U.S.C. 823) are not satisfied.

(c) At any hearing for the revocation or suspension of a registration, the Bureau shall have the burden of proving that the requirements for such revocation or suspension to section 304(a) of the Act (21 U.S.C. 824(a)) are satisfied.

§ 301.58 Presiding officer.

A presiding officer, designated by the Director, shall preside over all hearings. The functions of the presiding officer shall commence upon his designation and terminate upon the certification of the record to the Director. The presiding officer shall have the duty to conduct a fair hearing, to take all necessary action to avoid delay, and to maintain order. He shall have all powers necessary to these ends, including (but not limited to) the power to:

(a) Arrange and change the date, time, and place of hearings (other than the time and place prescribed in § 301.60) and prehearing conferences and issue notice thereof.

(b) Hold conferences to settle, simplify, or determine the issues in a hearing, or to consider other matters that may aid in the expeditious disposition of the hearing.

(c) Require parties to state their position in writing with respect to the various issues in the hearing and to exchange such statements with all other parties.

(d) Examine witnesses and direct witnesses to testify.

(e) Receive, rule on, exclude, or limit evidence.

(f) Rule on procedural items pending before him.

(g) Take any action permitted to the presiding officer as authorized by this Part or by the provisions of the Administrative Procedure Act (5 U.S.C. 551–559).

§ 301.59 Conduct of hearing and parties; ex parte communications.

(a) Hearings shall be conducted in an informal but orderly manner in accordance with law and the directions of the presiding officer.

(b) Participants in any hearing and their representatives, whether or not members of the bar, shall conduct themselves in accordance with judicial standards of practice and ethics and the directions of the presiding officer. Refusal to comply with this section shall constitute grounds for immediate exclusion from any hearing.

(c) If any official of the Bureau is contacted by any individual in private or public life concerning any matter which is the subject of any hearing, at any time after the date on which the applicant receives an order to show cause pursuant to § 301.48, or the date on which a notice of hearing on the application is published pursuant to § 301.43 (whichever is sooner), the official who is contacted shall prepare a memorandum setting forth the substance of the conversation and shall file this memorandum in the appropriate public docket file. The presiding officer and employees of the Bureau shall comply with the requirements of 5 U.S.C. 554(d) regarding ex parte communications and participation in any hearing.

§ 301.60 Time and place of hearing.

The hearing will commence at the place and time designated in the order to show cause or notice of hearing published in the FEDERAL REGISTER (unless expedited pursuant to § 301.46(c)) but thereafter it may be moved to a different place and may be continued from day to day or recessed to a later day without notice other than announcement thereof by the presiding officer at the hearing.

§ 301.61 Prehearing conference.

The presiding officer on his own motion, or on the motion of any party for good cause shown, may direct all parties to appear at a specified time and place for a conference for:

(a) The simplification of the issues.

(b) The possibility of obtaining stipulations, admission of facts, and documents.

(c) The possibility of limiting the number of expert witnesses.

(d) The identification, and if practicable, the scheduling of all witnesses to be called.

(e) The advance submission at the prehearing conference of all documentary evidence and affidavits to be marked for identification.

(f) Such other matters as may aid in the expeditious disposition of the hearing.

§ 301.62 Prehearing ruling.

The presiding officer may have the prehearing conference report verbatim and shall make a ruling reciting the action taken at the conference, the agreements made by the parties, the schedule of witnesses, and a statement of the issues for hearing. Such ruling shall control the subsequent course of the hearing unless modified by a subsequent ruling.

§ 301.63 Submission of documentary evidence and affidavits and identification of witnesses subsequent to prehearing conference.

All documentary evidence and affidavits not submitted and all witnesses not identified at the prehearing conference shall be submitted or identified to the presiding officer as soon as possible, with a showing that the offering party had good cause for failing to so submit or identify at the prehearing conference. If the presiding officer determines that good cause does exist, the documents or affidavits shall be submitted or witnesses identified to all parties sufficiently in advance of the offer of such documents or affidavits or witnesses at the hearing to avoid prejudice or surprise to the other parties. If the presiding officer determines that good cause does not exist, he may refuse to admit as evidence such documents or affidavits or the testimony of such witnesses.

§ 301.64 Summary of testimony; affidavits.

(a) The presiding officer may direct that summaries of the direct testimony of witnesses be prepared in writing and served on all parties in advance of the hearing. Witnesses will not be permitted to read summaries of their testimony into the record and all witnesses shall be available for cross-examination. Each witness shall, before proceeding to testify, be sworn or make affirmation.

(b) Affidavits submitted at the prehearing conference or pursuant to § 301.63 with good cause may be examined by all parties and opposing affidavits may be submitted to the presiding officer within a period of time fixed by him. Affidavits admitted into evidence shall be considered in light of the lack of opportunity for cross-examination in determining the weight to be attached to statements made therein.

§ 301.65 Submission and receipt of evidence.

(a) The presiding officer shall admit only evidence that is competent, relevant material and not unduly repetitious.

(b) Opinion testimony shall be admitted when the presiding officer is satisfied that the witness is properly qualified.

(c) The authenticity of all documents submitted in advance shall be deemed admitted unless written objection thereto is filed with the presiding officer, except that a party will be permitted to challenge such authenticity at a later time upon a showing of good cause for failure to have filed such written objection.

(d) Samples, if otherwise admissible into evidence, may be displayed at the hearing and may be described for purposes of the record, or may be admitted in evidence as exhibits.

(e) Where official notice is taken or is to be taken of a material fact not appearing in the evidence of record, any party, on timely request, shall be afforded opportunity to controvert such fact.

(f) The presiding officer shall file as exhibits copies of the following documents:

(1) The order to show cause issued pursuant to § 301.48 or notice of hearing published pursuant to § 301.43;

(2) Any notice of waiver or modification of rules made pursuant to § 301.53;

(3) Any waiver of hearing (together with any statement filed therewith) filed pursuant to § 301.55;

(4) The prehearing ruling, if any, made pursuant to § 301.62; and

(5) Any other document necessary to show the basis for the hearing.

§ 301.66 Objections; offer of proof.

If any party in the hearing objects to the admission or rejection of any evidence or to other limitation of the scope of any examination or cross-examination, he shall state briefly the grounds for such objection without extended argument or debate thereon except as permitted by the presiding officer. A ruling of the presiding officer on any such objection shall be a part of the transcript, together with such offer of proof as has been made if a proper foundation has been laid for its admission. An offer of proof made in connection with an objection taken to any ruling of the presiding officer rejecting or excluding proffered oral testimony shall consist of a statement of the substance of the evidence which the party contends would be adduced by such testimony; and, if the excluded evidence consists of evidence in documentary or written form a copy of such evidence shall be marked for identification and shall accompany the records as the offer of proof.

§ 301.67 Exceptions to rulings.

Exceptions to rulings of the presiding officer are unnecessary. It is sufficient that a party, at the time the ruling of the presiding officer is sought, makes known the action that he desires the presiding officer to take, or his objection to an action taken, and his grounds therefor.

§ 301.68 Appeal from ruling of presiding officer.

Rulings of the presiding officer may not be appealed to the Director prior to his consideration of the entire hearing, except with the consent of the presiding officer and where he certifies on the record or in writing that the allowance of an interlocutory appeal is clearly necessary to prevent exceptional delay, expense, or prejudice to any party or substantial detriment to the public interest. If an appeal is allowed, any party in the hearing may file a brief in quintuplicate

with the Director within such period that the presiding officer directs. No oral argument will be heard unless the Director directs otherwise.

§ 301.69 Official transcript; index; corrections.

(a) Testimony given at a hearing shall be reported verbatim. The Bureau will make provision for a stenographic record of the testimony and for such copies of the transcript thereof as it requires for its own purpose. Any person desiring a copy of the transcript of the testimony and exhibits taken at the hearing or of any part thereof (except such materials as are described in § 301.04(b)) shall be entitled to the same upon application to the Hearing Clerk of the Bureau and upon payment of the costs thereof.

(b) At the close of the hearing, the presiding officer shall afford the parties and witnesses time (not longer than 30 days, except in unusual cases) in which to submit written proposed corrections of the transcript, pointing out errors that may have been made in transcribing the testimony. The presiding officer shall promptly thereafter order such corrections made as in his judgment are required to make the transcript conform to the testimony.

§ 301.70 Proposed findings of fact and conclusions of law.

Any party in the hearing may file in quintuplicate proposed findings of fact and conclusions of law within the time fixed by the presiding officer. Any party so filing shall serve one copy of his proposed findings and conclusion upon each other party in the hearing. The party shall include a statement of supporting reasons for the proposed findings and conclusions, together with evidence of record (including specific and complete citations of the pages of the transcript and exhibits) and citations of authorities relied upon.

§ 301.71 Report and record.

As soon as practicable after the time for the parties to file proposed findings of fact and conclusions of law has expired, the presiding officer shall prepare a report containing the following:

(a) His recommended rulings on the proposed findings of fact and conclusions of law.

(b) His recommended findings of fact and conclusions of law, with the reasons therefor.

(c) His recommended decision.

The presiding officer shall certify to the Director the record, which shall contain the transcript of testimony, exhibits, the findings of fact and conclusions of law proposed by the parties, and his report. Upon receipt of the certified record, the Director shall serve one copy of the report of the presiding officer upon each party in the hearing.

§ 301.72 Final order.

As soon as practicable after the presiding officer has certified the record to the Director, the Director shall issue his order on the granting, denial, revocation, or suspension of registration. In the event that an application for registration to manufacture in bulk a basic class of any controlled substance listed in schedule I or II is granted, or any application for registration is denied, or any registration is revoked or suspended, the order shall include the findings of fact and conclusions of law upon which the order is based. The order shall specify the date on which it shall take effect. The Director shall serve one copy of his order upon each party in the hearing.

§ 301.73 Copies of petitions for judicial review.

Copies of petitions for judicial review, filed pursuant to section 507 of the Act (21 U.S.C. 877) shall be delivered to and served upon the Director in quintuplicate. The Director shall certify the record of the hearing and shall file the certified record in the appropriate U.S. Court of Appeals.

MODIFICATION, TRANSFER AND TERMINATION OF REGISTRATION

§ 301.81 Modification in registration.

Any registrant may apply to modify his registration to authorize the handling of additional controlled substances by filing an application and paying the appropriate fee in the same manner as an application for new registration.

§ 301.82 Termination of registration.

The registration of any person shall terminate if and when such person dies, ceases legal existence, discontinues business or professional practice, or changes his name or address as shown on the certificate of registration. Any registrant who ceases legal existence, discontinues business or professional practice, or changes his name or address as shown on the certificate of registration shall notify the Director promptly of such fact. In the event of a change in name or address, the person may apply for a new registration in advance of the effective date of such change.

§ 301.83 Transfer of registration.

No registration or any authority conferred thereby shall be assigned or otherwise transferred except upon such conditions as the Director may specifically designate and then only pursuant to his written consent.

SECURITY CONTROLS

§ 301.91 Purpose.

(a) All registrants shall provide security controls to guard against theft and diversion of controlled substances. The security controls shall be commensurate with the quantity of controlled substances in the possession of the registrant in normal business operations. Any substantial increase in the quantity of controlled substances in the possession of the registrant shall require a commensurate increase in security controls.

(b) All registrants who receive or ship substantial quantities of controlled substances in normal business operations shall employ safeguards necessary to guard against intransit losses.

(c) The following regulations are intended as standards for the construction and maintenance of security facilities and areas used in processing and storing controlled substances. Substantial compliance with these standards may be deemed sufficient by the Bureau after evaluation of the overall security controls.

(d) The security controls of persons presently registered under the Harrison Narcotic Act shall be deemed in compliance with the following security regulations, provided that the Bureau has previously approved them. All such registered persons shall so notify the Bureau before May 1, 1971, indicating that prior Bureau approval was given and describing the security controls, except where such description is on file with the Bureau, in which case reference to that fact will suffice.

(e) Construction of any new facilities and/or areas used in processing and/or storing controlled substances by persons included within paragraph (d) of this section must comply with the following security regulations.

§ 301.92 Manufacturers, distributors, importers and exporters: schedule I and II substances.

(a) *Vault.* All raw, bulk and in-process materials, in addition to finished products, shall be stored in a vault, the walls, floor, and ceiling of which shall be constructed of not less than eight (80 inches of concrete, reinforced vertically and horizontally with one-half (½) inch steel rods tied (6) inches on center. However, where a vault is to be constructed on an existing floor, such floor shall be deemed adequate provided that it consists of a concrete slab not less than 6 inches thick and an additional layer of concrete not less than four (4) inches, reinforced in accordance with the above criteria.

(b) *Vault entrance.* A vault door shall be installed containing a combination lock, re-locking device, and at least one-half (½) inch steel plate. A "day-gate," which is self-closing and self-locking, shall also be installed for use during the normal hours of operation in which the vault door is open.

(c) *Electrical protection.* (1) The vault perimeter shall be equipped with:

(i) An alarm, which upon unauthorized entry, shall transmit a signal directly to a central station protection company and/or a local or State police agency which has a legal duty to respond; and

(ii) Hold-up buttons at strategic points of entry to the vault's perimeter area.

(2) The vault shall be equipped with:

(i) Contact switches for the vault door; and

(ii) One of the following:

(*a*) Complete lacing of the walls, floor, and ceiling of the vault;

(*b*) Sensitive ultrasonic equipment within the vault;

(*c*) Sensitive sound accumulator system; or

(d) Any device designed to detect illegal entry as may be approved by the Bureau.

(d) *Separate manufacturing area.* Manufacturing, including bottling, labeling and packaging, shall be conducted in an area separate from the area of manufacture of noncontrolled substances, except in an area where the security requirements for schedule I or schedule II substances apply, in which case both schedule I or II substances and noncontrolled substances may be manufactured in such area.

(e) *In-process substances.* All in-process substances shall be returned to the vault at the end of each work day, except where a continuous process or other normal manufacturing operation should not be interrupted, in which case the processing area shall be securely locked, with an alarm, which upon unauthorized entry, shall transmit a signal directly to a central station protection company and/or local or State police agency which has a legal duty to respond.

(f) *Accessibility.* The vault and manufacturing areas shall be accessible only to those employees required for efficient operation.

§ 301.93 Manufacturers, distributors, importers and exporters: schedule III, IV and V substances.

(a) *Secure enclosure.* All raw, bulk, and in-process materials, in addition to finished products shall be stored in a secure enclosure. A secure enclosure may include an entire building and/or an area located therein, provided that the following requirements are met:

(1) *Electrical protection.* All enclosure entrances shall be equipped with an alarm, which upon unauthorized entry, shall transmit a signal directly to a central station protection company and/or a local or State police agency has a legal duty to respond.

(2) *Accessibility.* The secure enclosure shall be accessible only to those employees required for efficient operation.

(b) *Enclosure entrance.* Where the secure enclosure is an area located within an entire building, the entrance to such enclosure shall be equipped with a gate or door which is both self-closing and self-locking.

§ 301.94 Manufacturers, distributors, importers, and exporters: additional security control.

(a) A good faith inquiry shall be made with either the Bureau or the appropriate State drug registration agency to determine whether a person ordering controlled substances, who is unknown to the registrant, is validly registered to possess the ordered controlled substances.

(b) A system shall be designed and operated to inform the registrant, who shall in turn inform the Bureau, of suspicious orders of controlled substances. Suspicious orders may include, but are not limited to, orders of unusual size, orders which deviate substantially from a normal pattern, and orders of unusual frequency.

(c) The Bureau shall be notified by the registrant of the loss or theft of controlled substances.

(d) The registrant shall not distribute any controlled substance listed in schedule I or II, or any narcotic controlled substance listed in schedule III, IV, or V, as a sample to any potential or current customer.

§ 301.95 Practitioners: schedule I substances.

Controlled substances listed in schedule I shall be stored in a safe with an Underwriters' Laboratories Burglary Rating of at least TRTL–30 or the equivalent. If the safe weighs less than 750 pounds, it shall be bolted or cemented to the wall or floor in such a way that it cannot be removed. If the safe weighs more than 750 pounds, it shall be rendered immobile by removing all rolling equipment from the base. The safe shall be equipped with an electrical alarm device.

§ 301.96 Practitioners: schedule II substances.

Controlled substances listed in schedule II shall be stored in a securely locked, substantially constructed cabinet.

§ 301.97 Practitioners: schedules III, IV, and V substances.

Controlled substances listed in schedules III, IV, and V shall be stored in a locked cabinet. However, pharmacies may dispense such substances throughout the noncontrolled substances stock in such a manner as to obstruct the theft or diversion of the controlled substances.

PART 302—LABELING AND PACKAGING REQUIREMENTS FOR CONTROLLED SUBSTANCES

§ 302.01 Scope of Part 302.

Requirements governing the labeling and packaging of controlled substances pursuant to section 305 of the Act (21 U.S.C. 825) set forth generally be that section and specifically by the sections of this part.

§ 302.02 Definitions.

As used in this part, the following terms shall have the meanings specified:

(a) The term "commercial container" means any bottle, jar, tube, ampule, or other receptacle in which a substance is held for distribution or dispensing to an ultimate user, and in addition, any box or package in which the receptacle is held for distribution or dispensing to an ultimate user. The term "commercial container" does not include any package liner, package insert or other material kept with or within a commercial container, nor any carton, crate, drug, or other package in which commercial containers are stored or are used for shipment of controlled substances.

(b) The term "label" means any display of written, printed, or graphic matter placed upon the commercial container of any controlled substance by any manufacturer of such substance.

(c) The term "labeling" means all labels and other written, printed, or graphic matter (1) upon any controlled substance or any of its commercial containers or wrappers, or (2) accompanying such controlled substance.

(d) The term "manufacture" means the producing, preparation, propagation, compounding, or processing of a drug or other substance or the packaging or repackaging of such substance, or the labeling or relabeling of the commercial container of such substance, but does not include the activities of a practitioner who, as an incident to his administration or dispensing such substance in the course of his professional practice, prepares, compounds, packages or labels such substance.

(e) Any term not defined in this section shall have the definition set forth in section 102 of the Act (21 U.S.C. 802) or § 301.02 of this chapter.

§ 302.03 Symbol required; exceptions.

(a) Each commercial container of a controlled substance (except for a controlled substance excepted by the Director pursuant to Part 308 of this chapter) shall have printed on the label the symbol designating the schedule in which such controlled substance is listed. Each such commercial container, if it otherwise has no label, must bear a label complying with the requirement of this part.

(b) Each manufacturer shall print upon the labeling of each controlled substance distributed by him the symbol designating the schedule in which such controlled substance is listed.

(c) The following symbols shall designate the schedule corresponding thereto:

Schedule	*Symbol*
Schedule I	(I) or C–I.
Schedule II	(II) or C–II.
Schedule III	(III) or C–III.
Schedule IV	(IV) or C–IV.
Schedule V	(V) or C–V.

The word "schedule" need not be used. No distinction need be made between narcotic and nonnarcotic substances.

(d) The symbol is not required on a carton or wrapper in which a commercial container is held if the symbol is easily legible through such carton or wrapper.

(e) The symbol is not required on a commercial container too small or otherwise unable to accommodate a label, if the symbol is printed on the box or package from which the commercial container is removed upon dispensing to an ultimate user.

(f) The symbol is not required on a commercial container containing, or on the labeling of, a controlled substance being utilized in clinical research involving blind and double blind studies.

§ 302.04 Location and size of symbol on label.

(a) The symbol shall be prominently located on the right upper corner of the principal panel of the label of the commercial container and/or the panel of the commercial container normally dis-

played to dispensers of any controlled substance listed in schedules I through IV. The symbol must be at least two times as large as the largest type otherwise printed on the label.

(b) In lieu of locating the symbol in the corner of the label, as prescribed in paragraph (a) of this section, the symbol may be overprinted on the label, in which case the symbol must be printed at least one-half the size of the label and in a contrasting color to all other printing on the label. Every commercial container of any controlled substance listed in schedule V shall have the symbol overprinted on the label in accordance with this subsection.

(c) In all cases the symbol shall be clear and large enough to afford easy identification of the schedule of the controlled substance upon inspection without removal from the dispenser's shelf.

§ 302.05 Location and size of symbol on labeling.

The symbol shall be prominently located on all labeling other than labels covered by § 302.04. In all cases the symbol shall be clear and large enough to afford prompt identification of the controlled substance upon inspection of the labeling.

§ 302.06 Effective dates of labeling requirements.

(a) In the case of a controlled substance listed in any schedule on May 1, 1971, and manufactured after December 1, 1971, all labels on commercial containers of, and all labeling of, that substance shall comply with the requirements of § 302.02.

(b) In case of a controlled substance listed on a schedule on May 1, 1971, and thereafter transferred to another schedule, and in the case of a controlled substance added to any schedule after May 1, 1971, all labels on commercial containers of, and all labeling of, that substance shall comply with the requirements of § 302.02 not later than 180 days following the date on which the transfer or addition becomes effective.

(c) The Director may, in the case of any controlled substance, require compliance with the requirements of § 302.02 within a period of time shorter than required by this section if he finds that emergency conditions exist necessitating an earlier effective date.

(d) Until compliance is required under this section, the label on commercial container containing, and the labeling of, any controlled substance shall comply with any requirements under Federal law as to labels of such containers and as to labeling of such substances existing prior to the effective date prescribed in this section.

§ 302.07 Sealing of controlled substances.

(a) On each bottle, multiple dose vial, or other commercial container of any controlled substance listed in schedules I and/or II, and of any narcotic controlled substance listed in schedule III or IV, there shall be securely affixed to the stopper, cap, lid, covering, or wrapper or such container a seal to insure its integrity and to disclose upon inspection any tampering or opening of the container.

(b) Any seal accepted for use under Federal law prior to May 1, 1971, shall be deemed acceptable for use under this section.

PART 303—QUOTAS

GENERAL INFORMATION

§ 303.01 Scope of Part 303.

Procedures governing the establishment of production and manufacturing quotas on basic classes of controlled substances listed in schedules I and II pursuant to section 306 of the Act (21 U.S.C. 826) are governed generally by that section and specifically by the sections of this part.

§ 303.02 Definitions.

As used in this part, the following terms shall have the meanings specified:

(a) The term "inventory" means all factory and branch stocks in finished form of a basic class of controlled substance manufactured or otherwise acquired by a registrant, whether in bulk, commercial containers, or contained in pharmaceutical preparations in the possession of the registrant (including stocks held by the registrant under separate registration as a manufacturer, importer, exporter, or distributor).

(b) The term "net disposal" means the quantity of a basic class of controlled substance sold, exchanged, given away, used in the production of another substance (whether a controlled substance or not), contained in or combined with other substances or otherwise consumed by or transferred to another person by the registrant during a stated period, less the quantity returned to the registrant by any purchaser and the quantity sold or transferred by the registrant to another registered manufacturer of the same basic class of controlled substance.

(c) The term "registrant" means any person registered pursuant to section 303 of the Act (21 U.S.C. 823).

(d) Any term not defined in this section shall have the definition set forth in section 102 of the Act (21 U.S.C. 802) and § 301.02 of this chapter.

AGGREGATE PRODUCTION AND PROCUREMENT QUOTAS

§ 303.11 Aggregate production quotas.

(a) The Director shall, on or before May 1 of each year, determine the total quantity of each basic class of controlled substance listed in schedule I or II necessary to be manufactured during the following calendar year to provide for the estimated medical, scientific, research and industrial needs of the United States, for lawful export requirements, and for the establishment and maintenance of reserve stocks.

(b) In making his determinations, the Director shall consider the following factors:

(1) Total net disposals of the class by all manufacturers during the current and 2 preceding years;

(2) Trends in the national rate of net disposal of the class;

(3) Total actual (or estimated) inventories of the class and of all substances manufactured from the class, and trends in inventory accumulation;

(4) Projected demand for such class as indicated by procurement quotas requested pursuant to § 303.12; and

(5) Other factors affecting medical, scientific, research, and industrial needs in the United States and lawful export requirements, as the Director finds relevant, including changes in the currently accepted medical use in treatment with the class or the substances which are manufactured from it, the economic and physical availability of raw materials for use in manufacturing and for inventory purposes, yield and stability problems, potential disruptions to production (including possible labor strikes), and recent unforeseen emergencies such as floods and fires.

(c) The Director shall, on or before May 1 of each year, publish in the FEDERAL REGISTER general notice of an aggregate production quota for any basic class determined by him under this section. A copy of notice shall be mailed simultaneously to each person registered as a bulk manufacturer of the basic class. Any interested person may, within 30 days from the date of publication of the notice, request a hearing on the aggregate production quota by filing a written request, and a statement of the grounds therefor, with the Director, Bureau of Narcotics and Dangerous Drugs, Department of Justice, Washington, D.C. 20537. If a hearing is requested and reasonable grounds are shown, the Director shall hold a public hearing on the aggregate production quota for the basic class pursuant to the hearing procedures prescribed for hearings under section 201 of the Act (21 U.S.C. 811) in §§ 316.61–316.78 of this chapter. Notice of the hearing shall be published at least 30 days prior to the hearing and mailed simultaneously to all persons to whom the notice of the determination of the aggregate production quota was mailed.

§ 303.12 Procurement quotas.

(a) In order to determine the estimated needs for, and to insure an adequate and uninterrupted supply of, basic classes of controlled substances listed in schedules I and II, the Director shall issue procurement quotas authorizing persons to procure and use quantities of each basic class of such substances for the purpose of manufacturing such class into dosage forms or into other substances.

(b) Any person who is registered to manufacture controlled substances listed in any schedule and who desires to use during the next calendar year any basic class of controlled substances listed in schedule I or II for purposes of manufacturing, shall apply on BND Form 194 for a procurement quota for such basic class. A separate application must be

made for each basic class desired to be procured or used. The applicant shall state whether he intends to manufacture the basic class himself or purchase it from another manufacturer. The applicant shall state separately each purpose for which the basic class is desired, the quantity desired for that purpose during the next calendar year, and the quantities used and estimated to be used, if any, for that purpose during the current and preceding 2 calendar years. If the purpose is to manufacture the basic class into dosage form, the applicant shall state the official name, common or usual name, chemical name, or brand name of that form. If the purpose is to manufacture another substance, the applicant shall state the official name, common or usual name, chemical name, or brand name of the substance, and, if a controlled substance listed in any schedule, the schedule number and Bureau controlled substances code number of the substance. If the purpose is to manufacture another basic class of controlled substance listed in schedule I or II, the applicant shall also state the quantity of the other basic class which the applicant has applied to manufacture pursuant to § 303.22 and the quantity of the first basic class necessary to manufacture a specified unit of the second basic class. BND Form 194 shall be filed on or before April 1 of the year preceding the calendar year for which the procurement quota is being applied. Copies of BND Form 194 may be obtained from, and shall be filed with, the Director, Bureau of Narcotics and Dangerous Drugs, Department of Justice, Washington, D.C. 20537.

(c) The Director shall, on or before July 1 of the year preceding the calendar year during which the quota shall be effective, issue to each applicant a procurement quota authorizing him to procure and use:

(1) All quantities of such class necessary to manufacture all quantities of other basic classes of controlled substances listed in schedules I and II which the applicant is authorized to manufacture pursuant to § 303.23; and

(2) Such other quantities of such class as the applicant has applied to procure and use and are consistent with his past use, his estimated needs, and the total quantity of such class that will be produced.

(d) Any person to whom a procurement quota has been issued may at any time request an adjustment in the quota by applying to the Director with a statement showing the need for the adjustment. The Director shall increase or decrease the procurement quota of such person as and to the extent that he finds, after considering the factors enumerated in paragraph (c) of this section and any occurrences since the issuance of the procurement quota, that the need justifies an adjustment.

(e) The following persons need not obtain a procurement quota:

(1) Any person who is registered to manufacture a basic class of controlled substance listed in schedule I or II and who uses all of the quantity he manufactures in the manufacture of a substance not controlled under the Act; and

(2) Any person who is registered to manufacture controlled substances and who manufactures annually less than 1 kilogram of all basic classes of controlled substances listed in schedules I and II.

INDIVIDUAL MANUFACTURING QUOTAS

§ 303.21 Individual manufacturing quotas.

(a) The Director shall, on or before July 1 of each year, fix for and issue to each person who is registered to manufacture a basic class of controlled substance listed in schedule I or II, and who applies for a manufacturing quota, an individual manufacturing quota authorizing that person to manufacture during the next calendar year a quantity of that basic class. Any manufacturing quota fixed and issued by the Director shall be subject to his authority to reduce or limit it at a later date pursuant to § 303.26 and to his authority to revoke or suspend it at any time pursuant to §§ 301.45 and 301.46 of this chapter.

(b) No individual manufacturing quota shall be required for registrants listed in § 303.12(e).

§ 303.22 Procedure for applying for manufacturing quotas.

Any person who is registered to manufacture any basic class of controlled substance listed in schedule I or II and who desires to manufacture a quantity of such class shall apply on BND Form 189 for a manufacturing quota for such quantity of such class. Copies of BND Form 189 may be obtained from, and shall be filed (on or before May 1 of the year preceding the calendar year for which the manufacturing quota is being applied) with, the Director, Bureau of Narcotics and Dangerous Drugs, Department of Justice, Washington, D.C. 20537. A separate application must be made for each basic class desired to be manufactured. The applicant shall state:

(a) The Bureau controlled substances code number of the basic class;

(b) For the basic class in each of the current and preceding 2 calendar years,

(1) The authorized manufacturing quota, if any;

(2) The actual or estimated net disposal;

(3) The actual or estimated inventory allowance pursuant to § 305.26 of this chapter; and

(4) The actual or estimated inventory as of December 31;

(c) For the basic class in the next calendar year,

(1) The desired manufacturing quota; and

(2) Any additional factors which the applicant finds relevant to the fixing of his manufacturing quota, including the trend of (and recent changes in) his and the national rates of net disposal, his production cycle and current inventory position, the economic and physical availability of raw materials for use in manufacturing and for inventory purposes, yield and stability problems, potential disruptions to production (including possible labor strikes) and recent unforeseen emergencies such as floods and fires.

§ 303.23 Procedure for fixing individual manufacturing quotas.

(a) In fixing individual manufacturing quotas for a basic class of controlled substance listed in schedule I or II, the Director shall allocate to each applicant who is currently manufacturing such class a quota equal to 100 percent of the estimated net disposal of that applicant for the next calendar year, adjusted (1) By the amount necessary to increase or reduce the inventory of the applicant on December 31 of the current year to his inventory allowance for the next calendar year, pursuant to § 303.24, and (2) By any other factors which the Director deems relevant to the fixing of the individual manufacturing quota of the applicant, including the trend of (and recent changes in) his and the national rates of net disposal, his production cycle and current inventory position, the economic and physical availability of raw materials for use in manufacturing and for inventory purposes, yield and stability problems, potential disruptions to production (including possible labor strikes), and recent unforeseen emergencies such as floods and fires.

(b) In fixing individual manufacturing quotas for a basic class of controlled substance listed in schedule I or II, the Director shall allocate to each applicant who is not currently manufacturing such class a quota equal to 100 percent of the reasonably estimated net disposal of that applicant for the next calendar year, as determined by the Director, adjusted (1) By the amount necessary to provide the applicant his inventory allowance for the next calendar year, pursuant to § 303.24, and (2) By any other factors which the Director deems relevant to the fixing of the individual manufacturing quota of the applicant, including the trend of (and recent changes in) the national rate of net disposal, his production cycle and current inventory position, the economic and physical availability of raw materials for use in manufacturing and for inventory purposes, yield and stability problems, potential disruptions to production (including possible labor strikes), and recent unforeseen emergencies such as floods and fires.

§ 303.24 Inventory allowance.

(a) For the purpose of determining individual manufacturing quotas pursuant to § 303.23, each registered manufacturer shall be allowed as a part of such quota an amount sufficient to maintain an inventory equal to,

(1) For current manufacturers, 50 percent of his average estimated net disposal for the current calendar year and the last preceding calendar year; or

(2) For new manufacturers, 50 percent of his reasonably estimated net disposal for the next calendar year as determined by the Director.

(b) During each calendar year each registered manufacturer shall be allowed to maintain an inventory of a basic class not exceeding 65 percent of his estimated net disposal of that class for that year, as determined at the time his quota for that year was determined. At any time the inventory of a basic class held by a manufacturer exceeds 65 percent of his estimated net disposal, his quota for that class is automatically suspended and shall remain suspended until his inventory is less than 60 percent of his estimated net disposal.

(c) If, during a calendar year, a registrant has manufactured the entire quantity of a basic class allocated to him under a manufacturing quota, and his inventory of that class is less than 40 percent of his estimated net disposal of that class for that year, the Director shall, upon application pursuant to § 303.25, increase the quota of such registrant sufficiently to allow restoration of the inventory to 50 percent of the estimated net disposal for that year.

§ 303.25 Increase in individual manufacturing quotas.

(a) Any registrant who holds an individual manufacturing quota for a basic class of controlled substance listed in schedule I or II may file with the Director an application on Bureau Form 189 for an increase in such quota in order for him to meet his estimated net disposal, inventory and other requirements during the remainder of such calendar year.

(b) The Director, in passing upon a registrant's application for an increase in his individual manufacturing quota (except an application made pursuant to § 303.24(c)), shall take into consideration any occurrences since the filing of such registrant's initial quota application that may require an increased manufacturing rate by such registrant during the balance of the calendar year. In passing upon such application the Director may also take into consideration the amount, if any, by which his determination of the total quantity for the basic class of controlled substance to be manufactured under § 303.11 exceeds the aggregate of all the individual manufacturing quotas for the basic class of controlled substance, and the equitable distribution of such excess among other registrants.

§ 303.26 Reduction in individual manufacturing quotas.

The Director may at any time reduce an individual manufacturing quota for a basic class of controlled substance listed in schedule I or II which he has previously fixed in order to prevent the aggregate of the individual manufacturing quotas outstanding or to be granted from exceeding the aggregate production quota which has been established for that class pursuant to § 303.11. If a quota assigned to a new manufacturer pursuant to § 303.23(b), or if a quota assigned to any manufacturer is increased pursuant to § 303.24(c), or if an import issued to an importer pursuant to Part 312 of this chapter, causes the total quantity of a basic class to be manufactured and imported during the year to exceed the aggregate production quota which has been established for that class pursuant to § 303.11, the Director may proportionately reduce the individual manufacturing quotas of all other registrants to keep the aggregate production quota within the limits originally established, or, alternatively, the Director may reduce the individual manufacturing quota of any registrant whose quota is suspended pursuant to § 303.24(b) or § 301.45 or § 301.46 of this chapter.

§ 303.27 Abandonment of quota.

Any manufacturer assigned an individual manufacturing quota for any basic class pursuant to § 303.23 may at any time abandon his right to manufacture all or any part of such quota by filing a written notice of such abandonment, stating the Bureau controlled substances code number of the substance and the amount which he has chosen not to manufacture. The Director may, in his discretion, allocate such amount among the other manufacturers in proportion to their respective quotas.

TRANSITIONAL REGULATIONS

§ 303.41 Quota system for 1971.

For purposes of fixing aggregate production and individual manufacturing quotas for basic classes of controlled substances listed in schedules I and II pursuant to section 306 of the Act (21 U.S.C. 326) for the calendar year 1971 only, procedures prescribed in regulations in effect prior to the effect date of this part (i.e., 21 §§ 301.121–301.126 of this chapter) shall be utilized.

PART 304—RECORDS AND REPORTS OF REGISTRANTS

GENERAL INFORMATION

§ 304.01 Scope of Part 304.

Inventory and other records and reports required under section 307 or section 1008(d) of the Act (21 U.S.C. 827 and 958(d)) shall be in accordance with, and contain the information required by, those sections and by the sections of this Part.

§ 304.02 Definitions.

As used in this Part, the following terms shall have the meaning specified:

(a) The term "Act" means the Controlled Substances Act (84 Stat. 1242; 21 U.S.C. 801) and/or the Controlled Substances Import and Export Act (84 Stat. 1285; 21 U.S.C. 951).

(b) The term "institutional practitioner" means a hospital or other person (other than an individual) licensed, registered, or otherwise permitted, by the United States or the jurisdiction in which it practices, to dispense a controlled substance in the course of professional practice, but does not include a pharmacy.

(c) The term "name" means the official name, common or usual name, chemical name, or brand name of a substance.

(d) The term "practitioner" means a physician, dentist, veterinarian, or other individual licensed, registered, or otherwise permitted, by the United States or the jurisdiction in which he practices, to dispense a controlled substance in the course of professional practice, but does not include a pharmacist, a pharmacy, or an institutional practitioner.

(e) The term "readily retrievable" means that certain records are kept by automatic data processing systems or other electronic or mechanized record-keeping systems in such a manner that they can be separated out from all other records in a reasonable time and/or records are kept on which certain items are asterisked, redlined, or in some other manner visually identifiable apart from other items appearing on the records.

(f) The term "registrant" means any person who is registered pursuant to either section 303 or section 1007 of the Act (21 U.S.C. 823 or 957).

(g) Any term not defined in this section shall have the definition set forth in sections 102 and 1001 of the Act (21 U.S.C. 802 and 951) and in § 301.02, 302.02 and 311.02 of this chapter.

§ 304.03 Persons required to keep records and file reports.

(a) Each registrant shall maintain the records and inventories and shall file the reports required by this part, except as exempted by this section.

(b) A registered practitioner is not required to keep records with respect to narcotic controlled substances listed in schedules II through V which he prescribes or administers in the lawful course of his professional practice; he shall keep records, however, with respect to such substances that he dispenses other than by prescribing or administering.

(c) A registered practitioner is not required to keep records with respect to nonnarcotic controlled substances listed in schedules II through V which he dispenses in any manner unless he regularly charges his patients, either separately or together with charges for other professional services, for such substances so dispensed.

(d) A registered person using any controlled substance in research conducted in conformity with an exemption granted under section 505(i) or 512(j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i) or 360b(j)) at a registered establishment which maintains records in accordance with either of those sections is not required to keep records if he notifies the Bureau of the name, address, and registration number of the establishment maintaining such records.

(e) A registered person using any controlled substance in preclinical research or in teaching at a registered establishment which maintains records with respect to such substances is not required to keep records if he notifies the Bureau of the name, address, and registration number of the establishment maintaining such records.

(f) Notice required by paragraphs (d) and (e) of this section shall be given at the time the person applies for registration or reregistration, shall be made in the form of an attachment to the application, and shall be filed with the application.

§ 304.04 Maintenance of records and inventories.

(a) Every inventory and other record required to be kept under the Part shall be kept by the registrant and be available, for at least 2 years from the date of such inventory or record, for inspecting and copying by authorized employees of the Bureau.

(b) Each registered manufacturer, distributor, importer, and exporter shall maintain inventories and records of controlled substances as follows:

(1) Inventories and records of controlled substances listed in schedules I and II shall be maintained separately from all of the records of the registrant; and

(2) Inventories and records of controlled substances listed in schedules III, IV, and V shall be maintained either separately from all other records of the registrant or in such form that the information required is readily retrievable from the ordinary business records of the registrant.

(c) Each registered pratitioner required to keep records and institutional practitioner shall maintain inventories and records of controlled substances in the manner prescribed in paragraph (b) of this section.

(d) Each registered pharmacy shall maintain the inventories and records of controlled substances as follows:

(1) Inventories and records of all controlled substances listed in schedules I and II shall be maintained separately from all other records of the pharmacy, and prescriptions for such substances shall be maintained in a separate prescription file; and

(2) Inventories and records of controlled substances listed in schedules III, IV, and V shall be maintained either separately from all other records of the pharmacy or in such form that the information required is readily retrievable from ordinary business records of the pharmacy, and prescriptions for such substances shall be maintained either in separate prescription file for controlled substances listed in schedules III, IV, and V only or in such form that they are readily retrievable from the other prescription records of the pharmacy. Prescriptions will be deemed readily retrievable if, at the time they are initially filed, the face of the prescription is stamped in red ink in the lower right corner with the letter "C" no less than 1-inch high and filed in the usual consecutively numbered prescription file.

INVENTORY REQUIREMENTS

§ 304.11 General requirements for inventories.

(a) Each inventory shall contain a complete and accurate record of all controlled substances on hand on the date the inventory is taken. Controlled substances shall be deemed to be "on hand" if they are in the possession of or under the control of the registrant, including substances returned by a customer, substances sold to a customer but not yet shipped, substances stored in a warehouse on behalf of the registrant, and substances in the possession of employees of the registrant and intended for distribution as samples.

(b) A separate inventory shall be made by a registrant for each registered location. In the event controlled substances in the possession or under the control of the registrant at a location for which he is not registered, the substances shall be included in the inventory of the registered location to which they are subject to control or to which the person possessing the substance is responsible. Each inventory for a registered location shall be kept at the registered location.

(c) A separate inventory shall be made by a registrant for each independent activity for which he is registered, except as provided in § 304.18.

(d) A registrant may take an inventory on a date that is within 4 days of his biennial inventory date pursuant to § 304.13 if he notifies in advance the Regional Director of the Bureau in his region of the date on which he will take the inventory. A registrant may take an inventory either as of the opening of business or as of the close of business on the inventory date. The registrant shall indicate on the inventory records whether the inventory is taken as of the opening or as of the close of business and the date the inventory is taken.

(e) An inventory must be maintained in a written, typewritten or printed form. An inventory taken by use of an oral recording device must be promptly transcribed.

§ 304.12 Initial inventory date.

(a) Every person required to keep records who is provisionally registered on May 1, 1971, shall take an inventory of all stocks of controlled substances on hand on that date in accordance with §§ 304.15–304.18, as applicable.

(b) Every person required to keep records who is registered after May 1, 1971, and who was not provisionally registered on that date, shall take an inventory of all stocks of controlled substances on hand on the date he first engages in the manufacture, distribution, or dispensing of controlled substances, in accordance with §§ 304.15–304.18, as applicable.

§ 304.13 Biennial inventory date.

Every 2 years following the date on which the initial inventory is taken by a registrant pursuant to § 304.12, the registrant shall take a new inventory of all stocks of controlled substances on hand. The biennial inventory may be taken (a) on the day of the year on which the initial inventory was taken or (b) on the registrant's regular general physical inventory date, if any, which is nearest to and does not vary by more than 6 months from the biennial date that would otherwise apply or (c) on any other fixed date which does not vary by more than six months from the biennial date that would otherwise apply. If the registrant elects to take the biennial inventory on his regular general physical inventory date or another fixed date, he shall notify the Bureau of this election and of the date on which the biennial inventory will be taken.

§ 304.14 Inventory date for newly controlled substances.

On the effective date of a rule by the Director pursuant to §§ 316.77, 316.79 or 316.80 of this chapter adding a substance to any schedule of controlled substances, which substance was, immediately prior to that date, not listed on any such schedule, every registrant required to keep records who is manufacturing, distributing or dispensing that substance shall take an inventory of all stocks of the substance on hand. Thereafter such substance shall be included in each inventory made by the registrant pursuant to § 304.13.

§ 304.15 Inventories of manufacturers.

Each registered manufacturer shall include the following information in his inventory:

(a) For each controlled substance in bulk form to be used in (or capable of use in) the manufacture of the same or other controlled or non-controlled substances in finished form;

(1) The name of the substance; and

(2) The total quantity of the substance to the nearest metric unit weight consistent with unit size.

(b) For each controlled substance in the process of manufacture on the inventory date,

(1) The name of the substance;

(2) The quantity of the substance in each batch and/or stage of manufacture, identified by the batch number or other appropriate identifying number;

(3) The physical form which the substance is to take upon completion of the manufacturing process (e.g., granulations, tablets, capsules, or solutions), identified by the batch number or other appropriate identifying number, and if possible the finished form of the substance (e.g., 10-milligram tablet or 10-milligram concentration per fluid ounce or milliliter) and the number or volume thereof; and

(c) For each controlled substance in finished form,

(1) The name of the substance;

(2) Each finished form of the substance (e.g., 10-milligram tablet or 10 milligram concentration per fluid ounce or milliliter);

(3) The number of units or volume of each finished form in each commercial container (e.g., 100-tablet bottle or 3 milliliter vial);

(4) The number of each commercial container; and

(5) The total quantity of the substance in all forms to the nearest metric unit weight.

(d) For each controlled substance not included in paragraphs (a), (b) or (c) of this section (e.g., damaged, defective or impure substances awaiting disposal or substances held for research purposes),

(1) The name of the substance;

(2) The total quantity of the substance to the nearest metric unit weight; and

(3) The reason for the substance being maintained by the registrant and whether such substance is capable of use

in the manufacture of any controlled substance in finished form.

§ 304.16 Inventories of distributors.

Each registered distributor shall include in his inventory the same information required of manufacturers pursuant to § 304.15 (c) and (d).

§ 304.17 Inventories of dispensers and researchers.

Each person registered to dispense or conduct research with controlled substances and required to keep records pursuant to § 304.03 shall include in his inventory the same information required of manufacturers pursuant to § 304.15 (c) and (d). In determining the number of units of each finished form of a controlled substance in a commercial container which has been opened, the dispenser shall do as follows:

(a) If the substance is listed in schedule I or II, he shall make a tablet or capsule count; and

(b) If the substance is listed in schedule III, IV, or V, he shall make a tablet or capsule count, unless the container is graduated to reflect its content, in which case he may make an estimate based on the graduations.

§ 304.18 Inventories of importers and exporters.

Each registered importer or exporter shall include in his inventory the same information required of manufacturers pursuant to § 304.15 (a), (c), and (d). Each registered importer and exporter who is also registered as a manufacturer or as a distributor shall include in his inventory as an importer or exporter only those stocks of controlled substances that are actually separated from his stocks as a manufacturer or as a distributor (e.g., in transit or in storage for shipment).

§ 304.19 Inventories for chemical analysts.

Each analytical laboratory registered to conduct chemical analysis with controlled substances shall include in its biennial inventory, to the extent known or readily ascertainable, the same information required of manufacturers pursuant to § 305.15 (a), (c), and (d) of this chapter. Appropriate notations on a reproduction or facsimile of the records of receipt and delivery or disposal of controlled substances or suspected controlled substances required in § 304.27 will suffice for this purpose.

CONTINUING RECORDS

§ 304.21 General requirements for continuing records.

(a) On and after May 1, 1971, every registrant required to keep records pursuant to § 304.03 shall maintain on a current basis a complete and accurate record of each such substance manufactured, imported, received, sold, delivered, exported, or otherwise disposed of by him, except that no registrant shall be required to maintain a perpetual inventory.

(b) Separate records shall be maintained by a registrant for each registered location. In the event controlled substances are in the possession or under the control of a registrant at a location for which he is not registered, the substances shall be included in the records of the registered location to which they are subject to control or to which the person possessing the substance is responsible.

(c) Separate records shall be maintained by a registrant for each independent activity for which he is registered, except as provided in § 304.25.

§ 304.22 Records of manufacturers.

Each registered manufacturer shall maintain records with the following information:

(a) For each controlled substance in bulk form to be used, or capable of use in, or being used in, the manufacture of the same or other controlled or noncontrolled substances in finished form,

(1) The name of the substance;

(2) The quantity manufactured in bulk form by the registrant, including the date, quantity and batch or other identifying number of each batch manufactured;

(3) The quantity received from other persons, including the date and quantity of each receipt and the name, address, and registration number of the other person from whom the substance was received;

(4) The quantity imported directly by the registrant (under a registration as an importer) for use in manufacture by him, including the date, quantity, and import permit or declaration number for each importation;

(5) The quantity used to manufacture the same substance in finished form, including:

(i) The date and batch or other identifying number of each manufacture;

(ii) The quantity used in the manufacture;

(iii) The finished form (e.g., 10-milligram tablets or 100-milligram concentration per fluid ounce or milliliter);

(iv) The number of units of finished form manufactured;

(v) The quantity used in quality control;

(vi) The quantity lost during manufacturing and the causes therefor, if known;

(vii) The total quantity of the substance contained in the finished form;

(viii) The theoretical and actual yields; and

(ix) Such other information as is necessary to account for all controlled substances used in the manufacturing process;

(6) The quantity used to manufacture other controlled and noncontrolled substances, including the name of each substance manufactured and the information required in subparagraph (5) of this paragraph;

(7) The quantity distributed in bulk form to other persons, including the date and quantity of each distribution and the name, address, and registration number of each person to whom a distribution was made;

(8) The quantity exported directly by the registrant (under a registration as an exporter), including the date, quantity, and export permit or declaration number of each exportation;

(9) The quantity disposed of in any other manner by the registrant, including the date and manner of disposal and the quantity disposed.

(b) For each controlled substance in finished form,

(1) The name of the substance;

(2) Each finished form (e.g., 10-milligram tablet or 10-milligram concentration per fluid ounce or milliliter) and the number of units or volume of finished form in each commercial container (e.g., 100-tablet bottle or 3-milliliter vial);

(3) The number of each commercial container of finished form manufactured from bulk form by the registrant, including the information required pursuant to subparagraph (5) of paragraph (a) of this section;

(4) The number of units of finished forms and/or commercial containers received from other persons, including the date of and number of units and/or commercial containers in each receipt and the name, address, and registration number of the person from whom the units were received;

(5) The number of units of finished forms and/or commercial containers imported directly by the registrant (under a registration as an importer), including the date of and the number of units and for commercial containers in each importation;

(6) The number of units and/or commercial containers manufactured by the registrant from units in finished form received from others or imported, including:

(i) The date and batch or other identifying number of each manufacture;

(ii) The operation performed (e.g., repackaging or relabeling;

(iii) The number of units of finished form used in the manufacture, the number manufactured and the number lost during manufacture, with the causes therefor, if known; and

(iv) Such other information as is necessary to account for all controlled substances used in the manufacturing process;

(7) The number of commercial containers distributed to other persons, including the date of and number of containers in each distribution, and the name, address, and registration number of the person to whom the containers were distributed;

(8) The number of commercial containers exported directly by the registrant (under a registration as an exporter), including the date, number of containers and export permit or declaration number for each exportation; and

(9) The number of units of finished forms and/or commercial containers disposed of in any other manner by the registrant, including the date and manner of disposal and the quantity of the substance in finished form disposed.

§ 304.23 Records for distributors.

Each registered distributor shall maintain records with the following information for each controlled substance:

(a) The name of the substance;

(b) Each finished form (e.g., 10-milligram tablet or 10-milligram concentration per fluid ounce or milliliter) and the number of units or volume of finished form in each commercial container (e.g., 100-tablet bottle or 3-milliliter vial);

(c) The number of each commercial container of such finished form received from other persons, including the date of and number of containers in each receipt and the name, address, and registration number of the person from whom the containers were received;

(d) The number of commercial containers of such finished form by the registrant (under a registration as an importer), including the date of and the number of containers in each importation;

(e) The number of commercial containers of such finished form distributed to other persons, including the date of and number of containers in each distribution and the name, address, and registration number of the person to whom the containers were distributed;

(f) The number of commercial containers of such finished form directly by the registrant (under a registration as an exporter), including the date of and the number of containers in each exportation; and

(g) The number of units or volume of finished forms and/or commercial containers disposed of in any other manner by the registrant, including the date and manner of disposal and the quantity of the substance in finished form disposed.

§ 304.24 Records for dispensers and researchers.

Each person registered to dispense or conduct research with controlled substances and required to keep records pursuant to § 304.03 shall maintain records with the following information for each controlled substance:

(a) The name of the substance;

(b) Each finished form (e.g., 10 milligram tablet or 10 milligram concentration per fluid ounce or milliliter) and the number of units or volume of finished form in each commercial container (e.g., 100-tablet bottle or 3-milliliter vial);

(c) The number of each commercial container of such finished form received from other persons, including the date of and number of containers in each receipt and the name, address, and registration number of the person from whom the containers were received;

(d) The number of units or volume of such finished form dispensed, including the name and address of the person to whom it was dispensed, the date of dispensing, the number of units or volume dispensed, and the written or typewritten name or initials of the individual who dispensed or administered the substance on behalf of the dispenser; and

(e) The number of units or volume of such finished forms and/or commercial containers disposed of in any other manner by the registrant, including the date and manner of disposal and the quantity of the substance in finished form disposed.

§ 304.25 Records for importers.

Each registered importer shall maintain records with the following information for each controlled substance:

(a) The name of the substance;

(b) The quantity (or number of units or volume in finished form) imported, including the date, quantity (or number of units or volume), and import permit or declaration number for each importation;

(c) The quantity (or number of units or volume in finished form) distributed to other persons, including the date and quantity (or number of units or volume) of each distribution and the name, address, and registration number of each person to whom a distribution was made; and

(d) The quantity disposed of in any other manner by the registrant (except quantities used in manufacturing by an importer under a registration as a manufacturer, which quantities are to be recorded pursuant to § 304.22 (a)(4) or (b)(5)), including the date and manner of disposal and the quantity disposed.

§ 304.26 Records of exporters.

Each registered exporter shall maintain records with the following information for each controlled substance:

(a) The name of the substance;

(b) The quantity (or number of units or volume in finished form) received from other persons, including the date and quantity (or number of units or volume) of each receipt and the name, address, and registration number of each person from whom the substance was received;

(c) The quantity (or number of units or volume in finished form) exported, including the date, quantity (or number of units or volume), and the export permit or declaration number for each exportation, but excluding all quantities (and numbers of units and volumes) manufactured by an exporter under a registration as a manufacturer, which quantities (and numbers of units and volumes) are to be recorded pursuant to § 304.22 (a)(8) or (b)(8); and

(d) The quantity disposed of in any other manner by the registrant, including the date and manner of disposal and the quantity disposed.

§ 304.27 Records for chemical analysis.

(a) Each person registered to conduct chemical analysis with controlled substances shall maintain records with the following information (to the extent known and reasonably ascertainable by him) for each controlled substance:

(1) The name of the substance;

(2) The form or forms the substance is received in (e.g., powder, granulation, tablet, capsule, or solution) and the concentration of the substance in each form (e.g., E.P., U.S.P., 10-milligram tablet or 10-milligram concentration per milliliter);

(3) The total quantity of the forms received (e.g., 100 tablets, 30 one-milliliter vials, or 10 grams of powder), including the date and quantity of each receipt and the name, address, and registration number, if any, of each person from whom the substance was received;

(4) The quantity distributed or disposed of in any manner by the registrant (except quantities used in chemical analysis or other laboratory work), including the date and manner of distribution or disposal, and the name, address and registration number, if any, of each person to whom the substance was distributed.

(b) Records of controlled substances used in chemical analysis or other laboratory work are not required.

(c) In the case of known or suspected controlled substances received for identification, analysis or evidentiary purposes, the gross weight of the sealed evidence container with its contents may be used in lieu of the detailed information required in paragraphs (a) (2) and (3) of this section. Nothing in this section shall be construed to require any analysis not otherwise needed or contemplated.

REPORTS

§ 304.31 Reports from manufacturers and importers.

(a) Each registered manufacturer and registered importer shall submit a quarterly report (BND Form 234) accounting for all stocks of narcotic controlled substances on hand at the beginning and at the end of the quarter, and for all receipts (BND Form 234a), dispositions (BND Form 234b), manufacturing (BND Form 234c) and packaging (BND Form 234d), of such substances. The returns shall be submitted to the Distribution Audit Branch, Bureau of Narcotics and Dangerous Drugs, U.S. Department of Justice, Washington, D.C. 20537, on or before the 15th day of the month succeeding the period for which it is submitted.

(b) All narcotic controlled substances received by a manufacturer or importer, shall be recorded on Form 234a in order and at the time of receipt. Where record on Form 234a cannot, for any good and sufficient reason, be made immediately, the manufacturer or importer shall have available for inspection such invoices, delivery or duplicate sales slips, or other papers or records as may be required to evidence any unrecorded purchase or receipt.

(c) All dispositions of narcotic controlled substances by a manufacturer or importer, including exports, distributions, and losses, shall be reported on BND Form 234b. A separate sheet, properly headed in the space provided, shall be used for each different type of transaction. On each sheet separate entries shall be used to report dispositions of each substance and of each different type and size of container or unit involved. All losses reported shall be fully explained. The details of all exports and all domestic distributions of narcotic controlled substances other than (1)

Methylmorphine (codeine), (2) Ethylmorphine (Dionin), and (3) Narcotic controlled substances in schedules III, IV, and V sold to practitioners, shall be reported in full on BND Form 234b. The details of distributions of (1) Methylmorphine (codeine), (2) Ethylmorphine (Dionin) and (3) Narcotic controlled substances in schedules III, IV, and V sold to practitioners, shall be included in summarized entries on BND Form 234b. For all such distributions not reported in detail the manufacturer shall have available for inspection original sales orders, delivery slips, or other papers or records sufficient to fully evidence and explain the dispositions.

(d) All narcotic controlled substances used in the production of other drugs or preparations, with the exception of transactions involving original manufacture from raw opium or coca leaves, shall be entered on BND Form 234c in the order and at the time they are placed into the process of manufacture. All narcotic controlled substances and preparations produced therefrom shall be entered on the same form, at the time of production, which entry shall be clearly identified with the entry of substances used in their production. Where record of "Used for Production" or "Production" cannot be made immediately the manufacturer shall have available such batch tags, production orders, or other papers as may be required to evidence any unrecorded quantity used or produced. Any loss in manufacture, and any recoverable wastes salvaged from the manufacture shall be reported. All such wastes shall be returned to raw stock and included in the report of raw materials on hand at the end of the month. Any narcotic controlled substances actively in process of manufacture at the end of the month shall be so reported. Where substances are placed in process during one quarter and a portion of the production is removed from process as finished goods during the same quarter, the portion thus removed from process shall be reported "Produced" and the remainder reported as "In process" at the close of the period. Narcotic controlled substances placed in process for the manufacture of narcotic controlled substances listed in schedule V shall be reported on a separate BND Form 234c, on which the kind and quantity of narcotic used and the name of the substance to be produced therefrom shall be stated.

(e) All narcotic controlled substances, either bulk finished goods or goods already packaged, which are used during the quarter for packaging or repackaging into commercial containers shall be reported as credit entries in BND Form 234d, and in each instance clearly identified with the entry of substance used in such packaging. A separate entry shall be made for each different size of package produced, but all entries representing a single packaging lot shall be grouped together. The number of packages of a given size produced, the size of the package (indicating the number of pills, tablets, ounces, etc.), the narcotic controlled contained in each unit in the package, the total narcotic controlled substance content of each package, and the aggregate narcotic controlled substance content of all packages represented by the entry shall be indicated. The recoverable wastes salvaged from the packaging operation and the losses in packaging shall be shown as credit entries on the form. All recoverable wastes reported during the quarter shall be returned to raw stock and further accounted for as raw materials. Any goods actively in process of packaging at the close of the quarter shall be so reported. Where substances are placed in process for packaging during one quarter and a portion thereof are removed as packages produced during the same quarter, the portion thus removed shall be reported at packages produced and the remainder reported as in process at the end of the quarter.

(f) Each manufacturer and importer shall submit as a part of his fourth quarterly return (BND Form 234) an inventory (BND Form 234e) of narcotic controlled substances which are in his possession on December 31 of each year. The substances shall be classified as follows:

(1) Raw materials.
(2) Goods in process.
(3) Finished bulk stock.
(4) Finished goods in marketable packages.
(5) Miscellaneous stock.

§ 304.32 Reports of distributors and exporters.

(a) Every registered distributor and registered exporter shall submit a monthly return on BND Form 235 and its supplements 235a and 235b accounting for all transactions involving narcotic controlled substances, including all receipts (BND Form 235a) and dispositions (BND Form 234b). The return shall be submitted to the Distribution Audit Branch, Bureau of Narcotics and Dangerous Drugs, Department of Justice, Washington, D.C. 20537, on or before the 15th day of the month succeeding that for which the return is submitted.

(b) All narcotic controlled substances received by a distributor or exporter shall be recorded on BND Form 235a in order and at the time of receipt. Where a record on BND Form 235a cannot, for any good and sufficient reason, be made immediately, the distributor or exporter shall have available for inspection such invoices, delivery or duplicate sales slips, or other papers or records as may be required to evidence any unrecorded purchase or other receipt.

(c) All dispositions of narcotic controlled substances, including distributions, exports, and losses, shall be reported on BND Form 235b. A separate sheet, properly headed in the space provided, shall be used for each different type of transaction. On each sheet separate entries shall be made of dispositions of each substance and of each different type and size of container or unit involved. All losses reported shall be fully explained. The details of all exports of narcotic controlled substances, and the details of all domestic distributions of narcotic controlled substances other than (1) Methylmorphine (codeine), (2) Ethylmorphine (Dionin), and (3) Narcotic controlled substances in schedules III, IV, and V sold to practitioners shall be reported on BND Form 235b. The details of distributions of (1) methylmorphine (codeine), (2) ethylmorphine (Dionin), and (3) narcotic substances in schedules III, IV, and V distributed to practitioners shall be included in summarized entries on BND Form 235b. For all such distributions not reported in detail the distributor shall have available for inspection original sales orders, delivery slips, or other papers or records sufficient to fully evidence and explain the dispositions.

(d) Each distributor and exporter shall submit, as part of his December return on BND Form 235 and its supplements, an inventory on BND Form 235c of schedules I through V narcotic controlled substances, which are in his possession on December 31 of each year. A separate entry shall be made for each narcotic substance as follows:

(1) the name, quantity, and narcotic content of the drug or preparation;
(2) the size of the individual container;
(3) the number of containers;
(4) the total narcotic content of all the containers covered by the entry, classified according to the narcotic substance in the drug or preparation.

(e) The distributor shall report on BND Form 235 a complete summary of transactions for the month.

§ 304.33 Reports from manufacturers importing opium.

(a) Every manufacturer importing crude opium shall submit, in addition to the report on BND Form 234 and its supplements, BND Form 163 and its supplements, 163a and 163b,accounting for the importation and for all manufacturing operations performed between importation and the production in bulk of finished marketable products, standardized in accordance with the U.S. Pharmacopeia, National Formulary, or other recognized medical standards. Subsequent manufacture from such products, including bottling or packaging operations, shall be accounted for in the quarterly returns on BND Form 234 and its supplements. BND Form 163 and its supplements shall be submitted quarterly to the Distribution Audit Branch, BNDD, Department of Justice, Washington, D.C. 20537, on or before the 15th day of the month immediately following the period for which it is submitted.

(b) The report of manufacture from crude opium shall consist of summaries (BND Forms 163 and 163a) with supporting detail sheets (on BND Form 163b) accounting for original manufacture from crude opium, production from morphine for further manufacture and production from manufacturing opium, and also accounting for stocks of crude opium, manufacturing opium, morphine for further manufacture and other crude alkaloids.

(c) The detail sheet (BND Form 163b) supporting the summary of original manufacture from crude opium shall show separately the crude opium used for the manufacture of opium tinctures and extracts, crude opium used for the extraction of alkaloids, crude opium used for the manufacture of controlled substances listed in schedule V, and crude opium used for the production of manufacturing opium; and shall show separately the medicinal opium, alkaloids and salts, opium tinctures and extracts, controlled substances listed in schedule V, and manufacturing opium produced.

(d) Importation of opium shall be reported in summarized entries in the debit summary of the quarterly report (BND Form 234) and shall be immediately reported by similar summarized entries in the credit summary of the quarterly report (BND Form 234) as transferred to importing manufacturer's report. Such importations shall further be reported in summary (BND Form 163) and supporting detail sheets (BND Form 163b). Products manufactured therefrom shall be reported as produced in accordance with paragraphs (b) and (c) of this section and, with the exception of manufacturing opium, morphine for further manufacture, and other crude or unfinished alkaloids, shall be transferred to the quarterly report (BND Form 234) when reported produced.

(e) Upon importation of crude opium, samples will be selected and assays made by the importing manufacturer in the manner and according to the method specified in the U.S. Pharmacopoeia. These assays shall be accounted for in terms of its anhydrous morphine alkaloid content. Where final assay data is not determined at the time of rendering report, the report shall be made on the basis of the best data available, subject to adjustment, and the necessary adjusting entires shall be made on the next report.

(f) Upon withdrawal of crude opium from customs custody, the importing manufacturer shall assign to each container an identification mark or number by which the opium will be associated with the lot assay and identified in reports.

(g) Where factory procedure is such that partial withdrawals of opium are made from individual containers, there shall be attached to each container a stock record card on which shall be kept a complete record of all withdrawals therefrom.

(h) Manufacturing opium shall be reported produced when it comes into existence in that form in which it is intended for exclusive use in further manufacture. Medicinal opium, morphine and its salts, or other alkaloids or derivatives produced exclusively for distribution shall be reported as produced when manufacture has actually been completed and the finished marketable product ready for packaging and distribution. Such products shall be regarded as ready for packaging and distribution as soon as all processing other than mere packaging has been completed. Medicinal opium, tinctures, extracts, or other products manufactured partly for distribution and partly for use in further manufacture will be reported produced as soon as manufacture is complete and they are ready either for use in further manufacture or for packaging for distribution.

(i) No accumulations of morphine or other narcotic controlled substances in their pure or near-pure states shall be permitted to remain inactively in process. All such products nearing completion of their respective processes and approaching a condition of purity shall be carefully protected, promptly completed, and immediately transferred to finished stocks, and reported as produced.

(j) In making conversions of opium alkaloids and their salts to anhydrous morphine the quantity of the particular alkaloid or salt in avoirdupois ounces shall be multipled by a conversion factor arrived at by ascertaining the ratio, carried to the fourth decimal place, between the respective molecular weight of such alkaloid or salt and the molecular weight of anhydrous morphine (285.16), such weights being computed to the third decimal place from the chemical formulae of the substances and the atomic weights of elements, as adopted by the International Committee on Chemical Elements and published in the latest edition of the U.S. Pharmacopoeia.

§ 304.34 Reports of manufacturers importing medicinal coca leaves.

(a) Every manufacturer importing raw coca leaves for the manufacture of medicinal products shall submit, in addition to the report on BND Form 234 and its supplements, BND Form 168 and its supplements, 168a and 168b, accounting for the importation and for all manufacturing operations performed between the importation and the manufacture of bulk or finished products standardized in accordance with U.S. Pharmacopeia, National Formulary, or other recognized standards. Subsequent manufacture from such products, including bottling or packaging operations, shall be accounted for in quarterly reports on BND Form 234 and its supplements. Reports on Form 168 and its supplements shall be submitted quarterly to the Distribution Audit Branch, Bureau of Narcotics and Dangerous Drugs, Department of Justice, Washington, D.C. 20537, on or before the 15th day of the month immediately following the period for which it is submitted.

(b) The report of manufacture from medicinal coca leaves shall consist of summaries (BND Forms 168 and 168a) with supporting detail sheets (BND Form 168b) accounting for original manufacture from such leaves, conversions or production from manufacturing coca extracts, and also accounting for stocks of raw coca leaves, manufacturing coca extracts, and other crude coca alkaloids.

(c) The detail sheets (BND Form 168b) supporting the summary of original manufacture from medicinal coca leaves, shall show separately the coca leaves used for the manufacture of manufacturing coca extracts, coca leaves used for the direct manufacture of marketable coca tinctures and extracts, and coca leaves used for the extraction of alkaloids, and shall show separately the coca alkaloids and salts, coca tinctures and extracts, and manufacturing coca extracts produced.

(d) Importations of medicinal coca leaves shall be reported in summarized entries in the debit summary of the quarterly report (BND Form 234) and shall be immediately reported by similar summarized entries in the credit summary of the quarterly report (BND Form 234) as transferred to importing manufacturer's report. Such importations shall further be reported in summary (BND Form 168) and supporting detail sheets (BND Form 168b). Products manufactured therefrom shall be reported as produced in accordance with paragraph (h) of this section and, with the exception of manufacturing coca extracts, residues or bases for further manufacture, and other crude or unfinished alkaloids, shall be transferred to the quarterly report (BND Form 234) when reported produced.

(e) Upon importation of medicinal coca leaves, samples will be selected and assays made by the importing manufacturer in accordance with recognized chemical procedures. These assays shall form the basis of accounting for such coca leaves, which shall be accounted for in terms of their cocaine alkaloid content or equivalency or their total anhydrous coca alkaloid content. Where final assay data is not determined at the time of submitting the report, the report shall be made on the basis of the best data available, subject to adjustment, and the necessary adjusting entries shall be made on the next report.

(f) Upon withdrawal of medicinal coca leaves from customs custody, the importing manufacturer shall assign to each bale or container an identification mark or number by which the coca leaves will be associated with the lot assay and identified in reports.

(g) Where factory procedure is such that partial withdrawals of medicinal coca leaves are made from individual containers, there shall be attached to the container a stock record card on which shall be kept a complete record of withdrawals therefrom.

(h) Manufacturing coca extracts shall be reported as produced when they come into existence in that form in which they are intended for exclusive use in further manufacture. Cocaine and its salts, ecgonine and its salts, or other alkaloids or derivatives produced exclusively for distribution shall be reported as produced when manufacture has actually been completed and the finished marketable product is ready for packaging and distribution. Such products shall be regarded as ready for packaging and distribution as soon as all processing other than mere packaging has been completed. Tinctures, extracts, or other products manufactured partly for distribution and partly for use in further manufacture shall be reported produced as soon as manufacture is complete and

they are ready either for use in further manufacture or for packaging for distribution.

(i) No accumulations of cocaine or ecgonine or other narcotic controlled substances in their pure or near-pure states shall be permitted to remain inactively in process. All such products nearing completion of their respective processes and approaching a condition of purity shall be carefully protected, promptly completed, and immediately transferred to finished stocks and reported as produced.

(j) In making conversations of coca alkaloids and their salts to cocaine alkaloid and to anhydrous ecgonine alkaloid, the quantity of the particular alkaloid or salt in avoirdupois ounces shall be multipled by a conversion factor arrived at by ascertaining the ratio, carried to the fourth decimal place, between the molecular weight of such alkaloid or salt and the molecular weight of cocaine alkaloid (303.172) or anhydrous ecgonine alkaloid (185.125), as the case may be, such weights being computed to the third decimal place from the chemical formulae of the substances and the atomic weights of elements, as adopted by the International Committee on Chemical Elements and published in the latest edition of the U.S. Pharmacopeia.

§ 304.35 Reports from manufacturers importing special coca leaves.

(a) Every manufacturer using special coca leaves imported into the United States shall submit a quarterly report (BND Form 169) accounting for all transactions involving such leaves or substances derived therefrom which contain cocaine or ecgonine, or any salts, derivatives, or preparations from which cocaine or ecgonine may be synthesized or made. This report shall be submitted to the Distribution Audit Branch, Bureau of Narcotics and Dangerous Drugs, Department of Justice, Washington, D.C. 20537, on or before the 15th day of the month following the period for which the report is made. Such report shall include a report of all importations of special coca leaves (BND Form 169a), a report of all materials entered into the processes of manufacture (BND Form 169b), a report of the various substances produced therefrom (BND Form 169c, 169d, and 169e), a report of all such substances destroyed (BND Form 169f), and a summary of operations (BND Form 169g).

(b) The report of importations shall provide in appropriate columns the following data as to each importation:

(1) The date of the import permit;

(2) The serial number of the import permit;

(3) The name of the foreign consignor;

(4) The address of the foreign consignor;

(5) The foreign port of export;

(6) The number of bales imported;

(7) The serial numbers of the bales imported; and

(8) The quantity imported in avoirdupois pounds.

(c) The report of materials entered into the process of manufacture shall provide in appropriate columns the following information as to each lot of leaves dumped:

(1) The lot number of specification, a specification to be assigned to each dump for identification purposes in order to avoid repeating the serial numbers of the bales when the lot is subsequently referred to;

(2) The date the leaves entered into the process of manufacture;

(3) The number of bales dumped;

(4) The serial numbers of the bales;

(5) The quantity of leaves entered into the process of manufacture, stated in avoirdupois pounds;

(6) The quantity of alcohol used for each extraction or wash of the leaves;

(7) The quantity of water used for each water extraction or dilution;

(8) The quantity of any other or additional substance introduced at any stage into the process of manufacture; and

(9) The dry weight of any filter cloth or other absorbent material to be later removed from the process after saturation.

(d) The reports of substances produced from special coca leaves shall provide in columns the following information as to each production lot or dump:

(1) The lot number;

(2) The quantity of ground leaves entered into process, in terms of avoirdupois ounces and the quantity, in ounces and grains, of alkaloid contained therein as determined by analysis;

(3) The quantity of substance in process after each distinct step in the manufacturing process and the total alkaloid contained in each, stated in ounces and grains;

(4) The quantity of exhausted or spent leaves and the quantity of each residue removed from process, and the total alkaloid contained in each, stated in ounces and grains;

(5) The weight of the used filter cloth or other absorbent material removed, after saturation; and

(6) The quantity, in gallons, of finished extract produced.

(e) The report of substances destroyed, shall provide in appropriate columns the following data as to each lot destroyed:

(1) The lot number;

(2) The quantity of spent leaves, residues, and saturated materials destroyed, stated separately for each; and

(3) The name of the Government officer witnessing the destruction.

(f) The summary shall include a complete accounting for all transactions in raw leaves, leaves in process, and residues removed from production processes.

(1) The summary of raw coca leaves shall include:

(i) The quantity of special coca leaves on hand at the beginning of the quarter;

(ii) The quantity of special coca leaves imported during the quarter;

(iii) The quantity of special coca leaves entered into the process of manufacture during the quarter;

(iv) The quantity of special coca leaves on hand at the end of the quarter; and

(v) Any other transaction during the quarter which increased or decreased the quantity of raw coca leaves on hand.

(2) The summary of coca leaves in process shall include:

(i) The quantity of special coca leaves in process at the beginning of the quarter;

(ii) The quantity of such leaves placed in the process during the quarter;

(iii) The quantity of such leaves represented by lots completed during the quarter;

(iv) The quantity of such leaves represented by lots in process at the end of the quarter; and

(v) Any other transaction during the quarter which increased or decreased the quantity of leaves in process.

(3) The summary of residues removed from production processes shall provide in appropriate columns, separately as to spent leaves, each residue and saturated material, the following information:

(i) The quantity of each, on hand at the beginning of the quarter, awaiting destruction;

(ii) The quantity of each removed from process during the quarter;

(iii) The quantity of each destroyed during the quarter;

(iv) The quantity of each on hand at the end of the quarter; and

(v) Any other transaction during the quarter affecting the quantity of such residues on hand.

PART 305—ORDER FORMS

§ 305.01 Scope of Part 305.

Procedures governing the issuance, use, and preservation of order forms pursuant to section 308 of the Act (21 U.S.C. 828) are set forth generally by that section and specifically by the sections of this part.

§ 305.02 Definitions.

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

(a) The term "Act" means the Controlled Substances Act (84 Stat. 1242; 21 U.S.C. 801) and/or the Controlled Substances Import and Export Act (84 Stat. 1285; 21 U.S.C. 951).

(b) The term "purchaser" means any registered person entitled to obtain and execute order forms pursuant to § 305.04 and § 305.06.

(c) The term "supplier" means any registered person entitled to fill order forms pursuant to § 305.08.

(d) Any term not defined in this section shall have the definition set forth in section 102 of the Act (21 U.S.C. 802) and §§ 301.02 and 302.02 of this chapter.

§ 305.03 Distributions requiring order forms.

An order form (BND Form 222c) is required for each distribution of a controlled substance listed in schedule I or II, except for the following:

(a) The exportation of such substances from the United States in conformity with the Act;

(b) The delivery of such substances to or by a common or contract carrier for carriage in the lawful and usual course of its business, or to or by a warehouseman for storage in the lawful and usual course of its business (but excluding such carriage or storage by the owner of the substance in connection with the distribution to a third person);

(c) The procurement of a sample of such substances by an exempt law enforcement official pursuant to § 301.26 (c) of this chapter, provided that the statement required by that section is used and is preserved in the manner prescribed in this part for order forms;

(d) The procurement of such substances by a civil defense or disaster relief organization, pursuant to § 301.27 of this chapter, provided that the civil defense emergency order form required by that section is used and is preserved with other records of the registrant; and

(e) The purchase of such substances by the master of a vessel pursuant to § 301.28(a)(3) of this chapter: *Provided*, That the special order form provided by the U.S. Public Health Service as required by that section is used and preserved in the manner prescribed on this order form.

§ 305.04 Persons entitled to obtain and execute order forms.

(a) Order forms may be obtained only by persons who are registered under section 303 of the Act (21 U.S.C. 823) to handle controlled substances listed in schedules I and II, and by persons who are registered under section 1008 of the Act (21 U.S.C. 958) to export such substances. Persons not registered to handle controlled substances listed in schedules I or II and persons registered only to import controlled substances listed in any schedule are not entitled to obtain order forms.

(b) An order form may be executed only on behalf of the registrant named thereon and only if his registration as to the substances being purchased has not expired or been revoked or suspended.

§ 305.05 Procedure to obtain order forms.

(a) Order forms are issued in books of six forms, each form containing an original, duplicate and triplicate copy (respectively, Copy 1, Copy 2, and Copy 3). A limit of three books of forms will be furnished on any requisition, unless additional books are specifically requested and a reasonable need for such additional books is shown.

(b) Any person applying for a registration which would entitle him to obtain order forms may requisition such forms by so indicating on the application form; order forms will be supplied upon the registration of the applicant. Any person holding a registration entitling him to obtain order forms may requisition such forms for the first time on BND Form 222d, which may be obtained from the Registration Branch of the Bureau. Any person already holding order forms may requisition additional forms only on BND Form 222b, which is contained in each book of order forms. All requisitions shall be submitted to the Registration Branch, Bureau of Narcotics and Dangerous Drugs, Department of Justice, Washington, D.C. 20005.

(c) Each requisition shall show the name, address, and registration number of the registrant and the number of books of order forms desired. Each requisition shall be signed and dated by the same person who signed the most recent application for registration or for reregistration, or by any person authorized to obtain and execute order forms by a power of attorney pursuant to § 305.07.

(d) Order forms will be serially numbered and issued with the name, address and registration number of the registrant, the authorized activity and schedules of the registrant and the substance in schedule I which the registrant is auhorized to handle, if any, printed thereon. In the case of order forms issued to a person registered to conduct chemical analysis with controlled substances listed in schedule I, the order forms shall not be confined to a single such substance and may be used to purchase any of such substances. This information cannot be altered or changed by the registrant; any errors must be corrected by the Registration Branch of the Bureau by returning the forms with notification of the error.

§ 305.06 Procedure to execute order forms.

(a) Order forms shall be prepared and executed by the purchaser simultaneously in triplicate by means of interleaved carbon sheets which are part of the BND Form 222c. Order forms shall be prepared by use of a typewriter, pen, or indelible pencil.

(b) Only one item shall be entered on each numbered line. There are five lines on each order form. If one order form is not sufficient to include all items in an order, additional forms shall be used. The total number of items ordered shall be noted on that form in the space provided. Attachment of extra sheets to an order form, or use of order forms for substances other than controlled substances listed in schedules I and II, is not permitted.

(c) An item shall consist of one or more containers of the same finished form and quantity of the same substance; a separate item shall be made for each container of different finished form, quantity or substance. For each item the form shall show the name of the article ordered, the finished form of the article (e.g., 10-milligram tablet or 10-milligram concentration per fluid ounce or milliliter), the number of units or volume in each commercial container (e.g., 100-tablet bottle or 3-fluid ounces), the number of commercial containers ordered, and the name and quantity per unit of the controlled substance or substances contained in the article if not in pure form. The catalogue number of the article may be included at the discretion of the purchaser.

(d) The name and address of the supplier from whom the controlled substances are being ordered shall be entered on the form. Only one supplier may be listed on any one form.

(e) Each order form shall be signed and dated by a person authorized to sign a requisition for order forms on behalf of the purchaser pursuant to § 305.05(c). The name of the purchaser, if different from the individual signing the order form, shall also be inserted in the signature space. Unexecuted order forms may be kept and may be executed at a location other than the registered location printed on the form, provided that all unexecuted forms are delivered promptly to the registered location upon an inspection of such location by any officer authorized to make inspections, or to enforce, any Federal, State, or local law regarding controlled substances.

§ 305.07 Power of attorney.

Any purchaser may authorize one or more individuals, whether or not located at the registered location of the purchaser, to obtain and execute order forms on his behalf by filing a power of attorney on BND Form 231 for each such individual with the Registration Branch, Bureau of Narcotics and Dangerous Drugs, Department of Justice, Post Office Box 28083, Central Station, Washington, D.C. 20005. The power of attorney shall be signed by the same person who signed the most recent application for registration or reregistration and shall contain the signature of the individual being authorized to obtain and execute order forms, which individual shall affirm his signature. Any power of attorney may be revoked at any time by filing a notice of revocation, signed by the person who signed the power of attorney, with the Registration Branch at the foregoing address. It shall be necessary to submit a new power of attorney upon the reregistration of a purchaser only if the application for reregistration was signed by a person different from the person who signed the existing power of attorney.

§ 305.08 Persons entitled to fill order forms.

An order form may be filled only by a person registered as a manufacturer or distributor of controlled substances listed in schedules I or II under section 303 of the Act (21 U.S.C. 823) or an importer of such substances under section 1008 of the Act (21 U.S.C. 958), except for the following:

(a) A person registered to dispense such substances under section 303 of the Act, or to export such substances under section 1008 of the Act, if he is discontinuing business or if his registration is expiring without reregistration, may dispose of any controlled substances listed in schedule I or II in his possession pursuant to order forms if he has obtained the specific approval of each transaction from the Regional Director of the Bureau in his region; and

(b) A person who has obtained any controlled substance in schedule I or II by order form may return such substance, or portion thereof, to the person from whom he obtained the substance pursuant to the order form of the latter person.

§ 305.09 Procedure for filling order forms.

(a) The purchaser shall submit Copy 1 and Copy 2 of the order form to the supplier, and retain Copy 3 in his own files.

(b) The supplier shall fill the order, if possible and if he desires to do so, and record on Copies 1 and 2 the number of commercial containers furnished on each item and the date on which such containers are shipped to the purchaser. If an order cannot be filled in its entirety, it may be filled in part and the balance supplied by additional shipments within 60 days following the date of the order form. No order form shall be valid more than 60 days after its execution by the purchaser, except as specified in paragraph (f) of this section.

(c) The controlled substances order shall only be shipped to the purchaser and at the location printed by the Bureau on the order form, except as specified in paragraph (f) of this section.

(d) The supplier shall retain Copy 1 of the order form for his own files and forward Copy 2 to the Regional Director of the Bureau in the region in which the supplier is located. Copy 2 shall be forwarded at the close of the month during which the order is filled; if an order is filled by partial shipments, Copy 2 shall be forwarded at the close of the month during which the final shipment is made or during which the 60-day validity period expires.

(e) The purchaser shall record on Copy 3 of the order form the number of commercial containers furnished on each item and the dates on which such containers are received by the purchaser.

(f) Order forms submitted by registered procurement officers of the Armed Services Medical Procurement Agency for delivery to armed services establishments within the United States may be shipped to locations other than the location printed on the order form, and in partial shipments at different times not to exceed six months from the date of the order, as designated by the procurement officer when submitting the order.

§ 305.10 Procedure for endorsing order forms.

(a) An order form made out to any supplier who cannot fill all or a part of the order within the time limitation set forth in § 305.09 may be endorsed to another supplier for filling. The endorsement shall be made only by the supplier to whom the order form was first made, shall state (in the spaces provided on the reverse sides of Copies 1 and 2 of the order form) the name and address of the second supplier, and shall be signed by a person authorized to obtain and execute order forms on behalf of the first supplier. The first supplier may not fill any part of an order on an endorsed form. The second supplier shall fill the order, if possible and if he desires to do so, in accordance with § 305.09 (b), (c), and (d), including shipping all substances directly to the purchaser.

(b) Distributions made on endorsed order forms shall be reported by the second supplier in the same manner as all other distributions except that where the name of the supplier is requested on the reporting form, the second supplier shall record the name, address and registration number of the first supplier.

§ 305.11 Unaccepted and defective order forms.

(a) No order form shall be filled if it:

(1) Is not complete, legible, or properly prepared, executed or endorsed; or

(2) Shows any alteration, erasure, or change of any description.

(b) If an order form cannot be filled for any reason under this section, the supplier shall return Copies 1 and 2 to the purchaser with a statement as to the reason (e.g., illegible or altered). A supplier may for any reason refuse to accept any order and if a supplier refuses to accept the order, a statement that the order is not accepted shall be sufficient for purposes of this subsection.

(c) When received by the purchaser, Copies 1 and 2 of the order form and the statement shall be attached to Copy 3 and retained in the files of the purchaser in accordance with § 305.13. A defective order form may not be corrected; it must be replaced by a new order form in order for the order to be filled.

§ 305.12 Lost and stolen order forms.

(a) If a purchaser ascertains that an unfilled order form has been lost, he shall execute another in triplicate and a statement containing the serial number and date of the lost form, and stating that the goods covered by the first order form were not received through loss of that order form. Copy 3 of the second form and a copy of the statement shall be retained with Copy 3 of the order form first executed. If the first order form is subsequently received by the supplier to whom it was directed, the supplier shall mark upon the face thereof "Not accepted" and return Copies 1 and 2 to the purchaser, who shall attach it to Copy 3 and the statement.

(b) Whenever any used or unused order forms are stolen from or lost (otherwise than in the course of transmission) by any purchaser or supplier, he shall immediately upon discovery of such theft or loss, report the same to the Registration Branch, Bureau of Narcotics and Dangerous Drugs, Department of Justice, Post Office Box 28083, Central Station, Washington, D.C. 20005, stating the serial number of each form stolen or lost. If the theft or loss includes any original order forms received from purchasers and the supplier is unable to state the serial numbers of such order forms, he shall report the date or approximate date of receipt thereof and the names and addresses of the purchasers. If an entire book of order forms is lost or stolen, and the purchaser is unable to state the serial numbers of the order forms contained therein, he shall report, in lieu of the numbers of the forms contained in such book, the date or approximate date of issuance thereof. If any unused order form reported stolen or lost is subsequently recovered or found, the Registration Branch of the Bureau shall immediately be notified.

§ 305.13 Preservation of order forms.

(a) The purchaser shall retain Copy 3 of each order form which has been filled. He shall also retain in his files all copies of each unaccepted or defective order form and each statement attached thereto.

(b) The supplier shall retain Copy 1 of each order form which he has filled.

(c) Order forms must be maintained separately from all other records of the registrant. Order forms are required to be kept available for inspection for a period of 2 years. If a purchaser has several registered locations, he must retain Copy 3 of the executed order forms and any attached statements or other related documents at the registered location printed on the order form.

§ 305.14 Return of unused order forms.

If the registration of any purchaser terminates (because the purchaser dies, ceases legal existence, discontinues business or professional practice, or changes his name or address as shown on his registration) or is suspended or revoked pursuant to § 301.46 of this chapter as to any controlled substance listed in schedule I or II, he shall return all unused order forms for such substance to the nearest office of the Bureau.

§ 305.15 Interim use of IRS order forms.

Existing order forms (IRS Form 2513) will be valid until April 30, 1972, for transactions of controlled substances listed in schedule I and II. Purchasers using existing IRS Forms 2513 after April 30, 1971, must place the registration number assigned by the Bureau on the form in the block which contains the name, address, old IRS registration, and class of registration. Registrants who obtain BND Form 222c, but still possess IRS order forms, should not discard the IRS Forms, but instead draw a line thru the unused forms and print "Void" across the line. Voided forms must be maintained for at least 2 years in the manner prescribed in § 305.13.

§ 305.16 Interim use of IRS order form requisitions.

Effective May 1, 1971, only the Bureau will issue order forms. A purchaser desiring order forms (BND Form 222c) may obtain them by using IRS Form 679 found in the back of his current IRS order from book. In utilizing IRS Form 679, the registration number assigned by the Bureau must be placed in section 8 of the requisition form and the requisition forwarded to Registration Branch, Bureau of Narcotics and Dangerous Drugs, Department of Justice, Post Office Box 28083, Central Station, Washington, D.C. 20005. IRS Form 679 will not be valid after April 30, 1972.

PART 306—PRESCRIPTIONS

General Information

§ 306.01 Scope of Part 306.

Rules governing the issuance, filling and filing of prescriptions pursuant to section 309 of the Act (21 U.S.C. 829) are set forth generally in that section and specifically by the sections of this part.

§ 306.02 Definitions.

As used in this part, the following terms shall have the meanings specified:

(a) The term "Act" means the Controlled Substances Act (84 Stat. 1242; 21 U.S.C. 801).

(b) The term "institutional practitioner" means a hospital or other person (other than an individual) licensed, registered, or otherwise permitted, by the United States or the jurisdiction in which it practices, to dispense a controlled substance in the course of professional practice, but does not include a pharmacy.

(c) The term "pharmacist" means any pharmacist licensed by a State to dispense controlled substances, and shall include any other person authorized by a State to dispense controlled substances under the supervision of a pharmacist licensed by such State.

(d) The term "practitioner" means a physician, dentist, veterinarian, or other individual licensed, registered, or otherwise permitted, by the United States or the jurisdiction in which he practices, to dispense a controlled substance in the course of professional practice, but does not include a pharmacist, or an institutional practitioner.

(e) The term "register" or "registered" means a person registered under section 303 of the Act (21 U.S.C. 823).

(f) Any term not defined in this section shall have the definition set forth in section 102 of the Act (21 U.S.C. 802) or § 301.02 of this chapter.

§ 306.03 Persons entitled to issue prescriptions.

A prescription for a controlled substance may be issued only by a practitioner who is:

(a) authorized to prescribe controlled substances by the jurisdiction in which he is licensed to practice his profession; and

(b) either registered or exempted from registration pursuant to § 301.25 of this chapter.

§ 306.04 Purpose of issue of prescription.

A prescription for a controlled substance to be effective must be issued for a legitimate medical purpose by a practitioner acting in the usual course of his professional practice. The responsibility for the proper prescribing and dispensing of controlled substances is upon the prescribing practitioner, but a corresponding responsibility rests with the pharmacist who fills the prescription. An order purporting to be a prescription issued not in the usual course of professional treatment or in legitimate and authorized research is not a prescription within the meaning and intent of section 309 of the Act (21 U.S.C. 829) and the person filling such a prescription, as well as the person issuing it, shall be subject to the penalties provided for violations of the provisions of law relating to controlled substances.

§ 306.05 Manner of issuance of prescriptions.

All prescriptions for controlled substances shall be dated as of, and signed on, the day when issued and shall bear the full name and address of the patient, and the name, address, and registration number of the practitioner. A practitioner may sign a prescription in the same manner as he would sign a check or legal document (e.g., J. H. Smith or John H. Smith). Where an oral order is not permitted, prescriptions should be written with ink or indelible pencil or typewriter; if typewritten, they shall be signed by the practitioner. The prescriptions may be prepared by a secretary or agent for the signature of a practitioner, but the prescribing practitioner is responsible in case the prescription does not conform in all essential respects to the law and regulations. A corresponding liability rests upon the pharmacist who fills a prescription not prepared in the form prescribed by these regulations.

§ 306.06 Persons entitled to fill prescriptions.

A prescription for controlled substances may only be filled by a pharmacist acting in the usual course of his professional practice and either registered individually or employed in a registered pharmacy.

Controlled Substances Listed in Schedule II

§ 306.11 Requirement of prescriptions.

(a) A pharmacist may dispense a controlled substance listed in schedule II only pursuant to a written prescription signed by the prescribing practitioner, except as provided in paragraph (c) of this section.

(b) A practitioner or institutional practitioner may administer or dispense such substance in the course of professional practice without a prescription.

(c) In the case of an emergency situation, as defined by the Secretary in § 1.110 of this title, a pharmacist may dispense a controlled substance listed in schedule II upon receiving oral authorization of a prescribing practitioner, provided that:

(1) The quantity prescribed and dispensed is limited to the amount adequate to treat the patient during the emergency period (dispensing beyond the emergency period must be pursuant to a written prescription signed by the prescribing practitioner);

(2) The prescription shall be immediately reduced to writing by the pharmacist and shall contain all information required in § 306.05, except for the signature of the prescribing practitioner;

(3) If the prescribing practitioner is not known to the pharmacist, he must make a reasonable effort to determine that the oral authorization came from a practitioner, which may include a callback to the prescribing practitioner using his phone number as listed in the telephone directory and/or other good faith efforts to insure his identity; and

(4) Within 72 hours after authorizing an emergency oral prescription, the prescribing practitioner shall cause a written prescription for the emergency quantity prescribed to be delivered to the dispensing pharmacist. In addition to conforming to the requirements of § 306.05, the prescription shall have written on its face "Authorization for Emergency Dispensing," and the date of the oral order. The written prescription may be delivered to the pharmacist in person or by mail, but if delivered by mail it must be postmarked within the 72-hour period. Upon receipt, the dispensing pharmacist shall attach this prescription to the oral emergency prescription which had earlier been reduced to writing. The pharmacist shall notify the nearest office of the Bureau if the prescribing practitioner fails to deliver a written prescription to him; failure of the pharmacist to do so shall void the authority conferred by this subsection to dispense without a written prescription of a prescribing practitioner.

§ 306.12 Refilling prescriptions.

The refilling of a prescription for a controlled substance listed in schedule II is prohibited.

§ 306.13 Partial filling of prescriptions.

The partial filling of a prescription for a controlled substance listed in schedule II is permissible, if the pharmacist is unable to supply the full quantity called for in a written or emergency oral prescription and he makes a notation of the quantity supplied on the face of the written prescription (or written record of the emergency oral prescription) and so advises the authorizing practitioner. The remaining portion of the prescription may be filled within 72 hours of the first partial filling. No further quantity may be supplied beyond 72 hours without a new prescription.

§ 306.14 Labeling of substances.

The pharmacist filling a written or emergency oral prescription for a controlled substance listed in schedule II shall affix to the package a label showing date of filling, the pharmacy name and address, the serial number of the prescription, the name and address of the patient, the name and registration number of the prescribing practitioner, and directions for use and cautionary statements, if any, contained in such prescription or required by law.

§ 306.15 Filing of prescriptions.

All written prescriptions and written records of emergency oral prescriptions shall be kept in accordance with requirements of § 304.04(d) of this chapter.

Controlled Substances Listed in Schedules III and IV

§ 306.21 Requirement of prescription.

(a) A pharmacist may dispense a controlled substance listed in schedules III

or IV only pursuant to either a written prescription signed by a prescribing practitioner or an oral prescription made by a prescribing practitioner and promptly reduced to writing by the pharmacist containing all information required in § 306.05, except for the signature of the prescribing practitioner.

(b) A practitioner or institutional practitioner may administer or dispense such substance in the course of professional practice without a prescription.

§ 306.22 Refilling of prescriptions.

No prescription for a controlled substance listed in schedule III or IV shall be filled or refilled more than 6 months after the date on which such prescription was issued and no such prescription authorized to be refilled may be refilled more than five times. Each refilling of a prescription shall be entered on the back of the prescription, initialed, and dated by the pharmacist as of the date of dispensing, and shall state the amount dispensed. If the pharmacist merely initials and dates the back of the prescription he shall be deemed to have dispensed a refill for the full face amount of the prescription. Addition quantities of controlled substances listed in schedule III or IV may only be authorized by a prescribing practitioner through issuance of a new prescription as provided in § 306.21 which shall be a new and separate prescription.

§ 306.23 Labeling of substances.

The pharmacist filling a prescription for a controlled substance listed in schedule III or IV shall affix to the package a label showing the pharmacy name and address, the serial number and date of filling, the name and address of the patient, the name and registration number of the practitioner issuing the prescription, and directions for use and cautionary statements, if any, contained in such prescription as required by law.

§ 306.24 Filing prescriptions.

All prescriptions for controlled substances listed in schedules III and IV shall be kept in accordance with § 304.04(d) of this chapter.

CONTROLLED SUBSTANCES LISTED IN SCHEDULE V

§ 306.31 Requirement of prescription.

(a) A pharmacist may dispense a controlled substance listed in schedule V pursuant to a prescription as required for controlled substances listed in schedules III and IV in § 306.21. A pharmacist dispensing such substance pursuant to a prescription shall label the substance in accordance with § 306.23 and file the prescription in accordance with § 306.24.

(b) A practitioner or institutional practitioner may administer or dispense such substance in the course of professional practice without a prescription.

§ 306.32 Distribution without prescription.

A controlled substance listed in schedule V may be distributed without a prescription to a purchaser at retail, provided that:

(a) Such distribution is made only by a pharmacist and not by a nonpharmacist employee even if under the direct supervision of a pharmacist (after the pharmacist has fulfilled his professional and legal responsibilities set forth in this section, however, the actual cash, credit transaction, or delivery, may be completed by a nonpharmacist);

(b) Not more than 240 cc. (8 ounces) of any such substance containing opium, nor more than 120 cc. (4 ounces) of any other controlled substance listed in schedule V, may be distributed at retail to the same purchaser in any given 48-hour period;

(c) The purchaser is at least 18 years of age;

(d) The pharmacist requires every purchaser of a controlled substance listed in schedule V not known to him to furnish suitable identification (including proof of age where appropriate);

(e) A bound record book for distributions of controlled substances listed in schedule V (other than by prescription) is maintained by the pharmacist, which book shall contain the name and address of the purchaser, the name and quantity of controlled substance purchased, the date of each purchase, and the name or initials of the pharmacist who distributed the substance to the purchaser (the book shall be maintained in accordance with the recordkeeping requirement of § 304.04 of this chapter); and

(f) A prescription is not required for distribution or dispensing of the substance pursuant to any other Federal, or State or local law.

PART 307—MISCELLANEOUS

GENERAL INFORMATION

§ 307.01 Definitions.

As used in this part, the following terms shall have the meanings specified:

(a) The term "Act" means the Controlled Substances Act (84 Stat. 1242; 21 U.S.C. 801) and/or the Controlled Substances Import and Export Act (84 Stat. 1285; 21 U.S.C. 951).

(b) Any term not defined in this section shall have the definition set forth in sections 102 and 1001 of the Act (21 U.S.C. 802 and 951) and in § 301.02 of this chapter.

§ 307.02 Application of State law.

Nothing in Parts 301–308, 311, 312, 316, or 330 of this chapter shall be construed as authorizing or permitting any person to do any act which such person is not authorized or permitted to do under the law of the State in which he desires to do such act.

§ 307.03 Exceptions to regulations.

Any person may apply for an exception to the application of any provision of Parts 301–308, 311, 312, or 316 of this chapter by filing a written request stating the reasons for such exception. Requests shall be filed with the Director, Bureau of Narcotics and Dangerous Drugs, Department of Justice, Washington, D.C. 20537. The Director may grant an exception in his discretion, but in no case shall he be required to grant an exception to any person which is not otherwise required by law or the regulations cited in this section.

SPECIAL EXCEPTIONS FOR MANUFACTURE AND DISTRIBUTION CONTROLLED SUBSTANCES

§ 307.11 Emergency distribution by a dispenser.

(a) In the event of an emergency, a dispenser may distribute (without being registered as a distributor) a controlled substance to a second dispenser in order for the second dispenser to dispense the substance: *Provided*, That,

(1) The amount distributed does not exceed to the amount required by the second dispenser for immediate dispensing;

(2) The distribution is recorded as a dispensing by the first dispenser, and the receipt as a distribution received by the second dispenser, and each dispenser retains a signed receipt of the distribution;

(3) The second dispenser is registered under the Act to dispense the controlled substance to be distributed to him; and

(4) If the substance is listed in schedule I, or II, an order form is used as required in Part 305 of this chapter.

(b) For purposes of this section, an emergency shall be deemed to mean a situation where a quantity of a controlled substance must be dispensed to a person who does not have an alternative source for such substance reasonably available to him and the dispenser cannot obtain such substance through normal distribution channels within the time required to meet the need of the person for such substance.

§ 307.12 Distribution upon discontinuance or transfer of business.

(a) Any registrant desiring to discontinue or transfer business activities altogether or with respect to controlled substances shall return his certificate of registration, and any order forms in his possession, to the Registration Branch, Bureau of Narcotics and Dangerous Drugs, Department of Justice, Washington, D.C. 20537 for cancellation. Any controlled substances in his possession may be disposed of either in accordance with § 307.21 or transferred to another registrant. If the registrant desires to transfer the substance to another registrant, he shall take an inventory of all controlled substances which he desires to transfer and submit this inventory, together with his name, address, and registration number, and the name, address, and registration number of the proposed transferee, to the Regional Director of the Bureau in the region in which he is doing business. If the Regional Director gives written approval to the transferee, the registrant may transfer the substances to the named transferee without being registered as a distributor. All controlled substances listed in schedule I or II must be transferred pursuant to order forms in accordance to Part 305 of this chapter. Schedule III, IV, and V substances will be transferred in accordance to the inventory prepared by the registrant and ap-

proved by the Regional Director. If the Regional Director denies the registrant authority to make the proposed transfer, the registrant shall dispose of the substance in accordance with § 307.21.

(b) In the case of registrants required to make reports pursuant to Part 304 of this chapter, a report marked "Final" will be prepared and submitted by the transferor registrant showing the disposition of all the controlled substances for which a report is required; no additional report will be required from him, provided that no further transactions involving controlled substances are consummated by him. The initial report of the transferee registrant shall account for transactions beginning with the day next succeeding the date of discontinuance or transfer of business by the transferor registrant, and the substances transferred to him shall be reported as receipts in his initial report.

§ 307.13 Incidental manufacture of controlled substances.

Any registered manufacturer who, incidentally but necessarily, manufactures a controlled substance as a result of the manufacture of a controlled substance or basic class of controlled substance for which he is registered and has been issued an individual manufacturing quota pursuant to Part 303 of this chapter (if such substance or class is listed in schedule I or II) shall be exempt from the requirement of registration pursuant to Part 301 of this chapter and, if such incidentally manufactured substance is listed in schedule I or II, shall be exempt from the requirement of an individual manufacturing quota pursuant to Part 303 of this chapter, if such substances are disposed of in accordance with § 307.21.

DISPOSAL OF CONTROLLED SUBSTANCES

§ 307.21 Procedure for disposing of controlled substances.

(a) Any person lawfully in possession of any controlled substance and desiring or required to dispose of such substance may apply to the Regional Director of the Bureau in the region in which the person is located for authority and instructions to dispose of such substance. Application may be made on BND Form 41, or by a letter stating:

(1) The name, address, and registration number, if any, of the person;

(2) The name and quantity of each controlled substance to be disposed of; and

(3) How the applicant obtained the substance, if known (e.g. incidental by-product of manufacturing process; death of a patient in a nursing home; discontinuing business).

(b) The Regional Director shall authorize and instruct the applicant to dispose of the controlled substance in one of the following manners:

(1) By transfer to person registered under the Act and authorized to possess the substance;

(2) By delivery to an agent of the Bureau or to the nearest office of the Bureau;

(3) By destruction in the presence of an agent of the Bureau or other authorized person; or

(4) By such other means as the Regional Director may determine to assure that the substance does not become available to unauthorized persons.

§ 307.22 Disposal of controlled substances by the Bureau.

Any controlled substance delivered to the Bureau under § 307.21 or forfeited pursuant to section 511 of the Act (21 U.S.C. 881) may be delivered to any department, bureau, or other agency of the United States or of any State upon proper application addressed to the Director, Bureau of Narcotics and Dangerous Drugs, Department of Justice, Washington, D.C. 20537. The application shall show the name, address, and official title of the person or agency to whom the controlled drugs are to be delivered, including the name and quantity of the substances desired and the purpose for which intended. The delivery of such controlled drugs shall be ordered by the Director, if, in his opinion, there exists a medical or scientific need therefor.

SPECIAL EXEMPT PERSONS

§ 307.31 Native American Church.

The listing of peyote as a controlled substance in schedule I does not apply to the nondrug use of peyote in bona fide religious ceremonies of the Native American Church, and members of the Native American Church so using peyote are exempt from registration. Any person who manufactures peyote for or distributes peyote to the Native American Church, however, is required to obtain registration annually and to comply with all other requirements of law.

PART 308—SCHEDULES OF CONTROLLED SUBSTANCES

GENERAL INFORMATION

§ 308.01 Scope of Part 308.

Schedules of controlled substances established by section 202 of the Act (21 U.S.C. 812), as they are changed, updated, and republished from time to time, are set forth in this part.

§ 308.02 Definitions.

As used in this part, the following terms shall have the meanings specified:

(a) The term "Act" means the Controlled Substance Act (84 Stat. 1242; 21 U.S.C. 801) and/or the Controlled Substances Import and Export Act (84 Stat. 1285; 21 U.S.C. 951).

(b) Any term not defined in this section shall have the definition set forth in section 102 and 1001 of the Act (21 U.S.C. 802 and 951) and § 301.02 of this chapter.

§ 308.03 Procedure for scheduling of controlled substances.

Procedure for the issuance, amendment, or repeal of rules pursuant to section 201 of the Act (21 U.S.C. 811), classifying substances having a potential for abuse, is set forth in §§ 316.48–316.81 of this chapter.

SCHEDULES

§ 308.11 Schedule I.

(a) Schedule I shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section. Each drug or substance shall have the Bureau controlled substances code number set forth opposite it.

(b) Opiates. Unless specifically excepted or unless listed in another schedule, any of the following opiates, including its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation:

(1)	Acetylmethadol	9601
(2)	Allylprodine	9602
(3)	Alphacetylmethadol	9603
(4)	Alphameprodine	9604
(5)	Alphamethadol	9605
(6)	Benzethidine	9606
(7)	Betacetylmethadol	9607
(8)	Betameprodine	9608
(9)	Betamethadol	9609
(10)	Betaprodine	9611
(11)	Clonitazene	9612
(12)	Dextromoramide	9613
(13)	Dextrorphan	9614
(14)	Diampromide	9615
(15)	Diethylthiambutene	9616
(16)	Dimenoxadol	9617
(17)	Dimepheptanol	9618
(18)	Dimethylthiambutene	9619
(19)	Dioxaphetyl butyrate	9621
(20)	Dipipanone	9622
(21)	Ethylmethylthiambutene	9623
(22)	Etonitazene	9624
(23)	Etoxeridine	9625
(24)	Furethidine	9626
(25)	Hydroxypethidine	9627
(26)	Ketobemidone	9628
(27)	Levomoramide	9629
(28)	Levophenacylmorphan	9631
(29)	Morpheridine	9632
(30)	Noracymethadol	9633
(31)	Norlevorphanol	9634
(32)	Normethadone	9635
(33)	Norpipanone	9636
(34)	Phenadoxone	9637
(35)	Phenampromide	9638
(36)	Phenomorphan	9647
(37)	Phenoperidine	9641
(38)	Piritramide	9642
(39)	Proheptazine	9643
(40)	Properidine	9644
(41)	Racemoramide	9645
(42)	Trimeperidine	9646

(c) Opium derivatives. Unless specifically excepted or unless listed in another schedule, any of the following opium derivatives, its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1)	Acetorphine	9319
(2)	Acetyldihydrocodeine	9051
(3)	Benzylmorphine	9052
(4)	Codeine methylbromide	9070
(5)	Codeine-N-Oxide	9053
(6)	Cyprenorphine	9054
(7)	Desomorphine	9055
(8)	Dihydromorphine	9145
(9)	Etorphine	9056
(10)	Heroin	9200
(11)	Hydromorphinol	9301
(12)	Methyldesorphine	9302
(13)	Methylhydromorphine	9304
(14)	Morphine methylbromide	9305
(15)	Morphine methylsulfonate	9306

(16) Morphine-N-Oxide ---------- 9307
(17) Myrophine ---------- 9308
(18) Nicocodeine ---------- 9309
(19) Nicomorphine ---------- 9312
(20) Normorphine ---------- 9313
(21) Pholcodine ---------- 9314
(22) Thebacon ---------- 9315

(d) Hallucinogenic substances. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation, which contains any quantity of the following hallucinogenic substances, or which contains any of its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) 3,4-methylenedioxy amphetamine ---------- 7400
(2) 5-methoxy-3,4-methylenedioxy amphetamine ---------- 7401
(3) 3,4,5-trimethoxy amphetamine-- 7390
(4) Bufotenine ---------- 7433
Some trade and other names: 3-(β-Dimethylaminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)-5-indoloi; *N,N*-dimethylserotonin; 5-hydroxy-*N*-dimethyltryptamine; mappine.
(5) Diethyltryptamine ---------- 7434
Some trade and other names: *N,N*-Diethyltryptamine; DET.
(6) Dimethyltryptamine ---------- 7435
Some trade or other names: DMT
(7) 4-methyl-2,5-dimethoxyamphetamine ---------- 7395
Some trade and other names: 4-methyl-2,5-dimethoxy-α-methylphenethylamine; "DOM"; and "STP".
(8) Ibogaine ---------- 7260
Some trade and other names: 7-Ethyl-6,6α,7,8,9,10,12,13-octahydro-2-methoxy-6,9-methano-5H-pyrido (1',2':1,2 azepino 4,5-b) indole; tabernanthe iboga.
(9) Lysergic acid diethylamide------ 7315
Some trade or other names: d-Lysergic acid diethylamide.
(10) Marihuana ---------- 7360
(11) Mescaline ---------- 7381
(12) Peyote ---------- 7415
(13) N-ethyl-3-piperidyl benzilate--- 7482
(14) N-methyl-3-piperidyl benzilate-- 7484
(15) Psilocybin ---------- 7437
(16) Psilocyn ---------- 7438
(17) Tetrahydrocannabinols --------- 7370
Synthetic equivalents of the substances contained in the plant, or in the resinous extractives of Cannabis, sp. and/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following:
Δ^1 cis or trans tetrahydrocannabinol, and their optical isomers.
Δ^2 cis or trans tetrahydrocannabinol, and their optical isomers.
$\Delta^{3,4}$ tetrahydrocannabinol, and its optical isomers.
(Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions are covered.)

§ 308.12 Schedule II.

(a) Schedule II shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section. Each drug or substance shall have the Bureau controlled substances code number set forth opposite it.

(b) Substances, vegetable origin or chemical synthesis. Unless specifically excepted or unless listed in another schedule, any of the following substances whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate, including the following:

(A) Raw opium---------- 9600
(B) Opium extracts---------- 9610
(C) Opium fluid extracts---------- 9620
(D) Powdered opium---------- 9639
(E) Granulated opium---------- 9640
(F) Tincture of opium---------- 9630
(G) Apomorphine ---------- 9030
(H) Codeine ---------- 9050
(I) Ethylmorphine ---------- 9190
(J) Hydrocodone ---------- 9193
(K) Hydromorphone ---------- 9194
(L) Metopon ---------- 9260
(M) Morphine ---------- 9300
(N) Oxycodone ---------- 9143
(O) Oxymorphone ---------- 9652
(P) Thebaine ---------- 9333

(2) Any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in subparagraph (1) of this paragraph, except that these substances shall not include the isoquinoline alkaloids of opium.

(3) Opium poppy and poppy straw.

(4) Coca leaves (9040) and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, except that the substances shall not include decocainized coca leaves or extraction of coca leaves, which extractions do not contain cocaine (9041) or ecgonine (9180).

(c) Opiates. Unless specifically excepted or unless in another schedule any of the following opiates, including its isomers, esters, ethers, salts and salts of isomers, esters and ethers whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation:

(1) Alpharodine ---------- 9010
(2) Anileridine ---------- 9020
(3) Bezitramide ---------- 9800
(4) Dihydrocodeine ---------- 9120
(5) Diphenoxylate ---------- 9170
(6) Fentanyl ---------- 9801
(7) Isomethadone ---------- 9226
(8) Levomethorphan ---------- 9210
(9) Levorphanol ---------- 9220
(10) Metazocine ---------- 9240
(11) Methadone ---------- 9250
(12) Methadone-Intermediate, 4-cyano-2-dimethylamino-4,4-diphenyl butane ---------- 9254
(13) Moramide-Intermediate, 2-methyl-3-morpholino-1, 1-diphenylpropane-carboxylic acid------- 9802
(14) Pethidine ---------- 9230
(15) Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine ---------- 9232
(16) Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate ---------- 9233
(17) Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid---------- 9234
(18) Phenazocine ---------- 9715
(19) Piminodine ---------- 9730
(20) Racemethorphan ---------- 9732
(21) Racemorphan ---------- 9733

(d) Methamphetamine. Unless specifically excepted or unless listed in another schedule, any injectable liquid which contains any quantity of methamphetamine, including its salts, isomers, and salts of isomers—1400.

§ 308.13 Schedule III.

(a) Schedule III shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section. Each drug or substance shall have the Bureau controlled substances code number set forth opposite it.

(b) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system:

(1) Amphetamine, its salts, optical isomers, and salts of its optical isomers ---------- 1100
(2) Phenmetrazine and its salts---- 1630
(3) Any substance (except an injectable liquid) which contains any quantity of methamphetamine, including its salts, isomers, and salts of isomers---------- 1105
(4) Methylphenidate ---------- 1726

(c) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system:

(1) Any substance which contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid. 2100
(2) Chorhexadol ---------- 2510
(3) Glutethimide ---------- 2550
(4) Lysergic acid---------- 7300
(5) Lysergic acid amide---------- 7310
(6) Methyprylon ---------- 2575
(7) Phencyclidine ---------- 7471
(8) Sulfondiethylmethane ---------- 2600
(9) Sulfonethylmethane ---------- 2605
(10) Sulfonmethane ---------- 2610

(d) Nalorphine—9400.

(e) Narcotics drugs. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof:

(1) Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium---------- 9803
(2) Not more than 1.8 grams of codeine per 100 milliliters of not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts ---------- 9804
(3) Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium ---------- 9805

(4) Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts 9806

(5) Not more than 1.8 grams of dihydrocodeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts 9807

(6) Not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts 9808

(7) Not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts 9809

(8) Not more than 50 milligrams of morphine per 100 milliliters or per 100 grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts 9810

§ 308.14 Schedule IV.

(a) Schedule IV shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section. Each drug or substance shall have the Bureau controlled substances code number set forth opposite it.

(b) Depressants.

(1) Barbital 2145
(2) Chloral betaine 2460
(3) Chloral hydrate 2465
(4) Ethchlorvynol 2540
(5) Ethinamate 2545
(6) Methohexital 2264
(7) Meprobamate 2820
(8) Methylphenobarbital 2250
(9) Paraldehyde 2585
(10) Petrichloral 2591
(11) Phenobarbital 2285

§ 308.15 Schedule V.

(a) Schedule V shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.

(b) Narcotic drugs containing nonnarcotic active medicinal ingredients. Any compound, mixture, or preparation containing any of the following limited quantities of narcotic drugs, which shall include one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone:

(1) Not more than 200 milligrams of codeine per 100 milliliters or per 100 grams or not more than 10 milligrams per dosage unit.

(2) Nor more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams or not more than 5 milligrams per dosage unit.

(3) Not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams or not more than 5 milligrams per dosage unit.

(4) Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit.

(5) Not more than 100 milligrams of opium per 100 milliliters or per 100 grams or not more than 5 milligrams per dosage unit.

Excluded Nonnarcotic Substances

§ 308.21 Application for exclusion of a nonnarcotic substance.

(a) Any person seeking to have any nonnarcotic substance which may, under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301), be lawfully sold over the counter without a prescription, excluded from any schedule, pursuant to section 201(g)(1) of the Act (21 U.S.C. 811(g)(1)), may apply to the Director, Bureau of Narcotics and Dangerous Drugs, Department of Justice, Washington, D.C. 20537.

(b) An application for an exclusion under this section shall be handled by the Director, in determining whether the substance shall be excluded, in the manner prescribed for petitions to classify a substance on a schedule set forth in §§ 316.48–316.78 of this chapter.

§ 308.22 Excluded substances.

The following nonnarcotic substances which may, under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301), be lawfully sold over the counter without a prescription, are excluded from all schedules pursuant to section 201(g)(1) of the Act (21 U.S.C. 811(g)(1)):

Trade name or other designation	Composition	Manufacturer or supplier
Amodrine	Tablet: Phenobarbital, 8 mg.; aminophylline, 100 mg.; racephedrine hydrochloride, 25 mg.	G. D. Searle & Co.
Bronkaid	Tablet: Phenobarbital, 8 mg.; ephedrine sulfate, 24 mg.; glyceryl guaiacolate, 100 mg.; theophylline, 100 mg.; thenyldiamine, 10 mg.	Drew Pharmacal Co., Inc.
Bronkotab Elixir	Elixir (5 cc): Phenobarbital, 4 mg.; ephedrine sulfate, 12 mg.; glyceryl guaiacolate, 50 mg.; theophylline, 15 mg.; chlorpheniramine maleate, 1 mg.	Breon Laboratories Inc.
Bronkotabs	Tablet: Phenobarbital, 8 mg.; ephedrine sulfate, 24 mg.; glyceryl guaiacolate, 100 mg.; theophylline, 100 mg.; thenyldiamine, 10 mg.	Do.
Primatene	Tablet: Phenobarbital, ¼ gr.; ephedrine, ⅜ gr.	Whitehall Laboratories.
Tedral	Tablet: Phenobarbital, 8 mg.; theophylline, 130 mg.; ephedrine hydrochloride, 24 mg.	Warner-Chilcott Laboratories.
Tedral Anti-H	Tablet: Phenobarbital, 8 mg.; chlorpheniramine maleate, 2 mg.; theophylline, 130 mg.; ephedrine hydrochloride, 24 mg.	Do.
Tedral one-half strength	Tablet: Phenobarbital, 4 mg.; theophylline, 65 mg.; ephedrine hydrochloride, 12 mg.	Do.
Tedral Pediatric Suspension	Suspension (5 cc): Phenobarbital, 4 mg.; ephedrine hydrochloride, 12 mg.; theophylline, 65 mg.	Do.
Tedral suppositories double strength.	Suppository: Phenobarbital, 16 mg.; theophylline, 260 mg.; ephedrine hydrochloride, 48 mg.	Do.
Tedral suppositories regular strength.	Suppository: Phenobarbital, 8 mg.; theophylline, 130 mg.; ephedrine hydrochloride, 24 mg.	Do.
Verequad	Tablet: Phenobarbital, 8 mg.; theophylline calcium salicylate, 130 mg.; ephedrine hydrochloride, 24 mg.; glyceryl guaiacolate, 100 mg.	Knoll Pharmaceutical Co.
Verequad	Suspension (5 cc): Phenobarbital, 4 mg.; theophylline calcium salicylate, 65 mg.; ephedrine hydrochloride, 12 mg.; glyceryl guaiacolate, 50 mg.	Do.

Excepted Stimulant or Depressant Compounds

§ 308.31 Application for exception of a stimulant or depressant compound.

(a) Any person seeking to have any compound, mixture, or preparation containing any depressant or stimulant substance listed in § 308.13 (b) or (c), or in § 308.14, or in § 308.15, excepted from the application of all or any part of the Act, pursuant to section 202(d) of the Act, may apply to the Director, Bureau of Narcotics and Dangerous Drugs, Department of Justice, Washington, D.C. 20537, for such exception.

(b) An application for an exception under this section shall contain the following information:

(1) The complete quantitative composition of the dosage form.

(2) Description of the unit dosage form together with complete labeling.

(3) A summary of the pharmacology of the product including animal investigations and clinical evaluations and studies, with emphasis on the psychic and/or physiological dependence liability (this must be done for each of the active ingredients separately and for the combination product).

(4) Details of synergisms and antagonisms among ingredients.

(5) Deterrent effects of the noncontrolled ingredients.

(6) Complete copies of all literature in support of claims.

(7) Reported instances of abuse.

(8) Reported and anticipated adverse effects.

(9) Number of dosage units produced for the past 2 years.

(c) An application for an exception under this section shall be handled in the manner prescribed for petitions to classify a substance on any schedule set forth in §§ 316.48–316.78 of this chapter.

§ 308.32 Excepted compounds.

(a) Until criteria are adopted by the Bureau by which the Director may determine whether to except any compound, mixture, or preparation containing any depressant or stimulant substance listed in § 308.13 (b) or (c), or in § 308.14, or in § 308.15, from the application of all or any part of the Act pursuant to section 202(d) of the Act (21 U.S.C. 812(d)), the drugs set forth in paragraph (b) of this section have been excepted by the Director from application of the sections 305, 307, 308, and 309 of the Act (21 U.S.C. 825, 827–9)

for administrative purposes only. The excepting of these drugs by the Director should not be construed as an adoption or rejection of the criteria by which these drugs were originally excepted. Any deviation from the quantitative composition of any of the listed drugs shall require a petition for exception in order for that drug to be excepted.

(b) The following drugs in dosage unit form, and any other drug of the quantitative composition shown below for one of the following drugs or which is the same except that it contains a lesser quantity of controlled substances, and which are restricted by law to dispensing on prescription, are excepted from the requirements of the Act:

Trade name or other designation	Composition	Manufacturer or supplier
A.E.A	Tablet: Amobarbital, 25 mg.; aminophylline, 120 mg.; ephedrine hydrochloride, 25 mg.	Haack Laboratories, Inc.
Alased	Tablet: Phenobarbital, 16.2 mg.; homatropine methylbromide, 3.6 mg.; aluminum hydroxide gel, dried, 7½ gr.; magnesium trisilicate, 2½ gr.	Norgine Laboratories, Inc.
Alcitex	Tablet: Phenobarbital, ⅛ gr.; atropine sulfate, 1/5000 gr.; calcium carbonate, 3½ gr.; magnesium carbonate, 2½ gr.; cerium oxalate, ½ gr.	Paul B. Elder Co., Inc.
Algoson	Tablet: Butabarbital sodium, 7.5 mg.; acetaminophen, 300 mg.	McNeil Laboratories Inc.
Alhydrox	Tablet: Phenobarbital, ⅛ gr.; aluminum hydroxide, 5 gr.; atropine sulfate, 1/400 gr.	Physicians Supply.
Alkasans	Tablet: Phenobarbital, 8.0 mg.; atropine sulfate, 0.06 mg.; kaolin-alumina gel, 500 mg.	P. J. Noyes Co.
Alsical	Powder (60 gr.): Phenobarbital, ¼ gr.; belladonna extract, ⅛ gr.; calcium carbonate, 24 gr.; magnesium trisilicate, 15 gr.; magnesium oxide, 10 gr.; aluminum hydroxide gel, dried, 10 gr.	Dorsey Laboratories.
Alubelap	Tablet: Phenobarbital, 8 mg.; aluminum hydroxide gel, dried, 300 mg.; belladonna extract, 4 mg.	Haack Laboratories, Inc.
Aludrox SA Suspension	Suspension (5 cc.): Butabarbital, 8 mg.; ambutonium bromide, 2.5 mg.	Wyeth Laboratories.
Aludrox SA Tablets	Tablet: Butabarbital, 8 mg.; ambutonium bromide, 2.5 mg.	Do.
Alu-Mag	Tablet: Phenobarbital, ⅛ gr.; aluminum hydroxide gel, dried, 2½ gr.; magnesium trisilicate, 2½ gr.; belladonna leaf extract, ⅛ gr.	Norsal Laboratories, Inc.
Alumazen	Tablet: Phenobarbital, 8 mg.; atropine sulfate, 0.06 mg.; magnesium trisilicate, 500 mg.; aluminum hydroxide gel, dried, 250 mg.; saccharin sodium, 0.12 mg.	The Zemmer Co.
Aluminum hydroxide, magnesium trisilicate, and kaolin with phenobarbital and atropine sulfate.	Tablet: Phenobarbital, ⅛ gr.; aluminum hydroxide, 2 gr.; magnesium trisilicate, 4 gr.; kaolin, colloidal, 2 gr.; atropine sulfate, 1/300 gr.	Buffalo Pharmaceutical Supply Corp.
Aminodrox with Phenobarbital.	Tablet: Phenobarbital, 15 mg.; aminophylline, 0.1 gm.; aluminum hydroxide gel, dried, 0.12 gm.	The S. E. Massengill Co.
Aminodrox-Forte with Phenobarbital.	Tablet: Phenobarbital, 15 mg.; aminophylline, 200 mg.; aluminum hydroxide gel, dried, 250 mg.	Do.
Aminophylline and Amytal	Capsule: Amobarbital, 32 mg.; aminophylline, 0.1 gm.	Eli Lilly Co.
Aminophylline with pentobarbital.	Suppository: Pentobarbital sodium, 100 mg.; aminophylline, 500 mg.	G. D. Searle & Co.
Aminophylline and phenobarbital.	Tablet: Phenobarbital, 15 mg.; aminophylline, 100 mg.	The Zemmer Co.
Do	Tablet: Phenobarbital, ¼ gr.; aminophylline, 100 mg.	The Blue Line Chemical Co.
Aminophylline with phenobarbital.	Tablet: Phenobarbital, 16 mg.; aminophylline, 100 mg.	H. E. Dubin Laboratories, Inc.
Do	Tablet: Phenobarbital, 15 mg.; aminophylline, 100 mg.	G. D. Searle & Co.
Do	Tablet: Phenobarbital, 15 mg.; aminophylline, 200 mg.	Do.
Aminophylline with phenobarbital.	Tablet: Phenobarbital, 30 mg.; aminophylline, 200 mg.	Do.
Amobarbital and PETN	Capsule: Amobarbital, 50 mg.; pentaerythritol tetranitrate, 30 mg.	Meyer Laboratories, Inc.
Ampyrox with Butabarbital Sodium (AMPYROX).	Tablet: Butabarbital sodium, 15 mg.; scopolamine methylnitrate, 2 mg.	Paul B. Elder Co., Inc.
Ampyrox with Butabarbital Sodium, Elixir.	Elixir (5 cc.): Butabarbital sodium, 10 mg.; scopolamine methylnitrate, 1 mg.	Do.
Amsed (NAP-37)	Tablet: Phenobarbital, ¼ gr.; hyoscine hydrobromide, 0.0072 mg.; atropine sulfate, 0.024 mg.; hyoscyamine hydrobromide, 0.128 mg.	North American Pharmacal, Inc.
Amsodyne	Tablet: Phenobarbital, ¼ gr.; extract belladonna leaves, ⅛ gr.; aspirin, 5 gr.; caffeine, ¼ gr.	Paul B. Elder Co., Inc.
Antacia No. 3 with Phenobarbital and Atropine.	Tablet: Phenobarbital, ⅛ gr.; atropine sulfate, 1/500 gr.; calcium carbonate, 5 gr.; magnesium hydroxide, 5 gr.	Meyers and Co.
Antispasmodic	Tablet (purple): Phenobarbital, 16.2 mg.; hyoscyamine sulfate, 0.1037 mg.; homatropine methylbromide, 0.567 mg.; hyoscine hydrobromide, 0.0065 mg.	Hydrex Co., Inc.
Antispasmodic-Enzyme	Tablet: Phenobarbital, 8.1 mg.; hyoscyamine sulfate, 0.0519 mg.; homatropine methylbromide, 0.2885 mg.; hyoscine hydrobromide, 0.0033 mg.; pancreatin, 100 mg.; pepsin, 150 mg.	Do.
Antrocol	Tablet or capsule: Phenobarbital, 16 mg.; atropine sulfate, 0.324 mg.; colloidal sulfur, 22 mg.	Wm. P. Poythress & Co., Inc.
Aqualin-Plus, Children	Suppository: Pentobarbital sodium, 3/8 gr.; theophylline, 1⅞ gr.	The Wm. A. Webster Co.
Aqualin-Plus No. 1	Suppository: Pentobarbital sodium, ¾ gr.; theophylline, 3¾ gr.	Do.
Aqualin-Plus No. 2	Suppository: Pentobarbital sodium, 1½ gr.; theophylline, 7½ gr.	Do.
Aqualin-Plus No. 2A	Suppository: Pentobarbital sodium, ¾ gr.; theophylline, 7½ gr.	Do.
Asmabar	Tablet: Butabarbital, 20 mg.; ephedrine sulfate, 25 mg.; theophylline hydroxide, 130 mg.	The Blue Line Chemical Co.
Asmacol	Tablet: Butabarbital, 15 mg.; aminophylline, 180 mg.; phenylpropanolamine hydrochloride, 25 mg.; chlorpheniramine maleate, 2 mg.; aluminum hydroxide gel, dried, 60 mg.; magnesium trisilicate, 60 mg.	The Vale Chemical Co., Inc.
Asperease, Modified with Phenobarbital.	Tablet: Phenobarbital, 0.008 gm.; acetylsalicyclic acid, 0.5 gm.	P. J. Noyes Co.
Atropal	Tablet: Phenobarbital, ⅛ gr.; atropine sulfate, 1/500 gr.; magnesium trisilicate, 2½ gr.; aluminum hydroxide gel, dried, 2½ gr.	Neisler Laboratories, Inc.
Atrosilital	Tablet: Phenobarbital, 15 mg.; atropine sulfate, 0.12 mg.; magnesium trisilicate, 0.5 gm.; saccharin sodium, 0.12 mg.	The Zemmer Co.
Banthine with Phenobarbital	Tablet: Phenobarbital, 15 mg.; methantheline bromide, 50 mg.	G. D. Searle & Co.
Barbatro No. 1	Tablet: Phenobarbital, 15 mg.; atropine sulfate, 0.12 mg.	The S. E. Massengill Co.
Barbatro No. 2	Tablet: Phenobarbital, 15 mg.; atropine sulfate, 0.25 mg.	Do.
Barbeloid	Tablet: Amobarbital sodium, 20 mg.; hyoscyamine sulfate, 0.125 mg.; hyoscine hydrobromide, 0.007 mg.; homatropine methylbromide, 0.5 mg.	The Vale Chemical Co., Inc.
Barbidonna Elixir	Elixir (5 cc.): Phenobarbital, 16 mg.; hyoscyamine sulfate, 0.1286 mg.; atropine sulfate, 0.0250 mg.; scopolamine hydrobromide, 0.0074 mg.	Mallinckrodt Pharmaceuticals, Division of Mallinckrodt Chemical Works.
Barbidonna Tablets	Tablet: Phenobarbital, 16 mg.; hyoscyamine sulfate, 0.1286 mg.; atropine sulfate, 0.0250 mg.; scopolamine hydrobromide, 0.0074 mg.	Do.
Barboma Elixir	Elixir (100 cc.): Phenobarbital, 0.4 gm.; homatropine methylbromide, 33.8 mg.	The Blue Line Chemical Co.
Barboma Tablets	Tablet: Phenobarbital, ¼ gr.; homatropine methylbromide, 1/4s gr.	Do.
Bardase	Tablet or elixir (4 cc.): Phenobarbital, 16.2 mg.; hyoscyamine sulfate, 0.1 mg.; hyoscine hydrobromide, 0.007 mg.; atropine, 0.020 mg.; Taka-Diastase, 162.0 mg.	Parke, Davis & Co.
Bar-Don Elixir	Elixir (30 cc.): Phenobarbital, 100 mg.; hyoscyamine hydrobromide, 0.60 mg.; hyoscine hydrobromide, 0.042 mg.; atropine sulfate, 0.12 mg.	Warren-Teed Pharamaceuticals Inc.
Bar-Don Tablets	Tablet: Phenobarbital, 16.670 mg.; hyoscyamine hydrobromide, 0.10 mg.; hyoscine hydrobromide, 0.007 mg.; atropine sulfate, 0.020 mg.	Do.
Belap No. 0	Tablet: Phenobarbital, 8 mg.; belladonna extract, 8 mg.	Haack Laboratories, Inc.
Belap No. 1	Tablet: Phenobarbital, 15 mg.; belladonna extract, 8 mg.	Do.
Belap Ty-Med	Tablet: Amobarbital, 50 mg.; homatropine methylbromide, 7.5 mg.	Do.
Belladenal	Tablet: Phenobarbital, 50 mg.; bellafoline, 0.25 mg.	Sandoz Pharmaceuticals.
Do	Elixir (15 cc.): Phenobarbital, 15.6 mg.; bellafoline, 0.078 mg.	Do.
Bellatol Elixir	Elixir (5 cc.): Butabarbital sodium, 20 mg.; tincture belladonna, 0.83 cc.	The Zemmer Co.

Trade name or other designation	Composition	Manufacturer or supplier
Bellergal	Tablet: Phenobarbital, 20 mg.; ergotamine tartrate, 0.3 mg.; levorotatory alkaloids of belladonna, 0.1 mg.	Sandoz Pharmaceuticals.
Do	Tablet: Phenobarbital, 40 mg.; ergotamine tartrate, 0.6 mg.; levorotatory alkaloids of belladonna, 0.2 mg.	Do.
Beplete with Belladonna Elixir.	Elixir (4 cc.): Phenobarbital, 15 mg.; vitamin B_1, 1.5 mg.; vitamin B_2, 1 mg.; vitamin B_6, 0.33 mg.; vitamin B_{12}, 1.66 mg.; niacinamide, 10 mg.; pantothenol, 0.2 mg.; belladonna alkaloids, 0.2 mg.	Wyeth Laboratories.
Bexadonna	Tablet: Phenobarbital, 16 mg.; homatropine methylbromide, 10 mg.; hyoscine hydrobromide, 0.0065 mg.; hyoscyamine sulfate, 0.1 mg.	Bexar Pharmaceuticals.
Bilamide	Tablet: Phenobarbital, 1/8 gr.; dried ox bile, 2 gr.; dehydrocholic acid, 2 gr.; homatropine methylbromide, 1/48 gr.	Norgine Laboratories, Inc.
Binitrin	Tablet: Butabarbital sodium, 15.0 mg.; nitroglycerin, 0.3 mg.; pentaerythritol tetranitrate, 10.0 mg.	The Vale Chemical Co., Inc.
Bioxatphen	Tablet: Phenobarbital, 8 mg.; atropine sulfate, 0.06 mg.; bismuth subnitrate, 120 mg.; cerium oxalate, 120 mg.	The Zemmer Co.
Bismuth, belladonna, and phenobarbital.	Capsule: Phenobarbital, 1/4 gr.; bismuth subgallate, 5 gr.; extract belladonna leaf, 1/6 gr.	The Bernard Co.
Buffadyne A–S	Tablet: Amobarbital, 15 mg.; aspirin, 300 mg.; phenacetin, 150 mg.; caffeine, 30 mg.; homatropine methylbromide, 2.5 mg.; aluminum hydroxide gel, 75 mg.; magnesium hydroxide, 45 mg.	Lemmon Pharmacal Co.
Buffadyne with Barbiturates	Tablet: Secobarbital sodium, 8 mg.; amobarbital, 8 mg.; aspirin, 300 mg.; phenacetin, 150 mg.; caffeine, 30 mg.; aluminum hydroxide gel, 75 mg.; magnesium hydroxide, 45 mg.	Do.
Bunesia	Tablet: Butabarbital sodium, 10 mg.; homatropine methylbromide, 2.5 mg.; magnesium hydroxide, 300 mg.	McNeil Laboratories, Inc.
Buren	Tablet: Butabarbital, 15 mg.; phenazopyridine hydrochloride, 150 mg.; scopolamine hydrobromide, 0.0065 mg.; atropine sulfate, 0.0194 mg.; hyoscyamine sulfate, 0.1037 mg.	B. F. Ascher & Co., Inc.
Burrizem	Tablet: Butabarbital sodium, 10 mg.; reserpine, 0.1 mg.; rutin, 20 mg.; mannitol hexanitrate, 30 mg.	The Zemmer Co.
Butabarbital and hyoscyamine sulfate.	Tablet or elixir (5 cc.): Butabarbital, 15 mg.; hyoscyamine sulfate, 0.125 mg.	Meyer Laboratories, Inc.
Do	Capsule: Butabarbital, 45 mg.; hyoscyamine sulfate, 0.375 mg.	Do.
Butibel	Tablet or elixir (5 cc.): Butabarbital sodium, 15 mg.; belladonna extract, 15 mg. (hyoscyamine sulfate, 0.138 mg.; hyoscine hydrobromide, 0.027 mg.; atropine sulfate, 0.067 mg.).	Do.
Butibel R–A	Tablet: Butabarbital sodium, 30 mg.; belladonna extract, 30 mg.	Do.
Butibel-Gel Suspension	Suspension (15 cc.): Butabarbital sodium, 7.5 mg.; belladonna extract, 7.5 mg. (total alkaloids 0.187 mg.); activated attapulgite, 1.5 mg.; pectin, 75 mg.	Do.
Butibel-Gel Tablets	Tablet: Butabarbital sodium, 7.5 mg.; belladonna extract, 7.5 mg. (total alkaloids 0.0935 mg.); activated attapulgite, 500 mg.; pectin, 45 mg.	Do.
Butibel-Zyme	Tablet: Butabarbital sodium, 15 mg.; belladonna extract, 15 mg. (total alkaloids 0.187 mg.); proteolytic enzyme standardized, 10 mg.; amylolytic enzyme standardized, 20 mg.; cellulolytic emzyme standardized, 5 mg.; lipolytic enzyme standardized, 100 mg.; iron ox bile (45% cholic acid), 30 mg.	Do.
Butizetic	Tablet: Butabarbital sodium, 15 mg.; acetaminophen, 200 mg.; phenacetin, 150 mg.; caffeine, 30 mg.	Do.
Cafergot P–B	Tablet: Phenobarbital sodium, 30 mg.; ergotamine tartrate, 1 mg.; caffeine, 100 mg.; levorotatory alkaloids of belladonna, 0.125 mg.	Sandoz Pharmaceuticals.
Do	Suppository: Pentobarbital, 60 mg.; ergotamine tartrate, 2 mg.; caffeine, 100 mg.; levorotatory alkaloids of belladonna, 0.25 mg.	Do.
Cal-Ma-Phen	Tablet: Phenobarbital, 1/4 gr.; calcium-carbonate, 5 gr.; magnesium hydroxide, 5 gr.; atropine sulfate, 1/300 gr.	Physicians Supply Co.
Cantil with Phenobarbital	Tablet: Phenobarbital, 16 mg.; mepenzolate bromide, 25 mg.	Lakeside Laboratories, Inc.
Carbonates No. 3 with Phenobarbital and Atropine.	Tablet: Phenobarbital, 8 mg.; atropine sulfate, 0.11 mg.; calcium carbonate, 224 mg.; magnesium carbonate, 160 mg.; bismuth subcarbonate, 32 mg.	P. J. Noyes Co.
Cardalin-Phen	Tablet: Phenobarbital, 1/4 gr.; aminophylline, 5 gr.; aluminum hydroxide gel, dried, 2 1/2 gr.; benzocaine, 1/2 gr.	Neisler Laboratories, Inc.
Cardilate-P	Tablet: Phenobarbital, 15 mg.; erythrityl tetranitrate, 10 mg.	Burroughs Wellcome & Co. (U.S.A.) Inc.
Cholarace	Tablet: Pentobarbital, 27.5 mg.; oxtriphylline, 200 mg.; racephedrine, 20 mg.	Warner-Chilcott Laboratories.
Co-Elorine 25	Capsule: Amobarbital, 8 mg.; tricyclamol chloride, 25 mg.	Eli Lilly and Co.
Co-Elorine 100	Capsule: Amobarbital, 16 mg.; tricyclamol chloride, 100 mg.	Do.
Cold Preparation, Special	Tablet: Phenobarbital, 8.1 mg.; chlorpheniramine maleate, 2 mg.; pseudoephedrine hydrochloride, 60 mg.; salicylamide, powder, 300 mg.	Knight Pharmacal Co.
Corenil	Tablet: Racemic methamphetamine hydro chloride, 1.25 mg.; clistin (carbinoxamine maleate), 2 mg.; belladonna extract, 8 mg.	McNeil Laboratories, Inc.
Covadil	Tablet: Butabarbital sodium, 20 mg.; pentaerythritol tetranitrate, 15 mg.	The Blue Line Chemical Co.
Dactil with Phenobarbital	Tablet: Phenobarbital, 16 mg.; piperidolate hydrochloride, 50 mg.	Lakeside Laboratories, Inc.
Dainite	Tablet: Pentobarbital sodium, 1/4 gr. aminophylline, 3 gr.; ephedrine hydrochloride, 1/4 gr.; aluminum hydroxide gel, dried, 2 1/2 gr.; benzocaine, 1/4 gr.	Neisler Laboratories, Inc.
Dainite-KI	Tablet: Phenobarbital, 1/4 gr.; aminophylline, 3 gr.; ephedrine hydrochloride, 1/4 gr.; potassium iodide, 5 gr.; aluminum hydroxide gel, dried, 2 1/2 gr.; benzocaine, 1/4 gr.	Do.
Dainite Night	Tablet: Phenobarbital, 3/4 gr.; pentobarbital sodium, 1/2 gr.; aminophylline, 4 gr.; aluminum hydroxide gel, dried, 2 1/2 gr.; benzocaine, 1/4 gr.	Do.
Dainite Pediatric	Tablet: Phenobarbital, 1/8 gr.; aminophylline, 1 gr.; ephedrine hydrochloride, 1/12 gr.; aluminum hydroxide gel, dried, 1/2 gr.; benzocaine, 1/8 gr.	Do.
Daricon PB	Tablet: Phenobarbital, 15 mg.; oxyphencyclimine hydrochloride, 5 mg.	Pfizer Laboratories.
Diatraegus	Tablet: Diallylbarbituric acid, 1/4 gr.; nitroglycerin, 1/250 gr.; sodium nitrite, 1 gr.; tincture crataegus, 2 minims.	Buffington's, Inc.
Dia-Tropine	Tablet: Diallylbarbituric acid, 1/4 gr.; atropine sulfate, 1/300 gr.; magnesium carbonate, 2 1/2 gr.; calcium carbonate, 3 1/2 gr.; bismuth subcarbonate, 1 gr.	Do.
Dilantin with Phenobarbital	Capsule: Phenobarbital, 1/4 gr.; diphenylhydantoin sodium, 0.1 gm.	Parke, Davis & Co.
Do	Capsule: Phenobarbital, 1/2 gr.; diphenylhydantoin sodium, 0.1 gm.	Do.
Dolonil	Tablet: Butabarbital, 15 mg.; phenazopyridine hydrochloride, 150 mg.; hyoscyamine hydrobromide, 0.3 mg.	Warner-Chilcott Laboratories.
Donabarb	Tablet: Phenobarbital, 1/4 gr.; powder extract belladonna, 1/6 gr.	Paul B. Elder Co., Inc.
Donaphen, New Special Donaphen.	Tablet: Phenobarbital, 15 mg.; atropine sulfate, 0.024 mg.; scopolamine hydrobromide, 0.0072 mg.; hyoscyamine hydrobromide, 0.128 mg.	Burt Krone Co.
Donna-Sed Elixir	Elixir (5 cc.): Phenobarbital, 16.2 mg.; hyoscyamine hydrobromide, 0.1037 mg.; atropine sulfate, 0.0194 mg.; hyscine hydrobromide, 0.0065 mg.	North American Pharmacal, Inc.
Donnasep	Tablet: Phenobarbital, 8.1 mg.; phenazopyridine hydrochloride, 50.0 mg., methenamine mandelate, 500 mg.; hyoscyamine sulfate, 0.0519 mg.; atropine sulfate, 0.0097 mg.; hyoscine hydrobromide, 0.0033 mg.	A. H. Robins Co., Inc.
Donphen	Tablet: Phenobarbital, 15 mg.; hyoscyamine sulfate, 0.1 mg.; atropine sulfate, 0.02 mg.; scopolamine hydrobromide, 6 μg.	Lemmon Pharmacal Co.
Dormitol-HM	Tablet: Phenobarbital, 1/4 gr.; homatropine methylbromide, 1/54 gr.; strontium bromide, 1 gr.	Buffington's Inc.
Dynapin with Phenobarbital	Tablet: Phenobarbital, 15 mg.; nitroglycerin, 0.5 mg.; pentaerythritol tetranitrate, 15 mg.	Key Pharmacal Co.
Edrisal	Tablet: Dextroamphetamine sulfate, 2.5 mg.; aspirin, 0.16 gm.; phenacetin 0.16 gm.	Smith Kline & French Laboratories.
Elmaloin with Phenobarbital	Capsule: Phenobarbital, 15 mg.; diphenylhydantoin, 1 1/2 gr.	Paul B. Elder Co., Inc.
Ephedrine and sodium phenobarbital.	Tablet: Sodium phenobarbital, 1/4 gr.; ephedrine sulfate, 3/8 gr.	The Vale Chemical Co., Inc.

Trade name or other designation	Composition	Manufacturer or supplier
Ephedrine sulfate and phenobarbital.	Tablet: Phenobarbital, 15 mg.; ephedrine sulfate, 25 mg.	The Zemmer Co.
Ephedrine with Phenobarbital.	Tablet: Phenobarbital, ¼ gr.; ephedrine sulfate, ⅜ gr.	P. J. Noyes Co.
Ercafital	Tablet: Phenobarbital, 7.5 mg.; ergotamine tartrate, 0.5 mg.; caffeine, 50 mg.	The Blue Line Chemical Co.
Ethrava-trate	Tablet: Mephobarbital, 10 mg.; pentaerythrityl tetranitrate, 20 mg.; ethaverine hydrochloride, 30 mg.	North American Pharmacal, Inc.
Eu-Phed-Amin	Tablet: Phenobarbital, 30 mg.; aminophylline, 0.1 gm.; ephedrine sulfate, 30 mg.; extract euphorbia, 0.1 gm.	Warren-Teed Pharmaceuticals Inc.
Eu-Phed-Ital	Tablet: Phenobarbital sodium, 30 mg.; ephedrine sulfate, 30 mg.; extract euphorbia, 0.12 gm.	Do.
Fensobel	Tablet: Phenobarbital, 8.1 mg.; belladonna extract, 2.95 mg.; aluminum hydrochloride gel, dried, 63 mg.; magnesium trisilicate, 63 mg.; bismuth subcarbonate, 32.5 mg.; magnesium carbonate, 252 mg.; precipitated calcium carbonate, 203.5 mg.; malt diastase, 12.5 mg.; peppermint oil, 3 mg.	United States Vitamin & Pharmaceutical Corp.
Franol	Tablet: Phenobarbital, 8 mg.; theophylline, 130 mg.; benzylephedrine hydrochloride, 32 mg.	Winthrop Laboratories.
Genegesic Capsules	Capsule: Methamphetamine hydrochloride, 1.2 mg.; chlorpheniramine maleate, 3.8 mg.; phenacetin, 120.0 mg.; salicylamide, 180.0 mg.; caffeine, 30.0 mg.; ascorbic acid, 50.0 mg.	General Pharmaceutical Products, Inc.
Homechol	Tablet: Pentobarbital sodium, 8.0 mg.; homatropine methylbromide, 2.5 mg.; dehydrocholic acid, 60.0 mg.; ox bile extract, 150.0 mg.	Lemmon Pharmacal Co.
Homadonna	Tablet or elixir (5 cc.): Phenobarbital, 16 mg.; homatropine methylbromide, 2.5 mg.	Mallinckrodt Pharmaceuticals, Division of Mallinckrodt Chemical Works.
Homopent	Tablet: Pentobarbital sodium, 15 mg.; homatropine methylbromide, 2.5 mg.; magnesium trisilicate, 300 mg.	Lemmon Pharmacal Co.
Hovizyme	Tablet: Methamphetamine hydrochloride, 0.5 mg.; conjugated estrogen-equine, 0.125 mg.; methyl testosterone, 1.25 mg.; amylase, 10.0 mg.; protease, 5.0 mg.; cellulase, 2.0 mg.; nicotinyl alcohol tartrate, 7.5 mg.; dehydrocholic acid, 50.0 mg.; ascorbic acid, 50.0 mg.; ferrous fumarate, 6.0 mg.	Ayerst Laboratories.
H-P-A (Modified)	Tablet: Phenobarbital, ¼ gr.; aspirin, 5 gr.; extract hyoscyamus, ⅙ gr.	Paine Drug Co.
Hybephen	Tablet: Phenobarbital, 15 mg.; hyoscyamine sulfate, 0.1277 mg.; atropine sulfate, 0.0233 mg.; hyoscine hydrobromide, 0.0094 mg.	The S. E. Massengill Co.
Hybephen Elixir	Elixir (5 cc.): Phenobarbital, 15 mg.; hyoscyamine sulfate, 0.1277 mg.; atropine sulfate, 0.0233 mg.; hyoscine hydrobromide, 0.0094 mg.	Do.
Hydrochol Plus	Tablet: Amobarbital, 15 mg.; dehydrocholic acid, 200 mg.; scopolamine methylnitrate, 0.8 mg.; ox bile desiccated, 50 mg.	Paul B. Elder Co., Inc.
Hytrona Antispasmodic Elixir	Elixir (5 cc.): Phenobarbital, 16 mg.; belladonna alkaloids, 0.2 mg.	Pitman-Moore.
Hytrona Antispasmodic Tablets.	Tablet: Phenobarbital, 16 mg.; belladonna alkaloids, 0.2 mg.	Do.
Ilocalm	Tablet: Mephobarbital, 30 mg.; methscopolamine nitrate, 2.5 mg.; *d*-calcium pantothenate, 25 mg.	Warren-Teed Pharmaceuticals Inc.
Isordil with Phenobarbital	Tablet: Phenobarbital, 15 mg.; isosorbide dinitrate, 10 mg.	Ives Laboratories Inc.
Isufranol	Tablet: Phenobarbital, 8 mg.; theophylline, 130 mg.; benzylephedrine, 32 mg.; isoproterenol hydrochloride, 10 mg.	Winthrop Laboratories.
Isufranol, Mild	Tablet: Phenobarbital, 8 mg.; theophylline, 130 mg.; benzylephedrine, 32 mg.; isoproterenol hydrochloride, 5 mg.	Do.
Isuprel Compound Elixir	Elixir (15 cc.): Phenobarbital, 6 mg.; isoproterenol hydrochloride, 2.5 mg.; ephedrine sulfate, 12 mg.; theophylline, 45 mg.; potassium iodide, 150 mg.	Do.
Kaphebel	Tablet: Phenobarbital, ⅙ gr.; belladonna root, ¼ gr.; kaolin colloidal, 7½ gr.	Paul B. Elder Co., Inc.
Kanumodic	Tablet: Pentobarbital, 8 mg.; methscopolamine nitrate, 2 mg.; cellulase, 9 mg.; pancrestin, 500 mg.; glutamic acid hydrochloride, 200 mg.; ox bile extract, 100 mg.; pepsin, 150 mg.	Dorsey Laboratories.
Kavatrate	Tablet: Phenobarbital sodium, ¼ gr.; veratrum veride, ¼ gr.; mistletoe, ½ gr.; hawthorn tincture, 30 minims; sodium nitrite, 1 gr.	Key Pharmacal Co.
Kie with Phenobarbital	Tablet: Phenobarbital, 16 mg.; potassium iodide, 400 mg.; ephedrine sulfate, 24 mg.	Laser Inc.
Kiophyllin	Tablet: Phenobarbital, 15 mg.; aminophyllin, 150 mg.; potassium iodide, 125 mg.	G. D. Searle & Co.
Luftodil Suspension	Suspension (5 cc.): Phenobarbital, 8 mg.; theophylline, 50 mg.; ephedrine hydrochloride, 12 mg.; glyceryl guaiacolate, 100 mg.	Mallinckrodt Pharmaceuticals, Division of Mallinckrodt Chemical Works.
Luftodil Tablets	Tablet: Phenobarbital, 16 mg.; theophylline, 100 mg.; ephedrine hydrochloride, 24 mg.; glyceryl guaiacolate, 200 mg.	Do.
Lufyllin-EP	Tablet: Phenobarbital, 16 mg.; lufyllin (dyphylline), 100 mg.; ephedrine hydrochloride; 16 mg.	Do.
Magnesium hydroxide-phenobarbital compound.	Tablet: Phenobarbital sodium, 15 mg.; magnesium hydroxide, 300 mg.; atropine sulfate with aromatics, 0.12 mg.	McNeil Laboratories, Inc.
Malglyn Compound	Tablet or suspension (5 cc.): Phenobarbital, 16.2 mg.; belladonna alkaloids, 0.162 mg.; dihydroxy aluminum aminoacetate, 0.5 gm.	Brayten Pharmaceutical Co.
Manniphen	Tablet: Phenobarbital, 16 mg.; mannitol hexanitrate, 32 mg.	The Vale Chemical Co., Inc.
Manniphen with Rutin	Tablet: Phenobarbital, 16 mg.; mannitol hexanitrate, 32 mg.; rutin, 20 mg.	Do.
Mannitol hexanitrate with phenobarbital.	Tablet: Phenobarbital, ¼ gr.; mannitol hexanitrate, ½ gr.	P. J. Noyes Co.
Do	Tablet: Phenobarbital, ¼ gr.; mannitol hexanitrate, ½ gr.	The Blue Line Chemical Co.
Maxitol	Tablet: Phenobarbital, 15 mg.; mannitol hexanitrate, 15 mg.; rutin, 15 mg.; ascorbic acid, 15 mg.	Burt Krone Co.
Mediatric	Tablet or capsule: Methamphetamine hydrochloride, 1 mg.; conjugated estrogens-equine, 0.25 mg.; methyltestosterone, 2.5. mg.	Ayerst Laboratories.
Mediatric Liquid	Solution (15 cc.): Methamphetamine hydrochloride, 1 mg.; conjugated estrogens-equine, 0.25 mg.; methyltestosterone, 2.5. mg.	Do.
Meprane Phenobarbital	Tablet: Phenobarbital, 16 mg.; promethestrol dipropionate, 1 mg.	Reed & Carnrick.
Mesopin-PB	Tablet or elixir (5 cc.): Phenobarbital, 15 mg.; homatropine methylbromide, 5 mg.	Endo Laboratories Inc.
Metamine with Butabarbital	Tablet: Butabarbital, 16.2 mg.; trolnitrate phosphate, 2 mg.	Pfizer Laboratories.
Do	Tablet: Butabarbital, 48.6 mg.; trolnitrate phosphate, 10 mg.	Do.
Mexal	Tablet: Phenobarbital, 16 mg.; mannitol hexanitrate, 32 mg.	The S. E. Massengill Co.
Milprem-200	Tablet: Meprobamate 200 mg. Conjugated Estrogens—equine 0.4 mg.	Wallace Pharmaceuticals.
Milprem-400	Tablet: Meprobamate 400 mg. Conjugated Estrogens—equine 0.4.	Do.
Milpath-200	Tablet: Meprobamate 200 mg. Tridihexethyl Chloride, 25 mg.	Do.
Milpath-400	Tablet: Meprobamate 400 mg. Tridihexethyl Chloride, 25 mg.	Do.
Miltrate-10	Tablet: Meprobamate 200 mg. Pentaerythritol tetranitrate, 10 mg.	Do.
Miltrate-20	Tablet: Meprobamate 200 mg. Pentaerythritol tetranitrate, 20 mg.	Do.
Monomeb	Tablet: Mephobarbital, 32 mg.; penthienate bromide, 5 mg.	Winthrop Laboratories.
Mudrane	Tablet: Phenobarbital, 21 mg.; potassium iodide, 195 mg.; aminophylline, 130 mg.; ephedrine hydrochloride, 16 mg.	Wm. P. Poythress & Co., Inc.
Mudrane GG Elixir	Elixir (5 cc.): Phenobarbital, 5.4 mg.: theophylline 20 mg.; ephedrine hydrochloride, 4 mg.; glyceryl guaiacolate, 26 mg.	Do
Nactisol	Tablet: Butabarbital sodium, 15 mg.; poldine methylsulfate, 4 mg.	McNeil Laboratories, Inc.
Natrona Compound	Tablet: Phenobarbital, 15 mg.; extract hawthorn berries, 30 mg.; extract mistletoe, 15 mg.; sodium nitrite, 60 mg.; sodium bicarbonate, 0.2 gm.	The Zemmer Co.
Neocholan	Tablet: Phenobarbital, 8 mg.; dehydrocholic acid, 250 mg.; bile extract, 15 mg., homatropine methylbromide, 1.2 mg.	Pitman-Moore.
Nergestic	Tablet: Phenobarbital, 8 mg.; atropine sulfate, 0.10 mg.; magnesium trisilicate, 0.5 gm.	The S. E. Massengill Co.
Nitrased	Tablet: Secobarbital, 15 mg.; nitroglycerin, 0.4 mg.; pentaerythrityl tetranitrate, 15 mg.	Lemmon Pharmacal Co.
Nophesan Tablets	Tablet: Phenobarbital, 8 mg.; acetylsalicylic acid, 300 mg.	P. J. Noyes Co.

Trade name or other designation	Composition	Manufacturer or supplier
Novalene	Tablet: Phenobarbital, 16 mg.; ephedrine sulfate, 24 mg.; potassium iodide, 162 mg; calcium lactate, 162 mg.	Lemmon Pharmacal Co.
Oxsorbil-PB	Capsule: Phenobarbital, 7.5 mg.; belladonna extract, 7.5 mg.; dehydrocholoic acid, 32 mg.; desoxycholic acid, 32 mg.; ox bile extract, 65 mg.; sorbitan monooleate, 160 mg.; oleic acid, 180 mg.	Ives Laboratories, Inc.
Paminal Elixir	Elixir (5 cc.): Phenobarbital, 8 mg.; methscopolamine bromide, 1.25 mg.	The Upjohn Co.
Pamine PB Elixir	Elixir (5 cc.): Phenobarbital, 8 mg.; methscopolamine bromide, 1.25 mg.	Do.
Pamine PB, Half Strength	Tablet: Phenobarbital, 8 mg.; methscopolamine bromide, 1.25 mg.	Do.
Pediatric Piptal Antipyretic	Solution (0.6 cc.): Phenobarbital, 3 mg.; pipenzolate bromide, 5 mg.; acetaminophen, 60 mg.	Lakeside Laboratories, Inc.
Pediatric Piptal with Phenobarbital.	Solution (0.5 cc.): Phenobarbital, 3 mg.; pipenzolate bromide, 2 mg.	Do.
Pencetylon	Tablet: Phenobarbital, ¼ gr.; acetylsalicylic acid, 5 gr.	Paul B. Elder Co., Inc.
Pentaerythrityl tetranitrate with phenobarbital.	Tablet: Phenobarbital, 16 mg.; pentaerythrityl tetranitrate, 10 mg.	P. J. Noyes Co.
Do	Tablet: Phenobarbital, 16 mg.; pentaerythrityl tetranitrate, 20 mg.	Do.
Pentratrol with Phenobarbital	Tablet: Phenobarbital, 15 mg.; pentaerythrityl tetranitrate, 10 mg.	North American Pharmacal Co.
Pentraline	Tablet: Butabarbital sodium, 10 mg.; reserpine, 0.05 mg.; pentaerythrityl tetranitrate, 10 mg.	McNeil Laboratories, Inc.
Perbuzem	Tablet: Butabarbital sodium, 15 mg.; pentaerythrityl tetranitrate, 10 mg.	The Zemmer Co.
Peribar L-A No. 1	Tablet: Phenobarbital, 48.6 mg.; pentaerythrityl tetranitrate, 30 mg.	Whittier Laboratories, Inc.
Peritrate with Phenobarbital	Tablet: Phenobarbital, 15 mg.; pentaerythrityl tetranitrate, 10 mg.	Warner-Chilcott
Do	Tablet: Phenobarbital, 15 mg.; pentaerythrityl tetranitrate, 20 mg.	Do.
Peritrate with Phenobarbital SA.	Tablet: Phenobarbital, 45 mg.; pentaerythrityl tetranitrate, 80 mg.	Do.
Phedorine	Tablet: Diallylbarbituric acid, 16 mg.; extract stramonium, 8 mg. (alkaloids 0.0015 gr.); ephedrine, 8 mg.; theophyline, 160 mg.	Buffington's, Inc.
Phenaphen Plus	Tablet: Phenobarbital, 16.2 mg.; phenacetin, 194 mg.; aspirin, 162 mg.; hyoscyamine sulfate, 0.031 mg.; pheniramine maleate, 12.5 mg.; phenylephrine hydrochloride, 10 mg.	A. H. Robins Co., Inc.
Phenobarbital and atropine	Tablet: Phenobarbital, ¼ gr.; atropine sulfate, 1/100 gr.	The Blue Line Chemical Co.
Do	do	Meyers & Co.
Do	do	Paine Drug Co.
Do	Tablet: Phenobarbital, ¼ gr.; atropine sulfate, 1/150 gr.	The Vale Chemical Co., Inc.
Phenobarbital with atropine sulfate.	Tablet: Phenobarbital, 8 mg.; atropine sulfate, 0.06 mg.	The Zemmer Co.
Phenobarbital with atropine sulfate No. 2.	Tablet: Phenobarbital, 15 mg.; atropine sulfate, 0.12 mg.	Do.
Phenobarbital and atropine sulfate.	Tablet: Phenobarbital, ¼ gr.; atropine sulfate, 1/100 gr.	Buffington's Inc.
Phenobarbital & Atropine No. 1.	Tablet: Phenobarbital, 16 mg.; atropine sulfate, 0.13 mg.	Pitman-Moore.
Phenobarbital & Atropine No. 2.	Tablet: Phenobarbital, 8 mg.; atropine sulfate, 0.65 mg.	Do.
Phenobarbital and Atropine Tablets.	Tablet: Phenobarbital, 8 mg.; atropine sulfate 1/1000 gr.	P. J. Noyes Co.
Do	Tablet: Phenobarbital, 16 mg.; atropine sulfate, 1/100 gr.	Do.
Phenobarbital and Atropine Tablets No. 2.	Tablet: Phenobarbital, ¼ gr.; atropine sulfate, 1/100 gr.	Do.
Phenobarbital and Atropine Tablets No. 3.	Tablet: Phenobarbital, ½ gr.; atropine sulfate, 1/100 gr.	Do.
Phenobarbital and belladonna	Tablet: Phenobarbital, ¼ gr.; belladonna leaves ⅓ gr. (total alkaloids 0.0015 gr.).	The Vale Chemical Co., Inc.
Do	Tablet: Phenobarbital, ¼ gr.; belladonna extract, ⅓ gr.	Paine Drug Co.
Do	Tablet: Phenobarbital, 16 mg.; belladonna extract, 8 mg.	Eli Lilly and Co.
Phenobarbital and Belladonna No. 2.	Tablet: Phenobarbital, ¼ gr.; belladonna extract, ⅓ gr. (alkaloids 0.00156 gr.).	The Upjohn Co.
Phenobarbital with mannitol hexanitriate.	Tablet: Phenobarbital, 7.5 mg., mannitol hexanitrate 15 mg.; ascorbic acid powder, 25 mg.; rutin, 25 mg	Paul B. Elder Co., Inc. (Harold M. Harter, D.V.M.)
Phenobarbital and mannitol hexanitrate.	Tablet; Phenobarbital, ¼ gr.; mannitol hexanitrate, ½ gr.	Meyer Drug & Surgical Supply Co.
Phenobarbital Sodium Atropine No. 1.	Tablet: Phenobarbital sodium, 8 mg.; atropine sulfate, 60 μg.	McNeil Laboratories, Inc.
Phenobarbital Sodium Atropine No. 2.	Tablet: Phenobarbital sodium, 15 mg.; atropine sulfate, 120 μg.	McNeil Laboratories, Inc.
Phenobarbital Sodium Atropine No. 3.	Tablet: Phenobarbital sodium, 20 mg.; atropine sulfate, 200 μg.	Do.
Phenobarbital and sodium nitrite.	Tablet: Phenobarbital, ¼ gr.; sodium nitrite, 1 gr.	P. J. Noyes Co.
Phenobarbital Theocalcin	Tablet: Phenobarbital, 15 mg.; theobromine calcium salicylate, 0.5 gm.	Knoll Pharmaceutical Co.
Phenodonna Tablets	Tablet: Phenobarbital, ¼ gr.; tincture belladonna, 6 minims.	Flint Medical & Surgical Supply Co.
Phenodrox	Tablet: Phenobarbital, ¼ gr.; atropine sulfate, 1/500 gr.; magnesium trisilicate, 4 gr.; aluminum hydroxide gel, dried, 4 gr.	North American Pharmacal Inc.
Phyldrox	Tablet: Phenobarbital, 15 mg.; neothylline, 100 mg.; ephedrine sulfate, 25 mg.	Lemmon Pharmacal Co.
Piptal PHB Elixir	Elixir (5cc.): Phenobarbital, 16 mg.; pipenzolate bromide, 5 mg.	Lakeside Laboratories, Inc.
Piptal PHB Tablets	Tablet: Phenobarbital, 16 mg.; pipenzolate bromide, 5 mg.	Do.
Prantal with Phenobarbital	Tablet: Phenobarbital, 16 mg.; diphemanil methylsulfate, 100 mg.	Schering Corp.
Premarin with Phenobarbital	Tablet: Phenobarbital, 32 mg.; conjugated estrogens-equine, 0.625 mg.	Ayerst Laboratories.
Probanthine with phenobarbital.	Tablet: Phenobarbital, 15 mg.; probanthine, 15 mg.	G. D. Searle & Co.
Probital	Tablet: Phenobarbital, 15 mg.; probanthine, 7.5 mg.	Do.
Propenite	Tablet: Phenobarbital sodium, 12 mg.; sodium nitrite, 60 mg.; hawthorn berries extract, 120 mg.; mistletoe extract, 60 mg.	The Zemmer Co.
Prydonnal Spansule	Capsule: Phenobarbital, 65 mg.; belladonna alkaloids, 0.4 mg. (hyoscyamine sulfate, 0.305 mg.; atropine sulfate, 0.06 mg., scopolamine hydrobromide, 0.035 mg.).	Smith Kline & French Laboratories.
Quadrinal	Tablet: Phenobarbital, 24 mg.; ephedrine hydrochloride 24 mg.; theophyline calcium salicylate, 130 mg.; potassium iodide, 300 mg.	Knoll Pharmaceutical Co.
Do	Suspension (5 cc.): Phenobarbital, 12 mg.; ephedrine hydrochloride, 12 mg.; theophylline calcium salicylate, 65 mg.; potassium iodide, 160 mg.	Do.
Quintrate with Nitroglycerin and Phenobarbital.	Tablet: Phenobarbital, 15 mg.; pentaerythrityl tetranitrate, 20 mg.; nitroglycerin, 0.4 mg.	Paul B. Elder Co., Inc. (Glynn A. Beard).
Quintrate with Phenobarbital	Tablet: Phenobarbital, 15 mg.; pentaerythrityl tetranitrate, 10 mg.	Do.
Do	Tablet: Phenobarbital, 15 mg.; pentaerythrityl tetranitrate, 20 mg.	Do.
Rheastat	Suspension (1 fluid ounce (32 cc.)): Phenobarbital, 16 mg.; hyoscyamine sulfate, 0.1286 mg.; atropine sulfate, 0.0250 mg.; scopolamine hydrobromide, 0.0074 mg.; kaolin, colloidal, 5.76 gm.; pectin, 320 mg.; sodium, (as Cl), 6 meq.; potassium (as Cl), 4 meq.	Mallinckrodt Pharmaceuticals Division of Mallinckrodt Chemical Works.
Robinul-PH	Tablet: Phenobarbital, 16.2 mg.; glycopyrrolate, 1.0 mg.	A. H. Robins Co., Inc.
Robinul-PH Forte	Tablet: Phenobarbital, 16.2 mg.; glycopyrrolate, 2.0 mg.	Do.
Ruhexatal	Tablet: Phenobarbital, 15 mg.; mannitol hexanitrate, 30 mg.; ascorbic acid, 10 mg.; rutin, 20 mg.	Lemmon Pharmacal Co.
Rutol	Tablet: Phenobarbital, 8.0 mg.; mannitol hexanitrate, 16 mg.; rutin, 10 mg.	Pitman-Moore.
Salisil with Phenobarbital	Tablet: Phenobarbital, ¼ gr.; acetylsalicylic acid, 5 gr.; magnesium trisilicate, 2 gr.	Paul B. Elder Co., Inc.
Selbella	Tablet: Phenobarbital, ⅓ gr.; aluminum hydroxide, 5 gr.; belladonna extract, ⅙ gr.	Wyeth Laboratories.
Sed-Tens	Tablet (12 hr.): Amobarbital, 50 mg.; homatropine methylbromide, 7.5 mg.	Lemmon Pharmacal Co.
Sibena	Tablet: Butabarbital sodium, 16 mg.; simethicone, 25 mg.; belladonna extract, 16 mg. (total alkaloids 0.20 mg.).	Plough Laboratories, Inc.
Sodium nitrite with phenobarbital.	Tablet: Phenobarbital sodium, ⅓ gr.; sodium nitrite, 1 gr.; sodium bicarbonate, 2 gr.; hawthorn berries, fluid extract, ¼ minim.	Paine Drug Co.
Do	Tablet: Phenobarbital, ½ gr.; sodium nitrite, 1 gr.	Buffalo Pharmaceutical Supply Corp.

Trade name or other designation	Composition	Manufacturer or supplier
Spasticol PB	Tablet: Phenobarbital, 15 mg.; homatropine methylbromide, 2.5 mg.	Key Pharmaceuticals, Inc.
Spastosed	Tablet: Phenobarbital, 8 mg.; atropine sulfate, 0.13 mg.; calcium carbonate, 227 mg.; magnesium hydroxide, 162 mg.	North American Pharmacal, Inc.
Special Formula 711	Tablet: *d*-Amphetamine sulfate, 2.5 mg.; mephenesin, 500 mg.; salicylamide, 300 mg.	Detroit First Aid Co.
Synirin	Tablet: Pentobarbital, 8 mg.; aspirin, 324 mg.	Wm. P. Poythress & Co., Inc.
TCS	Tablet: Phenobarbital 16, mg.; theobromine salicylate, 0.4 gm.; calcium salicylate, 0.06 gm.	Do.
Tedral-25	Tablet: Butabarbital, 25 mg.; theophylline, 130 mg.; ephedrine hydrochloride, 24 mg.	Warner-Chilcott Laboratories.
Tedral S.A.	Tablet: Phenobarbital, 25 mg.; theophylline, 180 mg.; ephedrine hydrochloride, 48 mg.	Do.
Tensodin	Tablet: Phenobarbital, 15 mg.; ethaverine hydrochloride, 30 mg.; theophylline calcium salicylate, 200 mg.	Knoll Pharmaceutical Co.
Tensophen	Tablet: Phenobarbital, 16 mg.; nitroglycerin, 0.26 mg.; sodium nitrite, 32 mg.; podophyllin, 1 mg.; extract beef bile, 16 mg.	P. J. Noyes Co.
Tetralute I	One bottle of buffer compound containing 4.15 gm. of sodium barbital and 0.75 gm. of barbital; other drugs and components.	Miles Laboratories, Inc.
Thedrizem	Tablet: Phenobarbital, 8 mg.; theophylline, hydrous, 100 mg.; ephedrine hydrochloride, 25 mg.	The Zemmer Co.
Theobarb	Tablet: Phenobarbital, 32 mg.; theobromine, 325 mg.	Mallinckrodt Pharmaceuticals, Division of Mallinckrodt Chemical Works.
Theobarb-R	Tablet: Phenobarbital, 10 mg.; reserpine, 0.1 mg.; theobromine, 324 mg.	Do.
Theobarb Special	Tablet: Phenobarbital, 16 mg.; theobromine, 325 mg.	Do.
Theobromine and phenobarbital.	Tablet: Phenobarbital, 16 mg.; theobromine, 0.3 gm.	P. J. Noyes Co.
Theobromine-Phenobarbital	Tablet: Phenobarbital, 30 mg.; theobromine, 0.3 gm.	The S. E. Massengill Co.
Do.	Tablet: Phenobarbital, 32 mg.; theobromine, 324 mg.	The Upjohn Co.
Theobromine-Phenobarbital Compound.	Tablet: Phenobarbital, ¼ gr.; theobromine, 2½ gr.; potassium iodide, 2½ gr.; potassium bicarbonate, 2 gr.	Do.
Theobromine with Phenobarbital No. 1.	Tablet: Phenobarbital, 15 mg.; theobromine, 324 mg.	Buffington's Inc.
Theobromine and sodium acetate with phenobarbital.	Tablet: Phenobarbital, ¼ gr.; theobromine and sodium acetate, 3 gr.	Paul B. Elder Co., Inc.
Theobromine sodium salicylate with phenobarbital.	Tablet: Phenobarbital, 15 mg.; theobromine sodium salicylate, 300 mg.	The Zemmer Co.
Theocardone No. 1	Tablet: Phenobarbital, 15 mg.; theobromine, 300 mg.	Haack Laboratories, Inc.
Theocardone No. 2	Tablet: Phenobarbital, 30 mg.; theobromine, 300 mg.	Do.
Theodide	Tablet: Phenobarbital, ¼ gr.; potassium iodide, 2½ gr.; theobromine sodium salicylate, 2½ gr.	The Vale Chemical Co., Inc.
Theoglycinate with Phenobarbital.	Tablet: Phenobarbital, 16 mg.; theophylline-sodium glycinate, 324 mg.	Brayten Pharmaceutical Co.
Theoglycinate with Racephedrine and Phenobarbital.	Tablet: Phenobarbital, 16 mg.; theophylline-sodium glycinate, 324 mg.; racephedrine hydrochloride, 24 mg.	Do.
Theoplaphen	Tablet: Phenobarbital, 15 mg.; theobromine sodium salicylate, 0.2 gm.; calcium lactate, 0.1 gm.	The S. E. Massengill Co.
Theominal	Tablet: Phenobarbital, 32 mg.; theobromine, 320 mg.	Winthrop Laboratories.
Theominal M	Tablet: Phenobarbital, 15 mg.; theobromine, 320 mg.	Do.
Theominal R S	Tablet: Phenobarbital, 10 mg.; theobromine, 320 mg.; alseroxylon, 1.5 mg.	Do.
Theophen	Tablet: Phenobarbital, ¼ gr.; theobromine sodium salicylate, 5 gr.; calcium carbonate, 2½ gr.	The Vale Chemical Co., Inc.
Theorate	Tablet: Phenobarbital, 16.2 mg.; theobromine, 324 mg.	Whittier Laboratories, Inc.
Thora-Dex No. 1	Tablet: Dextroamphetamine sulfate, 2 mg., chlorpromazine hydrochloride, 10 mg.	Smith Kline & French Laboratories.
Thora-Dex No. 2	Tablet: Dextroamphetamine sulfate, 5 mg.; chlorpromazine hydrochloride, 25 mg.	Do.
Thymodyne	Tablet: Phenobarbital, 32 mg.; theophylline anhydrous, 130 mg.; ephedrine sulfate, 24 mg.	P. J. Noyes Co.
Trocinate with Phenobarbital	Tablet: Phenobarbital, 16 mg.; thiphenamil hydrochloride, 100 mg.	Wm. P. Poythress & Co., Inc.
Tricoloid	Tablet: Phenobarbital, 16 mg.; tricyclamol chloride, 50 mg.	Burroughs Wellcome & Co.
Triophen	Tablet: Phenobarbital, ⅓ gr.; antropine sulfate, 1/300 gr.; magnesium trisilicate, 7 gr.	The Vale Chemical Co., Inc.
Unitensen-Phen	Tablet: Phenobarbital, 15 mg.; cryptenamine, 1 mg.	Neisler Laboratories, Inc.
Valpin-PB	Tablet or elixir (5 cc.): Phenobarbital, 8 mg.; anisotropine methylbromide, 10 mg.	Endo Laboratories Inc.
Vasorutin	Tablet: Diallylbarbituric acid, ¾ gr.; nitroglycerin, 1/250 gr.; sodium nitrite, 1 gr.; tincture crataegus, 2 minims; rutin, 20 mg.	Buffington's, Inc.
Veraflex	Tablet: Phenobarbital, 15 mg.; cryptenamine, 65 CSR (carotid sinus reflex) units; rutin, 20 mg.	Neisler Laboratories, Inc.
Veralzem	Tablet: Phenobarbital, 15 mg.; veratrum viride, 50 mg.; sodium nitrite, 60 mg.	The Zemmer Co.
Veratrite	Tablet: Phenobarbital, ¼ gr.; cryptenamine, 40 CSR (carotid sinus reflex) units; sodium nitrite, 1 gr.	Neisler Laboratories, Inc.
Veritag	Tablet: Phenobarbital, 16 mg.; veratrum viride, 40 mg.; sodium nitrite, 65 mg.	S. J. Tutag and Co.
Vertegus	Tablet: Phenobarbital, ¼ gr.; veratrum viride, ¾ gr.; sodium nitrite, 1 gr.; mistletoe, ½ gr.; hawthorn berries, ½ gr.	Burt Krone Co.
Veruphen	Tablet: Phenobarbital, 15 mg.; rutin, 20 mg.; veratrum viride, 15 mg.; sodium nitrite, 60 mg.	The Zemmer Co.
Viritin	Tablet: Phenobarbital, 15 mg.; mannitol hexanitrate, 30 mg.; veratrum viride alkaloids, 1.5 mg.; rutin, 20 mg.	Lemmon Pharmacal Co.
Weytabs No. 1	Tablet: *dl*-Desoxyephedrine hydrochloride, 5 mg.; thyroid, 60 mg.; atropine sulfate, 0.125 mg.; aloin, 15 mg.	The Vale Chemical Co., Inc.
Weytabs No. 2	Tablet: *dl*-Desoxyephedrine hydrochloride, 5 mg.; thyroid, 60 mg.; atropine sulfate, 0.125 mg.	Do.
Weytabs No. 3	Tablet: Phenobarbital, 15 mg.; *dl*-desoxyephedrine hydrochloride, 5 mg.; thyroid 60 mg.	Do.
W-T	Powder (4 gm.): Phenobarbital, 15 mg.; belladonna extract, 10 mg. (0.12 mg. belladonna alkaloids); benzocaine, 15 mg.; calcium carbonate, 1.55 gm.; magnesium oxide, 0.5 gm.; aluminum hydroxide gel, dried, 60 mg.	Warren-Teed Pharmaceuticals Inc.
W-T	Tablet: Phenobarbital, 1/16 gr.; belladonna extract, 1/24 gr.; benzocaine, 1/16 gr.; calcium carbonate, 6 gr.; magnesium trisilicate, 3¾ gr.; aluminum hydroxide gel, dried, 2½ gr.; chlorophyll extract, 1%.	Do.
Xaniophen	Tablet: Phenobarbital, 16.2 mg.; theobromine, 162 mg.; ethylenediamine dihydriodide, 32.4 mg.	Pitman-Moore.
Zallogen Compound	Tablet: Phenobarbital, 8 mg.; tocamphyl, 75 mg.; homatropine methylbormide, 2.5 mg.	The S. E. Massengill Co.
Zantrate	Tablet: Cyclopentenylallylbarbituric acid, ½ gr.; ephedrine sulfate, ⅜ gr.; theophylline anhydrous, 2 gr.	The Upjohn Co.
Zem-Dab	Tablet: Butabarbital sodium, 10 mg.; dehydrocholic acid, 60 mg.; ox bile desiccated, 120 mg.; homatropine methylbromide, 2.5 mg.	The Zemmer Co.
No. 23	Tablet: Phenobarbital, ½ gr.; aminophylline, 3 gr.	Stayner Corp.
No. 35	Tablet: Phenobarbital, ⅛ gr.; aminophylline, 1.5 gr.; ephedrine sulfate, ⅜ gr.	Do.
No. 36	Tablet: Pentabarbital sodium, ¾ gr.; ephedrine sulfate, ⅜ gr.; aminophylline, 3 gr.	Do.
No. 65	Tablet: Phenobarbital, ¼ gr.; extract belladonna, ¼ gr.	Do.
No. 66	Tablet: Phenobarbital, ¼ gr.; extract belladonna, ¼ gr.	Do.
No. 75	Tablet: Phenobarbital, ¼ gr.; belladonna, 1/6 gr.	Bariatric Corp.
No. 88	Tablet: Phenobarbital, ¼ gr.; aminophylline, 1.5 gr.	Stayner Corp.
No. 89	Tablet: Phenobarbital, ½ gr.; aminophylline, 1/5 gr.	Do.
No. 111	Tablet: Phenobarbital, ½ gr.; ephedrine sulfate, ⅜ gr.	Do.
No. 136	Tablet: Phenobarbital, 20 mg.; homatropine methylbromide, 5 mg.	Do.
No. 643	Tablet: Phenobarital, ⅛ gr.; theophylline, 2 gr.; ephedrine hydrochloride, ⅜ gr.	Do.
Rx. No. 4104	Tablet: Phenobarital, ¼ gr.; calcium carbonate, 7½ gr.; magnesium oxide, 4 gr.; atropine sulfate, 1/300 gr.	The Zemmer Co.
Rx. No. 4105	Tablet: Phenobarital, ¼ gr.; calcium carbonate, 10 gr.; atropine sulfate, 1/300 gr.	Do.
Rx. No. 4108	Capsule: Phenobarital, ¼ gr.; atropine sulfate, 1/300 gr.; calcium carbonate, 6½ gr.; magnesium oxide, heavy, 2 gr.	Do.
Rx. No. 4123	Capsule: Phenobarbital, ¼ gr.; bismuth subgallate, 5 gr.; extract belladenna, 1/6 gr.	Do.

Trade name or other designation	Composition	Manufacturer or supplier
Rx. No. 4126	Capsule: Pentabarbital sodium, 15 mg.; extract belladonna, 10 mg.	The Zemmer Co.
Rx. No. 4143	Capsule: Phenobarbital, ¼ gr.; aminophylline, 1.5 gr.; potassium iodide, 1 gr.	Do.
Rx. No. 4152	Tablet: Phenobarbital, ¼ gr.; atropine sulfate, 1/200 gr.	Do.
Rx. No. 4155	Tablet: Phenobarbital, ⅛ gr.; atropine sulfate, 1/1000 gr.; aluminum hydroxide gel. 3¾ gr.; kaolin, 3¾ gr.	Do.
Rx. No. 4170	Tablet: Phenobarbital, ½ gr.; atropine sulfate, 1/200 gr.; calcium carbonate, 10 gr.	Do.
Rx. No. 4184	Capsule: Sodium butabarbital, 15 mg.; belladonna extract, 15 mg.	Do.

PART 311—REGISTRATION OF IMPORTERS AND EXPORTERS OF CONTROLLED SUBSTANCES

GENERAL INFORMATION

§ 311.01 Scope of Part 311.

Procedures governing the registration of importers and exporters of controlled substances pursuant to sections 1007 and 1008 of the Act (21 U.S.C. 957–958) are set forth generally by those sections and specifically by the sections of this part.

§ 311.02 Definitions.

As used in this part, the following terms shall have the meanings specified:

(a) The term "Act" means the Controlled Substances Import and Export Act (84 Stat. 1285; 21 U.S.C. 951).

(b) The term "Controlled Substances Act" means the Controlled Substances Act (84 Stat. 1242; 21 U.S.C. 801).

(c) The term "customs territory of the United States" means the several States, the District of Columbia, and Puerto Rico.

(d) The term "export" means, with respect to any article, any taking out or removal of such article from the jurisdiction of the United States (whether or not such taking out or removal constitutes an exportation within the meaning of the customs and related laws of the United States).

(e) The term "exporter" includes every person who exports, or who acts as an export broker for exportation of, controlled substances listed in schedules I through IV.

(f) The term "hearing" means any hearing held pursuant to this part for the granting, denial, revocation or suspension of a registration pursuant to section 1008 of the Act (21 U.S.C. 958).

(g) The term "import" means, with respect to any article, any bringing in or introduction of such article into either the jurisdiction of the United States or the customs territory of the United States, and from the jurisdiction of the United States into the customs territory of the United States (whether or not such bringing in or introduction constitutes an importation within the meaning of the tariff laws of the United States).

(h) The term "importer" includes every person who imports, or who acts as an import broker for importation of, controlled substances listed in any schedule.

(i) The term "jurisdiction of the United States" means the customs territory of the United States, the Virgin Islands, the Canal Zone, Guam, American Samoa, and the Trust Territories of the Pacific Islands.

(j) The terms "register" and "registration" refer only to registration required and permitted by section 1007 of the Act (21 U.S.C. 957).

(k) Any term not defined in this section shall have the definition set forth in section 1001 of the Act (21 U.S.C. 951) or 21 CFR 301.02.

§ 311.03 Information; special instructions.

Information regarding procedures under these rules and instructions supplementing these rules will be furnished upon request by writing to the Registration Branch, Bureau of Narcotics and Dangerous Drugs, Department of Justice, Post Office Box 28083, Central Station, Washington, D.C. 20005.

§ 311.04 Inspection or record.

The record bearing on any registration, except for material described in § 301.04(b) (3) and (4) of this chapter, shall be available for public inspection and copying during office hours in the office of the Registration Branch, Bureau of Narcotics and Dangerous Drugs, Department of Justice, Washington, D.C. 20537, or in the Office of the Hearing Clerk, Bureau of Narcotics and Dangerous Drugs, Department of Justice, Washington, D.C. 20537, if such report is part of a hearing in progress.

FEES FOR REGISTRATION AND REREGISTRATION

§ 311.11 Fee amounts.

(a) For each registration or reregistration to import controlled substances, the registrant shall pay a fee of $25.

(b) For each registration or reregistration to export controlled substances, the registrant shall pay a fee of $25.

§ 311.12 Time of payment; refund.

Registration and reregistration fees shall be paid at the time when the application for registration or reregistration is submitted for filing. In the event that the application is not accepted for filing or is denied, the payment shall be refunded to the applicant.

REQUIREMENTS OF REGISTRATION

§ 311.21 Person required to register.

Every person who imports any controlled substance, or who exports any controlled substance listed in schedules I through IV, or who proposes to engage in such importation or exportation, shall obtain annually a registration unless exempted by law or pursuant to §§ 311.24–28. Only persons actually engaged in such activities are required to obtain a registration; related or affiliated persons who are not engaged in such activities are not required to be registered. (For example, a stockholder or parent corporation importing controlled substances is not required to obtain a registration.)

§ 311.22 Separate registration for independent activities.

(a) Every person who engages in more than one group of independent activities, as described in § 301.22 of this chapter shall obtain a separate registration for each group of activities as required by that section.

(b) One or more controlled substances listed in schedules II through V may be included in a single registration to engage in any independent activity. Only one basic class of controlled substance listed in schedule I, and no controlled substances listed in any other schedule, may be included in a single registration.

§ 311.23 Separate registrations for separate locations.

(a) A separate registration is required for each principal place of business at one general principal location where controlled substances are imported or exported by a person.

(b) The following locations shall be deemed not to be places where controlled substances are imported or exported:

(1) A warehouse where controlled substances are stored on behalf of a registered person, unless such substances are distributed directly from such warehouse to persons other than the registered person or persons not required to register by virtue of subsection 1007(b)(1)(B) (21 U.S.C. 957(b)(1)(b)); and

(2) An office used by agents of a registrant where sales of controlled substances are solicited, made, or supervised but which neither contains such substances (other than substances for display purposes) nor serves as a distribution point for filling sales orders.

§ 311.24 Exemption of certain military personnel.

The requirement of registration is waived for any official of the U.S. Army, Navy, Air Force, Coast Guard, or Public Health Service who is authorized to import or export controlled substances in the course of his official duties.

§ 311.25 Exemption of law enforcement officials.

The requirement of registration is waived for any employee of the Bureau, any officer of the U.S. Bureau of Customs, any officer or employee of the U.S. Food and Drug Administration, and any other Federal officer who is lawfully engaged in the enforcement of any Federal law relating to controlled substances, drugs or customs, and is duly authorized to possess, import or export controlled substances in the course of his official duties.

§ 311.26 Exemption for ocean vessels.

Owners of vessels described in § 301.28 of this chapter shall not be deemed to import or export any controlled substance purchased and stored in accordance with that section.

§ 311.27 Exemption for commercial aircraft.

Air carriers operating aircraft described in § 301.29 of this chapter shall not be deemed to import or export any controlled substance purchased and stored in accordance with that section.

§ 311.28 Exemptions for personal medical use.

(a) Any individual who has in his possession a controlled substance listed in schedules II, III, IV, or V, which he has lawfully obtained for his personal medical use, or for administration to an animal accompanying him, may enter or depart the United States with such substance notwithstanding sections 1002–1005 of the Act (21 U.S.C. 952–955), providing the following conditions are met:

(1) The controlled substance is in the original container in which it was dispensed to the individual; and

(2) The individual makes a declaration to an appropriate official of the U.S. Bureau of Customs stating:

(i) That the controlled substance is possessed for his personal use, or for an animal accompanying him; and

(ii) The trade or chemical name and the symbol designating the schedule of the controlled substance if it appears on the container label, or, if such name does not appear on the label, the name, address, and prescription number of the pharmacy or practitioner who dispensed the substance.

APPLICATIONS FOR REGISTRATION

§ 311.31 Time for application for registration; expiration date.

(a) Any person who is required to be registered and who is not so registered may apply for registration at any time. No person required to be registered shall engage in any activity for which registration is required until the application for registration is granted and a registration certificate is issued by the Director.

(b) Any person who is registered may apply to be reregistered not more than 60 days before the expiration date of his registration.

(c) At the time any person is first registered, he will be assigned to one of 12 groups in the same manner and with the same effect as provided in § 301.31 of this chapter.

§ 311.32 Application forms; contents; signature.

(a) Any person who is required to be registered to import or export controlled substances, and who is not so registered, shall apply on BND Form 225.

(b) Any person who is registered to import or export controlled substances, shall apply for reregistration on BND Form 227.

(c) BND Form 225 may be obtained at any regional office of the Bureau or by writing to the Registration Branch, Bureau of Narcotics and Dangerous Drugs, U.S. Department of Justice, Post Office Box 28083, Central Station, Washington, DC 20005. BND Form 227 will be mailed to each registered importer and exporter approximately 60 days before the expiration date of his registration; if any registered person does not receive such forms within 45 days before the expiration date of his registration, he must promptly give notice of such fact and request such forms by writing to the Registration Branch of the Bureau at the foregoing address.

(d) Each application for registration to import or export any basic class of controlled substance listed in schedule 1 shall include the Bureau Controlled Substance Code Number for the basic class to be covered by such registration.

(e) Each application shall include all information called for in the form, unless the item is not applicable, in which case this fact shall be indicated.

(f) Each application, attachment, or other document filed as part of an application, shall be signed by the applicant, if an individual; by a partner of the applicant, if a partnership; or by an officer of the applicant, if a corporation, association, trust or other entity.

§ 311.33 Filing of application; acceptance for filing; additional information; amendments to and withdrawals of applications.

Applications for registration to import or export controlled substances shall be filed, accepted for filing, supplemented, amended and withdrawn as provided in § 301.34–301.37 of this chapter.

ACTION ON APPLICATIONS FOR REGISTRATION: REVOCATION OR SUSPENSION OF REGISTRATION

§ 311.41 Administrative review generally.

The Director may inspect, or cause to be inspected, the establishment of an applicant or registrant, pursuant to § 316.01 of this chapter. The Director shall review the application for registration and other information gathered by the Bureau regarding an applicant in order to determine whether the applicable standards of section 1008 of the Act (21 U.S.C. 958) have been met by the applicant.

§ 311.42 Application for importation of schedule I and II substances.

(a) In the case of an application for registration to import a basic class of any controlled substance listed in schedule I or II, under the authority of section 1002(a)(2)(B) of the Act (21 U.S.C. 952(a)(2)(B)), the Director shall, upon the filing of such application, publish in the FEDERAL REGISTER a notice naming the applicant and stating that such applicant has applied to be registered as an importer of a basic class of narcotic or nonnarcotic controlled substance, which class shall be identified. A copy of said notice shall be mailed simultaneously to each person registered as a bulk manufacturer of that basic class and to any other applicant therefor. Any such person may, within 30 days from the date of publication of the notice in the FEDERAL REGISTER, file written comments on or objections to the issuance of the same time, file a written request for a hearing on the application. If a hearing is requested, the Director shall hold a hearing on the application pursuant to § 311.51. Notice of the hearing shall be published in the FEDERAL REGISTER, and shall be mailed simultaneously to the applicant and to all persons to whom notice of the application was mailed. Notice of the hearing shall contain a summary of all comments and objections filed regarding the application and shall state the time and place for the hearing, which shall not be less than 30 days after the date of publication of such notice in the FEDERAL REGISTER. A hearing pursuant to this section may be consolidated with a hearing held pursuant to § 311.43 or § 311.44.

(b) In determining whether competition among the domestic manufacturers of a controlled substance is adequate within the meaning of section 1002(a)(2)(B) of the Act (21 U.S.C. 952(a)(2)(B)), the Director shall consider among other factors:

(1) The extent of price rigidity in the light of changes in (i) raw materials and other costs and (ii) conditions of supply and demand;

(2) The extent of service and quality competition among the domestic manufacturers for shares of the domestic market;

(3) The existence of substantial differentials between (i) domestic prices and (ii) the higher of prices generally prevailing in foreign markets or the prices at which foreign manufacturers are committed to undertake to provide such products in the domestic market in conformity with the Act or the Controlled Substances Act. In determining the existence of substantial differentials hereunder, appropriate consideration should be given to any additional costs imposed on domestic manufacturers by the requirements of the Act or the Controlled Substances Act and such other factors as the Director may deem relevent. In no event shall a foreign manufacturer's offering prices in the United States be considered if they are lower than those prevailing in the foreign manufacturer's own domestic market.

(c) In considering the scope of the domestic market, consideration shall be given to substitute products which are reasonably interchangeable in terms of price, quality and use.

(d) The fact that the number of existing manufacturers is small shall not demonstrate, in and of itself, that adequate competition among them does not exist.

§ 311.43 Certificate of registration; denial of registration.

(a) The Director shall issue a certificate of registration (BND Form 223) to an applicant if the issuance of registration or reregistration is required under the applicable provisions of section 1008 of the Act (21 U.S.C. 958). In the event the issuance of registration or reregistration is not required, the Director shall deny the application. Before denying any application, the Director shall issue an order to show cause pursuant to § 311.47 and, if requested by the applicant, shall hold a hearing on the application pursuant to § 311.51.

(b) The certificate of registration (BND Form 223) shall contain the information, and shall be displayed in the manner prescribed in 21 CFR 301.44(b).

§ 311.44 Suspension or revocation of registration.

(a) The Director may suspend any registration pursuant to section 304(a) of the Controlled Substances Act (21 U.S.C. 824 (a)) for any period of time he determines.

(b) The Director may revoke any registration pursuant to section 304(a) of the Controlled Substances Act (21 U.S.C. 824(a)).

(c) Before revoking or suspending any registration, the Director shall issue an order to show cause pursuant to § 310.47 of this chapter, and if requested by the registrant, shall hold a hearing pursuant to § 311.51. Notwithstanding the requirements of this section, however, the Director may suspend any registration pending a final order pursuant to § 311.45.

(d) Upon service of the order of the Director suspending or revoking registration, the registrant shall immediately deliver his certificate of registration and any order forms or permits in his possession to the nearest office of the Bureau. The suspension or revocation of a registration shall suspend or revoke any permits issued pursuant to Part 312 of this chapter. Also, upon service of the order of the Director revoking registration, the registrant shall, as instructed by the Director:

(1) Deliver all controlled substances in his possession to the nearest office of the Bureau or to authorized agents of the Bureau; or

(2) Place all controlled substances in his possession under seal as described in section 304(f) of the Controlled Substances Act (21 U.S.C. 824(f)).

(e) In the event that revocation or suspension is limited to a particular controlled substance or substances, the registrant shall be given a new certificate of registration for all substances not affected by such revocation or suspension. The registrant shall deliver the old registration and, if appropriate, any order forms or permits in his possession to the nearest office of the Bureau. Also, the registrant shall, as instructed by the Director:

(1) Deliver to the nearest office of the Bureau or to authorized agents of the Bureau all of the particular controlled substance or substances affected by the revocation or suspension which are in his possession; or

(2) Place all of such substances under seal as described in section 304(f) of the Controlled Substances Act (21 U.S.C. 824(f)).

§ 311.45 Suspension of registration pending final order.

(a) The Director may suspend any registration simultaneously with or at any time subsequent to the service upon the registrant of an order to show cause why such registration should not be revoked or suspended, in any case where he finds that there is an imminent danger to the public health or safety. If the Director so suspends, he shall serve with the order to show cause pursuant to § 311.47 an order of immediate suspension which shall contain a statement of his findings regarding the danger to public health or safety.

(b) Upon receipt of the order of immediate suspension, the registrant shall promptly return his certificate of registration and any order forms and permits in his possession to the nearest office of the Bureau. The suspension of any registration under this section shall suspend any permits issued pursuant to Part 312 of this chapter.

(c) Any suspension shall continue in effect until the conclusion of all proceedings upon revocation or suspension, including any judicial review thereof, unless sooner withdrawn by the Director or dissolved by a court of competent jurisdiction. Any registrant whose registration is suspended under this section may request a hearing on the revocation or suspension of his registration at a time earlier than specified in the order to show cause pursuant to § 312.47 which request shall be granted by the Director, who shall fix a date for such hearing as early as reasonably possible.

§ 311.46 Extension of registration pending final order.

An applicant for reregistration who is doing business under a registration previously granted and not revoked or suspended may have the existing registration extended and continue in effect until the date on which the Director issues his order on the application for reregistration as provided in § 301.47 of this chapter.

§ 311.47 Order to show cause.

(a) If, upon examination of the application for registration from any applicant and other information gathered by the Bureau regarding the applicant, the Director is unable to make the determinations required by the applicable provisions of section 303 of the Controlled Substances Act (21 U.S.C. 823) to register the applicant, the Director shall serve upon the applicant an order to show cause why the registration should not be denied, as provided in § 301.48 of this chapter.

(b) If, upon information gathered by the Bureau regarding any registrant, the Director determines that the registration of such registrant is subject to suspension or revocation pursuant to section 304 of the Controlled Substances Act (21 U.S.C. 824), the Director shall serve upon the registrant an order to show cause why the registration should not be revoked or suspended, as provided in § 301.48 of this chapter.

HEARINGS

§ 311.51 Hearings generally.

(a) In any case where the Director shall hold a hearing on any registration or applictaion thereof, the procedures for such hearing shall be governed generally by the adjudication procedures set out in the Administrative Procedure Act (5 U.S.C. 551–559) and specifically by section 1008 of the Act (21 U.S.C. 958), by § 311.52–.53, and by the procedure for hearings pursuant to sections 303 and 304 of the Controlled Substances Act (21 U.S.C. 823–824) set forth in § 301.52–.73 of this chapter.

(b) Any hearing under this part shall be independent of, and not in lieu of, criminal prosecutions or other proceedings under the Act or any other law of the United States.

§ 311.52 Hearings on application for importation of schedule I and II substances.

A hearing on an application for registration to import a basic class of any controlled substance in schedule I or II required by § 311.42 shall be held under the same procedures prescribed in §§ 301.51–301.73 of this chapter for a hearing on an application for registration to manufacture in bulk a basic class of any controlled substance.

§ 311.53 Burden of proof.

(a) At any hearing on the granting or denial of an applicant to be registered to import or export any controlled substance in schedule I or II, the applicant shall have the burden of proving that the requirements for each registration pursuant to section 1008(a) of the Act (21 U.S.C. 958(a)) are satisfied. Any other person participating in the hearing pursuant to § 310.42 of this chapter shall have the burden of proving any propositions of fact or law asserted by him in the hearings.

(b) At any other hearing for the denial of a registration, the Bureau shall have the burden of proving that the requirements for such registration pursuant to section 1008(c) of the Act (21 U.S.C. 958(c)) are not satisfied.

(c) At any hearing for the revocation or suspension of a registration, the Bureau shall have the burden of proving that the requirements for such revocation or suspension to section 304(a) of the Controlled Substances Act (21 U.S.C. 824(a)) are satisfied.

PART 312—IMPORTATION AND EXPORTATION OF CONTROLLED SUBSTANCES

§ 312.01 Scope of Part 312.

Procedures governing the importation, exportation, transshipment and intransit shipment of controlled substances pursuant to sections 1002, 1003, and 1004 of the Act (21 U.S.C. 952, 953, and 954) are governed generally by those sections and specifically by the sections of this part.

§ 312.02 Definitions.

As used in this part, the following terms shall have the meanings specified:

(a) The term "Act" means the Controlled Substances Import and Export Act (84 Stat. 1285; 21 U.S.C. 951).

(b) Any term not defined in this section shall have the definition set forth in sections 1001 and 102 of the Act (21 U.S.C. 951 and 802) and § 311.02 of this chapter.

IMPORTATION OF CONTROLLED SUBSTANCES

§ 312.11 Requirement of authorization to import.

(a) No person shall import or cause to be imported any controlled substance listed in schedule I or II or any narcotic controlled substance listed in schedules III, IV, or V unless and until such person is registered under the Act (or exempt from registration) and the Director has issued him a permit to do so pursuant to § 312.13.

(b) No person shall import or cause to be imported any nonnarcotic controlled substances listed in schedules III, IV, or V unless and until such person is registered under the Act (or exempt from registration) and he has filed an import declaration to do so with the Director at least 15 days prior to importation, pursuant to § 312.18.

(c) When an import permit or declaration is required, a separate permit or declaration must be obtained for each consignment of controlled substances to be imported.

§ 312.12 Application for import permit.

(a) An application for a permit to import controlled substances shall be made on BND Form 85. BND Form 85 may be obtained from, and shall be filed with, the Distribution Audit Branch, Bureau of Narcotics and Dangerous Drugs, Department of Justice, Washington, D.C. 20537. Each application shall show the date of execution, the registration number of the importer, and the name and detailed description of each of the controlled substances desired to be imported, the net quantity of each, the anhydrous alkaloid content in any narcotic controlled substance to be imported, if known, the number and size of packages or containers, the name and quantity of the controlled substance contained in any preparation, and the quantity of any solids being given in kilograms or parts thereof. The application shall also include the following:

(1) The name, address, and business of the consignor, if known at the time application is submitted, but if unknown at that time, the fact should be indicated and the name and address afterwards furnished to the Director as soon as ascertained by the importer;

(2) The foreign port of exportation (i.e.), the place where the article will begin its journey of exportation to the United States);

(3) The port of entry into the United States;

(4) The latest date said shipment will leave said foreign port;

(5) The stock on hand of the controlled substance desired to be imported;

(6) The name of the importing carrier or vessel (if known, or if unknown it should be stated whether shipment will be made by express, freight, or otherwise, imports of controlled substances in schedules I or II and narcotic drugs in schedules III, IV, or V by mail being prohibited);

(7) The total tentative allotment to the importer of such controlled substance for the current calendar year;

(8) The total number of kilograms of said allotment for which permits have previously been issued and the total quantity of controlled substance actually imported during the current year to date.

(b) If desired, alternative foreign ports of exportation within the same country may be indicated upon the application (e.g., (1) Calcutta, (2) Bombay). If a formal permit is issued pursuant to such application, it will bear the names of the two ports in the order given in the application and will authorize shipment from either port. Alternate ports in different countries will not be authorized in the same permit.

§ 312.13 Issuance of import permit.

(a) The Director may authorize importation of any controlled substance listed in schedule I or II or any narcotic drug in listed schedule III, IV, or V if he finds:

(1) That the substance is crude opium or coca leaves in such quantity as he finds necessary to provide for medical, scientific, or other legitimate purposes;

(2) That the substance is necessary to provide for medical and scientific needs or other legitimate needs of the United States during an emergency where domestic supplies of such substance or drug are found to be inadequate, or in any case in which the Director finds that competition among domestic manufacturers of the controlled substance is inadequate and will not be rendered adequate by the registration of additional manufacturers under section 303 of the Controlled Substances Act (21 U.S.C. 823); or

(3) That the domestic supply of any controlled substance is inadequate for scientific studies, and that the importation of that substance for scientific purposes is only for delivery to officials of the United Nations, of the United States, or of any State, or to any person registered or exempted from registration under sections 1007 and 1008 of the Act (21 U.S.C. 957 and 958).

(b) If, after careful consideration of the application, it is found that approval cannot be given, such fact and the reasons therefor will be communicated to the applicant by the Director. If additional information is required, or other action is necessary to correct any mistake or irregularity in the application or accompanying documents, opportunity will be afforded the prospective importer by the Director to furnish such additional information or to correct such mistake or irregularity before the application is finally approved.

(c) Each import permit shall be serially numbered and all five copies shall bear the same serial number. All copies of import permits shall bear the signature of the Director or his delegate, and facsimiles of signatures shall not be used. No permit shall be altered or changed by any person after being signed by the Director or his delegate and any change or alteration upon the fact of any permit, after it shall have been signed by the Director or his delegate shall render it void and of no effect. Permits are not transferable. Each copy of the permit shall have printed or stamped thereon the disposition to be made thereof. Each permit shall be dated and shall certify that the importer named therein is thereby permitted as a registrant under the Act, to import, through the port named, one shipment of not to exceed the specified quantity of the named controlled substances, shipment to be made before a specified date. Not more than one shipment shall be made on a single import permit. The permit shall state that the Director is satisfied that the consignment proposed to be imported is required for legitimate purposes.

§ 312.14 Distribution of copies of import permit.

An import permit approved by the Director shall be prepared in quintuplicate (numbered Copy 1, Copy 2, etc., respectively), each copy being signed by the Director or his delegate. After being signed, these copies shall be distributed and serve purposes as follows:

(a) Copy 1 and Copy 5 shall be transmitted by the Bureau to the importer, who shall retain Copy 5 on file as his record of authority for the importation, and shall transmit Copy 1 to the foreign exporter. The foreign exporter will submit Copy 1 to the proper governmental authority in the exporting country, if required, as a prerequisite to the issuance of an export authorization. This copy of the permit will accompany the shipment. Upon arrival of the imported merchandise, the District Director of the U.S. Bureau of Customs, at the port of entry will, after appraising the merchandise, forward Copy 1 to the Distribution Audit Branch with a report on the reverse side of such copy, showing the name of the port of importation, date prepared, name and net quantity of each substance, and report of analysis of the merchandise entered.

(b) Copy 2 shall be forwarded by the Bureau to the proper governmental authorities of the exporting country.

(c) Copy 3 shall be forwarded by the Bureau to the District Director of the U.S. Bureau of Customs at the U.S. port of entry, which shall be the customs port of destination in the case of shipments transported under immediate transportation entries, in order that the District Director may compare it with Copy 1 and the bill of lading upon arrival of the merchandise. If a discrepancy is noted between corresponding items upon different copies of a permit bearing the same serial number when compared by the District Director, he shall refuse to permit entry of the merchandise until the facts are communicated to the Bureau and further instructions are received.

§ 312.15 Shipments in greater or less amount than authorized.

(a) If the shipment made under an import permit is greater than the maximum amount authorized to be imported under the permit, as determined at the weighing by the District Director of the U.S. Bureau of Customs, such differ-

ence shall be seized subject to forfeiture, pending an explanation; except that shipments of substances exceeding the maximum authorized amount by less than 1 percent may be released to the importer upon the filing by him of an amended import permit. If the substance is included in schedule I, it will be summarily forfeited to the Government.

(b) If the shipment made under the permit is less than the maximum amount authorized to be imported under the permit as determined at the weighing by the District Director of the U.S. Bureau of Customs, such difference, when ascertained by the Bureau, shall be recredited to the tentative allotment against which the quantity covered by the permit was charged, and the balance of any such tentative allotment with any such recredits will remain available to the importer to whom made (unless previously revoked in whole or in part), for importations pursuant to any permit or permits as are requested and issued during the remainder of the calendar year to which the allotment is applicable. No permit shall be issued for importation of a quantity of controlled substances as a charge against the tentative allotment for a given calendar year, after the close of such calendar year, unless the Director of the Bureau decides to make an exception for good cause shown.

§ 312.16 Cancellation of permit; expiration date.

(a) A permit may be canceled after being issued, at the request of the importer, provided no shipment has been made thereunder. In the event that a permit is lost, the Director may, upon the production by the importer of satisfactory proof, by affidavit or otherwise, issue a duplicate permit. Nothing in this part shall affect the right, hereby reserved by the Director, to cancel a permit at any time for proper cause.

(b) An import permit shall not be valid after the date specified therein, and in no event shall the date be subsequent to 6 months after the date the permit is issued. Any unused import permit shall be returned for cancellation by the registrant to the Distribution Audit Branch, Bureau of Narcotics and Dangerous Drugs, Department of Justice, Washington, D.C. 20537.

§ 312.17 Special report from importers.

Whenever requested by the Director, importers shall render to him not later than 30 days after receipt of the request therefor a statement under oath of the stocks of controlled substances on hand as of the date specified by the Director in his request, and, if desired by the Director, an estimate of the probable requirements for legitimate uses of the importer for any subsequent period that may be designated by the Director. In lieu of any special statement that may be considered necessary, the Director may accept the figures given upon the reports subsequent by said importer under Part 304 of this chapter.

§ 312.18 Contents of import declaration.

(a) Any nonnarcotic substance listed in schedule III, IV, or V may be imported if that substance is needed for medical, scientific or other legitimate uses in the United States, and will be imported pursuant to controlled substances import declaration.

(b) A registrant desiring to import any nonnarcotic controlled substance in schedules III, IV, or V must furnish a controlled substances import declaration and BND Form 236 to the Registration Branch, Bureau of Narcotics and Dangerous Drugs, Department of Justice, Post Office Box 28083, Washington, DC 20005, not later than fifteen (15) calendar days prior to the proposed date of importation and distribute four copies of same as hereinafter directed in § 312.19.

(c) BND Form 236 must be executed in quintuplicate and will include the following information:

(1) The name, address, and registration number of the importer; and the name and address and registration number of the import broker, if any; and

(2) A complete description of the controlled substances to be imported, including name, quantity, and dosage units; and

(3) The proposed import date, the foreign port of exportation to the United States, the port of entry, and the name, address, and registration number of the recipient in the United States; and

(4) The name and address of the consignor in the foreign country of exportation, and any registration or license numbers if the consignor is required to have such numbers either by the country of exportation or under U.S. law.

(d) Notwithstanding the time limitations included in paragraph (a) of this section, a registrant may obtain a special waiver of these time limitations in emergency or unusual instances, provided that a specific confirmation is received from the Director or his delegate advising the registrant to proceed pursuant to the special waiver.

§ 312.19 Distribution of import declaration.

The required five copies of the controlled substances import declaration will be distributed as follows:

(a) Copy 1, Copy 2, and Copy 3 shall be transmitted to the foreign shipper. The foreign shipper will submit Copy 1 to the proper governmental authority in the foreign country, if required as a prerequisite to export authorization. Copy 1 will then accompany the shipment to its destination, and shall be retained on file by the importer. Copy 2 shall be detached and retained by the appropriate customs official of the foreign country. Copy 3 shall be removed by the District Director of the U.S. Bureau of Customs at the port of entry, who shall sign and date the certification of customs on Copy 3, nothing any changes from the entries made by the importer, and shall then forward that copy to the Registration Branch of the Bureau.

(b) Copy 4 shall be forwarded directly to the Distribution Registration Branch, Bureau of Narcotics and Dangerous Drugs, Department of Justice, Washington, D.C. 20537, at least 15 days prior to the proposed date of importation.

(c) Copy 5 shall be retained by the importer on file as his record of authority for the importation.

Exportation of Controlled Substances

§ 312.21 Requirement of authorization to export.

(a) No person shall in any manner export or cause to be exported from the United States any controlled substance listed in schedule I or II, and any narcotic drug listed in schedule III or IV, unless and until such person is registered under the Act (or exempted from registration) and the Director has issued him a permit to do so pursuant to § 312.23.

(b) No person shall in any manner export or cause to be exported from the United States any nonnarcotic controlled substance listed in schedule III or IV or any controlled substance listed in schedule V, unless and until such person is registered under the Act (or exempted from registration) and he has furnished a special controlled substance export invoice as provided by section 1003(e) of the Act to the Director pursuant to § 312.26.

(c) A separate authorization request is obtained for each consignment of such controlled substances to be exported.

§ 312.22 Application for export permit.

(a) An application for a permit to export controlled substances shall be made on BND Form 161 which may be obtained from, and shall be filed with, the Distribution Audit Branch, Bureau of Narcotics and Dangerous Drugs, Department of Justice, Washington, D.C. 20537. Each application shall show the exporter's name, address, and registration number, the name and detailed description of each controlled substance desired to be exported, the net quantity thereof, the number and size of packages or containers, the name and quantity of the controlled substance contained in any preparation, and the quantity of any solids being given in kilograms or parts thereof. The application shall include the name, address, and business of the consignee, foreign port of entry, the port of exportation, the approximate date of exportation, the name of the exporting carrier or vessel (if known, or if unknown it should be stated whether shipment will be made by express, freight, or otherwise, exports of controlled substances by mail being prohibited), the date and number, if any, of the supporting foreign import license or permit accompanying the application, and the authority by whom such foreign license or permit was issued. The application shall also contain an affidavit that the packages are labeled in conformance with Part 302 of this chapter and that, to the best of affiant's knowledge and belief, the controlled substances therein are to be applied exclu-

sively to medical and scientific uses within the country to which exported, will not be reexported therefrom and that there is an actual need for the controlled substance for medical or scientific uses within such country. In the case of exportation of bulk coca leaf alkaloid, the affidavit may state that to the best of knowledge and belief, the controlled substances will be processed within the country to which exported, either for medical or scientific use within that country or for reexportation in accordance with the laws of that country to another for medical or scientific use within that country. The application shall be signed and dated by the exporter and shall contain the address from which the substances will be shipped for exportation.

(b) There shall also be submitted with the application any import license or permit (and a translation thereof if in a foreign language) or a certified copy of any such license or permit issued by competent authorities in the country of destination, or other documentary evidence deemed adequate by the Director, showing that the merchandise is consigned to an authorized permittee, that it is to be applied exclusively to medical or scientific use within the country of destination, that it will not be reexported from such country, and that there is an actual need for the controlled substance for medical or scientific use within such country. (In the case of exportation of bulk coca leaf alkaloid, the submitted evidence need only show the material outlined in paragraph (a) of this section for such exportations.)

§ 312.23 Issuance of export permit.

(a) The Director may authorize exportation of any controlled substance listed in schedule I or II or any narcotic controlled substance listed in schedule III or IV if he finds that such exportation is permitted by subsections 1003 (a), (b), (c), or (d) of the Act (21 U.S.C. 953 (a), (b), (c) or (d)).

(b) If after careful consideration of the application it is found that approval cannot be given, such fact and the reasons therefor will be communicated to the applicant by the Director. If additional information is required, or other action is necessary to correct any mistake or irregularity in the application or accompanying documents, opportunity will be afforded the prospective exporter by the Director to furnish such additional information or to correct such mistake or irregularity before the application is finally disapproved.

(c) Each export permit shall be serially numbered, and shall be predicated upon a separate import certificate or other documentary evidence, and not more than one shipment shall be made thereon. All export permits shall be entered in a register kept for that purpose in the office of the Director. Export permits are not transferable.

(d) No export permit shall be issued for the exportation of any narcotic drug to any country when the Director has information to show that the estimates submitted with respect to that country for the current period, under the Narcotics Limitation Convention of 1931, or the Single Convention on Narcotic Drugs of 1961, have been, or, considering the quantity proposed to be imported, will be exceeded. If it shall appear, through subsequent advice received from the International Narcotic Control Board of the United Nations that the estimates of the country of destination have been adjusted to permit further importation of the narcotic drug, an export permit may then be issued if otherwise permissible.

§ 312.24 Distribution of copies of export permit.

An export permit shall be prepared in sextuplet (numbered Copy 1, Copy 2, etc., respectively). These copies shall be distributed and serve purposes as follows:

(a) Copy 1, Copy 2, and Copy 3 shall be transmitted by the Bureau to the exporter who will retain Copy 3 as his record of authority for the exportation. The exporter shall present to the District Director of the U.S. Bureau of Customs, at the port of export and at the time of shipment, Copy 1 and Copy 2. Afer endorsing the port of export on the reverse side of Copy 1 and Copy 2 the District Director shall forward the endorsed Copy 1 with the shipment, and return the endorsed Copy 2 to the Distribution Audit Branch, Bureau of Narcotics and Dangerous Drugs, Department of Justice, Washington, D.C. 20537.

(b) Copy 4 shall be forwarded by the Bureau to the District Director of the U.S. Bureau of Customs at the port of export for comparison with Copy 1 and for retention for the customs record.

(c) Copy 5 shall be forwarded by the Bureau to the officer in the country of destination who issued the import certificate, or other documentary evidence upon which the export permit is founded.

(d) Copy 6 shall be retained by the Bureau.

§ 312.25 Expiration date.

An export permit shall not be valid after the date specified therein, which date shall conform to the expiration date specified in the supporting import certificate or other documentary evidence upon which the export permit is founded, but in no event shall the date be subsequent to 6 months after the date the permit is issued. Any unused export permit shall be returned by the permittee to the Distribution Audit Branch for cancellation.

§ 312.26 Records required of exporter.

The exporter shall keep a record of any serial numbers that might appear on packages of narcotic drugs in quantities of one ounce or more in such a manner as will identify the foreign consignee, along with Copy 3 of the export permit.

§ 312.27 Contents of special controlled substances invoice.

(a) A registrant desiring to export any nonnarcotic controlled substance listed in schedule III or V or any controlled substance listed in schedule V must furnish a special controlled substances export invoice on BND Form 236 to the Registration Branch, Bureau of Narcotics and Dangerous Drugs, Department of Justice, Post Office Box 28083, Washington, DC 20005, not less than fifteen (15) calendar days prior to the proposed date of exportation, and distribute four copies of same as hereinafter directed in § 312.27.

(b) This invoice must be executed by the exporter in quintuplicate and include the following information.

(1) The name, address, and registration number of the exporter; and the name, address and registration number of the exporter broker, if any; and

(2) A complete description of the controlled substances to be exported, including the name, quantity and dosage units; and

(3) The proposed export date, the port of exportation, the foreign port of entry, the carriers and shippers involved, method of shipment, the name of the vessel if applicable, and the name, address, and registration number, if any, of any forwarding agent utilized; and

(4) The name and address of the consignee in the country of destination, and any registration or license numbers if the consignee is required to have such numbers either by the country of destination or under United States law. In addition, documentation must be provided to show that such consignee is authorized under the laws and regulations of the country of destination to receive the controlled substances.

(c) Notwithstanding the time limitations included in paragraph (a) of this section, a registrant may obtain a special waiver of these time limitations in emergency or unusual instances; provided that a specific confirmation is received from the Director or his delegate advising the registrant to proceed pursuant to the special waiver.

§ 312.28 Distribution of special controlled substances invoice.

The required five copies of the special controlled substances export invoice, BND Form 236, will be distributed as follows:

(a) Copy 1 shall accompany the shipment and remain with the shipment to its destination.

(b) Copy 2 shall accompany the shipment and will be detached and retained by appropriate customs officials at the foreign country of destination.

(c) Copy 3 shall accompany the shipment and will be detached by the District Director of the U.S. Bureau of Customs at the port of exportation, who shall sign and date the certification of customs on such Copy 3, noting any changes from the entries made by the exporter, and shall then promtly forward Copy 3 to the Registration Branch of the Bureau.

(d) Copy 4 shall be forwarded directly to the Registration Branch, Bureau of Narcotics and Dangerous Drugs, Department of Justice, Post Office Box 28083, Washington, DC 20005, at least fifteen (15) days prior to the proposed date of exportation. These must be attached to

this copy documentation (including registration numbers if required) that such consignee is authorized under the laws and regulations of the country of destination to receive the controlled substances.

(e) Copy 5 shall be retained by the exporter on file as his record of authority for the exportation.

§ 312.29 Domestic release prohibited.

An exporter or a forwarding agent acting for an exporter must either deliver the controlled substances to the port or border, or deliver the controlled substances to a bonded carrier approved by the consignor for delivery to the port or border, and may not, under any other circumstances, release a shipment of controlled substances to anyone, including the foreign consignee or his agent, within the United States.

TRANSSHIPMENT AND IN-TRANSIT SHIPMENT OF CONTROLLED SUBSTANCES

§ 312.31 Schedule I: Application for prior written approval.

(a) A controlled substance listed in schedule I may be imported into the United States for transshipment, or may be transferred or transshipped within the United States for immediate exportation, provided that:

(1) The controlled substance is necessary for scientific, medical, or other legitimate purposes in the country of destination, and

(2) Prior written approval has been granted by the Director.

(b) An application for prior written approval must be submited to the Distribution Audit Branch, Bureau of Narcotics and Dangerous Drugs, Department of Justice, Washington, D.C. 20537, at least 30 days, or in the case of an emergency as soon as practicable, prior to the expected date of importation, transfer or transshipment. Each application shall contain the following:

(1) The date of execution;

(2) The identification and description of the controlled substance;

(3) The net quantity thereof;

(4) The number and size of the controlled substance containers;

(5) The name, address, and business of the foreign exporter;

(6) The foreign port of exportation;

(7) The approximate date of exportation;

(8) The identification of the exporting carrier;

(9) The name, address and business of the importer, transferor, or transshipper;

(10) The registration number, if any, of the importer, transferor or transshipper;

(11) The U.S. port of entry;

(12) The approximate date of entry;

(13) The name, address and business of the consignee at the foreign port of entry;

(14) The shipping route from the U.S. port of exportation to the foreign port of entry;

(15) The approximate date of receipt by the consignee at the foreign port of entry; and

(16) The signature of the importer, transferor or transhipper, or his agent accompanied by the agent's title.

(c) An application shall be accompanied by an import license or permit or a certified copy of such license or permit issued by a competent authority of the country of destination (or other documentary evidence deemed adequate by the Director), indicating that the controlled subtance:

(1) Is to be applied exclusively to scientific, medical or other legitimate uses within the country of destination;

(2) Will not be exported from such country; and

(3) Is needed therein because there is an actual shortage thereof and a demand therefor for scientific, medical or other legitimate uses within such country.

Verification by an American consular officer of the signatures on a foreign import license or permit shall be required, if such license or permit does not bear the seal of the authority signing them.

(d) The Director shall, within 21 days from the date of receipt of the application, review it and rule thereon, either granting or denying the application. Prior to a denial, however, the Director shall notify the applicant that approval cannot be granted, stating the reasons therefor. The applicant shall be accorded an opportunity to amend the application, with the Director either granting or denying the amended application within 7 days of its receipt.

(e) If the Director does not grant or deny the application within 21 days of its receipt, or in the case of an amended application, within 7 days of its receipt, it shall be deemed approval of the application, and the applicant may proceed.

§ 312.32 Schedules II, III, IV: Advance Notice.

(a) A controlled substance listed in schedules II, III, or IV may be imported into the United States for transshipment, or may be transferred or transshipped within the United States for immediate exportation, provided that written notice is submitted to the Distribution Audit Branch, Bureau of Narcotics and Dangerous Drugs, Department of Justice, Washington, D.C. 20537, at least 14 days prior to the expected date of importation, transfer or transshipment.

(b) Each advance notice shall contain those items required by § 312.31(b).

PART 316—ADMINISTRATIVE FUNCTIONS, PRACTICES, AND PROCEDURES

Subpart A—Administrative Inspections

§ 316.01 Scope of Subpart A.

Procedures regarding administrative inspections and warrants pursuant to sections 302(f), 510, and 1015 of the Act (21 U.S.C. 822(f), 880, and 965) are governed generally by those sections and specifically by the sections of this Subpart.

§ 316.02 Definitions.

As used in this Subpart, the following terms shall have the meanings specified:

(a) The term "Act" means the Controlled Substances Act (84 Stat. 1242; 21 U.S.C. 801) and/or the Controlled Substances Import and Export Act (84 Stat. 1285; 21 U.S.C. 951).

(b) The term "Bureau" means the Bureau of Narcotics and Dangerous Drugs.

(c) The term "controlled premises" means—(1) Places where original or other records or documents required under the Act are kept or required to be kept, and

(2) Places, including factories, warehouses, or other establishments, and conveyances, where persons registered under the Act or exempted from registration under the Act may lawfully hold, manufacture, or distribute, dispense, administer, or otherwise dispose of controlled substances.

(d) The term "Director" means the Director of the Bureau. The Director has been delegated authority under the Act by the Attorney General (§ 0.100) of this title.

(e) The term "inspector" means an officer or employee of the Bureau authorized to make inspections under the Act.

(f) The term "register" and "registration" refer to registration required and permitted by sections 303 and 1007 of the Act (21 U.S.C. 823 and 957).

(g) Any term not defined in this section shall have the definition set forth in sections 102 and 1001 of the Act (21 U.S.C. 802 and 951).

§ 316.03 Authority to make inspections.

In carrying out his functions under the Act, the Director, through his inspectors, is authorized in accordance with sections 510 and 1015 of the Act (21 U.S.C. 880 and 965) to enter controlled premises and conduct administrative inspections thereof, for the purpose of:

(a) Inspecting, copying, and verifying the correctness of records, reports, or other documents required to be kept or made under the Act and the regulations promulgated under the Act, including, but not limited to, inventory and other records required to be kept pursuant to Part 304 of this chapter, order form records required to be kept pursuant to Part 305 of this chapter, prescription and distribution records required to be kept pursuant to Part 306 of this chapter, shipping records identifying the name of each carrier used and the date and quantity of each shipment, and storage records identifying the name of each warehouse used and the date and quantity of each storage;

(b) Inspecting within reasonable limits and in a reasonable manner all pertinent equipment, finished and unfinished controlled substances and other substances or materials, containers, and labeling found at the controlled premises relating to this Act;

(c) Making a physical inventory of all controlled substances on-hand at the premises;

(d) Collecting samples of controlled drugs or precursors;

(e) Checking of records and information on distribution of controlled substances by the registrant as they relate to total distribution of the registrant (i.e., has the distribution in controlled substances increased markedly within the past year, and if so why); and

(f) Except as provided in § 316.04, all other things therein (including records, files, papers, processes, controls and facilities) appropriate for verification of the records, reports, documents referred to above or otherwise bearing on the provisions of the Act and the regulations thereunder.

§ 316.04 Exclusion from inspection.

(a) Unless the owner, operator or agent in charge of the controlled premises so consents in writing, no inspection authorized by these regulations shall extend to:

(1) Financial data;

(2) Sales data other than shipping data; or

(3) Pricing data.

§ 316.05 Entry.

(a) An inspection shall be carried out by an inspector. Any such inspector, upon (1) Stating his purpose and (2) Presenting to the owner, operator or agent in charge of the premises to be inspected (i) Appropriate credentials, and (ii) Written notice of his inspection authority under § 314.06 of this chapter, and (3) Receiving informed consent under § 316.08 or through the use of administrative warrant issued under § 316.09 to § 316.14, shall have the right to enter such premises and conduct inspections at reasonable times and in a reasonable manner.

§ 316.06 Notice of inspection.

The notice of inspection (BND Form 82) shall contain:

(a) The name and title of the owner, operator, or agent in charge of the controlled premises;

(b) The controlled premises name;

(c) The address of the controlled premises to be inspected;

(d) The date and time of the inspection;

(e) A statement that a notice of inspection is given pursuant to section 510 of the Federal Controlled Substances Act (21 U.S.C. 880);

(f) A reproduction of the pertinent parts of section 510 of the Controlled Substances Act; and

(g) The signature of the inspector.

§ 316.07 Requirement for administrative inspection warrant; exceptions.

In all cases where an inspection is contemplated, an administrative inspection warrant is required pursuant to section 510 of the Act (21 U.S.C. 880), except that such warrant shall not be required for establishments applying for initial registration under the Act, for the inspection of books and records pursuant to an administrative subpoena issued in accordance with section 506 of the Act (21 U.S.C. 876) nor for entries in administrative inspections (including seizures of property):

(a) With the consent of the owner, operator, or agent in charge of the controlled premises as set forth in § 316.08;

(b) In situations presenting imminent danger to health or safety;

(c) In situations involving inspection of conveyances where there is reasonable cause to obtain a warrant;

(d) In any other exceptional or emergency circumstance or time or opportunity to apply for a warrant is lacking; or

(e) In any other situations where a warrant is not constitutionally required.

§ 316.08 Consent to inspection.

(a) An administrative inspection warrant shall not be required if informed consent is obtained from the owner, operator, or agent in charge of the controlled premises to be inspected.

(b) Wherever possible, informed consent shall consist of a written statement signed by the owner, operator, agent in charge of the premises to be inspected and witnessed by two persons. The written consent shall contain the following information:

(1) That he (the owner, operator, or agent in charge of the premises) has been informed of his constitutional right not to have an administrative inspection made without an administrative inspection warrant;

(2) Of his right to refuse to consent to such an inspection;

(3) Of the possibility that anything of an incriminating nature which may be found may be seized and used against him in a criminal prosecution;

(4) That he has been presented with a notice of inspection as set forth in § 316.06;

(5) That the consent is given by him is voluntary and without threats of any kind; and

(6) That he may withdraw his consent at any time during the course of inspection.

(c) The written consent shall be produced in duplicate be distributed as follows:

(1) The original will be retained by the inspector; and

(2) The duplicate will be given to the person inspected.

§ 316.09 Application for administrative inspection warrant.

(a) An administrative inspection warrant application shall be submitted to any judge of the United States or of a State court of record, or any United States magistrate, on BND Form 2001, or a reasonable facsimile, and shall contain the following information:

(1) The name and address of the controlled premises to be inspected;

(2) A statement of statutory authority for the administrative inspection warrant, and that the fact that the particular inspection in question is designed to insure compliance with the Controlled Substances Act or the Controlled Substances Import and Export Act and the regulations promulgated under those Acts;

(3) A statement relating to the nature and extent of the administrative inspection, including, where necessary, a request to seize specified items and/or to collect samples of finished or unfinished controlled substances;

(4) A statement that the establishment either:

(i) has not been previously inspected, or

(ii) was last inspected on a particular date.

(b) The application shall be submitted under oath to an appropriate judge or magistrate.

§ 316.10 Administrative probable cause.

If the judge or magistrate is satisfied that "administrative probable cause," as defined in section 510(d)(1) of the Act (21 U.S.C. 880(d)(1)) exists, he shall issue an administrative warrant. Administrative probable cause shall not mean criminal probable cause as defined by Federal statute or case law.

§ 316.11 Execution of Warrants.

An administrative inspection warrant shall be executed and returned as required by, and any inventory or seizure made shall comply with the requirements of, section 510(d)(3) of the Act (21 U.S.C. 880(d)(3)). The inspection shall begin as soon as is practicable after the issuance of the administrative inspection warrant and shall be completed with reasonable promptness. The inspection shall be conducted during regular business hours and shall be completed in a reasonable manner.

§ 316.12 Refusal to allow inspection with an administrative warrant.

If a registrant or any person subject to the Act refuses to permit execution of an administrative warrant or impedes the inspector in the execution of that warrant, he shall be advised that such refusal or action constitutes a violation of section 402(a)(6) of the Act (21 U.S.C. (a)(6)). If he persists and the circumstances warrant, he shall be arrested and the inspection shall commence or continue.

§ 316.13 Frequency of administrative inspections.

Except where circumstances otherwise dictate, it is the intent of the Bureau to inspect all manufacturers of controlled substances listed in schedules I and II and distributors of controlled substances listed in schedule I once each year; and to inspect all distributors of controlled substances listed in schedules II through V and manufacturers of controlled substances listed in schedules III through V once every 3 years.

Subpart B—Protection of Researchers and Research Subjects

§ 316.21 Confidentiality of research subjects.

(a) Any person registered to conduct research in controlled substances under the Controlled Substances Act (84 Stat. 1242; 21 U.S.C. 801), who intends to maintain the confidentiality of those

persons who are the subjects of such research, shall, upon registration or within a reasonable time thereafter, submit to the Director, Bureau of Narcotics and Dangerous Drugs, Department of Justice, Washington, D.C. 20537, a separate request for each research project involving controlled substances, which shall contain the following:

(1) The researcher's registration number for that project;

(2) The location of the research project;

(3) A general description of the research or a copy of the research protocol;

(4) A specific request to withhold the names and/or any other identifying characteristics of the research subjects; and

(5) The reasons supporting the request.

(b) Within 30 days from the date of receipt of the request, the Director shall issue a letter, either granting confidentiality, requesting additional information, or denying confidentiality, in which case the reasons for the denial shall be included. A grant of confidentiality shall be limited solely to the specific research project indicated in the request.

(c) Within 30 days after the date of completion of the research project, the researcher shall so notify the Director.

§ 316.22 Exemption from prosecution for researcher.

(a) Upon registration of a practitioner to engage in research in controlled substances under the Controlled Substances Act (84 Stat. 1242; 21 U.S.C. 801), the Director of the Bureau of Narcotics and Dangerous Drugs, on his own motion or upon request in writing from the Secretary or from the practitioner, exempt the registrant when acting within the scope of his registration, from prosecution under Federal, State, or local laws for offenses relating to possession, distribution or dispensing of those controlled substances within the scope of his exemption. However, this exemption does not diminish any requirement of compliance with the Federal Food, Drug and Cosmetic Act (21 U.S.C. 301).

(b) The exemption shall consist of a letter issued by the Director, which shall include:

(1) The researcher's name and address;

(2) The researcher's registration number from the research project;

(3) The location of the research project;

(4) A concise statement of the scope of the researcher's registration; and

(5) The limits of the exemption.

(c) The exemption shall apply to all acts done in the scope of the exemption while the exemption is in effect. The exemption shall remain in effect until completion of the research project or until the registration of the researcher is either revoked or suspended or his renewal of registration is denied. Within 30 days of the date of completion of the research project, the researcher shall so notify the Director and return the letter of exemption.

Subpart C—Enforcement Proceedings

§ 316.31 Authority for enforcement proceeding.

A hearing may be ordered or granted by any Regional Director of the Bureau of Narcotics and Dangerous Drugs, at his discretion, to permit any person against whom criminal and/or civil action is contemplated under the Controlled Substances Act (84 Stat. 1242; 21 U.S.C. 801) or the Controlled Substances Import and Export Act (84 Stat. 1285, 21 U.S.C. 951) an opportunity to present his views and his proposals for bringing his alleged violations into compliance with the law. Such hearing will also permit him to show cause why prosecution should not be instituted, or to present his views on the contemplated proceeding.

§ 316.32 Notice of proceeding; time and place.

Appropriate notice designating the time and place for the hearing shall be given to the person. Upon request, seasonably made, by the person to whom notice has been given, the time or place of the hearing, or both, may be changed if the request states reasonable grounds for such change. Such request shall be addressed to the Regional Director who issued the notice.

§ 316.33 Conduct of proceeding.

Presentation of views at a hearing under this Subpart shall be private and informal. The views presented shall be confined to matters relevant to bringing violations into compliance with the Act or to other contemplated proceedings under the Act. These views may be presented orally or in writing by the person to whom the notice was given, or by his authorized representative.

§ 316.34 Records of proceeding.

A formal record of the hearing may be made at the request of either the Regional Director or the person for whom the hearing is being conducted. If such record is to be made at the request of the Regional Director, the person attending the hearing will be so advised prior to the start of the hearing.

All interested persons are invited to submit their comments or objections in writing regarding this proposal. Comments and objections should be submitted in quintuplicate to the Office of Chief Counsel, Bureau of Narcotics and Dangerous Drugs, Department of Justice, Room 611, 1405 Eye Street NW., Washington, DC 20537, and must be received no later than 30 days after publication of this proposal in the FEDERAL REGISTER. It is the intention of the Bureau of Narcotics and Dangerous Drugs to publish final rules no later than April 15, 1971, to take effect on May 1, 1971, in order that regulations be in effect when the Comprehensive Drug Abuse Prevention and Control Act of 1970 becomes effective in its entirety.

Dated: March 8, 1971.

JOHN E. INGERSOLL,
Director, Bureau of Narcotics and Dangerous Drugs.

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