FEDERAL REGISTER

VOLUME 36 • NUMBER 55

Saturday, March 20, 1971 • Washington, D.C.

Pages 5321–5404

Part I

(Part II begins on page 5399)

Agencies in this issue—

Detailed list of Contents appears inside.

FEDERAL REGISTER

Area Code 202 Phone 962–8626

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

The FEDERAL REGISTER will be furnished by mail to subscribers, free of postage, for $2.50 per month or $25 per year, payable in advance. The charge for individual copies is 20 cents for each issue, or 20 cents for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

The regulatory material appearing herein is keyed to the CODE OF FEDERAL REGULATIONS, which is published, under 50 titles, pursuant to section 11 of the Federal Register Act, as amended (44 U.S.C. 1510). The CODE OF FEDERAL REGULATIONS is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

Contents

(Continued on next page)

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.

1 CFR

Appendix B 5325

3 CFR

EXECUTIVE ORDER:
April 17, 1926 (revoked in part by PLO 5031) 5342

7 CFR

910 5340

24 CFR

1909 5340
1914 5340

26 CFR

1 (3 documents) 5325, 5336, 5339
13 (2 documents) 5339
PROPOSED RULES:
1 5355
53 (2 documents) 5355, 5357
143 5357

38 CFR

3 5341

43 CFR

PUBLIC LAND ORDERS:
5030 5341
5031 5342
PROPOSED RULES:
1840 5367
1850 5367
4110 5367
9230 5367

45 CFR

1201 5342

46 CFR

PROPOSED RULES:
146 5400
147 5400
503 5369
510 5369
543 5369

47 CFR

0 5345
64 5345
PROPOSED RULES:
73 5369

Rules and Regulations

Title 1—GENERAL PROVISIONS

Chapter I—Administrative Committee of the Federal Register

APPENDIX B—LISTS OF ACTS REQUIRING PUBLICATION IN THE "FEDERAL REGISTER"

Appendix B is amended by adding thereto the list of acts enacted in 1970 requiring or authorizing the publication of documents in the FEDERAL REGISTER, as follows:

1970

Presidential Determination of Foreign Aid	84 Stat. 9; 22 U.S.C. 2370 note.
Railroad Retirement Tax	84 Stat. 71; 26 U.S.C. 3221.
Pollution abatement award	84 Stat. 111; 33 U.S.C. 1172.
Oil Dispersant or Emulsifier	84 Stat. 112; 33 U.S.C. 1155.
Pay of Federal Employees	84 Stat 196; 5 U.S.C. 5332 note.
International Expositions	84 Stat. 272; 22 U.S.C. 2804.
Retirement of Federal Home Loan Mortgage Corporation Stock.	84 Stat. 454; 12 U.S.C. 1453.
Unemployment Compensation Program	84 Stat. 709; 26 U.S.C. 3304 note.
Temporary postal rates, fees, and classification.	84 Stat. 763; 39 U.S.C. 3641.
Effective date of postal changes	84 Stat 787; 39 U.S.C. note preceding 101.
Cost-accounting standards, rules, and regulations.	84 Stat. 798; 50 App. U.S.C. 2168.
Railroad safety	84 Stat. 973; 45 U.S.C. 435.
King Range National Conservation Area	84 Stat. 1068; 16 U.S.C. 460y–3.
Sleeping Bear Dunes National Lakeshore	84 Stat. 1075; 16 U.S.C. 460x–1, 460x–2.
Cherokee Indians of North Carolina	84 Stat. 1097 (no U.S.C.).
Records and reports of financial actions	84 Stat. 1125; 31 U.S.C. 1051 note.
Solid waste disposal	84 Stat. 1232; 42 U.S.C. 3254c.
Drug abuse prevention and control	84 Stat. 1284; 21 U.S.C. 801 note.
Bicentennial Commission symbols	84 Stat. 1389 (no U.S.C.).
Minute Man Park	84 Stat. 1437; 16 U.S.C. 410s.
Atomic Energy Antitrust	84 Stat. 1473; 42 U.S.C. 2135.
Atomic Energy license	84 Stat. 1474; 42 U.S.C. 2232.
Geothermal Resource Areas	84 Stat. 1572; 30 U.S.C. 1020.
Safety and Health Standards	84 Stat. 1594, 1596, 1597; 29 U.S.C. 655.
Poison Prevention Packaging	84 Stat. 1674; 15 U.S.C. 1471 note.
Air Pollution	84 Stat. 1679, 1696, 1699, 1702; 42 U.S.C. 1857c–3, 1857f–5, 1957f–6c, 1857f–6e.
Prototype housing costs	84 Stat. 1778; 42 U.S.C. 1415 and note.
Seals of United States and President	84 Stat. 1941; 18 U.S.C. 713.
Pay of Federal Employees	84 Stat. 1949; 5 U.S.C. 5305.
Voyageurs National Park	84 Stat. 1970; 16 U.S.C. 160a.
Financial Assistance to Railroads	84 Stat. 1975; 45 U.S.C. 662.

Title 26—INTERNAL REVENUE

Chapter I—Internal Revenue Service, Department of the Treasury

SUBCHAPTER A—INCOME TAX

[T.D. 7100]

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

Revision of Corporate Rates and Related Provisions Pursuant to Revenue Act of 1964 and Imposition and Extensions of Tax Surcharge

On December 5, 1970, notice of proposed rule making with respect to the amendment of the Income Tax Regulations (26 CFR Part 1) under sections 11, 51, 242(a), 821 (a) and (c), 826, and 963 of the Internal Revenue Code of 1954 to reflect the changes made by sections 121, 123 (a) and (c) and 201 (d) of the Revenue Act of 1964 (78 Stat. 19), by sections 102 and 104(b) of the Revenue and Expenditure Control Act of 1968 (82 Stat. 251), by section 5 of the Act of August 7, 1969 (Public Law 91–53, 82 Stat. 252), and by sections 401(b)(2)(B) and 701 of the Tax Reform Act of 1969 (83 Stat. 487) was published in the FEDERAL REGISTER (35 F.R. 18537). 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, subject to the changes set forth below:

Paragraphs (a)(1), (b)(3), (d)(1)(i) and (2), (e)(1), and (i) of § 1.51–1, as set forth in paragraph 3 of the notice of proposed rule making, are revised.

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

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

Approved: March 12, 1971.

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

In order to conform the Income Tax Regulations (26 CFR Part 1) under sections 11, 242(a), 821 (a) and (c), and 826, of the Internal Revenue Code of 1954 to sections 121, 123 (a) and (c), and 201(d) of the Revenue Act of 1964 (78 Stat. 19), and to section 401(b)(2)(B) of the Tax Reform Act of 1969 (83 Stat. 602) and under sections 51 and 963 of the Code to sections 102 and 104(b) of the Revenue and Expenditure Control Act of 1968 (82 Stat. 251), to section 5 of the Act of August 7, 1969 (Public Law 91–53, 82 Stat. 252), and to section 701 of the Tax Reform Act of 1969 (83 Stat. 487), such regulations are amended as follows:

PARAGRAPH 1. Section 1.11 is amended by revising section 11, and the historical note to read as follows:

§ 1.11 Tax on corporations.

SEC. 11. *Tax imposed*—(a) *Corporations in general.* A tax is hereby imposed for each taxable year on the taxable income of every corporation. The tax shall consist of a normal tax computed under subsection (b) and a surtax computed under subsection (c).

(b) *Normal tax.* The normal tax is equal to the following percentage of the taxable income:

(1) 30 percent, in the case of a taxable year beginning before January 1, 1964, and

(2) 22 percent, in the case of a taxable year beginning after December 31, 1963.

(c) *Surtax.* The surtax is equal to the following percentage of the amount by which the taxable income exceeds the surtax exemption for the taxable year:

(1) 22 percent, in the case of a taxable year beginning before January 1, 1964,

(2) 28 percent, in the case of a taxable year beginning after December 31, 1963, and before January 1, 1965, and

(3) 26 percent, in the case of a taxable year beginning after December 31, 1964.

(d) *Surtax exemption.* For purposes of this subtitle, the surtax exemption for any taxable year is $25,000, except that, with respect to a corporation to which section 1561 or 1564 (relating to surtax exemptions in case of certain controlled corporations) applies for the taxable year, the surtax exemption for the taxable year is the amount determined under such section.

(e) *Exceptions.* Subsection (a) shall not apply to a corporation subject to a tax imposed by—

(1) Section 594 (relating to mutual savings banks conducting life insurance business),

(2) Subchapter L (sec. 801 and following, relating to insurance companies),

(3) Subchapter M (sec. 851 and following, relating to regulated investment companies and real estate investment trusts).

(f) *Foreign corporations.* In the case of a foreign corporation, the tax imposed by subsection (a) shall apply only as provided by section 882.

[Sec. 11 as amended by sec. 2, Tax Rate Extension Act 1955 (69 Stat. 114); sec. 2, Tax Rate Extension Act 1956 (70 Stat. 66); sec. 2, Tax Rate Extension Act 1957 (71 Stat. 9); sec. 2, Tax Rate Extension Act 1958 (72 Stat. 259); sec. 2, Tax Rate Extension Act 1959 (73 Stat. 157); sec. 201, Public Debt and Tax Rate Extension Act 1960 (74 Stat. 290); sec. 2, Tax Rate Extension Act 1961 (75 Stat. 193); sec. 2,

Tax Rate Extension Act 1962 (76 Stat. 114); sec. 2, Tax Rate Extension Act 1963 (77 Stat. 72); sec. 121, Rev. Act 1964 (78 Stat. 25); sec. 104(b)(2), Foreign Investor's Tax Act 1966 (80 Stat. 1557); sec. 401, Tax Reform Act 1969 (83 Stat. 602)]

PAR. 2. Section 1.11–1 is amended by revising paragraphs (c) and (d) to read as follows:

§ 1.11–1 Tax on corporations.

* * * * *

(c) The normal tax is computed by applying to the taxable income the rate of tax in effect for the taxable year. The rates of tax applicable for the respective taxable years are as follows:

	Percent
For taxable years beginning before January 1, 1964	30
For taxable years beginning after December 31, 1963	22

(d) The surtax is at the rate of: (1) 22 percent in the case of a taxable year beginning before January 1, 1964; (2) 28 percent in the case of a taxable year beginning after December 31, 1963, and before January 1, 1965; and (3) 26 percent in the case of a taxable year beginning after December 31, 1964; and is upon the taxable income (computed without regard to the deduction, if any, provided in section 242 for partially tax-exempt interest) in excess of $25,000. However, in certain circumstances the $25,000 exemption from surtax may be disallowed in whole or in part, or limited in amount. See sections 269, 1551, 1561, and 1564 and the regulations thereunder.

* * * * *

PAR. 3. There are inserted immediately after § 1.48–7 the following new sections:

TAX SURCHARGE

§ 1.51 Statutory provisions; imposition of tax surcharge.

SEC. 51. Tax surcharge—(a) *Imposition of tax*—(1) *Calendar years*—(A) *Individuals (other than estates and trusts)*. In addition to the other taxes imposed by this chapter, there is hereby imposed on the income of every individual (other than an estate or trust) whose taxable year is the calendar year a tax as follows:

CALENDAR YEAR 1968

TABLE 1.—SINGLE PERSON (OTHER THAN HEAD OF HOUSEHOLD) AND MARRIED PERSON FILING SEPARATE RETURN

If the adjusted tax is: At least	But less than	The tax is—	If the adjusted tax is: At least	But less than	The tax is—	If the adjusted tax is: At least	But less than	The tax is—
0	$148	0	$275	$282	$20	$513	$527	$39
$148	155	$1	282	288	21	527	540	40
155	162	2	288	298	22	540	553	41
162	168	3	298	313	23	553	567	42
168	175	4	313	327	24	567	580	43
175	182	5	327	340	25	580	593	44
182	188	6	340	353	26	593	607	45
188	195	7	353	367	27	607	620	46
195	202	8	367	380	28	620	633	47
202	208	9	380	393	29	633	647	48
208	215	10	393	407	30	647	660	49
215	222	11	407	420	31	660	673	50
222	228	12	420	433	32	673	687	51
228	235	13	433	447	33	687	700	52
235	242	14	447	460	34	700	713	53
242	248	15	460	473	35	713	727	54
248	255	16	473	487	36	727	734	55
255	262	17	487	500	37	734 and over, 7.5% of the adjusted tax.		
262	268	18	500	513	38			
268	275	19						

TABLE 2.—HEAD OF HOUSEHOLD

If the adjusted tax is: At least	But less than	The tax is—	If the adjusted tax is: At least	But less than	The tax is—	If the adjusted tax is: At least	But less than	The tax is—
0	$223	0	$350	$357	$20	$527	$540	$40
$223	230	$1	357	363	21	540	553	41
230	237	2	363	370	22	553	567	42
237	243	3	370	377	23	567	580	43
243	250	4	377	383	24	580	593	44
250	257	5	383	390	25	593	607	45
257	263	6	390	397	26	607	620	46
263	270	7	397	403	27	620	633	47
270	277	8	403	410	28	633	647	48
277	283	9	410	417	29	647	660	49
283	290	10	417	423	30	660	673	50
290	297	11	423	430	31	673	687	51
297	303	12	430	437	32	687	700	52
303	310	13	437	447	33	700	713	53
310	317	14	447	460	34	713	727	54
317	323	15	460	473	35	727	734	55
323	330	16	473	487	36	734 and over, 7.5% of the adjusted tax.		
330	337	17	487	500	37			
337	343	18	500	513	38			
343	350	19	513	527	39			

TABLE 3.—MARRIED PERSONS OR SURVIVING SPOUSE FILING JOINT RETURN

If the adjusted tax is: At least	But less than	The tax is—	If the adjusted tax is: At least	But less than	The tax is—	If the adjusted tax is: At least	But less than	The tax is—
0	$293	0	$420	$427	$20	$553	$560	$40
$293	300	$1	427	433	21	560	567	41
300	307	2	433	440	22	567	573	42
307	313	3	440	447	23	573	580	43
313	320	4	447	453	24	580	593	44
320	327	5	453	460	25	593	607	45
327	333	6	460	467	26	607	620	46
333	340	7	467	473	27	620	633	47
340	347	8	473	480	28	633	647	48
347	353	9	480	487	29	647	660	49
353	360	10	487	493	30	660	673	50
360	367	11	493	500	31	673	687	51
367	373	12	500	507	32	687	700	52
373	380	13	507	513	33	700	713	53
380	387	14	513	520	34	713	727	54
387	393	15	520	527	35	727	734	55
393	400	16	527	533	36	734 and over, 7.5% of the adjusted tax.		
400	407	17	533	540	37			
407	413	18	540	547	38			
413	420	19	547	553	39			

CALENDAR YEAR 1969

TABLE 1.—SINGLE PERSON (OTHER THAN HEAD OF HOUSEHOLD) AND MARRIED PERSONS FILING SEPARATE RETURN

If the adjusted tax is: At least	But less than	The tax is—	If the adjusted tax is: At least	But less than	The tax is—	If the adjusted tax is: At least	But less than	The tax is—
0	$148	0	$273	$278	$26	$515	$525	$52
$148	153	$1	278	283	27	525	535	53
153	158	2	283	288	28	535	545	54
158	163	3	288	295	29	545	555	55
163	168	4	295	305	30	555	565	56
168	173	5	305	315	31	565	575	57
173	178	6	315	325	32	575	585	58
178	183	7	325	335	33	585	595	59
183	188	8	335	345	34	595	605	60
188	193	9	345	355	35	605	615	61
193	198	10	355	365	36	615	625	62
198	203	11	365	375	37	625	635	63
203	208	12	375	385	38	635	645	64
208	213	13	385	395	39	645	655	65
213	218	14	395	405	40	655	665	66
218	223	15	405	415	41	665	675	67
223	228	16	415	425	42	675	685	68
228	233	17	425	435	43	685	695	69
233	238	18	435	445	44	695	705	70
238	243	19	445	455	45	705	715	71
243	248	20	455	465	46	715	725	72
248	253	21	465	475	47	725	735	73
253	258	22	475	485	48	735 and over, 10% of the adjusted tax.		
258	263	23	485	495	49			
263	268	24	495	505	50			
268	273	25	505	515	51			

TABLE 2.—HEAD OF HOUSEHOLD

If the adjusted tax is: At least	But less than	The tax is—	If the adjusted tax is: At least	But less than	The tax is—	If the adjusted tax is: At least	But less than	The tax is—
0	$223	0	$348	$353	$26	$505	$515	$51
$223	228	$1	353	358	27	515	525	52
228	233	2	358	363	28	525	535	53
233	238	3	363	368	29	535	545	54
238	243	4	368	373	30	545	555	55
243	248	5	373	378	31	555	565	56
248	253	6	378	383	32	565	575	57
253	258	7	383	388	33	575	585	58
258	263	8	388	393	34	585	595	59
263	268	9	393	398	35	595	605	60
268	273	10	398	403	36	605	615	61
273	278	11	403	408	37	615	625	62
278	283	12	408	413	38	625	635	63
283	288	13	413	418	39	635	645	64
288	293	14	418	423	40	645	655	65
293	298	15	423	428	41	655	665	66
298	303	16	428	433	42	665	675	67
303	308	17	433	438	43	675	685	68
308	313	18	438	445	44	685	695	69
313	318	19	445	455	45	695	705	70
318	323	20	455	465	46	705	715	71
32	328	21	465	475	47	715	725	72
328	333	22	475	485	48	725	735	73
333	338	23	485	495	49	735 and over, 10% of the adjusted tax.		
338	343	24	495	505	50			
343	348	25						

TABLE 3.—MARRIED PERSONS OR SURVIVING SPOUSE FILING JOINT RETURN

If the adjusted tax is: At least	But less than	The tax is—	If the adjusted tax is: At least	But less than	The tax is—	If the adjusted tax is: At least	But less than	The tax is—
0	$293	0	$418	$423	$26	$548	$553	$52
$293	298	$1	423	428	27	553	558	53
298	303	2	428	433	28	558	563	54
303	308	3	433	438	29	563	568	55
308	313	4	438	443	30	568	573	56
313	318	5	443	448	31	573	578	57
318	323	6	448	453	32	578	585	58
323	328	7	453	458	33	585	595	59
328	333	8	458	463	34	595	605	60
333	338	9	463	468	35	605	615	61
338	343	10	468	473	36	615	625	62
343	348	11	473	478	37	625	635	63
348	353	12	478	483	38	635	645	64
353	358	13	483	488	39	645	655	65
358	363	14	488	493	40	655	665	66
363	368	15	493	498	41	665	675	67
368	373	16	498	503	42	675	685	68
373	378	17	503	508	43	685	695	69
378	383	18	508	513	44	695	705	70
383	388	19	513	518	45	705	715	71
388	393	20	518	523	46	715	725	72
393	398	21	523	528	47	725	735	73
398	403	22	528	533	48	735 and over, 10% of the adjusted tax.		
403	408	23	533	538	49			
408	413	24	538	543	50			
413	418	25	543	548	51			

CALENDAR YEAR 1970

TABLE 1.—SINGLE PERSON (OTHER THAN HEAD OF HOUSEHOLD) AND MARRIED PERSONS FILING SEPARATE RETURNS

If the adjusted tax is: At least	But less than	The tax is—	If the adjusted tax is: At least	But less than	The tax is—	If the adjusted tax is: At least	But less than	The tax is—
0	$155	0	$700	$740	$18	$1,420	$1,460	$36
$155	175	$1	740	780	19	1,460	1,500	37
175	195	2	780	820	20	1,500	1,540	38
195	215	3	820	860	21	1,540	1,580	39
215	235	4	860	900	22	1,580	1,620	40
235	255	5	900	940	23	1,620	1,660	41
255	275	6	940	980	24	1,660	1,700	42
275	300	7	980	1,020	25	1,700	1,740	43
300	340	8	1,020	1,060	26	1,740	1,780	44
340	380	9	1,060	1,100	27	1,780	1,820	45
380	420	10	1,100	1,140	28	1,820	1,860	46
420	460	11	1,140	1,180	29	1,860	1,900	47
460	500	12	1,180	1,220	30	1,900	1,940	48
500	540	13	1,220	1,260	31	1,940	1,980	49
540	580	14	1,260	1,300	32	1,980	2,020	50
580	620	15	1,300	1,340	33	2,020 and over, 2.5% of the adjusted tax.		
620	660	16	1,340	1,380	34			
660	700	17	1,380	1,420	35			

TABLE 2.—HEAD OF HOUSEHOLD

If the adjusted tax is: At least	But less than	The tax is—	If the adjusted tax is: At least	But less than	The tax is—	If the adjusted tax is: At least	But less than	The tax is—
0	$230	0	$700	$740	$18	$1,420	$1,460	$36
$230	250	$1	740	780	19	1,460	1,500	37
250	270	2	780	820	20	1,500	1,540	38
270	290	3	820	860	21	1,540	1,580	39
290	310	4	860	900	22	1,580	1,620	40
310	330	5	900	940	23	1,620	1,660	41
330	350	6	940	980	24	1,660	1,700	42
350	370	7	980	1,020	25	1,700	1,740	43
370	390	8	1,020	1,060	26	1,740	1,780	44
390	410	9	1,060	1,100	27	1,780	1,820	45
410	430	10	1,100	1,140	28	1,820	1,860	46
430	460	11	1,140	1,180	29	1,860	1,900	47
460	500	12	1,180	1,220	30	1,900	1,940	48
500	540	13	1,220	1,260	31	1,940	1,980	49
540	580	14	1,260	1,300	32	1,980	2,020	50
580	620	15	1,300	1,340	33	2,020 and over, 2.5% of the adjusted tax.		
620	660	16	1,340	1,380	34			
660	700	17	1,380	1,420	35			

TABLE 3.—MARRIED PERSONS OR SURVIVING SPOUSE FILING JOINT RETURN

If the adjusted tax is: At least	But less than	The tax is—	If the adjusted tax is: At least	But less than	The tax is—	If the adjusted tax is: At least	But less than	The tax is—
0	$300	0	$700	$740	$18	$1,420	$1,460	$36
$300	320	$1	740	780	19	1,460	1,500	37
320	340	2	780	820	20	1,500	1,540	38
340	360	3	820	860	21	1,540	1,580	39
360	380	4	860	900	22	1,580	1,620	40
380	400	5	900	940	23	1,620	1,660	41
400	420	6	940	980	24	1,660	1,700	42
420	440	7	980	1,020	25	1,700	1,740	43
440	460	8	1,020	1,060	26	1,740	1,780	44
460	480	9	1,060	1,100	27	1,780	1,820	45
480	500	10	1,100	1,140	28	1,820	1,860	46
500	520	11	1,140	1,180	29	1,860	1,900	47
520	540	12	1,180	1,220	30	1,900	1,940	48
540	560	13	1,220	1,260	31	1,940	1,980	49
560	580	14	1,260	1,300	32	1,980	2,020	50
580	620	15	1,300	1,340	33	2,020 and over, 2.5% of the adjusted tax.		
620	660	16	1,340	1,380	34			
660	700	17	1,380	1,420	35			

(B) *Other persons.* In addition to the other taxes imposed by this chapter, there is hereby imposed on the income of every corporation, and on the income of every estate and trust, whose taxable year is the calendar year, a tax equal to the percent of the adjusted tax (as defined in subsection (b)) for the taxable year specified in the following table:

Calendar year	Percent: Estates and trusts	Percent: Corporations
1968	7.5	10.0
1969	10.0	10.0
1970	2.5	2.5

(2) *Fiscal and short taxable years*—(A) *In general.* In addition to the other taxes imposed by this chapter and except as provided in subparagraph (B), in the case of taxable years ending on or after the effective date of the surcharge and beginning before July 1, 1970, there is hereby imposed on the income of every person whose taxable year is other than the calendar year, a tax equal to—

(i) 10 percent of the adjusted tax for the taxable year, multiplied by

(ii) A fraction, the numerator of which is the sum of the number of days in the taxable year occurring on or after the effective date of the surcharge and before January 1, 1970, plus one-half times the number of days in the taxable year occurring after December 31, 1969, and before July 1, 1970, and the denominator of which is the number of days in the entire taxable year.

(B) *Limitation.* In the case of—

(i) A husband and wife (or surviving spouse) who file a joint return under section 6013 and whose adjusted tax for the taxable year is less than $580,

(ii) An individual who is a head of a household to whom section 1(b) applies and whose adjusted tax for the taxable year is less than $440, and

(iii) Any other individual (other than an estate or trust) whose adjusted tax for the taxable year is less than $290,

the tax imposed by subparagraph (A) shall not be greater than an amount equal to twice the tax which would be imposed by subparagraph (A) if the tax were imposed on the amount by which the adjusted tax exceeds $290, $220, or $145, respectively.

(C) *Effective date defined.* For purposes of subparagraph (A), the term "effective date of the surcharge" means—

(i) January 1, 1968, in the case of a corporation, and

(ii) April 1, 1968, in the case of any other taxpayer.

(b) *Adjusted tax defined.* For purposes of this section, the term "adjusted tax" means, with respect to any taxable year, the tax imposed by this chapter for such taxable year, determined without regard to—

(1) The taxes imposed by this section, section 56, section 871(a), and section 881; and

(2) Any increases in tax under section 47(a) (relating to certain dispositions, etc., of section 38 property) or section 614(c)(4)(C) (relating to increase in tax for deductions under section 615(a) prior to aggregation),

and reduced by an amount equal to the amount of any credit which would be allowable under section 37 (relating to retirement income) if no tax were imposed by this section for such taxable year.

(c) *Estimated tax.* For purposes of applying the provisions of this title with respect to declarations, amended declarations, and payments of estimated tax the time prescribed for filing or payment of which is on or after—

(1) In the case of an individual, September 15, 1968, or

(2) In the case of a corporation, June 15, 1968,

sections 6654(d)(1) and 6655(d)(1) shall not apply with respect to any taxable year for which a tax is imposed by this section.

(d) *Western Hemisphere trade corporations and dividends on certain preferred stock.* In computing, for a taxable year of a corporation, the fraction described in—

(1) Section 244(a)(2), relating to deduction with respect to dividends received on the preferred stock of a public utility,

(2) Section 247(a)(2), relating to deduction with respect to certain dividends paid by a public utility, or

(3) Section 922(2), relating to special deduction for Western Hemisphere trade corporations,

the denominator shall, under regulations prescribed by the Secretary or his delegate, be increased to reflect the rate at which tax is imposed under subsection (a) for such taxable year.

(e) *Shareholders of regulated investment companies.* In computing the amount of tax deemed paid under section 852(b)(3)(D)(ii) and the adjustment to basis described in section 852(b)(3)(D)(iii), the percentages set forth therein shall be adjusted under regulations prescribed by the Secretary or his delegate to reflect the rate at which tax is imposed under subsection (a).

(f) *Special rule.* For purposes of this title, to the extent the tax imposed by this section is attributable (under regulations prescribed by the Secretary or his delegate) to a tax imposed by another section of this chapter, such tax shall be deemed to be imposed by such other section.

[Sec. 51 as added by sec. 102, Revenue and Expenditure Control Act 1968 (82 Stat. 251); as amended by sec. 5, Act of Aug. 7, 1969 (Public Law 91-53, 82 Stat. 252); sec. 701, Tax Reform Act 1969 (83 Stat. 657)]

§ 1.51-1 Imposition of surcharge.

(a) *Introduction*—(1) *Scope of section.* In addition to the other taxes imposed under chapter 1 of the Code, section 51 imposes a surcharge on the income of individuals, estates and trusts and corporations. The tax imposed by this section constitutes a Federal income tax. Thus, for example, for purposes of sections 275(a)(1), 535(b)(1), 545(b)(1), and 556(b)(1), the term "Federal income tax" used therein includes the proper amount of the surcharge.

(2) *Taxable years affected.* The surcharge is applicable with respect to taxpayers other than corporations for taxable years ending after March 31, 1968, and beginning before July 1, 1970, and with respect to corporations for taxable years ending after December 31, 1967,

and beginning before July 1, 1970. For purposes of this section, the term, "effective date of the surcharge" for taxpayers other than corporations is April 1, 1968, and for corporations is January 1, 1968. Although the effective date for a taxpayer other than a corporation is April 1, 1968, the adjusted tax of a taxpayer whose taxable year ends after March 31, 1968, includes the tax (with certain adjustments described in paragraph (c) of this section) for the entire taxable year. For example, the adjusted tax of a taxpayer whose taxable year is the calendar year 1968, will include the tax on such taxpayer's taxable income for his entire calendar year 1968. The surcharge is not applicable with respect to a taxable year beginning after June 30, 1970.

(b) *Computation of surcharge for calendar years*—(1) *Individuals.* The surcharge imposed on individuals whose taxable year is the calendar year is determined in accordance with the applicable table contained in section 51(a)(1)(A).

(2) *Other persons.* The surcharge on the income of corporations and estates and trusts whose taxable year is the calendar year is determined in accordance with the table contained in section 51(a)(1)(B).

(3) *Special rules for computation of surcharge.* A limitation on the amount of tax imposed by chapter 1 of the Code which is determined with reference to tax rates applicable to prior taxable years, as, for example, the limitations prescribed in sections 481, 668, 1341, 1342, and 1383, shall be applied after the computation of tax including the surcharge (determined without regard to such limitation). For example, under section 481(a) if an individual changes his method of accounting certain adjustments must be made to his income. However, an increase in tax as a result of such adjustment (the "basic" increase) is limited by section 481(b) to the increase that would have resulted if the adjustment had been spread out and added ratably to the taxable income over the year in question and the 2 preceding years. In such cases the basic increase under section 481(a) will be computed with the surcharge if the change in accounting is taken into account in a surcharge year. However, the limitation in section 481(b) will be computed as follows: The amount of tax on the income (including the ratable portion of the adjustment) in any surcharge year will be figured by taking the surcharge into account; however, the amount of tax on the incomes (including the ratable portion of the adjustment) in any nonsurcharge year will be figured only under regular rates (i.e., without the surcharge).

(4) *Illustration of principles.* The provisions of subparagraph (3) of this paragraph may be illustrated by the following examples:

Example. (a) A, an individual filing a joint return whose taxable year is a calendar year changed his method of accounting for the calendar year 1968. The change resulted in an adjustment under section 481(a) requiring a $6,000 increase in A's taxable income for 1968. Prior to the adjustment A's taxable income for 1968 was $20,000. In order to apply section 481(b)(1) it is determined that A's taxable income for 1967 and 1966 was $14,000 and $12,000 respectively, and A's tax liability for 1967 and 1966 was $2,760 and $2,260 respectively. Under section 481(a) taxable income is increased from $20,000 to $26,000. Assume the tax computed without regard to the surcharge on $20,000 is $4,380 and on $26,000 is $6,380. Assume that the amount of surcharge on an adjusted tax of $4,380 and $6,380 is $328.50 and $478.50, respectively.

(b) Under section 481(b)(1) A's 1968 tax attributable to the $6,000 increase in A's 1968 taxable income shall not be greater than the aggregate increase in taxes for 1968, 1967, and 1966 if $2,000 (⅓ of $6,000) were added to $20,000 taxable income for 1968, $14,000 taxable income for 1967 and $12,000 taxable income for 1966. Under subparagraph (3) of this paragraph, A's 1968 tax attributable to the $6,000 increase for purposes of applying section 481(b)(1) is determined after computation of the surcharge for 1968. A's 1968 tax (including surcharge) on $20,000 is $4,708.50 ($4,380+$328.50); and on $26,000 is $6,858.50 ($6,380+$478.50). Therefore, A's 1968 tax (including surcharge) attributable to such increase is $2,150 ($6,858.50—$4,708.50).

(c) For purposes of applying section 481(b)(1) the aggregate increase in taxes (including surcharge) for 1968, 1967, and 1966 resulting from a $2,000 increase in the taxable income for each year is computed as follows:

	1968	1967	1966
(1) Taxable income before adjustment	$20,000.00	$14,000	$12,000
(2) Taxable income with adjustment (item (1) plus $2,000)	22,000.00	16,000	14,000
(3) Tax without surcharge after adjustment (tax on item (2))	5,020.00	3,260	2,760
(4) 1968 surcharge after adjustment (7.5% of line 3)	376.50		
(5) Tax with surcharge after adjustment (items (3)+(4))	5,396.50	3,260	2,760
(6) Tax (with surcharge included for 1968) before adjustment	4,708.50	2,760	2,260
(7) Increase in tax (with surcharge for 1968) attributable to adjustment (item (5) minus item (6))	688.00	500	500
(8) Total increase in taxes (including surcharge) for 1968, 1967, and 1966 ($688+$500+$500)		1,688	

(d) Since this increase in tax of $1,688 is less than the increase in tax attributable to the inclusion of the entire adjustment of $6,000 in A's 1968 taxable income ($2,150), the limitation provided by section 481(b)(1) applies and the total tax (including surcharge) for 1968 if section 481(b)(2) does not apply is determined as follows:

(1) Tax (including surcharge) on $20,000	4,708.50
(2) Increase as limited by section 481(b)(1)	1,688.00
(3) Total tax (including surcharge) for 1968	6,396.50

(c) *Adjusted tax*—(1) *In general.* The term "adjusted tax" means, with respect to any taxable year, the tax imposed by chapter 1 of the Code (other than the surcharge imposed by section 51) including the tax imposed by section 1201 (relating to the alternative tax for capital gains) for such taxable year, determined without regard to,

(i) The tax imposed by section 871(a) (relating to tax on income of nonresident aliens not connected with U.S. business),

(ii) The tax imposed by section 881 (relating to tax on income of foreign corporations not connected with U.S. business),

(iii) The tax imposed by section 56 (relating to minimum tax for tax preferences),

(iv) Any increase in tax under section 47(a) (relating to certain dispositions, etc., of section 38 property),

(v) Any increase in tax under section 614(c)(4)(C) (relating to special rules as to operating mineral interests in mines in connection with section 615(a) prior to aggregation), and

(vi) The limitations on tax referred to in paragraph (b)(3) of this section,

and reduced as provided in subparagraph (2) of this subparagraph by the credit allowable under section 37 (relating to retirement income). In the computation of the adjusted tax, the alternative tax imposed by section 1201 is determined and included in adjusted tax without taking the surcharge into account. Similarly, the alternative tax determined under sections 594, 802(a)(2), 821(c), and 1304(e)(2) shall be included in adjusted tax, without taking the surcharge into account in such computation. In computing the surcharge, the surcharge percentage contained in the applicable tables is applied against the entire amount of adjusted tax, including the amount attributable to the alternative tax.

(2) *Application of tax credits.* Under section 51 adjusted tax is determined before all credits against tax, except the retirement income credit under section 37. In making the computation of the retirement income credit for purposes only of determining adjusted tax, the limitation contained in section 37(a) is determined without taking the surcharge into account. After the determination of the adjusted tax, the taxpayer's total tax liability, including the surcharge, may be offset by credits to which the taxpayer is entitled, including the retirement income credit (determined after taking the surcharge into account). In the determination of other credits similarly limited by the amount of tax imposed under chapter 1 of the Code, as, for example, the credit allowed under section 46, relating to credits on investments in certain depreciable property, the amount of tax upon which such limitation is based shall include the tax surcharge.

(d) *Computation of tax surcharge for fiscal and short taxable years*—(1) *In general.* (i) The tax surcharge attributable to the fiscal year or short taxable year of a corporation or of an estate or trust, and, except as limited by subparagraph (4) of this paragraph, of any individual (other than an estate or trust),

is determined in accordance with section 51(a)(2). Under section 51(a)(2) in the case of taxable years ending on or after the effective date of the surcharge (as defined in paragraph (a)(2) of this section) and beginning before July 1, 1970, the surcharge is determined by multiplying 10 percent of the adjusted tax for the taxable year by a fraction (hereinafter described as the proration fraction), the numerator of which is the sum of the number of days, if any, in the taxable year occurring on and after the effective date of the surcharge and before January 1, 1970, plus one-half times the number of days, if any, in the taxable year occurring after December 31, 1969, and before July 1, 1970, and the denominator of which is the number of days in the entire taxable year. Section 21, relating to computation of tax in years where there is a change in rates, is not applicable to the increase in tax attributable to the surcharge.

(ii) The following examples illustrate the application of subdivision (i) of this subparagraph:

Example (1). A, a single individual (other than a surviving spouse or head of household) reports his income on a July 1 through June 30 fiscal year. For the period of July 1, 1967, through June 30, 1968, A's adjusted tax is $36,600. Since A's taxable year is a fiscal year, A computes his tax surcharge by use of the proration fraction. Therefore, A's tax surcharge for fiscal year 1968 is $910 determined by multiplying $3,660 (10 percent of $36,600) by a fraction, the numerator of which is 91 (the number of days in the taxable year occurring on and after April 1, 1968, the effective date of the surcharge for individuals, and before January 1, 1970) and the denominator of which is 366 (the number of days in his entire taxable year)

$$\left($3{,}660 \times \frac{91}{366}\right).$$

Example (2). Assume the same facts in example (1) except that the facts are with respect to A's fiscal year ending June 30, 1969. Since the entire fisca. year begins after the effective date of the surcharge (Apr. 1, 1968) and is before January 1, 1970, A's surcharge is $3,660 (10 percent of $36,600).

Example (3). B, a single individual (other than a surviving spouse or head of household) reports his income on a July 1 through June 30 fiscal year. For the period of July 1, 1969 through June 30, 1970, B's adjusted tax is $36,500. Since B's taxable year is a fiscal year, B computes his tax surcharge by use of the proration fraction, the numerator of which is 274.5, which is the sum of 184, the number of days in the taxable year occurring after April 1, 1968, and before January 1, 1970; and one-half of 181, the number of days in the taxable year occurring after December 31, 1969 and before July 1, 1970

$$\left(184 + \frac{181}{2}\right).$$

Therefore, B's tax surcharge for the fiscal year ending in 1970 is $2,745, determined by multiplying $3,650 (10 percent of $36,500) by a fraction, the numerator of which is 274.5 and the denominator of which is 365 (the number of days in B's entire taxable year)

$$\left($3{,}650 \times \frac{274.5}{365}\right)$$

(2) *Short taxable year because of death of spouse.* If a husband and wife have different taxable years solely because of the death of a spouse, and both would have had the calendar year or the same fiscal year as the taxable year but for such death, and if a joint return is filed with respect to the taxable years of each, then for purposes of the computation of the tax surcharge on the joint return the taxable years of both spouses shall be treated as the calendar year, or the fiscal year, as the case may be. In such a case the rules contained in section 6013(c), relating to the treatment of a joint return after the death of either spouse, shall apply. Accordingly, if H dies on August 30, 1968, and a joint return is filed on April 15, 1969, for the short taxable year of H, January 1 through August 30, and the calendar year of his wife, W, their surcharge will be computed in the manner prescribed in Table 3, section 15(a)(1)(A), based upon W's calendar year.

(3) *Short taxable year due to changes of accounting period.* (i) In the case of a return for a short period due to change of annual accounting period, the computation under section 443(b)(1) shall be made to determine the adjusted tax and not to determine the surcharge. In such case, the proration fraction prescribed in section 51(a)(2) is applicable after the determination of tax (without regard to the surcharge) for the short period under section 443(b). Therefore, if the taxpayer elects to utilize the exception provided in paragraph (2) of section 443(b), the greater of the amount under clause (i) or (ii) of subparagraph (A) of such paragraph is determined without taking the surcharge into account, and such amount is then used as a basis for determining the adjusted tax for purposes of computing the surcharge.

(ii) The application of this subparagraph is illustrated by the following example:

Example. (a) A and B, individuals filing a joint return, have been granted permission under section 442 to change their annual accounting period. They file a return for the short period of 7 months ending May 31, 1968. Assume that A and B have properly annualized their taxable income and credits for the short period (Nov. 1, 1967, through May 31, 1968) and such annualized taxable income and credits is as follows:

Taxable income	$12,000
Retirement income credit	340
Other allowable credits	1,200

(b) A and B's tax before surcharge is as follows:

Tax on $12,000		$2,260
Less: Retirement income credit	$340	
Other credits	1,200	1,540
Tax for annualized period		720
Tax for 7 month period (7/12 × $720)		420

(c) A and B's tax surcharge is computed as follows:

Tax determined under section 443	$420
Add: Credits other than retirement income credit (7/12 × $1,200)	700
Adjusted tax	1,120
Tax Surcharge (6 1/13 × 10% × $1,120)	32.08
(d) A and B's total tax ($420 + 32.08)	452.08

(4) *Limitation on surcharge attributable to individuals with fiscal or short taxable years.* With respect to individuals with fiscal or short taxable years—

(i) *Joint return.* In the case of a husband and wife (or surviving spouse) who file a joint return under section 6013 and whose adjusted tax for the taxable year is less than $580, the surcharge shall not exceed twice the surcharge which would be determined under section 51(a)(2)(A) if the surcharge were imposed on the amount by which the adjusted tax exceeds $290.

(ii) *Head of household.* In the case of an individual who is a head of household to whom section 1(b) applies and whose adjusted tax for the taxable year is less than $440, the surcharge shall not exceed twice the surcharge which would be determined under section 51(a)(2)(A) if the surcharge were imposed on the amount by which the adjusted tax exceeds $220.

(iii) *Other individuals.* In the case of an individual other than an individual referred to in subdivision (i) or (ii) of this subparagraph (but not including an estate or trust) whose adjusted tax for the taxable year is less than $290, the surcharge shall not exceed twice the surcharge which would be determined under section 51(a)(2)(A) if the surcharge were imposed on the amount by which the adjusted tax exceeds $145.

(iv) *Illustration.* The provisions of this subparagraph may be illustrated by the following example:

Example: A and B file a joint return for the fiscal year July 1, 1967, through June 30, 1968. Their adjusted tax is $500. Since their adjusted tax is less than $580, the amount of the surcharge is limited as provided in subdivision (i) of this subparagraph. The limitation is computed as follows:

Adjusted tax	$500
Less: Limitation amount for taxpayers filing joint returns	290
Balance against which twice the surcharge rate is applied	210
Amount of surcharge before limitation $\left($500 \times 10\% \times \frac{91}{366}\right)$	12.43
Amount of surcharge as limited $\left($210 \times 10\% \times \frac{91}{366} \times 2\right)$	10.44

(e) *Western Hemisphere trade corporations and dividends on certain stock.* (1) Section 244(a)(2) (relating to deductions with respect to dividends received on the preferred stock of a public utility), section 247(a)(2) (relating to deduction with respect to certain dividends paid by a public utility) and section 922(2) (relating to special deduction for Western Hemisphere trade corporations) provide deductions which are computed, in part, by multiplying the dividends received or paid in the case of sections 244(a)(2) and 247(a)(2), and taxable income in the case of section 922(2), by a fraction, the numerator of which is 14 percent, and the denominator of which is that percentage which equals the sum of the normal tax rate prescribed in section 11(b) and the surtax

rate prescribed in section 11(c), for the taxable year, for example, 48 percent for 1968 and 1969. In order to reflect the imposition of the tax surcharge in the determination of these deductions, section 51(d) provides that the denominator of such fractions must be increased to reflect the rate at which the surcharge is imposed. Under this provision, in the case of a corporation whose taxable year is a calendar year, the denominator is increased from 48 percent to 52.8 percent for 1968 and 1969, and from 48 percent to 49.2 percent for 1970. In the case of a corporation whose taxable year is other than a calendar year, the fraction prescribed in each section is adjusted by adding to the denominator of such fraction the product of 4.8 percent (10 percent of 48 percent) multiplied by a surcharge proration fraction, the numerator of which is the sum of the number of days, if any, in the taxable year occurring on and after January 1, 1968, and before January 1, 1970, plus one-half times the number of days, if any, in the taxable year occurring after December 31, 1969 and before July 1, 1970, and the denominator of which is the number of days in the entire taxable year.

(2) The application of this paragraph is illustrated by the following examples:

Example (1). A, a calendar year corporation eligible for the deduction under section 244 (relating to dividends received on certain preferred stock), receives dividends in 1968 of $10,000 from Corporation B, a public utility corporation which is subject to taxation under chapter 1 of the Code, and with respect to which the deduction provided under section 247 is allowable with respect to these dividends. The deduction allowable under section 244 for the calendar year 1968 with respect to these dividends is $6,246.21, computed as follows:

Dividends received on preferred stock	$10,000.00
Less: The product of such dividends and the fraction specified in section 244(a)(2) adjusted to reflect surcharge ($10,000×14/52.8)	2,651.52
Amount subject to 85 percent deduction	7,348.48
Deduction allowable under section 244 (85 percent of $7,348.48)	6,246.21

Example (2). (a) Corporation W which qualifies as a Western Hemisphere trade corporation has taxable income for the fiscal year February 1, 1967, through January 31, 1968 (without taking the special deduction allowed under section 922 into account) of $176,688. The number of days in W's taxable year occurring on and after January 1, 1968, is 31. The number of days in the entire taxable year is 365.

(b) The denominator of the fraction referred to in section 922(2) used in computing the special deduction is increased from 48 percent to 48.40767 percent, computed as follows:

	Percent
Product of 4.8 percent and surcharge proration fraction (4.8% of 31/365)	0.40767
Sum of 48 percent and product (48%+0.40767%)	48.40767

(c) Corporation W's special deduction under section 922 is $51,100, which is the product of W's taxable income (computed without the deduction) ($176,688) and the fraction referred to in section 922(2) adjusted to reflect the surcharge (14%/48.40767%) computed as follows:

$$\frac{(14\%)+(\$176{,}688)}{(48.40767\%)}=\$51{,}100.$$

(f) *Shareholders of regulated investment companies*—(1) *In general.* Section 852 requires, generally, that shareholders of regulated investment companies include in their income their designated share of undistributed long-term capital gain. Under section 852(b)(3)(D)(ii) a shareholder is deemed to have paid his share of the tax required to be paid by the company under section 852(b)(3)(A) on such gain. Prior to the amendment of section 852 by the Tax Reform Act of 1969, which amendments were effective for taxable years beginning after December 31, 1969, section 852(b)(3)(A) expressly referred to a 25 percentage figure. For taxable years beginning after December 31, 1969, section 852(b)(3)(A), as amended by the Act, no longer refers to a specific percentage figure. Under section 852(b)(3)(D)(iii) the basis of the shareholder's shares is correspondingly increased with respect to his share of the capital gain on which he is deemed to have paid tax.

(2) *Adjustment for calendar year company*—(i) *Calendar years 1968 and 1969.* In the case of a regulated investment company whose taxable year is a calendar year, the tax of 25 percent deemed paid, under former section 852(b)(3)(D)(ii), by a shareholder of a regulated investment company is increased by 2.5 percent (10 percent of 25 percent) from 25 percent to 27.5 percent. A corresponding adjustment must also be made in the percentage figure used to increase adjusted basis of the shares of the regulated investment company in the hands of the shareholder. Therefore, the applicable percentage figure is decreased from 75 percent to 72.5 percent (75 percent less 2.5 percent).

(ii) *Calendar year 1970.* The taxes deemed paid by a shareholder of a regulated investment company under section 852(b)(3)(D)(ii) include the surcharge. This has the effect of increasing the percentage figures of 25 percent and 28 percent, referred to in section 1201(a), to, respectively, 25.625 percent (25 percent plus .625 percent (the product of 2.5 percent of 25 percent)) and 28.7 percent (28 percent plus 0.7 percent (the product of 2.5 percent of 28 percent)). A corresponding adjustment for 1970 must also be made in the percentage figures prescribed under section 852(b)(3)(D)(iii) used to increase adjusted basis of the shares of the shareholder. Therefore, the percentages applicable in section 852(b)(3)(D)(iii) are decreased from 75 percent to 74.375 percent (75 percent less 0.625 percent (the product of 2.5 percent of 25 percent)) and from 72 percent to 71.3 percent (72 percent less 0.7 percent (the product of 2.5 percent of 28 percent)) for calendar year 1970.

(3) *Adjustment for a fiscal or short taxable year*—(i) *Taxable years ending prior to January 1, 1970.* In the case of a corporation with a taxable year which is other than a calendar year and which ends prior to January 1, 1970, the tax of 25 percent deemed paid by a shareholder of a regulated investment company is increased by the product of 2.5 percent (10 percent of 25 percent) times a surcharge proration fraction, the numerator of which is the sum of the number of days in the taxable year of the regulated investment company occurring on and after January 1, 1968, and the denominator of which is the number of days in the entire taxable year. The percentage figure of 75 percent used to increase adjusted basis of the shares of the regulated investment company in the hands of the shareholder is correspondingly decreased.

(ii) *Taxable years ending after December 31, 1969.* In the case of taxable years, other than the calendar year, beginning in 1969 and ending in 1970, in applying section 852(b)(3)(D)(ii) each shareholder shall be deemed to have paid a tax on certain capital gains imposed upon the investment company by section 852(b)(3)(A) which amount shall include the amount of surcharge attributable thereto. Since the rate of tax under section 852(b)(3)(A) (without regard to the surcharge) has changed, with the effective date of change being January 1, 1970, the rules of section 21 (relating to the effect of such changes) shall be applied in computing the adjusted tax of the company. After the adjusted tax is so computed, the surcharge attributable thereto shall be determined under section 51(a)(2)(A) of the Code and paragraph (d) of this section. Similarly, a corresponding adjustment to the basis under section 852(b)(3)(D)(iii) shall be made.

(iii) Subdivisions (i) and (ii) of this subparagraph may be illustrated by the following examples. Assume that all computations are carried out to sufficient accuracy:

Example (1). (a) R, a regulated investment company as defined in section 851, has a fiscal taxable year from April 1, 1967, through March 31, 1968. The number of days in R's taxable year occurring on or after January 1, 1968, is 91. The number of days in the entire taxable year is 366.

(b) The percentage figure (25 percent before adjustment) referred to in former section 852(b)(3)(A) and, by cross reference, in section 852(b)(3)(D)(ii) applicable to R must be increased to 25.622 percent, computed as follows:

$$\frac{(2.5\%)\times(91)}{366}+25\%=25.622\%$$

(c) The percentage figure (75 percent prior to adjustment) referred to in former section 852(b)(3)(D)(iii) must be decreased to 74.378 percent, computed as follows:

$$75\%-\frac{(2.5\%)\times(91)}{366}=74.378\%$$

Example (2). (a) R, a regulated investment company as defined in section 851, has a fiscal taxable year from July 1, 1969, through June 30, 1970. The amount of undistributed long-term capital gains, during such taxable year of R, is $55,000. There are no short-term capital losses and no deductions for dividends paid (as defined in section 561). The total amount of undistributed subsection (d) gain (as defined in section 1201(d)) is $50,000. The number of days in R's taxable year occurring before January 1,

1970, is 184. The number of days in R's taxable year occurring after December 31, 1969, is 181. One-half of the number of days in R's taxable year occurring after December 31, 1969, and before July 1, 1970, is 90.5. The total number of days in R's taxable year is 365.

(b) Adjusted tax is $13,824.39, computed as follows:

(1) First tentative tax is $6,931.51

$$\left((25\% \times \$55{,}000) \times \frac{184}{365}\right)$$

(2) Second tentative tax is $6,892.88

$$\left([(25\% \times \$50{,}000) + (28\% \times \$5{,}000)] \times \frac{181}{365}\right)$$

(3) The sum of first tentative tax and second tentative tax is $13,824.39 ($6,931.51+$6,892.88).

(c) The amount of surcharge is $1,039.67, computed as follows:

$$(10\% \times \$13{,}824.39) \times \frac{184+90.5}{365} = \$1{,}039.67$$

(g) *Determinations of substractions from policyholders surplus account of life insurance company.* Section 815(c)(3)(B) provides that there shall be subtracted from the policyholder's surplus account the amount (determined without regard to section 802(a)(3)) by which the tax imposed for the taxable year by section 802(a) is increased by reason of section 802(b)(3). Section 1.815–4 provides a formula to be used to determine the amount of the subtraction referred to in section 815(c)(3). In order to take the surcharge into account the numerator (referred to in § 1.815–4(c)(2)(iii)(*b*)) and the denominators contained in such formulas shall be decreased to reflect the surcharge percentage. For example, § 1.815–4(c)(2)(i), which applies, in general, when a company's life insurance company taxable income exceeds $25,000, provides that the amount subtracted from the policyholders surplus account shall be determined by multiplying the amount treated as distributed out of such account by a ratio, the numerator of which is 100 percent and the denominator of which is 100 percent minus the sum of the normal tax rate and the surtax rate for the taxable year. In order to reflect the imposition of the surcharge, the denominator of the fraction must be decreased from 52 percent (100 percent−48 percent) to 47.2 percent (100 percent−(48 percent+4.8 percent)) for 1968 and 1969. For 1970, the denominator must be decreased from 52 percent to 49.2 percent (100 percent−(48 percent+1.2 percent)).

(h) *Special rule for application of surcharge*—(1) *General rule.* Except as otherwise provided in this section, to the extent the tax imposed by section 51 is attributable to a tax imposed by another section of chapter 1 of the Code, such tax shall be deemed to be imposed by such other section. For example, if the only tax (other than the surcharge) imposed under chapter 1 of the Code to which a particular corporation is subject is the tax imposed by section 11, then the surcharge imposed on such corporation shall be deemed to be imposed by section 11. However, in computing the adjusted tax under section 51(b) and paragraph (c) of this section, the taxes imposed shall be determined without regard to any amount of the surcharge, whether or not deemed imposed by a section other than section 51 by operation of this paragraph. If an amount of surcharge is deemed imposed by a section other than section 51 by application of this paragraph, this paragraph shall not be applied again with respect to the same amount of surcharge. Thus, for example, if a life insurance company is subject to the tax imposed by section 802, the rates of which are determined with reference to section 11, the surcharge attributable to such tax shall be deemed to be imposed by section 802 and not by section 11. Therefore, in applying section 815(c)(3)(B), relating to certain subtractions of amounts of tax from policyholders surplus account of a stock life insurance company, the term "tax imposed for the taxable year by section 802(a)" includes the amount of surcharge attributable thereto. (See paragraph (g) of this section for special rules for determining such term.)

(2) *Illustrations of general rule.* The application of the rules contained in subparagraph (1) of this paragraph is illustrated as follows:

(i) In general, under section 46(a) the amount of credit for investment in certain depreciable property is limited to an amount equal to a specified amount of tax other than the tax imposed by certain designated sections (such as section 531, relating to the accumulated earnings tax). Under subparagraph (1) of this paragraph, only the amount of the surcharge attributable to the tax imposed by sections other than the designated sections may be taken into account in computing the limitation on the credit under section 46.

(ii) In general, under section 72(n)(3) (relating to determination of taxable income by certain self-employed individuals) any increase in taxes imposed by section 1 or 3 by reason of section 72(n)(3) shall not be reduced by any credit under part IV of subchapter A (other than sections 31 and 39 thereof). Under the rules prescribed in subparagraph (1) of this paragraph, such resulting increase in taxes shall be deemed to include the proper amount of the surcharge, and accordingly, such amount of surcharge shall not be reduced by such credits.

(iii) In general, under section 1372(b)(1) if a small business corporation makes an election under section 1372(a), such corporation shall not be subject to the taxes imposed by chapter 1 of the Code other than the tax imposed by section 1378. Under the rules prescribed in subparagraph (1) of this paragraph, such corporation shall be deemed to be subject to the surcharge imposed by section 51 attributable to the tax imposed by section 1378.

(i) *Payment of surcharge*—(1) *In general.* (i) Except as provided in subdivision (ii) of this subparagraph, the surcharge is due and payable at the same time as the income tax imposed by Chapter 1 of the Code.

(ii) In the case of a taxable year ending before June 28, 1968, the time prescribed for payment of the surcharge shall be on September 16, 1968. If a corporation elects, under section 6152, to pay its tax in two equal installments and both installments are due before September 16, 1968, then the entire additional payment required to reflect the surcharge must be paid on or before September 16. If the first installment is due on or before September 16, but the second installment is due after that date, the corporation must pay one-half of the amount of the surcharge on or before September 16, 1968. The remaining one-half of the surcharge due must be paid as a part of the second installment on the due date for that installment. A taxpayer whose taxable year ended before June 28, 1968, and filed his return before September 16, 1968, without including the tax imposed by section 51 is required to file an amended return (or an amended fiscal year tax computation schedule) by September 16, 1968 to reflect the amount of his tax surcharge. Since an amended return (or an amended fiscal year tax computation schedule) does not constitute a return for purposes of determining the periods of limitation under section 6501 or 6511 of the Code, neither the period of limitation on assessment and collection nor the period of limitation on credit or refund, if otherwise measured from the time the return is filed, will be extended by the subsequent filing of such amended return or schedule.

(2) *Interest on underpayments.* Under section 6601 interest on an underpayment of the surcharge due on or before September 16, 1968, will be computed from such date. However, for purposes of computing interest on an underpayment of any tax, if the due date for payment of such tax (other than the surcharge) is before September 16, 1968, and if such tax is for a period, or a portion of a period, during which the surcharge applies, a payment before September 16, 1968, whether or not designated a payment of the surcharge, is applied against the underpayment of such tax to the extent thereof, and the balance, if any, is applied against any surcharge liability due on or before September 16, 1968.

(3) *Interest on overpayments.* Under sections 6611 and 6513, in general, interest on an overpayment of surcharge made before September 16, 1968, will be computed from such date. In the case of an overpayment of tax (not including surcharge) for a due date which is before the September 16, 1968, due date to the extent not designated a payment of surcharge, interest on such overpayment shall begin as of the prior due date (or payment, whichever is later) even if an amount of overpayment is subsequently credited against a subsequent tax liability (including a surcharge liability) on or after September 16, 1968. For purposes of this subparagraph an amount is treated as a payment of surcharge to the extent the payment exceeds the amount

of tax computed without regard to the surcharge as shown on the return or amended return, and to the extent the payment does not exceed the amount reported on the return as surcharge.

PAR. 4. Section 1.242 is amended by revising section 242(a) and a historical note is added to read as follows:

§ 1.242 Statutory provisions; partially tax-exempt interest.

SEC. 242. *Partially tax-exempt interest*—(a) *Allowance of deduction.* There shall be allowed to a corporation as a deduction the amount received as interest on obligations of the United States or on obligations of corporations organized under Acts of Congress which are instrumentalities of the United States, but only if—

(1) Such interest is included in gross income; and

(2) Such interest is exempt from normal tax under the section authorizing the issuance of such obligations.

No deduction shall be allowed under this section for purposes of any surtax imposed by this subtitle.

* * * * *

[Sec. 242 as amended by sec. 123(c), Rev. Act 1964 (78 Stat. 30)]

PAR. 5. Section 1.242–1 is amended to read as follows:

§ 1.242–1 Deduction for partially tax-exempt interest.

A corporation is allowed a deduction under section 242(a) in an amount equal to certain interest received on obligations of the United States, or an obligation of corporations organized under Acts of Congress which are instrumentalities of the United States. The interest for which a deduction shall be allowed is interest which is included in gross income and which is exempt from normal tax under the act, as amended and supplemented, which authorized the issuance of the obligations. The deduction allowed by section 242(a) is allowed only for the purpose of computing normal tax, and therefore, no deduction is allowed for such interest in the computation of any surtax imposed by subtitle A of the Internal Revenue Code of 1954.

PAR. 6. Section 1.821 is amended by revising sections 821 (a) and (c)(1) and the historical note. These amended provisions read as follows:

§ 1.821 Statutory provisions; tax on mutual insurance companies (other than life or marine or fire insurance companies issuing perpetual policies).

SEC. 821. *Tax on mutual insurance companies to which part II applies*—(a) *Imposition of tax.* A tax is hereby imposed for each taxable year beginning after December 31, 1963, on the mutual insurance company taxable income of every mutual insurance company (other than a life insurance company and other than a fire, flood, or marine insurance company subject to the tax imposed by section 831). Such tax shall consist of—

(1) *Normal tax.* A normal tax of 22 percent of the mutual insurance company taxable income, or 44 percent of the amount by which such taxable income exceeds $6,000, whichever is the lesser; plus

(2) *Surtax.* A surtax on the mutual insurance company taxable income computed as provided in section 11(c) as though the mutual insurance company taxable income were the taxable income referred to in section 11(c).

* * * * *

(c) *Alternative tax for certain small companies*—(1) *Imposition of tax.* In the case of taxable years beginning after December 31, 1963. there is hereby imposed for each taxable year on the income of each mutual insurance company to which this subsection applies a tax (which shall be in lieu of the tax imposed by subsection (a)) computed as follows:

(A) *Normal tax.* A normal tax of 22 percent of the taxable investment income, or 44 percent of the amount by which such taxable income exceeds $3,000, whichever is the lesser; plus

(B) *Surtax.* A surtax on the taxable investment income computed as provided in section 11(c) as though the taxable investment income were the taxable income referred to in section 11(c).

* * * * *

[Sec. 821 as amended by sec. 2, Tax Rate Extension Act 1955 (69 Stat. 14); sec. 3(a) (1) and (2), Life Insurance Company Tax Act 1955 (70 Stat. 47); sec. 2, Tax Rate Extension Act 1956 (70 Stat. 66); sec. 2, Tax Rate Extension Act 1957 (71 Stat. 9); sec. 2, Tax Rate Extension Act 1958 (72 Stat. 259); sec. 2, Tax Rate Extension Act 1959 (73 Stat. 157); sec. 201, Public Debt and Tax Rate Extension Act 1960 (74 Stat. 290); sec. 2, Tax Rate Extension Act 1961 (75 Stat. 193); sec. 2, Tax Rate Extension Act 1962 (76 Stat. 114); sec. 8(a), Rev. Act 1962 (76 Stat. 989); sec. 2, Tax Rate Extension Act 1963 (77 Stat. 72); sec. 123(a), Rev. Act 1964 (78 Stat. 29)]

PAR. 7. Section 1.821–4 is amended by revising paragraphs (b), (d), and (e)(2). These amended provisions read as follows:

§ 1.821–4 Tax on mutual insurance companies other than life insurance companies and other than fire, flood, or marine insurance companies subject to tax imposed by section 831.

* * * * *

(b) *Rates of tax imposed by section 821(a)*—(1) *Normal tax.* For taxable years beginning before January 1, 1964, the normal tax imposed under section 821(a) is the lesser of 30 percent of mutual insurance company taxable income, or 60 percent of the amount by which mutual insurance company taxable income exceeds $6,000. In the case of taxable years beginning after December 31, 1963, the normal tax is imposed at the rate of 22 percent of mutual insurance company taxable income, or 44 percent of the amount by which mutual insurance company taxable income exceeds $6,000, whichever is the lesser. For example, a company subject to tax under section 821(a) will file a return but will pay no normal tax if mutual insurance company taxable income does not exceed $6,000. When mutual insurance company taxable income exceeds $6,000 but does not exceed $12,000, the company will pay a normal tax equal to 44 percent (60 percent in the case of taxable years beginning before Jan. 1, 1964), of the amount by which mutual insurance company taxable income exceeds $6,000. When mutual insurance company taxable income exceeds $12,000, the company will pay normal tax at the rate of 22 percent (30 percent in the case of taxable years beginning before Jan. 1, 1964), of such income.

(2) *Surtax*—(i) *Taxable years beginning before January 1, 1964.* For taxable years beginning before January 1, 1964, companies taxable under section 821(a) are subject to a surtax equal to 22 percent of so much of their mutual insurance company taxable income (computed without regard to the deduction provided in section 242 for partially tax-exempt interest) as exceeds $25,000. In the case of an interinsurer or reciprocal underwriter electing to be subject to the limitation provided in section 826(b), the surtax applies to any increase in mutual insurance company taxable income attributable to such election, without regard to the $25,000 surtax exemption otherwise provided by this subparagraph, and without regard to whether the company is liable for any normal tax under subparagraph (1) of this paragraph. See section 826(f) and § 1.826–2.

(ii) *Taxable years beginning after December 31, 1963.* For taxable years beginning after December 31, 1963, companies taxable under section 821(a) are subject to a surtax at the rates and with the exemptions provided in section 11(c) on their mutual insurance company taxable income. In the case of an interinsurer or reciprocal underwriter electing to be subject to the limitation provided in section 826(b), the surtax applies to any increase in mutual insurance company taxable income attributable to such election, without regard to the surtax exemption otherwise provided by section 11(d), and without regard to whether the company is liable for any normal tax under section 821(a)(1) and subparagraph (1) of this paragraph. See section 826(f) and § 1.826–2.

* * * * *

(d) *Examples.* The application of the tax imposed by section 821(a) may be illustrated by the following examples:

Example (1). (a) M, a mutual casualty insurance company, for the calendar year 1963 has gross receipts from the items described in section 822(b) (other than paragraph (1)(D) thereof) and premiums (including deposits and assessments) in excess of $500,000, and therefore is subject to the tax imposed by section 821(a). M's taxable investment income, computed under section 822, is $30,000 and its statutory underwriting income, computed under section 823, is $15,000. M subtracts $3,000 from its protection against loss account in accordance with the computation made under section 824(d). M has no unused loss deduction. M received no partially tax exempt interest. If M is not subject to section 826, its mutual insurance company taxable income for the taxable year 1963 is $48,000, computed as follows:

(1) Taxable investment income	$30,000
(2) Statutory underwriting income	15,000
(3) Subtractions from protection against loss account	3,000
(4) Total income items	48,000

(5) Investment loss	0
(6) Statutory underwriting loss	0
(7) Unused loss deduction	0
(8) Total loss items	0
(9) Mutual insurance company taxable income (item (4) minus item (8))	48,000

(b) Since M's mutual insurance company taxable income is in excess of $12,000, M will pay normal tax on its mutual insurance company taxable income at a rate of 30 percent. In addition, since M's mutual insurance company taxable income exceeds $25,000, M will pay surtax on such excess at a rate of 22 percent. M's total tax liability for the taxable year 1963 is $19,460, computed as follows:

(1) Mutual insurance company taxable income as computed in item (a)(9)	$48,000
(2) Normal tax; 30 percent of mutual insurance company taxable income	14,400
(3) Surtax exemption	25,000
(4) Mutual insurance company taxable income subject to the surtax (item (1) minus item (3))	23,000
(5) Surtax: 22 percent of mutual insurance company taxable income subject to the surtax	5,060
(6) Total tax (item (2) plus item (5))	19,460

Example (2). If in example (1), M's mutual insurance company taxable income for 1963 had been in excess of $6,000 but not in excess of $12,000, M would pay normal tax in an amount equal to 60 percent of the amount by which such income exceeded $6,000. Thus, if M had mutual insurance company taxable income of $11,000, M's total tax liability for the taxable year 1963 would be $3,000, computed as follows:

(1) Mutual insurance company taxable income	$11,000
(2) Mutual insurance company taxable income in excess of $6,000 ($11,000 minus $6,000)	5,000
(3) 30 percent of item (1)	3,300
(4) 60 percent of item (2)	3,000
(5) Normal tax (lesser of items (3) or (4))	3,000
(6) Surtax exemption	25,000

Since the surtax exemption exceeds the mutual insurance company taxable income for purposes of the surtax, there is no surtax liability. Since the normal tax under section 821(a) is the lesser of 30 percent of mutual insurance company taxable income or 60 percent of the amount by which such income exceeds $6,000, M's normal tax (and total income tax liability) is $3,000. If M's mutual insurance company taxable income was not in excess of $6,000, M would be required to file a return, but would not be liable for any normal tax, since, in such a case, 60 percent of M's mutual insurance company taxable income in excess of $6,000 would be zero.

Example (3). Assume the same income as in example (1) in the 1965 calendar year and that M is not a corporation to which section 1561 (with respect to certain controlled corporations) applies. Since M's mutual insurance company taxable income is in excess of $12,000, M will pay normal tax on its mutual insurance company taxable income at a rate of 22 percent. In addition, since M's mutual insurance company taxable income exceeds the surtax exemption provided in section 11(d) of $25,000, M will pay a surtax on such excess at the rate provided in section 11(c), 26 percent. M's total liability for the taxable year 1964 is $16,540, computed as follows:

(1) Mutual insurance company taxable income as computed in example (1)	$48,000
(2) Normal tax: 22 percent of mutual insurance company taxable income for normal tax purposes	10,560
(3) Surtax exemption provided by section 11(d)	25,000
(4) Mutual insurance company taxable income subject to the surtax (item (1) minus item (3))	23,000
(5) Surtax: at rates provided in section 11(c): 26 percent of mutual insurance company taxable income subject to the surtax	5,980
(6) Total tax (item (2) plus item (7))	16,540

(e) *Alternative tax for certain small mutual insurance companies.* * * *

(2) *Rates of tax imposed by section 821 (c)*— (i) *Normal tax.* The normal tax for taxable years beginning before January 1, 1964, is the lesser of 30 percent of taxable investment income or 60 percent of the amount by which taxable investment income exceeds $3,000. For taxable years beginning after December 31, 1963, the normal tax is imposed at the rate of 22 percent of taxable investment income, or 44 percent of the amount by which taxable investment income exceeds $3,000, whichever is the lesser. Thus, a company subject to tax under section 821(c) will file a return but will pay no tax if for the taxable year its taxable investment income does not exceed $3,000; or will pay a normal tax equal to 44 percent (60 percent in the case of taxable years beginning before Jan. 1, 1964), of taxable investment income in excess of $3,000 when such income exceeds $3,000 but does not exceed $6,000. When taxable investment income exceeds $6,000, the normal tax is imposed at the rate of 22 percent (30 percent in the case of taxable years beginning before Jan. 1, 1964) of such income.

(ii) *Surtax.* For taxable years beginning before January 1, 1964, a surtax is imposed at the rate of 22 percent of taxable investment income (computed without regard to the deduction provided in section 242 for partially tax-exempt interest) in excess of $25,000. For taxable years beginning after December 31, 1963, a surtax is imposed at the rate provided in section 11(c) on taxable investment income in excess of the surtax exemption provided in section 11(d).

* * * * *

PAR. 8. Paragraph (b) of § 1.826–2 is amended to read as follows:

§ 1.826–2 Special rules applicable to electing reciprocals.

* * * * *

(b) *Denial of surtax exemption.* Section 826(f) provides that the tax imposed upon any increase in the mutual insurance company taxable income of a reciprocal which is attributable to the limitation provided by section 826(b) shall be computed without regard to the surtax exemption provided by section 821(a)(2) and the regulations thereunder. Thus, a company making the election provided under section 826(a) will be subject to surtax, as well as normal tax, on the increase in its mutual insurance company taxable income for the taxable year which is attributable to such election. Similarly, any amount which was added to the protection against loss account by reason of an election under section 826(a) and § 1.826–1, and which is subtracted from such account in accordance with section 826 (d) and paragraph (a) of this section, will be subject to surtax, as well as normal tax, to the extent such amount increases mutual insurance company taxable income in the year in which the subtraction is made. Furthermore, the company will be subject to surtax on such increases notwithstanding the fact that it may have no normal tax liability for the taxable year, because its mutual insurance company taxable income (after giving effect to the election provided by section 826(a)) does not exceed $6,000.

PAR. 9. Section 1.963 is amended by revising section 963(b) and by revising the historical note to read as follows:

§ 1.963 Statutory provisions; receipt of minimum distributions by domestic corporations.

SEC. 963. *Receipt of minimum distributions by domestic corporations.* * * *

(b) *Minimum distribution.* * * *

(1) *Taxable years beginning in 1963 and taxable years entirely within the surcharge period ending before January 1, 1970*—

If the effective foreign tax rate is (percentage)—	*The required minimum distribution of earnings and profits is (percentage)*—
Under 10	90
10 or over but less than 20	86
20 or over but less than 28	82
28 or over but less than 34	75
34 or over but less than 39	68
39 or over but less than 42	55
42 or over but less than 44	40
44 or over but less than 46	27
46 or over but less than 47	14
47 or over	0

* * * * *

(2) *Taxable years beginning in 1964 and taxable years beginning in 1969 and ending in 1970 to the extent subparagraph (B) applies*—

If the effective foreign tax rate is (percentage)—	*The required minimum distribution of earnings and profits is (percentage)*—
Under 10	87
10 or over but less than 19	83
19 or over but less than 27	79
27 or over but less than 33	72
33 or over but less than 37	65
37 or over but less than 40	53
40 or over but less than 42	38
42 or over but less than 44	26
44 or over but less than 45	13
45 or over	0

(3) *Taxable years beginning after 1964 (except taxable years which include any part of the surcharge period)*—

If the effective foreign tax rate is (percentage)—	*The required minimum distribution of earnings and profits is (percentage)*—
Under 9	83
9 or over but less than 18	79
18 or over but less than 26	76
26 or over but less than 32	69
32 or over but less than 36	63
36 or over but less than 39	51
39 or over but less than 41	37
41 or over but less than 42	25
42 or over but less than 43	13
43 or over	0

In the case of a taxable year beginning before the surcharge period and ending within the surcharge period, or beginning within the surcharge period and ending after the surcharge period, or beginning before January 1, 1970, and ending after December 31, 1969, the required minimum distribution shall be equal to the sum of—

(A) That portion of the minimum distribution which would be required if the provisions of paragraph (1) were applicable to the taxable year, which the number of days in such taxable year which are within the surcharge period and before January 1, 1970, bears to the total number of days in such taxable year,

(B) That portion of the minimum distribution which would be required if the provisions of paragraph (2) were applicable to such taxable year, which the number of days in such taxable year which are within the surcharge period and after December 31, 1969, bears to the total number of days in such taxable year, and

(C) That portion of the minimum distribution which would be required if the provisions of paragraph (3) were applicable to such taxable year, which the number of days in such taxable year which are not within the surcharge period bears to the total number of days in such taxable year.

As used in this subsection, the term "surcharge period" means the period beginning January 1, 1968, and ending June 30, 1970.

* * * * *

[Sec. 963 as added by sec. 12(a), Rev. Act 1962 (76 Stat. 1006); amended by sec. 123(b), Rev. Act 1964 (78 Stat. 29); sec. 102, Rev. and Exp. Con. Act 1968 (82 Stat. 251); sec. 701, Tax Reform Act 1969 (83 Stat. 659)]

PAR. 10. Section 1.963–1 is amended by revising paragraph (a)(1) and by revising that part of paragraph (b) that precedes subparagraph (1) thereof. These amended and revised provisions read as follows:

§ 1.963–1 Exclusion of subpart F income upon receipt of minimum distribution.

(a) *In general*—(1) *Purpose of section 963.* Section 963 sets forth an exception to section 951(a)(1)(A)(i) by providing that a United States corporate shareholder may exclude from its gross income the subpart F income of a controlled foreign corporation if for the taxable year such shareholder elects such exclusion and, where necessary, receives a distribution of the earnings and profits of such foreign corporation sufficient to bring the aggregate U.S. and foreign income taxes on the pretax earnings and profits of that corporation to a percentage level approaching the U.S. tax rate for such year on the income of a domestic corporation. The election to secure an exclusion under section 963 may be made with respect to a "single first-tier corporation" or a "chain" or "group" of controlled foreign corporations. This section defines the terms "single first-tier corporations," "chains," "group," and certain other terms and prescribes the manner in which such an election is to be made. Section 1.963–2 describes the manner in which the amount of the minimum distribution for any taxable year is to be determined. Section 1.963–3 specifies the distributions counting toward a minimum distribution. Section 1.963–4 sets forth the requirement with respect to a minimum distribution from a chain or group that the overall U.S. and foreign income tax must equal either 90 percent of the U.S. corporate tax rate applied against consolidated pretax and predistribution earnings and profits or, with the application of the special rules set forth in that section, the total U.S. and foreign income taxes which would have been incurred in respect of a pro rata minimum distribution from the chain or group. Section 1.963–5 provides special rules for applying section 963 in certain cases in which the rate of foreign income tax incurred by a foreign corporation varies with the amount of distributions it makes for the taxable year. Section 1.963–6 outlines the deficiency distribution procedure that may be followed if for reasonable cause a U.S. corporate shareholder fails to receive a complete minimum distribution for a taxable year for which it elects the exclusion under section 963. Section 1.963–7 provides transitional rules for the application of section 963 for certain taxable years of U.S. shareholders ending on or before the 90th day after September 30, 1964. Section 1.963–8 provides rules for the determination of the required minimum distribution during the period the surcharge imposed by section 51 is in effect.

* * * * *

(b) *Definitions.* For purposes of section 963 and §§ 1.963–1 through 1.963–8—

* * * * *

PAR. 11. Section 1.963–2 is amended by revising paragraph (b) and paragraph (d)(1). These amended provisions read as follows:

§ 1.963–2 Determination of the amount of the minimum distribution.

* * * * *

(b) *Statutory percentage.* The statutory percentage (referred to in paragraph (a) of this section) for the taxable year shall be determined by applying the effective foreign tax rate (as defined in paragraph (c) of this section) for such year with respect to the single first-tier corporation, chain, or group, as the case may be, against—

(1) The table set forth in section 963(b)(1) in the case of an election to secure an exclusion under section 963 for a taxable year of the United States shareholder beginning in 1963 and a taxable year entirely within the surcharge period ending before January 1, 1970.

(2) The table set forth in section 963(b)(2) in the case of an election to secure an exclusion under section 963 for a taxable year of the U.S. shareholder beginning in 1964 or for a taxable year of such shareholder beginning in 1969 and ending in 1970 to the extent subparagraph (B) of section 963(b)(3) applies,

(3) The table set forth in section 963(b)(3) in the case of an election to secure an exclusion under section 963 for a taxable year of the U.S. shareholder beginning after December 31, 1964 except a taxable year which includes any part of the surcharge period, or

(4) The table set forth in paragraph (b) of § 1.963–8 in the case of an election to secure an exclusion under section 963 for the calendar year 1970.

Example. Domestic corporation M owns all the one class of stock in controlled foreign corporation A. Corporation M uses the calendar year as its taxable year, and A Corporation uses a fiscal year ending August 31. For 1964, M Corporation makes a first-tier election in order to exclude from gross income for such year the subpart F income of A Corporation for its taxable year ending on August 31, 1964. Although, such election applies to the taxable year of A Corporation beginning on September 1, 1963, the applicable table, for purposes of determining the statutory percentages to be used under paragraph (a) of this section for the taxable year, is that set forth in section 963(b)(2), which relates to taxable years of United States shareholders beginning in 1964. Thus, if for the taxable year of A Corporation ending August 31, 1964, the effective foreign tax rate is 30 percent, A Corporation would have to distribute 72 percent of its earnings and profits for such year in order for M Corporation to be entitled to an exclusion under section 963 for 1964.

* * * * *

(d) *Determination of proportionate share of earnings and profits and consolidated earnings and profits*—(1) *Earnings and profits of foreign corporations.* For purposes of §§ 1.963–1 through 1.963–8, the earnings and profits, or deficit in earnings and profits, for the taxable year, of a single first-tier corporation or of a foreign corporation in a chain or group shall be the amount of its earnings and profits for such year, determined under section 964(a) and § 1.964–1 but without reduction for foreign income tax or for distributions made by such corporation, less—

(i) In the case of a foreign corporation included in a chain or group, the amount of any distributions received (computed without reduction for any income tax paid or accrued by such corporation with respect to such distributions) by such corporation during its taxable year from the earnings and profits (whether or not from earnings and profits of the taxable year to which the election under section 963 applies) of another foreign corporation in the chain or group,

(ii) In the case of every foreign corporation, the amount of foreign income tax paid or accrued by such corporation

during its taxable year other than foreign income tax referred to in subdivision (i) and (iii) of this subparagraph, and

(iii) In the case of a foreign corporation included in a chain or group, the foreign income tax paid or accrued by such corporation with respect to distributions from the earnings and profits of any other foreign corporation in the chain or group for the taxable year of such other corporation to which the election under section 963 applies, but only if the U.S. shareholder chooses under this subdivision to take such tax into account in determining the effective foreign tax rate rather than count it toward the amount of the minimum distribution as provided in paragraph (b)(2) of § 1.963–3.

In the event that the foreign income tax of a corporation included in a chain or group depends upon the extent to which distributions are made by such corporation, the amount of foreign income tax referred to in subdivision (ii) of this subparagraph shall, only for purposes of determining the effective foreign tax rate, be the amount which would have been paid or accrued if no distributions had been made. For the rules in other cases involving corporations whose foreign income tax varies with distributions, see § 1.963–5. For the manner of computing the earnings and profits of a foreign branch treated as a wholly owned foreign subsidiary corporation see paragraph (f)(4)(ii) of § 1.963–1.

* * * * *

PAR. 12. Section 1.963–4 is amended by revising that part of paragraph (a)(2) that precedes subdivision (i) thereof to read as follows:

§ 1.963–4 Limitations on minimum distribution from a chain or group.

(a) *Minimum overall tax burden.* * * *.

(2) *Definitions.* For purposes of §§ 1.963–1 through 1.963.8—* * *

* * * * *

PAR. 13. The following new section is inserted immediately after § 1.963–7.

§ 1.963–8 Determination of minimum distribution during the surcharge period.

(a) *Taxable years not wholly within the surcharge period.* In the case of a taxable year beginning before the surcharge period and ending within the surcharge period, or beginning within the surcharge period and ending after the surcharge period, or beginning before January 1, 1970, and ending after December 31, 1969, section 963(b) provides the method for determining the required minimum distribution. Under the method prescribed in section 963(b) for such years, the required minimum distribution is an amount equal to the sums of:

(1) That portion of the minimum distribution which would be required if the provisions of section 963(b)(1) were applicable to the taxable year, which the number of days in such taxable year which are within the surcharge period and before January 1, 1970, bears to the total number of days in such taxable year.

(2) That portion of the minimum distribution which would be required if the provisions of section 963(b)(2) were applicable to such taxable year, which the number of days in such taxable year which are within the surcharge period and after December 31, 1969, bears to the total number of days in such taxable year, and

(3) That portion of the minimum distribution which would be required if the provisions of section 963(b)(3) were applicable to such taxable year, which the number of days in such taxable year which are not within the surcharge period bears to the total number of days in such taxable year.

(b) *Calendar year 1970.* For calendar year 1970, the required minimum distribution shall be an amount determined in accordance with the following table:

If the effective foreign tax rate is (percentage)—	*The required minimum distribution of earnings and profits is (percentage)—*
Under 9	84.983562
9 or over but less than 10	82.967123
10 or over but less than 18	80.983562
18 or over but less than 19	79.471233
19 or over but less than 26	77.487671
26 or over but less than 27	73.958904
27 or over but less than 32	70.487671
32 or over but less than 33	67.463014
33 or over but less than 36	63.991781
36 or over but less than 37	57.942466
37 or over but less than 39	51.991781
39 or over but less than 40	44.934247
40 or over but less than 41	37.495890
41 or over but less than 42	31.446575
42 or over but less than 43	19.446575
43 or over but less than 44	12.893151
44 or over but less than 45	6.446575
45 or over	0

(c) *Surcharge period.* For purposes of this section the term "surcharge period" means the period beginning January 1, 1968, and ending June 30, 1970.

(d) *Illustration of principles.* The application of the rules set forth in paragraphs (a), (b), and (c) of this section may be illustrated by the following example. It is assumed that all computations are carried to sufficient accuracy:

Example. (a) M, a domestic corporation, and A, its controlled corporation (the one class of stock of which is wholly owned by M), both have a taxable year beginning December 1, 1969, and ending November 30, 1970. For such taxable year M makes a first-tier election with respect to A corporation. The effective foreign tax rate for such year is 30 percent.

(b) Under section 963(b) and paragraph (b) of this section the surcharge period ends June 30, 1970. Therefore, of the 365 days in the taxable year, 153 days are not within the surcharge period. Of the remaining 212 days, 31 are within the surcharge period and before January 1, 1970 and 181 days are within the surcharge period and after December 31, 1969. If section 963(b)(1) were applicable to the entire taxable year, the required minimum distribution of earnings and profits would be 75 percent. If section 963(b)(2) were applicable to the entire taxable year, the required minimum distribution would be 72 percent. If section 963(b)(3) were applicable to the entire taxable year, the required minimum distribution would be 69 percent.

(c) Under section 963(b) and this section the required minimum distribution of earnings and profits is 71 percent, computed as follows:

$$\left(75\%\times\frac{31}{365}\right)+\left(72\%\times\frac{181}{365}\right)+\left(69\%\times\frac{153}{365}\right)=71\%.$$

[FR Doc.71–3782 Filed 3–19–71;8:45 am]

[T.D. 7099]

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

Children of Divorced or Separated Parents

On September 12, 1970, a notice of proposed rule making with respect to the amendment of the Income Tax Regulations (26 CFR Part 1) under section 152 of the Internal Revenue Code of 1954, relating to children of divorced or separated parents, was published in the FEDERAL REGISTER (35 F.R. 14403). After consideration of all the relevant matter presented by interested persons regarding the rules proposed, the amendments so proposed are adopted subject to the changes set forth below:

PARAGRAPH 1. Paragraphs (a) and (d)(2) of § 1.152–4, as set forth in paragraph 2 of the notice of proposed rule making are revised.

PAR. 2. Paragraph (a)(2)(iii) is added to § 1.152–1.

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

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

Approved: March 12, 1971.

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

In order to conform the Income Tax Regulations (26 CFR Part 1) under section 152 of the Internal Revenue Code of 1954 to the Act of August 31, 1967 (Public Law 90–78, 81 Stat. 191), such regulations are amended as follows:

PARAGRAPH 1. Section 1.152 is amended by revising so much of subsection (a) of section 152 as precedes paragraph (1), by adding at the end of section 152 a new subsection (e), and by revising the historical note. The revised and added provisions read as follows:

§ 1.152 Statutory provisions; dependent defined.

SEC. 152. *Dependent defined*—(a) *General definition.* For purposes of this subtitle, the term "dependent" means any of the following individuals over half of whose support, for the calendar year in which the taxable year of the taxpayer begins, was received from the taxpayer (or is treated under subsection (c) or (e) as received from the taxpayer):

* * * * *

(e) *Support test in case of child of divorced parents, etc.*—(1) *General rule.*—If—

(A) A child (as defined in section 151(e)(3)) receives over half of his support during the calendar year from his parents who are divorced or legally separated under a decree of divorce or separate maintenance, or who are separated under a written separation agreement, and

(B) Such child is in the custody of one or both of his parents for more than one-half of the calendar year,

Such child shall be treated, for purposes of subsection (a), as receiving over half of his support during the calendar year from the parent having custody for a greater portion of the calendar year unless he is treated, under the provisions of paragraph (2), as having received over half of his support for such year from the other parent (referred to in this subsection as the parent not having custody).

(2) *Special rule.* The child of parents described in paragraph (1) shall be treated as having received over half of his support during the calendar year from the parent not having custody if—

(A) (i) The decree of divorce or of separate maintenance, or a written agreement between the parents applicable to the taxable year beginning in such calendar year, provides that the parent not having custody shall be entitled to any deduction allowable under section 151 for such child, and

(ii) Such parent not having custody provides at least $600 for the support of such child during the calendar year, or

(B) (i) The parent not having custody provides $1,200 or more for the support of such child (or if there is more than one such child, $1,200 or more for all of such children) for the calendar year, and

(ii) The parent having custody of such child does not clearly establish that he provided more for the support of such child during the calendar year than the parent not having custody.

For purposes of this paragraph, amounts expended for the support of a child or children shall be treated as received from the parent not having custody to the extent that such parent provided amounts for such support.

(3) *Itemized statement required.* If a taxpayer claims that paragraph (2)(B) applies with respect to a child for a calendar year and the other parent claims that paragraph (2)(B)(i) is not satisfied or claims to have provided more for the support of such child during such calendar year than the taxpayer, each parent shall be entitled to receive, under regulations to be prescribed by the Secretary or his delegate, an itemized statement of the expenditures upon which the other parent's claim of support is based.

(4) *Exception for multiple-support agreement.* The provisions of this subsection shall not apply in any case where over half of the support of the child is treated as having been received from a taxpayer under the provisions of subsection (c).

(5) *Regulations.* The Secretary or his delegate shall prescribe such regulations as may be necessary to carry out the purposes of this subsection.

[Sec. 152 as amended by sec. 2, Act of Aug. 9, 1955 (Public Law 333, 84th Cong., 69 Stat. 626); sec. 4, Technical Amendments Act of 1958 (72 Stat. 1607); sec. 1, Act of Sept. 23, 1959 (Public Law 86-376, 73 Stat. 699); sec. 1, Act of Aug. 31, 1967 (Public Law 90-78, 81 Stat. 191)]

PAR. 2. Paragraph (a)(2)(iii) of § 1.152-1 is added as follows:

§ 1.152-1 General definition of a dependent.

(a) * * *

(2) * * *

(iii) (*a*) For purposes of determining the amount of support furnished for a child (or children) by a taxpayer for a given calendar year, an arrearage payment made in a year subsequent to a calendar year for which there is an unpaid liability shall not be treated as paid either during that calendar year or in the year of payment, but no amount shall be treated as an arrearage payment to the extent that there is an unpaid liability (determined without regard to such payment) with respect to the support of a child for the taxable year of payment; and

(*b*) Similarly, payments made prior to any calendar year (whether or not made in the form of a lump sum payment in settlement of the parent's liability for support) shall not be treated as made during such calendar year, but payments made during any calendar year from amounts set aside in trust by a parent in a prior year, shall be treated as made during the calendar year in which paid.

* * * * *

PAR. 3. The following new section is inserted after § 1.152-3:

§ 1.152-4 Support test in case of child of divorced or separated parents.

(a) *Applicability.* For taxable years beginning after December 31, 1966, the provisions of section 152(e) and this section relate to a determination of which of separated parents (that is, parents who are divorced or legally separated under a decree of divorce or separate maintenance, or separated under a written separation agreement) is to be treated for purposes of section 152(a) and § 1.152-1 as having provided more than half of the support of a child, as defined in section 151(e)(3) and § 1.151-3(a). For section 152(e) and this section to apply either parent or both parents combined must provide more than one-half of the child's total support, within the meaning of § 1.152-1(a)(2)(i) during the calendar year in which the taxable year of the parent who is claiming the child as a dependent begins; and such child must be in the custody of one or both of his parents for more than one-half of the calendar year. Thus, section 152(e) and this section do not apply if a person other than the parents provides one-half or more for the support of such child during the calendar year or has custody of the child for one-half or more of the calendar year. In addition, section 152(e) and this section do not apply in any case where over half of the support of the child is treated as having been received from a taxpayer pursuant to a multiple support agreement under the provisions of section 152(c) and § 1.152-3. Nor does section 152(e) and this section apply to a period for which a joint return signed by both parents is filed.

(b) *Custody.* "Custody," for purposes of this section, will be determined by the terms of the most recent decree of divorce or separate maintenance, or subsequent custody decree, or, if none, a written separation agreement. In the event of so-called "split" custody, or if neither a decree or agreement establishes who has custody, or if the validity or continuing effect of such decree or agreement is uncertain by reason of proceedings pending on the last day of the calendar year, "custody" will be deemed to be with the parent who, as between both parents, has the physical custody of the child for the greater portion of the calendar year.

(c) *General rule.* For purposes of section 152(a) and § 1.152-1, a child shall be treated as receiving over half of his support during the calendar year from the parent (hereinafter referred to as the "custodial parent") having custody within the meaning of paragraph (b) of this section for a greater portion of the calendar year unless the exceptions of paragraph (d) of this section apply. If the parents of such a child are divorced or separated for only a portion of a calendar year after having had joint custody of the child for the prior portion of the year, the parent who has custody for the greater portion of the remainder of the year after divorce or separation shall be treated as having custody for a greater portion of the calendar year. Except as provided in section 152(e)(2)(A) and paragraph (d)(2) of this section (relating to decree or agreement) parents who are unable to enter into a multiple support agreement under section 152(c) cannot enter into an agreement as to which parent is entitled to claim a child as a dependent. Therefore, in general, the custodial parent shall be allowed as a deduction the exemption for the dependent child, if the requirements of section 151(e) are met.

(d) *Exceptions*—(1) *In general.* Notwithstanding paragraph (c) of this section, a child shall be treated as receiving over half of his support during the calendar year from the parent who is not the custodial parent (hereinafter referred to as the "noncustodial parent") if the conditions of subparagraph (2) or (3) of this paragraph are met.

(2) *Decree or agreement.* A noncustodial parent who provides at least $600 for the support of a child during the calendar year shall be treated as having provided more than half the support of the child if the decree of divorce or of separate maintenance, or a written agreement between the parents applicable to the taxable year of the noncustodial parent beginning in such calendar year, provides that the noncustodial parent shall be entitled to any deduction allowable under section 151 as an exemption for the dependent child. In order for this subparagraph to apply, the noncustodial parent must provide at least $600 for the

support of each child he claims as a dependent. For taxable years beginning after December 31, 1970, in the case of a written agreement or portion of a written agreement between the parents which allocates the deduction to the noncustodial parent, the noncustodial parent must attach to his return (or amended return) a copy of such agreement or such portion of such agreement which is applicable to the calendar year in which the taxable year of the noncustodial parent begins.

(3) *Actual support.* A noncustodial parent who provides $1,200 or more support for the child (or if there is more than one child for which he claims an exemption, $1,200 or more for the combined support for all of such children) shall be treated as having provided more than half the support for the child (or children) notwithstanding any provision to the contrary contained in a decree of divorce or separation or in a written agreement, unless the custodial parent clearly establishes that the custodial parent provided, in fact, more for the support of the child during the calendar year than the noncustodial parent. Under section 152(e)(2)(B) and this subparagraph, if the noncustodial parent establishes that he has provided $1,200 or more for the support of the child, then the custodial parent has the burden of establishing by clear and convincing evidence that the custodial parent has provided more for the support of the child than has been established by the noncustodial parent in order to be treated as having provided over half of the support of the child. See paragraph (e) of this section with regard to notification and submission of itemized statements.

(4) *Amount of support.* For purposes of this paragraph, amounts expended for the support of a child shall be treated as received from the noncustodial parent to the extent that the noncustodial parent provided amounts for the support of the child, whether or not such amounts provided by the noncustodial parent are actually expended for child support. Therefore, for example, if only the parents have provided support for the child during a calendar year, only the excess of the total amount expended for the support of the child over the amount so provided by the noncustodial parent shall be treated as provided by the custodial parent for the support of the child.

(e) *Itemized statement*—(1) *Exchange.* (i) If a parent intends to claim for a taxable year a child as a dependent or a parent is uncertain whether he is entitled to claim a child and desires either to determine whether the second parent intends to or has claimed the same child as a dependent, or if the first parent desires to receive an itemized statement as provided in subparagraph (3) of this paragraph from the second parent, the first parent is entitled to receive such information from the second parent in writing upon request provided he both notifies the second parent of his intention (or possible intention) to so claim the child and sends the second parent a copy of such an itemized statement upon which the first parent's claim is based. A failure to make such a request shall not affect the right of the first parent to claim the child as a dependent. However, if the first parent makes such a request, and the second parent does not respond within a reasonable time, and it is determined that the first parent is not entitled to claim the child as a dependent, the inability of the first parent to obtain information will be taken into account in determining whether the addition to tax under section 6653, relating to failure to pay tax, is applicable.

(ii) Upon receipt of such a request accompanied by an itemized statement, if the second parent intends to claim (with respect to the calendar year in which such taxable year of the first parent begins) or has claimed the same child as a dependent, the second parent shall so inform the first parent, and if so requested shall send him a copy of the itemized statement upon which the second parent's claim is based. A notification under this subparagraph that the parent is claiming or is not claiming the child as a dependent shall not affect the rights of the parent making such notification and does not constitute a waiver.

(2) *Attachment to return.* For taxable years beginning after December 31, 1970, if a parent intends to claim a child as a dependent and, prior to the filing of his return or the time prescribed by law for filing the return (determined without regard to any extension thereof), whichever is later, such parent makes or receives a request under the procedures provided under paragraph (e)(1) of this section, then unless he is reasonably certain that the other parent will not claim the child as a dependent, such parent must attach to his return (or if the return is already filed, to a corrected or amended return) a copy of the itemized statement upon which such parent's claim is based, as provided in subparagraph (3) of this paragraph, together with a copy of the other parent's itemized statement, if available, at the time the return is filed. Failure to attach an itemized statement to the extent required by this subparagraph will be taken into account in determining whether the addition to tax under section 6653, relating to failure to pay tax, is applicable in the event it is determined that the parent is not entitled to claim the child as a dependent.

(3) *Contents.* The itemized statement referred to in subparagraphs (1) and (2) of this paragraph shall include—

(i) The name of the child (or children) being claimed as a dependent as well as the name of both parents and, if known, the address and social security number of both parents;

(ii) If known, the number of months the dependent child (or children) lived during the calendar year in the home of each parent or person other than the parents;

(iii) If known, income for the taxable year of each dependent child;

(iv) If known, the total amount of support furnished the child (or children) (including amounts furnished by persons other than the parents);

(v) A list of amounts expended during the calendar year for the child (or children) made by the parent making the statement and itemized to show the amounts expended for medical and dental care, food, shelter, clothing, education, recreation, and transportation;

(vi) Amounts actually paid by the parent making the statement during the calendar year for the support of the child (or children) pursuant to a decree of divorce or separate maintenance, or a written separation agreement; and

(vii) Other amounts paid or expended by the parent making the statement during the calendar year, for the support of the child (or children).

(4) *Requirement by officer.* Notwithstanding subparagraph (1), (2), or (3) of this paragraph, an internal revenue officer may require the submission of an itemized statement from either parent and may make it available to the other parent. Such itemized statement shall contain the information requested by the internal revenue officer and shall be filed within such reasonable time as may be designated by him. If the required statement is not furnished pursuant to the instructions of the internal revenue officer, the claim of support of the parent failing to comply with such requirement may be disallowed by the Internal Revenue Service.

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

Example (1). A, a child of B and C, who were divorced June 1, 1970, received $1,000 for support during the calendar year 1970, of which $400 was provided by B and $300 was provided by C. No multiple support agreement was entered into. Prior to the divorce B and C jointly had custody of A, and for the remainder of 1970, B had custody of A for the months of October through December, while C had custody of A for the months of June through September. Since C had custody for 4 of the 7 months following the divorce, C is the custodial parent for 1970 and is treated as having provided over half of the support for A during 1970.

Example (2). Assume the same facts as in example (1) and that for the calendar year 1971, of $1,000 support expended for A during 1971, $400 was provided by B and $300 was provided by C. Furthermore, assume that in addition to having custody of A for the months of October through December 1971, B had custody for the first 5 months of 1971. Since B had custody of A for a total of 8 months in 1971, B is the custodial parent for 1971 and is treated as having provided over half of the support for A during 1971.

Example (3). D received all of his support, $1,000, during the calendar year 1970, from his parents E and F, who are separated under a written separation agreement. F had custody of D for the entire year of 1970, but under the agreement E was to provide $600 for the support of D during 1970, and E is entitled to any deduction allowable under section 151 for the years 1970 and 1971. E, in fact, provides only $550 for the support of D during 1970, but makes up the arrearage of $50 early in 1971. Nevertheless, F is treated as having provided over half of the support for D during 1970.

Example (4). Assume the same facts as in example (3) and that F had custody of D for

the entire year 1971, and of $2,350 expended for the support of D during 1971, E provided $650 while F provided $1,700. Since under the written separation agreement E is entitled to any deduction allowable under section 151 for D for the year 1971 and E provided at least $600 for the support of D, E is treated as having provided over half of the support of D, for 1971.

Example (5). G and H are legally separated under a decree of separate maintenance. G has custody of I, the child of G and H, for the entire year, and G and H enter into a written agreement that G is entitled to any deduction allowable under section 151 for I for the calendar year 1970. However, during 1970, of the $2,000 provided for the support of I, H provided $1,300 while G provided only $700. H has provided more than $1,200 for the support of I, and G cannot establish that G provided more for the support of I, than did H. Therefore, notwithstanding the agreement, since H does not have custody of I, H is treated as having provided over half of the support for I for 1970.

Example (6). J and K, the children of L and M, who are divorced, received a total of $3,400 for the support of both during the calendar year 1970 from their parents. L, who has custody of J and K for the entire year 1970, provided $1,800 for the support of both, while M, the noncustodial parent, provided $1,600 for such support. Under the decree of divorce, M is entitled to any deduction allowable under section 151 for such children. Since M has provided at least $600 for the support of each child, M is treated as having provided over half the support for J and K for 1970. Furthermore, as J and K are determined under section 152(e) and § 1.152-4 to be dependents of M for purposes of section 151(e), they are also considered to be dependents of M with respect to other provisions of the Code that are dependent upon such a determination for their operation. (For example, section 213.)

[FR Doc.71-3877 Filed 3-19-71;8:47 am]

[T.D. 7097]

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

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

Election Relating to Crop Insurance Proceeds; Correction

On March 18, 1971, Treasury Decision 7097 was published in the FEDERAL REGISTER (36 F.R. 5215). The preamble for such Treasury Decision is changed to read as follows:

On December 3, 1970, notice of proposed rule making with respect to the amendment of the Income Tax Regulations (26 CFR Part 1) under section 451 of the Internal Revenue Code of 1954 (pertaining to elections relating to crop insurance proceeds) to reflect the changes made by section 215 of the Tax Reform Act of 1969 (83 Stat. 573) was published in the FEDERAL REGISTER (35 F.R. 18389). 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 (subject to the changes set forth below), and Treasury Decision 7026, as published on February 17, 1970, in the FEDERAL REGISTER (35 F.R. 3067), is hereby revoked.

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

[FR Doc.71-3948 Filed 3-19-71;8:50 am]

[T.D. 7101]

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

Brother-Sister Controlled Group

The following regulations relate to the application of section 1563 of the Internal Revenue Code of 1954, as amended by section 401(c) of the Tax Reform Act of 1969 (83 Stat. 602). The regulations set forth herein are temporary and are designed to give taxpayers guidance in determining whether two or more corporations are component members of a brother-sister controlled group. More detailed regulations under that section will be issued subsequently.

§ 13.16 Statutory provisions; definitions and special rules.

Section 1563(a) as amended by section 401(c) of the Tax Reform Act of 1969:

SEC. 1563. *Definitions and special rules*—(a) *Controlled group of corporations.* * * *

(2) *Brother-sister controlled group.* Two or more corporations if five or fewer persons who are individuals, estates, or trusts own (within the meaning of subsection (d)(2)) stock possessing—

(A) At least 80 percent of the total combined voting power of all classes of stock entitled to vote or at least 80 percent of the total value of shares of all classes of the stock of each corporation, and

(B) More than 50 percent of the total combined voting power of all classes of stock entitled to vote or more than 50 percent of the total value of shares of all classes of stock of each corporation, taking into account the stock ownership of each such person only to the extent such stock ownership is identical with respect to each such corporation.

* * * * * *

[Sec. 1563 as added by sec. 235(a), Rev. Act 1964 (78 Stat. 116); amended by sec. 401(c) Tax Reform Act 1969 (83 Stat. 602)]

§ 13.16-1 Definition of controlled group for taxable years ending on or after December 31, 1970.

(a) *Brother-sister controlled group.* (1) For taxable years ending on or after December 31, 1970, the term "brother-sister controlled group" means two or more corporations if the same five or fewer persons who are individuals, estates, or trusts own (directly and with the application of the rules contained in paragraph (b) of § 1.1563-3 of this chapter), singly or in combination, stock possessing—

(i) At least 80 percent of the total combined voting power of all classes of stock entitled to vote or at least 80 percent of the total value of shares of all classes of the stock of each corporation; and

(ii) More than 50 percent of the total combined voting power of all classes of stock entitled to vote or more than 50 percent of the total value of shares of all classes of stock of each corporation, taking into account the stock ownership of each such person only to the extent such stock ownership is identical with respect to each such corporation.

(2) The principles of this paragraph may be illustrated by the following examples:

Example (1). The outstanding stock of corporations P, Q, R, S, and T, which have only one class of stock outstanding, is owned by the following unrelated individuals:

Individuals	Corporations					Identical ownership
	P	Q	R	S	T	
	Percent					
A	60	60	60	60	100	60
B	40					
C		40				
D			40			
E				40		
Total	100	100	100	100	100	60

Corporations P, Q, R, S, and T are members of a brother-sister controlled group.

Example (2). The outstanding stock of corporations U and V, which have only one class of stock outstanding, is owned by the following unrelated individuals:

Individuals	Corporations		Identical ownership
	U	V	
	Percent		
F	5		
G	10		
H	10		
I	20		
J	55	55	55
K		10	
L		10	
M		10	
N		10	
O		5	
Total	100	100	55

Corporations U and V are not members of a brother-sister controlled group because at least 80 percent of the stock of each corporation is not owned by the same five or fewer persons.

(b) *Overlapping brother-sister controlled groups after 1969.* If, on a December 31 after 1969, a corporation would, without application of this paragraph, be a component member of more than one brother-sister controlled group on such date, such corporation shall be treated as component member of only one such group on such date. The determination as to which group such corporation is treated as a component member shall be made by the district director with audit jurisdiction of such corporation's return for the taxable year that includes such December 31 unless such corporation files an election as provided in this paragraph. The election shall be in the form of a statement, signed by a person authorized to act on behalf of such corporation, designating the group in which the corporation has elected to be included. The statement shall provide all the information with respect to stock ownership which is reasonably necessary to satisfy the district

director that the corporation would, but for the election, be a component member of more than one controlled group. The statement shall be filed on or before the due date (including extensions of time) for the filing of the income tax return of such corporation for the taxable year. (However, in the case of an election with respect to December 31, 1970, the statement shall be considered as timely filed if filed on or before June 15, 1971.) Once filed, the election is irrevocable and effective until such time that a change in the stock ownership of the corporation results in termination of membership in the controlled group in which such corporation has been included.

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.

(Secs. 1563(b)(4) (78 Stat. 121; 26 U.S.C. 1563(b)(4)), 7805 (68A Stat. 917; 26 U.S.C. 7805), Internal Revenue Code of 1954)

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

Approved: March 17, 1971.

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

[FR Doc.71-3878 Filed 3-19-71;8:47 am]

Title 7—AGRICULTURE

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

[Lemon Reg. 472]

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

Limitation of Handling

§ 910.772 Lemon Regulation 472.

(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 16, 1971.

(b) *Order.* (1) The respective quantities of lemons grown in California and Arizona which may be handled during the period March 21 through March 27, 1971, are hereby fixed as follows:

(i) District 1: 9,000 cartons;

(ii) District 2: 191,000 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 17, 1971.

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

[FR Doc.71-3907 Filed 3-19-71;8:49 am]

Title 24—HOUSING AND HOUSING CREDIT

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

SUBCHAPTER B—NATIONAL FLOOD INSURANCE PROGRAM

PART 1909—GENERAL PROVISIONS

PART 1914—AREAS ELIGIBLE FOR THE SALE OF INSURANCE

Elimination of Emergency Flood Insurance Area Map

The following miscellaneous amendments are made to Parts 1909 and 1914, to add the term "affiliates" to the definitions in § 1909.1 and to revise §§ 1909.1, 1914.2, and 1914.3 by amending the definition of and eliminating the requirement for an Emergency Flood Insurance Area Map. Since this amendment eliminates a requirement previously imposed by the Administrator, notice and public procedure hereon are found to be unnecessary, and the amendment shall be effective upon publication in the FEDERAL REGISTER.

1. Section 1909.1 is amended by adding a definition of "affiliates" in alphabetical order, and amending the definition of "Emergency Flood Insurance Area Map" to read as follows:

§ 1909.1 General definitions.

* * * * *

"Affiliates" means two or more associated business concerns which are or can be either directly or indirectly controlled by one or more of the affiliates or by a third party.

* * * * *

"Emergency Flood Insurance Area Map" means the official map on which the Administrator has delineated the areas in which flood insurance may be sold under the emergency flood insurance program.

* * * * *

2. The title and paragraph (a) of § 1914.2 are amended to read as follows:

§ 1914.2 Eligibility under emergency program.

(a) Where a Flood Insurance Rate Map, described in § 1914.3, is not available at the time an applicant community qualifies for flood insurance under the emergency program, the Administrator may declare the entire community a flood plain area having special flood hazards. As soon as the Administrator has obtained sufficient technical information to define the special flood hazard area more precisely, he may request the local

authority responsible for implementing the assurances required by § 1910.12 of this chapter, to delineate on a local map or plat (of sufficient scale to show the location of building sites for insurance purposes) the proposed boundaries of the more limited area having special flood hazards. Local maps so prepared and subsequently approved by the Administrator for official purposes are known as Flood Hazard Boundary Maps.

* * * * *

3. Paragraph (a) of § 1914.3 is amended to read as follows:

§ 1914.3 Flood Insurance Maps.

(a) Emergency Flood Insurance Area Map: Areas, under the emergency program, for which the Administrator has authorized the sale of flood insurance may be designated on an Emergency Flood Insurance Area Map.

* * * * *

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968), 82 Stat. 572, as amended by secs. 408–410 of the HUD Act of 1969, 83 Stat. 396; 42 U.S.C. 4001–4127; Secretary's delegation of authority to Federal Insurance Administrator, 34 F.R. 2680, Feb. 27, 1969)

Effective date. This document shall be effective upon publication in the FEDERAL REGISTER (3–20–71).

GEORGE K. BERNSTEIN,
Federal Insurance Administrator.

[FR Doc.71–3870 Filed 3–19–71;8:46 am]

Title 38—PENSIONS, BONUSES, AND VETERANS' RELIEF

Chapter I—Veterans Administration

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

COMMISSIONED OFFICERS OF NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

1. In § 3.1(g), subparagraph (6) is amended to read as follows:

§ 3.1 Definitions.

* * * * *

(g) "Secretary concerned" means:

* * * * * *

(6) The Secretary of Commerce, with respect to matters concerning the Coast and Geodetic Survey, the Environmental Science Services Administration, and the National Oceanic and Atmospheric Administration.

* * * * *

2. In § 3.5, paragraph (d) is amended to read as follows:

§ 3.5 Dependency and indemnity compensation.

* * * * *

(d) *Group life insurance.* No dependency and indemnity compensation of death compensation shall be paid to any widow, child, or parent based on the death of a commissioned officer of the Public Health Service, the Coast and Geodetic Survey, the Environmental Science Services Administration, or the National Oceanic and Atmospheric Administration occurring on or after May 1, 1957, if any amounts are payable under the Federal Employees' Group Life Insurance Act of 1954 (Public Law 598, 83d Cong., as amended) based on the same death. (Sec. 501(c)(2), Public Law 881, 84th Cong. (70 Stat. 857), as amended by sec. 13(u), Public Law 85–857 (72 Stat. 1266); sec. 5, Public Law 91–621 (84 Stat. 1863).)

* * * * *

3. In § 3.6(b), that portion of subparagraph (3) preceding subdivision (i) is amended to read as follows:

§ 3.6 Duty periods.

* * * * *

(b) *"Active duty."* This means:

* * * * *

(3) Full-time duty as a commissioned officer of the Coast and Geodetic Survey or of its successor agencies, the Environmental Science Services Administration and the National Oceanic and Atmospheric Administration:

* * * * *

4. In § 3.7, paragraph (g) is amended to read as follows:

§ 3.7 Persons included.

* * * * *

(g) *Coast and Geodetic Survey, and its successor agencies, the Environmental Science Services Administration and the National Oceanic and Atmospheric Administration.* See § 3.6(b)(3).

* * * * *

5. In § 3.400, paragraphs (b)(2)(iii) and (c)(3)(iv) are added to read as follows:

§ 3.400 General.

* * * * *

(b) *Disability benefits.* * * *

(2) *Disability compensations.* * * *

(iii) *Disability incurred in Environmental Science Services Administration or National Oceanic and Atmospheric Administration, prior to December 31, 1970.* Date following date of discharge or release from full-time duty as a commissioned officer if application is filed on or after December 31, 1970, and prior to July 1, 1971. (Public Law 91–621, 84 Stat. 1863)

* * * * *

(c) *Death benefits.* * * *

(3) *Dependency and indemnity compensation.* * * *

(iv) *Death prior to December 31, 1970, of commissioned officer of Environmental Science Services Administration or National Oceanic and Atmospheric Administration, on full-time duty.* First day of the month in which death occurred if application is filed on or after December 31, 1970, and prior to July 1, 1971. (Public Law 91–621, 84 Stat. 1863)

* * * * *

6. In § 3.750, paragraphs (a) and (c) are amended to read as follows:

§ 3.750 Retirement pay.

(a) *General.* Except as provided in paragraph (c) of this section and § 3.751, any person entitled to receive retirement pay based on service as a member of the Armed Forces or as a commissioned officer of the Public Health Service, the Coast and Geodetic Survey, the Environmental Science Services Administration; or the National Oceanic and Atmospheric Administration may not receive such pay concurrently with benefits payable under laws administered by the Veterans Administration. The term "retirement pay" includes retired pay and retainer pay.

* * * * *

(c) *Waiver.* A person specified in paragraph (a) of this section may receive pension or compensation upon filing with the service department concerned a waiver of so much of his retirement pay as is equal in amount to the pension or compensation to which he is entitled. (38 U.S.C. 3105)

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

These VA regulations are effective December 31, 1970.

Approved: March 16, 1971.

By direction of the Administrator.

[SEAL] FRED B. RHODES,
Deputy Administrator.

[FR Doc.71–3882 Filed 3–19–71;8:47 am]

Title 43—PUBLIC LANDS: INTERIOR

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

APPENDIX—PUBLIC LAND ORDERS

[Public Land Order 5030]

[Arizona 5883]

ARIZONA

Withdrawal for National Forest Administrative Site and Recreation Areas

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

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

KAIBAB NATIONAL FOREST

GILA AND SALT RIVER MERIDIAN

Dogtown Campground

T. 21 N., R. 2 E., Sec. 12, S½, S½NE¼.

Chalender and Williams Ranger Station Administrative Site

T. 22 N., R. 2 E.,
Sec. 27, SW¼NW¼NE¼SE¼, W½SW¼NE¼SE¼, approximately 2 acres in the S½NE¼NW¼SE¼, not in conflict with PLO 3147 Roadside Zone and E.S. 677, SE¼NW¼SE¼ (less approximately 1 acre in conflict with E.S. 677 and approximately 3 acres in R.R. exception).

The areas described aggregate 415.5 acres in Conconino County.

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

HARRISON LOESCH,
Assistant Secretary of the Interior.

MARCH 16, 1971.

[FR Doc.71-3858 Filed 3-19-71;8:45 am]

[Public Land Order 5031]

[New Mexico 8475]

NEW MEXICO

Partial Revocation of Public Water Reserve

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

1. The Executive order of April 17, 1926, creating Public Water Reserve No. 107, Interpretation No. 250 of February 6, 1929, is hereby revoked so far as it affects the following described land:

NEW MEXICO PRINCIPAL MERIDIAN

T. 30 S., R. 19 W.,
Sec. 6, SE¼SW¼.

The area described aggregates 40 acres in Hidalgo County.

The land is located 15 miles south of the small community of Animas. The terrain is slightly rolling and the soils are moderately deep sandy loam. The vegetal cover consists of tobosa and sacaton grasses and mesquite.

2. At 10 a.m. on April 21, 1971, the land shall be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 10 a.m. on April 21, 1971, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing. The land has been open to applications and offers under the mineral leasing laws, and to location under the U.S. mining laws for metalliferous minerals. It will be open to location for nonmetalliferous minerals at 10 a.m. on April 21, 1971.

Inquiries concerning the land shall be addressed to the Land Office Manager, Bureau of Land Management, Post Office Box 1449, Santa Fe, NM 87501.

HARRISON LOESCH,
Assistant Secretary of the Interior.

MARCH 16, 1971.

[FR Doc.71-3859 Filed 3-19-71;8:45 am]

Title 45—PUBLIC WELFARE

Chapter XII—Environmental Protection Agency

PART 1201—CONTROL OF AIR POLLUTION FROM NEW MOTOR VEHICLES AND NEW MOTOR VEHICLE ENGINES

Miscellaneous Amendments

On November 10, 1970, regulations for the control of air pollution from new motor vehicles and new motor vehicle engines beginning with the 1972 model year were published in 45 CFR Part 85 (35 F.R. 17288). Subsequently (35 F.R. 19181), Part 85 was redesignated as Part 1201 in Chapter XII of Title 45 of the Code of Federal Regulations, and the terms "Department of Health, Education, and Welfare" and "Secretary" in the part were deemed to mean "Environmental Protection Agency" and "Administrator" respectively.

Numerous questions and comments were received by the Acting Commissioner, Air Pollution Control Office, from manufacturers concerning the interpretation and application of the provisions of the regulations. In order that Air Pollution Control Office personnel could properly respond to the industry's inquiries and observations, a technical meeting was held at the Air Pollution Control Office's headquarters at the Parklawn Building, Rockville, Md., on December 10, 1970. Notice of the meeting was mailed to vehicle manufacturers and industry associations, both domestic and foreign, together with an invitation affording them an opportunity to discuss the implementation of those regulations. In addition, an announcement of the meeting was made through a press release which invited the public to participate. In attendance at the meeting, in addition to Federal personnel, were representatives of the domestic and foreign automobile and engine manufacturers and the industry associations, research and development concerns, oil companies, and one State air pollution control agency. The amendments and corrections set forth below are the results of that meeting and of further efforts at clarification by program personnel.

The Agency finds that good cause exists for omitting as unnecessary and impracticable a notice of proposed rule making, public rule making procedure, and postponement of effective date in the issuance of these amendments, in that (1) they are designed to correct and clarify the regulations; (2) to the extent that minor substantive revisions are made they are mitigative in nature, and both industry and the public were provided opportunity to discuss the need for revision at the public technical meeting; and (3) considerations of lead time for the 1972 model year dictate immediate promulgation.

(Sec. 301(a), 81 Stat. 504; 42 U.S.C. 1857g(a), as amended by sec. 15(c)(2), Public Law 91-604, 84 Stat. 1713)

Dated: March 16, 1971.

WILLIAM D. RUCKELSHAUS,
Administrator.

Part 1201 of Chapter XII, Title 45 of the Code of Federal Regulations is amended as follows, effective upon publication (3-20-71):

1. In § 1201.1, paragraphs (a) (1), (4), (16), and (31) are revised to read as follows:

§ 1201.1 Definitions.

(a) * * *

(1) "Act" means Part A of Title II of the Clean Air Act, 42 U.S.C. 1857 f-1 through f-7, as amended by Public Law 91-604.

* * * * *

(4) "Gross vehicle weight" means the manufacturer's gross weight rating for the individual vehicle.

* * * * *

(16) "Crankcase emissions" means airborne substances emitted to the atmosphere from any portion of the engine crankcase ventilation or lubrication systems.

* * * * *

(31) "Span gas" means a gas of known concentration which is used routinely to set the output level of an analyzer.

2. Section 1201.30 is revised to read as follows:

§ 1201.30 Applicability.

The provisions of this subpart are applicable to new gasoline fueled heavy duty engines beginning with the 1972 model year.

§ 1201.51 [Amended]

3. In § 1201.51(b)(5), the comma after the word "conformity" is deleted.

4. In § 1201.55, paragraph (b)(1)(i) is revised to read as follows:

§ 1201.55 Certification.

* * * * *

(b)(1) * * *

(i) A test vehicle selected under § 1201.89(b) (2) or (4), § 1201.110(b) (2) or (4), or § 1201.130(b)(2), as appropriate, shall represent all vehicles in the same engine family of the same engine displacement-exhaust emission control system-evaporative emission control system combination.

* * * * *

§ 1201.58 [Amended]

5. In § 1201.58(a), the word "intended" is deleted.

§ 1201.64 [Amended]

6. In § 1201.64(c), the word "witnesses" is changed to "witness".

7. Section 1201.70 is revised to read as follows:

§ 1201.70 Introduction.

The procedures described in this subpart will be the test program to determine the conformity of gasoline fueled light duty vehicles with the applicable standards set forth in this part.

(a) The test consists of prescribed sequences of fueling, parking, and operating conditions. The exhaust gases generated during vehicle operation are diluted with air and sampled continuously for subsequent analysis of specific components by prescribed analytical techniques. The fuel evaporative emissions are collected for subsequent weighing during both vehicle parking and operating events. The test applies to vehicles equipped with catalytic or direct-flame afterburners, induction system modifications, or other systems or to uncontrolled vehicles and engines.

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

(c) The fuel evaporative emission test is designed to determine fuel hydrocarbon evaporative emissions to the atmosphere as a consequence of urban driving, and diurnal temperature fluctuations during parking. It is associated with a series of events representative of a motor vehicle's operation, which result in fuel vapor losses directly from the fuel tank and carburetor. Activated carbon traps are employed in collecting the vaporized fuel. The test procedure is specifically aimed at collecting and weighing:

(1) Diurnal breathing losses from the fuel tank and other parts of the fuel system when the fuel tank is subjected to a temperature increase representative of the diurnal range;

(2) Running losses from the fuel tank and carburetor resulting from a simulated trip from a cold start on a chassis dynamometer; and

(3) Hot soak losses from the fuel tank and carburetor which result when the vehicle is parked and the hot engine is turned off.

§ 1201.71 [Amended]

8. In § 1201.71, the word "of" following the word "content" in paragraph (a) is changed to "or" and the listing in the table in paragraph (b) under the "Premium" column on the "Sulfur, wt. percent" line reading "0.2–0.10" is changed to read "0.02–0.10".

§ 1201.74 [Amended]

9. In § 1201.74(a), the second word "than" in subparagraph (1), is changed to "then" and a comma is inserted in subparagraph (2) after "§ 1201.71(a)".

10. In § 1201.76, the hyphen after "mm" in paragraph (e)(2)(ii), is deleted and paragraph (b) is revised to read as follows:

§ 1201.76 Dynamometer procedure.

* * * * *

(b) During dynamometer operation, a fixed speed cooling fan shall be positioned so as to direct cooling air to the vehicle in an appropriate manner with the engine compartment cover open. The fan capacity shall normally not exceed 5,300 c.f.m. If, however, the manufacturer can show that during field operation the vehicle receives additional cooling, the fan capacity may be increased or additional fans used if approved in advance by the Administrator. In the case of vehicles with front engine compartments, the fan(s) shall be squarely positioned between 8 and 12 inches in front of the cooling air inlets (grill). In the case of vehicles with rear engine compartments (or if special designs make the above impractical), the cooling fan(s) shall be placed in a position to provide sufficient air to maintain engine cooling.

* * * * *

11. In § 1201.77, a comma is inserted after "m.p.h." in paragraph (f) and paragraph (e) is revised to read as follows:

* * * * *

§ 1201.77 Three-speed manual transmissions.

(e) Acceleration modes shall be driven smoothly with the shift speeds as recommended by the manufacturer. If the manufacturer does not recommend shift speeds, the vehicle shall be shifted from first to second gear at 15 m.p.h. and from second to third gear at 25 m.p.h. The operator shall release the accelerator pedal during the shift, and accomplish the shift with minimum closed throttle time. If the vehicle cannot accelerate at the specified rates, the vehicle shall be accelerated at WOT until the vehicle speed reaches the speed at which it should be at that time during the test.

* * * * *

12. In § 1201.78 paragraphs (a) is revised to read as follows:

§ 1201.78 Four-speed and five-speed manual transmissions.

(a) Use the same procedure as for three-speed manual transmissions for shifting from first to second gear and from second to third gear. If the manufacturer does not recommend shift speeds, the vehicle shall be shifted from third to fourth gear at 40 m.p.h. Fifth gear may be used at the manufacturer's option.

* * * * *

13. In § 1201.79, paragraph (a) is revised to read as follows:

§ 1201.79 Automatic transmissions.

(a) All test conditions shall be run with the transmission in "Drive" (highest gear). Automatic stick-shift transmissions may be shifted as manual transmissions at the option of the manufacturer.

* * * * *

14. In § 1201.80, paragraphs (b)(1)(2), (d), and (f)(3) are revised. As amended § 1201.80 reads as follows:

§ 1201.80 Engine starting and restarting.

* * * * *

(b)(1) Vehicles equipped with automatic chokes shall be operated according to the instructions which will be included in the manufacturer's operating or owner's manual including "kick-down" from cold fast idle. For vehicles whose starting instructions do not specify "kick-down" from cold fast idle, the "kick-down" will not be performed. For vehicles whose starting instructions specify "kick-down" from cold fast idle, without specifying a time or for vehicles which do not have starting instructions, the "kick-down" shall be performed 13 seconds after the engine starts. The transmission shall be placed in gear 15 seconds after the engine is started. If necessary, braking may be employed to keep the drive wheels from turning.

(2) Vehicles equipped with manual chokes shall be operated according to the instructions which will be included in the manufacturer's operating or owner's manual. If not specified, the choke shall be operated to maintain engine idle at 1,100±50 r.p.m. during the initial idle period and used where necessary during the remainder of the test to keep the engine running.

* * * * *

(d) If the vehicle does not start after 10 seconds of cranking, cranking shall cease and the reason for failure to start determined. The revolution counter on the constant volume sampler (see § 1201.85, Dynamometer test runs) shall be turned off and the sample solenoid valves placed in the "dump" position during this diagnostic period. In addition, either the positive displacement pump should be turned off or the exhaust tube disconnected from the tailpipe during the diagnostic period. If failure to start is an operational error, the vehicle shall be rescheduled for testing from a cold start. If failure to start is caused by vehicle malfunction, corrective action of less than 30 minutes duration may be taken and the test continued. The sampling system shall be reactivated at the same time cranking is started. When the engine starts, the driving schedule timing sequence shall begin. If failure to start is caused by vehicle malfunction and the vehicle cannot be started, the test shall be voided, the vehicle removed from the dynamometer, corrective action taken, and the vehicle rescheduled for test. The reason for the malfunction (if determined) and the corrective action taken shall be reported.

* * * * *

(f) * * *

(3) If the vehicle will not restart within 1 minute, the test shall be voided,

the vehicle removed from the dynamometer, corective action taken, and the vehicle rescheduled for test. The reason for the malfunction (if determined) and the corerctive action taken shall be reported.

15. Section 1201.81 is revised to read as follows:

§ 1201.81 Sampling and analytical system (exhaust emissions).

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

(b) *Component description (exhaust gas sampling system).* The following components will be used in the exhaust gas sampling system for testing under the regulations in this part. See Figure 1a. Other types of constant volume samplers may be used if shown to yield equivalent results.

(1) A dilution air filter assembly consisting of a particulate (paper) filter to remove solid matter from the dilution air and thus increase the life of the charcoal filter; a charcoal filter to reduce and stabilize the background hydrocarbon level; a second particulate filter to remove charcoal particles from the air stream. The filters shall be of sufficient capacity and the duct which carries the dilution air to the point where the exhaust gas is added shall be of sufficient size so that the pressure at the mixing point is less than 3 inches of water pressure below ambient when the constant volume sampler is operating at its maximum flow rate.

(2) A flexible, leak-tight connector and tube to the vehicle tailpipe. The flexible tubing shall be of sufficient size to limit the maximum pressure at the tailpipe to less than 5 inches of water pressure above ambient during the test.

(3) A heating system to preheat the heat exchanger to within ±10° F. of its operating temperature before the test begins.

(4) A heat exchanger capable of limiting the gas mixture temperature variation during the entire test to ±10° F. as measured at a point immediately ahead of the positive displacement pump.

(5) A positive displacement pump to pump the dilute exhaust mixture. The pump capacity (300 to 350 c.f.m. is sufficient for testing most vehicles) shall be large enough to virtually eliminate water condensation in the system. See appendix C for flow calibration techniques.

(6) Temperature sensor (T1) with an accuracy of ±2° F. to allow continuous recording of the temperature of the dilute exhaust mixture entering the positive displacement pump.

(7) Gauge (G1) with an accuracy of ±1 mm. Hg to measure the pressure depression of the dilute exhaust mixture entering the positive displacement pump, relative to atmospheric pressure.

(8) Gauge (G2) with an accuracy of ±1 mm. Hg to measure the pressure increase across the positive displacement pump.

(9) Sample probes (S1 and S2) shall be pointed upstream to collect samples from the dilution airstream and the dilute exhaust mixture. The probes shall be sized so that the gas velocities in the probe inlet and the bulk stream are as nearly identical as practical. Additional sample probes may be used, for example, to obtain continuous concentration traces of the dilute exhaust stream. In such case the sample flow rate, in standard cubic feet per test, must be added to the calculated dilute exhaust volume. The position of the sample probe in Figure 1a is pictorial only.

(10) Filters (F1 and F2) to remove particulate matter from dilution air and dilute exhaust samples prior to entering sample collection bags.

(11) Pumps (P1 and P2) to pump the dilution air and dilute exhaust into their respective sample collection bags.

(12) Flow control valves (N1 and N2) to regulate flows to sample collection bags, at constant flow rates. The minimum sample flow shall be 5 c.f.h.

(13) Flowmeters (FL1 and FL2) to insure, by visual observation, that constant flow rates are maintained throughout the test.

(14) Three-way solenoid valves (V1 and V2) to direct sample streams to either their respective bags or overboard.

(15) Quick-connect leak-tight fittings (C1 and C2), with automatic shutoff on bag side, to attach sample bags to sample system.

(16) Sample collection bags for dilution air and exhaust samples of sufficient capacity so as not to impede sample flow.

(17) A revolution counter to count the revolutions of the positive displacement pump while the test is in progress and samples are being collected.

(c) *Component description (exhaust gas analytical system).* The following components will be used in the exhaust gas analytical system for testing under the regulations in this part. The analytical system provides for the determination of hydrocarbon concentrations by flame ionization detector (FID) analysis and the determination of carbon monoxide concentrations by nondispersive infrared (NDIR) analysis in dilute exhaust samples. See Figure 1b. Other analytical principles may be employed if shown to yield equivalent results and if approved in advance by the Administrator.

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

(2) Pump (P3) to transfer samples from the sample bag to the analyzers.

(3) Selector valves (V3, V4, and V5) for directing sample and calibrating gages or zeroing gas to the analyzers.

(4) Flow control valves (N3, N4, N5, and N6) to regulate flows to a constant rate of 5 c.f.h.

(5) A flame-ionization-detector type analyzer to measure HC concentrations.

(6) A carbon monoxide sensitized nondispersive infrared analyzer to measure CO concentrations.

(7) Flowmeter (FL3) to indicate sample flow rate.

(8) Recorders to provide permanent records of calibration, spanning and sample measurements.

16. In § 1201.82(d), a new subparagraph (3) is added. As amended, § 1201.82 reads as follows:

§ 1201.82 Sampling and analytical system (fuel evaporative emissions).

* * * * *

(d) * * *

(3) Other types of thermocouples and recording equipment may be used provided they record the information specified in subparagraph (1) of this paragraph with the required accuracy and are self-contained. Type J thermocouples are required to be compatible with recording instruments used in Federal certification facilities.

17. In § 1201.83, paragraphs (j) and (l) are revised to read as follows:

§ 1201.83 Information to be recorded.

* * * * *

(j) Barometric pressure, ambient temperature and humidity and the temperature of the air in front (from 6 to 12 inches from the grill) of the radiator during the test.

* * * * *

(l) The temperature and pressure of the mixture of exhaust and dilution air entering the positive displacement pump and the pressure increases across the pump. The temperature of the mixture shall be recorded continuously or digitally at a rate often enough to determine temperature variations, or it may be controlled to +5° F. of the set point of the temperature control system. In the last case only the set point need be recorded.

* * * * *

18. In § 1201.84, a new paragraph (c) is added. As amended, § 1201.84 reads as follows:

§ 1201.84 Analytical system calibration and sample handling.

* * * * *

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

19. In § 1201.85, paragraphs (b) (4) and (14) are revised to read as follows:

§ 1201.85 Dynamometer test runs.

* * * * *

(b) * * *

(4) Start the positive displacement pump (if not already on), the sample pumps and the temperature recorder. (The heat exchanger of the constant volume sampler should be preheated to its operating temperature before the test begins.)

* * * * *

(14) The positive displacement pump may be turned off, if desired.

§ 1201.89 [Amended]

20. In § 1201.89(a)(4), the word "subparagraph" is changed to "subparagraphs."

21. In § 1201.90(a)(1), the word "schedule" in subdivision (v) is changed to "scheduled", a new subdivision (viii) is added, and the present subdivision (viii) is renumbered as subdivision (ix). As amended, § 1201.90 is revised to read as follows:

§ 1201.90 Maintenance.

(a) * * *

(1) * * *

(v) The fuel evaporative emission control system may be serviced at 12,000-mile intervals (± 250 miles) of scheduled driving.

* * * * *

(viii) Engine idle speed may be adjusted at the 4,000-mile test point.

(ix) Any other engine or fuel system maintenance or repairs will be allowed only with the advance approval of the Administrator.

* * * * *

§ 1201.91 [Amended]

22. In § 1201.91(d), the reference "§ 1201.33" is changed to "§ 1201.53".

23. In § 1201.100, paragraphs (a) and (b) are revised to read as follows:

§ 1201.100 Introduction.

* * * * *

(a) The test consists of prescribed sequences of engine operating conditions to be conducted on an engine dynamometer. The exhaust gases generated during engine operation are sampled continuously for specific component analysis through the analytical train. The test is applicable to engines equipped with catalytic or direct-flame afterburners, induction system modifications, or other systems, or to uncontrolled engines.

(b) The exhaust emission test is designed to determine hydrocarbon and carbon monoxide concentrations during a truck driving pattern in a metropolitan area as simulated on an engine dynamometer. The test consists of two warm-up cycles and two hot cycles. The average concentrations for the warmup cycles and the hot cycles are combined to yield the reported values.

* * * * *

§ 1201.105 [Amended]

24. In § 1201.105(f), the phrase "number carburetors" is revised to read "number of carburetors".

25. In § 1201.110, paragraph (e) is revised to read as follows:

§ 1201.110 Test engines.

* * * * *

(e) In lieu of testing an emission data or durability data engine selected under paragraph (b) or (c) of this section and submitting data therfor, a manufacturer may, with the prior written approval of the Administrator, submit data on a similar engine for which certification has previously been obtained.

26. In § 1201.111(a)(1), a new subdivision (vii) is added and the present subdivision (vii) is renumbered as subdivision (viii). As amended § 1201.111 is revised to read as follows:

§ 1201.111 Maintenance.

(a) * * *

(1) * * *

(vii) Engine idle speed may be adjusted at the 125-hour test point.

(viii) Any other engine or fuel system maintenance or repairs will be allowed only with the advance approval of the Administrator.

* * * * *

§ 1201.122 [Amended]

27. In § 1201.122 (a) (2) (iii), the word "with" is changed to "within".

§ 1201.123 [Amended]

28. In § 1201.123(b)(2), the word "measurment" is changed to "measurement".

§ 1201.124 [Amended]

29. In § 1201.124(c)(2), the phrase "at least 15 minutes prior to testing" is enclosed in parentheses.

§ 1201.126 [Amended]

30. In § 1201.126(a)(3), the word "valve" is changed to "value".

31. In § 1201.130, paragraph (e) is revised to read as follows:

§ 1201.130 Test engines.

* * * * *

(e) In lieu of testing an emission data or durability data engine selected under paragraph (b) or (c) of this section and submitting data therefor, a manufacturer may, with the prior written approval of the Administrator, submit data on a similar engine for which certification has previously been obtained.

32. In § 1201.131(a)(1), subdivision (iii) is revised, a new subdivision (vi) is added, and the present subdivision (vi) is renumbered as subdivision (vii). As amended, § 1201.131 is revised to read as follows:

§ 1201.131 Maintenance.

(a) * * *

(1) * * *

(iii) Normal engine lubrication services (engine oil change and oil filter, fuel filter, and air filter servicing and adjustment of drive belt tension and engine bolt torque, as required) will be allowed at manufacturer's recommended intervals.

* * * * *

(vi) Engine low-idle speed may be adjusted at the 125-hour test point.

(vii) Any other engine or fuel system maintenance or repair will be allowed only with the advance approval of the Administrator.

* * * * *

33. In Appendix A, the speed corresponding to 613 sec. is revised and two time points are added as follows:

Time (sec.)	*Speed (m.p.h.)*
613	22.8
842	20.1
1372	0.0

34. In Appendix C, steps 5 and 6 are revised. As amended, Appendix C reads as follows:

5. The gas flow, Q, at each test point is calculated in standard cubic feet per minute from the flow device data.

6. The gas flow (at pump inlet pressure and temperature) is calculated in cubic feet per revolution from the following:

$$V_O = \frac{Q}{n} \times \frac{T_p}{528} \times \frac{760}{P_p}$$

Where:

Q = Gas flow in standard cubic feet per minute.

n = Pump speed in revolution per minute.

See § 1201.87 for remainder of definitions.

[FR Doc.71-3896 Filed 3-19-71;8:49 am]

Title 47—TELECOMMUNICATION

Chapter I—Federal Communications Commission

[Docket No. 16979; FCC 71-255]

PART 0—COMMISSION ORGANIZATION

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

Computer and Communication Services and Facilities

Final decision and order. In the matter of regulatory and policy problems presented by the interdependence of computer and communication services and facilities; Docket No. 16979.

A. Introduction

1. The Commission's Notice of Proposed Rule Making and Tenative Decision in this proceeding was issued on April 3, 1970 (FCC 70-338).[1] Interested parties were invited to submit written comments with respect thereto by June 15, 1970, and to participate in oral argument therein. Thirty-three parties submitted written comments and 18 parties participated in oral argument on September 3, 1970. Attachment A[1a] lists those parties submitting written comments to the Tentative Decision and Notice of Proposed Rule Making and denotes, with an asterisk, those parties who appeared and participated in oral argument.

2. In the Tenative Decision, we stated that:

It is clear from the comments submitted by respondents, as well as those in the SRI Reports, that the issues which raised basic concern in both the communications and computer industries are those which relate to the nature and extent of the regulatory jurisdiction and control which we intend to exercise over the furnishing of data processing and communications services, or some

[1] Hereinafter cited as Tentative Decision.

[1a] Attachment A filed as part of original document.

combination thereof, by non-carrier data processing organizations and the furnishing of data processing services by communications common carriers. (paragraph 5)

This evaluation was further substantiated by the written comments on our Tentative Decision and the thrust of the participants' positions in oral argument.

3. Upon evaluation of the comments and oral argument held upon the findings and conclusions set forth in the Tentative Decision, we are of the opinion that certain clarifications and, in some instances, modifications of the Tentative Decision and the proposed rules are in order. Before turning our attention to these matters, however, we wish to point out that, although there were 61 respondents to the initial inquiry, only 33 parties submitted written comments to the Tenttive Decision and poposed rules: and of those 33, only 24 had been original respondents. Consequently, it is reasonable to assume that 36 of the parties to this proceeding [2] concurred, or at least acquiesced, in the Commission's tentative position. Moreover, several of the 33 written submissions indicate general agreement with, and an endorsement of, the basic findings and conclusions in the Tentative Decision as these are reflected in the proposed rules.

B. Issues and Discussion

JURISDICTION—GENERAL

4. Several parties have urged that we explicitly recognize that our common carrier regulatory jurisdiction cannot be extended to data processing services, as such.[3] Since we are not proposing, at this time, to regulate data processing, as such, a discussion of the extent of our jurisdiction with respect thereto is neither relevant nor necessary for purposes of this Decision and the rules promulgated herein. However, we wish to reiterate that:

> • • • (I)f there should develop significant changes in the structure of the data processing industry, or, if abuses emerge which require the exercise of corrective action by the Commission, we shall not hesitate to reexamine the policies set forth herein. (Tentative Decision, paragraph 23.)

SEPARATION OF CARRIERS AND DATA PROCESSING AFFILIATES

5. Several carriers contend that this Commission is without authority to affect their public offering of data processing services and that, therefore, we lack the statutory warrant for effectuating the proposed rules which require a separation of data processing activities from common carriage undertakings. We do not agree.

6. We wish to make it clear that in our Decision herein and in the rules adopted to implement this Decision we are not attempting to assert jurisdiction over common carriers as purveyors of computer services, as such. Instead, we are addressing ourselves to the obligation of common carriers, in accordance with the purposes and objectives of the Communications Act, to make available "to all the people of the United States a rapid, efficient, nationwide and worldwide wire and radio communications service with adequate facilities at reasonable charges" (47 U.S.S. sec 151), and to the duty imposed upon this Commission by the Communications Act of 1934, as amended, to execute and enforce the provisions of that Act in such manner as to achieve the purposes and objectives of the Act.

7. There is virtually unanimous agreement by all who have commented in response to our Inquiry, as well as by all those who have contributed to the rapidly expanding professional literature in the field, that the data processing industry has become a major force in the American economy, and that its importance to the economy will increase in both absolute and relative terms in the years ahead.[4] There is similar agreement that there is a close and intimate relationship between data processing and communications services and that this interdependence will continue to increase. In fact, it is clear that data processing cannot survive, much less develop further, except through reliance upon and use of communication facilities and services. Conversely, modern communication systems rely upon and make increasingly greater use of data processing. We stated in our Notice of Inquiry, and no respondent has challenged the finding, that common carriers "as part of the natural evolution of the developing communications art" were rapidly becoming equipped to enter into the data processing field, if not by design, by the fact that computers utilized for the provision of conventional communication services could be programed additionally to perform data processing services. Notice of Inquiry, 8 FCC 2d 11, 13 (1966).

8. It is our view that the total record herein, including the arguments addressed in both written and oral presentations to us, supports the conclusion that without appropriate regulatory safeguards, the provision of data processing services by common carriers could adversely affect the statutory obligation of such carriers to provide adequate communication services under reasonable terms and conditions and impair effective competition in the sale of data processing services.

9. In our Tentative Decision, we identified specifically the following areas of regulatory concern:

(a) That the sale of data processing services by carriers should not adversely affect the provision of efficient and economic common carrier services;

(b) That the costs related to the furnishing of such data processing services should not be passed on, directly or indirectly, to the users of common carrier services;

(c) That revenues derived from common carrier services should not be used to subsidize any data processing services; and

(d) That the furnishing of such data processing services by carriers should not inhibit free and fair competition between communication common carriers and data processing companies or otherwise involve practices contrary to the policies and prohibitions of the antitrust laws. (Tentative Decision, paragraph 34.)

10. As discussed in our Tentative Decision, appropriate regulatory treatment of these concerns requires "a maximum separation of activities which are subject to regulation from non-regulated activities involving data processing." (Tentative Decision, paragraph 35.) Such a degree of separation, we concluded, would enable us, as well as State regulatory agencies, to discharge regulatory responsibilities with respect to maintaining adequate and efficient communications services at reasonable and nondiscriminatory rates and practices. It would also be conducive, we stated, to removing foreseeable anticompetitive carrier practices and avoiding the necessity of taking corrective measures that might otherwise be called for. (Tentative Decision, paragraph 37.) Nothing has been brought to our attention, either by written comment or in oral argument, or in market developments, that provides us with any rational basis for abandoning our tentative conclusions in this respect.[5] Consequently, we consider the concept of "maximum separation" central to our regulatory scheme, and shall require such separation to insure that the public is offered efficient and economical communication services.

11. We turn now to the questions which have been raised as to the manner in which this concept should be implemented. Several parties have urged an outright prohibition against the furnishing of computer services by any communications common carrier, any affiliate of such a carrier, or any entity under common ownership with a carrier. Such a sanction would be extreme. It

---

[2] The Department of Justice, an original party to this proceeding, did not submit written comments but requested, and was granted, permission to appear and participate in oral argument.

[3] We have defined data processing as "The use of a computer for the processing of information as distinguished from circuit or message-switching. 'Processing' involves the use of the computer for operations which include, inter alia, the functions of storing, retrieving sorting, merging and calculating data, according to programed instructions." (Tentative Decision, paragraph 15(a).)

[4] See, generally, Stanford Research Institute Reports, Policy Issues Presented by the Interdependence of Computer and Communications Services et al. (2 vols.), prepared for FCC, Contract RC-10056, February 1969.

[5] Indeed, Bunker-Ramo's formal complaint of June 5, 1970, against Western Union is, of itself, indicative of a type of problem we foresee and believe will be minimized by the implementation of the principles of maximum separation. Without seeking to evaluate herein the merits of that complaint, we nevertheless believe that it substantiates our position that potential controversy is highly probable wherever a communications supplier is also competitive with its communications customers.

would be contrary to our policy of permitting the common carrier, directly or through affiliates, to enageg in nonregulated activities so long as such activities are not repugnant to or in derogation of the economic and social objectives of the Act. (See Tentative Decision, paragraph 24.) Furthermore, as we found in our Tentative Decision, the computer service industry is one characterized by open competition and relatively free entry. (See paragraphs 19–23.) These characteristics, in fact, provide a major basis for our conclusion that we should not, at this point, assert regulatory authority over data processing, as such. Under these circumstances, and in view of our expectation that the competition afforded by carriers in the provision of computer services could and would provide benefits in such matters as new and improved services and lower prices, we cannot find the necessary social, economic, or policy considerations which would require or even justify an outright prohibition against the furnishing of data processing services by common carriers. We shall, therefore, reaffirm our Tentative Decision in this respect and permit the data processing industry to evolve with carrier participation therein under conditions designed to obviate foreseeable abuses. At the same time, we stress our intention to reconsider this conclusion should future experience indicate that any of the premises underlying this conclusion have not materialized or that in spite of our prescribed safeguards carrier abuses are developing.

12. Having determined not to impose outright prohibitions against carrier provision of data processing services, we now turn to a consideration of the questions raised regarding those safeguards we have proposed in order to obviate any derogation of carrier communication service obligations to the public, or to prevent any abuse or limitation with respect to free competition because of the carrier's access to customers as a provider of communication services. As we stated in our Tentative Decision:

> The dangers * * * relate primarily to the alleged ability of common carriers to favor their own data processing activities by discriminatory services, cross-subsidization, improper pricing of common carrier services, and related anticompetitive practices and activities. (Paragraph 22.)

We propose that common carriers desiring to provide data processing services be permitted to do so only through affiliates utilizing separate books of account, separate officers, separate operating personnel, and separate equipment and facilities devoted exclusively to the rendition of data processing services.

13. Western Union contends that certain economies and consequential public benefits would flow from the public sale, lease, or other disposition of a common carrier's "offpeak" or "backup" computing system capacity. While it may be true that costs allocated to the sale of such capacity would reduce the revenues required from communications services, we believe that the potential abuses inherent in operations of this nature outweigh whatever benefits might be achieved. First of all, a carrier's "backup" system should be designed to meet foreseeable breakdowns of equipment dedicated to public service and it should be available instantly for that purpose without the conflicting claims of other users. With respect to "offpeak" capacity, it is clear, assuming sound systems analyses were employed by carrier personnel, that such capacity exists only during those hours when the communications flow is light, and that during peak hours, the systems' capacity approaches full utilization for communication services provision. It is characteristic of common carrier service that normal peaks shift and that abnormal or nonrecurring peaks eventuate from time to time. The use of "offpeak" capacity for data processing would derogate from the carrier's ability to accommodate these occurrences. Such arrangements could result in an unacceptable conflict with the vital public functions for which the carriers are licensed.

14. Aside from these considerations, there are also other problems inherent in joint use of facilities or personnel. Our experiences with attempting to allocate investment and costs between and among communciation services provided by fungible plant and operated by the same personnel of a common carrier convince us of the great difficulties which could be involved in allocation procedures between communications and data processing activities. The potential for abuse and the difficulty of preventing or promptly remedying improprieties convince us that we should not alter our tentative conclusions as to the desirability of the type of separation contemplated by our Tentative Decision.

15. Under these circumstances, any economic benefits that might accrue to the carrier or its customers by permitting the commingling of regulated and data processing activities are, in our judgment, more than offset by the potential adverse effects of such an arrangement. We conclude that a carrier's computer system or systems should be dedicated exclusively to its public communication services or to its "in-house" data processing requirements incidental thereto.

16. In order to implement our concept of "maximum separation", we have sought to establish requisites affecting the mode of operation of common carriers and their data processing affiliates. (See Tentative Decision, paragraph 36; § 64.702 of the Commission's rules, 47 CFR 64.702, as proposed). Several carriers contend that the extent of separation we would require therein is "unfair" and, if adopted as formulated, would place carrier data processors at a competitive disadvantage as compared to counterparts not affiliated with common carriers. We find this contention without merit. As we stated in our Tentative Decision:

> For a relatively small capital investment, a service firm can be formed, computer equipment can be leased, and programers can be hired. The factors which mark the difference between service bureau success or failure are imaginative innovation, quality programing, and useful service features, rather than the size of the staff or the computing installation (paragraph 21).

Consequently, we believe that our restrictions herein respecting corporate arrangements are neither onerous nor burdensome but reflect, rather, the market conditions confronted by those 800 or more non-carrier-related firms with whom carrier data affiliates will be competing.

17. We also take note of the fact that major carrier enterprises have already taken steps voluntarily to effect a corporate and physical separation of their communications and data processing activities. We have carefully considered the extensive record in this proceeding and have concluded that the requirements respecting the maintenance of separate books of account, separate facilities, and separate officers and operating personnel are not "unfair" but, rather, constitute a reasonable means of establishing a framework in which carriers may offer data processing services.

18. We further stated in our Tentative Decision that no carrier subject to our proposed rules shall be permitted to "engage in the sale or promotion of data processing activities on behalf of its data processing affiliate." (Paragraph 36; § 64.702(b)(3) of the Commission's rules, 47 CFR 64.702(b)(3)), as proposed. We consider such restriction consonant with our regulatory scheme of maximum separation. Several parties have indicated that, implicit in such restriction, is an extension which would prohibit the data affiliate from using the corporate name of the common carrier in its promotional activities. It is further urged that the carrier data affiliate should have a different name from the common carrier. It is argued, in essence, that if the above practices are not proscribed by Commission rule, the same coercive effect as with the carrier's solicitation of sales can be attained indirectly. Upon consideration of these contentions, we have decided to modify our rules to prohibit a data affiliate from using the name of its related common carrier in its promotions and, further, to prohibit such affiliate from using, in its corporate name, any words or symbols contained in the name of its affiliated carrier.[6] We recognize that, as a practical business matter, such improper promotions may occur in personal dealings between a data affiliate and its prospective customer. However, we admonish that we shall retain continuing jurisdiction over this matter and shall react appropriately if circumstances indicate that such wrongful promotional activity is taking place. Accordingly, we shall direct our rule against

[6] We note that similar restrictions were applied to IBM and its wholly owned subsidiary, Service Bureau Corp. U.S. v. IBM Corp. (Consent Judgment), Civil Action No. 72-344, So. Dist. of N.Y., Jan. 25, 1956.

the use of name and symbols of the carrier affiliate toward any holding company owning or jointly owning a common carrier and a data processing entity, and toward any common carrier with an interest, direct or indirect, in a data processing affiliate.

SERVICES TO CARRIERS BY AFFILIATE

19. It has been urged by several parties to this proceeding that the safeguards be extended to include a proviso that would prohibit a common carrier from obtaining the services of its data processing affiliate. It is contended that such arrangements between a carrier and its affiliate would be conducive to the development of the very substantive ills that our concept of maximum separation is designed to inhibit or, at least, to minimize. That is, such arrangements could result in the subsidization of the data processing affiliate, with the carrier's communications customers eventually absorbing the cost of inflated data processing charges through an extended rate base. Furthermore, it is urged that exclusive transactions between a carrier and its affiliate for data processing services would substantially impact the competitive market in which hundreds of small competing service bureau firms would be unable to obtain and retain the patronage of so significant a data processing customer. Additionally, it is contended, a significant burden would be placed upon the Commission to police the propriety of arrangements between a carrier and its data processing affiliate. Any improprieties in such dealings would be difficult to detect and rectify in view of the fact that data processing service offerings, and the charges made therefor, are neither fixed nor stable, but may vary considerably among customers.

20. The fundamental question raised by these contentions is whether the extent of required separation between a carrier and its data affiliate, as set forth in the Tentative Decision, suffices to prevent any arbitrary manipulation in the allocation of revenues and expenses between a carrier's regulated and unregulated service offerings. The specialized and variant nature of the data processing services, particularly with reference to costs and charges therefor, is conducive to improprieties which are difficult to detect. Such improprieties could translate into inflated charges to customers of a carrier's regulated services which, in turn, could lead to lengthy administrative proceedings and other litigation. At the same time, such improprieties could cause irreparable harm to a carrier affiliate's data processing competitors and, thus, to the essentially competitive market within which data processing service offerings currently exist. In other words, excessive payments by carriers to data processing affiliates would enable the affiliates to unfairly underprice their own competitors in the data processing market. Since the basic objective of our policy herein is the deterrence of foreseeable abuse from indirect carrier entry into data processing, we shall amend our rules to include a provision prohibiting a common carrier from obtaining any data processing service from its data affiliate. In so doing, we recognize that a carrier with data processing requirements has available to it the option of utilizing an "in-house" system to accommodate its particular computing needs, of turning to and bargaining with any nonaffiliated service firm for computer services, or, with respect to intercarrier arrangements (e.g., billing information, settlement data, traffic studies and other communications service-related operations data) between the Bell System Companies and various independent telephone companies, of accommodating such data processing requirements to the extent possible on a shaded cost basis. See paragraph 40, infra. We consider the above restriction a logical and necessary extension of the concept of "maximum separation," one amply supported by our regulatory experiences and by the record in this proceeding, and one which imposes no unreasonable burden upon common carriers.

SERVICES TO AFFILIATES

21. One of the more difficult policy problems we must further address in this proceeding concerns the circumstances in which a common carrier is the supplier of communication facilities and services to a competitor of its data processing affiliate. As we stated in our Tentative Decision:

> We expect that under no circumstances will carriers give any preferential treatment to their data processing affiliates and that carriers will scrupulously administer the terms and conditions of tariffs in making their facilities and services available to affiliates and nonaffiliates on a nondiscriminatory and nonpreferential basis. (Tentative Decision, paragraph 37).

It has been suggested that both the motive and opportunity are present in the above situation for a carrier to render favorable treatment to its affiliate to the expense of the latter's competitors. We are aware that such preferences may be subtle in nature and may include, among others, the provision of superior equipment, installation and maintenance, as well as more timely response to initial orders and requests for outage corrections. This is the gravamen of the pending formal complaint filed with us by Bunker-Ramo against Western Union alleging that it has suffered discriminatory treatment at the hands of its communications supplier, Western Union, through the latter's favoring its own SICOM service.

22. As previously discussed, we are not convinced that the public interest requires total preclusion of carriers from offering data processing services. At the same time, we are mindful that carriers serving their affiliates, as well as the competitors of those affiliates, may be inclined to resolve service and facility problems which arise in specific situations in favor of their own affiliates. We wish to make it clear that any such favoritism is contrary to the obligations of the carriers under the requirements of the Act. Specifically, the carriers may not give any preference to affiliates in the offering of facilities or services, in the timing of the installation of facilities, in the quality of service offered or in the charges for like services. We expect the carrier will live up to the spirit as well as the letter, of their obligations. We will, however, monitor closely the actions of the carriers in serving their affiliates and nonaffiliates and will take prompt action, including the consideration of the imposition of specific requirements by rule, should we find that our confidence in carrier compliance has been misplaced.

JURISDICTION—CONNECTING CARRIERS

23. It is contended that we lack the jurisdictional base to impose our safeguards upon connecting carriers within the meaning of section 2(b) (2), (3), and (4) of the Communications Act; that our authority over such connecting carriers is specifically limited to matters respecting regulation of interstate and foreign communications services and charges through sections 201–205 of the Act. This Commission's jurisdictional warrant extends to all communication common carriers insofar as they are participants in the provision of interstate communications services. And insofar as any connecting carrier's participation in interstate service provision may foreseeably be adversely affected by its nonregulated undertakings, we believe it is incumbent upon us to impose such rules as are necessary to preserve the integrity of those services. We have, however, exempted from our safeguards those common carriers not directly or indirectly controlled by or under common control with another carrier or carriers wherein the combined annual operating revenues of all such carriers does not exceed $1 million.[7] (See Tentative Decision, paragraph 36.) In so doing we have sought to avoid imposing the burdens of maximum separation upon smaller carriers. In balancing the public interest factors, we have concluded that the requirements of separation for these carriers would inhibit or preclude their participation in data processing and would thereby frustrate or eliminate a source of anticipated competition in the data processing market. We recognize the contention that irrespective of the size of any carrier, its influence is considerable within its operating franchise. However, we believe that both the potential and motives for abuse by these smaller carriers is minimal at this time. We shall retain jurisdiction in the matter, and upon an instance or instances wherein an exempted carrier's data processing activities derogate from its primary obligation of serving communication needs, or wherein it improperly utilizes its position to adversely influence the data processing market in its operating territory, we shall appropriately modify our rules herein.

[7] Of nearly 700 independent telephone companies, approximately one-half would be exempted from the rules herein by this cutoff provision.

SUMMARY ON SEPARATION OF CARRIERS AND AFFILIATES

24. In summation, our rules reflecting the implementation of the concept of maximum separation shall be adopted, as proposed, except for the modifications and clarifications indicated herein. In addition to those requirements delineated in the Tentative Decision, a carrier shall be precluded from disposing of any capacity on computer systems utilized by that carrier for the provision of common carrier communications services. Further, a carrier shall be prohibited from obtaining any data processing services from its data affiliate. Carrier-related data entities shall be required to employ a corporate name or symbol other than that employed by its carrier affiliate, and such entities are forbidden to promote their products or services through or by association with the carrier affiliate. Our proposed rules shall be amended accordingly.

RULE-MAKING

25. Some carriers have contended that our attempt to meet our statutory obligation through the vehicle of rulemaking is improper. They allege that we are legally constrained to remain passive and wait until what we consider to be foreseeable carrier improprieties in their offering of data processing services actually take place. It is their position that only after wrongdoing has occurred may this Commission or an injured party seek remedial action through the vehicle of a formal adjudicatory proceeding. This Commission is not so restricted either by statute or by judicial decision. We are not constrained to await the actual occurrence of evils we foresee and to take action to correct or punish through an adjudicatory proceeding. Rather, we may act instead to prevent such evils by formulating and adopting rules of general applicability with respect to anticipated improprieties. It has been held that:

> (T)he choice made between proceeding by general rule or by individual, ad hoc litigation is one that lies primarily in the informed discretion of the administrative agency. Securities and Exchange Commission v. Chenery Corp., 352 U.S. 195, 203 (1947) [8]

To insist upon one form of agency action to the exclusion of the other is to exalt form over necessity. Id., at 202.

26. In accordance with the standards laid down by the Court, we have examined and analyzed the scope and potential impact of the many facets of common carrier computer activities to determine the course of regulation most suited to the circumstances. We have determined that a case-by-case resolution of problems respecting the framework in which common carriers offer data processing services to the public is not desirable, nor would it be justified by the record in this proceeding. For we are here attempting to deal with clear-cut, reasonably foreseeable dangers which would be patently detrimental to the public interest. We have fashioned a rule designed to maintain an environment in which a communications common carrier may offer noncommunications services without adverse effects upon its public communications services or upon the competitive market in which such noncommunications services are offered. Moreover, we are acting with the knowledge that a prescriptive rule is a preventive rather than a corrective measure designed to preserve an environment so affected with the public interest, that any injury thereto cannot be adequately compensated. In so doing we are persuaded that our actions herein are reasonable in light of both the record developed in this lengthy proceeding and the statutory obligations required of us by the Congress.

27. On the other hand, we are prepared to render ad hoc evaluations with respect to "hybrid services" to determine whether a particular package service offering is essentially data processing or communication.[9] We have decided upon this particular course of regulation because our analyses disclose that we have insufficient experience with such offerings to enable us to adopt rules of general applicability sufficiently definitive to accommodate the variety of future service offerings. We recognize that such offerings may be devised which present problems we cannot reasonably foresee, or which may be so specialized or variant in nature as to be impossible of capturing within the boundaries of a single rule. In these situations we believe we must retain power to deal with these offerings and the problems presented thereby on a case-by-case basis if our process is to remain flexible and effective. (See SEC v. Chenery Corp., supra, at 202–203.)

28. So long as we comply with the mandate of the Communications Act, we have, and should have, wide discretion in determining questions both of public policy and of procedural policy, and in making and applying appropriate rules therefor. Ward v. FCC 108 F 2d 486, 491 (D.C. Cir. 1939). And as have previously indicated in our Tentative Decision:

> (A)s the expert agency, we are "entitled to latitude in coping with new developments" in the dynamic field of communications. Consequently, we are "entitled to some leeway in choosing which jurisdictional base and which regulatory tools will be most effective in advancing the Congressional objective"—the protection of the public interest.[10]

We believe we have wisely utilized the regulatory tools available to us in this proceeding in attempting to further the public interest in this era of burgeoning technological development.

29. We indicated in our Tentative Decision that:

> It is noteworthy that, in varying degrees, the safeguards * * * have already been implemented by the larger interstate common carrier systems. Western Union, General Telephone and Electronics, and United Utilities have organized or acquired separate affiliates for the promotion and sale of data processing services. (Paragraph 38.)

For whatever are the motives of these carriers in forming separate data processing affiliates—the anticipation of regulation by this Commission, the anticipation or fact of regulation by State agencies, the dictates of sound business practice, or some combination of the above—the fact remains that several carriers have voluntarily undertaken to accomplish substantially that which we shall require of them. Our safeguards, therefore, will promote uniformity of separation and operation among the larger carrier organizations seeking to offer data processing services to the public through corporate affiliates.

30. It should be made clear that we are not seeking to regulate data processing as such, nor are we attempting to regulate the substance of any carrier's offerings of data processing. Rather, we are limiting regulation to requirements respecting the framework in which a carrier may publicly offer particular nonregulated services, the nature and characteristics of which require separation before predictable abuses are given opportunity to arise. Additionally, the success of our regulatory scheme is dependent upon a uniform application of our safeguards irrespective of the technical legal status of any carrier or the particular geographic community which it serves.

THE HYBRID SERVICE OFFERING

31. It is contended by several parties in this proceeding that this Commission is obligated by statute to regulate the "hybrid service," as defined,[11] insofar as such service contains a communication component. We cannot agree. As we have indicated in our Tentative Decision:

> It is our position that where message-switching is offered as an integral part of and as an incidental feature of a package offering that is primarily data processing, there will be total regulatory forebearance with respect to the entire service whether offered by a common carrier or noncommon carrier * * *. (Tentative Decision, paragraph 41.)

We believe that we are granted discretionary latitude, under the Communications Act and relevant judicial interpretations thereof, to refrain from subjecting a marginal activity to our regulatory process where it is clear that the public interest will be served by such a course. (See paragraph 28, supra.) In this instance, we believe that the imposition of regulatory constraints over what is clearly a data processing hybrid offering, even though it contains communications elements which are an integral

[8] Although this ruling was specifically addressed to the SEC with respect to the Public Utility Holding Company Act, there is no reason for doubting it was intended to have general applicability. (See N.L.R.B. v. Majestic Weaving Co., 355 F. 2d 854, 860, n. 2 (2d Cir. 1966).)

[9] See paragraphs 31–33, infra.

[10] Tentative Decision, paragraph 18, citing Philadelphia, Television Broadcasting Co. v. F.C.C., 359 F 2d 282, 284 (D.C. Cir. 1966).

[11] "An offering of service which combines Remote Access data processing with message-switching to form a single integrated service." (Tentative Decision, paragraph 15(e).)

part of and an incidental feature thereof, would tend to inhibit flexibility in the development and dissemination of such valuable offerings and thus would be contrary to the public interest. In essence, we recognize no overriding public interest requirement at this time to regulate a service which, due to its nature, except for incidental and peripheral communications elements, is appropriately offered in the existing competitive environment.

32. On the other hand, it is urged by some parties to this proceeding that all hybrid services and their offerors be exempted from regulation even where such services are "essentially communications" under the principles enunciated in paragraphs 39–45 of the Tentative Decision. The rationale underlying this position stems from the belief that to do otherwise may retard the development of valuable hybrid communication services which, for one reason or another, common carriers might not choose to make available to the public upon a reasonable request therefor. It is true that the Courts have recognized that the Communications Act gives substantial discretion to the Commission as to how we may best administer the provisions thereof in dealing with the dynamic developments characteristic of the communications field. Nevertheless, there is a bona fide question as to whether such decisions may be construed to permit the Commission, by the exercise of administrative discretion, to exempt from the provisions of the Act applicable to interstate common carrier communication services those activities which clearly or admittedly constitute a public offering of communication services. This is because Congress has specifically ordained that all such activities are subject to regulation and has fashioned a specific scheme of regulation therefor. See title 47 U.S.C., title II. In any event, we see no need at this time to attempt a definitive resolution of this question. It is sufficient to note that in our opinion, based on the record before us, that hybrid services which are "essentially communications" under the principles enunciated in our Tentative Decision, warrant appropriate regulatory treatment as common carrier services under the Act. It also should be pointed out in this regard that, within the statutory scheme of regulation applicable to interstate common carrier services, the Commission may exercise appropriate discretion as to the methods and policies that will best serve the public interest in the regulation of hybrid communication services.

33. We note that it has been argued that the Commission should elaborate upon the guidelines set forth in its Tentative Decision by giving examples and formulating specific factual situations under which particular hybrid services would fall into either the category of hybrid communications or hybrid data services. We believe, however, that in a field as dynamic and innovative as this one, it is not possible to formulate a sufficient number of hypothetical situations which would provide meaningful guidelines. We are also troubled lest such formulation serve a purpose exactly contrary to that which is intended by inhibiting the ingenuity and responsiveness of the interested parties and causing them to limit or construct their services in accordance with the hypothetical cases we have listed rather than the actual needs of users. Instead, as we have previously indicated, we believe that guidelines for the industry and the formulation of general principles can best be accomplished by review and evaluation on an ad hoc basis of factual situations as they develop. Under such circumstances we will be reacting to demonstrated needs and will be developing precedents related to the "real world" in the data/communications field. We stress that we stand prepared to render promptly whatever assistance we can in resolving problems and removing uncertainties, particularly in the early period after the issuance of this decision, before clear-cut precedental guidelines are established.

34. We believe it essential, however, that we lay down the procedural ground rules under which the necessary guidance and rulings can be made by the Commission with respect to the status of any proposed hybrid offering. We address ourselves first to hybrid offerings which may be made directly by common carriers and which carriers themselves believe are hybrid communication rather than hybrid data processing services. We shall require by rule that, 90 days prior to the time when a carrier intends to file a tariff with respect to a service which it believes to be a hybrid communication offering, it shall submit to the Commission a complete description of the service as well as the reasons why, in its opinion, such service is a hybrid communication service. This submission would be in addition to that required under Part 61 of the Commission's rules, 47 CFR 61.01 et seq., with respect to new or revised tariff offerings. If, at the end of 60 days after notice is filed with us, we shall not have advised the carrier to the contrary, the carrier may proceed to file appropriate tariffs offering the service subject, of course, to whatever action may be taken by the Commission on such matters as the level of rates and conditions of service proposed in the tariff. If, within 60 days after considering the proposal of the carrier and whatever comments are made thereupon, we tentatively conclude that the service offering is not a hybrid communication service, we shall advise the carrier of that fact. The carrier may then seek reconsideration of the tentative conclusion, request a hearing on any disputed factual findings or pursue such other remedies as are provided by law. We recognize that there is an outstanding rule-making proposal, in Docket No. 19117, which would require carriers to obtain prior approval before filing tariffs for any new or revised class or subclass of communications service subject to regulation under the Communications Act, including, of course, any new or revised class of hybrid communications service. Accordingly, the procedures that we are adopting herein are interim in nature and are subject to modification in the context of the Commissions action on such proposed rulemaking.

35. We are not imposing the same requirements upon noncommon carriers who offer what they consider to be hybrid data processing services. The noncommon carrier generally will be using communication facilities leased from a common carrier to provide these services. We anticipate, therefore, that the communications common carrier providing the communications portion of the hybrid service will question any service that appears, in fact, to be a hybrid communications service. This is so because of the tariff provisions of the carrier that prohibit the resale of service by its customers. The carrier in such circumstances could either call this matter to the Commission's attention or, pursuant to its tariffs, treat it as an attempt for the resale of communications service, which as noted above the tariffs prohibit, and refuse to provide the facility.

36. A special concern arises in those instances where a common carrier provides its data processing affiliate with communication services and facilities to be used by the latter in offering alleged hybrid data processing services. We recognize that in these situations the carrier may be reluctant to call our attention to a hybrid service, the features of which could pose controvertible questions as to its regulatory status. Under section 218 of the Act, 47 U.S.C. section 218, we are empowered to obtain full and complete information from a carrier and its affiliates in order to enable us to discharge our statutory responsibilities. We will therefore, require that before a common carrier may provide communication services to an affiliated data processing entity, the carrier, directly or through its affiliate, must first submit a full description of the proposed hybrid service to the Commission, together with a statement of the reasons for concluding that the service is essentially data processing. The carrier may subsequently provide such service unless, within 30 days from the receipt of such notice, the Commission shall have advised the carrier of its tentative conclusion that the intended service is a communication service. If the carrier and its affiliate disagree with the Commission's conclusion, they may then seek reconsideration of the tentative conclusion, request a hearing on any disputed factual findings or pursue such other remedies as are provided by law. We wish to stress that the foregoing requirements will not affect a carrier's provision of communication facilities to its data affiliate under effective tariffs for use by the latter in furnishing any Remote Access Data Processing Service as distinguished from a Hybrid

Service since, by definition, such Remote Access Service does not contain a message-switching capability.[12]

37. Another Commission concern arises from the possibility that a common carrier may properly initiate and provide a communication service, whether or not a hybrid communication service, until such time as the service becomes profitable or otherwise achieves a strong market position. At such point in time the carrier may then seek to detariff the service by purposely altering its nature to an extent sufficient to transform it into a data processing service, hybrid or otherwise. The service, as modified, would then be provided on a nonregulated basis by the carrier's data affiliate. Our concern here is that the discontinuance of a tariffed service should not deprive any segment of the public of needed common carrier communications and that terms and conditions of the transfer by the carrier to its data affiliate will be reasonable so as not to result in an economic burden or penalty upon the customers for the residual services of the carrier. Here, we wish to stress that we intend to look to the essential substance of a service in terms of its principal orientation, i.e., communication or data processing, in judging whether the service qualifies for detariffing. (See Tentative Decision, paragraphs 40–43.) In other words, the addition of certain data processing features to what is essentially the offering of a communications service will not necessarily constitute the revised offering as a data processing service. We appreciate that these matters do not lend themselves to simplistic facts or generalizations. Until we have required a greater amount of concrete experience in this area as a basis for formulating a well defined guiding policy, we intend to render the required judgments on a case-by-case approach. Accordingly, we shall require, by rule, that no common carrier providing a communication service, hybrid or otherwise, may discontinue such tariffed service, subject to the Commission's jurisdiction, until authorization to do so is obtained from the Commission. We will require that a carrier seeking to detariff and discontinue its offering must show that neither the present nor future public convenience and necessity will be adversely affected by the discontinuance. Such a showing shall include whether and to what extent there is a demand for the service, the entity or entities which would continue to provide such service if discontinued by the carrier, and the comments of existing customers on the proposed modification of the service to be detariffed and offered by the carrier's data affiliate. The carrier shall also show the nature and extent of the public demand for the modified service as proposed to be rendered. Additionally, the carrier will be required to submit full information as to the disposition of any of the facilities utilized in the service sought to be detariffed, including relevant financial arrangements, the accounting to be performed by the carrier with respect to the transaction involved, and the treatment of any losses sustained in the provision of the communication service. As we have previously indicated (paragraph 34 supra), our recently instituted rule making proceeding in Docket No. 19117 may ultimately affect the rules promulgated herein. We will, of course, review and modify as necessary our requirements in light of the determinations made in that docket.

38. In order to facilitate prompt actions on these matters, we will delegate authority to the Chief of the Common Carrier Bureau to make the initial determinations required herein above (see § 64.702 (e), (f), and (g) of the Commission's rules below) subject, of course, to reconsideration de novo by the Commission in those instances where such is requested. Accordingly, Part 0 of the Commission's rules and regulations will be amended to reflect the delegation of authority to the Chief of the Common Carrier Bureau to render such initial determinations. (See below.)

OTHER MATTERS

39. It is contended by nonaffiliated data processors that the extent to which they, as communications customers, must divulge to the carrier the purposes toward which the leased communications facilities will be employed in any service offering compromises them and their offerings with respect to a carrier's data affiliate. In effect, the fear is expressed that provision to the carrier of detailed information regarding a competitive offering is, in essence, provision of such information to the carrier's data affiliate. We believe this to be an unreasonable fear on the part of nonaffiliated data processors. In the first instance, the majority of such nonaffiliated firms will doubtless turn to companies of the Bell System for communication services and facilities since the latter provide the greater share of such services. And since these companies are legally precluded from providing anything other than regulated common carrier service,[13] they will have no data processing affiliates which could secure unfair advantage from the information supplied with requests for service. Information and data respecting the substantive nature of a data firm's service offering is indeed proprietary and need not be submitted to any carrier unless compelling reasons dictate otherwise. We will consider any attempt on the part of a carrier to secure and use such information for the benefit of its data processing affiliate as a serious breach of the policy established herein, and will not hesitate to impose appropriate sanctions as provided by law. Accordingly, we shall retain jurisdiction over this matter in order to insure that carrier suppliers of communications sevices do not exploit their position as such to the detriment of nonaffiliated data processors, and shall thus be in a position to take whatever further action may be necessary in light of future developments.

40. We turn now to the question respecting data processing services that the Bell System Companies perform for themselves and for independent telephone companies in connection with intercarrier arrangements and traffic. In view of Bell's and the independent's position in oral argument, and the fact that there was voiced no opposition to such arrangements, we find that no need presently exists to interrupt this practice. We hasten to add that the above decision is premised, in part, upon the understanding that charges to the independent telephone companies for these data processing services are designed to and are fixed at levels sufficient to compensate only for actual costs. Accordingly, so long as the data service performed by the Bell System Companies are incidental to the inter-carrier provision of communication services, and so long as costs associated therewith are shaped proportionately by the participating carriers, such practices may be continued.

41. We have reviewed the arguments of the international carriers who seek to provide data processing services that they be treated differently from domestic common carriers. There is no doubt that many of the potential abuses we foresee relate primarily to domestic carriers. However, there is a substantial potential for impact upon the communication services of the international carriers particularly in view of the rapid growth of both communication and data processing services. In addition, the international carriers maintain direct relations with many large users who could become data processing customers and are, therefore, in a position to affect adversely the free and unfettered competitive atmosphere in the provision of such services. We shall, therefore, affirm our conclusion that international carriers be fully subjected to this Decision and the Rules we are adopting.

42. It has been pointed out that the Tentative Decision requires that carrier data affiliates file reports with us, that carrier data affiliates obtain communication services and facilities under tariff rates and conditions, and that carrier data affiliates offer reasonable customer interconnection options; but that none of these measures are to be made a requirement of our rules. See Tentative Decision, paragraph 36. With respect to the filing of affiliate reports, we are of the opinion that, at this time, except as provided in paragraph 36 supra and § 64.702(f) of our rules, it would be premature to prescribe rules requiring such

[12] We have defined a Remote Access Data Processing Service as "an offering of data processing wherein communications facilities, linking a central computer to remote customer terminals, provide a vehicle for the transmission of data between such computer and customer terminal." (Tentative Decision, paragraph 15(d).)

[13] United States v. Western Electric Co., Inc. and American Telephone and Telegraph Co. (consent judgment), 13 RR 2143; 1956 Trade Cases 71, 134 filed Jan. 24, 1956, D.C.N.J.; see, also Tentative Decision, paragraphs 24 and 43.

separate affiliate reports. We feel that we should first observe developments under our policy and rules herein before addressing ourselves further to the question of what annual or other reports, if any, may be necessary from a carrier affiliate in order to enable us to perform our statutory duties. With respect to tariff dealings between a carrier and its affiliate, we find no need to regulate such dealings by additional rule. For under the Communications Act and existing Commission Rules, a carrier data affiliate which leases communication facilities from its affiliated carrier is to be treated on the same basis as any nonaffiliated leasee of like or similar communication services. Should any carrier discriminate in favor of its data affiliate, this Commission possesses extensive authority under Title II of the Act to remedy the situation. Finally, with respect to the expectation of reasonable customer interconnection options, we are of the opinion that the keen competitive forces of the market place will best resolve this problem. It appears to us that if any data processor, carrier affiliated or otherwise, refuses to interconnect a device or system at the reasonable request of the customer, the latter can obtain relief by subscribing to a like service from a more competitive data offeror. If, however, our expectation is not borne out by actual developments and serious problems result from a refusal on the part of carrier data affiliates to permit reasonable interconnection or the attachment of customer devices to their data processing networks, we shall re-examine our position herein, including our present conclusion respecting the exercise of jurisdiction over data processing (See paragraph 4, supra).

43. In paragraph 10 of the Tentative Decision, we concluded that:

> * * * (Q)uestions relating to interconnection or to the need for other improved common carrier service offerings, regulations and practices to serve computer needs, can best be handled through rate, tariff and licensing proceedings that are now pending or that may be initiated in the future, rather than through a continuation of our Inquiry in this Docket.

As has been indicated above, the primary concerns of industry participants in this proceeding involved the nature and extent of our jurisdicition over data processing and communication services, and the circumstances under which we would permit common carriers to engage in the provisions of data processing services (paragraph 2, supra). Consequently, we have addressed ourselves in this Decision primarily to these basic concerns. We recognize, however, that there are a number of other matters, as set forth in our Notice of Inquiry, that are within the comprehensive scope of this proceeding since the issues originally raised herein clearly touched upon virtually every aspect of the growing interdependence of computer and communication services and facilities.

44. We have not been persuaded that our conclusion to handle those remaining issues in other proceedings should be altered despite contentions that this proceeding ought to remain open to accommodate matters respecting interconnection and the adequacy of carrier service offerings. We have addressed these issues and others in proceedings parallel to Docket No. 16979. Paragraphs 6–13 of the Tentative Decision discusses these matters and their status as of April 1, 1970. Since the issuance of our Tentative Decision, there have been further significant developments worthy of note. The National Academy of Sciences has completed its report to us on the technical feasibilities of interconnection and we anticipate taking further action in this matter in the near future. In addition, the Commission currently has under consideration a proposal concerning the formulation of policies governing the entry and regulation of common carriers in the specialized communications market. (Notice of Inquiry to Formulate Policy; notice of proposed rule making, and order (Docket No. 18920, FCC 70–768, July 17, 1970.) In these and other docketed proceedings, we expect to resolve issues identified by our original notice of inquiry.

45. Several parties expressed concern that the definitions and concepts we adopted for purposes of this decision be neither fixed nor immutable, and that recognition be accorded the fact that they may change with developing technology. We concur. As was indicated in paragraph 15 of the Tentative Decision, the definitions therein were for purposes "of providing clarity and precision of definition and application". They were, as was pointed out, "for our immediate purposes" and consequently do not apply, nor do we necessarily urge their application, beyond this proceeding and the rules promulgated herein.

46. At this point we again call attention to the substance of paragraph 38 of the Tentative Decision which, in pertinent part, states:

> We intend to conduct a full and comprehensive review of those affiliated organizations [carrier data processing affiliates] and their operations to insure that they are in full compliance with policies promulgated herein. We shall require in this regard that each such company, within 60 days from the effective date of the final decision herein, submit in writing a full description of the organization, facilities and operations of their data processing affiliates, together with copies of all agreements and memoranda or other arrangements between carrier and affiliate. Other carriers, who may not have already established such arrangements to separate their communications activities from the sale of data processing services shall do so within 6 months from the effective date of any rules adopted to implement this policy.

Accordingly, we shall order that all common carriers currently providing data processing services, either directly or through previously established data processing affiliates, which carriers are not exempted by the $1 million cutoff provision, shall comply fully with the separations provisions of the Commission's rules (see § 64.702(c)) within 6 months from the effective date of this decision. Such carriers shall, during the 6-month period, comply fully with all other provisions of our rules, and shall submit reports every 60 days of progress made toward complete compliance with § 64.702(c). The initial report of these carriers shall contain a complete description of the existing or proposed organization, facilities and operations of the data processing affiliate, together with copies of all agreements and memoranda or other arrangements between carrier and affiliate. Any carrier not furnishing data processing services, either directly or through previously established data processing affiliates, which carrier is not exempted by the $1 million cutoff provision, shall not inaugurate data processing services except in full compliance with our rules, and shall, within 60 days after it commences such services, submit to the Commission a written report setting forth a complete description of the organization, facilities and operations of the data processing affiliate, together with copies of all agreements and memoranda or other arrangements between carrier and affiliate.

47. We wish to further emphasize paragraph 11 of the Tentative Decision in which we recognized the difficulty of projecting and quantifying the future communications requirements of computer users. In stating that we intend to monitor future developments on a continuous basis, we further stated that:

> * * * (W)e intend to establish appropriate informal procedures by which such information may be received and reviewed on a continuing and current basis by the Commission. Such procedures will be designed to afford interested parties the opportunity to participate in a discussion and evaluation of present and future communications requirements of computer users, the steps that are to be taken by carriers in order to respond to any such bona fide requirements, and the actions, if any, the Commission may be called upon to take in order to assure that the carriers are properly responsive to such requirements.

We shall institute such informal procedures through public notice and will, of course, welcome the participation of all interested parties.

C. Conclusion

48. In view of all the foregoing, and upon consideration of the entire records in this proceeding, we have concluded that the public interest requires adoption of our Tentative Decision and Proposed Rules as modified herein. As we have indicated, we shall closely observe the effects of our decision and the operation of our rules and, whenever necessary to the public interest, we shall make such reevaluation and render such modifications as may be required.

D. Order

Accordingly, it is ordered, That pursuant to section 4(i) of the Communications Act, 47 U.S.C. section 154(i), and section 5(d) of the Communications Act, 47 U.S.C. section 155(d), the rules set forth below are adopted effective April 30, 1971.

It is further ordered, That, (a) all common carriers currently providing data processing services, either directly or through previously established data processing affiliates, which carriers are not exempted from the provisions of § 64.702(c) by the application of § 64.702 (b), shall within 6 months of the effective date of this order, comply fully with the provisions of § 64.702(c) of the Commission's rules. All such carriers shall, during this 6-month period, comply fully with all other provisions of our rules, and shall submit reports every 60 days of progress made toward complete compliance with § 64.702(c). The initial report shall contain a complete description of the existing or proposed organization, facilities and operations of the data processing affiliate(s), together with copies of all agreements and memoranda or other arrangements between carrier and affiliate(s); (b) any common carrier not furnishing data processing services on the effective date of this order, either directly or through previously established data processing affiliates, which carrier is not exempted from the provisions of § 64.702(c) by the application of § 64.702 (b) of the Commission's rules, shall not inaugurate such services except in full compliance with our rules including § 64.702(c), and shall, within 60 days after it commences such services, submit to the Commission a written report setting forth a complete description of the organization facilities and operations of the data processing affiliate(s), together with copies of all agreements and memoranda or other arrangements between carrier and affiliate(s).

It is further ordered, That, ITT and RCA file, within 30 days from the effective date of this Decision, tariffs covering their ARX and AIRCON services, respectively.

It is further ordered, That, except for those issues and matters over which the Commission has retained jurisdiction, this proceeding is hereby terminated.

(Secs. 4, 5, 48 Stat., as amended 1066, 1068; 47 U.S.C. 145, 155)

Adopted: March 10, 1971.

Released: March 18, 1971.

FEDERAL COMMUNICATIONS COMMISSION,[14]
[SEAL] BEN F. WAPLE,
Secretary.

Part 0 of Chapter I of Title 47 of the Code of Federal Regulations is amended by the addition of a new § 0.308 in Subpart B to read as follows:

§ 0.308 Authority concerning hybrid services.

The Chief of the Common Carrier Bureau is delegated authority to act upon submissions filed under § 64.702 (e), (f), and (g) of this chapter with respect to proposed hybrid service offerings of common carriers and data processing affiliates of common carriers, and proposed discontinuances by common carriers of communication services.

Part 64 of Chapter I of Title 47 of the Code of Federal Regulations is amended by adding a new Subpart G and new § 64.702 to read as follows:

Subpart G—Participation in Data Processing by Communications Common Carriers

§ 64.702 Furnishing of data processing services.

(a) For the purpose of this subpart—

(1) "Data processing" is the use of a computer for the processing of information as distinguished from circuit or message-switching. "Processing" involves the use of the computer for operations which include, inter alia, the functions of storing, retrieving, sorting, merging and calculating data, according to programed instructions.

(2) "Message-switching" is the computer-controlled transmission of messages, between two or more points, via communications facilities, wherein the content of the message remains unaltered.

(3) "Local Data Processing Service" is an offering of data processing wherein communications facilities are not involved in serving the customer.

(4) "Remote Access Data Processing Service" is an offering of data processing wherein communications facilities, linking a central computer to remote customer terminals, provide a vehicle for the transmission of data between such computer and customer terminals.

(5) "Hybrid Service" is an offering of service which combines Remote Access data processing and message-switching to form a single integrated service.

(i) Hybrid Data Processing Service is a hybrid service offering wherein the message-switching capability is incidental to the data processing function or purpose.

(ii) Hybrid Communication Service is a hybrid service offering wherein the data processing capability is incidental to the message-switching function or purpose.

(b) Except as provided herein, no common carrier subject, in whole or in part, to the Communications Act shall engage directly or indirectly in furnishing data processing service to others except as expressly provided in paragraph (c) of this section. This prohibition shall apply to all communications common carriers, including section 2(b)(2) carriers, where any carrier itself has annual operating revenues exceeding $1 million or any such carrier is directly or indirectly controlled by, or is under common control with, another carrier or carriers, and the combined annual revenues of all such carriers exceed $1 million.

(c) Except for Companies of the Bell System, common carriers may, subject to other provisions of law, have a controlling or lesser interest in, or be under common control with, a separate corporate entity that furnishes data processing service to others provided the following conditions are met:

(1) Each such separate corporation must its own books of account, have separate officers, utilize separate operating personnel, and utilize computing equipment and facilities separate from those of the carrier for its data processing service offerings.

(2) Each such common carrier shall file with the Commission a complete statement of the terms and conditions of every written or oral contract, agreement or other arrangement entered into between such carrier and any such separate corporation with 30 days after the contract, agreement, or other arrangement is made.

(3) No such common carrier subject to the prohibition of paragraph (b) of this section shall engage in the sale or promotion of data processing services on behalf of any such separate corporation.

(4) No such common carrier, or a holding company owning or jointly owning a common carrier and any such separate corporation, shall permit the separate corporation to employ in its name any words or symbols contained in the name of the carrier, nor shall such carrier or holding company permit any such separate corporation to use the name of the carrier in the separate corporation's promotional activities or enterprises.

(5) No such common carrier shall purchase, lease, or otherwise obtain any data processing service or services from any such separate corporation.

(d) No common carrier subject in whole or in part to the Communications Act of 1934, as amended, shall sell, lease, or otherwise make available to any other entity any capacity or computer system component on its computer system or systems which that carrier uses in any way for the provision of its common carrier communications services.

(e) Any common carrier intending to file a tariff respecting a service offering which it considers to be a hybrid communication service shall, at least 90 days prior to the intended effective date of such tariff, submit to the Commission a complete description of the service, along with a statement of its reasons for concluding that the proposed service is a hybrid communication service. Whereupon:

(1) If, at the end of 60 days after such notice is filed with the Commission, the Commission has not advised the carrier of contrary findings respecting its proposed hybrid communication service, the carrier may proceed to file appropriate tariffs in accordance with applicable provisions of the Commission's rules; or

(2) If the carrier is advised within 60 days after the Commission's receipt of notice that the Commission has tentatively concluded that the proposed offering is not a hybrid communication service, the carrier may seek reconsideration of the tentative conclusion, request a hearing on any disputed factual findings or pursue such other remedies as are provided by law.

(f) Before a common carrier may provide its data processing affiliate with

[14] Concurring and dissenting statement of Chairman Burch (in which Commissioners Robert E. Lee and Wells join) and concurring statement of Commissioner Bartley filed as part of original document; Commissioner Johnson concurring in the result.

communication services and facilities which the latter desires to use for the furnishing of any hybrid data processing service, the carrier shall first submit, directly or through its affiliate, a complete description of the proposed service offering, along with a statement of the reasons for concluding that the service is a hybrid data processing service. The carrier may provide such service unless, within 30 days from the receipt of such notice, the Commission shall have advised the carrier or its affiliate of the Commission's tentative conclusion that the intended service is a communications service. If the carrier and its affiliate disagree therewith, the carrier may seek reconsideration of the tentative conclusion, request a hearing on any disputed factual findings or pursue such other remedies as are provided by law.

(g) No common carrier providing a communication service, hybrid or otherwise, may discontinue such tariffed service until authorization to do so is obtained from the Commission. In seeking authorization to discontinue a service, a carrier must:

(1) Demonstrate that neither the present nor future public convenience and necessity will be adversely affected by the discontinuance. Such demonstration shall include whether and to what extent there is a demand for the communication service, the entity or entities which would continue to provide such service if discontinued by the carrier, and the comments of existing customers on any proposed modification of the service and its offering by a carrier's data processing affiliate;

(2) Demonstrate the nature and extent of the public demand for any modified service proposed to be rendered as a hybrid data processing service; and

(3) Submit full information as to the disposition of any of the facilities used in the communication service, including relevant financial arrangements, the accounting to be performed by the carrier with respect to the transaction, and the treatment of any losses sustained in the provision of the communication service.

[FR Doc.71-3903 Filed 3-19-71;8:49 am]

Proposed Rule Making

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR Part 1]

DEPRECIATION ALLOWANCES USING ASSET DEPRECIATION RANGE SYSTEM

Notice of Proposed Rule Making

Correction

In F.R. Doc. 71-3647 appearing at page 4885 in the issue of Saturday, March 13, 1971, the following changes should be made:

1. The table appearing in the center column of page 4890 should be transferred to appear after the first paragraph of example (1) in § 1.167(a)-11(c)(4).

2. The 11th and 12th lines of § 1.167(a)-11(d)(2)(iv) should read as follows: "identifiable unit of property for a substantially different use. Such an expenditure is distinguished from an expendi-".

[26 CFR Part 53]

FOUNDATION EXCISE TAXES

Tax on Investment Income

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

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

The following regulations are prescribed under section 4940 of the Internal Revenue Code of 1954, as enacted by section 101(b) of the Tax Reform Act of 1969 (83 Stat. 498), relating to taxes on investment income. Except where otherwise specifically provided, these regulations are applicable to taxable years beginning after December 31, 1969.

Subpart A—Taxes on Investment Income

§ 53.4940 Statutory provisions; imposition of excise tax on investment income.

SEC. 4940. *Excise tax based on investment income*—(a) *Tax-exempt foundations.* There is hereby imposed on each private foundation which is exempt from taxation under section 501(a) for the taxable year, with respect to the carrying on of its activities, a tax equal to 4 percent of the net investment income of such foundation for the taxable year.

(b) *Taxable foundations.* There is hereby imposed on each private foundation which is not exempt from taxation under section 501(a) for the taxable year, with respect to the carrying on of its activities, a tax equal to:

(1) The amount (if any) by which the sum of (A) the tax imposed under subsection (a) (computed as if such subsection applied to such private foundation for the taxable year), plus (B) the amount of the tax which would have been imposed under section 511 for the taxable year if such private foundation had been exempt from taxation under section 501(a), exceeds

(2) The tax imposed under subtitle A on such private foundation for the taxable year.

(c) *Net investment income defined*—(1) *In general.* For purposes of subsection (a), the net investment income is the amount by which (A) the sum of the gross investment income and the net capital gain exceeds (B) the deductions allowed by paragraph (3). Except to the extent inconsistent with the provisions of this section, net investment income shall be determined under the principles of subtitle A.

(2) *Gross investment income.* For purposes of paragraph (1), the term "gross investment income" means the gross amount of income from interest, dividends, rents, and royalties, but not including any such income to the extent included in computing the tax imposed by section 511.

(3) *Deductions*—(A) *In general.* For purposes of paragraph (1), there shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred for the production or collection of gross investment income or for the management, conservation, or maintenance of property held for the production of such income, determined with the modifications set forth in subparagraph (B).

(B) *Modifications.* For purposes of subparagraph (A)—

(i) The deduction provided by section 167 shall be allowed, but only on the basis of the straight line method of depreciation.

(ii) The deduction for depletion provided by section 611 shall be allowed, but such deduction shall be determined without regard to section 613 (relating to percentage depletion).

(4) *Capital gains and losses.* For purposes of paragraph (1) in determining net capital gain—

(A) There shall be taken into account only gains and losses from the sale or other disposition of property used for the production of interest, dividends, rents, and royalties, and property used for the production of income included in computing the tax imposed by section 511 (except to the extent gain or loss from the sale or other disposition of such property is taken into account for purposes of such tax).

(B) The basis for determining gain in the case of property held by the private foundation on December 31, 1969, and continuously thereafter to the date of its disposition shall be deemed to be not less than the fair market value of such property on December 31, 1969.

(C) Losses from sales or other dispositions of property shall be allowed only to the extent of gains from such sales or other dispositions, and there shall be no capital loss carryovers.

(5) *Tax-exempt income.* For purposes of this section, net investment income shall be determined by applying section 103 (relating to interest on certain governmental obligations) and section 265 (relating to expenses and interest relating to tax-exempt income).

[Sec. 4940 as added by sec. 101(b), Tax Reform Act 1969 (83 Stat. 498)]

§ 53.4940-1 Excise tax on net investment income.

(a) *In general.* Section 4940 imposes an excise tax of 4 percent on the net investment income (as defined in section 4940(c) and paragraph (c) of this section) of a tax-exempt private foundation (as defined in section 509) for each taxable year. This tax will be reported on Form 990, "Return of Organization Exempt From Income Tax," and will be paid annually at the time prescribed for filing such annual return (determined without regard to any extension of time for filing). In addition, an excise tax is imposed in the manner prescribed in paragraph (b) of this section on certain taxable private foundations. This tax is to be paid annually at the time the organization is required to pay its income taxes imposed under subtitle A. Except as otherwise provided herein, no exclusions or deductions from gross investment income or credits against tax are allowable under this section.

(b) *Taxable foundations.* (1) The excise tax imposed under section 4940 on private foundations which are not exempt from taxation under section 501(a) is equal to:

(i) The amount (if any) by which the sum of—

(a) The tax on net investment income imposed under section 4940(a), computed as if such private foundation were exempt from taxation under section 501(a) and described in section 501(c)(3) for the taxable year, plus

(b) The amount of the tax imposed by section 511 which would have been imposed for such taxable year if such private foundation had been exempt from taxation under section 501(a), exceeds

(ii) The tax imposed under subtitle A on such private foundation for the taxable year.

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

Example (1). Assume that the tax liability under subtitle A for private foundation X, which is not exempt from taxation under section 501(a) for 1970, is $10,000. Had X been exempt under section 501(a) for 1970, the tax imposed under section 4940(a) would have been $4,000 and the tax imposed under section 511 would have been $7,000. The excess of the sum of the taxes which would have been imposed under sections 4940(a) and 511 ($11,000) over the tax that was imposed under subtitle A ($10,000) is $1,000, the amount of the tax imposed on such organization under section 4940(b).

Example (2). Assume the facts stated in Example (1), except that the tax liability under subtitle A is $15,000 rather than $10,000. Because the sum of the taxes which would have been imposed under sections 4940(a) and 511 ($11,000) does not exceed the tax that was imposed under subtitle A ($15,000), there is no tax imposed under section 4940(b) with respect to such foundation.

(c) *Net investment income defined*—(1) *In general.* For purposes of section 4940(a), "net investment income" of a private foundation is the amount by which:

(i) The sum of the gross investment income (as defined in section 4940(c)(2) and paragraph (d) of this section) and the net capital gain (within the meaning of section 4940(c)(4) and paragraph (f) of this section) exceeds

(ii) The deductions allowed by section 4940(c)(3) and paragraph (e) of this section.

In computing the income includible under this section as gross investment income and the deductions allowable under this section from such income, the principles of subtitle A shall be utilized to the extent they are applicable to the definitions contained herein.

(2) *Tax-exempt income.* For purposes of computing net investment income under section 4940, the provisions of section 103 (relating to interest on certain governmental obligations) and section 265 (relating to expenses and interest relating to tax-exempt income) and the regulations thereunder shall apply.

(d) *Gross investment income*—(1) *In general.* For purposes of paragraph (c) of this section, "gross investment income" means the gross amounts of income from interest, dividends, rents, and royalties (including overriding royalties) received by a private foundation from all sources, but does not include such income to the extent included in computing the tax imposed by section 511. Under this definition, interest, dividends, rents, and royalties derived from assets devoted to charitable activities are includible in gross investment income. Therefore, for example, interest received on a student loan would be includible in the gross investment income of a private foundation making such loan.

(2) *Certain trust disbursements.* In the case of a distribution from a trust described in section 4947(a)(1) or (2), such distribution shall not retain its character in the hands of the distributee for purposes of computing the tax under section 4940; except that, in the case of a distribution from a trust described in section 4947(a)(2), the income of such trust attributable to transfers in trust after May 26, 1969, shall retain its character in the hands of a distributee private foundation for purposes of section 4940 (unless such income is taken into account because of the application of section 671).

(3) *Treatment of certain distributions in redemption of stock.* For purposes of applying section 302(b)(1), any distribution made to a private foundation by a disqualified person (as defined in section 4946(a)), in redemption of stock held by such private foundation in a business enterprise shall be treated as not essentially equivalent to a dividend if all of the following conditions are satisfied: (i) Such redemption is of stock which was owned by a private foundation on May 26, 1969 (or which is acquired by a private foundation under the terms of a trust which was irrevocable on May 26, 1969, or under the terms of a will executed on or before such date, which are in effect on such date and at all times thereafter); (ii) such foundation is required to dispose of such property in order not to be liable for tax under section 4943 (relating to taxes on excess business holdings); and (iii) such foundation receives in return an amount which equals or exceeds the fair market value of such property at the time of such disposition or at the time a contract for such disposition was previously executed in a transaction which would not constitute a prohibited transaction (within the meaning of section 503(b) or the corresponding provisions of prior law). In the case of a disposition before January 1, 1975, section 4943 shall be applied without taking section 4943(c)(4) into account.

(e) *Deductions*—(1) *In general.* (i) For purposes of computing net investment income, there shall be allowed as a deduction from gross investment income all the ordinary and necessary expenses paid or incurred for the production or collection of gross investment income or for the management, conservation, or maintenance of property held for the production of such income, determined with the modifications set forth in subparagraph (2) of this paragraph. Such expenses include that portion of a private foundation's operating expenses which is paid or incurred for the production or collection of gross investment income. Operating expenses include compensation of officers, other salaries and wages of employees, interest, and rent and taxes upon property used in the foundation's operations. To the extent such expenses are taken into account in computing the tax imposed by section 511, they shall not be deductible for purposes of computing the tax imposed by section 4940.

(ii) Where only a portion of property produces, or is held for the production of, income subject to the section 4940 excise tax, and the remainder of the property is used for exempt purposes, the deductions allowed by section 4940(c)(3) shall be apportioned between the exempt and nonexempt uses.

(iii) No amount is allowable as a deduction under this section to the extent it is paid or incurred for purposes other than those described in subdivision (i) of this subparagraph. Thus, for example, the deductions prescribed by the following sections are not allowable: (a) The charitable deduction prescribed under sections 170 and 642(c); (b) the net operating loss deduction prescribed under section 172; and (c) the special deductions prescribed under part VIII, subchapter B, chapter 1.

(2) *Deduction modifications.* The following modifications shall be made in determining deductions otherwise allowable under this paragraph:

(i) The depreciation deduction shall be allowed, but only on the basis of the straight line method provided in section 167(b)(1).

(ii) The depletion deduction shall be allowed, but such deduction shall be determined without regard to section 613, relating to percentage depletion.

(iii) The basis to be used for purposes of the deduction allowed for depreciation or depletion shall be the basis determined under the rules of part II of subchapter O of chapter 1 and without regard to section 4940(c)(4)(B), relating to the basis for determining gain, or section 362(c).

(iv) The deduction for expenses paid or incurred in any taxable year for the production of gross investment income earned as an incident to a charitable function shall be no greater than the income earned from such function which is includible as gross investment income for such year. For example, where rental income is incidentally realized in 1971 from historic buildings held open to the public, deductions paid or incurred in 1971 for the production of such income shall be limited to the amount of rental income includible as gross investment income for 1971.

(f) *Capital gain and losses*—(1) *General rule.* In determining net capital gain for purposes of the tax imposed by section 4940, there shall be taken into account only capital gains and losses from the sale or other disposition of property held by a private foundation for investment purposes (other than program-related investments, as defined in section 4944(c)), and property used for the production of income included

in computing the tax imposed by section 511 except to the extent gain or loss from the sale or other disposition of such property is taken into account for purposes of such tax. Under this subparagraph, gains and losses from the sale or other disposition of property used for the exempt purposes of the private foundation are excluded. For example, gain or loss on the sale of the buildings used for the exempt activities of a private foundation would not be subject to the section 4940 tax. Where the foundation uses property for its exempt purposes, but also incidentally derives income from such property which is subject to the tax imposed by section 4940(a), any gain or loss resulting from the sale or other disposition of such property is not subject to the tax imposed by section 4940(a). For example, if a tax-exempt private foundation maintains buildings of an historical nature and keeps them open for public inspection, but requires a number of its employees to live in these buildings and charges the employees rent, the rent would be subject to the tax imposed by section 4940(a), but any gain or loss resulting from the sale of such property would not be subject to such tax. However, where the foundation uses property for both exempt purposes and (other than incidentally) for investment purposes (for example, a building in which the foundation's charitable and investment activities are carried on), that portion of any gain or loss from the sale or other disposition of such property which is allocable to the investment use of such property must be taken into account in computing net capital gain for such taxable year. For purposes of this paragraph, a distribution of property for purposes described in section 170(c) (1) or (2)(B) shall not be treated as a sale or other disposition of property.

(2) *Basis.* (i) The basis for purposes of determining gain from the sale or other disposition of property shall be the greater of:

(*a*) Fair market value on December 31, 1969, plus or minus all adjustments after December 31, 1969, and before the date of disposition under the rules of part II of subchapter O of chapter 1, provided that the property was held by the private foundation on December 31, 1969, and continuously thereafter to the date of disposition, or

(*b*) Basis as determined under the rules of part II of subchapter O of chapter 1,

subject to the provisions of section 4940(c)(3)(B) (and without regard to section 362(c)).

(ii) For purposes of determining loss from the sale or other disposition of property, basis as determined in subdivision (i)(*b*) of this subparagraph shall apply.

(3) *Losses.* Where the sale or other disposition of property referred to in section 4940(c)(4)(A) results in a capital loss, such loss may be subtracted from capital gains from the sale or other disposition of other such property during the same taxable year, but only to the extent of such gains. Should losses from the sale or other disposition of such property exceed gains from the sale or other disposition of such property during the same taxable year, such excess may not be deducted from gross investment income under section 4940(c)(3) in any taxable year, nor may such excess be used to reduce gains in either prior or future taxable years, regardless of whether the foundation is a corporation or a trust.

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

Example (1). A private foundation holds certain depreciable real property on December 31, 1969, having a basis of $102,000. The fair market value of such property on that date was $100,000. For its taxable year 1970 the foundation was allowed depreciation for such property of $5,100 on the straight-line method, the allowable amount computed on the $102,000 basis. The property was sold on January 1, 1971, for $100,000. Because fair market value on December 31, 1969, less straight-line depreciation of $5,100 ($94,900) is less than basis as determined by part II of subchapter O of chapter 1, $96,900 ($102,000 less $5,100), a gain of $3,100 is recognized (i.e., sales price of $100,000 less the greater of the two possible bases).

Example (2). Assume the same facts in Example (1), except that the sale price was $95,000. Because the sale price was $1,900 less than the basis for loss ($96,900 as determined by the application of subparagraph (2)(ii) of this paragraph), there is a capital loss of $1,900 which may be deducted against capital gains for 1971 (if any) in determining net capital gain.

Example (3). A private foundation holds certain depreciable real property on December 31, 1969, having a basis of $102,000. The fair market value of such property on that date was $110,000. For its taxable year 1970 the foundation was allowed depreciation for such property of $5,100 on the straight-line method, the allowable amount computed on the $102,000 basis. The property was sold on January 1, 1971, for $100,000. Fair market value on December 31, 1969, less straight-line depreciation of $5,100 ($104,900) exceeds basis as determined by part II of subchapter O of chapter 1, $96,900 ($102,000 less $5,100), and will be used for purposes of determining gain. Because basis for purposes of determining gain exceeds sale price, there is no gain. There is no loss because basis for purposes of determining loss ($96,900) is less than sale price.

[FR Doc.71-3872 Filed 3-19-71;8:46 am]

[26 CFR Parts 53, 143]

FOUNDATION EXCISE TAXES

Taxes on Taxable Expenditures

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

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

The following regulations are prescribed under section 4945 of the Internal Revenue Code of 1954 as enacted by section 101(b) of the Tax Reform Act of 1969 (83 Stat. 512), relating to taxes on taxable expenditures. Temporary Treasury Regulations § 143.1, 35 F.R. 763 (1970), and (insofar as related to section 4945) § 143.8, 35 F.R. 7727 (1970), are superseded. Except where otherwise specifically provided, the following regulations take effect on January 1, 1970.

Subpart F—Taxes on Taxable Expenditures

§ 53.4945 Statutory provisions; imposition of excise taxes on taxable expenditures.

SEC. 4945. *Taxes on taxable expenditures.*

(a) *Initial taxes*—(1) *On the foundation.* There is hereby imposed on each taxable expenditure (as defined in subsection (d)) a tax equal to 10 percent of the amount thereof. The tax imposed by this paragraph shall be paid by the private foundation.

(2) *On the management.* There is hereby imposed on the agreement of any foundation manager to the making of an expenditure, knowing that it is a taxable expenditure, a tax equal to 2½ percent of the amount thereof, unless such agreement is not willful and is due to reasonable cause. The tax imposed by this paragraph shall be paid by any foundation manager who agreed to the making of the expenditure.

(b) *Additional taxes*— (1) *On the foundation.* In any case in which an initial tax is imposed by subsection (a)(1) on a taxable expenditure and such expenditure is not corrected within the correction period, there is hereby imposed a tax equal to 100 percent of the amount of the expenditure. The tax imposed by this paragraph shall be paid by the private foundation.

(2) *On the management.* In any case in which an additional tax is imposed by paragraph (1), if a foundation manager refused to agree to part or all of the correction, there is hereby imposed a tax equal to 50 percent of the amount of the taxable expenditure. The tax imposed by this paragraph shall be paid by any foundation manager who refused to agree to part or all of the correction.

(c) *Special rules.* For purposes of subsections (a) and (b)—

(1) *Joint and several liability.* If more than one person is liable under subsection

(a)(2) or (b)(2) with respect to the making of a taxable expenditure, all such persons shall be jointly and severally liable under such paragraph with respect to such expenditure.

(2) *Limit for management.* With respect to any one taxable expenditure, the maximum amount of the tax imposed by subsection (a)(2) shall not exceed $5,000, and the maximum amount of the tax imposed by subsection (b)(2) shall not exceed $10,000.

(d) *Taxable expenditure.* For purposes of this section, the term "taxable expenditure" means any amount paid or incurred by a private foundation—

(1) To carry on propaganda, or otherwise to attempt, to influence legislation, within the meaning of subsection (e),

(2) Except as provided in subsection (f), to influence the outcome of any specific public election, or to carry on, directly or indirectly, any voter registration drive,

(3) As a grant to an individual for travel, study, or other similar purposes by such individual, unless such grant satisfies the requirements of sugsection (g),

(4) As a grant to an organization (other than an organization described in paragraph (1), (2), or (3) of section 509(a)), unless the private foundation exercises expenditure responsibility with respect to such grant in accordance with subsection (h), or

(5) For any purpose other than one specified in section 170(c)(2)(B).

(e) *Activities within subsection (d)(1).* For purposes of subsection (d)(1), the term "taxable expenditure" means any amount paid or incurred by a private foundation for—

(1) Any attempt to influence any legislation through an attempt to affect the opinion of the general public or any segment thereof, and

(2) Any attempt to influence legislation through communication with any member or employee of a legislative body, or with any other government official or employee who may participate in the formulation of the legislation (except technical advice or assistance provided to a governmental body or to a committee or other subdivision thereof in response to a written request by such body or subdivision, as the case may be),

other than through making available the results of nonpartisan analysis, study, or research. Paragraph (2) of this subsection shall not apply to any amount paid or incurred in connection with an appearance before, or communication to, any legislative body with respect to a possible decision of such body which might affect the existence of the private foundation, its powers and duties, its tax-exempt status, or the deduction of contributions to such foundation.

(f) *Nonpartisan activities carried on by certain organizations.* Subsection (d)(2) shall not apply to any amount paid or incurred by an organization—

(1) Which is described in section 501(c)(3) and exempt from taxation under section 501(a),

(2) The activities of which are nonpartisan, are not confined to one specific election period, and are carried on in five or more States,

(3) Substantially all of the income of which is expended directly for the active conduct of the activities constituting the purpose or function for which it is organized and operated.

(4) Substantially all of the support (other than gross investment income as defined in section 509(e)) of which is received from exempt organizations, the general public, governmental units described in section 170(c)(1), or any combination of the foregoing; not more than 25 percent of such support is received from any one exempt organization (for this purpose treating private foundations which are described in section 4946(a)(1)(H) with respect to each other as one exempt organization); and not more than half of the support of which is received from gross investment income, and

(5) Contributions to which for voter registration drives are not subject to conditions that they may be used only in specified States, possessions of the United States, or political subdivisions or other areas of any of the foregoing, or the District of Columbia, or that they may be used in only one specific election period.

In determining whether the organization meets the requirements of paragraph (4) for any taxable year of such organization, there shall be taken into account the support received by such organization during such taxable year and during the immediately preceding 4 taxable years of such organization (excluding therefrom any preceding taxable year which begins before January 1, 1970). Subsection (d)(4) shall not apply to any grant to an organization which meets the requirements of this subsection.

(g) *Individual grants.* Subsection (d)(3) shall not apply to an individual grant awarded on an objective and nondiscriminatory basis pursuant to a procedure approved in advance by the Secretary or his delegate, if it is demonstrated to the satisfaction of the Secretary or his delegate that—

(1) The grant constitutes a scholarship or fellowship grant which is subject to the provisions of section 117(a) and is to be used for study at an educational institution described in section 151(e)(4).

(2) The grant constitutes a prize or award which is subject to the provisions of section 74(b), if the recipient of such prize or award is selected from the general public, or

(3) The purpose of the grant is to achieve a specific objective, produce a report or other similar product, or improve or enhance a literary, artistic, musical, scientific, teaching, or other similar capacity, skill, or talent of the grantee.

(h) *Expenditure responsibility.* The expenditure responsibility referred to in subsection (d)(4) means that the private foundation is responsible to exert all reasonable efforts and to establish adequate procedures—

(1) To see that the grant is spent solely for the purpose for which made,

(2) To obtain full and complete reports from the grantee on how the funds are spent, and

(3) To make full and detailed reports with respect to such expenditures to the Secretary or his delegate.

(i) *Other definitions.* For purposes of this section—

(1) *Correction.* The terms "correction" and "correct" mean, with respect to any taxable expenditure, (A) recovering part or all of the expenditure to the extent recovery is possible, and where full recovery is not possible such additional corrective action as is prescribed by the Secretary or his delegate by regulations, or (B) in the case of a failure to comply with subsection (h)(2) or (h)(3), obtaining or making the report in question.

(2) *Correction period.* The term "correction period" means, with respect to any taxable expenditure, the period beginning with the date on which the taxable expenditure occurs and ending 90 days after the date of mailing of a notice of deficiency with respect to the tax imposed by subsection (b)(1) under section 6212, extended by—

(A) Any period in which a deficiency cannot be assessed under section 6213(a), and

(B) Any other period which the Secretary or his delegate determines is reasonable and necessary to bring about correction of the txable expenditure (except that such determination shall not be made with respect to any taxable expenditure within the meaning of paragraph (1), (2), (3), or (4) of subsection (d) because of any action by an appropriate State officer as defined in section 6104(c)(2)).

[Sec. 4945 as added by sec. 101(b), Tax Reform Act 1969 (83 Stat. 512)]

§ 53.4945–1 Taxes on taxable expenditures.

(a) *Imposition of initial taxes*—(1) *Tax on private foundation.* Section 4945(a)(1) of the Code imposes an excise tax on each taxable expenditure (as defined in section 4945(d)) of a private foundation. This tax is to be paid by the private foundation and is at the rate of 10 percent of the amount of each taxable expenditure.

(2) *Tax on foundation manager*—(i) *In general.* Section 4945(a)(2) of the Code imposes, under certain circumstances, an excise tax on the agreement of any foundation manager to the making of a taxable expenditure by a private foundation. This tax is imposed in any case in which a tax is imposed by section 4945(a)(1) if such foundation manager knows that the expenditure to which he agrees is a taxable expenditure, unless such agreement is not willful and is due to reasonable cause.

(ii) *Agreement.* The agreement of any foundation manager to the making of an expenditure shall consist of any manifestation of approval of the expenditure.

(iii) *Knowing.* For purposes of section 4945, a foundation manager shall be considered to have agreed to an expenditure "knowing" that it is a taxable expenditure if he knows or has reason to know that it is a taxable expenditure.

(iv) *Willful.* A foundation manager's agreement to a taxable expenditure is willful if it is voluntary, conscious, and intentional. No motive to avoid the restrictions of the law or the incurrence of any tax is necessary to make an agreement willful. However, a foundation manager's agreement to a taxable expenditure is not willful if he does not know or have reason to know that it is a taxable expenditure.

(v) *Due to reasonable cause.* A foundation manager's actions are due to reasonable cause if he has exercised ordinary business care and prudence. Thus, for example, if a foundation manager relied on the advice of counsel that an expenditure is not a taxable expenditure under section 4945 although it is subsequently held to be a taxable expenditure, or that certain proposed reporting procedures with respec to an expenditure would satisfy the tests of section 4945(h) and the procedures did not satisfy such section, the foundation manager's agreement to such expenditure would generally be considered "due to reasonable cause".

(vi) *Rate and incidence of tax.* The tax imposed under section 4945(a)(2) is at the rate of 2½ percent of the amount of each taxable expenditure to which the foundation manager has agreed. This

tax shall be paid by the foundation manager.

(vii) *Cross reference.* For provisions relating to the burden of proof in cases involving the issue whether a foundation manager has knowingly agreed to the making of a taxable expenditure, see section 7454(b).

(b) *Imposition of additional taxes*—(1) *Tax on private foundation.* Section 4945(b)(1) of the Code imposes an excise tax in any case in which an initial tax is imposed under section 4945(a)(1) on a taxable expenditure of a private foundation and the expenditure is not corrected within the correction period (as defined in section 4945(i)(2)). The tax imposed under section 4945(b)(1) is to be paid by the private foundation and is at the rate of 100 percent of the amount of each taxable expenditure.

(2) *Tax on foundation manager.* Section 4945(b)(2) of the Code imposes an excise tax in any case in which a tax is imposed under section 4945(b)(1) and a foundation manager has refused to agree to part or all of the correction of the taxable expenditure. The tax imposed under section 4945(b)(2) is at the rate of 50 percent of the amount of the taxable expenditure. This tax is to be paid by any foundation manager who has refused to agree to part or all of the correction of the taxable expenditure.

(c) *Special rules*—(1) *Joint and several liability.* In any case where more than one foundation manager is liable for the tax imposed under section 4945(a)(2) or (b)(2) with respect to the making of a taxable expenditure, all such foundation managers shall be jointly and severally liable for the tax imposed under each such paragraph with respect to such taxable expenditure.

(2) *Limits on liability for management.* The maximum amount of tax imposed under section 4945(a)(2) with respect to any one taxable expenditure shall be $5,000, and the maximum amount of tax imposed under section 4945(b)(2) with respect to any one taxable expenditure shall be $10,000.

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

Example (1). A, B, and C comprise the board of directors of Foundation M. They vote unanimously in favor of a grant of $100,000 to D, a business associate of each of the directors. Each director knows that D was selected as the recipient of the grant solely because of his friendship with the directors. Initial taxes are imposed under paragraphs (1) and (2) of section 4945(a). The tax to be paid by the foundation is $10,000 (10 percent of $100,000). The tax to be paid by the board of directors is $2,500 (2½ percent of $100,000). A, B, and C are jointly and severally liable for this $2,500, and this sum may be collected by the Service from any one of them.

Example (2). Assume the same facts as in Example (1). Further assume that within the correction period A makes a motion to correct the taxable expenditure at a meeting of the board of directors. The motion is defeated by a 2-to-1 vote, A voting for the motion and B and C voting against it. In these circumstances an additional tax would be paid by the private foundation in the amount of $100,000 (100 percent of $100,000). The additional tax to be paid by B and C is $10,000 (5 percent of $100,000 subject to a maximum of $10,000). B and C are jointly and severally liable for the $10,000, and this sum may be collected by the Service from either of them.

(d) *Correction*—(1) *In general.* Except as provided in subparagraph (2) of this paragraph, correction of a taxable expenditure shall be accomplished by recovering part or all of the expenditure to the extent recovery is possible, and, where full recovery cannot be accomplished, by any additional corrective action which the Commissioner may prescribe. Such additional corrective action is to be determined by the circumstances of each particular case and may include the following:

(i) Requiring that any unpaid funds due the grantee be withheld;

(ii) Requiring that no further grants be made to the particular grantee;

(iii) In addition to other reports that are required, requiring periodic (e.g., quarterly) reports from the foundation with respect to all expenditures of the foundation (such reports shall be equivalent in detail to the reports required by section 4945(h)(3) and § 53.4945–5(d));

(iv) Requiring improved methods of exercising expenditure responsibility;

(v) Requiring improved methods of selecting recipients of individual grants; and

(vi) Requiring such other measures as the Commissioner may prescribe in a particular case.

(2) *Correction for inadequate reporting.* If the expenditure is taxable only because of a failure to obtain a full and complete report as required by section 4945(h)(2) or because of a failure to make a full and detailed report as required by section 4945(h)(3), correction may be accomplished by obtaining or making the report in question.

(e) *Correction period*—(1) *In general.* For purposes of section 4945, the correction period shall begin with the date on which the taxable expenditure occurs and end 90 days after the date of mailing of a notice of deficiency under section 6212 with respect to the tax imposed under section 4945(b)(1). This period shall be extended by any period in which a deficiency cannot be assessed under section 6213(a) and any other period which the Commissioner determines is reasonable and necessary to bring about correction of the taxable expenditure.

(2) *Extensions of correction period.* (i) Except as provided in subdivision (ii) of this subparagraph, the Commissioner ordinarily will not extend the correction period for a taxable expenditure unless the following factors are present:

(*a*) The foundation (or, with respect to any taxable expenditure within the meaning of section 4945(d)(5), an appropriate State officer as defined in section 6104(c)(2)) is actively in good faith seeking to correct the taxable expenditure;

(*b*) Adequate corrective action cannot reasonably be expected to result during the unextended correction period; and

(*c*) The taxable expenditure appears to have been an isolated occurrence and it appears unlikely that the foundation will pay or incur similar taxable expenditures in the future.

The Commissioner shall not make a determination extending the correction period with respect to any taxable expenditure within the meaning of section 4945(d)(1), (2), (3), or (4) because of any action by an appropriate State officer (as defined in section 6104(c)(2)), unless the expenditure is also taxable by reason of section 4945(d)(5).

(ii) If a foundation files a claim for refund with respect to a tax imposed under section 4945(a)(1) within the unextended correction period, the Commissioner shall extend the correction period during the pendency of the claim. If such claim is denied, the correction period will be extended by an additional 90 days to permit the foundation to file a suit or proceeding referred to in section 7422(b) with respect to such claim or to make the required correction. If such suit or proceeding is filed, the correction period will be extended during the pendency of such suit or proceeding.

§ 53.4945–2 Propaganda influencing legislation.

(a) *Propaganda influencing legislation, etc.*—(1) *In general.* Under section 4945(d)(1) the term "taxable expenditure" includes any amount paid or incurred by a private foundation to carry on propaganda, or otherwise to attempt, to influence legislation. Attempts to influence legislation may include communications with a member or employee of a legislative body or with an official of the executive department of a government or efforts to affect the opinion of the general public with respect to legislation being considered by, or to be submitted imminently to, a legislative body. See, however, paragraphs (b) and (d) of this section for exceptions to the general rule.

(2) *Legislation defined.* For purposes of this section, the term "legislation" includes action by the Congress, by any State legislature, by any local council or similar governing body, or by the public in a referendum, initiative, constitutional amendment, or similar procedure. Such term does not include actions by executive, judicial, or administrative bodies. The word "action" is limited to the introduction, enactment, defeat, or repeal of legislation. However, for purposes of section 4945, the term "any attempt to influence legislation" does not encompass activities by a private foundation which are directly in support of the formation or expansion of a public park or equivalent preserves (such as public recreation areas, game or forest preserves, and soil demonstration areas) established or to be established by the National Park System, or by a State, municipality, or other governmental unit described in section 170(c)(1).

(3) *Jointly funded projects.* A private foundation will not be treated as having paid or incurred any amount to attempt to influence legislation merely because it makes a grant to another organization upon the condition that the recipient obtain a matching support appropriation from a governmental body. In addition, a private foundation will not be treated as having made taxable expenditures of amounts paid or incurred in carrying on discussions with officials of governmental bodies provided that:

(i) The subject of such discussions is a program which is jointly funded by the foundation and the Government or is a new program which may be jointly funded by the foundation and the Government,

(ii) The discussions are undertaken for the purpose of exchanging data and infomation on the subject matter of the program, and

(iii) Such discussions are not undertaken by foundation managers in order to make any direct attempt to persuade governmental officials or employees to take particular positions on specific legislative issues other than such program.

(4) *Grants to public organizations*—(i) *In general.* A grant by a private foundation to an organization described in section 509(a) (1), (2), or (3) does not constitute a taxable expenditure by such foundation under section 4945(d) if the grant by the private foundation is not earmarked to be used for any activity described in section 4945(d) (1), (2), or (5), is not earmarked to be used in a manner which would violate section 4945(d) (3) or (4), and such granting foundation does not retain power to cause the grantee to engage in any such prohibited activity or to select the recipient to which the grant is to be devoted. For purposes of this subdivision, a grant by a private foundation is earmarked if such grant is given pursuant to an agreement, oral or written, that the grant will be used for specific purposes. For the expenditure responsibility requirements with respect to organizations other than those described in section 509(a) (1), (2), or (3), see § 53.4945–5.

(ii) *Certain "public" organizations.* For purposes of this section, an organization shall be considered a section 509(a)(1) organization if it is treated as such under paragraph (4) of § 53.4945–5(a).

(iii) The provisions of this subparagraph may be illustrated by the following examples:

Example (1). M, a private foundation, makes a general purpose grant to N, an organization described in section 509(a)(1). As an insubstantial portion of its activities, N makes some attempts to influence the State legislature with regard to changes in the mental health laws. The use of the grant is not earmarked by M to be used in a manner which would violate section 4945(d). In addition, M does not retain power over the choice by N of the activity or recipient to which the grant is to be devoted. Even if the grant is subsequently devoted by N to its legislative activities, the grant by M is not a taxable expenditure under section 4945(d).

Example (2). X, a private foundation, makes a grant to Y University for the purpose of conducting research on the potential environmental effects of certain pesticides. X does not earmark the grant for any purpose which would violate section 4945(d) and does not retain power to cause Y to engage in any activity described in section 4945(d) (1), (2), or (5), or to select any recipient to which the grant may be devoted. Y uses most of the funds for the research project; however, on its own volition, Y expends a portion of the grant funds to send a representative to testify at congressional hearings on a specific bill proposing certain pesticide control measures. The portion of the grant funds expended with respect to the congressional hearings is not treated as a taxable expenditure by X under section 4945(d).

(b) *Attempts to affect the opinion of the general public.* Except as provided in paragraph (d)(1) of this section (relating to the making available of nonpartisan analysis, study or research), any expenditure paid or incurred by a private foundation in an attempt to influence any legislation through an attempt to affect the opinion of the general public or any segment thereof is a taxable expenditure. For purposes of this paragraph, expenditures for examinations and discussions of broad social, economic, and similar problems are not taxable even if the problems are of the type with which government would be expected to deal ultimately. Thus, the term "any attempt to influence any legislation" does not include public discussion, the general subject of which is also the subject of legislation before a legislative body, so long as such discussion does not address itself to the merits of a specific legislative proposal. For example, a private foundation may, without incurring tax under section 4945, present a discussion of environmental pollution, a problem being considered by Congress and various State legislatures, provided the discussion is not directly addressed to specific legislation being considered.

(c) *Lobbying activities.* Except as provided in paragraph (d) of this section, any expenditure for the purpose of influencing legislation through communication with any member or employee of a legislative body, or with any government official or employee who may participate in the formulation of the legislation, is a taxable expenditure.

(d) *Exceptions*—(1) *Nonpartisan analysis, study, or research*—(i) *In general.* Engaging in nonpartisan analysis, study, or research and making available to the public or to governmental bodies the results of such work do not constitute carrying on propaganda, or otherwise attempting, to influence legislation.

(ii) *Nonpartisan analysis, study or research.* For purposes of section 4945(e), "nonpartisan analysis, study, or research" means an independent and objective exposition of a particular subject matter, including any activity which is "educational" within the meaning of § 1.501 (c)(3)–1, (d)(3) of this chapter. The analysis, study, or research may contain recommendations, findings, or conclusions, if there is a sufficiently full and fair exposition of the pertinent facts to enable the public or an individual to form an independent opinion or conclusion. Activities of a noncommercial educational broadcasting station (television or radio) constitute nonpartisan analysis, study or research if the station adheres to the Federal Communications Commission regulations and its "fairness doctrine" and requires balanced, fair, and objective presentation of issues.

(iii) *Presentation as part of a series.* Normally, whether a publication or broadcast qualifies as "nonpartisan analysis, study, or research" will be determined on a presentation-by-presentation basis. However, if a publication or broadcast is one of a series prepared or sponsored by a private foundation and the overall effect of the series is a balanced, fair, and nonpartisan analysis or study of the subject, then any individual publication or broadcast within the series will not result in a taxable expenditure even though such individual broadcast or publication does not meet the standards of subdivision (ii) of this subparagraph. A determination that a broadcast or publication is part of a series will ordinarily not be made on the basis of after-the-fact representations, but will ordinarily require:

(*a*) A public announcement before each broadcast or publication that it is a part of a series; and

(*b*) The existence of plans, scripts, working outlines, or similar documents for such a series that predate the actual presentations.

If a private foundation times or channels a part of a series which is described in this subdivision in a manner designed to influence the general public or the action of a legislative body with respect to a specific legislative proposal in violation of section 4945(d)(1), the expense of preparing and distributing such part of the analysis, study, or research will be a taxable expenditure under this section.

(iv) *Making available results of analysis, study, or research.* A private foundation may choose any suitable means, including oral or written presentations, to distribute the results of its nonpartisan analysis, study, or research, with or without charge. Such means include distribution of reprints of speeches, articles and reports (including the report required under section 6056); presentation of information through conferences, meetings and discussions; and dissemination to the news media, including radio, television and newspapers, and to other public forums. For purposes of this subparagraph, such presentations may not be limited to or directed toward persons who are interested solely in one side of a particular issue.

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

Example (1). A private foundation establishes a research project to collect information on the neurotic and psychotic dangers

to unwed mothers who cannot secure abortions. The research project is responsive to the keen public interest in proposed legislation pending before several State legislatures which would liberalize abortion laws. It does not include a sufficiently full and fair exposition of the pertinent facts to enable the public or an individual to form an independent opinion or conclusion. This project is not within the exception for nonpartisan analysis, study, or research because it is designed to present information merely on one side of the legislative controversy.

Example (2). Assume the same facts as Example (1), except that the research project is to collect and report fully and fairly information and conclusions as to the presence or absence of such dangers, the presence or absence of neurotic and psychotic dangers as a result of having abortions, and the social and moral considerations bearing on both sides of the issue. The project is within the exception for nonpartisan analysis, study, or research because it is designed to present information on both sides of the legislative controversy and presents a sufficiently full and fair exposition of the pertinent facts to enable the public or an individual to form an independent opinion or conclusion.

Example (3). Assume the same facts as Example (2), except that the foundation presents a two-program television series relating to the abortion issue. The first program contains information, arguments, and conclusions favoring liberalized abortion legislation. The second program contains information, arguments, and conclusions opposing liberalized abortion legislation. Before each program the foundation makes a public announcement that the program is part of a series. The foundation's programs are within the exception for nonpartisan analysis, study, or research. Although neither program individually could be regarded as nonpartisan, the series of two programs constitutes a balanced presentation.

Example (4). Assume the same facts as Example (3), except that the foundation arranged for televising the program favoring liberalized abortion legislation at 8 p.m. Thursday evening and for televising the program opposing such legislation at 7 a.m. Sunday morning. The foundation's presentation is not within the exception for nonpartisan analysis, study, or research, since the foundation disseminated its information in a manner prejudicial to one side of the legislative controversy.

(2) *Technical advice or assistance*—(i) *In general.* Amounts paid or incurred in connection with providing technical advice or assistance to a governmental body, or to a committee or subdivision thereof, in response to a written request by such body or subdivision do not constitute taxable expenditures for purposes of this section. Under this exception, the request for assistance or advice must be made in the name of the requesting governmental body, committee or subdivision rather than an individual member thereof. Similarly, the response to such request must be available to every member of the requesting body, committee or subdivision.

(ii) *Nature of technical advice or assistance.* "Technical advice or assistance" may be given as a result of knowledge or skill in a given area. Because such assistance or advice may be given only at the express request of a governmental body, committee or subdivision, the oral or written presentation of such assistance or advice need not qualify as nonpartisan analysis, study or research. The offering of opinions or recommendations will ordinarily qualify under this exception only if such opinions or recommendations are specifically requested by the governmental body, committee or subdivision.

(iii) The provisions of this subparagraph may be illustrated by the following examples:

Example (1). A Congressional committee is studying the feasibility of legislation to provide funds for scholarships to U.S. students attending schools abroad. X, a private foundation which has engaged in a private scholarship program of this type, is asked, in writing, by the committee to describe the manner in which it selects candidates for its program. The organizations response disclosing its methods of selection constitutes technical advice or assistance.

Example (2). Assume the same facts as Example (1), except that the organization's response not only includes its own grant-making procedures, but also recommends that such procedures would be more desirable than those used by another specified organization. This response would not qualify as technical advice or assistance since it was not requested by the committee. Expenditures paid or incurred with respect to such response will constitute taxable expenditures unless the presentation can qualify as the making available of nonpartisan analysis, study or research.

Example (3). Assume the same facts as Example (1), except that the organization is requested, in addition, to give its views regarding the wisdom of adopting such a program. A response to this request giving such an opinion would qualify as "technical advice or assistance", and expenditures paid or incurred with respect to such response would not constitute taxable expenditures.

(3) *Decisions affecting the powers, duties, etc., of a private foundation*—(i) *In general.* Paragraph (c) of this section does not apply to any amount paid or incurred in connection with an appearance before, or communication to, any legislative body with respect to a possible decision of such body which might affect the existence of the private foundation, its powers and duties, its tax-exempt status, or the deductibility of contributions to such foundation. Under this exception, a foundation may communicate with the entire legislative body, committees or subcommittees of such legislative body, individual congressmen or legislators, members of their staffs, or representatives of the executive branch, who are involved in the legislative process, if such communication is limited to the prescribed subjects.

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

Example (1). A bill is being considered by Congress which would, if enacted, restrict the power of a private foundation to engage in transactions with certain related persons. Under the proposed bill a private foundation would lose its exemption from taxation if it engaged in such transactions. W, a private foundation, writes to the congressional committee considering the bill, arguing that the enactment of such a bill would not be advisable, and subsequently appears before such committee to make its arguments. Expenditures paid or incurred with respect to such submissions do not constitute taxable expenditures since they are made with respect to a possible decision of Congress which might affect the existence of the private foundation, its powers and duties, its tax-exempt status, or the deduction of contributions to such foundation.

Example (2). A bill being considered in a State legislature is designed to implement the requirements of section 508(e) of the Internal Revenue Code of 1954. Under such section, a private foundation is required to make certain amendments to its governing instrument. X, a private foundation, makes a submission to the legislature which proposes alternative measures which might be taken in lieu of the proposed bill. Expenditures paid or incurred in making such submission do not constitute taxable expenditures since they are made with respect to a possible decision of such State legislature which might affect the existence of the private foundation, its powers and duties, its tax-exempt status, or the deduction of contributions to such foundation.

Example (3). A bill is being considered by a State legislature under which the State would assume certain responsibilities for nursing care of the aged. Y, a private foundation which hiterto has engaged in such activities, appears before the State legislature and contends that such activities can be better performed by privately supported organizations. Expenditures paid or incurred with respect to such appearance are not made with respect to possible decisions of the State legislature which might affect the existence of the private foundation, its powers and duties, its tax-exempt status, or the deduction of contributions to such foundation, but rather merely affect the scope of the private foundation's future activities.

Example (4). A State legislature is considering the annual appropriations bill. Z, a private foundation which had hitherto performed contract research for the State, appears before the appropriations committee in order to attempt to persuade the committee of the advisability of continuing the program. Expenditures paid or incurred with respect to such appearance are not made with respect to possible decisions of the State legislature which might affect the existence of the private foundation, its powers and duties, its tax-exempt status, or the deduction of contributions to such foundation, but rather merely affect the scope of the private foundation's future activities.

§ 53.4945–3 Influencing elections and carrying on voter registration drives.

(a) *Expenditures to influence elections or carry on voter registration drives*—(1) *In general.* Under section 4945(d)(2), the term "taxable expenditure" includes any amount paid or incurred by a private foundation to influence the outcome of any specific public election or to carry on, directly or indirectly, any voter registration drive, unless such amount is paid or incurred by an organization described in section 4945(f).

(2) *Influencing the outcome of a specific public election.* For purposes of this section, an organization shall be considered to be influencing the outcome of any specific public election if it participates or intervenes, directly or indirectly, in any political campaign on behalf of or in opposition to any candidate for public office. The term "candidate for public office" means an individual who offers himself, or is proposed by others, as a contestant for an elective public office, whether such office be national, State or local. Activities which constitute participation or intervention in a political

campaign on behalf of or in opposition to a candidate include, but are not limited to:

(i) Publishing or distributing written or printed statements or making oral statements on behalf of or in opposition to such a candidate;

(ii) Paying salaries or expenses of campaign workers; and

(iii) Conducting or paying the expenses of conducting a voter registration drive limited to the geographic area covered by the campaign.

(b) *Nonpartisan activities carried on by certain organizations*—(1) *In general.* If an organization meets the requirements described in section 4945(f), an amount paid or incurred by such organization shall not be considered a taxable expenditure even though the use of such amount is otherwise described in section 4945(d)(2). Such requirements are:

(i) The organization is described in section 501(c)(3) and exempt from taxation under section 501(a);

(ii) The activities of the organization are nonpartisan, are not confined to one specific election period, and are carried on in five or more States;

(iii) The organization expends at least 85 percent of its income directly for the active conduct (within the meaning of section 4942(j)(3) and the regulations thereunder) of the activities constituting the purpose or function for which it is organized and operated;

(iv) The organization receives at least 85 percent of its support (other than gross investment income as defined in section 509(e)) from exempt organizations, the general public, governmental units described in section 170(c)(1), or any combination of the foregoing; the organization does not receive more than 25 percent of its support (other than gross investment income) from any one exempt organization (for this purpose treating private foundations which are described in section 4946(a)(1)(H) with respect to each other as one exempt organization); and not more than half of the support of the organization is received from gross investment income; and

(v) Contributions to the organization for voter registration drives are not subject to conditions that they may be used only in specified States, possessions of the United States, or political subdivisions or other areas of any of the foregoing, or the District of Columbia, or that they may be used in only one specific election period.

(2) *Grants to section 4945(f) organizations.* If a private foundation makes a grant to an organization described in section 4945(f), such grant will not be treated as a taxable expenditure under section 4945(d) (2) or (4).

(3) *Period for determining support*—(i) *In general.* The determination whether an organization meets the support test in section 4945(f)(4) for any taxable year is to be made by aggregating all amounts of support received by the organization doing the taxable year and the immediately preceding 4 taxable years. However, the support received in any taxable year which begins before January 1, 1970, shall be excluded.

(ii) *New organizations and organizations with no preceding taxable years beginning after December 31, 1969.* Except as provided in subparagraph (4) of this paragraph, in the case of a new organization or an organization with no taxable years that begin after December 31, 1969, and immediately precede the taxable year in question, the requirements of the support test in section 4945 (f) will be considered as met for the taxable year if such requirements are met by the end of the taxable year.

(iii) *Organization with three or fewer preceding taxable years.* In the case of an organization which has been in existence for at least one but fewer than four preceding taxable years beginning after December 31, 1969, the determination whether such organization meets the requirements of the support test in section 4945(f)(4) for the taxable year is to be made by taking into account all the support received by such organization during the taxable year and during each preceding taxable year beginning after December 31, 1969.

(4) *Advance rulings.* An organization will be given an advance ruling that it is an organization described in section 4945(f) for its first taxable year of operation beginning after December 31, 1969, if it submits evidence establishing that it can reasonably be expected to meet the tests under section 4945(f) for such taxable year. An organization which, pursuant to this subparagraph, has been treated as an organization described in section 4945(f) for a taxable year (without withdrawal of such treatment by notification from the Internal Revenue Service during such year), but actually fails to meet the requirements of section 4945(f) for such taxable year, will not be treated as an organization described in section 4945(f) as of the first day of its next taxable year for purposes of making any determination under the internal revenue laws with respect to such organization, until such time as the organization does meet the requirements of section 4945(f). For purposes of section 4945, the status of grants or contributions with respect to grantors or contributors to such organization will not be affected until notice of change of status of such organization is made to the public (such as by publication in the Internal Revenue Bulletin), unless the grantor or contributor (or any person standing in a relationship to such grantor or contributor which is described in section 4946(a)(1) (C) through (G)) was in part responsible for, or was aware of, the fact that the organization did not satisfy section 4945 (f) at the end of the taxable year with respect to which the organization had obtained an advance ruling or a determination letter that it was a section 4945(f) organization, or acquired knowledge that the Internal Revenue Service had given notice to such organization that it would be deleted from classification as a section 4945(f) organization.

§ 53.4945–4 Grants to individuals.

(a) *Grants to individuals*—(1) *In general.* Under section 4945(d)(3) the term "taxable expenditure" includes any amount paid or incurred by a private foundation as a grant to an individual for travel, study, or other similar purposes by such individual unless the grant satisfies the requirements of section 4945(g). Grants to individuals which are not taxable expenditures because made in accordance with the requirements of section 4945(g) may result in the imposition of excise taxes under other provisions of chapter 42.

(2) *"Grants" defined.* For purposes of section 4945, the term "grants" shall include, but is not limited to, such expenditures as scholarships, fellowships, internships, prizes, and awards. Grants shall also include loans for purposes described in section 170(c)(2)(B) and "program related investments" (such as investments in small businesses in central cities or in businesses which assist in neighborhood renovation). Conversely, "grants" do not generally include salaries to employees or payments (including salaries, consultants' fees and reimbursement for travel expenses) to persons for personal services in assisting a foundation in planning, evaluating or developing projects or areas of program activity by consulting, by advising or by participating in conferences organized by the foundation.

(3) *Requirements for individual grants*—(i) *Grants for other than section 4945(d)(3) purposes.* A grant to an individual for purposes other than those described in section 4945(d)(3) is not a taxable expenditure within the meaning of section 4945(d)(3). For example, if a foundation makes grants to indigent individuals to enable them to purchase furniture, such grants are not taxable expenditures within the meaning of section 4945(d)(3).

(ii) *Grants for section 4945(d)(3) purposes.* Under section 4945(g), a grant to an individual for travel, study, or other similar purposes is not a "taxable expenditure" only if:

(*a*) The grant is awarded on an objective and nondiscriminatory basis (within the meaning of paragraph (b) of this section);

(*b*) The grant is made pursuant to a procedure approved in advance by the Commissioner; and

(*c*) It is demonstrated to the satisfaction of the Commissioner that:

(*1*) The grant constitutes a scholarship or fellowship grant which is excluded from gross income under section 117(a) and is to be utilized for study at an educational institution described in section 151(e)(4);

(*2*) The grant constitutes a prize or award which is excluded from gross income under section 74(b), and the recipient of such prize or award is selected from the general public within the meaning of section 4941(d)(2)(G)(i) and the regulations thereunder; or

(*3*) The purpose of the grant is to achieve a specific objective, produce a report or other similar product, or

improve or enhance a literary, artistic, musical, scientific, teaching, or other similar capacity, skill, or talent of the grantee.

(4) *Certain designated grants*—(i) *In general.* A grant by a private foundation to another organization, which the grantee organization uses to make payments to an individual for purposes described in section 4945(d)(3), shall not be regarded as a grant by the private foundation to the individual grantee if the foundation does not earmark the use of the grant for any named individual and does not retain power to cause the selection of the individual grantee by the grantee organization. For purposes of this subparagraph, a grant described herein shall not be regarded as a grant by the foundation to an individual grantee even though such foundation has reason to believe that certain individuals would derive benefits from such grant so long as the grantee organization exercises control, in fact, over the selection process and actually makes the selection completely independently of the private foundation.

(ii) *Certain grants to "public charities".* A grant by a private foundation to an organization described in section 509(a)(1), (2), or (3), which the grantee uses to make payments to an individual for purposes described in section 4945(d)(3), shall not be regarded as a grant by the private foundation to the individual grantee (regardless of the application of subdivision (i) of this subparagraph) if the grant is made for a project which is to be undertaken under the supervision of the section 509(a)(1), (2), or (3) organization and such organization controls the selection of the individual grantee. This subdivision shall apply regardless of whether the name of the individual grantee was first proposed by the private foundation, but only if there is an objective manifestation of the section 509(a)(1), (2), or (3) organization's control over the selection process. For purposes of this subdivision, an organization shall be considered a section 509(a)(1) organization if it is treated as such under subparagraph (4) of § 53.4945–5(a).

(iii) *Grants to governmental agencies.* If a private foundation makes a grant to an organization described in section 170(c)(1) (regardless of whether it is described in section 501(c)(3)) and such grant is earmarked for use by an individual for purposes described in section 4945(d)(3), such grant is not subject to the requirements of section 4945(d)(3) and (g) and this section (regardless of the application of subdivision (i) of the subparagraph) if the section 170(c)(1) organization satisfies the Commissioner in advance that its grant-making program:

(a) Is in furtherance of a purpose described in section 170(c)(2)(B),

(b) Requires that the individual grantee submit reports to it which would satisfy paragraph (c)(3) of this section, and

(c) Requires that the organization investigate jeopardized grants in a manner substantially similar to that described in paragraph (c)(4) of this section.

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

Example (1). A university described in section 170(b)(1)(A)(ii) requests that a private foundation grant it $100,000 to enable the university to obtain the services of a particular scientist for a research project in a special field of biochemistry in which he has unique competence. The foundation, after determining that the project deserves support, makes the grant to the university to enable it to obtain the services of this scientist. The university is authorized to keep the funds even if it is unsuccessful in attempting to employ the scientist. Under these circumstances the foundation will not be treated as having made a grant to the individual scientist for purposes of section 4945(d)(3) and (g), since the requirements of subdivision (i) of this subparagraph have been satisfied. Even if the university were not authorized to keep the funds if it is unsuccessful in attempting to employ the scientist, the foundation would not be treated as having made a grant to the individual scientist for purposes of section 4945(d)(3) and (g), since it is clear from the facts and circumstances that the selection of the particular scientist was made by the university and thus the requirements of subdivision (ii) of this subparagraph would have been satisfied.

Example (2). Assume the same facts as Example (1), except that there are a number of scientists who are qualified to administer the research project, the foundation suggests the name of the particular scientist to be employed by the university, and the university is not authorized to keep the funds if it is unsuccessful in attempting to employ the particular scientist. For purposes of section 4945(d)(3) and (g), the foundation will be treated as having made a grant to the individual scientist whose name it suggested, since it is clear from the facts and circumstances that selection of the particular scientist was made by the foundation.

Example (3). X, a private foundation, is aware of the exceptional research facilities at Y University, an organization described in section 170(b)(1)(A)(ii). Officials of X approach officials of Y with an offer to give Y a grant of $100,000 if Y will engage an adequately qualified physicist to conduct a specific research project. Y's officials accepts this proposal, and it is agreed that Y will administer the funds. After examining the qualifications of several research physicists, the officials of Y agree that A, whose name was first suggested by officials of X, is uniquely qualified to conduct the project. X's grant letter provides that X has the right to renegotiate the terms of the grant if there is a substantial deviation from such terms, such as breakdown of Y's research facilities or termination of the conduct of the project by an adequately qualified physicist. Under these circumstances, X will not be treated as having made a grant to A for purposes of section 4945(d)(3) and (g), since the requirements of subdivision (ii) of this subparagraph have been satisfied.

(5) *Earmarked grants to individuals.* A grant by a private foundation to an individual is a taxable expenditure by such foundation under section 4945(d) if—

(i) The grant is earmarked to be used for any activity described in section 4945(d)(1), (2), or (5), or is earmarked to be used in a manner which would violate section 4945(d)(3) or (4), or

(ii) Such granting foundation retains power to cause the grantee to engage in any such prohibited activity and such grant is in fact used in a manner which violates section 4945(d).

For purposes of this subdivision, a grant by a private foundation is earmarked if such grant is given pursuant to an agreement, oral or written, that the grant will be used for specific purposes.

(6) *Certain grants for purposes described in section 4945(g)(3).* If a grant is made to an individual for a purpose described in section 4945(g)(3) and such grant otherwise meets the requirements of section 4945(g), such grant shall not be treated as a taxable expenditure even if it is a scholarship or a fellowship grant which is not excludable from income under section 117 or if it is a prize or award which is includible in income under section 74.

(b) *Selection of grantees on "an objective and nondiscriminatory basis"*—(1) *In general.* For purposes of this section, in order for a foundation to establish that its grants to individuals are made on an objective and nondiscriminatory basis, the grants must be awarded in accordance with a program which, if it were a substantial part of the foundation's activities, would be consistent with:

(i) The existence of the foundation's exempt status under section 501(c)(3);

(ii) The allowance of deductions under section 170 for contributions to the granting foundation; and

(iii) The requirements of subparagraphs (2), (3), and (4) of this paragraph.

(2) *Candidates for grants.* The group from which grantees are chosen must bear a reasonable relation to the purposes of the grant. The group must be sufficiently broad so that the giving of grants to members of such group would be considered to fulfill a purpose described in section 170(c)(2)(B). However, consistent with this requirement, the foundation may impose reasonable restrictions on the group of potential grantees. For example, selection of a qualified research scientist to work on a particular project does not violate the requirements of section 4945(d)(3) merely because the foundation selects him from a group of three scientists who are experts in that field.

(3) *Selection from within group of potential grantees.* The criteria used in selecting grant recipients from the potential grantees should be related to the purpose of the grant. Thus, for example, proper criteria for selecting scholarship recipients might include (but are not limited to) the following: Prior academic performance; performance on tests designed to measure ability and aptitude for college work; recommendations from instructors; financial need; and the conclusions which the selection committee might draw from a personal interview as to the potential recipient's motivation and character.

(4) *Persons making selections.* The person or group of persons who select recipients of grants should not be in a

position to derive a private benefit, directly or indirectly, if certain potential grantees are selected over others.

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

Example (1). X Company employs 100,000 people of whom 1,000 are classified by the company as executives. The company has organized the X Company Foundation which, as its sole activity, provides 100 4-year college scholarships per year for children of the company's employees. Children of all employees (other than disqualified persons with respect to the foundation) who have worked for the X Company for at least 2 years are eligible to apply for these scholarships. In previous years, the number of children eligible to apply for such scholarships has averaged 2,000 per year. Selection of scholarship recipients from among the applicants is made by three prominent educators, who have no connection (other than as members of the selection committee) with the company, the foundation or any of the employees of the Company. The selections are made on the basis of the applicants' prior academic performance, performance on certain tests designed to measure ability and aptitude for college work, and financial need. No disproportionate number of scholarships has been granted to relatives of executives of X Company. Under these circumstances, the operation of the scholarship program by the X Company Foundation: (1) is consistent with the existence of the foundation's exempt status under section 501(c)(3) and with the allowance of deductions under section 170 for contributions to the foundation; (2) utilizes objective and nondiscriminatory criteria in selecting scholarship recipients from among the applicants; and (3) utilizes a selection committee which appears likely to make objective and nondiscriminatory selections of grant recipients.

Example (2). Assume the same facts as Example (1), except that the foundation establishes a program to provide 20 college scholarships per year for members of a certain ethnic minority. All members of this minority group (other than disqualified persons with respect to the foundation) living in State Z are eligible to apply for these scholarships. It is estimated that at least 400 persons will be eligible to apply for these scholarships each year. Under these circumstances, the operation of this scholarship program by the foundation: (1) Is consistent with the existence of the foundation's exempt status under section 501(c)(3) and with the allowance of deductions under section 170 for contributions to the foundation; (2) utilizes objective and nondiscriminatory criteria in selecting scholarship recipients from among the applicants; and (3) utilizes a selection committee which appears likely to make objective and nondiscriminatory selections of grant recipients.

(c) *Requirements of a proper procedure*—(1) *In general.* Section 4945(g) requires that grants to individuals must be made pursuant to a procedure approved in advance. To secure such approval, a private foundation must demonstrate to the satisfaction of the Commissioner that—

(i) Its grant procedure includes an objective and nondiscriminatory selection process (as described in paragraph (b) of this section);

(ii) Such procedure is reasonably calculated to result in performance by grantees of the activities that the grants are intended to finance; and

(iii) The foundation plans to obtain reports to determine whether the grantees have performed the activities that the grants are intended to finance.

No single procedure or set of procedures is required. Procedures may vary depending upon such factors as the size of the foundation, the amount and purpose of the grants and whether one or more recipients are involved.

(2) *Supervision of scholarships and fellowship grants.* With respect to any scholarships or fellowship grants, a private foundation must make arrangements with the educational institution to receive a report of the grantee's courses taken (if any) and grades received (if any) in each academic period. Such a report must be obtained from the educational institution at least once a year. In cases of grantees whose study at an educational institution does not involve the taking of courses but only the preparation of research papers or projects, such as the writing of a doctoral thesis, the foundation must receive a brief report on the progress of the paper or project at least once a year. Such a report must be approved by the faculty member supervising the grantee or by another appropriate university official. Upon completion of a grantee's study at an educational institution, a final report must also be obtained.

(3) *Grants described in section 4945(g)(3).* With respect to a grant made under section 4945(g)(3), the private foundation shall require reports on the use of the funds and the progress made by the grantee toward achieving the purposes for which the grant was made. Such reports must be made at least once a year. Upon completion of the undertaking for which the grant was made, a final report must be made describing the grantee's accomplishments with respect to the grant and accounting for the funds received under such grant.

(4) *Investigation of jeopardized grants.* Where the reports submitted under this paragraph or other information indicates that all or any part of a grant is not being used in furtherance of the purposes of such grant, the foundation is under a duty to investigate. While conducting its investigation, the foundation must withhold further payments to the extent possible until it has determined that no part of the grant has been used for improper purposes and that it appears likely that no part of the grant will be so used in the future. If the foundation determines that any part of the grant has been used for improper purposes, it must withhold further payments until the diverted funds have been restored and it has received assurances that future diversions will not occur. In cases in which the diverted funds are not restored, the foundation will be treated as having made a taxable expenditure unless it takes all reasonable and appropriate steps to recover the diverted funds and withholds all future payments upon the particular grant and other grants to the same grantee. If the foundation fails to take all such steps, the amount of the taxable expenditure shall be the amount of the diversion plus the amount of any future payments to the same grantee. If the foundation does take all such steps but the diverted funds are not restored or assurances that future diversions will not occur are not made by the grantee, the amount of the taxable expenditure shall be the amount of any future payments to the same grantee.

(5) *Retention of records.* A private foundation shall retain records pertaining to all grants to individuals for purposes described in section 4945(d)(3). Such records shall include:

(i) All information the foundation secures to evaluate the qualification of potential grantees;

(ii) Identification of grantees;

(iii) Specification of the amount and purpose of each grant; and

(iv) The followup information which the foundation obtains in complying with subparagraphs (2), (3), and (4) of this paragraph.

(6) *Example.* The provisions of paragraphs (b) and (c) of this section may be illustrated by the following example:

Example. The X Foundation grants 10 scholarships each year to graduates of high schools in its area to permit the recipients to attend college. It makes the availability of its scholarships known by oral or written communications each year to the principals of three major high schools in the area. The foundation obtains information from each high school on the academic qualifications, background, and financial need of applicants. It requires that each applicant be recommended by two of his teachers or by the principal of his high school. All application forms are reviewed by the foundation officer responsible for making the awards, and scholarships are granted on the basis of the academic qualifications and financial need of the grantees. The foundation obtains annual reports on the academic performance of the scholarship recipient from the college or university which he attends. It maintains a file on each scholarship awarded, including the original application, recommendations, a record of the action taken on the application, and the reports on the recipient from the institution which he attends. The described procedures of the X Foundation for the making of grants to individuals qualify for Internal Revenue Service approval under section 4945(g).

(d) *Submission of grant procedure*—(1) *Contents of request for approval of grant procedures.* A request for advance approval of a foundation's grant procedures must fully describe the foundation's procedures for awarding grants and for ascertaining that such grants are used for the proper purposes. The approval procedure does not contemplate specific approval of particular grant programs but instead one-time approval of a system of standards, procedures, and followup designed to result in grants which meet the requirements of section 4945(g). Thus, such approval shall apply to a subsequent grant program as long

as the procedures under which it is conducted do not differ materially from those described in the request to the Commissioner. The request must contain the following items:

(i) A statement describing the selection process. Such statement shall be sufficiently detailed for the Commissioner to determine whether the grants are made on an objective and nondiscriminatory basis under paragraph (b) of this section.

(ii) A description of the terms and conditions under which the foundation ordinarily makes such grants, which is sufficient to enable the Commissioner to determine whether the grants awarded under such procedures would meet the requirements of paragraph (1), (2), or (3) of section 4945(g).

(iii) A detailed description of the private foundation's procedure for exercising supervision over grants, as described in paragraph (c) (2) and (3) of this section.

(iv) A description of the foundation's procedures for review of grantee reports, for investigation where diversion of grant funds from their proper purposes is indicated, and for recovery of diverted grant funds, as described in paragraph (c)(4) of this section.

(2) *Place of submission.* Requests for approval of grant procedures shall be submitted to the District Director of the district in which the foundation's principal place of business is located.

(3) *Internal Revenue Service action on request for approval of grant procedures.* If, by the 60th day after a request for approval of grant procedures has been properly submitted to the Internal Revenue Service, the organization has not been notified that such procedures are not acceptable, such procedures shall be considered as approved from the date of submission until receipt of actual notice from the Internal Revenue Service that such procedures do not meet the requirements of this section. If an "expenditure responsibility" grant is made after notification to the organization by the Internal Revenue Service that the procedures under which the grant is made are not acceptable, such grant is a taxable expenditure under this section.

(e) *Effective dates*—(1) *In general.* This section shall apply to all grants to individuals for travel, study or other similar purposes which are made by private foundations more than 90 days after [insert date that final regulations under section 4945 are filed by the Office of the Federal Register].

(2) *Transitional rules*—(i) *Grants committed prior to January 1, 1970.* Section 4945 (d)(3) and (g) and this section shall not apply to a grant for section 170(c)(2)(B) purposes made on or after January 1, 1970, if the grant was made pursuant to a commitment entered into prior to such date, but only if such commitment was made in accordance with the foundation's usual practices and is reasonable in amount in light of the purposes of the grant. For purposes of this subdivision, a commitment will be considered entered into prior to January 1, 1970, if prior to such date, the amount and nature of the payments to be made and the name of the payee were entered on the records of the payor, or were otherwise adequately evidenced, or the notice of the payment to be received was communicated to the payee in writing.

(ii) *Grants awarded on or after January 1, 1970.* In the case of a grant awarded on or after January 1, 1970, but prior to the expiration of 90 days after [insert date that final regulations under section 4945 are filed by the Office of the Federal Register], and paid within 18 months after the award of such grant, the requirements of section 4945(g) that an indivdual grant be awarded on an objective and nondiscriminatory basis pursuant to a procedure approved in advance by the Commissioner will be deemed satisfied if the grantor utilizes any procedure in good faith in awarding a grant to an individual which, in fact, is reasonably calculated to provide objectivity and nondiscrimination in the awarding of such grant and to result in a grant which complies with the conditions of section 4945(g) (1), (2), or (3).

§ 53.4945–5 Grants to organizations.

(a) *Grants to nonpublic organizations*—(1) *In general.* Under section 4945(d)(4) the term "taxable expenditure" includes any amount paid or incurred by a private foundation as a grant to an organization (other than an organization described in section 509(a)(1), (2), or (3)), unless the private foundation exercises expenditure responsibility with respect to such grant in accordance with section 4945(h). However, the granting foundation does not have to exercise expenditure responsibility with respect to amounts granted to organizations described in section 4945(f).

(2) *"Grants" defined.* For a description of the term "grants", see § 53.4945–4(a)(2).

(3) *Section 509(a) (1), (2), and (3) organizations.* See section 508(b) and the regulations thereunder for rules relating to when a grantor may rely on a potential grantee's characterization of its status as set forth in the notice described in section 508(b).

(4) *Certain "public organizations.* For purposes of this section, an organization will be treated as a section 509(a)(1) organization if:

(i) It qualifies as such under paragraph (a) of § 1.509(a)–2; or

(ii) It is an organization described in section 170(c)(1) or 511(a)(2)(B), even if it is not described in section 501(c)(3).

(5) *Certain earmarked grants*—(i) *In general.* A grant by a private foundation to a grantee organization which the grantee organizations uses to make payments to another organization (the secondary grantee) shall not be regarded as a grant by the private foundation to the secondary grantee if the foundation does not earmark the use of the grant for any named secondary grantee and does not retain power to cause the selection of the secondary grantee by the organization to which it has given the grant. For purposes of this subdivision, a grant described herein shall not be regarded as a grant by the foundation to the secondary grantee even though such foundation has reason to believe that certain organizations would derive benefits from such grant so long as the original grantee organization exercises control, in fact, over the selection process and actually makes the selection completely independently of the private foundation.

(ii) *To governmental agencies.* If a private foundation makes a grant to an organization described in section 170(c)(1) and such grant is earmarked for use by another organization, the granting foundation need not exercise expenditure responsibility with respect to such grant if the section 170(c)(1) organization satisfies the Commissioner in advance that:

(*a*) Its grant-making program is in furtherance of a purpose described in section 170(c)(2)(B), and

(*b*) The section 170(c)(1) organization exercises "expenditure responsibility" in a manner that would satisfy this section if it applied to such section 170(c)(1) organization.

However, with respect to such grant, the granting foundation must make the reports required by section 4945(h)(3) and paragraph (d) of this section, unless such grant is earmarked for use by an organization described in section 509(a)(1), (2), or (3).

(b) *Expenditure responsibility*—(1) *In general.* A private foundation is not an insurer of the activity of the organization to which it makes a grant. A private foundation will be considered to be exercising "expenditure responsibility" under section 4945(h) as long as it exerts all reasonable efforts and establishes adequate procedures—

(i) To see that the grant is spent solely for the purpose for which made,

(ii) To obtain full and complete reports from the grantee on how the funds are spent, and

(iii) To make full and detailed reports with respect to such expenditures to the Commissioner.

(2) *Pregrant inquiry.* Before making a grant to an organization with respect to which expenditure responsibility must be exercised under this section, a private foundation should conduct a limited inquiry concerning the potential grantee. Such inquiry should be complete enough to give a reasonable man assurance that the grantee will use the grant for the proper purposes. The inquiry should concern itself with matters such as: (i) The identity, prior history, and experience (if any) of the grantee organization and its managers; and (ii) any knowledge which the private foundation has (based on prior experience or otherwise) of, or other information which is readily available concerning, the management, activities, and practices of the grantee organization. The scope of the inquiry might be expected to vary from case to case depending upon the size and purpose of the grant and

the period over which it is to be paid.

(3) *Terms of grants.* In order to meet the expenditure responsibility requirements of section 4945(h), a private foundation must require that each grant to an organization, with respect to which expenditure responsibility must be exercised under this section, be made subject to a written commitment signed by an appropriate officer, director or trustee of the grantee organization. Such commitment must include an agreement by the grantee—

(i) To repay any portion of the amount granted which is not used for the purposes of the grant,

(ii) To submit full and complete annual reports on the manner in which the funds are spent and the progress made in accomplishing the purposes of the grant, except as provided in paragraph (c)(2) of this section,

(iii) To maintain its books and records in a manner consistent with paragraph (c)(3) of this section, and to make such books and records available to the grantor at reasonable times, and

(iv) Not to use any of the funds—

(*a*) To carry on propaganda, or otherwise to attempt to influence legislation (within the meaning of section 4945(d)(1),

(*b*) To influence the outcome of any specific public election, or to carry on, directly or indirectly, any voter registration drive (within the meaning of section 4945(d)(2)),

(*c*) For any grant which does not comply with the requirements of section 4945(d)(3) or (4), or

(*d*) For any purpose other than one specified in section 170(c)(2)(B).

The agreement must also clearly specify the purposes of the grant, and such purposes must be described in section 170(c)(2)(B). Such purposes may include contributing for capital endowment, for the purchase of capital equipment, or for general support provided that neither the grants nor the income therefrom may be used for purposes other than those described in section 170(c)(2)(B).

(c) *Reports from grantees*—(1) *In general.* In the case of grants described in section 4945(d)(4), except as provided in subparagraph (2) of this paragraph, the granting private foundation shall require reports on the use of the funds and the progress made by the grantee toward achieving the purposes for which the grant was made. The grantee shall make such reports at least once a year. Upon completion of the use of the grant funds, the grantee must make a final report detailing all expenditures made from such funds (including salaries, travel, and supplies) and indicating the progress made toward the goals of the grant. The grantor need not conduct any independent verification of such reports unless it has reason to doubt their accuracy or reliability.

(2) *Capital endowment grants to exempt private foundations.* If a private foundation makes a grant described in section 4945(d)(4) to a private foundation which is exempt from taxation under section 501(a) for endowment, for the purchase of capital equipment, or for other capital purposes, the grantor foundation shall require reports from the grantee on the use of the principal and the income (if any) from the grant funds. The grantee shall make such reports annually for its taxable year in which the grant was made and the immediately succeeding 2 taxable years. Unless it is reasonably apparent to the grantor before the end of such second succeeding taxable year that the principal, the income from the grant funds or the equipment purchased with the grant funds is being used for purposes which would result in liability for tax under section 4945(d), the grantor may then allow such reports to be discontinued.

(3) *Grantees' accounting and recordkeeping procedures.* Although the grantee need not segregate grant funds physically unless the grantor requires such segregation, such funds must be shown separately on the grantee's books. Expenditures made in furtherance of the grant purposes must be charged against the grant, and records of such expenditures adequate to enable the use of such funds to be checked readily must be kept. The records of expenditures, as well as copies of the reports submitted to the grantor, must be kept for at least 4 years after completion of the use of the grant funds. If physical segregation has not been required and the grantee's records are not adequate to determine when a particular grant has been fully expended, the grantor shall use a first-in, first-out method in determining the allocation of the grantee's expenditures to grants received by the grantee to the extent such method is consistent with the available records of the grantee.

(d) *Reporting to Internal Revenue Service by grantor*—(1) *In general.* To satisfy the report-making requirements of section 4945(h)(3), a granting foundation must provide the required information on its information return (Form 990) for each taxable year with respect to each grant made during the taxable year which is subject to the expenditure responsibility requirements of section 4945(h). Such information must also be provided on such return with respect to each grant subject to such requirements upon which any amount or any report is outstanding at any time during the taxable year. However, with respect to any grant made for endowment or other capital purposes, the grantor must provide the required information only for any taxable year for which the grantor must require a report from the grantee under paragraph (c)(2) of this section.

(2) *Contents of report.* The report required by this paragraph shall include the following information:

(i) The name and address of the grantee,

(ii) The date and amount of the grant,

(iii) The purpose of the grant,

(iv) The amounts expended by the grantee,

(v) Whether the grantee has diverted any portion of the funds (or the income therefrom in the case of an endowment grant) from the purpose of the grant (to the knowledge of the grantor),

(vi) The dates of any reports received from the grantee,

(vii) The relationship (if any) of the grantee to any foundation manager or substantial contributor of the grantor, and

(viii) The date and results of any verification of the grantee's reports undertaken by the grantor or by others at the direction of the grantor.

(3) *Recordkeeping requirements.* In addition to the information included on the information return, a granting foundation shall make available at its principal office each of the following items:

(i) A copy of the agreement covering each "expenditure responsibility" grant made during the taxable year,

(ii) A copy of each report received during the taxable year from each grantee on any "expenditure responsibility" grant, and

(iii) A copy of each report made by the grantor's personnel or independent auditors of any audits or other investigations made during the taxable year with respect to any "expenditure responsibility" grant.

(e) *Violations of expenditure responsibility requirements*—(1) *Failures by grantee*—(i) *Diversions.* Any diversion of grant funds (or the income therefrom in the case of an endowment grant) by the grantee to any use not in furtherance of a purpose specified in the grant may result in the diverted portion of such grant being treated as a taxable expenditure of the grantor under section 4945(d)(4). However, the amount of such diversion (for example, the income diverted in the case of an endowment grant, or the rental value of capital equipment for the period of time for which diverted) will not be considered a taxable expenditure if:

(*a*) The grant was made in accordance with the requirements of paragraph (b) of this section,

(*b*) The grantee furnished the reports required by paragraph (c) of this section and, with respect to paragraph (c)(1) of this section, such reports were furnished at least until the time of diversion,

(*c*) The grantor has fully complied with the reporting provisions of paragraph (d) of this section requiring reports to the Commissioner and has used due diligence in investigating any indications that grant funds might be diverted,

(*d*) The grantor has withheld all future payments upon the diverted grant and any other grant to the same grantee, and

(*e*) The grantor has taken all reasonable and appropriate steps to recover the amount of the diversion from the grantee.

If the foundation fails to take all steps described in (*e*) of this subdivision, the amount of the taxable expenditure shall be the amount of the diversion plus the amount of any future payments to the same grantee. If the foundation does take all such steps but the amount of

the diversion is not restored or assurances that future diversions will not occur are not made by the grantee, the amount of the taxable expenditure shall be the amount of any future payments to the same grantee.

(ii) *Failure to make reports.* A failure by the grantee to make the reports required by paragraph (c) of this section (or the making of inadequate reports) shall result in the grant's being treated as a taxable expenditure by the grantor unless the grantor:

(a) Has made the grant in accordance with paragraph (b) of this section,

(b) Has complied with the reporting requirements contained in paragraph (d) of this section,

(c) Makes a reasonable effort to obtain the required report, and

(d) Withholds all future payments on this grant and on any other grant to the same grantee until such report is furnished.

(2) *Violations by the grantor.* In addition to the situations described in subparagraph (1) of this paragraph, a grant which is subject to the expenditure responsibility requirements of section 4945 (h) will be considered a taxable expenditure of the granting foundation if the grantor—

(i) Fails to make a pregrant inquiry as described in paragraph (b)(2) of this section,

(ii) Fails to make the grant in accordance with a procedure consistent with the requirements of paragraph (b)(3) of this section, or

(iii) Fails to report to the Internal Revenue Service as provided in paragraph (d) of this section.

(f) *Effective dates*—(1) *In general.* This section shall apply to all grants which are subject to the expenditure responsibility requirements of section 4945 (d)(4) and (h) and which are made by private foundations more than 90 days after [insert date that final regulations under section 4945 are filed by the Office of the Federal Register].

(2) *Transitional rules*—(i) *Certain grants awarded prior to May 27, 1969.* Section 4945 (d)(4) and (h) and this section shall not apply to a grant to a private foundation which is not controlled, directly or indirectly, by the grantor foundation or one or more disqualified persons (as defined in section 4946) with respect to the grantor foundation, provided that such grant—

(a) Is made pursuant to a written commitment which was binding on May 26, 1969, and at all times thereafter,

(b) Is made for one or more of the purposes described in section 170(c)(2)(B), and

(c) Is to be paid out to such grantee foundation on or before December 31, 1974.

(ii) *Grants or expenditures committed prior to January 1, 1970.* Except as provided in paragraph (e)(2)(i) of § 53.4945–4, section 4945 shall not apply to a grant or an expenditure for section 170(c)(2)(B) purposes made on or after January 1, 1970, if the grant or expenditure was made pursuant to a commitment entered into prior to such date, but only if (in the case of a grant or an expenditure other than an unlimited general-purpose grant to an organization) such commitment is reasonable in amount in light of the purposes of the grant. For purposes of this subdivision, a commitment will be considered entered into prior to January 1, 1970, if prior to such date, the amount and nature of the payments to be made and the name of the payee were entered on the records of the payor, or were otherwise adequately evidenced, or the notice of the payment to be received was communicated to the payee in writing.

(iii) *Grants awarded on or after January 1, 1970.* Paragraphs (b)(2), (b)(3), and (c) of this section shall not apply to grants awarded on or after January 1, 1970, but prior to the expiration of 90 days after [insert date that final regulations under section 4945 are filed by the Office of the Federal Register], if the grantor had made reasonable efforts, and has established adequate procedures such as a prudent man would adopt in managing his own property, to see that the grant is spent solely for the purpose for which made, to obtain full and complete reports from the grantee on how the funds are spent, and to make full and detailed reports with respect to such grant to the Commissioner.

§ 53.4945–6 Expenditures for noncharitable purposes.

(a) *In general.* Under section 4945 (d)(5) the term "taxable expenditure" includes any amount paid or incurred by a private foundation for any purpose other than one specified in section 170 (c)(2)(B). Thus, ordinarily only an expenditure for an activity which, if it were a substantial part of the organization's total activities, would cause loss of tax exemption is a taxable expenditure under section 4945(d)(5). For purposes of this section and §§ 53.4945–1 through 53.4945–5, purposes described in section 170(c)(2)(B) shall be treated as including purposes described in section 170(c)(1) or (in the case of a charitable remainder trust described in section 664) section 170(c)(3)(B), (4), or (5).

(b) *Particular expenditures.* (1) The following types of expenditures will not be treated as taxable expenditures under section 4945(d)(5):

(i) Expenditures to acquire investments entered into for the purpose of obtaining income or funds to be used in furtherance of purposes described in section 170(c)(2)(B),

(ii) Reasonable expenses with respect to investments described in subdivision (i) of this subparagraph,

(iii) Payment of taxes,

(iv) Any expenses which qualify as deductions in the computation of unrelated business income tax under section 511, or

(v) Any payment which constitutes a qualifying distribution under section 4942(g).

(2) Conversely, any expenditure for unreasonable administrative expenses, including compensation and consultant fees, is a taxable expenditure under section 4945(d)(5). The determination whether an expenditure is unreasonable shall depend upon the facts and circumstances of the particular case.

[FR Doc.71–3873 Filed 3–19–71;8:46 am]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[43 CFR Parts 1840, 1850, 4110, 9230]

FEDERAL RANGE CODE FOR GRAZING DISTRICTS

Hearings and Appeals Procedures

These amendments are proposed to conform the regulations governing hearings and appeals in grazing cases within grazing districts established under the act of June 28, 1934, as amended, 43 U.S.C. section 315 (1964), to the reorganization of the appellate structure in the Department. The Secretary has exercised supervisory authority over appeals to the Director, Bureau of Land Management, including grazing cases within grazing districts (see 35 F.R. 10012, June 18, 1970). The Secretary has also delegated authority to decide these appeals finally for the Department to the Board of Land Appeals in the Office of Hearings and Appeals (Release No. 1213 of July 17, 1970 (211 DM 13), published on July 28, 1970, 35 F.R. 12081).

The proposed regulations change the time for filing a notice of appeal from a hearing examiner's decision under the Federal Range Code for Grazing Districts from 10 days to 30 days from receipt of the decision. They provide for the application of a grace period for filing appeal documents at all stages of the appeal process under this Code. Consistent with hearings procedures in other public lands cases generally, they provide that reporter's fees will be paid by the Bureau of Land Management, with each party paying for any copies of the transcript obtained by him. Other minor additions and changes have also been made for clarity and for uniformity with appeals procedures in public lands cases generally.

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rule making process. Accordingly, interested persons may submit written comments, suggestions, or objections with respect to the proposed amended regulations to the Director, Office of Hearings and Appeals, Department of the Interior, 4015 Wilson Boulevard, Arlington, VA 22203, within 60 days from the date of publication of this notice in the FEDERAL REGISTER.

Dated: March 15, 1971.

ROGERS C. B. MORTON,
Secretary of the Interior.

PART 1840—APPEALS PROCEDURES

Subpart 1840—Appeals Procedures; General

1. Paragraph (b) of § 1840.0–6 is amended to delete the last sentence. The amended paragraph reads as follows:

§ 1840.0–6 Documents.

* * * * *

(b) *Grace period for filing.* Whenever a document is required under this part to be filed within a certain time and it is not received in the proper office, as provided in paragraph (a) of this section, during that time, the delay in filing will be waived if the document is filed not later than 10 days after it was required to be filed and it is determined that the document was transmitted or probably transmitted to the office in which the filing is required before the end of the period in which it was required to be filed. Determinations under this paragraph shall be made by the officer before whom is pending the appeal in connection with which the document is required to be filed.

* * * * *

Subpart 1842—Appeals to the Board of Land Appeals

2. Section 1842.2 is amended to read as follows:

§ 1842.2 Who may appeal.

Except as otherwise provided in Group 2400 of this chapter, except to the extent that decisions of Bureau of Land Management officers must first be appealed to a hearing examiner under Subpart 1853 and Part 4110 of this chapter, and except where a decision has been approved by the Secretary, any party adversely affected by a decision of an officer of the Bureau of Land Management or of a hearing examiner shall have a right of appeal to the Board.

3. Paragraph (a) of § 1842.4 is amended to delete the last sentence. The amended paragraph reads as follows:

§ 1842.4 Appeal; how taken, mandatory time limit.

(a) A person who wishes to appeal to the Board must file in the office of the officer who made the decision (not the Board) a notice that he wishes to appeal. The notice of appeal must give the serial number or other identification of the case and must be transmitted in time to be filed in the office where it is required to be filed within 30 days after the person taking the appeal is served with the decision from which he is appealing. The notice of appeal may include a statement of the reasons for the appeal and any arguments the appellant wishes to make.

* * * * *

PART 1850—HEARINGS PROCEDURES

Subpart 1850—Hearings Procedures; General

4. The headings of the following numbered sections listed in the table of contents to Part 1850, Subpart 1853, are amended to read as follows:

Sec.
1853.5 Conduct of hearing; reporter's fees; transcript.
1853.6 Findings of fact and decision by examiner; notice; submission to Board of Land Appeals for decision.
1853.7 Appeals to the Board of Land Appeals.

5. Section 1850.0–5 is amended by adding two new paragraphs, (f) and (g), to the section, to read as follows:

§ 1850.0–5 Definitions.

* * * * *

(f) "State Director" means the supervising Bureau of Land Management officer for the State in which the particular range lies, or his authorized agent.

(g) "District manager" means the supervising Bureau of Land Management officer of the grazing district in which the particular range lies, or his authorized agent.

6. Paragraph (b) of § 1850.0–6 is amended to read as follows:

§ 1850.0–6 Documents.

* * * * *

(b) *Grace period for filing.* Whenever a document is required under this part to be filed within a certain time and it is not received in the proper office, as provided in paragraph (a) of this section, during that time, the delay in filing will be waived if the document is filed not later than 10 days after it was required to be filed and it is determined that the document was transmitted or probably transmitted to the office in which the filing is required before the end of the period in which it was required to be filed. Determinations under this paragraph shall be made by the officer before whom is pending the appeal or contest in connection with which the document is required to be filed. This paragraph does not apply to requests for postponement of hearings under §§ 1852.3–1 and 1852.3–3.

* * * * *

Subpart 1853—Grazing Proceedings (Inside Grazing Districts)

7. The heading of § 1853.5 is amended and a new paragraph (d) is added to the section, to read as follows:

§ 1853.5 Conduct of hearing; reporter's fees; transcript.

* * * * *

(d) The reporter's fees shall be borne by the Bureau. Each party shall pay for any copies of the transcript obtained by him. Unless the parties stipulate to a summary of the evidence, the Government will file the original copy of the transcript with the case record.

8. The heading of § 1853.6 is amended by changing "Director" to "Board of Land Appeals," and paragraph (b) is revised to read as follows:

§ 1853.6 Findings of fact and decision by examiner; notice; submission to Board of Land Appeals for decision.

* * * * *

(b) The Board of Land Appeals may require, in any designated case, that the examiner make only a recommended decision and that such decision and the record be submitted to the Board for consideration. The recommended decision shall meet all the requirements for a decision set forth in paragraph (a) of this section. The Board shall then make the decision in the case. This decision shall include such additional findings and conclusions as do not appear in the recommended decision and the record shall include such rulings on proposed findings and conclusions submitted by the parties as have not been made by the examiner.

9. The heading of § 1853.7 is amended, paragraphs (a), (b), and (c) are revoked, and the section is revised to read as follows:

§ 1853.7 Appeals to the Board of Land Appeals.

Any party affected by the examiner's decision, including the State Director, has the right to appeal to the Board of Land Appeals, in accordance with the procedures and rules set forth in Part 1840 of this chapter.

10. Paragraph (b) of § 1853.8 is amended to read as follows:

§ 1853.8 Effect of decision suspended during appeal.

* * * * *

(b) When the orderly administration of the range or other public interest so requires, (1) the district manager may provide initially in his decision that it shall be in full force and effect pending decision on an appeal therefrom; (2) the examiner may provide in the decision on an appeal before such officer that it shall be in full force and effect pending decision on any further appeal; (3) the Board may provide by interim order that any decision from which an appeal is taken shall be in full force and effect pending final decision on the appeal. Any action taken by the district manager pursuant to a decision shall be subject to modification or revocation by the examiner or the Board upon an appeal from the decision. In order to insure the exhaustion of administrative remedies before resort to court action, no decision which at the time of its rendition is subject to appeal to a superior authority in the Department shall be considered final so as to be agency action subject to judicial review under 5 U.S.C. section 704, unless it has been made effective pending a decision on appeal in the manner provided in this paragraph.

PART 4110—GRAZING ADMINISTRATION (INSIDE GRAZING DISTRICTS) (THE FEDERAL RANGE CODE FOR GRAZING DISTRICTS)

Subpart 4110—Grazing Administration (Inside Grazing Districts); General

11. Section 4110.0–5 is amended by redesignating paragraph (d) as paragraph (e); redesignating paragraph (e) as (f); redesignating paragraphs (f), (g), (h), (i), (j), (k), (l), (m), (n), (o), (p), and (q) as paragraphs (h), (i), (j),

(k), (l), (m), (n), (o), (p) (q), (r), and (s), respectively; inserting new paragraphs (d) and (g); and redesignating paragraph (r) as (t) and amending that paragraph. The revised section reads as follows:

§ 4110.0–5 Definitions.

* * * * *

(d) "Board of Land Appeals" means the Board in the Office of Hearings and Appeals, Office of the Secretary, authorized to decide finally for the Department appeals to the Secertary arising under this part.

* * * * *

(g) "District manager" means the supervising Bureau of Land Management officer of the grazing district in which the particular range lies, or his authorized agent.

* * * * *

(t) "Adjudication of grazing privileges" is the determination of the qualifications for grazing privileges of the base properties, land (paragraph (m)(1) of this section) or water (paragraph (r)(1) of this section) offered in support of applications for grazing licenses or permits in a range unit or area, and the subsequent equitable apportionment among the applicants of the forage production within the proper grazing season and capacity of the particular unit or area of Federal range, and acceptance by the applicants of the grazing privileges based upon the apportionment or its subtantiation in a decision by an examiner or the Board of Land Appeals upon appeal. (Applicable provisions are Subpart 4111 and § 4115.2–3.)

Subpart 4111—Awards of Grazing Privileges

12. Paragraph (f) of § 4111.4–3 is amended to read as follows:

§ 4111.4–3 Reductions.

* * * * *

(f) Federal range lands to be used under a license or permit are subject to classification and disposition under the provisions of sections 7 and 14 of the act, and to withdrawal, appropriation, selection, or other disposal under the public land laws. Reasonable notice of a pending or proposed classification, withdrawal or other disposal which might result in a diminution of the available Federal range will be given to the licensee or permittee of such lands, consistent with Parts 2450 and 2460 of this chapter, and subject to the right of protest or appeal to the Board of Land Appeals, as may be provided in such notice and Parts 1840 and 1850 of this chapter.

Subpart 4115—Records and Administrative Procedures

13. Subparagraph (6) of § 4115.2–1(j) is amended to read as follows:

§ 4115.2–1 License and permit procedures; requirements and conditions.

* * * * *

(j) * * *

(6) Any adverse action by the District Manager on an application for suspension of a license or permit under this paragraph may be appealed by the licensee or permittee to the Board of Land Appeals, in accordance with Part 1840 of this chapter.

* * * * *

14. Section 4115.2–3 is amended to read as follows:

§ 4115.2–3 Appeals and hearings.

Any applicant whose interest is adversely affected by a final decision of the District Manager may appeal to an Examiner in accordance with § 1853.1 of this chapter. The conduct of hearings is provided for in §§ 1853.2 through 1853.6 of this chapter. Appeals from the Examiner's decision may be made to the Board of Land Appeals pursuant to § 1853.7 and in accordance with Part 1840 of this chapter.

15. Item (*b*) of § 4115.2–5(a)(7)(ii) is revised to read as follows:

§ 4115.2–5 Range improvements and contributions.

(a) * * *

(7) * * *

(ii) * * *

(*b*) The refusal or failure of the land applicant to pay the licensee, permittee, or other party entitled thereto, in accordance with the agreement or in the amount fixed by the District Manager and within the time allowed, shall be just cause for the rejection of an application or for the cancellation of any rights or interests in the lands acquired by the applicant by reason of the allowance of his application. Such rejection or cancellation shall be subject to the right of appeal directly to the Board of Land Appeals, in accordance with Part 1840 of this chapter.

* * * * *

PART 9230—TRESPASS

Subpart 9239—Kinds of Trespass

16. Paragraph (h) of § 9239.3–2 is amended to read as follows:

§ 9239.3–2 Inside grazing districts.

* * * * *

(h) *Appeals.* Appeal from the decision of the examiner to the Board of Land Appeals of any matter under this § 9239.3–2, shall be made in accordance with § 1853.7 and Part 1840 of this chapter.

[FR Doc.71–3860 Filed 3–19–71;8:46 am]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 73]

[Docket No. 19144]

FM BROADCAST STATIONS

Table of Assignments, Cayce, S.C., etc.; Order Extending Time for Filing Comments and Reply Comments

In the matter of amendment of § 73.202(b), table of assignments, FM stations (Cayce, Columbia, and Burnettown, S.C.), Docket No. 19144; RM–1376, RM–1452.

1. This proceeding was begun by notice of proposed rule making (FCC 71–110) adopted February 3, 1971, released February 4, 1971, and published in the FEDERAL REGISTER February 10, 1971, 36 F.R. 2801. The dates for filing comments and reply comments are March 16, 1971, and March 26, 1971, respectively.

2. On March 12, 1971, Midland Valley Investment Co., Inc. (Midland Investment), filed a request to extend the time for filing comments and reply comments to April 5, 1971, and April 15, 1971, respectively. Midland Investment states that due to press of other business it is unable to prepare the necessary information in order to file a meaningful response by the deadline date.

3. We are of the view that the additional time is warranted and would serve the public interest. *Accordingly, it is ordered,* That the time for filing comments and reply comments in Docket 19144 is extended to and including April 5, 1971, and April 15, 1971, respectively.

4. This action is taken pursuant to authority found in sections 4(i), 5(d)(1), and 303(r) of the Communications Act of 1934, as amended, and § 0.281(d)(8) of the Commission's rules.

Adopted: March 15, 1971.

Released: March 17, 1971.

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

[FR Doc.71–3902 Filed 3–19–71;8:49 am]

FEDERAL MARITIME COMMISSION

[46 CFR Parts 503, 510, 543]

[Docket No. 71–22]

SCHEDULE OF FEES AND CHARGES

Notice of Proposed Rule Making

Notice is hereby given that the Federal Maritime Commission is considering the establishment of fees for licensing and regulatory activities which are currently not subject to any charges, and the revision of existing fees.

In the provisions of title V of the Independent Offices Appropriations Act of 1952 (31 U.S.C. 483(a)), hereinafter referred to as "Title V",[1] Congress has stated that "any work, service, publication, report, document, benefit, privilege, authority, use, franchise, license, permit, certificate, registration, or similar thing of value or utility performed, furnished, provided, granted, prepared, or issued by any Federal agency * * * to or for any person * * * shall be self-sustaining to the full extent possible." In order to bring about the accomplishment of this objective, title V authorizes the head of each

[1] Title V has been found to be a constitutional delegation of authority by the Congress to the independent regulatory agencies to fix and assess fees. Aeronautical Radio, Inc. v. United States, 335 F. 2d 304 (7th Cir. 1964), cert. denied, 379 U.S. 966 (1965).

agency to prescribe by regulation such fees and charges as he shall determine "to be fair and equitable taking into consideration direct and indirect cost to the government, value to the recipient, public policy or interest served and other pertinent facts."

The enabling legislation referred to above also provides that the fees and charges shall be as uniform as practicable and subject to such policies as the President may prescribe. On September 23, 1959, the Bureau of the Budget, now the Office of Management and Budget, operating on behalf of the President, issued Circular No. A–25, which sets forth general policies for developing a fair, equitable and uniform system of charges for certain Government services and property so as to implement the applicable provisions of title V. Essentially, Circular No. A–25 requires that a reasonable charge be made to each recipient for a measurable unit or amount of Federal Government service from which he derives a benefit in order that the Government recover the full cost of rendering that service. The circular further calls for a periodical reassessment of costs, with related adjustment of fees, if necessary, and the establishment of new fees where none exist.

The Federal Maritime Commission, in conducting its regulatory activities, conveys special benefits to identifiable recipients above and beyond those which accrue to the public at large. In fairness to the general taxpayer, who bears the burden of supporting Federal agencies, the Government has, as evidenced above, adopted the policy that the recipient of special benefits conveyed by a Federal agency should pay a reasonable charge for the benefits received. In accordance with this policy, the Commission has determined that the public interest would be served by the establishment of a fair and equitable schedule of fees for its licensing and regulatory activities, thereby recouping for the Government a portion of the Commission's costs of regulating the maritime industry.

Having ascertained certain services for which heretofore no fees were prescribed and which services are of "value or utility" to the recipient, and are performed at his request, the Commission proposes to adopt a schedule which will prescribe fees for such services and also incorporate existing fees and charges, adjusted to reflect the increased costs of the Commission's operations. In arriving at the proposed schedule of fees, considerable effort has been directed toward selecting those services provided by the Commission which are readily identifiable and assigning to each a fair and equitable assessment.

In considering the amount of the individual fees, the Commission has endeavored, by balancing the staff and time involved, the value of the service to the recipient, and the public interest served, to determine the fair and equitable share of costs, which in the judgment of the Commission, should be borne by those who request the services and benefit from them.

For the sake of clarity and organization, fees and charges already promulgated by the Commission and contained in Part 503—Public Information, and Part 510—Licensing of Independent Ocean Freight Forwarders, are proposed to be amended and transferred to proposed new Part 543.

Therefore, pursuant to the provisions of section 4 of the Administrative Procedure Act (5 U.S.C. 553), section 43 of the Shipping Act, 1916 (46 U.S.C. 841a), and title V of the Independent Offices Appropriations Act of 1952 (31 U.S.C. 483(a)), as implemented by Budget Circular A–25, dated September 23, 1959, notice is hereby given that the Federal Maritime Commission proposes to amend Title 46 of the Code of Federal Regulations:

I. By adding a new Part 543—Schedule of Fees and Charges, which would read as follows:

PART 543—SCHEDULE OF FEES AND CHARGES

Sec.
543.1 Scope; authority.
543.2 General.
543.3 Independent ocean freight forwarder fees.
543.4 Passenger vessel certification fees.
543.5 Tariff filing fees.
543.6 Special permission application fee.
543.7 Agreement filing fee.
543.8 Fees for special services.

AUTHORITY: The provisions of this Part 543 issued under section 43 of the Shipping Act, 1916 (46 U.S.C. 841(a)), and Title V of the Independent Offices Appropriations Act of 1952 (31 U.S.C. 483(a)).

§ 543.1 Scope; authority.

(a) This part establishes the various fees and charges which will be assessed for the issuance of licenses and certificates and the performance of other regulatory services by the Federal Maritime Commission.

(b) The provisions of this part are issued pursuant to the authority contained in title V of the Independent Offices Appropriations Act of 1952 (31 U.S.C. 483 (a)) and in accordance with the guidelines set forth in Circular No. A–25 issued on September 23, 1959 by the Bureau of the Budget, now the Office of Management and Budget. Title V of the Independent Offices Appropriations Act of 1952 provides that any service rendered by a Federal agency to or for any person shall be performed on a self-sustaining basis to the fullest extent possible and, further, authorizes each Federal agency to prescribe by regulation such fees as it shall determine to be fair and equitable. Budget Circular No. A–25, in setting out guidelines to implement the enabling statute referred to above essentially requires that a reasonable charge be made to each recipient for a measurable unit or amount of Federal Government service from which he derives a benefit in order that the Government recover the full cost of rendering that service and, further, calls for a periodical reassessment of costs, with related adjustment of fees, if necessary.

§ 543.2 General.

(a) Every application, filing or request, for which a fee is prescribed in this part, must be accomplished by a remittance in the full amount of the fee. In no case will an application, filing or request be accepted, considered or processed prior to payment of the full amount specified. Applications and other filings for which no remittance is received, or for which an insufficient amount is received, may be returned to the applicant. In the case of multiple applications for which a single check is drawn to cover all fees for the applications, it would be of great assistance to the Commission if a transmittal letter or notice were attached stating what fees are covered by the check.

(b) Fees are payable in terms of U.S. dollars and may be paid by check, draft, or postal money order made payable to the Federal Maritime Commission. Cash will be not be accepted. All fees collected will be paid into the U.S. Treasury as miscellaneous receipts in accordance with the provisions of title V of the Independent Offices Appropriations Act of 1952 (31 U.S.C. 483(a)).

(c) Except as provided in §§ 543.3(a) and 543.4(d), all fees will be charged irrespective of the Commission's disposition of the application or request. Applications or other filings returned to applicants for additional information or corrections will not require an additional fee when resubmitted.

§ 543.3 Independent ocean freight forwarder fees.

(a) *License.* Every application for licensing as an independent ocean freight forwarder, as required by § 510.5(b) of this chapter, shall be accomplished by an application fee of $300. The application fee shall be returned only when application for return is made within 1 year of denial of the license, and when on the face of the application the applicant fails to meet the requirements of section 44, Shipping Act, 1916 (46 U.S.C. 841(b)), or the regulations promulgated thereunder. In no event shall the application fee be returned where a field investigation of applicant's qualifications has been conducted, or an application has been denied on the basis of hearing pursuant to § 510.8(a) of this chapter. Applications denied prior to hearing, without prejudice, may be refiled on the basis of changed facts within 1 year of the denial.

(b) *Transfer of license.* Every request for approval of transfer of a license, as required by § 510.8(d) of this chapter, shall be accompanied by a fee of $300.

(c) *Branch office or separate establishment.* Every request for approval of a branch office or the right to operate through a separate establishment, as required by § 510.23(a) of this chapter shall be accompanied by a fee of $25.

(d) *Reissuance of license.* In any case necessitating the issuance of a new license, such as, but not limited to, a change in name or replacement of a lost license, a fee of $10 will be assessed.

§ 543.4 Passenger vessel certification fees.

(a) *Application fees.* Every application for a Passenger Vessel Financial Responsibility Certificate (Performance) and every application for a Passenger Vessel Financial Responsibility Certificate (Casualty) filed pursuant to Part 540 of this chapter shall be accompanied by an application fee of $100.

(b) *Casualty certification fee.* In addition to the $100 fee which must be remitted with each application for a Certificate of Financial Responsibility (Casualty), a vessel certification fee for each vessel listed on the application shall be paid by the applicant in accordance with the following schedule of vessel accommodations:

From 50 up to 500	$5
From 501 up to 1,000	10
From 1,001 up to 1,500	15
Over 1,500	25

(c) *Performance certification fee.* In addition to the $100 fee which must be remitted with each application for a Certificate of Financial Responsibility (Performance), a vessel certification fee for each vessel listed on the application shall be paid by the applicant in accordance with the following schedule of vessel accommodations.

From 50 up to 500	$ 5
From 501 up to 1,000	10
From 1,001 up to 1,500	15
Over 1,500	25

(d) *Refunds.* Certification fees will be refunded, on request, if (1) the application is withdrawn prior to the issuance of the Certificate or (2) the Certificate is denied pursuant to § 540.8 or § 540.26 of this chapter.

(e) *Reissuance of Certificate.* In any case necessitating the issuance of a new Casualty or Performance Certificate; such as, but not limited to, the addition of a vessel, change in name, or replacement of a lost Certificate, the individual vessel fee, based on the particular vessel's number of accommodations, shall apply.

§ 543.5 Tariff filing fees.

Temporary tariff (foreign trade): The fee for filing a "temporary tariff", pursuant to § 536.6(c) of this chapter (Commission General Order 13), is $1 per rate or other item changed subject, however, to a minimum of $5 per filing.

§ 543.6 Special permission application fee.

Every application for "special permission" to file tariff matter on less than statutory notice, as provided in section 18(b)(2) of the Shipping Act, 1916 (46 U.S.C. 817(b)), or section 2 of the Intercoastal Shipping Act, 1933 (46 U.S.C. 844), or to waive the requirements of Part 531 of this chapter (Commission Tariff Circular No. 3) or Part 536 of this chapter (Commission General Order 13) shall be accompanied by an application fee of $25.

§ 543.7 Agreement filing fee.

(a) *Agreements and dual rate systems.* Every application for approval of agreements (including amendments or modifications) under section 15 of the Shipping Act, 1916 (46 U.S.C. 814), or of exclusive patronage contract (dual rate) systems (including amendments) under section 14(b) of the Shipping Act, 1916 46 U.S.C. 813(a)), shall be accompanied by an application fee of $1,000.

(b) *Exemptions.* Every application filed pursuant to section 35 of the Shipping Act, 1916 (46 U.S.C. 833(a)), for exemption of a class of agreements or a specified activity from the requirements of the Shipping Act, 1916, or the Intercoastal Shipping Act, 1933, shall be accompanied by a filing fee of $500.

(c) *Nonexclusive transshipment agreement.* Every "nonexclusive transshipment agreement" filed pursuant to Part 524 of this chapter (Commission General Order 23) must be accompanied by a fee of $25.

§ 543.8 Fees for special services.

The basic fees set forth below provide for documents to be mailed with ordinary first-class postage prepaid. If copy is to be transmitted by registered, certified, air, or special delivery mail, postage therefor will be added to the basic fee. Also, if special handling or packaging is required, costs thereof will be added to the basic fee.

(a) *Copying of records and documents.* The copying of records and documents will be available at the rate of 30 cents per page (one side) by the Xerox process, limited to size 8¼" x 14" or smaller.

(b) *Certification and validation.* The certification and validation (with Federal Maritime Commission seal) of documents filed with or issued by the Commission will be available at $2 for each such certification.

(c) *Records and information search.* To the extent that time can be made available, records and information search will be performed for reimbursement at the following rates:

(1) By clerical personnel at a rate of $5 per person per hour.

(2) By professional personnel at an actual hourly cost basis to be established prior to search.

(3) Minimum charge, $5.

(d) *Subscriptions to publications.* Annual subscriptions to Commission publications for which there are regular mailing lists are available at the charges indicated below for calendar year terms. Subscriptions for periods of less than a full calendar year will be prorated on a quarterly basis. No provision is made for refund upon cancellation of subscription by a purchaser.

(1) Orders, notices, rulings, and decisions (initial and final) issued by the hearing examiners and by the Commission in all formal docketed proceedings before the Federal Maritime Commission are available at an annual subscription rate of $50.

(2) Final decisions (only) issued by the Commission in all formal docketed proceedings before the Commission are available at an annual subscription rate of $20.

(3) General Orders of the Commission, including all proposed and final rules, are available at an annual subscription rate of $10 (initial annual subscription will entitle the purchaser to a complete set of current General Orders issued to date).

(4) Request of interested persons to be placed on mailing list to receive orders, notices, decisions, etc., in a particular docketed proceeding will be accompanied by a fee of $5.

(5) Exceptions: No charge will be made by the Commission for notices, decisions, orders, etc., required by law to be served on a party to any proceeding or matter before the Commission. No charge will be made for single copies of Commission publications individually requested in person or by mail. In addition a subscription to Commission mailing lists will be entered without charge when one of the following conditions is present:

(i) The furnishing of the service without charge is an appropriate courtesy to a foreign country or international organization.

(ii) The recipient is another governmental agency, Federal, State, or local, concerned with the domestic or foreign commerce by water of the United States or, having a legitimate interest in the proceedings and activities of the Commission.

(iii) The recipient is a college or university.

(iv) The recipient does not fall into subdivision (i), (ii), or (iii) of this subparagraph, but is determined by the Commission to be appropriate in the interest of its program.

(e) *Transcripts.* Transcripts of testimony and of oral argument are furnished by a nongovernmental contractor, and may be purchased directly from the reporting firm.

(f) *Automobile Manufacturers Measurements.* The Commission publication entitled "Automobile Manufacturers' Measurements" is available on a fiscal year subscription basis, including any supplements issued during the fiscal year in which purchased, for a fee of $10

II. By transferring to proposed new Part 543, amending, and inserting into proposed new § 543.3(a) the last four sentences of existing § 510.5(b) of this chapter.

III. By transferring to proposed new Part 543, amending, and redesignating as § 543.8, the regulations currently appearing in § 503.43 of this chapter.

Interested persons may participate in this rulemaking proceeding by filing with the Secretary, Federal Maritime Commission, Washington, D.C. 20573, on or before April 19, 1971, an original and 15 copies of their views or arguments pertaining to the proposed rules. All suggestions for changes in text should be accompanied by drafts of the language thought necessary to accomplish the desired change.

By order of the Federal Maritime Commission.

[SEAL] FRANCIS C. HURNEY, *Secretary.*

[FR Doc.71-3887 Filed 3-19-71;8:47 am]

Notices

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

NEVADA

Addition of Land to Grazing Districts; Correction

MARCH 12, 1971.

In F.R. Doc. 64–12258 appearing on page 16084 in the issue for December 2, 1964, under Grazing District No. 5, T. 2 S., R. 54 E., line reading "Secs. 20, 22, 28, and 29" should be corrected to read "Secs. 20, 21, 28, and 29." Grazing District No. 6, T. 1 S., R. 54 E., line reading "Sec. 29, S½NW¼, SW¼NE¼" should be corrected to read "Sec. 29, S½, NW¼, SW¼NE¼."

NOLAN F. KEIL,
State Director, Nevada.

[FR Doc.71–3861 Filed 3–19–71;8:46 am]

Office of the Secretary

WATCHES AND WATCH MOVEMENTS

Allocation of Duty-Free Watch Quota for American Samoa for Calendar Year 1971

CROSS REFERENCE: For a document issued jointly by the Department of Commerce and the Department of the Interior regarding allocation of the duty-free watch quota for American Samoa for the calendar year 1971, see F.R. Doc. 71–3949, Department of Commerce, *infra*.

DEPARTMENT OF COMMERCE

Office of the Secretary

WATCHES AND WATCH MOVEMENTS

Allocation of Duty-Free Watch Quota for American Samoa for Calendar Year 1971

By notice published in the FEDERAL REGISTER on January 16, 1970 (35 F.R. 603), the Departments of Commerce and the Interior invited interested parties to apply for an allocation of the 1970 calendar year quota for watches and watch movements assembled in American Samoa for duty-free entry into the customs territory of the United States under Public Law 89–805 and for a tentative allocation of such quota for calendar 1971. In the judgment of the Departments, no application received for the American Samoan watch quota was adequately responsive to the requirements of the notice of January 16, 1970, in particular to the requirements of the territorial government as stated in the appendix thereto.

The Government of American Samoa subsequently modified its requirements regarding the establishment and conduct of a watch movement assembly business in American Samoa and on August 8, 1970, the Departments published revised rules for allocation of the Samoan watch quota for calendar year 1970 and, tentatively, 1971 which incorporated the changes made in the territorial requirements as previously published (35 F.R. 12675). Interested parties were notified that no allocation of the Samoan quota had been made pursuant to the notice of January 16, 1970, and such parties were invited to apply on or before September 15, 1970, for an allocation of the 1970 calendar year Samoan watch quota and for a tentative allocation of such quota for calendar year 1971. Due to the limited time remaining between September 15 and the end of calendar year 1970, it was not possible for the Government of American Samoa to comply with certain requirements of the Departments' notice of August 8, 1970, in sufficient time for the Departments to make an allocation of the Samoan watch quota for calendar year 1970.

In determining which of the applicants responding to the notice of August 8, 1970, was best qualified to establish watch movement assembly operations in American Samoa, the Departments gave special consideration to (1) technical capability; (2) financial responsibility; (3) marketing experience; (4) number of local workers to be employed; (5) wage rates to be paid local workers; (6) ability to train unskilled workers in watch movement assembly; (7) watch movement assembly operations to be performed in Samoa; and (8) time required to establish watch movement assembly operations. After careful consideration of all factors involved, the Departments have concluded that the Bulova Watch Company, Inc., is the best qualified of the applicants to establish a viable watch movement assembly operation in American Samoa. Accordingly, the American Samoa duty-free watch quota for calendar year 1971 is allocated to the Bulova Watch Co., Inc.

This allocation is subject to satisfactory implementation by the quota recipient of all written statements of intent which were relied upon by the Departments. The quota recipient will be required to comply with all requirements of the U.S. Bureau of Customs concerning watch movement assembly operations which must be performed in American Samoa in order to qualify watch movements for duty-free entry into the customs territory of the United States under General Headnote 3(a), T.S.U.S. Furthermore, the quota recipient will be required to comply with the general requirement(s) of the territorial government regarding the establishment and conduct of a watch movement assembly business in American Samoa.

In order to establish watch movement assembly in American Samoa it will be necessary for the quota recipient to construct a plant building as well as housing for non-Samoan supervisory personnel, install equipment and tooling, acquire inventory, and train local workers. Because of the time and investment costs required to establish a watch movement assembly operation which will make a substantial and lasting contribution to the economy of American Samoa, the Departments do not intend to invite applications from new entrants for the allocable calendar year 1972 American Samoa watch quota unless (1) the recipient of the 1971 calendar year quota fails to abide substantially with the terms and conditions in its application upon which the Departments relied in making the quota allocation for calendar year 1971, or (2) the amount of the duty-free watch quota available to American Samoa for calendar year 1972 is sufficiently greater than that available for calendar year 1971 as to sustain more than one economically viable watch assembly operation in America Samoa.

Dated: March 17, 1971.

STANLEY NEHMER,
Deputy Assistant Secretary for Resources, Department of Commerce.

HARRISON LOESCH,
Assistant Secretary for Public Land Management, Department of the Interior.

[FR Doc.71–3949 Filed 3–19–71;9:31 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

RECEIPT OF PUBLIC LAW 81–815 APPLICATIONS

Notice of Cutoff Date for Fiscal Year 1971

Pursuant to the authority vested in me by section 3 of Public Law 81–815 (20 U.S.C. 633) and 45 CFR 114.2, notice is hereby given of the following cutoff date:

For the purpose of sections 3 and 14 of Public Law 81–815, June 23, 1971, is hereby set as the second date during fiscal year 1971 on or before which completed applications for payments to which an applicant may be entitled under the Act from such funds as may be available for such purposes shall be filed.

Dated: March 15, 1971.

S. P. MARLAND, Jr.,
U.S. Commissioner of Education.

[FR Doc.71–3857 Filed 3–19–71;8:45 am]

CIVIL AERONAUTICS BOARD

[Docket No. 21268; Order 71-3-90]

DUNCAN AVIATION, INC.

Order To Show Cause Regarding Establishment of Service Mail Rate

Issued under delegated authority March 16, 1971.

A final service mail rate for the transportation of mail by aircraft, established by Order 71-3-11, dated March 2, 1971, in this docket, is currently in effect for the above-captioned air taxi, operating under 14 CFR Part 298. This rate is based on six rounds trips per week between Kansas City, Mo., and Lincoln, Nebr., via Grand Island, Nebr.

The Postmaster General filed a petition on March 1, 1971, stating that the volume of mail involved does not justify weekend trips on this route and he has been authorized by the carrier to petition for a new rate of 61.97 cents per great circle aricraft mile, based on five round trips per week. The carrier and the Post Office Department have agreed that the proposed rate is a fair and reasonable rate for these services.

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 March 1, 1971, to Duncan Aviation, 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 61.97 cents per great circle aircraft mile between Kansas City, Mo., and Lincoln, Nebr., via Grand Island, Nebr.

2. This final rate, to be paid entirely by the Postmaster General, is based on five round trips per week flown with Beech E-18S or Beech G-18S 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. Duncan Aviation, Inc., the Postmaster General, Frontier Airlines, Inc., United Air Lines, Inc., and all other interested persons are directed to show cause why the Board should not adopt the foregoing proposed findings and conclusions and fix, determine, and publish the final 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 Duncan Aviation, Inc.;

2. Further procedures herein shall be in accordance with 14 CFR Part 302, and notice of any objection to the rate or to the other findings and conclusions proposed herein, shall be filed within 10 days, and if notice is filed, written answer and supporting documents shall be filed within 30 days after service of this order;

3. If notice of objection is not filed within 10 days after service of this order, or if notice is filed and answer is not filed within 30 days after service of this order, all persons shall be deemed to have waived the right to a hearing and all other procedural steps short of a final decision by the Board, and the Board may enter an order incorporating the findings and conclusions proposed herein and fix and determine the final rate specified herein;

4. If answer is filed presenting issues for hearing, the issues involved in determining the fair and reasonable final rate shall be limited to those specifically raised by the answer, except insofar as other issues are raised in accordance with Rule 307 of the rules of practice (14 CFR 302.307); and

5. This order shall be served upon Duncan Aviation, Inc., the Postmaster General, Frontier Airlines, Inc., and United Air Lines, Inc.

This order will be published in the FEDERAL REGISTER.

[SEAL] HARRY J. ZINK,
Secretary.

[FR Doc.71-3899 Filed 3-19-71;8:48 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).

[Docket No. 23072]

LUFTVERKEHRSUNTERNEHMEN ATLANTIS A. G.

Notice of Prehearing Conference

Notice is hereby given that a prehearing conference in the above-entitled matter is assigned to be held on April 6, 1971, at 10 a.m., e.s.t., in Room 805, Universal Building, 1825 Connecticut Avenue NW., Washington, DC, before Examiner Joseph L. Fitzmaurice.

Dated at Washington, D.C., March 17, 1971.

[SEAL] THOMAS L. WRENN,
Chief Examiner.

[FR Doc.71-3897 Filed 3-19-71;8:48 am]

[Docket Nos. 19917, 21810; Order 71-3-89]

SEDALIA, MARSHALL, BOONVILLE STAGE LINE, INC.

Order To Show Cause Regarding Establishment of Service Mail Rate

Issued under delegated authority March 16, 1971.

A final service mail rate for the transportation of mail by aircraft, established by Order 70-4-108, April 22, 1970, in Docket 21810, is currently in effect for the above-captioned air taxi, operating under 14 CFR Part 298. This rate is based on six round trips per week between Independence and Wichita, via Fort Scott, Kans.

The Postmaster General filed a petition on March 1, 1971, stating that the volume of mail involved does not justify weekend trips on this route and he has been authorized by the carrier to petition for a new rate of 49.5 cents per great circle aircraft mile, based on five round trips per week. The carrier and the Post Office Department have agreed that the proposed rate is a fair and reasonable rate for these services.

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 March 1, 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 49.5 cents per great circle aircraft mile between Independence and Wichita, via Fort Scott, Kans.

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 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, 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, and notice of any objection to the rate or to the other findings and conclusions proposed herein, shall be filed within 10 days, and if notice is filed, written answer and supporting documents shall be filed within 30 days after service of this order;

3. If notice of objection is not filed within 10 days after service of this order,

[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).

or if notice is filed and answer is not filed within 30 days after service of this order, all persons shall be deemed to have waived the right to a hearing and all other procedural steps short of a final decision by the Board, and the Board may enter an order incorporating the findings and conclusions proposed herein and fix and determine the final rate specified herein;

4. If answer is filed presenting issues for hearing, the issues involved in determining the fair and reasonable final rate shall be limited to those specifically raised by the answer, except insofar as other issues are raised in accordance with Rule 307 of the rules of practice (14 CFR 302.307); and

5. This order shall be served upon Sedalia, Marshall, Boonville Stage Line, Inc., and the Postmaster General.

This order will be published in the FEDERAL REGISTER.

[SEAL] HARRY J. ZINK,
Secretary.

[FR Doc.71-3900 Filed 3-19-71;8:48 am]

[Docket No. 19880; Order 71-3-84]

UPPER VALLEY AVIATION, INC.

Order To Show Cause Regarding Establishment of Service Mail Rate

Issued under delegated authority March 16, 1971.

A final service mail rate for the transportation of mail by aircraft, established by Order 68-7-167, dated July 31, 1968, in this docket, is currently in effect for the above-captioned air taxi, operating under 14 CFR Part 298. This rate is based on six round trips per week between McAllen, Corpus Christi, and San Antonio, Tex.

The Postmaster General filed a petition on February 23, 1971, stating that the volume of mail involved does not justify weekend trips on this route and he has been authorized by the carrier to petition for a new rate of 48.2 cents per great circle aircraft mile, based on five round trips per week. The carrier and the Post Office Department have agreed that the proposed rate is a fair and reasonable rate for these services.

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 February 23, 1971, to Upper Valley Aviation, 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 48.2 cents per great circle aircraft mile between McAllen, Corpus Christi, and San Antonio, Tex.

2. This final rate, to be paid entirely by the Postmaster General, is based on five round trips per week flown with Beechcraft E18S 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. Upper Valley Aviation, Inc., the Postmaster General, Braniff Airways, Inc., Texas International Airlines, 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 Upper Valley Aviation, Inc.;

2. Further procedures herein shall be in accordance with 14 CFR Part 302, and notice of any objection to the rate or to the other findings and conclusions proposed herein, shall be filed within 10 days, and if notice is filed, written answer and supporting documents shall be filed within 30 days after service of this order;

3. If notice of objection is not filed within 10 days after service of this order, or if notice is filed and answer is not filed within 30 days after service of this order, all persons shall be deemed to have waived the right to a hearing and all other procedural steps short of a final decision by the Board, and the Board may enter an order incorporating the findings and conclusions proposed herein and fix and determine the final rate specified herein;

4. If answer is filed presenting issues for hearing, the issues involved in determining the fair and reasonable final rate shall be limited to those specifically raised by the answer, except insofar as other issues are raised in accordance with Rule 307 of the rules of practice (14 CFR 302.307); and

5. This order shall be served upon Upper Valley Aviation, Inc., the Postmaster General, Braniff Airways, Inc., and Texas International Airlines, Inc.

This order will be published in the FEDERAL REGISTER.

[SEAL] HARRY J. ZINK,
Secretary.

[FR Doc.71-3901 Filed 3-19-71;8:49 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).

CIVIL SERVICE COMMISSION

MINIMUM RATES AND RATE RANGES

Notice of Adjustment

Under the authority of 5 U.S.C. 5303 and Executive Order 11073, the Civil Service Commission has adjusted the minimum rates and rate ranges for certain occupations and grade levels for which special rates were approved under 5 U.S.C. 5303. The following tables contain the basic special salary rate information for each occupation and grade level for which special rates are authorized. Only the special minimum and special maximum rate (i.e., 10th step) are shown; however, a full special rate range is authorized for each occupation and grade level specified. The full range of special rates can be prepared by successively adding the amount of the within grade increase, as shown for each grade, beginning with the special minimum to produce a rate for each step up to the special maximum rate.

The effective date of the revised rates is the pay period that begins on or after January 31, 1971.

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

GS-000 MISCELLANEOUS OCCUPATIONS GROUP

Occupational series coverage	Geographic coverage	Grade	1st step rate	10th step rate	Within grade increase	Effective date
GS-081 Firefighter (General) Firefighter (Structural) Firefighter (Airfield) Table No. 001	Naval Training Center, Great Lakes, Ill. and Federal installations within a 22-mile radius of the center.	GS-3 GS-4 GS-5	$6,076 6,616 7,169	$7,732 8,479 9,248	$184 207 231	1-31-71
GS-081 Firefighter (General) [1] Firefighter (Structural) [1] Firefighter (Airfield) [1] Fire protection Inspector [1] Fire Chief	San Francisco and 35-mile radius extended to include Travis Air Force Base near Fairfield, Calif.	GS-3 GS-4 GS-5 GS-6 GS-7 GS-8	6,812 7,651 8,093 8,501 9,154 9,809	8,468 9,514 10,172 10,823 11,728 12,653	184 207 231 268 286 316	1-31-71

[1] NOTE: Covers both nonsupervisory and supervisory positions at applicable grade levels.
Table No. 002

Occupational series coverage	Geographic coverage	Grade	1st step rate	10th step rate	Within grade increase	Effective date
GS-081 Fire Protection and Prevention Series Table No. 003	Washington, D.C. Standard Metropolitan Statistical Area, including Quantico Marine Base.	GS-3 GS-4 GS-5 GS-6	$6,628 7,030 7,400 7,985	$8,284 8,893 9,479 10,307	$184 207 231 258	1-31-71
GS-081 Fire Protection and Prevention Series Table No. 004	San Diego County, Calif.	GS-3 GS-4 GS-5 GS-6 GS-7 GS-8	6,812 7,651 8,093 8,501 9,154 9,809	8,468 9,514 10,172 10,823 11,728 12,653	184 207 231 258 286 316	1-31-71
GS-081 Fire Protection and Prevention Series Table No. 005	Ventura County, Calif.	GS-3 GS-4 GS-5 GS-6	6,444 6,823 7,400 7,985	8,100 8,686 9,479 10,307	184 207 231 258	1-31-71
GS-081 Fire Protection and Prevention Series Table No. 006	City of Stockton, Calif., including Sharpe Army Depot, and Defense Depot, Tracy, Calif.	GS-3 GS-4 GS-6	6,076 6,616 7,169	7,732 8,479 9,248	184 207 231	1-31-71
GS-083 Police Series Table No. 008	Washington, D.C. Standard Metropolitan Statistical Area, including District of Columbia Children's Center, Laurel, Md., and Quantico Marine Base.	GS-4 GS-5 GS-6	7,444 7,862 8,243	9,307 9,941 10,565	207 231 258	1-31-71
GS-085 Guard Series Table No. 007	Washington D.C. Standard Metropolitan Statistical Area including District of Columbia Children's Center, Laurel, Md., and Quantico Marine Base.	GS-2 GS-3 GS-4 GS-5 GS-6	6,038 6,812 7,444 7,862 8,243	7,505 8,468 9,307 9,941 10,565	163 184 207 231 258	1-31-71
GS-100 Social Science, Psychology and Welfare Group						
GS-180 Psychology Series Table No. 050	Worldwide.	GS-11	13,457	17,246	421	1-31-71
GS-300 General Administrative, Clerical, and Office Services Group						
GS-301 Police Cadet Table No. 150	District of Columbia Metropolitan Police Department	GS-2 GS-3	5,549 6,076	7,016 7,732	163 184	1-31-71
GS-312 Clerk-Stenographer GS-316 Clerk-Dictating Machine Transcriber GS-318 Secretary GS-322 Clerk-Typist Table No. 152	Cook County Illinois (includes city of Chicago).	GS-2 GS-3	5,060 5,708	6,527 7,364	163 184	1-31-71
GS-312 Clerk-Stenographer GS-316 Clerk-Dictating Machine Transcriber GS-318 Secretary GS-322 Clerk-Typist In addition to above series, coverage includes all positions in grades GS-2 and GS-3 with the following parenthetical titles: (Typing); or (Stenography); or (Dictating Machine Transcribing). Use of any of the parenthetical titles cited indicates that a substantial requirement for the skill identified exists in the position, and the requirement is of sufficient significance to warrant selective certification from an appropriate clerical register (or equivalent selectivity in noncompetitive actions). In all cases the position description must reflect those duties which necessitated the use of the parenthetical title. Table No. 900.	New York, N.Y. (Includes the counties of Bronx, Kings, New York, Queens, and Richmond).	GS-2 GS-3	5,223 5,708	6,690 7,364	163 184	1-31-71
GS-343 GAO Management Auditor Table No. 250	Worldwide (except for New York, N.Y. Standard Metropolitan Statistical Area).	GS-7 GS-9	10,012 10,819	12,586 13,960	286 349	1-31-71
GS-343 GAO Management Auditor Table No. 251	New York, N.Y. Standard Metropolitan Statistical Area.	GS-7 GS-9	10,584 11,517	13,158 14,658	286 349	1-31-71
GS-356 Card Punch Operation Series Table No. 156	San Francisco-Oakland Standard Metropolitan Statistical Area (includes Alameda, Contra Costa, Marin, San Francisco, and San Mateo Counties); Santa Clara County; Solano County; Los Angeles County; Orange County; and Government Activities at Edwards AFB in Kern County, Calif.	GS-3	5,708	7,364	184	1-31-71
GS-359 Electric Accounting Machine Operating Series, Grade 4 Only GS-362 Electric Accounting Machine Project Planning Series Grade 7 Only Table No. 154	Juneau Election District, Alaska.	GS-4 GS-7	6,823 8,868	8,686 11,442	207 286	1-31-71
GS-400 Biological Sciences Group						
GS-403 Microbiology Series Table No. 220	Nationwide.	GS-5	7,400	9,479	231	1-31-71

Occupational series coverage	Geographic coverage	Grade	1st step rate	10th step rate	Within grade increase	Effective date
	GS-500 Accounting and Budget Group					
GS-510 Accounting Series GS-512 Internal Revenue Agent Series Table No. 258	Worldwide (except for New York, N.Y. Standard Metropolitan Statistical Area).	GS-5 GS-6 GS-7 GS-8 GS-9	$8,555 9,275 10,012 10,441 10,819	$10,634 11,597 12,586 13,285 13,960	$231 258 286 316 349	1-31-71
GS-510 Accounting Series GS-512 Internal Revenue Agent Series Table No. 259	New York, N.Y. Standard Metropolitan Statistical Area.	GS-5 GS-6 GS-7 GS-8 GS-9 GS-10	8,555 9,533 10,584 11,073 11,517 12,285	10,634 11,855 13,158 13,917 14,658 15,741	231 258 286 316 349 384	1-31-71
GS-602 Medical Officer Series Table No. 290	Worldwide.	GS-11 GS-12 GS-13 GS-14 GS-15	16,404 19,549 22,497 24,285 25,867	20,193 24,058 27,825 30,531 33,139	421 501 592 694 808	[1] 1-1-71
GS-610 Nurse Series Table No. 306	Galveston, Tex.	GS-4 GS-5 GS-6	7,651 8,093 8,243	9,514 10,172 10,565	207 231 258	1-31-71
GS-610 Nurse Series Table No. 301	State of California (Excluding San Francisco, Calif., and 35-mile radius extended to include Travis Air Force Base; San Diego County; and Division of Indian Health Nurses).	GS-4 GS-5 GS-6	7,651 8,093 8,243	9,514 10,172 10,565	207 231 258	1-31-71
GS-610 Nurse Series Table No. 303	San Francisco, Calif., and 35-mile radius extended to include Travis Air Force Base.	GS-4 GS-5 GS-6 GS-7 GS-8 GS-9	8,065 8,555 9,017 9,440 10,125 10,819	9,928 10,634 11,339 12,014 12,969 13,960	207 231 258 286 316 349	1-31-71
GS-610 Nurse Series GS-615 Public Health Nurse Series Table No. 293	Division of Indian Health, Public Health Service, Continental United States; Ellsworth Air Force Base, Rapid City, S. Dak.; Albuquerque, N. Mex., including Kirtland Air Force Base and Sandia Base Military Reservation; Fort Sill, Okla.; Job Corps center Box Elder, S. Dak.; State of Alaska.	GS-4 GS-5	7,030 7,631	8,893 9,710	207 231	1-31-71
[1] (NOTE: These rates originally authorized under FPM Letter 530-156.)						
GS-610 Nurse Series Table No. 299	Seattle and Bremerton, Wash.	GS-4 GS-5 GS-6	7,444 7,862 8,243	9,307 9,941 10,565	207 231 258	1-31-71
GS-610 Nurse Series Table No. 297	Philadelphia, Pa.	GS-4 GS-5	7,030 7,631	8,893 9,710	207 231	1-31-71
GS-610 Nurse Series Table No. 295	New Orleans, La.	GS-4 GS-5	6,616 7,169	8,479 9,248	207 231	1-31-71
GS-610 Nurse Series Table No. 292	Baltimore, Md., Standard Metropolitan Statistical Area.	GS-4 GS-5 GS-6	7,444 7,862 8,243	9,307 9,941 10,565	207 231 258	1-31-71
GS-610 Nurse Series Table No. 305	Boston, Mass., Standard Metropolitan Statistical Area.	GS-4 GS-5 GS-6	7,651 8,093 8,243	9,514 10,172 10,565	207 231 258	1-31-71
GS-615 Public Health Nurse Series Table No. 300	Washington, D.C., Standard Metropolitan Statistcal Area.	GS-5	8,093	10,172	231	1-31-71
GS-610 Nurse Series Table No. 304	Washington, D.C., Standard Metropolitan Statistical Area Including the D.C. Government's Children's Center, Laurel, Md., and the U.S. Marine Corps Base, Quantico, Va.	GS-4 GS-5	7,858 8,324	9,721 10,403	207 231	1-31-71
GS-610 Nurse Series GS-615 Public Health Nurse Series Table No. 296	New York, N.Y.	GS-4 GS-5 GS-6 GS-7 GS-8 GS-9 GS-10	8,065 9,017 9,533 10,012 10,757 11,517 11,901	9,928 11,096 11,855 12,586 13,601 14,658 15,357	207 231 258 286 316 349 384	1-31-71
GS-621 Nursing Assistant Series Table No. 307	City of Palo Alto and Federal Installations within a 10-mile radius, California.	GS-2 GS-3	5,223 5,708	6,690 7,364	163 184	1-31-71
GS-621 Nursing Assistant Series (Excluding Licensed Practical Nurse). Table No. 333	New York, N.Y., SMSA (Includes New York City; Nassau, Rockland, Suffolk, and Westchester Counties).	GS-2 GS-3	5,223 5,708	6,690 7,364	163 184	1-31-71
GS-621 Licensed Practical Nurse Table No. 334	New York, N.Y. Standard Metropolitan Statistical Area	GS-3 GS-4 GS-5 GS-6	6,812 7,237 7,631 7,985	8,468 9,100 9,710 10,307	184 207 231 258	1-31-71
GS-621 Licensed Practical Nurse Table No. 337	Cook County, Ill. (Including the city of Chicago).	GS-3 GS-4	6,076 6,616	7,732 8,479	184 207	1-31-71
GS-621 Nursing Assistant Series (Excluding Licensed Practical Nurse). Table No. 335	East Orange and Lyons Veterans Administration Hospitals, N.J.	GS-2 GS-3	5,223 5,708	6,690 7,364	163 184	1-31-71

Occupational series coverage	Geographic coverage	Grade	1st step rate	10th step rate	Within grade increase	Effective date
GS-621 Licensed Practical Nurse Table No. 336	East Orange and Lyons Veterans Administration Hospitals, N.J.	GS-3 GS-4	$6,076 6,616	$7,732 8,479	$184 207	1-31-71
GS-631 Occupational Therapists GS-633 Physical Therapists Table No. 308	Washington, D.C., Standard Metropolitan Statistical Area.	GS-5 GS-6	8,093 8,243	10,172 10,565	231 258	1-31-71
GS-631 Occupational Therapist GS-633 Physical Therapist Table No. 309	Los Angeles-Long Beach Calif., Standard Metropolitan Statistical Area.	GS-5 GS-6 GS-7 GS-8	8,324 8,759 9,154 9,809	10,403 11,081 11,728 12,653	231 258 286 316	1-31-71
GS-633 Physical Therapist Table No. 311	Cincinnati, Ohio, Standard Metropolitan Statistical Area.	GS-5 GS-6	7,862 7,985	9,941 10,307	231 258	1-31-71
GS-631 Occupational Therapist GS-633 Physical Therapist Table No. 310	New York City and Suffolk County, N.Y.	GS-5 GS-6 GS-7 GS-8 GS-9	9,017 9,533 10,012 10,441 10,819	11,096 11,855 12,586 13,285 13,960	231 258 286 316 349	1-31-71
GS-644 Medical Technologist Series Table No. 318	Washington, D.C. Standard Metropolitan Statistical Area.	GS-5	8,093	10,172	231	1-31-71
GS-644 Medical Technologist Series Table No. 317	Omaha, Nebraska, Standard Metropolitan Statistical Area.	GS-5	7,400	9,479	231	1-31-71
GS-644 Medical Technologist Series Table No. 316	Ann Arbor, Mich., Standard Metropolitan Statistical Area.	GS-5 GS-7	8,555 9,154	10,634 11,728	231 286	1-31-71
GS-644 Medical Technologist Series Table No. 315	New Orleans, La.	GS-5	7,169	9,248	231	1-31-71
GS-644 Medical Technologist Series Table No. 314	Milwaukee, Wis.	GS-5 GS-7	8,093 8,868	10,172 11,442	231 286	1-31-71
GS-644 Medical Technologist Series Table No. 312	Baltimore, Md., Standard Metropolitan Statistical Area.	GS-5	7,631	9,710	231	1-31-71
GS-644 Medical Technologist Series Table No. 313	State of California	GS-5 GS-6 GS-7 GS-8 GS-9	8,555 9,017 9,726 10,125 10,819	10,634 11,339 12,300 12,969 13,960	231 258 286 316 349	1-31-71
GS-644 Medical Technologist Series Table No. 319	Chicago and Hines, Ill.	GS-5	7,631	9,710	231	1-31-71
GS-644 Medical Technologist Series Table No. 331	New York City, N.Y. (includes Bronx, Kings, New York, Queens, and Richmond Counties).	GS-5	7,862	9,941	231	1-31-71
GS-647 Medical Radiology Technician Table No. 320	New York City.	GS-4 GS-5 GS-6 GS-6 GS-8	8,065 8,555 9,017 9,726 10,125	9,928 10,634 11,339 12,300 12,969	207 231 258 286 316	1-31-71
GS-647 Medical Radiology Technician Table No. 321	San Francisco, Calif., and Federal installations within a 35-mile radius.	GS-5 GS-6 GS-7	7,631 8,243 8,868	9,710 10,565 11,442	231 258 286	1-31-71
GS-649 Inhalation Therapy Technician Table No. 330	West Haven, Conn.	GS-4 GS-5 GS-6	6,823 7,400 7,985	8,686 9,479 10,307	207 231 258	1-31-71
GS-660 Pharmacist Table No. 322	State of California.	GS-9 GS-10 GS-11	11,866 12,669 13,457	15,007 16,125 17,246	349 384 421	1-31-71
GS-665 Speech Pathology and Audiology Series Table No. 324	Worldwide.	GS-11	13,457	17,246	421	1-31-71
GS-668 Podiatrist Table No. 325	Washington, D.C. Standard Metropolitan Statistical Area	GS-9 GS-10 GS-11	11,866 13,053 14,299	15,007 16,509 18,088	349 384 421	1-31-71
GS-682 Dental Hygienist Series Table No. 327	Norfolk and Newport News-Hampton, Va., Standard Metropolitan Statistical Area.	GS-4 GS-5	7,651 8,555	9,514 10,634	207 231	1-31-71
GS-682 Dental Hygienist Series Table No. 328	States of California and Nevada.	GS-4 GS-5 GS-6 GS-7	7,237 8,093 8,501 9,154	9,100 10,172 10,823 11,728	207 231 258 286	1-31-71
GS-682 Dental Hygienist Series Table No. 338	Denver, Colo. Standard Metropolitan Statistical Area	GS-4 GS-5 GS-6 GS-7	7,444 7,862 8,501 9,154	9,307 9,941 10,823 11,728	207 231 258 286	1-31-71
GS-682 Dental Hygienist Series Table No. 332	Boston Standard Metropolitan Statistical Area, Brockton, and Fort Devens, Mass.	GS-4 GS-5	6,616 7,169	8,479 9,248	207 231	1-31-71
GS-690 Industrial Hygiene Series Table No. 329	Worldwide.	GS-5 GS-6 GS-7 GS-8 GS-9 GS-10	8,324 9,275 10,298 10,757 11,517 11,901	10,403 11,597 12,872 13,601 14,658 15,357	231 258 286 316 349 384	1-31-71

Occupational series coverage	Geographic coverage	Grade	1st step rate	10th step rate	Within grade increase	Effective date
GS-700 Veterinary Medical Science Group						
GS-701 Veterinarian Series [1] (Note: These rates originally authorized under FPM Letter 530-156) Table No. 400	Worldwide.	GS-9	$11,168	$14,309	$349	[1] 1-1-71
GS-800 Engineering and Architecture Group						
GS-800- All Professional Series in the Engineering and Architecture Group. Professional Series in the GS-800 Group Are: GS-801 General GS-803 Safety GS-804 Fire Prevention GS-806 Materials GS-807 Landscape Architecture GS-808 Architecture GS-810 Civil GS-819 Sanitary GS-830 Mechanical GS-840 Nuclear GS-850 Electrical GS-855 Electronic GS-861 Aerospace GS-870 Marine GS-871 Naval Architecture GS-880 Mining GS-881 Petroleum GS-890 Agricultural GS-892 Ceramic GS-893 Chemical GS-894 Welding GS-896 Industrial Table No. 410	Worldwide.	GS-5 GS-6 GS-7 GS-8 GS-9 GS-10	$8,555 9,533 10,584 11,073 11,517 11,901	$10,634 11,855 13,158 13,917 14,658 15,357	$231 258 286 316 349 384	1-31-71
GS-1100 Business and Industry Group						
GS-1169 Revenue Officer Table No. 550	State of California.	GS-5	7,400	9,479	231	1-31-71
GS-1200 Copyright, Patent, and Trade-Mark Group						
GS-1221 Patent Adviser GS-1223 Patent Classifying GS-1224 Patent Examining Table No. 575	Worldwide.	GS-5 GS-6 GS-7 GS-8 GS-9 GS-10	8,555 9,533 10,584 11,073 11,517 11,901	10,634 11,855 13,158 13,917 14,658 15,357	231 258 286 316 349 384	1-31-71
GS-1300 Physical Sciences Group						
GS-1301.1 Physical Science Subseries Table No. 585	Worldwide.	GS-5 GS-6 GS-7 GS-8 GS-9 GS-10	8,555 9,533 10,584 11,073 11,517 11,901	10,634 11,855 13,158 13,917 14,658 15,357	231 258 286 316 349 384	1-31-71
Certain Series in the GS-1300 Group as follows: GS-1306 Health Physics GS-1310 Physics GS-1313 Geophysics GS-1315 Hydrology GS-1320 Chemistry GS-1321 Metallurgy GS-1330 Astronomy and Space Science GS-1340 Meteorology GS-1360 Oceanography GS-1372 Geodesy GS-1380 Forest Products Technology GS-1386 Photographic Technology Table No. 586	Worldwide.	GS-5 GS-6 GS-7 GS-8 GS-9 GS-10	8,324 9,275 10,298 10,757 11,517 11,901	10,403 11,597 12,872 13,601 14,658 15,357	231 258 286 316 349 384	1-31-71
GS-1350 Geology Series Table No. 587	Worldwide.	GS-5 GS-7	8,555 9,440	10,634 12,014	231 286	1-31-71
GS-1370 Cartographer Series GS-1301 Physical Science Series Table No. 588	(1) Cartographer, GS-1370, in grades GS-5 through 7, in the St. Louis, Mo., Standard Metropolitan Statistical Area, and the Washington, D.C., SMSA. (2) Physical Scientists, GS-1301, in grade GS-7 at the Air Force Aeronautical Chart and Information Center in the St. Louis, Mo., SMSA. (Incumbents of these positions perform professional work in cartography in combination with professional work in at least one other recognized scientific occupation, such as geodesy. Such positions are normally filled by reassignment or promotion from positions of cartographer.)	GS-5 GS-6 GS-7	7,631 8,501 9,440	9,710 10,823 12,014	231 258 286	1-31-71

Occupational series coverage	Geographic coverage	Grade	1st step rate	10th step rate	Within grade increase	Effective date
GS-1500 Mathematics and Statistics Group						
GS-1510 Actuary GS-1515 Operations Research GS-1520 Mathematics Series GS-1529 Mathematical Statistics Table No. 695	Worldwide.	GS-5 GS-6 GS-7 GS-8 GS-9	$7,862 8,759 9,726 10,441 11,168	$9,941 11,081 12,300 13,285 14,309	$231 258 286 316 349	1-31-71
GS-1600 Equipment, Facilities, and Service Group						
GS-1654 Printing Management Series (Note: Eligibility for these special rates is limited to employees who have at least a Baccalaureate Degree with a major in printing management.) Table No. 725	Nationwide.	GS-5 GS-7	8,555 9,154	10,634 11,728	231 286	1-31-71
GS-1700 Education Group						
GS-1710 Teacher Note: Eligibility for these special rates is limited to employees engaged in teaching students with "special needs" in the school identified. Table No. 750	Mary G. Zeigler School, Department of Public Welfare, District of Columbia Government, Laurel, Md.	GS-5 GS-7	8,324 8,868	10,403 11,442	231 286	1-31-71
GS-1800 Investigation Group						
GS-1811 Criminal Investigator (Limited to positions of Special Agent (Intelligence) in the Internal Revenue Service). Table No. 260	Nationwide (Except New York, N.Y. Standard Metropolitan Statistical Area).	GS-5 GS-6 GS-7 GS-8 GS-9	8,555 9,275 10,012 10,441 10,819	10,634 11,597 12,586 13,285 13,960	231 258 286 316 349	1-31-71
GS-1811 Criminal Investigator (Limited to positions of Special Agent (Intelligence) in the Internal Revenue Service). Table No. 261	New York, N.Y. Standard Metropolitan Statistical Area.	GS-5 GS-6 GS-7 GS-8 GS-9 GS-10	8,555 9,533 10,584 11,073 11,517 12,285	10,634 11,855 13,158 13,917 14,658 15,741	231 258 286 316 349 384	1-31-71
GS-1899 Customs Security Officer Note: The special rates authorized herein will be automatically terminated effective the beginning of the first pay period which commences on or after September 1, 1971, unless a specific determination is made to take other appropriate action. Table No. 777	New York, N.Y. Standard Metropolitan Statistical Area, Newark, N.J. Standard Metropolitan Statistical area.	GS-4 GS-5 GS-7 GS-9	7,237 8,093 10,012 10,819	9,100 10,172 12,586 13,960	207 231 286 349	1-31-71

Grade	Statutory range [1]										Extended range for special rates									Within grade increases	Grade
GS-1	$4,326	$4,470	$4,614	$4,758	$4,902	$5,046	$5,190	$5,334	$5,478	$5,622	$5,766	$5,910	$6,054	$6,198	$6,342	$6,486	$6,630	$6,774	$6,918	144	GS-1
GS-2	4,897	5,060	5,223	5,386	5,549	5,712	5,875	6,038	6,201	6,364	6,527	6,690	6,853	7,016	7,179	7,342	7,505	7,668	7,831	163	GS-2
GS-3	5,524	5,708	5,892	6,076	6,260	6,444	6,628	6,812	6,996	7,180	7,364	7,548	7,732	7,916	8,100	8,284	8,468	8,652	8,836	184	GS-3
GS-4	6,202	6,409	6,616	6,823	7,030	7,237	7,444	7,651	8,858	8,065	8,272	8,479	8,686	8,893	9,100	9,307	9,514	9,721	9,928	207	GS-4
GS-5	6,938	7,169	7,400	7,631	7,862	8,093	8,324	8,555	8,786	9,017	9,248	9,479	9,710	9,941	10,172	10,403	10,634	10,865	11,096	231	GS-5
GS-6	7,727	7,985	8,243	8,501	8,759	9,017	9,275	9,533	9,791	10,049	10,307	10,565	10,823	11,081	11,339	11,597	11,855	12,113	12,371	258	GS-6
GS-7	8,582	8,868	9,154	9,440	9,726	10,012	10,298	10,584	10,870	11,156	11,442	11,728	12,014	12,300	12,586	12,872	13,158	13,444	13,730	286	GS-7
GS-8	9,493	9,809	10,125	10,441	10,757	11,073	11,389	11,705	12,021	12,337	12,653	12,969	13,285	13,601	13,917	14,233	14,549	14,865	15,181	316	GS-8
GS-9	10,470	10,819	11,168	11,517	11,866	12,215	12,564	12,913	13,262	13,611	13,960	14,309	14,658	15,007	15,356	15,705	16,054	16,403	16,752	349	GS-9
GS-10	11,517	11,901	12,285	12,669	13,053	13,437	13,821	14,205	14,589	14,973	15,357	15,741	16,125	16,509	16,893	17,277	17,661	18,045	18,429	384	GS-10
GS-11	12,615	13,036	13,457	13,878	14,299	14,720	15,141	15,562	15,983	16,404	16,825	17,246	17,667	18,088	18,509	18,930	19,351	19,772	20,193	421	GS-11
GS-12	15,040	15,541	16,042	16,543	17,044	17,545	18,046	18,547	19,048	19,549	20,050	20,551	21,052	21,553	22,054	22,554	23,056	23,557	24,058	501	GS-12
GS-13	17,761	18,353	18,945	19,537	20,129	20,721	21,313	21,905	22,497	23,089	23,681	24,273	24,865	25,457	26,049	26,641	27,233	27,825	28,417	592	GS-13
GS-14	20,815	21,509	22,203	22,897	23,591	24,285	24,979	25,673	26,367	27,061	27,755	28,449	29,143	29,837	30,531	31,225	31,919	32,613	33,307	694	GS-14
GS-15	24,251	25,059	25,867	26,675	27,483	28,291	29,099	29,907	30,715	31,523	32,331	33,139	33,947	34,755	35,563	[2] 36,371	[2] 37,179	[2] 37,987	[2] 38,795	808	GS-15

[1] Effective as of the first day of the first pay period beginning on or after Jan. 1, 1971.
[2] Rates may not exceed the rate for Executive Level V. As of Jan. 1971 Executive Level V rate was $36,000.

[FR Doc.71-3619 Filed 3-19-71;8:45 am]

FEDERAL HOME LOAN BANK BOARD

[H.C. No. 95]

TAHOE FINANCIAL CO., INC.

Notice of Receipt of Application for Approval of Acquisition of Control of Tahoe Savings and Loan Association

MARCH 17, 1971.

Notice is hereby given that the Federal Savings and Loan Insurance Corporation has received an application from Tahoe Financial Co., Inc., South Lake Tahoe, Calif., for approval of acquisition of control of the Tahoe Savings and Loan Association, South Lake Tahoe, Calif., an insured institution, under the provisions of section 408(e) of the National Housing Act, as amended (12 U.S.C. 1730a(e)), and § 584.4 of the Regulations for Savings and Loan Holding Companies, said acquisition to be effected by an exchange of stock of Tahoe Financial Co., Inc., for stock of Tahoe Savings and Loan Association. Comments on the proposed acquisition should be submitted to the Director, Office of Examinations and Supervision, Federal Home Loan Bank Board, Washington, D.C. 20552, within 30 days of the date this notice appears in the FEDERAL REGISTER.

[SEAL] GRENVILLE L. MILLARD, JR.,
Assistant Secretary,
Federal Home Loan Bank Board.

[FR Doc.71-3886 Filed 3-19-71;8:47 am]

FEDERAL MARITIME COMMISSION

[No. 71-16]

JOHNSON LINES ET AL.

Postponement of Filing Dates

MARCH 15, 1971.

Johnson Lines, French Line, Hapag-Lloyd Line; violations of section 18(b)(3), Shipping Act, 1916.

This proceeding was instituted by order of the Commission dated February 24, 1971. The date by which respondents were to submit affidavits of fact and memoranda of law in response to this order was set for March 19, 1971.

Respondents have now moved the Commission to dismiss the proceeding or alternatively to make its order more definite and certain. To provide time for the disposition of this motion the above-mentioned filing dates are postponed until further notice.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.71-3888 Filed 3-19-71;8:47 am]

FAR EAST CONFERENCE

Notice of Agreement Filed

Notice is hereby given that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1405 I Street NW., Room 1202; or may inspect the agreement at the Field Offices located at New York, N.Y., New Orleans, La., and San Francisco, Calif. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 20 days after publication of this notice in the FEDERAL REGISTER. Any person desiring a hearing on the proposed agreement shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the statement should indicate that this has been done.

Notice of agreement filed by:

Elkan Turk, Jr., Esq., Burlingham, Underwood, Wright, White & Lord, 25 Broadway, New York, NY 10004.

Agreement No. 17-33 is a modification of the Far East Conference's basic agreement which has been filed in an effort to comply with the Federal Maritime Commission's requirements concerning Self-Policing Systems, General Order 7 (Revised) as published in the FEDERAL REGISTER of October 28, 1970 (35 F.R. 16679).

Dated: March 17, 1971.

By order of the Federal Maritime Commission.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.71-3889 Filed 3-19-71;8:48 am]

TRANS-PACIFIC FREIGHT CONFERENCE OF HONG KONG

Notice of Agreement Filed

Notice is hereby given that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1405 I Street NW., Room 1202; or may inspect the agreement at the Field Offices located at New York, N.Y., New Orleans, La., and San Francisco, Calif. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 20 days after publication of this notice in the FEDERAL REGISTER. Any person desiring a hearing on the proposed agreement shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the statement should indicate that this has been done.

Notice of agreement filed by:

Charles F. Warren, Esq., 1100 Connecticut Avenue NW., Washington, DC 20036.

The second paragraph of Article 6 of the Trans-Pacific Freight Conference of Hong Kong's basic agreement, No. 14, in part prohibits absorption at loading and discharging ports of rail coastal steamer freights or other charges except as may be agreed upon by the Conference lines. Agreement No. 14-32, here, would extend this prohibition to the same degree to truck freights.

Dated: March 17, 1971.

By order of the Federal Maritime Commission.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.71-3890 Filed 3-19-71;8:48 am]

TRANS-PACIFIC FREIGHT CONFERENCE OF JAPAN

Notice of Agreement Filed

Notice is hereby given that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1405 I Street NW., Room 1202; or may inspect the agreement at the Field Offices located at New York, N.Y., New Orleans, La., and San Francisco, Calif. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 20 days after publication of this notice in the FEDERAL REGISTER. Any person desiring a hearing on the proposed agreement shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with

particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the statement should indicate that this has been done.

Notice of agreement filed by:

Charles F. Warren, Esq., 1100 Connecticut Avenue NW., Washington, DC 20036.

The final sentence of Article 3(a) of the Trans-Pacific Freight Conference of Japan's basic agreement, No. 150, prohibits the absorption of wharfage, storage, or other charges against cargo except as may be agreed upon by the Conference Lines and reflected in the Conference tariff. Agreement No. 150–49, here, would extend this prohibition to the same degree to "absorptions at loading and discharging ports of rail, truck, or water freights."

Dated: March 17, 1971.

By order of the Federal Maritime Commission.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.71-3891 Filed 3-19-71;8:48 am]

FEDERAL POWER COMMISSION

[Docket No. RI71-809, etc.]

TEXACO, INC., 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 10, 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.

[1] Does not consolidate for hearing or dispose of the several matters herein.

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.

APPENDIX A

Docket No.	Respondent	Rate schedule No.	Supplement No.	Purchaser and producing area	Amount of annual increase	Date filing tendered	Effective date unless suspended	Date suspended until—	Cents per Mcf* Rate in effect	Cents per Mcf* Proposed increased rate	Rate in effect subject to refund in dockets Nos.
RI71-809	Texaco, Inc	435	[3] 9	Sea Robin Pipeline Co. (Eugene Island Block 205) (Offshore Louisiana).	(1)	2- 8-71		3-26-71	17.0	[2] 22.0	
	do	440	[3] 3	Transcontinental Gas Pipe Line Corp. (Eugene Island Block 208) (Offshore Louisiana).	$63,875	2- 8-71		3-26-71	17.0	[2] 22.0	
	do	441	[3] 3	Transcontinental Gas Pipe Line Corp. (Dog Lake Field, Terrebonne Parish, Southern Louisiana).	(1)	2- 8-71		3-26-71	18.5	[2] 22.0	
	do	442	[3] 3	Transcontinental Gas Pipe Line Corp. (Southern Marsh Island Block 48) (Offshore Louisiana).	63,875	2- 8-71		3-26-71	17.0	[2] 22.0	
	do	445	[3] 2	Texas Gas Transmission Corp. (Eugene Island Block 273) (Offshore Louisiana).	(1)	2- 8-71		3-26-71	17.0	[2] 22.0	
	do	446	[3] 2	United Fuel Gas Co. (Eugene Island Block 273) (Offshore Louisiana).	(1)	2- 8-71		3-26-71	17.0	[2] 22.0	
	do	447	[3] 2	Texas Gas Transmission Corp. (Southern Marsh Island Block 11) (Offshore Louisiana).	63,875	2- 8-71		3-26-71	17.0	[2] 22.0	
	do	448	[3] 3	Texas Eastern Transmission Corp. (Main Pass Block 95) (Offshore Louisiana).	(1)	2- 8-71		3-26-71	17.0	[2] 22.25	
	do	449	[3] 4	Sea Robin Pipeline Co. (East Cameron Block 265) (Offshore Louisiana).	(1)	2- 8-71		3-26-71	17.0	[2] 26.0	
RI71-810	Michel T. Halbouty	11	3	Natural Gas Pipeline Co. of America (East Holly Beach Field) (Cameron Parish) (Southern Louisiana).	36,000	2- 9-71		3-27-71	[4] 21.25	[2] 22.375	
RI71-811	Getty Oil Co	110	3	Southern Natural Gas Co. (Grange Field, Lawrence and Jefferson Davis Counties) (Mississippi).	7,234	2-16-71		4-19-71	[4] 20.6	25.4225	
RI71-812	Pennzoil Producing Co.[10]	216	[5] [12] 16	United Gas Pipe Line Co. (Bay Baptiste Field) (Terrebonne Parish) (Southern Louisiana).	60,000	2-16-71		4- 3-71	20.0	[2] 26.0	RI71-275.
RI71-813	Sun Oil Co	482	[7] [12] 4	Transcontinental Gas Pipe Line Corp. (Ship Shoal Block 239) (Offshore Louisiana).	9,681	2-10-71		3-28-71	17.0	[2] 21.25	
RI71-814	Aquitaine Oil Corp	4	[7] [12] 3	Transcontinental Gas Pipe Line Corp. (Ship Shoal 239-256) (Offshore Louisiana).	3,230	2-16-71		4- 3-71	17.0	[2] 21.25	
RI71-815	Humble Oil & Refining Co. et al.	35	[8] [13] 21	United Gas Pipe Line Co. (Duck Lake Field, St. Mary and St. Martin Parishes) (Southern Louisiana).	5,407	2-16-71		4- 3-71	22.375	[2] [9] 24.95	RI71-700.
RI71-816	H. H. Phillips, Jr. et al	3	13	Natural Gas P/L Co. of America (La Gloria Field, Jim Wells and Brooks Counties, Tex., RR. District No. 4).	2,937	[11] 2- 4-71		4- 7-71	[2] [4] 14.0525	[2] [4] 16.72945	RI70-396.
RI71-817	Pennzoil Producing Co	261	[14] [15] 12	Southern Natural Gas Co. (Plum Point Field, Lafourche Parish) (Southern Louisiana).	11,781	2-16-71		4- 3-71	22.375	[2] 26.0	RI71-685.

APPENDIX A

Docket No.	Respondent	Rate schedule No.	Supplement No.	Purchaser and producing area	Amount of annual increase	Date filing tendered	Effective date unless suspended	Date suspended until—	Cents per Mcf* Rate in effect	Cents per Mcf* Proposed increased rate	Rate in effect subject to refund in dockets Nos.
RI71-818	Atlantic Richfield Co.	635	3	Tennessee Gas Pipe Line Co., a division of Tenneco, Inc. (Ship Shoal Area Block 198) (Offshore Louisiana).	40,688	2-18-71		4-5-71	21.375	[3] 22.25	RI71-657.
RI68-315	Mobil Oil Corp.	366	1 to 2	Colorado Interstate Gas Co. (Patrick Draw Field, Sweetwater County, Wyo.).	632	2-16-71		[23] Accepted	[25] 15.5	[25] 15.616	RI68-315.
RI70-414	do.	371	1 to 6	El Paso Natural Gas Co. (Tip Top Field, Sublette County, Wyo.).	182	2-16-71		[23] Accepted	17.0	17.218	RI70-414.
RI69-691	Mobil Oil Corp. et al.	447	1 to 1	Montana-Dakota Utilities Co. (Big Horn Area, Big Horn County, Wyo.).	21	2-16-71		[23] Accepted	14.6154	14.6884	RI69-691.
RI69-324	Pan American Petroleum Corp.	411	1 to 3	El Paso Natural Gas Co. (Ute Dome Paradox Field) (San Juan County, N. Mex., San Juan Basin).	7,706	2-16-71		[24] Accepted	15.0	15.3448	RI69-324.
RI71-819	Pennzoil United, Inc. et al.	13	7	Northern Natural Gas Co. (Coyanosa Field, Pecos County, Tex.) (Permian Basin).	13,049	2-16-71		4-19-71	[25] 16.0	[25] 17.0638	
RI71-820	Kerr-McGee Corp. et al.	15	1 to 7	Southern Natural Gas Co. (Spider Field, De Sota Parish) (Northern Louisiana).	32,116	2-5-71		[19] 3-21-71	[17] 14.4855	[17 18] 18.5	
RI71-821	An-Son Corp. et al.	7	2	Lone Star Gas Co. (Sholem-Alechem Field, Carter County) (Oklahoma Other Area).	4,760	2-12-71		4-15-71	[25] 11.0	[25] 13.0	
RI71-822	G. L. Vinson	1	3	Arkansas Louisiana Gas Co. (Arkoma Area, Le Flore County) (Oklahoma Other Area).	915	2-18-71		4-21-71	[16 25] 15.0	[15 25] 16.015	
RI71-823	Imperial-American Management Co.	10	11	Arkansas Louisiana Gas Co. (Arkoma Area, Le Flore County et al.) (Oklahoma Other Area and Franklin County) (Arkansas).	12,890	2-18-71		4-21-71	[16 25] 15.0	[16 25] 16.015	
RI71-824	Rudman Resources, Inc.	(20)	(21)	El Paso Natural Gas Co. (Worsham-Bayer Field) (Reeves County, Tex.) (Permian Basin).	9,751	2-17-71		4-20-71	[24] 16.5	[24] 17.5656	
	do.	(20)	(22)	El Paso Natural Gas Co. (Gomez Ellenburger Field) (Pecos County, Tex.) (Permian Basin).	852	2-17-71		4-20-71	[24] 16.5	[24] 17.5656	
RI71-825	Williams Properties, Inc.	(20)	(22)	do.	107	2-17-71		4-20-71	[24] 16.5	[24] 17.5656	
RI71-826	Texas American Oil Corp.	(20)		Northern Natural Gas Co. (Ozona Field, Crockett County, Tex.) (Permian Basin).	518	2-16-71		4-19-71	[25] 16.0	[25] 17.0638	

*Unless otherwise stated, the pressure base is 15.025 p.s.i.a.
[1] No deliveries at present.
[2] Increase resulting from termination of moratorium in Southern Louisiana pursuant to Order No. 413 issued Oct. 27, 1970.
[3] Applies to casinghead gas only.
[4] Conditioned temporary certificated initial rate.
[5] Permanently certificated initial rate.
[6] Applies only to gas from the 9,400' reservoir which was inadvertently omitted in previous increased rate filing.
[7] Pertains to casinghead gas which was inadvertently omitted in previous rate increase filing.
[8] Pertains to sales from reservoirs discovered on or after Oct. 1, 1968.
[9] Includes 0.15 cent paid by buyer to seller for gathering, dehydrating and treating operations.
[10] Both buyer and seller are wholly owned subsidiaries of Pennzoil United Inc.
[11] As corrected by filing of Feb. 18, 1971.
[12] Submitted as a correction to an earlier increased rate filing and considered as an increase applicable to gas not covered by the earlier filing.
[13] Includes documents establishing the OP-4, Reservoir A as a newly discovered reservoir pursuant to Opinion No. 567.
[14] Includes documents establishing the 10,970' and 11,000' reservoirs as newly discovered reservoirs pursuant to Opinion No. 567.
[15] Pertains only to gas produced from reservoirs identified therein.
[16] Base rate subject to downward B.t.u. adjustment.
[17] Includes 1.125-cent tax reimbursement.
[18] To be substituted for rate of 17.375 cents currently suspended in Docket No. RI71-648.
[19] End of suspension period pursuant to order issued concurrently with Order No. 423.
[20] No rate schedule on file. Applicant issued a small producer certificate.
[21] Pertains to contract dated Nov. 22, 1967.
[22] Pertains to contract dated Mar. 9, 1965.
[23] Accepted, subject to the existing suspension proceedings in Docket No. RI68-315, RI70-414, and RI69-691, respectively, to be effective Feb. 16, 1971, the date of filing.
[24] Accepted, subject to the existing suspension proceeding in Docket No. RI69-324, to be effective on the date of expiration of 30 days' statutory notice, Mar. 19, 1971.
[25] The pressure base is 14.65 p.s.i.a.

The proposed increases of Mobil Oil Corp. reflect partial reimbursement for the Wyoming severance tax, and consistent with Commission action on similar filings, the proposed increases are accepted for filing subject to existing suspension proceedings to be effective on the date of filing.

Kerr-McGee Corp. previously filed a favored-nation rate increase from 14.4855 cents to 17.3750 cents exclusive of tax reimbursement which was suspended in Docket No. RI71-648 until May 31, 1971. Kerr-McGee now proposes to further increase the suspended rate to 18.5 cents to include tax reimbursement of 1.1250 cents. Consistent with prior Commission action on substitute rate increases to add tax reimbursement, the instant filing is accepted subject to the existing suspension proceeding in Docket No. RI71-648 and such filing is suspended until March 21, 1971, the date of expiration of the suspenison period in docket (as provided for by the order shortening suspension periods issued February 18, 1971, concurrently with Commission Order No. 423).

Certain Respondents request effective dates for which adequate notice has not been given. Good cause has not been shown and they are denied.

The proposed increases, except for those relating to tax increases and those relating to sales outside Southern Louisiana, 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.

All of the producers' proposed increased rates and charges exceed the applicable area price levels for increased rates as set forth in the Commission's Statement of General Policy No. 61-1, as amended (18 CFR 2.56).

[FR Doc.71-3769 Filed 3-19-71;8:45 am]

[Dockets Nos. E-7574, E-7595]

NEW ENGLAND POWER CO.

Order Suspending Proposed Increased Rate Filing, Consolidating Proceedings, Providing for Hearing, Granting Intervention, Denying Motion To Reject Filing, Granting Motion To Add a Petitioner and To Supplement Prior Filing, and Denying Application for Reconsideration

MARCH 12, 1971.

This order suspends for 5 months the operation of a proposed increased rate filing, consolidates proceedings, provides for public hearing, grants intervention, denies motion requesting rejection of

rate increase filing, grants motion to add a petitioner and to supplement filing, and denies an application for reconsideration.

On January 15, 1971, New England Power Co. (NEPCO), a public utility subject to the jurisdiction of this Commission, tendered for filing in Docket No. E-7595 Rate Schedule R-5, which proposes to increase NEPCO's rates and charges to its wholesale for resale customers, together with certificates of concurrence filed by Massachusetts Electric Co., and Narragansett Electric Co.[1] The filing would increase NEPCO's revenues over its 1969 revenues by approximately $13,459,000. NEPCO requests that its filing become effective March 15, 1971.

In support of its filing, NEPCO states that the increase is necessary for it to achieve a revenue level, in a period of soaring costs, that would enable it to provide the earnings coverage needed to raise necessary debt capital and provide a fair return to its stockholders.

On February 17, 1971, the Municipal Interveners[2] filed a motion to reject NEPCO's filing on the ground, inter alia, that the proposed design of the increased rates discriminate against the nonaffiliate customers and in favor of NEPCO's affiliate, Massachusetts Electric Co. The Municipal Interveners allege that this discrimination is contrary to the public policy enunciated in the antitrust statutes enacted by Congress (15 U.S.C. 2, 13) and, consequently, violates the Federal Power Act. Further, the interveners assert that the filing should be rejected because NEPCO did not set forth an explanation of the reasons for the rate changes proposed.

On March 2, 1971, NEPCO filed an answer opposing the motion for rejection of its rate filing. In its answer, NEPCO denies that its rate design is discriminatory and asserts that, if there are any differences in charges between its affiliated and nonaffiliated customers, the difference is justified by the costs of serving those customers. NEPCO further denies that its filing letter did not explain the reasons for the filing or the changes proposed.

The filing does not warrant rejection on its face. The issue of discrimination presents a factual question that can only be resolved after a full evidentiary record is made. At that time, we will then be in a position to ascertain whether the rate differential, if any, between affiliated and nonaffiliated customers is justified on a cost basis as alleged by NEPCO. Additionally, we find that NEPCO complied with our regulations requiring an explanation of the proposed changes and the reasons therefor. Accordingly, we will deny the motion to reject filed by the Municipal Interveners. We will, however, grant their alternate request to suspend NEPCO's filing for 5 months and order a hearing thereon. Further, we will require NEPCO to file 1970 cost data as requested by the Municipal Interveners in addition to other data NEPCO may wish to file in support of its filing.

Notice of the filing was given by publication in the FEDERAL REGISTER on February 3, 1971 (36 F.R. 1924), stating that any person desiring to be heard or make protest should file his statement with the Commission on or before February 17, 1971. In response, the Commission has received numerous protests and has reviewed those protests prior to acting on NEPCO's filing. In addition, our published notice requested persons wishing to intervene to file a petition for intervention in conformity with our rules of practice and procedure. Petitions were filed by the Municipal Interveners, the Secretary of Defense, and the Rhode Island Division of Public Utilities. The petition filed by Rhode Island was not timely filed. However, it was filed in substitution of a timely filed request for a cooperative hearing. NEPCO in its response did not oppose the petitions to intervene filed by the above-named petitioners.[3]

On March 4, 1971, the Municipal Interveners filed a motion to add another petitioner, New Hampshire Electric Cooperative, Inc., to their group of petitioners. Additionally, the interveners seek permission to supplement their filing of February 17, 1971, by setting forth matters that occurred since their filing. On March 9, 1971, Nepco filed its response in which it did not oppose the motion to add a petitioner and to supplement, but did oppose the prayers of the motion to reject or condition the rate filing. We will grant the motion to add a petitioner and to supplement the prior filing.

By order issued January 28, 1971, in Docket No. E-7574, we, inter alia, suspended the operation of NEPCO's proposal to increase its generation and transmission credits to its affiliate, Narragansett Electric Co. (Narragansett), required NEPCO to account for and report to the Commission "the increased rates and charges" of the proposed change in credits and to refund any portion of the change found unjustified, and ordered a hearing on the proposed change. On February 22, 1971, NEPCO filed an application for reconsideration of that order in which it requests the Commission to eliminate suspension of the filing under section 205 of the Federal Power Act and, instead, to institute an investigation under section 206. Additionally, NEPCO, in its application, requests modification of the order to permit its filing to become effective January 1, 1971, and to eliminate the accounting and reporting requirements for the "increased rates and charges."

By its filing in Docket No. E-7574, NEPCO sought to increase its generation and transmission credits to Narragansett under its contract for primary service for resale to its affiliate. By its filing, NEPCO's costs would increase and its revenues would decrease. Thus, NEPCO states that our order obviously misspoke itself when it referred to "increased rates and charges." Our order, of course, discussed NEPCO's proposal to increase its credits to Narragansett and the accounting and reporting requirements of the order should be read in that context. Consequently, NEPCO should report and account for the difference in credit allowances under its contract prior to the proposed change and under the contract as proposed to be changed. Furthermore, our order of January 28, 1971, suspended the filing by Narragansett of its concurrence to NEPCO's filing, which concurrence is in fact "increased rates and charges" to NEPCO. We believe that the order is sufficiently clear and that no modification of our order is required on that point.

Additionally, NEPCO urges us to amend the suspension order pertaining to its credit adjustment to Narragansett by eliminating the section 205 suspension proceeding and instituting a section 206 investigation. In support of its request, NEPCO asserts that the operation prospectively of any adjustment to its proposed credit adjustment would not adversely affect the interests of any of the parties. However, as part of its justification for Rate Schedule R-5, NEPCO reflected its increased costs to Narragansett under its proposed credit adjustment. Thus, the adjustment of credits, if necessary, would affect the costs to NEPCO's jurisdictional customers to the extent that their rates are based, in part, on the increased credit adjustment. Accordingly, the application for reconsideration should be denied[4] and the proceedings in Dockets Nos. E-7574 and E-7595, since they contain common questions of law and fact, should be consolidated for purposes of hearing and decision.

---

[1] The rate schedule supplements are identified in appendix A below and, for purposes of convenience, all subject filings will be hereinafter referred to as Rate Schedule R-5.

[2] The Municipal Interveners consist of the Municipal Electric Association of Massachusetts, Inc. together with the electrical departments and plants of the Massachusetts towns and cities of Ashburnham, Boylston, Danvers, Georgetown, Groton, Hingham, Holden, Hudson, Hull, Ipswich, Littleton, Mansfield, Marblehead, Merrimac, Middleton, North Attleboro, Paxton, Peabody, Princeton, Shrewsbury, Sterling, Templeton, West Boylston, together with the Manchester Electric Co. On March 4, 1971, motion for leave to add New Hampshire Electric Cooperative, Inc. as a petitioner was filed with the Commission.

[3] NEPCO questioned the statutory authority of the Consumers' Council of Massachusetts to intervene herein, although not objecting to its intervention if it has such authority. However, the letter filed by Consumers' Council was treated as a protest rather than as a petition to intervene. We advised the Consumers' Council of Massachusetts, as well as for the State of Rhode Island, which filed a similar letter, that their letters did not meet the requirements of our rules of practice and procedure as petitions to intervene. We requested them to prepare proper petitions and to serve them as required by our rules. To date, those Councils have not filed new petitions.

[4] NEPCO's further argument that the suspension order in Docket No. E-7574 should be modified to permit the change to be effective Jan. 1, 1971, in order to avoid the "burden and inconvenience [of accounting for and reporting the change] arising out of the 29-day postponement" lacks merit.

The Commission further finds:

(1) The tendered Rate Schedule R–5 as further identified and designated in Appendix A below may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful under the Federal Power Act.

(2) Good cause exists for denying the motion filed by the Municipal Interveners on February 17, 1971, to reject the filing of Rate Schedule R–5, as identified in Appendix A below.

(3) It is necessary and appropriate for the purposes of the Federal Power Act, particularly sections 205, 206, 301, 307, 308, and 309 thereof, that the Commission enter upon a hearing concerning the lawfulness of Rate Schedule R–5, as further identified in Appendix A below, that those rate schedules be suspended and the use thereof be deferred, and that a public hearing be initiated on the lawfulness of those rate schedules in accordance with the procedures set forth below, all as hereinafter provided.

(4) Good cause exists for consolidating the proceedings in Dockets Nos. E–7574 and E–7595 for the purposes of hearing and decision.

(5) Good cause exists for granting Municipal Interveners' motion to add a petitioner to their petition to intervene and to supplement their filing of February 17, 1971.

(6) Participation by the aforementioned petitioners, the Municipal Interveners, Secretary of Defense, and Rhode Island Division of Public Utilities, for intervention in Docket No. E–7595 may be in the public interest.

(7) Good cause exists for denying NEPCO's application for reconsideration of our order issued January 28, 1971, in Docket No. E–7574.

The Commission orders:

(A) The motion filed by the Municipal Interveners to reject Rate Schedule R–5 is hereby denied.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by the Federal Power Act and pursuant to the Commission's rules of practice and procedure, a public hearing shall be convened at the offices of the Federal Power Commission, Washington, D.C. 20426, at a date and time to be set by the Hearing Examiner designated to preside over this proceeding, concerning the lawfulness of Rate Schedule R–5, as further identified and designated in Appendix A below.

(C) Pending such hearing and decision thereon, Rate Schedule R–5, as further identified and designated in Appendix A below, is hereby suspended and the use thereof deferred until August 15, 1971. On that date, those rate schedules shall take effect in the manner prescribed by the Federal Power Act; and NEPCO, subject to further orders of the Commission, shall charge and collect the new rates and charges set forth in those rate schedules for all power sold and delivered thereunder.

(D) The proceedings in Dockets Nos. E–7574 and E–7595 are hereby consolidated for purposes of hearing and decision.

(E) NEPCO shall file with the Commission and serve on all parties, on or before April 30, 1971, its case-in-chief in support of its filings in Dockets Nos. E–7574 and E–7595, including testimony of witnesses and exhibits. As part of that support, NEPCO shall file 1970 cost data in the form required by Statements A through O of § 35.13 of our regulations, in addition to any other data that it deems relevant and material to its burden of establishing the propriety of its filings under the Federal Power Act. The parties may submit to the Presiding Examiner, on or before May 20, 1971, proposed dates for commencement of cross-examination of NEPCO's witnesses or, if a party believes that a prehearing conference will expedite the hearing, he may file a motion for a prehearing conference, including therein a statement of how the proceeding would be expedited thereby and a proposed agenda for the conference. All further procedural dates shall be as ordered by the Presiding Examiner.

(F) NEPCO shall refund at such times and in such amounts to the person entitled thereto, and in such manner as may be required by final order of the Commission, the portion of the increased rates and charges found by the Commission in Docket No. E–7595 not justified, together with interest at the prime rate in Boston, Mass., on August 15, 1971, from the date of payment until refunded; shall bear all costs of any such refunding; shall keep accurate accounts in detail of all the amounts received by reason of the increased rates and charges effective as of August 15, 1971, for each billing period, specifying by whom and in whose behalf such amounts were paid and shall report (original and one copy) in writing and under oath, to the Commission monthly, for each billing period, and for each purchaser the billing determinants of electric energy sold and delivered under the subject rate schedules, and the revenues resulting therefrom as computed under the rates and charges in effect immediately prior to August 15, 1971, and under the rates and charges made effective by this order, together with the differences in the revenues so computed.

(G) The Municipal Interveners, the Secretary of Defense, and the Rhode Island Division of Public Utilities are hereby permitted to intervene in this proceeding subject to the rules of practice and procedure and the regulations of the Commission: *Provided, however,* That participation of such interveners shall be limited to the matters affecting asserted rights and interests specifically set forth in the petitions to intervene; *And, provided, further,* That the admission of such interveners shall not be construed as recognition by the Commission that they or any of them might be aggrieved by any orders entered in this proceeding.

(H) The motion filed by the Municipal Interveners on March 4, 1971, to add New Hampshire Electric Cooperative, Inc., as a petitioner and to supplement its February 17, 1971, filing is hereby granted.

(I) The application filed by NEPCO for reconsideration of our order issued January 28, 1971, in Docket No. E–7574 is hereby denied.

(J) Unless otherwise ordered by the Commission, NEPCO shall not change the terms or provisions of the subject rate schedules or of its presently effective rate schedules until this proceeding has been terminated or until the period of suspension has expired.

(K) Notices of intervention or petitions to intervene may be filed with the Federal Power Commission, Washington, D.C. 20426, on or before April 12, 1971, in accordance with the Commission's rules of practice and procedure (18 CFR 1.8 or 1.37).

By the Commission.

[SEAL] KENNETH F. PLUMB,
Acting Secretary.

APPENDIX A

DOCKET NO. E–7595, RATE SCHEDULE DESIGNATION

New England Power Co., Third Revised Sheet No. 11 (Supersedes Second Revised Sheet No. 11).
Fourth Revised Sheet No. 12 (Supersedes Third Revised Sheet No. 12).
Second Revised Sheet No. 16 (Supersedes First Revised Sheet No. 16).

To the following Rate Schedule:

FPC No.:	*Other Party*
161	The Narragansett Electric Co.[1]
162	Massachusetts Electric Co.[1 2]
163	Granite State Electric Co.[1]
164	Green Mountain Power Co.
165	Manchester Electric Co.
166	Town of Groveland.
167	Town of Littleton (New Hampshire).[1]
169	Town of Georgetown.
170	Town of Mansfield.
171	Town of Middleton.
172	Town of Sterling.
173	Town of Hull.
174	Town of Merrimac.
175	Town of Littleton (Massachusetts).
176	Town of Groton.
177	Town of Boylston.
178	Town of Paxton.
179	Town of Danvers.
180	Town of Templeton.
181	Town of Marblehead.[1]
182	Town of Ashburnham.
183	Town of Princeton.
184	Town of Hingham.
185	Town of North Attleborough.
186	City of Peabody.[1]
187	Town of Holden.
188	Town of West Boylston.
189	Town of Ipswich.[1]
1199	Department of the Army.
200	New Hampshire Electric Cooperative, Inc.
202	Town of Hudson.
207	Town of Shrewsbury.
208	Fitchburg Gas and Electric Light Co.[1]

[1] Second Revised Sheet No. 19 (Supersedes First Revised Sheet No. 19) in lieu of Second Revised Sheet No. 16 (Supersedes First Revised Sheet No. 16).

[2] Also includes: Second Revised Sheet No. 20 (Supersedes First Revised Sheet No. 20) to reflect listing of delivery points.

DOCKET NO. E–7595—RATE SCHEDULE DESIGNATIONS

New England Power Co., Third Revised Sheet No. 22 (Superseding Second Revised Sheet No. 22).

To the following Rate Schedules:

FPC No.	Other Party
162	Massachusetts Electric Co.[2]

[2] Revision of Nepco's billing credits to Masselec.

Certificate of Concurrence

Massachusetts Electric Co., Supplement No. 4 to Rate Schedule FPC No. 38, (concurs in New England Power Co., Revised Sheets to FPC No. 162).

The Narragansett Electric Co., Supplement No. 5 to Rate Schedule FPC No. 24 (concurs in New England Power Co., Revised Sheets to FPC No. 161).

[FR Doc.71-3852 Filed 3-19-71;8:45 am]

[Project No. 2614]

VANCEBURG ELECTRIC LIGHT, HEAT AND POWER SYSTEM AND CITY OF VANCEBURG, KY.

Notice of Application for License for Unconstructed Project

MARCH 12, 1971.

Public notice is hereby given that application for a license has been filed under the Federal Power Act (16 U.S.C. 791a–825r) by Vanceburg Electric Light, Heat and Power System and the city of Vanceburg, Ky. (correspondence to William T. Love, Chairman Utilities Commission, city of Vanceburg, Ky. 41179), for proposed Project No. 2614, known as the Greenup Project, to be located on the Ohio River at the U.S. Government's constructed Greenup dam. The hydroelectric power facilities proposed in the application would be installed on the Ohio side of the river in Scioto County, Ohio, in the region of Greenup, Ky., and Ironton and Portsmouth, Ohio; would affect lands of the United States under the supervision of the Corps of Engineers; would utilize water from the Government dam; and would include an 85-mile transmission line to Renaker, Ky.

According to the application, the proposed project would be located in the space available on the Ohio side of the river east of gate pier No. 10 and would consist of: (1) A short concrete intake canal approximately 65 feet long and 150 feet wide, connected on one end to (2) a powerplant intake structure which in turn connects to (3) a concrete powerhouse section about 185 feet long and 175 feet wide consisting of three parallel concrete conduits enclosing three horizontal-axis, bulb-type kaplan turbines each rated at 33,000 hp. (metric) connected with three generators each rated at 42,000 kv.-a. with a 0.98 power factor; (4) a tailrace canal approximately 100 feet long and 154 feet wide; (5) a single circuit, 138-kv. transmission line of wood pole, H-frame construction, except for the river crossing which would be supported by two metal towers, extending through Greenup, Lewis, Mason, Robertson, and Harrison Counties, Ky., for approximately 85 miles between a substation at the Greenup powerhouse and the Renaker substation of East Kentucky Rural Electric Cooperative Corp. (Cooperative) in Harrison County, Ky., via applicants Black Oak substation and the Cooperative's Argentum, Charters, and Murphysville substations; (6) recreational facilities consisting of fishing and observation platforms; and (7) appurtenant facilities.

Any person desiring to be heard or make any protest with reference to said application should on or before May 24, 1971, file with the Federal Power Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or participate as a party in any hearing therein must file petitions to intervene in accordance with Commission's rules. The application is on file with the Commission and available for public inspection.

KENNETH F. PLUMB,
Acting Secretary.

[FR Doc.71-3853 Filed 3-19-71;8:45 am]

FEDERAL RESERVE SYSTEM

SOCIETY CORP.

Order Approving Acquisition of Bank Stock by Bank Holding Company

In the matter of the application of Society Corp., Cleveland, Ohio, for approval of acquisition of 80 percent or more of the voting shares of The Peoples Bank of Youngstown, Youngstown, Ohio.

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), the application of Society Corp., Cleveland, Ohio ("Applicant"), a registered bank holding company, for the Board's prior approval of the acquisition of 80 percent or more of the voting shares of The Peoples Bank of Youngstown, Youngstown, Ohio (Bank).

As required by section 3(b) of the Act, the Board gave written notice of receipt of the application to the Ohio Superintendent of Banks and requested his views and recommendation. The Superintendent recommended approval of the application.

Notice of receipt of the application was published in FEDERAL REGISTER on January 26, 1971 (36 F.R. 1232), providing an opportunity for interested persons to submit comments and views with respect to the proposal. A copy of the application was forwarded to the U.S. Department of Justice for its consideration. Time for filing comments and views has expired and all those received have been considered by the Board.

The Board has considered the application in the light of the factors set forth in section 3(c) of the Act, including the effect of the proposed acquisition on competition, the financial and managerial resources and future prospects of the Applicant and the banks concerned, and the convenience and needs of the communities to be served. Upon such consideration, the Board finds that:

Applicant, the second largest bank holding company and the fourth largest banking organization in Ohio, controls 10 banks with aggregate deposits of $1,038 million, representing 5.2 percent of the commercial bank deposits in the State. (All banking data are as of June 30, 1970, and reflect holding company acquisitions approved by the Board to date.) Upon acquisition of Bank ($32 million deposits), Applicant would control 5.3 percent of the commercial bank deposits in the State; its position relative to other banking organizations and holding companies would remain the same.

Bank is by a substantial margin the smallest of four banks headquartered in Youngstown and the sixth largest of 14 banks in the Youngstown-Warren SMSA, holding less than 4.1 percent of total area deposits. The fifth largest bank in this market has control over almost three times as many deposits as Bank. Applicant's closest subsidiary bank is located 33 miles from Youngstown and there is no meaningful competition between Bank and that bank or any other of Applicant's subsidiaries. Further, in light of the distances involved and Ohio law restricting branching, it seems unlikely on the facts of record that any significant competition would develop in the future. Based on the foregoing, the Board concludes that consummation of the proposal would have no adverse effect on competition in any relevant area and might stimulate competition in the Youngstown area.

Considerations relating to the convenience and needs of the communities to be served lend some weight toward approval of the application as affiliation with Applicant would facilitate loan participations and would enable Bank to provide international banking services. The banking factors are regarded as consistent with approval. It is the Board's judgment that the proposed transaction would be in the public interest, and that the application should be approved.

It is hereby ordered, For the reasons set forth in the findings summarized above, that said application be and hereby is approved, provided that the action so approved shall not be consummated (a) before the 30th calendar day following the date of this order, or (b) later than 3 months after the date of this order, unless such time be extended for good cause by the Board, or by the

Federal Reserve Bank of Cleveland pursuant to delegated authority.

By order of the Board of Governors,[1] March 15, 1971.

[SEAL] KENNETH A. KENYON,
Deputy Secretary.

[FR Doc.71-3854 Filed 3-19-71;8:45 am]

VIRGINIA COMMONWEALTH BANKSHARES, INC.

Order Approving Acquisition of Bank Stock by Bank Holding Company

In the matter of the application of Virginia Commonwealth Bankshares, Inc., Richmond, Va., for approval of acquisition of 100 percent of the voting shares of The Bank of Virginia of Roanoke Valley, Vinton, Va., a proposed new bank.

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)), the application of Virginia Commonwealth Bankshares, Inc., Richmond, Va. (Applicant), a registered bank holding company, for the Board's prior approval of the acquisition of 100 percent of the voting shares of The Bank of Virginia of Roanoke Valley, Vinton, Va., a proposed new bank.

As required by section 3(b) of the Act, the Board gave written notice of receipt of the application to the Commissioner of Banking for the State of Virginia and requested his views and recommendation. The Commissioner recommended approval of the application.

Notice of receipt of the application was published in the FEDERAL REGISTER on January 14, 1971 (36 F.R. 575), providing an opportunity for interested persons to submit comments and views with respect to the proposal. A copy of the application was forwarded to the U.S. Department of Justice for its consideration. Time for filing comments and views has expired and all those received have been considered by the Board.

The Board has considered the application in the light of the factors set forth in section 3(c) of the Act, including the effect of the proposed acquisition on competition, the financial and managerial resources and future prospects of the Applicant and the banks concerned, and the convenience and needs of the communities to be served. Upon such consideration, the Board finds that:

Applicant is the fourth largest banking organization and the second largest bank holding company in Virginia, controlling 13 banks with aggregate deposits of $582.1 million. This represents 8 percent of total banking deposits in the State of Virginia. (Banking data are as of June 30, 1970, adjusted to reflect holding company acquisitions and formations approved by the Board through February 28, 1971.) Since Bank is a proposed new bank, consummation of the proposal would not increase concentration in any market.

Bank would have a single office in the town of Vinton and would primarily serve that town, the eastern side of the city of Roanoke, and eastern Roanoke County. The three largest banks in the city of Roanoke each have branches in Vinton, with which Bank would be in competition. The relevant banking market is considered to approximate the cities of Roanoke and Salem and all of Roanoke County. Applicant has two bank subsidiaries with offices in that market. One such subsidiary, The Bank of Virginia, headquartered in Richmond, has a branch office in downtown Roanoke. The other, The Bank of Virginia of the Southwest, has four offices in Salem and its environs. These two subsidiaries of Applicant together hold approximately 11.5 percent of deposits in the relevant market. Under Virginia law, no present banking subsidiary of Applicant may establish a branch in Bank's primary service area.

Based upon the foregoing, the Board concludes that consummation of the proposed acquisition would not have an adverse effect on competition in any relevant area and might have a procompetitive effect through the introduction of an additional banking alternative for residents of eastern Roanoke County, presently the fastest growing area in the relevant market. The banking factors, as they relate to Applicant, its subsidiaries, and Bank, and considerations relating to the convenience and needs of the communities to be served, are regarded as consistent with approval of the application. It is the Board's judgment that the proposed transaction would be in the public interest, and that the application should be approved.

It is hereby ordered, For the reasons set forth in the findings summarized above, that said application be and hereby is approved: *Provided,* That the action so approved shall not be consummated (a) before the 30th calendar day following the date of this order, or (b) later than 3 months after the date of this order; and provided further that (c) The Bank of Virginia of Roanoke Valley shall be opened for business not later than 6 months after the date of this order. The time periods described in (b) and (c) above may be extended for good cause by the Board, or by the Federal Reserve Bank of Richmond pursuant to delegated authority.

By the order of the Board of Governors,[1] March 15, 1971.

[SEAL] KENNETH A. KENYON,
Deputy Secretary.

[FR Doc.71-3855 Filed 3-19-71;8:45 am]

[1] Voting for this action: Vice Chairman Robertson and Governors Mitchell, Daane, Maisel, Brimmer, and Sherrill. Absent and not voting: Chairman Burns.

[1] Voting for this action: Vice Chairman Robertson and Governors Mitchell, Daane, Maisel, Brimmer, and Sherrill. Absent and not voting: Chairman Burns.

DEPARTMENT OF THE TREASURY

Bureau of Customs

[STS 643.3 t]

CHICKEN EGGS IN THE SHELL FROM MEXICO

Withholding of Appraisement Notice

Information was received on March 11, 1971, that chicken eggs in the shell from Mexico were being sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160 et seq.) (referred to in this notice as "the Act"). This information was the subject of an "Antidumping Proceeding Notice," which was published in the FEDERAL REGISTER of March 17, 1971, on page 5144. The "Antidumping Proceeding Notice" indicated that there was evidence on record concerning injury to or likelihood of injury to or prevention of establishment of an industry in the United States.

Pursuant to section 201(b) of the Act (19 U.S.C. 160(b)) notice is hereby given that there are reasonable grounds to believe or suspect that the purchase price (section 203 of the Act; 19 U.S.C. 162) of such chicken eggs in the shell from Mexico is less, or likely to be less, than the foreign market value (section 205 of the Act; 19 U.S.C. 164).

Customs officers are being directed to withhold appraisement of chicken eggs in the shell from Mexico in accordance with § 153.48, Customs Regulations (19 CFR 153.48).

In accordance with §§ 153.32(b) and 153.37, Customs Regulations (19 CFR 153.32(b), 153.37) interested parties may present written views or arguments, or request in writing that the Secretary of the Treasury afford an opportunity to present oral views.

Any such written views or arguments, or request should be addressed to the Commissioner of Customs, 2100 K Street, NW., Washington, D.C. 20226, in time to be received by his office not later than 7 days from the date of publication of this notice in the FEDERAL REGISTER.

This notice, which is published pursuant to § 153.34(a) Customs Regulations, shall become effective upon publication in the FEDERAL REGISTER (3-20-71). It shall cease to be effective at the expiration of 3 months from the date of such publication, unless previously revoked.

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

Approved: March 18, 1971.

EUGENE T. ROSSIDES,
Assistant Secretary of the Treasury.

[FR Doc.71-3961 Filed 3-19-71;11:35 am]

Office of the Secretary

[ATS 643.3-v]

CHICKEN EGGS IN THE SHELL FROM MEXICO

Determination of Sales at Less Than Fair Value

MARCH 18, 1971.

Information was received on March 11, 1971, that chicken eggs in the shell from Mexico were being sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160 et seq.) (referred to in this notice as "the Act").

A "Withholding of Appraisement Notice" issued by the Commissioner of Customs is being published concurrently with this notice.

I hereby determine that chicken eggs in the shell from Mexico are being, or are likely to be, sold at less than fair value within the meaning of section 201(a) of the Act.

Statement of reasons. The information gathered indicates that the proper basis for comparison was between purchase price and home market price.

Purchase price was based on a duty paid, delivered to customer price. Deductions were allowed for U.S. duty, inland freight and brokerage charges.

Home market price was based on the wholesale price in Mexico.

Comparison between purchase and home market price revealed that purchase price was lower than home market price.

This determination is published pursuant to section 201(c) of the Act (19 U.S.C. 160(c)).

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

[FR Doc.71-3962 Filed 3-19-71;11:35 am]

GENERAL SERVICES ADMINISTRATION

[Federal Property Management Regs.; Temporary Reg. F-91]

SECRETARY OF DEFENSE

Delegation of Authority

1. *Purpose.* This regulation delegates authority to the Secretary of Defense to represent the consumer interests of the Federal Government in a telecommunications service rate proceeding.

2. *Effective date.* This regulation is effective immediately.

3. *Delegation.* a. Pursuant to the authority vested in me by the Federal Property and Administrative Services Act of 1949, 63 Stat. 377, as amended, particularly sections 201(a)(4) and 205(d) (40 U.S.C. 481(a)(4) and 486(d)), authority is delegated to the Secretary of Defense to represent the consumer interests of the executive agencies of the Federal Government before the Michigan Public Service Commission in a proceeding involving intrastate rates for telecommunications services provided by Michigan Bell Telephone Co. (Case No. U-3838).

b. The Secretary of Defense may redelegate this authority to any officer, official, or employee of the Department of Defense.

c. This authority shall be exercised in accordance with the policies, procedures, and controls prescribed by the General Services Administration, and, further, shall be exercised in cooperation with the responsible officers, officials, and employees thereof.

Dated: March 15, 1971.

ROBERT L. KUNZIG,
Administrator of General Services.

[FR Doc.71-3879 Filed 3-19-71;8:47 am]

[Federal Property Management Regs.; Temporary Reg. F-92]

SECRETARY OF DEFENSE

Delegation of Authority

1. *Purpose.* This regulation delegates authority to the Secretary of Defense to represent the consumer interests of the Federal Government in a water service regulatory proceeding.

2. *Effective date.* This regulation is effective immediately.

3. *Delegation.* a. Pursuant to the authority vested in me by the Federal Property and Administrative Services Act of 1949, 63 Stat. 377, as amended, particularly sections 201(a)(4) and 205(d) (40 U.S.C. 481(a)(4) and 486(d)), authority is delegated to the Secretary of Defense to represent the consumer interests of the executive agencies of the Federal Government before the Illinois Commerce Commission in a regulatory proceding involving the East St. Louis and Interurban Water Co. (Docket No. 56230).

b. The Secretary of Defense may redelegate this authority to any officer, official, or employee of the Department of Defense.

c. This authority shall be exercised in accordance with the policies, procedures, and controls prescribed by the General Services Administration, and, further, shall be exercised in cooperaton with the responsible officers, officials, and employees thereof.

Dated: March 12, 1971.

ROBERT L. KUNZIG,
Administrator of General Services.

[FR Doc.71-3856 Filed 3-19-71;8:45 am]

OFFICE OF EMERGENCY PREPAREDNESS

FLORIDA

Amendment to Notice of Major Disaster

Notice of Major Disaster for the State of Florida, dated March 15, 1971, and as published March 18, 1971 (36 F.R. 5261), 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 March 15, 1971:

The Counties of:

Broward.	Lee.
Collier.	Palm Beach.
Hendry.	

Dated: March 18, 1971.

G. A. LINCOLN,
Director,
Office of Emergency Preparedness.

[FR Doc.71-3956 Filed 3-19-71;9:59 am]

SECURITIES AND EXCHANGE COMMISSION

[70-4999; 68-183]

AMERICAN ELECTRIC POWER CO., INC.

Notice of Proposed Amendment of Certificate of Incorporation To Increase Authorized Shares of Common Stock and Order Authorizing Solicitation of Proxies in Connection Therewith

MARCH 16, 1971.

Notice is hereby given that American Electric Power Co., Inc. (AEP), 2 Broadway, New York, NY 10004, 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)(2), 7, and 12(e) of the Act and Rule 62 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.

AEP proposes to submit to its stockholders at an annual meeting to be held April 28, 1971, a proposal to amend its Certificate of Incorporation to increase from 65 million to 70 million the aggregate number of authorized shares of common stock, par value $6.50 per share. It is contemplated that the additional shares of authorized stock, the issuance and sale of which are to be the subject of future filings with this Commission, will be used (a) to retire AEP's notes to banks and commercial paper notes, heretofore authorized, (b) for equity investments in its operating subsidiary companies, and (c) to permit the acquisition of operating properties or securities of one or more public utility companies. The proposed amendment will require the affirmative vote of the holders of the majority of the 54 million outstanding shares of common stock. AEP intends to solicit proxies, which are to be mailed on or about March 18, 1971, the date of record for voting eligibility, from its common stockholders to obtain the requisite approval of the proposed

amendment. AEP proposes to make telephonic, telegraphic, or personal solicitation to some stockholders through its officers and regular employees.

It is stated that the fees and expenses, including State taxes, of AEP to be paid in connection with the proposed amendment will not exceed $21,250, including legal fees of $5,000. It is further stated that no State commission and no Federal commission, other than this Commission, has jurisdiction over the proposed transactions. AEP has filed its proxy solicitation material and requests that the effectiveness of its declaration with respect to the solicitation be accelerated as provided in Rule 62.

Notice is further given that any interested person may, not later than April 15, 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 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 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 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.71-3867 Filed 3-19-71;8:46 am]

[70-4997]

OHIO EDISON CO.

Notice of Proposed Issue of Bonds for Sinking Fund Purposes

MARCH 15, 1971.

Notice is hereby given that Ohio Edison Co. (Ohio Edison), 47 North Main Street, Akron, OH 44308, a registered holding company and a public-utility company, has filed a declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 (Act), designating sections 6(a) and 7 of the Act 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.

Ohio Edison proposes, on or about May 1 and November 1, 1971, to issue $6,159,000 principal amount of its first mortgage bonds 3¼ percent series of 1955 due 1985, under the provisions of its 12th Supplemental Indenture dated as of May 1, 1955, and to surrender such bonds to the trustee in accordance with the sinking fund provisions. The bonds are to be identical with those authorized by the Commission on September 3, 1970 (Holding Company Act Release No. 16824), and are to be issued on the basis of unfunded property additions. Ohio Edison estimates that, after giving effect to the issuance of the sinking fund bonds, unfunded net property additions will amount to approximately $193,700,000 as of December 31, 1970.

It is stated that the issuance of the sinking fund bonds is subject to the jurisdiction of the Public Utilities Commission of Ohio and that no other State commission and no Federal commission, other than this Commission, has jurisdiction over the proposed transaction. The fees and expenses to be paid in connection with the sinking fund bonds are estimated at $1,100, including counsel fee of $500.

Notice is further given that any interested person may, not later than April 7, 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 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.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

[SEAL] ROSALIE F. SCHNEIDER,
Recording Secretary.

[FR Doc.71-3868 Filed 3-19-71;8:46 am]

SMALL BUSINESS ADMINISTRATION

[License No. 10/10-5156]

AMERICAN INDIAN INVESTMENT OPPORTUNITIES, INC.

Notice of Application for License as Minority Enterprise Small Business Investment Company

An application for a license to operate as a minority enterprise small business investment company (MESBIC) under the provisions of the Small Business Investment Act of 1958, as amended (15 U.S.C. 661 et. seq.) (Act), has been filed by American Indian Investment Opportunities, Inc. (Opportunities), (applicant) with the Small Business Administration (SBA) pursuant to § 107.102 of the SBA regulations governing small business investment companies (13 CFR Part 107; 33 F.R. 326).

The officers and directors of the applicant are as follows:

Kenneth Anquoe, 10816 East 25th Place, Tulsa, OK 74129, Director, Fourth Vice President.

J. Clayton Feaver, 900 East Boyd, Norman, OK 73069, Director.

Iola Hayden, 1820 Jefferson Place, Washington, DC 20036, Director, First Vice President.

Juanita Learned, 2840 Grand Boulevard NW., Oklahoma City, OK 73107, Director, Secretary.

Lucille McClung, Route No. 1, Cache, OK 73527, Director, Treasurer.

Margaret Poahway, Route No. 1, Cache, OK 73527, Director.

Elias Roberts, Post Office Box 16, Wright City, OK 74766, Director, Third Vice President.

James Wahpepah, Route No. 1, Jones, OK 73049, Director, Chairman of the Board, President.

Robert Whitebird, Post Office Box 677, Quapaw, OK 74363, Director, Second Vice President.

Peter L. Graff, 300 Hal Muldrow Drive, Apartment 119, Norman, OK 73069, Staff Director.

Oklahomans for Indian Opportunity, Inc., 555 Constitution Avenue, Norman, OK 73069, 51 percent shareholder.

Americans for Indian Opportunity, Inc., 1820 Jefferson Place, Washington, DC 20036, 49 percent shareholder.

Both of these corporations are nonprofit with no beneficial owners.

The applicant, an Oklahoma corporation with its principal place of business located at 555 Constitution Avenue, Norman, OK 73069, will begin operations with $150,100 of paid-in capital and surplus, consisting of 150,100 shares of common stock, issued at $1 per share to the two stockholders. The Ford Foundation has issued a commitment for a $150,000 grant to be used for most of the initial capital. The applicant intends to increase

its capital to $250,000 through the purchase of additional stock by the two shareholders noted above and the purchase of $50,000 in preferred stock by the Ghetto Loan and Investment Committee of the Executive Council of the Domestic and Foreign Mission Society of the Protestant Episcopal Church in the United States of America. The preferred stock will be nonvoting and will carry a cumulative dividend rate of 5 percent.

Applicant will not concentrate its investments in any particular industry but will invest in diversified enterprises. According to the company's stated investment policy, it is to be licensed solely for the purpose of providing assistance which will contribute to a well-balanced national economy by facilitating the acquisition or maintenance of ownership of small business concerns by individuals whose participation in the free enterprise system is hampered because of social or economic disadvantages.

Matters involved in SBA's consideration of the applicant include the general business reputation and character of the proposed owners and management, and the probability of successful operation of the applicant under such management, including adequate profitability and financial soundness, in accordance with the Act and SBA Regulations.

Any interested person may, not later than 10 days from the date of publication of this notice, submit to SBA, in writing, relevant comments on the proposed MESBIC. Any such communication should be addressed to the Associate Administrator for Investment, Small Business Administration, 1441 L Street NW., Washington, DC 20416.

A copy of this notice shall be published in a newspaper of general circulation in Norman, Okla.

JAMES THOMAS PHELAN,
Acting Associate Administrator for Investment.

MARCH 12, 1971.

[FR Doc.71-3862 Filed 3-19-71;8:46 am]

FIRST REALTY CAPITAL FUNDS CORP.

Notice of Surrender of License To Operate as Small Business Investment Corporation

Notice is hereby given that First Realty Capital Funds Corporation, New York, N.Y., incorporated under the laws of the State of New York on April 11, 1960, has surrendered its license (Number 02/02-0037) issued by the Small Business Administration on February 14, 1961.

Under the authority vested by the Small Business Investment Act of 1958, as amended, and pursuant to the regulations promulgated thereunder, the surrender of the license of First Realty Capital Funds Corp. is hereby accepted and it is no longer licensed to operate as a small business investment company.

JAMES THOMAS PHELAN,
Acting Associate Administrator for Investment.

MARCH 12, 1971.

[FR Doc.71-3863 Filed 3-19-71;8:46 am]

GREAT EASTERN CAPITAL CORP.

Notice of License Surrender

Notice is hereby given that Great Eastern Captial Corp. (Great Eastern), 43 East Main Street, Norristown, PA 19401, has surrendered its license to operate as a small business investment company pursuant to § 107.105 of the regulations governing small business investment companies (33 F.R. 326, 13 CFR Part 107).

Great Eastern was licensed as a small business investment company on May 2, 1961, to operate solely under the Small Business Investment Act of 1958 (the Act), as amended (15 U.S.C., 661 et seq.), and the regulations promulgated thereunder.

Under the authority vested by the Act, and pursuant to the cited regulation, the surrender of the license was accepted and all rights, privileges, and franchises derived therefrom were canceled and terminated as of February 8, 1971.

JAMES THOMAS PHELAN,
Acting Associate Administrator for Investment.

MARCH 10, 1971.

[FR Doc.71-3864 Filed 3-19-71;8:46 am]

URBAN FUND, INC.

Notice of Issuance of License To Operate as Minority Enterprise Small Business Investment Company

On February 26, 1971, a notice was published in the FEDERAL REGISTER (36 F.R. 3558) stating that an application had been filed with the Small Business Administration pursuant to § 107.102 of the Regulations Governing Small Business Investment Companies (33 F.R. 326, 13 CFR Part 107) for a license to operate as a minority enterprise small business investment company by the Urban Fund, Inc., 1525 East 53d Street, Chicago, IL 60635.

Interested parties were invited to submit their written comments to SBA. No comments were received.

Notice is hereby given that pursuant to the provisions of the Small Business Investment Act of 1958, as amended (15 U.S.C. 661 et seq.), after having considered the application and all other pertinent information and facts with regard thereto, SBA has issued License No. 07/07-5080 to The Urban Fund, Inc., to operate as a minority enterprise small business investment company.

JAMES THOMAS PHELAN,
Acting Associate Administrator for Investment.

MARCH 12, 1971.

[FR Doc.71-3865 Filed 3-19-71;8:46 am]

VENTURE INVESTMENT CO.

Notice of Issuance of License To Operate as Minority Enterprise Small Business Investment Company

On January 26, 1971, a notice was published in the FEDERAL REGISTER (36 F.R. 1234) stating that an application had been filed with the Small Business Administration pursuant to § 107.102 of the Regulations Governing Small Business Investment Companies (33 F.R. 326, 13 CFR Part 107) for a license to operate as a minority enterprise small business investment company by Venture Investment Co., 201 Bearinger Building, Saginaw, MI 48607.

Interested parties were invited to submit their written comments to SBA. No comments were received.

Notice is hereby given that pursuant to the provisions of the Small Business Investment Act of 1958, as amended (15 U.S.C. 661 et seq.), after having considered the application and all other pertinent information and facts with regard thereto, SBA has issued License No. 07/15-5026 to Venture Investment Co., to operate as a minority enterprise small business investment company.

A. H. SINGER,
Associate Administrator for Investment.

MARCH 10, 1971.

[FR Doc.71-3866 Filed 3-19-71;8:46 am]

TARIFF COMMISSION

[TEA-I-20]

MARBLE AND TRAVERTINE PRODUCTS

Notice of Investigation and Hearing

Investigation instituted. Following receipt of a petition filed by the National Association of Marble Producers on February 25, 1971, as amended on March 11, 1971, the U.S. Tarriff Commission, on March 16, 1971, instituted an investigation under section 301(b)(1) of the Trade Expansion Act of 1962 to determine whether "marble, travertine, and articles of marble or travertine, all the foregoing provided for in items 514.65, 514.81, and 515.24 of the Tariff Schedules of the United States," are, as a result in major part of concessions granted thereon under trade agreements, being

imported into the United States in such increased quantities as to cause, or threaten to cause, serious injury to the domestic industry or industries producing like or directly competitive products.

Public hearing ordered. A public hearing in connection with this investigation will be held beginning at 10 a.m., e.d.s.t., on June 15, 1971, in the Hearing Room, Tariff Commission Building, Eighth and E Streets NW., Washington, DC. Appearances at the hearing should be entered in accordance with § 201.13 of the Tariff Commission's rules of practice and procedure.

Requests to appear must contain a careful estimate of the aggregate time desired for presentation of oral testimony by all witnesses for whose appearances the request is filed.

Inspection of petition. The petition filed in this case is available for inspection by persons concerned at the office of the Secretary, U.S. Tariff Commission, Eighth and E Streets NW., Washington, DC, and at the New York office of the Tariff Commission located in Room 437 of the Customhouse.

Issued: March 17, 1971.

By order of the Commission.

[SEAL] KENNETH R. MASON,
Secretary.

[FR Doc.71-3880 Filed 3-19-71;8:47 am]

DEPARTMENT OF LABOR

Office of the Secretary

NEW JERSEY

Notice of Availability of Extended Unemployment Compensation

The Federal-State Extended Unemployment Compensation Act of 1970, title II of Public Law 91-373, establishes a program of extended unemployment compensation payable when unemployment is high (according to indicators set forth in the law) to unemployed workers who have received all of the regular compensation to which they are entitled. Pursuant to section 203(b)(2) of the Act, notice is hereby given that Charles Serraino, Commissioner, New Jersey Department of Labor and Industry, has determined that there was a State "on" indicator in New Jersey for the week beginning November 28, 1970, and that an extended benefit period began in the State with the week beginning January 3, 1971.

Signed at Washington, D.C., this 16th day of March 1971.

J. D. HODGSON,
Secretary of Labor.

[FR Doc.71-3883 Filed 3-19-71;8:47 am]

INTERSTATE COMMERCE COMMISSION

FOURTH SECTION APPLICATIONS FOR RELIEF

MARCH 17, 1971.

Protests to the granting of an application must be prepared in accordance with Rule 1100.40 of the general rules of practice (49 CFR 1100.40) and filed within 15 days from the date of publication of this notice in the FEDERAL REGISTER.

LONG-AND-SHORT HAUL

FSA No. 42151—*Rubber compounds from Evansville, Ind.* Filed by Southwestern Freight Bureau, agent (No. B-221), for interested rail carriers. Rates on rubber compounds, n.o.i.b.n., loose or in packages, in carloads, as described in the application, from Evansville, Ind., to Fort Smith, Ark.

Grounds for relief—Market competition.

Tariff—Supplement 203 to Southwestern Freight Bureau, agent, tariff ICC 4663.

FSA No. 42152—*Returned shipments of printing paper winding cores between and to official territory.* Filed by Traffic Executive Association-Eastern Railroads, agent (E.R. No. 2998), for interested rail carriers. Rates on returned cores, printing paper winding, in carloads, as described in the application, between points in official territory (excluding Northern Illinois and Southern Wisconsin), on the one hand, also from points in southern territory to official territory, on the other.

Grounds for relief—Return movements of commodities.

Tariff—Supplement 159 to Traffic Executive Association-Eastern Railroads, agent, tariff ICC C-366.

FSA No. 42153—*Class and commodity rates between points in Texas.* Filed by Texas-Louisiana Freight Bureau, agent (No. 647), for interested rail carriers. Rates on gelatin, starch and corn syrup, in carloads and tank carloads, as described in the application, from, to, and between points in Texas, over interstate routes through adjoining States.

Grounds for relief—Intrastate rates and maintenance of rates from and to points in other States not subject to the same competition.

Tariff—Supplement 118 to Texas-Louisiana Freight Bureau, agent, tariff ICC 998.

AGGREGATE-OF-INTERMEDIATES

FSA No. 42154—*Class and commodity rates between points in Texas.* Filed by Texas-Louisiana Freight Bureau, agent (No. 648), for interested rail carriers. Rates on gelatin, molasses, blackstrap, petroleum pitch, starch, and corn syrup, in carloads and tank carloads, as described in the application, from, to, and between points in Texas, over interstate routes through adjoining States.

Grounds for relief—Maintenance of depressed rates published to meet intrastate competition without use of such rates as factors in constructing combination rates.

Tariff—Supplement 118 to Texas-Louisiana Freight Bureau, agent, tariff ICC 998.

By the Commission.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.71-3892 Filed 3-19-71;8:48 am]

[Notice 264]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

MARCH 16, 1971.

The following are notices of filing of applications for temporary authority under section 210a(a) of the Interstate Commerce Act provided for under the new rules of Ex Parte No. MC-67 (49 CFR Part 1131), published in the FEDERAL REGISTER, issue of April 27, 1965, effective July 1, 1965. These rules provide that protests to the granting of an application must be filed with the field official named in the FEDERAL REGISTER publication, within 15 calendar days after the date of notice of the filing of the application is published in the FEDERAL REGISTER. One copy of such protests must be served on the applicant, or its authorized representative, if any, and the protests must certify that such service has been made. The protests must be specific as to the service which such protestant can and will offer, and must consist of a signed original and six copies.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in field office to which protests are to be transmitted.

MOTOR CARRIERS OF PROPERTY

No. MC 2860 (Sub-No. 95 TA), filed March 10, 1971. Applicant: NATIONAL FREIGHT, INC., 57 West Park Avenue, Vineland, NJ 08360. Applicant's representative: Addison Hand (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Empty glass containers*, from Waxahachie, Tex., to New Orleans, La., for 150 days. Supporting shipper: Kerr Glass Manufacturing Corp., Post Office Box 4000, Lancaster, PA 17604. Send protests

to: Raymond T. Jones, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 428 East State Street, Room 204, Trenton, NJ 08608.

No. MC 11592 (Sub-No. 12 TA), filed March 10, 1971. Applicant: BEST REFRIGERATED EXPRESS, INC., 1402 Pacific Street, Omaha, NE 68108. Applicant's representative: Donald L. Stern, 530 Univac Building, Omaha, NE 68106. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, meat byproducts and articles distributed by meat packinghouses*, as described in *Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except hides and commodities in bulk, in tank vehicles), from the plantsite and storage facilities of Beefland International, Inc., at or near Council Bluffs, Iowa, to points in Illinois, Indiana, Michigan, Ohio, and Wisconsin, for 150 days. Supporting shipper: Beefland International, Inc., Council Bluffs, Iowa (Robert Young). Send protests to: Carroll Russell, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 705 Federal Office Building, Omaha, NE 68102.

No. MC 25798 (Sub-No. 220 TA), filed March 10, 1971. Applicant: CLAY HYDER TRUCKING LINES, INC., 502 East Bridgers Avenue, Post Office Box 1186, Auburndale, FL 33823. Applicant's representative: Tony G. Russell (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, meat byproducts and articles distributed by meat packinghouses* as described in sections A, C, and D of appendix I to the report in *Descriptions in Motor Carriers Certificates*, 61 M.C.C. 209 and 766, from Joslin, Ill., to points in Alabama, Florida, Georgia, North Carolina, and South Carolina, for 180 days. Supporting shipper: Illini Beef Packers, Inc., Attention: Herman C. Jacobsen, Transportation Consultant, 221 North La Salle Street, Chicago, IL 60601. Send protests to: District Supervisor Joseph B. Teichert, Interstate Commerce Commission, Bureau of Operations, 5720 Southwest 17th Street, Room 105, Miami, FL 33155.

No. MC 25798 (Sub-No. 221 TA), filed March 10, 1971. Applicant: CLAY HYDER TRUCKING LINES, INC., 502 East Bridgers Avenue, Post Office Box 1186, Auburndale, FL 33823. Applicant's representative: Tony G. Russell (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Prepared flour mixes, frostings, and/or icing mixes* from Chelsea, Mich., to points in Alabama, Florida, Georgia, Louisiana, North Carolina, South Carolina, and Texas, for 180 days. Supporting shipper: Chelsea Milling Co., Chelsea, Mich. Send protests to: District Supervisor Joseph B. Teichert, Interstate Commerce Commission, Bureau of Operations, 5720 Southwest 17th Street, Room 105, Miami, FL 33155.

No. MC 55885 (Sub-No. 10 TA), filed March 10, 1971. Applicant: JACKSON TRUCKING, INC., 1210 106th Avenue, Plainwell, MI 49080. Applicant's representative: Karl L. Gotting, 1200 Bank of Lansing Building, Lansing, MI 48933. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Bakery goods*, not frozen, in refrigerated equipment, from Grand Rapids, Mich., to Valdosta, Augusta, Columbus, and Atlanta, Ga., for 180 days. NOTE: No tacking nor interlining intended. Supporting shipper: Euram Foods, Inc., 7780 South Division Avenue, Grand Rapids, MI 49508. Send protests to: C. R. Flemming, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Federal Building, Room 225, Lansing, MI 48933.

No. MC 61955 (Sub-No. 12 TA), filed March 10, 1971. Applicant: CENTROPOLIS TRANSFER CO., INC., 6700 Wilson Avenue, Kansas City, MO 64125. Applicant's representative: Frank W. Taylor, 1221 Baltimore Avenue, Suite 812, Kansas City, MO 64105. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lime and limestone products*, from Springfield, Mo., to points in Kansas, *rejected, returned, or refused shipments on return*, for 150 days. Supporting shipper: Ash Grove Cement Co., Kansas City, Mo. Send protests to: Vernon V. Coble, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 1100 Federal Office Building, 911 Walnut Street, Kansas City, MO 64106.

No. MC 65224 (Sub-No. 6 TA), filed March 10, 1971. Applicant: HENNIS FREIGHT LINES OF CANADA LIMITED, doing business as, FLORIDA REFRIGERATED SERVICE, U.S. Highway 301 North, Post Office Box 1297, Dade City, FL 33525. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen fruits, berries and vegetables*, from points in Cameron and Hidalgo Counties, Tex., to points in Louisiana, Mississippi, Georgia, North Carolina, South Carolina, Florida, Virginia, West Virginia, Arkansas, Kentucky, Tennessee, Ohio, and Alabama and from Laredo, Tex., to Louisiana, Mississippi, Georgia, Florida, Virginia, Arkansas, Kentucky, Tennessee, Ohio, and Pennsylvania, for 180 days. Supporting shipper: San Antonio Foreign Trading Co., 8622 Crownhill Boulevard, San Antonio, TX 78209. Send protests to: District Supervisor G. H. Fauss, Jr., Bureau of Operations, Interstate Commerce Commission, Box 35008, 400 West Bay Street, Jacksonville, FL 32202.

No. MC 94842 (Sub-No. 4 TA), filed March 10, 1971. Applicant: ROBERT CROCKET, INC., 102 Crescent Avenue, Chelsea, MA 02150. Applicant's representative: Frank J. Weiner, 6 Beacon Street, Boston, MA 02108. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Weldments*, from Fitchburg, Mass., to points in the United States (excluding Hawaii), for 150 days. Supporting shipper: Steel-Fab, Inc., 430 Crawford Street, Fitchburg, MA 01420. Send protests to: Max Gorenstein, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 2211–B John F. Kennedy Federal Building, Government Center, Boston, MA 02203.

No. MC 103191 (Sub-No. 33 TA), filed March 10, 1971. Applicant: THE GEO. A. RHEMAN CO., INC., Post Office Box 2095, Station A, Charleston, SC 29403. Applicant's representative: Harris G. Andrews, Post Office Box 4255, Greenville, SC 29608. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Blastings and*, in bulk, in self-unloading pneumatic tank trailers, from Edmunds, S.C., to Copperhill, Tenn., for 180 days. Supporting shipper: The Ralph M. Parsons Co., Post Office Box 926, Copperhill, TN 37317. Send protests to: E. E. Strotheid, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 300 Columbia Building, 1200 Main Street, Columbia, SC 29201.

No. MC 107295 (Sub-No. 491 TA), filed March 10, 1971. Applicant: PRE-FAB TRANSIT CO. (Illinois corporation), 100 South Main Street, Post Office Box 146, Farmer City, IL 61842. Applicant's representative: Bruce J. Kinnee (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Pulpboard*, from Livingston, Ala., to points in Iowa and Pennsylvania, for 180 days. Supporting shipper: Custom Sheeting Corp., Post Office Box EG, Livingston, AL. Send protests to: Harold Jolliff, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 476, 325 West Adams Street, Springfield, IL 62704.

No. MC 111729 (Sub-No. 312 TA), filed March 10, 1971. Applicant: AMERICAN COURIER CORPORATION, 2 Nevada Drive, Lake Success, NY 11040. Applicant's representative: John M. Delany (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Business papers, records, and audit accounting media of all kinds*; (a) between Fries, Va., on the one hand, and, on the other, Mayodan and Winston-Salem, N.C.; (b) between Roanoke, Va., on the one hand, and, on the other, Asheville, Raleigh, and Winston-Salem, N.C.; and (c) between Independence, Va., on the one hand, and, on the other, Gastonia, High Point, and Marion, N.C.; (2) *official Government papers, records, and audit and accounting media of all kinds*, between the District of Columbia (Washington, D.C.), on the one hand, and, on the other, Boyers, Pa.; (3) *proofs, cuts, copy, manuscripts, advertising poster material,*

and matter pertaining thereto; (a) between Elkhart, Ind., on the one hand, and, on the other, Chicago, Ill.; Cincinnati, Ohio; Benton Harbor, Detroit, Dowagiac, Kalamazoo, and St. Joseph, Mich.; and Louisville, Ky.; and (b) between South Bend, Ind., on the one hand, and, on the other, points in Kalamazoo, Kent, Ottawa, and St. Joseph Counties, Mich., and Chicago, Ill.; (4) *thread, cloth, and cloth samples,* restricted against the transportation of packages or articles weighing in the aggregate more than 75 pounds from one consignor to one consignee, on any one day, between Independence, Va., on the one hand, and, on the other, Gastonia, High Point, and Marion, N.C.: (5) *cut flowers and decorative greens,* having an immediately prior or subsequent movement by air or motor vehicle; (a) between points in North Dakota; (b) between points in South Dakota; and (c) between points in West Virginia; (6) *hospital and surgical supplies,* restricted against the transportation of packages or articles weighing in the aggregate more than 75 pounds from one consignor to one consignee, on any one day, between Bluefield, W. Va., on the one hand, and, on the other, points in Kentucky, North Carolina, Ohio, Tennessee, and Virginia; and (7) *business and social stationery,* between Charlotte, N.C., and Roanoke, Va., for 180 days. Supporting shippers: U.S. Civil Service Commission, Washington, D.C. 20415; Washington Mills Co., Fries, Va. 24330; J. W. Burress, Inc., Post Office Box 719, 1701 Shenandoah Avenue NW., Roanoke, VA 24004; Boger, Martin, Fairchild & Co., Inc., Rural Route 6, Box 94, West Elkhart, IN 46514; Mossberg & Co., Inc., 301 East Sample Street, South Bend, IN 46623; Anvil Brand, Inc., High Point, N.C.; Norman Cox & Co., Fort Myers, FL 33902; Skyland Hospital Supply, Division of Bluefield Supply Co., 240 Bluefield Avenue (Post Office Box 1460), Bluefield, WV 24701; Stone Printing, 116–132 North Jefferson Street (Post Office Box 1600), Roanoke, VA 24007; and Gulf Coast Farms, Inc., Fort Myers, Fla. 33902. Send protests to: Anthony Chiusano, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 26 Federal Plaza, New York, NY 10007.

No. MC 112801 (Sub-No. 118 TA), filed March 10, 1971. Applicant: TRANSPORT SERVICE CO., Post Office Box 50272, 5100 West 41st Street, Chicago, IL 60650. Applicant's representative: Robert H. Levy, 29 South La Salle Street, Chicago, IL. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Linseed oil,* in bulk, in tank vehicles, from the plantsite of Archer Daniels Midland Co. at Mankato, Minn., to Chicago, Ill., Toledo and Cleveland, Ohio, Mount Clemens, Mich., Memphis, Tenn., Wichita, Kans., Greensboro, N.C., Garland and Diboll, Tex., and Jackson, Miss., for 180 days. Supporting shipper: Archer Daniels Midland Co., Decatur, Ill. 62525. Send protests to: Robert G. Anderson, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Everett McKinley Dirksen Building, 219 South Dearborn Street, Room 1086, Chicago, IL 60604.

No. MC 114647 (Sub-No. 24 TA), filed March 10, 1971. Applicant: ROBERT E. PLETCHER, doing business as PLETCHER TRANSFER & STORAGE, Highway 69 South, Post Office Box 206, Forest City, IA 50436. Applicant's representative: Robert E. Pletcher (same address as above). Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Travel trailers and pickup camper coaches,* in truck-away service, from Forest City, Iowa, to points in Arizona, Nevada, Oregon, California, West Virginia, Kentucky, Virginia, Tennessee, Georgia, Florida, North Carolina, South Carolina, Alabama, Mississippi, and Louisiana, with return of *damaged defective, rejected, or returned shipments,* for 180 days. Supporting shipper: Kayot, Inc., Forester Division, 1326 South Fourth Street, Forest City, IA 50436. Send protests to: Ellis L. Annett, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 677 Federal Building, Des Moines, IA 50309.

No. MC 117072 (Sub-No. 2 TA), filed March 10, 1971. Applicant: ARMORED TRANSPORT, INC., 1130 South Flower Street, Los Angeles, CA 90015. Applicant's representative: Robert G. Irvin (same address as above). Authority sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Business records, audit media, tabulation cards, data processing materials, checks, drafts, securities and transit items,* between Reno, Nev., on the one hand, and, on the other, points on those portions of Nevada Highway 28, U.S. Highway 50, and California Highways 89 and 28, in Nevada and California which embrace Lake Tahoe, for 180 days. Supporting shippers: Central California Federal Savings & Loan Association, 295 North Lake Tahoe Boulevard, Tahoe City, CA; Crocker-Citizens National Bank, 961 Emerald Bay Road, South Lake Tahoe, CA; First National Bank of Nevada, 1 East First Street, Box 461, Reno, NV 89504; Sears, Roebuck & Co., U.S. Highway 50, South Lake Tahoe, CA; and The Sierra Pacific Power Co., 3320 Sandy Way, South Lake Tahoe, CA. Send protests to: John E. Nance, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 7708, Federal Building, 300 North Los Angeles Street, Los Angeles, CA 90012.

No. MC 119180 (Sub-No. 9 TA), filed March 10, 1971. Applicant: TREGO BROS. INC., U.S. Route 40, Post Office Drawer L, North East, MD 21901. Applicant's representative: L. Agnew Myers, Jr., Suite 1122, Warner Building, E at 13th Street NW., Washington, DC 20004. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Nitrogen fertilizer solutions,* in bulk, in tank vehicles, from the storage facility, warehouse, or depots of Swift Agricultural Chemicals Corp. at Lewes, Del., to points in Delaware, Maryland, Virginia, New Jersey, Pennsylvania, and New York, for 180 days. Supporting shipper: Swift Agricultural Chemicals Corp., Post Office Box 340, Glen Burnie, MD 21061. Send protests to: Paul J. Lowry, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 227 Old Post Office Building, Post Office Box 258, 129 East Main Street, Salisbury, MD 21801.

No. MC 119443 (Sub-No. 28 TA), filed March 10, 1971. Applicant: P. E. KRAMME, INC., Main Street, Monroeville, N.J. 08343. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Chocolate products, confectioner's products, and cocoa butter,* in bulk, in tank vehicles, from Fulton, N.Y., to St. Louis, Mo., for 180 days. Supporting shipper: The Nestle Co., Inc., 100 Bloomingdale Road, White Plains, NY 10605. Send protests to: Raymond T. Jones, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 428 East State Street, Trenton, NJ 08608.

No. MC 119577 (Sub-No. 18 TA), filed March 10, 1971. Applicant: OTTAWA CARTAGE, INC., Post Office Box 458, Ottawa, IL 61350. Applicant's representative: Albert A. Andrin, 29 South La Salle Street, Chicago, IL 60603. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Silica sand,* in bulk, from Ottawa, Ill., to the plantsite of Arkansas Precast Corp. at Jacksonville, Ark., for 180 days. Supporting shipper: Arkansas Precast Corp., Post Office Box 216, North Little Rock, AR 72115. Send protests to: William J. Gray, Jr., District Supervisor, Interstate Commerce Commission, Bureau of Operations, Everett McKinley Dirksen Building, 219 South Dearborn Street, Room 1086, Chicago, IL 60604.

No. MC 119741 (Sub-No. 37 TA), filed March 10, 1971. Applicant: GREEN FIELD TRANSPORT COMPANY, INC., Post Office Box 1235, R.F.D. 2, Fort Dodge, IA 50501. Applicant's representative: Donald L. Stern, 530 Univac Building, 7100 West Center Road, Omaha, NE 68106. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Meats, meat products, meat byproducts, and articles distributed by meat packinghouses,* as defined in sections A, C, and D of appendix 1 to the report in *Descriptions in Motor Carrier Certificates,* 61 M.C.C. 209 and 766 (except commodities in bulk, in tank vehicles, and except hides) from points in the Omaha, Nebr., Council Bluffs, Iowa, commercial zones to points in Connecticut, Illinois, Indiana, Maryand, Massachusetts, Michigan, New York, New Jersey, Ohio, Pennsylvania, Rhode Island, and the District of Columbia, for 150 days. Supporting shipper: Beefland International, Inc., 2700 23d Avenue, Council Bluffs, IA 55501. Send protests to: Ellise L. Annett, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 677 Federal Building, Des Moines, IA 50309.

No. MC 119777 (Sub-No. 205 TA), filed March 10, 1971. Applicant: LIGON SPECIALIZED HAULER, INC., Post Office Drawer L, Madisonville, KY 42431. Applicant's representative: Fred F. Bradley, Suite 202–204, Court Square Office Building, Frankfort, KY 40601. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel strand, wire, cable, and spirals*, from Florida Wire and Cable Co., Jacksonville, Fla., to Noranda Aluminum Co., New Madrid, Mo., and Reynolds Aluminum Co., Malvern, Ark. Supporting shipper: William R. Boyle, Traffic Manager, Florida Wire and Cable Co., 825 North Lane Avenue, Post Office Box 6835, Jacksonville, FL 32205. Send protests to: Wayne L. Merilatt, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 426 Post Office Building, Louisville, KY 40202.

No. MC 121533 (Sub-No. 5 TA), filed March 10, 1971. Applicant: WESTERN HAULING, INC., Post Office Box 3001, Seattle, WA 98114. Applicant's representative: Gerald W. Marsland (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steeel articles, and pipe, including plastic*, between points in Washington and Oregon, for 180 days. Supporting shippers: There are approximately 16 statements of support attached to the application, which may be examined here at the Interstate Commerce Commission in Washington, D.C., or copies thereof which may be examined at the field office named below. Send protests to E. J. Casey, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 6130 Arcade Building, Seattle, WA 98101.

No. MC 123383 (Sub-No. 53 TA), filed March 10, 1971. Applicant: BOYLE BROTHERS, INC., 941 South Second Street, Camden, NJ 08102. Applicant's representative: Thomas E. Kiley (same address as above). Authority sought to operate as a common carrier, by motor vehicle, over irregular routes, transporting: *Building, construction materials, supplies, and equipment, and such commodities* as are dealt in by wholesale and retail hardware stores; and *accessories* used in the manufacture and furnishing of mobile homes, from points in Camden County, N.J., to points in Connecticut, Delaware, Illinois, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, Tennessee, Vermont, Virginia, West Virginia, and the District of Columbia, for 150 days. Supporting shipper: Evans Products Co., Post Office Box 880, Corona, CA 91720. Send protests to: Raymond T. Jones, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 428 East State Street, Room 204, Trenton, NJ 08608.

No. MC 124199 (Sub-No. 6 TA), filed March 10, 1971. Applicant: CHESAPEAKE BULK TERMINALS, INC., 2767 Wilkens Avenue, Baltimore, MD 21223. Applicant's representative: Donald C. Gibeau (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Dry starch*, in bulk, from Baltimore, Md., to Lancaster, Pa., and New Castle, Del., for 150 days. Supporting shipper: Raymond J. Hellwig, Assistant General Traffic Manager, Anheuser-Busch, Inc., St. Louis, Mo. 63118. Send protests to: William L. Hughes, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 1125 Federal Building, Baltimore, MD 21201.

No. MC 128273 (Sub-No. 89 TA), filed March 10, 1971. Applicant: MIDWESTERN EXPRESS, INC., Box 189, 121 Humboldt Street, Fort Scott, KS 66701. Applicant's representative: Harry Ross, 846 Warner Building, Washington, DC 20003. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Paper and paper products*, from Taylorville, Ill., Gary, Ind., and Burlington, Iowa; to points in California, Nevada, Arizona, Utah, Colorado, and New Mexico, for 180 days. Supporting shipper: Georgia-Pacific Corp., 800 Summer Street, Stamford, CT 06902. Send protests to: M. E. Taylor, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 501 Petroleum Building, Wichita, KS 67202.

No. MC 129486 (Sub-No. 4 TA), filed March 10, 1971. Applicant: PAGE TRUCKING COMPANY, INC., Post Office Box 14, Hines, MN 56647. Applicant's representative: Gene P. Johnson, 502 First National Bank Building, Fargo, ND 58102. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Uncanned processed fruits and vegetables*, in packages, from the plantsite of Continental "NU" Process, Inc., located at Ortonville, Minn., to points in the United States (except Alaska and Hawaii), restricted against transportation of frozen foods to Memphis, Tenn., and points in Alabama, Arizona, Arkansas, California, Iowa, Kansas, Louisiana, Mississippi, Missouri, Nebraska, New Mexico, Oklahoma, and Texas, for 180 days. Supporting shipper: Continental "NU" Process, Inc., Post Office Box 23, Crookston, MN 56716. Send protests to: J. H. Ambs, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Post Office Box 2340, Fargo, ND 58102.

No. MC 133342 (Sub-No. 1 TA), filed March 10, 1971. Applicant: COLUMBIA CIFUNE TRUCKING, INC., doing business as, COLUMBIA TRUCKING, 3 Seventh Street, North Arlington NJ 07032. Applicant's representative: S. Berne Smith, Post Office Box 1166, Harrisburg, PA 17108. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Chinaware, earthenware, and glass tableware*, from the storage facilities of American Commercial, Inc., doing business as Mikasa, in Secaucus, N.J., to New Cassel, Garden City, Oceanside, and Seaford (Nassau County), N.Y., for 180 days. Supporting shipper: Mikasa, 212 Fifth Avenue, New York, NY 10010. Send protests to: District Supervisor Joel Morrows, Bureau of Operations, Interstate Commerce Commission, 970 Broad Street, Newark, NJ 07102.

No. MC 134922 (Sub-No. 7 TA), filed March 10, 1971. Applicant: B. J. McADAMS, INC., Route 6, Box 15, North Little Rock, AR 72118. Applicant's representative: William J. Boyd, 29 South La Salle Street, Chicago, IL 60603. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meat, meat products, meat byproducts, and articles distributed by meat packinghouses*, as described in Appendix 1 to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except hides and commodities in bulk), and *equipment, materials, and supplies* used in the conduct of meat packing businesses, between the plantsite and facilities of Illini Beef Packers, Inc., at or near Joslin, Ill., on the one hand, and, on the other, points in Oklahoma, Missouri, Texas, Kansas, Louisiana, Arkansas, Mississippi, Arizona, and New Mexico, for 180 days. Supporting shipper: Illini Beef Packers, Inc., Post Office Box 245, Cenefel, IL 61254. Send protests to: District Supervisor, William H. Land, Jr., Interstate Commerce Commission, Bureau of Operations, 2519 Federal Office Building, 700 West Capitol, Little Rock, AR 72201.

No. MC 135376 TA, filed March 10, 1971. Applicant: WILKE ADAMS, 102 East High Street, Mount Sterling KY 40353. Applicant's representative: Caswell P. Lane, Box 384, Mount Sterling, KY 40353. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Sacked manufactured feed*, from Louisville, Ky., to Morristown, Limestone, Rogersville, Falls Branch, and Kingsport, Tenn., Pennington Gap, Duffield, Blacksburg, and Coeburn, Va., and Bristol, Va.-Tenn., for 180 days. Supporting shipper: Edward C. Aubrey, President, Aubrey Feed Mills, Inc., 932 East Chestnut Street, Louisiana, KY 40202. Send protests to: R. W. Schneiter, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 222 Bakhaus Building, 1500 West Main Street, Lexington, KY 40505.

MOTOR CARRIER OF PASSENGERS

No. MC 135374 TA, filed March 10, 1971. Applicant: IMPALA COACH LINES, LTD., 2219 Government Street, Penticton, BC Canada. Applicant's representative: J. Stewart Black, 1322 Laburnum Street, Vancouver 9, BC. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Passengers and their baggage*, from ports of entry on the international boundary line between the United States and Canada, located in Washington, to points in Washington, Oregon, California, Nevada, Arizona, and Idaho, returning with the same passengers, for 180 days. Supporting shippers:

There are approximately 11 statements of support attached to the application, which may be examined here at the Interstate Commerce Commission in Washington, D.C., or copies thereof which may be examined at the field office named below. Send protests to: E. J. Casey, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 6130 Arcade Building, Seattle, WA 98101.

By the Commission.

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

[FR Doc.71-3893 Filed 3-19-71;8:48 am]

[Notice 666]

MOTOR CARRIER TRANSFER PROCEEDINGS

MARCH 17, 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-72490. By supplemental order of March 8, 1971, the Motor Carrier Board approved the transfer to E & E Transportation, Inc., Somerville, Mass., of the operating rights in certificate No. MC-13558 and certificate of registration No. MC-13558 (Sub-No. 2), both issued December 8, 1969 to Edward J. Enright, doing business as Wellesley Freight Lines, Wellesley, Mass., authorizing the transportation of general and specified commodities between specified points and areas in Massachusetts. Frederick T. O'Sullivan, 372 Granite Avenue, Milton, MA 02186, attorney for applicants.

No. MC-FC-72690. Dual Operations Are Involved. By order of February 25, 1971, the Motor Carrier Board approved the transfer to Combs Trucking Co., Inc., Glens Falls, N.Y., of certificates Nos. MC-93900 (Sub-No. 1) and MC-93900 (Sub-No. 18) issued August 11, 1958 and February 7, 1962, and permit No. MC-123665 issued October 11, 1966, to Joseph W. Brown, Fort Edward, N.Y., authorizing the transportation of: Paper mill machinery and parts, wooden pallets, malt beverages, concrete blocks and pipe, and fabrics and laces, and materials used in the manufacture thereof, between specified points in New Jersey, Pennsylvania, Delaware, Connecticut, Massachusetts, Vermont, Indiana, Illinois, Maryland, Ohio, and New York. John C. Lemery, attorney, 11 Chester Street, Glens Falls, NY 12801; W. Norman Charles, attorney, 80 Bay Street, Glens Falls, NY 12801.

No. MC-FC-72697. By order of March 11, 1971, the Motor Carrier Board approved the transfer to Specialized Truck Service, Inc., Venice, Fla., of the operating rights in certificates Nos. MC-106644 (Sub-No. 38), MC-106644 (Sub-No. 62), MC-106644 (Sub-No. 66), MC-106644 (Sub-No. 71), MC-106644 (Sub-No. 96) and a portion of the operating rights in No. MC-106644 (Sub-No. 74) issued July 21, 1960, November 27, 1967, February 6, 1968, June 14, 1967, April 20, 1970, and June 6, 1968, respectively, to Superior Trucking Co., Inc., Atlanta, Ga., authorizing the transportation of malt beverages from specified points in Georgia and Florida to points in Tennessee, Alabama, Florida, North Carolina, South Carolina, Georgia, Arkansas, Kentucky, Louisiana, Mississippi, and Virginia and between Pabst, Ga., and points in Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina, and a specified portion of Tennessee and advertising matter from Atlanta, Ga., to points in Tennessee, Alabama, Florida, North Carolina, and South Carolina; and building, wall or insulating boards, and materials and supplies from the plantsite of the Armstrong Cork Co., at or near Macon, Ga., to points in Alabama, Arkansas, Connecticut, Delaware, Florida, Illinois, Indiana, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Mississippi, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Vermont, Virginia, West Virginia, Wisconsin, and the District of Columbia; and plywood and particleboard from the plantsites of the Georgia-Pacific Corp. at or near Louisville and Gloster, Miss., to points in Alabama, Florida, Georgia, Arkansas, North Carolina, South Carolina, Tennessee, Louisiana, Texas, Oklahoma, Kansas, Missouri, Iowa, Wisconsin, Michigan, Illinois, Indiana, Maine, Ohio, Kentucky, Virginia, West Virginia, Maryland, Delaware, Pennsylvania, New Jersey, New York, Connecticut, Massachusetts, Rhode Island, Vermont, New Hampshire, and the District of Columbia; and composition sheets from the plantsite of Georgia-Pacific Corp., Crossett, Ark., to points in Alabama, Arkansas, Connecticut, Florida, Georgia, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Virginia, West Virginia, Wisconsin, and the District of Columbia; and gypsum wallboard, gypsum lath, and gypsum wallboard products from the plantsite of Dierks Forests, Inc., at Briar, Ark., to points in Alabama, Florida, Georgia, Illinois, Indiana, Kentucky, Mississippi, North Carolina, Ohio, South Carolina, Tennessee, Virginia, and West Virginia and lumber and lumber products from the plantsites of Dierks Forests, Inc., at Dierks and Mountain Pine, Ark., to points in Alabama, Florida, Georgia, Illinois, Indiana, Kentucky, Michigan, Mississippi, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, and Wisconsin, and posts, poles, piling, and lumber from the plantsite of Dierks Forests, Inc., at Process City, Ark., to points in Alabama, Florida, Georgia, Illinois, Indiana, Kentucky, Michigan, Mississippi, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, and Virginia. Guy H. Postell, Suite 713, 3384 Peachtree Road NE., Atlanta, GA 30326, attorney for applicants.

No. MC-FC-72723. By order of March 5, 1971, the Motor Carrier Board approved the transfer to Lenox Carruth, Dallas, Tex., of the certificate of registration in No. MC-98649 (Sub-No. 3) issued November 5, 1970, to Road Runner Truck Lines, Inc., Dallas, Tex., evidencing a right to engage in transportation in interstate or foreign commerce solely within the State of Texas, corresponding in scope to the service authorized in certificate No. 5132, dated November 7, 1958, transferred and reissued October 1, 1969, by the Railroad Commission of Texas. Hugh T. Matthews, 630 Fidelity Union Tower, Dallas, TX 75201, attorney for applicants.

No. MC-FC-72726. By order of March 5, 1971, the Motor Carrier Board approved the transfer to Joseph A. Esposito, Gennaro Esposito, and Albert Esposito, doing business as Joseph A. Esposito & Co., Boston, Mass., of the operating rights in certificate No. MC-90767, issued October 3, 1949, to Joseph A. Esposito, Gennaro Esposito, Albert Esposito and John DiFronzo, doing business as Joseph A. Esposito & Co., Boston, Mass., authorizing the transportation of used store, office and restaurant fixtures between Boston, Mass., on the one hand, and, on the other, points in Maine, Rhode Island and Connecticut. Joseph A. Kline, 31 Milk Street, Boston, MA 02109, attorney for applicants.

No. MC-FC-72735. By order of March 11, 1971, the Motor Carrier Board approved the transfer to Laber Russo Trucking Co., Inc., Johnston, R.I., of a portion of the operating rights in certificate No. MC-61394 issued August 21, 1956, to Pierce Arrow Trucking Co., of R.I., Inc., Cranston, R.I., authorizing the transportation of petroleum products and empty drums and containers for petroleum products between Providence, R.I., on the one hand, and, on the other, Fall River and Worcester, Mass. Russell B. Curnett, registered practitioner, 36 Circuit Drive, Edgewood Station, Providence, RI 02905.

No. MC-FC-72738. By order of March 11, 1971, the Motor Carrier Board approved the transfer to Zeigler's Storage & Transfer, Inc., Carlisle, Pa., of the operating rights in permit No. MC-116137 and certificate No. MC-45674 issued July 5, 1957, and April 6, 1966, respectively, to Clayton H. Zeigler, doing business as Zeigler's Storage & Transfer, Carlisle, Pa., authorizing the transportation of new office furniture, fixtures, and equipment, uncrated, for initial installation in post offices, from Carlisle, Pa., to points in Alabama, Arkansas,

Connecticut, Delaware, Florida, Georgia, Louisiana, Maine, Maryland, Massachusetts, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Rhode Island, South Carolina, Tennessee, Texas, Vermont, Virginia, West Virginia, and the District of Columbia, and household goods, from points in Cumberland, Adams, Franklin, Perry, Dauphin, and York Counties, Pa., to points in New York, Massachusetts, Rhode Island, Connecticut, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, Georgia, West Virginia, Ohio, Indiana, Illinois, Kansas, and the District of Columbia. Dual operations were approved. Christian V. Graf, 410 North Front Street, Harrisburg, Pa. 17101, attorney for applicants.

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

[FR Doc.71-3894 Filed 3-19-71;8:48 am]

CUMULATIVE LIST OF PARTS AFFECTED—MARCH

The following numerical guide is a list of parts of each title of the Code of Federal Regulations affected by documents published to date during March.

1 CFR

	Page
16	5203
Appendix B	5325

3 CFR

	Page
PROCLAMATIONS:	
4032	4111
4033	4463
4034	4465
4035	4589
4036	4749
4037	4971
EXECUTIVE ORDERS:	
April 17, 1926 (revoked in part by PLO 5031)	5342
5327 (see PLO 5029)	5042
10001 (see EO 11586)	4751
10008 (see EO 11586)	4751
10202 (see EO 11586)	4751
10292 (see EO 11586)	4751
10420 (see EO 11586)	4751
10659 (see EO 11586)	4751
10714 (see EO 11586)	4751
10837 (see EO 11586)	4751
10984 (see EO 11586)	4751
11248 (amended by EO 11587)	4973
11350 (see EO 11586)	4751
11360 (see EO 11586)	4751
11491 (see Memorandum of March 11, 1971)	4975
11584	4365
11585	4467
11586	4751
11587	4973
PRESIDENTIAL DOCUMENTS OTHER THAN PROCLAMATIONS AND EXECUTIVE ORDERS:	
Memorandum of March 11, 1971	4975

5 CFR

	Page
213	3881, 3882, 4292, 4471, 4537, 4977, 5033, 5205
316	3882
2411	5205

7 CFR

	Page
16	5285
301	3882, 4471, 4776
722	4853
724	4977
730	3883
760	5205
780	4367
811	3883
842	4475
862	4261
905	3884
907	3959, 4262, 4537, 4705, 5033, 5208
908	4262, 4706, 5209
910	3960, 4476, 4537, 4859, 5034, 5340
912	4476
913	4477
914	4477
966	5285
980	4263
1061	4776
1065	4367
1472	3884
PROPOSED RULES:	
59	5178
916	4055
917	4056
981	4295
991	4060
1000	3909
1001	3909, 4408, 4548, 5141
1002	3909, 4548, 5141
1004	3909, 4548, 5141
1006	3909, 4548
1007	3909, 4548
1011	3909, 4548
1012	3909, 4548
1013	3909, 4548
1015	3909, 4548, 5141
1030	3909, 4548
1032	3909, 4548
1033	3909, 4548
1036	3909, 4297, 4548
1040	3909, 4548
1043	3909, 4548
1044	3909, 4548
1046	3909, 4548
1049	3909, 4548
1050	3909, 4548
1060	3909, 4548
1061	3909, 4548
1062	3909, 4548
1063	3909, 4548
1064	3909, 4415, 4548
1065	3909, 4548
1068	3909, 4548
1069	3909, 4548
1070	3909, 4548
1071	3909, 4548
1073	3909, 4548
1075	3909, 4548
PROPOSED RULES—Continued	
1076	3909, 4548
1078	3909, 4548
1079	3909, 4548
1090	3909, 4548
1094	3909, 4548
1096	3909, 4548
1097	3909, 4548
1098	3909, 4548
1099	3909, 4548
1101	3909, 4548
1102	3909, 4548
1103	3909, 4548
1104	3909, 4548
1106	3909, 4548
1108	3909, 4548
1120	3909, 4548
1121	3909, 4548
1124	3909, 4548
1125	3909, 4548
1126	3909, 4548
1127	3909, 4548
1128	3909, 4548
1129	3909, 4548
1130	3909, 4548
1131	3909, 4548
1132	3909, 4548
1133	3909, 4548
1134	3909, 4548
1136	3909, 4548
1137	3909, 4548
1138	3909, 4548

9 CFR

	Page
76	3890, 3891, 4367, 4368, 4478, 4685, 4977, 5285
78	4860
311	4591

10 CFR

	Page
2	4686
35	4368
50	4861
170	4978

12 CFR

	Page
4	5050
18	4478
224	4538
226	4113
335	3959
527	4686
545	4688
556	5051

12 CFR—Continued

Page

PROPOSED RULES:

563 5250
748 4996

13 CFR

121 4832

PROPOSED RULES:

121 5302

14 CFR

39 3891, 4369, 4478, 4479, 4689, 4753, 4861, 5034, 5209, 5210, 5286
61 4591
71 3892, 4043, 4370–4375, 4479, 4480, 4538, 4690–4692, 4753, 4754, 4862, 5034, 5210, 5211, 5286–5288
73 4114, 4862
75 4043, 4044, 4373, 4692, 4862, 5211
91 4591
95 4481
97 4482, 4862, 5288
127 4863
207 3893
221 4538
288 4538
385 4592
389 4115
399 4542
430 4864
431 4864

PROPOSED RULES:

25 4878
29 4878
37 4878
39 4707, 4708
61 5247
71 3926, 3927, 4424–4426, 4508–4510, 4708, 4788, 4789, 4881, 5249, 5298, 5299
73 3927, 4881
75 4298, 4299, 4510, 4709, 4790, 4791
91 4878, 5247
121 4878
123 4878
135 4878
Ch. II 4627
239 4882
302 3928

15 CFR

4 4868
367 5035
368 4375
371 4375
373 4376
376 4376
386 4376
667 5035

16 CFR

13 4592–4596, 4692–4695, 5212

17 CFR

231 4483
239 4779
241 4483
271 4978

PROPOSED RULES:

150 4408
230 4070
249 4070
274 4070

18 CFR

Page

101 4386
105 3960
141 3964
201 3960, 5044
204 5048
260 5049

PROPOSED RULES:

201 4551
260 4551

19 CFR

1 4979
4 4979
10 4484
18 4485
21 4490
25 4490
114 4490
123 4490
153 4597, 4877

PROPOSED RULES:

1 4547, 4611
22 4046

20 CFR

239 4980
262 4980
395 4980

PROPOSED RULES:

1 4547
410 4340

21 CFR

27 4542
46 3965
121 5213
130 5037
141 4379
145 4379
146a 4260
148c 4260
148t 4491
148u 4696
148w 4375
148y 4869
149b 4261
420 3965

PROPOSED RULES:

3 5052
15 4788
16 4060
301 4928
302 4928
303 4928
304 4928
305 4928
306 4928
307 4928
308 4928
311 4928
312 4928
316 4928

22 CFR

41 5040
47 4697
51 4870
730 4698

24 CFR

5 4780
10 4291
200 4542, 4980
1600 4542

24 CFR—Continued

Page

1909 5340
1914 4492, 4780, 5340
1915 4493, 4781

PROPOSED RULES:

81 4427

25 CFR

111 4870

PROPOSED RULES:

221 4054

26 CFR

1 4597, 4871, 4984, 5214, 5215, 5325, 5336, 5339
13 4872, 5339
31 5216
48 3893
53 5240
154 3894
245 4115

PROPOSED RULES:

1 3899, 4387, 4388, 4547, 4885, 4986, 5221, 5227, 5236, 5355
13 5227
31 5227
53 5240, 5355, 5357
143 5357
150 4896
151 4896
152 4896
194 4048, 4393
196 4048, 4393
197 4048, 4393
201 4048, 4393, 4611
240 4393
245 4048, 4393, 4398
252 4611
301 5236, 5243

29 CFR

1 4045
5 4045
462 5289
511 4782
778 4699, 4981
1520 5040

PROPOSED RULES:

602 4551
603 4551
608 4551
609 4551
610 4551
611 4551
612 4551
614 4551
615 4551
687 4551

30 CFR

70 4981

PROPOSED RULES:

11 4652
12 4652
13 4652
14 4652
14a 4652
70 4547
75 4406, 4548, 4994, 5244, 5296
90 3900

LIST OF FEDERAL REGISTER PAGES AND DATES—MARCH

Pages	*Date*
3875–3953	March 2
3955–4106	3
4107–4357	4
4359–4456	5
4457–4532	6
4533–4583	9
4585–4680	10
4681–4744	11
4745–4845	12
4847–4966	13
4967–5027	16
5029–5197	17
5199–5280	18
5281–5320	19
5321–5404	20

FEDERAL REGISTER

VOLUME 36 • NUMBER 55

Saturday, March 20, 1971 • Washington, D.C.

PART II

DEPARTMENT OF TRANSPORTATION

Coast Guard

•

DANGEROUS CARGOES

Notice of Proposed Rule Making and Public Hearing

DEPARTMENT OF TRANSPORTATION

Coast Guard

[46 CFR Parts 146, 147]

[CGFR 71-12]

DANGEROUS CARGOES

Notice of Proposed Rule Making and Public Hearing

1. Notification is hereby made that a public hearing will be held on Tuesday, June 8, 1971, commencing at 9:30 a.m. in Conference Room 2230, Department of Transportation, Nassif Building, 400 Seventh Street SW., Washington, DC, concerning the proposed amendments detailed below. The hearing will be an informal one. It will not be a judicial or evidentiary type of hearing and there will be no cross-examination of persons presenting statements. Interested persons are invited to attend the hearing and present oral or written statements on the proposal.

2. In addition, interested persons are invited to submit written data, views, arguments, or comments regarding the proposals to the Commandant (MHM), U.S. Coast Guard, Washington, D.C. 20591. Communications received on or before June 15, 1971, will be considered before final action is taken on the proposals. Communications should refer to FEDERAL REGISTER document CGFR 71-12 and identify the section number of the regulation to which the communication is directed, the specific wording recommended, the reason for the recommended change, and the name and address of the firm, if any, making the submission. For the convenience of the public, the proposed amendments have been categorized into three groups, as detailed below.

3. Each communication received at the hearing or within the time specified will be fully considered and evaluated before final action is taken on this proposal. Copies of all written communications will be available for examination in Room 8306, Department of Transportation, Nassif Building, 400 Seventh Street SW., Washington, DC, both before and after the closing date for the receipt of comments. The proposal contained in this document may be changed in the light of the communications received.

4. The first group of proposals consists of certain amendments that have been made to Chapter I, Subtitle B, of Title 49, Code of Federal Regulations, after rule making procedures had been conducted by the Hazardous Materials Regulations Board, of the Department of Transportation and all of these changes are now being considered by the Commandant as amendments to 46 CFR Subchapter N. They are as follows:

a. In § 146.04-5, the shipping names, "Calcium hypochlorite compounds, dry, containing more than 39 percent available chlorine" and "Hydrazine solution containing 50 percent or less of water" will be revised to read as follows: "Calcium hypochlorite mixtures (dry containing more than 39 percent available chlorine)" and "Hydrazine solution (containing 50 percent or less of water)" respectively. It is also proposed that these new shipping names be reflected in §§ 146.22-100 and 146.23-100. Additionally, dimethylhexane dihydroperoxide will no longer be authorized to be transported by the water mode in §§ 146.04-5 and 146.22-100.

b. As indicated below, certain sections of Subpart 146.05 are being revised to reiterate more completely many of the general packaging regulations provided in 49 CFR 173:

(1) Section 146.05-3 (a) and (b) will be revised to read as follows:

§ 146.05-3 Prohibited packaging.

(a) The offering of packages of dangerous articles in outside packages containing in the same compartment interior packages, the mixture of contents of which would be liable to cause a dangerous evolution of heat or gas or produce corrosive materials, is prohibited for transportation.

(b) The offering for transportation of any package or container of any liquid, solid or gaseous material which under conditions incident to transportation may polymerize (combine or react with itself) or decompose so as to cause dangerous evolution of heat or gas, is prohibited. Such materials may be offered for transportation when properly stabilized or inhibited. Refrigeration may be used as a means of stabilization only when approved by the Commandant of the Coast Guard.

* * * * *

(2) Section 146.05-5 (b) and (c), as they relate to acceptance of DOT and ICC specification packaging, will be revised to read:

§ 146.05-5 DOT and ICC specification packaging.

* * * * *

(b) Where the regulations require Specification 6D or 37M cylindrical steel overpacks, Specification 5B, 6J, or 37A (singletrip container) metal drums manufactured before March 18, 1964, having inside Specification 2S, 2SL, 2T, or 2TL polyethylene containers, may be continued in use for the commodities and gross weights for which they were previously authorized.

(c) Reusable molded polyethylene containers for use without overpack complying with Specification 34, manufactured before September 5, 1966, may be continued in use, if they are plainly marked "DOT-34", and are embossed with the maker's name or symbol, rated capacity, and the month and year of manufacture.

* * * * *

(3) Section 146.05-10 is being completely revised and will repeat as applicable the provisions of 49 CFR 173.28 as amended in the FEDERAL REGISTER issues of July 31, 1970 (35 F.R. 12275), and December 16, 1970 (35 F.R. 19021).

(4) A new section, § 146.05-11, entitled *Standard requirements for all packages* will reiterate the provisions of 49 CFR 173.24 as applicable, in order to clarify the requirements for packages shipped by the water mode. The present sections, §§ 146.05-11 through 146.05-17 will be renumbered §§ 146.05-12 through 146.05-18, inclusive.

c. In § 146.19-12, a new paragraph (h) will be added to require that the numerical values for package assignments as fissile class I, the transport indices for fissile class II packages, and the vehicle limitations for fissile class III packages be determined in accordance with §§ 71.36 through 71.40 of Title 10 of the Code of Federal Regulations. Also, in § 146.19-100 fiberboard boxes (DOT-23F, 23H) will be authorized as additional packaging on board cargo vessels, passenger vessels, ferry vessels, and railroad car ferries for the articles "fissile radioactive materials" and "radioactive materials, n.o.s."

d. In § 146.20-300, the definition of oil well cartridge in column 2 will be revised to read as follows: "Oil well cartridges are tubular devices each containing not more than 350 grains of propellant powder and having no ignition device or element. Cartridges must be constructed and packed so that they will be incapable of functioning en masse as a result of exposure to external flames."

e. In § 146.21-100, in column 2, opposite the article "ethyl chloride" it will be stated in boldface type, "Outage for all outside containers except tank cars must be 7.5 percent or more at 70° F." Also the following additional packaging will be authorized for the indicated articles on board cargo vessels:

(1) Portable tanks (DOT-51) not over 20,000 pounds gross weight, for "on deck" and "first deck below" stowage of ethyl chloride.

(2) Cylinders (DOT-4BA240, 4BW 240), for ethylene imine, inhibited and propylene, imine, inhibited.

(3) Steel drums (DOT-37D) NRC, not over 55-gallon capacity, for paints, enamel, lacquer, etc. having a density not exceeding 10 pounds per gallon and a flash point above 20° F. These drums may also be transported on passenger vessels, ferry vessels, and railroad car ferries.

f. In § 146.22-100, the following additional packaging will be authorized for the indicated articles on board cargo vessels:

(1) Tightly closed gondola cars and boxcars, for magnesium, metallic (other than scrap), powdered, pellets, turnings, or ribbon.

(2) Portable tanks (DOT-51) not over 20,000 pounds gross weight and complying with DOT regulations in 49 CFR 173.206(c)(4), for lithium aluminum hydride, lithium ferro silicon, lithium hydride, lithium metal, lithium silicon, metallic potassium, metallic sodium, sodium aluminum hydride, sodium amide, and sodium potassium alloys.

g. In § 146.22-200, the following changes will be made to the list of outside containers:

(1) Fiber drums (DOT-21C) will no longer be authorized for lithium hypo-

chlorite compounds, dry, on cargo vessels, passenger vessels, ferry vessels, or railroad car ferries.

(2) Wooden boxes (DOT–16A) WIC, maximum gross weight 400 pounds will be authorized as additional packaging on board cargo vessels for all liquid organic peroxides.

(3) The authorized gross weight for fiberboard boxes (DOT–12B) WIC will be increased from 50 to 65 pounds net weight for the article "benzoyl peroxide, wet".

h. In § 146.23–100, the maximum gross weight of fiberboard boxes (DOT–12A) WIC of polyethylene, carrying etching acid liquid, n.o.s. will be changed from 65 to 40 pounds. The stipulation in columns 4, 5, 6, and 7 opposite the article "electrolyte acid or alkaline corrosive battery fluid packed with battery charger, etc." which applies to fiberboard boxes (DOT–12B) will be revised to read: "Fiberboard boxes (DOT–12B) packed in compliance with DOT regulations".

Also:

(1) The following additional packaging will be authorized for the indicated articles on board cargo vessels, passenger vessels, ferry vessels, and railroad car ferries:

(i) Aluminum drums (DOT–42B, 42C, 42D), for anhydrous hydrazine.

(ii) Polyethylene containers (DOT–34), for hydrochloric (muriatic) acid and sulfuric acid (oil of vitriol), the latter having a concentration not to exceed 95 percent.

(iii) Polysyrene cases (DOT–33A) (NRC) having one inside glass bottle of not over 16-ounce capacity, for: Acids, liquid, n.o.s.; alkaline corrosive battery fluid; alkaline caustic liquids, n.o.s.; alkaline corrosive liquids, n.o.s.; antimony pentachloride solution; chromic acid solution; compounds, cleaning, liquid; compounds, iron or steel rust preventing or removing; compounds, lacquer, paint or varnish, etc. removing, reducing or thinning, liquid; compounds, vulcanizing, liquid; corrosive liquids, n.o.s.; drugs, chemicals, medicines, cosmetics, n.o.s.; formic acid; formic acid solution; hexamethylene diamine solution; and tris-(1-Aziridinyl) phosphine oxide.

(2) The following additional packaging will be authorized for the indicated articles on board cargo vessels only:

(i) Metal barrels or drums (DOT–5), for acetyl chloride, antimony pentachloride, benzoyl chloride, chromyl chloride, pyro sulfuryl chloride, silicon chloride, sulfur chloride (mono and di), sulfuryl chloride, thionyl chloride, tin tetrachloride (anyhydrous), and titanium tetrachloride.

(ii) Cylinders (DOT–4BA240, 4BW–240), for titanium tetrachloride.

(iii) Cylinders (DOT–4BW240), for bromine pentafluoride, bromine trifluoride and chlorine trifluoride.

(iv) Fiberboard boxes (DOT–12A) maximum gross weight 80 pounds, for hydrofluoric acid not over 70 percent strength.

(v) Polyethylene containers (DOT–34), 30-gallon maximum capacity, for hydrogen peroxide and hydrofluosilicic acid, the former not exceeding 52 percent strength.

(vi) Cylindrical steel overpack (DOT–6D, 37M) WIC 2S, 2SL, or 2T, for ethyl chloroformate and methyl chloroformate.

(vii) Metal drums (DOT–5B) lined with a material which is compatible with the article carried, for phosphorous oxybromide, phosphorous oxychloride, phosphorous trichloride and thiophosphoryl chloride.

(viii) Cylindrical steel overpack (DOT–37M) WIC 2S, 2SL, or 2T, for hydrofluoric acid of concentration not over 70 percent.

(ix) Carboys, glass (DOT–1K) in boxes, kegs or plywood drums, for acetyl chloride, benzoyl chloride, chromyl chloride, pyro sulfuryl chloride, silicon chloride, sulfur chloride (mono and di), sulfuryl chloride, thionyl chloride, and titanium tetrachloride.

i. In § 146.24–15, paragraph (f) will be revised to show that inside metal containers (DOT–2Q) are authorized as additional packaging for refrigerant gases only.

j. In § 146.24–20, the provisions of paragraph (c)(4) which presently place a restriction on the flash point of aerosol products packaged in "exempt" quantities will be deleted.

k. In § 146.25–100, the following additional packaging will be authorized for the indicated articles on board cargo vessels:

(1) Cylinders (DOT–4BW), for: Chloropicrin and methyl chloride mixtures; and chloropicrin and nonflammable, nonliquefied compressed gas mixtures.

(2) Cylinders (DOT–4BW240), for the following articles when they are mixed with compressed gas: Hexaethyl tetraphosphate; organic phosphate mixtures, n.o.s.; parathion; tetraethyl pyrophosphate; and tetraethyl dithio pyrophosphate.

l. In § 146.25–200, the phrase "not over 65 lb. gr. wt." following fiberboard boxes (DOT–12B, 12C) in column 4 will be revised to read "Fiberboard boxes manufactured and marked for a gr. wt. of 65 lbs. may have a gr. wt. of 70 lbs. provided net wt. of contents does not exceed 6 lbs.", for the articles: Hexaethyl tetraphosphate mixtures; methyl parathion mixtures; organic phosphate compound mixtures, n.o.s.; parathion mixtures; tetraethyl dithio pyrophosphate mixtures; and tetraethyl pyrophosphate mixtures, dry. Also the following additional packaging will be authorized for the indicated articles on board cargo vessels:

(1) Motor vehicles and rail cars complying with Department of Transportation regulations, for bulk shipment of arsenical dust, arsenical flue dust and other poisonous noncombustible byproduct dusts, and arsenic trioxide. Motor vehicles will also be authorized on board ferry vessels. Rail cars will also be authorized on board railroad car ferries.

(2) Metal drums (DOT–17H) not over 450 pounds gross weight, for cyanides or cyanide mixtures, dry

5. The second group of proposals consists of amendments that the Hazardous Materials Regulations Board is presently considering making to 49 CFR Subtitle B and the Commandant is also considering as amendments to 46 CFR Chapter I, Subchapter N. They are as follows:

a. Railway fusees and highway fusees will be reclassified as inflammable solids rather than Class C explosives. Accordingly, the entries "Highway fusees" and "Railway fusees" will be deleted from §§ 146.04–5 and 146.20–300. In § 146.04–5 the entry "Fusees (see: 'Railway fusees' or 'Highway fusees')" will be deleted. In its place "Fusees", classed as an inflammable solid and requiring a yellow label will be added. This new entry will also be added to § 146.22–100 in column one. In column two of this section, the following will be added:

A fusee is a device designed to burn at a controlled rate and to produce visible effects for signaling purposes. It consists of a pasteboard or fiber tube containing a colored flare mixture and with or without a means of support. The composition of the fusee must be such that spontaneous ignition does not occur when the moistened composition is exposed to a temperture of BVV° *F. for 72 consecutive hours. Fusees must have individual tip, head, or similar ignition point or surface entirely covered and securely protected against accidental contact or friction.*

Fusees without spikes when offered for shipment may be packed in packages prescribed herein, omitting the protection required for these devices when equipped with spikes.

May be packed with nonexplosive or noninflammable articles provided the outside packages are marked as prescribed below.

Each outside package must be plainly marked in letters not less than seven-sixteenths inch in height "Fusees" and with the additional words "Handle Carefully—Keep Fire Away."

In column three the label will be required to be "Yellow". Columns 4, 5, 6, and 7 will be identical to the entries presently given for "Highway fusees" in § 146.20–300. The proposal described in this paragraph conforms with the proposal published by the Hazardous Materials Regulations Board in the April 22, 1970, issue of the FEDERAL REGISTER (35 F.R. 6439).

b. Extensive revisions to the present classification and labeling requirements of 49 CFR Parts 170–189 have been proposed by the Hazardous Materials Regulations Board in the July 22, 1970, issue of the FEDERAL REGISTER (35 F.R. 11742). In general these revisions will adopt the classification and labeling schemes developed by the United Nations. In order to reflect these changes in 46 CFR Part 146, the following changes will be made:

(1) Applicable shipping names listed in § 146.04–5 and the tables of Subparts 146.19 through 146.26 will be revised to conform with those proposed by the Hazardous Materials Regulations Board.

(2) The following new classes of articles are proposed: Spontaneously combustible liquids; Spontaneously combustible solids; Water reactive solids; and Etiological agents. These new classes

will absorb many articles presently included in other classes. In addition the following classes will be renamed: "Class C Poisons" will be renamed "Irritating agents"; "Inflammable liquids"; will be renamed "Flammable liquids"; "Inflammable solids" will be renamed "Flammable solids"; and "Inflammable compressed gases" will be renamed "Flammable compressed gases". It should be noted, however, that specific stowing, packing and handling regulations stated in columns 2, 4, 5, 6, and 7 of the tables will not be affected at this time. Column 3 will be eliminated since the required label will only be indicated in § 146.04–5.

(3) Labels described in § 146.05–17 will be changed to reflect the labels used in the United Nations system (with minor exceptions).

(4) For compatibility of stowage with other hazardous materials: Spontaneously combustible liquids will be considered to be in the same category with flammable liquids; spontaneously combustible solids and water reactive solids will be in the same category with flammable solids; etiological agents will be in the same category with Class A poisons.

(5) The changes proposed for 49 CFR Parts 170–189 do not involve combustible liquids, hazardous articles or military explosives; so, these regulations will be unaffected, with two exceptions. Many articles classed as combustible liquids are also classed as flammable liquids. If the shipping name of the flammable liquid is revised, the name of the combustible liquid will be similarly revised. Also column three of §§ 146.26–100 and 146.27–100 will be eliminated.

(6) For details concerning new labels, shipping names, or definitions of the new classifications the July 22, 1970, FEDERAL REGISTER (35 F.R. 11742) should be consulted.

c. Wherever in 46 CFR Parts 146 and 147 any of the following phrases occur they will be deleted and replaced with the phrase "harzardous materials": "Dangerous articles of cargo"; "any permitted explosives or other dangerous articles or substances"; "dangerous substances"; "explosives or other dangerous articles or substances"; "dangerous articles"; or "permitted explosives or other dangerous articles or substances". The proposal described in this paragraph conforms with the proposal published by the Hazardous Materials Regulations Board in the September 1, 1970, FEDERAL REGISTER (35 F.R. 13834).

d. The proposal published in the December 5, 1970, FEDERAL REGISTER (35 F.R. 18534) specifying use of the Tagliabue (Tag) open-cup tester (ASTM D 56–70) to determine flash points of inflammable liquids, instead of the Tagliabut (Tag) open-cup tester (ASTM D 1310–67), will be adopted. Additionally, the definition of combustible liquid would be changed to incorporate use of the closed-cup tester. Specifically, 46 CFR Part 146 will be revised as follows:

(1) The definition of "flash point" in § 146.03–14 will read: "Flash point of a liquid means the minimum temperature of the liquid at which it gives off vapor sufficient to form an ignitable mixture with air near the surface of the liquid or within the container used."

(2) A definition for "closed-cup" will be added to Subpart 146.03 to read: " 'Close-cup' means the method for determining flash point as specified in the Standard Method of Test for Flash Point by the Tagliabue (Tag) Closed Tester (ASTM D 56–70) (American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pa.). In determining the flash points of liquids having a viscosity of 4 centipoise or higher (at 100° F.) the prescribed 2° F./minute rate of the Tag test must be reduced to 0.5° F./minute, or the temperature differential between the sample and the bath must be maintained at 5° F. or less."

(3) The definition of "inflammable liquid" in § 146.21–1(a) will be revised to reflect that an inflammable liquid is one with a closed-cup flash point at or below 73° F. Corrections will also be made to reflect this revised definition in § 146.21–100, opposite the entry for inflammable liquid, n.o.s.

(4) The definition of "combustible liquid" in § 146.26–1 will be revised to show that a combustible liquid is one with a closed cup flash point at or below 141° F. and above 73° F.

(5) Section 146.27–5 will be revised to show that the upper flash point limit on liquids dealt with by the section is 141° F. by the closed cup method.

(e) Section 146.21–100, will be revised to authorize tank cars complying with DOT regulations (trainships only) as additional packaging for acrolein on cargo vessels. The proposal described in this paragraph conforms with the proposal published by the Hazardous Materials Regulations Board in the October 27, 1970, FEDERAL REGISTER (35 F.R. 16643).

6. The third group of amendments is being proposed to update the regulations of 46 CFR Chapter I, Subchapter N. This group of amendments is not necessarily based on proposals considered by the Hazardous Materials Regulations Board, and is proposed by the Coast Guard under the authority of 46 U.S.C. 170 and 391a. As described in the three categories listed below, some involve new requirements, some are meant to interpret and clarify existing regulations, and others involve changes of an editorial nature:

a. The following proposals involve new requirements.

(1) A modal requirement for reporting accidents or incidents involving hazardous materials was published in the October 31, 1970, FEDERAL REGISTER (35 F.R. 19835). Certain sections of 46 CFR Part 146 which would require reports that duplicate the reports required by the new regulation, were not deleted. Accordingly, §§ 146.02–14 (d) and (e), 146.20–51 (c) and (d), and 146.24–75 (a) and (b) will be amended by deleting the requirements for these duplicate reports. Section 146.02–15 will be revised by stating that the reports made in accordance with its provisions are in addition to any that may be required by § 146.02–35(a). Also, the last sentence of § 146.02–15(b) will be changed to state that the report to the District Commander covering jettisoning or similar disposition of packages found in an unsafe condition shall include a description of the location and quantity of the disposed material. In addition, § 146.02–35, the section which describes the general requirements for reporting incidents involving hazardous materials, will be revised as follows:

(i) Section 146.02–13(a) will be deleted and restated in this section.

(ii) A paragraph will be added to read, "For other reports which may be required in addition to those required by paragraph (a) of this section, see §§ 146.02–15 (a) and (b), 146.02–16, and 146.19–50(a)."

(2) Subpart 146.07 will be revised to show that its provisions are applicable to inland as well as ocean going vessels. In addition § 146.07–25 will be amended to state that highway vehicles, railroad vehicles, containers and portable tanks transported by the water mode must display labels in lieu of the placards presently required. Such a change will create consistency with the stipulations of the International Convention on the Safety of Life at Sea, 1960, Chapter VII, Regulation 4. In another change, articles packaged in such limited quantities that they are exempted from the requirements for specification packaging, labeling, and marking other than true name of product, will be exempted from the compatibility regulations stated in § 146.07–40 (b). Also, because most passenger vessels are not properly designed for below deck stowage of containers of dangerous cargo, Subpart 146.07 will be amended to show that the conversion table of § 146.07–40(c) does not apply to passenger vessels.

(3) Based on a recommendation by the National Transportation Safety Board resulting from its investigation of the collision involving the "SS African Star" and the "M/V Midwest Cities," Subpart 146.06 will be amended to require that the dangerous cargo manifest be kept in a holder located on or near the bridge. It will also be required that any special permits dealing with transport of dangerous cargo and which are required to be aboard the vessel, be kept in this holder.

(4) As has been permitted during the past 2 years by special permit, certain practices pertaining to the use of commercial explosives will be permitted by the regulations. Specifically, § 146.09–2 will be amended to state that the partition bulkhead does not need to be installed when the explosives are palletized. Also § 146.20–35 will be revised by eliminating the requirement for using cargo nets and landing mattresses when loading palletized Class A explosives.

(5) In § 146.10–2 it will be made clear that the compatibility regulations stated elsewhere in Part 146 are also applicable to barges. This will be done by deleting the phrase "and except as to stowage" in the first sentence of the section.

(6) The note in column 4 of § 146.20–300, opposite the entry for "blasting caps—1,000 or less" will be revised to read "NOTE: When stowed with other

explosives, blasting caps in quantities of 1,000 or less shall be stowed in accordance with the compatibility requirements set forth in § 146.20–90 for blasting caps (Class A explosives)."

(7) Section 146.23–10(c) will be deleted because it is no longer applicable.

(8) Because of health hazards created by tolylene diisocyanate and ethylene dibromide, these two articles have been included in the list of hazardous articles. Tolylene diisocyanate is a strong sensitizer which has caused severe asthma type symptoms in personnel overcome following accidental spills. Ethylene dibromide is an article considered similar to but more toxic than two articles presently regulated as hazardous articles, chloroform and carbon tetrachloride. It is proposed that § 146.27–100 be amended to incorporate these two articles as follows:

(i) For tolylene diisocyanate:

Column 1: Tolylene diisocyanate.
Column 2:
Clear, faintly yellow liquid with strong pungent odor.
Toxic. Do not breathe fumes.
Keep away from heat and open flame. Stow away from living quarters and food stuffs. Must be stowed in well ventilated spaces.
Do not stow with corrosive liquids, amines or alcohols.
Outside containers must be marked "Tolylene Diisocyanate".
Column 3: No label required.
Column 4:
Stowage:
"On deck protected."
"On deck under cover."
"Tween decks."
"Under deck away from heat."
Outside containers:
Tight stainless steel, nickel, or aluminum drums.
Wooden boxes, nonspecification, WIC.
Fiberboard boxes, WIC.
Column 5:
Stowage:
"On deck protected."
"On deck under cover."
"Tween decks."
"Under deck away from heat."
Outside containers:
Tight stainless steel, nickel, or aluminum drums.
Wooden boxes, nonspecification, WIC.
Fiberboard boxes, WIC.
Column 6:
Ferry stowage (AA).
Outside containers:
Tight stainless steel, nickel, or aluminum drums.
Wooden boxes, nonspecification, WIC.
Fiberboard boxes, WIC.
Column 7:
Ferry stowage (BB).
Outside containers:
Tight stainless steel, nickel, or aluminum drums.
Wooden boxes, nonspecification, WIC.
Fiberboard boxes, WIC.

(ii) For ethylene dibromide:

Column 1: Ethylene dibromide.
Column 2:
Colorless liquid with odor of chloroform.
Vapors 6.3 times heavier than air.
Toxic.
Do not breathe fumes and avoid prolonged contact with skin.
Boiling point 269° F.
Must be stowed in spaces capable of being ventilated.
Containers must be marked "Ethylene dibromide".
Column 3: No label required.
Column 4:
Stowage:
"On deck."
"Tween decks."
"Under deck."
Outside containers:
Any DOT specification container for liquids as shown in the Class B, less dangerous poisons table (§ 146.25–200) for cargo vessels.
Also:
Metal barrels or drums (CFC R 40) not over 55 gal. cap.
Wooden boxes, nonspecification, WIC not over 200 lb. gr. wt.
Fiberboard boxes (CFC R 41) WIC not over 90 lb. gr. wt.
Bulk as specifically approved by Commandant.
NOTE: Containers shall be of a design and constructed of materials that will not react dangerously with nor be decomposed by the chemical packed therein.
Column 5:
Stowage:
"On decks."
"Tween decks."
"Under deck."
Outside containers:
Any DOT specification container for liquids as shown in the Class B, less dangerous poisons table (§ 146.25–200) for passenger vessels.
Also:
Metal barrels or drums (CFC R 40) not over 55 gal. cap.
Wooden boxes, nonspecification, WIC, not over 200 lb. gr. wt.
Fiberboard boxes (CFC R 41) WIC, not over 90 lb. gr. wt.
NOTE: Containers shall be of a design and constructed of materials that will not react dangerously with nor be decomposed by the chemical packed therein.
Column 6:
Ferry stowage (AA).
Outside containers:
Any DOT specification container for liquids as shown in the Class B, less dangerous poisons table (§ 146.25–200) for ferry vessels.
Also:
Metal barrels or drums (CFC R 40) not not over 55 gal. cap.
Wooden boxes, nonspecification, WIC, not over 200 lb. gr. wt.
Fiberboard boxes (CFC R 41) WIC not over 90 lb. gr. wt.
Tank motor vehicles complying with DOT motor carrier regulations.
NOTE: Containers shall be of a design and constructed of materials that will not react dangerously with nor be decomposed by the chemical packed therein.
Column 7:
Ferry stowage (BB).
Outside containers:
Any DOT specification container for liquids as shown in the Class B, less dangerous poisons table (§ 146.25–200) for car ferries.
Also:
Metal barrels or drums (CFC R 40) not over 55 gal. cap.
Wooden boxes, nonspecification WIC, not over 200 lb. gr. wt.
Fiberboard boxes (CFC R 41) WIC, not over 90 lb. gr. wt.
Tank cars complying with DOT rail carrier regulations.
Tank motor vehicles complying with DOT motor carrier regulations.
NOTE: Containers shall be of a design and constructed of materials that will not react dangerously with nor be decomposed by the chemical packed therein.

(9) Section 146.22–100 will be amended to exempt animal charcoal, that is not wet and not activated, from the regulations of Part 146.

(10) The provisions of Subpart 146.27 relating to stowage of motor vehicles and mechanized equipment will be clarified to provide that when these vehicles have fuel in their tanks, they cannot be stowed inside closed containers. This prohibition is being recommended to prevent the buildup of a potentially explosive atmosphere in virtually airtight containers. Also, it will be stated in column 5 of § 146.27–100 that "tanks, portable, liquid" which previously contained a combustible liquid may be carried on passenger vessels. Stowage location requirements for these tanks on passenger vessels will be the same as for cargo vessels.

(11) The military explosive regulations of Subpart 146.29 will be modified to some extent. Most notably, a new section, § 146.29–12, will be added to provide that all outside packages of military explosives must be marked with the proper Coast Guard classification of ammunition contained therein. This change is proposed because of numerous violations involving incompatible stowage. The marking will be required to be in block letters not less than ½-inch high and may be printed, stenciled or stamped on each outside package. Abbreviations of the classes such as "CG X–C" will be authorized. A new section, § 146.29–42, entitled "Containers of ammunition", will be added to provide for the increasing demand for movement of explosives in containers. This new section will recodify § 146.29–41(k), and in addition provide that explosives other than those of Coast Guard classes I and II may be transported in containers upon approval of the Commandant. The definition in § 146.29–11(c)(16) for "container" will be revised to restate that ammunition transported in containers is not limited to classes I and II. No details regarding specific design requirements for the containers will be mentioned since they are presently only in the development stage. In another change, a definition for "accessible" will be added to § 146.29–11 stating that stowage required to be accessible must be located so that a firefighting party with equipment can readily approach it. It is proposed to amend § 146.29–45(c) to make it clear that drafts of explosives cannot be handled over explosives or other dangerous articles which may have been placed on deck permanently or temporarily. Also, § 146.29–100, Class X–E, will be amended to include rockets with warheads as well as those without warheads.

(12) Section 147.01–4 will be revised to describe which articles of ships' stores and supplies are required to be certified by the Coast Guard. These articles will include: articles required by § 147.05–100 to be certified; and articles not listed in § 147.05–100 but which can be classified as either a radioactive material, class A, B, or C explosive, inflammable liquid, inflammable solid, oxidizing material, corrosive liquid, compressed gas, class A, B, or C poison, combustible liquid or hazardous article. Section 147.03–4 will be revised to detail information that is required by the Coast Guard to be on

labels of articles of ships' stores and supplies. This latter amendment will facilitate the handling of requests for certification of articles of ships' stores and supplies. The information required on the label will include the trade name of the product; the manufacturer's address; operating instructions, including step by step procedures for the proper use of the product; and first aid instructions to be followed in case of improper handling or accidental personnel contact, including antidotes for accidental ingestion.

(13) Finally several miscellaneous changes are proposed to the classification, handling and stowage requirements in §§ 146.19–100 through 146.27–100. In column four of § 146.22–200 the "on deck protected" stowage will be deleted for calcium hypochlorite due to a casualty related to this stowage location. In column two of § 146.24–100, for the article "hydrogen sulfide", the description *"Foul odor gives warning of dangerous quantities in air"* will be replaced with *"Offensive odor similar to that of rotten eggs. Do not depend on sense of smell to detect dangerous levels of concentration."* This description is changed since published data indicates dangerous levels of concentration may not be detectable by the sense of smell due to olfactory fatigue. The entry for calcium cyanamide in § 146.27–100 will be amended to show that when the commodity has a calcium carbide content between 0.1 and 0.5 percent, burlap or four-ply paper bags with waterproof liners can be used as outside containers. Also, it will be stated that when the article contains less than 0.1 percent calcium carbide it is not regulated. This change reflects the philosophy of the Intergovernmental Maritime Consultative Organization for this product. It is also proposed to amend § 146.27–100 to authorize metal borings, shavings, turnings, and cuttings to have compressed bales wrapped in burlap as the outside packaging provided the burlap shows no sign of oil.

b. The following proposals are made primarily for purposes of clarification:

(1) In 1966 the provisions authorizing gas tight holds were changed to conform with the ventilation requirements of Chapter VII, Regulation 7 of the International Convention on Safety of Life at Sea 1960 by stating that inflammable liquids have to be stowed in ventilated holds. All references to gas tight holds were not, however, deleted. This ambiguity is now being corrected by making appropriate changes to § 146.21–45.

(2) When the provisions of Subpart 146.27 as applicable to motor vehicles and mechanized equipment were revised in the October 29, 1969, issue of the FEDERAL REGISTER (34 F.R. 17478), the provision authorizing "spaces specially suitable for vehicles" to be designated by administrations of countries in which foreign vessels are registered was inadvertently deleted. This omission will be rectified by inserting the following sentence in § 146.27–32(a): "Specially suitable spaces for vehicles on foreign vessels shall be designated as such by the Administration of the country in which the vessels are registered."

(3) Subpart 146.28 will be deleted for the convenience of the public. As indicated below, packaging authorized by this subpart will be placed in sections of the regulations appropriate for the articles concerned:

(i) The provisions of §§ 146.28–1, 146.28–2, 146.28–6, and 146.28–7 are already duplicated elsewhere in 46 CFR Part 146, so no redesignations are necessary.

(ii) The provisions of § 146.28–8 will be placed as a note in column 4 of § 146.21–100, for the article "Gasoline".

(iii) The provisions of § 146.28–13 will be restated in a new section, § 146.21–17, entitled "Additional packaging".

(iv) Section 146.21–100 will be modified to reflect § 146.28–14 by indicating that inflammable liquids are authorized to be packaged in fiberboard boxes with inside containers (DOT–12B) whenever fiberboard boxes with inside containers (DOT–12D) are presently accepted.

(v) The provisions of § 146.28–15 will be placed as a note in columns 4, 5, 6, and 7 of § 146.21–100, for the article "Cement, leather".

(vi) The provisions of § 146.87–17 will be placed as a note in columns 4, 5, 6, and 7 of § 146.23–100, for the article "Chromic acid solution".

(vii) In § 146.25–200, columns 4, 5, 6, and 7, for the article "methyl bromide" will be amended by adding "Metal drums (DOT–5A) max. cap. 30 gal." to reflect packaging authorized by § 146.28–20.

(viii) The provisions of §§ 146.28–21 and 146.28–22 will be restated in a new section, § 146.25–17, entitled "Additional packaging".

c. Several changes of an editorial nature are proposed. The permit exemption of § 146.20–85(b) which states a permit is not required when loading less than 300 pounds of Class A explosives, is to be deleted to be consistent with 33 CFR 126.17. In § 146.04–5, column three, the typographical errors regarding labels for: *Aerosol products;* aircraft rocket engine (commercial); aircraft rocket engine igniters (commercial); air, compressed; and alcohol, allyl will be corrected. In another change, the title of Subpart 146.05 will be revised to read "Shippers Requirements Regarding Labeling, Packing, Marking, Classification, and Shipping Papers". This change is intended to emphasize that the shipper is responsible for article classification (cf. § 146.05–11). Column 2 of § 146.21–100, for the article "methyl methacrylate", is to be amended by adding the following: "See § 146.05–3 for prohibited shipments." In § 146.26–100, for box toe gum, the reference in column 4 to "§ 20.01–5" will be changed to read: "§ 30.01–5". Section 146.27–1(b) will be amended by adding the sentence: "(As stipulated by § 146.27–5, certain liquids are not subject to the regulations of this part.)" This is intended to clarify the fact that many combustible liquids are not hazardous articles. Section 146.29–59(g)(4) will be deleted due to the fact that radioactive materials are no longer classified as poisons but have their own classification; their compatibility requirements with military explosives remain identical but will be added in § 146.29–59(i). The title of Subpart 147.03 will be revised to read: "Use of ships' stores and supplies of a dangerous nature aboard ship." This new title is more descriptive of the text contained within § 147.03–1.

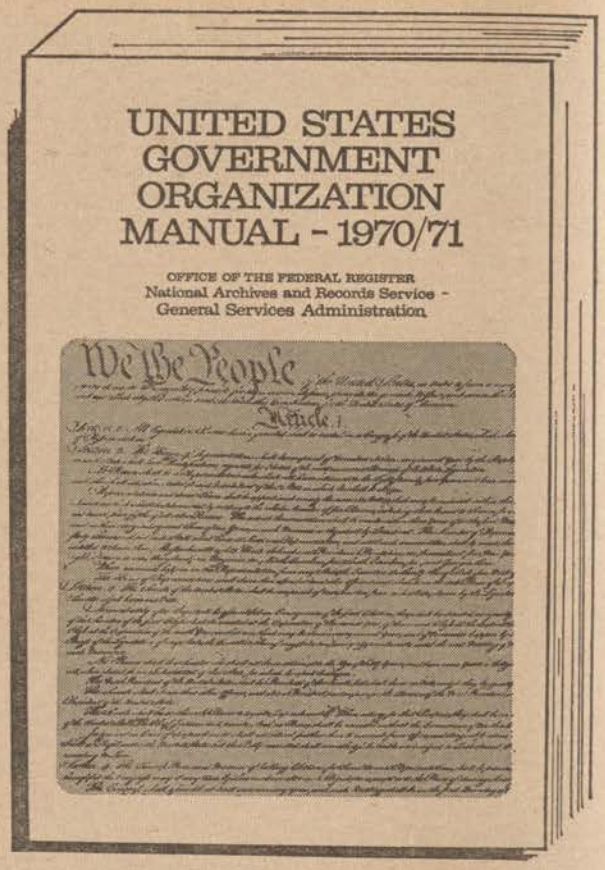
7. The proposed amendments are made under the authority of R.S. 4405, as amended, R.S. 4417a, as amended, R.S. 4462, as amended, R.S. 4472, as amended, section 6(b)(1), 80 Stat. 937; 46 U.S.C. 375, 391a, 416, 170, 49 U.S.C. 1655(b)(1); 49 CFR 1.46(b).

Dated: March 17, 1971.

W. M. BENKERT,
Captain, U.S. Coast Guard, Acting Chief, Office of Merchant Marine Safety.

[FR Doc.71–3881 Filed 3–19–71;8:47 am]

know your government



UNITED STATES GOVERNMENT ORGANIZATION MANUAL 1970/71

presents essential information about Government agencies (updated and republished annually). Describes the creation and authority, organization, and functions of the agencies in the legislative, judicial, and executive branches. This handbook is an indispensable reference tool for teachers, students, librarians, researchers, businessmen, and lawyers who need current official information about the U.S. Government. The United States Government Organization Manual is the official guide to the functions of the Federal Government, published by the Office of the Federal Register, GSA.

$3.00 per copy. Paperbound, with charts

Order from Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402