AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
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federal register

WEDNESDAY, JUNE 9, 1971
WASHINGTON, D.C.

Volume 36 ■ Number 111
Pages 11071–11173

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**Order from Superintendent of Documents,
United States Government Printing Office,
Washington, D.C. 20402**

FEDERAL REGISTER

Area Code 202 Phone 962-8626

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

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Title 3—The President

PROCLAMATION 4059

Fire Prevention Week, 1971

By the President of the United States of America

A Proclamation

Despite unparalleled technological advances in many areas of our society, uncontrolled fires continue to bring a great deal of tragedy and widespread loss to our Nation. Fires now kill more than 12,000 persons each year and cause annual property losses exceeding $2 billion.

The most shameful aspect of this terrible waste is that it is so unnecessary. Most fires are caused by carelessness, by lack of knowledge, or by hazardous conditions—all of which can be eliminated. But while we all give occasional lip-service to the importance of fire prevention, our deeds too often fail to match our words—and so the loss continues.

But this pattern need not continue. If each of us will only focus his attention on the practical implications of fire prevention in his daily life, a great deal can be done to reduce the destruction caused by fires.

NOW, THEREFORE, I, RICHARD NIXON, President of the United States of America, do hereby designate the week beginning October 3, 1971, as Fire Prevention Week.

I call upon all citizens to participate in the fire prevention activities of their various governments, of community fire departments, and of the National Fire Protection Association. Every person should be alert to the ways in which he can eliminate fire hazards. Every citizen should learn how to report fires, how to use basic extinguishing agents and firefighting techniques, and how to react when major fires strike his place of work or his residence. The need to rethink all of these matters is especially important as new technologies change our living environments and the nature of the fire risks we encounter.

I also encourage all Federal agencies, in cooperation with the Federal Fire Council, to conduct effective fire prevention programs, including fire exit drills and other means of training employees, in order to help reduce this waste of life and resources which now plagues our Nation.

IN WITNESS WHEREOF, I have hereunto set my hand this seventh day of June in the year of our Lord nineteen hundred seventy-one, and of the Independence of the United States of America the one hundred ninety-fifth.

Richard Nixon

[FR Doc.71-8113 Filed 6-7-71; 2:27 pm]

EXECUTIVE ORDER 11596

Designating the Customs Cooperation Council as a Public International Organization Entitled To Enjoy Certain Privileges, Exemptions, and Immunities

By virtue of the authority vested in me by section 1 of the International Organizations Immunities Act (59 Stat. 669; 22 U.S.C. 288), and having found that the United States participates in the Customs Cooperation Council pursuant to the Convention Establishing a Customs Cooperation Council of December 15, 1950, TIAS 7063, I hereby designate the Customs Cooperation Council as a public international organization entitled to enjoy the privileges, exemptions, and immunities conferred by the International Organizations Immunities Act.

The designation of the Customs Cooperation Council as a public international organization within the meaning of the International Organizations Immunities Act shall not be deemed to abridge in any respect privileges, exemptions, and immunities which the organization may have acquired or may acquire by treaty or Congressional action.

Richard Nixon

THE WHITE HOUSE,
June 5, 1971.

[FR Doc.71-8112 Filed 6-7-71; 2:27 pm]

Rules and Regulations

Title 7—AGRICULTURE

Chapter XIV—Commodity Credit Corporation, Department of Agriculture

SUBCHAPTER B—LOANS, PURCHASES, AND OTHER OPERATIONS

[CCC Grain Price Support Regs., 1971 Crop Oat Supp.]

PART 1421—GRAINS AND SIMILARLY HANDLED COMMODITIES

Subpart—1971 Crop Oat Loan and Purchase Program

Correction

In F.R. Doc. 71-7016 appearing at page 9236 in the issue of Friday, May 21, 1971, in § 1421.274(a), the support rate per bushel for "All counties" in the State of Oklahoma reading "$0.63" should read "$0.64".

SUBCHAPTER C—EXPORT PROGRAMS

PART 1488—FINANCING OF SALES OF AGRICULTURAL COMMODITIES

Subpart A—Financing of Export Sales of Agricultural Commodities From Private Stocks Under CCC Export Credit Sales Program (GSM-4, Revision II)

DAIRY BREEDING CATTLE; CORRECTION

F.R. Doc. 71-7163, published at pages 9439-9442 in the issue dated Tuesday, May 25, 1971, is corrected by changing "DHIR" to read "DHI" in paragraphs D.2.(a), D.3., and E. of Exhibit I to Supplement II.

Signed at Washington, D.C., on June 2, 1971.

CLIFFORD G. PULVERMACHER,
Vice President, Commodity Credit Corporation, and General Sales Manager, Export Marketing Service.

[FR Doc.71-8009 Filed 6-8-71;8:48 am]

Title 5—ADMINISTRATIVE PERSONNEL

Chapter I—Civil Service Commission

PART 213—EXCEPTED SERVICE

Department of the Interior

Section 213.3312 is amended to show that one additional position of Assistant to the Secretary (Congressional Liaison) is excepted under Schedule C.

Effective on publication in the FEDERAL REGISTER (6-9-71), subparagraph (26) of paragraph (a) of § 213.3312 is amended as set out below.

§ 213.3312 Department of the Interior.

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

(26) Three Assistants to the Secretary (Congressional Liaison).

* * * * *

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

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

[FR Doc.71-7976 Filed 6-8-71;8:45 am]

PART 213—EXCEPTED SERVICE

Department of the Interior

Section 213.3312 is amended to show that one position of Special Assistant to the Under Secretary is excepted under Schedule C.

Effective on publication in the FEDERAL REGISTER (6-9-71), subparagraph (27) is added to paragraph (a) of § 213.3312 as set out below.

§ 213.3312 Department of the Interior.

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

(27) One Special Assistant to the Under Secretary.

* * * * *

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

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

[FR Doc.71-7975 Filed 6-8-71;8:45 am]

Title 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Administration, Department of Transportation

[Airspace Docket No. 71-WA-10]

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

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

Alteration of Positive Control Area

On March 18, 1971, a notice of proposed rule making was published in the FEDERAL REGISTER (36 F.R. 5249) stating that the Federal Aviation Administration (FAA) was considering amendments to Parts 71 and 75 of the Federal Aviation Regulations that would expand the positive control area (PCA) from flight level 240 to 18,000 feet MSL in the western portion of the United States.

Interested persons were afforded an opportunity to participate in the proposed rule making through the submission of comments. A great number of comments were received in response to the notice. A great majority of the commentators objected to the proposal on the grounds that it would place an unnecessary restriction on aircraft operating under visual flight rules (see and void), and that it would place an undue burden on the air traffic control system. A large number of commenators believed it would seriously curtail soaring operations in an area where a great number of gliders and sail planes are operating.

The Federal Aviation Administration has consistently maintained that the risk of mid-air collision is less likely in a positive control environment than anywhere else in the system. Many aircraft now operate at closure speeds in excess of 1,000 knots. The "see and avoid" type of separation is increasingly less effective as closure speeds increase, since aircraft now can be upon each other before the pilots are able to detect other aircraft and maneuver to avoid collision. Designation of this strata as positive control area would augment "see and avoid" with provision of air traffic control services including radar. The FAA believes that safety considerations require the action being taken.

As was stated in the notice, the Federal Aviation Administration has determined that it now has sufficient equipment and personnel to provide the expanded positive control services in the area proposed in the notice.

The Federal Aviation Administration believes that the fear of glider enthusiasts that soaring would be seriously curtailed are unfounded. Currently, several areas have been allocated for soaring activities. Air traffic control facilities have executed letters of procedures with soaring organizations to enable them to operate with minimum interference. In addition, waivers have been granted for special soaring operations in other positive control airspace. The requirement to coordinate special flight into positive control airspace remains the same. It is the opinion of the FAA that the possible inconvenience to soaring activities caused by lowering the ceiling of the APC is offset by the safety considerations involved.

The area defined in the notice was designed to encompass entire air route traffic control center areas. Since issuance of the notice several alterations to center boundaries have been effected. As the changes are not of great significance to the user and relate primarily to the

internal operation of the air traffic control system, the changes are reflected herein.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended effective 0901 G.m.t., July 22, 1971 as hereinafter set forth.

Section 71.193 (36 F.R. 5675) is amended by deleting all after "Continental Control Area" and substituting therefor:

That airspace within the continental control area from flight level 240 to and including flight level 600 bounded by a line beginning at lat. 38°00'00" N., long. 75°11'00" W., thence via a line 3 nautical miles from the coastline to the United States/Mexican border, thence along the United States/Mexican border to lat. 32°15'00" N., long. 114°00'00" W. thence to lat. 34°02'00" N., long. 114°00'00" W. thence to lat. 34°11'00" N., long. 113°30'00" W. thence to lat. 34°58'00" N., long. 113°30'00" W. thence to lat. 35°23'00" N., long. 112°40'00" W. thence to lat. 35°26'00" N., long. 112°00'00" W. thence to lat. 35°26'00" N., long. 110°00'00" W. thence to lat. 36°43'00" N., long. 106°05'00" W. thence to lat. 36°43'00" N., long. 105°00'00" W. thence to lat. 37°30'00" N., long. 102°33'00" W. thence to lat. 38°28'00" N., long. 101°50'00" W. thence to lat. 38°36'00" N., long. 101°28'00" W. thence to lat. 38°49'00" N., long. 100°50'00" W. thence to lat. 38°56'00" N., long. 99°42'00" W. thence to lat. 39°23'00" N., long. 99°04'00" W. thence to lat. 38°47'00" N., long. 99°04'00" W. thence to lat. 38°22'00" N., long. 98°24'00" W. thence to lat. 38°22'00" N., long. 96°22'00" W. thence to lat. 38°04'00" N., long. 96°00'00" W. thence to lat. 36°42'00" N., long. 95°53'00" W. thence to lat. 36°55'00" N., long. 95°05'00" W. thence to lat. 36°26'00" N., long. 94°41'00" W. thence to lat. 37°09'00" N., long. 90°34'00" W. thence to lat. 37°32'00" N., long. 88°50'00" W. thence to lat. 37°43'30" N., long. 88°19'00" W. thence to lat. 37°16'30" N., long. 87°23'50" W. thence to lat. 37°18'00" N., long. 86°09'00" W. thence to lat. 36°54'00" N., long. 85°35'00" W. thence to lat. 36°11'00" N., long. 85°24'00" W. thence to lat. 36°12'30" N., long. 85°10'30" W. thence to lat. 36°30'00" N., long. 84°45'00" W. thence to lat. 36°34'00" N., long. 84°01'00" W. thence to lat. 37°11'30" N., long. 81°09'00" W. thence to lat. 37°16'00" N., long. 80°53'00" W. thence to lat. 37°18'15" N., long. 80°44'45" W. thence to lat. 37°12'15" N., long. 80°25'45" W. thence to lat. 37°00'00" N., long. 80°25'10" W. thence to lat. 36°19'00" N., long. 79°16'00" W. thence to lat. 37°01'00" N., long. 77°55'00" W. thence to lat. 38°26'20" N., long. 77°03'15" W. thence to lat. 38°53'40" N., long. 75°51'20" W. thence to lat. 38°20'30" N., long. 75°36'40" W. thence to lat. 38°13'30" N., long. 75°41'00" W. thence to point of beginning, excluding the portion south of lat. 25°04'00" N.

That airspace within the continental control area from 18,000 feet MSL to and including flight level 600 bounded by a line beginning at: lat. 38°00'00" N., long. 75°11'00" W. thence to lat. 38°13'30" N., long. 75°41'00" W. thence to lat. 38°20'30" N., long. 75°36'40" W. thence to lat. 38°53'40" N., long. 75°51'20" W. thence to lat. 38°26'20" N., long. 77°03'15" W. thence to lat. 37°01'00" N., long. 77°55'00" W. thence to lat. 36°19'00" N., long. 79°16'00" W. thence to lat. 37°00'00" N., long. 80°25'10" W. thence to lat. 37°12'15" N., long. 80°25'45" W. thence to lat. 37°18'15" N., long. 80°44'45" W. thence to lat. 37°16'00" N., long. 80°53'00" W. thence to lat. 37°11'30" N., long. 81°09'00" W. thence to lat. 36°34'00" N., long. 84°01'00" W. thence to lat. 36°30'00" N., long. 84°45'00" W. thence to lat. 36°12'30" N., long. 85°10'30" W. thence to lat. 36°11'00" N., long. 85°24'00" W. thence to lat. 36°54'00" N., long. 85°35'00" W. thence to lat. 37°18'00" N., long. 86°09'00" W. thence to lat. 37°16'30" N., long. 87°23'50" W. thence to lat. 37°43'30" N., long. 88°19'00" W. thence to lat. 37°32'00" N., long. 88°50'00" W. thence to lat. 37°09'00" N., long. 90°34'00" W. thence to lat. 36°26'00" N., long. 94°41'00" W. thence to lat. 36°55'00" N., long. 95°05'00" W. thence to lat. 36°42'00" N., long. 95°53'00" W. thence to lat. 38°04'00" N., long. 96°00'00" W. thence to lat. 38°22'00" N., long. 96°22'00" W. thence to lat. 38°22'00" N., long. 98°24'00" W. thence to lat. 38°47'00" N., long. 99°04'00" W. thence to lat. 39°23'00" N., long. 99°04'00" W. thence to lat. 38°56'00" N., long. 99°42'00" W. thence to lat. 38°49'00" N., long. 100°50'00" W. thence to lat. 38°36'00" N., long. 101°28'00" W. thence to lat. 38°28'00" N., long. 101°50'00" W. thence to lat. 37°30'00" N., long. 102°33'00" W. thence to lat. 36°43'00" N., long. 105°00'00" W. thence to lat. 36°43'00" N., long. 106°05'00" W. thence to lat. 35°26'00" N., long. 110°00'00" W. thence to lat. 35°26'00" N., long. 112°00'00" W. thence to lat. 35°23'00" N., long. 112°40'00" W. thence to lat. 34°58'00" N., long. 113°30'00" W. thence to lat. 34°11'00" N., long. 113°30'00" W. thence to lat. 34°02'00" N., long. 114°00'00" W. thence to lat. 32°15'00" N., long. 114°00'00" W. thence along United States/Mexico boundary to lat. 32°31'00" N., long. 117°11'00" W. thence via a line 3 nautical miles from the coastline to lat. 48°30'00" N., long. 124°45'00" W. thence along the United States/Canadian border to lat. 45°01'00" N., long. 71°29'00" W. thence to lat. 45°17'00" N., long. 71°20'00" W. thence to lat. 45°17'20" N., long. 71°16'00" W. thence along United States/Canadian border to lat. 45°18'10" N., long. 71°05'40" W. thence to lat. 45°19'00" N., long. 70°56'00" W. thence along the United States/Canadian border to lat. 45°19'55" N., long. 70°49'00" W. thence to lat. 45°20'40" N., long. 70°39'30" W. thence to lat. 45°40'40" N., long. 70°30'30" W. thence along the United States/Canadian border to lat. 45°40'20" N., long. 67°46'30" W. thence to lat. 45°37'30" N., long. 67°46'30" W. thence to lat. 45°27'00" N., long. 67°29'00" W. thence along the United States/Canadian border to lat. 44°48'00" N., long. 66°53'00" W. thence via a line 3 nautical miles from the coastline to lat. 44°01'00" N., long. 69°01'00" W. thence to lat. 43°47'48" N., long. 69°23'20" W. thence via a line 3 nautical miles from the coastline to lat. 43°09'31" N., long. 70°31'24" W. thence to lat. 43°07'40" N., long. 70°32'45" W. thence to lat. 43°03'16" N., long. 70°36'17" W. thence to lat. 42°57'43" N., long. 70°41'49" W. thence to via a line 3 nautical miles from the coastline to lat. 41°59'10" N., long. 70°32'10" W. thence to lat. 42°05'45" N., long. 70°17'50" W. thence to via a line 3 nautical miles from the coastline to lat. 41°29'54" N., long. 70°30'26" W. thence to lat. 41°26'24" N., long. 71°05'36" W. thence to via a line 3 nautical miles from the coastline to lat. 41°16'30" N., long. 71°47'35" W. thence to lat. 41°04'50" N., long. 71°47'25" W. thence to lat. 41°01'20" N., long. 71°50'45" W. thence via a line 3 nautical miles from the coastline to point of beginning, excluding the Santa Barbara Islands, Farallon Island.

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

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

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

[FR Doc.71-8050 Filed 6-8-71;8:49 am]

Title 16—COMMERCIAL PRACTICES

Chapter I—Federal Trade Commission

SUBCHAPTER A—PROCEDURES AND RULES OF PRACTICE

PART 1—GENERAL PROCEDURES

Subpart H—Administration of the Fair Credit Reporting Act

Correction

In F.R. Doc. 71-7165 appearing at page 9293 in the issue of Saturday, May 22, 1971, the citation "83 Stat. 1128" in the authority following the table of contents should read "84 Stat. 1128".

SUBCHAPTER E—RULES, REGULATIONS, STATEMENTS OF GENERAL POLICY OR INTERPRETATION AND EXEMPTIONS UNDER THE FAIR PACKAGING AND LABELING ACT

PART 501—EXEMPTIONS FROM REQUIREMENTS AND PROHIBITIONS UNDER PART 500

Candles

Correction

In F.R. Doc. 71-7823 appearing at page 10846 in the issue of Friday, June 4, 1971, the date of filing of the document now reading "5-3-71" should read "6-3-71".

Title 24—HOUSING AND HOUSING CREDIT

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

SUBCHAPTER B—NATIONAL FLOOD INSURANCE PROGRAM

PART 1914—AREAS ELIGIBLE FOR THE SALE OF INSURANCE

List of Designated Areas

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

§ 1914.4 List of designated areas.

* * * * * * *

State	County	Location	Map No.	State map repository	Local map repository	Effective date of authorization of sale of flood insurance for area
* * *	* * *	* * *	* * *	* * *	* * *	* * *
Florida	Pinellas	Clearwater	I 12 103 0570 05 through I 12 103 0570 08	Department of Community Affairs, State of Florida, 309 Office Plaza, Tallahassee, Fl. 32301. State of Florida Insurance Department, Treasurer's Office, State Capitol, Tallahassee, FL 32304.	City Hall Lobby, Clearwater City Hall, Clearwater, Fla. 33518.	June 4, 1971.
Do	Broward	Hollywood				Do.
Georgia	Chatham	Port Wentworth				Do.
Hawaii	Hawaii	Hilo and vicinity.	I 15 001 1900 05 through I 15 001 1900 08	Department of Land and Natural Resources, Box 621, Honolulu, HI 96809. Hawaii Insurance Department, Box 3614, Honolulu, HI 96811.	County of Hawaii Planning Department, 25 Aupuni St., Hilo, HI 96720.	Do.
Kansas	Ford	Dodge City				Do.
Texas	Grayson	Sherman	I 48 181 6350 03 through I 48 181 6350 14	Texas Water Development Board, 301 West 2d St., Austin, TX 78711. Texas State Board of Insurance, 1110 San Jacinto St., Austin, TX 78701.	Office of Urban Affairs, 3d Floor, Municipal Bldg., Sherman, Tx. 75090.	Do.

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

Issued: June 9, 1971.

GEORGE K. BERNSTEIN,
Federal Insurance Administrator.

[FR Doc.71–8011 Filed 6–8–71;8:48 am]

PART 1915—IDENTIFICATION OF FLOOD-PRONE AREAS

List of Flood Hazard Areas

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

§ 1915.3 List of flood hazard areas.

* * * * * * *

State	County	Location	Map No.	State map repository	Local map repository	Effective date of identification of areas which have special flood hazards
* * *	* * *	* * *	* * *	* * *	* * *	* * *
Florida	Pinellas	Clearwater	H 12 103 0570 05 through H 12 103 0570 08	Department of Community Affairs, State of Florida, 309 Office Plaza, Tallahassee, Fla. 32301. State of Florida Insurance Department, Treasurer's Office State Capitol, Tallahassee, FL 32304.	City Hall Lobby, Clearwater City Hall, Clearwater, Fla. 33518.	June 27, 1970.
Do	Broward	Hollywood				June 9, 1971.
Georgia	Chatham	Port Wentworth				Do.
Hawaii	Hawaii	Hilo and vicinity.	H 15 001 1900 05 through H 15 001 1900 08	Department of Land and Natural Resources, Box 621, Honolulu, HI 96809. Hawaii Insurance Department, Box 3614, Honolulu, HI 96811.	County of Hawaii Planning Department, 25 Aupuni St., Hilo, HI 96720.	June 5, 1970.
Kansas	Ford	Dodge City				June 9, 1971.
Texas	Grayson	Sherman	H 48 181 6350 03 through H 48 181 6350 14	Texas Water Development Board, 301 West 2d St. Austin, TX 78711. Texas State Board of Insurance, 1110 San Jacinto St., Austin, TX 78701.	Office of Urban Affairs, 3d Floor, Municipal Bldg., Sherman, TX 75090.	May 21, 1970 and June 9, 1971.

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

Issued: June 9, 1971.

GEORGE K. BERNSTEIN,
Federal Insurance Administrator.

[FR Doc.71–8012 Filed 6–8–71;8:48 am]

Title 26—INTERNAL REVENUE

Chapter I—Internal Revenue Service, Department of the Treasury

SUBCHAPTER A—INCOME TAX

[T.D. 7123]

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

Low Income Allowance and Standard Deduction

On January 1, 1971, notice of proposed rule making with respect to the amendment of the Income Tax Regulations (26 CFR Part 1) under sections 4, 141, 143, and 144 of the Internal Revenue Code of 1954 to conform to section 802 of the Tax Reform Act of 1969 (83 Stat. 676) was published in the FEDERAL REGISTER (36 F.R. 17). After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, the amendment of regulations as proposed is hereby adopted.

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

[SEAL] HAROLD T. SWARTZ,
Acting Commissioner of Internal Revenue.

Approved: June 2, 1971.

EDWIN S. COHEN,
Assistant Secretary of the Treasury.

In order to conform the Income Tax Regulations (26 CFR Part 1) under sections 4, 141, 143, and 144 of the Internal Revenue Code of 1954 to section 802 of the Tax Reform Act of 1969 (83 Stat. 676), such regulations are amended as follows:

PARAGRAPH 1. Section 1.4 is amended by revising subsections (a), (c), and (f)(4) of section 4 and by revising the historical note to read as follows:

§ 1.4 Statutory provisions; rules for optional tax.

SEC. 4. *Rules for optional tax*—(a) *Number of exemptions.* For purposes of the tables prescribed by the Secretary or his delegate pursuant to section 3, the term "number of exemptions" means the number of exemptions allowed under section 151 as deductions in computing taxable income.

* * * * *

(c) *Husband or wife filing separate return.* (1) A husband or wife may not elect to pay the optional tax imposed by section 3 if the tax of the other spouse is determined under section 1 on the basis of taxable income computed without regard to the standard deduction.

(2) Except as otherwise provided in this subsection, in the case of a husband or wife filing a separate return the tax imposed by section 3 shall be the lesser of the tax shown in—

(A) The table prescribed under section 3 applicable in the case of married persons filing separate returns which applies the percentage standard deduction, or

(B) The table prescribed under section 3 applicable in the case of married persons filing separate returns which applies the low income allowance.

(3) The table referred to in paragraph (2)(B) shall not apply in the case of a husband or wife filing a separate return if the tax of the other spouse is determined with regard to the percentage standard deduction; except that an individual described in section 141(d)(2) may elect (under regulations prescribed by the Secretary or his delegate) to pay the tax shown in the table referred to in paragraph (2)(B) in lieu of the tax shown in the table referred to in paragraph (2)(A). For purposes of this title, an election under the preceding sentence shall be treated as an election made under section 141(d)(2).

(4) For purposes of this subsection, determination of marital status shall be made under section 143.

* * * * *

(f) *Cross references.* * * *

(4) For computation of tax by Secretary or his delegate, see section 6014.

[Sec. 4 as amended by secs. 232(f)(1) and 301(b)(1) and (3), Rev. Act 1964 (78 Stat. 111, 140); secs. 802(c)(1), (2), and (3), Tax Reform Act 1969 (83 Stat. 677, 678)]

PAR. 2. Section 1.4–3 is amended by revising paragraph (b)(1), by redesignating paragraph (c) as paragraph (d), by revising such redesignated paragraph, and by adding a new paragraph (c), to read as follows:

§ 1.4–3 Husband and wife filing separate returns.

* * * * *

(b) *Taxable years beginning after December 31, 1963, and before January 1, 1970.* (1) In the case of a husband and wife filing a separate return for a taxable year beginning after December 31, 1963, and before January 1, 1970, the optional tax imposed by section 3 shall be—

(i) For taxable years beginning in 1964, the lesser of the tax shown in Table IV (relating to the 10-percent standard deduction for married persons filing separate returns) or Table V (relating to the minimum standard deduction for married persons filing separate returns) of section 3(a), and

(ii) For a taxable year beginning after December 31, 1964, and before January 1, 1970, the lesser of the tax shown in Table IV (relating to the 10-percent standard deduction for married persons filing separate returns) or Table V (relating to minimum standard deduction for married persons filing separate returns) of section 3(b).

* * * * *

(c) *Taxable years beginning after December 31, 1969.* (1) In the case of a husband and wife filing a separate return for a taxable year beginning after December 31, 1969, the optional tax imposed by section 3 shall be the lesser of the tax shown in—

(i) The table prescribed under section 3 applicable to such taxable year in the case of married persons filing separate returns which applies the percentage standard deduction, or

(ii) The table prescribed under section 3 applicable to such taxable year in the case of married persons filing separate returns which applies the low income allowance.

(2) If the tax of one spouse is determined by the table described in subparagraph (1)(i) of this paragraph or if such spouse in computing taxable income uses the percentage standard deduction provided for in section 141(b), then the table described in subparagraph (1)(ii) of this paragraph shall not apply in the case of the other spouse, if such other spouse elects to pay the optional tax imposed under section 3. Thus, if a husband and wife compute the tax with reference to the standard deduction, one cannot elect to use the percentage standard deduction and the other elect to use the low income allowance. A married individual described in section 141(d)(2) may elect pursuant to such section and the regulations thereunder to pay the tax shown in the table described by subparagraph (1)(ii) of this paragraph in lieu of the tax shown in the table described by subparagraph (1)(i) of this paragraph. See section 141(d) and the regulations thereunder for rules relating to the standard deduction in the case of married individuals filing separate returns.

(d) *Determination of marital status.* For the purpose of applying the restrictions upon the right of a married person to elect to pay the tax under section 3, (1) the determination of marital status is made as of the close of the taxpayer's taxable year or, if his spouse died during such year, as of the date of death; (2) a person legally separated from his spouse under a decree of divorce or separate maintenance on the last day of his taxable year (or the date of death of his spouse, whichever is applicable) is not considered as married; and (3) with respect to taxable years beginning after December 31, 1969, a person, although considered as married within the meaning of section 143(a), is considered as not married if he lives apart from his spouse and satisfies the requirements set forth in section 143(b). See section 143 and the regulations thereunder.

PAR. 3. Section 1.141 is revised to read as follows:

§ 1.141 Statutory provisions; standard deduction.

SEC. 141. *Standard deduction*—(a) *Standard deduction.* Except as otherwise provided in this section, the standard deduction referred to in this title is the larger of the percentage standard deduction or the low income allowance.

(b) *Percentage standard deduction.* The percentage standard deduction is an amount equal to the applicable percentage of adjusted gross income shown in the following table, but not to exceed the maximum amount shown in such table (or one-half of such maximum amount in the case of a separate return by a married individual):

Taxable years beginning in—	Applicable percentage	Maximum amount
1970	10	$1,000
1971	13	1,500
1972	14	2,000
1973 and thereafter	15	2,000

[For Code sec. 141(c) as amended effective for taxable years beginning after December 31, 1971, see sec. 141(c) immediately following this sec. 141(c)]

(c) *Low income allowance*—(1) *In general.* The low income allowance is an amount equal to the sum of—

(A) The basic allowance, and

(B) The additional allowance.

(2) *Basic allowance.* For purposes of this subsection, the basic allowance is an amount equal to the sum of—

(A) $200, plus

(B) $100, multiplied by the number of exemptions.

The basic allowance shall not exceed $1,000.

(3) *Additional allowance*—(A) *In general.* For purposes of this subsection, the additional allowance is an amount equal to the excess (if any) of $900 over the sum of—

(i) $100, multiplied by the number of exemptions, plus

(ii) The income phase-out.

(B) *Income phase-out.* For purposes of subparagraph (A)(ii), the income phase-out is an amount equal to one-half of the amount by which the adjusted gross income for the taxable year exceeds the sum of—

(i) $1,100, plus

(ii) $625, multiplied by the number of exemptions.

(4) *Married individuals filing separate returns.* In the case of a married taxpayer filing a separate return—

(A) The low income allowance is an amount equal to the basic allowance, and

(B) The basic allowance is an amount (not in excess of $500) equal to the sum of—

(i) $100, plus

(ii) $100, multiplied by the number of exemptions.

(5) *Number of exemptions.* For purposes of this subsection, the number of exemptions is the number of exemptions allowed as a deduction for the taxable year under section 151.

(6) *Special rule for 1971.* For a taxable year beginning after December 31, 1970, and before January 1, 1972,—

(A) Paragraph (3)(A) shall be applied by substituting "$850" for "$900",

(B) Paragraph (3)(B) shall be applied by substituting "one-fifteenth" for "one-half",

(C) Paragraph (3)(B)(i) shall be applied by substituting "$1,050" for "$1,100", and

(D) Paragraph (3)(B)(ii) shall be applied by substituting "$650" for "$625".

[Sec. 141(c) as amended effective for taxable years beginning after Dec. 31, 1971]

(c) *Low income allowance.* The low income allowance is $1,000 ($500, in the case of a married individual filing a separate return).

(d) *Married individuals filing separate returns.* Notwithstanding subsection (a)—

(1) The low income allowance shall not apply in the case of a separate return by a married individual if the tax of the other spouse is determined with regard to the percentage standard deduction.

(2) A married individual filing a separate return may, if the low income allowance is less than the percentage standard deduction, and if the low income allowance of his spouse is greater than the percentage standard deduction of such spouse, elect (under regulations prescribed by the Secretary or his delegate) to have his tax determined with regard to the low income allowance in lieu of being determined with regard to the percentage standard deduction.

[Sec. 141 as amended by sec. 112(a), Rev. Act 1964 (78 Stat. 23); sec. 802 (a), (c)(4), and (e), Tax Reform Act 1969 (83 Stat. 676, 678)]

PAR. 4. Section 1.141–1 is amended by revising paragraph (a), redesignating paragraphs (d) and (e) as paragraphs (f) and (g), respectively, revising redesignated paragraph (f), and adding new paragraphs (d), (e), and (h), to read as follows:

§ 1.141–1 **Standard deduction.**

(a) *In general.* The standard deduction referred to in this section is:

(1) For taxable years beginning before January 1, 1964, the 10-percent standard deduction,

(2) For taxable years beginning after December 31, 1963, and before January 1, 1970, the larger of the 10-percent standard deduction or the minimum standard deduction, and

(3) For taxable years beginning after December 31, 1969, the larger of the percentage standard deduction or the low income allowance.

The taxpayer may elect to take, in addition to the deductions from gross income allowable in computing adjusted gross income and the deduction described in section 151 relating to personal exemptions, a standard deduction in lieu of all deductions other than those described in section 62 and in lieu of certain credits allowable to the taxpayer, had he not so elected. See section 36. Such credits include: The credit provided by section 33 for taxes imposed by foreign countries and possessions of the United States; the credit provided by section 32 for tax withheld at source under section 1451 by the obligor on tax-free covenant bonds with respect to interest on such bonds; and the credit provided by section 35 with respect to interest on United States obligations and interest on obligations of instrumentalities of the United States. In the case of a taxable year beginning before January 1, 1970, such standard deduction, however, may in no event exceed $1,000, or $500 in the case of a separate return by a married individual. For determination of marital status see § 1.143–1. See section 4 and the regulations thereunder for rules relating to standard deduction in respect of optional tax. The optional tax tables provided for in section 3 reflect the standard deduction provided for in section 141.

* * * * *

(d) *Percentage standard deduction.* The percentage standard deduction is an amount equal to the applicable percentage of adjusted gross income shown in the following table, but not to exceed the maximum amount shown in such table (or one-half of such maximum amount in the case of a separate return by a married individual):

Taxable years beginning in—	Applicable percentage	Maximum amount
1970	10	$1,000
1971	13	1,500
1972	14	2,000
1973 and thereafter	15	2,000

(e) *Low income allowance*—(1) *In general*—(i) *For taxable years beginning in 1970 and 1971.* For taxable years beginning after December 31, 1969, and before January 1, 1972, the low income allowance is an amount equal to the sum of the basic allowance and the additional allowance. The low income allowance is never less than the basic allowance. In the case of a married taxpayer (as determined by applying section 143(a), but not including an individual who is not considered as married, as determined by applying section 143(b)), filing a separate return, however, the low income allowance is equal to the basic allowance, and the basic allowance is an amount (not in excess of $500) equal to the sum of (*a*) $100, plus (*b*) $100, multiplied by the number of exemptions allowed as a deduction for the taxable year under section 151.

(ii) *For taxable years beginning after December 31, 1971.* For taxable years beginning after December 31, 1971, the low income allowance is $1,000 in the case of a return of an individual who is not married (including an individual who is not considered as married by virtue of section 143(b)) or in the case of a joint return of a married couple. The low income allowance is $500 in the case of a married individual filing a separate return.

(2) *Basic allowance.* The basic allowance is an amount, not in excess of $1,000, equal to the sum of—

(i) $200, plus

(ii) $100, multiplied by the number of exemptions allowed as a deduction for the taxable year under section 151.

(3) *Additional allowance*—(i) *In general.* The additional allowance is an amount equal to the excess (if any) of $900 ($850, in the case of a taxable year beginning after December 31, 1970, and before January 1, 1972) over the sum of—

(*a*) $100, multiplied by the number of such exemptions, plus

(*b*) The income phase-out, if any.

(ii) *Income phase-out.* The income phase-out is an amount equal to one-half (one-fifteenth in the case of a taxable year beginning after December 31, 1970, and before January 1, 1972) of the amount (if any) by which the adjusted gross income for the taxable year exceeds the sum of—

(*a*) $1,100 ($1,050, in the case of a taxable year beginning after December 31, 1970, and before January 1, 1972), plus

(*b*) $625 ($650, in the case of a taxable year beginning after December 31, 1970, and before January 1, 1972) multiplied by the number of such exemptions.

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

Example (1). H, a married individual, files a joint return with W, his wife, for calendar year 1970. Their combined adjusted gross income for that year is $5,000. They are entitled to six exemptions under section 151 for the year. Their standard deduction is the low income allowance ($1,025.00) since it is larger than the percentage standard deduction ($500) and is computed as follows:

Percentage standard deduction (10% of $5,000)		$500
Low income allowance:		
(i) Basic allowance ($200, plus $100 multiplied by the number of exemptions [6], but not in excess of $1,000)		$800
Plus		
(ii) Additional allowance (Excess of $900 over the sum of $100 multiplied by the number of exemptions and the income phase-out):		
(a) $100 × number of exemptions (6)	$600	
Plus		
(b) Income phase-out:		
(1) Adjusted gross income	$5,000	
(2) Less ($1,100 + [625 × 6])	4,850	
	150	
(3) Income phase-out (½ × 150)	75	
(c) Additional allowance ($900 − [600 + 75])	225	
(iii) Low income allowance (basic allowance [$800] plus additional allowance [$225])		1,025

Example (2). H, a married individual, files a joint return with W, his wife, for calendar year 1971. Their combined adjusted gross income for that year is $5,000. They are entitled to six exemptions under section 151 for the year. Their standard deduction is the low income allowance ($1,046.67) since it is larger than the percentage standard deduction ($650) and is computed as follows:

Percentage standard deduction (13% of $5,000)		$650.00
Low income allowance:		
(i) Basic allowance ($200, plus $100 multiplied by the number of exemptions [6], but not in excess of $1,000)	$800.00	
Plus		
(ii) Additional allowance (Excess of $850 over the sum of $100 multiplied by the number of exemptions and the income phase-out):		
(a) $100 × number of exemptions (6)	$600.00	
Plus		
(b) Income phase-out:		
(1) Adjusted gross income	$5,000.00	
(2) Less ($1,050 + [650 × 6])	4,950.00	
	50.00	
(3) Income phase-out (1/15 × 50)	3.33	
(c) Additional allowance ($850 − [600 + 3.33])	246.67	
(iii) Low income allowance (Basic allowance [$800] plus additional allowance [$246.67])		1,046.67

Example (3). H, a married taxpayer living with his spouse, files a separate return for 1971 and has adjusted gross income of $3,000 for that year. He is entitled to six exemptions under section 151 for the year. H's standard deduction is the low income allowance which is equal to the basic allowance (not in excess of $500), and is computed as follows:

Percentage standard deduction ($3,000 × 13%)		$390
Low income allowance:		
Basic allowance ($100, plus $100 multiplied by number of exemptions [6] but not in excess of $500)	$500	
Low income allowance	500	

Example (4). H, a married individual entitled to six exemptions, files a separate return for 1971, is living apart from his spouse, and qualifies under section 143(b) and paragraph (b) of § 1.143–1 to be considered as not married. H has adjusted gross income of $5,000. His standard deduction is the low income allowance ($1,046.67) and is computed in the manner shown in example (2).

(f) *Married individuals filing separate returns.* (1) In the case of a married individual filing a separate return for a taxable year beginning after December 31, 1969, the low income allowance shall not apply if the tax of the other spouse is determined with regard to the percentage standard deduction or is computed by the Internal Revenue Service pursuant to section 6014.

(2) A married individual filing a separate return for a taxable year beginning after December 31, 1969, may elect to determine his tax with regard to the low income allowance in lieu of determining it under the percentage standard deduction although his low income allowance is less than the percentage standard deduction if the low income allowance of his spouse is greater than the percentage standard deduction of such spouse. A taxpayer shall signify on his return his election to determine his tax with regard to the low income allowance by claiming thereon the deduction in the amount provided for in section 141(c) instead of the amount provided for in section 141 (b).

(3) In the case of a taxable year beginning after December 31, 1963, and before January 1, 1970, subparagraphs (1) and (2) of this paragraph shall be applied by substituting "minimum standard deduction", "the 10-percent standard deduction", and "December 31, 1963, and before January 1, 1970" for "low income allowance", "percentage standard deduction", and "December 31, 1969", respectively.

(4) For rules relating to the election to pay the optional tax imposed by section 3 when married individuals file separate returns, see section 4(c) and the regulations thereunder.

(g) *Short taxable year due to death of taxpayer.* An election to take the standard deduction may be made for a taxable year which is less than 12 months on account of the death of the taxpayer.

(h) *Cross reference.* For the computation of the standard deduction for a fiscal year beginning in 1969, 1970, 1971, or 1972, see section 21(d) and the regulations thereunder.

PAR. 5. Section 1.143 is amended by revising section 143 and by adding a historical note to read as follows:

§ 1.143 Statutory provisions; determination of marital status.

SEC. 143. *Determination of marital status*—(a) *General rule.* For purposes of this part—

(1) The determination of whether an individual is married shall be made as of the close of his taxable year; except that if his spouse dies during his taxable year such determination shall be made as of the time of such death; and

(2) An individual legally separated from his spouse under a decree of divorce or of separate maintenance shall not be considered as married.

(b) *Certain married individuals living apart.* For purposes of this part, if—

(1) An individual who is married (within the meaning of subsection (a) and who files a separate return maintains as his home a household which constitutes for more than one-half of the taxable year the principal place of abode of a dependent (A) who (within the meaning of section 152) is a son, stepson, daughter, or stepdaughter of the individual, and (B) with respect to whom such individual is entitled to a deduction for the taxable year under section 151,

(2) Such individual furnishes over half of the cost of maintaining such household during the taxable year, and

(3) During the entire taxable year such individual's spouse is not a member of such household,

such individual shall not be considered as married.

[Sec. 143 as amended by sec. 802(b), Tax Reform Act 1969 (83 Stat. 677)]

PAR. 6. Section 1.143–1 is amended to read as follows:

§ 1.143–1 Determination of marital status.

(a) *General rule.* The determination of whether an individual is married shall be made as of the close of his taxable year unless his spouse dies during his taxable year, in which case such determination shall be made as of the time of such death; and, except as provided in paragraph (b) of this section, an individual shall be considered as married even though living apart from his spouse unless legally separated under a decree of divorce or separate maintenance. The provisions of this paragraph may be illustrated by the following examples:

Example (1). Taxpayer A and his wife B both make their returns on a calendar year basis. In July 1954, they enter into a separation agreement and thereafter live apart, but no decree of divorce or separate maintenance is issued until March 1955. If A

itemizes and claims his actual deductions on his return for the calendar year 1954, B may not elect the standard deduction on her return since B is considered as married to A (although permanently separated by agreement) on the last day of 1954.

Example (2). Taxpayer A makes his returns on the basis of a fiscal year ending June 30. His wife B makes her returns on the calendar year basis. A died in October 1954. In such case, since A and B were married as of the date of death, B may not elect the standard deduction for the calendar year 1954 if the income of A for the short taxable year ending with the date of his death is determined without regard to the standard deduction.

(b) *Certain married individuals living apart.* (1) For purposes of part IV of subchapter B of chapter 1 of the Code, an individual is not considered as married for taxable years beginning after December 31, 1969, if (i) such individual is married (within the meaning of paragraph (a) of this section) but files a separate return; (ii) such individual maintains as his home a household which constitutes for more than one-half of the taxable year the principal place of abode of a dependent (*a*) who (within the meaning of section 152 and the regulations thereunder) is a son, stepson, daughter, or stepdaughter of the individual, and (*b*) with respect to whom such individual is entitled to a deduction for the taxable year under section 151; (iii) such individual furnishes over half of the cost of maintaining such household during the taxable year; and (iv) during the entire taxable year such individual's spouse is not a member of such household.

(2) For purposes of subparagraph (1)(ii)(*a*) of this paragraph, a legally adopted son or daughter of an individual, a child (described in paragraph (c)(2) of § 1.152–2) who is a member of an individual's household if placed with such individual by an authorized placement agency (as defined in paragraph (c)(2) of § 1.152–2) for legal adoption by such individual, or a foster child (described in paragraph (c)(4) of § 1.152–2) of an individual if such child satisfies the requirements of section 152(a)(9) of the Code and paragraph (b) of § 1.152–1 with respect to such individual, shall be treated as a son or daughter of such individual by blood.

(3) For purposes of subparagraph (1)(ii) of this paragraph, the household must actually constitute the home of the individual for his taxable year. However, a physical change in the location of such home will not prevent an individual from qualifying for the treatment provided in subparagraph (1) of this paragraph. It is not sufficient that the individual maintain the household without being its occupant. The individual and the dependent described in subparagraph (1)(ii)(*a*) of this paragraph must occupy the household for more than one-half of the taxable year of the individual. However, the fact that such dependent is born or dies within the taxable year will not prevent an individual from qualifying for such treatment if the household constitutes the principal place of abode of such dependent for the remaining or preceding part of such taxable year. The individual and such dependent will be considered as occupying the household during temporary absences from the household due to special circumstances. A nonpermanent failure to occupy the common abode by reason of illness, education, business, vacation, military service, or a custody agreement under which a child or stepchild is absent for less than 6 months in the taxable year of the taxpayer, shall be considered a temporary absence due to special circumstances. Such absence will not prevent an individual from qualifying for the treatment provided in subparagraph (1) of this paragraph if (i) it is reasonable to assume that such individual or the dependent will return to the household and (ii) such individual continues to maintain such household or a substantially equivalent household in anticipation of such return.

(4) An individual shall be considered as maintaining a household only if he pays more than one-half of the cost thereof for his taxable year. The cost of maintaining a household shall be the expenses incurred for the mutual benefit of the occupants thereof by reason of its operation as the principal place of abode of such occupants for such taxable year. The cost of maintaining a household shall not include expenses otherwise incurred. The expenses of maintaining a household include property taxes, mortgage interest, rent, utility charges, upkeep and repairs, property insurance, and food consumed on the premises. Such expenses do not include the cost of clothing, education, medical treatment, vacations, life insurance, and transportation. In addition, the cost of maintaining a household shall not include any amount which represents the value of services rendered in the household by the taxpayer or by a dependent described in subparagraph (1)(ii)(*a*) of this paragraph.

(5) For purposes of subparagraph (1)(iv) of this paragraph, an individual's spouse is not a member of the household during a taxable year if such household does not constitute such spouse's place of abode at any time during such year. An individual's spouse will be considered to be a member of the household during temporary absences from the household due to special circumstances. A nonpermanent failure to occupy such household as his abode by reason of illness, education, business, vacation, or military service shall be considered a mere temporary absence due to special circumstances.

(6) The provisions of this paragraph may be illustrated by the following example:

Example. Taxpayer A, married to B at the close of the calendar year 1971, his taxable year, is living apart from B, but A is not legally separated from B under a decree of divorce or separate maintenance. A maintains a household as his home which is for 7 months of 1971 the principal place of abode of C, his son, with respect to whom A is entitled to a deduction under section 151. A pays for more than one-half the cost of maintaining that household. At no time during 1971 was B a member of the household occupied by A and C. A files a separate return for 1971. Under these circumstances, A is considered as not married under section 143(b) for purposes of the standard deduction. Even though A is married and files a separate return A may claim for 1971 as his standard deduction the larger of the low income allowance up to a maximum of $1,050 consisting of both the basic allowance and additional allowance (rather than the basic allowance only subject to the $500 limitation applicable to a separate return of a married individual) or the percentage standard deduction subject to the $1,500 limitation (rather than the $750 limitation applicable to a separate return of a married individual). See § 1.141–1. For purposes of the provisions of part IV of subchapter B of chapter 1 of the Code and the regulations thereunder, A is treated as unmarried.

PAR. 7. Section 1.144–1 is amended by adding a new paragraph (d) to read as follows:

§ 1.144–1 Manner and effect of election to take the standard deduction.

* * * * *

(d) For determination of marital status, see § 1.143–1.

PAR. 8. Section 1.144–2 is amended by adding a new paragraph (e) to read as follows:

§ 1.144–2 Change of election with respect to the standard deduction.

* * * * *

(e) For determination of marital status, see § 1.143–1.

[FR Doc.71–8047 Filed 6–8–71;8:51 am]

Title 33—NAVIGATION AND NAVIGABLE WATERS

Chapter I—Coast Guard, Department of Transportation

SUBCHAPTER J—BRIDGES

[CGFR 70–43]

PART 117—DRAWBRIDGE OPERATION REGULATIONS

Bogue Sound, N.C.

This amendment revises the regulations for the North Carolina State Highway Commission drawbridge across Bogue Sound to extend the times during which the draw may remain closed and to change the times from eastern standard time to local time. This time change should eliminate the confusion that presently exists in converting eastern standard time to eastern daylight saving time. The present regulations allow the draw to remain closed from 12 m. to 6 p.m., e.s.t., from June 15 through Labor Day, on Saturdays, Sundays, and July 4, but require that the draw open at 2 p.m. and 4 p.m. for any vessels waiting to pass. This revision adds a period from May 1 through June 14, on Saturdays, Sundays, and national holidays from 1 p.m. to 7 p.m. during which the draw may remain closed and requires that the draw open on the hour for any vessel during this period. The draw is required to open at

any time for public vessels of the United States, towboats with tows, commercial vessels, and vessel in an emergency involving danger to life or property. This change is made to minimize vehicular traffic congestion during these periods.

This amendment was circulated as a public notice dated August 5, 1969, by the Commander, Fifth Coast Guard District and was published in the FEDERAL REGISTER as a notice of proposed rule making (CGFR 70-43) on April 15, 1970 (35 F.R. 6109).

In view of comments received, it appears that openings from May 1 through June 14 on the hour rather than half hour and hour would provide a smoother vehicular traffic flow and this change from the notice is made in the regulations. The Coast Guard believes that these less frequent openings do not unduly restrict navigation. This regulation may be revised in the future if a review of additional data indicates that further revision is desirable.

Accordingly, Part 117 is amended by revising § 117.355 to read as follows:

§ 117.355 Bogue Sound (Atlantic Intracoastal), N.C., North Carolina State Highway Commission Bridge at Atlantic Beach.

(a) The draw shall open on signal except—

(1) From May 1 through June 14, on Saturdays, Sundays, and national holidays, from 1 p.m. to 7 p.m., the draw need not open for the passage of vessel except that the draw shall open on the hour for any vessel; and

(2) From June 15 through Labor Day, on Saturdays, Sundays, and the Fourth of July from 1 p.m. to 7 p.m. the draw need not open for the passage of vessels except that the draw shall open at 3 p.m. and 5 p.m. for any vessels.

(b) The draw shall open on signal at any time, not withstanding the provisions of paragraph (a) of this section for the passage of vessels of the United States, towboats with tows, commercial vessels, and any vessel in an emergency involving danger to life or property. An emergency shall be indicated by four blasts of a whistle, horn, or similar device.

(c) The owner or agency controlling the bridge shall erect and maintain on the upstream and downstream sides of the bridge, on the bridge or elsewhere, signs acceptable to the District Commander setting forth the regulations in this section.

(Sec. 5, 28 Stat. 362, as amended, sec. 6(g)(2), 80 Stat. 937; 33 U.S.C. 499, 49 U.S.C. 1655(g)(2); 49 CFR 1.46(c)(5) (35 F.R. 4959), 33 CFR 1.05-1(c)(5) (35 F.R. 15922))

Effective date. This revision shall become effective on July 9, 1971.

Dated: June 2, 1971.

R. E. HAMMOND,
Rear Admiral, U.S. Coast Guard,
Chief, Office of Operations.

[FR Doc.71-8040 Filed 6-8-71;8:51 am]

Title 41—PUBLIC CONTRACTS AND PROPERTY MANAGEMENT

Chapter 5A—Federal Supply Service, General Services Administration

PART 5A-72—REGULAR PURCHASE PROGRAMS OTHER THAN FEDERAL SUPPLY SCHEDULE

Miscellaneous Amendments

The table of contents of Part 5A-72 is amended by adding and revising the following entries:

Sec.

5A-72.105-16 Monthly Supply Potential (MSP) and Method of Award clauses.

5A-72.106-7 Procurement of paints, dopes, varnishes, and related products (FSC Group 80).

Subpart 5A-72.6—Standby-Stock Procurement Policies and Procedures

5A-72.601 General.

5A-72.602 Application of Standby-Stock clause.

5A-72.603 Estimated requirements in solicitations.

5A-72.604 Initial standby-stock quantities.

5A-72.605 Standby-stock and other items in the same solicitation.

5A-72.606 Contract clauses.

5A-72.607 Contracting period.

5A-72.608 Placing delivery orders under standby-stock contracts.

5A-72.609 Action by quality control representative.

5A-72.610 Guarantee to purchase replacement quantities—notice of discontinuance.

5A-72.611 Standby-Stock clause.

AUTHORITY: The provisions of this Subpart 5A-72.6 issued under sec. 205(c), 63 Stat. 390; 40 U.S.C. 426(c); 41 CFR 5-1.101(c).

Subpart 5A-72.1—Procurement of Stores Stock Items

1. Section 5A-72.105-6 is amended by adding paragraph (e) as follows:

§ 5A-72.105-6 Delivery conditions and shipping point.

* * * * *

(e) When required as part of the solicitation, the following Production Point clause shall be inserted (see FPR 1-2.201(b)(4)):

PRODUCTION POINT

Offeror shall insert, in the spaces below, the names of the manufacturers of the items offered and the address of the production facility(ies).

Item No.	Name of manufacturer	Production point (address, including county)

2. Section 5A-72.105-14 is amended as follows:

§ 5A-72.105-14 F.o.b. destination deliveries of less-than-carload quantities to GSA Supply Depots.

* * * * *

(b) Deductions from contractor's invoices pursuant to the clause in (a), above, will be made by the Finance Division in the appropriate Accounting Center making payment for the supplies and will be based on a statement furnished by the receiving supply depot indicating the amount to be deducted and the basis therefor.

3. Section 5A-72.105-15 is revised as follows:

§ 5A-72.105-15 Progressive awards.

(a) When it is expected that total requirements may exceed the quantity which any one supplier is willing or capable to allocate monthly toward such total requirements, the solicitation may provide for progressive awards, subject to the following limitations:

(1) Progressive awards should be avoided if the total requirements can be broken into smaller quantities by zoning them for separate delivery destinations within the continental United States or by providing for separate awards on an item-by-item basis even though like items are involved which would otherwise lend themselves to award in the aggregate.

(2) The progressive awards method should also be used only after the contracting officer has explored and found that the more preferable monthly supply potential (MSP) method is not feasible (see § 5A-72.105-16). The progressive awards clause (see (b)(8), below) shall not be used when the MSP method is used.

(b) When progressive awards are found to be the acceptable procurement method in accordance with (a), above, the contracting officer shall:

(1) Provide in the solicitation that offerors are permitted to indicate monthly quantity limitations for the items for which they can accept orders;

(2) Determine whether certain groups of items would involve the use of the same production facilities and, if so, request offerors to provide one monthly allocation for the whole group which may be applied to any line or combination of line items. Where knowledge of production techniques is insufficient to permit grouping by the contracting officer, offerors should be requested to group items on their own and to offer monthly allocations for each group;

(3) If monthly quantity limitations are indicated by offerors in accordance with (b)(1) above, they must be advised that, if progressive awards are made, orders in excess of those allocations may not be accepted;

(4) Reject offers which are considered unreasonably high (see § 1-2.404-2(c));

(5) Make a sufficient number of awards to insure supply availability;

(6) Establish controls to insure that order in excess of the maximum monthly quantity allocation for the contractor who had offered the lowest price are issued to the next successively higher contractor (see § 5A–72.105–24);

(7) When applicable, successful offerors shall be advised in the award that progressive awards have been made;

(8) Because of the great diversity of the items which may be involved in a procurement by the progressive awards method, it is not possible to prescribe a uniform contract clause which would apply to all situations. Therefore the following clause is set forth only as a sample and a guide, subject to any necessary modifications to fit the particular situation.

PROGRESSIVE AWARDS AND MONTHLY QUANTITY ALLOCATIONS

(a) Monthly quantity allocation. (1) Set forth below are the Government's estimated annual and monthly requirements for each stock item covered by this invitation. In order to preclude the placement of orders with any Contractor in excess of his production capacity, bidders are requested to indicate, in the spaces provided, the total quantity per month which they are willing to furnish of any item, or group of items, involving the use of the same production facilities. Since the number of items on which any bidder may be eligible for award cannot be determined in advance of bid opening, bidders are urged, in making monthly allocations, to group, for allocation purposes, as many items as possible. Such grouping will make it possible for the Government to make fullest use of the production capabilities of each bidder. (2) Bidders need not limit their monthly quantity allocations to the Government's estimated monthly requirements, since additional unanticipated needs may occur during the period of the contract. If a bidder does not insert monthly allocation quantities, he will be deemed to offer to furnish all of the Government's requirements, even though they may exceed the stated estimated requirements.

Federal stock number	Estimated annual requirements	Estimated monthly requirements

BIDDERS MONTHLY QUANTITY ALLOCATIONS

Items or groups of items	*Monthly allocation quantity*

(b) Progressive awards. If the low responsive bidder offers a monthly quantity allocation of less than the Government's estimated requirements, the Government may make progressive awards to the extent necessary to meet the estimated requirements. In such cases, awards will be made to the low responsive bidder, covering Government requirements up to that bidder's stated monthly quantity allocations, and then progressively to other bidders to the extent necessary.

(c) Ordering procedure. If progressive awards are made, orders will be placed first with the contractor offering the lowest price on each item normally up to that contractor's maximum quantity allocation and then, in the same manner, successively to other contractors. However, to avoid the placement of unduly small orders or the splitting of a single requirement between two contractors, the Government reserves the right to place orders with back-up contractors whenever the orders placed with lower priced contractors equal or exceed 95 percent of their monthly quantity allocation for the item or group of items being ordered. In no case will orders be placed with any contractor in excess of his monthly quantity allocation.

4. Section 5A–72.105–16 is revised as follows:

§ 5A–72.105–16 Monthly Supply Potential (MSP) and Method of Award clauses.

(a) *General.* The Monthly Supply Potential (MSP) clause and Method of Award clause (see (d) and (e), below) shall be included in all solicitations for requirements-type term contracts (see § 5A–72.105–3) under national and area contracting assignments for stock items, except where (1) another authorized clause is used to limit the contractor's obligation to deliver (e.g., Standby-Stock clause), or (2) the Director, Procurement Operations Division; the Director, Special Programs Division; or the Chief of a Regional Procurement Division authorizes an exception (in which case the file shall be documented accordingly). Use of these clauses is not mandatory in requirements-type term contracts issued by regional offices for their own regional requirements. However, the clauses should be used where the estimated requirements are substantial and it is anticipated that difficulties may otherwise be encountered because of inadequate production capacities of some offerors.

(b) *Purpose.* The purpose of the MSP clause is to provide for a maximum limit on the quantity the contractor is obligated to deliver under requirements contracts in those cases where the estimated requirements are expected to exceed the production capability of some prospective bidders (see § 1–3.409(b)). The use of the MSP clause also gives the Government an opportunity to make the fullest use of the low bidder's production capacity.

(c) *Guidelines for use of the MSP and Method of Award clauses.* (1) The MSP and Method of Award clauses provide that items or groups of items will not be subdivided for award purposes, which is different from progressive awards which are awards for partial quantities of an item to two or more offerors where the low acceptable offeror does not or cannot offer the full quantity (see § 5A–72.105–15).

(2) The MSP clause provides space for bidders to insert their MSP's for individual items or to furnish a combined MSP for all items or groups of items. This space shall not be rearranged or relocated in the item listing as it is designed to encourage bidders to furnish a combined MSP for as many items or groups of items as possible.

(3) Estimated requirements for the entire contract period shall be shown for each item (or for a group of items, if award is to be made for a group of items in the aggregate).

(4) The estimated peak monthly requirements (EPMR), if any, shall be calculated for each item separately and shall be no higher than to cover anticipated normal upward requirements fluctuations. The EPMR stated in solicitations shall not exceed 150 percent of the monthly average of the estimated requirements unless authorized by the Director, Procurement Operations Division; the Director, Special Programs Division; or the Chief of a Regional Procurement Division.

(d) *The Monthly Supply Potential clause.*

MONTHLY SUPPLY POTENTIAL

Set forth in the Schedule of items are the Governments estimated requirements for the period of this contract and estimated peak monthly requirements for each item or group of items covered by this solicitation. In order to preclude the placement of orders with any contractor in excess of his production capacity, offerors are requested to indicate, in the spaces provided, the total quantity per month which they are willing to furnish of any item or group of items involving the use of the same production facilities. Since the number of items or groups of items on which any offeror may be eligible for award cannot be determined in advance of opening of offers, offerors are urged, in setting their monthly supply potentials, to group as many items or groups of items as possible. Such grouping will make it possible for the Government to make fullest use of the production facilities of each offeror. For example, if an offeror's production facilities can be used to produce any of the items or groups of items covered by the solicitation, the offeror may insert a single overall limitation on the quantity he can supply applicable to all items or groups of items. Bidders are cautioned that in order to quality for an award, the offeror's monthly supply potential must cover the Government's estimated peak monthly requirement for each group or individual item to be awarded to the offeror. Groups or individual items will not be subdivided for award purposes.

OFFEROR'S MONTHLY SUPPLY POTENTIAL

Items or groups of items	*Offeror's monthly supply potential*

The Government is obligated to place pursuant to this contract all orders for the supplies covered herein, except (1) orders for less than that which may be specified in a Minimum Order Limitation clause, (2) orders in excess of that which may be specified in a Maximum Order Limitation clause, and (3) in the case of exigencies as specified in the Scope of Contract clause.

The Government's estimated peak monthly and estimated requirements for the period of this contract are furnished for the information of offerors, but shall not be construed to represent any amount which the Government shall be obligated to purchase under the contract (except as may be provided in a Guaranteed Minimum clause).

If an offeror *does not provide a monthly supply potential,* he will be deemed to offer to furninsh one hundred and twenty-five percent (125%) of the Government's esti-

mated peak monthly requirement for the item or group of items, which quantity shall then be considered as his stated monthly supply potential.

For each item or groups of items awarded him pursuant to this solicitation, the successful offeror (Contractor) shall be obligated to fill all orders received by him during any one calendar month, calculated from the date of award, the total of which does not exceed either his stated monthly supply potential or one hundred and twenty-five percent (125%) of the estimated peak monthly requirement for the item or group of items, whichever is less.

The Contractor may, with respect to any item(s) or group of items, refuse to accept orders, or portions thereof, received during any one calendar month which exceed the monthly quantities he is required to accept: *Provided*, That such refusal to accept is communicated in writing to the office issuing such order(s) within 5 days of receipt of the order by the Contractor. Further, the Contractor is requested to notify the Contracting Officer when he has reached the required monthly quantity and will not accept additional orders for that month. Failure to communicate the refusal to accept to the office issuing the order within the time required shall be deemed to be acceptance of the order by the Contractor. Delivery (or "shipment", as the case may be) of all orders, or portions thereof, in excess of the required monthly quantity which have been accepted, or deemed to have been accepted, by the Contractor shall be made within the same number of days as is required for those orders not in excess of the required monthly quantity. The Contractor shall not accept any of these orders against the required monthly quantity for the succeeding month. Orders, or portions thereof, which have been properly refused by the Contractor may be procured outside of this contract without prejudice to either party.

(e) *The Method of Award clause for use with MSP clause. (See § 5A–72.106–7 for paint contracts.)* Both paragraphs (a) and (b) of the clause must be appropriately modified where the solicitation covers only items to be awarded individually or only groups of items to be awarded in the aggregate. Also, paragraph b(1) must be modified where other than the weighted factor formula method (e.g., preestablished price listed method) is to be used.

METHOD OF AWARD

(a) Award will be made in accordance with (b), below, on the basis of the Government's estimated peak monthly requirements, to the low responsive offeror(s) up to their stated monthly supply potentials. Within the limits prescribed by the offeror, the Government will apply offeror's monthly supply potential to any items or groups of items offered, as the Government's interests require. In order to qualify for an award, the offeror's monthly supply potential must cover the Government's estimated peak monthly requirement for each group or individual item to be awarded to the offeror. Groups or individual items will not be subdivided for award purposes.

(b) Award will be made as follows:

(1) Groups _____: In the aggregate by group. The low aggregate offeror will be determined by multiplying the unit price submitted on each item by the estimated quantity specified, and adding the resultant extensions. In order to qualify for an award on a group, prices must be submitted on each item within the group.

(2) Items _____: Item-by-Item

5. Section 5A–72.105–21 is revised by adding the Minimum Order Limitation clause.

§ 5A–72.105–21 Minimum orders.

(a) Where it is known that bidders are reluctant to accept small orders and will increase prices to cover additional costs for handling such orders, a minimum order provision shall be included in invitations for bids. Where the contract will cover the requirements of more than one region, the ordering pattern at the regions involved shall be considered in setting the minimum so as to limit the extent of open-market purchases of small requirements.

(b) The following clause shall be included in solicitations for offers when applicable in accordance with (a), above:

MINIMUM ORDER LIMITATION

No ordering office will be obligated to order and no contractor will be obligated to make any delivery amounting to less than _____,[1] but such deliveries may be ordered by the Government subject to acceptance by the Contractor. Failure on the part of the Contractor to return the order by mailing or otherwise furnishing it to the ordering office within 5 working days after receipt shall constitute acceptance whereupon all other provisions of the contract shall apply to such order.

Notwithstanding the foregoing, where either Government Standard Unit Packing or Commercial Standard Unit Packing is specified in the contract, orders shall be placed only in the specified standard pack quantity or multiples thereof.

6. Section 5A–72.106–7 is added to provide guidelines for the procurement of paints, dopes, varnishes, and related products (FSC Group 80), as follows:

§ 5A–72.106–7 Procurement of paints, dopes, varnishes, and related products (FSC Group 80).

This section prescribes special clauses and guidelines applicable to the procurement of paints, dopes, varnishes, and related products (FSC Group 80 items).

(a) *The Minimum Order Limitation clause.* (See § 5A–72.105–21.)

(b) *The Method of Award clause.* This clause shall be used only in conjunction with the MSP clause (see § 5A–72.105–16(d)). Solicitations for paints, varnishes and related products shall provide for a 6-month contract period unless the buying office desires and determines it advantageous to provide for a 12-month period. In the latter case, offers shall be solicited for both a 6-month and a 12-month period and award shall be made for all items either for the 6- or the 12-month period. To provide for the foregoing the following clause shall be used. If it is contemplated to make awards in the aggregate, the clause shall be modified accordingly.

METHOD OF AWARD

Award for all items will be made either for a 12-month contract period or a 6-month contract period, whichever results in the lowest total cost to the Government. For the purpose of determining whether award will be made for all items for the 12-month contract period or for all items for the 6-month contract period, offers will be evaluated as follows:

(a) The low responsive offers for each contract period for all items will be multiplied by the estimated quantity for each item and the resultant extensions will be added to determine the total cost for each contract period.

(b) The total cost for the 12-month contract period will be divided by two (2) and the result will be compared with the total cost for the 6-month contract period. Award will then be made for all items either for the 12-month contract period or for the 6-month contract period, whichever results in the lowest total cost to the Government.

(c) In the event offerors choose to limit their offers to either the 6-month contract period or the 12-month contract period, and, as a result of such limitation, offers for an item are received for only one of the two contract periods, such item will be excluded from the evaluation outlined in (a) and (b), above. However, if the contract period selected under (a) and (b) conforms to the contract period for any item on which offers were received for one contract period only, the Government reserves the right to make award on such item. If the contract period selected under (a) and (b) does not conform to the contract period for any item on which offers were received for one contract period only, such offers will not be considered for award.

Subject to the above, award will be made item-by-item on the basis of the Government's estimated peak monthly requirements to the low responsive offerors up to their stated monthly supply potentials. Within the limits prescribed by the offeror, the Government will apply offeror's monthly supply potential to any items offered, as the Government's interests require. In order to qualify for an award, the offeror's monthly supply potential must cover the Government's estimated peak monthly requirement for each individual item to be awarded to the offeror. Individual item quantities will not be subdivided for award purposes.

(c) *The Color Chips clause.* The following clause shall be used subject to a review prior to issuance of the solicitation to insure that all standards, specifications, and other data are complete, current, and correct.

COLOR CHIPS

Colors of material to be furnished under this contract must conform to those included under Federal Standard 595 (*indicate complete identification, such as number, date, etc.*) and/or other standards such as Munsell Colors, ANA, etc. Color chips shall be furnished to the successful offeror by the GSA Regional Quality Control Division responsible for performing the source inspection.

(d) *The Availability for Inspection and Testing and Delivery clause.*

AVAILABILITY FOR INSPECTION AND TESTING AND DELIVERY

The Government requires that the supplies listed herein be made available for inspection

[1] Enter the minimum economical quantity in terms of dollar amount, pounds, gallons, drums, packages, dozens, etc.; coinciding with unit(s) of issue specified in the schedule. Contracting officers shall consider the compatibility between the minimum order limitation and the normal standard pack.

and testing within _____[1] days after receipt of order and delivered to destination within _____[2] days after notice of approval and release by the Government representative.

If the Contractor fails to make the supplies available for inspection and testing within the number of days after receipt of order or fails to make delivery to destination within _____[2] days after notice of approval and release by the Government representative specified above, the Contractor shall be deemed to have failed to make delivery within the purview of Article 11(a)(i) of the General Provisions, Standard Form 32. If the Contractor makes the supplies available for testing and inspection within the number of days specified above and the Government rejects the supplies for non-conformance within specification requirements, the contract shall be subject to termination for default pursuant to Article 11(a)(ii) of the General Provisions, Standard Form 32.

(e) *Contractor Responsibility clause.*

CONTRACTOR RESPONSIBILITY

The contractor inspection responsibility, set forth in Clause 5, Inspection, of GSA Form 1424, GSA Supplemental Provisions, is supplemented as follows:

(a) *Contractor quality control provisions:* The Contractor shall maintain an effective quality control system acceptable to the Government including the laboratory testing facilities necessary to conduct all the tests required by the specification. In the event the contractor is utilizing a commercial laboratory, the laboratory must have the capability of performing all the specification tests and be acceptable to the Government. The Contractor shall furnish the name and address of the laboratory.

(b) *Paint chip requirement:* For each lot of coating, the Contractor shall furnish the Government representative a paint chip delineating the color, gloss, and general appearance of the material covered by the lot. The paint chip shall be approximately 3 x 5 inches.

(c) *Testing procedures and reports:* All tests shall be performed on each batch of paint. The tests shall be in accordance with the application specifications. The Contractor is cautioned to refer to, and to comply with, all modifications of the specifications cited in the contractual documents. If testing is not done by the Contractor, it shall be his responsibility to furnish the testing facility with all pertinent contract information and modifications to make certain that the testing establishment is adequately informed to accomplish all tests on each batch and make accurate reports. Quantitative test results shall be reported on each batch to the same number of digits as are used in stating the requirements of that property in the commodity specification. Qualitative values on each batch shall be definitely stated. Results should not be reported simply as "complies" or "satisfactory", but shall be stated in the same manner as in the specification requirements. The test results shall be reported by reference to the property for which tested and the requirements in the product specification.

(d) *Ingredients-certificate of compliance:* When the specification has mandatory ingredient requirements, the Contractor shall make available to the Government representative a certificate of compliance from the ingredient supplier for each batch or lot of such ingredient used. The certificate of compliance shall include all the test data. For replenished ingredients normally mixed, blended, or combined in storage tanks or bins, the Contractor shall make available to the Government representative the supplier's certificate of compliance for each replenishment lot or batch. Irrespective of the preceding, for products of critical end use, such as shipbottom paints, each batch or lot of ingredients shall be sampled, tested, and approved by the Government when required by the specification, prior to the batch or lot being used in the manufacture of the end product.

(e) *Samples:* The Contractor shall make available to the Government representative the material, by batch, for sampling by the Government representative for the purpose of Government testing.

(f) *Batch numbers:* Batch numbers shall be assigned so that each batch number represents a distinct production quantity produced under identical containers at one time. This batch number will be marked on all containers and will be annotated on contractor's inspection and test reports.

(f) *Method of Determining Fill clause.* The following clause shall be used subject to a review prior to issuance of the solicitation to insure that all standards, specifications, and other data are complete, current, and correct.

METHOD OF DETERMINING FILL

Fill of paint in nonpressurized containers for compliance with the gallon (volume) requirement of the solicitation for offers shall be determined as described below. In cases of conflict between the specification requirement and the method described below, or in the absence of a method for determining fill in the specification, the method below shall govern.

Sample unit—The sample unit shall be one filled container.

Sample. The size of sample shall be in accordance with MIL-STD-105, Special Inspection Level S-3, except that the sample size derived from MIL-STD-105 shall be rounded off to the next highest increment of 5. At no time shall the sample size be less than five containers, unless the inspection lot consists of less than five containers, in which case all containers shall be included in the determination of fill. Random sampling shall be used.

Tare—The average weight of an empty container (tare) shall be obtained by weighing five empty containers and determining the average of the five.

Weight per Gallon—The weight per gallon shall be determined by Method 4184.1, Fed. Std. 141.

Fill of containers—Fill of containers shall be computed by the following formula:

$$\text{Average volume per container (gallon)} = \frac{\text{Gross weight of sample minus tare weight of sample}}{\text{Weight per gallon multiplied by number of containers in the sample}}$$

(g) *Amendment of Specifications clause.* The following clause shall be used subject to a review prior to issuance of the solicitation to insure that all standards, specifications, and other data are complete, current, and correct.

AMENDMENT OF SPECIFICATIONS

This clause is applicable to FSC 8010 items, except aerosols, solid materials, such as stick materials, and thinners and supersedes, to the extent specified, all other provisions of the specification regarding shelf life:

The contents of original unopened containers when stored at temperatures of not less than 0° F., nor more than 115° F., for 1 year from the date of acceptance (for purposes of this clause, date of acceptance for standby stock contracts is the date the material was authorized for placement in standby stock) shall show no skinning, livering, curdling, hard dry caking, tough gummy sediment, putrefaction and reaction with the container. After such period, the contents shall be capable of being readily mixed in a 1-gallon or 5-gallon container to a smooth homogeneous state within 10 minutes and 20 minutes respectively. The contents shall meet all requirements of the specification except that in the case of the solvent systems the viscosity shall not exceed the specified maximum by more than 10 Krebs Units, unless otherwise provided for in the specification.

After visual examination for skinning, livering, curdling, hardcaking, tough gummy sediment, putrefaction, and reaction with the container, the following mixing technique shall be used in determining compliance with specification requirements:

Shake a 1-gallon container for 5 minutes, or 10 minutes for a 5-gallon container, with a mechanical shaker ("Red Devil" or equivalent). Then remove the lid and pour off the supernatant liquid into a clean container. Stir any remaining paste with a clean, broad, flat paddle until uniform consistency is obtained, thoroughly incorporating any pigment which remained on the sides and bottom of the container. Return the liquid, which was originally poured off, in small increments with continuous manual stirring. The manual mixing and stirring shall be completed within 5 minutes for a 1-gallon container and within 10 minutes for a 5-gallon container.

(h) *Warranty of Supplies clause.* This clause is applicable to FSC Class 8010 items, except aerosols.

WARRANTY OF SUPPLIES

(a) Notwithstanding inspection and acceptance by the Government for products furnished under this contract or any provisions of this contract concerning the conclusiveness thereof, the Contractor warrants that for a period of 1 year from the date of acceptance of the item, the material will comply with the specifications; except in the case of solvent systems, the viscosity may exceed the specified maximum to the extent of 10 Krebs Units, unless otherwise specified.

(b) The Regional Quality Control Representative, as the Contracting Officer's Representative, shall request the Contractor to replace any deficient material covered by this warranty immediately (but not later than 3 weeks from receipt of the request). The request shall contain information concerning the deficiencies found, the location of the material, and the quantity which is involved.

(c) If Contractor fails to replace or to make a firm commitment for the replacement of the deficient material within the time specified in (b) above, the Contracting

[1] Normally this period is 60 days, but for some shipbottom paints procured by the Procurement Operations Division a minimum time requirement of 75 days should be inserted.

[2] Normally the delivery time is 30 days, except for exigency definite quantity or small urgent requirements where shorter delivery times may be stated.

Officer, having been advised by the Quality Control Division of the Contractor's refusal or inability to make timely replacement of any deficient materials, shall give written notice of breach of warranty to the Contractor. The Contracting Officer's notice shall require that Contractor either:

(i) Correct or replace any product or part thereof that does not conform with the requirements of this contract within the meaning of paragraph (a) of this warranty, or

(ii) Furnish prompt refund to the Government in an amount equal to the contract price, plus transportation charges to the destination(s) in the contract if paid by the Government.

(d) If the Contractor fails or refuses to correct or replace the nonconforming supplies or refund the purchase price within a period of ------[1] days after receipt of notice from the Contracting Officer, the Contracting Officer may, by contract or otherwise, correct or replace them with similar supplies and charge to the Contractor the cost occasioned to the Government thereby. In addition, if the Contractor fails to furnish timely disposition instructions, the Contracting Officer may dispose of the nonconforming supplies for the Contractor's account in a reasonable manner, in which case the Government is entitled to reimbursement from the Contractor or from the proceeds for the reasonable expense of the care and disposition of the nonconforming supplies.

(e) Any supplies or parts thereof corrected or furnished in replacement, pursuant to this clause, shall also be subject to all the provisions of this clause to the same extent as supplies initially delivered.

(f) Failure to agree upon any determination made under this clause shall be a dispute concerning a question of fact within the meaning of the "Disputes" clause of this contract.

(g) The rights and remedies of the Government provided in this clause are in addition to and do not limit any rights afforded to the Government by any other clause of the contract.

(i) *Warranty of Supplies (Aerosols) clause.* When this clause is used for Class 8030 and 8040 items, delete "(Aerosols)" and add "mixing and stirring" after shaking.

WARRANTY OF SUPPLIES (AEROSOLS)

Material furnished shall have a 1-year unqualified guaranteed shelf life beginning with date of acceptance and must be guaranteed usable after normal shaking.

When material is determined unusable, contractor must either (1) replace all defective quantities at no charge, or (2) reimburse the Government for full replacement value, whichever is ordered by the Contracting Officer. Replacement or reimbursement will include the transportation factor mentioned in the clause entitled "Delivery-Destination Prices". This is in addition to the rights reserved to the Government under Article 5(d), General Provisions, Standard Form 32.

(j) *The Production Point clause. (See § 5A–72.105–6(e))*

(k) *Variation In Quantity clause. (See § 5A–7.011–4)*

(l) *Monthly Supply Potential clause. (See 5A–72.105–16)*

(m) *Standby Stock clause. (See Subpart 5A–72.6)*

7. Subpart 5A–72.6 is added as follows:

[1] NOTE TO CONTRACTING OFFICER: Normally this period is 60 days, but the Contracting Officer may enter a longer period.

Subpart 5A–72.6—Standby-Stock Procurement Policies and Procedures

§ 5A–72.601 General.

(a) This subpart prescribes policies and procedures for the procurement of stock items by the standby-stock method. This method of procurement is designed to insure prompt supply availability of stock items where agencies' needs are expected to fluctuate widely. This method of procurement also tends to reduce warehousing and transportation costs.

(b) A contractor under a contract containing standby-stock provisions is required to produce in advance of the ordering period under a contract, a stipulated quantity of standby stock. For instance, under a regular 12-month term contract, the ordering period is 12 months. For example, if standby-stock provisions are added providing for a 2-month get-ready period, the total contract period becomes 14 months. This distinction must be clearly understood in order to properly adjust contract production plans when converting to standby-stock type contracts. Each standby-stock contract should be awarded sufficiently early so that the get-ready period under the contract and the contract period of the expiring contract will end at the same time.

(c) The Government, under a contract containing standby-stock provisions, guarantees to purchase the initial quantity of standby stock and also, with certain exceptions, any additional quantities which the contractor produces to replenish quantities shipped from standby stock. The contractor is required to replenish quantities shipped from standby stock as necessary to insure that all orders received in any calendar month which are within the estimated monthly requirement are shipped within the prescribed delivery time. Noncompliance with the prescribed delivery requirement shall be considered as a contract delinquency and may be subject to the provisions of paragraph (a)(i) of Article 11, Default, Standard Form 32, General Provisions.

(d) When a procuring activity purposes to use standby-stock provisions for the first time with respect to any commodity, the draft solicitation, prepared in accordance with this Subpart 5A–72.6, shall be submitted with a covering letter to the Director, Procurement Operations Division; the Director, Special Programs Division; or the Chief of a Regional Procurement Division. If the use of standby stock provisions is approved, the approval will advise regarding the need, if any, for prebid conferences with prospective suppliers to explain the standby-stock principle.

(e) This Subpart 5A–72.6 applies to FSS supply control, contracting, and quality control activities.

§ 5A–72.602 Application of Standby-Stock clause.

The clause in § 5A–72.611 is prescribed for requirements-type contracts for stock items when it is determined that its use is practicable and will result in significant advantages to the Government. Factors to be considered in making this determination may include the type of the commodity, volume of the requirements, storage costs, fluctuations in demand, industry practices, market conditions, and other pertinent factors. Procuring activities may not make substantive changes in the clause or use a different standby-stock clause without prior approval of the Assistant Commissioner for Procurement. Each request for such approval shall be accompanied by a draft of the solicitation containing the proposed clause and shall state the reasons for using a modified clause rather than the clause in § 5A–72.611.

§ 5A–72.603 Estimated requirements in solicitations.

For each stock item, the estimated requirements for the ordering period and the estimated monthly requirement shall be shown in the schedule of the solicitation. Where the solicitation calls for f.o.b. destination prices, the estimated total requirements for each destination must be shown separately and also the estimated monthly requirements except that where two or more destinations are grouped for award in the aggregate, the estimated monthly requirements for all destinations in the group shall be shown as one figure for the group.

§ 5A–72.604 Initial standby-stock quantities.

The initial standby-stock quantities to be required shall be sufficient to fill the estimated requirements for a period equal to the number of days specified in (a) of the clause plus 30 days. (See § 5A–72.611 for the standby-stock clause.) However, the initial quantity should be not less than twice or more than four times the estimated monthly requirements. The additional 30-day supply is a margin of safety to provide greater assurance of continuity of supply. Accordingly, it is preferable that the initial quantity include the additional 30-day cushion. However, it may be reduced or eliminated if the contracting officer determines such action is appropriate under the circumstances.

§ 5A–72.605 Standby stock and other items in the same solicitation.

(a) Solicitations which contain the standby-stock provisions shall cover only items for which a standby-stock quantity will be required.

(b) Solicitations which contain standby-stock provisions shall not provide for progressive awards.

§ 5A–72.606 Contract clauses.

(a) Each solicitation which provides for standby-stock shall include the following clauses:

GOVERNMENT'S OBLIGATION UNDER PREVIOUS CONTRACTS

This contract shall not be deemed to cover requirements which are filled by supplies which the Government is obligated to order under a previous contract.

OFFEROR'S MONTHLY QUANTITY LIMITATION (FOR AWARD PURPOSES ONLY)

The offeror may, by appropriate entries in the spaces below, limit the quantities he may be obligated to furnish under a resultant contract. Since the items or groups of items on which an offeror may be eligible for award cannot be determined in advance of opening of offers, offerors are urged to state a single overall monthly quantity limitation applicable to as many items or groups of items as possible. In the event the monthly quantity limitation indicated is less than the total of the estimated monthly requirements shown in the schedule for all items or groups of items on which the offer is submitted, the Government may select those items or groups of items for award which will result in the lowest overall cost to the Government, unless otherwise restricted by the offeror. If the offeror does not indicate a monthly quantity limitation, it will be deemed to be the estimated monthly requirement for each item or group of items on which the offer is submitted. In order to qualify for an award, the offeror's monthly quantity limitation must cover the Government's estimated monthly requirement for each individual item or group of items to be awarded to the offeror. Individual items or groups of items will not be subdivided for award purposes.

OFFEROR'S MONTHLY QUANTITY LIMITATION

Items or groups of items	*Units*

(b) Each solicitation containing standby-stock provisions shall also contain all applicable clauses required by regulations or other instructions, except as amended as follows:

(1) The Scope of Contract clause in § 5A–7.170–12(b) shall be used, but with the first sentence changed to read as follows; and the words "ordering period" shall be substituted for the words "contract period" in the last sentence:

This contract for the period _____ (1) _____, or date of award whichever is later, through _____ (2) _____, provides for the normal supply requirements of the General Services Administration supply distribution facilities identified herein during the ordering period beginning _____ (3) _____ or _____ (4) _____ days after date of award, whichever is later, through _____ (5) _____.

NOTE TO CONTRACTING OFFICER: Insert in blank (3), above, the expected beginning date of the ordering period. Insert in blanks (2) and (5) the ending date of the ordering period. Insert in blank (1) the date which precedes the date inserted in blank (3) by the number of days allowed for production and inspection in determining the required standby-stock quantities under § 5A–72.604. Insert in blank (4) the number of days between the dates inserted in blanks (1) and (3).

(2) The Source of Inspection clause, Clause 5(a), GSA Form 1424, GSA Supplemental Provisions, applies, except for the following phrase in 5(a)(1)(a), "the Contractor is notified in writing by the Contracting Officer or his designated representative."

(3) According to paragraph 5(a)(2), GSA Form 1424, GSA Supplemental Provisions, the solicitation shall contain the following provision and blank spaces for offerors to complete:

SOURCE INSPECTION

Clause 5, GSA Form 1424, GSA Supplemental Provisions (with the exception of 5(a)(1)(a) of GSA Form 1424) applies. Offerors shall complete the following spaces to indicate where supplies will be available for inspection.

Item No.	Name of manufacturing plant or other facility	Address (including county)

(4) Clause 43 (Deliveries Beyond the Contractual Period—Placing of Orders) of GSA Form 1424 does not apply.

(5) Since the time of delivery requirements for standby-stock items will be stated in the Standby-Stock clause, no other time of Delivery clause will be used.

(c) Generally, the clauses identified in (1) through (6) below, shall be located in solicitations in the sequence indicated:

(1) Scope of Contract. (See § 5A–72.606(b)(1).)

(2) Government's Obligations Under Previous Contracts. (See § 5A–72.606(a).)

(3) Minimum Order Limitation. (See § 5A–72.105–21.)

(4) Maximum Order Limitation. (See § 5A–73.112(f).)

(5) Standby-Stock. (See § 5A–72.611.)

(6) Offeror's Monthly Quantity Limitation. (See § 5A–72.606(a).)

§ 5A–72.607 Contracting period.

(a) The contract period of all standby-stock contracts shall consist of a contractor's get-ready period and an ordering period. The length of the contractor's get-ready period is equal to the number of days to be specified in (a) of the Standby-Stock clause (the time in which the contractor is required to produce the initial quantities and have them inspected (see § 5A–72.611). The ordering period normally will be the same length of time as the contract period under a nonstandby-stock type contract for the commodity involved. If, for example, the contract period of a nonstandby-stock type contract for a commodity was 12 months and the number of days specified in (a) of the Standby-Stock clause is 60 days, the contract period of the standby-stock contract will be 14 months.

(b) The general description to be entered in the schedule portion on page 1 of the solicitation (see § 5A–2.201(b)(1)) shall be as follows:

Requirements contract (with guaranteed purchase quantities) for the period (1) _____, or date of award (whichever is later), through (2) _____, covering stock replinishment requirements during the period (3) _____, through (4) _____, for (include brief general description of the item covered by the solicitation).

NOTE TO CONTRACTING OFFICER: Insert in blanks (1) through (4), above, the same dates inserted in blanks (1) through (3) and (5), respectively, in the first sentence of the Scope of Contract clause, as provided in § 5A–72.606(b)(1).

(c) Each standby-stock contract should be awarded sufficiently early so that the get-ready period under the new contract and the contract period of the expiring contract will end at the same time.

§ 5A–72.608 Placing delivery orders under standby-stock contracts.

(a) Ordering activities shall not place any orders under a standby-stock contract prior to the first day of the ordering period specified in the contract.

(b) No order shall be placed under a standby-stock contract after the expiration date of the specified ordering period, except as authorized under the provision of paragraph (c)(2) of the Standby-Stock clause (§ 5A–72.611).

(c) Delivery orders placed under standby-stock contracts shall specify "Ship as per contract" in the Delivery Time block on the order form except that computer prepared orders will print delivery time as programed.

§ 5A–72.609 Action by quality control representative.

(a) The quality control representative will visit the contractor's or supplier's plant to insure a mutual understanding of all terms and conditions of a contract, prior to the start of production, when determined by the Chief, Quality Control Division. At that time, all contract terms will be reviewed with particular emphasis on standby-stock requirements, and the contractor or supplier will be notified of the requirements to maintain detailed records in accordance with the standby-stock clause in the contract.

(b) Any deficiencies noted on the first or any subsequent visits shall be reported promptly to the contracting officer on GSA Form 1679, Contract Administration. Typical examples of deficiencies are:

(1) Production cycle longer than time allowed to have initial standby-stock available;

(2) Failure to ship within the allowed number of days after receipt of purchase order;

(3) Not replenishing standby stock in accordance with contract terms;

(4) Not scheduling material into production on time;

(5) Not having replenishment stock on hand at time of inspection visits;

(6) Not adhering to shelf-life requirements in the contract; specifically, lack of assurance relative to any remaining shelf life of items; and

(7) Not maintaining detailed records as required.

(c) The quality control representative will make necessary arrangements for his return visit for purposes of inspecting material. In the event the material is not ready at the time arranged for inspection, the contractor will be charged for lost time in accordance with terms of the contract.

(d) The quality control representative will insure that preinspected stock will be held in a set-aside area and properly identified as inspected stock. All containers of material offered by the contractor shall be stamped to indicate that it has been inspected. At the time of inspection, the quality control representative will instruct the contractor to prepare GSA Form 308, Notice of Inspection, and, after completion of the form by the quality control representative, to distribute copies to the contracting officer, the regional Quality Control Division, and the quality control representative, retaining the original. In the event material is rejected, the contracting officer will be notified by copy of GSA Form 308. If rejection of the lot will preclude timely delivery on orders received, the quality control representative will notify the contracting officer of the rejection on GSA Form 1679, and include his recommendations as to appropriate action.

(e) When the contract period has expired and the contractor has on hand or in process quantities of standby stock for which the contractor has not received orders, the quality control representative will notify the contracting officer on GSA Form 1679 of such quantities, by item, indicating with respect to each item the extent to which the Government is obligated to purchase (see paragraph (c) of the Standby-Stock clause in § 5A–72.611).

(f) The quality control representative will instruct the contractor to document each shipment from standby stock by use of one of the following forms:

(1) DD Form 250—when shipment is to a military installation, or

(2) GSA Form 308—when shipment is to other than a military installation.

§ 5A–72.610 Guarantee to purchase replacement quantities—notice of discontinuance.

(a) The inventory manager will advise the contracting officer whenever actual requirements indicate a sustained decreased demand pattern so that the contracting officer may notify the contractor, pursuant to (c) of the Standby-Stock clause, that orders received by the contractor in subsequent months shall not fall within the guarantee provided in that paragraph.

(b) Monthly demand forecasts should be carefully checked to determine that they are valid and reflect the buyers' best estimate of anticipated future demand.

§ 5A–72.611 Standby-Stock clause.

STANDBY-STOCK

(a) Initial quantity.

For each item awarded to him, the Contractor shall by the beginning date of the ordering period or within ------ days after date of award, whichever is later, produce and have inspected by the Government, as being in compliance with contract requirements, ------ times the number of units specified in the schedule as the estimated monthly requirement for that item.

(See Note 1, below.)

(b) Replenishment of standby stock.

With respect to each item, the Contractor shall replenish the standby-stock with items inspected by the Government, as being in compliance with contract requirements, at such times as to insure that all orders received by the Contractor in any one calendar month, which are within the estimated monthly requirements for that item, are shipped within the time period specified in (e), below. No replenishment action shall be initiated by the Contractor during the last ------ months of the contract.

(See Note 2, below)

(c) Guarantee to purchase.

(1) The Government guarantees to purchase with respect to each item an amount equal to the initial standby-stock quantity for that item plus the total quantity of all delivery orders for that item which (1) do not exceed the estimated monthly requirement for that item, and (2) are received by the Contractor prior to the last ------ months of the contract. However, with respect to each item, the Government reserves the right to notify the Contractor at any time during the contract period that orders received in the calendar months succeeding the month in which such notice is received, shall not fall within the above guarantee. In such event, the Contractor's obligation to ship in accordance with (e), below, shall continue only until such time as the orders received in succeeding months, which are within the estimated monthly requirement, equal the initial standby-stock quantity for that item. All other orders shall be shipped in accordance with (f), below.

(2) The Contractor shall, forty-five (45) to thirty (30) days prior to the expiration date of the contract and again within ten (10) days following the expiration date of the contract, notify the Contracting Officer by letter of any unordered quantity which the Government has guaranteed to purchase. Failure to notify the Contracting Officer within the prescribed times shall relieve the Government of its obligation to order; however, if the Government elects to issue orders for the entire balance or any portion thereof, the Contractor will be obligated to furnish such quantities. The Government reserves the right to defer placing orders for any unordered quantity it has guaranteed to purchase for thirty (30) days following the expiration date of the contract.

(See Note 3, below)

(d) Deferment of initial orders.

In order not to disrupt the orderly and expeditious production of the initial standby-stock quantities, the Government will not place, and the Contractor will not be permitted to accept, orders under this contract prior to the beginning date of the ordering period or prior to ------ days after date of award, whichever is later.

(See Note 4, below)

(e) Time for shipment—Orders within the estimated monthly requirement.

The Contractor shall furnish all quantities ordered during any calendar month which do not exceed the estimated monthly requirements set forth in the schedule. Such quantities shall be shipped within ------ days after receipt of orders.

(See Note 5, below)

(f) Orders in excess of the estimated monthly requirement.

The Government is obligated to place, pursuant to this contract, all orders for the supplies covered herein except (1) orders for less than the minimum in the Minimum Order Limitation clause; (2) orders in excess of the maximum specified in the Maximum Order Limitations clause; and (3) in the case of exigencies, as specified in the Scope of Contract clause. The Contractor, however, may with respect to any item refuse to accept all orders or portions thereof received in any one month which exceed the estimated monthly requirement for that item. Such refusal to accept must be communicated to the office issuing such orders within ------ days of receipt of the orders by the Contractor. Failure to communicate the refusal to accept to the office issuing the delivery order within the time required shall be deemed to be acceptance of the order by the Contractor. With respect to all orders in excess of the estimated monthly requirement accepted or deemed to have been accepted by the Contractor, shipment shall be within ------ days from date of receipt of the order. Acceptance of orders in excess of the estimated monthly requirement shall not relieve the Contractor from complying with the delivery schedule in (e), above, with regard to orders falling within the estimated monthly requirement.

(See Note 6, below)

(g) Inspection.

Supplies shall not be shipped until they have been inspected at origin in accordance with the terms of this contract and found to conform with contract requirements, unless specifically permitted otherwise under an existing Quality Approved Manufacturer Agreement.

(h) Filling orders.

(1) Orders shall be filed in the same order they are received by the Contractor, unless otherwise authorized by the Contracting Officer.

(2) Supplies which are subject to any shelf-life requirements specified in this contract shall be shipped from standby-stock on a "first-in, first-out" basis provided the remaining shelf-life upon delivery is sufficient to comply with the terms of the contract.

(i) Maintenance of records by Contractor.

The Contractor shall maintain detailed records showing the following information for each item:

(1) Quantity of standby-stock on hand (not specifically allocated to orders received);

(2) Cumulative total of quantities shipped from standby-stock;

(3) Quantities in production for standby-stock replenishment pursuant to (b), above, and the dates for each quantity scheduled;

(4) For each delivery order received, the:

(i) Order number;

(ii) Date of order;

(iii) Date order received;

(iv) Quantity ordered; and

(v) Date shipped.

(See Note 7, below)

Notes to Contracting Officers:

NOTE 1: The number of days to be inserted in the first blank shall be representative of the time required by the majority of firms in the industry to produce and have inspected the initial quantity. If the initial quantity is equal to the estimated monthly requirement, the second blank and the word "times" shall be omitted; otherwise, the blank shall be filled in with the initial quantity expressed as ½, 1½, 2, 3 times, etc., as appropriate.

NOTE 2: The number of months to be inserted in the blank shall be equal to figure obtained by dividing the initial standby-stock quantity by the estimated monthly requirement.

NOTE 3: The number of months to be inserted in the blank shall be the same as in (b), above.

NOTE 4: The number of days to be inserted in the blank shall be the same as the number inserted in the first blank in (a), above.

NOTE 5: A reasonably short time should be inserted in the blank—say 5 to 10 days.

NOTE 6: In the first blank, insert a reasonably short time—say _____ to 5 days. In the second blank, insert the same number of days as in the first blank in (a), above.

NOTE 7: The above clause, as written, is for use in invitations which provide for award on an item-by-item basis. When used in invitations which provide for award by groups of items, the language must be appropriately modified.

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c); 41 CFR 5-1.101(c))

Effective date. This regulation is effective June 30, 1971, but may be observed earlier.

Dated: June 1, 1971.

L. E. SPANGLER,
Acting Commissioner,
Federal Supply Service.

[FR Doc.71-8039 Filed 6-8-71;8:51 am]

Chapter 9—Atomic Energy Commission

PART 9-3—PROCUREMENT BY NEGOTIATION

PART 9-16—PROCUREMENT FORMS

Miscellaneous Amendments

The following subpart, 9-16.7, Forms for Negotiated Architect-Engineer Contracts, is added to provide for the use, implementation and supplementation of Standard Form 252—Architect-Engineer Fixed-Price Contract (August 1970 Edition) and Standard Form 253 General Provisions—(Architect-Engineer Contract, August 1970 Edition). Changes in AECPR 9-3 related to this addition are also included.

1. In Subpart 9-3.4, Types of Contracts, § 9-3.404-50 *Lump-sum contract for architect-engineer services with reimbursement for certain costs* is revised to read as follows:

Subpart 9-3.4—Types of Contracts

§ 9-3.404-50 Lump-sum contract for architect-engineer services with reimbursement for certain costs.

(a) Description: This type of contract normally provides for a fixed amount or lump sum for the A-E services (see § 9-18.306-50(b)(1) of this chapter for definition of these services) plus reimbursement of, or payment of an additional lump sum for certain costs listed in § 9-16.703-50 of this chapter, Clause 15, paragraph (b) to the extent they are incurred in connection with the work and approved by the contracting officer. These costs generally are not susceptible of reasonable estimation in advance due to a wide variation in the extent the related services are required for various projects, or they are for services not normally a part of titles I, II, and III.

(b) Compensation is included in the lump sum derived from the fee schedule for all drawings, plans, and documents prepared and reproduced under title I, except those which are reimbursable in conjunction with field surveys and subsurface investigations; for all drawings, specifications, invitations for bid, and other related documents prepared and reproduced under title II, prior to approval of title II design by the Commission, and for preparation of reproducible copies and furnishing 20 copies of such drawings and documents after approval by the Commission; and for reproducible "as-built" record drawings and marked-up "as-built" specifications prepared under title III (including updated master linen tracings, or reproducible linen tracings from the master set, if so specified in the contract). The provisions of the applicable Government Printing and Binding Regulations must also be observed.

(c) Where the contractor's responsible supervising representative, or an officer, proprietor, executive, or administrative head of the contractor participates directly in the performance of any of the services listed in paragraph (b)(1) through (3) of § 9-16.703-50 of this chapter, Clause 15, he may be compensated for the time actually so engaged. The rate of compensation, including the allocation of home office expenses, if any, shall be subject to approval by the contracting officer and commensurate with the cost of employing another qualified person to do such work, but the salary portion should not exceed the actual salary rate of the individual concerned.

(d) The costs listed in paragraphs (a) and (c) of this section cover services that are normal to complete titles I, II, and III services. No profit should be included in the adidtional compensation for those services because the architect-engineer's profit for the service is included in the lump-sum amount determined from the fee schedule. In order to ensure adequate technical services, they may be paid for on an actual cost basis. However, if it is considered to be more advantageous to the Government, an additional lump sum should be negotiated to cover the costs. In the case of personal services such as inspectors, a daily rate may be negotiated. The calculation of the additional lump sum, or daily rate, should show clearly the amount allowed for each of the services or elements of cost.

(e) The services covered in paragraph (b)(4), (8), and (10) of § 9-16.703-50 of this chapter, Clause 15, may be furnished by the Commission instead of reimbursing the contractor for the expenses. The type of services that will be furnished should be stated in the contract.

(f) If services are furnished that are beyond titles I, II, and III, such as developmental work, special engineering studies, and the preparation of special documents such as operating and maintenance manuals, additional compensation, including profit, should be paid for such services. Note that preliminary proposals and construction completion reports normally are considered a part of titles I and III.

(g) Use of lump-sum contract:

(1) A lump-sum contract for architect-engineer services should be used wherever it is practicable to compile, in advance of the preparation of plans and specifications, adequate information specifically describing the character and extent of services required.

(2) When there is insufficient scope information available to permit contracting for complete services (titles I, II, and III) on a lump-sum basis, and when it may be to the advantage of the Government to do so, consideration should be given to contracting only for a study contract or for the preliminary engineering (title I), on either a reimbursable or lump-sum basis, in order to permit entering into a lump-sum contract for the remaining portion of architect-engineer services (titles II and III), based upon information developed in the first phase.

2. The following new subpart is added:

Subpart 9-16.7—Forms for Negotiated Architect-Engineer Contracts

Sec.

9-16.700 Scope of subpart.
9-16.701-50 Forms prescribed.
9-16.703-50 Terms, conditions, and provisions.

AUTHORITY: The provisions of this Subpart 9-16.7 issued under sec. 161, Atomic Energy Act of 1954, as amended, 68 Stat. 948, 42 U.S.C. 2201; sec. 205, Federal Property and Administrative Services Act of 1949, as amended, 63 Stat. 390, 40 U.S.C. 486.

Subpart 9-16.7—Forms for Negotiated Architect-Engineer Contracts

§ 9-16.700 Scope of subpart.

This subpart prescribes the AEC additions to the standard forms prescribed by FPR Subpart 1-16.7 for use in procuring architect-engineer services under negotiated fixed-price contracts.

§ 9-16.701-50 Forms prescribed.

The following provisions shall be included in Standard Form 252 (FPR 1-16.901-252): Architect-Engineer Fixed-Price Contract, Item 6:

(a) *Description of project.*

NOTE: As full a description as is feasible should be inserted. If the architect-engineer services are to be furnished for a construction project, describe the facilities involved, including any auxiliary facilities that may be required.

(b) *Statement of architect-engineer services.* The Contractor shall, within the shortest reasonable time, furnish for the construction project the architect-engineer services described below, subject to such further detailed requirements as may be appended to this Contract by agreement of the parties.

NOTE A: This form of contract provides for completion of the architect-engineer services "within the shortest reasonable time." The form may be modified to provide for completion of separable parts of the work at different times.

NOTE B: When title I, II, or III services are to be furnished, the following language may be used to describe such services. Modifications in the text of this language may be made to omit inappropriate items or, where necessary, to meet particular circumstances.

TITLE I—PRELIMINARY SERVICES

(1) Conduct or arrange for, by subcontract or otherwise as approved by the Contracting Officer, and supervise all necessary topographical and other filed surveys, the preparation of maps, and necessary test borings and other subsurface investigations.

(2) Consult and collaborate with the Commission or its designee to determine the requirements which will govern the design of the project and to establish architectural and engineering criteria for such design.

(3) Conduct preliminary studies, and prepare preliminary sketches, drawings, layout plans, outline specifications and reports, showings features and characteristics of the design proposed to meet the Commission's requirements. If more,than three studies, including sketches, drawings, plans, outline specifications, or documents are required because of changes initiated by the Commission, an equitable adjustment in the lump-sum compensation will be made in accordance with provisions of the changes article.

(4) The drawings, plans, and outline specifications and documents shall be prepared in such form and furnished in such quantity as directed by the Commission.

Specific quantities of the drawings, plans, outline specifications, and documents should be indicated here or elsewhere in the contract.

(5) Prepare preliminary estimates of cost and time schedules for (i) completion of the design and working drawings and specifications, and (ii) construction.

(6) Prepare preliminary estimates of material quantities required for construction.

TITLE II—DESIGN SERVICES

(1) Upon approval by the Commission of preliminary plans and estimates, undertake the design of the construction project.

(2) Undertake restudy and redesign work due to minor deviations from the approved preliminary work as may be required by the Commission.

(3) Prepare and revise, for the approval of the Commission, and furnish complete sets of contract bidding documents, including working drawings, details, and specifications for construction, in such form and quantity and including such provisions as may be required by law or the directions of the Commission.

Specific quantities of drawings and specifications should be indicated here, or elsewhere in the contract.

(4) Prepare, or when directed by the Commission participate with others in the preparation of, a detailed estimate of the cost of a construction based on the approved design and working drawings and specifications.

(5) Assist the Commission and its designees in securing, analyzing, and evaluating construction bids or proposals.

(6) When requested, consult with and advise the Commission on any questions which may arise in connection with the architect-engineer services described in this contract.

TITLE III—SUPERVISION OF CONSTRUCTION

(1) Furnish and maintain governing lines and bench marks to provide horizontal and vertical controls to which construction may be referred.

(2) Check and approve, or require revision of, all vendors' shop drawings to assure conformity with the approved design and working drawings and specifications.

(3) Inspect the execution of construction so as to assure adherence to approved working drawings and specifications.

(4) Inspect construction workmanship and materials, and equipment, and report to the Commission as to their conformity or noncomformity to the approved working drawings and specifications.

(5) Make or procure such field or laboratory tests of construction workmanship and materials, and equipment, as the Commission may require or approve.

(6) Prepare estimates of reasonable amounts of increase or decrease in Contract price and/or contract completion time for contract modifications, evaluate proposals submitted by the constructor for such contract adjustments and make recommendations to the Contracting Officer for use in negotiating.

(7) Prepare reports and make recommendations on status of deliveries of materials and equipment as the Commission may require or approve.

(8) Prepare monthly and other reports of the progress of construction, as may be required, and partial, interim and final estimates and reports of quantities and values of construction work performed, for payment or other purposes.

(9) Furnish _____ set(s) of reproducible "as-built" record drawings of the type specified by the Commission and _____ set(s) of mark-up specifications, showing construction as actually accomplished.

§ 9–16.703–50 Terms, conditions, and provisions.

The additional clauses and provisions listed below shall be added to Standard Form 253: (FPR 1–16.901–253) General Provisions (Architect-Engineer Contract), August 1970 edition, as required. Clauses may be omitted or added with the approval of Counsel.

14. *Alterations and additions.*

The following alterations in or additions to the provisions of Standard Form 253, General Provisions, of this contract were made prior to execution of the contract by the parties:

1. Definitions. The following paragraph (c) is added to this clause:

"(c) The term 'Commission' means the U.S. Atomic Energy Commission or any duly authorized representative thereof, including the Contracting Officer except for the purpose of deciding an appeal under the clause entitled 'Dispute'."

15. *Payment.*

(a) *Lump-sum compensation.* The Contractor shall be paid the lump-sum of $_____ which shall constitute full compensation for all services and materials furnished under this Contract except for the costs hereinafter specified in the paragraph entitled "Reimbursement for Certain Costs."

(b) *Reimbursement for certain costs.* The Contractor shall be entitled, in addition to payment of the lump sum hereinbefore provided for, to reimbursement for the following costs to the extent approved by the Contracting Officer, but not to exceed a total of $_____.

(1) The actual costs of labor, materials, and equipment use, and traveling expenses, and approved subcontracts and transportation of things, required for topographical and other field surveys, the preparation of maps, and test borings and other subsurface investigations under this Contract.

(2) The actual costs of labor, materials and equipment use, and traveling expenses for the resident engineer in charge, field engineers, and inspectors, part-time inspectors from the home or branch office, and the supporting field office force as required at the site of the construction project for inspection of construction.

(3) The actual costs of labor and materials and traveling expenses for expediting or inspecting material and equipment, and checking or expediting shop drawings at vendors' plants.

(4) The actual cost of on-site transportation for services listed in (1) through (3) above.

NOTE: This may also be the cost based on a rate or rates approved in advance by the Contracting Officer.

(5) Compensation paid for such outside expert technical assistance, including the services of materials testing laboratories, as is approved in writing by the Contracting Officer in connection with the performance of any of the work under this contract.

(6) The actual costs of labor, materials, and equipment use, or an allowance in lieu of such actual cost at a rate or rates approved in advance by the Contracting Officer, for copies in excess of 20 prints of drawings, specifications, invitations for bid, or other related documents, and revisions thereto, which are reproduced after title II design is approved by the Commission and which are for use by the Commission and its construction contractors. (This does not include "as-built" record drawings and specifications as required under title III services.)

(7) The actual costs of labor, materials, and equipment use for copies of special documents, such as completion reports, that have been prepared in accordance with instructions of the Commission.

(8) The cost of telegraph and long-distance telephone services required at the construction site for performance of the field engineering services.

(9) Expenses of such travel of the Contractor's responsible supervising representative that might be required in addition to the normal supervision furnished under the fee or specified in the contract.

(10) The actual costs of furniture and equipment (rental or purchase as approved in advance by the Contracting Officer), field office space, utilities, janitorial service, and similar items for use in performing titles I and III field work.

NOTE A: Include only the costs from those listed in this clause that are applicable to the services required under the contract.

NOTE B: This clause provides for lump-sum compensation for certain services and cost reimbursement for other services. If it is desired that the cost reimbursement portion be made on a lump-sum basis or on the basis of negotiated rates (e.g., a fixed amount per day) appropriate revisions in the clause will be required.

NOTE C: If some payments are to be made either on the basis of actual costs or negotiated rates, a limit to the total amount that may be so paid without a modification to the contract should be provided in the payment article for control purposes.

NOTE D: Include the following definitions:

(1) "Labor costs" include:

(i) Wages and salaries.

(ii) Directly related payroll costs (social security and unemployment insurance taxes, workmen's compensation insurance premiums, vacation, sick leave, benefit and welfare plans, etc., required by law, employer-employee agreement, or an established policy of the contractor).

(iii) Home or branch office overhead expenses which are applicable and properly chargeable to the work. The full overhead rate should not be applied to salaries of personnel assigned to continuous field duty. For such personnel, reimbursement should be made at a rate to cover only the cost of specific essential services and supplies furnished by the home or branch office to the field staff and which otherwise would have to be procured in the field. Where it is feasible or practical with respect to particular

services or supplies, reimbursement may be made on the basis of actual costs.

(2) Labor costs do not include any of the above costs and expenses applicable to the Contractor's responsible supervising representative, or to an officer, proprietor, executive, or administrative head of the Contractor, except where he participates directly in the performance of any of the services listed in paragraphs (b) (1) through (3) of this clause.

(3) Traveling expenses include the actual cost of travel of persons (employees and, if authorized, their dependents) and subsistence incident to such travel, and transportation of personal household goods and effects, in amounts not exceeding such limits as may be prescribed by the Contracting Officer, or allowances in lieu of such actual cost at rates approved by the Contracting Officer. The cost of transportation between living quarters and the site of the construction project of persons employed at such site is not included unless specifically approved by the Contracting Officer.

(c) *Partial payments on account of lump-sum compensation.* Ninety (90) percent of the lump-sum compensation shall become due and payable in monthly installments in amounts based on the proportion of the work then completed, as determined by the Contracting Officer, and the balance upon completion and acceptance of all work under this contract.

(d) *Reimbursement payments.* (1) Payments for costs which are reimbursable under the provisions of the paragraph entitled "Reimbursement for certain costs" shall be made to the Contractor at intervals stipulated by the Contractor and the Contracting Officer and upon completion and acceptance of the work under this contract.

(2) Notwithstanding any other provision of this contract, when the amount for which the Contractor shall be entitled to reimbursement equals the maximum amount the Government has agreed to reimburse the Contractor under this contract and any modification thereto, the Contractor shall not be expected or required to incur further expenses or obligations under paragraph (b) of this Clause unless and until the Government first increases the maximum amount stipulated in paragraph (b) by appropriate modification thereof, nor shall the Government be obligated to reimburse the Contractor for expenses beyond that amount.

(e) *Final payment.* Upon completion of the work and its acceptance by the Government, and upon the furnishing by the Contractor of a release, in such form and with such exceptions as may be approved by the Contracting Officer, of all claims against the Government under or arising out of this contract, the Government shall promptly pay to the Contractor the unpaid balance of the lump-sum compensation and reimbursable costs less (i) deductions due under the terms of this contract, and (ii) any sum required to settle any unsettled claim which the Government may have against the Contractor in connection with this contract.

(f) *Supporting documents.* Claims for payment shall be accompanied by such supporting documents and justifications as the Contracting Officer shall prescribe.

(g) *Records and accounts relating to reimbursable costs—Inspection and audit.* The Contractor agrees to keep books of account, records, documents, and other evidence bearing on costs which are reimbursable under the provisions of the paragraph entitled "Reimbursement for certain costs." The method of accounting employed by the Contractor with reference to such costs shall be subject to the approval of the Commission, but no material change shall be required therein if it conforms to generally accepted accounting practice. All such books of account, records, documents, and other evidence relating to such reimbursable costs shall be subject to inspection and audit by the Commission at all reasonable times, and the Contractor shall afford the Commission proper facilities for such inspection and audit. Subject to such other disposition as may be agreed upon by the Contractor and the Commission, the Contractor shall, for a period of three (3) years after final payment under this contract, or of the time periods for the particular records specified in Part 1–20 of the Federal Procurement Regulations (41 CFR Part 1–20), whichever expires earlier, preserve such of the books of account, records, documents, and other evidence relating to reimbursable costs as are not furnished by the Contractor to the Government in support of payments under the contract.

16. *State and local taxes (FPR 1–11.401–1).*

17. *Subcontracts.*

The Contractor shall not enter into any contractual commitment to a third party which involves the performance in whole or in part of a specific part of the work described in Standard Form 252 under "Statement of Architect-Engineer Services" without the written approval of the Contracting Officer. However, this article is not applicable to a contract of employment.

NOTE: Paragraph (c) of § 9–7.5006–29 should be included in the contract if deemed necessary.

18. *Contractor's organization (§ 9–7.5006–6).*

NOTE: For off-site architect-engineer contracts, substitute the following for paragraph (b):

"A competent supervising representative of the Contractor satisfactory to the Contracting Officer shall be in charge of the work at all times."

19. *Key personnel (§9–7.5007–2).*

20. *Patents (§9–9.5003).*

NOTE: The patent clause should not be departed from except on the advice of the Field Patent Group, or in the absence of such group, on the advice of the Office of the Assistant General Counsel for Patents. In each case it will be necessary to determine whether or not it would be appropriate to add the indemnity clause, with or without modifications.

NOTE: The patent indemnity clause is Clause 15 of Standard Form 23A. For modifications to this indemnity clause, see Note "A" under Article XIX, Patent indemnity, § 9–16.5002–4.

21. *Security (§9–7.5004–11).*

NOTE: The security clause includes a paragraph to the effect that the Contractor agrees to conform to all security regulations and requirements of the AEC. To the maximum extent feasible, specific security regulations and requirements, which are not expressly set forth in the security clause but to which the Contractor may become subject under the paragraph referred to above, shall either be set forth or incorporated by reference in an appendix to the contact.

22. *Safety, health, and fire protection (§ 9–7.5006–47).*

23. *Permits (§9–7.5006–48).*

24. *Renegotiation (§9–7.5004–20).*

25. *Classification (§ 9–7.5004–21).*

26. *Utilization of small business concerns (FPR 1–1.710–3(a)).*

27. *Utilization of concerns in labor surplus areas (FPR 1–1.805–3(a)).*

28. *Property (§ 9–7.5006–27).*

29. *Reports.*

(The nature and quantity of any reports, such as reports of the progress of the architect-engineer work, which will be required of the Contractor shall be set forth in this clause or incorporated by reference in this clause and in an appendix to be attached to the contract. Contracting Officers will be expected to require in most cases that reports be furnished at intervals disclosing the progress of the architect-engineer work.)

3. In Subpart 9–16.50, Contract Outlines, § 9–16.5002–6 *Outline of a lump-sum architect-engineer contract (with cost reimbursement features)* is deleted.

Subpart 9–16.50—Contract Outlines

§ 9–16.5002 Contract Outlines.

§ 9–16.5002–6 [Deleted]

Effective date. These amendments shall become effective May 29, 1971.

Dated at Germantown, Md., this 2d day of June 1971.

For the U.S. Atomic Energy Commission.

JOSEPH L. SMITH,
Director,
Division of Contracts.

[FR Doc.71–7972 Filed 6–8–71;8:45 am]

Title 43—PUBLIC LANDS: INTERIOR

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

APPENDIX—PUBLIC LAND ORDERS

[Public Land Order 5062]

[Montana 17093]

MONTANA

Withdrawal for Public Recreation Site

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:

Subject to valid existing rights, the following described public domain lands, under the jurisdiction of the Secretary of the Interior, and national forest lands, under the jurisdiction of the Department of Agriculture, are hereby withdrawn from all forms of appropriation under the public land laws, including the mining laws (30 U.S.C., Ch. 2), and from leasing under the mineral leasing laws, and reserved for the protection of public recreation values:

PRINCIPAL MERIDIAN

T. 3 S., R. 1 E.,
Sec. 10, lots 3, 5, 7, and 9;
Sec. 11, NW¼NW¼;
Sec. 15, lots 1 to 10, inclusive, E½NW¼, SW¼SW¼, NW¼SE¼;
Sec. 21, lots 3 and 6, E½NW¼;
Sec. 22, lots 1 to 9, inclusive, SW¼NE¼, E½SW¼;
Sec. 27, lots 1 to 8, inclusive, SW¼SW¼, W½SE¼;
Sec. 32, SE¼SE¼;
Sec. 33, lots 1 to 4, inclusive, E½SW¼, SW¼SW¼, SE¼NE¼, NW¼SE¼;
Sec. 34, lots 1 to 6, inclusive, NW¼NE¼, NW¼NW¼, E½SW¼, SW¼SW¼.

T. 4 S., R. 1 E.,
Sec. 4, lots 3 to 6, inclusive;
Sec. 5, lots 1, 2, 5, 6, and 7, S½NE¼, W½SE¼;
Sec. 8, lots 1 to 8, inclusive SE¼NE¼, E½NW¼, W½SW¼, E½SE¼, SW¼SE¼;
Sec. 17, lots 1 and 2, N½NE¼, NW¼NW¼.

The areas of public domain lands described aggregate approximately 3,137.69 acres.

GALLATIN NATIONAL FOREST

T. 4 S., R. 1 E.,
Sec. 4, lots 1, 2, 7, 8, S½NE¼, NE¼SW¼, S½SW¼, SE¼.

The areas of national forest lands described aggregate approximately 501.55 acres.

The total of the areas described above aggregates 3,639.24 acres in Madison County.

HARRISON LOESCH,
Assistant Secretary of the Interior.

JUNE 1, 1971.

[FR Doc.71-7988 Filed 6-8-71;8:46 am]

[Public Land Order 5063]

[Idaho 2554]

IDAHO

Partial Revocation of Public Land Order No. 1703

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. Public Land Order No. 1703 of August 4, 1958, withdrawing national forest lands and reserving them for use by the Department of the Army, Corps of Engineers, for flood control purposes in connection with the Albeni Falls Project is hereby revoked so far as it affects the following described lands:

KANIKSU NATIONAL FOREST

BOISE MERIDIAN

T. 55 N., R. 1 W.,
Sec. 18, that portion of the original lot 1 lying easterly of Crescent Lode Mining Claim M.S. 2039, now described as lot 5 on the official plat of survey accepted 6-20-69.

The area described aggregates 2.22 acres in Bonner County.

2. The described land shall immediately become available for the consummation of a pending Forest Service exchange.

HARRISON LOESCH,
Assistant Secretary of the Interior.

JUNE 1, 1971.

[FR Doc.71-7989 Filed 6-8-71;8:46 am]

[Public Land Order 5064]

[Utah 12081]

UTAH

Powersite Restoration No. 708; Partial Revocation of Powersite Reserve No. 363

By virtue of the authority contained in section 24 of the Act of June 10, 1920, 41 Stat. 1075, as amended, 16 U.S.C. sec. 818 (1964), and pursuant to the determination of the Federal Power Commission in DA-193-Utah, it is ordered as follows:

1. The Executive order of May 27, 1913, creating Powersite Reserve No. 363, is hereby revoked so far as it affects the following described land:

SALT LAKE MERIDIAN

T. 17 S., R. 8 E.,
Sec. 6, lot 5.

The area described aggregates 36.48 acres in Emery County.

2. This revocation is made in furtherance of the right of the State of Utah to file a school land indemnity selection application for the land pursuant to sections 2275 and 2276, U.S. Revised Statutes, as amended, 43 U.S.C. secs. 851-853 (1964). Accordingly, the land described in this order is hereby classified, pursuant to section 7 of the Act of June 28, 1934, 48 Stat. 1272, as amended, 43 U.S.C. sec. 315f (1964), as suitable for such selection. The land, therefore, will not be subject to other use or disposition under the public land laws in the absence of a modification or revocation of such classification (43 CFR 2440.4).

HARRISON LOESCH,
Assistant Secretary of the Interior.

JUNE 1, 1971.

[FR Doc.71-7990 Filed 6-8-71;8:46 am]

[Public Land Order 5065]

[Oregon 7292]

OREGON

Reservation for Constructed Forest Road

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 and to the provisions of existing withdrawals, the following described public land is hereby withdrawn from all forms of appropriation under the public land laws, including the mining laws (30 U.S.C., Ch. 2), but not from leasing under the mineral leasing laws, nor the disposal of materials under the Act of July 31, 1947, 61 Stat. 681, as amended, 30 U.S.C. secs. 601, 604 (1964), and reserved for use of the Department of Agriculture for the granting of easements or road rights-of-way as authorized by section 2 of the Act of October 13, 1964, 78 Stat. 1089, 16 U.S.C. secs. 532, 533 (1964):

WILLAMETTE MERIDIAN

COON JOHNSON ROAD NO. 1987

T. 20 S., R. 9 W.,
Sec. 8, SW¼NW¼.

A strip of land 100 feet in width, being 50 feet in width on both sides of the centerline of the Coon Johnson Road No. 1987, as shown on a plat filed in the Oregon State Office, Bureau of Land Management, Portland, Oreg.

The area described contains about 2 acres in Douglas County.

2. The withdrawal made by this order shall not preclude agricultural entries, sales, exchanges, or leases under applicable public land laws, of any legal subdivision traversed by any cooperator road constructed on any land withdrawn by this order: *Provided*, That any such entry, sale, exchange, or lease shall be subject to this order and to any road right-of-way easement over the land issued by the Department of Agriculture.

HARRISON LOESCH,
Assistant Secretary of the Interior.

JUNE 1, 1971.

[FR Doc.71-7991 Filed 6-8-71;8:46 am]

[Public Land Order 5066]

[Arizona 5946]

ARIZONA

Partial Revocation of Public Land Order No. 1556

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:

Public Land Order No. 1556 of November 19, 1957, withdrawing national forest lands for use as administrative sites, recreation areas, and roadside zones, is hereby revoked so far as it affects the following described lands:

PRESCOTT NATIONAL FOREST

GILA AND SALT RIVER MERIDIAN

New Black Canyon Highway—Cordes Junction to Flagstaff, Roadside Zone

A strip of land 200 feet on each side of the centerline of the Cordes Junction to Flagstaff section of the New Black Canyon Highway, through the following legal subdivisions:

T. 13 N., R. 3 E.,
Sec. 14, lots 3 and 13 (parts of the former NW¼).

The areas described aggregate 30.62 acres in Yavapai County.

The lands have been patented pursuant to the National Forest Exchange Act of March 20, 1922, 42 Stat. 465, as amended, 16 U.S.C. sec. 485 (1964).

HARRISON LOESCH,
Assistant Secretary of the Interior.

JUNE 1, 1971.

[FR Doc.71-7992 Filed 6-8-71;8:47 am]

[Public Land Order 5067]

[Arizona 032893]

ARIZONA

Revocation of Public Land Order No. 64

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. Public Land Order No. 64 of November 19, 1942, withdrawing the following lands for use by the War Department (now the Department of the Army), as auxiliary landing fields is hereby revoked:

GILA AND SALT RIVER MERIDIAN

T. 11 S., R. 9 E.,
Sec. 35, E½E½, SW¼NE¼, NW¼SE¼, N½ SW¼SE¼.
T. 12 S., R. 9 E.,
Sec. 1, lot 4.
T. 8 S., R. 10 E.,
Sec. 34, E½NW¼NW¼.
T. 12 S., R. 10 E.,
Sec. 23, NW¼NW¼.

The areas described aggregate 359.30 acres in Pima and Pinal Counties.

The topography is level to undulating and the soils are sandy with typical desert grass, greasewood, and scrub mesquite.

2. At 10 a.m. on July 7, 1971, the lands shall be open to the operation of the public land laws, including the United States mining laws, and to the filing of applications and offers under the mineral leasing laws, 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 July 7, 1971, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

Inquiries should be addressed to the Manager, Land Office, Bureau of Land Management, Phoenix, Ariz.

HARRISON LOESCH,
Assistant Secretary of the Interior.

JUNE 1, 1971.

[FR Doc.71-7993 Filed 6-8-71;8:47 am]

[Public Land Order 5068]

[Colorado 3123]

COLORADO

Partial Revocation of National Forest Administrative Site Withdrawals

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 Secretary's Order of October 26, 1906, withdrawing public domain lands for use by the U.S. Forest Service as an administrative site is hereby revoked insofar as it affects the following described lands:

SIXTH PRINCIPAL MERIDIAN

KANNAH CREEK RANGER STATION

Administrative Site

T. 12 S., R. 97 W.,
Sec. 19, lots 7, 8, 10, NE¼SW¼.

The area described aggregates 133.76 acres in Mesa County.

2. At 10 a.m. on July 7, 1971, the lands shall be open to operation of the public land laws, including the U.S. mining laws, and to the filing of applications and offers under the mineral leasing laws, subject to valid existing rights, and the requirements of applicable law. All valid applications filed at or prior to 10 a.m. on July 7, 1971, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

Inquiries concerning the land should be addressed to the Manager, Land Office, Bureau of Land Management, Room 15019, Federal Building, 1961 Stout Street, Denver, CO 80202.

HARRISON LOESCH,
Assistant Secretary of the Interior.

JUNE 1, 1971.

[FR Doc.71-7994 Filed 6-8-71;8:47 am]

Title 46—SHIPPING

Chapter II—Maritime Administration, Department of Commerce

SUBCHAPTER C—REGULATIONS AFFECTING SUBSIDIZED VESSELS AND OPERATORS

[General Order 13, Rev.]

PART 251—APPLICATIONS FOR SUBSIDIES AND OTHER DIRECT FINANCIAL AID

Applications for Operating-Differential Subsidy

Correction

In F.R. Doc. 71-8046 appearing on page 11033 in the issue for Tuesday, June 8, 1971, the publication date in the second line, reading "(6-9-71)", should read "(6-8-71)".

Title 50—WILDLIFE AND FISHERIES

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

PART 32—HUNTING

Sand Lake National Wildlife Refuge, S. Dak.

The following special regulation is issued and is effective on date of publication in the FEDERAL REGISTER (6-9-71).

§ 32.12 **Special regulations; big game; for individual wildlife refuge areas.**

SOUTH DAKOTA

SAND LAKE NATIONAL WILDLIFE REFUGE

Public hunting of big game on the Sand Lake National Wildlife Refuge, South Dakota, is permitted only on the area designated by signs as open to hunting. This open area, comprising 20,000 acres, is delineated on a map available at the refuge headquarters and from the Regional Director, Bureau of Sport Fisheries and Wildlife, Federal Building, Fort Snelling, Twin Cities, MI 55111. Hunting shall be in accordance with all applicable State regulations covering the hunting of deer subject to the following conditions:

(1) Archery season—September 4 through September 12, 1971, both dates inclusive and December 6 through December 31, 1971, both dates inclusive.

(2) Firearms season—November 27 through December 5, 1971, both dates inclusive.

(3) All hunters must exhibit their hunting license, deer tag, and vehicle contents to Federal and State officers upon request.

(4) Hunters will not be allowed to drive on refuge maintained trails, but may park their vehicles outside the refuge and hunt on foot.

(5) All deer taken on the refuge not checked by State or Federal Officers in the field must be checked at refuge headquarters.

The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally, which are set forth in Title 50, Code of Federal Regulations, Part 32, and are effective through December 31, 1971.

LYLE J. SCHOONOVER,
Refuge Manager, Sand Lake National Wildlife Refuge.

MAY 26, 1971.

[FR Doc.71-7997 Filed 6-8-71;8:47 am]

PART 32—HUNTING

Sand Lake National Wildlife Refuge, S. Dak.

The following special regulation is issued and is effective on date of publication in the FEDERAL REGISTER (6-9-71).

§ 32.22 **Special regulations; upland game; for individual wildlife refuge areas.**

SOUTH DAKOTA

SAND LAKE NATIONAL WILDLIFE REFUGE

Public hunting of pheasants on the Sand Lake National Wildlife Refuge, S. Dak., is permitted only on the area designated by signs as open to hunting. This open area, comprising 20,000 acres, is delineated on a map available at the refuge headquarters and from the Regional Director, Bureau of Sport Fisheries and Wildlife, Federal Building, Fort Snelling, Twin Cities, MN 55111. Hunting shall be in accordance with all applicable State regulations covering the hunting of pheasants subject to the following conditions:

(1) The open season for hunting pheasants on the refuge is from December 6 through December 12, 1971, both dates inclusive.

(2) Hunters will not be allowed to drive on refuge maintained trails, but may park their vehicles outside of the refuge and hunt on foot.

The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally, which are set forth in Title 50, Code of Federal Regulations, Part 32, and are effective through December 12, 1971.

LYLE J. SCHOONOVER,
Refuge Manager, Sand Lake National Wildlife Refuge.

MAY 26, 1971.

[FR Doc.71-7998 Filed 6-8-71;8:47 am]

Proposed Rule Making

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR Part 1]

INCOME TAX

Taxation of Exempt Organizations on Rents From Real Property and Interest, Rents, etc., From Controlled Organizations

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, by July 9, 1971. 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 by July 9, 1971. 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).

RANDOLPH W. THROWER,
Commissioner of Internal Revenue.

In order to conform the Income Tax Regulations (26 CFR Part 1) under section 512(b) of the Internal Revenue Code of 1954 to section 121(b)(2)(A) and (C) of the Tax Reform Act of 1969 (83 Stat. 538), such regulations are amended as follows:

PARAGRAPH 1. Section 1.512(b) is amended by revising paragraph (3) of section 512(b) and by adding at the end thereof a new paragraph (15) and by revising the historical note. These amended and added provisions read as follows:

§ 1.512(b) Statutory provisions; unrelated business taxable income; modifications.

SEC. 512. *Unrelated business taxable income.* * * *

(b) *Modifications.* * * *

(3) In the case of rents—

(A) Except as provided in subparagraph (B), there shall be excluded—

(i) All rents from real property (including property described in section 1245(a)(3)(C)), and

(ii) All rents from personal property (including for purposes of this paragraph as personal property any property described in section 1245(a)(3)(B)) leased with such real property, if the rent attributable to such personal property are an incidental amount of the total rents received or accrued under the lease, determined at the time the personal property is placed in service.

(B) Subparagraph (A) shall not apply—

(i) If more than 50 percent of the total rent received or accrued under the lease is attributable to personal property described in subparagraph (A)(ii), or

(ii) If the determination of the amount of such rent depends in whole or in part on the income or profits derived by any person from the property leased (other than an amount based on a fixed percentage or percentages of receipts or sales).

(C) There shall be excluded all deductions directly connected with rents excluded under subparagraph (A).

* * * * *

(15) Notwithstanding paragraphs (1), (2), or (3), amounts of interest, annuities, royalties, and rents derived from any organization (in this paragraph called the "controlled organization") of which the organization deriving such amounts (in this paragraph called "controlling organization") has control (as defined in section 368(c)) shall be included as an item of gross income (whether or not the activity from which such amounts are derived represents a trade or business or is regularly carried on) in an amount which bears the same ratio as—

(A) (i) In the case of a controlled organization which is not exempt from taxation under section 501(a), the excess of the amount of taxable income of the controlled organization over the amount of such organization's taxable income which if derived directly by the controlling organization would not be unrelated business taxable income, or

(ii) In the case of a controlled organization which is exempt from taxation under section 501(a), the amount of unrelated business taxable income of the controlled organization, bears to,

(B) The taxable income of the controlled organization (determined in the case of a controlled organization to which subparagraph (a)(ii) applies as if it were not an organization except from taxation under section 501(a)), but not less than the amount determined in clause (i) or (ii), as the case may be, of subparagraph (A),

both amounts computed without regard to amounts paid directly or indirectly to the controlling organization. There shall be allowed all deductions directly connected with amounts included in gross income under the preceding sentence.

* * * * *

[Sec. 512(b) as amended by Act of Apr. 7, 1958 (Public Law 85-367, 72 Stat. 80); Act of July 17, 1964 (Public Law 88-380, 78 Stat. 333); sec. 121(b)(2)(A) and (C) of the Tax Reform Act 1969 (73 Stat. 538)]

PAR. 2. Section 1.512(b)-1 is amended by revising paragraph (c) and adding at the end thereof a new paragraph (l). These amended and added provisions read as follows:

§ 1.512(b)-1 Modifications.

* * * * *

(c) *Rents*—(1) *Taxable years beginning before January 1, 1970.* For taxable years beginning before January 1, 1970, rents from real property (including personal property leased with the real property) and the deductions directly connected therewith shall be excluded in computing unrelated business taxable income, except that certain rents from, and certain deductions in connection with, a business lease (as defined in section 514(f)) shall be included in computing unrelated business taxable income. See subparagraph (5) of this paragraph for rules governing amounts received for the rendering of services.

(2) *Taxable years beginning after December 31, 1969*—(i) *In general.* For taxable years beginning after December 31, 1969, except as provided in subdivision (iii) of this subparagraph, rents from property described in subdivision (ii) of this subparagraph, and the deductons directly connected therewith, shall be excluded in computing unrelated business taxable income. However, notwithstanding subdivision (ii) of this subparagraph, certain rents from and certain deductions in connection with either debt-financed property (as defined in section 514(b)) or property rented to controlled organizations (as defined in paragraph (l) of this section) shall be included in computing unrelated business taxable income.

(ii) *Excluded rents.* The rents which are excluded from unrelated business income under section 512(b)(3)(A) and this paragraph are—

(*a*) *Real property.* All rents from real property; and

(*b*) *Personal property.* All rents from personal property leased with real property if the rents attributable to such personal property are an incidental amount of the total rents received or accrued under the lease, determined at the time the personal property is first placed in service by the lessee.

Rentals attributable to personal property generally are not an incidental amount of the total rents if the rents attributable to the personal property exceed 10 percent of the total rents from all the property leased. For example, if the rents attributable to the personal property leased are determined to be $3,000 per year, and the total rents from all property leased are $10,000 per year, then such $3,000 amount is not to be excluded from the computation of unrelated business taxable income by operation of section 512(b)(3)(A)(ii) and this paragraph, since such amount is not an incidental portion of the total rents.

(iii) *Exception.* Subdivision (ii) of this subparagraph shall not apply, if either—

(a) *Excess personal property rentals.* More than 50 percent of the total rents are attributable to personal property, determined at the time such personal property is first placed in service by the lessee; or

(b) *Net profits.* The determination of the amount of such rents depends in whole or in part on the income or profits derived by any person from the property leased, other than an amount based on a fixed percentage or percentages of the gross receipts or sales. For purposes of the preceding sentence, the rules contained in paragraph (b)(1) of § 1.856–4 shall apply.

(iv) *Illustration.* This subparagraph may be illustrated by the following example:

Example. A, an exempt organization, owns a printing factory which consists of a building housing two printing presses and other equipment necessary for printing. On January 1, 1971, A rents the building and the printing equipment to B for $10,000 a year. The lease states that $9,000 of such rent is for the building and $1,000 for the printing equipment. However, it is determined that notwithstanding the terms of the lease $4,000, or 40 percent ($4,000/$10,000), of the rent is actually attributable to the printing equipment. During 1971, A has $3,000 of deductions, all of which are properly allocable to the land and building. Under these circumstances, A shall not take into account in computing its unrelated business taxable income the $6,000 of rent attributable to the building and the $3,000 of deductions directly connected with such rent. However, the $4,000 of rent attributable to the printing equipment is not excluded from the computation of A's unrelated business taxable income by operation of section 512(b)(3)(A)(ii) or this paragraph since such rent represents more than an incidental portion of the total rents.

(3) *Definitions and special rules.* For purposes of subparagraph (2) of this paragraph—

(i) *Real property defined.* The term "real property" means all real property, including any property described in sections 1245(a)(3)(C) and 1250(c) and the regulations thereunder.

(ii) *Personal property defined.* The term "personal property" means all personal property, including any property described in section 1245(a)(3)(B) and the regulations thereunder.

(iii) *Multiple leases.* If separate leases are entered into with respect to real and personal property, and such properties have an integrated use (e.g., one or more leases for real property and another lease or leases for personal property to be used upon such real property), all such leases shall be considered as one lease.

(iv) *Placed in service.* Property is "placed in service" by the lessee when it is first subject to his use in accordance with the terms of the lease. For example, property subject to a lease entered into on November 1, 1971, for a term commencing on January 1, 1972, shall be considered as placed in service on January 1, 1972, regardless of when the property is first actually used by the lessee.

(v) *Changes in rent charged or personal property rented.* If—

(a) By reason of the placing of additional or substitute personal property in service, there is an increase of 100 percent or more in the rent attributable to all the personal property leased, or

(b) There is a modification of the lease by which there is a change in the rent charged (whether or not there is a change in the amount of personal property rented),

the rent attributable to personal property shall be recomputed to determine whether the exclusion under subparagraph (2)(ii)(b) of this paragraph or the exception under subparagraph (2)(iii)(a) of this paragraph applies. Any change in the treatment of rentals, attributable to a recomputation under this subdivision, shall be effective only with respect to rents for the period beginning with the event which occasioned the recomputation.

(4) *Examples.* Subparagraphs (2) and (3) of this paragraph may be illustrated by the following examples:

Example (1). On January 1, 1971, A, an organization described in section 501(c)(3), executes two leases with B. One is for the rental of a computer, with a stated annual rental of $750. The other is for the rental of office space in which to use the computer, at a stated annual rental of $7,250. The total annual rent under both leases for 1971 is $8,000. At the time the computer is first placed in service, however, taking both leases into consideration, it is determined that notwithstanding the terms of the lease $3,000, or 37.5 percent ($3,000/$8,000), of the rent is actually attributable to the computer. Therefore, for 1971, only the $5,000 ($8,000—$3,000) attributable to the rental of the office space is excluded from the computation of A's unrelated business taxable income by operation of section 512(b)(3).

Example (2). Assume the facts as stated in example (1). Assume further that the leases to which the computer and office space are subject in example (1) provide that the rent may be increased or decreased, depending upon the prevailing rental value for similar computers and office space. On January 1, 1972, the total annual rent is increased in the computer lease to $2,000, and in the office space lease to $9,000. For 1972, it is determined that notwithstanding the terms of the leases $6,000, or 54.5 percent ($6,000/$11,000), of the total rent is actually attributable to the computer as of that time. Even though the personal property rentals now exceed 50 percent of the total rents, the rentals attributable to real property continue to be excluded, since there was no modification of the lease terms and since the increase in rentals was not attributable to placing new property in service. See subparagraph (3)(v) of this paragraph. Thus, for 1972 the $5,000 attributable to the office space continues to be excluded from the computation of A's unrelated business taxable income by operation of section 512(b)(3).

Example (3). Assume the facts as stated in example (1), except that on January 1, 1973, B rents a second computer from A, which is placed in service under the lease. The total rent is increased to $2,000 for the computer lease and to $10,000 for the office space lease. It is determined at the time the second computer is first placed in service that notwithstanding the terms of the leases $7,000 of the rent is actually attributable to the computers. Since the rent attributable to personal property has increased by more than 100 percent ($4,000/$3,000=133%), a redetermination must be made under subparagraph (3)(v)(a) of this paragraph. As a result, 58.3 percent ($7,000/$12,000) of the total rent is attributable to personal property. Since this exceeds 50 percent of the total rent received by A, none of the rents are excluded from the computation of A's unrelated business taxable income by operation of section 512(b)(3).

Example (4). Assume the facts as stated in example (3), except that on June 30, 1975, the lease between B and A is modified. The total rent for the computer lease is reduced to $1,500 and the total rent for the office space lease is reduced to $7,500. Pursuant to subdivision (3)(v)(b) of this paragraph, a redetermination is made as of June 30, 1975. As of the modification date, it is determined that notwithstanding the terms of the leases, the rent actually attributable to the computers is $4,000, or 44.4 percent ($4,000/$9,000), of the total rent. Since less than 50 percent of the total rental is now attributable to personal property, the rents attributable to real property ($5,000), for periods after June 30, 1975, are excluded from the computation of A's unrelated business taxable income by operation of section 512(b)(3). However, the rents attributable to personal property ($4,000) are not excluded from unrelated business taxable income for such periods by operation of section 512(b)(3), since they represent more than an incidental portion of the total rents.

(5) *Rendering of services.* For purposes of this paragraph, payments for the use or occupancy of rooms and other space where services are also rendered to the occupant, such as for the use or occupancy of rooms or other quarters in hotels, boarding houses, or apartment houses furnishing hotel services, or in tourist camps or tourist homes, motor courts, or motels, or for the use or occupancy of space in parking lots, warehouses, or storage garages, do not constitute rentals from real property. Generally, services are considered rendered to the occupant if they are primarily for his convenience and are other than those usually or customarily rendered in connection with the rental of rooms or other space for occupancy only. The supplying of maid service, for example, constitutes such service; whereas the furnishing of heat and light, the cleaning of public entrances, exists, stairways, and lobbies, the collection of trash, etc., are not considered as services rendered to the occupant. Payments for the use or occupancy of entire private residences or living quarters in duplex or multiple housing units, of offices in any office building, etc., are generally rentals from real property.

* * * * *

(l) *Interest, annuities, royalties, and rents from controlled organizations*—(1) *In general.* For taxable years beginning after December 31, 1969, if an exempt organization (hereinafter referred to as the "controlling organization") has control (as defined in subparagraph (4) of this paragraph) of another organization (hereinafter referred to as the "controlled organization"), the controlling organization shall include as an item of gross income in computing its unrelated business taxable income, the amount of interest, annuities, royalties, and rents derived from the controlled organization

determined under subparagraph (2) or (3) of this paragraph. The preceding sentence shall apply whether or not the activity conducted by the controlling organization to derive such amounts represents a trade or business or is regularly carried on. Thus, for example, amounts received by a controlling organization from the rental of its real property to a controlled organization on an irregular basis may be included in the unrelated business taxable income of the controlling organization.

(2) *Exempt controlled organization*—(i) *In general.* If the controlled organization is exempt from taxation under section 501(a), the amount referred to in subparagraph (1) of this paragraph is an amount which bears the same ratio to the interest, annuities, royalties, and rents received by the controlling organization from the controlled organization as the unrelated business taxable income of the controlled organization bears to whichever of the following amounts is the greater—

(*a*) The taxable income of the controlled organization, computed as though the controlled organization were not exempt from taxation under section 501(a), or

(*b*) The unrelated business taxable income of the controlled organization, both determined without regard to any amounts paid directly or indirectly to the controlling organization. The controlling organization shall be allowed all deductions directly connected with amounts included in gross income under the preceding sentence.

(ii) *Examples.* This subparagraph may be illustrated by the following examples:

Example (1). A, a scientific organization exempt under section 501(c)(3), owns all the stock of B, another scientific organization exempt under section 501(c)(3). During 1971, A rents a laboratory to B for $15,000 a year. A's total deductions for 1971 with respect to the leased property are $3,000: $1,000 for maintenance and $2,000 for depreciation. If B were not an exempt organization, its total taxable income would be $300,000, disregarding rent paid to A. B's unrelated business taxable income, disregarding rent paid to A, is $100,000. Under these circumstances, $4,000 of the rent paid by B will be included by A as net rental income in determining its unrelated business taxable income, computed as follows:

B's unrelated business taxable income (disregarding rent paid to A)	$100,000
B's taxable income (computed as though B were not exempt and disregarding rent paid to A)	$300,000
Ratio ($100,000/$300,000)	⅓
Total rent	$15,000
Total deductions	$3,000
Rental income treated as gross income from an unrelated trade or business (⅓ of $15,000)	$5,000
Less deductions directed connected with such income (⅓ of $3,000)	$1,000
Net rental income included by A in computing its unrelated business taxable income	$4,000

Example (2). Assume the facts as stated in example (1), except that B's taxable income is $90,000 (computed as though B were not an exempt organization, and disregarding rents paid to A). B's unrelated business taxable income ($100,000) is therefore greater than its taxable income ($90,000). Thus, the ratio used to determine what portion of the rent A receives is taxable is one since both the numerator and denominator of such ratio is B's unrelated business taxable income. Consequently, all the rent received by A from B ($15,000), and the deductions directly connected therewith ($3,000), are included by A in computing its unrelated business taxable income.

(3) *Nonexempt controlled organization*—(i) *In general.* If the controlled organization is not exempt from taxation under section 501(a), the amount referred to in subparagraph (1) of this paragraph is an amount which bears the same ratio to the interest, annuities, royalties, and rents received by the controlling organization from the controlled organization as the "excess taxable income" (as defined in subdivision (ii) of this subparagraph) of the controlled organization bears to whichever of the following amounts is the greater—

(*a*) The taxable income of the controlled organization, or

(*b*) The excess taxable income of the controlled organization,

both determined without regard to any amount paid directly or indirectly to the controlling organization. The controlling organization shall be allowed all deductions which are directly connected with amounts included in gross income under the preceding sentence.

(ii) *Excess taxable income.* For purposes of this paragraph, the term "excess taxable income" means the excess of the controlled organization's taxable income over the amount of such taxable income which, if derived directly by the controlling organization, would not be unrelated business taxable income.

(iii) *Examples.* This subparagraph may be illustrated by the following examples:

Example (1). A, a university exempt from taxation under section 501(c)(3), owns all the stock of M, a nonexempt organization. During 1971, M leases a factory and a dormitory from A for a total annual rental of $100,000. During the taxable year, M has $500,000 of taxable income, disregarding the rent paid to A: $150,000 from a dormitory for students of A university, and $350,000 from the operation of a factory which is a business unrelated to A's exempt function. A's deductions for 1971 with respect to the leased property are $4,000 for the dormitory and $16,000 for the factory. Under these circumstances, $56,000 of the rent paid by M will be included by A as net rental income in determining its unrelated business taxable income, computed as follows:

M's taxable income (disregarding rent paid to A)	$500,000
Less taxable income from dormitory	150,000
Excess taxable income	$350,000
Ratio ($350,000/$500,000)	7/10
Total rent paid to A	$100,000
Total deductions ($4,000+$16,000)	20,000
Rental income treated as gross income from an unrelated trade or business (7/10 of $100,000)	$70,000
Less deductions directly connected with such income (7/10 of $20,000)	$14,000
Net rental income included by A in computing its unrelated business taxable income	$56,000

Example (2). Assume the facts as stated in example (1), except that M's taxable income (disregarding rent paid to A) is $300,000, consisting of $350,000 from the operation of the factory and a $50,000 loss from the operation of the dormitory. Thus, M's "excess taxable income" is also $300,000, since none of M's taxable income would be excluded from the computation of A's unrelated business taxable income if received directly by A. The ratio of M's "excess taxable income" to its taxable income is therefore one ($300,000/$300,000). Thus, all the rent received by A from M ($100,000), and the deductions directly connected therewith ($20,000), are included in the computation of A's unrelated business taxable income.

(4) *Control.* For purposes of this paragraph—

(i) *Stock corporation.* In the case of an organization which is a stock corporation, the term "control" means ownership by an exempt organization of stock possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote and at least 80 percent of the total number of shares of all other classes of stock of such corporation.

(ii) *Nonstock organization.* In the case of a nonstock organization, the term "control" means that at least 80 percent of the directors or trustees of such organization are either representative of or directly or indirectly controlled by an exempt organization. A trustee or director is representative of an exempt organization if he is a trustee, director, or employee of such exempt organization. A trustee or director is controlled by an exempt organization if such organization has the power to remove such trustee or director and designate a new trustee or director.

(5) *Amounts taxable under other provisions of the Code*—(i) *In general.* Section 512(b)(15) and this paragraph do not apply to amounts which are included in the computation of unrelated business taxable income by operation of any other section of the Code. However, amounts which are not included in unrelated business taxable income by operation of section 512(a)(1), or rents which are excluded by operation of section 512(b)(3)(A), may be included in unrelated business taxable income by operation of section 512(b)(15) and this paragraph.

(ii) *Debt-financed property.* Rents derived from the lease of debt-financed property by a controlling organization to a controlled organization are subject to the rules contained in section 512(b)(15) and this paragraph. Thus, if a controlling organization leases debt-financed property to a controlled organization, the amount of rents includible in the controlling organization's unrelated business taxable income shall first be determined under section 512(b)(15) and this paragraph, and only the portion of such rents not taken into account by operation of section 512(b)(15) are taken into account in computing unrelated business taxable income under section 514. See example (3) of § 1.514(b)-1(b)(2)(iii).

[FR Doc.71-7910 Filed 6-8-71;8:45 am]

DEPARTMENT OF AGRICULTURE

Consumer and Marketing Service

[7 CFR Part 909]

GRAPEFRUIT GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

Proposed Increase in Assessment Rate and Decrease in Expenses for 1970–71 Fiscal Year

Consideration is being given to the proposal set forth herein submitted by the Grapefruit Administrative Committee, established under Order No. 909, as amended (7 CFR Part 909; 35 F.R. 16637), regulating the handling of Grapefruit grown in Arizona and designated part of California, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), as the agency to administer the terms and provisions thereof. The committee now estimates that due to freeze damage in the production area the crop will not reach the previously estimated total, thus rendering necessary the proposed increase in assessment rate and decrease in expenses.

The proposal is that the provisions of paragraphs (a) *Expenses* and (b) *Rate of assessment* of § 909.209 (35 F.R. 17653) be amended to read as follows:

§ 909.209 Expenses, rate of assessment, and carryover of unexpended Funds.

(a) *Expenses.* The expenses that are reasonable and likely to be incurred by the Administrative Committee during the period September 1, 1970 through August 31, 1971 will amount to $88,200.

(b) *Rate of assessment.* The rate of assessment fo reach period, payable by each handler in accordance with § 909.41, is hereby fixed at $0.035 per carton, or equivalent quantity of grapefruit.

* * * * *

All persons who desire to submit written data, views, or arguments in connection with the aforesaid proposals should file the same, in quadruplicate, with the Hearing Clerk, U.S. Department of Agriculture, Room 112, Administration Building, Washington, D.C. 20250, not later than the 10th day after the publication of this notice in the FEDERAL REGISTER. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

Dated: June 4, 1971.

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

[FR Doc.71–8045 Filed 6–8–71;8:51 am]

[7 CFR Part 917]

FRESH PEARS, PLUMS, AND PEACHES GROWN IN CALIFORNIA

Proposed Handling Limitation

Consideration is being given to the following proposal submitted by the Peach Commodity Committee, established pursuant to the amended marketing agreement and Order No. 917, as amended (7 CFR Part 917; 36 F.R. 7510), regulating the handling of fresh pears, plums, and peaches grown in California, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674).

The proposal is to establish container and pack specifications hereinafter set forth applicable to fresh peaches so as to provide standardized packages of uniformly sized peaches to promote orderly marketing of this fruit consistent with the declared policy of the act and the interests of producers and consumers.

All persons who desire to submit written data, views, or arguments, for consideration in connection with the proposed regulation shall file the same in quadruplicate, with the Hearing Clerk, U.S. Department of Agriculture, Room 112, Administration Building, Washington, D.C. 20250, not later than the 7th day after publication of this notice in the FEDERAL REGISTER. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

§ 917.424 Peach Regulation 2.

(a) On and after June 20, 1971, no handler shall handle any package or container of any variety of peaches except in accordance with the following terms and conditions:

(1) Such peaches, when place-packed in packages or containers in rows, shall conform to the requirements of standard pack.

(2) Each package or container of peaches shall bear in plain sight and in plain letters, on one outside end, the name of the variety, if known, or when the variety is not known, the words "unknown variety."

(3) Each package or container of peaches shall bear on one outside end, in plain sight and in plain letters, the size description of the peaches which description shall conform to the following, as applicable:

(i) When packed or filled in any package or container the size shall be indicated in accordance with the number of peaches in the package or container, or by the equivalent size designation for such peaches when packed in a No. 22D standard lug box in accordance with the requirements of standard pack as set forth in the U.S. Standards for Peaches (§§ 51.1210–51.1223 of this title), e.g. "88 size," and "96 size," etc.

(4) The difference in diameter between the smallest and largest peach in any individual container shall not be greater than three-eighths inch: *Provided,* That a total of not more than 5 percent, by count, of the peaches in a package or container may fail to meet this requirement.

(b) When used herein "standard pack" shall have the same meaning as set forth in the U.S. Standards for Peaches (§§ 51.1210–51.1223 of this title); the term "No. 22D standard lug box" shall have the same meaning as set forth in section 43601 of the Agricultural Code of California; and all other terms shall have the same meaning as when used in the marketing agreement and order.

Dated: June 4, 1971.

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

[FR Doc.71–8043 Filed 6–8–71;8:51 am]

[7 CFR Part 917]

FRESH PEARS, PLUMS, AND PEACHES GROWN IN CALIFORNIA

Proposed Approval of Expenses and Fixing of Rates of Assessment for 1971–72 Fiscal Period

Consideration is being given to the following proposals submitted by the Control Committee, established under the marketing agreement, as amended, and Order No. 917, as amended (7 CFR Part 917; 36 F.R. 7510), regulating the handling of fresh pears, plums, and peaches grown in the State of California, effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), as the agency to administer the provisions thereof:

(a) That expenses that are reasonable and likely to be incurred during the fiscal period from March 1, 1971, through February 29, 1972, will amount to $427,990.

(b) That the rates of assessment for such fiscal period payable for each handler in accordance with § 917.37 be fixed at:

(1) Nine-tenths of a cent ($0.009) per standard western pear box of pears, or its equivalent in other containers or in bulk;

(2) Four and four-tenths of a cent ($0.044) per standard four-basket crate of plums, or its equivalent in other containers or in bulk; and

(3) Three and five-tenths of a cent ($0.035) per Los Angeles lug, or its equivalent in other containers or in bulk.

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

All persons who desire to submit written data, views, or arguments in connection with the aforesaid proposals shall file the same, in quadruplicate, with the Hearing Clerk, U.S. Department of Agri-

culture, Room 112, Administration Building, Washington, D.C. 20250, not later than the 10th day after the publication of this notice in the FEDERAL REGISTER. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

Dated: June 4, 1971.

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

[FR Doc.71-8044 Filed 6-8-71;8:51 am]

[7 CFR Part 921]

FRESH PEACHES GROWN IN DESIGNATED COUNTIES IN WASHINGTON

Proposed Handling Limitation

Consideration is being given to the following proposal, as hereinafter set forth, which would limit the handling of fresh peaches grown in designated counties in Washington by establishing regulations, pursuant to the order, which was recommended by the Washington Fresh Peach Marketing Committee, established pursuant to the marketing agreement, and Order No. 921 (7 CFR Part 921) regulating the handling of fresh peaches grown in designated counties in Washington. This program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674).

All persons who desire to submit written data, views, or arguments in connection with the proposal should file the same with the Hearing Clerk, Room 112A, U.S. Department of Agriculture, Washington, D.C. 20250, not later than the 7th day after the publication of this notice in the FEDERAL REGISTER. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The recommendations of the Washington Fresh Peach Marketing Committee reflect its appraisal of the crop and current and prospective market conditions. Shipments of peaches from the production area are expected to begin on or about June 28, 1971. The proposed grade (including uniform firmness), size, maturity, and pack requirements provided herein are necessary to prevent the handling, on and after June 28, 1971, of any peaches which do not comply with such requirements, so as to provide consumers with good quality fruit, consistent with (1) the overall quality of the crop, and (2) maximizing returns to producers pursuant to the declared policy of the act. Individual shipments, not exceeding 500 pounds, of peaches sold for home use and not for resale, subject to necessary safeguards, are excepted from these proposed requirements in that the quantity of peaches so handled has been relatively inconsequential when compared with the total quantity handled.

Such proposal reads as follows:

§ 921.308 Peach Regulation 8.

(a) Order: Peach Regulation 7 (35 F.R. 10891) is hereby terminated on June 28, 1971.

(b) During the period June 28, 1971, through June 30, 1972, no handler shall handle any lot of peaches unless such peaches meet the following applicable requirements, or are handled in accordance with subparagraph (6) of this paragraph:

(1) Minimum grade: Such peaches shall grade at least Washington Extra Fancy Grade: *Provided,* That peaches which grade Washington Fancy Grade, or better, may be handled if they are packed in the Western lug box or the standard peach box.

(2) Minimum size:

(i) Such peaches of any variety, except peaches of the Elberta varieties, packed in any container except the standard peach box, shall measure not less than 2⅜ inches in diameter;

(ii) Such peaches of any variety when packed in a standard peach box shall measure not less than 2¼ inches in diameter; and

(iii) Such peaches of the Elberta varieties, packed in any container shall measure not less than 2¼ inches in diameter.

(3) Minimum maturity: Such peaches shall be well matured, except that any lot of peaches shall be deemed to have met such minimum maturity requirement if not more than 25 percent, by count, of the peaches in such lot are mature.

(4) Uniform firmness: Such peaches in individual containers shall have a reasonably uniform degree of firmness.

(5) Pack:

(i) Such peaches in loose or jumble packs shall be in containers of a capacity equal to or greater than that of a Western lug box and shall contain not less than 26 pounds net weight of peaches: *Provided,* That such containers of peaches having less than 26 pounds net weight may be handled if such containers are well filled; and

(ii) Such peaches other than peaches in loose or jumble packs in any container shall meet the standard pack requirements as set forth in the Washington Standards for Peaches (Order No. 1203), or the U.S. Standards for Peaches (§ 51.1210 et seq. of this title).

(6) Notwithstanding any other provision of this section, any individual shipment of peaches sold by the producer or at an established packinghouse which meets each of the following requirements may be handled without regard to the provisions of this paragraph, of § 921.41 (Assessments), and of § 921.55 (Inspection and certification) if:

(i) The shipment consists of peaches sold for home use and not for resale;

(ii) The shipment does not, in the aggregate, exceed 500 pounds, net weight, of peaches; and

(iii) Each container is stamped or marked with the handler's name and address and with the words "not for resale" in letters at least one-half inch in height.

(c) The terms "Washington Extra Fancy Grade", "Washington Fancy Grade", and "mature" shall have the same meaning as when used in the Washington Standards for Peaches (effective June 14, 1971), issued by the State of Washington Department of Agriculture; the term "well matured" shall mean peaches which will yield very slightly to moderate pressure at the suture or blossom end, have shoulders and suture that are well filled out, and have skin and flesh colored sufficiently that it will show characteristic varietal color when ripe; the term "loose or jumble pack" shall mean that the peaches are not placed in the container in rows, cups, compartments, or otherwise are not placed in the container in symmetrical order; the term "standard peach box" shall mean a container with inside dimensions of 4¼ to 6 by 11½ by 16 inches; the term "Western lug box" shall mean any container with inside dimensions of 7 by 11½ by 18 inches; the term "diameter" shall mean the greatest distance, measured through the center of the peach at right angles to a line running from the stem to the blossom end; and terms used in the marketing agreement and order shall, when used herein, have the same meaning as is given to the respective term in the marketing agreement and order.

Dated: June 4, 1971.

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

[FR Doc.71-8042 Filed 6-8-71;8:51 am]

[7 CFR Part 1136]

[Docket No. AO 309-A17]

MILK IN GREAT BASIN MARKETING AREA

Decision on Proposed Amendments to Marketing Agreement and to Order

A public hearing was held upon proposed amendments to the marketing agreement and the order regulating the handling of milk in the Great Basin marketing area. The hearing was held, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice (7 CFR Part 900), at Salt Lake City, Utah, pursuant to notices thereof issued on December 2, 1970 (35 F.R. 18621), and December 9, 1970 (35 F.R. 18975).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Deputy Administrator, Regulatory Programs, on April 14, 1971 (36 F.R. 7462), filed with the Hearing Clerk, U.S. Department of Agriculture, his recommended decision containing

notice of the opportunity to file written exceptions thereto.

The material issues, findings and conclusions, rulings, and general findings of the recommended decision are hereby approved and adopted and are set forth in full herein, subject to the following modifications:

1. In the discussion under the heading "4. Pool plant qualifications." the first and seventh paragraphs are changed and three additional paragraphs are added immediately following the fourth paragraph thereof.

2. The discussion under the heading "5. Diversion of producer milk." is changed in its entirety.

The material issues on the record relate to:

1. The Class I price.
2. The Class III price.
3. Location differentials.
4. Pool plant qualifications.
5. Diversion of producer milk.
6. Computation of allowable shrinkage.

There was no testimony on proposals 7 and 8 as published in the notice of hearing and no other basis exists in the record for considering the changes proposed. Accordingly, no action on such proposals is taken in this decision.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. *Class I Price.* The Class I price differential, the amount added to the basic formula price (Minnesota-Wisconsin price series) for the preceding month to determine the Class I price, should be reduced 32 cents, from $2.22 to $1.90.

The hearing notice proposal, to reduce the Class I price 50 cents, was submitted by a major handler in the market. He contended that the present Class I price ($7.04 in December 1970) is tending to develop excessive production for the market, is improperly aligned with the Class I prices in other Federal order markets, and is high relative to the cost of obtaining milk from alternative sources of supply.

A second handler who supported the 50-cent reduction in the Class I price stated that the present price is causing the loss of Class I sales from the pool to substitutes for fluid milk products, that the present margin between the Class I price and uniform price encourages producers to drop out of the pool and become producer-handlers, and that the cost an ungraded shipper would incur to qualify his farm as a Grade A operation (and thereby be eligible to become a producer under the order) does not justify as wide a difference as now exists between the Class I and Class III prices.

A cooperative representing a majority of the producers on the market, although not supporting the full 50-cent decrease, favored some reduction in the Class I price. The cooperative spokesman was not specific, however, regarding the price reduction appropriate in the light of current supply conditions.

Opposition testimony to reducing the Class I price was presented by the operator of a nonpool (cheese manufacturing) plant at which milk is received from 325 to 350 ungraded dairy farms. This plant also receives substantial quantities of surplus pool milk that is classified in Class III under the order. These latter receipts are obtained by transfer and diversion from regulated plants.

This manufacturing plant operator also operates a farm from which milk is shipped to a pool plant. He opposed a reduction in the Class I price on the basis that it would result in a lower price being paid to him for his milk as a producer under the order. Several Grade A and ungraded milk shippers, some or all of whose production is received at the manufacturing plant, also expressed opposition to reducing the Class I price.

A person who claims producer-handler status (although determined by the market administrator to be a pool handler) opposed reducing the Class I price because it would reduce the cost of milk to his competitors.

A cooperative representing about 25 percent of the producers on the market opposed any reduction in the Class I price on the basis that it would be reflected in reduced returns to producers.

The Class I price must be maintained at a level which, in conjunction with the Class II and Class III prices, will result in returns to producers high enough to maintain an adequate, but not excessive, supply of quality milk to meet the requirements of consumers, including necessary market reserves. The present Class I price is tending to attract increasingly larger quantities of milk for the market in excess of the market's fluid needs. In 1969, both producer deliveries and Class I sales of pool handlers increased by 4 percent over 1968. The 489 million pounds produced for the market in 1970 was 41 million pounds greater than production in 1969, an increase of 9 percent. Class I sales of pool milk were essentially unchanged, 275 million pounds in 1969 and 274 million pounds in 1970.

The accelerating rate of production for the market is further indicated by the 14 percent increase in the quantity of producer milk pooled in the last 3 months of 1970 over a year earlier. The deterioration in the ratio of Class I sales to producer deliveries is reflected in the 56 percent Class I utilization of producer deliveries in 1970 compared to utilizations of 61 percent, 62 percent and 61 percent, respectively in 1969, 1968 and 1967.

The rapidly expanding production relative to Class I sales is reflected in an increasingly larger spread between the Great Basin Class I and uniform prices. For the year 1970, the Class I price and the uniform price averaged $6.89 and $5.77, respectively, a difference of $1.12 which was 10 cents greater than in 1969.

Since producer-handlers operate essentially only a Class I business, the widening disparity between the Class I price and the uniform price provides a substantial incentive for individuals to operate as producer-handlers and this is reflected in the increased share of the total Class I sales which producer-handlers in this market have acquired.

Class I sales by producer-handlers are a substantial portion, about 10 percent, of the total Class I sales in the market. In 1970, when Class I sales of producer milk were 274 million pounds, producer-handler Class I distribution in the marketing area totaled 32 million pounds.

Milk from a number of farms in the Boise, Idaho, area is pooled under both the Great Basin and Oregon-Washington orders. Boise is 432 miles from Portland and 362 miles from Salt Lake City, the principal cities in the Oregon-Washington and Great Basin marketing areas, respectively. For December 1970, the Class I price, f.o.b. Boise, under the Oregon-Washington order was $6.125 (Class I price of $6.77 less 64.5 cents location adjustment) and under the Great Basin order $6.565 (Class I price of $7.04 less 47.5 cents location adjustment).

In addition to the milk from the Boise area actually moving from producers' farms to pool plants in the Great Basin and Oregon-Washington marketing areas, substantial additional quantities of milk are available in that area and at other locations in southern Idaho. Such other locations of potential supply in southern Idaho for the Great Basin market, and significantly closer to the market than Boise, are near Pocatello, Idaho Falls, and Twin Falls which cities are 164, 210, and 233 miles, respectively, from Salt Lake City.

It is concluded, therefore, that the present Class I price differential is not necessary to induce an adequate supply and is reduced 32 cents per hundredweight.

Based on the current utilization in the pool, the proposed 32-cent reduction in the Class I price in conjunction with the increase in the Class III price provided elsewhere in this decision will return to producers a uniform price approximating that realized from the present pricing in the order. It is expected, however, that the proposed price changes will encourage greater use of producer milk in Class I and thus, over the longer term, result in an improved marketing situation.

Some witnesses opposed lowering the Class I price on the basis that it would reduce returns to producers. In their testimony they held that if the Class I price were reduced, producers would increase their production but that the quantities of Class I milk sold would not be affected by such change in price. Such testimony advances the theory that the Class I price under an order should be reduced to encourage increased production for the market and be increased when an incentive to producers to reduce their production is needed. There is no economic foundation for this line of reasoning.

2. *Class III price.* The Class III price should be the basic formula price for the month.

The basic formula price (Minnesota-Wisconsin manufacturing milk price series) reflects the value of manufactur-

ing milk to processors in the major production areas of the United States. The Minnesota-Wisconsin price series is used as a basis for determining surplus class prices in a great majority of the Federal milk orders. Because manufactured milk products compete on a national market, it is important that the price for milk in such uses in this market be as close as possible to prices in other markets.

The order now uses a butter-nonfat dry milk formula to derive the Class III price. In 1970, when the order Class III price averaged $4.37, the Minnesota-Wisconsin average price was 29 cents more, $4.66.

The handler who proposed a 50-cent reduction in the Class I price also proposed increasing the Class III price to the level of the Minnesota-Wisconsin price. He cited particularly as a basis for his proposal that the Class III price is unreasonably low relative to prices being paid for manufacturing grade milk in this area, and is encouraging operators of manufacturing milk plants to lower their purchase cost of milk by attaching additional milk to the pool solely for manufacturing purposes and to obtain the uniform price (which exceeds local pay prices for manufacturing milk) for their dairy farmers.

Operators of plants, both regulated and unregulated, opposed using the Minnesota-Wisconsin price as the Class III price. These plants, the major outlets for surplus milk in the market, depend on receipts from both ungraded dairy farms and producers (Grade A milk) for their supplies.

The Class III price must be at such a level that handlers will accept and market those quantities of producer milk in excess of Class I needs. Otherwise some producer milk might be left without a market. The price, however, should not be so low that handlers under the regulation will be encouraged to seek milk supplies solely for the purpose of converting them into Class III products at the expense of producers generally.

Producers are not receiving the full market value through the pool for their Class III milk. Markets are available locally for milk for manufacturing purposes at prices substantially above the present Class III price. Regulated handlers can realize the higher market value of milk disposed of by them in such uses. Such higher value is not adequately reflected, however, in the payments made to producers under the order.

In December 1970, when the order Class III price was $4.49 and the Minnesota-Wisconsin price was $4.83 for milk of 3.5 percent butterfat content, manufacturing plants in the area generally paid prices even higher than the Minnesota-Wisconsin average. Substantial quantities of milk produced in the area are utilized in the manufacture of hard cheeses (American, Cheddar, Monterey, etc.). One cheese manufacturing plant receives milk from between 325 to 350 ungraded shippers. Prices paid for ungraded milk varies according to the volume, whether it is received in cans or via a bulk tank truck, and whether or not it is cooled at the farm. Although some shippers are paid as much as $5.10 for milk of 3.5 percent butterfat, the average price paid at this plant for milk from ungraded farms was about $4.90 in December.

The above plant also receives milk from pool plants, both as diverted milk and as shipments from such plants. The price paid for Class III milk this plant receives from a plant operated by a major cooperative in the market is about $5. The milk received as diverted milk from another pool handler is purchased at 25 cents above the Class III price, or essentially at the Minnesota-Wisconsin price.

A second cheese manufacturing plant in the area pays his shippers from $4.70 to $5 for milk containing 3.5 percent butterfat, depending on the volume of delivery.

The handler proposing a higher Class III price under the order receives milk from ungraded farms at a plant operated by him in Boise, Idaho. His pay price is $4.94 for milk of 3.5 percent butterfat. The milk is used to produce butter and nonfat dry milk.

In addition to their fluid milk operations, some cooperatives in the market operate manufacturing plants receiving milk from ungraded farms. The price paid at one such manufacturing plant in Utah is about $5 for milk containing 3.5 percent butterfat.

A cooperative in the Boise area, a handler under the order on the basis of member milk shipped regularly from the farms to a pool distributing plant in Salt Lake City, also disposes of substantial quantities of its member milk for manufacturing purposes to a condensing plant in Idaho. The price received by the cooperative f.o.b. its plant in Idaho is $5.06 for milk containing 3.5 percent butterfat. The cost of transporting the milk to the manufacturing plant, more than 100 miles away, is borne by the buyer.

The price for Class II milk (used to produce cottage cheese) is determined by adding 15 cents to the Class III price. There was no proposal before the hearing to change the relationship between the Class II and Class III prices, which heretofore has been found appropriate. This relationship is continued.

3. *Location differentials.* The location adjustment provisions of the order should not be changed.

The proposal in the hearing notice would replace Ogden and Provo with Salt Lake City as the basing point from which distances are measured in determining location adjustments. Proponent of the proposal offered no testimony at the hearing. Others who testified regarding location adjustments were concerned with aspects other than changing the basing point.

Two cooperatives proposed extending the area where no location adjustments are applicable. At present no location adjustments apply at plants within 150 miles of either Ogden or Provo. At any plant 150 miles or more from the nearer of these cities the Class I and uniform prices are reduced 22 cents, plus 1.5 cents for each additional 10 miles beyond 160 miles.

One of these cooperatives proposed replacing the 150-mile limit with any distance more than 164 miles, the mileage from Provo to the location of a nonpool manufacturing plant operated by the cooperative. This plant receives a supply from about 15 ungraded shippers, and from several producers under the order whose production is received as diverted milk on a number of days during most months. The uniform price under the order on milk diverted to the plant, which is pooled as Class III milk, is subject to a minus 23.5-cent location adjustment.

The cooperative's proposal, which would result in no location differential at its plant, would reduce its overall obligation in making settlement to the producer-settlement fund by an amount equal to 23.5 cents times the hundredweight of producer milk diverted to its plant. The cooperative stated that unless the change they request is made, it will not be economically feasible to operate this relatively small manufacturing plant.

A cooperative in the Boise area proposed that Ogden and Provo be retained as basing points, but that the base zone in which no location adjustment is applicable be extended from 150 to 200 miles. Such a change is designed to increase returns for producer milk diverted to manufacturing plants to the extent that the location adjustment is reduced or eliminated at the various nonpool manufacturing plants in southern Utah to which milk sometimes is diverted by the cooperative. The spokesman for the cooperative urged that the proposed change should be adopted because it would give more producers an opportunity to receive higher prices for their milk. Again, the milk diverted is utilized and pooled in Class III under the order.

The principal purpose of location pricing is to facilitate the economic movement of milk for Class I purposes from distant plants to the central market. It is not the purpose of location pricing to encourage the production of milk to supply the needs of manufacturing plants at distant locations from the market.

The proposals, if adopted, would not implement the movement of milk to the central market but instead would tend to attract additional unneeded supplies of milk for manufacturing purposes into the pool at the expense of producers regularly supplying the fluid market. The proposals are therefore denied.

4. *Pool plant qualifications.* (a) The monthly route disposition requirement for pooling a distributing plant should be not less than 50 percent of its total receipts in September through February, not less than 45 percent in March and April, and not less than 40 percent in May through August. These latter months are those of seasonally high production relative to demand.

A plant must now distribute at least 50 percent of its total receipts on routes in each month to qualify as a pool plant. The requirements that route disposition

in the marketing area during the month be at least 15 percent of the plant's total route disposition should not be changed.

In the notice of hearing, a cooperative proposed minimum monthly route disposition requirements for pooling of 40 percent of a plant's receipts of fluid milk products in May through August, 55 percent in October through January, and 45 percent in the remaining months of the year.

At the hearing, the cooperative modified its proposal to specify a minimum route disposition percentage of receipts for each month, ranging from 40 percent in June to 52 percent in October and January. The average Class I utilization percentage of producer milk each month in 1968, 1969 and 1970 was used as a guide for determining the proposed monthly percentages.

A cooperative excepted to the recommended decision's 40 percent minimum route disposition requirement for pooling in March, April, and August. It argued that a 45 percent minimum route disposition requirement would be more appropriate under conditions in the Great Basin market.

Production for the Great Basin market is heaviest in the months of May, June, July, and August. Production in August in recent years has been substantially the same as in the other 3 months. In 1970, when producer milk pooled in August was 43.3 million pounds, it was 42.6 million pounds in May, 42.8 million pounds in June and 43.2 million pounds in July. In view of this, it would be inappropriate to adopt a route disposition requirement for pooling in August different from the 40 percent rate deemed suitable for the other 3 months of seasonally high production.

Producer milk pooled in March and April 1970 was 40.9 million pounds and 39.8 million pounds, respectively. The production of Great Basin producers in these months has over the years been significantly below that in the flush production months of May-August. Adopting a 45 percent minimum route disposition requirement for March and April, as originally proposed in the hearing notice proposal, gives consideration to this.

The proponent cooperative represents a majority of Great Basin order producers. It operates pool plants and is primarily responsible for handling much of the reserve supplies of milk for the market. Unless the route disposition requirements for pooling are changed, the cooperative's distributing plant could fail to qualify as a pool plant in some months. This could result especially during the months of seasonally high production if the reserve supplies of milk for the market necessarily handled at such plant were to increase significantly from present levels.

There has been a substantial increase in production for the market relative to its Class I needs in recent years. This has resulted in the cooperative handling increasingly larger quantities of the expanded production at its pool distributing plant during the flush production months. In June 1970 and in some months in prior years, the 50 percent route disposition requirement was suspended from the order to enable the cooperative to handle surplus milk without losing pool plant status for its distributing plant.

The proposal to provide a different minimum route disposition percentage for each month (varying from 40 percent to 52 percent) to qualify a plant for pooling should not be adopted. Such a provision, which is an unnecessary refinement of the order, is impracticable and would accomplish no worthwhile purpose. The monthly route disposition percentage requirements for pooling herein adopted (50 percent in September–February, 45 percent in March and April, and 40 percent in May–August) provide a reasonable standard for establishing association of distributing plants with the market under current conditions. The requirements for pooling adopted should enable the cooperative which is responsible for handling a major portion of the reserve milk of the market to continue to perform this important service, particularly during the months of seasonally high production, with out endangering the pool plant status of its distributing plant.

Another cooperative suggested that no action be taken on the proposal to revise the pooling provisions, but that the relief sought be achieved by suspension action for each month as needed.

A suspension is not an appropriate alternative to amendment action. It would be inappropriate to continue as part of the order but to set aside for temporary periods by suspension action, a provision known to be unsuitable, in lieu of adopting the most appropriate provision through the hearing process.

The qualifying percentages adopted in this decision will contribute to stability and orderly marketing in the area by providing a basis for pooling distributing plants that are suited to present conditions in the Great Basin market.

(b) In determining its pool plant status, the total receipts on which the percentage of a plant's route disposition is computed should exclude receipts from other order plants used for manufacturing purposes. Such receipts are now included in the total receipts of a distributing plant in determining its qualification for pooling.

Milk so received is not available as a part of the regular supply for the market to serve fluid needs, and should not be allowed to affect the uniform price paid to Great Basin producers for their deliveries. The Great Basin order plant should have opportunity, however, to receive such milk for manufacturing use without adding to its difficulty in meeting pooling requirements. It is appropriate, therefore, for purposes of determining pool plant status, that milk received at a Great Basin order plant from another Federal order market not be counted as a receipt at the Great Basin order plant when such milk is classified as Class III at the receiving plant and is priced and pooled under the other order.

5. *Diversion of producer milk.* The milk of its producer members diverted from any pool distributing plant by a cooperative association operating a distributing plant should be considered as a receipt at the cooperative's plant in determining its performance for pool plant status.

Under the Great Basin order, both the milk of its members which a cooperative causes to be delivered to pool distributing plants of other handlers, and the quantity of all such milk assigned to Class I at such plants, are combined with the receipts and disposition of the cooperative's plant as a basis for qualifying its own pool distributing plant as a pool plant under the performance standards. This method of determining cooperative plant performance has been used in the market for a number of years. The only proposal at this hearing concerned the manner in which diverted milk would be counted under this general basis for pooling a cooperative's distributing plant.

The recommended decision proposed that milk diverted by a cooperative from its own, or any other, pool plant not be considered as a receipt at a pool plant in determining the pool plant status of the plant from which diverted. The basis for this action was that the provision whereby a cooperative may divert monthly to nonpool plants up to 25 percent of its producer members' deliveries to all pool plants in March–August, and up to 20 percent in September–February, would be fully adequate for maintaining a reasonable limit to the quantities of milk that may be diverted.

In their exceptions to the recommended decision, the major cooperatives urged that the diversion provisions be further tightened by providing that the total quantity of cooperative members' milk diverted from pool distributing plants (including a cooperative's own plant) be considered as a receipt at the cooperative's plant in determining whether it meets the percentage performance requirements for pool plant status.

Since the milk of its members physically received at and disposed of by all pool distributing plants at which member milk is received is used in determining the qualification of a cooperative's distributing plant as a pool plant, the member milk diverted by the cooperative from all such plants should be counted as part of the receipts at, and disposition from, the cooperative's plant.

Instituting such a provision in the order will provide a safeguard against adding to the pool unneeded supplies (via diversions) and will encourage inclusion in the pool of only that milk regularly associated with the market in meeting its Class I requirements.

6. *Computation of allowable shrinkage.* A cooperative proposed that the shrinkage provisions of the order apply to milk moved to a nonpool plant from a pool plant, by transfer or diversion, in the same manner that is now applicable on milk received at a pool plant from producers and other pool plants.

The order now provides for a maximum shrinkage allowance in Class III

at each pool plant of 2 percent of producer milk (except diverted milk) and of milk received from a cooperative in its capacity as a handler for bulk tank milk picked up at the farm, plus 1.5 percent of milk received in bulk from other pool plants and of bulk fluid milk products received from other order plants and unregulated supply plants (exclusive of the quantity of such receipts for which a Class III utilization is expressly requested by a handler), and less 1.5 percent of milk disposed of in bulk tank lots to other pool plants.

No provision is now made in the order for shrinkage on milk transferred or diverted from a pool plant to a nonpool plant. The incidence of shrinkage is no different on transfers of milk from a pool plant to a nonpool plant than it is on milk moved from one pool plant to another. Neither is it different if the milk is moved directly from the farm either to a pool plant or as diverted milk to a nonpool plant. It is appropriate, therefore, that the shrinkage provisions of the order be amended to apply to milk transferred and diverted from a pool plant to a nonpool plant the same as they do to milk moved between pool plants and moved directly from producers' farms to pool plants. Accordingly, an allowable 2 percent shrinkage at a pool plant on milk transferred or diverted to a nonpool plant would be reduced by 1.5 percent, and the pool plant would retain the remaining shrinkage allowance of not more than 0.5 percent on such milk.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

Evidence on proposals to make certain changes in the Class I and Class III pricing provisions of the order were excluded from the record by the presiding officer on the basis that they were not within the scope of the hearing. Offers of proof made by the parties submitting the proposals have been reviewed. The action taken by the presiding officer on them is hereby reaffirmed for the reasons stated by him on the record of the hearing.

General Findings

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the tentative marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held;

Rulings on Exceptions

In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received was carefully and fully considered in conjunction with the record evidence. To the extent that the findings and conclusions, and the regulatory provisions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

Marketing Agreement and Order

Annexed hereto and made a part hereof are two documents, a marketing agreement regulating the handling of milk, and an order amending the order regulating the handling of milk in the Great Basin marketing area which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered, That this entire decision, except the attached marketing agreement, be published in the Federal Register. The regulatory provisions of the marketing agreement are identical with those contained in the order as hereby proposed to be amended by the attached order which is published with this decision.

Determination of Producer Approval and Representative Period

March 1971 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the order, as amended and as hereby proposed to be amended, regulating the handling of milk in the Great Basin marketing area is approved or favored by producers, as defined under the terms of the order, as amended and as hereby proposed to be amended, and who, during such representative period, were engaged in the production of milk for sale within the aforesaid marketing area.

Signed at Washington, D.C., on June 3, 1971.

Richard E. Lyng,
Assistant Secretary.

Order[1] Amending the Order, Regulating the Handling of Milk in the Great Basin Marketing Area

Findings and Determinations

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings.* A public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Great Basin marketing area. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure (7 CFR Part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area, and the minimum prices specified in the order as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

Order relative to handling. It is therefore ordered that on and after the effective date hereof the handling of milk in the Great Basin marketing area shall be in conformity to and in compliance with the terms and conditions of the order, as amended, and as hereby amended, as follows:

The provisions of the proposed marketing agreement and order amending the order contained in the recommended

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

decision issued by the Deputy Administrator, Regulatory Programs, on April 14, 1971, and published in the FEDERAL REGISTER on April 20, 1971 (36 F.R. 7462), shall be and are the terms and provisions of this order, amending the order, and are set forth in full herein subject to the following modifications in § 1136.11:

1. Section 1136.11 is revised as follows:

§ 1136.11 Pool plant.

"Pool plant" means:

(a) A fluid milk plant, except a producer-handler plant, from which not less than 50 percent in any month of September through February, not less than 45 percent in any month of March and April, and not less than 40 percent in any month of May through August of the fluid milk products, except filled milk, approved by a duly constituted health authority for fluid consumption that are physically received at such plant (excluding milk received at such plant from other order plants or dairy farms which is classified in Class III under this order and which is subject to the pricing and pooling provisions of another order issued pursuant to the Act) or diverted therefrom as producer milk to a nonpool plant pursuant to § 1136.13 is disposed of on routes, and not less than 15 percent of such route disposition is on routes in the marketing area.

(1) For the purpose of determining the qualification pursuant to this paragraph of a fluid milk plant pursuant to § 1136.10 (a) operated by a cooperative association, producer milk which such cooperative association causes to be delivered to the pool plant of another handler or diverted therefrom shall be included with receipts of producer milk at such cooperative's plant and the quantity of such milk assigned to Class I pursuant to § 1136.22(h) shall be included as a Class I route disposition from such cooperative's plant;

(i) If such a cooperative association operates more than one fluid milk plant as defined in § 1136.10(a), such producer milk and class I milk shall be included in the computation for whichever plant the cooperative association requests in writing to the market administrator; and

(ii) If no such written request is made, such producer milk and class I milk shall be prorated among the plants; and

(2) If a handler operates more than one fluid milk plant, the combined receipts and fluid milk products disposition, except filled milk, of any such plants may be used as the basis for qualifying the respective plants pursuant to the preceding computations specified in this paragraph if a handler in writing so requests the market administrator.

* * * * *

2. Section 1136.13(c) is revised as follows:

§ 1136.13 Producer milk.

* * * * *

(c) Diverted from a pool plant to a nonpool plant that is not another order plant, a producer-handler plant or an exempt distributing plant, subject to the following conditions:

(1) Such milk shall be deemed to have been received by the diverting handler at the location of the plant to which diverted;

(2) Not less than 6 days' production of the producer whose milk is diverted is physically received at a pool plant;

(3) A cooperative association may divert for its account only the milk of member producers: *Provided*, That the total quantity of milk so diverted that exceeds 25 percent of the milk physically received at all pool plants from member producers in any month of March through August, and that exceeds 20 percent of such receipts in any month of September through February, shall not be producer milk;

(4) The operator of a pool plant other than a cooperative association may divert for his account only the milk of producers who are not members of a cooperative association: *Provided*, That the total quantity of milk so diverted that exceeds 25 percent of the milk physically received at such plant from producers who are not members of a cooperative association in any month of March through August, and that exceeds 20 percent of such receipts in any month of September through February, shall not be producer milk;

(5) The diverting handler shall designate the dairy farmers whose milk is not producer milk pursuant to subparagraphs (3) and (4) of this paragraph. If the handler fails to make such designation, no milk diverted by him shall be producer milk;

(6) Two or more cooperative associations may have their allowable diversions computed on the basis of the combined deliveries of milk by their members if each association has filed such a request in writing with the market administrator on or before the 1st day of the month the agreement is effective. This request shall specify the basis for assigning overdiverted milk to the producer members of each cooperative association according to a method approved by the market administrator; or

* * * * *

3. Section 1136.41(c)(5) is revised as follows:

§ 1136.41 Classes of utilization.

* * * * *

(c) * * *

(5) In shrinkage of skim milk and butterfat, respectively, at each pool plant, or a handler pursuant to § 1136.9(c), assigned pursuant to § 1136.45(b)(1), but not to exceed the following:

(i) Two percent of producer milk; plus

(ii) One and one-half percent of milk plus
received in bulk from other pool plants;

(iii) One and one-half percent of milk received from a handler pursuant to § 1136.9(c) (except that if the handler operating the pool plant files notice with the market administrator that he is purchasing such milk on the basis of farm weights, the applicable percentage shall be 2 percent); plus

(iv) One and one-half percent of receipts of fluid milk products in bulk from an other order plant, exclusive of the quantity for which class III utilization was requested by the operator of such plant and the handler; plus

(v) One and one-half percent of receipts of fluid milk products in bulk from unregulated supply plants, exclusive of the quantity for which class III utilizations was requested by the handler; less

(vi) One and one-half percent of milk transferred or diverted in bulk to other plants (except when the exception specified in subdivision (iii) of this subparagraph applies, the applicable percentage shall be 2 percent);

* * * * *

4. Section 1136.50 is revised as follows:

§ 1136.50 Class prices.

Subject to the provisions of §§ 1136.52 and 1136.53, the class prices per hundredweight for the month shall be as follows:

(a) *Class I milk price.* The class I milk price shall be the basic formula price for the preceding month plus $1.70 and plus 20 cents.

(b) *Class II milk price.* The class II milk price shall be the class III price for the month plus 15 cents.

(c) *Class III milk price.* The class III milk price shall be the basic formula price for the month.

[FR Doc.71-8008 Filed 6-8-71;8:48 am]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Federal Insurance Administration

[24 CFR Parts 1909, 1910]

[Docket No. R-71-116]

CRITERIA FOR LAND MANAGEMENT AND USE IN FLOOD-PRONE AREAS

Notice of Proposed Rule Making

Pursuant to the National Flood Insurance Act of 1968 (42 U.S.C. 4001, 82 Stat. 572, as amended by sections 408-410 of Public Law 91-152, 83 Stat. 396-397) and delegation of authority by the Secretary of Housing and Urban Development (34 F.R. 2680), the Federal Insurance Administrator proposes to amend Parts 1909 and 1910 of Subchapter B of Chapter VII of Title 24 of the Code of Federal Regulations.

Flood and mudslide insurance is available only in States or areas that have evidenced a positive interest in securing such insurance and have agreed to adopt by December 31, 1971, adequate land use and control measures (with effective enforcement provisions) consistent with criteria prescribed by the Federal Insurance Administrator. After December 31, 1971, no new flood or mudslide insurance may be provided and existing policies may not be renewed in any area that has not adopted such measures.

The purpose of these proposed amendments is to set out the minimum standards for adequate land use and control measures for each category of community, depending upon the amount of technical information available. Several

changes are proposed in the existing regulations. In Part 1909, definitions of floodproofing, coastal high-hazard area, 100-year flood, and water surface elevation data are added. The definition of substantial improvement is amended to include any repair, reconstruction, or improvement of a property, the cost of which equals or exceeds 50 percent of the value of the property either (a) before the improvement is started or (b) if the property has been damaged and is being restored, before the damage occurred. The effect of this amendment is reflected in § 1911.52 of the regulations, which states that any property located in an identified area having special flood hazards and which has been substantially improved can be insured only at actuarial rates. The definition of floodway is amended to exclude coastal areas, which are now designated as coastal high-hazard areas.

In § 1910.4, water pollution control on flood plains is added as a suggested State function. Sections 1910.6 and 1910.7 now specifically require first floor elevations of new structures to be at or above the level of the 100-year flood. Sections 1910.7, 1910.8, and 1910.9 contain specific performance standards that communities must meet by their subdivision planning requirements, health codes, and building codes. Section 1910.14 has been deleted and replaced by a new § 1910.45, which sets forth the minimum land use and control measures a community must adopt, based upon the amount of flood data available to it.

Interested persons are invited to participate in the making of the proposed rule by submitting data, comments, or suggestions on the proposed regulations, in triplicate, to the Federal Insurance Administrator, Department of Housing and Urban Development, Washington, D.C. 20410. Communications should identify the proposed rule by the above docket number and title. Prior to adoption of these regulations, the Administrator will consider all relevant comments or suggestions received within 30 days from the publication date of this notice. Copies of comments submitted will be available during business hours, both before and after the specified closing date, at the above address, for examination by interested persons.

The proposed changes are as follows:

1. The table of contents is amended by redesignating § 1910.9 as § 1910.10; by deleting § 1910.8 *Building and health code requirements* and replacing it with two new sections, § 1910.8 *Health code requirements* and § 1910.9 *Building code requirements;* and by redesignating § 1910.14 as § 1910.45 *Conditions for flood insurance eligibility.*

§ 1909.1 [Amended]

2. Section 1909.1 is amended by adding the following definitions in proper alphabetical sequence:

"Coastal high hazard area" means a special district subject to high velocity waters, including hurricane wave wash (identified as Av zones on appropriate Federal Insurance Administration Official Flood Hazard Maps). Areas with existing sand dune barriers or major erosion problems may be included in the special district in order to restrict their development.

"Floodproofing" means any combination of structural and nonstructural additions, changes, or adjustments to properties and structures, primarily for the reduction or elimination of flood damage to lands, water, and sanitary facilities, structures, and contents of buildings.

"100-year flood" means a flood of such magnitude as may reasonably be expected to be equaled or exceeded on an average of once every 100 years; the term also means that level of flooding having a 1 percent probability of occurrence in any year.

"Water surface elevation data" means the elevations in relation to mean sea level expected to be reached by floods of various magnitudes and frequencies at pertinent points along a stream or in the flood plains of coastal areas.

3. Section 1909.1 is further amended by revising the definitions of "floodway" and "substantial improvement" to read as follows:

"Floodway" means the minimum areas of a riverine flood plain reasonably required for passage of flood waters. The limits of the floodway will vary according to conditions within the flood plain.

"Substantial improvement" means any repair, reconstruction, or improvement of a property, the cost of which equals or exceeds 50 percent of the fair market value of the property either (a) before the improvement is started or (b) if the property has been damaged and is being restored, before the damage occurred. Substantial improvement is started when the first alteration of any wall, ceiling, floor, or other structural part of the building commences.

4. Section 1910.4(a) is amended by adding a new subparagraph (12) as follows:

§ 1910.4 State coordination.

(a) * * *

(12) Requiring that any proposed use of the flood plain which may cause pollution of waters be reviewed and approved by the State water pollution control agency to assure that proper safeguards are being provided to prevent such pollution.

* * * * *

5. Sections 1910.6 through 1910.9 are revised to read as follows:

§ 1910.6 Land use and control measures.

(a) After December 31, 1971, enforceable statutes, ordinances, regulations, or any similar measure or combination of measures, whether applicable on a statewide, regional, or local basis, shall provide adequate land use restrictions within each community eligible for the sale of Federal flood insurance on the basis of the relevant data with respect to flood exposure available to it. To be adequate, such measures must be applicable at a minimum to areas identified as flood plain areas having special flood hazards.

(b) There should be included in such measures a clear and comprehensive statement that their purpose is to encourage only that development of flood-prone areas which (1) is appropriate in the light of the probability of flood damage and the need to reduce flood losses, (2) represents an acceptable social and economic use of the land in relation to the hazards involved, and (3) does not increase the danger to human life; and to discourage all other development.

(c) To be acceptable, land use and control measures must be consistent with any flood plain management programs already in force in the areas adjacent to the jurisdiction involved, and shall meet any applicable State standards. They must generally prohibit all new construction or substantial improvement of properties within any floodway.

(d) Such measures must require structures to be elevated so as to assure protection from all reasonably expected flooding, and specifically prohibit the construction of first floor elevations below the level of the 100-year flood in any area where that level has been identified.

(e) In coastal areas, formal consideration must be given to the need for bulkheads, seawalls, and pilings before each new building permit is issued, and all new construction or substantial improvement of properties in identified coastal high hazard areas must be prohibited.

§ 1910.7 Subdivision planning requirements.

(a) Each community eligible for the sale of flood insurance shall adopt subdivision regulations which:

(1) Prohibit the development of flood-prone lands except as permitted by such regulations,

(2) Prohibit subdivision of lands within a flood plain area where the cost of providing utilities and governmental services in the area would pose an unreasonable economic burden,

(3) Require the location, elevation, and construction of all public utilities and facilities, such as sewer, gas, electrical, and water systems and streets in such a manner as to minimize or eliminate damage by flooding,

(4) Provide for adequate drainage so as to reduce the community's exposure to flood hazards and to prevent the aggravation of flood hazards with respect to adjacent and downstream communities,

(5) Specify the minimum elevations applicable to new developments, and

(6) Generally provide that no platted lot shall be approved that does not contain a suitable building site of sufficient elevation to permit construction utilizing a first floor elevation above the level of the 100-year flood.

(b) Riverine communities shall specifically require that any proposed use of land located within the areas of special flood hazards must meet the standards set forth in § 1910.45(f)(3) (i) through (iii) and may be platted for residential

use only if all parts of platted lots located within the floodway are expressly limited to open space uses. The local government may require subdividers to furnish delineations of the limits of all floodways as a prerequisite for subdivision approval. Fill shall not be permitted within the floodway except where the effect of such fill on flood heights is fully offset by stream improvements.

§ 1910.8 Health code requirements.

After December 31, 1971, enforceable State or local health codes or regulations within each community eligible for the sale of flood insurance shall require as a minimum that proposed land and construction improvements and developments in flood-prone areas:

(a) Utilize water supply systems and sanitary sewage systems designed to preclude infiltration of flood waters into the systems and discharges from the system into flood waters;

(b) Locate septic tanks to avoid impairment of them or contamination from them during flooding;

(c) Comply with applicable State and local water pollution control requirements; and

(d) Avoid unhealthful areas of pondage or accumulation of debris and obstacles in flooding situations.

§ 1910.9 Building code requirements.

(a) After December 31, 1971, enforceable State or local building codes or regulations within each community eligible for the sale of flood insurance shall require as a minimum that proposed improvements and developments in flood-prone areas provide the following flood damage abatement measures:

(1) Structures shall be designed to prevent flotation and collapse and to prevent damage to nonstructural elements. All mobile homes not on wheels and all frame structures, including prefabricated houses, shall be securely anchored to foundations in order to prevent flotation or lateral movement.

(2) Thermal insulation used below the first floor level shall be of a type that does not absorb water.

(3) Adhesives shall have a bonding strength that is unaffected by inundation.

(4) Doors and all wood trim shall be sealed with a water-proof paint or similar product.

(5) Water heaters, furnaces, electrical distribution panels, and other critical mechanical or electrical installations shall be prohibited in basements. Separate electrical circuits shall serve lower levels and shall be dropped from above.

(b) In addition to the building code requirements set forth in paragraph (a) of this section for all flood-prone areas, the following restrictions shall be applied to any proposed construction within identified flood plain areas having special flood hazards:

(1) No basement shall be permitted in any residential structure.

(2) Basements shall be permitted in nonresidential structures only if they are designed to preclude inundation by the 100-year flood, either by (i) the elimination of exterior openings below the 100-year flood level or (ii) the required use of water-tight closures, such as bulkheads and flood shields. However, no basements shall be permitted in soils whose permeability meets or exceeds the minimum local standards of permeability established for installation of individual sewage disposal systems.

(3) The following minimum building standards shall also apply:

(i) Plywood used at or below the first floor level shall be of an "exterior" or "marine" grade and of a water-resistant or waterproof variety.

(ii) Wood flooring used at or below the first floor level shall be installed to accommodate a lateral expansion of the flooring, perpendicular to the flooring grain, without incurring structural damage to the building.

(iii) Basement ceilings shall have sufficient wet strength and be so installed as to survive inundation.

(iv) Paints or other finishes used at or below the first floor level shall be capable of surviving inundation.

(v) All air ducts, large pipes, and storage tanks located at or below the first floor level shall be firmly anchored to prevent flotation. Tanks shall be vented at a location above the 100-year flood level.

§ 1910.10 Revisions.

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

6. Section 1910.14 is redesignated § 1910.45 and is revised to read as follows:

§ 1910.45 Conditions for flood insurance eligibility.

(a) Flood insurance coverage shall not be sold or renewed under the program within an eligible area after December 31, 1971, unless the appropriate public body having jurisdiction over the area has adopted land use and control measures (to be applied uniformly throughout the area to all privately and publicly owned lands) which the Administrator finds adequate and consistent with the criteria set forth in Subparts A and B of this Part 1910. The adequacy of such measures for each eligible area shall be determined on the basis of the applicable performance standards set forth in paragraph (f) of this § 1910.45, depending upon the amount of technical information available to each respective area. However, nothing in this § 1910.45 shall be construed as modifying or replacing the general requirement that all eligible areas must take into account flood and mudslide hazards, to the extent that they are known, in all official actions relating to land use or development.

(b) Areas identified in Part 1915 of this chapter as containing both flood plain areas having special flood hazards and mudslide areas having special mudslide hazards must adopt land use and control measures with respect to each type of hazard, or flood insurance will not be made available after December 31, 1971, within such areas.

(c) The land use and control measures required by this Part 1910 shall apply to all riverine and coastal flood plain areas, but shall have special application to those areas identified pursuant to Part 1915 of this chapter as having special flood hazards, as delineated on Official Flood Hazard Maps. Where special circumstances exist, the appropriate public body representing an eligible area may propose the adoption of a lower flood frequency standard than the 100-year flood for consideration by the Administrator, but it must submit comprehensive planning data in support of any such request and receive the Administrator's written approval of the standard proposed, if it is to avoid the loss of flood insurance.

(d) The land use and control measures adopted by each eligible area shall specify that:

(1) The boundaries of flood plains, flood plain areas having special flood hazards, and floodways shall be subject to amendment to conform with any amended boundaries identified by the Administrator, and

(2) Within the flood plain area having special flood hazards, the laws and ordinances concerning flood plains, flood proofing, floodway preservation, and other measures designed to reduce flood losses shall take precedence over any conflicting laws, ordinances, and codes.

(e) The Federal Insurance Administration will generally provide the data upon which local land use and control measures should be based. However, if the Federal Insurance Administration has not provided sufficient data to furnish a basis for these measures, the local government may use hydrological data obtained from other Federal or State agencies or from consulting services on an interim basis or, if the Administrator approves the use of such data, on a more permanent basis.

(f) The standards governing the adequacy of the local land use and control measures that must be in force by December 31, 1971, shall depend on the amount of technical data previously made available to the particular area by the Administrator, and shall be as follows:

(1) In eligible areas where the Administrator has declared the entire area a flood plain area having special flood hazards pursuant to § 1914.2(a) of this chapter and has not defined the special flood hazard area more precisely, has not provided water surface elevation data, and has not provided on the basis of available information data sufficient to identify the floodway or coastal high hazard area, the local government shall adopt the following measures with respect to the entire community:

(i) Applications for building permits shall be reviewed on a case-by-case basis by appropriate local officials to assure (*a*) that building sites will be reasonably safe from flooding, and (*b*) that where the building site is in a location that may have a flood hazard, all new construction and substantial repairs, improvements, or alterations will be floodproofed in acocrdance with the minimum floodproofing criteria specified in § 1910.9(a).

(ii) To the extent existing data permit, all proposed developments and improvements within the eligible area shall be designed and constructed in accordance with all of the other requirements of this Part 1910.

(2) Where the Administrator has identified a flood plain area within an eligible area as having special flood hazards, but has produced neither water surface elevation data nor data sufficient to identify the floodway or coastal high hazard area, the local government shall adopt the flood plain management measures required by subparagraph (1) of this paragraph, except that the case-by-case review of building permit applications need apply only to sites located within the area having special flood hazards.

(3) Where the Administrator has identified the flood plain area having special flood hazards, and has provided water surface elevations for the 100-year flood, but has not provided data sufficient to identify the floodway or coastal high hazard area, the minimum land use and control measures adopted by the local government for the flood plain shall include the following:

(i) Proposed permanent structures within the flood plain area having special flood hazards shall be required to have first floor elevations at or above the level of the 100-year flood. Exceptions may be granted by the local government only for nonresidential structures which, together with attendant utility and sanitary facilities, are adequately floodproofed up to the level of the 100-year flood.

(ii) No use, including land fill, shall be permitted within the eligible area if the proposed use, in conjunction with all other uses permitted since enactment of the ordinance, would increase water surface elevations of the 100-year flood more than 1 foot. An applicant for such land use may be required to furnish specific information as to the effect of his proposed action on future flood heights.

(iii) To the extent existing data permit, all proposed developments and improvements within the eligible area shall be designed and constructed in accordance with all of the other requirements of this Part 1910.

(iv) Any relocation or realignment of river and stream channels shall be prohibited if it would reduce the natural valley storage capacity of the area with respect to the 100-year flood.

(4) Where the Administrator has identified the riverine flood plain area having special flood hazards, has provided water surface location date for the 100-year flood, and has provided floodway data, the land use and control measures adopted by the local government for the flood plain shall include a zoning ordinance meeting the requirements of subparagraph (3) of this paragraph, plus the following additional requirements:

(i) Existing nonconforming uses in the floodway may be modified, altered, or repaired to incorporate floodproofing measures, but such nonconforming uses shall not be expanded.

(ii) The designated floodway shall remain free of encroachments that would impair its ability to carry and discharge the waters resulting from the 100-year flood without raising its natural profile more than 1 foot at any point.

(iii) Within the floodway, residential structures shall not be permitted. Open space uses shall be encouraged. Building permits shall be issued for nonresidential uses only if the applicant has demonstrated that the proposed use, in conjunction with all other uses permitted since enactment of the flood plain management ordinance, will not increase any water surface elevation of the 100-year flood by more than 1 foot. Fill shall not be permitted within the floodway except where the effect of such fill on flood heights is fully offset by stream improvements.

(5) Where the Administrator has identified the coastal flood plain area having special flood hazards, has provided water surface elevation data for the 100-year flood, and has provided data sufficient to identify a coastal high hazard area, the land use and control measures adopted by the local government for the flood plain shall include a zoning ordinance meeting the requirements of subparagraph (3) of this paragraph, plus the following additional requirements:

(i) Existing nonconforming uses in the coastal high hazard area may be modified, altered, or repaired to incorporated floodproofing measures, but such nonconforming uses shall not be expanded.

(ii) No area subject to high velocity waters shall be developed for residential use unless (*a*) structures are required to be elevated on poles or piles to a first floor level above the 100-year flood, located behind the normal high tide level, and securely anchored to piles or piers, and (*b*) spaces are left below first floors to minimize the impact of the wave of flood waters.

(g) No area eligible for the sale of flood insurance shall be required to meet the respective requirements of subparagraph (1), (2), or (3) of paragraph (f) of this section until 6 months from the date it receives the technical data required for compliance with the applicable subparagraph. However, at the end of the 6-month period or on December 31, 1971, whichever is later, each eligible area shall be required to comply with the requirements of the then applicable subparagraph, as determined on the basis of the data that have been available to it for such period.

(h) Areas applying after December 31, 1971, for eligibility for the sale of flood insurance shall be required to meet the standards of subparagraph (1) or (2) of paragraph (f) of this section, whichever is appropriate to the manner in which the area of the flood plain having special flood hazards has been determined. Thereafter, each eligible area shall be permitted a period of 6 months from the date of its receipt of the applicable data set forth in subparagraphs (3), (4), and (5) of paragraph (f) of this section, in which to meet the respective requirements of such subparagraphs.

(i) By December 31, 1971, communities that have been fdentified as containing mudslide areas having special mudslide hazards shall also be required to have enacted land use and control measures consistent with the criteria set forth in Subpart B of this part in order to retain eligibility for flood insurance. Communities that are identified after December 31, 1971, as containing special mudslide hazard areas must have enacted land use and control measures consistent with the criteria of Subpart B of this part in order to become eligible for flood insurance.

(j) The local government must certify that all proposed flood and mudslide land use and control measures were provided to the designated State coordinating agency prior to their adoption. The submission to the State must describe proposed enforcement procedures.

(k) After flood insurance is made available under the program, the locally designated responsible official in each eligible area shall submit an annual report to the Administrator on the progress that has been made during the past year within the area in the development and implementation of flood plain and mudslide area land management measures. The report shall be submitted on the anniversary date of the area's initial eligibility.

(l) Copies of each annual report shall also be submitted by the responsible official to the coordinating agency designated by the Governor and to other appropriate State and local bodies. The Administrator shall be informed of the agencies to which the annual reports are sent.

(m) Local governments having jurisdiction over flood-prone areas may submit requests for waivers of one or more of the specific requirements set forth in this Part 1910, whether or not the area is eligible for flood insurance at the time of the request, but no waiver request from an eligible area will be considered by the Administrator with respect to the requirements of paragraph (f) of this § 1910.45 unless it is submitted at least 90 days prior to December 31, 1971.

GEORGE K. BERNSTEIN,
Federal Insurance Administrator.

[FR Doc.71-8020 Filed 6-8-71;8:49 am]

ATOMIC ENERGY COMMISSION

[10 CFR Part 50]

LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

Light-Water-Cooled Nuclear Power Reactors

The Atomic Energy Commission has under consideration amendments to its regulation, 10 CFR Part 50, "Licensing of Production and Utilization Facilities," which would supplement the regulation with a new Appendix I to that part to provide numerical guides for design objectives and technical specification requirements for limiting conditions for operation for light-water-cooled nuclear power reactors to keep radioactivity in effluents as low as practicable.

On December 3, 1970, the Atomic Energy Commission published in the FEDERAL REGISTER (35 F.R. 18385) amendments to 10 CFR Part 50 that specified design and operating requirements for nuclear power reactors to keep levels of radioactivity in effluents to unrestricted areas as low as practicable. The amendments provided qualitative guidance, but not numerical criteria, for determining when design objectives and operations meet the requirements for keeping levels of radioactivity in effluents as low as practicable.

The Commission noted in the Statement of Considerations published with the amendments the desirability of developing more definitive guidance in connection with the amendments and that it was initiating discussions with the nuclear power industry and other competent groups to achieve that goal.

The Commission considers that the proposed numerical guides for design objectives and technical specification requirements for limiting conditions for operation for light-water-cooled nuclear power reactors set out below would meet the criterion "as low as practicable" for radioactive material in effluents released to unrestricted areas. The guidance would be specifically applicable only to light-water-cooled nuclear power reactors and would not necessarily be appropriate for other types of nuclear power reactors and other kinds of nuclear facilities.

As noted in the Statement of Considerations accompanying the amendments to Part 50 published in the FEDERAL REGISTER on December 3, 1970, the Commission has always subscribed to the general principle that, within established radiation protection guides, radiation exposures to the public should be kept as low as practicable. This general principle has been a central one in the field of radiation protection for many years. Operating licenses include provisions to limit and control radioactive effluents from the plants. Experience has shown that licensees have generally kept exposures to radiation and releases of radioactivity in effluents to levels well below the limits specified in 10 CFR Part 20. Specifically, experience with licensed light-water-cooled nuclear power reactors to date shows that radioactivity in water and air effluents has been kept at low levels—for the most part small percentages of the Part 20 limits. Resultant exposures to the public living in the immediate vicinity of operating power reactors have been small percentages of Federal radiation protection guides.

The Commission also noted that, in general, the release of radioactivity in effluents from nuclear power reactors now in operation have been within ranges that may be considered "as low as practicable," and that, as a result of advances in reactor technology, further reduction of those releases can be achieved. The amendments to Part 50 published on December 3, 1970, were intended to give appropriate regulatory effect, with respect to radioactivity in effluents from nuclear power reactors, to the qualitative guidance of the Federal Radiation Council that radiation doses should be kept "as low as practicable". The proposed guides set out below are intended to provide quantitative guidance to that end for light-water-cooled nuclear power reactors.

The proposed numerical guides are based on present light-water-cooled nuclear power reactor operating experience and state of technology (including recent improvements). In developing the guides the Commission has taken into account comments and suggestions by representatives of power reactor suppliers, electrical utilities, architect-engineering firms, environmental and conservation groups and States in which nuclear power reactors are located on the general subject of definitive guidance for nuclear power reactors. Meetings were held by the Commission with these groups in January and February 1971. The participants in these meetings were provided an opportunity to express their views on the need for more definitive guidance for design objectives for light-water-cooled nuclear power reactors to keep radioactivity in effluents as low as practicable; whether the guidance should be expressed in terms of waste treatment equipment requirements and performance specifications or numerical criteria on quantities and concentrations released to the environment; and to suggest what equipment or numerical criteria would be appropriate at this time.

Generally, the participants favored numerical criteria. Views were expressed that the criteria should be derived from potential doses to people or in the form of quantities and concentrations of radioactive material emitted to the environment. Some opinions were expressed that present technology (including recent improvements) is such that light-water-cooled nuclear power reactors can be designed to keep exposures to the public in the offsite environment within a few percent of exposures from natural background radiation.

The participants also stressed the importance of operating flexibility to take into account unusual conditions of operation which may, on a temporary basis, result in exposures higher than the few percent of natural background radiation, but well within radiation protection guides. Recognition of the need for this operating flexibility is currently stated in § 50.36a(b).

The Commission believes that the proposed guides for design objectives and limiting conditions for operation for light-water-cooled nuclear power reactors set out below provide a reasonable basis at the present time for implementing the principle that radioactive material in effluents released to unrestricted areas should be kept "as low as practicable." As noted in the amendments to Part 50 published on December 3, 1970, "The term 'as low as practicable' as used in this part means as low as is practicably achievable taking into account the state of technology, and the economics of improvements in relation to benefits to the public health and safety and in relation to the utilization of atomic energy in the public interest." The Commission will continue to evaluate the appropriateness of these guides for light-water-cooled nuclear power reactors in light of further operating experience.

Under the President's Reorganization Plan No. 3 of 1970, the Environmental Protection Agency (EPA) is responsible for establishing generally applicable environmental radiation standards for the protection of the general environment from radioactive materials. The AEC is responsible for the implementation and enforcement of EPA's generally applicable environmental standards.

EPA has under consideration generally applicable environmental standards for these types of power reactors. AEC has consulted EPA in the development of the guides on design objectives and limiting conditions for operation set forth below to control radioactivity in effluent releases. If the design objectives and operating limits established herein should prove to be incompatible with any generally applicable environmental standard hereafter established by EPA, the AEC will modify these objectives and limits as necessary.

The proposed guides for design objectives and limiting conditions for operation for light-water-cooled nuclear power reactors are consistent with the basic radiation protection standards and guides recommended by the International Commission on Radiological Protection (ICRP), the National Council on Radiation Protection and Measurements (NCRP), and the Federal Radiation Council (FRC). (The functions of the FRC were transferred to the Environmental Protection Agency pursuant to Reorganization Plan No. 3 of 1970.) These standards form the basis for the Commission's regulation, 10 CFR Part 20, "Standards for Protection Against Radiation". In this regard, the NCRP announced on January 26, 1971, the release of NCRP Report No. 39, "Basic Radiation Protection Criteria". The NCRP noted that a 10-year study by the

Council has confirmed the validity of most of the basic radiation protection criteria presently used by governmental agencies to regulate the exposure of the population and of radiation workers. The dose limits for individual members of the public remain at 0.5 rem per year and the yearly dose limit of 0.17 rem per person averaged over the population is unchanged. These limits are compatible with the limits and guides recommended by the ICRP and the FRG and apply to exposures from all sources other than medical procedures and natural background.

The NCRP–ICRP–FRC recommended limits and guides give appropriate consideration to the overall requirements of health protection and the beneficial use of radiation and atomic energy. Any biological effects that may occur at the low levels of the limits and guides occur so infrequently that they cannot be detected with existing techniques. The standards setting groups have added to the numerical guidance the general admonition that all radiation exposure should be held to lowest practicable level. This admonition takes into account that generally applicable standards or rules established to cover many situations must necessarily be set at a higher level than may be justified in any given individual situation.

The acceptability of a given level of exposure for a particular activity can be determined only by giving due regard to the reasons for permitting the exposure. This means that, within the basic standards of FRC, NCRP, and ICRP, different limitations on exposure levels are appropriate for various types of activities depending upon the circumstances. A level that is practicable for one type of activity may not be practicable for a different type of activity.

The proposed guides for design objectives and limitations on operations set forth below would be specifically applicable to light-water-cooled nuclear power reactors. Light-water-cooled nuclear power reactors are the only type of power reactors that are being installed in relatively large numbers and on which there is substantial operating experience in the United States. The guides would not necessarily be appropriate for controling levels of radioactivity in effluents from other types of nuclear power reactors. On the basis of present information on the technology of these other types of reactors, it is expected that releases of radioactivity in effluents can generally be kept within the proposed guides for light-water-cooled nuclear power reactors. The Commission plans to develop numerical guides on levels of radioactivity in effluents that may be considered as low as practicable for other types of nuclear power reactors such as gas cooled and fast breeder reactors as adequate design and operating experience is acquired. In the meantime, design objectives and technical specifications for limiting conditions for operation to carry out the purposes of keeping levels of radioactivity in effluents to unrestricted areas as low as practicable will be specified for other types of nuclear power reactors on a case-by-case basis.

Neither would the guides necessarily be appropriate for controlling levels of radioactivity in effluents from other kinds of nuclear facilities such as fuel reprocessing plants, fuel fabrication plants, or radioisotope processing plants where the design characteristics of the plant and nature of operations involve different considerations. The Commission is giving further consideration to appropriate amendments to its regulations to specify design objectives and limiting conditions for operation to minimize levels of radioactivity released in the operation of other types of licensed facilities such as reactor fuel reprocessing plants.

Expected consequences of guides for design objectives. The proposed guides for design objectives for light-water-cooled nuclear power reactors have been selected primarily on the basis that existing technology makes it feasible to design and operate light-water-cooled nuclear power reactors within the guides. The design objectives are expressed in terms of guides for limiting the number of quantities and for limiting concentrations of radioactive materials in effluents. It is expected that conformance with the guides on design objectives would achieve the following results:

1. Provide reasonable assurance that annual exposures to individuals living near the boundary of a site where one or more light-water-cooled nuclear power reactors are located, from radioactivity released in either liquid or gaseous effluents from all such reactors, will generally be less than about 5 percent of average exposures from natural background radiation.[1] This level of exposure is about 1 percent of Federal radiation protection guides for individual members of the public.

2. Provide reasonable assurance that annual exposures to sizeable population groups from radioactivity released in either liquid or gaseous effluents from all light-water-cooled nuclear power reactors on all sites in the United States for the foreseeable future will generally be less than about 1 percent of exposures from natural background radiation. This level of exposure is also less than 1 percent of Federal radiation protection guides for the average population dose.

These levels of exposure would be indistinguishable from exposures due to variation in natural background radiation, would not be measurable with existing techniques, and would be estimated from effluent data from nuclear power plants by calculational techniques. These levels of exposure are obviously very low in comparison with the much higher exposures incurred by the public from natural background due to cosmic radiation, natural radioactivity in the body and in all materials with which people come into contact, air travel, and from many activities commonly engaged in by the public.

Specific provisions of guides for design objectives. The proposed guides for radioactive materials in liquid effluents would specify limitations on annual total quantities of radioactive material, except tritium, and annual average concentrations of radioactive material in effluent, prior to dilution in a natural body of water, released by each light-water-cooled nuclear power reactor at a site. The release of the concentrations and total quantity of radioactive material from a site at these levels is not likely to result in exposures to the whole body or any organ of an individual in the offsite environment in excess of 5 millirems. In deriving the guides on design objective quantities and concentrations, conservative assumptions have been made on dilution factors, physical, and biological concentration factors in the food chain, dietary intakes and other pertinent factors to relate quantities released to exposures offsite.

The proposed guides for design objectives for radioactive materials in gaseous effluents would limit the total quantity of radioactive material released from a site to the offsite environment so that annual average exposure rates due to noble gases at any location on the boundary of the site or in the offsite environment would not be likely to exceed 10 millirems. Annual average concentrations at any location on the boundary of a site or in the offsite environment from radioactive iodines or radioactive material in particulate form would be limited to specified values.

The proposed guides for design objective concentrations specified for radioactive iodines or radioactive material in particulate form would include a reduction factor of 100,000 for Part 20 concentration values in air that would allow for possible exposures from certain radioactive materials that may be concentrated in the food chain. Resultant exposures to individuals offsite would not be expected to exceed 5 millirems per year. The reduction factor would include a 1,000 factor by which the maximum permissible concentration of radioactive iodine in air should be reduced to allow for the milk exposure pathway. This factor of 1,000 has been derived for radioactive iodine, taking into account the milk pathway. However, it has been arbitrarily applied to radionuclides of iodine and to all radionuclides in particulate form with a half-life greater than 8 days. The factor is not appropriate for iodine where milk is not a pathway of exposure or for other radionuclides under any actual conditions of exposure. The factor is highly conservative for radionuclides other than iodine and is applied only because it appears feasible to meet these very low levels. The specified annual average exposure rates of 10 millirems from noble gases and specified concentrations of radioiodines and particulates at any location on the boundary

[1] Average exposures due to natural background radiation in the United States are in the range of 100–125 millirems per year.

of the site or in the offsite environment provide reasonable assurance that actual annual exposures to the whole body or any organ of an individual member of the public will not exceed 5 millirems.

The proposed guides for design objectives would provide that an applicant for a permit to construct a light-water-cooled nuclear power reactor at a particular site could propose design objective quantities and concentrations in effluents higher than those specified in the guides. The Commission would approve the design objectives if the applicant provided reasonable assurance that, taking into account the environmental characteristics of the site, the concentrations and total quantity of radioactive material released by all light-water-cooled nuclear power reactors at the site in either liquid or gaseous effluents would not result in actual exposures to the whole body or any organ of an individual in the offsite environment in excess of 5 millirems per year.

The proposed guides for design objectives (expressed as quantities and concentrations in effluents) for light-water-cooled nuclear power reactors are sufficiently conservative to provide reasonable assurance that, for most locations having environmental characteristics likely to be considered acceptable by the Commission for a nuclear power reactor site, increases in radiation exposures to individual members of the public living at the site boundary, due to radioactive material in either liquid or gaseous effluents from operation of light-water-cooled nuclear power reactors at the site, will generally be less than 5 millirems per year and average exposures to sizeable population groups will generally be less than 1 millirem per year. Nevertheless, the guides provide that the Commission may specify, as design objectives, quantities and concentrations of radioactive material above background in either liquid or gaseous effluents to be released to unrestricted areas that are lower than the specified quantities and concentrations if it appears that for a particular site the specified quantities and concentrations are likely to result in annual exposures to an individual that would exceed 5 millirems.

Conformance with the proposed guides for design objective quantities and concentrations in effluents would provide reasonable assurance that the resultant whole body dose to the total population exposed would be less than about 400 man-rems[2] per year per 1,000 megawatts electrical installed nuclear generating capacity at a site from radioactive material in liquid and gaseous effluents. Average exposures to large population groups would be less than 1 millirem per year.

Guides on technical specifications limiting conditions for operation. The proposed guidance would include provisions for developing technical specifications with respect to limiting conditions for operation to control radioactivity in effluents from light-water-cooled nuclear power reactors during normal operations. The technical specifications would be included as conditions in operating licenses. These provisions are designed to assure that reasonable efforts are made to keep actual releases of radioactivity in effluents during operation to levels that are within the guides on design objective quantities and concentrations. It is expected that actual levels of radioactivity in effluents will normally be within the design objective levels. It is necessary, however, that nuclear power reactors designed for generating electricity have a high degree of reliability. Operating flexibility is needed to take into account some variation in the small quantities of radioactivity that leak from fuel elements which may, on a transient basis, result in levels of radioactivity in effluents in excess of the design objective quantities and concentrations.

The proposed guidance would provide operating flexibility and at the same time assure a positive system of control, by a graded scale of action by the licensee, to reduce releases of radioactivity if rates of release actually experienced, averaged over any calendar quarter, are such that the quantities or concentrations in effluents would be likely to exceed twice the design objective quantities and concentrations. The proposed Appendix I would provide that the Commission may take appropriate action to assure that release rates are reduced if rates of release of quantities and concentrations in effluents actually experienced, averaged over any calendar quarter, indicate that annual rates of release are likely to exceed a range of 4–8 times the design objective quantities and concentrations. Release rates within this range would be expected to keep the annual exposure rate to individuals offsite within a range of 20–40 mrems per year during the quarterly period. In the proposed guidance on technical specifications, provision would be made for an appropriate period of time for all licensees of light-water-cooled nuclear power reactors to implement the guidance with respect to facility operation.

Pursuant to the Atomic Energy Act of 1954, as amended, and section 553 of title 5 of the United States Code, notice is hereby given that adoption of the following amendment to 10 CFR Part 50 is contemplated. All interested persons who wish to submit comments or suggestions in connection with the proposed amendment should send them to the Secretary of the Commission, U.S. Atomic Energy Commission, Washington, D.C., 20545, Attention: Chief, Public Proceedings Branch, within 60 days after publication of this notice in the FEDERAL REGISTER. Comments and suggestions received after that period will be considered if it is practicable to do so, but assurance of consideration cannot be given except as to comments filed within the period specified. Copies of comments received may be examined in the Commission's Public Document Room at 1717 H Street NW., Washington, D.C.

1. Section 50.34a of 10 CFR Part 50 is amended by adding the following sentence at the end of paragraph (a):

§ 50.34a Design objectives for equipment to control releases of radioactive material in effluents—nuclear power reactors.

(a) * * * The guides set out in Appendix I provide numerical guidance on design objectives for light-water-cooled nuclear power reactors to meet the requirement that radioactive material in effluents released to unrestricted areas be kept "as low as practicable."

* * * * *

2. Section 50.36a of 10 CFR Part 50 is amended by adding the following sentence at the end of paragraph (b):

§ 50.36a Technical specifications on effluents from nuclear power reactors.

* * * * *

(b) * * * The guides set out in Appendix I provide numerical guidance on limiting conditions for operation for light-water-cooled nuclear power reactors to meet the requirement that radioactive materials in effluents released to unrestricted areas be kept "as low as practicable."

3. A new Appendix I is added to read as follows:

APPENDIX I—NUMERICAL GUIDES FOR DESIGN OBJECTIVES AND LIMITING CONDITIONS FOR OPERATION TO MEET THE CRITERION "AS LOW AS PRACTICABLE" FOR RADIOACTIVE MATERIAL IN LIGHT-WATER-COOLED NUCLEAR POWER REACTOR EFFLUENTS

SECTION I. *Introduction.* Section 50.34a(a) provides that an application for a permit to construct a nuclear power reactor shall include a description of the preliminary design of equipment to be installed to maintain control over radioactive materials in gaseous and liquid effluents produced during normal reactor operations, including expected operational occurrences. In the case of an application filed on or after January 2, 1971, the application must also identify the design objectives, and the means to be employed, for keeping levels of radioactive material in effluents to unrestricted areas "as low as practicable".

Section 50.36a contains provisions designed to assure that releases of radioactivity from nuclear power reactors to unrestricted areas during normal reactor operations, including expected operational occurrences, are kept "as low as practicable".

This appendix provides numerical guidance on design objectives and limiting conditions for operation to assist applicants for, and holders of, licenses for light-water-cooled nuclear power reactors in meeting the requirement that radioactive material in effluents released from those facilities to unrestricted areas be kept "as low as practicable". This guidance is appropriate only for light-water-cooled nuclear power reactors and not for other types of nuclear facilities.

[2] A useful measure of the total exposure of a large number of persons is the man-rem. The exposure of any group of persons measured in man-rems is the product of the number of persons in the group times the average exposure in rems of the members of the group. Thus, if each member of a population group of 1 million people were exposed to 0.001 rem (1 millirem), the total man-rem exposure would be 1,000 man-rem.

SEC. II. *Guides on design objectives for light-water-cooled nuclear power reactors licensed under 10 CFR Part 50.* The guides for design objectives (expressed as quantities and concentrations of radioactive material in effluents) for light-water-cooled nuclear power reactors specified in paragraphs A and B of this section are sufficiently conservative to provide reasonable assurance that, for most locations having environmental characteristics likely to be considered acceptable by the Commission for a nuclear power reactor site, resultant increases in radiation exposures to individual members of the public living at the site boundary, due to operation of light-water-cooled nuclear power reactors at the site, will generally be less than 5 percent of exposures due to natural background radiation and average exposures to sizeable population groups will generally be less than 1 percent of exposures due to natural background radiation. The guides on design objectives for light-water-cooled nuclear power reactors set forth in paragraphs A and B of this section may be used by an applicant for a permit to construct a light-water-cooled nuclear power reactor as guidance in meeting the requirements of § 50.34a(a) that applications filed after January 2, 1971, identify the design objectives, and the means to be employed, for keeping levels of radioactive material in effluents to unrestricted areas as low as practicable.

A. For radioactive material above background in liquid effluents to be released to unrestricted areas by each light-water-cooled nuclear power reactor at a site:

1. The estimated annual total quantity of radioactive material, except tritium, should not exceed 5 curies; and

2. The estimated annual average concentration of radioactive material prior to dilution in a natural body of water, except tritium, should not exceed 0.00002 microcurie (20 picocuries) per liter; and

3. The estimated annual average concentration of tritium prior to dilution in a natural body of water should not exceed 0.005 microcurie (5,000 picocuries) per liter.

B. For radioactive material above background in gaseous effluents, the estimated total quantities of radioactive material to be released to unrestricted areas by all light-water-cooled nuclear power reactors at a site should not result in:

1. An annual average exposure rate due to noble gases at any location on the boundary of the site or in the offsite environment in excess of 10 millirems;[3] and

* * * * *

2. Annual average concentrations at any location on the boundary of the site or in the offsite environment of radioactive iodines, or radioactive material in particulate form with a half-life greater than 8 days, in excess of the concentrations in air specified in Appendix B, Table II, Column I, of 10 CFR Part 20, divided by 100,000.

C. Notwithstanding the guidance in paragraphs A and B above, design objectives, based on quantities and concentrations of radioactive material above background in effluents to be released to unrestricted areas, higher than those specified in those paragraphs may be deemed to meet the requirement for keeping levels of radioactive material in effluents to unrestricted areas as low as practicable if the applicant provides reasonable assurance that:

1. For radioactive material above background in liquid effluents to be released to unrestricted areas by all light-water-cooled nuclear power reactors at a site, the proposed higher quantities or concentrations will not result in annual exposures to the whole body or any organ of an individual in excess of 5 millirems; [4] and

2. For radioactive noble gases and iodines and radioactive material in particulate form above background in gaseous effluents to be released to unrestricted areas by all light-water-cooled nuclear power reactors at a site, the proposed higher quantities and concentrations will not result in annual exposures to the whole body or any organ of an individual in excess of 5 millirems.

D. Notwithstanding the guidance in paragraphs A, B, and C above, for a particular site the Commission may specify, as guidance on design objectives, lower quantities and concentrations of radioactive material above background in effluents to be released to unrestricted areas if it appears that the use of the design objectives described in those paragraphs is likely to result in releases of total quantities of radioactive material from all light-water-cooled nuclear power reactors at the site that are estimated to cause an annual exposure in excess of 5 millirems to the whole body or any organ of an individual in the offsite environment from radioactive material above background in either liquid or gaseous effluents.

SEC. III. *Guides on technical specifications for limiting conditions for operation for light-water-cooled nuclear power reactors licensed under 10 CFR Part 50.* The guides on limiting conditions for operation for light-water-cooled nuclear power reactors set forth below may be used by an applicant for a license to operate a light-water-cooled nuclear power reactor as guidance in developing technical specifications under § 50.36a(a) to keep levels of radioactive materials in effluents to unrestricted areas as low as practicable.

Section 50.36a(b) provides that licensees shall be guided by certain considerations in establishing and implementing operating procedures that take into account the need for operating flexibility while at the same time assure that the licensee will exert his best effort to keep levels of radioactive material in effluents as low as practicable. The guidance set forth below provides more specific guidance to licensees in this respect.

In using the guides set forth in section IV it is expected that it should generally be feasible to keep average annual releases of radioactive material in effluents from light-water-cooled nuclear power reactors within the levels set forth as numerical guides for design objectives in section II above. At the same time, the licensee is permitted the flexibility of operation, compatible with considerations of health and safety, to assure that the public is provided a dependable source of power even under unusual operating conditions which may temporarily result in releases higher than such numerical guides for design objectives, but still within levels that assure that actual exposures to the public are small fractions of natural background radiation. It is expected that in using this operational flexibility under unusual operating conditions, the licensee will exert his best efforts to keep levels of radioactive material in effluents within the numerical guides for design objectives.

SEC. IV. *Guides for limiting conditions for operation for light-water-cooled nuclear power reactors.* A. If rates of release of radioactive materials in effluents from light-water-cooled nuclear power reactors actually experienced, averaged over any calendar quarter, are such that the estimated annual quantities or concentrations of radioactive material in effluents are likely to exceed twice the design objective quantities and concentrations set forth in section II above, the licensee should:

1. make an investigation to identify the causes for such release rates; and

2. define and initiate a program of action to reduce such release rates to the design levels; and

3. report these actions to the Commission on a timely basis.

B. If rates of release of radioactive material in liquid or gaseous effluents actually experienced, averaged over any calendar quarter, are such that estimated annual quantities or concentrations of radioactive material in effluents are likely to exceed a range of 4–8 times the design objective quantities and concentrations set forth in section II above,[5] the Commission will take appropriate action to assure that such release rates are reduced. (Section 50.36a(a)(2) requires the licensee to submit certain reports to the Commission with regard to the quantities of the principal radionuclides released to unrestricted areas. It also provides that, on the basis of such reports and any additional information the Commission may obtain from the licensee and others, the Commission may from time to time require the licensee to take such action as the Commission deems appropriate.)

C. The guides for limiting conditions for operation described in paragraphs A and B of this section are applicable to technical

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[3] An exposure rate such that a hypothetical individual continuously present in the open at any location on the boundary of the site or in the offsite environment would not incur an annual exposure in excess of 5 millirems. This neglects the reduction in the exposures to a real individual that would be afforded by the distance from the site boundary at which the individual is located, shielding provided by living indoors and periods of time the individual is not present in the area.

[4] For purposes of the guides in Appendix I, exposure of members of the public should be estimated from distributions in the environment of radioactive material released in effluents. For estimates of external exposure the rem may be considered equivalent to the rad; and account should be taken of the appropriate physical parameters (energy of radiation, absorption coefficients, etc.). Estimates of internal dose commitment, in terms of the common unit of dose equivalence (rem), should be generally consistent with the conventions or assumptions for calculational purposes most recently published by the International Commission on Radiological Protection which apply directly to intakes of radioactive material from air and water, and those applicable to water may be applied to intakes from food. These conventions or assumptions should be used for calculations of dose equivalence except for exposures due to strontium-89, strontium-90, or radionuclides of iodine. For those radionuclides the biological and physical assumptions of FRC Report No. 2 should be used. It is assumed that annual average concentrations of radioactive iodine in the environment, as listed in Part 20, Appendix B, Table II, would result in annual doses of 1.5 rems to the thyroid and the concentration of strontium-89 or strontium-90 would result in annual doses of 0.5 rem to the bone. Exposure to the whole body should be assessed as exposure to the gonads or red bone marrow.

[5] Release rates within this range would be expected to keep the annual exposure rate to individuals offsite within a range of 20–40 mrems per year during this quarterly period.

specifications included in any license authorizing operation of a light-water-cooled nuclear power reactor constructed pursuant to a construction permit for which application was filed on or after January 2, 1971. For light-water-cooled nuclear power reactors constructed pursuant to a construction permit for which application was filed prior to January 2, 1971, appropriate technical specifications should be developed to carry out the purposes of keeping levels of radioactive material in effluents to unrestricted areas as low as practicable. In any event, all holders of licenses authorizing operation of a light-water-cooled nuclear power reactor should, after (36 months from effective date of this guide), develop technical specifications in conformity with the guides of this Section.

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

Dated at Washington, D.C., this 4th day of June 1971.

For the Atomic Energy Commission.

W. B. McCool,
Secretary of the Commission.

[FR Doc.71-8049 Filed 6-8-71;8:51 am]

Notices

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

CHIEFS, LANDS AND MINING SECTION AND OIL AND GAS SECTION, BRANCH OF LANDS AND MINERALS OPERATIONS, WYOMING STATE OFFICE

Redelegation of Authority

JUNE 2, 1971.

1. Pursuant to the authority contained in the Redelegation of Authority published in the FEDERAL REGISTER on May 15, 1971, as F.R. Doc. 71-6794, I hereby redelegate to the Chief, Lands and Mining Section and the Chief, Oil and Gas Section in the Branch of Lands and Minerals Operations, authority to take action on the following matters listed in Part I of Bureau Order No. 701 of July 23, 1964, as amended:

A. *Chief, Lands and Mining Section.*

Sec.	Sec.	Sec.
2.2(b)	2.6(k)	2.9(i)
2.3(a)	2.6(l)	2.9(j)
2.3(c)	2.9(a)	2.9(k)
2.6(b)	2.9(b)	2.9(l)
2.6(c)	2.9(c)	2.9(m)
2.6(d)	2.9(d)	2.9(n)
2.6(e)	2.9(e)	2.9(p)
2.6(f)	2.9(f)	2.9(q)
2.6(j)	2.9(h)	2.9(r)

B. *Chief, Oil and Gas Section.*

Sec.		
2.2(b)	2.3(c)	2.6(h)
2.3(a)	2.6(a)	2.9(s)

2. The Chief, Branch of Lands and Minerals Operations may, in his discretion, personally exercise any authority hereby delegated to the Chief, Lands and Mining Section and the Chief, Oil and Gas Section.

3. The Chief, Lands and Mining Section or the Chief, Oil and Gas Section may, by written order, designate any qualified employee of his section to perform the functions of his position, in an acting capacity, in his absence. Such order will be approved by the Chief, Branch of Lands and Minerals Operations.

4. *Effective date.* This redelegation will become effective June 21, 1971.

PHILIP C. HAMILTON,
Acting Chief, Branch of Lands and Minerals Operations.

Approved: June 2, 1971.
DANIEL P. BAKER,
State Director.

[FR Doc.71-7987 Filed 6-8-71;8:46 am]

Fish and Wildlife Service

BRIGANTINE NATIONAL WILDLIFE REFUGE

Notice of Public Hearing Regarding Wilderness Proposal

Notice is hereby given in accordance with provisions of the Wilderness Act of September 3, 1964 (Public Law 88-577; 78 Stat. 890-896; 16 U.S.C. 1131-1136), that a public hearing will be held beginning at 2 p.m. on August 11, 1971, at the Holy Spirit High School, California Avenue and New Road (Route 9), Absecon, N.J., on a proposal leading to a recommendation to be made to the President of the United States by the Secretary of the Interior, regarding the desirability of including the Brigantine Wilderness proposal within the National Wilderness Preservation System. The wilderness proposal consists of approximately 4,250 acres within Brigantine National Wildlife Refuge, and is located in Atlantic and Ocean Counties, State of New Jersey.

A brochure containing a map and information about the Brigantine Wilderness proposal may be obtained from the Refuge Manager, Brigantine National Wildlife Refuge, Great Creek Road, Post Office Box 72, Oceanville, NJ 08231, or the Regional Director, Bureau of Sport Fisheries and Wildlife, U.S. Post Office and Courthouse, Boston, Mass. 02109.

Individuals or organizations may express their oral or written views by appearing at this hearing, or they may submit written comments for inclusion in the official record of the hearing to the Regional Director at the above address by September 13, 1971.

J. P. LINDUSKA,
Associate Director, Bureau of Sport Fisheries and Wildlife.

JUNE 4, 1971.

[FR Doc.71-7996 Filed 6-8-71;8:47 am]

CABEZA PRIETA GAME RANGE

Notice of Public Hearing Regarding Wilderness Proposal

Notice is hereby given in accordance with provisions of the Wilderness Act of September 3, 1964 (Public Law 88-577; 78 Stat. 890-896; 16 U.S.C. 1131-1136), that a public hearing will be held beginning at 9 a.m. (m.s.t.), on August 11, 1971, at the City Council Chambers, Tucson, Ariz., and continued at 9 a.m. (m.s.t.), on August 12 at the Del Webb's TowneHouse, Phoenix, Ariz., at 10 a.m. (m.s.t.), on August 13 at the Ajo High School Auditorium, Ajo, Ariz., and further continued at 9 a.m. (m.s.t.), on August 14 at the Yuma City-County Library, Yuma, Ariz., on a proposal leading to a recommendation to be made to the President of the United States by the Secretary of the Interior regarding the desirability of including the proposed Cabeza Prieta Wilderness within the National Wilderness Preservation System. The wilderness proposal consists of approximately 744,000 acres within the Cabeza Prieta Game Range, and is located in Yuma and Pima Counties, State of Arizona.

A brochure containing a map and information about the Cabeza Prieta Wilderness proposal may be obtained from the Refuge Manager, Cabeza Prieta Game Range, Post Office Box 1032, Yuma, Ariz. 85364, or the Regional Director, Bureau of Sport Fisheries and Wildlife, Federal Building, 500 Gold Avenue SW., Albuquerque, NM 87103.

Individuals or organizations may express their oral or written views by appearing at this hearing, or they may submit written comments for inclusion in the official record of the hearing to the Regional Director at the above address by September 14, 1971.

J. P. LINDUSKA,
Associate Director, Bureau of Sport Fisheries and Wildlife.

JUNE 4, 1971.

[FR Doc.71-7995 Filed 6-8-71;8:47 am]

Geological Survey

COLORADO AND CERTAIN OTHER STATES

Definitions of Known Geologic Structures of Producing Oil and Gas Fields

Pursuant to 43 CFR 3120.2-2(b) notice is hereby given that the known geologic structures of producing oil and gas fields have been defined as follows:

NAMES OF FIELD, EFFECTIVE DATE, ACREAGE

(6) COLORADO

Trail Canyon, April 20, 1971, 5,480.

(24) MISSISSIPPI

West Tar Creek, March 8, 1971, 251.

(26) MONTANA

Cedar Creek, February 17, 1971, 192, 682.
Ragged Point, February 16, 1971, 3,360.
Stensvad, February 16, 1971, 2,367.

(50) WYOMING

Basin Northwest, June 1, 1969, 996.
Bishop Ranch, March 29, 1971, 320.
Bishop Ranch South, March 19, 1971, 680.

Cowley-Homestead, January 25, 1971, 1,202.
Marshall, March 4, 1971, 1,474.
No Water, March 8, 1971, 3,853.
Patrick Draw-Desert Springs, April 13, 1971, 85,265.
Rattlesnake, January 19, 1971, 3,962.
Reel, January 27, 1971, 1,320.
South Oregon Basin, March 1, 1970, 7,971.

Maps and diagrams showing the boundaries of the defined structures have been filed with the appropriate land office of the Bureau of Land Management and are also of record in the Geological Survey, Washington, D.C.

W. A. RADLINSKI,
Acting Director.

JUNE 1, 1971.

[FR Doc.71-7999 Filed 6-8-71;8:47 am]

DEPARTMENT OF COMMERCE

Maritime Administration

[Docket No. S-265]

TRINIDAD CORP.

Notice of Application

In F.R. Doc. 71-7543 appearing in the FEDERAL REGISTER issue of May 29, 1971 (36 F.R. 9889), the first sentence of the last paragraph should read, "In the event petitions regarding the relevant section 805(a) issues are received from parties with standing to be heard, a hearing has been tentatively scheduled for 10 a.m., on June 17, 1971, in conference room A, first floor, main lobby, Department of Commerce Building, 14th and E Streets NW., Washington, DC."

Dated: June 7, 1971.

JAMES S. DAWSON, Jr.,
Secretary.

[FR Doc.71-8111 Filed 6-7-71;1:40 pm]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[DESI 8107]

CALCIUM LEUCOVORIN INJECTION

Drugs for Human Use; Drug Efficacy Study Implementation

The Food and Drug Administration has evaluated a report received from the National Academy of Sciences-National Research Council, Drug Efficacy Study Group, on Calcium Leucovorin Injection; Lederle Laboratories, Division of American Cynamid Co., Post Office Box 500, Pearl River, New York 10965 (NDA 8-107).

Such drugs are regarded as new drugs (21 U.S.C. 321(p)). Supplemental new drug applications are required to revise the labeling in and to update previously approved applications providing for such drugs. A new drug application is required from any person marketing such drug without approval.

A. *Effectiveness classification.* The Food and Drug Administration has considered the Academy's report, as well as other available evidence, and concludes that calcium leucovorin is effective when administered promptly to diminish the toxicity and counteract the effect of inadvertently administered overdosages of folic acid antagonists and in the treatment of megaloblastic anemias due to sprue, nutritional deficiency, pregnancy, and infancy.

B. *Conditions for approval and marketing.* The Food and Drug Administration is prepared to approve abbreviated new drug applications and abbreviated supplements to previously approved new drug applications under conditions described herein.

1. *Form of drug.* Calcium leucovorin preparations are in sterile aqueous solution form suitable for intramuscular administration and contain per dosage unit an amount appropriate for administration in the dosage range described in the labeling conditions in this announcement.

2. *Labeling conditions.* a. The label bears the statement, "Caution: Federal law prohibits dispensing without prescription."

b. The drug is labeled to comply with all requirements of the Act and regulations promulgated thereunder and those parts of its labeling indicated below are substantially as follows: (Optional additional information, applicable to the drug, may be proposed under other appropriate paragraph headings and should follow the information set forth below.)

DESCRIPTION

(Descriptive information to be included by the manufacturer or distributor should be confined to an appropriate description of the physical and chemical properties of the drug and the formulation.)

ACTION

Leucovorin (folinic acid) is the formyl derivative and active form of folic acid.

Calcium leucovorin is useful clinically in circumventing the action of folate reductase.

INDICATIONS

Indicated (a) to diminish the toxicity and counteract the effect of inadvertently administered overdosages of folic acid antagonists. (See warnings). (b) In the treatment of the megaloblastic anemias due to sprue, nutritional deficiency, pregnancy, and infancy when oral therapy is not feasible.

WARNINGS

Leucovorin is improper therapy for pernicious anemia and other megaloblastic anemias secondary to lack of vitamin B_{12}. A hematologic remission may occur while neurologic manifestations remain progressive.

In the treatment of overdosage of folic acid antagonists leucovorin must be administered within 1 hour, if possible, and is usually ineffective if administered after a delay of 4 hours.

ADVERSE REACTIONS

Allergic sensitization has been reported following both oral and parenteral administration of folic acid.

DOSAGE

Megaloblastic anemia: There is no evidence that intramuscular doses greater than 1 mg. daily have greater efficacy than those of 1 mg.; additionally, loss of folate in the urine becomes roughly logarithmic as the amount administered exceeds 1 mg.

For the treatment of overdosage of folic acid antagonists: To be given in amounts equal to the weight of the antagonist given.

3. *Marketing status.* Marketing of such drugs may be continued under the conditions described in the notice entitled "Conditions for Marketing New Drugs Evaluated in Drug Efficacy Study," published in the FEDERAL REGISTER July 14, 1970 (35 F.R. 11273), as follows:

a. For the holder of a "deemed approved" new drug application (i.e., an applications which became effective on the basis of safety prior to October 10, 1962), the submission of a supplement for revised labeling and an abbreviated supplement for updating information as described in paragraphs (a)(1) (i) and (iii) of the notice of July 14, 1970.

b. For any person who does not hold an approved or effective new drug application, the submission of an abbreviated new drug application as described in paragraph (a)(3)(i) of that notice.

c. For any distributor of the drug, the use of labeling in accord with this announcement for any such drug shipped within the jurisdiction of the Act as described in paragraph (b) of that notice.

Representatives of the Administration are willing to meet with any interested person who desires a conference concerning proposed changes in the labeling set forth herein. Requests for such meetings should be made to the Office of Scientific Evaluation (BD-100), at the address given below, within 30 days after the publication of this notice in the FEDERAL REGISTER.

A copy of the Academy's report has been furnished to the firm referred to above. Any other interested person may obtain a copy by request to the Food and Drug Administration, Press Relations Office (CE-200), 200 C Street SW., Washington, D.C. 20204.

Communications forwarded in response to this announcement should be identified with the reference number DESI 8107, directed to the attention of the appropriate office listed below, and addressed to the Food and Drug Administration, 5600 Fishers Lane, Rockville, Maryland 20852:

Supplements (identify with NDA number): Office of Scientific Evaluation (BD-100), Bureau of Drugs.

Original abbreviated new drug applications (identify as such): Drug Efficacy Study Implementation Project Office (BD-5), Bureau of Drugs.

All other communications regarding this announcement: Drug Efficacy Study Implementation Project Office (BD-5), Bureau of Drugs.

This notice is issued pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (secs. 502, 505, 52 Stat. 1050-53, as amended; 21 U.S.C. 352, 355)

and under the authority delegated to the Commissioner of Food and Drugs (21 CFR 2.120).

Dated: May 7, 1971.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.71-7986 Filed 6-8-71;8:46 am]

Social and Rehabilitation Service

REHABILITATION SERVICES ADMINISTRATION

Statement of Organization, Functions, and Delegations of Authority

Part 5 of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health, Education, and Welfare (34 F.R. 1279, Jan. 25, 1969, as amended) is hereby further amended to reflect the reorganization of the Rehabilitation Services Administration. For such purposes, section 5-B is amended as follows:

1. Strike out all that appears under the heading "Division of Special Populations" and insert under the same heading the following:

Provides for the full development of projects, programs and services for individuals and groups who suffer from specific disabilities, except for blindness and visual handicaps, for deafness and communicative disorders, and for developmental disabilities, or who share common conditions or characteristics, medical or otherwise, which permit categorical identification. Reviews project grant applications as assigned to the Division of Special Populations, in accordance with agency guidelines, appropriate evaluative criteria, and central-regional office responsibilities. Assumes leadership for the achievement of agency missions as assigned by the Commissioner on the basis of the division's particular expertise. Provides leadership and consultation to regional offices, State agencies, and other grantees in the development and expansion of rehabilitation programs and services for all disability groups, except for the blind and visually handicapped, for those suffering from deafness and communicative disorders, and those with developmental disabilities. Develops and implements program strategies and approaches to reach public assistance recipients and the disabled residents of target poverty communities (e.g., migratory agricultural workers). Within assigned area of responsibility, collaborates with the Office of Planning and Policy Development and other appropriate agency staff in the development of guidelines, manual issuances and other directives for existing programs serving various disability groups and for those programs mandated by legislative amendment such as vocational education and juvenile delinquency. Develops appropriate techniques to facilitate client participation in the formulation of program objectives within the agency and at the State agency and other grantee level.

2. Add directly after the paragraph headed "Division of Special Populations" under the heading "Office for the Blind and Visually Handicapped" the following:

Provides for the full development of projects, programs, and services for individuals who suffer from blindness and visual handicaps. Reviews project grant applications as assigned to the Office for the Blind and Visually Handicapped, in accordance with agency guidelines, appropriate evaluative criteria, and central-regional office responsibilities. Assumes leadership for achievement of agency missions as assigned by the Commissioner on the basis of the office's special expertise. Provides leadership and consultation to regional offices, State agencies, and other grantees in the development and expansion of rehabilitation programs and services for the blind and visually handicapped. Maintains liaison and consultation with national organizations of and for the blind and with the blind community nationwide to serve as a focal point and to provide increased leadership and advocacy for the Nation's blind and visually handicapped. In collaboration with the Division of Special Populations and other appropriate agency staff, develops and implements program strategies and approaches to reach blind public assistance recipients and the blind and visually handicapped residents of target poverty communities (e.g., migratory agricultural workers). Within assigned area of responsibility, collaborates with the Office of Planning and Policy Development and other appropriate agency staff in the development of guidelines, manual issuances, and other directives for existing programs serving the blind and visually handicapped and for those programs mandated by legislative amendment, such as vocational education and juvenile delinquency. Develops appropriate methods to facilitate client participation in the formulation of program objectives within the agency and at the State agency and other grantee level.

3. Add directly after the paragraph headed "Office for the Blind and Visually Handicapped" under the heading "Office for Deafness and Communicative Disorders" the following:

Provides for the full development of projects, programs, and services for individuals who suffer from deafness and communicative disorders. Reviews project grant applications as assigned to the Office for Deafness and Communicative Disorders, in accordance with agency guidelines, appropriate evaluative criteria, and central-regional office responsibilities. Assumes leadership for achievement of agency missions as assigned by the Commissioner on the basis of the office's special expertise. Provides leadership and consultation to regional offices, State agencies, and other grantees in the development and expansion of rehabilitation programs and services for those persons suffering from deafness and communicative disorders. Maintains liaison and consultation with national organizations of and for the deaf and with the deaf community nationwide to serve as a focal point and to provide increased leadership and advocacy for the Nation's deaf and those suffering from communicative disorders. In collaboration with the Division of Special Populations and other appropriate agency staff, develops and implements program strategies and approaches to reach those persons suffering from deafness and communicative disorders who are on public assistance as well as such persons who are resident in target poverty communities (e.g., migratory agricultural workers). Within assigned area of responsibility, collaborates with the Office of Planning and Policy Development and other appropriate agency staff in the development of guidelines, manual issuances, and other directives for existing programs serving those suffering from deafness and communicative disorders and for those programs mandated by legislative amendment, such as vocational education and juvenile delinquency. Develops appropriate methods to facilitate client participation in the formulation of program objectives within the agency and at the State agency and other grantee level.

4. Strike out all that appears under the heading "Division of Planning and Management Assistance" and insert under the same heading the following:

Provides nonfinancial technical support and assistance to regional offices, State agencies and other grantees across agency programs. Develops planning and management procedures and methods of common application and implements such systems leading to improvement in overall program performance and goal achievement. Provides leadership in development of planning, operations, and management tools and methods to serve State agency and other grantee programs. With the assistance of the divisions concerned with program development, designs and provides consultative assistance in implementation of new program techniques through manual chapter instructions, guide materials, and onsite visits. Provides staff support and assistance to facilitate decentralization of agency functions in cooperation with field operations staff. Evaluates and assists State agencies in the development of comprehensive State plans.

5. Strike the heading "Division of Grant Administration" and all that follows under that heading and substitute the heading "Division of State Program Financial Operations" and the following:

Provides for the financial management of RSA formula grant programs. Provides support services in financial management within RSA and to regional offices, State agencies and across all agency programs. Develops and provides to the Division of Grants Administration, SRS, a financial plan for the administration of RSA project grants. Develops procedures, provides leadership, and evaluates the development and implementation of program and financial planning activities

of the PPBS type by State agencies. Assists State agencies in developing capabilities to provide program financial inputs to overall RSA short and long-term program planning. Consolidates the administration of agency grant programs. Assists the Budget Division in the formulation, justification and execution of the legislation budget, including the budgetary call for estimates from State agencies. In cooperation with the Division of Planning and Management Assistance, provides financial consultative support to regional offices and State agencies, including preparation of pertinent manual chapters, forms, and other assistance. Applies statutory formulae for allotment of funds across all agency appropriations. Makes analyses of and coordinates all audit reports and negotiates audit exceptions for the agency. Monitors the accuracy and timeliness of State agency fiscal reports and financial data. Designs and develops systems for processing program financial data and reports with the assistance of the Division of Monitoring and Program Analysis. Develops and interprets administrative and fiscal policies and procedures governing the use of formula grants funds including the cost principles to be applied in the preparation of grant applications and budgets. Makes special studies of problem areas in the application of fiscal management policies, procedures and standards. Prepares uniform terminology standards of policies and procedures for grants administration and fiscal management. In support of the Office of Planning and Policy Development, reviews new legislation and legislative proposals relating to grants to determine their conformance with established grant policies and recommends policy revisions when necessary. Under the coordination of the Office of Planning and Policy Development, establishes and maintains working relationships with other Federal agencies, grantee institutions and State agencies in order to develop and coordinate grant policies and procedures. Establishes and maintains proper fiscal management, including the accountability of funds, for grant programs administered by RSA which are delegated to Regional Offices.

6. Strike out all that appears under the heading "Budget Division" and insert under the same heading the following:

Provides budgetary services and assistance to the agency and maintains associated liaison services with the department and SRS. In conjunction with the Division of State Program Financial Operations and in cooperation with the Office of Planning and Policy Development and other program units, formulates, justifies, and executes the legislative budget. Provides technical assistance in ensuring implementation of departmental budgetary directives. Assists the Division of State Program Financial Operations in preparation of financial reports and summaries, and adoption of improved internal financial analysis procedures and methods. Cooperates with the Office of Planning and Policy Development and with other program units in the formulation of short- and long-term program financial planning methods.

Approved: June 2, 1971.

ELLIOT L. RICHARDSON,
Secretary.

[FR Doc.71-8013 Filed 6-8-71;8:48 am]

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGFR 71-52]

ELLIOT BAY-WEST WATERWAY, SEATTLE, WASH.

Security Zone

By virtue of the authority vested in the Commandant, U.S. Coast Guard, by Executive Order 10173, as amended (33 CFR Part 6), sec. 6(b)(1), 80 Stat. 937, 49 U.S.C. 1655(b)(1), 49 CFR 1.46(b) and the redelegation of authority to Chief, Office of Operations, U.S. Coast Guard, as contained in the FEDERAL REGISTER of May 27, 1970 (35 F.R. 8279), I hereby affirm for publication in the FEDERAL REGISTER the order of J. J. McClelland, Rear Admiral, U.S. Coast Guard, Commander, Thirteenth Coast Guard District, who has exercised authority as District Commander, such order reading as follows:

ELLIOT BAY—WEST WATERWAY, SEATTLE, WASH.

SECURITY ZONE

Under the authority of section I of title II of the Espionage Act of June 15, 1917, 40 Stat. 220, as amended, 50 U.S.C. 191, and Executive Order 10173, as amended, I declare that from 1815 Pacific daylight time on Wednesday June 23, 1971 until 1900 Pacific daylight time on Wednesday June 23, 1971 the following area is a security zone and I order it to be closed to any person or vessel due to the launching of the Destroyer Escort (DE-1073).

The waters of the West Waterway, Seattle, Wash., within the coordinates of latitude 47°-35' N., longitude 122°21'25" W., at the shoreline of Harbor Island, Seattle, Wash., south to latitude 47°34'22" N., longitude 122°21'25" W., west to latitude 47°34'22" N., longitude 122°21'37" W., at the shoreline of West Seattle, Seattle, Wash., north to latitude 47°-35' N., longitude 122°21'37" W.

No person or vessel shall remain in or enter this security zone without the permission of the Captain of the Port.

The Captain of the Port, Seattle, Wash., shall enforce this order. In the enforcement of this order, the Captain of the Port may utilize, by appropriate agreement, personnel and facilities of any other Federal agency, or of any State or political subdivision thereof.

For violation of this order, section 2 of title II of the Espionage Act of June 15, 1917 (40 Stat. 200 as amended, 50 U.S.C. 192), provides:

"If any owner, agent, master, officer, or person in charge, or any member of the crew of such vessel fails to comply with any regulation or rule issued or given under the provisions of this chapter, or obstructs or interferes with the exercise of any power conferred by this chapter, the vessel, together with her tackle, apparel, furniture, and equipment shall be subject to seizure and forfeiture to the United States in the same manner as merchandise is forfeited for violation of the customs revenue laws, and the person guilty of such failure, obstruction, or interference, shall be punished by imprisonment for not more than 10 years and may, in the discretion of the court, be fined not more than $10,000.

"(a) If any person knowingly fails to comply with any regulation or rule issued or order given under the provisions of this chapter, or knowingly obstructs or interferes with the exercise of any power conferred by this chapter, he shall be punished by imprisonment for not more than 10 years and may, at the discretion of the court, be fined not more than $10,000."

Dated: June 3, 1971.

R. E. HAMMOND,
Rear Admiral, U.S. Coast Guard,
Chief, Office of Operations.

[FR Doc.71-8041 Filed 6-8-71;8:51 am]

National Transportation Safety Board

[Docket No. Sa-425]

AIRCRAFT ACCIDENT AT COOLIDGE, ARIZ.

Notice of Accident Investigation Hearing

In the matter of investigation of accident involving Apache Airlines, Inc., De Havilland CJ-60, of U.S. Registry N4922, Coolidge, Ariz., May 6, 1971; Docket No. Sa-425.

Notice is hereby given that an accident investigation hearing on the above matter will be held commencing at 9:30 a.m. (local time), on July 21, 1971, at the Mountain Shadows Hotel, 5641 East Lincoln Drive, Scottsdale, AZ.

Dated this 1st day of June 1971.

[SEAL] WILLIAM R. HENDRICKS,
Senior Hearing Officer.

[FR Doc.71-8005 Filed 6-8-71;8:48 am]

ATOMIC ENERGY COMMISSION

[Docket No. 50-172]

LOCKHEED AIRCRAFT CORP.

Order Authorizing Partial Dismantling of Facility

By application dated April 12, 1971, Lockheed Aircraft Corp. requested authorization to partially dismantle the Radiation Effects Reactor (RER) in accordance with the Decommissioning Plan attached to the application. Operation of the RER facility, located in Dawson County, Ga., was discontinued September 30, 1970.

We have reviewed the application in accordance with the provisions of the Atomic Energy Commission's regulations and have found that the partial dismantlement and disposal of certain component parts and byproduct and special nuclear materials in accordance with the

regulations in 10 CFR Chapter I and the application will not be inimical to the common defense and security or to the health and safety of the public.

Accordingly, it is hereby ordered, That the Lockheed Aircraft Corp. may partially dismantle the RER covered by Facility License No. R–86 dated July 20, 1962, in accordance with the application and the Commission's regulations.

After completion of the partial dismantlement of the RER, disposal of certain parts and byproduct and special nuclear materials, an inspection by the Commission's representatives and the issuance of a byproduct materials license by the State of Georgia to cover any remaining byproduct materials, consideration will be given to the issuance of a further order terminating Facility License No. R–86.

Date of issuance: May 27, 1971.

For the Atomic Energy Commission.

PETER A. MORRIS,
Director,
Division of Reactor Licensing.

[FR Doc.71–7973 Filed 6–8–71;8:45 am]

[Dockets Nos. 50–390, 50–391]

TENNESSEE VALLEY AUTHORITY

Notice of Receipt of Application for Construction Permits and Facility Licenses

Tennessee Valley Authority, Knoxville, Tenn. 37902, pursuant to section 103 of the Atomic Energy Act of 1954, as amended, has filed an application dated May 14, 1971, for two construction permits and facility licenses to authorize construction and operation of two pressurized water reactors on the applicant's approximately 1,770-acre Watts Bar site on the west bank of the Tennessee River, in Rhea County, approximately 50 miles northeast of Chattanooga, Tenn.

The proposed reactors are designated by the applicant as the Watts Bar Nuclear Plant Units 1 and 2. Each unit is designed for a maximum expected output of 3,425 megawatts (thermal) with a gross output of about 1,180 megawatts (electrical).

A copy of the application is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the Dayton Public Library, First Avenue, Dayton, Tenn.

Dated at Bethesda, Md., this 2d day of June 1971.

For the Atomic Energy Commission.

PETER A. MORRIS,
Director,
Division of Reactor Licensing.

[FR Doc.71–7974 Filed 6–8–71;8:45 am]

[Docket No. 50–271]

VERMONT YANKEE NUCLEAR POWER CORP.

Notice of Availability of Detailed Statement on Environmental Considerations

Pursuant to the National Environmental Policy Act of 1969 and the Atomic Energy Commission's regulations in Appendix D to 10 CFR Part 50, notice is hereby given that a document entitled "Detailed Statement on the Environmental Considerations by the Division of Reactor Licensing, U.S. Atomic Energy Commission, Related to the Proposed Issuance of an Operating License to the Vermont Yankee Nuclear Power Corporation for the Vermont Yankee Nuclear Power Station" is being placed in the following locations where it will be available for inspection by members of the public: The Commission's Public Document Room, 1717 H Street NW., Washington, DC; and at the Brooks Memorial Library, 224 Main Street, Brattleboro, VT 05301. Single copies of the statement may be obtained by writing the Director, Division of Reactor Licensing, U.S. Atomic Energy Commission, Washington, D.C. 20545.

Dated at Bethesda, Md., this 7th day of June 1971.

For the Atomic Energy Commission.

PETER A. MORRIS,
Director,
Division of Reactor Licensing.

[FR Doc.71–8134 Filed 6–8–71;8:52 am]

CIVIL AERONAUTICS BOARD

[Docket No. 23472; Order 71–6–24]

AIRBORNE FREIGHT CORP.

Order of Investigation and Suspension

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 3d day of June 1971.

By tariff revisions [1] filed May 6, marked to become effective June 6, 1971, Airborne Freight Corp. (Airborne), an air freight forwarder, proposes to reduce all of its import specific commodity rates from Los Angeles and San Francisco to Chicago, New York, and Newark.[2]

Airborne asserts that its proposals are based upon the "economies" of chartered aircraft in order to generate traffic now moving via surface transportation and to reduce the impact on shippers of recent rate increases.

Complaints have been filed by American Airlines, Inc. (American), The Flying Tiger Line Inc. (Tiger), and United Air Lines, Inc. (United).[3] The complaints variously assert, inter alia, that the proposed rates would result in significant diversion from scheduled air transportation and would seriously jeopardize the existence of such transportation, now operating unprofitably; that the forwarder has presented no justification for the tariff filing; that the proposed rates would undercut the direct carrier rates; and that the proposed rates would result in out-of-pocket loss to the forwarder.

Upon consideration of all relevant factors, the Board finds that Airborne's proposed reductions may be unjust, unreasonable, unjustly discriminatory, unduly preferential, unduly prejudicial, or otherwise unlawful, and should be investigated. The Board further concludes that the rates should be suspended pending investigation.

The proposed rates would effect reductions of approximately 25 percent below its currently effective import rates for numerous commodities from Los Angeles and San Francisco to Chicago, New York, and Newark. The reductions would undercut similar import specific commodity rates of the direct carriers as much as 25 percent. The proposals may have a serious impact on these carriers through traffic diversion to chartered aircraft or from the necessity of reducing their rates significantly.

Airborne, however, does not present factual data indicating the volume of traffic that it hopes to obtain by its proposal, nor does it make any factual showing that its proposed rates would be economic.

In view of the above circumstances, the Board will not permit the sharp reductions proposed in prime markets to become effective without investigation.

Accordingly, pursuant to the Federal Aviation Act of 1958, and particularly sections 204(a) and 1002 thereof:

It is ordered, That:

1. An investigation be instituted to determine whether the rates from Los Angeles/San Francisco, Calif. to Chicago, Ill., and Newark, N.J./New York, N.Y. on First Revised Page 10–A of Airborne Freight Corp.'s CAB No. 32, and rules, regulations, or practices affecting

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[1] Revisions to Airborne Freight Corp.'s Tariff CAB No. 32.

[2] The rates apply to shipments originating at points other than in the continental United States or Canada from which transportation was performed by an ocean carrier. In addition to airport-to-airport transportation, the rates cover the following services or expenses at no additional charge:

(a) Pickup service within corporate limits of the origin airport city from steamship docks, warehouses or appraiser's stores, which are located within corporate limits of origin airport city, and

(b) Wharfage fees, and

(c) Cost of handling to and loading into forwarder's vehicle from steamship docks, warehouses or appraiser's stores.

[3] Tiger's complaint asks suspension pending investigation but was untimely as a request for suspension. The carrier also requests rejection of the proposal as an alternative to suspension on the ground that the requirements of § 221.165 of our economic regulations have been disregarded. Forwarders, however, are exempt from certain of the above requirements and we find no basis for rejection.

such rates are or will be unjust, unreasonable, unjustly discriminatory, unduly preferential, unduly prejudicial, or otherwise unlawful, and if found to be unlawful, to determine and prescribe the lawful rates, and rules, regulations, or practices affecting such rates;

2. Pending hearing and decision by the Board, the rates from Los Angeles/San Francisco, Calif., to Chicago, Ill., and Newark, N.J./New York, N.Y. on First Revised Page 10–A of Airborne Freight Corp.'s CAB No. 32, are suspended and their use deferred to and including September 3, 1971, unless otherwise ordered by the Board, and that no changes be made therein during the period of suspension except by order or special permission of the Board;

3. The proceeding herein designated Docket 23472, be assigned for hearing before an examiner of the Board at a time and place hereafter to be designated;

4. The complaints of American Airlines, Inc., in Docket 23413; The Flying Tiger Line Inc., in Docket 23421; and United Air Lines, Inc., in Docket 23414, are dismissed, except to the extent granted herein; and

5. Copies of this order shall be filed with the tariff and served upon Airborne Freight Corp., American Airlines, Inc., The Flying Tiger Line Inc., and United Air Lines, Inc., which are hereby made parties to Docket 23472.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.[1]

[FR Doc.71-8036 Filed 6-8-71;8:50 am]

[SEAL] HARRY J. ZINK,
Secretary.

[Dockets Nos. 21604, 21695]

ALOHA AIRLINES, INC., AND HAWAIIAN AIRLINES, INC.

Notice of Postponement of Hearing

Aloha Airlines, Inc. v. Hawaiian Airlines, Inc., Docket 21604; Hawaiian Airlines, Inc. v. Aloha Airlines, Inc., Docket 21695; enforcement proceeding.

Upon consideration of the request of the Bureau of Enforcement, dated June 2, 1971, notice is hereby given that the hearing in the above-entitled matters is postponed to be held on June 29, 1971, at 10 a.m., e.d.s.t., in Room 726, Universal Building, 1825 Connecticut Avenue NW., Washington, DC, before the undersigned Examiner.

Dated at Washington, D.C., June 3, 1971.

[SEAL] MILTON H. SHAPIRO,
Hearing Examiner.

[FR Doc.71-8037 Filed 6-8-71;8:50 am]

[1] Partial dissent of Member Minetti filed as part of the original document.

[Docket No. 20993; Order 71-6-19]

INTERNATIONAL AIR TRANSPORT ASSOCIATION

Order Regarding Specific Commodity Rates

Issued under delegated authority June 2, 1971.

By Order 71-5-31, dated May 7, 1971, action was deferred with a view toward eventual approval, on an agreement embodied in the resolutions of Traffic Conference 1 of the International Air Transport Association (IATA) and adopted by the 28th Meeting of the TC1 Specific Commodity Rates Board. The agreement would amend the specific commodity rate structure currently applicable within the Western Hemisphere. These revisions include (1) reduced rates under new commodity descriptions, (2) the cancellation, amendment, or naming of new rates under existing commodity descriptions, and (3) changes in commodity descriptions.

In deferring action on the agreement, 10 days were granted in which interested persons might file petitions in support of or in opposition to the proposed action. No petitions have been received within the filing period, and the tentative conclusions in Order 71-5-31 will herein be made final.

Accordingly, it is ordered, That:

Agreement CAB 22390 be and it hereby is approved: *Provided,* That approval shall not constitute approval of the specific commodity descriptions contained therein for purposes of tariff publication; provided further that tariff filings shall be marked to become effective on not less than 30 days' notice from the date of filing.

This order will be published in the FEDERAL REGISTER.

[SEAL] HARRY J. ZINK,
Secretary.

[FR Doc.71-8033 Filed 6-8-71;8:50 am]

[Docket No. 22628; Order 71-6-20]

INTERNATIONAL AIR TRANSPORT ASSOCIATION

Order Regarding Fare Matters

Issued under delegated authority June 2, 1971.

An agreement has been filed with the Board, pursuant to section 412(a) of the Federal Aviation Act of 1958 (the Act) and Part 261 of the Board's economic regulations, between various air carriers, foreign air carriers, and other carriers, embodied in the resolutions of Traffic Conference 1 of the International Air Transport Association (IATA). The agreement, which was adopted pursuant to the provisions of Resolution 072 dealing with the establishment of special creative fares within the Western Hemisphere, has been assigned the above-designated CAB agreement number.

The agreement would establish 7/30-day round-trip excursion fares from Ciudad Juarez/Monterrey (Mexico) to Los Angeles.

Pursuant to authority duly delegated by the Board in the Board's regulations, 14 CFR 385.14, it is not found, on a tentative basis, that the subject agreement is adverse to the public interest or in violation of the Act.

Accordingly, it is ordered, That:

Action on Agreement CAB 22444 be and hereby is deferred with a view toward eventual approval.

Persons entitled to petition the Board for review of this order, pursuant to the Board's Regulations, 14 CFR 385.50, may, within 10 days after the date of service of this order, file such petitions in support of or in opposition to our proposed action herein.

This order will be published in the FEDERAL REGISTER.

[SEAL] HARRY J. ZINK,
Secretary.

[FR Doc.71-8034 Filed 6-8-71;8:50 am]

[Docket No. 23112; Order 71-6-27]

INTERNATIONAL AIR TRANSPORT ASSOCIATION

Order Regarding International Route Charges

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 4th day of June 1971.

By Order 71-4-151 dated April 23, 1971, the Board deferred action with a view toward disapproval of a resolution adopted by the International Air Transport Association (IATA) which would provide for the establishment of fare and rate surcharges to cover international route charges.[1] In deferring action a period of 30 days was established for the receipt of comments from any interested parties.

Comments have been received from a number of interested parties,[2] most of which are directed to the merits of establishing surcharges to cover international route charges. Seaboard however petitions the Board for an extension until July 30, 1971, of the time for submission of comments. Seaboard states that international route charges have become a critical problem for international carriers and that further means of dealing with this problem is currently being discussed at the IATA Cargo Traffic Conference now being held in Singapore.

[1] Charges imposed by or on behalf of a government for facilities and/or services provided for air navigation and safety other than those associated with airports or approach and airport control.

[2] Eastern Air Lines, National Airlines, Northwest Airlines, Seaboard World Airlines, South African Airways and Trans World Airlines.

Seaboard indicates that it is likely that this matter will also be discussed at the IATA Passenger Traffic Conference scheduled to commence in Montreal on June 28, 1971. Inasmuch as the results of the above conferences will not be known until late July, Seaboard suggests that it is in the best interest of all concerned to defer submission of comments until July 30, 1971. The Board believes that there is substantial merit to the request of Seaboard and we will grant the extension sought.

The Board, acting pursuant to section 102, 204(a), and 412 of the Act, finds that it is in the public interest to further defer action until after July 30, 1971, on Agreement CAB 22245, R-1 and R-3 (Resolution 295d, International Route Charge-Passenger and Resolution 295e, International Route Charge-Cargo) so as to receive comments in support of or in opposition to the Board's proposed disapproval.

Accordingly, it is ordered, That the time provided for submitting comments as set forth in Order 71-4-151 shall be extended until July 30, 1971.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] HARRY J. ZINK,
Secretary.

[FR Doc.71-8035 Filed 6-8-71;8:50 am]

[Docket No. 23473; Order 71-6-25]

JOYCE EXPEDITING SERVICE, INC.

Order of Suspension and Investigation

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 4th day of June 1971.

By tariff revision[1] filed May 3 and marked to become effective June 7, 1971, Joyce Expediting Service, Inc. (Joyce), an air freight forwarder, proposes to increase its excess valuation charge from 15 to 30 cents for each $100, or fraction thereof, by which the declared value of a shipment exceeds 50 cents per pound or $50 per shipment, whichever is higher. No complaints have been received.

Most major forwarders currently have in effect an excess value charge of 15 cents per $100 on their domestic traffic. The Board has suspended, pending investigation, a number of previous proposals to increase excess valuation charges above this level where no showing has been made that existing excess value revenues do not cover the amount of claim expense stemming from declarations of excess value.[2] Joyce has not submitted any data on the relationship between its excess value revenues and losses attributable to declarations of excess valuation or any other statement supporting its proposal.

[1] Tariff CAB No. 1 issued by Joyce Expediting Service, Inc.

[2] E.g., Order 71-4-53 dated Apr. 9, 1971, and prior orders cited therein.

Upon consideration of all relevant factors, the Board finds that the proposed excess valuation charges may be unjust, unreasonable, unjustly discriminatory, unduly preferential, unduly prejudicial or otherwise unlawful, and should be investigated. We further conclude that the proposed change should be suspended pending investigation.

Accordingly, pursuant to the Federal Aviation Act of 1958, and particularly sections 204(a) and 1002 thereof:

It is ordered, That:

1. An investigation be instituted to determine whether the charge and provisions in Rule No. 110, paragraph 2 on Third Revised Page 9 of Joyce Expediting Service, Inc.'s CAB No. 1, and rules, regulations, or practices affecting such charge and provisions, are or will be, unjust, unreasonable, unjustly discriminatory, unduly preferential, unduly prejudicial, or otherwise unlawful, and if found to be unlawful, to determine and prescribe the lawful charge and provisions, and rules, regulations, or practices affecting such charge and provisions;

2. Pending hearing and decision by the Board, Rule No. 110, paragraph 2 on Third Revised Page 9 of Joyce Expediting Service, Inc.'s CAB No. 1 is suspended and its use deferred to and including September 4, 1971, unless otherwise ordered by the Board, and that no changes be made therein during the period of suspension except by order or special permission of the Board;

3. The proceeding herein designated as Docket 23473, be assigned for hearing before an examiner of the Board at a time and place hereafter to be designated; and

4. Copies of this order shall be filed with the tariffs and served upon Joyce Expediting Service, Inc., who is hereby made a party to this proceeding.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] HARRY J. ZINK,
Secretary.

[FR Doc.71-8038 Filed 6-8-71;8:51 am]

CIVIL SERVICE COMMISSION

DEPARTMENT OF COMMERCE

Notice of Grant of Authority To Make Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission authorizes the Department of Commerce to fill by noncareer executive assignment in the excepted service the position of Director, Congressional Affairs, National Oceanic and Atomospheric Administration, Office of the Administrator.

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

[FR Doc.71-7977 Filed 6-8-71;8:45 am]

DEPARTMENT OF DEFENSE

Notice of Grant of Authority To Make Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission authorizes the Department of Defense to fill by noncareer executive assignment in the excepted service the position of Special Assistant for Economic Impacts, Office of the Secretary of Defense.

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

[FR Doc.71-7978 Filed 6-8-71;8:45 am]

DEPARTMENT OF THE INTERIOR

Notice of Title Change in Noncareer Executive Assignment

By notice of November 17, 1967, F.R. Doc. 67-13608, the Civil Service Commission authorized the departments and agencies to fill by noncareer executive assignment, certain positions removed from Schedule C of Civil Service Rule VI by 5 CFR 213.3301a on November 17, 1967. This is notice that the title of one such position so authorized to be filled by noncareer executive assignment has been changed from "Assistant to the Secretary (Congressional Liaison)" to "Assistant to the Secretary and Director of Congressional Liaison."

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

[FR Doc.71-7979 Filed 6-8-71;8:45 am]

EXECUTIVE OFFICER, DISTRICT OF COLUMBIA COURTS

Manpower Shortage; Notice of Listing

Under the provisions of 5 U.S.C. sec. 5723, the Civil Service Commission has found, effective May 27, 1971, that there is a manpower shortage for the single position of Executive Officer of the District of Columbia Courts.

Assuming other legal requirements are met, an appointee to this position may be paid for the expense of travel and transportation to his first post of duty.

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

[FR Doc.71-7980 Filed 6-8-71;8:45 am]

HIGHWAY SAFETY MANAGEMENT SPECIALIST, DEPARTMENT OF TRANSPORTATION

Manpower Shortage; Notice of Listing

Under the provisions of 5 U.S.C. sec. 5723, the Civil Service Commission found

a manpower shortage on April 26, 1971, for the single position of Highway Safety Management Specialist, GS–2125–13, Highway Safety Programs Office, Region IV, Atlanta Regional Office, National Highway Traffic Safety Administration, Department of Transportation, Atlanta, Ga. The finding is self-canceling when the position is filled.

Assuming all other legal requirements are met, an appointee to this position may be paid for the expense of travel and transportation to first post of duty.

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

[FR Doc.71–7981 Filed 6–8–71;8:45 am]

FEDERAL POWER COMMISSION

[Docket No. CP71–279]

CITY OF ANDERSONVILLE, GA., AND SOUTH GEORGIA NATURAL GAS CO.

Notice of Application

JUNE 2, 1971.

Take notice that on May 20, 1971, the city of Andersonville, Ga. (applicant), Andersonville, Ga. 31711, filed in Docket No. CP71–279 an application pursuant to section 7(a) of the Natural Gas Act for an order of the Commission directing South Georgia Natural Gas Co. (respondent) to construct facilities and establish connection of its natural gas transportation facilities with facilities proposed to be constructed by applicant, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it obtains its sole supply of natural gas from respondent. Applicant specifically requests that respondent be directed to construct 1.5 miles of 3½-inch pipeline and provide a new delivery point to applicant at the end of this pipeline to enable it to sell natural gas to Mullite of America (Mullite), located in Sumter County, Ga., on an interruptible basis.

The estimated cost of the facilities requested herein is $46,920. Applicant states that it will reimburse respondent for the cost of this construction and that Mullite will then reimburse applicant.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 22, 1971, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

KENNETH F. PLUMB,
Acting Secretary.

[FR Doc.71–8019 Filed 6–8–71;8:49 am]

[Docket No. CI62–550, etc.]

BURMAH OIL DEVELOPMENT, INC.

Notice of Redesignation

JUNE 3, 1971.

By letters of March 31, 1971, Burmah Oil Development, Inc., advised the Commission that its name had been changed from Southdown Burmah Oil Co. by amendment to its certificate of incorporation dated February 12, 1970, and filed with the Secretary of State of the State of Delaware on February 16, 1970.

Accordingly, the following certificates of public convenience and necessity issued pursuant to section 7(c) of the Natural Gas Act, proceedings instituted under section 4(e) of the Natural Gas Act, and FPC gas rate schedules are redesignated as Burmah Oil Development, Inc.:

FPC gas rate schedule	Certificate docket No.	Rate proceeding docket No.
1	CI62–551	RI66–196, RI71–738.
2	CI62–550	RI66–159, RI71–738.

KENNETH F. PLUMB,
Acting Secretary.

[FR Doc.71–8017 Filed 6–8–71;8:49 am]

[Dockets Nos. CP71–274, CI71–819]

LONE STAR GATHERING CO. ET AL.

Notice of Applications

JUNE 3, 1971.

Take notice that on May 18, 1971, Lone Star Gathering Co. (Gathering), Lone Star Gas Co. (Lone Star), and Lone Star Producing Co. (Producing), each of 301 South Harwood Street, Dallas, TX 75201, filed in Dockets Nos. CP71–274 and CI71–819 a joint application pursuant to sections 7 (c) and (b) of the Natural Gas Act for:

(1) Certificates of public convenience and necessity authorizing the construction, acquisition and operation of facilities and the transportation and sale of natural gas;

(2) Permission and approval to abandon certain described facilities;

(3) An order amending the order issued January 29, 1962, to Lone Star in Docket No. G–8763 (27 FPC 179);

all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Applicants state that the application has its genesis in a dispute between Lone Star and Natural Gas Pipeline Company of America (Natural) regarding their respective rights and obligations under a service agreement made effective by the Commission on December 1, 1961, a dispute engendered by the seriously diminishing gas supply in the Fox area of Oklahoma from which gas has heretofore been produced and sold to Natural under the service agreement. Because of this situation, Lone Star and Natural have worked toward a solution of their problems, and as a result, on May 6, 1971, applicants and Natural have entered into a precedent agreement obligating them to enter into certain concurrent agreements contemplating the:

(1) Assignment by Lone Star to Natural of certain gas purchase contracts;

(2) Transportation by Gathering of natural gas for the account of Natural;

(3) Sale by Producing to Natural of natural gas produced from the Fashing Field, Atascosa County, Tex.;

(4) Amendment of the December 1, 1961, service agreement and the termination of service rendered thereunder by December 31, 1971, or sooner; and

(5) Termination of the existing exchange of gas between Lone Star and Natural.

To effectuate such precedent and concurrent agreements, Gathering and Producing seek certificates of public convenience and necessity authorizing:

(1) The construction by Gathering of three (3) new pipeline segments, aggregating approximately 39.55 miles in length, togeher with appurtenant facilities, in Oklahoma and Texas, and the acquisition of three (3) existing pipelines approximately 38 miles in length and appurtenances by purchase from Lone Star in Texas; and the operation of the aforesaid facilities for the transportation of 34,332,995 Mcf of natural gas annually for the account of Natural on a cost of service basis pursuant to an agreed form of transportation agreement, and

(2) The sale by Producing in interstate commerce of natural gas produced from the Fashing Field to Natural for resale, effective January 1, 1972, at an initial price of 16½ cents per Mcf.

Lone Star seeks an order of the Commission amending the order issued January 29, 1962, in Docket No. G–8763, so as to authorize Lone Star to sell and deliver to Natural 20,000,000 Mcf of natural gas in 1971.

Further, Lone Star seeks permission and approval to abandon:

(1) The sale to Natural on December 31, 1971, or upon delivery of 20,000,000 Mcf by it, whichever is earlier, and certain pipeline, metering and regulating facilities by means of which the sale is made;

(2) The exchange, authorized on September 24, 1970, in Docket No. CP71–24, of its two-thirds (⅔) interest in gas reserves underlying the Puryear Gas Unit in Hemphill County, Tex., with Natural pursuant to the terms and conditions of an exchange agreement dated July 1, 1970, inasmuch as Lone Star will no longer have any natural gas available to continue the exchange by virtue of the assignment of these gas reserves to Natural; and

(3) By sale, the facilities which Gathering proposes to acquire from it in Texas as hereinbefore described. Lone Star avers that the proposed abandonment of facilities will not result in the abandonment or dimunition of natural gas service to any customer or lessen the public service rendered by it.

The actual cost of the facilities to be constructed by Gathering is $2,415,865, and the cost of those to be acquired is $868,445, for a total of $3,284,310. Gathering proposes to finance the cost of such facilities by selling additional stock to its parent, Lone Star.

The application states that the proposals contained therein for construction and transfer of facilities will accomplish a rearrangement and realignment which will provide Natural with substantial new sources of gas supply and permit Lone Star to better utilize the remaining reserves in the Fox area. Moreover, Producing's comprehensive program for the exploration and development of gas reserves will undoubtedly benefit Natural, as well as Lone Star's existing and potential customers in Texas and Oklahoma, as contemplated by the terms and provisions of the precedent agreement. Further, the approval of this joint application will enable Lone Star and Natural to compose their differences and thus allow each to plan present and future operations on a sound and orderly basis to the advantage of their respective customers.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 21, 1971, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificates and permission and approval for the proposed abandonment are required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Acting Secretary.

[FR Doc.71-8018 Filed 6-8-71;8:49 am]

[Docket No. CP71-287]

DELHI GAS PIPELINE CORP.

Notice of Application

JUNE 8, 1971.

Take notice that on June 2, 1971, Delhi Gas Pipeline Corp. (applicant), Fidelity Union Tower Building, Dallas TX 75201, filed in Docket No. CP71-287 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the operation of existing facilities for the transportation and sale of natural gas, for a limited term, to Texas Eastern Transmission Corp. (Texas Eastern), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it has been advised by Texas Eastern of a need for additional volumes of natural gas to meet existing contractual requirements. Specifically, applicant seeks a limited authorization with pregranted abandonment, to sell up to 16,000 Mcf of natural gas per day to Texas Eastern for a period of 1 year beginning on the date of Commission authorization. Applicant states that the selling price for the sales proposed herein will be 35 cents per Mcf.

Applicant also states that it is exempt from regulation by the Federal Power Commission under the provisions of section 1(c) of the Natural Gas Act and proposes this sale for resale of natural gas in interstate commerce subject to the following conditions:

(1) The certificate issued herein be limited to authorization of the proposed sale to Texas Eastern and facilities necessary to make such sale;

(2) The Commission waive its accounting and other reporting requirements with respect to applicant for the term of the limited-term certificate sought herein. Applicant will be willing to report the volumes sold to Texas Eastern pursuant to the requested authorization.

(3) The jurisdictional status of the facilities and operations of independent producers and other suppliers from whom applicant purchases gas and the sales by such independent producers and other suppliers be not affected during the term of the limited-term certificate;

(4) With the exception of the sale to be certificated herein, all of applicant's existing facilities, its operation of such facilities, and its sales from its system are and will continue to be exempt from Commission regulation, and the nonjurisdictional status of all of applicant's existing and proposed purchases of natural gas, and the nonjurisdictional status of applicant's existing sales from its system will not be rendered jurisdictional or otherwise affected by Commission regulation by the certificate issued for the sale contemplated herein.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than 15 days for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said application should on or before June 18, 1971, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Acting Secretary.

[FR Doc.71-8143 Filed 6-8-71;9:49 am]

FEDERAL RESERVE SYSTEM

ATLANTIC BANCORPORATION

Notice of Application for Approval of Acquisition of Shares of Bank

Notice is hereby given that application has been made, pursuant to section 3(a)(3) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(a)(3)), by Atlantic Bancorporation, which is a bank holding company located in Jacksonville, Fla., for prior approval by the Board of Governors of the acquisition by applicant of not less than 52 percent of the voting shares of Gainesville Atlantic Bank, Gainesville, Fla., a proposed new bank.

Section 3(c) of the Act provides that the Board shall not approve:

(1) Any acquisition or merger or consolidation under section 3 which would result in a monopoly, or which would be

in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the business of banking in any part of the United States, or

(2) Any other proposed acquisition or merger or consolidation under section 3 whose effect in any section of the country may be substantially to lessen competition, or to tend to create a monopoly, or which in any other manner would be in restraint of trade, unless the Board finds that the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served.

Section 3(c) further provides that, in every case, the Board shall take into consideration the financial and managerial resources and future prospects of the company or companies and the banks concerned, and the convenience and needs of the community to be served.

Not later than thirty (30) days after the publication of this notice in the FEDERAL REGISTER, comments and views regarding the proposed acquisition may be filed with the Board. Communications should be addressed to the Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551. The application may be inspected at the office of the Board of Governors or the Federal Reserve Bank of Atlanta.

By order of the Board of Governors, June 3, 1971.

[SEAL] KENNETH A. KENYON,
Deputy Secretary.

[FR Doc.71-7982 Filed 6-8-71;8:46 am]

FIRST AMERICAN NATIONAL CORP.

Order Approving Action To Become Bank Holding Company

In the matter of the application of First American National Corp., Nashville, Tenn., for approval of action to become a bank holding company.

There has come before the Board of Governors, pursuant to section 3(a)(1) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(a)(1)) and § 222.3 (a) of Federal Reserve Regulation Y (12 CFR 222.3(a)), an application by First American National Corp., Nashville, Tenn. (Applicant), for the Board's prior approval of action whereby Applicant would become a bank holding company through the acquisition of 100 percent of the voting shares (less directors' qualifying shares) of the successor by merger to First American National Bank of Nashville, Nashville, Tenn. (Bank), and a nonoperating bank. The nonoperating bank has significance only as a means of acquiring all of the shares of the bank to be merged into it; the proposal is therefore treated herein as one to acquire shares of Bank.

As required by section 3(b) of the Act, the Board gave written notice of receipt of the application to the Comptroller of the Currency and requested his views and recommendation. The Comptroller offered no objection to approval of the application.

Notice of receipt of the application was published in the FEDERAL REGISTER on April 20, 1971 (36 F.R. 7487), 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 bank concerned, and the convenience and needs of the communities to be served, and finds that:

Applicant is a nonoperating corporation formed for the purpose of acquiring Bank ($565.9 million deposits). (All banking data are as of June 30, 1970, and reflect holding company approvals and acquisitions to date.) Upon consummation of the proposal Applicant will assume Bank's present position as the State's third largest banking organization with 8.5 percent of total deposits in the State. As Applicant has no present operations or subsidiaries, consummation of the proposal would eliminate neither existing nor potential competition. Neither does it appear that there would be adverse effects on any bank in the area involved.

The financial and managerial resources and prospects of Bank are generally satisfactory, as would be those of Applicant upon approval. Consummation of the proposal would have no immediate effect on the convenience and needs of the community involved. Considerations under these factors are consistent with approval. It is the Board's judgment that consummation of the proposal would be in the public interest and that the application should be approved.

It is hereby ordered, For the reasons summarized above, that said application be and hereby is approved: *Provided,* That the acquisition so approved shall not be consummated (a) before the 30th calendar day following the date of this order or (b) later than 3 months after the date of this order, unless such period is extended for good cause by the Board, or by the Federal Reserve Bank of Atlanta pursuant to delegated authority.

By order of the Board of Governors,[1] June 3, 1971.

[SEAL] KENNETH A. KENYON,
Deputy Secretary.

[FR Doc.71-7984 Filed 6-8-71;8:46 am]

[1] Voting for this action: Chairman Burns and Governors Robertson, Mitchell, Daane, Maisel, and Sherrill. Absent and not voting: Governor Brimmer.

FIRST VIRGINIA BANKSHARES CORP.

Notice of Application for Approval of Acquisition of Shares of Bank

Notice is hereby given that application has been made, pursuant to section 3(a)(3) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(a)(3)), by First Virginia Bankshares Corp., which is a bank holding company located in Arlington, Va., for prior approval by the Board of Governors of the acquisition by applicant of 80 percent or more of the voting shares of the successor by merger to Bank of Bland County, Bland, Va.

Section 3(c) of the Act provides that the Board shall not approve:

(1) Any acquisition or merger or consolidation under section 3 which would result in a monopoly, or which would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the business of banking in any part of the United States, or

(2) Any other proposed acquisition or merger or consolidation under section 3 whose effect in any section of the country may be substantially to lessen competition, or to tend to create a monopoly, or which in any other manner would be in restraint of trade, unless the Board finds that the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served.

Section 3(c) further provides that, in every case, the Board shall take into consideration the financial and managerial resources and future prospects of the company or companies and the banks concerned, and the convenience and needs of the community to be served.

Not later than thirty (30) days after the publication of this notice in the FEDERAL REGISTER, comments and views regarding the proposed acquisition may be filed with the Board. Communications should be addressed to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The application may be inspected at the office of the Board of Governors or the Federal Reserve Bank of Richmond.

By order of the Board of Governors, June 3, 1971.

[SEAL] KENNETH A. KENYON,
Deputy Secretary.

[FR Doc.71-7983 Filed 6-8-71;8:46 am]

HAMILTON BANCSHARES, INC.

Notice of Application for Approval of Acquisition of Shares of Bank

Notice is hereby given that application has been made, pursuant to section 3(a)(3) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(a)(3)), by Hamilton Bancshares, Inc., which is a

bank holding company located in Chattanooga, Tennessee, for prior approval by the Board of Governors of the acquisition by applicant of 90.5 percent or more of the voting shares of The First National Bank of Polk County, Copperhill, Tenn.

Section 3(c) of the Act provides that the Board shall not approve:

(1) Any acquisition or merger or consolidation under section 3 which would result in a monopoly, or which would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the business of banking in any part of the United States, or

(2) Any other proposed acquisition or merger or consolidation under section 3 whose effect in any section of the country may be substantially to lessen competition, or to tend to create a monopoly, or which in any other manner would be in restraint of trade, unless the Board finds that the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served.

Section 3(c) further provides that, in every case, the Board shall take into consideration the financial and managerial resources and future prospects of the company or companies and the banks concerned, and the convenience and needs of the community to be served.

Not later than thirty (30) days after the publication of this notice in the FEDERAL REGISTER, comments and views regarding the proposed acquisition may be filed with the Board. Communications should be addressed to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The application may be inspected at the office of the Board of Governors or the Federal Reserve Bank of Atlanta.

By order of the Board of Governors, June 3, 1971.

[SEAL] KENNETH A. KENYON,
Deputy Secretary.

[FR Doc.71-7985 Filed 6-8-71;8:46 am]

INTERIM COMPLIANCE PANEL (COAL MINE HEALTH AND SAFETY)

MARGARET PEERLESS COAL CO.

Applications for Renewal Permits; Notice of Opportunity for Public Hearing

Applications for Renewal Permits for Noncompliance with the Electric Face Equipment Standard specified in the Federal Coal Mine Health and Safety Act of 1969 have been received as follows:

(1) ICP Docket No. 3059 000, Margaret Peerless Coal Co., Mine No. 2, USBM ID No. 46 01735 0, Summersville, Nicholas County, W. Va.:

ICP Permit No. 3059 001 (Wilcox Continuous Miner & Bridge, Ser. No. 298).
ICP Permit No. 3059 002 (Wilcox Universal Advance Conveyor, Ser. No. 143).
ICP Permit No. 3059 003 (Jeffrey Room Conveyor, Ser. No. 1).
ICP Permit No. 3059 004 (Wilcox Continuous Miner & Bridge, Ser. No. 285).
ICP Permit No. 3059 005 (Wilcox Room Belt Conveyor, Ser. No. 1).
ICP Permit No. 3059 006 (Wilcox Universal Advance Conveyor, Ser. No. 130).
ICP Permit No. 3059 008 (Wilcox Roof Bolter, Ser. No. 2016).
ICP Permit No. 3059 009 (Wilcox Roof Bolter, Ser. No. 2019).
ICP Permit No. 3059 010 (Wilcox Roof Bolter, Ser. No. 2037).
ICP Permit No. 3059 012 (Wilcox Roof Bolter, Ser. No. 2040).
ICP Permit No. 3059 013 (Kersey Mine Tractor, Ser. No. 6424).
ICP Permit No. 3059 014 (Pemco Mine Tractor, Ser. No. TAC-1001).
ICP Permit No. 3059 015 (S & S Mine Tractor, Ser. No. 160-13).
ICP Permit No. 3059 016 (S & S Conveyor Trailer, Ser. No. CT-328).
ICP Permit No. 3059 022 (Shopmade Goat-Boss Car, Ser. No. 1).
ICP Permit No. 3059 029 (Shopmade Goat-Boss Car, Ser. No. 2).

In accordance with the provisions of section 305(a)(7) of the Federal Coal Mine Health and Safety Act of 1969 (83 Stat. 742, et seq., Public Law 91-173), notice is hereby given that requests for public hearing as to an application for renewal may be filed within 15 days after publication of this notice. Requests for public hearing must be completed in accordance with 30 CFR Part 505 (35 F.R. 11296, July 15, 1970), copies of which may be obtained from the Panel on request.

Copies of renewal applications are available for inspection and requests for public hearing may be filed in the office of the Correspondence Control Officer, Interim Compliance Panel, Eighth Floor, 1730 K Street NW., Washington, DC 20006.

GEORGE A. HORNBECK,
Chairman,
Interim Compliance Panel.

JUNE 3, 1971.

[FR Doc.71-8000 Filed 6-8-71;8:47 am]

PEERLESS EAGLE COAL CO.

Applications for Renewal Permits; Notice of Opportunity for Public Hearing

Applications for Renewal Permits for Noncompliance with the Electric Face Equipment Standard specified in the Federal Coal Mine Health and Safety Act of 1969 have been received as follows:

(1) ICP Docket No. 3063 000, Peerless Eagle Coal Co., Mine No. 1, USBM ID No. 46 01476 0, Summersville, Nicholas County, W. Va.:

ICP Permit No. 3063 001 (Joy Coal Cutter, Ser. No. 15865).
ICP Permit No. 3063 002 (Joy Coal Cutter, Ser. No. 15917).
ICP Permit No. 3063 003 (Joy Coal Cutter, Ser. No. 15307).
ICP Permit No. 3063 004 (Galis Roof Drill, Ser. No. 3004701587).
ICP Permit No. 3063 005 (Galis Roof Drill, Ser. No. 3083391).
ICP Permit No. 3063 006 (Galis Roof Drill, Ser. No. 3035707).
ICP Permit No. 3063 008 (Joy Loader, Ser. No. 8663).
ICP Permit No. 3063 009 (Joy Shuttle Car, Ser. No. ET9032).
ICP Permit No. 3063 010 (Joy Loader, Ser. No. 8664).
ICP Permit No. 3063 011 (Joy Loader, Ser. No. 8872).
ICP Permit No. 3063 013 (Joy Shuttle Car, Ser. No. ET9033).
ICP Permit No. 3063 015 (Joy Shuttle Car, Ser. No. ET8446).
ICP Permit No. 3063 016 (Joy Shuttle Car, Ser. No. ET7702).
ICP Permit No. 3063 017 (Kersey Mine Tractor, Ser. No. 6013).
ICP Permit No. 3063 018 (Kersey Mine Tractor, Ser. No. 6761).
ICP Permit No. 3063 019 (Joy Shuttle Car, Ser. No. ET7734).
ICP Permit No. 3063 020 (Joy Coal Cutter, Ser. No. 15452).
ICP Permit No. 3063 021 (Shop Built Coal Drill, Ser. No. Co. No. 3 Coal Drill).
ICP Permit No. 3063 022 (Shop Built Coal Drill, Ser. No. Co. No. 2 Coal Drill).
ICP Permit No. 3063 023 (Shop Built Coal Drill, Ser. No. Co. No. 1 Coal Drill).
ICP Permit No. 3063 024 (Shop Built Coal Drill, Ser. No. Co. No. 4 Coal Drill).

In accordance with the provisions of section 305(a)(7) of the Federal Coal Mine Health and Safety Act of 1969 (83 Stat. 742, et seq., Public Law 91-173), notice is hereby given that requests for public hearing as to an application for renewal may be filed within 15 days after publication of this notice. Requests for public hearing must be completed in accordance with 30 CFR Part 505 (35 F.R. 11296, July 15, 1970), copies of which may be obtained from the Panel on request.

Copies of renewal applications are available for inspection and requests for public hearing may be filed in the office of the Correspondence Control Officer, Interim Compliance Panel, Eighth Floor, 1730 K Street NW., Washington, D.C. 20006.

GEORGE A. HORNBECK,
Chairman,
Interim Compliance Panel.

JUNE 3, 1971.

[FR Doc.71-8003 Filed 6-8-71;8:48 am]

PEERLESS EAGLE COAL CO. ET AL.

Applications for Renewal Permits; Notice of Opportunity for Public Hearing

Applications for Renewal Permits for Noncompliance with the Electric Face Equipment Standard specified in the Federal Coal Mine Health and Safety Act of 1969 have been received as follows:

(1) ICP Docket No. 3062 000, Peerless Eagle Coal Co., Mine No. 2A, USBM ID No. 46 01616 0, Summersville, Nicholas County, W. Va.:

ICP Permit No. 3062 001 (S & S Machinery Mine Tractor, Ser. No. 4-4-66-2654).

ICP Permit No. 3062 003 (Joy Coal Cutter, Ser. No. 15360).
ICP Permit No. 3062 004 (Galis Roof Drill, Ser. No. 3026868).
ICP Permit No. 3062 005 (Joy Loader, Ser. No. 8871).
ICP Permit No. 3062 006 (Shop Built Coal Drill, Ser. No. Co. No. 5).

(2) ICP Docket No. 3080 000, Imperial Smokeless Coal Co., Quinwood No. 7 Mine, USBM ID No. 46 01474 0, Leivasy, Nicholas County, W. Va.:
ICP Permit No. 3080 001 (Joy Loader Ser. No. 9245).
ICP Permit No. 3080 007 (Joy Cutting Machine, Ser. No. 17541).
ICP Permit No. 3080 013 (Galis Roof Drill Ser. No. 3026863).
ICP Permit No. 3080 020 (Joy Shuttle Car, Ser. No. ET8690).
ICP Permit No. 3080 025 (Joy Shuttle Car. Ser. No. ET8691).

(3) ICP Docket No. 3082 000, Imperial Coal Co., Imperial Mine, USBM ID No. 05 00306 0, Erie, Weld County, Colo.:
ICP Permit No. 3082 001 (Joy Manufacturing Co. Continuous Miner, Ser. No. JM256).
ICP Permit No. 3082 002 (Joy Manufacturing Co. Continuous Miner, Ser. No. JM 254).
ICP Permit No. 3082 003 (Joy Manufacturing Co. Loading Machine, Ser. No. 2832).
ICP Permit No. 3082 004 (Joy Manufacturing Co. Loading Machine, Ser. No. 2471).
ICP Permit No. 3082 005 (Joy Manufacturing Co. Shuttle Car, Ser. No. ET2731).
ICP Permit No. 3082 006 (Joy Manufacturing Co. Shuttle Car, Ser. No. ET2722).

In accordance with the provisions of section 305(a)(7) of the Federal Coal Mine Health and Safety Act of 1969 (83 Stat. 742, et seq., Public Law 91–173), notice is hereby given that requests for public hearing as to an application for renewal may be filed within 15 days after publication of this notice. Requests for public hearing must be completed in accordance with 30 CFR Part 505 (35 F. R. 11296, July 15, 1970), copies of which may be obtained from the Panel on request.

Copies of renewal applications are available for inspection and requests for public hearing may be filed in the office of the Correspondence Control Officer, Interim Compliance Panel, Eighth Floor, 1730 K Street NW., Washington, DC 20006.

GEORGE A. HORNBECK,
Chairman,
Interim Compliance Panel.

JUNE 3, 1971.

[FR Doc.71-8002 Filed 6-8-71;8:48 am]

PREMIUM COAL CO.

Applications for Renewal Permits; Notice of Opportunity for Public Hearing

Applications for Renewal Permits for Noncompliance with the Electric Face Equipment Standard specified in the Federal Coal Mine Health and Safety Act of 1969 have been received as follows:

ICP Docket No. 3096 000, Premium Coal Co., Mine No. 12, USBM ID No. 44 01752 0, Big Rock, Buchanan County, Va.:
ICP Docket No. 3096 001 (Joy Loader, Ser. No. 6887).
ICP Docket No. 3096 002 (Joy Loader, Ser. No. 8540).
ICP Docket No. 3096 003 (Joy Loader, Ser. No. 8503).
ICP Docket No. 3096 004 (Joy Cutter, Ser. No. 15996).
ICP Docket No. 3096 005 (Royal Cutter, Ser. No. 5).
ICP Docket No. 3096 006 (Royal Roof Bolter, Ser. No. 6).
ICP Docket No. 3096 007 (Galis Roof Bolter, Ser. No. 2–C12194).
ICP Docket No. 3096 008 (Mine Safety Rock Duster, Ser. No. 1–33487T10).
ICP Docket No. 3096 009 (Shopmade Hydraulic Drill, Ser. No. 9).
ICP Docket No. 3096 012 (Mescher 3-wheel Tractor, Ser. No. 12).
ICP Docket No. 3096 013 (Mescher 3-wheel Tractor, Ser. No. 13).
ICP Docket No. 3096 014 (Mescher 3-wheel Tractor, Ser. No. 14).
ICP Docket No. 3096 015 (Mescher 3-wheel Tractor, Ser. No. 15).
ICP Docket No. 3096 016 (Bailey 3-wheel Tractor, Ser. No. 16).
ICP Docket No. 3096 017 (Bailey 3-wheel Tractor, Ser. No. 17).
ICP Docket No. 3096 018 (Bailey 3-wheel Tractor, Ser. No. 18).
ICP Docket No. 3096 019 (S&S Machinery 3-wheel Tractor, Ser. No. 19).
ICP Docket No. 3096 020 (S&S Machinery 3-wheel Tractor, Ser. No. 81463).
ICP Docket No. 3096 021 (Mescher 4-wheel Tractor, Ser. No. 21).

In accordance with the provisions of section 305(a)(7) of the Federal Coal Mine Health and Safety Act of 1969 (83 Stat. 742, et seq., Public Law 91–173), notice is hereby given that requests for public hearing as to an application for renewal may be filed within 15 days after publication of this notice. Requests for public hearing must be completed in accordance with 30 CFR Part 505 (35 F.R. 11296, July 15, 1970), copies of which may be obtained from the Panel on request.

Copies of renewal applications are available for inspection and requests for public hearing may be filed in the office of the Correspondence Control Officer, Interim Compliance Panel, Eighth Floor, 1730 K Street NW., Washington, DC 20006.

GEORGE A. HORNBECK,
Chairman,
Interim Compliance Panel.

JUNE 3, 1971.

[FR Doc.71-8001 Filed 6-8-71;8:47 am]

SMALL BUSINESS ADMINISTRATION

[Delegation of Authority No. 30, Rev. 13; Amdt. 2]

BRANCH MANAGERS ET AL.

Delegation of Authority To Conduct Program Activities in Field Offices

Delegation of Authority No. 30 (Revision 13) (36 F.R. 5381), as amended (36 F.R. 7625), is hereby further amended by revising Part I, section A, paragraphs 1.k, 1.l, and 3, section B, 1.a, 3, and 5; Part II, section B, 1, and 3; and Part IV, section B, 1.b, 2.b, and 3.b; and by adding Part III, section A, paragraphs 1.b, and 2.h, section D, 1.c(2) and 2.i; Part V, section A, 1.b(2)(d) and 3.l, section B, 1.l, 3.k, 3.l, and 4.m; and Part VII, section A, 1.b(2), and section B, 1.c(7), and 1.d(2), to read as follows:

PART I—FINANCING PROGRAM

SECTION A. *Loan Approval Authority—1. Small Business Act section 7(a) loans.* To approve or decline business loans not exceeding the following amounts (SBA share):

* * * * *

k. Branch Manager, Marquette, Mich., Branch Office, $100,000.
l. Branch Manager, Milwaukee, Wis., Branch Office, $100,000.

* * * * *

3. *Displaced business and other economic injury loans.* a. To decline displaced business loans, coal mine health and safety loans, consumer protection loans (meat, egg, poultry), and economic injury disaster loans in connection with declarations made by the Secretary of Agriculture for natural disasters in any amount and to approve such loans up to the following amounts (SBA share):

* * * * *

b. To approve or decline displaced business loans, coal mine health and safety loans, consumer protection loans (meat, egg, poultry), and economic injury disaster loans in connection with declarations made by the Secretary of Agriculture for natural disasters up to the following amounts (SBA share):

* * * * *

(9) Branch Manager, Marquette, Mich., Branch Office, $100,000.
(10) Branch Manager, Milwaukee, Wis., Branch Office, $100,000.

SEC. B. *Other financing authority.* 1.a. To enter into business, economic opportunity, disaster, displaced business, consumer protection (meat, egg, poultry), and coal mine health and safety loan participation agreements with banks:

* * * * *

3. To cancel, reinstate, modify, and amend authorizations:

a. For business, economic, opportunity, disaster, displaced business, consumer protection (meat, egg, poultry), and coal mine health and safety loans:

* * * * *

(8) Branch Manager, Milwaukee, Wis., Branch Office.

b. For fully undisbursed business, economic opportunity, disaster, displaced business, consumer protection (meat, egg, poultry), and coal mine health and safety loans:

(1) Chief and Assistant Chief, Regional Financing Division.
(2) Regional Supervisory Loan Officer.
(3) Chief, District Financing Division.
(4) District Supervisory Loan Officer, if assigned.
(5) Branch Supervisory Loan Officer, if assigned, Fairbanks, Alaska, Branch Office.

c. For business, economic opportunity, disaster, displaced business, consumer protection (meat, egg, poultry), and coal mine health and safety loans personally approved under delegated authority:

* * * * *

5.a. To extend the disbursement period on all loan authorizations:

* * * * *

(9) Branch Manager, Milwaukee, Wis., Branch Office.

b. To extend the disbursement period on all loan authorizations on loans fully undisbursed:

(1) Chiefs and Assistant Chief, Regional Financing Division.

(2) Regional Supervisory Loan Officer.

(3) Loan Officer, Regional Financing Division.

(4) Chief, District Financing Division.

(5) District Supervisory Loan Officer, if assigned.

(6) Loan Officer, District Financing Division.

(7) Branch Supervisory Loan Officer, if assigned, Fairbanks, Alaska, Branch Office.

(8) Branch Supervisory Loan Officer, if assigned, Gulfport, Miss., Branch Office.

* * * * *

PART II—COMMUNITY ECONOMIC DEVELOPMENT (CED) PROGRAM

* * * * *

SEC. B. *Other 501 and 502 authority.* 1.a. To extend the disbursement period on sections 501 and 502 loan authorizations:

* * * * *

(5) Branch Manager, Milwaukee, Wis., Branch Office.

b. To extend the disbursement period on fully undisbursed sections 501 and 502 loans:

(1) Chief, Regional CED Division.

(2) Economic Development Specialists, Regional CED Division.

(3) Chief, District CED Division.

(4) Economic Development Specialists, District CED Division.

* * * * *

3.a. To cancel, reinstate, modify, and amend authorizations for sections 501 and 502 loans:

* * * * *

(5) Branch Manager, Milwaukee, Wis., Branch Office.

b. To cancel, reinstate, modify, and amend authorizations for fully undisbursed sections 501 and 502 loans:

(1) Chief, Regional CED Division.

(2) Economic Development Specialists, Regional CED Division.

(3) Chief, District CED Division.

(4) Economic Development Specialists, District CED Division.

* * * * *

PART III—LOAN ADMINISTRATION (LA) PROGRAM

SECTION A. *Loan administration, servicing, collection, and liquidation authority.* 1. * * *

b. * * *

(4) Supervisory Loan Officer, Branch LA Division, Gulfport, Miss., Branch Office.

2. * * *

h. Supervisory Loan Officer, Branch LA Division, Gulfport, Miss., Branch Office.

* * * * *

SEC. D. *Lease guarantee administration and servicing authority.* 1. * * *

c. * * *

(2) Supervisory Loan Officer, Branch LA Division, Gulfport, Miss., Branch Office.

2. * * *

i. Supervisory Loan Officer, Branch LA Division, Gulfport, Miss., Branch Office.

PART IV—PROCUREMENT AND MANAGEMENT ASSISTANCE

* * * * *

SEC. B. *Section 8(a) contracting authority.* 1. * * *

b. Chief, Regional PMA Division, $100,000.

2. * * *

b. Chief, Regional PMA Division.

3. * * *

b. Chief, Regional PMA Division, $100,000.

* * * * *

PART V—LEGAL SERVICES

SECTION A. *Authority to conduct litigation activities.* 1. * * *

b. * * *

(2) * * *

(d) Branch Counsel, Gulfport, Miss., Branch Office.

* * * * *

3. * * *

l. Branch Counsel, Gulfport, Miss., Branch Office.

SEC. B. *Loan closing authority.* 1. * * *

1. Branch Counsel, Gulfport, Miss., Branch Office.

* * * * *

3. * * *

k. Branch Manager, Gulfport, Miss., Branch Office.

l. Branch Counsel, Gulfport, Miss., Branch Office.

4. * * *

m. Branch Counsel, Gulfport, Miss., Branch Office.

* * * * *

PART VII—ELIGIBILITY AND SIZE DETERMINATIONS

SECTION A. *Eligibility determinations.* 1. * * *

b. In accordance with Small Business Administration standards and policies, to determine eligibility of applicants for assistance under the sections 501 and 502 loan programs of the Agency:

* * * * *

(2) Chief, District CED Division.

* * * * *

SEC. B. *Size determinations.* 1. * * *

c. To make initial size determinations in all cases within the meaning of the Small Business Size Standards Regulations, as amended, except sections 501 and 502 loans, and further to make product classification decisions for financing purposes only:

* * * * *

(7) Regional Supervisory Loan Officer.

d. To make initial size determinations in all sections 501 and 502 loans within the meaning of the Small Business Size Standards Regulations, as amended, and further, to make product classification decisions for sections 501 and 502 loans only.

* * * * *

(2) Chief, District CED Division.

* * * * *

Effective Dates:

Part I, section A, paragraphs 1.k. and 1.l	3- 1-71
Paragraph 3	3-26-71
except 3.b (9) and (10)	3- 1-71
Section B, paragraphs 1.a. and 3	3-26-71
except 3.a(8) and 3.b (1)-(5)	3- 1-71
5.a(9) and 5.b (1)-(7)	3- 1-71
5.b(8)	3-12-71
Part II, section B, paragraphs 1 and 3	3- 1-71
Part III, section A, paragraphs 1.b and 2.h, and section D, 1.c (2) and 2.l	3-12-71
Part IV, section B, paragraphs 1.b, 2.b, and 3.b	4-14-71
Part V, section A, paragraphs 1.b (2) (d) and 3.l, section B, 1.l, 3.k, 3.l, and 4.m	3-12-71
Part VII, section A, paragraph 1.b (2), and section B, 1.c(7) and 1.d(2)	4-28-71

THOMAS S. KLEPPE,
Administrator.

[FR Doc.71-8004 Filed 6-8-71;8:48 am]

ELECTRONIC SYSTEMS INVESTMENT CORP.

Notice of Approval of Application for Transfer of Control of Licensed Small Business Investment Company

Pursuant to the provisions of § 107.701 of the Small Business Administration (SBA) rules and regulations (13 CFR Part 107, 33 F.R. 326), a notice of filing of an application for transfer of control of Electronic Systems Investment Corp., License No. 03/04-0048, 4321 Hartwick Road, College Park, MD 20740, was published in the FEDERAL REGISTER on April 29, 1971 (36 F.R. 8176).

Interested persons were given until May 10, 1971, to send their comments to SBA on the proposed transfer of control. No comments were received.

Upon consideration of the application and other relevant information, SBA hereby approves the transfer of control of Electronic Systems Investment Corp.

Dated: May 21, 1971.

A. H. SINGER,
Associate Administrator for Investment.

[FR Doc.71-8015 Filed 6-8-71;8:49 am]

U.A.G. INVESTMENT CORP.

Notice of License Surrender

Notice is hereby given that U.A.G. Investment Corp. (U.A.G.), Post Office Box 67, Robesonia, PA 19551, 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).

U.A.G. was licensed as a small business investment company on August 13, 1962, 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 is hereby accepted and all rights, privileges, and franchises derived therefrom are canceled.

Dated: June 1, 1971.

A. H. SINGER,
Associate Administrator for Investment.

[FR Doc.71-8014 Filed 6-8-71;8:48 am]

INTERSTATE COMMERCE COMMISSION

[No. MC-C-7353]

A & A TRANSFER & STORAGE, INC. ET AL.

Petition Regarding Transportation of Unaccompanied Baggage

JUNE 4, 1971.

Petitioners: A & A Transfer & Storage, Inc et al. Petitioner's attorney: Alan F. Wohlstetter, 1 Farragut Square South, Washington, DC 20006.

By joint petition filed May 27, 1971, petitioners seek a determination as to whether the transportation of unaccompanied baggage is lawful under a certificate of public convenience and necessity that, subject to certain restrictions, authorizes the transportation of used household goods. The names and addresses of all 67 motor common carriers that have joined in the petition and the docket numbers under which each has been issued a certificate of public convenience and necessity are on record in the public docket in this proceeding and a complete list of them may be obtained upon written request made to the Secretary, Interstate Commerce Commission, Washington, DC 20423.

Generally petitioners contend that the propriety of their prior transportation of shipments of unaccompanied baggage either under color of right or pursuant to a license to transport used household goods was seldom questioned. They assert, however, that now there is widespread confusion and controversy among them and hundreds of other similarly licensed motor common carriers. Specifically they seek determination of the question:

May a motor common carrier transport a shipment of unaccompanied baggage under a certificate of public convenience and necessity which authorizes it to transport used household goods restricted to the transportation of shipments having a prior or subsequent movement, in containers, beyond the points authorized, and further restricted to the performance of pickup and delivery service in connection with packing, crating, and containerization, or unpacking, uncrating, and decontainerization of such shipments?

Assertedly for the sake of fair and equitable treatment of them and numerous other motor common carriers similarly situated, petitioners pray that the Commission issue an order declaring that motor carrier operating authority authorizing the transportation of used household goods also includes authority to transport unaccompanied baggage. They contend that such result would not only be consistent with good administrative practice, orderly procedure and sound regulation, but that it would also avoid the tremendous burdens that would be imposed upon the involved carriers and the Commission should the hundreds of motor carriers of used household goods be required to obtain additional authority to transport unaccompanied baggage.

Any interested person (including petitioners) desiring to participate in this proceeding shall file an original and seven copies of his written representations, views and arguments in support of, or against the relief requested within 30 days from the date of this publication in the FEDERAL REGISTER.

By the Commission.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.71-8032 Filed 6-8-71;8:50 am]

FOURTH SECTION APPLICATIONS FOR RELIEF

JUNE 4, 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. 42219—*Class and commodity rates between points in Texas.* Filed by Texas-Louisiana Freight Bureau, agent (No. 649), for interested rail carriers. Rates on coke and related articles, newsprint paper, railway tracks, portable, trailers, cocoanut oil and related articles, 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 119 to Texas-Louisiana Freight Bureau, agent, tariff ICC 998. Rates are published to become effective on July 7, 1971.

FSA No. 42221—*Chlorine from Gramercy, La.* Filed by O. W. South, Jr., agent (No. A6260), for interested rail carriers. Rates on chlorine, in tank car loads, as described in the application, from Gramercy, La., to Hamilton, Miss.

Grounds for relief—Market competition.

Tariff—Supplement 190 to Southern Freight Association, agent, tariff ICC S-699. Rates are published to become effective on July 8, 1971.

AGGREGATE-OF-INTERMEDIATES

FSA No. 42220—*Class and commodity rates between points in Texas.* Filed by Texas-Louisiana Freight Bureau, agent (No. 650), for interested rail carriers. Rates on liquefied chlorine gas, sulphur, zinc spelter and anodes, coke and related articles, newsprint paper, railway tracks, portable, trailers, cocoanut oil, and related articles, 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 119 to Texas-Louisiana Freight Bureau, agent, tariff ICC 998. Rates are published to become effective on July 7, 1971.

By the Commission.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.71-8023 Filed 6-8-71;8:49 am]

HOME TRANSPORTATION, INC., ET AL.

Assignment of Hearings

JUNE 4, 1971.

Cases assigned for hearing, postponement, cancellation, or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested.

MC 111545 Sub 116, Home Transportation, Inc., application dismissed.

MC 113459 Sub 51, H. J. Jefferies Truck Line, Inc., application dismissed.

MC 128273 Sub 83, Midwestern Express, Inc., application dismissed.

FD 26661, J. V. McNicholas Transfer Co.—Note, and Assumption of Obligation and Liability, assigned June 7, 1971, at the Offices of Interstate Commerce Commission, Washington, D.C.

MC 134788 Sub 1, North Penn Bus Line, Inc., now assigned July 19, 1971, at Philadelphia, Pa., transferred from Joint Board No. 42, to a hearing examiner.

MC 119767 Sub 250, Beaver Transport Co., assigned July 22, 1971, at Chicago, Ill., in Tax Court Room 1743, Everett McKinley Dirksen Building, 219 S. Dearborn Street.

FD 26426, St. Louis Southwestern Railway Co.—Purchase—Alton & Southern Railway Co., assigned July 12, 1971, in U.S. District Courtroom, Federal Building, 1114 Market Street, St. Louis, MO.

FD 26427, St. Louis Southwestern Railway Co. & Missouri Pacific Railroad Co.—Operation in Part Alton & Southern Railway Co., assigned July 12, 1971, in U.S. District Courtroom, Federal Building, 1114 Market Street, St. Louis, MO.

MC 682 Sub 11, Burnham Van Service, Inc., assigned July 26, 1971, in Room B–13025, Federal Building, 450 Golden Gate Avenue, San Francisco, CA.

MC 868 Sub 8, Signal Trucking Service Ltd., assigned July 12, 1971, at Los Angeles, Calif., in Room 1534, U.S. Courthouse, 312 North Spring Street, and July 19, 1971, at San Francisco, Calif., in Room B–13025, Federal Building, 450 Golden Gate Avenue.

MC–F–11051, Denver Midwest Motor Freight, Inc.—Control and Merger—Premier Trucking Service Co., assigned July 12, 1971, in the Second Floor Jury Room, Federal Building, Sixth and Douglas Streets, Sioux City, IA.

MC 108449 Sub 302, Indianhead Truck Line, Inc., assigned for continued hearing July 19, 1971, in Room 203, Jury Room No. 2, Second Floor Federal Building, Sixth and Douglas Streets, Sioux City, IA.

MC 120800 Sub 24, Capitol Truck Line, Inc., assigned for continued hearing on July 19, 1971, in Room 203, Jury Room No. 2, Second Floor, Federal Building, Sixth and Douglas Streets, Sioux City, IA.

MC 47126 Sub 5, Suburban Transit, Inc., assigned July 26, 1971, in Room 2069, New Federal Building, 1240 East Ninth Street, Cleveland, OH.

MC 116763 Sub 176, Carl Subler Trucking, Inc., assigned July 22, 1971, in Room 4, State Office Building, 65 South Front Street, Columbus, OH.

MC–F–10945 et al., Western Gillette, Inc.—Purchase (Portion)—Deaton, Inc., assigned for continued hearing June 7, 1971, at the Office of the Interstate Commerce Commission, Washington, D.C.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.71–8024 Filed 6–8–71;8:49 am]

[Notice 14]

MOTOR CARRIER ALTERNATE ROUTE DEVIATION NOTICES

JUNE 4, 1971.

The following letter-notices of proposals to operate over deviation routes for operating convenience only have been filed with the Interstate Commerce Commission under the Commission's Revised Deviation Rules—Motor Carriers of Passengers, 1969 (49 CFR 1042.2(c)(9)) and notice thereof to all interested persons is hereby given as provided in such rules (49 CFR 1042.2(c)(9)).

Protests against the use of any proposed deviation route herein described may be filed with the Interstate Commerce Commission in the manner and form provided in such rules (49 CFR 1042.2(c)(9)) at any time, but will not operate to stay commencement of the proposed operations unless filed within 30 days from the date of publication.

Successively filed letter-notices of the same carrier under the Commission's Revised Deviation Rules—Motor Carriers of Property, 1969, will be numbered consecutively for convenience in identification and protests, if any, should refer to such letter-notices by number.

MOTOR CARRIERS OF PASSENGERS

No. MC–1515 (Deviation No. 582), GREYHOUND LINES, INC. (Eastern Division), 1400 West Third Street, Cleveland, OH 44113, filed May 21, 1971. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *passengers and their baggage, and express and newspapers* in the same vehicle with passengers, over a deviation route as follows: From Fairmont, W. Va., over West Virginia Highway 73 to interchange Interstate Highway 79, thence over Interstate Highway 79 to junction West Virginia Highway 73, thence over West Virginia Highway 73 to junction U.S. Highway 50, thence over U.S. Highway 50 to Clarksburg, W. Va., and return over the same route, for operating convenience only. The notice indicates that the carrier is presently authorized to transport passengers and the same property, over pertinent service routes as follows: (1) From Washington, Pa., over U.S. Highway 19 to Clarksburg, W. Va.; and (2) from Milford, Ohio, over U.S. Highway 50 via Vera Cruz, Ohio, to Winchester, Va., and return over the same routes.

No. MC–61616 (Deviation No. 39) (Cancels Deviation No. 4), MIDWEST BUSLINES, INC., 433 West Washington Avenue, North Little Rock, AR 72114, filed May 28, 1971. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *passengers and their baggage, and express and newspapers* in the same vehicle with passengers, over a deviation route as follows: From junction relocated U.S. Highway 67 and old U.S. Highway 67, 3 miles south of Searcy, Ark., over relocated U.S. Highway 67 to North Little Rock, Ark., and return over the same route, for operating convenience only. The notice indicates that the carrier is presently authorized to transport passengers and the same property, over a pertinent service route as follows: from St. Louis, Mo., over U.S. Highway 67 to Judsonia, Ark., thence over U.S. Highway 67 to junction U.S. Highway 67C, thence over U.S. Highway 67C to junction U.S. Highway 67, thence over U.S. Highway 67 to Maud, Tex., and return over the same route.

By the Commission.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.71–8026 Filed 6–8–71;8:49 am]

[Notice 19]

MOTOR CARRIER ALTERNATE ROUTE DEVIATION NOTICES

JUNE 4, 1971.

The following letter-notices of proposals to operate over deviation routes for operating convenience only have been filed with the Interstate Commerce Commission under the Commission's Revised Deviation Rules—Motor Carriers of Property, 1969 (49 CFR 1042.4(d)(11)) and notice thereof to all interested persons is hereby given as provided in such rules (49 CFR 1042.4(d)(11)).

Protests against the use of any proposed deviation route herein described may be filed with the Interstate Commerce Commission in the manner and form provided in such rules (49 CFR 1042.4(d)(12)) at any time, but will not operate to stay commencement of the proposed operations unless filed within 30 days from the date of publication.

Successively filed letter-notices of the same carrier under the Commission's Revised Deviation Rules—Motor Carriers of Property, 1969, will be numbered consecutively for convenience in identification and protests, if any, should refer to such letter-notices by number.

MOTOR CARRIERS OF PROPERTY

No. MC–3379 (Deviation No. 14), SNYDER BROS. MOTOR FREIGHT, INC., 363 Stanton Avenue, Akron, OH 44301, filed May 28, 1971. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: From Columbus, Ohio, over Interstate Highway 71 to junction Ohio Highway 13, thence over Ohio Highway 13 to junction U.S. Highway 30, thence over U.S. Highway 30 to Wooster, Ohio, and return over the same route, for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities, over a pertinent service route as follows: From Columbus, Ohio, over Ohio Highway 3 to Mt. Vernon, Ohio, thence over U.S. Highway 36 to Millwood, Ohio, thence over U.S. Highway 62 to Millersburg, Ohio, thence over Ohio Highway 76 to Holmesville, Ohio, thence over unnumbered highway Fredericksburg, Ohio, thence over Ohio Highway 94 to junction U.S. Highway 250, near Wooster, Ohio, thence over U.S. Highway 250 to Wooster, Ohio, and return over the same route.

No. MC–52953 (Deviation No. 17), ET & WNC TRANSPORTATION COMPANY, 132 Legion Street, Johnson City, TN, filed May 24, 1971. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: From junction U.S. Highways 61 and 49 north of Clarksdale, Miss., over U.S. Highway 49 to junction Arkansas Highway 17, near Brinkley, Ark., thence

over Arkansas Highway 17 to junction Interstate Highway 40, near Brinkley, Ark., thence over Interstate Highway 40 to Little Rock, Ark., and return over the same route, for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities, over pertinent service routes as follows: (1) From Memphis, Tenn., over U.S. Highway 70 to Little Rock, Ark.; (2) from Memphis, Tenn., over U.S. Highway 61 to Clarksdale, Miss., thence over U.S. Highway 49 to Tutwiler, Miss., thence over U.S. Highway 49–E to Greenwood, Miss.; (3) from Memphis, Tenn., over U.S. Highway 61 to Leland, Miss., thence over U.S. Highway 82 via Indianola, Miss., to Greenville, Miss.; and (4) from Ruleville, Miss., over Mississippi Highway 8 to Cleveland, Miss., and return over the same routes.

No. MC–75320 (Deviation No. 32), CAMPBELL SIXTY-SIX EXPRESS, INC., Post Office Box 807, Springfield, MO 65801, filed May 28, 1971. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: From Milwaukee, Wis., over Interstate Highway 94 to junction Interstate Highway 294, near Chicago, Ill., thence over Interstate Highway 294 to junction Interstate Highway 57, thence over Interstate Highway 57 to junction Interstate Highway 80, thence over Interstate Highway 80 to junction Interstate Highway 180, east of Princeton, Ill., thence over Interstate Highway 180 to junction Illinois Highway 29, thence over Illinois Highway 29 to junction U.S. Highway 24, near Peoria, Ill., thence over U.S. Highway 24 to Kansas City, Mo., and return over the same route, for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities over pertinent service routes as follows: (1) From Springfield, Mo., over Missouri Highway 13 via Clinton, Mo., to Warrensburg, Mo., thence over U.S. Highway 50 to Kansas City, Kans., (also from Springfield to Clinton as specified above, thence over Missouri Highway 35 to junction U.S. Highway 71, thence over U.S. Highway 71 to Harrisonville, Mo., thence over bypass U.S. Highway 71 to Lee's Summit, Mo., thence over U.S. Highway 50 to Kansas City), (2) from Springfield, Mo., over U.S. Highway 66 via St. Louis, Mo., to Gardner, Ill., thence over Illinois Highway 53 (formerly Alternate U.S. Highway 66) to junction U.S. Highway 66, thence over U.S. Highway 66 to Chicago, Ill. (also from Springfield over U.S. Highway 66 to junction Illinois Highway 48, thence over Illinois Highway 48 to junction U.S. Highway 45, thence over U.S. Highway 45 to Kankakee, Ill., thence over Illinois Highway 49 to Chicago; also from Springfield over Missouri Highway 13 to junction U.S. Highway 40, thence over U.S. Highway 40 to St. Louis, Mo., thence over Chicago as specified); and (3) from Milwaukee, Wis., over U.S. Highway 41 to junction Wisconsin Highway 36, thence over Wisconsin Highway 36 to junction U.S. Highway 45, thence over U.S. Highway 45 to junction Illinois Highway 21, thence over U.S. Highway 21 to Chicago, Ill., and return over the same routes.

By the Commission.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.71–8027 Filed 6–8–71;8:49 am]

[Notice 46]

MOTOR CARRIER APPLICATIONS AND CERTAIN OTHER PROCEEDINGS

JUNE 4, 1971.

The following publications are governed by the new Special Rule 1.247 of the Commission's rules of practice, published in the FEDERAL REGISTER, issue of December 3, 1963, which became effective January 1, 1964.

The publications hereinafter set forth reflect the scope of the applications as filed by applicant, and may include descriptions, restrictions, or limitations which are not in a form acceptable to the Commission. Authority which ultimately may be granted as a result of the applications here noticed will not necessarily reflect the phraseology set forth in the application as filed, but also will eliminate any restrictions which are not acceptable to the Commission.

MOTOR CARRIERS OF PROPERTY

No. MC 118859 (Sub-No. 5) (Republication), filed May 13, 1970, published in the FEDERAL REGISTER issue of July 30, 1970, and republished this issue. Applicant: BULLOCK TRUCKING COMPANY, INC., No. 6 Produce Market, Thomasville, Ga. 31792. Applicant's representative: Virgil H. Smith, 431 Title Building, Atlanta, Ga. 30303. The modified procedure has been followed in this proceeding and a report and order of the Commission, Review Board No. 4, decided May 6, 1971, and served May 28, 1971, finds: That the present and future public convenience and necessity require operation by applicant, in interstate or foreign commerce, as a common carrier by motor vehicle, over irregular routes, of wooden pallets from Valdosta, Ga., to points in Florida; that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder. Because it is possible that other persons, who have relied upon the notice of the application as published, may have an interest in and would be prejudiced by the lack of proper notice of the authority described in the findings of this report, a notice of the authority actually granted will be published in the FEDERAL REGISTER and issuance of a certificate in this proceeding will be withheld for a period of 30 days from the date of such publication, during which period any proper party in interest may file a petition to reopen or for other appropriate relief setting forth in detail the precise manner in which it has been so prejudiced.

No. MC 128527 (Sub-No. 10) (Republication), filed January 17, 1969, published in the FEDERAL REGISTER issue of February 13, 1969, and republished this issue. Applicant: MAY TRUCK COMPANY, a corporation, Post Office Box 398, Payette, ID 83661. Applicant's representative: Kenneth G. Bergquist, Post Office Box 1775, Boise, ID 83701. A report and order of the Commission, Division I, decided February 22, 1971, and served March 3, 1971, finds; that the present and future public convenience and necessity require operation by applicant, in interstate or foreign commerce, as a common carrier by motor vehicle, over irregular routes; (1) of meat, meat products, and meat byproducts, not frozen, from Caldwell, Idaho, to Multnomah and Clackamas Counties, Oreg.; (2) of sugar from Nampa, Idaho, to points in Oregon on and west of U.S. Highways 97 and 197; (3) of rubber from Portland, Oreg., to Boise, Idaho; (4) of orchard materials and supplies from Portland, Oreg., to Fruitland, Idaho; and (5) of steel pipe and tanks from Portland, Oreg., to points in Ada, Canyon, Elmore, Gem, Owyhee, Payette, and Washington Counties, Idaho; restricted in each instance (a) against the transportation of commodities in bulk; (b) against the transportation of commodities which because of size or weight require the use of special equipment; and (c) to the transportation of traffic originating at the named origins and destined to the indicated destinations; that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and our rules and regulations thereunder, subject to the term limitation indicated below; that a certificate authorizing such operation should be granted subject to the condition that the certificate shall be limited, in point of time, to a period expiring 3 years from its date of issue. Because it is possible that other persons who may have relied upon the notice of the application as published in the FEDERAL REGISTER may have an interest in and would be prejudiced by the lack of proper notice, a notice of the authority actually granted applicant will be published in the FEDERAL REGISTER and issuance of the permit in this proceeding will be withheld for a period of 30 days from the date of such publication, during which period any proper party in interest may file a petition to reopen or for other appropriate relief setting forth in detail the precise manner in which it has been so prejudiced.

NOTICE OF FILING OF PETITIONS

No. MC 2876 (Notice of Filing of Petition To Reopen "Grandfather" Application), filed May 20, 1971. Petitioner: W. J. BEITLER COMPANY, a corporation, Pittsburgh, Pa. Petitioner's representative: Arthur J. Diskin, 806 Frick

Building, Pittsburgh, Pa. 15219. Petitioner holds motor common carrier authority in No. MC 2876, authorizing the transportation of: *General commodities*, except those of unusual value, and except livestock, dangerous explosives, household goods as defined in *Practices of Motor Common Carriers of Household Goods*, 17 M.C.C. 467, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading, over irregular routes, from Pittsburgh, Pa., to Youngstown and Warren, Ohio, and points and places in Pennsylvania within 75 miles of Pittsburgh, with no transportation for compensation on return. By the instant petition, petitioner requests the Commission issue a revised certificate authorizing the transportation of general commodities, with the usual exceptions, from Pittsburgh, Pa., to points in Ohio on and east of U.S. Highway 21, to points in West Virginia on and north of U.S. Highway 50, and points in Pennsylvania on and west of U.S. Highway 15. Any interested person desiring to participate may file an original and six copies of his written representations, views, or argument in support of or against the petition within 30 days from the date of publication in the FEDERAL REGISTER.

No. MC 102081 (Notice of Filing of Petition for Removal of Weight Restrictions), filed May 13, 1971. Petitioner: IGNATZIO AIADRO, New Haven, Conn. Petitioner's representative: Thomas W. Murrett, 342 North Main Street, West Hartford, CT 06117. Petitioner holds authority in No. MC 102081, authorizing the transportation of: Used machinery and parts thereof, not boxed, crated, or skidded, minimum 1,000 pounds, maximum 10,000 pounds, over irregular routes, between New Haven and Meriden, Conn., on the one hand, and, on the other, Albany and Schenectady, N.Y., Boston, Worcester, and Springfield, Mass., and those in the New York, N.Y., commercial zone, as defined by the Commission in 1 M.C.C. 665. By the instant petition, petitioner requests that the weight limitation of "minimum 1,000 pounds, maximum 10,000 pounds" be eliminated. Any interested person desiring to participate may file an original and six copies of his written representations, views, or argument in support of or against the petition within 30 days from the date of publication in the FEDERAL REGISTER.

No. MC 107615 (Notice of Filing of Petition for Waiver of Rule 101(e) and for Clarification and Modification of Operating Authority), filed May 17, 1971. Petitioner: UNITED NEWS TRANSPORTATION COMPANY, a corporation, Philadelphia, Pa. Petitioner's representatives: V. Baker Smith and James W. Patterson, 2107 The Fidelity Building, Philadelphia, Pa. 19109. Petitioner holds authority in No. MC 107615 to operate as a motor common carrier, transporting: *Newspapers, magazines, books, catalogs, pamphlets, periodicals, publications and parts thereof, display stands, advertising materials, and printing plates*, over irregular routes, between Harrisburg, Pa., Baltimore, Md., and points and places in the Philadelphia, Pa., commercial zone as defined in *Philadelphia, Pa., Commercial Zone*, 17 M.C.C. 533, Washington, D.C., commercial zone as defined in *Washington, D.C., Commercial Zone*, 3 M.C.C. 243 and New York, N.Y. commercial zone as defined in *New York, N.Y., Commercial Zone*, 1 M.C.C. 665, on the one hand, and, on the other, points and places in Maryland, Delaware, New Jersey, Pennsylvania, Washington, D.C., commercial zone, supra, Rockland, Nassau, Westchester, and Suffolk Counties, N.Y., except that no transportation for compensation shall be performed from North Bergen, Newark, Paterson, Hackensack, Passaic, New Brunswick, Elizabeth, and Dunnelen, N.J., to points and places in New York, nor from New York City to points and places in the four New York counties named above. By the instant petition, petitioner seeks waiver of Rule 101(e) of the Commission's general rules of practice and clarification and modification of its operating authority to provide as follows: "Newspapers, magazines, books, catalogs, pamphlets, periodicals, publications and parts and articles used or useful in the printing, binding, manufacture, distribution, and sale thereof,". Any interested person desiring to participate may file an original and six copies of his written representations, views or argument in support of or against the petition within 30 days from the date of publication in the FEDERAL REGISTER.

No. MC 126305 (Sub-No. 13) (Correction) (Notice of Filing of Petition To Add Additional Shipper to Present Operating Authority), filed March 29, 1971, published FEDERAL REGISTER, issue of April 21, 1971, and republished as corrected this issue. Petitioner: BOYD BROTHERS TRANSPORTATION COMPANY, INC., Clayton, Ala. Petitioner's representative: George A. Olsen, Jersey City, N.J. 07306. NOTE: The purpose of this republication is to show the correct docket number assigned thereto, No. MC 126305 (Sub-No. 13), in lieu of No. MC 123605 (Sub-No. 13) which was published in error.

APPLICATION FOR CERTIFICATES OR PERMITS WHICH ARE TO BE PROCESSED CONCURRENTLY WITH APPLICATIONS UNDER SECTION 5 GOVERNED BY SPECIAL RULE 240 TO THE EXTENT APPLICABLE

No. MC 106451 (Sub-No. 8), filed May 11, 1971. Applicant: COOK MOTOR LINES, INC., Post Office Box 1391, Akron, OH 44309. Applicant's representative: John P. McMahon, 100 East Broad Street, Columbus, OH 43215. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* as defined by the Commission, except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment, between points within 75 miles of Gatewood, Fayette County, W. Va. (except those points in Cabell, Putnam, Kanawha, Mason, Jackson, Roane, Calhoun, Gilmer, Wirt, Wood, Lewis, Upshur, Randolph, and Ritchie Counties, W. Va., which are within 75 miles of Gatewood, W. Va., and which are located on and north of U.S. Highway 60). NOTE: In connection with tacking or joinder, applicant states that the physical operations would connect at authorized points south of U.S. Highway 60 and within 75 miles of Gatewood, W. Va., serving between such points and applicant's other authorized points in Ohio and West Virginia. The instant application is a matter directly related to the application in No. MC-F-11171, published in the FEDERAL REGISTER issue of May 26, 1971. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

APPLICATIONS UNDER SECTIONS 5 AND 210a(b)

The following applications are governed by the Interstate Commerce Commission's special rules governing notice of filing of applications by motor carriers of property or passengers under sections (5)(a) and 210(b) of the Interstate Commerce Act and certain other proceedings with respect thereto (49 CFR 1.240).

MOTOR CARRIERS OF PROPERTY

No. MC-F-11188. Authority sought for merger into WESTERN GILLETTE, INC., 2550 East 28th Street, Los Angeles, CA 90058, of the operating rights and property of DESERT EXPRESS, also of Los Angeles, Calif. 90058, and for acquisition by DONALD E. CANTLAY, as voting trustee, of Los Angeles, Calif. 90058, of control of such rights and property through the transaction. Applicants' attorney: Theodore W. Russell, 1545 Wilshire Boulevard, Los Angeles, CA 90017. Operating rights sought to be merged: *General commodities*, excepting, among others, household goods, commodities in bulk, and livestock, as a *common carrier*, over regular routes, between Los Angeles, and San Francisco, Calif., between junction California Highway 198 and California Highway 99 (formerly U.S. Highway 99), and Fresno, Calif., between Bakersfield, and Yermo, Calif., between junction California Highway 58 (formerly U.S. Highway 466) and California Highway 14 (formerly U.S. Highway 6) and junction California Highway 14 (formerly U.S. Highway 6) and unnumbered highway approximately 4 miles west of Inyokern, Calif., between junction California Highway 14 (formerly U.S. Highway 6) and unnumbered highway near Newhall, Solamint and Saugus, Calif., between Beechers Corners and Inyokern, Calif., between Daggett and Victorville, Calif., between junction Interstate Highway 15 (formerly U.S. Highway 91) and California Highway 58 (formerly U.S. Highway 466) and junction Interstate Highway 15 (formerly U.S. Highway 91) and U.S. Highway 66,

between Victorville and Palmdale, Calif., between Valyermo, Calif., and junction unnumbered county highway and California Highway 138, near Palmdale, Calif., between Lancaster and Lake Hughes, Calif., between Lancaster, Calif., and junction unnumbered highway and California Highway 58 (formerly U.S. Highway 466), between Daggett and Yermo, Calif., between junction California Highway 14 (formerly U.S. Highway 6) and unnumbered county highway near Cantil and Johannesburg, Calif.;

Between Johannesburg and Trona, Calif., between junction California Highway 14 (formerly U.S. Highway 6) and unnumbered county highway approximately 4 miles west of Inyokern, Calif., and junction unnumbered county highways east of Ridgecrest, Calif., located on the Johannesburg-Trona route, between junction U.S. Highway 395 and unnumbered county highway near Rademacher, Calif., and Ridgecrest, Calif., between Tehachapi, Calif., and Cummings Valley, Calif., between Magunden, Calif., and junction unnumbered county highway and California Highway 58 (formerly U.S. Highway 466), between Lamont, Calif., and junction unnumbered county highways, near Arvin, Calif., between Los Angeles and Atolia, Calif., serving the intermediate points of Rosamond and Mojave, Calif., and those between Mojave and Atolia, Calif., over irregular routes, between points in a described area surrounding Los Angeles, Calif. (Greater Los Angeles Territory), on the one hand, and, on the other, a described area surrounding Bakersfield, Calif. (Bakersfield Territory), between points in the Greater Los Angeles Territory on the one hand, and, on the other, points on the described regular routes, between points in the described Bakersfield Territory, between points within 10 miles of California Highway 14; *mining machinery and parts thereof* and *materials* and *supplies* used in mining operation, over regular and irregular routes, from Los Angeles Harbor and Long Beach Harbor, Calif., to Atolia, Calif., serving all intermediate points between Mojave and Atolia, Calif., not including Mojave, for delivery only; and the off-route points within 10 miles of California Highway 14 (formerly U.S. Highway 6) between Rosamond and Mojave, for delivery only; *feed*, from Lancaster, Calif., to Los Angeles Harbor and Long Beach Harbor, Calif., serving no intermediate points, with restriction. WESTERN GILLETTE, INC., is authorized to operate as a *common carrier* in Alabama, Arizona, Arkansas, California, Colorado, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Michigan, Missouri, Montana, New Mexico, New York, Nebraska, Nevada, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Texas, Utah, Vermont, Washington, and Wyoming. Application has not been filed for temporary authority under section 210a(b).

No. MC–F–11190. Authority sought for merger into TRANSPORT MOTOR EXPRESS, INC., Post Office Box 958, Fort Wayne, IN 46801, of the operating rights and property of A & B TRANSFER, INC., 2120 Marshall Avenue, Mattoon, IL 61938, and for acquisition by ESSEX INTERNATIONAL, INC., 1601 Wall Street, Fort Wayne, IN 46804, of control of such rights and property through the transaction. Applicants' attorney: Carl L. Steiner, 39 South LaSalle Street, Chicago, IL 60603. Operating rights sought to be merged: Under a certificate of registration, in Docket No. MC–48474 Sub-4, covering the transportation of general commodities, as a common carrier, in interstate commerce, within the State of Illinois. TRANSPORT MOTOR EXPRESS, INC., is authorized to operate as a *common carrier* in Indiana, Kentucky, Pennsylvania, Illinois, Ohio, West Virginia, New York, New Jersey, Maryland, District of Columbia, Virginia, Massachusetts, Connecticut, Rhode Island, Wisconsin, and Missouri. Application has not been filed for temporary authority under section 210a(b).

No. MC–F–11191. Authority sought for purchase by WEST TRANSPORTATION, INC., 961 South 14th Street, Richmond, CA 94802, of the operating rights of BIG PINE TRUCKING COMPANY, INC., Post Office Box 386, Big Pine, CA 93513, and for acquisition by JOSEPH L. PARDINI, also of Richmond, Calif. 94802, of control of such rights through the purchase. Applicants' attorney: Martin J. Rosen, 140 Montgomery Street, San Francisco, CA 94104. Operating rights sought to be transferred: *Talc*, as a *common carrier*, over regular and irregular routes, from mines in Nevada within 10 miles of Palmetto, Nev., to Lone Pine, Calif., serving the intermediate points of Zurich and Big Pine, Calif., for delivery only; *mining machinery and supplies*, maximum 10,000 pounds, from Lone Pine, Calif., to mines in Nevada within 10 miles of Palmetto, Nev., serving the intermediate points of Zurich and Big Pine, Calif., for pickup only; *talc and clay*, in bulk, over irregular routes, between points in Inyo County, Calif. Vendee is authorized to operate as a *common carrier* in California. Application has not been filed for temporary authority under section 210a(b). NOTE: MC–112999 Sub-4, is a matter directly related.

No. MC–F–11192. Authority sought for merger into BYERS TRANSPORTATION COMPANY, INC., 4200 Gardner Avenue, Kansas City, MO 64120, of the operating rights and property of COMMERCIAL FREIGHT LINES, INC., of Kansas City, Mo. 64120, and for acquisition by PAUL H. BYERS, ROBERT L. BYERS, AND CONSTANCE BYERS REITZES, all of 4200 Gardner Avenue, Kansas City, MO 64120, of control of such rights and property through the transaction. Applicants' attorneys: Richard R. Sigmon and Roland Rice, 618 Perpetual Building, 1111 E Street NW., Washington, DC 20004 and Lowell L. Knipmeyer, 2804 Power and Light Building, Kansas City, MO 64106. Operating rights sought to be merged: *General commodities*, with certain specified exceptions, and numerous other specified commodities, as a *common carrier*, over regular and irregular routes, from, to, and between specified points in the States of Nebraska, Illinois, Missouri, Iowa, Kansas, Oklahoma, Indiana, Wisconsin, Arkansas, Minnesota, and Michigan, with certain restrictions, serving various intermediate and off-route points, one alternate route for operating convenience only, as more specifically described in Docket No. MC–84511 and Sub-numbers thereunder. This notice does not purport to be a complete description of all of the operating rights of carrier involved. The foregoing summary is believed to be sufficient for purposes of public notice regarding the nature and extent of this carrier's operating rights, without stating, in full, the entirety, thereof. BYERS TRANSPORTATION COMPANY, INC., is authorized to operate as a *common carrier* in Missouri, Kansas, Illinois, Nebraska, and Iowa. Application has not been filed for temporary authority under section 210a(b).

No. MC–F–11193. Authority sought for control by MIDWEST EMERY FREIGHT SYSTEM, INC., 7000 South Pulaski Road, Chicago, IL 60629, of the operating rights and property of LASKAS MOTOR LINES, INC., 237 Hundington Avenue, Post Office Box 1072, Waterbury CT 06708, and for acquisition by RETNAR INDUSTRIES, INC., and in turn by MILTON D. RENTAR, both of Chicago, Ill. 60629, of control of LASKAS MOTOR LINES, INC., through the acquisition by MIDWEST EMERY FREIGHT SYSTEM, INC. Applicants' attorney: Jack Goodman, 39 South La Salle Street, Chicago, IL 60603. Operating rights sought to be controlled: *General commodities*, with exceptions, as a *common carrier*, over regular routes, between Hartford, Conn., and Perth Amboy, N.J., between Hartford, Conn., and Waterbury, Conn., between Derby, Conn., and New Haven, Conn., between Naugatuck, Conn., and Stratford, Conn., between Hartford, Conn., and Boston, Mass., between Manchester, Conn., and Boston, Mass., with restriction, between Springfield, Mass., and Meriden, Conn., between Northampton, Mass., and East Hartford, Conn., serving all intermediate points; and the off-route points of Chicopee, Easthampton, Greenfield, Indian Orchard, Ludlow, North Adams, Palmer, Pittsfield, Three Rivers, and Turners Falls, Mass.; *general commodities*, with exceptions, over irregular routes, between points and places on the above-designated regular routes, including intermediate and off-route points, on the one hand, and, on the other, Bethel Danbury, Danielson, Fitchville, Hanover, Jewett City Mystic, Manchester, Norwich, New London, Sandy Hook, Southbury, Torrington, Taftville, Wauregan, Willimantic, Wilton and Winsted, Conn., Mineola, N.Y., and Bound Brook, Clifton, Carlstadt, Dunellen, Englewood, Guttenberg, Garfield, Hawthorne, Lodi, Maplewood, Montclair, Morristown, New Brunswick, Nutley, Passaic, Paterson, Plainfield, Ridgewood,

Union City and West New York, N.J., from Hartford, Conn., to points in Massachusetts not authorized as intermediate or off-route points in connection with regular-route operations over the first three routes above. MIDWEST EMERY FREIGHT SYSTEM, INC., is authorized to operate as a *common carrier* in all of the States in the United States (except Alaska and Hawaii). Application has been filed for temporary authority under section 210a(b).

No. MC-F-11194. Authority sought for purchase by IML FREIGHT, INC., 2175 South 3270 West, Post Office Box 2277, Salt Lake City, UT 84110, of the operating rights of FRANK STANKIEWICZ, doing business as F. S. TRUCKING, Oakland Shores, Spencer, Mass. 01562, and for acquisition by GATES CORPORATION, 999 South Broadway, Denver, CO, of control of such rights through the purchase. Applicants' attorney: Carl L. Steiner, 39 South La Salle Street, Chicago, IL 60603. Operating rights sought to be transferred: Under a certificate of registration, in Docket No. MC-98442 Sub-1, covering the transportation of property, as a common carrier, in interstate commerce, within the State of Massachusetts. Vendee is authorized to operate as a common carrier in Colorado, Utah, Wyoming, Nevada, Nebraska, California, Illinois, Arizona, Idaho, Kansas, Missouri, Oregon, Washington, Kentucky, Indiana, Iowa, Ohio, Massachusetts, New York, District of Columbia, Pennsylvania, New Jersey, Connecticut, and Wisconsin. Application has been filed for temporary authority under Section 210a(b). NOTE: MC-33641 Sub 97, is a matter directly related.

By the Commission.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.71-8028 Filed 6-8-71;8:50 am]

NOTICE OF FILING OF MOTOR CARRIER INTRASTATE APPLICATIONS

JUNE 4, 1971.

The following applications for motor common carrier authority to operate in intrastate commerce seek concurrent motor carrier authorization in interstate or foreign commerce within the limits of the intrastate authority sought, pursuant to section 206(a)(6) of the Interstate Commerce Act, as amended October 15, 1962. These applications are governed by Special Rule 1.245 of the Commission's rules of practice, published in the FEDERAL REGISTER, issue of April 11, 1963, page 3533, which provides, among other things, that protests and requests for information concerning the time and place of State Commission hearings or other proceedings, any subsequent changes therein, any other related matters shall be directed to the State Commission with which the application is filed and shall not be addressed to or filed with the Interstate Commerce Commission.

State Docket No. C-2327 (Case No. 3), filed March 24, 1971. Applicant: MILLER TRANSPORTATION CORP., 4035 Jimbo Drive, Post Office Box 7047, Flint, MI 48507. Applicant's representative: Walter N. Bieneman, Suite 1700, 1 Woodward Avenue, Detroit, MI 48226. Certificate of public convenience and necessity sought to operate a freight service as follows: Transportation of *general commodities*, between Flint, Mich., and Detroit, Mich., via U.S. 23 to junction with I-96 and thence via I-96 and I-696 to Detroit; also via U.S. 23 to junction with I-94, and thence via I-94 to Detroit. Service over the described route shall be for operating convenience only and serving only those points otherwise authorized to be served. Both intrastate and interstate authority sought.

Hearing: June 10, 1971, 9:30 a.m., Michigan Public Service Commission, 525 West Ottawa Street, Seven Story State Office Building, Lansing, MI 48913. Requests for procedural information including the time for filing protests concerning this application should be addressed to the Department of Commerce, Michigan Public Service Commission, Seven Story State Office Building, Lansing, Mich., 48913 and should not be directed to the Interstate Commerce Commission.

State Docket No. 52636, filed May 25, 1971. Applicant: EDWARD A. DAUGHN, doing business as: MORNING-AFTERNOON DELIVERY, 548 Seventh Street, San Francisco, CA 94103. Applicant's representative: Marvin Handler, 405 Montgomery Street, Suite 1401, San Francisco, CA 94104. Certificate of public convenience and necessity sought to operate a freight service as follows: Transportation of *general commodities*, between points and places in the San Francisco Territory described as follows: San Francisco Territory includes all of the city of San Jose and that area embraced by the following boundary: Beginning at the point the San Francisco-San Mateo County boundary line meets the Pacific Ocean; thence easterly along said boundary line to a point 1 mile west of U.S. Highway 101; southerly along an imaginary line 1 mile west of and paralleling U.S. Highway 101 to its intersection with Southern Pacific Co. right-of-way at Arastradero Road; southeasterly along the Southern Pacific Co. right-of-way to Pollard Road, including industries served by the Southern Pacific Co. spur line extending approximately 2 miles southwest from Simla to Permanente; easterly along Pollard Road to West Parr Avenue; easterly along West Parr Avenue to Capri Drive; southerly along Capri Drive to East Parr Avenue; easterly along East Parr Avenue to the Southern Pacific Co. right-of-way to the Campbell-Los Gatos city limits; easterly along said limits and the prolongation thereof to the San Jose-Los Gatos Road; northeasterly along San Jose-Los Gatos Road to Foxworthy Avenue; easterly along Foxworthy Avenue to Almaden Road; southerly along Almaden Road to Hillsdale Avenue; easterly along Hillsdale Avenue to U.S. Highway 101; northwesterly along U.S. Highway 101 to Tully Road; northeasterly along Tully Road to White Road; northwesterly along White Road to McKee Road; southwesterly along McKee Road to Capitol Avenue; northwesterly along Capitol Avenue to State Highway 17 (Oakland Road);

Northerly along State Highway 17 to Warm Springs; northerly along the unnumbered highway via Mission San Jose and Niles to Hayward; northerly along Foothill Boulevard to Seminary Avenue; easterly along Seminary Avenue to Mountain Boulevard; northerly along Mountain Boulevard and Moraga Avenue to Estates Drive; westerly along Estates Drive, Harbord Drive, and Broadway Terrace to College Avenue; northerly along College Avenue to Dwight Way; easterly along Dwight Way to the Berkeley-Oakland boundary line; northerly along said boundary line to the campus boundary of the University of California; northerly and westerly along the campus boundary of the University of California to Euclid Avenue; northerly along Euclid Avenue to Marin Avenue; westerly along Marin Avenue to Arlington Avenue; northerly along Arlington Avenue to U.S. Highway 40 (San Pablo Avenue); northerly along U.S. Highway 40 to and including the city of Richmond; southwesterly along the highway extending from the city of Richmond to Point Richmond; southerly along an imaginary line from Point Richmond to the San Francisco Waterfront at the foot of Market Street; westerly along said waterfront and shoreline to Pacific Ocean; southerly along the shoreline of the Pacific Ocean to point of beginning. Except that applicant shall not transport any shipment of:

(1) Used household goods and personal effects not packed in accordance with the crated property requirements set forth in paragraph (d) of Item No. 10-C of Minimum Rate Tariff No. 4-A; (2) automobiles, trucks, and buses, viz.: New and used, finished or unfinished passenger automobiles (including jeeps), ambulances, hearses and taxis; freight automobiles, automobile chassis, trucks, truck chassis, truck trailers, trucks and trailers combined, buses and bus chassis; (3) livestock, viz.: bucks, bulls, calves, cattle, cows, dairy cattle, ewes, goats, hogs, horses, kids, lambs, oxen, pigs, sheep, sheep camp outfits, sows, steers, stags or swine; (4) liquids, compressed gases, commodities in semiplastic form and commodities in suspension in liquids in bulk, in tank trucks, tank trailers, tank semi-trailers, or a combination of such highway vehicles; (5) commodities when transported in bulk in dump trucks or in hopper-type trucks; (6) commodities when transported in motor vehicles equipped for mechanical mixing in transit; (7) cement; (8) logs; and (9) commodities of unusual or extraordinary value. Both intrastate and interstate authority sought.

HEARING: Time and place not known. Requests for procedural information including the time for filing protests concerning this application should be addressed to the California Public Utilities Commission, State Building, Civic Center, 455 Golden Gate Avenue, San Francisco, CA 94102 and should not be directed to the Interstate Commerce Commission.

State Docket No. 52647, filed May 26, 1971. Applicant: STATES WAREHOUSES, INC., 16000 Heron Avenue, La Mirada, CA 90638. Aplicant's representative: Donald Murchison, 9454 Wilshire Boulevard, Suite 400, Beverly Hills, CA 90212. Certificate of public convenience and necessity sought to operate a freight service as follows: Transportation of *general commodities,* with the usual exceptions: To, from, and between: LOS ANGELES BASIN TERRITORY includes that area embraced by the following boundary: Beginning at the point the Ventura County-Los Angeles County boundary line intersects the Pacific Ocean; thence northeasterly along said county line to the point it intersects State Highway No. 118, approximately 2 miles west of Chatsworth; easterly along State Highway No. 118 to Sepulveda Boulevard; northerly along Sepulveda Boulevard to Chatsworth Drive, northeasterly along Chatsworth Drive to the corporate boundary of the city of San Fernando; westerly and northerly along said corporate boundary to McClay Avenue; northeasterly along McClay Avenue and its prolongation to the Angeles National Forest boundary; southeasterly and easterly along the Angeles National Forest and San Bernardino National Forest boundary to the county road known as Mill Creek Road; westerly along Mill Creek Road to the county road 3.8 miles north of Yucaipa; southerly along said county road to and including the unincorporated community of Yucaipa; westerly along Redlands Boulevard to U.S. Highway No. 99; northwesterly along U.S. Highway No. 99 to the corporate boundary of the city of Redlands; westerly and northerly along said corporate boundary to Brookside Avenue; westerly along Brookside Avenue to Barton Avenue; westerly along Barton Avenue and its prolongation to Palm Avenue; westerly along Palm Avenue to La Cadena Drive; southwesterly along La Cadena Drive to Iowa Avenue; southerly along Iowa Avenue to U.S. Highway No. 60;

Southwesterly along U.S. Highways Nos. 60 and 395 to the county road approximately 1 mile north of Perris; easterly along said county road via Nuevo and Lakeview to the corporate boundary of the city of San Jacinto; easterly, southerly and westerly along said corporate boundary to San Jacinto Avenue; southerly along San Jacinto Avenue to State Highway No. 74; westerly along State Highway No. 74 to the corporate boundary of the city of Hemet; southerly, westerly, and northerly along said corporate boundary to the right-of-way of the Atchison, Topeka & Santa Fe Railway Co.; southwesterly along said right-of-way to Washington Avenue; southerly along Washington Avenue, through and including the unincorporated community of Winchester to Benton Road; westerly along Benton Road to the county road intersecting U.S. Highway No. 395, 2.1 miles north of the unincorporated community of Temecula; southerly along said county road to U.S. Highway No. 395; southeasterly along U.S. Highway No. 395 to the Riverside County-San Diego County boundary line; westerly along said boundary line to the Orange County-San Diego County boundary line; southerly along said boundary line to the Pacific Ocean; northwesterly along the shoreline of the Pacific Ocean to point of beginning. Both intrastate and interstate authority sought.

HEARING: Time and place not shown. Requests for procedural information including the time for filing protests concerning this application should be addressed to the Public Utilities Commission, State of California, State Building, Civic Center, 455 Golden Gate Avenue, San Francisco, CA 94102 and should not be directed to the Interstate Commerce Commission.

State Docket No. 71248–CCT, filed May 20, 1971. Applicant: SMALLEY INVESTMENTS, INC., doing business as SMALLEY TRANSPORTATION CO., 2202 38th Street, Tampa, FL 33605. Applicant's representative: W. J. Smalley (same address as applicant). Certificate of public convenience and necessity to operate a freight service as follows: Transportation of *general commodities,* by motor carrier, except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, garments on hangers, commodities requiring refrigeration, building and construction materials and supplies in truckload lots on flatbed, equipment and commodities, the transportation of which, because of size and weight, require the use of special equipment (except flatbed trailers) over regular routes and on regular schedules between all points in Hernando, Citrus, and Sumter Counties, and all points on U.S. Highway 301 from the Sumter County line to Ocala, Fla., and from Citrus County on U.S. Highway 19, U.S. Highway 41 and State Road 200 to State Roads 40 and 484, and all points on State Roads 40, 484, and 200 to Ocala and all points within a 5-mile radius of Ocala, Fla., and using Interstate Highway 75 as an alternate closed door route from Tampa to Ocala. The applicant desires to tack the authority sought with the authority already held by the applicant under FPSC Certificate No. 1013 and ICC Certificate No. MC 121667. Both intrastate and interstate authority sought.

HEARING: Date, time and place application to be assigned for hearing unknown at this time. Requests for procedural information including the time for filing protests concerning this application should be addressed to the Florida Public Service Commission, 700 South Adams Street, Tallahassee, FL 32304 and should not be directed to the Interstate Commerce Commission.

By the Commission.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.71-8025 Filed 6-8-71;8:49 am]

[Notice 308]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

JUNE 3, 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 531 (Sub-No. 271 TA), filed May 27, 1971. Applicant: YOUNGER BROTHERS, INC., 4904 Griggs Road, Post Office Box 14048, Houston, TX 77021. Applicant's representative: Wray E. Hughes (same address as above). Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Liquid chemicals,* in bulk, in tank vehicles, from the plantsite and/or storage facilities of Georgia Pacific Corp., at or near Plaquemine, La., to points in Alabama, Arkansas, Florida, Georgia, Mississippi, North Carolina, Ohio, South Carolina, Tennessee and Texas, restricted to the transportation of shipments originating at the above origins to the above destinations, for 180 days. NOTE: Applicant does not intend to tack with existing authority. Supporting shipper: Georgia-Pacific Corp. (Roger M. Feig, Traffic Supervisor), Post Office Box 629, Plaquemine, LA 70764. Send protests to: District Supervisor John C. Redus, Interstate Commerce Commission, Bureau of Operations, Post Office Box 61212, Houston, TX 77061.

No. MC 2226 (Sub-No. 101 TA), filed May 28, 1971. Applicant: RED ARROW FREIGHT LINES, INC., 3901 Sequin Road, Post Office Box 1897, San Antonio, TX 78206. Applicant's representative:

James M. Doherty, 401 First National Life Building, Austin, TX 78701. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities*, between Dallas, and Longview, Tex., over Interstate Highway 20 and from the intersection of Interstate Highway 20 and U.S. Highway 69 to Tyler, Tex., thence over U.S. Highway 271 to intersection of Interstate Highway 20 and return over the same routes, serving the off-route point of Kilgore, Tex., over State Highways 135, 42 and U.S. Highway 259, from and to the intersection with Interstate 20, serving all intermediate points, except between Dallas and Terrell, Tex., between Tyler, and Corsicana, Tex., over State Highway 31 via Athens, but prohibited from serving Athens or any other intermediate points. Between Tyler, and Palestine, Tex., over State Highway 31 and 19 via Athens, but prohibited from serving Athens or any other intermediate points, with an alternate route between Tyler and Palestine, Tex., over State Highway 155 via Frankston, serving no intermediate points, for 150 days. NOTE: Applicant proposes tacking and coordinating the said authority with all authority now contained in MC-2226 and subs. 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: Richard H. Dawkins, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 301 Broadway, Room 206, San Antonio, TX 78205.

No. MC 65224 (Sub-No. 9 TA), filed May 27, 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 citrus products*, from Corpus Christi and Monte Alto, Tex., to ports of entry between the United States and Canada, located in the States of Michigan and New York, for furtherance to points in Canada in through single-line service, for 180 days. Supporting shipper: Sun Pac Foods, Ltd., 3689 Weston Road, Weston, ON. 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 66121 (Sub-No. 20 TA), filed May 28, 1971. Applicant: INDIAN BOW TRUCK LINES, LTD., 103 Harvard Avenue, Smithtown, NY 11787. Applicant's representative: Bert Collins, 140 Cedar Street, New York, NY 10006. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Vinyl and nylon impregnated form, shapes and panels, and electrostatic coating equipment*, from Amityville, N.Y., to points in Louisiana, Alabama, Mississippi, Florida, Georgia, South Carolina, North Carolina, Kentucky, West Virginia, Tennessee, Maryland, Delaware, Virginia, Pennsylvania, New Jersey, New York, Ohio, Illinois, Indiana, Connecticut, Massachusetts, Rhode Island, and District of Columbia, for 180 days. Supporting shipper: Fiberstatics Corp., 7 Dixon Avenue, Amityville, NY 11701. Send protests to: Anthony Chiusano, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 26 Federal Plaza, New York, NY 10007.

No. MC 95876 (Sub-No. 112 TA), filed May 27, 1971. Applicant: ANDERSON TRUCKING SERVICE, INC., 203 Cooper Avenue North, Post Office Box 844, St. Cloud, MN 56301. Applicant's representative: Thomas J. Van Osdel, (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle over irregular routes, transporting: (1) *Snowmobiles*, (2) *snowmobile trailers*, (3) *parts, attachments, and accessories* for the commodities described in (1) and (2) and (4) *snowmobile clothing and accessories*, from Crosby, Minn., to points in Washington, Oregon, California, Idaho, Nevada, Montana, Wyoming, Utah, Colorado, North Dakota, South Dakota, Nebraska, Minnesota, Iowa, Michigan, Wisconsin, Illinois, Indiana, Ohio, New York, Pennsylvania, Maine, Vermont, New Hampshire, Massachusetts, Connecticut, Rhode Island, and New Jersey, for 180 days. Supporting shipper: Scorpion, Inc., Crosby, Minn, 56441. Send protests to: A. N. Spath, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 448 Federal Building and U.S. Courthouse, 110 South Fourth Street, Minneapolis, MN 55401.

No. MC 107496 (Sub-No. 812 TA), filed May 26, 1971. Applicant: RUAN TRANSPORT CORPORATION, Third and Keosauqua Way, Post Office Box 855, 50304, Des Moines, IA 50309. Applicant's representative: H. L. Fabritz (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid foundry core compound*, in bulk, from Muscatine, Iowa, to Cleveland, Ohio, for 150 days. Supporting shipper: Carver Foundry Products, 1056 Hershey Avenue, Muscatine, IA 52761. Send protests to: Ellis L. Annett, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 677 Federal Building, Des Moines, Iowa 50309.

No. MC 108207 (Sub-No. 318 TA), filed May 27, 1971. Applicant: FROZEN FOOD EXPRESS, INC., 318 Cadiz Street, Post Office Box 5888, Dallas, TX 75222. Applicant's representative: J. B. Ham (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Candy*, from Memphis, Tenn., to points in Arkansas, Louisiana, Missouri, Texas, and California, for 180 days. Supporting shipper: Standard Candy Co., 443 Second Avenue North, Post Office Box 1364, Nashville, TN 37202. Send protests to: District Supervisor E. K. Willis, Jr., Interstate Commerce Commission, Bureau of Operations, 1100 Commerce Street, Room 13C12, Dallas, TX 75202.

No. MC 115703 (Sub-No. 5 TA), filed May 27, 1971. Applicant: KREITZ MOTOR EXPRESS, INC., 717 Tulpehocken Street, Reading, PA 19601. Applicant's representative: James A. Vitez (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Such commodities as contractors' equipment, heavy and bulky articles, machinery and machine parts, and articles requiring special handling or rigging*, between points in Luzerne and York Counties, Pa., on the one hand, and, on the other, points in New York, New Jersey, Massachusetts, Connecticut, Rhode Island, Delaware, Maryland, Ohio, Virginia, West Virginia, and District of Columbia; and (2) *Machinery*, between points in Luzerne and York Counties, Pa., on the one hand, and, on the other, points in Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Delaware, Maryland, Virginia, North Carolina, Ohio, and District of Columbia, for 180 days. NOTE: Applicant intends to tack the above paragraphs in order to provide a through movement and/or interchange at points in York and Luzerne Counties, Pa. Restrictions: (1) The service authorized is restricted against the transportation of traffic originating at or destined to Luzerne and York Counties, Pa.; and (2) the service authorized is restricted to apply on traffic requiring Pennsylvania State Hauling permits. Purpose of application: applicant presently holds authority to conduct operations being applied for through Berks County, Pa., Gateway. This application is necessitated by the Pennsylvania Department of Transportation, Regulation 800 regarding the granting of permitted traffic over circuitous routes. Supporting shippers: George Young Co., 20th Street and Oregon Avenue, Philadelphia, PA 19145; Barber-Greene Co., Aurora, Ill.; Anderson IBEC, 19699 Progress Drive, Strongsville, OH 44136; Overseas Packing, Inc., 17625 St. Clair Avenue NE., Cleveland, OH 44110; Alten Foundry & Machine Works, Inc., 226 West Wheeling Street, Lancaster, OH 43130; C M P Corp., Post Office Box 258, Mansfield, OH 44901; Marietta Metal Products Co., 209 Putnam Avenue, Marietta, OH 45750; George R. Hall, Inc., 20234 Detroit Road, Cleveland, OH 44116; TRW, Inc., 23555 Euclid Avenue, Cleveland, OH 44117; C. A. Litzler Co., Inc., 4800 West 160th Street, Cleveland, OH 44135; Jarva, Inc., 29125 Hall Street, Solon, OH 44139; FECO A Bangor Punta Co., 5855 Grant Avenue, Cleveland, OH 44105; The Firestone Tire & Rubber Co., Akron, OH 44317 and the General Tire & Rubber Co., 1 General Street, Akron, OH 44309. Send protests to: Ross A. Davis, District Supervisor, Interstate Commerce

Commission, Bureau of Operations, 1518 Walnut Street, Room 1600, Philadelphia, PA 19102.

No. MC 116073 (Sub-No. 171 TA), filed May 27, 1971. Applicant: BARRETT MOBILE HOME TRANSPORT, INC., Post Office Box 919, 1825 Maine Avenue, Moorhead, MN 56560. Applicant's representative: Robert G. Tessar (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Trailers*, designed to be drawn by passenger automobiles, in intial movements; and (2) *buildings*, in sections, from Pine Grove, Pa., to points in New York, Vermont, New Hampshire, Massachusetts, Connecticut, Maine, Ohio, West Virginia, Washington, D.C., Delaware, New Jersey, and Maryland, for 180 days. Supporting shipper: Newport Homes, Inc., Pine Grove, Pa. 17963. Send protests to: J. H. Ambs, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Post Office Box 2340, Fargo, ND 58102.

No. MC 116073 (Sub-No. 172 TA), filed May 27, 1971. Applicant: BARRETT MOBILE HOME TRANSPORT, INC., Post Office Box 919, 1825 Maine Avenue, Moorhead, MN 56560. Applicant's representative: Robert G. Tessar (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Trailers*, designed to be drawn by passenger automobiles, in initial movements, from St. Clair, Pa., to points in New York, Maryland, Delaware, Virginia, New Jersey, Maine, Massachusetts, Vermont, New Hampshire, West Virginia, and Connecticut, for 180 days. Supporting shipper: Burlington Homes, Inc., State Highway 621, St. Clair, PA 17970. Send protests to: J. H. Ambs, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Post Office Box 2340, Fargo, ND 58102.

No. MC 126548 (Sub-No. 8 TA), filed May 27, 1971. Applicant: ELMER A. FEHRLE, doing business as FEHRLE TRUCKING, 2329 18th Street SW., Cedar Rapids, IA 52504. Applicant's representative: Kenneth F. Dudley, Post Office Box 279, Ottumwa, IA 52501. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Junk car bodies, junk and scrap metals, and salvage materials*, from Cedar Rapids, Iowa, to Chicago, Peoria, and Rockford, Ill., St. Louis, Mo., Cleveland, Ohio; Beloit and Milwaukee, Wis., for 180 days. Supporting shipper: Sun Line, Inc., 4000 Sixth Street SW., Cedar Rapids, IA 52404. Send protests to: Herbert W. Allen, Transportation Specialist, Interstate Commerce Commission, Bureau of Operations, 332 Federal Building, Fourth and Perry Streets, Davenport, IA 52801.

No. MC 129557 (Sub-No. 5 TA), filed May 26, 1971. Applicant: PAONE TRUCKING, INC., 88 Briggs Street, Cranston, RI 02920. Applicant's representative: Russell B. Curnett, 36 Circuit Drive, Edgewood Station, Providence, RI 02905. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Pumice building blocks*, on pallets, on vehicles equipped with mechanical loading and unloading devices, from Cranston, R.I., to Haverhill, Mass., for 150 days. Supporting shipper: Park Avenue Cement Block Co., Inc., 30 Budlong Road (office 1350 Park Avenue), Post Office Box 3530, Cranston, RI 20910. Send protests to: Gerald H. Curry,, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 187 Westminster Street, Providence, RI 02903.

No. MC 134163 (Sub-No. 5 TA), filed May 27, 1971. Applicant: JOSEPH RICHARDSON, Office: 908 De Kalb Street, Post Office Box 146, Bridgeport, PA 19405. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Pretzels*, from King of Prussia, Pa., to points in Massachusetts, Connecticut, New Hampshire, Vermont, Maine, Rhode Island, New York, New Jersey, Delaware, Maryland, and the District of Columbia, for 180 days. Supporting shipper: K & N Soft Pretzel Co., 155 Boro Line Road, King of Prussia, PA 19406. Send protests to: Ross A. Davis, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 1518 Walnut Street, Room 1600, Philadelphia, PA 19102.

No. MC 135570 (Sub-No. 2 TA), filed May 27, 1971. Applicant: STANLEY V. MAJKUT, doing business as MOBILE AIR TRANSPORT, 776C Watervliet Shaker Road, Latham, NY 12110. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (usual exceptions) having a prior or subsequent movement by air, between points in Albany, Rensselaer, and Schenectady Counties, N.Y., on the one hand, and, on the other, Newark Airport, Newark, N.J., John F. Kennedy and La Guardia Airports, New York, N.Y., for 150 days. Supporting shippers: Albany Felt Co., Albany, N.Y. 12201; Van Winkle Trucking, Inc., Latham, N.Y. 12110; Wits Air Cargo Service, Seattle, Wash. 98134; General Electric Co. Advertising & Sales Department, Schenectady, N.Y. 12305; General Electric Co. Gas Turbine Department, Schenectady, N.Y. 12305; Velano Bros., Inc., 7 Hemlock Street, Latham, N.Y. 12110. Send protests to: Charles F. Jacobs, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 518 Federal Building, Albany, N.Y. 12207.

No. MC 135631 (Sub-No. 1 TA), filed May 27, 1971. Applicant: WEISS TRUCKING, INC., Post Office Box 0, Vernal, UT 84078. Applicant's representative: William S. Richards, 900 Walker Bank Building, Salt Lake City, Utah 84111. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Lumber and lumber products* for the account of Bloch Lumber Co., Inc., of Albuquerque, N. Mex., between points in New Mexico, Texas, Arizona, Oklahoma, Colorado, Utah, Wyoming, Nebraska, Kansas, and Idaho, restricted against the transportation of lumber from points in Uintah County, Utah, to points in Arizona, California, Colorado, Illinois, Indiana, Iowa, Missouri, New Mexico, Nevada, Oklahoma, Texas, Wyoming, and Wisconsin, for 180 days. Supporting shipper: Bloch Lumber Co., Inc., 1517–A Girard NE., Albuquerque, N. Mex. 87106 (Frank Stanek, Manager, Southwest Division). Send protests to: John T. Vaughan, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 5239 Federal Building, Salt Lake City, Utah 84111.

No. MC 135632 TA, filed May 27, 1971. Applicant: FRANCIS D. BROWN & SON, INC., 600 Spring Street, Klamath Falls, OR 97601. Applicant's representative: Jack L. Dempsey (same address as applicant). Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Wood waste products*, from points in Siskiyou County, Calif., to points in Klamath County, Oreg., for 180 days. Supporting shipper: Weyerhaeuser Co., Post Office Box 9, Klamath Falls, OR 97601. Send protests to: A. E. Odoms, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 450 Multnomah Building, Portland, Oreg. 97204.

By the Commission.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.71-8029 Filed 6-8-71;8:50 am]

[Notice 699]

MOTOR CARRIER TRANSFER PROCEEDINGS

JUNE 4, 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–72899. By order of May 28, 1971, the Motor Carrier Board approved the transfer to Queensway, Inc., Old Forge, Pa., of that portion of the operating rights in certificate No. MC–46518 issued November 5, 1957, to R.F.C. Transport, Inc., East Syracuse, N.Y., authorizing the transportation of general commodities, with usual exceptions, between Rochester, N.Y., and New York, N.Y., serving all intermediate points and off-route points as follows: Geneva, N.Y., and points in the New York, N.Y., commercial zone, as defined by the Commission, unrestricted; Scranton and Wilkes-Barre, Pa., and Elmira and Syracuse,

N.Y., restricted to fresh fruits and vegetables only. Norman M. Pinsky and Herbert M. Canter, 345 South Warren Street, Syracuse, NY 13202, attorneys for transferor; and Kenneth R. Davis, 999 Union Street, Taylor, PA 18517, registered practitioner for transferee.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.71-8031 Filed 6-8-71;8:50 am]

[Notice 699-A]

MOTOR CARRIER TRANSFER PROCEEDINGS

JUNE 4, 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 general rules of practice any interested person may file a petition seeking reconsideration of the following numbered proceedings within 30 days from the date of service of the order. 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-72783. By order of May 26, 1971, Division 3, acting as an Appellate Division, approved the transfer to K & C, Inc., Cherry Hill, N.J., of that portion of the operating rights in certificate No. MC-52865 issued June 18, 1943, to Sheridan & Duncan, Inc., New York, N.Y., authorizing the transportation of general commodities, with named exceptions, between New York, N.Y., on the one hand, and, on the other, points and places in Burlington, Hunterdon, Mercer, and Warren Counties, N.J. Robert B. Pepper, 174 Brower Avenue, Edison, NJ 08817, registered practitioner for applicants.

No. MC-FC-72784. By order of May 26, 1971, Division 3, acting as an Appellate Division, approved the transfer to Wallack Freight Lines, Inc., Copiague, N.Y., of that portion of the operating rights in certificate No. MC-52865 issued June 18, 1943, to Sheridan & Duncan, Inc., New York, N.Y., authorizing the transportation of general commodities, with stated exceptions, between New York, N.Y., on the one hand, and, on the other, points and places in Bergen, Essex, Hudson, Middlesex, Monmouth, Morris, Ocean, Passaic, Somerset, and Union Counties, N.J. Robert B. Pepper, 174 Brower Avenue, Edison, NJ 08817, registered practitioner for applicants.

No. MC-FC-72785. By order of May 26, 1971, Division 3, acting as an Appellate Division, approved the transfer to Metrix Transport Express, Inc., Paterson, N.J., of a portion of the operating rights in certificate No. MC-106222 and all of the operating rights in certificates Nos. MC-106222 (Sub-No. 3) and MC-106222 (Sub-No. 4) issued September 9, 1957, November 26, 1958, and October 15, 1968, respectively, to Wallack Freight Lines, Inc., Copiague, N.Y., authorizing the transportation of general commodities, with usual exceptions, between points in New York, N.Y.; between points in the New York, N.Y., commercial zone, as defined by the Commission in 1 M.C.C. 665; between New York, N.Y., on the one hand, and, on the other, points in Elizabeth, Irvington, Newark, and Harrison, N.J., and between Bogota, N.J., and East Paterson, N.J. Robert B. Pepper, 174 Brower Avenue, Edison, NJ 08817, registered practitioner for applicants.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.71-8030 Filed 6-8-71;8:50 am]

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WEDNESDAY, JUNE 9, 1971
WASHINGTON, D.C.
Volume 36 ■ Number 111



PART II

FEDERAL COMMUNICATIONS COMMISSION

■

Domestic Public Point-to-Point Microwave Radio Service

■

Specialized Common Carrier Services

Title 47—TELECOMMUNICATION

Chapter I—Federal Communications Commission

[Docket No. 18920; FCC 71-547]

PART 21—DOMESTIC PUBLIC RADIO SERVICES (OTHER THAN MARITIME MOBILE)

Specialized Common Carrier Services in Domestic Public Point-to-Point Microwave Radio Service

First report and order. In the matter of establishment of policies and procedures for consideration of applications to provide specialized common carrier services in the domestic public point-to-point microwave radio service and proposed amendments to Parts 21, 43, and 61 of the Commission's rules.

I. Background

1. The Notice of Inquiry to Formulate Policy, Notice of Proposed Rule Making, and Order in this proceeding (24 FCC 2d 318, released July 17, 1970) was occasioned by a large number of applications by Data Transmission Corp. (Datran), companies associated with Microwave Communications of America, Inc. (MCI carriers or MCI), and others for authorizations to construct microwave facilities to provide specialized common carrier services in various parts of the country.[1] Datran has proposed a switched, all digital network dedicated exclusively to data transmission. The MCI carriers and others all propose point-to-point facilities for private line services including, but not limited, to data transmission. The applications are opposed by established carriers and other related interests, principally by American Telephone and Telegraph Co. (A.T. & T.) and The Western Union Telegraph Co. (Western Union).[2]

A. Purpose of this proceeding

2. The Notice undertook to resolve in an overall policy and rule making proceeding certain basic policy and procedural questions (see paragraph 17 below) which appeared common to all of the applications and oppositions, prior to consideration of each proposal on its individual merits (Notice, paragraphs 3, 23–24). The Commission stated that such action would be conducive to prompt, orderly, and efficient disposition of these matters and, in our opinion, would be far preferable to decisions on them arrived at in the context of individual proceedings, and/or evidentiary hearings on each set of applications, or even a single, consolidated evidentiary hearing (Notice, paragraph 3). We noted that the situation calls for expedition in the public interest, since it is claimed that the proposed services are urgently needed by the public now (Notice, paragraph 23). Moreover, these applications are tying up frequencies and may block or affect action on applications of others. We further emphasized that after the broad policy and procedural questions in this proceeding have been decided, there may remain other specific, factual questions to be resolved by appropriate procedures when the applications are processed (Notice, paragraphs 3, 24). We stated (paragraph 24):

> Once these issues have been determined, we will consider each proposal on its individual merits and follow such procedures as may be necessary to resolve any remaining questions pertinent to the particular set of applications. Each applicant will, of course, be required to make a satisfactory showing that it is qualified and that the service it seeks to offer is technically and economically sound and would otherwise serve the public interest.

B. Description of representative applications and opposition pleadings

1. Datran

3. As set forth in the Notice (paragraphs 6–9), Datran has proposed a switched, occasional use, all digital communications network specifically engineered for data transmission. The initial system would have 244 microwave stations to serve 35 cities on a backbone route between San Francisco, Los Angeles, Dallas, Minneapolis-St. Paul, Atlanta, and Boston. Spur routes from the backbone trunk would provide service to additional cities to accommodate growth in demand for service. The system would utilize time division multiplexing (TDM), and be modular in design to facilitate easy and economical extension of terminal capacity. Datran is proposing to provide the local distribution facilities, using a combination of 11 GHz frequencies and multipair cable. Space diversity and hot standby transmitters are proposed for increased system reliability.

4. According to Datran, its market studies show that major economic sectors, individual consumers, and providers of information systems and services in the aggregate have a rapidly expanding need for rapid, accurate, low-cost data transmission services which is largely unmet by present common carrier offerings. Specifically, Datran claims that the costs of existing communications services have not declined in proportion to data processing costs; that existing analog transmission systems require costly modulator-demodulator equipment to convert digital signals to analog and back again; that current switched services often take significant time to establish connections, which detracts from the productivity of the data terminal and operator; that transmission systems originally engineered for voice and record transmission do not meet the more demanding reliability standards of digital data transmission; that existing switched services generally cannot handle full-duplex transmission, which leads to reduced throughput and wasteful line reversal time; that the basic switched services, originally intended only for voice and record, provide only two major speed selections whereas many new data applications require faster and more varied choices; that attempts to establish a switched connection for data transmission can be impeded by the high incidence of busy signals currently being experienced in points and times of heavy user concentration; that communication between terminal devices utilizing different line speeds is not possible in most existing major networks; that many data transmissions can be completed in far less than the minimum charge periods now in force; and that while common carriers have recently begun to drop barriers against sharing and interconnection, much confusion and difficulty continues to exist in user attempts to apply this flexibility.

5. Datran attributes many of the asserted unmet needs of data transmission users to the circumstance that the existing switched facilities of common carriers were originally engineered only for voice and record analog transmission services, a constraint which does not exist in its proposed digital system. The three basic integrated components of Datran's proposed end-to-end system (trunking system, switching system, and local distribution system) are engineered specifically for, and dedicated to, digital data transmission. Thus, a subscriber need not convert his digital signals to a different (analog) transmission mode, since the system transmits the subscriber's signal in its original form. Moreover, as the signal is transmitted through the system, it is continuously regenerated into a new, clean, and conditioned signal without the amplified system noise present in analog systems. Datran states that the following features of its proposed systems will meet current and projected data transmission needs which are largely unmet by the existing carrier offerings:

- Low cost—as indicated by samples of proposed charges in Exhibit No. 8 to Datran's application.
- End-to-end compatibility—no analog/digital conversion required.
- Rapid connection—connection to be made within 3 seconds after receipt of last destination address indicator.
- High reliability—no more than one bit error in 10 million transmitted bits.
- Simultaneous two-way transmission (full duplex)—the proposed system would operate entirely in full duplex mode.
- Wide selection of switched speed offerings—the initial system would provide 150, 4,800, 9,600 and 14,400 bits per second switched service.

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[1] At the time of the Notice, there were 1,713 pending applications for microwave stations. As of Mar. 15, 1971, there are now 33 applicants (of whom 17 are MCI affiliated), making 46 separate proposals and seeking a total of 1,877 microwave stations (see Appendix A hereto).

[2] The Notice provided for a moratorium of the filing of petitions to deny and other pleadings involving specialized carrier applications pending a further Commission order following consideration of the issues in this proceeding (Notice, paragraphs 72, 75).

Low incidence of network busy conditions—a service goal of P.01 providing on an average no more than one busy signal in 100 attempts.

Flexibility to interconnect with and share facilities—Datran proposes to permit ample flexibility for potential users to interconnect user-provided facilities and to share the proposed system among more than one user.

Asymmetry—the system will provide capability for communication between all terminals on the network, regardless of their varying transmission needs.

6. Datran further asserts that there is "a need for competition in communications to motivate technological innovations, cost reductions and efficient allocation of facilities as well as to encourage efforts by common carriers beyond the simple expansion of current networks to meet growing demand." It supports its position with the following contentions: Full realization of the public interest in computer technology requires achievement of appropriate specialized communications services. The users of computer technology are not obtaining adequate service from communications facilities constructed for, and dedicated to, meeting voice and record transmission needs. Effective utilization of existing data processing technology is constrained by present common carrier communications services and facilities, and the design and development of new computer applications requiring data transmission is constrained by high cost as well as unreliable and inflexible service. The public will not realize the full benefits of existing and potential data processing technology until this situation is remedied. The best remedy would be to authorize a versatile, low-cost communications network uniquely structured for digital data communications. Moreover, authorization of its proposed system is likely to stimulate innovations and to encourage economies by all carriers. A major price paid for monopoly is reduced incentive for innovation. The introduction of competition into the provision of data transmission services to all users will spark further technical developments and spur all common carriers to measure and control costs more effectively in the public interest. If innovation can lower the cost of a service, or provide a better service at the same cost, that service will attract a larger market or create new markets. In addition, the benefits of the regulatory process are most readily obtained when the regulated system's structure, customers, services, and costs are easily identified and quantified. Authorization of its proposed system would allegedly encourage economies by all carriers through simplified application of new standards and measures for costs of services.

2. MCI Carriers

7. There are also pending applications by 17 MCI associated companies for portions of a proposed nationwide network to provide specialized private line communications services. The various MCI carriers propose to provide "customized" communications channels, tailored to the exact requirements of subscribers needing interoffice and intracompany communications, to meet newly developing data and specialized communications needs of the public at significantly low cost. The channels would accomodate transmission of data, facsimile, control, remote metering, voice, and other forms of communication. The MCI carrier applicants have each submitted market studies for the particular route. Originally MCI did not propose to provide end-to-end service. It was contemplated that local loop interconnection would be accomplished by the subscriber's private facilities or, for subscribers requiring only voice grade channels, by use of local landlines of existing telephone companies. MCI has since filed a petition for rulemaking (RM 1700) to allocate the frequencies 38.6–40 GHz for a local Carrier Distribution Service.

8. MCI-New York West's applications will serve as a typical example, since it is stated that this "is one of a series of independent MCI-type carriers made up of local ownership interests which will interconnect and cooperate with one another in order to provide a unified, nationwide, customized communications network through arrangements with Microwave Communications of America, Inc." MCI-New York West claims that its proposal offers the following features which are not now available to communications users on existing common carrier facilities:

Communications channels designed especially for data transmission;

Specified data error rate (1 error in 10^7);

Analog or digital input;

Data channels starting as low as 0.05 cents per mile per month;

Data channels priced on data speed rather than bandwidth;

One-way transmission;

Two-way transmission of different bandwidths;

138 communications channels ranging in bandwidth from 200 hertz to 960,000 hertz;

Termination of channels in 93 different types, with bandwidth ranging from 200 hertz to 960,000 hertz;

Channels can be terminated into the full single bandwidth of the channel or into a number of subchannels;

Thousands of channel and termination combinations are possible and feasible;

Communication channels start as low as 0.05 cents per mile per month;

Half-time use;

Sharing of channels;

Use of carrier's facilities for installation of subscriber's private equipment.

9. According to MCI, the "real distinction which delineates MCI service from anything provided today by existing common carriers is not the facility itself but the manner in which a customer may utilize it in order to provide a customized intracompany point-to-point communications system of his own design and capability." For example, the customer may purchase the exact bandwidth required on a point-to-point basis (including one-way channels), utilize it in whatever transmission mode he chooses (voice or data, alternately or singly), mix different bandwidths on the same channel, use his own terminal equipment and install his own equipment on MCI towers and shelters, provide either analog or digital input signals, and avail himself of MCI's offering of channels designed especially for data use with rates based on transmission speed rather than bandwidth.

10. MCI asserts that a grant of its applications would serve the public interest primarily by affording a flexibility in service needed by, but not now available to, an important communications submarket, and also by causing existing carriers to revise their service offerings and tariff provisions to the benefit of other communications users. Specifically, it claims that a strong need exists now for the type of services proposed by MCI-New York West. It reasons along the following lines: The computer industry "desperately" needs a communications network designed especially for data transmission. MCI would provide this network (accepting both analog and digital data signals) and meet many of the communications needs of the computer industry forecast over the next 5 years in a study by Arther D. Little, Inc. Moreover, the economic feasibility of, and market for, the proposed operation are demonstrated in a study conducted by Spindletop Research. Industry, business, government and educational entities also require additional communications channels other than those adapted to a communication network designed primarily for voice telephone service. It is essential that these entities have available flexible, low cost communications channels which they can customize to their own particular needs and requirements. The existing carriers serving the proposed routes allegedly do not and cannot readily provide the same type of offering. MCI claims its proposal would provide the benefits of competition in the specialized communications field, stimulate the development of new lines of equipment, introduce new ownership interests in the communications industry, and pioneer new types of communications. It would do so without having an adverse economic impact on the existing carriers or affecting their telephone or private line rate-making principles. There is, MCI says, "a distinct difference between a public telephone service which is a natural monopoly and a customized communications service offered on a private point-to-point basis."

3. Other Applications

11. There are also a number of applicants proposing to provide specialized common carrier services along or near some of the same routes proposed by Datran and/or MCI carriers, and along other routes or with different intermediate points (see Appendix A).[28] While

[28] Appendices A, B, C, and D filed as part of the original document.

varying in detail, in general all of these applicants—like the MCI carriers—propose to provide specialized private line services tailored to the requirements of the subscriber.[3] Some are already engaged in common carrier or private microwave operations, and propose to make use of such facilities, personnel and experience to the extent practicable. Some propose to provide "end-to-end" service, either by constructing their own local loop facilities or by negotiating on behalf of subscribers for interconnection with existing local carriers or by some combination of both. Interconnection with facilities of the subscribers and other microwave systems would be permitted. All claim, either on the basis of market studies or their own inquiries, that there is a substantial public need and demand for the proposed services, which are not now provided in the same manner by existing carriers.

4. Opposition Pleadings

12. A.T. & T. states that applications of the type filed by the MCI carriers and others cannot be regarded as an isolated experiment, but rather necessitate a Commission determination of "basic and important policy questions regarding future development of common carrier communications services throughout the United States." In connection with MCI-New York West's applications, A.T. & T. summarizes its position as follows:

> MCI-NY West's proposal and others like it confront the Commission with basic policy questions regarding the future development of common carrier communications services. They would offer to serve only limited segments of business users in certain selected cities, without concern for the deleterious impact this might have on the other business and residential users who are subscribers of the existing common carriers. Such proposals, if granted, would seriously undermine the policy of uniform interstate rates and dilute or delay the benefits that economies of scale would otherwise make available to the general telephone-using public. Moreover, the authorization of such proposals would result in harmful electrical interference to existing common carrier routes, inefficient and underutilization of scarce common carrier facilities, to the detriment of the general public. As shown above, there is no demonstrated unfilled public need for MCI-NY West's incomplete and inadequate proposal or for the network of which it would be a part. Existing common carrier facilities are more than adequate to meet the public need and the existing carriers stand ready to serve any additional need which may be found to exist in the future.

13. With respect to Datran's proposed nationwide switched digital network for data transmission, A.T. & T. raises a number of questions which it asserts require hearing. These concern alleged uneconomic duplication of common carrier facilities, impact on nationwide uniform rates, social costs (such as a less efficient total communications network, a requirement for additional Bell System standby capacity, intensified congestion of the radio spectrum), the basis for regulating or controlling competition between Datran and established carriers, the extent of public demand for services which is not, or will not be, met by existing carriers, comparative costs and frequency usages, and the technical and economic feasiblity of Datran's proposal. A.T. & T. also asserts that Datran's proposal would cause harmful interference to some stations of the Bell System companies, as well as additional cases of potential interference to full development of already established Bell System routes. A.T. & T. takes the position that construction of Datran's proposed system would be more costly than expansion of existing Bell System routes by an equivalent number of circuits, that a grant might lead to the adoption of route pricing by the established carriers and cause an increase in rates to the general public, and that the need alleged by Datran would be better met within its time frame by the Bell System's "evolutionary approach." It is further asserted that Datran's proposal will depend on intrastate, as well as interstate, service and require appropriate local or state authorization. In addition, A.T. & T. claims that a proliferation of 11 GHz local distribution systems in and around major cities would cause serious frequency congestion problems. Finally, it states that Datran's applications appear to be mutually exclusive with those filed by other specialized common carriers for technical or economic reasons, or both.

14. Western Union urges that consideration of the MCI carrier applications is premature before MCI's already authorized Chicago-St. Louis system has been demonstrated.[4] It requests the Commission to postpone any kind of action on the applications of Datran and other applicants pending a determination of the underlying policy questions, since the proposals "threaten the common carrier communications industry with significant change, if not upheaval." Western Union claims that a grant of these proposals will divert revenues from its prime industrial areas, jeopardize the cost averaging approach, and threaten its efforts to gain a broader economic base and more financial stability. It also claims that the applicants have failed to demonstrate a public need for their proposed services, or to establish their technical and financial qualifications, and that their proposed systems will cause harmful interference to some of its existing stations and prejudice its ability to expand to full band usage on present routes.

15. The applications are also opposed by the General System Telephone Companies (General), other independent telephone companies, and various existing miscellaneous common carriers. In general, they claim that grants would result in wasteful duplication of facilities within their operating territories and/or electrical interference to existing systems. In addition, some of the applicants seek denial of the applications of others on grounds of mutual exclusivity. The National Association of Regulatory Utility Commissioners (NARUC) has petitioned for a public hearing on the Datran applications. Moreover, the Washington Utilities and Transportation Commission opposes the MCI Pacific Coast applications on the ground that any diversion of interstate usage from established carriers to other communications media would have the effect of placing a heavier relative burden on intrastate users of jointly provided facilities.

16. The foregoing is not a complete listing of the applications and opposition pleadings on file, or a comprehensive summary of the individual contentions. However, it will serve to indicate the kind of proposals and objections that led us to institute this proceeding.

C. ISSUES POSED BY THE NOTICE

17. As already stated (paragraph 2 above), the purpose of this proceeding is to resolve certain threshold policy and procedural issues before we process the applications and opposition pleadings on their individual merits and determine whether any further proceedings are necessary on such questions as may remain. The issues to be considered in this proceeding were stated in the Notice as follows (paragraph 22):

> A. Whether as a general policy the public interest would be served by permitting the entry of new carriers in the specialized communications field; and if so;
>
> B. Whether comparative hearings on the various claims of economic mutual exclusivity among the applicants are necessary or desirable in the circumstances;
>
> C. What standards, procedures and/or rules should be adopted with respect to such technical matters as the avoidance of interference to domestic communications satellites in the 6 GHz band, the avoidance or resolution of terrestrial frequency conflicts and route blockages both vis-a-vis the facilities of established carriers and among the applicants, and the use of frequency diversity;
>
> D. Whether some measure of protection to the applicants' subscribers is called for in the area of quality and reliability of service; and
>
> E. What is the appropriate means for local distribution of the proposed services?

18. The discussion of Issue A in the Notice was posed as a "staff analysis" on which the Commission took no position pending consideration of comments by interested persons (Notice, paragraphs 22 and 45 b). The staff analysis (Notice, paragraphs 25–45a) concluded that a general policy in favor of new entry would serve the public interest because competition in the specialized field appears to be reasonably feasible and can be expected to have some beneficial effects without adverse impact on service by established carriers. Issues B–E were

[3] Three applicants have applied for systems serving cities solely within the State of Texas.

[4] See Microwave Communications, Inc., 18 FCC 2d 953 (1969); reconsideration denied, 21 FCC 2d 190 (1970); modifications granted, 27 FCC 2d 380 (1971); pending on review in the U.S. Court of Appeals for the District of Columbia Circuit in American Telephone & Telegraph Co. et al. v. Federal Communications Commission (Cases Nos. 23959 and 23962).

the Commission's proposals, contingent upon adoption of the staff position on Issue A and subject to modification in light of the Commission's resolution of that issue (Notice, paragraphs 22 and 45b). On Issue B it was proposed not to hold comparative hearings on issues of economic exclusivity among the applicants unless there is a much stronger showing of exclusivity than those now before us, and the Commission is persuaded that the public interest requires such action in the particular situation (Notice, paragraphs 46–50b). On Issue C, the Notice proposed to adopt rules governing frequency coordination, the use of frequency diversity, the orientation of antennas, and technical standards for antennas, as well as procedures for processing pending applications involving frequency conflicts with existing stations or those proposed in previously filed applications (Notice, paragraphs 51–61). On Issue D we proposed to require all carriers providing specialized services to state to their customers and in their tariffs the reliability of the service offered, to make refunds where the promised reliability is not met, and to file periodic reports with the Commission concerning the reliability actually achieved, service complaints and refunds (Notice, paragraphs 62–65). Finally, on Issue E the Notice proposed that new carriers and their customers should have the option of achieving local distribution through interconnection with local telephone carriers or through construction of independent local facilities and, in the latter connection, requested comments on the use of wire, cable, and/or radio—particularly frequencies in the vicinity of 11 GHz or in some portion of the spectrum above 11 GHz, such as 18 or 50 GHz (Notice, paragraphs 66–70).

D. PROCEEDINGS BEFORE THE COMMISSION

19. The Commission has received comments from almost 200 interested persons, and reply comments from those most directly concerned (see Appendix B hereto) [24]. Oral argument before the Commission en banc was heard on January 21–22, 1971,[5] and rebuttal comments to oral argument have been received. A summary of the comments and reply comments on Issues A, B, and E by those participating in the oral argument is attached as Appendix C.[25] The rebuttal comments are summarized in Appendix D.[26]

20. The issue engendering the most voluminous and widespread comment is Issue A. All but a very few of the parties commented in support of the staff analysis and in favor of new entry in the specialized field. Those opposed consist principally of the established carriers (A.T. & T., Western Union, GT&E Service Corp. (GT&E), and United Telephone System (United), United States Independent Telephone Association (USITA), and the National Association of Regulatory Utility Commissioners (NARUC)).[6] The bulk of those commenting in favor of new entry, apart from the applicants, are individual potential users and equipment manufacturers and/or their associations. The Department of Justice and the Small Business Administration also filed supporting comments. The positions of those parties who commented on Issues B–E are indicated in the discussion below.

21. Upon consideration of the entire record, we have decided to spin-off Issues A–C for determination herein and to conduct further proceedings to assist in a resolution of Issues D and E. We shall discuss each of the five issues in order, setting forth: (1) The proposals in the Notice, (2) the positions of the major parties, and (3) the basis for our findings and conclusions on the merits or, in the case of Issues D and E, our decision as to the necessity for further proceedings.

II. Discussion and Conclusions

A. Issue A: Whether as a General Policy the Public Interest Would Be Served by Permitting New Entry in the Specialized Communications Field

(1) *Staff Analysis in the Notice*

22. We set forth our staff's analysis and recommended disposition of this issue in the Notice at some length in order to facilitate effective and informed participation by the public (Notice, paragraph 22). Moreover, the comments of the parties on this issue are largely directed toward that analysis. Accordingly, in order to place their comments and our discussion in context, we think it worthwhile to repeat verbatim below the reasons given by the staff for its position that new entry would serve the public interest (Notice, paragraphs 25–45a):

25. In considering whether the public interest would be served by permitting new carriers to provide specialized communications services, the basic touchstone for decision is, of course, the Commission's mandate to regulate "interstate and foreign commerce in communication by wire and radio so as to make available, so far as possible, to all people of the United States a rapid, efficient, nationwide, and worldwide wire and radio communications service with adequate facilities at reasonable charges * * *" (Section 1 of the Communications Act). Although this is the first time that the Commission has been presented with a large number of applications for authority to provide competitive common carrier services via microwave in the field of domestic communications, the issue of competition is not new. The Commission has had numerous occasions to consider and establish policy with respect to the provision of communications services in the common carrier field on a competitive basis.

26. As long ago as 1948 applications were filed in Docket No. 8777 by Mackay Radio and Telegraph Co., a predecessor company to ITT World Communications, Inc. (ITT), for authority to operate circuits to Finland, the Netherlands, Portugal, and Surinam in competition with preexisting circuits to those points operated by RCA Communications, the predecessor to RCA Global Communications, Inc. (RCAC). Upon review of the Commission's decision [5] to grant the applications for Portugal and the Netherlands and deny the Surinam application (Finland was withdrawn), the Supreme Court held: [6]

(a) The Commission may not grant applications to provide a competitive service merely because it assumes "that competition is bound to be of advantage in an industry so regulated and so largely closed as this one * * *".

(b) The Commission may grant applications for competitive circuits after an analysis of the trends and needs of the industry [7] and in the exercise of "the discretion given it by the Congress." [8]

(c) "In reaching a conclusing that duplicating authorizations are in the public interest wherever competition is reasonably feasible the Commission is not required to make specific findings of tangible benefit." [9]

(d) In order to grant a competing application, "the Commission must at least warrant, as it were, that competition will serve some beneficial purpose such as maintaining good service or improving it." An applicant is not required to demonstrate tangible benefits. There must, however, "be ground for reasonable expectation that competition may have some beneficial effect." [10]

23a. Since the Supreme Court's decision in the *RCA* case, the Commission has granted authority for numerous competing direct radio telegraph circuits,[11] in certain instances without holding hearings. The Commission has also followed a similar policy with respect to the grant of competing applications to miscellaneous common carriers in the domestic communications field. In each instance the test was whether the competition was reasonably feasible and could be expected to have some beneficial effect.[12] In addition, the Commission has authorized the use of private microwave systems,[13] by enti-

[5] The motions of various parties to correct the transcript of the oral argument are hereby granted.

[6] The position of the established carriers is also supported by Eastern Oregon Telephone Co. and Consulting Communications Engineers, Inc.

[5] FCC 51–197; see also FCC 55–698.

[6] FCC v. RCA Communications, Inc., 346 U.S.C. 86 (1953).

[7] Id. page 97.

[8] Id. page 95.

[9] Id. page 96.

[10] Id. page 97.

[11] See, e.g., 26th Annual Report of the FCC, page 107. The Commission has also authorized competing international carriers to lease, or obtain indefeasible rights of use of, channels in international cables of A.T. & T. See, e.g., 28th Annual Report of the FCC, pages 124–125.

[12] The Commission in Mackay Radio and Telegraph, Inc., 15 FCC 690 at page 737, defined "reasonably feasible" as encompassing the concept that the applicant seeking to compete must demonstrate: That a grant of its application would enhance or induce competition; and that a grant of its application would not endanger the ability of the existing carrier to continue to provide competitive service to the points at issue or to other points of its services. Specifically, the Commission was concerned as to whether there was a sufficient volume of traffic available to support both services. The presence of such a volume of traffic was taken as an indication that competition was reasonably feasible.

[13] In the Matter of Allocation of Frequencies in the Bands Above 890 Mc., 27 FCC 359 (1959), 29 FCC 825 (1960).

ties to satisfy their own needs. This also introduces an element of competition in the sense that a potential user now has the alternative of leasing facilities from a common carrier or providing his own facilities.

27. We note that there are not numerous precedents in the general domestic common carrier service field for the authorization of competing circuits. This is due primarily to the fact that until the filing of the applications considered in Microwave Communications, Inc., 18 FCC 2d 953 (1969),[14] reconsideration denied 21 FCC 2d 190 (1970), the Commission had no occasion to consider applications for competitive service in this area. In its MCI decision, the Commission granted applications of MCI to provide specialized interstate common carrier services between Chicago and St. Louis upon a finding that competition was reasonably feasible and could be expected to provide some public benefits. While not determinative of issues posed by the instant applications, the MCI decision indicated a disposition to foster in the specialized communications field a competitive environment within which users may have a wider range of choices as to the means of satisfying their special communications needs.

28. The public interest would be best served by allowing the entry of new communications common carriers to serve the markets for special communications services, to the extent that such entry can be accommodated within the limitations of radiofrequency availability. For the reasons set forth below, competition in this area meets the long-established test, i.e., that it is reasonably feasible and can be expected to have some beneficial effect. Indeed, the advantages of such a policy appear to be manifold and to outweigh any risk that the public interest would be adversely affected.

29. The demand for all types of communications service is growing very rapidly. The use of standard voice communications services is expanding at very high rates and it is expected that this rapid growth will continue, if not increase.[15] In addition, data communication, which has been in an embryonic stage of development, will probably exhibit very substantial growth over the next decade.[16] In proposing a policy favoring the entry of new specialized common carriers, we look toward a degree of competition oriented toward the development of new communications services and markets and the application of improvements in technology to changing and diverse demands. Thus, we are not faced with the question of whether we should increase the number of carriers which are to serve a fixed market with the same services, as is implied by many of the arguments raised by the established carriers. Rather we anticipate that the new carriers would be developing new services and would thereby expand the size of the total communications market. There may well be realignments of customers for specific services in accord with the types and degrees of specialization provided by different carriers. But any loss to the established carriers can be expected to occur only in terms of their relative share of the total communications market which would be served and not in terms of the volume of communications provided. Since the total communications market being served is likely to be increased, the existing carriers' volumes of traffic may increase at the same time that there is entry by the new carriers.[17] Moreover, the filings before us indicate that the special service markets are quite different from the standard toll telephone service. The existing communications network was established to meet the requirements of voice transmission in a market where consumer demands were generally similar. However, data users require not only a different application of communications technology, but also have requirements for services that are heterogeneous in character. For example, Datran proposes to construct digital technology transmission systems especially to meet data requirements. Other applicants, while proposing to use analog transmission techniques, propose to offer services with systems more closely designed to the requirements of transmitting digital and other nonvoice traffic. The applicants would be able to use systems that have not been engineered around the specialized requirements of voice traffic (such as sensitivity to steady line noise but relative insensitivity to impulse noise and phase distortion). Some may even offer systems totally optimized to the requirements of data transmission or other specialized traffic. In summary, the diversity that characterizes both the demand and the technology supports our conclusion that new entry in this field is reasonably feasible.

30. There appears to be an increasing public need and demand for the availability of diverse and flexible means for meeting heterogeneous communications requirements. Furthermore, the means for satisfying such needs are becoming available through rapid developments in communication, computer and related technologies. The information before us affords grounds for a reasonable belief that there is a substantial public need for the proposed services which is not now being adequately met by the established carriers. The computer inquiry showed that there was dissatisfaction on the part of the computer industry and by many data users who had been attempting to adapt their requirements to existing services.[18] Datran has persuasively stated the public need for rapid, accurate and low-cost data transmission, the drawbacks in using existing facilities engineered for voice and record transmission, and the advantages of a switched, all-digital network with end-to-end compatibility (see paragraphs 7–9 * * * [of the Notice]). Moreover, the showings in the MCI applications (e.g., the Arthur D. Little and Spindletop studies) support the view that there is widespread interest in the types of specialized, private line services proposed by it and other applicants. The circumstance that so many applicants apparently believe that there are markets to be developed is also of some significance. By permitting the entry of specialized carriers, we would provide users with flexibility and a wider range of choices as to how they may best satisfy their expanding and changing requirements for specialized communication service.

31. We note in this connection that the applicants are in a disadvantageous competitive position vis-a-vis A.T. & T. insofar as prompt inauguration of the proposed services is concerned. Action on their applications may be delayed for some time by the necessity of resolving claims in petitions to deny, inter alia, that the showing of need is inadequate. Since A.T. & T. has numerous long line facilities, both cable and radio, and many diverse routes, it generally has enough flexibility and spare capacity to institute new services (at least on a limited scale) without having the immediate necessity of obtaining authorization for new or modified facilities. Therefore, A.T. & T. need only file a tariff in order to commence providing service on its authorized facilities. A.T. & T. is thus in a position to offer at any time services with many of the features proposed by the applicants, while challenging the showings of need made by would-be new entrants and claiming that hearings are required on their proposals.

32. There is also a question as to whether the existing carriers can meet the requirements in the specialized markets promptly, efficiently and effectively without prejudice to full and timely satisfaction of the increasing requirements of the public monopoly services. The responsibility for meeting the nation's growing and changing communications requirements is now largely concentrated in the Bell System. This responsibility is becoming more and more difficult to discharge in a manner which enables the Bell System to satisfy timely and effectively all existing and anticipated communications requirements. This is partly because of the diversity of such requirements, the obvious problems of designing and engineering facilities capable of meeting all such requirements with equal efficiency, economy and expedition, and the huge and increasing amounts of new capital that the Bell System must raise for construction purposes. The entry of new carriers would have the effect of dispersing somewhat the burdens, risks, and initiatives involved in supplying the rapidly growing markets for new and specialized services among a multiplicity of entrepreneurs who appear ready, willing and able to assume these undertakings. It would also expand the capability of the communications industry to respond to the challenge of meeting the rapidly growing and varied demands of communications users.

33. A.T. & T. claims that the entry of specialized carriers will result in the sacrifice of economies of scale and the incurrence of social costs. However, the achievement of any economies of large scale supply in particular facilities may be at the expense of potential economies in other directions. In order to realize large scale economies, a single supplier must conglomerate diverse functions and provide general standardized services, thereby foregoing potential economies of

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[14] See footnote 4.

[15] About 87 percent of the Bell System's interstate revenue is from message toll telephone and wide area telephone service, and these services have an annual growth rate of 15 percent. It has been estimated that the existing plant of the Bell System will quadruple by 1980. See Statement of R. R. Hough, Vice President, A.T. & T., before the FCC during continuing surveillance meetings, week of Sept. 8, 1969.

[16] In its report to the Commission in the computer inquiry (Docket No. 16979) Stanford Research Institute estimated that by 1980 10–50 percent of the Bell System plant may well be serving data users (as measured in terminal hours). However, A.T. & T. estimated that by 1980 data use will amount to only 5–10 percent of the peak network load.

[17] We note that despite the claims of potential adverse effects upon the established carriers that were made in the Carterfone case (13 FCC 2d 420), A.T. & T. Chairman Romnes stated in the 1968 Annual Report (page 4):

"Since customers now have more options in using the network, this should further increase usage and enhance the growth of our business. Competition in providing communications equipment that may be connected to the network will no doubt accelerate, but we are confident of our ability to meet the tests of the market. In the expanding structure of communications there is opportunity for all."

[18] For a summary of the responses of the computer industry and data users, see Report No. 2 of the Stanford Research Institute study in the computer inquiry (Docket No. 16979).

specialization that could be derived from serving a specialized portion of the market. During an era of relative stability in technology, characterized by markets with homogeneous demands, the efficiency of large scale, single supply is necessarily considerably greater than it is during an era of rapidly changing applications of improved technology and growing potential markets made up of diverse consumer demands. Any attempt to adapt facilities designed primarily to meet voice requirements to the quite different requirements of data communications may entail such compromises in service as to leave both types of users dissatisfied,[19] and may vitiate the economies of scale the carriers postulate.

34. Further, while economies of scale may result when large general purpose transmission facilities can be used to meet relatively homogeneous communications requirements, there may be other drawbacks. The sheer size of the A.T. & T. organizational structure, its enormous financing requirements, its vertical integration, and near monopoly position in the provision of communications services may make it slower to perceive and respond to individual, specialized requirements and to initiate market and technical innovations.[20] Competition in the specialized communications field would enlarge the equipment market for manufacturers other than Western Electric, and may stimulate technical innovation and the introduction of new techniques. Moreover, new carriers with smaller scale operations could devote their undivided attention to the particular needs to be served and, lacking a captive market, would be under pressure to innovate to produce those types of services which would attract and retain customers.

35. In an industry of the size and growing complexity of the communications common carrier industry, the entry of new carriers could provide a useful regulatory tool which would assist in achieving the statutory objective of adequate and efficient services at reasonable charges. Competition could afford some standard for comparing the performance of one carrier with another. Moreover, competitive pressure may encourage beneficial changes in A.T. & T.'s services and charges in the specialized field, and stimulate counter innovation or the more rapid introduction of new technology. The Commission noted in its MCI decision the apparent response of A.T. & T. to MCI's proposal in modifying certain of its sharing provisions of its private line tariff offerings (18 FCC 2d 953, 961–2).

36. We are not persuaded that the allegation of "creamskimming" is well-founded or would justify a bar against new entry of the type proposed here. The concept of creamskimming assumes that the total potential market that could be served is actually being served by the established carriers and that they are responding to all changes in demand and technology at an optimum rate. It postulates that there is no room for a potential entrant without giving him part of the existing market and the only attraction to the potential entrant is the existence of the cream on the low cost routes. But it appears that the principal attraction for the new applicants here is not the cream of the existing markets, but rather special service markets that have not been developed. As earlier mentioned, the entrants seek to expand the size of the total communications market in a manner that may benefit all communications users.

37. Further, the development of new markets must always take place gradually and begin in those particular submarket areas where maximum demand can be stimulated at minimum cost. This is the manner in which all new products and services are introduced, and it is practiced by the established carriers. When A.T. & T. developed its audio and video services during the 1948–58 period, it chose to serve only the larger population centers and not outlying areas. As a result the Commission authorized intercity relay facilities to broadcasters and to miscellaneous common carriers. More recently, A.T. & T. claims that the costs of high capacity microwave and cable facilities used between major cities justify its experimental Series 11,000 tariff which is applicable only between large cities. Further, A.T. & T. originally proposed plans to introduce interstate Picturephone service initially only between Pittsburgh's Golden Triangle area and lower Manhattan.[21]

38. Though claiming that the geographical scope of the applicants' proposals is too small,[22] the established carriers have not elected to specify any additional locations needing the proposed services at this time. The proposals now before us cover large sectors of the country, much larger than one might expect in initial proposals. Datran's proposed initial network is limited to 35 markets where the level of maturity of digital technology has created the greatest initial requirement for data transmission. However, it states that it plans ultimately to expand the system to serve all significant interstate as well as intrastate data transmission markets, "including residential subscribers as digital technology is extended to the home." As Datran points out, business and other institutions, rather than individuals, presently constitute the overwhelming majority of potential data transmission users and they are heavily concentrated in major metropolitan areas. We would not expect a system such as that proposed by Datran to be constructed on a total nationwide basis at one time, though we would anticipate orderly expansion and development of communications plant to meet evolving market demands.[23] Moreover, the combined routes of the applicants proposing specialized, private line services appear to cover the bulk of the major cities where customers for such services are apt to be concentrated, and they are proposing interconnection. We can reasonably expect applicants to propose extensions of their systems as their markets develop, and there is no indication of a cessation in the filing of new applications for special services in additional areas. Competition in the response to these new demands may result in much faster geographical extension of the services than would be the case if all markets were preserved for the established carriers. Finally, other customers could be reached by spur routes from these networks as demand develops, pursuant to Commission action under sections 201(a) and 214(d) if necessary in the public interest.

39. Assuming that the questions of interference and frequency blockage are satisfactorily resolved (see paragraphs 54–58 * * * [of the Notice]), we see no real basis for the asserted fears that the authorization of specialized systems would affect rates for existing common carrier services or delay the planned construction of high-capacity systems in this decade. Preliminarily, we note that there appears to be a basic inconsistency between the claim of adverse impact and the contention that there is no public need for the proposed services. Clearly, if the applicants are unable to attract subscribers because their needs are being fully and satisfactorily met by established carriers, there can be no adverse impact. On the more reasonable premise that unmet public need exists, some diversion of existing and potential traffic may occur. On the other hand, the stimulative effect of the specialized services may actually increase the amount of traffic being carried by the established carriers (see paragraph 29). Moreover, to the extent that they provide local distribution service as proposed by some of the applicants, established carriers would also realize an increase in business. Established carriers would, of course, be free to compete on equal terms with the new entrants and might obtain a very substantial portion of the specialized communications market.[24] Indeed, their established position and the fact that they already provide various communications services to potential customers for the specialized services could very well afford them a competitive advantage over newcomers to the field (see also paragraph 31 above).

40. It is important to recognize that we are concerned with only a relatively small percentage of established common carrier

[19] A.T. & T., in effect, recogizes some shortcomings in the use of voice oriented facilities for data transmission in that it is gradually working toward digital transmission with the 'evolutionary approach' necessitated by its existing plant. As Datran points out, it apparently recognized this need some time ago. An article entitled "Transmission Aspects of Data Transmission Service by Using Private Line Voice Telephone Channels' in the Bell System Technical Journal, Nov. 1957, states that:

"The telephone network was developed for speech transmission, and its characteristics were designed to fit that objective. Hence, it is recognized that the use of it for a distinctly different purpose, such as data transmission, may impose compromises both in the medium and in the special service contemplated."

See also, "Transmission Across Town or Across the Country," Bell Laboratories Record (May/June 1969), pages 162, 167, to the effect that the use of digital transmission for voice may be more costly than analog transmission.

[20] In its report and order relating to the establishment of domestic communication-satellite facilities by non-governmental entities, Docket No. 16495, Mar. 24, 1970 (22 FCC 2d 86), the Commission took note that "A.T. & T. has stated that it views satellite transmission as another form of transmission similar in function to terrestrial microwave systems and coaxial cables, and that there are no communications services which could be offered by satellites which cannot now be offered by terrestrial facilities." (paragraph 26, footnote 7) However, the Commission observed that:

"The most important value of domestic satellites at the present time appears to lie in their potential for opening new communications markets, for expanding the beneficial role of competition in the existing markets for specialized communication services, and for developing new and differentiated services that reflect the special characteristics of the satellite technology." (paragraph 25)

[21] A. T. & T. has since requested dismissal of its applications for authority to provide such service. However, it is offering Picturephone service in Pittsburgh.

[22] We note that the carriers cannot consistently claim both that there is no need for these specialized services and that the geographical scope of applicants' proposals is too small.

[23] Indeed, the Bell System and Western Union began on a modest basis and gradually evolved to their existing positions. Moreover, while the Bell System serves the bulk of the Nation's population, it does not serve most small towns and rural areas.

[24] A representative of Datran has stated that it expects to obtain only about 10 percent of the data market by 1980 (see Telecommunications Reports, Vol. 36, No. 20 (May 18, 1970), page 5).

service to the public.[25] For example, A.T. & T.'s present interstate business constitutes only about 30 percent of the Bell System's total business; about 87 percent of the interstate revenue is from message toll telephone and wide area telephone service (WATS), and these latter services have an annual growth rate of about 15 percent.[26] None of the applicants proposes to provide this type of service and we see no reason to expect any undesirable effects upon these services. An examination of A.T. & T.'s private line, program transmission and other more specialized services indicates that an estimate of the proportion of A.T. & T. services that is vulnerable to competitive inroads would be on the order of 2–4 percent of its existing total business. Moreover, it has been estimated that the existing plant of the Bell System will quadruple by 1980.[27] Thus, it is difficult to see how a diversion (if, indeed, there is any diversion) of some portion of that comparatively small percentage of total business represented by interstate specialized services would have any substantial effect on telephone rates and service or delay or preclude whatever expansion of facilities is needed to accommodate the rapid growth in telephone traffic. In light of this and the estimate of A.T. & T. that by 1980 data will amount to only 5–10 percent of its peak network load, we cannot find merit in the argument that the high-capacity facilities which A.T. & T. plans for the next decade are in any substantial or relative measure dependent upon a very substantial growth in data and specialized private line services of A.T. & T., far exceeding existing percentages, and would be made possible only by a denial of the applications before us.[28] Similarly, nothing before us warrants a conclusion that the uniform tariff policies of the established carriers would be endangered. It has not been shown that the rates of the new entrants would in fact be lower than Bell could justify with its uniform charging approach or that there is any real threat to the rates of the established carriers. In the event that adverse consequences to the public should develop, the Commission can take such action on the relevant tariff filings as may be necessary to protect the public. We think that in the context of the matters now before the Commission involving proposed new and different services, a question of this nature is more appropriately considered in connection with the tariffs rather than upon authorization of the facilities.

41. In addressing the question of pricing practices we must not overlook the possibility that the converse situation may arise. We refer to the possibility that the established carriers may file unduly low or discriminatory tariff schedules and thereby subject the new entrants who increase the competitive character of the market to unfair competition. In this connection we note that A.T. & T. could file tariffs which price its potentially competitive services below cost to prevent or limit entry and seek to recover the losses through cross-subsidy from its monopoly message toll telephone and WATS market. The Commission has already addressed itself to this problem by undertaking an examination of ratemaking principles in Dockets Nos. 16258 and 18128. See also the Commission's report and order in the domestic satellite proceeding (Docket No. 16495), 22 FCC 2d 86, 96. The notice of proposed rulemaking in Docket No. 18703 (FCC 69–1140) looks toward an expansion of the scope of information available to the Commission at the time of proposed rate changes or new services by any major carrier. In addition, the Commission is expected to address itself further in the near future to this problem and to explore the feasibility of establishing ratemaking standards which would identify cross-subsidization as well as policies directed to their prevention or elimination.

42. We turn now to a consideration of the other established carriers. First, there are the independent telephone companies. These are not engaged to any substantial degree in providing either interstate data or specialized private line services. Instead, for the most part, they are engaged in the provision of local exchange and other local services. They participate in interstate service primarily for the provision of the local distribution facilities. Under these circumstances it is difficult to visualize how they would be affected adversely by a grant of the pending applications. In fact, to the extent that these applicants rely upon or use existing local distribution facilities, their entry would increase the business of the independents.

43. The situation in the case of Western Union is different. Its revenues from leased systems and Telex account for about 30 and 15 percent, respectively of its total revenues, with the remaining 55 percent coming from message telegraph service and other services. The potential impact upon Western Union is therefore greater than upon either the Bell System or the independents. Such potential impact must, however, be evaluated in the context of the overall public interest. First of all, as already set forth in detail, we are here concerned with the sharing of a new, relatively untouched market in a field where even the present demand is growing at a very rapid rate. Secondly, the proposed services are designed to meet demands not being satisfied by the current services of the established carriers. Moreover, we believe that this market will best be served by a competitive service of supply. Thirdly, we are primarily concerned with the provision of interstate facilities. In this connection, we note that Western Union for the most part does not use its own facilities, but instead acquires them largely by lease or rental from A.T. & T. In fact, there is no established pattern for the installation of new facilities by Western Union other than its recently filed applications for facilities over a route from Cincinnati to Atlanta. Finally, the Commission has just announced that it has instructed its staff to prepare a decision approving Western Union's application to purchase the Bell System TWX system with estimated annual revenues of $86 million for 1971. This in itself should, if the transaction is given final Commission approval, increase Western Union's annual revenues materially. In view of all of these factors, it is our conclusion that additional competition is reasonably feasible and that the foreseeable public benefits from the new services set forth above (see paragraphs 30–35) far outweigh the potential dangers to Western Union. In any event, there is no substantial showing that a grant of the applications would deprive the public of any services provided by Western Union which it is now enjoying and there are very substantial grounds for finding that numerous benefits in the way of new, different and less expensive services would result from a grant of the pending applications.

44. The most important safeguard, however, is the fact that the Commission has ample power under the Communications Act to take such regulatory action as may be necessary in the public interest to avoid adverse impact on the achievement of statutory goals and, particularly, the basic purpose stated in section 1 of the Act. The Commission would, of course, not permit any degradation in overall services to the public or any impediment to the realization of their development. The results of any authorizations would be the object of close and continuous scrutiny by the Commission. Should adverse consequences develop or appear imminent, the Commission can take such remedial action or precautionary measures as may be necessary to protect the public. As indicated, appropriate action can be taken in connection with the tariffs. In addition, any renewal of license for the proposed facilities would require a public interest finding, and could be subject to any needed conditions. Moreover, the Commission's broad rule-making powers are always available. Finally, we do not contemplate any protective umbrella to shield the competitors, except from predatory pricing and other unfair anticompetitive practices, or any artificial bolstering of operations that cannot succeed on their own merits.

45. In short, we have an opportunity now to see if the benefits that may reasonably be anticipated from entry of new carriers in this narrow field will in fact materialize. We can do so at what appears to be minimal risk. If we fail to explore this opportunity, the present situation in which one carrier dominates the entire domestic communications scene will continue indefinitely, and we are unlikely to know what the public may be missing. On balance, we think that the better course in the public interest is to apply long standing precedent to the area of domestic microwave services and to open the door to realization of the possible advantages while keeping a watchful eye to avoid any adverse effect.

45a. Accordingly, inasmuch as it appears that additional competition is reasonably feasible in this burgeoning market and that the entry of new carriers may be expected to benefit the public by providing new and differentiated services, there is no need to designate the pending and anticipated applications for hearing on the broad issue of whether the public interest would be served by competition to the established carriers in the provision of specialized services or on the related contentions with respect to alleged duplication of facilities, the general question of the need for the new services and impact on uniform tariff policies and existing services. Interested persons may make as full a showing as they desire on this aspect in their comments in this proceeding, and the Commission will, of course, carefully consider all material submitted in arriving at policy determinations. However, we do recommend

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[25] All of the applicants propose interstate facilities and services except three applicants in Texas, which, we understand, does not require state certification for intrastate service. Applicants proposing to operate where state or local authorization is required for intrastate service must, of course, obtain the necessary authorization prior to engaging in such service, and where proposed facilities are justified on the basis of intrastate service, local or state authorization must be obtained prior to the filing of microwave applications (see § 21.15(c)(4) of the rules).

[26] However, the telephone facilities may be used for the transmission of data (e.g., Dataphone). It has been estimated that about 200,000 of the present approximately 96 million telephones are Dataphones. The use of Dataphones is expected to increase.

[27] See Statement of R. R. Hough, Vice-president, A.T. & T., before the FCC during continuing surveillance meetings, week of Sept. 8, 1969.

[28] As earlier indicated (footnote 16 above), A.T. & T. has estimated that by 1980 data will amount to only 5–10 percent of its peak network load.

that the policy decisions made in the proceeding should be dispositive of such questions for purposes of these applications, in the absence of unusual and distinguishing circumstances.

(2) *Positions of the Parties: Established Carriers*

23. The established carriers (principally A.T. & T. and Western Union [7] do not purport to be opposed to competition per se but urge that rule making is an inappropriate procedure for resolving the policy issues involved in new entry, both as a matter of law and of sound regulation. They assert that the staff analysis rests on untested and unsupported assumptions, and that evidentiary hearing is required to compile a full record and to afford an opportunity for cross-examination—particularly as to the applicants' market studies and showings of need. A.T. & T. would settle for a single, nation-wide evidentiary hearing whereas Western Union seeks multiple hearings on regions or individual routes.

24. For a more detailed description of A.T. & T.'s contentions, see Appendix C, pages 18–24, and Appendix D, pages 8–9. Very briefly, A.T. & T. asserts that the staff analysis has an inadequate basis and rests upon untested and unsupported assumptions that: The new entrants would provide new services (which the established carriers do not, or could not in the future, provide) and expand the size of the total communications market, that there is a burgeoning market sufficient to support indiscriminate entry of new specialized carriers, that there would be no effect on the ability of existing carriers to continue to realize declining unit costs, that there would be no impact on nationwide average rates, and that competition would spur innovation and the introduction of new technology.

25. A.T. & T. claims that there is no evidence as to the need for additional carriers, that it is not sufficient to rely on the Computer Inquiry and the market studies of the applicants, that it is erroneous to compare the proposed services with existing offerings since as public need develops, the existing carriers will meet it. It further asserts that the gist of the applicants' proposals is lower rates, whereas the real consideration should be lower costs. There are no facts before the Commission to establish that the Bell System has been unresponsive to data needs, or that the applicants would provide services as efficiently and economically as the Bell System. The existing structure of the communications industry has served the country well, and the Bell System is responsive to new and emerging service needs including data (as shown by Appendix C to its comments, Appendix A to its reply comments, and its plans to complete construction of a digital data network for 60 cities by 1975).

26. In addition, A.T. & T. claims that the staff analysis does not adequately consider the effect of new entry on telephone users. It states:

> The impact of such departure from well-established policy on quality and adequacy of the national telecommunications network, the services it provides, the declining unit costs realized and to be realized by the existing carriers, uniform nationwide rates, the pace of technical and service innovation, national security and efficient spectrum utilization—all matters of vital importance to users in general—would, we believe be substantial and cannot be ignored.

A.T. & T. asserts that the new entrants are proposing to engage in "creamskimming"—selective competition whereby revenues from profitable routes are diverted by a new carrier which chooses not to serve less profitable routes. While the greatest demand has been and still is for voice communication, the growth rate of data sets was over 50 percent in 1969 and, absent new entry, private line revenues are projected to grow to $1.5 billion by 1975 and $2.7 billion by 1980. The diversion of revenues from new entry would not be insubstantial, and new entry might prejudice economies of scale benefits, delay the installation of large capacity facilities on high density routes—thereby jeopardizing the realization of declining unit costs, and cause a departure from Bell's practice of nationwide average rates. While the major impact would be interstate, the effect on separations cannot be ignored. And, finally, the staff analysis does not comport with sound administrative practice. The carriers have raised substantial public interest questions which require evidentiary hearing.

27. In the event that the Commission should authorize new entry, A.T. & T. urges that every carrier (including A.T. & T. and Western Union) should be able to compete fully under explicit ground rules set forth by the Commission. It agrees that there should be no cross-subsidization or temporary price cuts. However, A.T. & T. should be permitted to depart from its nationwide rate structure where that practice inhibits its ability to compete effectively. Long-run incremental costs should be the cost criterion for pricing competitive services, and there must be no protection of inefficient specialized carriers who have no economic basis for survival.

28. For a more detailed summary of Western Union's position, see Appendix C, pages 25–29. In brief, Western Union urges that the Commission is required, as a matter of law and sound regulation, to appraise the consequences of increased competition by new carriers in evidentiary hearings involving particular geographic areas and the specific services for which licenses are sought. There is an expanding market for communications services, including data communication, but this market is not unlimited, is not growing at the same pace in various markets throughout the country, and its contours cannot be determined at this point in time. Evidentiary hearings are required by applicable law, for the Commission cannot by rule decide such adjudicatory issues as the nature and extent of the public need for particular services in a particular geographic area, the extent to which existing carriers will be injured in a given area by a particular type of new specialized service, or the relative benefits and burdens to the public on a particular route with respect to the particular communications service. Moreover, the staff analysis is based on multiple assumptions, none of which is supported by evidence or could be supported as a generality covering the entire nation and all possible forms of specialized communications services in all markets.

29. In addition, Western Union claims that the new entrants would be competing primarily among themselves and with Western Union, rather than with A.T. & T. Western Union states that its message telegraph service is a "profitless monopoly" and that 44 percent of its revenues and the bulk of its profits are derived from leased systems and Telex service. New entrants can be expected to divert substantial revenues from Western Union without compensating public benefits and such diversions would be particularly heavy initially, as a new entrant would almost certainly offer low rates in an attempt to obtain traffic. The result of a price war would be to weaken Western Union and reduce its ability to compete effectively with A.T. & T. Western Union claims that it is the only carrier with resources to provide effective competition to A.T. & T., and that new services cannot compensate for the loss or severe weakening of its service. If new entry is authorized, Western Union must be permitted to compete effectively and to offer its services at rates competitive with those of the new entrants. The Commission should declare that such rates are lawful, being based on competitive necessity, provided only that they do not burden a carrier's other customers.

Applicants

30. The applicants argue, with Department of Justice support (Appendix C, pages 32–36), that the rule making approach is entirely appropriate, in the public interest, and in accord with applicable legal and statutory authorities, Commission precedent in comparable situations, and the practice of other administrative agencies. They urge that the staff analysis comports with the RCA test, and is well-founded. They further claim that there is abundant warrant in the record and other material officially before the Commission for a finding that new entry in the special service market is reasonably feasible and can be ex-

[7] The position of A.T. & T. and Western Union is also supported by GT&E Service Corp. (T&E), United Telephone System (United), the United States Independent Telephone Association (USITA), the National Association of Regulatory Utility Commissioners (NARUC), Eastern Oregon Telephone Co. and Consulting Communications Engineers, Inc. We note, however, that International Telephone and Telegraph Co. (ITT) commented in support of new entry.

pected to have some beneficial effects without adverse impact on established carriers. Their comments, which are summarized in Appendix C, pages 1–17, 42, and Appendix D, pages 1–8,[2a] are briefly highlighted below.

a. *Potential market and public need and demand for the proposed services.* 31. The MCI carriers state that the need and potential demand for the proposed services is evidenced by the record in the MCI case, the record in the Computer Inquiry (Docket No. 16070), and independent studies for the MCI carriers made by Spindletop Research Center, Arthur D. Little & Co., and Technical Communications Corp. in connection with the pending applications. They further point to Executive Branch reports favoring new entry, and comments by potential users and other members of the public in this proceeding.[8] Appended days. N*95: Applicant does not intend to MCI's reply comments are representative views of 93 respondents expressing interest in the proposed services and/or some dissatisfaction with existing services of the Bell System (MCI Reply Comments, Appendix A) and excerpts from current technical publications dealing with the crisis in business and data communications (MCI Reply Comments, Appendix B).

32. The Datran filing contains an extensive discussion of its market study of the data transmission needs of seven major representative segments of the economy (securities, insurance, manufacturing, retailing, banking and finance, information systems and services, and health care). Datron urges that the projections and other information presented in its comments (see Appendix C, pages 8–10) represent a meaningful analysis of the current and expected data communications market, and establish conclusively that the market for such services can be expected to swell very significantly over the next decade. Applicant Southern Pacific Communications Co. relies on its own market studies and on additional market research studies made on its behalf by Computer Sciences Corp. which indicate substantial immediate demand and potential growth on its proposed routes (see Appendix C, page 14). It also relies on the comments and oral argument of its would-be customer, Greyhound Corp. (see Appendix C, pages 40–41). Nebraska Consolidated Communications Corp., an applicant formed and one-third owned by independent telephone companies, relies on an independent study by Arthur D. Little, Inc., and its showing of 50 or more potential customers in its applications. Nebraska Consolidated states that two of these are "firm, letter-of-intent customers" who by themselves would provide annual revenues of $894,196 with a potential for significant increase (see Appendix D, pages 6–7).

33. The applicants further claim that the potential market is largely undeveloped at present and would be stimulated by new entry and various features in their proposals not presently offered by established carriers. MCI urges that its proposed "customized" or "individually tailored" private line services would offer customers the flexibility and benefits of private microwave at lower cost to the user, e.g., the exact bandwidth required for any particular service, any bandwidth that is required, and flexibility in the use of channels and customer terminal equipment. Datran claims that for data communications to reach their full potential, additional data transmission facilities with the features proposed by it are essential. Datran asserts that the most prevalent problems with present carriers are: Excessive costs, lack of carrier responsiveness, inadequate field services, and poor facilities performance (see also, paragraph 7 of the Notice). The improvements offered by its proposed all-digital switched network exclusively for data are: Lower cost, rapid connect, high availability, full-duplex switched service; end-to-end compatibility; wider selection of speeds; improved accuracy and reliability; better planning guides and counselling; faster and more reliable installation; more responsive and capable maintenance and repair; and greater flexibility in modifying or configuring services to meet specific needs. Datran further asserts that A.T. & T. is estopped from claiming there is no need for an all-digital switched network for data transmission, in view of its own plans to institute such a network in the mid-1970's.

b. *Impact on established carriers.* 34. MCI states that the lack of any substantial potential impact on A.T. & T. is established by statistics taken from A.T. & T.'s annual reports to the Commission. In 1969, total revenues for the Bell System were $16.1 billion. Projected total revenues for all MCI carriers are approximately $55 million per year.[9] The compounding effect of A.T. & T.'s 1969 rate of circuit growth (12–13 percent) would give it slightly over 1 million interstate circuits in 1980—almost a fourfold increase over the 294,032 interstate circuits in 1969. The bulk of Bell's revenues is derived from its switched voice telephone service—a rapidly growing field the applicants do not propose to enter. In 1969, AT. & T.'s reported revenues from toll private line services (excluding video) accounted for only $561,261,383 or 3.5 percent of its total operating revenues of $16.1 billion. MCI's total projected yearly revenues would amount to only a small percentage of that small percentage of total Bell revenues. In 1969, it appears that data transmission accounted for only approximately $267.5 million or 1.7 percent of Bell's total revenues. Even assuming the unlikely event of a total diversion of such revenues, the effect would be minimal and would not adversely affect the construction of new facilities needed for A.T. & T.'s rapidly growing basic telephone service, declining unit costs, or nationwide rate averaging for telephone users. Moreover, the applicants are seeking primarily to serve a potential specialized market which is largely yet to be developed, and A.T. & T. may obtain a substantial share of that untapped market. Datran similarly points out that it is difficult to conceive how its proposed system with an initial investment of some $350 million could make any significant inroads on the revenues and economies of a nationwide telephone system which has over $40 billion in plant, a $7.7 billion investment program for 1971, and an $8.2 billion program for 1972.

35. While Western Union's revenues and facilities are also dwarfed by those of A.T. & T., its total net income has risen by about 45 percent since 1965, and its 1969 revenues totaled nearly $394 million. MCI asserts that Western Union's recent acquisition of TWX will further strengthen its position, adding an estimated $86 million in revenues. In that proceeding, Western Union stated that it did not fear new entry in the specialized field and that the prompt transfer of TWX would give it sufficient lead time to stand up to such "indirect" competition. In the Matter of Western Union Telegraph Co. (Docket No. 18519), 24 FCC 2d 664, 673. MCI further notes that Western Union expects $132 million from TWX-Telex, as compared with the $39 million and $47 million it received from Telex alone in 1968 and 1969. While Western Union's leased systems and other leased plant bring in about 32.6 percent of its yearly revenues (WU 1969 Annual Report, FCC Form R&O, pages 75–76), its largest systems are switched systems (the Automatic Digital Network for the Department of Defense and the Advanced Record System), as is Telex, with which MCI type carriers would not compete. Although Western Union has finally recognized the need for improved data communications by proposing to inaugurate a competitive system of its own, the proposed services of the applicants include many features which Western Union does not offer and has no plans to develop.

36. On "creamskimming," MCI states that its carrier network will serve 75 percent of the population and 85 percent of the business community.[10] While Datran's proposed initial network is limited to the 35 markets that it believes have the greatest initial requirement for data transmission, it has represented to the Commission that it plans ultimately to expand its system to serve all significant markets. The applicants further note that A.T. & T.'s proposed digital data system would serve only 60 markets initially, and that its telephone network, while serving most of the Nation's population, serves slightly less than 50 percent of the served area of the

[8] At oral argument MCI stated that it relies especially on the comments of the Federal Home Loan Bank of Des Moines (Transcript of Oral Argument, pages 13–14).

[9] Since MCI's comments were filed, it has applied for three additional routes.

[10] See, e.g., Transcript of Oral Argument, page 14.

United States (as confirmed by the comments of USITA).

c. *Cost basis for the pricing of competitive services by established carriers.* 37. MCI, Datran, and the Department of Justice oppose A.T. & T.'s position that long-run incremental costs should be used as the relevant cost-criterion for pricing its competitive services. They state that incremental costs are difficult to determine, particularly where the same facilities are used to provide both competitive and noncompetitive services, and may be based on unwarranted assumptions and result in cross-subsidy. MCI claims that the only practical means of assuring that A.T. & T.'s rates for specialized services will be equitable and nondiscriminatory is to require that they be based on fully allocated costs. However, MCI states that the Commission need not resolve that question in this proceeding (MCI rebuttal comments, page 17).

Other Parties

38. Apart from the applicants, a large number (over 150) of potential users and equipment suppliers, their associations, and other interested entities commented in support of new entry and many urged the Commission to act expeditiously (see Appendix B, and Appendix C, pages 37–44). Two of these parties are Government agencies.

39. The comments of the Department of Justice strongly endorse a policy of new entry in the specialized field (see Appendix C, pages 33–36, and Appendix D, pages 10–13). The Department states that it appears to be the consistent conclusion of expert studies in this field that service offerings of established carriers have not been responsive to modern needs for communications services, particularly data transmission. This, the Department notes, may have resulted in part from the firm commitment of these carriers to traditional commercial and pricing policies and to facilities designed to provide traditional services. The various surveys also reveal that customers themselves recognize a need for new, highly specialized, variously packaged and economical communications services. The Department urges that the ultimate benefit of new entry is likely to be the offering of more varied, more responsive, more innovative, and more economically priced and packaged specialized communications services for today's users. New entry would further encourage product and service innovation and create stronger incentives for cost control and economical rates. The Department states that new entry would also be consistent with the policy embodies in the antitrust laws, and with the recent recommendations of various expert governmental bodies which have urged greater reliance on competition in specialized services as well as in regulated industries generally.[11]

40. The Small Business Administration (SBA) states that information available to it shows that small business concerns are interested in flexibility and customized service, more economical service, and greater ability to use terminal equipment of their own choosing—benefits which the existing carriers do not satisfactorily provide (see Appendix C, pages 37–38). As an example, SBA points to time sharing arrangements for centrally located convertor facilities which depend upon adequate transmission services at economical rates and on the flexibility and fidelity of the transmission service. According to SBA:

> Manufacturers and lessors of convertor equipment have advised SBA that expansion of such systems, even to the outlying areas of large cities, is impeded and even prohibited by the high cost of transmission services and because of the inefficiencies inherent in transmission of information over voice grade transmission facilities. The fact that such present use of such systems is limited to very small geographic areas, for example, the Loop area in Chicago, attests to the accuracy of these contentions.

SBA asserts that the pending proposals of the applicants would provide direct and immediate benefits to small business in the area of improved transmission and reduced rates (e.g., by the elimination of switching costs for the MCI type of proposal), and through increased opportunities for small business concerns to sell equipment, supplies, and services.

41. Various computer and data processing interests asserted their dissatisfaction with present services and need for the proposed services. The Computer Timesharing Services Section of the Association of Data Processing Service Organizations (ADAPSO) states that present carriers have not shown the administrative ingenuity necessary to permit technological advances in timesharing computer services (see Appendix C, page 39). ADAPSO claims that there is an important and immediate need for common carrier services such as those proposed by the applicants, who would be motivated to provide contemporary, state-of-the-art facilities. The Information Network Division of Computer Sciences Corp. gives examples in its comments of difficulties experienced with existing carriers in the area of quality and reliability of service. The American Society for Information Sciences expressed the interest of libraries and other information centers in new entry to facilitate the sharing of data banks, and their need for low cost data transmission facilities with rapid communication-response time (see Appendix C, page 39). Many other entities involved in various software and hardware aspects of the computer and data processing industries submitted comments in a similar vein (e.g., Computer Sciences Corp.; National Information Systems Corp.; Bunker-Ramo Corp.; Common; Communicon; Noxwell Corp.; DIDO, Inc.; Data Communications Association; Dacom, Inc.; Industrial Data Engineers Associates, Inc.; Communications Unlimited, Inc.; Computer Communications Engineering Technology; Memorex Corp.; Paradyne Corp.; Industry Data Systems, Inc.; Tel Tech Corp.; Sanders Associates, Inc.; Computer Terminals of Minnesota, Inc.; and the Business Equipment Manufacturers Association (Data Processing Group)).

42. A number of potential users or their associations have expressed a need for and an interest in the proposed new services and facilities. The National Retail Merchants Association (NRMA) states that there is a real need, not adequately met by existing carriers, for new private line and data transmission services (see Appendix C, page 40). NRMA has conducted a survey among its members with particular emphasis on those retailers with growing private line requirements, and has attached to its filing questionnaires answered by 11 of the Nation's principal retailers (which have approximately 6,000 individual retail stores in the United States and do an annual aggregate of $20 billion in retail sales). Those responding favor new entry and anticipate benefits in the form of service innovation and customer responsiveness, even assuming that rates do not turn out to be lower. The American Bankers Association has also conducted a survey among its members and, on the basis of replies from 3,251 banks, states that the industry favors new entry and has a need for higher data transmission speeds, as well as for exceptionally high quality transmission facilities (Appendix C, page 43).[12] Greyhound Corp. states that it is vitally interested in the opportunities for new and additional bulk communications services which may be made available by new entry, and gives

[11] President's Task Force on Communications Policy, Final Report, Chapter 6, page 10 (1968); President Nixon's Special Task Force on Productivity and Competition under Professor George J. Stigler of the University of Chicago (Cong. Rec., June 12, 1969, pages 6530–6532); President's Council of Economic Advisers (Economic Report of the President, 1970, pages 108–109; Economic Report of the President, 1971, pages 128–129).

[12] A number of individual banks also filed comments in support of new entry (e.g., Federal Home Loan Bank of Des Moines; National Bank of Joliet; Federal Home Loan Bank of Boston; Security Pacific National Bank; Valley National Bank; and United California Bank).

examples of the features in Southern Pacific's proposed system that are of particular interest to Greyhound (see Appendix C, pages 40–41). Comments in support of new entry were filed by such entities as: The Central Committee on Communications Facilities of the American Petroleum Institute; the Utilities Telecommunications Council; the National Consumer Marketing Corp.; the Federation of Independent Business; the Joint Council on Educational Telecommunications; Hallmark Cards; Pillsbury Co.; Kaiser Aluminum and Chemical Corp.; National Gypsum Co.; Martin Marietta Co.; REA Express; Mobile Oil Co.; Schlage Lock Co.; and, filing jointly: Bethlehem Steel Corp.; E. I. du Pont de Nemours and Co., Inc.; Olin Corp.; Union Carbide Corp.; United States Steel Corp.; American Express Co.; and Weyerhauser Co. For other potential users favoring new entry, see Appendix B.

43. Several equipment manufacturers have filed comments supporting new entry, partly because of public need for the proposed services, but primarily on the ground that new entry would stimulate developments in microwave and electronics technology and expand the market for such equipment. Such parties include: the Electronics Industries Association; International Telephone and Telegraph Corp.; Miteq, Inc.; General Electric Co.; Conic Corp.; and Alpha Industries, Inc.

44. Finally, comments in support of new entry have been received from various communications interests not directly concerned with the particular services proposed by the applicants. The three national television networks state that the adoption of policies which would encourage the entry of new entities into the common carrier field to meet special communications requirements, including, among others, those providing alternatives to users in meeting their special needs in the program transmission area, would be "highly desirable." The National Cable Television Association agrees that the availability of additional choices as to the means of satisfying communications needs would be of "inestimable value." The National Association of Radiotelephone Systems (NARS) states that unquestioned benefits have resulted from the existing competition between landline and nonlandline carriers in the domestic radio common carrier field, though improved, more efficient, and less expensive communication service. NARS is of the firm belief that competition between huge, diversified carriers and small, specialized or single purpose carriers will continue to benefit the public and must be encouraged by the Commission.

3. Discussion and Conclusions on Issue A

45. In short, practically all of the parties, including a wide range of interested public participants, support the analysis of our staff and urge expeditious adoption of a policy in favor of new entry on the basis of the record in this proceeding. We shall therefore address our attention to the arguments of those who are opposed, namely, the established carriers and related interests. The carriers claim, in essence, that rule making is an inappropriate procedure for resolving the policy issues involved in new entry, both as a matter of law and of sound regulation; that the staff analysis does not comport with the applicable legal standard for new entry and rests on untested and unsupported assumptions; and that evidentiary hearing is required to determine the nature and extent of the potential market, the need for new entry, and the effect on existing carriers and their services.

a. *The Commission's authority to proceed by rule making.* 46. Upon consideration of the entire record, including the arguments made and authorities cited by the carriers, we remain of the view that rule making is an appropriate and proper procedure for resolving the broad policy issues confronting us here. As stressed at the outset (paragraph 2 above), this proceeding does not undertake to decide all of the issues pertinent to the pending applications, and does not go to the qualifications of the applicants or the sufficiency of particular proposals. Such questions will be resolved by appropriate procedures when the applications are processed. Rather, our purpose here is to consider what A.T. & T. has described as "basic and important policy questions regarding the future development of the common carrier communications services throughout the United States" (paragraph 12 above). These questions necessitate an analysis of the trends and needs of the industry, are common to all of the myraid proposals and opposition pleadings, and concern a large number of other interested persons. Moreover, for the reasons discussed in paragraphs 62–102 below, we are of the opinion that the record and other material officially before the Commission affords ample basis for a decision on the policy questions and that there is no material issue of fact requiring evidentiary hearing. In our judgment, a prior resolution of the policy aspect through rule making procedures would best conduce to a prompt, orderly and efficient disposition of these applications, and would serve the end of justice to all concerned (see section 4(j) of the Communications Act).

47. The Commission's legal authority to resolve the basic policy issues posed by new carrier entry in the specialized communications field through rule making rather than ajudicatory procedures seems clear. It has been generally established since SEC v. Chenery Corp., 323 U.S. 194, 202, 203, that:

> The function of filling in the interstices of the Act should be performed as much as possible, through this quasi-legislative promulgation of rules to be applied in the future. * * * [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.

Section 214 of the Communications Act contains no explicit hearing requirement except as a prerequisite to an order directing the establishment of facilities (section 214(d)). The hearing requirement of section 309 of the Communications Act does not withdraw "from the power of the Commission the rule making authority necessary for the orderly conduct of its business" (United States v. Storer Broadcasting Co., 351 U.S. 192, 202 (1956)), and "does not preclude the Commission from particularizing statutory standards through the rule making process" (FPC v. Texaco, 377 U.S. 33, 39 (1964)). Moreover, the general rule making power of the Commission is not limited to specific statutory authorizations, but extends to matters "not inconsistent with the act or law." United States v. Storer Broadcasting Co., supra, 351 U.S. at 202.

48. The adoption of policy, like that of a basic change in policy, "is better and more fairly examined and considered in rule making proceedings, where the inquiry can be thorough and where all interested parties can participate" (Hale v. FCC, 425 F.2d 556, 560 (C.A.D.C., 1970)). In WBEN, Inc. v. United States, 396 F.2d 601, 617, 618 (C.A. 2, 1968), cert. den. 393 U.S. 914, the Court stated:

> The Commission was on solid ground as a matter of good sense, in concluding that "a more particularized approach * * * would [not] throw significantly more light on the appropriate course of action in a given situation, anything like enough to warrant the burden involved. * * *" Adjudicatory hearings serve an important function when the agency bases its decision on the particular situation of individual parties who know more about this than anyone else. But when, as here, a new policy is based upon the general characteristics of an industry, rational decision is not furthered by requiring the agency to lose itself in an excursion into detail that too often obscures fundamental issues rather than clarifies them.

See also, American Airlines, Inc. v. CAB, 359 F. 2 d 624 (C.A.D.C.), cert. den. 385 U.S. 843 (1966), to effect that the Storer doctrine:

> * * * rests on a fundamental awareness that rule making is a vital part of the administrative process, particularly adapted to and needful for sound evaluation of policy in guiding the future development of industries subject to administrative regulation in the public interest, and that such rule making is not to be shackled, in the absence of clear and specific Congressional requirement, by importation of formalities developed for the adjudicatory process and basically unsuited for policy rule making.

Accord: Regular Common Carrier Conf. v. United States, 307 F. Supp. 941 (D.D.C., 1969).[15]

[15] See also, American Pilots' Association v. Quesada, 276 F. 2 d 892, 896 (C.A.D.C., 1960); American Commercial Lines v. CAB, 392 U.S. 571, 592; Grain Elevator, Flour & Feed Mill W., ILA, Local 418 v. NLRB, 376 F. 2 d 774, 781 (C.A.D.C., 1967); Cornell University v. United States, 427 F. 2 d 680, 685 (C.A. 2), 1970); Superior Oil Company v. Federal Power Commission, 322 F. 2 d 601, 612, 619 (C.A. 9, 1963), cert. den. 377 U.S. 922, rehear. den. 377 U.S. 960; United Air Lines, v. CAB, 228 F. 2 d 13, 16 (C.A.D.C., 1955).

49. This Commission has generally utilized its rule making powers in considering the policy questions involved in the establishment of new communications services on a nationwide basis, including those with potential competitive impact on existing licensees, and other matters of overall industry consequence. See, for example, Allocations of Frequencies in the Bands Above 890 Mc, 27 FCC 359 (1959), reconsideration denied 29 FCC 825 (1960)—authorizing private microwave systems as an alternative to the use of common carrier facilities; General Mobile Radio Service et al., 13 FCC 1190 (1949)—authorizing the development of competing common carrier systems in the two-way mobile radio field by allocating separate frequencies for landline and nonlandline companies; Establishment of Domestic Communication Satellite Facilities by non-Government Entities, 22 FCC 2d 86 and 810 (1970)—consideration of the policy questions involved in applications for domestic communications satellite systems; Television Inter-City Relay Stations, 17 Pike & Fischer, R.R. 1621 (1958)—authorizing television stations to establish their own specialized intercity microwave facilities; Bamberger Broadcasting Services, Inc., 11 FCC 211 (1946)—establishment of the FM service; Peoples Broadcasting Co. v. United States, 209 F. 2d 286 (C.A.D.C., 1953) and Logansport Broadcasting Corp. v. United States, 210 F. 2d 24 (C.A.D.C., 1954)—sustaining the Commission's use of rule making to promulgate a nationwide Table of Assignments in the television broadcasting field; First and Second Report and Order on CATV, 38 FCC 683 (1965) and 2 FCC 2d 725 (1966)—rules governing the carriage and nonduplication of broadcast stations by CATV systems; First Report and Order in Docket No. 18397, 20 FCC 2d 201 (1969)—CATV program origination.[14]

50. It is important to bear in mind that we are "concerned here only with the type of hearing required, not with the right to a hearing" (Transcontinent Television Corp. v. FCC, 308 F. 2d 339, 343 (C.A.D.C., 1962)). The parties have been fully heard on the issues specified in the Notice in accordance with the rule making procedures prescribed in the Administrative Procedure Act (5 U.S.C. 553). In addition, they have been accorded oral argument before the Commission en banc and an opportunity to submit written rebuttal. A party is not "entitled to insist upon a different sort of hearing than it was accorded" unless there is a specific and significant factual issue in dispute that needs to be resolved by confrontation and cross-examination of witnesses. Transcontinent Television Corp. v. FCC, supra; Goodwill Stations v. FCC, 325 F. 2d 637, 641–642 (C.A.D.C., 1963). The mere circumstances that an issue may be subject to controversy does not necessitate a resolution of the matter through adjudicatory procedures. We are not persuaded that there is any such issue here (see paragraphs 62–102, below). Evidentiary hearing is not required where the "applications, exhibits, affidavits, intervention petition and other pleadings, developed the salient facts of dispute to a sufficient depth and detail that the Commission was enabled to perceive, define and resolve the various strands of public interest" (Citizens for Allegany County, Inc. v. FPC, 414 F. 2d 1125, 1129 (C.A.D.C., 1969)).[15] Further, the "subordinate questions of procedure in ascertaining the public interest, when the Commission's licensing authority is invoked—the scope of the inquiry, whether applications should be heard contemporaneously or successively, whether parties should be allowed to intervene in one another's proceeding, and similar questions—were explicitly and by implication left to the Commission's own devising" (FCC v. WJR, The Goodwill Station, Inc., 337 U.S. 265, 283 (1949)).

51. That the carriers claim adverse impact may flow from a policy in favor of new entry, does not invalidate the use of the rule making procedure to weigh that factor. The use of rule making may be "valid even if its effect is to drive some operators out of business (American Trucking Association v. United States, 344 U.S. 298, 322), or the results are "of immediate and grave economic import to petitioner" (Williapoint Oysters, Inc. v. Ewing, 174 F. 2d 676, 694 (C.A. 9, 1949), cert. den. 339 U.S. 860, rehear. den. 339 U.S. 945), or some "will be easily able to survive under these rules; some will not" (Capitol Airways, Inc. v. Civil Aeronautics Board, 292 F. 2d 755, 758 (C.A.D.C., 1961).[16]

52. We are not persuaded by Western Union's contention that the broad policy issues involved in new entry should be examined in individual proceedings on a route by route basis. As A.T. & T. points out, we are concerned here with the future development of communications services throughout the United States. Both A.T. & T. and Western Union operate on a nationwide basis. Datran has proposed a nationwide, switched network, the MCI carriers also propose nationwide operations through interconnection, and various other applicants (such as Southern Pacific, Western Tele-Communications, Inc., and United Video) have proposed routes crossing very large geographic areas of the United States. Moreover, many of the potential customers expressing a need for and interest in the proposed service have business operations or other activities which are nationwide in scope. While there obviously may be some differences among routes, no circumstances have been called to our attention that might lead us to believe that new entry to serve expanding and new markets for specialized communications service would be contrary to the public interest in any particular area. Our review of the applications and opposition pleadings filed prior to the Notice clearly indicates that in each case both sides rely essentially on the same arguments. We see no interest of the public to be served by holding a multiplicity of proceedings to consider the same contentions over and over again, or by a piecemeal, regional evaluation of policy factors which are essentially nationwide in scope. If the record before us enables us to conclude—as we believe it does—that new entry on a nationwide basis is in the public interest, it follows that route-by-route analysis as sought by Western Union is neither necessary nor desirable. Moreover, the delay entailed in such a cumbersome procedure would be contrary to the public interest in an early resolution of the need for the systems proposed to be established.

53. Contrary to the further contention of Western Union, we have not abdicated our regulatory functions or engaged in a wholesale de-regulation of a class of carriers by invoking our rule making powers to consider the policy issues posed by new entry in the specialized field. Where, as here, the rule making procedure permits a sound evaluation and determination of policy to guide the future development of the industry and is also conducive to a prompt, orderly and efficient disposition of the matters at issue, we are effectuating our statutory responsibilities, rather than abrogating them, by choosing the procedure deemed most suitable to a resolution of the kind if issue before us.[17] SEC

[14] In the Second CATV Report the Commission attempted the evidentiary hearing approach to the carriage of distant signals in major markets. But after completing one major market hearing, the Commission "recognized the inadequacy of such individual hearings and the need 'for the formulation of overall policy' to govern CATV operations" in major markets and accordingly instituted rule making "designed to achieve the 'far-ranging, overall view [that] is necessary if the Commission is to come to grips with this dynamic field'" (Bucks County Cable TV, Inc. v. United States, 427 F. 2d 438, 445–446 (C.A. 3, 1970)). See Midwest Television, Inc., 13 FCC 2d 478, 488–489; Notice of Proposed Rule Making in Docket No. 18397, 15 FCC 2d 417, 433–434.

[15] See also, NBC v. Federal Communications Commission, 362 F. 2d 946 (C.A.D.C., 1966); Alaska Steamship Co. v. FMC, 356 U.S. 59 (1966); FPC v. Texaco Co. Inc., 377 U.S. 33 (1964); Pikes Peak Broadcasting Co. v. FCC, 422 F. 2d 671 (C.A.D.C., 1969); Railway Express Agency v. CAB, 345 F. 2d 445 (C.A.D.C., 1965); California Citizens Band Association v. FCC, 362, F. 2d 946 (C.A.D.C., 1966).

[16] See also, "The Choice of Rule Making or Adjudication in the Development of Administrative Policy," 78 Harv. L. Rev. 921 (March 1965); Robinson, "The Making of Administrative Policy: Another Look at Rulemaking and Adjudication and Administrative Procedural Reform," 118 U. of Pa. Law Review 485 (1970) Davis, Administrative Law Treatise, Vol. 1, Sec. 6.13, 1965, Pocket Supp., pages 150–151; "The Use of Agency Rulemaking to Deny Adjudication Apparently Required by Statute," 54 Iowa Law Review 1086 (1969).

[17] As in the case of any policy or rule of general applicability, a waiver, exception or evidentiary hearing may be granted upon an adequate showing of exceptional circumstances making it inappropriate to apply the policy or rule in a particular situation. United States v. Storer Broadcasting Co., 351 U.S. 192, 205 (1955).

v. Chenery Corp., supra; Hale v. FCC, supra. Our disposition of the policy aspect is consistent with applicable legal standards (see sections (b) and (c) below), and does not constitute a determination that all or any of the pending applications will be granted. Each application must still meet applicable statutory standards and comport with the policies established herein. Thus, each applicant will be "required to make a satisfactory showing that it is qualified and that the service it seeks to offer is technically and economically sound and would otherwise serve the public interest" (paragraph 2 above).

54. In sum, assuming the validity of our conclusion below (section (c)) as to the absence of any significant factual issue requiring resolution through confrontation and cross-examination of witnesses, we must reject the contention that we have exceeded our legal authority or abused our discretion by utilizing the rule making procedure to determine Issue A.

b. *Applicable legal standard for authorizing new entry.* 55. The carriers further contend that the staff analysis does not comport with the applicable legal standard for authorizing new carrier entry. They assert that under section 309 of the Act, where an applicant is a carrier the Commission must apply the standards of section 214. It is further claimed that this section was enacted to avoid wasteful competition and uneconomic duplication of facilities, and requires a finding that there is a need for the proposed services which existing carriers are not now adequately meeting and could not in the future adequately meet. We are of the opinion that this is too narrow a construction of sections 309 and 214 and the Commission's responsibilities thereunder.

56. The statutory standard governing the Commission's consideration of applications for microwave radio facilities to provide common carrier services is broadly stated in sections 309 and 214 of the Communications Act: whether a grant would serve the present or future public interest, convenience and necessity—a "criterion not too indefinite for fair enforcement." FCC v. RCA Communications, Inc., 346 U.S. 86, 90 (1953). In determining the threshold question here as to whether a licensing policy in favor of new entry would meet that test, the basic touchstone for decision is the Commission's mandate to regulate "interstate and foreign commerce in communication by wire and radio so as to make available, so far as possible, 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 * * *" (section 1 of the Act). Section 303(g) of the Act further directs that the Commission shall "generally encourage the larger and more effective use of radio in the public interest."

57. In order to accomplish this "comprehensive mandate," the Commission was given "not niggardly but expansive powers" and wide discretion to adopt flexible procedures, rules and orders to meet everchanging communications needs. Sections 4 (i) and (j) and 303(r) of the Communications Act; National Broadcasting Co. v. United States, 319 U.S. 190; FCC v. Pottsville Broadcasting Co., 309 U.S. 134, 137–138; United States v. Southwestern Cable Co., 392 U.S. 157, 172–173; United States v. Storer Broadcasting Co., 351 U.S. 192, 202–203. This flexibility to take administrative action imperative for the achievement of an agency's ultimate purpose applies not only to broadcasting but also to the field of common carrier regulation. Permian Basin Area Rate Cases, 390 U.S. 747, 776–777; American Trucking Association v. Atchison, Topeka and S. F. Ry. Co., 387 U.S. 397, 416.[18] As the Supreme Court stated in American Trucking (id.):

> [We] agree that the Commission, faced with new developments or in light of reconsideration of the relevant facts and its mandate, may alter its past interpretation and overturn past administrative rulings and practice. * * * In fact, although we make no judgment as to the policy aspects of the Commission's action, this kind of flexibility and adaptability to changing needs and patterns of transportation is an essential part of the office of a regulatory agency. Regulatory agencies do not establish rules of conduct to last forever; they are supposed within the limits of the law and of fair and prudent administration, to adopt their rules and practices to the Nation's needs in a volatile and changing economy. They are neither required nor supposed to regulate the present and the future within the inflexible limits of yesterday.

58. It is settled, moreover, in the communications common carrier field that "competition is a relevant factor in weighing the public interest" and that the exercise of the Commission's statutory responsibility "leaves wide discretion and calls for imaginative interpretation." FCC v. RCA Communications, Inc., 346 U.S. 86, 90, 93–97 (1953). To be sure, the Commission may not grant applications to provide a competitive service merely because it assumes that "competition is bound to be of advantage, in an industry so regulated and so largely closed as this one" (id., at 97). However, it may authorize competitive entry after an analysis of the trends and needs of the industry and in the exercise of "the discretion given it by the Congress" (id., at 95, 97). "In reaching a conclusion that duplicating authorizations are in the public interest wherever competition is reasonably feasible, the Commission is not required to make specific findings of tangible benefit" (id., at 96). "In the nature of things, the possible benefits of competition do not lend themselves to detailed forecast (id., at 96). The "Commission must at least warrant, as it were, that competition will serve some beneficial purpose such as maintaining good service or improving it" (id., at 97). While an applicant is not required to demonstrate tangible benefits, there must be "ground for reasonable expectation that competition may have some beneficial effect" (id., at 97).[19]

59. Upon review of the staff analysis, we think that it follows the standard of the RCA case and treats the considerations pertinent to the exercise of our discretion. We do not agree with the carriers' position that a policy in favor of new entry can legally and appropriately be adopted only if we conclude that the established carriers could not, in the future, adequately provide the proposed services. (See also, paragraphs 72 through 76 below). There is no uniform requirement that new entry may be authorized only if existing carriers are unable or unwilling to provide the proposed services.[20] Adequacy of existing

[18] See also, Fuchs, "The New Administrative State; Judicial Sanction for Agency Self-Determination in the Regulation of Industry," 69 Columbia Law Review 216 (1969).

[19] On remand in that case the Commission concluded on the basis of its experience that competition resulting from a grant of the applications was reasonably feasible and would serve the public interest. It stated: "What we require is, that, in order to be successful an applicant must demonstrate that, as has been done here, through the operation of such a circuit, some public need would be served or some advantage would accrue to the public, or at least that there is a reasonable expectation that such competition may have some beneficial effect." Mackey Radio and Telegraph Company, Inc., 19 FCC 1321, 1350 (1955), aff'd. RCA Communications, Inc. v. FCC, 238 F. 2d 24, 27–28 (1956), cert. den. 352 U.S. 1004 (1957).

[20] It has often been stated in cases involving the enjoinment of uncertificated construction (e.g., Texas & Pacific Ry. v. Gulf C. & S. F. Ry., 270 U.S. 266, 277 (1926); Texas N.O.R.R. v. The Northside Belt Ry., 276 U.S. 475, 479 (1928); Long Island R.R. v. New York Central R.R., 281 F. 2d 379, 384 (C.A. 2, 1930)) that the purpose of requiring a certificate for new construction under the Interstate Commerce Act was to prevent waste of carrier resources of two sorts—waste of the resources of the constructing carrier by unwise expenditures and waste of the resources of other carriers by extension of a new carrier into an area adequately served by existing lines. However, this does not mean that the ICC in deciding whether to issue a certificate under the public interest, convenience and necessity criterion of that Act may not take into account "the transportation needs of the public," the "necessity of enlarging transportation facilities," and "measures which 'would best promote the service in the interest of the public and the commerce of the people'." New York Central Securities Corp. v. United States, 287 U.S. 12, 24–25. Moreover, whatever the analogy between the railroad cases and competitive entry in the monopoly telephone and telegraph fields, "questions of competitive injury in the transportation field are very different from questions of public injury in the field of communications" in others areas and this Commission need not adopt the rationale of ICC decisions where they are of little relevance to the situation before it. Carter Mountain Transmission Corp. v. FCC, 321 F. 2d 359, 362–363 (C.A.D.C.), cert. den. 375 U.S. 951 (1963). What is involved here is a quite different situation: the sharing of relatively new markets which are expanding at a rapid rate and have a very large future growth potential. Further, while wasteful duplication is generally to be avoided, duplication is not wasteful where a certificating agency appropriately concludes that competition is reasonably feasible and may be expected to have some beneficial effect (FCC v. RCA Communications, Inc., supra).

common carrier service is "only one element to be considered in arriving at the broader determination of public convenience and necessity * * *. Other elements of importance appear to be the desirability of competition, the desirability of different kinds of service and the desirability of improved services." Nashua Motor Express, Inc. v. United States, 230 F. Supp. 646, 652 (D. N.H., 1964), and cases there cited.[21] Where, as here, growing future traffic is involved, the "adequacy of existing carriers to render the new service is not determinative" (ICC v. J–T Transport Co., 368 U.S. 81, 88 (1961)).[22] A certificating agency "should consider the public interest in maintaining the health and stability of existing carriers, see United States v. Drum, 368 U.S. 370, 374 (1962); but it is also true that, upon the basis of appropriate findings, 'the Commission may authorize the certificate even though the existing carriers might arrange to furnish successfully the projected service.'" United States v. Dixie Highway Express, Inc., 389 U.S. 409, 411–412 (1967). See also, ICC v. Parker, 326 U.S. 60, 70 (1945).

60. "[N]o carrier is entitled to protection from competition in the continuance of a service that fails to meet a public need, nor, by the same token, should the public be deprived of a new and improved service because it may divert some traffic from other carriers." Schaffer Transportation Co. v. United States, 355 U.S. 83, 91 (1957). A certificating agency "may properly look to the existence of some competition, even if entry is limited by legal barriers or regulatory necessity, as an important and effective tool in increasing efficiency and quality of service." Atlantic Seaboard Corp. v. FPC, 404 F.2 d 1268, 1272 (C.A.D.C., 1968). When an industry is "a highly regulated industry critical to the Nation's welfare," this "makes the play of competition not less important but more so." United States v. Philadelphia National Bank, 347 U.S. 321, 372 (1963). In Strickland Transportation Co., Inc., Extension—Louisiana Routes, 77 M.C.C. 655 (1958), additional competition was certificated because the existing carriers "cannot be depended upon to provide the type of service of which they are capable, except when faced with imminent threat of additional competition." And when there is doubt as to whether the facilities of existing carriers will be expanded fast enough to meet growing and significant future needs, a certificating "Commission has discretion to decide" that "the public interest requires that future * * * needs be assured rather than left uncertain," i.e., that the best regulatory action is to certificate additional carriers prepared to meet those needs. United States v. Detroit and Cleveland Navigation Co., 326 U.S. 236, 241 (1945).

61. It is in this broader and more flexible context that we believe we should apply the statutory standards of sections 309 and 214 to resolution of the issue of entry which is before us.

c. *The sufficiency of the record to enable a decision on the merits.* 62. We turn now to the carriers' argument that the staff analysis rests on untested and unsupported assumptions, and that evidentiary hearing is necessary to determine the nature and extent of the potential market, the need for new entry, and the effect on existing carriers and their services.

63. Upon review of the entire record and other material officially before the Commission, we find ample support for the staff's conclusions as to the trend of the communications industry generally, the nature of the potential market, and the public need and demand for the proposed services. (Notice, paragraphs 29–30.) There is no room for dispute that the demand for communications services is growing very rapidly and can be expected to continue to expand at very high rates. This is shown by the statistics contained in the carriers' annual reports to the Commission and other filings over the last several years.[23] Projecting present growth rates, A.T. & T. has estimated that the existing plant of the Bell System would quadruple by 1980 (see statement of A.T. & T. Vice President R. R. Hough before the FCC during continuance surveillance meetings, week of September 8, 1969). It is clear, moreover, that this projection is based primarily upon the rapidly expanding growth in local and interstate use of the standard voice communications services of the Bell System—services which the applicants do not seek to provide. Interstate revenues constitute only about 30 percent of A.T. & T.'s total revenues, and about 87 percent of the interstate revenue is derived from message toll telephone and wide area telephone services which have an annual growth rate of about 12 percent. Indeed, A. T. & T. notes in its comments that the "greatest service demand has been and still is for voice communication" (A.T. & T. comments, page 50).

64. It may be helpful at this point to clarify one matter. Contrary to the contention of some of the parties, the staff analysis did not err by placing too much emphasis on A.T. & T. and too little on Western Union and the independent telephone companies. In analysing the trends of the industry, the needs of the public, and the effect of new entry in the interstate specialized field on services of established carriers, it is necessary and appropriate to focus primarily on A.T. & T. There is no question but that A.T. & T. is now the dominant entity on the domestic communications scene. In 1970, the Bell System had gross operating revenues of approximately $16.9 billion, as compared to approximately $402.4 million for Western Union, and their gross investments in communications plant were approximately $54.8 billion for the Bell System and $939.6 million for Western Union (1970 A.T. & T. Annual Report (Form M), Schedule 12A; 1970 Western Union Annual Report (Form O Advance Copy), Schedule 100). A.T. & T.'s investment program is on the order of $7.7 billion for 1971 and $8.2 billion for 1972. While Western Union's revenues and facilities are growing,[24] its operations are on a modest scale alongside those of A.T. & T. For purposes of this proceeding, we accept the estimate of USITA (Appendix C, page 31) that the independent telephone companies have invested over $11 billion in some 11,000 local exchanges. However, they participate in interstate service primarily by providing local distribution facilities which interconnect with the facilities of the Bell System. They do not, with minor exceptions, furnish intercity facilities. Thus, while the potential impact on Western Union and the independents is a relevant factor to be weighed in our determination (see paragraphs 84 through 87 below), we must pay particular attention to the entity upon which the public is now primarily dependent for the provision of interstate services.

65. There is abundant support for the staff's conclusions that the specialized communications market, particularly for data communications, is growing at a rapid rate, and that there is a very large

[21] As the Department of Justice points out, the older ICC decisions in motor carrier cases, such as Hudson Transit Lines, Inc. v. United States, 82 F. Supp. 153 (S.D. N.Y., 1948), aff'd. 338 U.S. 802 (1949), no longer represent the modern approach in the motor carrier field. See also, Fulda: Competition in the Regulated Industries (Transportation) 88 (1961): "The central fact of intercity motor carriage of passengers is the existence of the Greyhound Corporation * * * Hence certification attempts by independent bus lines usually represent attempts to compete with the giant who overshadows the industry. It is not surprising that, on the whole, the Commission reacted favorably to these efforts."

[22] In the *J-Transport Co.* case, the Supreme Court stated that:

"By indulging in a presumption 'that the services of existing carriers will be adversely affected by a loss of potential traffic, even if they have not handled it before,' and by assigning to the applicants the burden of proving the inadequacy of existing services, the Commission favored the protestants' interests at the expense of the shippers' in a manner not countenanced by anything discoverable in Congress' delegation to it of responsibility." (368 U.S., at 90).

[23] The carriers do not, of course, repudiate the figures contained in their own reports to the Commission. MCI in its comments has accurately referred to some of these statistics. We occasionally select others as more relevant for our purposes. While the choice as to the relevant statistics may be subject to argument, the statistics themselves are unchallenged and do no require evidentiary hearing.

[24] Western Union's revenue growth is shown by its annual reports. Moreover, in applying for microwave facilities on its Cincinnati-Atlanta route (File Nos. 5623/5633–C1–P–70, granted by Commission action released on April 16, 1971, FCC 71–391), Western Union stated that its growth rate nationwide has been 14.8 percent (despite the falling volume of message traffic).

potential market yet to be developed. The market studies of the applicants all points in that direction (e.g., the studies submitted with the MCI applications by Spindletop Research Center and Arthur D. Little & Co.;[25] Datran's market studies some of which were conducted by Booz, Allen, and Hamilton, Inc. (see Appendix C, pages 9–10); Southern Pacific's field survey and the market study made on its behalf by Computer Sciences Corp. (see Appendix C, page 14); and a market study made by Arthur D. Little, Inc. for Nebraska Consolidated Communications Corp. (NCCC), a survey conducted by the NCC staff, and letters of interest from various firms (see Appendix D pages 6–7)).

66. The market studies of the applicants are generally consistent with the forecasts made in independent reports to the Commission by Stanford Research Institute (SRI) and Dittberner Associates (Dittberner), other published forecasts,[26] the record in the Computer Inquiry (Docket No. 16979), and our own findings in that proceeding. In its report to the Commission in the Computer Inquiry,[27] SRI forecast that data usage (measured in terminal hours) would increase from less than 1 percent of total usage of the Bell System plant to between 10–50 percent of total usage by 1980 (1 SRI Report 7379B, page 51). A.T. & T.'s estimate in the Computer Inquiry was that data usage would amount to 5–10 percent of peak network load by 1980. For the Dittberner forecasts as to anticipated dynamic growth in data communications, see pages 20, 22 of its report on extended interconnection privileges of customer-owned equipment, submitted to the Commission on September 1, 1970.

[25] In addition to the Spindletop and A. D. Little studies, the MCI applications contain:

(1) A regional study summarizing the types of firms in that region and growth rates of the firms by various economic indicators;

(2) Letters of intent and interest from firms contacted by the MCI carriers;

(3) A mail questionnaire and tabulation of results; and a

(4) Study prepared by Technical Communications Corp., entitled: "The Adverse Effect of Data Transmission on the Voice Network."

[26] See, e.g., "Terminal Makers Brisk Outlet for Modem, Coupler Procedures," Electronic News, June 1, 1970, p. 4; Auerback, "Terminal Shakeout on the Way," Datamation, May, 1970, p. 81; R. L. Arouson, "What's Happening to Data Communication," Control Engineer, November 1969, pp. 107–111; "Whole New Market," Forbes, July 1, 1969, p. 43; Manley R. Irwin, "Computers and Communications: The Economics of Interdependence," Law and Contemporary Problems, Duke University Spring 1969, Vol XXXIV, p. 361; President's Task Force on Communications Policy, Staff Paper 1, Part I (Clearinghouse for Federal Scientific and Technical Information, Springfield, Virginia, June 1969), Appendix A, pp. 22, 24.

[27] See, Stanford Research Institute Reports 7379B, Policy Issues Presented by the Interdependence of Computer and Communications Services, et al. (2 Vols.), prepared for the FCC, Contract RC–10056, February 1969.

67. As we found in our final report and order in the Computer Inquiry (FCC 71–255, paragraph 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 relative importance to the economy will increase in both absolute and relative terms in the years ahead."[28] We further found that "data processing cannot survive, much less develop further, except through reliance upon and use of communications facilities and services" (ibid.).

68. Finally, the carriers themselves do not dispute the present and potential future growth of the specialized communications market, particularly for data communication. In its comments in this proceeding, A.T. & T. projected that private line revenues would grow to $1.5 billion by 1975 and $2.7 billion by 1980.[29] A.T. & T. further notes that the growth rate for data sets was over 50 percent in 1969 (Transcript of Oral Argument, p. 162), and concedes that there is "no real dispute" that the "market for data communications is large and is growing" (Appendix C, p. 23). Western Union also "believes that there is an expanding market for communications services, including data communications as well as other forms" (Western Union comments, page 2).

69. While there may be some overlap between the services proposed by the applicants and the present offerings of the established carriers, we find sufficient warrant for the staff's conclusion that the applicants are seeking primarily to develop new services and markets, as well as to tap latent, but undeveloped submarkets for existing services, so that the effect of new entry may well be to expand the size of the total communications markets. To be sure, the established carriers now provide data transmission and private line services. However, the services proposed by the applicants have technical and service features significantly different from those of the established carriers. As the staff notes (Notice, paragraph 29), the existing communications network of the Bell System was established to meet the requirements of the voice transmission market where consumer demands are generally similar and economies of scale may be achieved. The facilities were engineered for voice and record analog transmission (though digital transmission facilities are being gradually incorporated), and with design objectives optimized for voice (e.g., the avoidance of steady line noise more than impulse noise and phase distortion (see Notice, footnote 19)). This is entirely understandable since the "greatest demand has been and still is for voice communication" and the general public must depend primarily upon the switched voice network of the Bell System for the provision of this basic service. The maintenance and improvement of such service is therefore a matter of first priority for the Bell System.

[28] The responses in the Computer Inquiry are summarized in Vol. 2 of the SRI Report, supra.

[29] As MCI points out, in 1969 A.T. & T.'s reported revenues from five categories of toll private line services (telephone, teletypewriter, other telegraph, Telpak, and other services) amounted to approximately $561 million (or $638 million if revenues from program transmission are included). Bell System Annual Reports for 1969 (FCC Form M), Sched. 34, p. 50. The average annual growth rate in private line revenues between 1965 and 1969 was 14.9 percent (MCI comments, p. 114).

70. However, data and other specialized users may require not only a different application of communications technology, but also have service requirements that are heterogeneous in character (see 2 SRI Report No. 7379B, page 49, and 1 SRI Report No. 7379B, pages 46–47). The proposals of the applicants are oriented toward meeting these special and diverse technical and service requirements, and toward achieving the economies and other benefits that may flow from specialization. Datran proposes to construct an all digital technology data transmission system which would avoid the necessity of converting digital signals to analog and back again (see paragraphs 4 and 5 above). It is offering service features designed to meet the special requirements of data transmission users, e.g., lower costs, end-to-end compatibility, rapid connection, high reliability, simultaneous two-way transmission, a wide selection of switched speed offering, a low incidence of network busy conditions, interconnection flexibility for user-provided facilities, asymmetry, etc. (see paragraphs 5 and 33 above). Other applicants, while proposing to use analog or analog/digital transmission techniques, proposed to offer both voice and nonvoice services with facilities more closely designed to the requirements of transmitting data and other nonvoice traffic. MCI's proposel "customized" or "individually tailored" private line services purport to offer customers the flexibility and benefits of private microwave at lower cost to the user, e.g., the exact bandwidth required for any particular service, any bandwidth that is required, and flexibility in the use of channels and customer terminal equipment (see paragraphs 7–9 and 33 above; Transcript of Oral Argument, pages 7–12). To the extent that customers may be attracted by any or all of these or other features of the applicants' proposals—customers who would not otherwise use or make such extensive use of the specialized service offerings of established carriers, it is a reasonable conclusion that the effect of new entry would be expansion of the total communications market. Moreover, competition within the market for specialized services, should motivate innovations or modifications in the service offerings and/or facilities by all carriers

serving that market and thus produce even greater growth rates in total specialized traffic than the growth rates projected in the context of the existing industry structure.

71. Further, there is no doubt as to the validity of the staff's conclusion that there is an increasing and widespread public demand for the availability of diverse and flexible means for meeting specialized communications requirements, and a substantial public need for the proposed service offerings—a need which has not been adequately met by the established carriers. These conclusions are overwhelmingly supported by the market studies, surveys, and the letters of customer intent and interest submitted by the applicants; by the responses in the Computer Inquiry; [30] and by the surveys conducted by and comments of the public parties to this proceeding (see paragraphs 38–44 above, and Appendix B). We are particularly impressed by the unanimity of viewpoint among such a wide cross-section of varied interests, and accord substantial weight to the views and desires expressed by the public participants.

72. As Datran points out, A.T. & T. now recognizes the need for a separate digital data system as evidenced by its own plans to institute such a system to serve 60 cities by 1975. Indeed, the basic thrust of the carriers' position is not so much a claim that the proposed services are not needed, but rather an argument that there is no need for a new entry because the established carriers are capable of meeting the present demands and future requirements of the public. A.T. & T. relies on various statements in the SRI Report to the effect that: "most present data transmission requirements * * * can be met by the wide variety of services available under the common carriers' public or special tariffs" (2 SRI Report No. 7379B, page 49), and "the major carriers are capable of meeting much of the projected demand for data communications in the next decade through low marginal cost modifications of their existing plant" (1 SRI Report No. 7379B, page 46).

73. We note, first, that these quotations are partial and taken out of context of SRI's qualifying statements. For example, the full text of the paragraph containing the first quotation is as follows (2 SRI Report No. 7379B, page 49):

> The overriding factor concerning adequacy of communications common carrier services for computer users' data transmission needs, as evident in the responses, is that the carriers' existing facilities and practices have been developed over more than a half century primarily to meet the large and steadily growing need for widespread availability of voice transmission. As a result of this evolutionary development, approximately 100 million telephones are in use throughout the Nation. Computer users' needs for data transmission have begun to emerge recently and rapidly and have had to be met largely by adaptations of the existing voice transmission system. Compared with voice communications, data transmission needs are currently much smaller, are growing more rapidly, and have different operating characteristics. Most present data transmission requirements, as the responses indicate, can be met by the wide variety of services available under the common carriers' public or special tariffs. But major questions are raised in the responses about whether and when the national switching network facilities and tariffs will need to be modified significantly or succeeded by a separate national switching network that is designed specifically for efficient data transmission.
> [Footnotes omitted.]

Further, while stating that much of the projected demand could be met through low marginal cost modifications of existing plant, SRI also points out that (Vol. 1, page 48): "If a capital investment is required in order to obtain future benefits for data users, the carriers must convince themselves that such an investment is likely to pay for itself in increased network usage by data users." Following such statements, SRI concludes (Vol. 1, page 53):

> Generally speaking, we believe that there is good evidence that the major carriers are interested in responding to data customers and their needs. Are they as responsive as companies operating in a competitive environment? Should we expect them to be? These and related questions go beyond our ability to provide answers.

74. More important, we do not think that the adequacy or capability of the established carriers to meet future requirements should be the determinative factor here, where growing future traffic is involved and new services are proposed. See cases cited in paragraphs 59–60 above. Even assuming that "the existing carriers might arrange to furnish successfully the projected service" (United States v. Dixie Highway Express, Inc., 389 U.S. 409, 411–412 (1967)), there are other benefits reasonably to be anticipated from new entry in the specialized communications field.

75. These benefits, in the words of the staff, are:

(1) By permitting the entry of specialized carriers, we would provide users with flexibility and a wider range of choices as to how they may best satisfy their expanding and changing requirements for specialized communication service (Notice, paragraph 30).

(2) There is also a question as to whether the existing carriers can meet the requirements in the specialized markets promptly, efficiently and effectively without prejudice to full and timely satisfaction of the increasing requirements of the public monopoly services. The responsibility for meeting the Nation's growing and changing communications requirements is now largely concentrated in the Bell System. This responsibility is becoming more and more difficult to discharge in a manner which enables the Bell System to satisfy timely and effectively all existing and anticipated communications requirements. This is partly because of the diversity of such requirements, the obvious problems of designing and engineering facilities capable of meeting all such requirements with equal efficiency, economy and expedition, and the huge and increasing amounts of new capital the Bell System must raise for construction purposes. The entry of new carriers would have the effect of dispersing somewhat the burdens, risks and initiatives involved in supplying the rapidly growing markets for new and specialized services among a multiplicity of entrepreneurs who appear ready, willing, and able to assume these undertakings. It would also expand the capability of the communications industry to respond to the challenge of meeting the rapidly growing and varied demands of communications users (Notice, paragraph 32).

(3) Further, while economies of scale may result when large general purpose transmission facilities can be used to meet relatively homogeneous communications requirements, there may be other drawbacks. The sheer size of the A.T. & T. organizational structure, its enormous financing requirements, its vertical integration, and near monopoly position in the provision of communications services may make it slower to perceive and respond to individual, specialized requirements and to initiate market and technical innovations. [Footnote omitted.] Competition in the specialized communications field would enlarge the equipment market for manufacturers other than Western Electric, and may stimulate technical innovation and the introduction of new techniques. Moreover, new carriers with smaller scale operations could devote their undivided attention to the particular needs to be served and, lacking a captive market, would be under pressure to innovate to produce those types of services which would attract and retain customers (Notice, paragraph 34).

(4) In an industry of the size and growing complexity of the communications common carrier industry, the entry of new carriers could provide a useful regulatory tool which would assist in achieving the statutory objective of adequate and efficient services at reasonable charges. Competition could afford some standard for comparing the performance of one carrier with another. Moveover, competitive pressure may encourage beneficial changes in A.T. & T.'s services and charges in the specialized field, and stimulate counter innovation or the more rapid introduction of new technology (Notice, paragraph 35).

76. It appears to us that the grounds stated by the staff for anticipating benefits from new entry are reasonable and in accord with the views of most parties to this proceeding. They are not controverted by the carriers, except as they generally urge that the staff's conclusions are unsupported and require evidentiary hearing. However, we are "not required to make specific findings of

[30] In its report to the Commission in the Computer Inquiry (Vol. 1, pp. 46–47), SRI listed 10 areas in which the data processing industry considers "present performance characteristics of the telephone network are in need of improvement for data uses" (see also SRI Report No. 7379B–2, pp. 52–62, and SRI Report No. 7379B–3, pp. 15–18, 38–41):

"1. A need for rapid connect and disconnect (a few tenths of a second).

"2. A need for a greater variety of transmission speeds and bandwidths.

"3. A need for switched duplex connections, e.g., independent, separate paths for the two directions of transmission, in voice grade circuits.

"4. A need for a choice of different data speeds in the two directions of transmission.

"5. A need to reduce error rates.

"6. A need for data on error performance and circuit characteristics with respect to amplitude and delay.

"7. A need for standards with respect to circuit reliability and transmission quality.

"8. A need for reduction in the variability of transmission performance in the public switched network.

"9. A need for improvement in circuit test procedure and techniques.

"10. A need for an all digital data transmission network."

tangible benefit," for in "the nature of things, the possible benefits of competition do not lend themselves to detailed forecast" (FCC v. RCA Communications, Inc., 346 U.S. 86, 96). That being the case, we see no necessity for, or useful purpose to be served by, evidentiary hearing on a question of this nature. It is our judgment, based on our cumulative knowledge of the industry and the entire record in this proceeding—including our staff's analysis, that there is sufficient ground for a reasonable expectation that new entry here will have some beneficial effects.[31] We so warrant.

77. We consider next the contention that the staff analysis does not adequately treat the effect of new entry on the existing carriers and their services to the public.

78. A.T. & T. claims that the diversion of revenues from new entry would not be insubstantial and might prejudice telephone users by delaying the installation of large capacity facilities (e.g., L5 coaxial cable carrier systems) on high density routes—thereby jeopardizing the realization of declining unit costs which would benefit all classes of A.T. & T.'s customers. A.T. & T. claims that competing carriers would simply be engaged in "cream-skimming" and thus cause A.T. & T. to depart from nationwide cost-averaging and the maintenance of nationwide uniform interstate rates. Like the staff, we do not see how there could be any diversion of revenues of a magnitude to have the impact claimed by A.T. & T., in view of the very small percentage of A.T. & T.'s existing total market that is vulnerable to competition of the kind proposed here, the growth rate of Bell's basic services, and the likelihood that A.T. & T. would obtain a very substantial share of the potential market for specialized services.

79. A.T. & T.'s reports to us indicate that the Bell system had gross operating revenues of approximately $16.9 billion in 1970, as compared to about $15.7 billion in 1969 (not including income from other sources such as Western Electric). Most of these revenues were derived from intrastate and interstate services which the applicants do not seek to provide.[32] Interstate revenues constitute about 30 percent of A.T. & T.'s total revenues, and about 87 percent of the interstate revenue is derived from message toll telephone (MTT) and wide area telephone services (WATS). Interstate private line revenues (including revenue from program transmission—a service not proposed by the applicants) amount to about 4 percent of total Bell System revenues. While there is some data usage of the switched network, it has been estimated that such usage (measured in terminal hours) accounted for less than 1 percent of total usage (intrastate and interstate) in 1968 (1 SRI Report 7379B, p. 51), and about 1.7 percent in 1969 (paragraph 34 above).

80. Projecting present growth rates, A.T. & T. has estimated that the existing plant of the Bell System would quadruple by 1980. As indicated in paragraph 63 above, this projection is based primarily upon the rapidly expanding growth in the use of standard voice communications services. Revenues from interstate MTT and WATS had an annual growth rate of about 12 percent from 1965 to 1969. During the same period the growth rate for interstate private line services was about 15 percent, and A.T. & T. estimates that revenue from such services would amount to $2.7 billion by 1980. This figure would still constitute a relatively small percentage of total interstate revenues when compared to the compounded effect of a 12 percent annual growth in interstate MTT and WATS revenues. In this proceeding A.T. & T. stated that the growth rate in the volume of data transmission over the past 5 years has been in the range of 50 percent annually (A.T. & T. reply comments, page 35), and in the Computer Inquiry it estimated that data usage would amount to 5–10 percent of peak network load by 1980. Though A.T. & T. does not indicate what proportion of this data growth and projected usage is interstate, the percentage of data usage by 1980 would be a comparatively small percentage of total usage even assuming that it were all interstate.[33]

81. While A.T. & T. does not challenge the revenue figures used by the staff or those used by MCI, it claims that the staff erred in assuming that private line does not represent a significant portion of the use of existing or future systems. It may be, as alleged by A.T. & T., that private line service accounts for about 25 percent of A.T. & T.'s total interstate channel miles. However, the point raised in the staff's analysis is that the portion of A.T. & T.'s total business which might be jeopardized, i.e., the interstate private line business, represented only a very small fraction of Bell's total revenues. In terms of the total investment of the Bell System, the investment in all interstate circuitry is of much less significance than noted by A.T. & T. as being devoted to the the 25 percent of interstate channel miles noted by A.T. & T. as being devoted to the private line services. Moreover, the total private line circuit mileage usage includes television program transmission which is a relatively voracious consumer of interstate channel mileage. For example, from 600–1,200 voice circuits can be derived from the bandwidth required for a single video channel (depending on the age and type of equipment utilized). We might also note that with the rapid growth in demand for circuitry for services other than private line, the rapid growth anticipated for the specialized services and the time frame which will be required for implementation of the plans of potential competitors, we cannot visualize A.T. & T. being burdened with unusuable quantities of circuitry for any significant period of time.

82. Most significantly, we see no reason whatsoever to assume that the applicants would divert all or even a substantial portion of that comparatively small percentage of existing and projected Bell System business that is vulnerable to competition.[34] As previously stated, the competition is for evolving, new, diverse and specialized needs in a dynamic, rapidly growing market. The applicants are seeking in large part to exploit latent demands and may well expand the size of the total communications market. Moreover, they are proposing very small scale operations compared to those of A.T. & T. MCI anticipates only about $55 million in total annual revenues from all of the MCI systems covered by applications on file at the time of its comments (Appendix C, page 3). Datran's proposed plant investment is only about $350 million, compared to A.T. & T.'s 1970 plant investment of approximately $54.8 billion and its investment programs of $7.7 and $8.2 billion for 1971 and 1972. Datran has indicated that it hopes to obtain about 10 percent of the data market by 1980. In addition, the introduction of new services and facilities by the specialized carriers would take place gradually over a period of time, with the volume paralleling the market growth in demand for specialized services. And, finally, A.T. & T. is adapting to supply certain specialized services which have not been adequately provided in the past (e.g., its proposed digital data network), and is free to compete with the specialized carriers for the potential market. A.T. æ T. has vast competitive resources, and it is likely that it will succeed in obtaining a very substantial portion of the large potential market.

83. Accordingly, we find no reason to anticipate that new entry in the specialized field would result in any substantial diversion of A.T. & T.'s revenues or have any significant adverse impact on telephone users, the installation of large capacity systems to meet the growing communications requirements of all kinds, or the realization of declining unit costs. At best, any impact that new entry may have upon declining unit costs or economies of scale would be more than offset by the other advantages inuring to the public from such new entry. By the same token, there is no reason to believe that

[31] We note that our independent judgment from a communications standpoint is consistent with the recommendations of various expert government bodies. See the comments of the Department of Justice (Appendix C, page 33, footnote 31).

[32] A.T. & T.'s intrastate revenues include not only local service, but also intrastate toll service. All of the applicants are proposing interstate services, except for some in Texas.

[33] As noted in the Notice (paragraph 68), a number of Bell System companies are before various State Commissions seeking substantial increases in charges for information system access lines (to provide direct access to the customer information system through local exchange facilities) on the ground that these are high usage lines.

[34] Even assuming a 50 percent diversion annually (a figure we consider to be unrealistically high), the growth in regular voice service could absorb virtually all of the lost channels in 1 year.

there would be any prejudice to A.T. & T.'s pace of technical and service innovation and national security role. On the contrary, we believe that new entry would act as a competitive stimulus to A.T. & T.'s innovative efforts.

84. The potential effect of new entry on other established carriers is, of course, a relevant factor to be weighed in our determination as to the overall public interest. As the staff recognized (Notice, paragraph 43), the potential impact on Western Union is greater than for A.T. & T. or the independent telephone companies. About 45 percent of its total revenues (and most of its profits) are derived from leased systems and Telex, with the remainder coming from message telegraph service and other services. While a fairly large percentage of Western Union's service may be vulnerable to competition, there are other countervailing factors to be considered. Western Union's gross operating revenues have increased from $305 million in 1965 to $402.4 million in 1970. Despite the falling volume of message telegraph traffic,[35] Western Union has stated that its growth rate nationwide has been on the order of 14.8 percent (see footnote 24 above). We have recently approved Western Union's acquisition of TWX from A.T. & T., which will add an estimated $86 million in annual revenues. In the Matter of Western Union Telegraph Co. (Docket No. 18519), 24 FCC 2d 664 (1970). Moreover, Western Union's largest leased systems are switched systems (the Automatic Digital Network for the Department of Defense and the Advanced Record System), as is Telex (though the latter also serves some point-to-point data customers). In our decision in Docket No. 18519, we noted (24 FCC 2d at 673):

> No concern was expressed as to possible competition from a specialized carrier such as MCI because in Western Union's opinion, any effect would be at best, indirect in nature. Western Union did state that the impact from Datran would be more because of the proposed size of its operation. Western Union did not believe that this impact had to be fully considered before the acquisition of TWX, since the prompt implementation of an approval of the proposed acquisition itself would afford the company sufficient lead time in the market.

85. Most significant, however, is the circumstance that has been repeatedly stressed herein, namely that "we are here concerned with the sharing of a new, relatively untouched market in a field where even present demand is growing at a very rapid rate" (Notice, paragraph 34). The proposed services of the applicants are designed to meet needs not adequately met by the established carriers in the past. While Western Union's data/record oriented network may differ from A.T. & T's voice/video oriented network, it does not have a nationwide, switched, all digital end-to-end data network such as that proposed by Datran. Moreover, Western Union's existing plant and investment growth rates are not on a scale that appears sufficient to accommodate the very large potential market for specialized services—particularly for data transmission.[36] We cannot accept Western Union's contention that it should be the only carrier authorized to compete with A.T. & T. In our judgment, the potential market would be best served by wider sources of competitive supply. Like A.T. & T., Western Union will have an opportunity to compete with new entrants on the merits of its own service offerings and facilities. If the public is attracted by what Western Union has to offer, it may retain most of its present specialized business as well as capture a sizeable share of the potential market.

86. In light of the foregoing, we are not persuaded that Western Union will necessarily suffer any substantial diversion of revenues or other detriment. In any event, we conclude that the need for, and public benefits reasonably anticipated from, new entry outweigh any potential dangers to Western Union.

87. As the staff pointed out (Notice, paragraph 42), it is difficult to visualize how independent telephone companies would be adversely affected. They participate in interstate service primarily by providing local distribution facilities and do not, with minor exceptions, furnish intercity facilities. To the extent that the new entrants rely on existing carriers for the provision of local distribution facilities, the business of the independents may increase. Indeed, GT&E has recognized this potential benefit by offering, with adequate lead time, to provide local distribution service for any authorized carrier, and by opposing the authorization of separate local distribution facilities (Appendix C, page 30).[37] Moreover, one of the applicants, Nebraska Consolidated Communications Corp. (NCCC), was formed, and is one-third owned, by independent telephone companies. NCCC states that the filing of their applications evidences the belief of these independents that the specialized carrier concept has potential for contributing more and better communications without adverse impact on the existing operations of independent telephone companies (Appendix D, page 6; Transcript of Oral Argument, page 124).[38] We find no likelihood that the independent telephone companies would be prejudiced by a policy in favor of new entry.

88. Nor do we find grounds for excluding new entry in the miscellaneous arguments advanced by the carriers relating to "creamskimming." Like the staff, we are not persuaded that the charge of "creamskimming" is well-founded or would justify a bar against new entry of the type proposed here. The staff's analysis of this allegation (Notice, paragraphs 36–38) is reasonable, has further support in the points made by applicants (paragraph 36 above), and is not refuted in the comments of the carriers. We also agree with the staff's treatment of the "economies of scale" contention (Notice, paragraphs 33–34), and note further that A.T. & T. apparently recognizes some advantage in specialization in view of its own plans for a functionally separate digital data network (A.T. & T. reply comments, Appendix A, page 5).

89. In the event that new entry is authorized, A.T. & T. and Western Union claim that they must be able to compete fully under explicit ground rules set forth by the Commission and to offer their services on competitive routes at rates competitive with those of the new entrants. Thus A.T. & T. alleges that new entry might require it to depart from cost averaging and uniform nationwide interstate rates. This approach to the pricing of A.T. & T.'s services in the past has been generally regarded as consistent with the public interest in the context of the predominantly monopoly structure which heretofore has characterized the common carrier industry. There is no reason to believe that this approach to pricing of the interstate message service offerings of the Bell System and Western Union (such as MTT, WATS, and public telegraph) need be altered by new entry into the developing specialized communications market. Clearly, none of the uniform rate structures of the existing car-

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[35] While Western claims message telegraph service is a "profitless monopoly," it would not be fair to existing or potential specialized users or in the public interest to deny new entry needed in the specialized field merely in order to facilitate a bolstering of the message telegraph service through subsidy from Western Union's other services. The plight of the telegraph message has been a continuing and growing problem even in the absence of any new entry. The arbitrary exclusion of new entry into the developing market for specialized services is certainly neither a practical or a justifiable solution to the problem, assuming that a solution is called for in the public interest.

[36] As Western Union noted, the staff analysis erroneously states that Western Union does not for the most part provide services on its own facilities, but instead provides such services by facilities acquired largely by lease or rental from A.T. & T. While this is true for local facilities, Western Union's Annual Report for 1969 (Schedule 400a) shows that it leased 38.9 percent of its intercity voice grade channel miles from others. We find that Western Union provides more than 60 percent of its intercity voice grade channel miles on its own facilities. The error is not of decisional significance. The fact remains that Western Union's gross plant investment and current investment program are very small compared to A.T. & T.'s (see paragraph 64 above). The public is now primarily dependent upon A.T. & T. for the provision of communications services, including specialized services.

[37] While USITA states that separate local distribution facilities would mean a loss of potential revenues to the independents, it expresses concern that the increased business derived from new entry might be offset by reduced settlements with existing carriers. Having found no reason to anticipate any substantial diversion of A.T. & T.'s revenues, we believe this concern to be groundless.

[38] There are also independent telephone company ownership interests in two other applicants: Associated Independent Telephone Microwave, Inc., and Telephone Utilities Service Corp. (see Appendix A).

riers for such services would appear to be in jeopardy since those services are not being challenged competitively to any substantial degree by the services proposed to be offered by the aspiring new entrants. Where services may be in direct competition, departure from uniform nationwide pricing practices may be in order, and in such circumstances will not be opposed by the Commission.

90. While asserting that there should be no cross-subsidization or temporary rate reductions, A.T. & T. urges that the cost basis for pricing specialized services on competitive routes should be long-run incremental costs. The applicants claim that the only practical means for assuring that A.T. & T.'s rates for specialized services will be equitable and nondiscriminatory is to require that rates for competitive services be based on fully allocated costs. We do not find it necessary at this time and on this record to speculate concerning the manner in which the existing carriers may seek to respond to competitive conditions that may emerge in the market for new and developing specialized communications services. We do, however, stress our objective to promote and maintain an environment within which existing and any new carriers shall have an opportunity to compete fairly and fully in the sale of specialized services. Our ratemaking and regulatory policies and practices will be appropriately adapted to accomplish this objective. There is no reason to deny the public the benefits that may derive from active and vigorous participation by the Bell System and Western Union in this market, so long as their participation is not a burden upon or significantly detrimental to their other services. Thus, it is our intention to permit the existing carriers to price their competitive services in a fashion that will realistically and resonably reflect economic advantages, if any, that are inherent in the plant and operations of those carriers. Moreover, we subscribe fully to the views of our staff, endorsed by the Department of Justice, that there should not be any "protective umbrella" for the new entrants or "any artificial bolstering of operations that cannot succeed on their own merits" (Notice, paragraph 44).

91. However, it is neither practical nor appropriate on this record to attempt a formulation of the precise principles that will achieve the above objectives. The applicability of long run incremental and fully allocated costs in pricing monopoly and competitive services of the Bell System, as well as appropriate methodologies for ascertaining such costs, are the principal issues in our pending proceedings in Docket No. 18128. That proceeding involves a determination of the reasonableness of the overall levels of earnings for each of A.T. & T.'s interstate services. The record in that proceeding, which is now well advanced, is focussing upon a Statement of Rate-Making Principles and Factors to which A.T. & T., Western Union, and other parties have stipulated. The Commission has not yet had occasion to pass upon the principles embodied in that Statement. However, we accepted the recommendation of the parties that effective testing of the complex economic theories of costing and pricing reflected by such principles "and the reconciliation of opposing, or at least partially conflicting, views of expert witnesses, can best be accomplished by relating the principles advocated to specific rate proposals" (Memorandum Opinion and Order released in Dockets Nos. 16258, 15011, and 18128 on August 7, 1969, 18 FCC 2d 761, 763). The Commission also recognized that the Statement "properly recognizes the relevance of both fully distributed and incremental costs in considering appropriate rate levels of specific classes of service" and, at the same time, noted that each party to the agreement reserved the right to assert the relevance of fully allocated costs, long run incremental costs or any other method of cost determination (18 FCC 2d at 763). Also, the Commission observed that: "The practical difficulties of accurately measuring incremental costs in a system as complex as the telephone industry have been recognized even by the advocates of incremental costs as a floor for pricing. Criticisms, likewise, have been directed to the use of fully distributed costs for pricing purposes. Moreover, some witnesses have advocated that public interest considerations could justify rate levels lower than might be supported by cost considerations alone, and one of the principles set forth in the stipulation (paragraph 12) provides for such a contingency." (18 FCC 2d at 763.)

92. A complete reading of the Commission's memorandum opinion and order and the Statement of Rate-Making Principles to which it is addressed, will demonstrate the impracticability of attempting any definitive resolution in this proceeding of the complex and controversial issues involved in the pricing and costing of monopoly and competitive services. It would be therefore premature and improper for the Commission to express any opinion on that question in this proceeding, except to reaffirm our intention to follow ratemaking principles and practices which will be compatible with the maintenance of a competitive environment. Moreover, the record in this proceeding has to do with the microwave applications of the would-be new entrants and the objections raised thereto. We do not yet have before us any tariff filings by the applicants or any revised tariff offerings by A.T. & T. and Western Union in response to such tariff filings. However, we do contemplate full and fair competition in the specialized field among all carriers, both established and new, and will address any problems as they arise with due regard, when appropriate, for the pricing and costing principles and factors established by our proceedings in the aforementioned Docket No. 18128. We will not delay the institution of new specialized services by existing or new carriers pending the outcome of that docket.

93. Finally, we have not overlooked the matter of efficient spectrum utilization. It appears likely that most of the proposed stations can be accommodated in the pertinent frequency bands, and that most, if not all, of the frequency conflicts can be removed through frequency coordination or some relocation of the proposed routes. In accordance with our usual practice, no application will be granted that would cause harmful electrical interference to existing common carrier facilities. We are requiring applicants to avoid blocking future expansion of existing carrier routes.[39] We are also adopting rules designed to achieve more efficient spectrum utilization by all new stations in these microwave bands (see discussion under Issue C, paragraphs 127–144 below). Moreover, efficient spectrum utilization is only one factor to be considered in evaluating the public interest. There are other important public benefits to be derived from affording new specialized carriers access to microwave frequencies (paragraphs 75–76 above), and we regard these considerations to be of controlling significance here.

94. To recapitulate, we find ample basis in the record and other material officially before us for the staff's conclusions as to the nature of the potential market, the public need and demand for the proposed services, the public benefits that may reasonably be anticipated from new entry, and the effect on existing carrier service to the public. Beyond bare, general assertions that the staff analysis rests on untested and unsupported assumptions, the carriers have not offered anything to indicate that the staff's conclusions are erroneous. We have twice sought to ascertain whether the carriers possessed any information, not contained in their filings, which might cast doubt on the validity of the staff's conclusions or warrant exploration in evidentiary hearing. No such information has been forthcoming.

95. In our order designating this matter for oral argument (FCC 70–1339, released December 18, 1970), we requested parties "to address the question of what, if any, specific information would be adduced in any evidentiary hearing which is of material importance and has not been, or could not have been, filed in the record of this proceeding." In response, A.T. & T. stated that there is a need for cross-examination:

[39] We note in this connection that A.T. & T. is planning construction of high capacity L5 coaxial cable facilities on high density routes where frequency congestion is most likely to be encountered. Further, new applicants, who are not constrained by existing facilities, have greater flexibility to modify proposed routes to avoid frequency conflicts or blockage of expansion of routes of others. During the pendency of this proceeding, a number of applicants have filed modifications designed to remove initial conflicts.

To pinpoint what proposed services are not now provided by established carriers, to examine the applicants' market studies more critically to see if they support the need for the proposed services, to determine the exact size and nature of the asserted market, and to ascertain whether the applicants' proposed systems are technically adequate for their intended uses and reasonably calculated to meet the need.[40] A.T. & T. further stated that it would offer evidence as to the nature and extent of the existing and future services and facilities of the Bell System, its studies as to the market for the proposed services and the effect of new entry on its service and rate structures, as well as on national security and balanced economic development. Western Union stated that the primary objective of an evidentiary hearing would be to examine the public need and demand for the proposed services. While not specifically proposing to offer any information, Western Union asserts that evidentiary hearings would enable it to prepare more comprehensive studies as to the dimensions of the market and give it an opportunity to show whether the applicants' forecasts are wrong or right.

96. In addition, by letters dated October 28, 1970, and December 11, 1970, the Chief of the Common Carrier Bureau requested A.T. & T. and Western Union to supply full information concerning any data market studies they might have made. The letter to A.T. & T. noted that Mr. William H. Ellinghaus, then Executive Vice-President, had announced in an address on August 31, 1970, that the "most extensive, most detailed study of the data market ever made" by A. T. & T. was nearing completion. In its reply on November 23, 1970, A.T. & T. said it had only begun the accumulation of raw data and that no meaningful conclusions could be drawn at that time. A.T. & T. further indicated that considerable time and manpower would be required to conduct the study and to assimilate the data into meaningful and usable form. Moreover, since the data study is structured to aid the Bell System in planning services for the data market, much of the information collected would be proprietary and could not appropriately be made public—though it might be supplied to the Commission on a privileged basis. Western Union's reply on January 13, 1971, indicated that it had studies in progress, relating in part to the future requirements of the public for communications facilities and services, and expected such studies to be completed in mid-1971. Western Union further stated that after the data from these studies have been analyzed, it would be willing to meet with the Commission to discuss what results might be made available.

[40] The technical adequacy of the applicants' proposals is a matter to be considered when the applications are processed, and is not involved in this proceeding.

97. We are compelled to several conclusions. First, at the time of their comments, reply comments and oral argument in this proceeding, A.T. & T. and Western Union had not progressed in their own market studies far enough to draw any meaningful conclusions and had no basis in such studies for challenging the forecasts made in the numerous studies completed by others. Second, even after their studies have been completed and the data analyzed, much of the information collected would be proprietary and could not appropriately be made public. We think it apparent that the same would hold true for the market studies of the applicants. It is not necessary for us to conduct evidentiary hearings in order to receive proprietary information on a privileged basis. Nor do we see any public purpose to be served by according the established carriers an opportunity to elicit through cross-examination any proprietary marketing information of their would-be competitors.

98. Third, and most important, we find that there is no need to explore the various market studies more critically through evidentiary hearing and cross-examination or to obtain any proprietary information on either a privileged or a public basis. In our opinion, such a procedure would lose the Commission in a counterproductive excursion into detail that would obscure rather than clarify the fundamental issue (WBEN, Inc. v. United States, 396 F. 2d 601, 617, 618 (C.A. 2, 1968), cert. den. 393 U.S. 914). There is no dispute, even from the established carriers, that the potential market is sizeable and apt to expand substantially over the next decade. All of the market studies, surveys, public comments and other material before us point in that direction, and there is no indication to the contrary (see paragraphs 65 through 68 above). The market studies on behalf of the applicants were conducted by reputable research organizations and our economists have found no apparent reason for questioning their methodology. We think that the general thrust of all of the market studies, taken together and in light of the record as a whole, is entitled to substantial weight as indicating that there is a potential heterogenous market of sufficient size to make competition in the specialized field reasonably feasible, and that there is substantial public need and demand for the proposed services.

99. We see no need to go further. We do not rely on any particular market study as reflecting the probable extent or precise nature of the potential market. It is not essential to our policy determination here to make findings as to the exact size of the potential market or the precise breakdown of the various latent submarkets that might be stimulated and developed by new entry. Factors of this kind do not lend themselves to precise prediction, and we would not undertake to make definitive findings as to such future developments even if we were to hold an evidentiary hearing. That the applicants perceive and are concentrating upon different forms of potential growth is a proper exercise of entrepreneurial discretion in a competitive arena where the potential market is characterized by diverse user demands and requirements. Indeed, the basic point here is that the potential market is not standardized, but heterogeneous (see Notice, paragraphs 29, 33).

100. We cannot conclude that the convenience or interest of the public would be served by subjecting all of the public parties to this proceeding (as well as those potential users submitting letters with the applications) to cross-examination on their expressed views and desires, as suggested by A.T. & T. The record compiled here and in the Computer proceeding is adequate for our purposes, and we deem the rule making procedure to be a more appropriate vehicle for public participation on that scale. Moreover, we see no need for cross-examination to pinpoint precisely what proposed services are not now provided by established carriers. It is clear that the proposed facilities and services of the applicants have several technical and service offering features which are different from those now provided by the established carriers (see paragraphs 69–71 above). The circumstance that there are undoubtedly some areas of overlap or similarity is not of decisional consequence here (paragraphs 72–74 above). Further, we have found that other potential benefits may reasonably be anticipated from new entry in the specialized field (paragraphs 75–76 above).

101. Finally, we find no need for evidentiary hearing to receive evidence as to the past, present, and future operations of the Bell System. A.T. & T. has already placed voluminous material on that aspect in the record of this proceeding (A.T. & T. comments, pages 47–80 and Appendices A–E; A.T. & T. reply comments, Appendix A). Moreover, we are familiar with A.T. & T.'s operations from its tariffs, reports, etc. in our files and from our longstanding regulatory relationship. We concede that A.T. & T. has served the nation well and are confident that it will continue to make every effort to do so. It is nevertheless our judgment that the public interest, convenience, and necessity would be served by new entry in the specialized field in the circumstances here.

102. Accordingly, we conclude that the record before us affords sufficient basis for a policy decision on the merits of Issue A (with the exception noted above), and that there is no need for evidentiary hearing on the broad issue of whether the public interest would be served by a general policy in favor of new entry in the specialized communications field.

d. *Findings and conclusions.* 103. In light of all of the foregoing and the record as a whole, we adopt our staff's analysis of Issue A, as amplified and modified herein. We find that: There is

a public need and demand for the proposed facilities and services and for new and diverse sources of supply, competition in the specialized communications field is reasonably feasible, there are grounds for a reasonable expectation that new entry will have some beneficial effects, and there is no reason to anticipate that new entry would have any adverse impact on service to the public by existing carriers such as to outweigh the considerations supporting new entry. We further find and conclude that a general policy in favor of the entry of new carriers in the specialized communications field would serve the public interest, convenience, and necessity.

104. Our policy determination is based upon the circumstances shown by the record before us, and any future proposals for new entry will be considered in light of the circumstances then pertaining. However, we do make clear that we will examine very critically any future opposition by the pending applicants to proposed new entry by others.[41] We further stress that our policy determination as to new specialized carrier entry terrestrially, does not afford any measure of protection against domestic communications satellite entry or otherwise prejudge our determination in Docket No. 16495 as to what course would best serve the public interest in the domestic satellite field.

B. ISSUE B: WHETHER COMPARATIVE HEARINGS ON THE VARIOUS CLAIMS OF ECONOMIC EXCLUSIVITY AMONG THE APPLICANTS ARE NECESSARY OR DESIRABLE IN THE CIRCUMSTANCES

1. *Proposals in the Notice*

105. In the Notice, it was proposed not to hold comparative hearings on claims of economic exclusivity among the applicants unless there is a much stronger showing of exclusivity than those presently before us and we are persuaded that the public interest requires such action in the particular situation (Notice, paragraphs 46–50b). In any event, we proposed to consider Datran's proposed system separately, since it alone has proposed a switched, all digital, end-to-end, occasional use, nationwide network exclusively for data transmission (Notice, paragraph 47).

2. *Positions of the Parties*

106. Of the 33 applicants now pending before the Commission, only four have claimed economic exclusivity and requested comparative hearing. These four are: Western Tele-Communications, Inc. (Western); United Video, Inc. (United Video); West Texas Microwave, Inc. (West Texas); and CPI Microwave, Inc. (CPI). All but CPI (which is affiliated with West Texas) are miscellaneous common carriers presently providing video service primarily to CATV systems. West Texas and CPI propose routes solely within the State of Texas. United Video's proposed routes run from Minneapolis-Chicago-Texas and from New Orleans to Chicago, serving different intermediate points. Western's proposed routes are in several Western States (Utah, Nevada, Colorado, Nebraska, South Dakota, Iowa, Minnesota), on the west coast (partly through interconnection with another west coast applicant, Microwave Transmission Corp.), and from Los Angeles and other western cities (Denver, Dodge City, Wichita, Topeka, Tulsa, Oklahoma City, and Kansas City), to Texas.

107. West Texas and CPI claim that there is room for only one new entrant in Texas and that a comparative hearing is necessary because there are two other competing applicants for West Texas routes and seven for CPI routes, in whole or in part. They also urge that Datran should not be treated separately. United Video states that there are four or five other applicants on portions of its routes and claims that some form of expedited hearing or arbitration is essential to select among applicants where the projected volume of traffic does not justify several new entrants. Western urges the Commission to determine the economics of exclusivity along routes or in areas where there is more than one applicant. As an alternative, Western proposes that existing video carriers be authorized to construct and provide the proposed services along their existing routes for a test period, in order to provide information to assist a Commission determination as to how many new entrants should be permitted on the route.

108. The position of the foregoing applicants is supported by Western Union, GT&E, and United Telephone System. They claim that under section 214 of the Act, the Commission is required to determine the need for each applicant and the amount of competition that is reasonably feasible on individual routes. They further assert that if too many new entrants are authorized and some go bankrupt, the public will be injured through loss of investment, the inconvenience to users of switching to another carrier, and the possibility of users being left with incompatible terminal equipment.

109. The other 29 applicants have either affirmatively stated that they do not desire comparative hearings on economic exclusivity, or have not opposed the Commission's proposal or sought comparative hearing. Those commenting claim that their market studies show a sizeable potential market and, in any event, the marketplace is the most appropriate test of who will best serve the public. They further urge that the four applicants requesting comparative hearing have not made any adequate showing as to the need for comparative hearing on their proposed routes or other routes. Although the four applicants speak vaguely of studies and conclusions that various markets will support no more than one or two new entrants, they have not come forth with such studies. An applicant claiming that there is need for only one new entrant should have the burden of showing that the market is so limited before other applicants, who think the market will support them, are all forced into a hearing. Moreover, even if some encounter difficulty, the result will not necessarily be bankruptcy but is more likely to be merger with a stronger competitor with little adverse impact on anyone. Users can always shift their business to the remaining carriers (including A.T. & T. and Western Union) and any inconvenience is a reasonable price to pay for competitive options. Finally, they assert that it is unlikely that comparative hearings would enable the Commission to make definitive findings as to the precise character and size of the potential specialized market on the affected routes or that they would otherwise be worth the delay and burden.

110. The Department of Justice takes the same position. It states that according to present law, hearings on economic exclusivity issues need be held only if the party who petitions for such a hearing meets the heavy burden of showing that there is so little revenue in the market that the contemplated amount of new entry would make it impossible for either new entrants or established carriers to remain financially strong enough to render adequate service to the public. Carroll Broadcasting Co. v. FCC, 258 F. 2d 440, 443 (C.A.D.C., 1958); Delta Airlines v. CAB, 275 F. 2d 632, 638 (C.A.D.C., 1959). The objecting party must make a prime facie case that the new competitive certifications "would as a matter of economic fact destroy or substantially reduce the rendition of the service required by the public interest * * *." (Delta Airlines, supra.) The burden of proof is on the party asserting economic exclusivity (Eastern Airlines, Inc. v. CAB, 271 F. 2d 752, 756–757 (C.A. 2, 1959)), and the Commission has discretion to deny comparative hearings if the statistics concerning supply and demand do not dictate the inference of economic exclusivity (Frontier Airlines, Inc. v. CAB, 349 F. 2d 587, 590 (C.A. 10, 1965)) Given the rapidly growing character of the computer data field and the large number of specialized submarkets within the field (based on a variety of considerations including bandwidth, circuit quality, and transmission method), a protesting carrier in this field would have a very heavy burden in making out a case for mutual economic exclusivity requiring evidentiary hearing.

[41] We cannot help but note several curious coincidences. There was once a time, almost a century ago, when Western Union was the dominant domestic carrier, and Bell was assaying new entry. It has been asserted that Western Union initially sought to make things difficult for Bell by every means at its disposal. Long after Bell outpaced Western Union to become the predominant carrier, they joined forces to oppose the authorization of private microwave systems, raising essentially the same arguments here asserted against new specialized carrier entry. Allocation of Frequencies in the Bands Above 890 Mc, 27 FCC 359, 411–412 (1959); 29 FCC 825, 848–855 (1960). Among the pending specialized applicants, it is only those who are existing miscellaneous carriers or affiliated with such carriers that claim economic exclusivity and seek comparative hearings to exclude other applicants.

111. The Department further states that the antitrust laws do not impede a "merger between two small companies to enable the combination to compete more effectively with larger corporations dominating the market, nor a merger between a corporation that is financially healthy and a failing one that can no longer be a vital competitive factor in the market." Brown Shoe Co. v. United States, 370 U.S. 294, 319 (1962); United States v. Diebold, Inc., 369 U.S. 654 (1962); Citizen Publishing Co. v. United States, 394 U.S. 131 (1969). The department urges that merger or sale of facilities to another competitor is a more likely fate for an unsuccessful entrant than bankruptcy or removal of facilities in this field. It states that this alternative would minimize customer inconvenience, and under Carterfone (13 FCC 2d 420) the successor would be required to permit continued use of customer terminal equipment unless there is a risk of network harm.

112. A.T. & T., which also supports the position of the bulk of the applicants on Issue B, states that if the Commission were to adopt a policy of new entry based on the staff analysis of Issue A, it "would be inconsistent with the essential rationale of that decision for the Commission then to attempt to select between and among would-be competitors, either new carriers or existing carriers." A.T. & T. further asserts that if (contrary to its belief) the staff's position on Issue A is correct, it can only be so because the alleged benefits of injecting competition in the specialized markets outweigh the probable disadvantages. These benefits cannot be realized if the ensuing competition is hampered by regulatory restrictions, or if the Commission "acts as a handicapper imposing artificial barriers to entry into this competitive area or shackling one would-be competitor in favor of another." In its rebuttal comments A.T. &. T. notes how illogical it would be to hold that two carriers (A.T. & T. and Western Union) are not enough, three would be all right without question, but four or more would be a crowd.

3. *Discussion and Conclusions*

113. Upon review of the record, we are inclined to adhere to our initial view that it would be contrary to the public interest and inconsistent with our policy determination on Issue A to attempt generally to limit entry among the pending applicants by holding comparative hearings on issues of economic exclusivity. We have concluded that the public interest would be served by affording users flexibility and a wide range of choices as to how they may best satisfy their expanding and diverse specialized requirements. Moreover, the applicants are seeking to develop a relatively new and potentially very large market, with heterogeneous submarkets, and there are technical and service differences among their proposals. In the circumstances presented here, we would be reluctant to take any action that might restrict entry unduly, and would not undertake to select "chosen instruments" unless we are persuaded that such a course is necessary to protect the public from significant adverse consequences.[42]

114. We are not presently confronted with the situation posited in some of the arguments—20 or so applicants seeking to serve the same route with precisely the same services and facilities. In the eastern portion of the country, the number of applicants is relatively few—only one or two (aside from Datran) for any particular route or area, and there are no claims of economic exclusivity. There are also only a few applicants for routes in the Western Mountain and Plain States. While there are a multiplicity of applicants in the Central States, proposing service to some points in common, most propose different intermediate points and extension to points not included in the proposals of others. The two areas with the largest number of proposed new routes (exclusive of Datran) are the Pacific coast, where there are four, some of whom propose different intermediate points,[43] and Texas, where they are eight. Three of the Texas applicants propose service solely within that State, whereas the others propose to serve other States as well. Moreover, the routes within Texas vary to some extent.

115. The service and facilities proposed by Datran are markedly different from those proposed by any other applicant. It alone has proposed a switched, all digital end-to-end network (including digital local distribution facilities) exclusively for data transmission. Its proposal would permit occasional use by those with small requirements. The other applicants have all proposed point-to-point, rather than switched, service to meet the private line requirements of the bulk user. They would offer a variety of specialized services, including but not limited to data transmission, primarily aimed at offering subscribers flexible, low-cost communications channels adaptable to the particular needs of each. Their proposed transmission mode is analog or analog/digital rather than all digital. Moreover, they are proposing to achieve local loop service by a variety of means, including interconnection with local telephone exchange facilities and customer-provided facilities, as well as—in some instances—new construction by the applicant. In light of these and other differences between the two types of proposals, we conclude that the public would benefit by the availability of both kinds of service from new entrants. While there may be mutual impact between the two types of proposals insofar as data transmission is concerned, it does not appear that a grant of Datran's application would preclude an opportunity for entry by one or more private line carriers in view of what the record as a whole shows as to the size and heterogeneous nature of the potential market and submarkets. Accordingly, we have decided to treat Datran's proposal separately from those of the other applicants.

116. The proposals of the private line applicants do not vary among themselves to the degree that they differ from Datran. However, there are differences in geographical scope. The MCI carriers propose a nationwide, interconnected network, which they estimate would be accessible to 75 percent of the population and 85 percent of the business community in the United States. Others, like Southern Pacific, Western, and United Video, propose routes crossing very large regions. Some, like several of the Texas applicants, propose service in only one or two States. The circumstance that their proposals are basically similar in that each is offering to provide "customized" services tailored to the requirements of individual subscribers, does not mean that each would evolve with identical facilities and services in the areas of overlap. As we recognized in the Notice (paragraph 49):

> Various systems may develop along different lines, each offering something of value to the public which would attract sufficient customers for viable operations. The number of successful operations may well depend on the ingenuity, enterprise and initiative of applicants and equipment manufacturers over a period of years in taking advantage of changing circumstances and in coming up with the types of services and equipment that will attract sufficient business to support the particular system.

117. The four applicants claiming economic exclusivity have not made any substantial prima facie showing that the potential specialized market along any particular route is so limited as to support only private line entrant. They make general assertions to that effect, purportedly reflecting business judgments based on their own market studies and surveys. However, they have not shown that such efforts were as comprehensive or aggressive as those of other applicants or that they have approached all of the potential users in the particular area. Nor have they demonstrated any prima facie reason for suspecting that the differing business judgments of other applicants are in error. We have found a general public need and demand for the proposed services in all areas. Where a majority of the applicants for any particular area or region are willing to proceed now in the face of competition by others, it would appear contrary to the public interest to delay the institution of needed new service in that area merely in order to afford one or two applicants an opportunity to show that new entry should be limited to one.

[42] From the standpoint of potential economic impact on established carriers, we fail to see how it makes much difference whether such specialized traffic as they do not obtain is spread among a larger or a smaller number of new carriers. Moreover, we have already rejected (paragraph 52 above) the contention that impact on established carriers should be considered on a piecemeal, route by route, basis.

[43] One of the original Pacific coast applicants, Astron Corporation, has dismissed its applications since the issuance of the Notice. Another of the Pacific coast applicants is affiliated with Datran.

118. The record as a whole, including all of the various market forecasts, indicates that entry by more than one private line carrier should generally be reasonably feasible, in view of the large potential market and its heterogeneous character. In this connection, it is pertinent to note that the proposed plant investments and revenue requirements of the private line applicants are not of a magnitude anywhere near those of an A.T. & T. or even a Western Union. The total proposed initial investment of all of the pending private line applicants is on the order of $175 million, including multiplexing equipment but excluding local distribution facilities.[44] MCI anticipates that total gross operating revenues for the MCI carriers would come to about $55 million in the first year. Nebraska Consolidated Communications Corporation expects to derive annual operating revenues of approximately $900,000 from only two out of the 50 or so potential customers it hopes to serve. When we authorized MCI to modify its Chicago-St. Louis route, our staff noted that with a loading of approximately 375 out of the potential 1,800 channels, that route would produce over a 25 percent return on invested capital in the first year.[45] Thus, a comparatively small share of the potential market may result in financially successful operations for any one applicant, and a number of small but viable carriers may be able to coexist in any particular region.

119. Further, and more important, we do not perceive any significant adverse consequences to the public in the event that one or more of the entrants should fail. In the first place, as the Department of Justice and other parties point out, if a weaker entrant should encounter difficulty, a merger with, or sale of facilities to, a stronger competitor is a more likely fate than bankruptcy or a removal of facilities from the field.[46] Even assuming bankruptcy, the loss of a carrier who is unable to attract sufficient customers for viable operations in a competitive market of substantial potential size is not a matter of great moment to the public at large. The demand for this type of communications service would undoubtedly be met by another entrant or an established carrier, and the frequencies would revert to the Commission for assignment to others.[47] Any remaining customers could transfer to another carrier at what appears to be minimal inconvenience, and such carrier would be required to permit continued use of customer terminal equipment unless there is a risk of network harm. Carterfone, 13 FCC 2d 420 (1968). Loss of investment to any failing entrant is a normal business risk in a competitive situation. While this factor may be important where we are concerned with basic communications services upon which the general public depends, it does not outweigh the public interest and convenience in having a wide range of choices for private line users in satisfying their specialized communications requirements. As stated in paragraph 90 above, we do not contemplate any "protective umbrella to the competitors" or "any artificial bolstering of operations that cannot succeed on their own merits." (Notice, paragraph 44.)

120. In light of the foregoing, we conclude that it is not necessary or desirable in the public interest to hold comparative hearings for the purpose of restricting new entry in any particular area to only one private line applicant. A question remains as to whether we should nevertheless undertake to place a ceiling on the number of new entrants in any given area, and to hold further proceedings to determine how many and who should be selected.

121. For many of the same reasons just discussed, we do not think that the public interest calls for this course in the present circumstances. There may be too many applicants for viable operations by all in some areas (e.g., in Texas or the Pacific coast). We do not yet know whether all of the pending applicants will be found qualified and, if so, will elect to proceed.[48] However, if an applicant is found qualified, obtains the necessary financial backing, and makes a business judgment to risk that investment in competition with such of the pending applicants as may be authorized, we are not inclined to place further obstacles in its path. Moreover, since new entry by more than one private line applicant appears reasonably feasible in a potential market of this nature, we deem the marketplace to be a more reliable and effective instrument than the comparative hearing process for determining how many and which new entrants may succeed. Considering the desirability of avoiding delay in the institution of services needed by the public now, the benefit to the public in the availability of diverse options, and the lack of public detriment in the event some fail, we will decline to hold such hearings on the pending applications.

122. Our policy determination under Issue A rests essentially on our judgment, based on circumstances shown by this record, that competition is reasonably feasible and offers benefits to the public such as to outweigh any risk that some new entrants may fail. We would be very reluctant at this time to foreclose future applicants from an opportunity to compete with the present applicants, perhaps with a different or better service or by developing a new submarket. As in the case of any policy or rule, the policy adopted here is, of course, subject to review in the light of changed circumstances and may be altered if it no longer comports with the public interest, convenience, and necessity. See American Trucking, supra (paragraph 57 above). We will examine future applications in light of the circumstances then shown, including any experience to date with operations of the pending applicants, and will take such action as is necessary in the public interest.[49]

C. ISSUE C: FREQUENCY AND ROUTE COORDINATION; SPECTRUM CONSERVATION

1. *Terrestrial Versus Satellite Systems*

123. Except for some stations, the applicants are generally proposing to use frequencies in the 6 GHz common carrier band (5925–6425 MHz), which is shared with the communications satellite service (as an up-link). We expressed some concern in the Notice as to whether applicants for domestic communications satellite systems would experience difficulty in coordinating earth stations

[44] Datran's proposed investment of about $350 million includes local distribution facilities (amounting to about half) and other costs such as switching equipment. If Datran succeeds in its goal of serving about 10 percent of the data market by 1980, and this is sufficient for successful operations by it, there should be ample room for more than one private line entrant providing other services as well (even assuming that A.T. & T. and Western Union garner a substantial share of the remaining 90 percent of the data transmission market).

[45] The staff's comment was based on MCI's projected revenues and costs, MCI Communications, Inc. (Files Nos. 5422–5423–C1–MP–70), Comments and Recommendations of the Common Carrier Bureau, pp. 4–5, 13, footnote 12.

[46] The Department states that the antitrust laws would not impede such a merger or sale of facilities.

[47] As indicated in the Notice (paragraph 50a), if it should turn out that the market is spread so thin among the new entrants as to adversely affect their service to the public in that area, we can take remedial action by rule making or comparative hearings at license renewal time. We do not find it necessary to reach A.T. & T.'s contention that a section 214 authorization, once issued, cannot be revoked. These carriers cannot operate without microwave radio licenses, and the Communications Act requires a public interest, convenience, and necessity finding for any renewal of license under the circumstances then pertaining. In the very unlikely situation that all of the new applicants fail, the public would be no worse off than it is today. Its sole sources for the provision of specialized communications services would be the established carriers.

[48] In order to avoid the possibility that an applicant may obtain a grant and tie up frequencies while deciding whether or not to proceed, we will strictly adhere to § 21.33(b) of the rules and will grant no extension of construction permits except for good cause shown, including a showing that construction is substantially underway.

[49] Under the Commisson's rules (§ 21.30 (b)), the time for filing new applications for consideration with the pending applications has long since expired, and any new applicant would not be entitled to comparative consideration except at license renewal time. Modifications in the pending applications to achieve compliance with the technical standards and rules adopted herein, will not subject these applications to a new cutoff period for the filing of competing applications. See also paragraph 135 below. Moreover, under normal processing procedures, no new application would be processed until processing of the pending applications has been completed (except for any hearings that may be required).

with terrestrial systems in the band, and recognized that the specialized carrier applications might complicate any problem. However, we did not propose to deny the new entrants access to this band on that ground, in view of the magnitude of the existing terrestrial usage, the possibility of additional frequency bands for satellite usage, and our belief that established and new carriers competing in the provision of terrestrial services should not be placed in unequal positions with respect to access to frequency bands. (Notice, paragraphs 51–52.)

124. The Communications Satellite Corp. has requested us to defer a resolution of this proceeding pending a decision in Docket No. 16495 on the domestic communications satellite applications. However, we do not think that such a course is necessary or in the public interest. The domestic satellite applications on file have already been coordinated with all of the stations proposed in previously filed terrestrial microwave applications, as well as with existing stations (Report and Order in Docket No. 16495, Appendix D, 22 FCC 2d 86, at 135).[50] Moreover, the satellite applicants have found what are purported to be interference-free locations for earth stations to operate in the 4 and 6 GHz bands reasonably close to the cities to be served (including the Nation's largest cities where congestion is most severe). Thus, the problem of satellite-terrestrial sharing in the 6 GHz band does not appear to be as serious as was feared at the time of the Notice. Although some of the applicants have proposed the use of the additional frequencies and additional frequency allocations are being considered at the World Administrative Radio Conference for Space Telecommunications (Geneva, June-July, 1971), there is no proposal to preclude the use of the 4 and 6 GHz bands for domestic satellite systems. Our action here is not prejudicial to a resolution of the issues in Docket No. 16495 (see paragraph 104 above), and we decline to grant the requested delay.[51]

125. In order to avoid possible interference to any domestic or other satellite system that would share the 6 GHz common carrier band (5925–6425 MHz) with terrestrial carriers, we proposed to prohibit the transmitting antennas of terrestrial facilities operating in that band from being aimed within 2° of the synchronous (geostationary) satellite orbit.[52] There was general support for and no opposition to this proposal. Accordingly, it will be adopted with the provision, as proposed, that exceptions can be made under unusual circumstances. In such instances, we would expect the applicant to submit a thorough engineering evaluation of possible impact on any authorized or proposed satellite operation, as well as to propose operation on a reduced power basis.[53] We are not aware of any existing facilities which will be in violation of this new requirement. However, if they do exist, we will not require them to be modified unless and until it is shown that they are likely to cause interference to authorized satellite facilities.

126. Possible interference to terrestrial facilities from satellite transmissions is generally not considered very likely. However, since the satellite downlink and terrestrial facilities share the band 3700–4200 MHz, we discourage the pointing of receiving antennas in that band within 2° of the sationary orbit (taking into account atmopheric refraction) to preclude possible future problems which may occur because of increased satellite transmission power or other reasons.

2. Terrestrial Frequency Conflicts and Route Blockage

127. Aside from the question of terrestrial versus satellite system coordination, the applications and opposition pleadings raise issues as to conflicts in terrestrial frequency usage and spectrum conservation. The established carriers claim that some of the proposed stations of the applicants would cause interference to their existing systems and block or impede economical expansion on existing microwave routes. There are also instances of frequency conflicts and potential interference among the applicants themselves. Based on past experience, we believe that most, if not all, of the claimed conflicts can be resolved through coordination and that new entry can be technically accommodated despite the growing frequency congestion. In order to facilitate such accommodation and future growth by all carriers, as well as to promote better coordinated and efficient use of spectrum, we proposed several measures in the Notice.

128. First, we proposed to amend our rules to require applicants, prior to filing, to coordinate the technical aspects of

[50] Most of the satellite applications were filed after most of the terrestrial applications. The coordination did not include the comparatively few later-filed specialized carrier applications, and some of the satellite applicants have not yet applied for all of the earth stations contemplated (a good many of which would be receive-only stations in the 4 GHz band). However, we would anticipate no serious problem in view of the experience to date.

[51] While the specialized carrier applicants and the domestic satellite applicants may be seeking, in part, to attract some of the same markets, the emphasis appears to differ. The specialized carrier applicants are concentrating on data transmission and private line services, whereas, Comsat, for example, has proposed: (1) To lease satellites to A.T. & T., and (2) to establish a multipurpose system in which television program transmission would play a major role. Most of the other satellite applicants are also proposing, inter alia, television program transmission service to broadcast stations and/or CATV systems. MCI Lockheed Satellite Corp. has proposed a multipurpose system which would complement rather than duplicate the proposed terrestrial services of the MCI carriers. In any event, the terrestrial and the satellite technologies each offer special advantages, and we have already concluded in Docket No. 16495 (22 FCC 2d at 88–90) that both should be available to the public—though the nature of the domestic satellite systems and the identity of the licensees to be authorized are questions still to be determined in that proceeding.

[52] Methods of calculating azimuths to be avoided may be found in: CCIR Report 393 (Green Books), New Delhi, 1970, and in Radio-Relay Antenna Point for Controlled Interference with Geostationary Satellites, by C. W. Lundgren and A. S. May, Bell System Technical Journal, Volume 48, Number 10, December 1969. The first reference is an approximate, graphical method of calculation while the second is suitable for computer calculation.

[53] The maximum value of equivalent isotropically radiated power should not exceed: (a) 47 dBW for any antenna beam directed within 0.5° of the stationary satellite orbit, or (b) 47 to 44 dBW, on a linear decibel scale (8 dB per degree), for any antenna beam directed between 0.5° and 1.5° of the stationary orbit. These values are subject to possible revision as satellite operations develop further.

their proposals with other authorized carriers and applicants with previously filed applications in the same general area, to avoid frequency conflicts and blockage of planned future route expansion to the extent possible (Notice, paragraphs 56–58). In this connection we also raised a question as to whether standards for protecting the expansion potential of major routes should be prescribed and, if so, what standards.

129. In the comments, the concept of prior coordination received general approval. An exception is GT&E. It urges the continuation of the present procedure (with minor modification) whereby other users are advised of new proposals by our public notice of applications filed, but the reasons for its opposition to mandatory prior coordination are unclear. A number of existing carriers state that they now coordinate frequency usage with other carriers in their areas of operation and have found the procedure mutually beneficial. Datran supports the procedure but expresses some concern that in cases involving disagreement (e.g., a competitive situation) there may be less inclination to resolve technical conflicts promptly. The Department of Justice also agrees to prior coordination, but states that the Commission should make it clear that such meetings are to be limited to technical matters and that no attempt should be made to use coordination as an attempt to divide up markets or customers. It suggests that the Commission may want to consider the possibility of requiring coordination meetings to be held publicly in the presence of Commission staff and other affected parties, with final agreement in writing.

130. On the question of route blockage there is agreement that some attempt should be made to protect existing growth routes to provide for future expansion. However, no one recommends any particular standard to apply in such cases. A.T. & T. suggests that heavy routes be protected by utilizing block frequency allocation, but it offers no details or advice on resolving the substantial number of problems that would be entailed in such a far reaching plan.

131. In view of these comments we conclude that mandatory prior coordination would be beneficial. We believe that such procedure will not only reduce the frequency conflicts that lead to the filing of petitions to deny applications, but will also enable the various carriers to use the limited frequencies more effectively in their particular areas of operation. The planning of new routes is especially important, and we urge such carrier applicants to make preliminary coordination to avoid extensive engineering expenditures where an alternative route may be required to prevent blockage of an existing route or to resolve other technical problems. However, we want to emphasize that such coordination meetings are to be used only to discuss technical matters and that any attempt to utilize such encounters, either directly or indirectly, for anti-competitive or market dividing purposes will not be tolerated. Moreover, the coordination representatives for each carrier or applicant should be technical personnel without overall policy making or marketing authority.[54]

132. In order to facilitate coordination, the names of the coordination representatives should be made available to all other carriers or known applicants in the same general area of operation. We will expect each carrier or applicant to use its best efforts to review proposals submitted for coordination within a reasonable time (determined primarily by the size and complexity of the proposal) and to attempt to resolve technical conflicts in good faith without regard to competitive circumstances. If coordination is not completed within a reasonable time, we will make provision for an applicant to file its proposal with an explanation of the circumstances. One other point we wish to make clear is that we do not intend, by the device of coordination, to give one carrier a veto power over another's technical proposal. If the problem cannot be resolved, the application(s) may be filed with a brief explanation of the dispute. If the objecting carrier deems the matter to be of sufficient importance, it may, of course, file a petition to deny or an informal objection. In accordance with long-established practice, the Commission does not grant any application where it is aware of likely interference to any authorized station.

133. To facilitate coordination several parties suggest that the Commission adopt technical standards involving interference calculation and specified frequency plans, among others. Western Union points out that while standards are presently determined unilaterally, there is no significant disagreement among established carriers, except with regard to digital and analog/digital systems for which standards have not yet been fully developed. Several other carriers, including A.T. & T., similarly oppose the development of these standards. We can appreciate the desirability of uniform standards, but we also recognize that each system must be designed to meet various performance requirements and to utilize various transmission techniques (some of which are relatively new). The design, of course, must also take into account a wide variety of existing facilities. We believe that the establishment of such technical standards would involve the Commission too deeply in system design to the detriment of design flexibility. Therefore, we will decline to develop standards of this type at this time. However, if it later appears that standards may be necessary, we will reconsider the matter.

134. On the problem of route blockage, there appears to be no easy solution. No one party has proposed a standard that we believe would be workable or equitable. Therefore, we can only state that our policy is to protect the future expansion of existing growth routes to the extent practicable. By this we mean that when a new route is designed, consideration should be given to adjacent routes that may have significant expansion requirements. If the new route can be reasonably adjusted to avoid or minimize impact on an established growth route, we will expect the adjustment to be made.

135. On the matter of frequency conflicts between copending applications, we proposed to require the later filing applicant to amend his application(s) to remove the conflict. Under the proposal, applications involving such conflicts would not be designated for hearing unless: (1) The later filed application is filed within the cutoff period prescribed by § 21.30(b), and (2) the Commission is satisfied that the frequency conflict cannot be resolved by reasonable measures by the later filing applicant.[55] Since there is no objection to this proposal, it will be adopted. To facilitate the processing of applications, the rule will contain provisions for dealing with applicants who do not make efforts to resolve conflicts within a reasonable time (see § 21.100(a)). As proposed in the Notice (paragraph 56), we will accord pending applicants an opportunity to modify their applications to achieve compliance with these rules. The original filing and cutoff dates will still be determinative of priority under these rules.

3. Frequency Diversity and Miscellaneous Technical Requirements

136. We also proposed in the Notice (paragraphs 59–61) several measures to achieve more efficient spectrum utilization by all carriers. The most important of these relates to the use of frequency diversity.[56] We noted several possible approaches: the complete elimination of frequency diversity, reduction of the number of allowed protection channels, restriction of use to high density routes, or to allow its use only where there is no

[54] We do not believe that it is necessary to go so far as having a Commission representative present at each meeting or having the results of any agreement reduced to writing, as suggested by the Department of Justice. Voluntary coordination has been employed for a number of years, and we have no evidence that illegal collusion has ever occurred. Also, we believe that the limited availability of Commission staff and the formality of written agreements would tend to hinder swift and effective coordination efforts.

[55] In the event the applications were filed on the same day, the burden of resolving the conflict would lie equally on the applicants.

[56] Frequency diversity may be regarded as two separate transmitters operating on different frequencies but carrying the same modulation and using a single antenna system. For purposes here, it also includes the use of a spare or protection channel which may be switched into the path of a faded channel.

reasonable alternative method of achieving the necessary reliability. Approximately 15 parties commented on this part of the proposal. Virtually all agree that frequency congestion is a problem which will grow and that space diversity is an affective means of providing reliability (at least from propagation outages). As to what should be done about frequency diversity, there are a variety of recommendations.

137. At one extreme GT&E urges virtually no change in the use of frequency diversity, contending that the presently accepted ratios (i.e. one protection channel for five working channels in the 4 GHz band, one for three in the 6 GHz band and one for one in the 11 GHz band) should be retained because they are needed for protection against equipment failures.[57] At the other extreme, Datran and Microwave Transmission Co. urge the complete elimination of frequency diversity, including the conversion of existing facilities using frequency diversity to space diversity. The other commenting parties take an intermediate approach, opposing the complete elimination of frequency diversity but suggesting various ways of restricting its use. A.T. & T. points, as may do, to the cost advantage of frequency diversity over space diversity on multiple channel systems. It also states that protection channels in its own facilities have an important function in addition to reliability by providing channels for occasional television service and for emergency restoration of failed channels on other connecting routes. With respect to reducing the ratio of protection channels as was suggested, A.T. & T. states that if cross band diversity is permitted (e.g. allowing both protection channels for the 4 and 6 GHz to be in the 6 GHz band), such an arrangement would provide adequate reliability for systems with good fading margins but would not provide adequate protection or restoration in many situations. However, A.T. & T. believes that space diversity can be used to augment frequency diversity on paths experiencing greater fade problems, and it is making plans to so utilize space diversity.

138. Southern Pacific, United Video, and Electronic Industries Association generally support restricted use of frequency diversity but take the position that the matter should be considered on a case by case basis and permitted where it is adequately justified and/or where frequency congestion is not a problem. Others, such as Nebraska Consolidated Communications, Microwave Service Co., and New York-Penn Microwave generally support a reduction in the number of protection channels. MITEQ, Inc., suggests that frequency diversity be banned on short paths of 15 or 20 miles in length. MCI emphasizes that all carriers should be treated equally and that the newer carriers should be permitted to employ the same ratio of protection channels as used at A.T. & T. Western Telecommunications and New York-Penn Microwave suggest a compromise between frequency diversity and space diversity in which space diversity would be utilized on the first two channels on a given route, with a protection channel being permitted upon the addition of a third working channel.

139. Upon evaluating this matter in light of the comments, we conclude that the status quo on the use of frequency diversity should not be maintained in view of the growing frequency congestion and the increasing demand for microwave frequencies to meet rapidly expanding communications requirements. It is generally agreed that space diversity is a satisfactory method of protecting against propagation failures. When used in conjunction with standby transmitters to protect against equipment failures, it offers a reasonable alternative to frequency diversity in achieving a relatively high degree of reliability. Its principal disadvantage when standby transmitters are utilized is cost, since each channel requires two transmitters and receivers per hop. However, on a one or two channel system, the cost differential is not susbtantial.[58] Also, space diversity does not offer the advantage of a spare channel which can be utilized for occasional video or to meet emergency requirements. Because of these reasons we conclude that the use of frequency diversity should be restricted rather than completely eliminated. While consideration of frequency diversity on a case-by-case basis, as suggested by several parties, may in theory be an equitable and flexible approach, we reject it because this would provide no standard for system design and because of the excessive administrative burden that it would impose on the Commission. A sensible compromise would appear to be one similar to that suggested by Western Telecommunications and New York-Penn Microwave, i.e., that frequency diversity not be permitted in the 4 and 6 GHz bands for the first two working channels on a particular route. Given the greater frequency impact caused by one for one and one for two protection on "thin routes" and the availability of space diversity as a reasonable alternative, we believe such approach would yield substantial savings in spectrum usage[59] without imposing undue economic hardship on the carrier. Under this procedure, once a route is expanded to a third working channel, a protection channel would be allowed. Because of its greater propagation problems and lesser congestion, we will not apply this standard to the 11 GHz band at this time.

140. Aside from the prohibition of frequency diversity on the first two channels on a 4 or 6 GHz route, it appears that a limitation on the total number of frequency diversity channels would be in order. Although several parties contend that the presently accepted ratios (as noted in paragraph 137) are necessary for adequate reliability, no one submits any technical data in support of this proposition. There is no doubt that additional protection channels may be desirable to the carrier as an added measure of safety or for more flexibility of operation, but we are not convinced that they are necessary as a general practice. In the past 10 years, there have been many advances in the state of art, new equipment is usually solid state and more reliable, and system design is more refined. Yet the same number of protection channels is generally used today as in the early days of microwave. Moreover, landline carriers have developed a multiplicity of routes between most of the larger communities in the country, thus creating route redundancy which gives them an extra degree of flexibility to handle peak loads or provide for restoration of failed channels. Finally, we note that frequency diversity may be supplemented by space diversity in areas where unusual propagation problems exist or where exceptional reliability is required. For these reasons, we conclude that the number of protection channels can be reduced without significant consequence on the overall public interest to only one in the 4 GHz band, one in the 6 GHz band, and a 1-to-3 ratio in the 11 GHz band. However, for the sake of flexibility we will not require that the protection channels be in the same band as the working channels as long as the specified protection ratios are observed.[60] We rec-

[57] Presumably Western Union can be considered of similar persuasion. It opposed consideration of frequency diversity in this proceeding, contending that the matter should be considered in connection with Docket No. 15130. In that proceeding Western Union in 1967 opposed then proposed restrictions on the use of frequency diversity.

[58] On a one channel system both frequency diversity and space diversity (with standby transmitters) employ two transmitters and receivers per hop. On a two channel system frequency diversity (utilizing one protection channel) requires three transmitters and receivers compared with four for space diversity. The space diversity system will require some initial additional cost for an extra receiving antenna (and associated waveguide) and perhaps a somewhat higher and more rugged tower.

[59] Routes employing only one or two working channels represent a very substantial portion of the total common carrier microwave facilities. For example, in Indiana, which is believed to be fairly typical, there are approximately 142 authorized common carrier microwave stations (exclusive of those restricted to video use) operating on some 278 transmission paths. Of these paths, about 148 consist of only one or two working channels. In view of our decision in this proceeding to permit competitive entry, it seems obvious that the number of such "thin routes" will proliferate.

[60] Current use of cross band diversity is primarily limited to the 6–11 GHz bands (e.g. Western Electric's TM/TL). For purposes of this rule making such systems will be classified as 6 GHz with protection channels in the 11 GHz band.

ognize that there may be occasions where unusual circumstance would dictate some deviation from this policy. Therefore, we will consider requests for waivers, but we will emphasize that waivers will not be granted unless there is a substantial showing of good cause directed to the facts of a given proposal.[61]

141. The rules will apply to all new facilities proposed in the future. Because of the extensive use of frequency diversity in existing facilities and the large number of pending applications proposing such use, we will apply the new requirements to these categories as well as new facilities to be proposed in the future. Therefore, where applications (both pending and new) involve the construction of new stations or new routes, we will require that the applications be amended, as necessary, to comply with the new rules (unless it can be shown that such requirement is unreasonable under the circumstances). However, in recognition of the problem inherent in the modification of existing facilities, we intend to be more flexible in application of the new rules. In general, the following procedure will be applied unless it can be shown to be unreasonable or disruptive in particular areas. Because of the probable need to construct higher towers in many instances, we will not require existing routes of one or two working channels to be converted from frequency diversity to space diversity unless another carrier can show that the diversity frequencies are necessary for working channels. However, we will expect each carrier to make plans to reduce the number of protection channels on existing facilities to meet new requirements. In general, it would appear that before additional channels are added on an existing route, any protection channels above the specified maximum should be converted to working channels. We will require that excess protection channels be relinquished prior to the next renewal period and that statements to this effect be submitted with the applications for renewal.[62] During this conversion period we will consider applications for modification of existing facilities in a manner consistent with these objectives, taking into account the reasonableness of each carrier's conversion plans.

142. Two other technical changes that were proposed involve the use of "periscope" antennas and antennas of less than 6 feet in diameter. In order to promote more efficient use of the spectrum, and perhaps improve the quality of service, it was proposed to ban the use of both. Our stated purpose was to tighten transmission paths and reduce the chances for interference in areas where frequency assignments are congested. Virtually all parties commenting on these questions support our objectives. In regard to the minimum size antenna, most suggest performance standards in lieu of the minimum 6-foot diameter. We think the suggestion is worthwhile. MCI proposes specific standards in tabular form which should be rather easy to apply. A.T. & T. suggests that standards be applied with some flexibility; it contends that the standards suggested by MCI may be too lenient in some areas, such as near major metropolitan areas, and too stringent in open areas with little prospect for interference. There appears to be some merit in the argument that a requirement for use of high performance antennas at all locations would impose an unnecessary cost burden on systems located in areas not likely to be subject to congestion problems. Therefore, we have decided to adopt dual standards. One such standard, which is very similar to the MCI proposal, represents a relatively high performance antenna that would be used in areas subject to congestion. The other standard represents an adequate antenna but one which would have somewhat less stringent requirements for side and back lobe suppression. Antennas meeting the lower standard should be used only in areas where frequency congestion is not reasonably expected. The type of antenna to use in each given circumstance is a decision which will be left to the carrier.[63] However, if a carrier selects the lower performance antenna and that antenna later causes a problem to another carrier's existing or proposed facilities, which problem would not occur if the higher performance antenna had been originally installed, we will require the replacement of the lower performance antenna at the licensee's own expense.

143. On the question of periscope antennas there is less unanimity, although the majority support an outright ban. A number of parties suggest some flexibility on the matter where there is no frequency congestion. United Video and West Texas Microwave are opposed to a total ban. They take the position that high towers (on the order of 400 feet and up) are required in flat country to get paths of acceptable length and that standard waveguide and parabolic radiators are practically limited to heights of about 250 feet. Moreover, they note that there is new periscope antenna equipment now on the market which promises good front to back isolation and reduced sidelobe radiation. We believe that these arguments for flexibility under special circumstances have some merit. Accordingly, we will ban the use of periscope antennas on new transmission paths but consider waivers where it can be shown that the periscope antenna system would involve substantially less cost and that the impact of its use is likely to be minimal.[64]

144. As to existing facilities employing periscope antennas or antennas not meeting the new performance standards, we will not require their replacement, except where it can be shown that such facilities inhibit the efficient use of the spectrum. In such cases, replacement will be required at the licensee's expense. These new requirements will, of course, be applied to all pending applications proposing new frequency paths.

D. ISSUE D: WHETHER SOME MEASURE OF PROTECTION TO APPLICANTS' SUBSCRIBERS IS CALLED FOR IN THE AREA OF QUALITY AND RELIABILITY OF SERVICE

1. Proposals in the Notice

145. In the Notice (paragraphs 62–65), the Commission tentatively decided against prescribing minimum standards of technical performance, but proposed to require for all carriers providing private line or other specialized services (paragraph 63):

(1) That the applicant specify in standard terminology in his microwave application the proposed reliability of service to the customer, to the extent that the nature of the proposed service is known;

(2) That the carrier be required to specify in his tariff, and notify the customer of, the precise reliability factors applicable to the particular service;

(3) That the carrier make refunds on a reasonable proportionate basis where the service rendered fails to meet the specified reliability standards; and

(4) That the carrier make periodic reports to the Commission concerning the reliability actually achieved, service complaints and refunds.

The Commission also requested comments on the development of standard statements of reliability quality factors for the various types of service, and on the contents of the proposed quarterly reports (paragraph 65).

2. Position of the Parties

146. All parties who addressed this issue (carriers, applicants, and others) were in favor of the goal of the proposals as a matter of general principle, though some questions were raised as to details. For example, Western Union asserted that it might be hard for those new carriers not providing end-to-end service to comply, since it might be difficult to determine who was responsible for any failure. Southern Pacific and Western

[61] The request for waiver should (among other things) include the following information:

(1) The reasons why space diversity and/or normal allocation of protection channels are not satisfactory;

(2) The degree of frequency congestion in the area concerned;

(3) The alternatives to the use of frequency diversity and their comparative cost in reasonable detail; and

(4) Any other public interest considerations that may support the request.

[62] The next renewal period is Jan. 1, 1975, for A.T. & T. Long Lines; Aug. 1, 1975, for the Bell System Companies; and Feb. 1, 1976, for all other carriers.

[63] This is not to say that we will not challenge the use of a lower performance antenna in an obviously congested area or one in which future congestion is likely.

[64] Requests for waivers should specify cost comparisons in reasonable detail and identify all existing and proposed terrestrial and satellite facilities on which the proposal could conceivably have some impact. Where sophistication of design is a factor in minimizing possible impact, full technical particulars should be submitted.

TeleCommunications were concerned that quarterly reports might prove burdensome. As an alternative, Southern Pacific suggested periodic filing of statistical reports on reliability to enable the Commission to determine whether more detailed reports would be necessary. Western TeleCommunications suggested semiannual reports, but would prefer an insystem quality control program with monitoring. GT&E suggested utilization of a sampling procedure for reporting trouble reports; and questioned whether the same measurement factors should be applied to all private line services of all carriers on an individual line basis.

147. However, very few parties addressed this issue in any depth, and there appears to be no consensus among those who did, except for a suggestion that the matter needs further study. A.T. & T.'s comments (pages 112–115) describe its methods for defining performance or quality objectives for its services and the problems it sees, make suggestions as to how to state service quality in terms more appropriate to meet FCC objectives, and incorporate by reference its comments in Docket No. 15130 (filed December 21, 1967). While agreeing that customers should be provided with understandable statements, A.T. & T. urges that specifications in tariffs should be limited to basic definitions of the concept and scope of quality and reliability and customer refund provisions. A.T. & T. states that it is prepared to work with the Commission in defining standard statements of reliability and quality of service, and suggests that its current monthly reports to the Commission would provide a useful frame of reference for the contents of quarterly reports.

148. Raytheon Co. urges that equipment manufacturers have a vital interest in this question and should be included in any studies to define standard statements. It asserts that parameter of circuit availability best defines circuit reliability in terms understandable by average users, and that this is customarily stated as a percentage of a time period, usually a month or year, that the system will be in service and operating with a quality equal to or greater than a stipulated value. New York-Penn Microwave Corp. proposes that there should be proportionate refund for any outage lasting more than one-half hour. Southern Pacific suggests that a "practical" reliability measure for data transmission might be one it has found useful for its private microwave system: outages of more than one-half minute in duration are considered major and appropriate steps are taken to rectify them; outages of less than one-half minute are monitored for frequency of occurrence and steps are taken accordingly.

149. The Computer Time-Sharing Services Section of the Association of Data Processing Service Organizations concurs in the goals of the proposals, but suggests amplification of carrier responsibilities and Commission involvement in the administration of procedures. It states that carriers should be required to publish meaningful specifications of their service, to be upgraded from time to time, which will enable users at reasonable cost and time to ascertain whether service in fact meets specifications (rather than relying on the carrier's judgment). It further urges that if the specifications are not met, the carrier should bear all costs of testing and refund charges for the period when performance did not meet the level of specifications. In addition, the tariffs should include time requirements for the installation of new service or modification of existing service. Bunker-Ramo Corp. also requests additional statements, e.g., as to the availability of maintenance facilities and restoration of outages. It urges the Commission to defer standard statements of reliability quality factors for evolution through a working conference of engineers and other interested persons under FCC supervision.

3. Conclusions

150. We think that this issue may have been overshadowed by other issues in this proceeding, and that it has not received the attention it deserves. In any event, this record does not afford an adequate basis for a Commission decision as to standard statements of reliability for various types of services, or the contents of periodic reports. Since the matter pertains more to services and tariff offerings than to the construction of facilities, we have time to conduct further studies with the assistance of interested entities and/or further proceedings before any decision on this issue is actually needed. We have concluded that further rule making on Issue E is necessary. The further notice of proposed rule making will include this issue as well, and will discuss the question of what, if any, additional steps to obtain the assistance of interested persons appear appropriate at this time. Accordingly, a resolution of Issue D will be deferred pending further procedures.

E. ISSUE E: WHAT IS THE APPROPRIATE MEANS FOR LOCAL DISTRIBUTION OF THE PROPOSED SERVICES?

1. Proposals in the Notice

151. In the Notice, it was proposed that new entrants and their customers would have the following options with respect to local loop service (Notice, paragraphs 67, 69):

(1) Interconnection or leased channel arrangements with local telephone carriers under reasonable terms and conditions to be negotiated with the new carriers (or in the case of customers, under reasonable terms set forth in the tariff schedule of the local carrier).

(2) Construction of independent local facilities by the applicants, their customers or some other entity. Comments were requested on the use of wire, cable and/or radio, particularly frequencies in the vicinity of 11 GHz, and 18 and 50 GHz or some other portion of the spectrum above 11 GHz. Parties were requested to address this aspect fully, with particular attention to the technical feasibility and comparative costs of the various alternatives and the effect on charges to subscribers for end-to-end service (Notice, paragraph 70).

2. Positions of the Parties

(a) *Interconnection.* 152. While Datran insists that end-to-end facilities are essential to its proposal, most of the applicants claim that a flexibility of choice as to interconnection or construction of new independent facilities is needed, and some propose to rely solely on interconnection. A.T. & T. says that: "When the Commission determines that it is in the public interest to license additional intercity common carriers, we would be willing to discuss with them the technical arrangements required and appropriate charges for any connections required of the telephone companies." GT&E states that, with adequate lead time, it will provide local distribution services to any authorized carrier. MCI claims to be encouraged by the statements of A.T. & T. and GT&E on this score. Western Union urges the Commission not to prejudice the technical and economic feasibility of interconnection in this proceeding, and to hold individual evidentiary hearings on interconnection for each new system. USITA asserts that separate local facilities would cause a loss of revenues to the independent telephone companies, but sees legal and technical problems in requiring interconnection and seeks individual evidentiary hearings. Southern Pacific urges the Commission not to postpone this question for future uncertainty and perhaps dispute, but rather to set forth guidelines now.

(b) *Construction of independent local facilities.* 153. Datran states that end-to-end facilities are essential to its switched digital data network and that interconnection with the local telephone exchange systems is not suitable to it. For local loops, it proposes to use a combination of cable and 11 GHz frequencies (with low-power transmitters and all carrier frequencies closely spaced within a single 20 MHz bandwidth which could distribute up to 4,000 4.8 Kb/s two-way data channels). Datran claims, with supporting technical studies for Dallas and Los Angeles, that such intracity use of 11 GHz would be fully compatible with intercity use, at least initially, and that 18 and 30 GHz and optical systems may be feasible alternatives for future expansion (particularly for short links). While preferring 11 GHz, Datran suggests a mix of 11 and 18 GHz as an alternative or, as a third choice, the use of 18 GHz.

154. MCI has filed a petition for rule making (RM 1700) to allocate the frequencies 38.6–40 GHz for a local Carrier Distribution Service. This petition is described in the summary of its comments (Appendix C, page 7). It urges that the local distribution issue be deferred, and that its petition be considered in a

separate proceeding. MCI's petition is opposed by GT&E (which is against any independent local facilities), and supported by Martin Marietta Corp., Resalab, Inc., MITEQ, Inc., A.T. & T. and Western Union. Datran expresses doubts as to the technical feasibility of 38.6–40 GHz for this purpose under the present state-of-the-art.

155. While A.T. & T. supports the end-to-end concept, it prefers 38.6–40 GHz over the use of either 11 GHz or 18 GHz (which it claims should be reserved primarily for intercity use and access to metropolitan areas) and suggests consideration of the possible use of 30 and 50 GHz frequencies as well. A.T. & T. supports further proceedings because the applicants have not given sufficient attention to this aspect and it foresees some technical and economic problems in such proposals as they have made. While adhering to the view that evidentiary hearings are required on all aspects of this proceeding, Western Union concurs in A.T. & T.'s position that 11 GHz should be reserved for intercity use and believes that the possible use of frequencies above 17 GHz should be considered in a separate proceeding.

156. EIA asserts that the use of 11 GHz for local loops would eventually create problems for intercity systems entering congested areas, but until such time as the 18–50 GHz region and equipment are available, sees no reason why 11 GHz should not be utilized to initiate metropolitan distribution systems so long as they are coordinated with access systems. NCTA requests the Commission not to decide upon any local distribution means which would exclude eventual use of CATV cable. Southern Pacific, like most of the applicants, states that the new carriers should have flexibility of choice of means, including interconnection, and that with such flexibility local distribution will be accomplished somehow. It sees problems in the promiscuous use of 11 GHz and suggests that the use of 18–50 GHz may be premature. However, Southern Pacific urges the Commission not to postpone the local distribution question, including interconnection terms, for future uncertainty and perhaps dispute. It requests the Commission to set forth guidelines and preliminary outlines of local distribution characteristics at this time for further study and comment.

3. *Conclusions*

157. We reaffirm the view expressed in the Notice (paragraph 67) that established carriers with exchange facilities should, upon request, permit interconnection or leased channel arrangements on reasonable terms and conditions to be negotiated with the new carriers, and also afford their customers the option of obtaining local distribution service under reasonable terms set forth in the tariff schedules of the local carrier. Moreover, as there stated, "where a carrier has monopoly control over essential facilities we will not condone any policy or practice whereby such carrier would discriminate in favor of an affiliated carrier or show favoritism among competitors." [65] In view of the representations of A.T. & T. and GT&E in this proceeding, upon which we rely, and the self-interest of other independent telephone companies in not losing potential new business, there appears to be no need to say more on this question at this time. Should any future problem arise, we will act expeditiously to take such measures as are necessary and appropriate in the public interest to implement and enforce the policies and objectives of this decision.

158. We also conclude that new carriers should have the option of constructing their own independent local facilities to provide end-to-end service.[66] However, this record does not afford an adequate basis for any determination as to what radiofrequencies should be made available for use in this conjunction. An allocation of frequencies above 11 GHz might be inappropriate prior to the World Administrative Radio Conference for Space Telecommunications (Geneva, June–July, 1971). Moreover, the parties to this proceeding are those primarily interested in Issues A and B, and other entities who may have an interest in frequency allocations above 11 GHz have not participated. We recognize that Datran has discussed and supported its 11 GHz proposal at some length, and other parties have addressed this question, though not in any depth. Since Datran has not yet applied for any 11 GHz intracity facilities, there would appear to be time to conduct further proceedings before any decision on the use of such frequencies is necessary.

159. Accordingly, we have decided to issue a further notice of proposed rule making on MCI's proposal to allocate the frequencies 38.6–40 GHz for a local carrier distribution service, and to include comparative consideration of frequencies in the other regions of the spectrum that have been suggested (11 GHz, 18 GHz, 30 GHz, and 50 GHz). We do not foreclose the contention, made by some parties here, that more than one frequency allocation might be appropriate, at least temporarily, or counterproposals as to possible alternative allocations. We will issue the further notice as soon as possible, and expedite the further proceedings on this question. For, we realize that this aspect should be resolved at an early date so that those authorized entrants contemplating local construction can plan and build such facilities without delay to the inauguration of the system.

[65] See, e.g., Report and Order in Docket No. 16778, 12 FCC 2d 841, 846 (1968); Final Report and Order in Docket No. 18509, 21 FCC 2d 307, 324–325 (1970); The Western Union Telegraph Co. v. United States, 217 F. 2d 579 (C.A. 2, 1954).

[66] By this we do not mean to preclude the use of CATV systems, if satisfactory arrangements can be worked out between the CATV operator and the specialized carrier, and subject to any regulation required by title II of the Communications Act and/or Commission rules.

III. Miscellaneous

160. In light of the foregoing, we conclude that the public interest, convenience and necessity would be served by adoption of the policies set forth above and the rules contained in Appendix E hereto, effective July 15, 1971. Authority for the policies and rules adopted herein is contained in sections 1, 2(a), 4 (i) and (j), 201, 202, 214, 218, 301, 303, 307–309, and 403 of the Communications Act. We also conclude that further proceedings are necessary for a resolution of Issues D and E herein, and will retain full jurisdiction over those aspects of this proceeding.

161. Our order released on July 17, 1970, herein (24 FCC 2d 318, 350) extended the time for filing petitions to deny and other pleadings with respect to then pending and new applications by specialized carriers, which pleadings were not due as of July 17, 1970, to a date to be specified by further order. We will provide that such pleadings are due about 30 days after publication of this First Report and Order in the Federal Register, i.e., on July 15, 1971. Thereafter, the normal filing times specified in the Commission's rules will apply to any responsive or new pleadings. Such pleadings should address questions not disposed of in this proceeding.

IV. Order

162. *Accordingly, it is ordered,* That:

a. The policies set forth herein and the rules contained in Appendix E hereto are adopted, effective July 15, 1971.

b. Petitions to deny and other pleadings with respect to the applications listed in Appendix A hereto, which were not due as of July 17, 1970, shall be filed on or before July 15, 1971.

c. This proceeding is terminated only with respect to Issues A, B, and C, and the Commission retains full jurisdiction over Issues D and E.

(Secs. 1, 2, 4, 201, 202, 214, 218, 301, 303, 307–309, 403, 48 Stat., as amended, 1064, 1066, 1070, 1075, 1077, 1081, 1082, 1083, 1084, 1085, 1094; 47 U.S.C. 151, 152, 154, 201, 202, 214, 218, 301, 303, 307–309, 403)

Adopted: May 25, 1971.

Released: June 3, 1971.

Federal Communications Commission,[67]

[SEAL] Ben F. Waple, *Secretary.*

Appendix E

Part 21 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

1. In § 21.1, the following definition is added in appropriate alphabetical order:

§ 21.1 Definitions.

* * * * *

Periscope antenna system. An antenna system which involves the use of a passive reflector to deflect the radiation of a

[67] Concurring statement of Commissioner Robert E. Lee filed as part of the original document.

directional antenna from a vertical or near-vertical beam to a horizontal or near-horizontal beam.

* * * * *

§ 21.100 [Amended]

2. In § 21.100, paragraph (a) is amended by deleting the last sentence beginning with the words "Frequency diversity transmission * * *" New paragraphs (c), (d), and (e) are added to read as follows:

(c) Frequency diversity transmission will not be authorized in these services in the absence of a factual showing that the required communications cannot practically be achieved by other means. Where frequency diversity is deemed to be justified on a protection channel basis, it shall be limited to one protection channel for the band 3,700–4,200 MHz, one protection channel for the band 5,925–6,425 MHz, and a ratio of one protection channel for three working channels for the band 10,700–11,700 MHz. In the bands 3,700–4,200 MHz and 5,925–6,425 MHz no frequency diversity protection channel will be authorized unless there is a minimum of three working channels.

(d) All applicants for regular authorization in the Point-to-Point Microwave Radio and Local Television Transmission Services shall, before filing an application, coordinate proposed frequency usage (including relevant technical details) with existing users in the area and other applicants with previously filed applications, whose facilities could affect or be affected by the new proposal in terms of frequency interference or restricted ultimate system capacity. All applicants, permittees and licensees shall cooperate fully and make reasonable efforts to resolve technical problems and conflicts that inhibit the most effective and efficient use of the radio spectrum. Applicants should make every reasonable effort to avoid blocking the growth of systems that are likely to need additional capacity in the foreseeable future. The applicant shall identify in the application all entities with which the technical proposal was coordinated. In the event that technical problems are not resolved or if the existing licensee, permittee or applicant does not respond to coordination efforts within a reasonable time, an explanation shall be submitted with the application.

(e) Where frequency conflicts arise between co-pending applications in the Point-to-Point Microwave Radio and Local Television Transmission Services, it shall be the obligation of the later filing applicant to amend his application to remove the conflict, unless he can make a showing that the conflict cannot be reasonably eliminated. Where a frequency conflict is not resolved and no showing is submitted as to why the conflict cannot be resolved, the Commission may grant the first filed application and dismiss the later filed application(s) after giving the later filing applicant(s) 30 days to respond to the proposed action.

3. Section 21.108 is revised to read as follows:

§ 21.108 Directional antennas.

(a) Unless otherwise authorized upon specific request by the applicant, each station authorized under the rules of this part, other than base, mobile and auxiliary test stations operating in the Domestic Public Land Mobile Radio Service, shall employ a directional antenna adjusted with the center of the major lobe of radiation in the horizontal plane directed toward the receiving station with which it communicates: *Provided, however*, Where a station communicates with more than one point, a multi- or omnidirectional antenna may be authorized if necessary. New periscope antenna systems will not, under ordinary circumstances, be authorized.

(b) Stations operating below 2,500 MHz (other than base, mobile and auxiliary test stations in the Domestic Public Land Mobile Radio Service) which are required to use directional antennas shall employ antennas meeting the standards indicated below. (Maximum beam width is for the major lobe of radiation measured at the half power points. Suppression is the minimum attenuation required for any secondary lobe signal and is referenced to the maximum signal in the main lobe.)

Frequency range	Maximum beam width	Suppression
Below 500 MHz	80°	10 dB
500 to 1,500 MHz	20°	13 dB
1,500 to 2,500 MHz	12°	13 dB

(c) Fixed stations (other than temporary fixed) operating at 2,500 MHz or higher shall employ transmitting antennas meeting performance standard A indicated below, except that in areas not subjected to frequency congestion, antennas meeting performance standard B may be used subject to the liability set forth in § 21.109(c). Additionally, the main lobe of each antenna shall have minimum power gain of 36 dB over a reference half wave dipole antenna. The values indicated represent the suppression required in the horizontal plane, without regard for the polarization plane of intended operation.

Angle from center line of main lobe	Minimum radiation suppression	
	Standard A	Standard B
5° up to, not including 10°	25 dB	20 dB
10° up to, not including 15°	29 dB	24 dB
15° up to, not including 20°	33 dB	28 dB
20° up to, not including 30°	36 dB	32 dB
30° up to, not including 100°	42 dB	35 dB
100° up to, including 180°	55 dB	36 dB

(d) In cases where passive reflectors are employed in conjunction with transmitting antenna systems, the foregoing paragraphs of this section also shall be applicable thereto. However, in such instances, the center of the major lobe of radiation from the antenna normally shall be directed at the passive reflector, and the center of the major lobe of radiation from the passive reflector directed toward the receiving station with which it communicates.

(e) No directional transmitting antenna utilized by a station operating in the band 5925–6425 MHz shall be aimed within 2° of the geostationary satellite orbit, taking into account atmospheric refraction. However, exception may be made in unusual circumstances upon a showing that interference to satellite communications is not likely to occur. [Methods of calculating azimuths to be avoided may be found in: CCIR Report 393 (Green Books), New Delhi, 1970, and in "Radio-Relay Antenna Pointing for Controlled Interference with Geostationary Satellites" by C. W. Lundgren and A. S. May, Bell System Technical Journal, Volume 48, Number 10, December 1969. The first reference is an approximate, graphical method of calculation while the second is suitable for computer calculation.]

4. Section 21.109 is amended by adding new paragraph (c) to read as follows:

§ 21.109 Antenna, tower, and transmitting systems changes.

* * * * *

(c) The Commission may require the replacement, at the licensee's expense, of any antenna or periscope antenna system of a permament fixed station operating at 2500 MHz or higher which does not meet performance Standard A specified in § 21.108(c), upon a showing that said antenna causes or is likely to cause interference to (or receive interference from) any other authorized or proposed station whereas an antenna meeting performance Standard A is not likely to involve such interference.

5. Section 21.709 is amended by adding new paragraph (c) to read as follows:

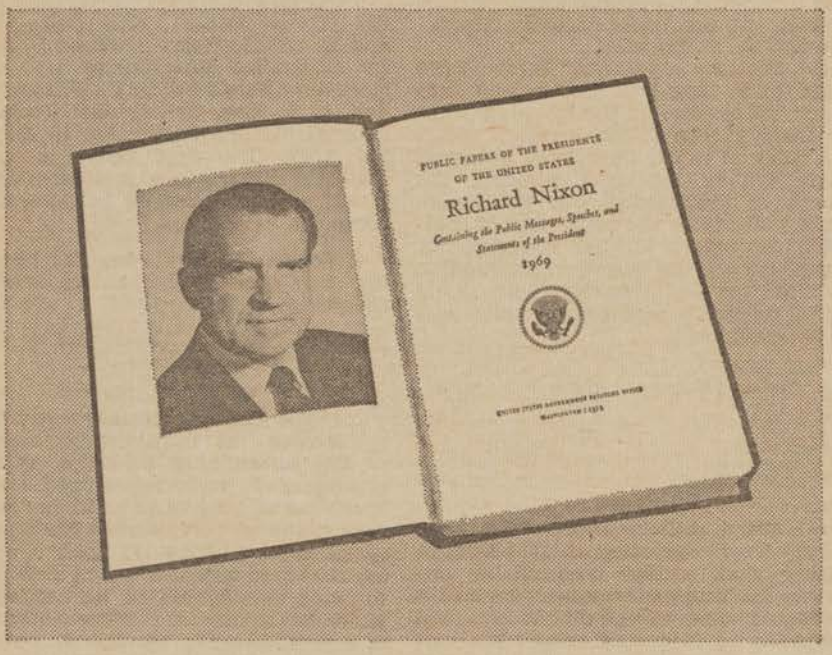
§ 21.709 Renewal of station license.

* * * * *

(c) Any application for renewal of license, for a term commencing January 1, 1975, or after, involving facilities utilizing frequency diversity must contain a statement showing compliance with § 21.100(c) or the exceptions recognized in paragraph 141 of the "First Report and Order" in Docket No. 18920 (FCC 71–547). If not in compliance, a complete statement with the reasons therefore shall be submitted.

[FR Doc.71–7861 Filed 6–8–71;8:45 am]

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