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## HIGHLIGHTS OF THIS ISSUE

This listing does not affect the legal status of any document published in this issue. Detailed table of contents appears inside.

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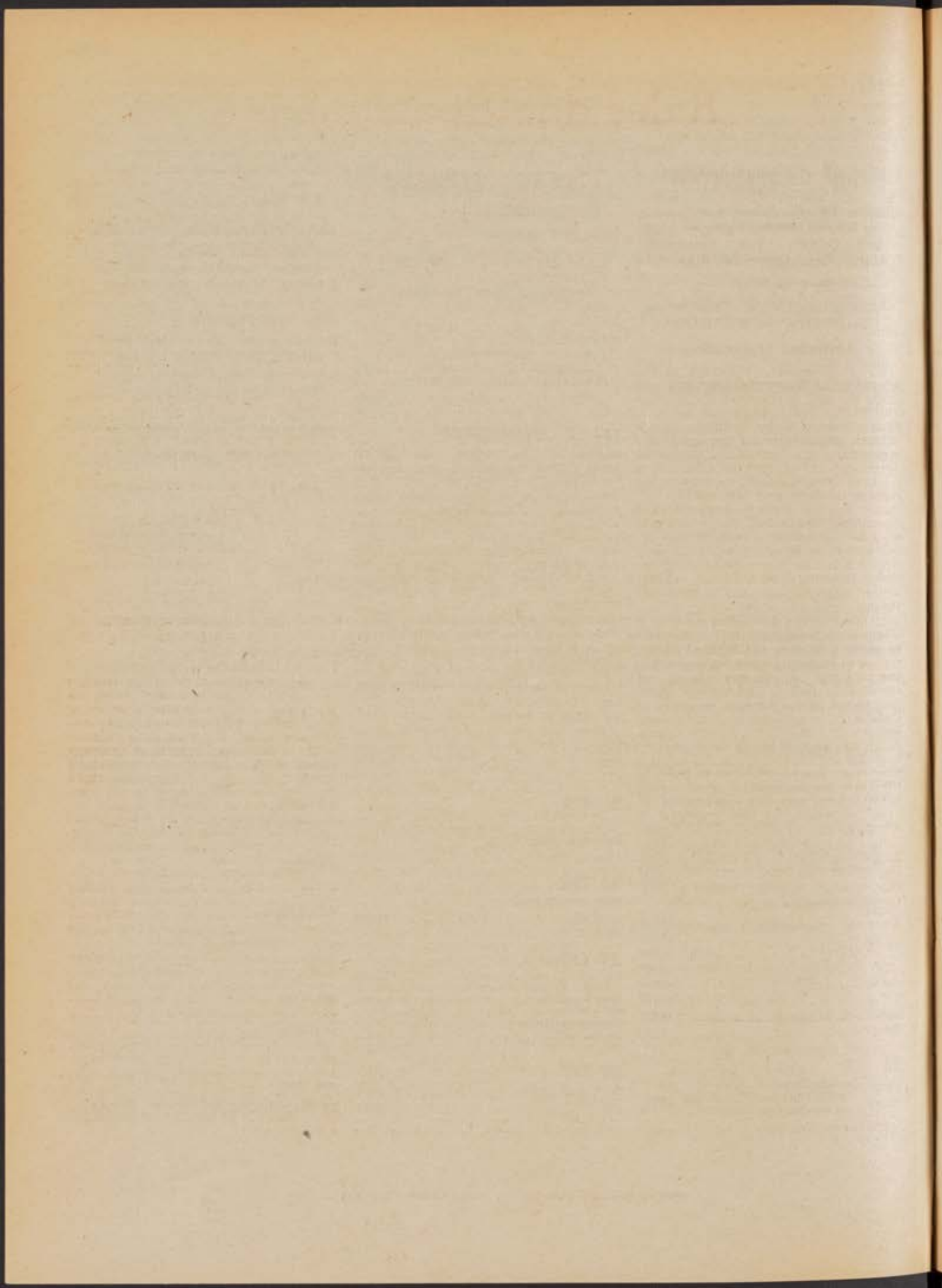
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# Rules and Regulations

## Title 7—AGRICULTURE

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

[Lemon Reg. 500, Amdt. 1]

### PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

#### Limitation of Handling

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 910, as amended (7 CFR Part 910; 36 F.R. 9061), regulating the handling of lemons grown in California and Arizona, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674, and upon the basis of the recommendations and information submitted by the Lemon Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such lemons, as hereinafter provided, will tend to effectuate the declared policy of the act.

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

(b) *Order, as amended.* The provision in paragraph (b) (1) of § 910.800 (Lemon Reg. 500, 36 F.R. 19008) during the period September 26, through October 2, 1971, is hereby amended to read as follows:

#### § 910.800 Lemon Regulation 500.

- • • • •  
(b) • • •  
(1) • • • 210,000 cartons.

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

Dated: September 30, 1971.

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

[FR Doc. 71-14565 Filed 10-4-71; 8:49 am]

## Title 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Administration, Department of Transportation

[Docket No. 10421; Amdt. 39-1317]

### PART 39—AIRWORTHINESS DIRECTIVES

#### Handley Page HP-137 Mark I Airplanes

Amendment 39-1031 (35 F.R. 11384), AD 70-15-4, requires, in part, removal of first stage turbine discs, P/N 0.261.25-013.0, from service before the accumulation of 400 hours total disc time in service or 1,000 cycles, whichever occurs sooner, on Handley Page HP-137 Mark I airplanes. After issuing Amendment 39-1031, the FAA determined that discs installed new on engines incorporating certain Turbomeca Modifications may safely accumulate 750 hours total disc time in service or 2,000 cycles before removal and replacement with new discs are required. Therefore, the AD is being amended to extend the service life of the first stage turbine discs, P/N 0.261.25.013.0, installed new on engines incorporating Turbomeca Mods. TU-123, TU-124, and TU-126 to 750 hours total disc time in service or 2,000 cycles, whichever occurs sooner. The existing requirements are continued with regard to all other first stage turbine discs. In addition, minor changes of an editorial nature have been made.

Since this amendment relieves a restriction, and imposes no additional burden on any person, notice and public procedure hereon are unnecessary and the amendment may be made effective in less than 30 days.

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (14 CFR 11.89), § 39.13 of Part 39 of the Federal Aviation Regulations, Amendment 39-1031 (35 F.R. 11384), AD 70-15-4, is amended as follows:

1. By amending paragraph (b) to read as follows:

(b) For first stage turbine discs, P/N 0.261.25.013.0, installed on engines that do not incorporate Turbomeca Mods. TU-123, TU-124, and TU-126, before the accumulation of 400 hours total disc time in service or 1,000 cycles, whichever occurs sooner, remove the first stage turbine disc from service and replace it with a new disc of the same part number.

2. By adding the following new paragraphs (c) and (d) at the end thereof to read as follows:

(c) For first stage turbine discs, P/N 0.261.25.013.0, installed new on engines that

incorporate Turbomeca Mods. TU-123, TU-124, and TU-126, installed in accordance with Turbomeca Service Instructions No. 0123, dated August 27, 1970, No. 0124, dated September 16, 1970, and No. 0127, dated September 16, 1970, respectively, or FAA-approved equivalents, before the accumulation of 750 hours total disc time in service or 2,000 cycles, whichever occurs sooner, remove the first stage turbine disc from service and replace it with a new disc of the same part number.

(d) For the purpose of complying with this AD, a cycle constitutes:

- (1) Any takeoff and landing operation;
- (2) Any touch and go landing operation;
- (3) Any other operation where reduction of power is followed by application of take-off power.

This amendment becomes effective October 5, 1971.

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

Issued in Washington, D.C. on September 30, 1971.

WILLIAM G. SHREVE, JR.,  
Acting Director,  
Flight Standards Service.

[FR Doc. 71-14619 Filed 10-4-71; 8:52 am]

[Docket No. 71-EA-68; Amdt. 39-1303]

### PART 39—AIRWORTHINESS DIRECTIVES

#### Sikorsky Aircraft

The Federal Aviation Administration is amending § 39.13 of Part 39 of the Federal Aviation Regulations so as to issue an airworthiness directive applicable to Sikorsky S-61 type helicopters.

There have been reports of fractures occurring in a part of the mechanical input linkage of the automatic flight control system servo valve. If the fracture occurs in an aircraft in flight, a hydraulic hardover causes an erratic or full displacement of one of the flight controls. The result would be an extremely hazardous situation.

Since the foregoing deficiency can exist or develop in helicopters of similar type design, an airworthiness directive is being published which will require the installation of a secondary link in the servo valve input linkage.

Since the foregoing requires expeditious adoption of this amendment, notice and public procedure hereon are impractical and good cause exists for making the amendment effective in less than 30 days.

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

Sikorsky. Applies to all S-61 type helicopters certified in all categories.

Compliance required as indicated. To prevent a hardover in the auxiliary servo system, as the result of fracture of the servo valve input linkage, accomplish the following:

a. Within the next 50 hours' time in service after the effective date of this AD, unless already accomplished, install a secondary link in the servo valve input linkage in accordance with section 2, paragraphs A., B., C., and G., of Sikorsky Service Bulletin No. 61B65-6A, dated July 1, 1971, or later approved revisions or an equivalent installation, both approved by the Chief, Engineering and Manufacturing Branch, FAA, Eastern Region.

b. Install secondary links per paragraph (a) on all spare units, prior to installation on the aircraft.

This amendment is effective October 7, 1971.

(Secs. 313(a), 601, 603, Federal Aviation Act of 1958, 49 U.S.C. 1354(a), 1421, 1423; sec. 8(c), Department of Transportation Act, 49 U.S.C. 1655(c))

Issued in Jamaica, N.Y., on September 22, 1971.

ROBERT H. STANTON,  
*Acting Director, Eastern Region.*

[FR Doc.71-14541 Filed 10-4-71; 8:47 am]

[Airworthiness Docket No. 71-SW-36, Amdt. 39-1304]

### PART 39—AIRWORTHINESS DIRECTIVES

#### Bell Models 205A and 205A-1 Helicopters

A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive imposing a periodic inspection for cracks in the left side of the forward spar cap of the vertical fin near the tail boom intersection for certain tail boom assemblies on Bell Models 205A and 205A-1 helicopters was published in 36 F.R. 13929.

Interested persons have been afforded an opportunity to participate in the making of the amendment. Two comments were received. One letter reported three cases of cracks occurring in the top section of the Bell Model 204B helicopter tail fin forward spar angles. These cases are not associated with the Model 205A or 205A-1 and are subject to separate consideration. The manufacturer advised that new tail boom assemblies will incorporate a new fin forward spar having two left steel cap angles and these new tail boom assemblies will not have a new part number. Therefore, the airworthiness directive now includes appropriate serial numbered tail booms or fuselage assemblies and their part numbers to preclude inspections of new tail fin spars having steel cap angles.

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

BELL. Applies to Bell Models 205A and 205A-1 helicopters certificated in all categories equipped with tail boom assembly, part number 205-032-802-1, -3, -5, -9, or -11.

Compliance required as indicated. To detect a possible fatigue crack in the vertical fin forward spar in the area of the first rivet hole above the tail fin and tail boom intersection at fuselage station 434 or fin station 70.3, accomplish the following:

(a) Inspect tail booms having 600 or more hours total time in service on the effective date of this AD within 25 hours' time in service therefrom, in accordance with the procedures listed in paragraph (c) unless already accomplished within the last 75 hours.

(b) Inspect tail booms having less than 600 hours total time in service on the effective date of this AD before reaching 625 hours total time in service in accordance with the procedures listed in paragraph (c) unless accomplished within the last 75 hours.

(c) Accomplish repetitive inspections in accordance with the procedures listed below at intervals of not more than 100 hours' time in service from the last inspection:

(1) Remove the 42° gear box cover from the tail boom and open the tail rotor drive shaft cover on the vertical fin.

(2) Remove and do not reinstall the one rivet in the spar cap angle at fin station 70.3 and remove the paint finish and clean the area around the rivet hole, inboard and outboard sides of spar, including radius of cap angle on the left side of the fin forward spar from fin station 69.5 to 71, using cloth and methyl ethyl ketone or equivalent.

(3) Inspect the rivet hole and the clear area of the fin spar for cracks using a visual or a dye penetrant or equivalent inspection method.

(4) If no cracks are found, protect the clear area of the spar and rivet hole using a clear lacquer or light film of clear grease or equivalent transparent protection.

(5) If cracks are found, remove the tail boom and replace with an uncracked tail boom in accordance with the procedures in The Bell Model 205A or 205A-1 Maintenance and Overhaul Instructions before further flight.

(d) Before the first flight of each day after the inspection in paragraph (c) is accomplished, conduct an inspection as follows:

(1) Remove the 42° gear box cover from the tail boom and open the tail rotor drive shaft cover on the vertical fin.

(2) Visually check the rivet hole area and the clear area of the fin forward spar for cracks.

(3) If cracks are found, remove the tail boom and replace with an uncracked tail boom in accordance with the procedure of The Bell Model 205A or 205A-1 Maintenance and Overhaul Instructions before further flight.

(4) The above inspection may be performed by the pilot.

NOTE: For the requirements regarding the listing of compliance and method of compliance with this airworthiness directive in the aircraft permanent maintenance record, see FAR 91.173.

(e) Operators not having kept time in service records on individual tail booms should use helicopter hours time in service for the purpose of this airworthiness directive.

(f) The inspections noted by this AD are no longer required when the tail fin forward spar is modified in accordance with Part 2, Bell Helicopter Company Service Bulletin No. 205A-6 dated May 11, 1971 or Revision A dated June 14, 1971, or later approved revision or in accordance with an equivalent method approved by the Chief, Engineering and Manufacturing Branch, Flight Standards Division, Southwest Region, FAA.

(g) This airworthiness directive is not applicable for tail boom assemblies P/N 205-032-802-9, serial numbers BBBI-50028 and subsequent, P/N 205-032-802-11 serial numbers BBBI-50003 and subsequent; and fuselage assemblies P/N 205-200-010-178, serial numbers BBDN-50051 and subsequent, and serial number BBDN-00101 and subsequent serial numbers.

The manufacturer's specifications and procedures identified and described in this directive are incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to the Service Manager, Bell Helicopter Co., Post Office Box 482, Fort Worth, TX 76101. These documents may also be examined at the Office of the Regional Counsel, Southwest Region, FAA, 4400 Blue Mound Road, Fort Worth, TX, and at FAA Headquarters, 800 Independence Avenue SW., Washington, DC. A historical file on this AD which includes the incorporated material in full is maintained by the FAA at its headquarters in Washington, D.C., and at the Southwest Regional Office in Fort Worth, Tex.

This amendment becomes effective October 30, 1971.

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

Issued in Fort Worth, Tex., on September 23, 1971.

HENRY L. NEWMAN,  
*Director, Southwest Region.*

NOTE: The incorporation by reference provisions in this document were approved by the Director of the Federal Register on June 19, 1967.

[FR Doc.71-14539 Filed 10-4-71; 8:47 am]

[Airspace Docket No. 71-SO-20]

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

#### Revocation and Alteration of Federal Airway Segments and Transition Area

On July 31, 1971, a notice of proposed rule making was published in the FEDERAL REGISTER (36 F.R. 14215) stating that the Federal Aviation Administration (FAA) was considering amendments to Part 71 of the Federal Aviation Regulations that would revoke segments of V-97E and V-492S, realine segments of V-7, V-7E, and V-492, and alter the Florida transition area.

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

Subsequent to the issuance of the notice it was found necessary to change the LaBelle 100° T (99° M) radial to the 101° T (100° M) radial so that V-492 will overlie the Bryant intersection. Since this



action is minor in nature action is taken herein to show this one degree change.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective 0901 G.m.t., November 11, 1971, as hereinafter set forth.

1. Section 71.123 (36 F.R. 18076 and 2010) is amended as follows:

a. In V-7 all preceding the phrase "Lakeland, Fla." is deleted and the phrase "From Biscayne Bay, Fla., Fort Myers, Fla., including an east alternate via Miami, Fla., INT Miami 316° and Fort Myers 096° radials;" is substituted therefor.

b. In V-97 all preceding the phrase "Albany, Ga." is deleted and the phrase "From Miami, Fla.; La Belle, Fla.; St. Petersburg, Fla.; Tallahassee, Fla., including a west alternate from St. Petersburg to INT St. Petersburg 331° and Cross City, Fla., 201° radials via INT St. Petersburg 316° and Cross City 201° radials;" is substituted therefor.

c. V-492 is amended to read as follows:

V-492 from St. Petersburg, Fla., La Belle, Fla.; INT LaBelle 101° and Palm Beach, Fla., 272° radials; Palm Beach, including a north alternate from LaBelle to Palm Beach via INT LaBelle 043° and Palm Beach 298° radials.

2. Section 71.181 (36 F.R. 2140, 15742, 15743, and 18192) is amended as follows:

In the Florida transition area the phrase "that airspace northwest of Tampa bounded on the east by V-35W, on the southwest and northwest by V-97E;" is deleted and the phrase "that airspace northwest of Tampa bounded on the east by V-35W, on the west by V-97 and on the north by V-7W;" is substituted therefor.

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

Issued in Washington, D.C., on September 28, 1971.

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

[FR Doc.71-14538 Filed 10-4-71;8:47 am]

[Airspace Docket No. 71-WE-42]

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

**Alteration of Transition Area**

On August 25, 1971, a notice of proposed rule making was published in the FEDERAL REGISTER (36 F.R. 16680) stating that the Federal Aviation Administration was considering an amendment to Part 71 of the Federal Aviation Regulations that would alter the description of the Riverside, Calif., transition area.

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

**Effective date.** This amendment shall be effective 0901 G.m.t., December 9, 1971.

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

Issued in Los Angeles, Calif., on September 24, 1971.

ARVIN O. BASNIGHT,  
Director, Western Region.

In § 71.181 (36 F.R. 2140) the description of the Riverside, California transition area is amended as follows:

Delete the 700-foot portion of the transition area and substitute the following therefor: "That airspace extending upward from 700 feet above the surface bounded by a line beginning at latitude 34°10'00" N., longitude 117°59'00" W., to latitude 34°10'00" N., longitude 117°01'00" W., to latitude 33°50'00" N., longitude 117°01'00" W., to latitude 33°42'30" N., longitude 116°56'30" W., to latitude 33°38'00" N., longitude 117°09'00" W., to latitude 33°51'00" N., longitude 117°24'30" W., to latitude 33°46'00" N., longitude 117°45'00" W., to latitude 33°56'00" N., longitude 117°53'00" W., to latitude 33°56'00" N., longitude 117°59'00" W., thence to point of beginning: \* \* \*"

[FR Doc.71-14535 Filed 10-4-71;8:46 am]

[Airspace Docket No. 71-SW-52]

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

**Alteration of Federal Airway Segment**

The purpose of this amendment to Part 71 of the Federal Aviation Regulations is to make a minor alteration to the segment of VOR Federal airway No. 289 between Lufkin, Tex., and Gregg County, Tex.

V-289 segment between Lufkin and Gregg County is aligned via the intersection of Lufkin 355° T (347° M) and Gregg County 181° T (174° M) radials. Action is being taken herein to realign the airway segment direct from Lufkin to Gregg County.

This realignment would provide better navigational guidance by use of the direct station to station radials of the Lufkin and Gregg County VORTACs.

Since this amendment is minor in nature and no substantive change in the regulation is effected, notice and public procedure thereon are unnecessary. However, since it is necessary that sufficient time be allowed to permit appropriate changes to be made on aeronautical charts, this amendment will become effective more than 30 days after publication.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective 0901 G.m.t., December 9, 1971, as hereinafter set forth.

In § 71.123 (36 F.R. 2010) V-289 is amended by deleting "INT Lufkin 355°

and Gregg County, Tex., 181° radials; Gregg County;" and substituting "Gregg County, Tex.;" therefor.

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

Issued in Washington, D.C., on September 27, 1971.

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

[FR Doc.71-14536 Filed 10-4-71;8:47 am]

[Docket No. 10746; Amdt. No. 121-80]

**PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT**

**Pictorial Displays for Recurrent Training**

This amendment to Part 121 of the Federal Aviation Regulations permits the use of pictorial displays for visual aircraft preflight inspection in recurrent training for pilots and flight engineers. This amendment is also applicable to air travel club operations governed by Part 123, and to air taxi operations using large aircraft, as provided in § 135.2.

This amendment is based on a notice of proposed rule making, Notice 70-49, published in the FEDERAL REGISTER on December 25, 1970 (35 F.R. 19640). Notice 70-49 was issued in response to a petition for rule making submitted by Delta Airlines. Six public comments were received, and only one commentator opposed the proposals made in the notice, while three concurred in general but submitted several recommendations, and two concurred with the notice as proposed. A discussion of the comments follows.

Two commentators stated that it is unnecessary to require the portrayal of abnormal conditions as proposed in § 121.427(d)(2)(ii). They contend that aircraft used in current preflight inspections are mechanically normal and that supplementary instruction material currently in use emphasizes the normal rather than the abnormal.

While the FAA believes that training should generally emphasize normal conditions, we also believe that it is important for pilots and flight engineers to be exposed to, and be aware of, abnormal conditions with respect to preflight inspection items. The use of pictorial displays is valuable in this regard, and provides an effective alternative to making physical changes to an airplane and thus giving it an abnormal configuration.

Another comment recommended that consideration be given to amending Appendix E to Part 121 to require training only on those visual inspection items which are appropriate to the pilot's duties. In addition, it was recommended that Appendix A to Part 61 and Appendix F to Part 121 be amended to permit waiver authority in cases where the certificate holder's operating procedures

specifically assign visual inspection duties to another crewmember or other authorized personnel.

While the FAA believes that these recommendations merit further agency examination for possible future rule making, they are considered outside the scope of Notice 70-49 and thus are not adopted herein.

One commentator objected strongly to the entire concept of pictorial displays for use in conducting the preflight inspection, because due to the nature of the inspection, pictures cannot realistically portray all that is required in a preflight inspection. This commentator stated that the preflight inspection involves, among other things, checking of maintenance logs to determine if items in need of repair have been repaired, a functional test of certain equipment, an in-depth examination of items which have a relatively high probability of failure or damage, and an inspection of the overall appearance of the aircraft. The commentator contended that pictorial displays to check these aspects of the preflight inspection are ineffective because: no evaluation could be made of whether a flight crewmember could locate components or if he would inspect them on an actual preflight inspection; pictures may be too restrictive with regard to the field of items they project, which may lead the flight crewmember to be misled as to the relation of one component to its surrounding components; and use of pictures eliminates the use of feel or motion which may be helpful to the flight crewmember in making the inspection in a sequence best suited for him. Finally, the commentator argues that in taking this action the FAA is acting contrary to its declared philosophy in the area of increased use of simulation equipment, namely that the simulator is an effective training tool because it can realistically portray the operating environment of an airplane. The commentator contends that realism is impossible when pictorial displays are used in connection with the preflight inspection.

In response to this commentator, it should be noted that this amendment affects only the recurrent training and proficiency check situations. Thus, those flight crewmembers affected will have been previously instructed and checked with regard to actual (or simulated) preflight inspections, and will have been involved in day-to-day operations in the airplane. Therefore, they will be familiar with proper procedures for conducting the preflight inspection. We do not agree with the commentator's view that the nature of the preflight inspection is such that it is not suited to pictorial display, even with regard to evaluation of the flight crewmember's performance. Also, we believe that the portrayal of abnormal conditions is an important capability of the pictorial display, which cannot be duplicated as easily and effectively in an airplane or a simulator.

Interested persons have been given an opportunity to participate in the making of this amendment and due consideration

has been given to all relevant matter presented.

In consideration of the foregoing, Part 121 of the Federal Aviation Regulations is amended, effective November 4, 1971, as follows:

1. By adding a new sentence to paragraph (d) (2) (ii) of § 121.427 to read as follows:

§ 121.427 Recurrent training.

(d) \* \* \*  
(2) \* \* \*  
(ii) \* \* \* The preflight inspection may be conducted in an airplane, or by using an approved pictorial means that realistically portrays the location and detail of preflight inspection items and provides for the portrayal of abnormal conditions.

2. By amending the flush paragraph after section I(b)(2) of Appendix F to Part 121 to read as follows:

APPENDIX F

PROFICIENCY CHECK REQUIREMENTS

I. \* \* \*  
(b) \* \* \*  
(2) \* \* \*

Except for flight checks required by § 121.424 (d) (2), an approved pictorial means that realistically portrays the location and detail of preflight inspection items and provides for the portrayal of abnormal conditions may be substituted for the preflight inspection. If a flight engineer is a required flight crewmember for the particular type airplane, the visual inspection may be waived under § 121.441 (d).

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

Issued in Washington, D.C., on September 27, 1971.

J. H. SHAFFER,  
Administrator.

[FR Doc. 71-14540 Filed 10-4-71; 8:47 am]

## Title 17—COMMODITY AND SECURITIES EXCHANGES

### Chapter II—Securities and Exchange Commission

[Releases Nos. 33-5196, 34-9345]

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

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

#### Coordination of the Disclosure System

The Securities and Exchange Commission today reiterated the importance of complete and timely compliance with

periodic reporting requirements by publicly held companies subject to the provisions of section 13 or 15(d) of the Securities Exchange Act of 1934 as well as the requirements for reporting transactions by insiders in securities of companies registered under section 12 of the Act.

The failure by public companies to observe the periodic reporting requirement presents a serious obstacle to the maintenance of fair and informed trading markets in the securities of such companies. Moreover, the Commission has in recent months, through such steps as implementing most of the disclosure recommendations of the Disclosure Policy Study Report, attempted to improve 1934 Act disclosures to more nearly approximate that required under the Securities Act of 1933. One of the Commission's purposes was to provide through the 1934 Act reporting system a continuous updating of material information.

In this connection the Commission wishes to emphasize that the applicability of various rules and the availability of certain disclosure forms under the 1933 Act is predicated upon full compliance with the periodic reporting requirements. For example, the use of Form S-7 (17 CFR 239.26) or S-16 (17 CFR 239.27) for registration of certain public offerings of securities under the Securities Act of 1933 depends in part upon a company having filed timely reports pursuant to section 13 of the 1934 Act for at least 3 fiscal years. Companies seeking to register securities on these forms should determine first that all 1934 Act reporting requirements have been satisfied. Also, companies registered pursuant to section 12 of the 1934 Act should take steps to assure that all insider reports required by section 16(a) of the Act have been filed by those security holders required to make such filings. The Commission suggests that issuers set up internal procedures to assure that this has been done.

In order adequately to review registration statements filed under the Securities Act of 1933 by publicly held companies that are subject to the periodic reporting requirements of the Securities Exchange Act of 1934, the Commission's staff should have access to the information required to be reported periodically under the 1934 Act. Accordingly, the Commission's Division of Corporation Finance has adopted the practice whereby its staff will ordinarily defer processing registration statements and amendments filed under the Securities Act of 1933 by issuers whose reports are delinquent until such reports are brought up to date. Issuers filing 1933 Act statements with the Commission are requested to indicate in their transmittal letters whether all 1934 Act reports required to be filed have been filed and are complete. Any reports that are delinquent should be identified, and it should be stated when these reports will be filed.

The Commission believes that the Division's practice is in the interest of protection of investors and will enable its staff to reduce delays in processing

filings by issuers who have observed the full and fair disclosure provisions of the Federal securities laws while enabling it to deal more effectively with those who have not done so.

By the Commission, September 27, 1971.

[SEAL] RONALD F. HUNT,  
Secretary.

[FR Doc.71-14560 Filed 10-4-71;8:49 am]

[Releases Nos. 34-9344, 1C-6744]

**PART 249—FORMS PRESCRIBED UNDER THE SECURITIES EXCHANGE ACT OF 1934**

**PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940**

**Disclosure of Changes in Accounting Firms or in Accounting Practices**

The Securities and Exchange Commission today adopted amendments to Forms 8-K (17 CFR 249.308), 7-Q (17 CFR 249.307a), 10-Q (17 CFR 249.308a), 10-K (17 CFR 249.310), and N-1Q (17 CFR 274.106) described below.

Form 8-K is used for reporting of certain specified events pursuant to sections 13 and 15(d) of the Securities Exchange Act of 1934. Forms 7-Q and 10-Q are used for quarterly reporting of summarized financial information pursuant to sections 13 and 15(d) of the Exchange Act, and Form 10-K is used for annual reports pursuant to those sections of the Exchange Act. Form N-1Q is used by management investment companies registered under the Investment Company Act of 1940 for quarterly reporting of certain specified events pursuant to section 30(b) of that Act and section 13 or 15(d) of the Exchange Act.

Proposed amendments to Forms 8-K and N-1Q and certain alternative proposals were issued for public comment on May 6, 1971, in Securities Exchange Act Release No. 9169 (36 F.R. 9261). The letters of comment which were received have been given careful consideration in determining the definitive amendments.

The Commission has determined that the proposed amendment to Item 9 of Form N-1Q which would require the registrant to report on any material charge or credit to income of an unusual nature should not be adopted, since investment companies generally do not have a significant amount of fixed assets or transactions not otherwise required to be reported in Item 9. The comparable amendment proposed for Item 10 of Form 8-K has been adopted in that form with certain modifications in lieu of the alternative proposal that the information be furnished on a quarterly basis on Form 10-Q in order to provide more timely reporting of these transactions.

The proposed amendments to Forms 8-K and N-1Q to add a new item which would require the registrant to report a change in the independent accountant

and the reason therefor and to request the accountant to submit a letter discussing the change have been adopted as new Items 12 and 10, respectively. However, the item has been revised so that the report will indicate whether there were certain disagreements with the accountant and so that the accountant will comment on the registrant's report. The Commission considers that these revisions meet the majority of the objections received to the requirement for comments on the changes by the registrant and the accountant and to a requirement to make the comments public and that treating these comments as non-public information would not be in the public interest.

The Commission has determined that the proposed amendment of Form 8-K to provide a new item which would require the registrant to submit a report on a material change in accounting principles and practices accompanied by a letter from the independent accountant regarding such changes will be more appropriate as amendments to Forms 7-Q, 10-Q, and 10-K so that the required information will be filed in conjunction with the financial data to which it relates. This procedure was an alternative discussed in the release announcing the proposed amendments. The comparable amendment proposed for Form N-1Q has been adopted as a new Item 11.

Revisions have been made to clarify and modify the proposals in certain respects. Other minor amendments of the forms have been adopted.

The amendments to Forms 8-K, 7-Q, 10-Q, 10-K are adopted pursuant to sections 13, 15(d) and 23(a) of the Exchange Act. The amendments to Form N-1Q are adopted pursuant to those sections of the Exchange Act and sections 30, 38, and 45(a) of the Investment Company Act.

Copies of the release, containing the foregoing amendments to the various reporting forms, have been filed as part of this document with the Office of the Federal Register. Additional copies are available upon request at the Securities and Exchange Commission, Washington, D.C. 20549.

The foregoing amendments shall be effective with respect to reports filed on Form 8-K on or after October 31, 1971, with respect to quarterly reports filed on Forms 7-Q, 10-Q, and N-1Q for periods ending on or after December 31, 1971, and with respect to annual reports filed on Form 10-K for fiscal years ending on or after December 31, 1971.

(Sec. 13, 48 Stat. 894, sec. 4, 78 Stat. 569; sec. 15(d), 48 Stat. 895, sec. 3, 49 Stat. 1377, sec. 6, 78 Stat. 570; sec. 23(a), 48 Stat. 901, sec. 8, 49 Stat. 1379; sec. 31, 54 Stat. 838; sec. 39, 54 Stat. 842; sec. 45, 54 Stat. 846; sec. 1106(a), 63 Stat. 972; 15 U.S.C. 78n, 80(d), 78n(a), 80a-30, 80a-38, 80a-45)

By the Commission, September 27, 1971.

[SEAL] RONALD F. HUNT,  
Secretary.

[FR Doc.71-14561 Filed 10-4-71;8:49 am]

**Title 21—FOOD AND DRUGS**

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

**SUBCHAPTER B—FOOD AND FOOD PRODUCTS**

**PART 121—FOOD ADDITIVES**

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

**ADHESIVES**

The Commissioner of Food and Drugs, having evaluated the data in a petition (FAP OH2519) filed by The Dow Chemical Co., 2020 Abbott Road Center, Midland, Mich. 48640, and other relevant material, concludes that the food additive regulations should be amended to provide for the safe use of a chlorinated pyridine mixture with active ingredients consisting of 2,3,5,6 - tetrachloro - 4 - (methylsulfonyl) pyridine, 2,3,5,6-tetrachloro-4-(methylsulfinyl) pyridine and pentachloropyridine as a preservative for food-packaging adhesives. Therefore, pursuant to provisions of Federal Food, Drug, and Cosmetic Act (sec. 409(c)(1), 72 Stat. 1786; 21 U.S.C. 348(c)(1)) and under authority delegated to the Commissioner (21 CFR 2.120), § 121.2520 is amended in paragraph (c)(5) by alphabetically inserting a new item in the list of components of adhesives, as follows:

**§ 121.2520 Adhesives.**

- (c) \* \* \*
- (5) \* \* \*

**COMPONENTS OF ADHESIVES**

<i>Substances</i>	<i>Limitations</i>
* * *	* * *

Chlorinated pyridine mixture with active ingredients consisting of 2,3,5,6 - tetrachloro - 4 - (methylsulfonyl) pyridine, 2,3,5,6 - tetrachloro - 4 - (methylsulfinyl) pyridine and pentachloropyridine.	For use as preservative only.
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Any person who will be adversely affected by the foregoing order may at any time within 30 days after its date of publication in the FEDERAL REGISTER file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 6-88, 5600 Fishers Lane, Rockville, Md. 20852, written objections thereto in quintuplicate. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or

brief in support thereof. Received objections may be seen in the above office during working hours, Monday through Friday.

**Effective date.** This order shall become effective on its date of publication in the FEDERAL REGISTER (10-5-71).

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

Dated: September 28, 1971.

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

[FR Doc.71-14553 Filed 10-4-71;8:48 am]

## Title 29—LABOR

### Subtitle A—Office of the Secretary of Labor

#### PART 55—GRANTS UNDER THE EMERGENCY EMPLOYMENT ACT OF 1971

##### Special Employment Assistance Program

Subtitle A of Title 29, Code of Federal Regulations, is hereby amended by adding thereto a new subpart to Part 55, designated Subpart B, and by amendments to Subpart A to clarify the separate coverage of the two subparts. The new Subpart B sets forth the regulations of the Secretary of Labor for making grants under section 6 of the Emergency Employment Act of 1971 (Public Law 92-54).

The Emergency Employment Act of 1971 was designed to increase employment and was made effective by Congress on an emergency basis. The effective implementation of section 6 of the Act is not possible without regulations to enable the intended recipients of Federal financial assistance to know the requirements and how to proceed. Compliance with the notice and public procedure requirements of 5 U.S.C. 553 would involve a delay in making available the assistance provided by this Act; we find that under the circumstances such delay would be impracticable and contrary to the public interest. Accordingly the amendments and the new Subpart B shall be effective upon publication in the FEDERAL REGISTER (10-5-71).

It is the policy of this Department that rules relating to public property, loans, grants, benefits, or contracts shall be published for comment notwithstanding the provisions of 5 U.S.C. 553. See 29 CFR 2.7 published in the July 10, 1971 FEDERAL REGISTER, 36 F.R. 12976. In accordance with the spirit of the public policy set forth in the above mentioned section interested parties may submit written comments, suggestions, data, or arguments to the Assistant Secretary for Manpower, U.S. Department of Labor, Washington, D.C. 20210, within 45 days of the publication of the regulations contained in this part. Material thus submitted will be evaluated and acted upon in the same manner as if this document were a proposal. Until it is revised, how-

ever, it shall remain effective, thus permitting the public business to proceed expeditiously.

Part 55 is hereby amended as follows:  
1. A new § 55.0 is hereby added as follows:

##### § 55.0 Coverage.

The provisions of this Subpart A involve grants made pursuant to section 9(a)(1) of the Emergency Employment Act and apply only to grants made pursuant to Subpart A except to the extent specifically incorporated by reference in other subparts.

2. Section 55.1 is hereby amended as follows:

##### § 55.1 Definitions.

As used in this subpart and in grant instruments entered into pursuant to this subpart:

3. A new table of contents for Subpart B is hereby added as follows:

Subpart B—Grants Under Section 6 of the Emergency Employment Act	
55.30	Scope and purpose.
55.31	Definitions.
55.31a	Incorporation of sections from Subpart A.
55.32	Applications for grants.
55.33	Distribution of section 6 funds.
55.34	Employing agencies.
55.35	Selection of participants.
55.36	Action upon applications.
55.37	Adjustments in payments; terminations of grants.
55.38	Manpower and supportive services.

**AUTHORITY:** The provisions of this Subpart B issued under sec. 6 of the Emergency Employment Act of 1971, P.L. 92-54, 85 Stat. 148.

#### Subpart B—Grants Under Section 6 of the Emergency Employment Act

4. A new Subpart B is hereby added, as follows:

##### § 55.30 Scope and purpose.

This subpart contains the policies, rules, and regulations of the Department of Labor in implementing the Special Employment Assistance Program under section 6 of the Emergency Employment Act of 1971 (Public Law 92-54, 85 Stat. 148).

##### § 55.31 Definitions.

As used in this Subpart B and in grant instruments entered into pursuant to this subpart:

(a) "Area of substantial unemployment" means any area of sufficient size and scope to sustain a public service employment program and which has a rate of unemployment equal to or in excess of 6 per centum for 3 consecutive months as determined by the Secretary.

(b) "Eligible applicant" means any unit or combination of units of general local government or any public agency or institution which is a subdivision of any such unit, or an Indian tribe on a Federal or State reservation, which is or has within it an area of substantial unemployment. It does not include a State or any State or Federal agency or institution.

(c) "Employing agency" means any

eligible applicant which has been designated by a Program Agent or the Secretary to employ participants with funds granted pursuant to section 6 of the Act.

(d) "Program Agent" means a State government or an eligible applicant which has been designated by the Secretary for requesting, receiving and administering funds pursuant to section 6 of the Act.

(e) The definitions of "the Act", "compensation", "health care", "participant", "poverty level", "professional work", "public service", "Secretary", "special veteran", "subagent or subgrantee", "supportive services", "State", "unemployed person" and "underemployed person" set forth in § 55.1 are hereby incorporated in this subpart.

##### § 55.31a Incorporation of sections from Subpart A.

Sections 55.10, 55.15, 55.16, 55.17, 55.18, 55.19, and 55.20 of the regulations in Subpart A of this part are hereby made applicable to section 6 of the Act, except that § 55.16(c) shall not be construed to make administrative services performed by the State as Program Agent allowable as non-Federal share. Contributions by the State toward the program of an eligible applicant are allowable.

##### § 55.32 Applications for grants.

An application for a grant for section 6 funds may be submitted by a Program Agent acting through its chief elected officer or his designee, or, in the case of a combination of units, the officer designated by such combinations of units. The application shall contain all the information and assurances required by §§ 55.3 and 55.6: *Provided*, That the provisions of § 55.6(g)(2) requiring maximum placement efforts by the Program Agent in the event the national rate of unemployment falls below 4.5 percent are inapplicable.

##### § 55.33 Distribution of section 6 funds.

(a) The Secretary will grant funds to Program Agents whose entire jurisdiction has a rate of unemployment of 6 percent or more for distribution within the jurisdiction.

(1) If the jurisdiction has a rate of unemployment of 6 percent or more and has no identifiable subareas or sections, the Program Agent may allocate funds for the employment of participants residing anywhere in the jurisdiction.

(2) If there are identifiable subareas or sections with greater or lesser unemployment than the remainder of the area, the Program Agent shall allocate the money as provided in subparagraph (3) of this paragraph, omitting any such subarea or section with less than 6 percent unemployment.

(3) The Program Agent shall apportion funds for employment of participants who are residents of identifiable subareas or sections with 6 percent or more unemployment. Half of the money allocated to the Program Agent shall be divided in proportion to the number of unemployed in the subarea or section compared to the number of unemployed in all areas with 6 percent or more unemployment in the jurisdiction; the other

half shall be divided in proportion to the number of unemployed in excess of 6 percent in the subarea or section compared to the number of unemployed in excess of 6 percent within the jurisdiction.

(4) The Program Agent shall not apportion grant funds for the employment of participants who reside in identifiable subareas or sections which under subparagraph (3) of this paragraph would receive less than \$25,000 in grant funds.

(b) The Secretary will grant funds to Program Agents whose jurisdiction has a rate of unemployment below 6 percent for specified pockets of high unemployment.

(c) Program Agents shall allocate funds equitably among city and county governments in which areas of substantial unemployment are located, including public agencies which are independent of supervision by such governments, taking into consideration the total governmental employment of each such governmental unit, and such other factors as the Program Agent may deem significant in determining an equitable distribution of funds.

**§ 55.34 Employing agencies.**

(a) Only an eligible applicant may become an employing agency.

(b) Activities and services for which financial assistance is granted under section 6 of the Act must be administered by or under the supervision of a Program Agent.

(c) Program Agents may make subgrants to any eligible applicant as defined in § 55.31(b) for use in employing participants: *Provided, however,* The Program Agent remains responsible as provided in § 55.5 for assuring compliance by such employing agency with the Act, the regulations and the grant conditions. If the Program Agent is a State, any eligible applicant receiving directly through it shall also be responsible to the Secretary for compliance with the Act, the regulations and the grant conditions and for any funds improperly expended.

(d) Program Agents and employing agencies may use funds allotted to them for contracts to purchase administrative services with public or private organizations: *Provided,* That any such contract with a private organization may not be for employment of participants: *And provided further,* That any such contract in excess of \$10,000 shall be approved by the Secretary.

**§ 55.35 Selection of participants.**

(a) Paragraphs (a) through (e) inclusive of § 55.7 are applicable to grants made pursuant to section 6 of the Act.

(b) Participants shall be selected from among the residents of the area, subarea, or section of a city or county to which the funds have been allocated in accordance with § 55.33. Wherever possible, employment opportunities shall be selected at job sites within the geographical bound-

aries of the area to be assisted, and the public services resulting from the public employment created shall be provided to residents of such area. If jobs are established outside the area, they must be within commuting distance.

**§ 55.36 Action upon applications.**

(a) An application for a grant pursuant to section 6 of the Act will be approved if (1) the Program Agent or, when the Program Agent is the State, the eligible applicants receiving grant funds directly through it, have the legal capacity to operate the program proposed, (2) the application meets the requirements of the statute and of the regulations in this subpart, and (3) the Secretary finds in his discretion that the amount requested and the plan for its allocation within the area will best serve to reduce unemployment in areas of substantial unemployment.

(b) The Program Agent will be notified of action taken on an application; if approved the grant will be completed as provided in § 55.11(b). If the application is denied, a notice of denial will be sent to the Program Agent, accompanied by a brief statement of the reason for denial.

(c) In the event an acceptable application is not filed within the time prescribed by the Secretary or is denied, or a grant is terminated in whole or in part during a fiscal year, the Secretary may make provision for the funds released by such failure to file, denial or termination, to be used by one or more alternative eligible applicants in furtherance of the purposes of section 6 of the Act.

**§ 55.37 Adjustments in payments; termination of grants.**

(a) If any funds are expended by a Program Agent, or an eligible applicant receiving through the State as Program Agent, in violation of the Act, the regulations, or grant conditions, the Secretary may make necessary or appropriate adjustments in payments to the Program Agent or may terminate the grant. If the violation is by an eligible applicant receiving grant funds directly from the State acting as Program Agent, the Secretary may seek recourse against such eligible applicant.

(b) The methods, provisions and procedures for adjustments in payments or termination of grants which are set forth in §§ 55.25 and 55.26 shall apply with respect to grants made pursuant to section 6 of the Act.

**§ 55.38 Manpower and supportive services.**

Federal funds made available under section 6 of the Act may not be expended for manpower, supportive services or health care.

Signed at Washington, D.C., this 20th day of September 1971.

J. D. HODGSON,  
*Secretary of Labor.*

[FR Doc.71-14572 Filed 10-4-71;8:50 am]

**Title 41—PUBLIC CONTRACTS AND PROPERTY MANAGEMENT**

**Chapter I—Federal Procurement Regulations**

**PART 1-15—CONTRACT COST PRINCIPLES AND PROCEDURES**

**Applicability to Nonprofit Organizations**

The amendment of the Federal Procurement Regulations published at 35 F.R. 14133, September 5, 1970, prescribed the mandatory use of the cost principles and procedures set forth in Subpart 1-15.2 in contracts with non-profit (noneducational) organizations effective October 1, 1971. Subsequently it was found that mandatory applicability effective on October 1, 1971, is not feasible; therefore, the effective date for mandatory applicability is changed to October 1, 1972.

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c))

*Effective date.* This regulation is effective October 1, 1971.

Dated: September 30, 1971.

ROBERT L. KUNZIG,  
*Administrator of General Services.*

[FR Doc. 71-14577 Filed 10-4-71;8:51 am]

**Chapter 9—Atomic Energy Commission**

**PART 9-12—LABOR**

**Subpart 9-12.8—Equal Opportunity in Employment**

This revision implements the requirements of the FPR Temporary Regulation 19 and updates Subpart 9-12.8, "Equal Opportunity in Employment."

1. Subpart 9-12.8, "Equal Opportunity in Employment" is revised to read as follows:

**Subpart 9-12.8—Equal Opportunity in Employment**

Sec.	
9-12.800	Scope of subpart.
9-12.805	Administration.
9-12.805-1	Duties of agencies.
9-12.805-50	Requirements for bidders and proposers.
9-12.805-51	Preaward contract actions—nonexempt contracts.
9-12.810	Affirmative action compliance programs.
9-12.810-50	Definitions.

**AUTHORITY:** The provisions of this Subpart 9-12.8 issued under sec. 161 of the Atomic Energy Act of 1954, as amended, 63 Stat. 948, U.S.C. 2201; sec. 205 of the Federal Property and Administrative Services Act of 1949, as amended, 63 Stat. 390, 40 U.S.C. 486.

**Subpart 9-12.8—Equal Opportunity in Employment**

**§ 9-12.800 Scope of subpart.**

(a) This subpart implements FPR Subpart 1-12.8, Equal Opportunity in

Employment, as amended by FPR Temporary Regulation 19.

(b) The provisions of FPR Subpart 1-12.8, as amended by FPR Temporary Regulation 19, and this subpart apply to cost-type contractor procurement.

#### § 9-12.805 Administration.

##### § 9-12.805-1 Duties of agencies.

(a) The Assistant to the General Manager is the AEC Contract Compliance Officer. The Contract Compliance Officer has designated certain Deputy Contract Compliance Officers who have responsibilities, under the Contract Compliance Officer, and within designated geographic areas, for privately owned facilities of Federal contractors assigned to AEC and for privately financed construction projects subject to the Equal Opportunity clause.

(b) Heads of Divisions and Offices, Headquarters, having contract authority, and Managers of Field Offices are Deputy Contract Compliance Officers for all existing and prospective AEC contractors, including construction contractors, performing work at Government-owned facilities and sites.

##### § 9-12.805-50 Requirements for bidders and proposers.

FPR 1-12.805-4(b) (1) as amended by FPR Temporary Regulation 19, sets forth the representations required of bidders and proposers. In invitation for bids and requests for proposals for construction contracts, the reference to Part 60-2 of this title shall be deleted from these representations.

##### § 9-12.805-51 Preaward contract actions—nonexempt contracts.

(a) *Nonconstruction contracts of \$1 million or more.* Before the award of a nonconstruction contract of \$1 million or more, the Contracting Officer shall determine by means of a preaward compliance review, under procedures and requirements set forth in FPR 1-12.805-5(d), as amended by FPR Temporary Regulation 19, that the prospective contractor and each of his known first-tier subcontractors who will be awarded subcontracts of \$1 million or more, are in compliance with the Equal Opportunity clause pursuant to Parts 60-1 and 60-2 of the rules and regulations of the Secretary of Labor in this title. In the event that the prospective contractor has not held a previous contract containing the Equal Opportunity clause, the Contracting Officer shall determine, prior to and as a condition of award, that the prospective contractor appears to be able to conform to the Equal Opportunity clause. In the event that the prospective contractor has not held a previous contract to which Part 60-2 of this title applied, his compliance status will be determined without regard to that part.

(b) *Construction contracts—(1) Construction contracts subject to OFCC orders applicable in particular areas.* Where the Director, OFCC, has designated specific affirmative action require-

ments for construction contracts over a stated dollar amount in a particular area, the invitation for bid or request for proposal for such construction contracts in the area shall include such affirmative action requirements.

(2) *Other nonexempt construction contracts.* (i) Prior to the award of construction contracts covered in this paragraph, the Contracting Officer shall determine, in accordance with FPR 1-1.310-5(5), that the prospective contractor appears to be able to conform to the requirements of the Equal Opportunity clause.

(ii) Contracting Officers are authorized, at their discretion, to incorporate in invitation for bids or request for proposals for construction contracts the following provisions:

(a) A provision that the bidder or proposer agrees that he will make good faith efforts to adhere to the affirmative action plan set forth in the invitation for bid or request for proposal.

(b) A provision that the apparent successful bidder, prior to award of the contract, will furnish to the Contracting Officer estimates of the approximate numbers and crafts of minority group persons expected to be employed in carrying out the contract and that he will make good faith efforts to employ minority persons consistent with those estimates. It should be noted that paragraphs (a) and (b) of this section may be used separately or may be used in combination.

(3) *Failure to submit an unqualified bid or proposal.* Qualification in any major respect of the provisions of the affirmative action requirements included in an invitation for bid or request for proposal for a construction contract in accordance with subparagraphs (1) or (2) (ii) of this paragraph, or inability of the Contracting Officer to make the determination in subparagraph (2) (4) of this paragraph, shall constitute grounds for determination that the bidder or proposer does not qualify as a responsible bidder and for rejection of his bid or proposal. In the case of procurement actions by AEC prime cost-type contractors, this determination shall be made only with the approval of the Contracting Officer.

(c) *Cost-type contractor procurements.* The requirements of paragraph (a) and (b) of § 9-12.805-51 shall be applied to procurement actions of cost-type contractors whose contracts involve the operation, maintenance, servicing, management, or construction of AEC facilities.

##### § 9-12.810 Affirmative action compliance programs.

##### § 9-12.810-50 Definitions.

As used in FPR 1-12.810—

(a) The term "employee" means any individual on the payroll of an employer who is an employee for purposes of the employer's withholding of Social Security taxes, except that such term shall

not include persons who are hired on a casual or temporary basis for a specified period of time or for the duration of a specified job; and

(b) The term "establishment" means an economic unit which produces goods or services such as a factory, office, store, or mine and, in most instances, the establishment is at a single physical location and is engaged in one, or predominantly one, type of economic activity.

*Effective date.* These amendments are effective upon publication in the FEDERAL REGISTER (10-5-71).

Dated at Germantown, Md., this 28th day of September 1971.

For the U.S. Atomic Energy Commission.

JOSEPH L. SMITH,  
Director, Division of Contracts.

[FR Doc.71-14551 Filed 10-4-71;8:48 am]

## Chapter 101—Federal Property Management Regulations

### SUBCHAPTER D—PUBLIC BUILDINGS AND SPACE

#### PART 101-19—MANAGEMENT OF BUILDINGS AND GROUNDS

##### Subpart 101-19.3—Conduct on Federal Property

###### ENFORCEMENT OF LAW GOVERNING CONDUCT ON FEDERAL PROPERTY

The Treasury, Postal Service, and General Government Appropriation Act, 1972, Public Law 92-49 (85 Stat. 108), provides that GSA guards shall have the powers of special policemen as provided in the Act of June 1, 1948 (62 Stat. 281; 40 U.S.C. 318), in all buildings and areas under the charge and control of GSA. Pursuant to the authority contained in both the above-mentioned Acts, GSA has determined that building rules and regulations are applicable to all GSA-controlled property, leased and Government-owned, and that the penalties shall be applicable to all GSA Government-owned property, regardless of the jurisdictional status of such GSA Government-owned property. The former limitations applied to all Federal property under the charge and control of GSA. The penalties, however, were limited to property over which the Government has exclusive or concurrent jurisdiction.

1. Section 101-19.300 is revised to read as follows:

##### § 101-19.300 Applicability.

These rules and regulations apply to all property under the charge and control of the General Services Administration and to all persons entering in or on such property. Each occupant agency shall be responsible for the observance of these rules and regulations.

2. Section 101-19.313 is revised to read as follows:

##### § 101-19.313 Penalties and other law.

Whoever shall be found guilty of violating the rules and regulations in this

Subpart 101-19.3 while on Government-owned property is subject to fine of not more than \$50 or imprisonment of not more than 30 days, or both. (See 40 U.S.C. 318c.) Nothing contained in these rules and regulations shall be construed to abrogate any other Federal laws or regulations or any State and local laws and regulations applicable to any area in which the property is situated.

(63 Stat. 377; 85 Stat. 108 et seq.; 40 U.S.C. 318 et seq.)

**Effective date.** This regulation is effective upon publication in the FEDERAL REGISTER (10-5-71).

Dated: September 28, 1971.

ROBERT L. KUNZIG,  
Administrator of General Services.

[FR Doc.71-14579 Filed 10-4-71;8:51 am]

SUBCHAPTER H—UTILIZATION AND DISPOSAL  
PART 101-42—PROPERTY REHABILITATION SERVICES AND FACILITIES

Subpart 101-42.3—Reclamation of Precious Metals and Critical Materials

RECOVERY OF SILVER FROM USED PHOTOGRAPHIC FIXING SOLUTION AND SCRAP FILM

This regulation extends the period for submission of semiannual reports to GSA on silver recovery activities from 30 days to within 45 days following the end of the reporting period. It allows Federal agencies additional time to meet the reporting requirements of § 101-42.302-2.

Section 101-42.302-2 is revised as follows:

§ 101-42.302-2 Reporting to GSA.

Executive agencies generating used photographic fixing solution and scrap film shall report to the General Services Administration (DP), Washington, D.C. 20405, on a semiannual basis, the number of activities recovering silver from hypo solution, the amount of silver recovered in terms of troy ounces, the method of recovery, the amount of silver recovered from scrap film, the method of recovery or disposal of scrap film, and the agency's estimate of savings for the period. Section 101-42.4902 illustrates a suggested format for the report. Reports shall cover the first 6 months and the last 6 months of each calendar year, and shall be submitted within 45 days following the end of the reporting period.

(Sec. 206(c), 63 Stat. 390; 40 U.S.C. 486(c)).

**Effective date.** This regulation is effective upon publication in the FEDERAL REGISTER (10-5-71).

Dated: September 28, 1971.

ROBERT L. KUNZIG,  
Administrator of General Services.

[FR Doc.71-14578 Filed 10-4-71;8:51 am]

## Title 46—SHIPPING

### Chapter II—Maritime Administration, Department of Commerce

#### SUBCHAPTER J—MISCELLANEOUS

[General Order 108, Amdt. 1]

### PART 381—CARGO PREFERENCE—U.S.-FLAG VESSELS

#### Fair and Reasonable Participation

In F.R. Doc. 71-7707 appearing in the FEDERAL REGISTER, issue of June 2, 1971 (36 F.R. 10739), Part 381 was amended by adding (a) a new paragraph "(e)" to § 381.2 Definitions, and (b) a new § 381.4 Fair and reasonable participation.

Said paragraph "(e)" is hereby editorially changed to paragraph "(d)".

Dated: October 1, 1971.

AARON SILVERMAN,  
Assistant Secretary.

[FR Doc.71-14663 Filed 10-4-71;8:52 am]

## Title 47—TELECOMMUNICATION

### Chapter I—Federal Communications Commission

[Docket No. 18740; FCC 71-977]

### PART 89—PUBLIC SAFETY RADIO SERVICES

### PART 91—INDUSTRIAL RADIO SERVICES

### PART 93—LAND TRANSPORTATION RADIO SERVICES

### PART 95—CITIZENS RADIO SERVICE

#### Operation of Certain Stations in Mobile Relay Systems

**Report and order.** In the matter of amendments of Parts 89, 91, 93, and 95 of the Commission's rules concerning the operation of certain fixed stations in the band 450-470 MHz which control mobile relay stations; Docket No. 18740, RM-1375.

1. On November 24, 1969, the Commission issued a notice of proposed rule making in the above-entitled matter. The notice was published in the FEDERAL REGISTER on November 29, 1969 (34 F.R. 19034), and it asked for comments and replies by December 29, 1969, and January 8, 1970, respectively. Comments were filed by the Central Committee on Communication Facilities of the American Petroleum Institute (API); Land Mobile Communications Section of the Industrial Electronics Division of the Electronic Industries Association (EIA); National Association of Business and Educational Radio, Inc. (NABER); National Association of Manufacturers (NAM); Northern California Chapter of the Associated Public-Safety Communication Officers, Inc. (NCAPCO); Special Industrial Radio Service Association,

Inc. (SIRSA); and the Utilities Telecommunications Council (UTC). No reply comments were submitted.

2. In our notice, we proposed four basic changes in our rules governing the authorization and operation of control stations in mobile relay systems using frequencies in the 450-470 MHz band. The first of these looked toward amendment of the rules to allow, in certain situations, the use of bidirectional, cardioid, or omnidirectional antennas. The second would permit certain required signal measurements to be made at "one" location, in those cases in which a fixed station was used to control more than one mobile relay station, thus relaxing procedures, which, under current rules, require such measurements to be made at the site of "all" mobile relay stations, even though commonly controlled. In this connection, we also proposed to modify the present requirements for filing an "engineering statement attesting to compliance with \* \* \* (the) signal level limitation." Instead, under amended procedures, it will only be necessary for the applicant to "certify" that the "output power of the proposed station transmitter will be adjusted to comply with the \* \* \* signal level limitation," and for the licensee to maintain records of the necessary measurement data. The third amendment would have eliminated the requirement for coordination for control stations operating on the same frequencies as associated mobile units in systems employing frequencies in the 450-470 MHz band; and, in the remaining change, we proposed to amend the rules to specify that "control stations may operate with a frequency tolerance of  $\pm 0.0005$  percent, in lieu of  $\pm 0.00025$  percent, retaining, however, the tighter frequency tolerance ( $\pm 0.00025$  percent) for all other fixed stations operating in the band.

3. Without exception, the parties supported the proposal to permit control stations, in the class mentioned, to operate with a frequency tolerance of  $\pm 0.0005$  percent. In view of this, and also for the reasons previously given in our notice, this new standard will be adopted. In contrast to the strong support for the foregoing rule changes, there was equally strong opposition to our proposal to eliminate the requirement for coordination for control stations. The parties argued that "preassignment" knowledge of the planned location of control stations would be of great assistance to coordinators in assessing "interference potentials" between mobile and control stations (and also between control stations in separate systems) transmitting on the same or adjacent channels in this band; and that it was important for them to have as much technical data as possible on mobile relay systems operating in the 450-470 MHz range—particularly those to be established in the densely populated areas where facilities of this kind are in heavy demand—since this information would enable the coordinators to make sound recommendations as to the most efficient channel available in these areas. Further, they contend, in light of our proposal to relax our

regulations governing the use of directional antennas, there is more reason than ever to require coordination; and overall, they conclude, the requirement makes possible the use of more effective and efficient assignment techniques. For these reasons, then, these parties ask that the proposal not be adopted.

4. In this instance, our objective was to eliminate a requirement which we felt was unnecessary, and, in this way, to lessen the burden on applicants for control station facilities in this class. It appears, however, that while this might be the result in some cases, there are other considerations, those advanced by the representatives of major user groups outlined above, as to why the proposed amendments should not be adopted; and, upon review of their presentations, we are persuaded that, at least for the present, the coordination requirement should be retained, and we do so.

5. A number of parties supported the remaining two proposals. Most were in favor of the plan to relax the requirements for use of directional antennas and of the amendments which would permit verification of technical operating criteria at one location, that is, in those systems in which a fixed station is used to control more than one base (mobile relay) station. However, EIA, NAM, and NABER, and NCAPCO, the latter insofar as licensees in the Public Safety Services are concerned, felt that the antenna and signal level limitations on control stations should be deleted, altogether. They argue, variously, that the standards are impractical—impossible to meet; and that, in some systems, signal levels vary seasonally and also deviate, from one time to another, due to the effect of natural and man-made obstructions. Further, NABER states, directional systems prevent effective monitoring, as the control station antenna, used for both transmitting and receiving, is oriented only toward the associated mobile relay station. Consequently, reception of signals of other control and mobile stations, not in that path, is not always possible. This leads to the use of systems at times when others are in operation, and this, in turn, causes interference and inefficiency. Finally, it is said (NAM and others) that there is no need, at all, for these provisions, because it is sufficient to require only that control stations, operating on mobile frequencies, not cause harmful interference to stations in the mobile service.

6. As we mentioned in our notice, the requirements relative to control station operation developed out of the proceeding in Docket No. 13847, and many of the arguments advanced by the parties, now, were considered, then. Our intent in this proceeding was not to reconsider the basic decisions arrived at in that prior rule making; rather, it was, and is, limited to relaxing, to the degree indicated in the notice, the antenna and signal strength limitations previously imposed on fixed stations using mobile channels in the 450-470 MHz band. In these circumstances, therefore, we find it inappropriate to review all of the underlying

factors which went into the formulation of the directional antenna and power limitation criteria. Consequently, we do not accede to the suggestion that all of the referenced requirements be dropped. Furthermore, there is nothing in the record in this proceeding to cause us to take such a course of action. Thus, while NABER's point as to monitoring is technically correct, the ready solution, there, is to install separate antennas for receiving and transmitting functions. If this were done, off-path control and mobile station signals could be received and monitoring duties properly performed. In summary on these matters, then, we decide, here, to adopt the amendments proposed, modifying the requirements for operation of control stations in the 450-470 MHz band. None of the parties object to the relaxation of these technical standards, and, as we have just said, we are not persuaded to eliminate them entirely, at least at the present time.

7. Authority for the rule amendments adopted herein is contained in section 4(i) and 303(r) of the Communications Act of 1934, as amended. Accordingly, it is ordered, That effective November 8, 1971, Parts 89, 91, 93, and 95 of the Commission's rules are amended as set forth below.

8. It is further ordered, That this proceeding is terminated.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Adopted: September 24, 1971.

Released: September 29, 1971.

FEDERAL COMMUNICATIONS  
COMMISSION,<sup>1</sup>

[SEAL] BEN F. WAPLE,  
Secretary.

I. Part 89 of the Commission's rules is amended as follows:

In § 89.103(a), new footnote 4 is added to the table of frequency tolerances, for the frequency range 450-470 MHz, to read as follows:

§ 89.103 Frequency stability.

(a) \* \* \*

Frequency range	All fixed and base stations	All mobile stations	
		Over 3 watts	3 watts or less
MHz	Percent	Percent	Percent
450 to 470.....	1 ± 0.00025	0.0005	± 0.0005
...	...	...	...

<sup>4</sup> Operational fixed stations controlling mobile relay stations, through use of the associated mobile frequency may operate with a frequency tolerance of 0.0005 percent.

II. Part 91 of the Commission's rules is amended as follows:

In § 91.102(a), new footnote 5 is added to the table of frequency tolerances, for

<sup>1</sup> Commissioners H. Rex Lee, Wells, and Houser absent.

the frequency range 450-470 MHz, to read as follows:

§ 91.102 Frequency stability.

(a) \* \* \*

Frequency range	Transmitter (input) power			
	Fixed and base stations		Mobile stations	
	Over 300 watts	300 watts or less	Over 3 watts	3 watts or less
MHz	Percent	Percent	Percent	Percent
450 to 470....	1 ± 0.00025	1 ± 0.0005	0.0005	± 0.0005
...	...	...	...	...

<sup>5</sup> Operational fixed stations controlling mobile relay stations, through use of the associated mobile frequency may operate with a frequency tolerance of 0.0005 percent.

III. Part 93 of the Commission's rules is amended as follows:

In § 93.102(a), new footnote 4 is added to the table of frequency tolerances, for the frequency range 450-470 MHz, to read as follows:

§ 93.102 Frequency stability.

(a) \* \* \*

Frequency range	All fixed and base stations	All mobile stations	
		Over 3 watts	3 watts or less
MHz	Percent	Percent	Percent
450 to 470.....	1 ± 0.00025	0.0005	± 0.0005
...	...	...	...

<sup>4</sup> Operational fixed stations controlling mobile relay stations, through use of the associated mobile frequency, may operate with a frequency tolerance of 0.0005 percent.

IV. Parts 89, 91, and 93 of the Commission's rules are amended as follows:

Sections 89.259(g)(4), 89.309(h)(4), 89.359(g)(4), 89.409(f)(1), 89.459(e)(1), 91.254(b)(30), 91.304(b)(33), 91.354(b)(33), 91.454(b)(12), 91.504(b)(29), 91.554(b)(9), 91.730(b)(18), 91.754(b)(14), and 93.352(d), are identically amended as set forth in § 89.259(g)(4), below:

§ 89.259 Frequencies available to the Local Government Radio Services.

(g) \* \* \*

(4) This frequency may be assigned to a control station associated with a mobile relay system if it is also assigned to the associated mobile station. Control stations operating on this frequency shall comply with the following requirements if they are located within 75 miles of the center of urbanized areas of 200,000 or more population.

(i) If the station is used to control one or more mobile relay stations located within 45 degrees of azimuth, a directional antenna having a front-to-back ratio of at least 15 db shall be used at the control station. For other situations where a directional antenna cannot be used, a cardioid, bidirectional or omnidirectional antenna may be employed. In



each case, the antenna used must, consistent with reasonable design, produce a radiation pattern that provides only the coverage necessary to permit satisfactory control of each mobile relay station and limit radiation in other directions to the extent feasible.

(ii) The strength of the signal of a control station, controlling a single mobile relay station, may not exceed by more than 6 db, at the antenna terminal of the mobile relay receiver, the signal strength produced there by a unit of the associated mobile station. When the station controls more than one mobile relay station, the 6 db control-to-mobile signal difference need be verified at only one of the mobile relay station sites. The measurement of the signal strength of the mobile unit must be made when such unit is transmitting from the control station location or, if that is not practical, from a location within one-fourth mile of the control station site.

(iii) Each application for a control station to be authorized under the provisions of this paragraph shall be accompanied by a statement certifying that the output power of the proposed station transmitter will be adjusted to comply with the foregoing signal level limitation. Records of the measurements used to determine the signal ratio shall be kept with the station records and shall be made available for inspection by Commission personnel upon request.

(iv) Control stations authorized prior to June 1, 1968, must conform to the requirements of this paragraph by no later than November 1, 1971.

(v) Urbanized areas of 200,000 or more population are defined in the U.S. Census of Population, 1960, Vol. 1, table 23, page 50. The centers of urbanized areas are determined from the Appendix, page 226 of the U.S. Commerce publication "Air Line Distance Between Cities in the United States."

V. Part 95 of the Commission's rules is amended as follows:

1. In § 95.41, paragraph (a) (1) preceding the table of frequencies is amended to read as follows:

§ 95.41 Frequencies available.

(a) \* \* \*  
(1) The following frequencies or frequency pairs are available primarily for assignment to base and mobile stations. They may also be assigned to fixed stations as follows:

(i) Fixed stations which are used to control base stations of a system may be assigned the frequency assigned to the mobile units associated with the base station. Such fixed stations shall comply with the following requirements if they are located within 75 miles of the center of urbanized areas of 200,000 or more population.

(a) If the station is used to control one or more base stations located within 45 degrees of azimuth, a directional antenna having a front-to-back ratio of at least 15 db shall be used at the fixed station. For other situations where such a directional antenna cannot be used, a cardi-

oid, bidirectional or omnidirectional antenna may be employed. Consistent with reasonable design, the antenna used must, in each case, produce a radiation pattern that provides only the coverage necessary to permit satisfactory control of each base station and limit radiation in other directions to the extent feasible.

(b) The strength of the signal of a fixed station controlling a single base station may not exceed the signal strength produced at the antenna terminal of the base receiver by a unit of the associated mobile station, by more than 6 db. When the station controls more than one base station, the 6 db control-to-mobile signal difference need be verified at only one of the base station sites. The measurement of the signal strength of the mobile unit must be made when such unit is transmitting from the control station location or, if that is not practical, from a location within one-fourth mile of the control station site.

(c) Each application for a control station to be authorized under the provisions of this paragraph shall be accompanied by a statement certifying that the output power of the proposed station transmitter will be adjusted to comply with the foregoing signal level limitation. Records of the measurements used to determine the signal ratio shall be kept with the station records and shall be made available for inspection by Commission personnel upon request.

(d) Urbanized areas of 200,000 or more population are defined in the U.S. Census of Population, 1960, Vol. 1, table 23, page 50. The centers of urbanized areas are determined from the Appendix, page 226 of the U.S. Commerce publication

"Air Line Distance Between Cities in the United States."

(ii) Fixed stations, other than those used to control base stations, which are located 75 or more miles from the center of an urbanized area of 200,000 or more population. The centers of urbanized areas of 200,000 or more population are listed on page 226 of the Appendix to the U.S. Department of Commerce publication "Air Line Distance Between Cities in the United States." When the fixed station is located 100 miles or less from the center of such an urbanized area, the power output may not exceed 15 watts. All fixed systems are limited to a maximum of two frequencies and must employ directional antennas with a front-to-back ratio of at least 15 db. For two-frequency systems, separation between transmit-receive frequencies is 5 MHz.

2. In § 95.45, new footnote 3 is added to the table of frequency tolerances, for Class A fixed and base stations, to read as follows:

§ 95.45 Frequency tolerance.

Class of station	Maximum authorized power input	Frequency tolerance	
		Fixed and base	Mobile
A.....	3 watts or less.....	± 0.0025	± 0.0005
A.....	Over 3 watts.....	± 0.0025	± 0.0005
***	***	***	***

<sup>1</sup> Fixed stations used to control base stations, through use of a mobile-only frequency, may operate with a frequency tolerance of 0.0005 percent.

[FR Doc.71-14497 Filed 10-4-71;8:45 am]

Title 49—TRANSPORTATION

Subtitle A—Office of the Secretary of Transportation

[OST Docket No. 29; Amdt. 25-1]

PART 25—RELOCATION ASSISTANCE AND LAND ACQUISITION UNDER FEDERAL AND FEDERALLY-ASSISTED PROGRAMS

Moving Expense Schedule

Correction

In F.R. Doc. 71-14218 appearing at page 19162 in the issue of Thursday, September 30, 1971, the following changes should be made in Table II:

1. The Allowance (Dollars) figures for South Carolina are subject to the provisions of footnote 2.
2. The entries for the States of Arizona and Michigan should appear as follows:

TABLE II—MOBILE HOMES

State	Miles		Area (square feet)		Width (feet)		Allowance (Dollars)
	More than	But not more than	More than	But not more than	More than	But not more than	
Arizona.....			0	300			130
			300	400			180
			400	500			210
			500	600			240
			600	700			270
Michigan.....			700				300
					0	8	125
					8	10	300
					10	12	250
					12		300

**Chapter I—Hazardous Materials Regulations Board, Department of Transportation**

[Docket No. HM-28; Amdts. 173-41A, 177-15A]

**PART 173—SHIPPERS**

**PART 177—SHIPMENTS MADE BY WAY OF COMMON, CONTRACT, OR PRIVATE CARRIER BY PUBLIC HIGHWAY**

**Removal of Label Exemption**

On May 19, 1971, the Hazardous Materials Regulations Board published Docket No. HM-28, Amendments Nos. 173-41A and 177.15A (36 F.R. 9068), concerning the removal of certain exemptions from labeling requirements for packages containing specified classes of hazardous materials. The effective date for alternate use of marking for compressed gas cylinders was stated as October 1, 1971.

On the basis of a petition filed by the Compressed Gas Association, the Board understands that makers of the decals have not been able to deliver sufficient numbers of decals to shippers to effect compliance with the marking requirements.

In consideration of this matter, the effective date for these amendments as they apply to the marking of cylinders containing compressed gases classed as "flammable" or "nonflammable," when transported by contract and private motor carriers, is extended to December 31, 1971.

(Secs. 831-835, title 18, U.S.C.; sec. 9, Department of Transportation Act, 49 U.S.C. 1657)

Issued in Washington, D.C., on September 30, 1971.

ROBERT A. KAYE,  
Director, Bureau of Motor Carrier Safety, Federal Highway Administration.

[FR Doc.71-14597 Filed 10-4-71; 8:52 am]

**Chapter X—Interstate Commerce Commission**

**SUBCHAPTER A—GENERAL RULES AND REGULATIONS**

[S.O. 1030, Amdt. 9]

**PART 1033—CAR SERVICE**

**Chicago, Rock Island, and Pacific Railroad Co. Authorized To Operate Over Tracks of the Atchison, Topeka, and Santa Fe Railway Co.**

At a session of the Interstate Commerce Commission, Railroad Service Board, held in Washington, D. C., on the 29th day of September 1971.

Upon further consideration of Service Order No. 1030 (34 F.R. 11211,

15250; 35 F.R. 5334, 10661, 15294; 36 F.R. 5798, 11999), and good cause appearing therefor:

It is ordered, That: § 1033.1030 Service Order No. 1030 (Chicago, Rock Island, and Pacific Railroad Co. authorized to operate over tracks of the Atchison, Topeka, and Santa Fe Railway Co.) be, and it is hereby, amended by substituting the following paragraph (e) for paragraph (e) thereof:

(e) *Expiration date.* This order shall expire at 11:59 p.m., December 31, 1971, unless otherwise modified, changed, or suspended by order of this Commission.

*Effective date.* This amendment shall become effective at 11:59 p.m., September 30, 1971.

(Secs. 1, 12, 15, and 17(2), 24 Stat. 379, 383, 384, as amended; 49 U.S.C. 1, 12, 15, and 17(2). Interprets or applies Secs. 1(10-17), 15(4), and 17(2), 40 Stat. 101, as amended, 54 Stat. 911; 49 U.S.C. 1(10-17), 15(4), and 17(2))

It is further ordered, That a copy of this order and direction shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association; and that notice of this order be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing it with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board.

[SEAL] ROBERT L. OSWALD,  
Secretary.

[FR Doc.71-14591 Filed 10-4-71; 8:51 am]

**Title 50—WILDLIFE AND FISHERIES**

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

**PART 32—HUNTING**

**Bitter Lake National Wildlife Refuge, N. Mex.**

The following special regulation is issued and is effective on date of publication in the FEDERAL REGISTER (10-5-71).

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

NEW MEXICO

BITTER LAKE NATIONAL WILDLIFE REFUGE

The public hunting of ring-necked and white-winged pheasants, quail, and rabbits on the Bitter Lake National Wildlife Refuge, N. Mex., is permitted as follows: Pheasants, from November 27, 1971, through November 28, 1971, inclusive;

quail from October 30, 1971 through January 2, 1972, inclusive; rabbits from October 23, 1971 through January 16, 1972, inclusive, only in the areas open to waterfowl hunting. These areas, comprising 3,320 acres, are delineated on maps available at refuge headquarters, 13 miles northeast of Roswell, N. Mex., and from the Regional Director, Bureau of Sport Fisheries and Wildlife, Post Office Box 1306, Albuquerque, NM 87103.

Hunting shall be in accordance with all applicable State regulations governing the hunting of pheasants, quail, and rabbits.

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 January 16, 1972.

LAWRENCE G. KLINE,  
Refuge Manager, Bitter Lake National Wildlife Refuge, Roswell, N. Mex.

SEPTEMBER 24, 1971.

[FR Doc.71-14527 Filed 10-4-71; 8:46 am]

**PART 32—HUNTING**

**Bitter Lake National Wildlife Refuge, N. Mex.**

The following special regulation is issued and is effective on date of publication in the FEDERAL REGISTER (10-5-71).

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

NEW MEXICO

BITTER LAKE NATIONAL WILDLIFE REFUGE

The public hunting of deer on the Bitter Lake National Wildlife Refuge is permitted only on the North Tract and as follows: Bow hunting from October 16, 1971 through October 31, 1971, inclusive; general hunting from November 20, 1971, through December 5, 1971, inclusive. The hunting area comprising about 12,000 acres, is delineated on maps available at refuge headquarters, 13 miles northeast of Roswell, N. Mex., and from the Regional Director, Bureau of Sport Fisheries and Wildlife, Post Office Box 1306, Albuquerque, NM 87103.

Hunting shall be in accordance with all applicable State regulations governing the hunting of deer.

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 5, 1971.

LAWRENCE G. KLINE,  
Refuge Manager, Bitter Lake National Wildlife Refuge, Roswell, N. Mex.

SEPTEMBER 24, 1971.

[FR Doc.71-14526 Filed 10-4-71; 8:46 am]

# Proposed Rule Making

## DEPARTMENT OF THE TREASURY

Internal Revenue Service

[ 26 CFR Parts 1, 301 ]

### IMPOSITION OF TAX ON NONRESIDENT ALIEN INDIVIDUALS, RETURN REQUIREMENTS, AND DECLARATIONS OF ESTIMATED INCOME TAX

#### Notice of Proposed Rule Making

Notice is hereby given that the regulations set forth in tentative form below are proposed to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury or his delegate. Prior to the final adoption of such regulations, consideration will be given to any comments or suggestions pertaining thereto which are submitted in writing, preferably in quintuplicate, to the Commissioner of Internal Revenue, Attention: CC:LR:T, Washington, D.C. 20224, by November 4, 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 November 4, 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).

[SEAL] JOHNNIE M. WALTERS,  
Commissioner of Internal Revenue.

In order to conform the Income Tax Regulations (26 CFR Part 1), and the Procedure and Administration Regulations (26 CFR Part 301), to the amendments of the Internal Revenue Code of 1954 made by subsections (a), (b), (f), (g), (j), (l), and (m) of section 103 of the Foreign Investors Tax Act of 1966 (80 Stat. 1547, 1550, 1551, 1552, 1554), such regulations are hereby amended as follows:

#### INCOME TAX REGULATIONS

##### [26 CFR Part 1]

PARAGRAPH 1. Section 1.1 is amended by redesignating subsection (d) of section 1 (as amended by section 111 of the Revenue Act of 1964) as subsection (e), by adding a new subsection (d) to such section 1, and by revising the first historical note, as follows:

#### § 1.1 Statutory provisions; tax imposed.

##### SECTION 1. Tax imposed. \* \* \*

(d) *Nonresident aliens.* In the case of a nonresident alien individual, the tax imposed by subsection (a) shall apply only as provided by section 871 or 877.

(e) *Cross reference.* For definition of taxable income, see section 63.

[Sec. 1 as amended by sec. 111, Rev. Act 1964 (78 Stat. 19); sec. 103(a)(2), Foreign Investors Tax Act 1966 (80 Stat. 1550)]

PAR. 2. Section 1.1-1 is amended by revising paragraphs (a)(1), (b), and (c) to read as follows:

#### § 1.1-1 Income tax on individuals.

(a) *General rule.* (1) Section 1 of the Code imposes an income tax on the income of every individual who is a citizen or resident of the United States and, to the extent provided by section 871(b) or 877(b), on the income of a nonresident alien individual. For optional tax in the case of taxpayers with adjusted gross income of less than \$10,000 (less than \$5,000 for taxable years beginning before January 1, 1970) see section 3. The tax imposed is upon taxable income (determined by subtracting the allowable deductions from gross income). The tax is determined in accordance with the table contained in section 1. See subparagraph (2) of this paragraph for reference guides to the appropriate table for taxable years beginning on or after January 1, 1964, and before January 1, 1965, taxable years beginning after December 31, 1964, and before January 1, 1971, and taxable years beginning after December 31, 1970. In certain cases credits are allowed against the amount of the tax. See part IV (section 31 and following), subchapter A, chapter 1 of the Code. In general, the tax is payable upon the basis of returns rendered by persons liable therefor (subchapter A (sections 6001 and following), chapter 61 of the Code) or at the source of the income by withholding. For the computation of tax in the case of a joint return of a husband and wife, or a return of a surviving spouse, for taxable years beginning before January 1, 1971, see section 2. The computation of tax in such a case for taxable years beginning after December 31, 1970, is determined in accordance with the table contained in section 1(a) as amended by the Tax Reform Act of 1969. For other rates of tax on individuals, see section 5(a). For the imposition of an additional tax for the calendar years 1968, 1969, and 1970, see section 51(a).

(b) *Citizens or residents of the United States liable to tax.* In general, all citizens of the United States, wherever resident, and all resident alien individuals are liable to the income taxes imposed by the Code whether the income is received

from sources within or without the United States. Pursuant to section 876, a nonresident alien individual who is a bona fide resident of Puerto Rico during the entire taxable year is, except as provided in section 933 with respect to Puerto Rican source income, subject to taxation in the same manner as a resident alien individual. As to tax on nonresident alien individuals, see sections 871 and 877.

(c) *Who is a citizen.* Every person born or naturalized in the United States and subject to its jurisdiction is a citizen. For other rules governing the acquisition of citizenship, see chapters 1 and 2 of title III of the Immigration and Nationality Act (8 U.S.C. 1401-1459). For rules governing loss of citizenship, see sections 349 to 357, inclusive, of such Act (8 U.S.C. 1481-1489), *Schneider v. Rusk*, (1964) 377 U.S. 163, and Rev. Rul. 70-506, C.B. 1970-2, 1. For rules pertaining to persons who are nationals but not citizens at birth, e.g., a person born in American Samoa, see section 308 of such Act (8 U.S.C. 1408). For special rules applicable to certain expatriates who have lost citizenship with a principal purpose of avoiding certain taxes, see section 877. A foreigner who has filed his declaration of intention of becoming a citizen but who has not yet been admitted to citizenship by a final order of a naturalization court is an alien.

PAR. 3. Section 1.116 is amended by revising section 116(d) and by revising the historical note. These amended provisions read as follows:

#### § 1.116 Statutory provisions; partial exclusion of dividends received by individuals.

SEC. 116. *Partial exclusion of dividends received by individuals.* \* \* \*

(d) *Certain nonresident aliens ineligible for exclusion.* In the case of a nonresident alien individual, subsection (a) shall apply only—

(1) In determining the tax imposed for the taxable year pursuant to section 871(b)(1) and only in respect of dividends which are effectively connected with the conduct of a trade or business within the United States, or

(2) In determining the tax imposed for the taxable year pursuant to section 877(b). [Sec. 116 as amended by sec. 3(a), Life Insurance Company Tax Act 1959 (73 Stat. 139); sec. 10(f), Act of Sept. 14, 1960 (Public Law 86-779, 74 Stat. 1009); secs. 201 (c) and (d) (5) (C), Rev. Act 1964 (78 Stat. 32); sec. 103(g), Foreign Investors Tax Act 1966 (80 Stat. 1552)]

PAR. 4. Section 1.116-1 is amended by revising paragraph (e)(1). This amended provision reads as follows:

#### § 1.116-1 Partial exclusion of dividends.

(e) *Taxpayers not entitled to exclusion.* (1) For taxable years beginning after December 31, 1966, the exclusion

allowed by section 116(a) and paragraph (a) of this section shall, in the case of a nonresident alien individual, apply only (i) in determining the tax imposed for the taxable year pursuant to section 871(b)(1), and the regulations thereunder, and only in respect of dividends which are effectively connected for the taxable year with the conduct of a trade or business in the United States by such individual, or (ii) in determining the tax imposed for the taxable year pursuant to section 877(b). For taxable years beginning before January 1, 1967, the exclusion is not available to nonresident alien individuals with respect to whom a tax is imposed for the taxable year under section 871(a).

PAR. 5. Section 1.154 is amended by revising section 154(3) and by adding a historical note. These amended and added provisions read as follows:

**§ 1.154 Statutory provisions; cross references.**

**SEC. 154. Cross references. \* \* \***

(3) For exemptions of nonresident aliens, see section 873(b)(3).

[Sec. 154 as amended by sec. 103(c)(2), Foreign Investors Tax Act 1966 (80 Stat. 1551)]

PAR. 6. Section 1.337-5 is amended by revising paragraph (d) to read as follows:

**§ 1.337-5 Special rules for certain minority shareholders.**

(d) *Claim for credit or refund.* Claim for credit or refund of the tax deemed to have been paid by a shareholder pursuant to section 337(d) and paragraph (b) of this section shall be made on the shareholder's income tax return (or in an amended return or claim for credit or refund) for the taxable year in which he receives the first distribution in complete liquidation. In the case of a shareholder which is a partnership, claim shall be made by the partners for credit or refund of their distributive shares of the tax deemed to have been paid by the partnership. In the case of a shareholder which is an electing small business corporation (within the meaning of section 1371(b)), claim shall be made by those persons who are shareholders of such corporation on the last day of the corporation's taxable year in which it received the first distribution in complete liquidation. In the case of a shareholder which is exempt from tax under section 501(a) and to which section 511 does not apply for the taxable year, claim for refund of the tax deemed to have been paid by such shareholder shall be made on Form 843. For other rules applicable to the filing of claims for credit or refund of an overpayment of tax, see section 6402 and the regulations thereunder. For the limitations applicable to the credit or refund of an overpayment of tax, see section 6511 and the regulations thereunder.

PAR. 7. Section 1.852-9 is amended by revising paragraph (c)(2)(ii) to read as follows:

**§ 1.852-9 Special procedural requirements applicable to designation under section 852(b)(3)(D).**

(c) *Shareholders. \* \* \**

(2) *Credit or refund. \* \* \**

(ii) *Form to be used.* Claim for refund or credit of the tax deemed to have been paid by a shareholder with respect to an amount of undistributed capital gains shall be made on the shareholder's income tax return for the taxable year in which such amount of undistributed capital gains is includible in gross income. In the case of a shareholder which is a partnership, claim shall be made by the partners on their income tax returns for refund or credit of their distributive shares of the tax deemed to have been paid by the partnership. In the case of a shareholder which is exempt from tax under section 501(a) and to which section 511 does not apply for the taxable year, claim for refund of the tax deemed to have been paid by such shareholder on an amount of undistributed capital gains for such year shall be made on Form 843 and copy B of Form 2439 furnished to such shareholder shall be attached to its claim. For other rules applicable to the filing of claims for credit or refund of an overpayment of tax, see § 301.6402-2 of this chapter (Regulations on Procedure and Administration), relating to claims for credit or refund, and § 301.6402-3 of this chapter, relating to special rules applicable to income tax.

PAR. 8. Section 1.871 is amended by revising the heading thereof, by revising so much of section 871(a) as precedes paragraph (2) thereof, by revising section 871(b), and by revising the historical note, as follows:

**§ 1.871A Statutory provisions; tax on nonresident alien individuals (before amendment by Foreign Investors Tax Act of 1966).**

**SEC. 871. Tax on nonresident alien individuals—(a) No United States business—30 percent tax—(1) Imposition of tax.** Except as otherwise provided in subsection (b) there is hereby imposed for each taxable year, in lieu of the tax imposed by section 1, on the amount received, by every nonresident alien individual not engaged in trade or business within the United States, from sources within the United States, as interest (except interest on deposits with persons carrying on the banking business), dividends, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits, and income (including amounts described in section 402(a)(2), section 403(a)(2), section 631(b) and (c), and section 1235, which are considered to be gains from the sale or exchange of capital assets), a tax of 30 percent of such amount.

(b) *No United States business—regular tax.* A nonresident alien individual not engaged in trade or business within the United States shall be taxable without regard to subsection (a) if during the taxable year the sum of the aggregate amount received from the sources specified in subsection (a)(1), plus the amount by which gains from sales or exchanges of capital assets exceed losses from such sales or exchanges (determined in

accordance with subsection (a)(2)) is more than \$19,000 in the case of a taxable year beginning in 1964 or more than \$21,200 in the case of a taxable year beginning after 1964, except that—

(1) The gross income shall include only income from the sources specified in subsection (a)(1) plus any gain (to the extent provided in subchapter P; sec. 1201 and following, relating to capital gains and losses) from a sale or exchange of a capital asset if such gain would be taken into account were the tax being determined under subsection (a)(2);

(2) The deductions (other than the deduction for charitable contributions and gifts provided in section 873(c)) shall be allowed only if and to the extent that they are properly allocable to the gross income from the sources specified in subsection (a), except that any loss from the sale or exchange of a capital asset shall be allowed (to the extent provided in subchapter P without the benefit of the capital loss carryover provided in section 1212), if such loss would be taken into account were the tax being determined under subsection (a)(2).

If (without regard to this sentence) the amount of the taxes imposed in the case of such an individual under section 1 or under section 1201(b), minus the credit under section 35, is an amount which is less than 30 percent of the sum of—

(A) The aggregate amount received from the sources specified in subsection (a)(1), plus

(B) The amount, determined under subsection (a)(2), by which gains from sales or exchanges of capital assets exceed losses from such sales or exchanges,

then this subsection shall not apply and subsection (a) shall apply. For purposes of this subsection, the term "aggregate amount received from the sources specified in subsection (a)(1)" shall be applied without any exclusion under section 116.

[Sec. 871 as amended by secs. 40(a) and 41(a), Technical Amendments Act 1958 (72 Stat. 1638, 1639); sec. 2(b), Act of April 22, 1960 (Public Law 86-437, 74 Stat. 79); sec. 110(b), Mutual Education and Cultural Exchange Act 1961 (75 Stat. 535); secs. 113(b) and 201(d)(12), Rev. Act 1964 (78 Stat. 24, 32); as in effect before amendment by sec. 103(a), Foreign Investors Tax Act 1966 (80 Stat. 1547)]

PAR. 9. Immediately before § 1.871-1 the following new section is inserted:

**§ 1.871 Statutory provisions; tax on nonresident alien individuals (after amendment by Foreign Investors Tax Act of 1966).**

**SEC. 871. Tax on nonresident alien individuals—(a) Income not connected with United States business—30 percent tax—(1) Income other than capital gains.** There is hereby imposed for each taxable year a tax of 30 percent of the amount received from sources within the United States by a nonresident alien individual as—

(A) Interest, dividends, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, and other fixed or determinable annual or periodical gains, profits, and income,

(B) Gains described in section 402(a)(2), 403(a)(2), or 631(b) or (c), and gains on transfers described in section 1235 made on or before October 4, 1966,

(C) In the case of bonds or other evidences of indebtedness issued after September 28, 1965, amounts which under section 1232 are considered as gains from the sale or exchange of property which is not a capital asset, and

(D) Gains from the sale or exchange after October 4, 1966, of patents, copyrights, secret processes and formulas, good will, trademarks, trade brands, franchises, and other like property, or of any interest in any such property, to the extent such gains are from payments which are contingent on the productivity, use, or disposition of the property or interest sold or exchanged, or from payments which are treated as being so contingent under subsection (e), but only to the extent the amount so received is not effectively connected with the conduct of a trade or business within the United States.

(2) *Capital gains of aliens present in the United States 183 days or more.* In the case of a nonresident alien individual present in the United States for a period or periods aggregating 183 days or more during the taxable year, there is hereby imposed for such year a tax of 30 percent of the amount by which his gains, derived from sources within the United States, from the sale or exchange at any time during such year of capital assets exceed his losses, allocable to sources within the United States, from the sale or exchange at any time during such year of capital assets. For purposes of this paragraph, gains and losses shall be taken into account only if, and to the extent that, they would be recognized and taken into account if such gains and losses were effectively connected with the conduct of a trade or business within the United States, except that such gains and losses shall be determined without regard to section 1202 (relating to deduction for capital gains) and such losses shall be determined without the benefits of the capital loss carryover provided in section 1212. Any gain or loss which is taken into account in determining the tax under paragraph (1) or subsection (b) shall not be taken into account in determining the tax under this paragraph. For purposes of the 183-day requirement of this paragraph, a nonresident alien individual not engaged in trade or business within the United States who has not established a taxable year for any prior period shall be treated as having a taxable year which is the calendar year.

(b) *Income connected with United States business—graduated rate of tax.*—(1) *Imposition of tax.* A nonresident alien individual engaged in trade or business within the United States during the taxable year shall be taxable as provided in section 1 or 1201(b) on his taxable income which is effectively connected with the conduct of a trade or business within the United States.

(2) *Determination of taxable income.* In determining taxable income for purposes of paragraph (1), gross income includes only gross income which is effectively connected with the conduct of a trade or business within the United States.

(c) *Participants in certain exchange or training programs.* For purposes of this section, a nonresident alien individual who (without regard to this subsection) is not engaged in trade or business within the United States and who is temporarily present in the United States as a nonimmigrant under subparagraph (F) or (J) of section 101(a)(15) of the Immigration and Nationality Act, as amended (8 U.S.C. 1101(a)(15) (F) or (J)), shall be treated as a nonresident alien individual engaged in trade or business within the United States, and any income described in section 1441(b)(1) or (2) which is received by such individual shall, to the extent derived from sources within the United States, be treated as effectively connected with the conduct of a trade or business within the United States.

(d) *Election to treat real property income as income connected with United States business.*—(1) *In general.* A nonresident alien individual who during the taxable year derives any income—

(A) From real property held for the production of income and located in the United States, or from any interest in such real property, including (i) gains from the sale or exchange of such real property or an interest therein, (ii) rents or royalties from mines, wells, or other natural deposits, and (iii) gains described in section 631 (b) or (c), and

(B) Which, but for this subsection, would not be treated as income which is effectively connected with the conduct of a trade or business within the United States,

may elect for such taxable year to treat all such income as income which is effectively connected with the conduct of a trade or business within the United States. In such case, such income shall be taxable as provided in subsection (b)(1) whether or not such individual is engaged in trade or business within the United States during the taxable year. An election under this paragraph for any taxable year shall remain in effect for all subsequent taxable years, except that it may be revoked with the consent of the Secretary or his delegate with respect to any taxable year.

(2) *Election after revocation.* If an election has been made under paragraph (1) and such election has been revoked, a new election may not be made under such paragraph for any taxable year before the fifth taxable year which begins after the first taxable year for which such revocation is effective, unless the Secretary or his delegate consents to such new election.

(3) *Form and time of election and revocation.* An election under paragraph (1), and any revocation of such an election, may be made only in such manner and at such time as the Secretary or his delegate may by regulations prescribe.

(e) *Gains from sale or exchange of certain intangible property.* For purposes of subsection (a)(1)(D), and for purposes of sections 881(a)(4), 1441(b), and 1442(a)—

(1) *Payments treated as contingent on use, etc.* If more than 50 percent of the gain for any taxable year from the sale or exchange of any patent, copyright, secret process or formula, good will, trademark, trade brand, franchise, or other like property, or of any interest in any such property, is from payments which are contingent on the productivity, use, or disposition of such property or interest, all of the gain for the taxable year from the sale or exchange of such property or interest shall be treated as being from payments which are contingent on the productivity, use, or disposition of such property or interest.

(2) *Source rule.* In determining whether gains described in subsection (a)(1)(D) and section 891(a)(4) are received from sources within the United States, such gains shall be treated as rentals or royalties for the use of, or privilege of using, property or an interest in property.

(f) *Certain annuities received under qualified plans.* For purposes of this section, gross income does not include any amount received as an annuity under a qualified annuity plan described in section 403(a)(1), or from a qualified trust described in section 401(a) which is exempt from tax under section 501(a), if—

(1) All of the personal services by reason of which such annuity is payable were either (A) personal services performed outside the United States by an individual who, at the time of performance of such personal services, was a nonresident alien, or (B) personal services described in section 864(b)(1) performed within the United States by such individual, and

(2) At the time the first amount is paid as such annuity under such annuity plan, or by such trust, 90 percent or more of the employees for whom contributions or benefits are provided under such annuity plan, or under the plan or plans of which such

trust is a part, are citizens or residents of the United States.

(g) *Cross references.* (1) For tax treatment of certain amounts distributed by the United States to nonresident alien individuals, see section 402(a)(4).

(2) For taxation of nonresident alien individuals who are expatriate U.S. citizens, see section 877.

(3) For doubling of tax on citizens of certain foreign countries, see section 891.

(4) For adjustment of tax in case of nationals or residents of certain foreign countries, see section 896.

(5) For withholding of tax at source on nonresident alien individuals, see section 1441.

(6) For the requirement of making a declaration of estimated tax by certain nonresident alien individuals, see section 6015(i).

[Sec. 871 as amended by secs. 40(a) and 41 (a), Technical Amendments Act 1958 (72 Stat. 1635, 1639); sec. 2(b), Act of April 22, 1960 (Public Law 86-437, 74 Stat. 79); sec. 110(b), Mutual Educational and Cultural Exchange Act 1961 (75 Stat. 535); secs. 113 (b) and 201(d)(12), Rev. Act 1964 (78 Stat. 24, 32); sec. 103(a), Foreign Investors Tax Act 1966 (80 Stat. 1547)]

PAR. 10. Section 1.871-1 is revised to read as follows:

§ 1.871-1 Classification and manner of taxing alien individuals.

(a) *Classes of aliens.* For purposes of the income tax, alien individuals are divided generally into two classes, namely, resident aliens and nonresident aliens. Resident alien individuals are, in general, taxable the same as citizens of the United States; that is, a resident alien is taxable on income derived from all sources, including sources without the United States. See § 1.1-1(b). Nonresident alien individuals are taxable only on certain income from sources within the United States and on the income from sources without the United States which is effectively connected for the taxable year with the conduct of a trade or business in the United States.

(b) *Classes of nonresident aliens.*—(1) *In general.* For purposes of the income tax, nonresident alien individuals are divided into the following three classes:

(i) Nonresident alien individuals who at no time during the taxable year are engaged in a trade or business in the United States.

(ii) Nonresident alien individuals who at any time during the taxable year are, or are deemed under § 1.871-9 to be, engaged in a trade or business in the United States, and

(iii) Nonresident alien individuals who are bona fide residents of Puerto Rico during the entire taxable year.

An individual described in subdivision (i) or (ii) of this subparagraph is subject to tax pursuant to the provisions of subpart A (section 871 and following), part II, subchapter N, chapter 1 of the Code, and the regulations thereunder. See §§ 1.871-7 and 1.871-8. The provisions of subpart A do not apply to individuals described in subdivision (iii) of this subparagraph, but such individuals, except as provided in section 933 with respect to Puerto Rican source income, are subject to the tax imposed by section 1 or section 1201(b). See § 1.876-1.

(2) *Treaty income.* If the gross income of a nonresident alien individual described in subparagraph (1) (i) or (ii) of this paragraph includes income on which the tax is limited by tax convention, see § 1.871-12.

(3) *Exclusions from gross income.* For rules relating to the exclusion of certain items from the gross income of a nonresident alien individual, including annuities excluded under section 871(f), see §§ 1.872-2 and 1.894-1.

(4) *Expatriation to avoid tax.* For special rules applicable in determining the tax of a nonresident alien individual who has lost U.S. citizenship with a principal purpose of avoiding certain taxes, see section 877.

(5) *Adjustment of tax of certain nonresident aliens.* For the application of pre-1967 income tax provisions to residents of a foreign country which imposes a more burdensome income tax than the United States, and for the adjustment of the income tax of a national or resident of a foreign country which imposes a discriminatory income tax on the income of citizens of the United States or domestic corporations, see section 896.

(6) *Citizens of certain U.S. possessions.* For rules for treating as nonresident alien individuals certain citizens of possessions of the United States who are not otherwise citizens of the United States, see section 932 and § 1.932-1.

(d) *Effective date.* This section shall apply for taxable years beginning after December 31, 1966. For corresponding rules applicable to taxable years beginning before January 1, 1967, see 26 CFR 1.871-1 and 1.871-7(a) (Rev. as of Jan. 1, 1971).

PAR. 11. Section 1.871-6 is amended to read as follows:

**§ 1.871-6 Duty of withholding agent to determine status of alien payee.**

(a) *Proof of status required.* If income is paid to an alien individual without withholding the tax under chapter 3 of the Code, except insofar as the regulations thereunder permit exemption from withholding, then the withholding agent must be prepared to justify the failure to withhold.

(b) *Evidence of residence.* A withholding agent may rely upon the evidence of residence afforded by the fact that the alien individual has filed Form 1078 or an equivalent written statement. This statement or form shall be filed in the manner prescribed in § 1.1441-5.

(c) *Cross reference.* For definition of the term "withholding agent," see § 1.1465-1.

(d) *Effective date.* This section shall apply for taxable years beginning after December 31, 1966. For corresponding rules applicable to taxable years beginning before January 1, 1967, see 26 CFR 1.871-6 (Rev. as of Jan. 1, 1971).

PAR. 12. Section 1.871-7 is deleted and the following new sections are inserted in lieu thereof:

**§ 1.871-7 Taxation of nonresident alien individuals not engaged in U.S. business.**

(a) *Imposition of tax.* (1) This section applies for purposes of determining the tax of a nonresident alien individual who at no time during the taxable year is engaged in trade or business in the United States. However, see also § 1.871-8 where such individual is a student or trainee deemed to be engaged in trade or business in the United States or where he has an election in effect for the taxable year in respect to real property income. Except as otherwise provided in § 1.871-12, a nonresident alien individual to whom this section applies is not subject to the tax imposed by section 1 or section 1201(b) but, pursuant to the provisions of section 871(a), is liable to a flat tax of 30 percent upon the aggregate of the amounts determined under paragraphs (b), (c), and (d) of this section which are received during the taxable year from sources within the United States. Except as specifically provided in such paragraphs, such amounts do not include gains from the sale or exchange of property. To determine the source of such amounts, see sections 861 through 863, and the regulations thereunder.

(2) The tax of 30 percent is imposed by section 871(a) upon an amount only to the extent the amount constitutes gross income. Thus, for example, the amount of an annuity which is subject to such tax shall be determined in accordance with section 72.

(3) Deductions shall not be allowed in determining the amount subject to tax under this section except that losses from sales or exchanges of capital assets shall be allowed to the extent provided in section 871(a)(2) and paragraph (d) of this section.

(4) Except as provided in §§ 1.871-9 and 1.871-10, a nonresident alien individual not engaged in trade or business in the United States during the taxable year has no income, gain, or loss for the taxable year which is effectively connected for the taxable year with the conduct of a trade or business in the United States. See section 864(c)(1)(B) and § 1.864-3.

(5) Gains and losses which, by reason of section 871(d) and § 1.871-10, are treated as gains or losses which are effectively connected for the taxable year with the conduct of a trade or business in the United States by the nonresident alien individual shall not be taken into account in determining the tax under this section. See, for example, paragraph (c)(2) of § 1.871-10.

(6) For special rules applicable in determining the tax of certain nonresident alien individuals, see paragraph (b) of § 1.871-1.

(b) *Fixed or determinable annual or periodical income.* The tax of 30 percent imposed by section 871(a)(1) applies to the gross amount received from sources within the United States as fixed or

determinable annual or periodical gains, profits, or income. Specific items of fixed or determinable annual or periodical income are enumerated in section 871(a)(1)(A) as interest, dividends, rents, salaries, wages, premiums, annuities, compensations, remunerations, and emoluments, but other items of fixed or determinable annual or periodical gains, profits, or income are also subject to the tax, as, for instance, royalties, including royalties for the use of patents, copyrights, secret processes and formulas, and other like property. As to the determination of fixed or determinable annual or periodical income, see paragraph (a) of § 1.1441-2. For special rules treating gain on the disposition of section 306 stock as fixed or determinable annual or periodical income for purposes of section 871(a), see section 306(f) and paragraph (h) of § 1.306-3.

(c) *Other income and gains—(1) Items subject to tax.* The tax of 30 percent imposed by section 871(a)(1) also applies to the following gains received during the taxable year from sources within the United States:

(i) Gains described in section 402(a)(2), relating to the treatment of total distributions from certain employees' trusts; section 403(a)(2), relating to treatment of certain payments under certain employee annuity plans; and section 631(b) or (c), relating to treatment of gain on the disposal of timber, coal, or iron ore with a retained economic interest;

(ii) [Reserved]

(iii) Gains on transfers described in section 1235, relating to certain transfers of patent rights, made on or before October 4, 1966; and

(iv) Gains from the sale or exchange after October 4, 1966, of patents, copyrights, secret processes and formulas, goodwill, trademarks, trade brands, franchises, or other like property, or of any interest in any such property, to the extent the gains are from payments (whether in a lump sum or in installments) which are contingent on the productivity, use, or disposition of the property or interest sold or exchanged, or from payments which are treated under section 871(e) and § 1.871-11 as being so contingent.

(2) *Nonapplication of 183-day rule.* The provisions of section 871(a)(2), relating to gains from the sale or exchange of capital assets, and paragraph (d)(2) of this section do not apply to the gains described in this paragraph; as a consequence, the taxpayer receiving gains described in subparagraph (1) of this paragraph during a taxable year is subject to the tax of 30 percent thereon without regard to the 183-day rule contained in such provisions.

(3) *Determination of amount of gain.* The tax of 30 percent imposed upon the gains described in subparagraph (1) of this paragraph applies to the full amount of the gains and is determined (i) without regard to the alternative tax imposed

by section 1201(b) upon the excess of the net long-term capital gain over the net short-term capital loss; (ii) without regard to the deduction allowed by section 1202 in respect of capital gains; (iii) without regard to section 1231, relating to property used in the trade or business and involuntary conversions; and (iv), except in the case of gains described in subparagraph (1)(ii) of this paragraph, whether or not the gains are considered to be gains from the sale or exchange of property which is a capital asset.

(d) *Gains from sale or exchange of capital assets*—(1) *Gains subject to tax.* The tax of 30 percent imposed by section 871(a)(2) applies to the excess of gains derived from sources within the United States over losses allocable to sources within the United States, which are derived from the sale or exchange of capital assets, determined in accordance with the provisions of subparagraphs (2) through (4) of this paragraph.

(2) *Presence in the United States 183 days or more.* (i) If the nonresident alien individual has been present in the United States for a period or periods aggregating 183 days or more during the taxable year, he is liable to a tax of 30 percent upon the amount by which his gains, derived from sources within the United States, from sales or exchanges of capital assets effected at any time during the year exceed his losses, allocable to sources within the United States, from sales or exchanges of capital assets effected at any time during that year. Gains and losses from sales or exchanges effected at any time during such taxable year are to be taken into account for this purpose even though the nonresident alien individual is not present in the United States at the time the sales or exchanges are effected. In addition, if the nonresident alien individual has been present in the United States for a period or periods aggregating 183 days or more during the taxable year, gains and losses for such taxable year from sales or exchanges of capital assets effected during a previous taxable year beginning after December 31, 1966, are to be taken into account, but only if he was also present in the United States during such previous taxable year for a period or periods aggregating 183 days or more.

(ii) If the nonresident alien individual has not been present in the United States during the taxable year, or if he has been present in the United States for a period or periods aggregating less than 183 days during the taxable year, gains and losses from sales or exchanges of capital assets effected during the year are not to be taken into account, except as required by paragraph (c) of this section, in determining the tax of such individual even through the sales or exchanges are effected during his presence in the United States. Moreover, gains and losses for such taxable year from sales or exchanges of capital assets effected during a previous taxable year beginning after December 31, 1966, are not to be taken

into account, even though the nonresident alien individual was present in the United States during such previous year for a period or periods aggregating 183 days or more.

(iii) For purposes of this subparagraph, a nonresident alien individual is not considered to be present in the United States by reason of the presence in the United States of a person who is an agent or partner of such individual or who is a fiduciary of an estate or trust of which such individual is a beneficiary or a grantor-owner to whom section 671 applies.

(iv) The application of this subparagraph may be illustrated by the following examples:

*Example (1).* B, a nonresident alien individual not engaged in trade or business in the United States and using the calendar year as the taxable year, is present in the United States from May 1, 1971, to November 15, 1971, a period of more than 182 days. While present in the United States, B effects for his own account on various dates a number of transactions in stocks and securities on the stock exchange, as a result of which he has recognized capital gains of \$10,000. During the period from January 1, 1971, to April 30, 1971, he carries out similar transactions through an agent in the United States, as a result of which B has recognized capital gains of \$5,000. On December 15, 1971, through an agent in the United States B sells a capital asset on the installment plan, no payments being made by the purchaser in 1971. During 1972, B receives installment payments of \$50,000 on the installment sale made in 1971, and the capital gain from sources within the United States for 1972 attributable to such payments is \$12,500. In addition, during the period from January 1, 1972, to May 31, 1972, B effects for his own account, through an agent in the United States, a number of transactions in stocks and securities on the stock exchange, as a result of which B has recognized capital gains of \$20,000. At no time during 1972 is B present in the United States or engaged in trade or business in the United States. Accordingly, for 1971, B is subject to tax under section 871(a)(2) on his capital gains of \$15,000 from the transactions in that year on the stock exchange. For 1972, B is not subject to tax on the capital gain of \$12,500 from the installment sale in 1971 or on the capital gains of \$20,000 from the transactions in 1972 on the stock exchange.

*Example (2).* The facts are the same as in example (1) except that B is present in the United States from June 15, 1972, to December 31, 1972, a period of more than 182 days. Accordingly, B is subject to tax under section 871(a)(2) for 1971 on his capital gains of \$15,000 from the transactions in that year on the stock exchange. He is also subject to tax under section 871(a)(2) for 1972 on his capital gains of \$32,500 (\$12,500 from the installment sale in 1971 plus \$20,000 from the transactions in 1972 on the stock exchange).

*Example (3).* D, a nonresident alien individual not engaged in trade or business in the United States and using the calendar year as the taxable year, is present in the United States from April 1, 1971, to August 31, 1971, a period of less than 183 days. While present in the United States, D effects for his own account on various dates a number of transactions in stocks and securities on the stock exchange, as a result of which he has recognized capital gains of \$15,000. During the period from January 1, 1971, to March 31, 1971, he carries out similar transactions through an agent in the United

States, as a result of which D has recognized capital gains of \$8,000. On December 20, 1971, through an agent in the United States D sells a capital asset on the installment plan, no payments being made by the purchaser in 1971. During 1972, D receives installment payments of \$200,000 on the installment sale made in 1971, and the capital gain from sources within the United States for 1972 attributable to such payments is \$50,000. In addition, during the period from February 1, 1972, to August 15, 1972, a period of more than 182 days, D effects for his own account, through an agent in the United States, a number of transactions in stocks and securities on the stock exchange, as a result of which D has recognized capital gains of \$25,000. At no time during 1972 is D present in the United States or engaged in trade or business in the United States. Accordingly, D is not subject to tax for 1971 or 1972 on any of his recognized capital gains.

*Example (4).* The facts are the same as in example (3) except that D is present in the United States from February 1, 1972, to August 15, 1972, a period of more than 182 days. Accordingly, D is not subject to tax for 1971 on his capital gains of \$23,000 from the transactions in that year on the stock exchange. For 1972 he is subject to tax under section 871(a)(2) on his capital gains of \$25,000 from the transactions in that year on the stock exchange, but he is not subject to the tax on the capital gain of \$50,000 from the installment sale in 1971.

(3) *Determination of 183-day period*—

(i) *In general.* In determining the total period of presence in the United States for a taxable year for purposes of subparagraph (2) of this paragraph, all separate periods of presence in the United States during the taxable year are to be aggregated. If the nonresident alien individual has not previously established a taxable year, as defined in section 441(b), he shall be treated as having a taxable year which is the calendar year, as defined in section 441(d). Subsequent adoption by such individual of a fiscal year as the taxable year will be treated as a change in the taxpayer's annual accounting period to which section 442 applies, and the change must be authorized under the Income Tax Regulations or prior approval must be obtained by filing an application on Form 1128 in accordance with paragraph (b) of § 1.442-1. If in the course of his taxable year the nonresident alien individual changes his status from that of a citizen or resident of the United States to that of a nonresident alien individual or vice versa, the determination of whether the individual has been present in the United States for 183 days or more during the taxable year shall be made by taking into account the entire taxable year, and not just that part of the taxable year during which he has the status of a nonresident alien individual.

(ii) *Definition of "day".* The term "day", as used in subparagraph (2) of this paragraph, means a calendar day during any portion of which the nonresident alien individual is physically present in the United States (within the meaning of sections 7701(a)(9) and 638) except that, in the case of an individual who is a resident of Canada or Mexico and, in the normal course of his employment in transportation service touching points within both Canada or Mexico

and the United States, performs personal services in both the foreign country and the United States, the following rules shall apply:

(a) The performance of labor or personal services during 8 hours or more in any 1 day within the United States shall be considered as 1 day in the United States, except that if a period of more or less than 8 hours is considered a full workday in the transportation job involved, such period shall be considered as 1 day within the United States.

(b) The performance of labor or personal services during less than 8 hours in any day in the United States shall, except as provided in (a) of this subdivision, be considered as a fractional part of a day in the United States. The total number of hours during which such services are performed in the United States during the taxable year, when divided by eight, shall be the number of days during which such individual shall be considered present in the United States during the taxable year.

(c) The aggregate number of days determined under (a) and (b) of this subdivision shall be considered the total number of days during which such individual is present in the United States during the taxable year.

(4) *Determination of amount of excess gains*—(i) *In general*. For the purpose of determining the excess of gains over losses subject to tax under this paragraph, gains and losses shall be taken into account only if, and to the extent that, they would be recognized and taken into account if the nonresident alien individual were engaged in trade or business in the United States during the taxable year and such gains and losses were effectively connected for such year with the conduct of a trade or business in the United States by such individual. However, in determining such excess of gains over losses no deduction may be taken under section 1202, relating to the deduction for capital gains, or section 1212, relating to the capital loss carryover. Thus, for example, in determining such excess gains all amounts considered under chapter 1 of the Code as gains or losses from the sale or exchange of capital assets shall be taken into account, except those gains which are described in section 871(a)(1)(B) or (D) and taken into account under paragraph (c) of this section and are considered to be gains from the sale or exchange of capital assets. Also, for example, a loss described in section 631(b) or (c) which is considered to be a loss from the sale of a capital asset shall be taken into account in determining the excess gains which are subject to tax under this paragraph. In further illustration, in determining such excess gains no deduction shall be allowed, pursuant to the provisions of section 267, for losses from sales or exchanges of property between related taxpayers. Any gains which are taken into account under section 871(a)(1) and paragraph (c) of this section shall not be taken into account in applying section 1231 for purposes of this paragraph. Gains and losses are to be taken into

account under this paragraph whether they are short-term or long-term capital gains or losses within the meaning of section 1222.

(ii) *Gains not included*. The provisions of this paragraph do not apply to any gains described in section 871(a)(1)(B) or (D), and in subdivision (i), (iii), or (iv) of paragraph (c)(1) of this section, which are considered to be gains from the sale or exchange of capital assets.

(iii) *Allowance of losses*. In determining the excess of gains over losses subject to tax under this paragraph losses shall be allowed only to the extent provided by section 165(c). Losses from sales or exchanges of capital assets in excess of gains from sales or exchanges of capital assets shall not be taken into account.

(e) *Credits against tax*. The credits allowed by section 31 (relating to tax withheld on wages), by section 32 (relating to tax withheld at source on nonresident aliens), by section 39 (relating to certain uses of gasoline and lubricating oil), and by section 6402 (relating to overpayments of tax) shall be allowed against the tax of a nonresident alien individual determined in accordance with this section.

(f) *Effective date*. This section shall apply for taxable years beginning after December 31, 1966. For corresponding rules applicable to taxable years beginning before January 1, 1967, see 26 CFR 1.871-7 (b) and (c) (Rev. as of Jan. 1, 1971).

**§ 1.871-3 Taxation of nonresident alien individuals engaged in U.S. business or treated as having effectively connected income.**

(a) *Segregation of income*. This section applies for purposes of determining the tax of a nonresident alien individual who at any time during the taxable year is engaged in trade or business in the United States. It also applies for purposes of determining the tax of a nonresident alien student or trainee who is deemed under section 871(c) and § 1.871-9 to be engaged in trade or business in the United States or of a nonresident alien individual who at no time during the taxable year is engaged in trade or business in the United States but has an election in effect for the taxable year under section 871(d) and § 1.871-10 in respect to real property income. A nonresident alien individual to whom this section applies must segregate his gross income for the taxable year into two categories, namely (1) the income which is effectively connected for the taxable year with the conduct of a trade or business in the United States by that individual, and (2) the income which is not effectively connected for the taxable year with the conduct of a trade or business in the United States by that individual. A separate tax shall then be determined upon each such category of income, as provided in paragraph (b) of this section. The determination of whether income or gain is or is not effectively connected for the taxable year with the conduct of a trade or business in the United States by the nonresident alien individual shall be made in accordance with section

864(c) and §§ 1.864-3 through 1.864-7. For purposes of this section income which is effectively connected for the taxable year with the conduct of a trade or business in the United States includes all income which is treated under section 871(c) or (d) and § 1.871-9 or § 1.871-10 as income which is effectively connected for such year with the conduct of a trade or business in the United States by the nonresident alien individual.

(b) *Imposition of tax*—(1) *Income not effectively connected with the conduct of a trade or business in the United States*. If a nonresident alien individual who is engaged in trade or business in the United States at any time during the taxable year derives during such year income from sources within the United States in the form of gains described in section 871(a)(1) and paragraph (b) or (c) of § 1.871-7 or gains from the sale or exchange of capital assets determined as provided in section 871(a)(2) and paragraph (d) of § 1.871-7, which are not effectively connected for the taxable year with the conduct of a trade or business in the United States by that individual, such income or gains shall be subject to a flat tax of 30 percent of the aggregate amount of such items. This tax shall be determined in the manner, and subject to the same conditions, set forth in § 1.871-7 as though the income or gains were derived by a nonresident alien individual not engaged in trade or business in the United States during the taxable year, except that (i) the rule in paragraph (d)(3) of such section for treating the calendar year as the taxable year shall not apply and (ii) in applying paragraph (d)(4) of such section, there shall not be taken into account any gains or losses which are taken into account in determining the tax under section 871(b) and subparagraph (2) of this paragraph. A nonresident alien individual who has an election in effect for the taxable year under section 871(d) and § 1.871-10 and who at no time during the taxable year is engaged in trade or business in the United States must determine his tax under § 1.871-7 on his income which is not treated as effectively connected with the conduct of a trade or business in the United States, subject to the exception contained in subdivision (ii) of this subparagraph.

(2) *Income effectively connected with the conduct of a trade or business in the United States*—(i) *In general*. If a nonresident alien to whom this section applies derives income or gains which are effectively connected for the taxable year with the conduct of a trade or business in the United States by that individual, the taxable income or gains shall, except as provided in § 1.871-12, be taxed in accordance with section 1 or, in the alternative, section 1201(b). See section 871(b)(1). Any income of the nonresident alien individual which is not effectively connected for the taxable year with the conduct of a trade or business in the United States by that individual shall not be taken into account in determining either the rate or amount of such tax. See paragraph (b) of § 1.872-1.



(ii) *Determination of taxable income.*

The taxable income for any taxable year for purposes of this subparagraph consists only of the nonresident alien individual's taxable income which is effectively connected for the taxable year with the conduct of a trade or business in the United States by that individual; and, for this purpose, it is immaterial that the trade or business with which that income is effectively connected is not the same as the trade or business carried on in the United States by that individual during the taxable year. See example (2) in § 1.864-4(b). In determining such taxable income all amounts constituting, or considered to be, gains or losses for the taxable year from the sale or exchange of capital assets shall be taken into account if such gains or losses are effectively connected for the taxable year with the conduct of a trade or business in the United States by that individual, and, for such purpose, the 183-day rule set forth in section 871(a)(2) and paragraph (d)(2) of § 1.871-7 shall not apply. Losses which are not effectively connected for the taxable year with the conduct of a trade or business in the United States by that individual shall not be taken into account in determining taxable income under this subdivision, except as provided in section 873(b)(1).

(iii) *Cross references.* For rules for determining the gross income and deductions for the taxable year, see sections 872 and 873, and the regulations thereunder.

(c) *Change in trade or business status.*—(1) *In general.* The determination as to whether a nonresident alien individual is engaged in trade or business within the United States during the taxable year is to be made for each taxable year. If at any time during the taxable year he is engaged in a trade or business in the United States, he is considered to be engaged in trade or business within the United States during the taxable year for purposes of sections 864(c)(1) and 871(b), and the regulations thereunder. Income, gain, or loss of a nonresident alien individual is not treated as being effectively connected for the taxable year with the conduct of a trade or business in the United States if he is not engaged in trade or business within the United States during such year, even though such income, gain, or loss may have been effectively connected for a previous taxable year with the conduct of a trade or business in the United States. See § 1.864-3. However, income, gain, or loss which is treated as effectively connected for the taxable year with the conduct of a trade or business in the United States by a nonresident alien individual will generally be treated as effectively connected for a subsequent taxable year if he is engaged in a trade or business in the United States during such subsequent year, even though such income, gain, or loss is not effectively connected with the conduct of the trade or business carried on in the United States during such subsequent year. This subparagraph does not apply to income described in section 871(c) or (d). It

may not apply to a nonresident alien individual who for the taxable year uses an accrual method of accounting or to income which is constructively received in the taxable year within the meaning of § 1.451-2.

(2) *Illustrations.* The application of this paragraph may be illustrated by the following examples:

*Example (1).* B, a nonresident alien individual using the calendar year as the taxable year and the cash receipts and disbursements method of accounting, is engaged in business (business R) in the United States from January 1, 1971, to August 31, 1971. During the period of September 1, 1971, to December 31, 1971, B receives installment payments of \$30,000 on sales made in the United States by business R during that year, and the income from sources within the United States for that year attributable to such payments is \$7,500. On September 15, 1971, another business (business S), which is carried on by B only in a foreign country sells to U.S. customers on the installment plan several pieces of equipment from inventory. During the period of September 16, 1971, to December 31, 1971, B receives installment payments of \$50,000 on these sales by business S, and the income from sources within the United States for that year attributable to such payments is \$10,000. Under section 864(c)(3) and paragraph (b) of § 1.864-4 the entire income of \$17,500 is effectively connected for 1971 with the conduct of a business in the United States by B. Accordingly, such income is taxable to B under paragraph (b)(2) of this section.

*Example (2).* Assume the same facts as in example (1), except that during 1972 B receives installment payments of \$20,000 from the sales made during 1971 in the United States by business R, and of \$80,000 from the sales made in 1971 to U.S. customers by business S, the total income from sources within the United States for 1972 attributable to such payments being \$13,000. At no time during 1972 is B engaged in a trade or business in the United States. Under section 864(c)(1)(B) the income of \$13,000 for 1972 is not effectively connected with the conduct of a trade or business in the United States by B. Accordingly, no amount of such income is taxable to B under section 871.

*Example (3).* Assume the same facts as in example (2), except that during 1972 B is engaged in a new business (business T) in the United States from July 1, 1972, to December 31, 1972. Under section 864(c)(3) and paragraph (b) of § 1.864-4, the income of \$13,000 is effectively connected for 1972 with the conduct of a business in the United States by B. Accordingly, such income is taxable to B under paragraph (b)(2) of this section.

*Example (4).* Assume the same facts as in example (2), except that the installment payments of \$20,000 from the sales made during 1971 in the United States by business R and not received by B until 1972 could have been received by B in 1971 if he had so desired. Under § 1.451-2, B is deemed to have constructively received the payments of \$20,000 in 1971. Accordingly, the income attributable to such payments is effectively connected for 1971 with the conduct of a business in the United States by B and is taxable to B in 1971 under paragraph (b)(2) of this section.

(d) *Credits against tax.* The credits allowed by section 31 (relating to tax withheld on wages), section 32 (relating to tax withheld at source on nonresident aliens), section 33 (relating to the foreign tax credit), section 35 (relating to partially tax-exempt interest), section 38 (relating to investment in certain de-

preciable property), section 39 (relating to certain uses of gasoline and lubricating oil), and section 6402 (relating to overpayments of tax) shall be allowed against the tax determined in accordance with this section. However, the credits allowed by sections 33 and 38 shall not be allowed against the flat tax of 30 percent imposed by section 371(a) and paragraph (b)(1) of this section. Moreover, no credit shall be allowed under section 35 to a nonresident alien individual with respect to whom a tax is imposed for the taxable year under section 871(a) and paragraph (b)(1) of this section, even though such individual has income for such year upon which tax is imposed under section 871(b) and paragraph (b)(2) of this section. For special rules applicable in determining the foreign tax credit, see section 906(b) and the regulations thereunder. For the disallowance of certain credits where a return is not filed for the taxable year, see section 874 and § 1.874-1.

(e) *Effective date.* This section shall apply for taxable years beginning after December 31, 1966. For corresponding rules applicable to taxable years beginning before January 1, 1967, see 26 CFR 1.871-7(d) (Rev. as of Jan. 1, 1971).

### § 1.871-9 Nonresident alien students or trainees deemed to be engaged in U.S. business.

(a) *Participants in certain exchange or training programs.* For purposes of §§ 1.871-7 and 1.871-8 a nonresident alien individual who is temporarily present in the United States during the taxable year as a nonimmigrant under subparagraph (F) (relating to the admission of students into the United States) or subparagraph (J) (relating to the admission of teachers, trainees, specialists, etc., into the United States) of section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)) (F) or (J)), and who without regard to this paragraph is not engaged in trade or business in the United States during such year, shall be deemed to be engaged in trade or business in the United States during the taxable year. For purposes of determining whether an alien who is present in the United States on an F visa or a J visa is a resident of the United States, see § 1.871-2.

(b) *Income treated as effectively connected with U.S. business.* Any income described in paragraph (1) (relating to the nonexcluded portion of certain scholarship or fellowship grants) or paragraph (2) (relating to certain nonexcluded expenses incident to such grants) of section 1441(b) which is received during the taxable year from sources within the United States by a nonresident alien individual described in paragraph (a) of this section is to be treated for purposes of §§ 1.871-7, 1.871-8, 1.872-1, and 1.873-1 as income which is effectively connected for the taxable year with the conduct of a trade or business in the United States by that individual. However, such income is not to be treated as effectively connected for the taxable year with the conduct of a trade or business in the United States for purposes of section 1441(c)(1) and paragraph (a) of

§ 1.1441-4. For exclusion relating to compensation paid to such individual by a foreign employer, see paragraph (b) of § 1.872-2.

(c) *Exchange visitors.* For purposes of paragraph (a) of this section a nonresident alien individual who is temporarily present in the United States during the taxable year as a nonimmigrant under subparagraph (J) of section 101(a)(15) of the Immigration and Nationality Act includes a nonresident alien individual admitted to the United States as an "exchange visitor" under section 201 of the U.S. Information and Educational Exchange Act of 1948 (22 U.S.C. 1446), which section was repealed by section 111 of the Mutual Educational and Cultural Exchange Act of 1961 (75 Stat. 538).

(d) *Mandatory application of rule.* The application of this section is mandatory and not subject to an election by the taxpayer.

(e) *Effective date.* This section shall apply for taxable years beginning after December 31, 1966. For corresponding rules applicable to taxable years beginning before January 1, 1967, see 26 CFR 1.871-7(a)(3) (Rev. as of Jan. 1, 1971).

§ 1.871-10 Election to treat real property income as effectively connected with U.S. business.

(a) *When election may be made.* A nonresident alien individual or foreign corporation which during the taxable year derives any income from real property which is located in the United States and, in the case of a nonresident alien individual, held for the production of income, or derives income from any interest in any such property, may elect, pursuant to section 871(d) or 882(d) and this section, to treat all such income as income which is effectively connected for the taxable year with the conduct of a trade or business in the United States by that taxpayer. The election may be made whether or not the taxpayer is engaged in trade or business in the United States during the taxable year for which the election is made or whether or not the taxpayer has income from real property which for the taxable year is effectively connected with the conduct of a trade or business in the United States, but it may be made only with respect to that income from sources within the United States which, without regard to this section, is not effectively connected for the taxable year with the conduct of a trade or business in the United States by the taxpayer. If for the taxable year the taxpayer has no income from real property located in the United States, or from any interest in such property, which is subject to the tax imposed by section 871(a) or 881(a), the election may not be made. But if an election has been properly made under this section for a taxable year, the election remains in effect, unless properly revoked, for subsequent taxable years even though during any such subsequent taxable year there is no income from the real property, or interest therein, in respect of which the election applies.

(b) *Income to which the election applies—(1) Included income.* An election

under this section shall apply to all income from real property which is located in the United States and, in the case of a nonresident alien individual, held for the production of income, and to all income derived from any interest in such property, including (i) gains from the sale or exchange of such property or an interest therein, (ii) rents or royalties from mines, oil or gas wells, or other natural resources, and (iii) gains described in section 631(b) or (c), relating to treatment of gain on the disposal of timber, coal, or iron ore with a retained economic interest. The election may not be made with respect to only one class of such income. For purposes of the election, income from real property, or from any interest in real property, includes any amount included under section 652 or 662 in the gross income of a nonresident alien individual or foreign corporation that is the beneficiary of an estate or trust if, by reason of the application of section 652(b) or 662(b), and the regulations thereunder, such amount has the character in the hands of that beneficiary of income from real property, or from any interest in real property. It is immaterial that no tax would be imposed on the income by section 871(a) and paragraph (a) of § 1.871-7, or by section 881(a) and paragraph (a) of § 1.881-2, if the election were not in effect. Thus, for example, if an election under this section has been made by a nonresident alien individual not engaged in trade or business in the United States during the taxable year, the tax imposed by section 871(b)(1) and paragraph (b)(2) of § 1.871-8 applies to his gains derived from the sale of real property located in the United States and held for the production of income, even though such income would not be subject to tax under section 871(a) if the election had not been made. In further illustration, assume that a nonresident alien individual not engaged in trade or business, or present, in the United States during the taxable year has income from sources within the United States consisting of oil royalties, rentals from a former personal residence, and capital gain from the sale of another residence held for the production of income. If he makes an election under this section, it will apply with respect to his royalties, rentals, and capital gain, even though such capital gain would not be subject to tax under section 871(a) if the election had not been made.

(2) *Income not included.* For purposes of subparagraph (1) of this paragraph, income from real property, or from any interest in real property, does not include (i) interest on a debt obligation secured by a mortgage of real property, (ii) any portion of a dividend, within the meaning of section 316, which is paid by a corporation or a trust, such as a real estate investment trust described in section 857, which derives income from real property, (iii) in the case of a nonresident alien individual, income from real property, such as a personal residence, which is not held for the production of income or from any transaction in such

property which was not entered into for profit, (iv) rentals from personal property, or royalties from intangible personal property, within the meaning of subparagraph (3) of this paragraph, or (v) income which, without regard to section 871(d) or 882(d) and this section, is treated as income which is effectively connected for the taxable year with the conduct of a trade or business in the United States.

(3) *Rules applicable to personal property.* For purposes of subparagraph (2) of this paragraph, in the case of a sales agreement, or rental or royalty agreement, affecting both real and personal property, the income from the transaction is to be allocated between the real property and the personal property in proportion to their respective fair market values unless the agreement specifically provides otherwise. In the case of such a rental or royalty agreement, the respective fair market values are to be determined as of the time the agreement is signed. However, if the amount of income so allocated to the personal property is less than 30 percent of the total income from the transaction, the entire income is to be treated as income from real property. In making determinations under this subparagraph, the principles of paragraph (c) of § 1.48-1, relating to the definition of "section 38 property," apply for purposes of determining whether property is tangible or intangible personal property and of paragraph (a)(5) of § 1.1245-1 apply for purposes of making the allocation of income between real and personal property.

(c) *Effect of the election—(1) Determination of tax.* The income to which, in accordance with paragraph (b) of this section, an election under this section applies shall be subject to tax in the manner, and subject to the same conditions, provided by section 871(b)(1) and paragraph (b)(2) of § 1.871-8, or by section 882(a)(1) and paragraph (b)(2) of § 1.882-1. For purposes of determining such tax for the taxable year, income to which the election applies shall be aggregated with all other income of the nonresident alien individual or foreign corporation which is effectively connected for the taxable year with the conduct of a trade or business in the United States by that taxpayer. To the extent that deductions are connected with income from real property to which the election applies, they shall be treated for purposes of section 873(a) or section 882(c)(1) as connected with income which is effectively connected for the taxable year with the conduct of a trade or business in the United States by the nonresident alien individual or foreign corporation. An election under this section does not cause a nonresident alien individual or foreign corporation, which is not engaged in trade or business in the United States during the taxable year, to be treated as though such taxpayer were engaged in trade or business in the United States during the taxable year. Thus, for example, the compensation received during the taxable year for services performed in the United States

in a previous taxable year by a nonresident alien individual, who has an election in effect for the taxable year under this section but is engaged in trade or business in the United States at no time during the taxable year, is not effectively connected for the taxable year with the conduct of a trade or business in the United States. In further illustration, gain for the taxable year from the casual sale of personal property described in section 1221 (1) derived by a nonresident alien individual who is not engaged in trade or business in the United States during the taxable year but has an election in effect for such year under this section is not effectively connected with the conduct of a trade or business in the United States. See § 1.864-3. If an election under this section is in effect for the taxable year, the income to which the election applies shall be treated, for purposes of section 871(b)(1) or section 882(a)(1), section 1441(c)(1), and paragraph (a) of § 1.1441-4, as income which is effectively connected for the taxable year with the conduct of a trade or business in the United States by the taxpayer.

(2) *Treatment of property to which election applies.* Any real property, or interest in real property, with respect to which an election under this section applies shall be treated as a capital asset which, if depreciable, is subject to the allowance for depreciation provided in section 167 and the regulations thereunder. Such property, or interest in property, shall be treated as property not used in a trade or business for purposes of applying any provisions of the Code, such as section 172(d)(4)(A), relating to gain or loss attributable to a trade or business for purposes of determining a net operating loss; section 1221(2), relating to property not constituting a capital asset; or section 1231(b), relating to special rules for treatment of gains and losses. For example, if a nonresident alien individual makes the election under this section and, while the election is in effect, sells unimproved land which is located in the United States and held for investment purposes, any gain or loss from the sale shall be considered gain or loss from the sale of a capital asset and shall be treated, for purposes of determining the tax under section 871(b)(1) and paragraph (b)(2) of § 1.871-8, as a gain or loss which is effectively connected for the taxable year with the conduct of a trade or business in the United States.

(d) *Manner of making or revoking an election—(1) Election, or revocation, without consent of Commissioner—(i) In general.* A nonresident alien individual or foreign corporation may, for the first taxable year for which the election under this section is to apply, make the initial election at any time before the expiration of the period prescribed by section 6511(a), or by section 6511(c) if the period for assessment is extended by agreement, for filing a claim for credit or refund of the tax imposed by chapter 1 of the Code for such taxable year. This election may be made without the consent of the Commissioner. Having made

the initial election, the taxpayer may, within the time prescribed for making the election for such taxable year, revoke the election without the consent of the Commissioner. If the revocation is timely and properly made, the taxpayer may make his initial election under this section for a later taxable year without the consent of the Commissioner. If the taxpayer revokes the initial election without the consent of the Commissioner, he must file amended income tax returns, or claims for credit or refund, where applicable, for the taxable years to which the revocation applies.

(ii) *Statement to be filed with return.* An election made under this section without the consent of the Commissioner shall be made for a taxable year by filing with the income tax return required under section 6012 and the regulations thereunder for such taxable year a statement to the effect that the election is being made. This statement shall include (a) a complete schedule of all real property, or any interest in real property, of which the taxpayer is titular or beneficial owner, which is located in the United States, (b) an indication of the extent to which the taxpayer has direct or beneficial ownership in each such item of real property, or interest in real property, (c) the location of the real property or interest therein, (d) a description of any substantial improvements on any such property, and (e) an identification of any taxable year or years in respect of which a revocation or new election under this section has previously occurred. This statement may not be filed with any return under section 6851 and the regulations thereunder.

(iii) *Exemption from withholding of tax.* For statement to be filed with a withholding agent at the beginning of a taxable year in respect of which an election under this section is to be made, see paragraph (a) of § 1.1441-4.

(2) *Revocation, or election, with consent of Commissioner—(i) In general.* If the nonresident alien individual or foreign corporation makes the initial election under this section for any taxable year and the period prescribed by subparagraph (1)(i) of this paragraph for making the election for such taxable year has expired, the election shall remain in effect for all subsequent taxable years, including taxable years for which the taxpayer realizes no income from real property, or from any interest therein, or for which he is not required under section 6012 and the regulations thereunder to file an income tax return. However, the election may be revoked in accordance with subdivision (iii) of this subparagraph for any subsequent taxable year with the consent of the Commissioner. If the election for any such taxable year is revoked with the consent of the Commissioner, the taxpayer may not make a new election before his fifth taxable year which begins after the first taxable year for which the revocation is effective unless consent is given to such new election by the Commissioner in accordance with subdivision (iii) of this subparagraph.

(ii) *Effect of new election.* A new election made for the fifth taxable year, or taxable year thereafter, without the consent of the Commissioner, and a new election made with the consent of the Commissioner, shall be treated as an initial election to which subparagraph (1) of this paragraph applies.

(iii) *Written request required.* A request to revoke an election made under this section when such revocation requires the consent of the Commissioner, or to make a new election when such election requires the consent of the Commissioner, shall be made in writing and shall be addressed to the Director of International Operations, Internal Revenue Service, Washington, D.C. 20225. The request shall include the name and address of the taxpayer and shall be signed by the taxpayer or his duly authorized representative. It must specify the taxable year for which the revocation or new election is to be effective and shall be filed within 75 days after the close of the first taxable year for which it is desired to make the change. The request must specify the grounds which are considered to justify the revocation or new election. The Director of International Operations may require such other information as may be necessary in order to determine whether the proposed change will be permitted. A copy of the consent by the Director of International Operations shall be attached to the taxpayer's return required under section 6012 and the regulations thereunder for the taxable year for which the revocation or new election is effective. A copy of such consent may not be filed with any return under section 6851 and the regulations thereunder.

(e) *Effective date.* This section shall apply for taxable years beginning after December 31, 1966. There are no corresponding rules in this part for taxable years beginning before January 1, 1967.

§ 1.871-11 Gains from sale or exchange of patents, copyrights, or similar property.

(a) *Contingent payment defined.* For purposes of section 871(a)(1)(D), section 881(a)(4), and this section, payments which are contingent on the productivity, use, or disposition of property or an interest therein include continuing payments, other than installment payments of a principal sum agreed upon in the transfer agreement, measured by a percentage of the selling price of the products marketed, or based on the units manufactured or sold, or based in a similar manner upon production, sale, use, or disposition of the property or interest transferred.

(b) *Payments treated as contingent on use.* Pursuant to section 871(e), if more than 50 percent of the gain of a nonresident alien individual or foreign corporation for any taxable year from the sale or exchange after October 4, 1966, of any patent, copyright, secret process or formula, goodwill, trademark, trade brand, franchise, or other like property, or of any interest in any such property, is from payments which are contingent

on the productivity, use, or disposition of such property or interest, all of the gain of such individual or corporation for the taxable year from the sale or exchange of such property or interest are, for purposes of section 871(a)(1)(D), section 881(a)(4), section 1441(b), or section 1442(a), and the regulations thereunder, to be treated as being from payments which are contingent on the productivity, use, or disposition of such property or interest. This paragraph does not apply for purposes of determining under section 871(b)(1) or 882(a)(1) the tax of a nonresident alien individual or foreign corporation on income which is effectively connected for the taxable year with the conduct of a trade or business in the United States.

(c) *Sale or exchange.* A sale or exchange for purposes of this section includes a transfer by an individual which by reason of section 1235, relating to the sale or exchange of patents, is considered the sale or exchange of a capital asset. The provisions of section 1253, relating to transfers of franchises, trademarks, and trade names, do not apply in determining whether a transfer is a sale or exchange for purposes of this section.

(d) *Recovery of adjusted basis.* For purposes of determining for any taxable year the amount of gains which are subject to tax under section 871(a)(1)(D) or 881(a)(4), payments received by the nonresident alien individual or foreign corporation during such year must be reduced by amounts representing recovery of the taxpayer's adjusted basis of the property or interest which is sold or exchanged. Where the taxpayer receives in the same taxable year payments which, without reference to section 871(e) and this section, are not contingent on the productivity, use, or disposition of the property or interest which is sold or exchanged and payments which are contingent on the productivity, use, or disposition of the property or interest which is sold or exchanged, the taxpayer's unrecovered adjusted basis in the property or interest which is sold or exchanged must be allocated for the taxable year between such payments on the basis of the gross amount of each such type of payments. Where the taxpayer receives in the taxable year only payments which are not so contingent or only payments which are so contingent, the taxpayer's unrecovered adjusted basis must be allocated in its entirety to such payments for the taxable year.

(e) *Source rule.* In determining whether gains described in section 871(a)(1)(D) or 881(a)(4) and paragraph (b) of this section are received from sources within the United States, such gains shall be treated as rentals or royalties for the use of, or privilege of using, property or an interest in property. See section 861(a)(4), § 1.861-5, and paragraph (a) of § 1.862-1.

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

*Example (1).* (a) A, a nonresident alien individual who uses the cash receipts and

disbursements method of accounting and the calendar year as the taxable year, holds a U.S. patent which he developed through his own effort. On December 15, 1967, A enters into an agreement of sale with M Corporation, a domestic corporation, whereby A assigns to M Corporation all of his U.S. rights in the patent. In consideration of the sale, M Corporation is obligated to pay a fixed sum of \$60,000, \$20,000 being payable on execution of the contract and the balance payable in four annual installments of \$10,000 each. As additional consideration, M Corporation agrees to pay to A a royalty in the amount of 2 percent of the gross sales of the products manufactured by M Corporation under the patent. A is not engaged in trade or business in the United States at any time during 1967 and 1968. His adjusted basis in the patent at the time of sale is \$28,800.

(b) In 1967, A receives only the \$20,000 paid by M Corporation on the execution of the contract of sale. No gain is realized by A upon receipt of this amount, and his unrecovered adjusted basis in the patent is reduced to \$8,800 (\$28,800 less \$20,000).

(c) In 1968, M Corporation has gross sales of \$600,000 from products manufactured under the patent. Consequently, for 1968, M Corporation pays \$22,000 to A, \$10,000 being the annual installment on the fixed payment and \$12,000 being payments under the terms of the royalty provision. A's recognized gain for 1968 is \$13,200 (\$22,000 reduced by the unrecovered adjusted basis of \$8,800). Of the total gain of \$13,200, gain in the amount of \$6,000 (\$10,000 - [\$8,800 × \$10,000/\$22,000]) is considered to be from the fixed installment payment and of \$7,200 (\$12,000 - [\$8,800 × \$12,000/\$22,000]) is considered to be from the royalty payment. Since 54.5 percent (\$7,200/\$13,200) of the gain recognized in 1968 from the sale of the patent is from payments which are contingent on the productivity, use, or disposition of the patent, all of the \$13,200 gain recognized in 1968 is treated, for purposes of section 871(a)(1)(D) and section 1441(b), as being from payments which are contingent on the productivity, use, or disposition of the patent.

*Example (2).* (a) F, a foreign corporation using the calendar year as the taxable year and not engaged in trade or business in the United States, holds a U.S. patent on certain property which it developed through its own efforts. On December 1, 1966, F Corporation enters into an agreement of sale with D Corporation, a domestic corporation, whereby D Corporation purchases the exclusive right and license, and the right to sublicense to others, to manufacture, use, and/or sell certain devices under the patent in the United States during the term of the patent. The agreement grants D Corporation the right to dispose, anywhere in the world, of machinery manufactured in the United States and equipped with such devices. Corporation D is granted the right, at its own expense, to prosecute infringers in its own name or in the name of F Corporation, or both, and to retain any damages recovered.

(b) Corporation D agrees to pay to F Corporation annually \$5 for each device manufactured under the patent during the year but in no case less than \$5,000 per year. In 1967, D Corporation manufactures 2,500 devices under the patent; and, in 1968, 1,500 devices. Under the terms of the contract D Corporation pays to F Corporation in 1967 \$12,500 with respect to production in that year and \$7,500 in 1968 with respect to production in that year. F Corporation's basis in the patent at the time of the sale is \$17,000.

(c) With respect to the payments received by F Corporation in 1967, no gain is realized by that corporation and its unrecovered adjusted basis in the patent is reduced to \$4,500 (\$17,000 less \$12,500).

(d) With respect to the payments received by F Corporation in 1968, such corporation has recognized gain of \$3,000 (\$7,500 reduced by unrecovered adjusted basis of \$4,500). Of the total gain of \$3,000, gain in the amount of \$2,000 (\$5,000 - [\$4,500 × \$5,000/\$7,500]) is considered to be from the fixed installment payment and of \$1,000 (\$2,500 - [\$4,500 × \$2,500/\$7,500]) is considered to be from payments which are contingent on the productivity, use, or disposition of the patent. Since 33.3 percent (\$1,000/\$3,000) of the gain recognized in 1968 from the sale of the patent is from payments which are contingent on the productivity, use, or disposition of the patent, only \$1,000 of the \$3,000 gain for that year constitutes gains which, for purposes of section 881(a)(4) and section 1442(a), are from payments which are contingent on the productivity, use, or disposition of the patent. The balance of \$2,000 is gain from the sale of property and is not subject to tax under section 881(a).

(g) *Effective date.* This section shall apply for taxable years beginning after December 31, 1966, but only in respect of gains from sales or exchanges occurring after October 4, 1966. There are no corresponding rules in this part for taxable years beginning before January 1, 1967.

#### § 1.871-12 Determination of tax on treaty income.

(a) *In general.* This section applies for purposes of determining under § 1.871-7 or § 1.871-8 the tax of a nonresident alien individual, or under § 1.881-2 or § 1.882-1 the tax of a foreign corporation, which for the taxable year has income described in section 872(a) or 882(b) upon which the tax is limited by an income tax convention to which the United States is a party. Income for such purposes does not include income of any kind which is exempt from tax under the provisions of an income tax convention to which the United States is a party. See §§ 1.872-2(c) and 1.883-1(b). This section shall not apply to a nonresident alien individual who is a bona fide resident of Puerto Rico during the entire taxable year.

(b) *Definition of treaty and nontreaty income.* (1) *In general.* (i) For purposes of this section the term "treaty income" shall be construed to mean the gross income of a nonresident alien individual or foreign corporation, in the case may be, the tax on which is limited by a tax convention. The term "nontreaty income" shall be construed, for such purposes, to mean the gross income of the nonresident alien individual or foreign corporation other than the treaty income. Neither term includes income of any kind which is exempt from the tax imposed by chapter 1 of the Code.

(ii) In determining either the treaty or nontreaty income the gross income shall be determined in accordance with §§ 1.872-1 and 1.872-2, or with §§ 1.882-3 and 1.883-1, except that in determining the treaty income the exclusion granted by section 116(a) for dividends shall not be taken into account. Thus, for example, treaty income includes the total amount of dividends paid by a domestic corporation not disqualified by section 116(b) and received from sources within the United States if, in accordance with

a tax convention, the dividends are subject to the income tax at a rate not to exceed 15 percent but does not include interest which, in accordance with a tax convention, is exempt from the income tax. In further illustration, neither the treaty nor the nontreaty income includes interest on certain governmental obligations which by reason of section 103 is excluded from gross income, or interest which by reason of a tax convention is exempt from the tax imposed by chapter 1 of the Code.

(iii) For purposes of applying any income tax convention to which the United States is a party, original issue discount which is subject to tax under section 871(a)(1)(C) or 881(a)(3) is to be treated as interest, and gains which are subject to tax under section 871(a)(1)(D) or 881(a)(4) are to be treated as royalty income. This subdivision shall not apply, however, where its application would be contrary to any treaty obligation of the United States.

(2) *Application of permanent establishment rule of treaties.* In applying this section with respect to income which is not effectively connected for the taxable year with the conduct of a trade or business in the United States by a nonresident alien individual or foreign corporation, see section 894(b), which provides that with respect to such income the nonresident alien individual or foreign corporation shall be deemed not to have a permanent establishment in the United States at any time during the taxable year for purposes of applying any exemption from, or reduction in rate of, tax provided by any tax convention.

(c) *Determination of tax—(1) In general.* If the gross income of a nonresident alien individual or foreign corporation, as the case may be, consists of both treaty and nontreaty income, the tax liability for the taxable year shall be the sum of the amounts determined in accordance with subparagraphs (2) and (3) of this paragraph. In no case, however, may the tax liability so determined exceed the tax liability (tax reduced by allowable credits) with respect to the taxpayer's entire income, determined in accordance with § 1.871-7 or § 1.871-8, or with § 1.881-2 or § 1.882-1, as though the tax convention had not come into effect and without reference to the provisions of this section. Determinations under this paragraph shall be made without taking into account any credits allowed by sections 31, 32, 39, and 6402, but such credits shall be allowed against the tax liability determined in accordance with this subparagraph.

(2) *Tax on nontreaty income.* For purposes of subparagraph (1) of this paragraph, compute a partial tax (determined without the allowance of any credit) upon only the nontreaty income in accordance with § 1.871-7 or § 1.871-8, or with § 1.881-2 or § 1.882-1, whichever applies, as though the tax convention had not come into effect. To the extent allowed by paragraph (d) of § 1.871-8, or paragraph (c) of § 1.882-1, the credits allowed by sections 33, 35, and 38 shall then be allowed, without taking into

account any item included in the treaty income, against the tax determined under this subparagraph.

(3) *Tax on treaty income.* For purposes of subparagraph (1) of this paragraph, compute a tax upon the gross amount, determined without the allowance of any deduction, of each separate item of treaty income at the reduced rate applicable to that item under the tax convention. No credits shall be allowed against the tax determined under this subparagraph.

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

*Example (1).* (a) A nonresident alien individual who is a resident of a foreign country with which the United States has entered into a tax convention receives during the taxable year 1967 from sources within the United States total gross income of \$4,100, consisting of the following items and determined without regard to the \$100 exclusion granted by section 116(a):

Dividends the tax on which is limited by the tax convention to a rate not to exceed 15 percent.....	\$3,100
Compensation for personal services, the tax on which is not limited by the tax convention.....	1,000
<b>Total gross income.....</b>	<b>4,100</b>

(b) The dividends are paid by a domestic corporation not disqualified by section 116 (b). The taxpayer is engaged in business in the United States during the taxable year by reason of performing personal services in the United States for a period in excess of 90 days, but does not have a permanent establishment therein. Under paragraph (c) (6) (i) of § 1.864-4, the dividends are effectively connected for the taxable year with the conduct of a trade or business in the United States. Interest expense in the amount of \$2,100 connected with the dividend income is paid by the taxpayer during the taxable year.

(c) The tax liability for the taxable year is \$193, determined as follows:

Total gross income, determined by taking into account the exclusion granted by section 116(a).....	\$4,000
Less: Deduction for interest expense paid.....	\$2,100
Deduction for personal exemption.....	600
<b>Taxable income.....</b>	<b>1,300</b>

Tax under section 1 of the Code (determined as provided in § 1.871-8 (b) (2) as though the tax convention had not come into effect) (\$145 plus 15 percent of \$300).....

(d) If the tax had been determined as provided in paragraph (c) (2) and (3) of this section, the tax liability would have been \$521, determined as follows:

Nontreaty gross income.....	\$1,000
Less: Deduction for personal exemption.....	600
<b>Nontreaty taxable income.....</b>	<b>400</b>
Tax under section 1 of the Code on nontreaty taxable income (14% of \$400).....	56
Plus: Tax on treaty income (gross dividends) (\$3,100 × 15 percent)....	465
<b>Total tax.....</b>	<b>521</b>

*Example (2).* (a) A nonresident alien individual, who is a resident of a foreign country with which the United States has entered

into a tax convention receives during the taxable year 1967 from sources within the United States total gross income of \$22,000, consisting of the following items:

Compensation for personal services the tax on which is not limited by the tax convention.....	\$20,000
Oil royalties the tax on which is limited by the tax convention to a rate not to exceed 15 percent.....	2,000
<b>Total gross income.....</b>	<b>22,000</b>

(b) The taxpayer is engaged in business in the United States during the taxable year but does not have a permanent establishment therein. Both the compensation for personal services and the income from oil royalties are considered to be effectively connected for the taxable year with the conduct of a trade or business in the United States, an election being in effect under § 1.871-10 as to real property income. There are no allowable deductions, other than the deductions allowed by sections 613 and 873(b)(3).

(c) The tax liability for the taxable year is \$6,100, determined as follows:

Nontreaty gross income.....	\$20,000
Less: Deduction for personal exemption.....	600
<b>Nontreaty taxable income.....</b>	<b>19,400</b>
Tax under section 1 of the Code on nontreaty taxable income (\$5,170 plus 45 percent of \$1,400).....	5,800
Plus: Tax on treaty income (Gross oil royalties) (\$2,000 × 15 percent).....	300

Total tax (determined as provided in paragraph (c) (2) and (3) of this section).....

(d) If the tax had been determined under paragraph (b) (2) of § 1.871-8 as though the tax convention had not come into effect, the tax liability would have been \$6,478, determined as follows:

Total gross income.....	\$22,000
Less: Deduction under section 613 for percentage depletion (\$2000 × 27½ percent).....	\$550
Deduction for personal exemption.....	600
<b>Taxable income.....</b>	<b>20,850</b>

Tax under section 1 of the Code on taxable income (\$6,070 plus 48 percent of \$850).....

(e) *Effective date.* This section shall apply for taxable years beginning after December 31, 1966. For corresponding rules applicable to taxable years beginning before January 1, 1967, see 26 CFR 1.871-7(e) (Rev. as of Jan. 1, 1971).

**§ 1.871-13 Taxation of alien individuals for taxable year of change of residence.**

(a) *In general.* (1) An alien individual who becomes a resident of the United States during the taxable year, or abandons his U.S. residence during the taxable year, is taxable for such year as though his taxable year were comprised of two separate periods, one consisting of the time during which he is a resident of the United States and the other consisting of the time during which he is not a resident of the United States. Accordingly, the income tax liability of an alien individual under chapter 1 of the Code

for the taxable year in which he changes his residence will be computed under two different sets of rules, one relating to residents for the period of residence and the other relating to nonresidents for the period of nonresidence. However, in determining the taxable income for such year which is subject to the graduated rate of tax imposed by section 1 or 1201 of the Code, all income for the period of residence must be aggregated with the income for the period of nonresidence which is effectively connected for such year with the conduct of a trade or business in the United States.

(2) For purposes of this section, an alien is deemed to be a resident of the United States for the day on which he becomes a resident of the United States and a nonresident of the United States for the day on which he abandons his U.S. residence.

(b) *Establishment of residence.* Income from sources without the United States which is not effectively connected with the conduct by the taxpayer of a trade or business in the United States is not taxable if received by an alien individual while he is not a resident of the United States, even though he becomes a resident of the United States after its receipt and before the close of the taxable year. However, income from sources without the United States which is not effectively connected with the conduct by the taxpayer of a trade or business in the United States is taxable if received by an alien individual while he is a resident of the United States, even though he earns the income earlier in the taxable year while he is not a resident of the United States.

(c) *Abandonment of residence.* Income from sources without the United States which is not effectively connected with the conduct by the taxpayer of a trade or business in the United States is not taxable if received by an alien individual while he is not a resident of the United States, even though he earns the income earlier in the taxable year while he is a resident of the United States. However, income from sources without the United States which is not effectively connected with the conduct by the taxpayer of a trade or business in the United States is taxable if received by an alien individual while he is a resident of the United States, even though he abandons his U.S. residence after its receipt and before the close of the taxable year.

(d) *Special rules—(1) Method of accounting.* Paragraphs (b) and (c) of this section may not apply to an alien individual who for the taxable year uses an accrual method of accounting.

(2) *Deductions for personal exemptions.* An alien individual to whom this section applies is entitled to deduct one personal exemption for the taxable year under section 151. In addition, he is entitled to such additional exemptions as are allowed as a deduction under section 151 but only to the extent the amount of such additional exemptions do not exceed his taxable income (determined without regard to any deduction for personal exemptions) for the period in the

taxable year during which he is a resident of the United States. This subparagraph does not apply to the extent it is inconsistent with section 873, and the regulations thereunder, or with the provisions of an income tax convention to which the United States is a party.

(3) *Exclusion of dividends received.* In determining the \$100 exclusion for the taxable year provided by section 116 in respect of certain dividends, only those dividends for the period of nonresidence may be taken into account as are effectively connected for the taxable year with the conduct of a trade or business in the United States. See § 1.116-1(e)(1).

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

*Example (1).* A, a married alien individual who uses the calendar year as the taxable year and the cash receipts and disbursements method of accounting, becomes a resident of the United States on June 1, 1971. During the period of nonresidence from January 1, 1971, to May 31, 1971, inclusive, A receives \$15,000 income from sources without the United States which is not effectively connected with the conduct of a trade or business in the United States. During the period of residence from June 1, 1971, to December 31, 1971, A receives wages of \$10,000 dividends of \$200 from a foreign corporation, and dividends of \$75 from a domestic corporation qualifying under section 116(a). Of the amount of wages so received, \$2,000 is for services performed by A outside the United States during the period of nonresidence. Total allowable deductions (other than for personal exemptions) amount to \$700, none of which are deductible under section 62 in computing adjusted gross income. For 1971 A's spouse has no gross income and is not the dependent of another taxpayer. For 1971, A's taxable income is \$8,200, all of which is subject to tax under section 1, as follows:

Wages	\$10,000	
Dividends from foreign corporation	200	
Dividends from domestic corporation (\$75 less \$75 exclusion)	0	
Adjusted gross income	10,200	
Less deductions:		
Personal exemptions (2×\$650)	\$1,300	
Other allowable deductions	700	2,000
Taxable income	8,200	

*Example (2).* The facts are the same as in example (1) except that during the period of nonresidence from January 1, 1971, to May 31, 1971, A receives from sources within the United States income of \$1,850 which is effectively connected with the conduct by A of a business in the United States and \$350 in dividends from domestic corporations qualifying under section 116(a). Only \$50 of these dividends are effectively connected with the conduct by A of a business in the United States. The assumption is made that there are no allowable deductions connected with such effectively connected income. For 1971, A has taxable income of \$10,075 subject to tax under section 1 and \$300 income subject to tax under section 871(a)(1)(A), as follows:

Wages	\$10,000	
Business income	1,850	
Dividends from foreign corporation	200	
Dividends from domestic corporation (\$125 less \$100 exclusion)	25	
Adjusted gross income	12,075	

Less deductions:

Personal exemptions (2×\$650)	\$1,300	
Other allowable deductions	700	2,000

Taxable income subject to tax under section 1..... 10,075

Income subject to tax under section 871(a)(1)(A)..... 300

*Example (3).* A, a married individual with three children, uses the calendar year as the taxable year and the cash receipts and disbursements method of accounting. On October 1, 1971, A and his family become residents of the United States. During the period of nonresidence from January 1, 1971, to September 30, 1971, A receives income of \$18,000 from sources without the United States which is not effectively connected with the conduct of a trade or business in the United States and of \$2,500 from sources within the United States which is effectively connected with the conduct of a business in the United States. It is assumed there are no allowable deductions connected with such effectively connected income. During the period of residence from October 1, 1971, to December 31, 1971, A receives wages of \$2,000, of which \$400 is for services performed outside the United States during the period of nonresidence. Total allowable deductions (other than for personal exemptions) amount to \$250, none of which are deductible under section 62 in computing adjusted gross income. Neither the spouse nor any of the children has any gross income for 1971, and the spouse is not the dependent of another taxpayer for such year. For 1971, A's taxable income is \$1,850, all of which is subject to tax under section 1, as follows:

Wages (residence period)	\$2,000	
Less: Allowable deductions	250	
Taxable income (without deduction for personal exemptions) (residence period)	\$1,750	
Business income (nonresidence period)	2,500	
Total taxable income (without deduction for personal exemptions)	4,250	
Less deduction for personal exemptions:		
Taxpayer	650	
Wife and 3 children (4×\$650, but not to exceed \$1,750)	2,400	
Taxable income	1,850	

(f) *Effective date.* This section shall apply for taxable years beginning after December 31, 1966. There are no corresponding rules in this part for taxable years beginning before January 1, 1967.

#### § 1.371-3 [Deleted]

PAR. 13. Section 1.871-8 is deleted.  
PAR. 14. Section 1.872 is amended by revising sections 872 (a) and (b) (3) (B), by adding a new paragraph (4) at the end of section 872(b), and by revising the historical note. These amended and added provisions read as follows:

#### § 1.872 Statutory provisions; gross income.

SEC. 872. *Gross income—(a) General rule.* In the case of a nonresident alien individual, gross income includes only—

(1) Gross income which is derived from sources within the United States and which is not effectively connected with the conduct of a trade or business within the United States, and

(2) Gross income which is effectively connected with the conduct of a trade or business within the United States.

(b) Exclusions. \* \* \*

(3) Compensation of participants in certain exchange or training programs. \* \* \*

(B) An office or place of business maintained in a foreign country or in a possession of the United States by a domestic corporation, a domestic partnership, or an individual who is a citizen or resident of the United States.

(4) Certain bond income of residents of the Ryukyu Islands or the Trust Territory of the Pacific Islands. Income derived by a nonresident alien individual from a series E or series H U.S. savings bond, if such individual acquired such bond while a resident of the Ryukyu Islands or the Trust Territory of the Pacific Islands.

[Sec. 872 as amended by sec. 110(c), Mutual Educational and Cultural Exchange Act 1961 (75 Stat. 536); sec. 103(b), Foreign Investors Tax Act 1966 (80 Stat. 1550)]

PAR. 15. Section 1.872-1 is amended to read as follows:

**§ 1.872-1 Gross income of nonresident alien individuals.**

(a) *In general*—(1) *Inclusions*. The gross income of a nonresident alien individual for any taxable year includes only (i) the gross income which is derived from sources within the United States and which is not effectively connected for the taxable year with the conduct of a trade or business in the United States by that individual and (ii) the gross income, irrespective of whether such income is derived from sources within or without the United States, which is effectively connected for the taxable year with the conduct of a trade or business in the United States by that individual. For the determination of the sources of income, see sections 861 through 863 and the regulations thereunder. For the determination of whether income from sources within or without the United States is effectively connected for the taxable year with the conduct of a trade or business in the United States, see sections 864(c) and 871(c) and (d), §§ 1.864-3 through 1.864-7, and §§ 1.871-9 and 1.871-10. For special rules for determining the income of an alien individual who changes his residence during the taxable year, see § 1.871-13.

(2) *Exchange transactions*. Even though a nonresident alien individual who effects certain transactions in the United States in stocks, securities, or commodities during the taxable year may not, by reason of section 864(b)(2) and paragraph (c) or (d) of § 1.864-2, be engaged in trade or business in the United States during the taxable year through the effecting of such transactions, nevertheless he shall be required to include in gross income for the taxable year the gains and profits from those transactions to the extent required by § 1.871-7 or § 1.871-8.

(3) *Exclusions*. For exclusions from gross income, see § 1.872-2.

(b) *Individuals not engaged in U.S. business*. In the case of a nonresident alien individual who at no time during the taxable year is engaged in trade or business in the United States, the gross

income shall include only (1) the gross income from sources within the United States which is described in section 871(a) and paragraphs (b), (c), and (d) of § 1.871-7, and (2) the gross income from sources within the United States which, by reason of section 871(c) or (d) and § 1.871-9 or § 1.871-10, is treated as effectively connected for the taxable year with the conduct of a trade or business in the United States by that individual.

(c) *Individuals engaged in U.S. business*. In the case of a nonresident alien individual who is engaged in trade or business in the United States at any time during the taxable year, the gross income shall include (1) the gross income from sources within and without the United States which is effectively connected for the taxable year with the conduct of a trade or business in the United States by that individual, (2) the gross income from sources within the United States which, by reason of the election provided in section 871(d) and § 1.871-10, is treated as effectively connected for the taxable year with the conduct of a trade or business in the United States by that individual, and (3) the gross income from sources within the United States which is described in section 871(a) and paragraphs (b), (c), and (d) of § 1.871-7 and is not effectively connected for the taxable year with the conduct of a trade or business in the United States by that individual.

(d) *Special rules applicable to certain expatriates*. For special rules for determining the gross income of a nonresident alien individual who has lost U.S. citizenship with a principal purpose of avoiding certain taxes, see section 877(b)(1).

(e) *Alien resident of Puerto Rico*. This section shall not apply in the case of a nonresident alien individual who is a bona fide resident of Puerto Rico during the entire taxable year. See section 876 and § 1.876-1.

(f) *Effective date*. This section shall apply for taxable years beginning after December 31, 1966. For corresponding rules applicable to taxable years beginning before January 1, 1967, see 26 CFR 1.872-1 (Rev. as of Jan. 1, 1971).

PAR. 16. Section 1.872-2 is amended to read as follows:

**§ 1.872-2 Exclusions from gross income of nonresident alien individuals.**

(a) *Earnings of foreign ships or aircraft*—(1) *Basic rule*. So much of the income from sources within the United States of a nonresident alien individual as consists of earnings derived from the operation of a ship or ships documented, or of aircraft registered, under the laws of a foreign country which grants an equivalent exemption to citizens of the U.S. nonresident in that foreign country and to corporations organized in the United States shall not be included in gross income.

(2) *Equivalent exemption*—(i) *Ships*. A foreign country which either imposes no income tax, or, in imposing an income

tax, exempts from taxation so much of the income of a citizen of the U.S. nonresident in that foreign country and of a corporation organized in the United States as consists of earnings derived from the operation of a ship or ships documented under the laws of the United States is considered as granting an equivalent exemption for purposes of the exclusion from gross income of the earnings of a foreign ship or ships.

(ii) *Aircraft*. A foreign country which either imposes no income tax, or, in imposing an income tax, exempts from taxation so much of the income of a citizen of the U.S. nonresident in that foreign country and of a corporation organized in the United States as consists of earnings derived from the operation of aircraft registered under the laws of the United States is considered as granting an equivalent exemption for purposes of the exclusion from gross income of the earnings of foreign aircraft.

(3) *Definition of earnings*. For purposes of subparagraphs (1) and (2) of this paragraph, compensation for personal services performed by an individual aboard a ship or aircraft does not constitute earnings derived by such individual from the operation of ships or aircraft.

(b) *Compensation paid by foreign employer to participants in certain exchange or training programs*—(1) *Exclusion from income*. Compensation paid to a nonresident alien individual for the period that the nonresident alien individual is temporarily present in the United States as a nonimmigrant under subparagraph (F) (relating to the admission of students into the United States) or subparagraph (J) (relating to the admission of teachers, trainees, specialists, etc., into the United States) of section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15) (F) or (J)) shall be excluded from gross income if the compensation is paid to such alien by his foreign employer. Compensation paid to a nonresident alien individual by the U.S. office of a domestic bank which is acting as paymaster on behalf of a foreign employer constitutes compensation paid by a foreign employer for purposes of this paragraph if the domestic bank is reimbursed by the foreign employer for such payment. A nonresident alien individual who is temporarily present in the United States as a nonimmigrant under such subparagraph (J) includes a nonresident alien individual admitted to the United States as an "exchange visitor" under section 201 of the U.S. Information and Educational Exchange Act of 1948 (22 U.S.C. 1446), which section was repealed by section 111 of the Mutual Education and Cultural Exchange Act of 1961 (75 Stat. 538).

(2) *Definition of foreign employer*. For purposes of this paragraph, the term "foreign employer" means a nonresident alien individual, a foreign partnership, a foreign corporation, or an office or place of business maintained in a foreign country or in a possession of the United States by a domestic corporation, a

domestic partnership, or an individual who is a citizen or resident of the United States. The term does not include a foreign government. However, see section 893 and § 1.893-1. Thus, if a French citizen employed in the Paris branch of a banking company incorporated in the State of New York were admitted to the United States under section 101(a)(15)(J) of the Immigration and Nationality Act to study monetary theory and continued to receive a salary from such foreign branch while studying in the United States, such salary would not be includible in his gross income.

(c) *Tax convention.* Income of any kind which is exempt from tax under the provisions of a tax convention or treaty to which the United States is a party shall not be included in the gross income of a nonresident alien individual. Income on which the tax is limited by tax convention shall be included in the gross income of a nonresident alien individual if it is not otherwise excluded from gross income. See §§ 1.871-12 and 1.894-1.

(d) *Certain bond income of residents of the Ryukyu Islands or the Trust Territory of the Pacific Islands.* Income derived by a nonresident alien individual from a series E or series H U.S. savings bond shall not be included in gross income if such individual acquired the bond while he was a resident of the Ryukyu Islands or the Trust Territory of the Pacific Islands. It is not necessary that the individual continue to be a resident of such Islands or Trust Territory for the period when, without regard to section 872(b)(4) and this paragraph, the income from the bond would otherwise be includible in his gross income under the provisions of section 446 or 454.

(e) *Certain annuities received under qualified plans.* Pursuant to section 871(f), income received by a nonresident alien individual as an annuity under a qualified annuity plan described in section 403(a)(1) (relating to taxation of employee annuities), or from a qualified trust described in section 401(a) (relating to qualified pension, profit-sharing, and stock bonus plans) which is exempt from tax under section 501(a) (relating to exemption from tax on corporations, certain trusts, etc.), shall not be included in gross income, and shall be exempt from tax, for purposes of section 871 and §§ 1.871-7 and 1.871-8, if—

(1) All of the personal services by reason of which the annuity is payable were either—

(i) Personal services performed outside the United States by an individual (whether or not the annuitant) who, at the time of performance of the services, was a nonresident alien individual, or

(ii) Personal services performed in the United States by a nonresident alien individual (whether or not the annuitant) which, by reason of section 864(b)(1) (or corresponding provision of any prior law), were not personal services causing such individual to be engaged in trade or business in the United States during the taxable year, and

(2) At the time the first amount is paid under the annuity plan, or by the

trust, as an annuity of the kind described in subparagraph (1) of this paragraph 90 percent or more of the employees or annuitants for whom contributions or benefits are provided under the annuity plan, or under the plan or plans of which the trust is a part, are citizens or residents of the United States.

This paragraph shall apply whether or not the taxpayer is engaged in trade or business in the United States at any time during the taxable year in which the annuity is received. This paragraph shall not apply to distributions by an employees' trust or from an annuity plan which give rise to gains described in section 402(a)(2) of 403(a)(2), whichever applies. See section 871(a)(1)(B) and paragraph (c)(1)(i) of § 1.871-7. For exemption from withholding of tax at source on an annuity which is exempt from tax under section 871(f) and this paragraph, see paragraph (g) of § 1.1441-4.

(f) *Other exclusions.* Income which is from sources without the United States, as determined under the provisions of sections 861 through 863, and the regulations thereunder, is not included in the gross income of a nonresident alien individual unless such income is effectively connected for the taxable year with the conduct of a trade or business in the United States by that individual. To determine specific exclusions in the case of other items which are from sources within the United States, see the applicable sections of the Code. For special rules under a tax convention for determining the sources of income and for excluding, from gross income, income from sources without the United States which is effectively connected with the conduct of a trade or business in the United States, see the applicable tax convention. For determining which income from sources without the United States is effectively connected with the conduct of a trade or business in the United States, see section 864(c)(4) and § 1.864-5.

(g) *Effective date.* This section shall apply for taxable years beginning after December 31, 1966. For corresponding rules applicable to taxable years beginning before January 1, 1967, see 26 CFR 1.872-2 (Rev. as of Jan. 1, 1971).

PAR. 17. Section 1.876-1 is amended by revising paragraphs (b) and (c) and by adding a new paragraph (d). These amended and added provisions read as follows:

§ 1.876-1 Alien residents of Puerto Rico.

(b) *Exceptions.* Though subject to the tax imposed by section 1, a nonresident alien individual who is a bona fide resident of Puerto Rico during his entire taxable year shall nevertheless be treated as a nonresident alien individual for the purpose of many provisions of the Code relating to nonresident alien individuals. Thus, for example, such a resident of Puerto Rico is not allowed to determine his tax in accordance with the optional tax table (section 4(d)(1)); is not allowed the standard deduction (section 142(b)(1)); is not allowed a deduction

for a "dependent" who is a resident of Puerto Rico unless the dependent is a citizen of the United States (section 152(b)(3)); is subject to withholding of tax at source under chapter 3 of the Code (sections 1441(e) and 1451(e)); is generally excepted from the collection of income tax at source on wages (paragraph (d)(1) of § 31.3401(a)(6)-1 of this chapter (Employment Tax Regulations)); is not allowed to make a joint return or a joint declaration of estimated tax (sections 6013(a)(1) and 6015(b)); must pay his estimated income tax on or before the 15th day of the 4th month of the taxable year (sections 6015(i)(3), 6073(a), and 6153(a)(1)); and generally must pay his income tax on or before the 15th day of the 6th month following the close of the taxable year (sections 6072(c) and 6151(a)).

(c) *Credits against tax.* The credits allowed by section 31 (relating to tax withheld on wages), section 32 (relating to tax withheld at source on nonresident aliens), section 33 (relating to taxes of foreign countries), section 35 (relating to partially tax-exempt interest), section 38 (relating to investment in certain depreciable property), and section 39 (relating to certain uses of gasoline and lubricating oil) shall be allowed against the tax determined in accordance with this section. No credit shall be allowed under section 37 in respect of retirement income.

(d) *Effective date.* This section shall apply for taxable years beginning after December 31, 1966. For corresponding rules applicable to taxable years beginning before January 1, 1967, see 26 CFR 1.876-1 (Rev. as of Jan. 1, 1971).

PAR. 18. Section 1.877 is redesignated as § 1.878 and revised to read as follows:

§ 1.878 Statutory provisions; certain foreign exempt organizations.

SEC. 878. *Foreign educational, charitable, and certain other exempt organizations.* For special provisions relating to unrelated business income of foreign educational, charitable, and other exempt trusts, see section 512(a).

[Sec. 878 as redesignated by sec. 103(f)(1), Foreign Investors Tax Act 1966 (80 Stat. 1551)]

PAR. 19. The following new section is inserted immediately after § 1.876-1:

§ 1.877 Statutory provisions; expatriation to avoid tax.

SEC. 877. *Expatriation to avoid tax.*—(a) *In general.* Every nonresident alien individual who at any time after March 8, 1965, and within the 10-year period immediately preceding the close of the taxable year lost U.S. citizenship, unless such loss did not have for one of its principal purposes the avoidance of taxes under this subtitle or subtitle B, shall be taxable for such taxable year in the manner provided in subsection (b) if the tax imposed pursuant to such subsection exceeds the tax which, without regard to this section, is imposed pursuant to section 871.

(b) *Alternative tax.* A nonresident alien individual described in subsection (a) shall be taxable for the taxable year as provided in section 1 or section 1201(b), except that—

(1) The gross income shall include only the gross income described in section 872(a)



(as modified by subsection (c) of this section), and

(2) The deductions shall be allowed if and to the extent that they are connected with the gross income included under this section except that the capital loss carryover provided by section 1212(b) shall not be allowed; and the proper allocation and apportionment of the deductions for this purpose shall be determined as provided under regulations prescribed by the Secretary or his delegate.

For purposes of paragraph (2), the deductions allowed by section 873(b) shall be allowed; and the deduction (for losses not connected with the trade or business if incurred in transactions entered into for profit) allowed by section 185(c) (2) shall be allowed, but only if the profit, if such transaction had resulted in a profit, would be included in gross income under this section.

(c) *Special rules of source.* For purposes of subsection (b), the following items of gross income shall be treated as income from sources within the United States:

(1) *Sale of property.* Gains on the sale or exchange of property (other than stock or debt obligations) located in the United States.

(2) *Stock or debt obligations.* Gains on the sale or exchange of stock issued by a domestic corporation or debt obligations of U.S. persons or of the United States, a State or political subdivision thereof, or the District of Columbia.

(d) *Exception for loss of citizenship for certain causes.* Subsection (a) shall not apply to a nonresident alien individual whose loss of U.S. citizenship resulted from the application of section 301(b), 350, or 355 of the Immigration and Nationality Act, as amended (8 U.S.C. 1401(b), 1482, or 1487).

(e) *Burden of proof.* If the Secretary or his delegate establishes that it is reasonable to believe that an individual's loss of U.S. citizenship would, but for this section, result in a substantial reduction for the taxable year in the taxes on his probable income for such year, the burden of proving for such taxable year that such loss of citizenship did not have for one of its principal purposes the avoidance of taxes under this subtitle or subtitle B shall be on such individual.

[Sec. 877 as added by sec. 103(f) (1), Foreign Investors Tax Act 1966 (80 Stat. 1551)]

PAR. 20. Section 1.932 is amended by revising section 932(a) and by adding a historical note as follows:

§ 1.932 Statutory provisions; taxation of citizens of possessions of the United States.

Sec. 932. *Citizens of possessions of the United States—(a) General rule.* Any individual who is a citizen of any possession of the United States (but not otherwise a citizen of the United States) and who is not a resident of the United States shall be subject to taxation under this subtitle in the same manner and subject to the same conditions as in the case of a nonresident alien individual. This section shall have no application in the case of a citizen of Puerto Rico.

[Sec. 932 as amended by sec. 103(m), Foreign Investors Tax Act 1966 (80 Stat. 1554)]

PAR. 21. Section 1.932-1 is amended by revising paragraph (a) to read as follows:

§ 1.932-1 Status of citizens of U.S. possessions.

(a) *General rule—(1) Definition and treatment.* A citizen of a possession of the United States (except Puerto Rico), who

is not otherwise a citizen or resident of the United States, including only the States and the District of Columbia, is treated for the purpose of the tax as if he were a nonresident alien individual. For purposes of the tax imposed on self-employment income by chapter 2 of the Code, the preceding sentence does not apply to the Virgin Islands, Guam, or American Samoa. See section 1402(a) (9). See subpart A (section 871 and following), part II, subchapter N, chapter 1 of the Code, and the regulations thereunder, for rules relating to imposition of tax on nonresident alien individuals. For Federal income tax purposes, a citizen of a possession of the United States who is not otherwise a citizen of the United States is a citizen of a possession of the United States who has not become a citizen of the United States by naturalization in a State or the District of Columbia. The fixed or determinable annual or periodical income from sources within the United States of a citizen of a possession of the United States who is treated as if he was a nonresident alien individual is subject to withholding. See section 1441.

PAR. 22. Section 1.1493 is amended by adding a historical note to read as follows:

§ 1.1493 Statutory provisions; definition of foreign trust.

[Sec. 1493 as in effect before its repeal by sec. 103(1) (2), Foreign Investors Tax Act 1966 (80 Stat. 1544)]

PAR. 23. Section 1.1493-1 is revised to read as follows:

§ 1.1493-1 Definition of foreign trust.

For taxable years beginning before January 1, 1967, a trust is to be considered a "foreign trust" within the meaning of chapter 5 of the Code, if, assuming a subsequent sale by the trustee, outside the United States and for cash, of the property transferred to the trust, the profit, if any, from such sale (being income from sources without the United States under the provisions of part I (section 861 and following), subchapter N, chapter 1 of the Code), would not be included in the gross income of the trust under subtitle A of the Code. For taxable years beginning after December 31, 1966, the term "foreign trust," as used in chapter 5 of the Code, shall have the meaning prescribed by section 7701(a) (31).

PAR. 24. Section 1.6012-1 is amended by revising paragraphs (a) (5) and (b) to read as follows:

§ 1.6012-1 Individuals required to make returns of income.

(a) *Individual citizen or resident.* . . .  
 (5) *Returns made by agents.* The return of income may be made by an agent if the person liable for the making of the return is unable to make it by reason of illness or continuous absence from the United States for a period of at least 60 days before the date prescribed by law for making the return. A return may also be made by an agent if the taxpayer re-

quests permission, in writing, of the district director for the internal revenue district in which is located the legal residence or principal place of business of the person liable for the making of the return, and such district director determines that good cause exists for permitting the return to be so made. However, assistance in the preparation of the return may be rendered under any circumstances. Whenever a return is made by an agent it shall be accompanied by a power of attorney in proper form, or a copy thereof, specifically authorizing him to represent his principal in making, executing, and filing the income return. Form 2848 may be used for this purpose. The agent, as well as the taxpayer, may incur liability for the penalties provided for erroneous, false, or fraudulent returns. For the requirements regarding signing of returns, see § 1.6061-1. The rules of paragraph (e) of § 601.504 of this chapter (Statement of Procedural Rules) shall apply under this subparagraph in determining whether a copy of a power of attorney must be certified.

(b) *Return of nonresident alien individual—(1) Requirement of return—(1)*

*In general.* Except as otherwise provided in subparagraph (2) of this paragraph, every nonresident alien individual who is engaged in trade or business in the United States during the taxable year or who has income which is subject to taxation under subtitle A of the Code shall make a return on Form 1040NR. For this purpose it is immaterial that the gross income for the taxable year is less than the minimum amount specified in section 6012(a) for making a return. Thus, a nonresident alien individual who is engaged in a trade or business in the United States during the taxable year is required to file a return on Form 1040NR even though (a) he has no income which is effectively connected with the conduct of a trade or business in the United States, (b) he has no income from sources within the United States, or (c) his income is exempt from income tax by reason of an income tax convention or any section of the Code. However, if the nonresident alien individual has no gross income for the taxable year, he is not required to complete the return schedules but must attach a statement to the return indicating the amount and nature of any exclusions claimed.

(ii) *Treaty income.* If the gross income of a nonresident alien individual includes treaty income, as defined in paragraph (b) (1) of § 1.871-12, a statement shall be attached to the return on Form 1040NR showing with respect to that income—

- (a) The amounts of tax withheld,
- (b) The names and post office addresses of withholding agents, and
- (c) Such other information as may be required by the return form, or by the instructions issued with respect to the form, to show the taxpayer's entitlement to the reduced rate of tax under the tax convention.

(2) *Exceptions—(1) Return not required when tax is fully paid at source.*

A nonresident alien individual who at no time during the taxable year is engaged in a trade or business in the United States is not required to make a return for the taxable year if his tax liability for the taxable year is fully satisfied by the withholding of tax at source under chapter 3 of the Code. This subdivision does not apply to a nonresident alien individual who has income for the taxable year which is treated under section 871 (c) or (d) and § 1.871-9 (relating to students or trainees) or § 1.871-10 (relating to real property income) as income which is effectively connected for the taxable year in which the conduct of a trade or business in the United States by that individual, or to a nonresident alien individual making a claim under § 301.6402-3 of this chapter (Procedure and Administration Regulations) for the refund of an overpayment of tax for the taxable year. For purposes of this subdivision, some of the items of income from sources within the United States upon which the tax liability will not have been fully satisfied by the withholding of tax at source under chapter 3 of the Code are:

(a) Interest upon so-called tax-free covenant bonds upon which, in accordance with section 1451 and § 1.1451-1, a tax of only 2 percent is required to be withheld at the source,

(b) In the case of bonds or other evidences of indebtedness issued after September 28, 1965, amounts described in section 871(a)(1)(C),

(c) Capital gains described in section 871(a)(2) and paragraph (d) of § 1.871-7, and

(d) Accrued interest received in connection with the sale of bonds between interest dates, which, in accordance with paragraph (h) of § 1.1441-4, is not subject to withholding of tax at the source.

(ii) *Return of alien changing place of residence.* (a) If an alien individual becomes a resident of the United States during the taxable year and is a resident of the United States on the last day of such year, he must make a return on Form 1040 for the taxable year. However, a separate schedule is required to be attached to this return to show the income tax computation for the part of the taxable year during which the alien was not a resident of the United States. A Form 1040NR, clearly marked "Statement" across the top, may be used as such a separate schedule.

(b) If an alien individual abandons his U.S. residence during the taxable year and is not a resident of the United States on the last day of such year, he must make a return on Form 1040NR for the taxable year. However, a separate schedule is required to be attached to this return to show the income tax computation for the part of the taxable year during which the alien was a resident of the United States. A Form 1040, clearly marked "Statement" across the top, may be used as such a separate schedule.

(c) A return is required under this subdivision only if the alien individual is otherwise required to make a return for the taxable year.

(iii) *Beneficiaries of estates or trusts.*

A nonresident alien individual who is a beneficiary of an estate or trust which is engaged in trade or business in the United States is not required to make a return for the taxable year merely because he is deemed to be engaged in trade or business within the United States under section 875(2). However, such nonresident alien beneficiary will be required to make a return if he otherwise satisfies the conditions of subparagraph (1)(i) of this paragraph for making a return.

(iv) *Certain alien residents of Puerto Rico.* This paragraph does not apply to a nonresident alien individual who is a bona fide resident of Puerto Rico during the taxable year. See section 876 and paragraph (a)(1)(iii) of this section.

(3) *Representative or agent for nonresident alien individual—(i) Cases where power of attorney is not required.* The responsible representative or agent within the United States of a nonresident alien individual shall make on behalf of his nonresident alien principal a return of, and shall pay the tax on, all income coming within his control as representative or agent which is subject to the income tax under subtitle A of the Code. The agency appointment will determine how completely the agent is substituted for the principal for tax purposes. Any person who collects interest or dividends on deposited securities of a nonresident alien individual, executes ownership certificates in connection therewith, or sells such securities under special instructions shall not be deemed merely by reason of such acts to be the responsible representative or agent of the nonresident alien individual. If the responsible representative or agent does not have a specific power of attorney from the nonresident alien individual to file a return in his behalf, the return shall be accompanied by a statement to the effect that the representative or agent does not possess specific power of attorney to file a return for such individual but that the return is being filed in accordance with the provisions of this subdivision.

(ii) *Cases where power of attorney is required.* Whenever a return is made by an agent acting under a duly authorized power of attorney for that purpose, the return shall be accompanied by the power of attorney in proper form, or a copy thereof, specifically authorizing him to represent his principal in making, executing, and filing the income tax return. Form 2848 may be used for this purpose. The agent, as well as the taxpayer, may incur liability for the penalties provided for erroneous, false, or fraudulent returns. For the requirements regarding signing of returns, see § 1.6061-1. The rules of paragraph (e) of § 601.504 of this chapter (Statement of Procedural Rules) shall apply under this subparagraph in determining whether a copy of a power of attorney must be certified.

(iii) *Limitation.* A return of income shall be required under this subparagraph only if the nonresident alien individual is otherwise required to make a return in accordance with this paragraph.

(4) *Disallowance of deductions and credits.* For provisions disallowing deductions and credits when a return of income has not been filed by or on behalf of a nonresident alien individual, see section 874(a) and the regulations thereunder.

(5) *Effective date.* This paragraph shall apply for taxable years beginning after December 31, 1966. For corresponding rules applicable to taxable years beginning before January 1, 1967, see 26 CFR 1.6012-1(b) (Rev. as of Jan. 1, 1971).

PAR. 25. Section 1.6012-3 is amended by revising subparagraph (2) (i), (iii), and (v) of paragraph (b) to read as follows:

§ 1.6012-3 Returns by fiduciaries.

(b) For other persons. . . .

(2) *Nonresident alien individuals—(i) In general.* A resident or domestic fiduciary or other person charged with the care of the person or property of a nonresident alien individual shall make a return for that individual and pay the tax unless—

(a) The nonresident alien individual makes a return of, and pays the tax on, his income for the taxable year,

(b) A responsible representative or agent in the United States of the nonresident alien individual makes a return of, and pays the tax on, the income of such alien individual for the taxable year, or

(c) The nonresident alien individual has appointed a person in the United States to act as his agent for the purpose of making a return of income and the fiduciary or other person charged with the care of the person or property of such alien individual attaches a copy of the agency appointment to his return on Form 1041.

(iii) *Disallowance of deductions and credits.* For provisions disallowing deductions and credits when a return of income has not been filed by or on behalf of a nonresident alien individual, see section 874 and the regulations thereunder.

(v) *Cross reference.* For requirements of withholding tax at source on nonresident alien individuals and of returns with respect to such withheld taxes, see §§ 1.1441-1 to 1.1465-1, inclusive.

PAR. 26. Section 1.6012-4 is revised to read as follows:

§ 1.6012-4 Miscellaneous returns.

For returns by regulated investment companies of tax on undistributed capital gain designated for special treatment under section 852(b)(3)(D), see § 1.852-9. For returns with respect to tax withheld on nonresident aliens and foreign corporations and on tax-free covenant bonds, see §§ 1.1461-1 to 1.1465-1, inclusive. For returns of tax on transfers to avoid income tax, see § 1.1494-1. For the requirement of an annual report by persons completing a Government contract, see 26 CFR (1939) 17.16 (Treasury Decision 4906, approved June 23, 1939), and

26 CFR (1939) 16.15 (Treasury Decision 4909, approved June 28, 1939), as made applicable to section 1471 of the 1954 Code by Treasury Decision 6091, approved August 16, 1954 (19 F.R. 5167, C.B. 1954-2, 47). See also § 1.1471-1.

PAR. 27. Section 1.6015 is amended by revising the heading and historical note to read as follows:

**§ 1.6015(a) Statutory provisions; declaration of estimated income tax by individuals; requirement of declaration.**

[Sec. 6015(a) as amended by sec. 5, Act of Sept. 14, 1960 (Public Law 86-779, 74 Stat. 1000); sec. 103(j)(1), Foreign Investors Tax Act 1966 (80 Stat. 1554); sec. 803(d)(7), Tax Reform Act 1969 (83 Stat. 684)]

PAR. 28. Section 1.6015(a)-1 is amended by deleting paragraph (c) and revising paragraph (d), as follows:

**§ 1.6015(a)-1 Declaration of estimated income tax by individuals.**

(c) [Deleted]

(d) *Nonresident alien individuals.* For the rules exempting certain nonresident alien individuals from the requirement of making a declaration of estimated income tax, see § 1.6015(i)-1.

PAR. 29. Section 1.6015(i) is redesignated as § 1.6015(j) and revised to read as follows:

**§ 1.6015(j) Statutory provisions; declaration of estimated income tax by individuals; applicability.**

Sec. 6015. *Declaration of estimated income tax by individuals.*

(j) *Applicability.* This section shall be applicable only with respect to taxable years beginning after December 31, 1954; and sections 58, 59, and 60 of the Internal Revenue Code of 1939 shall continue in force with respect to taxable years beginning before January 1, 1955.

[Sec. 6015(j) as redesignated by sec. 103(j)(2), Foreign Investors Tax Act 1966 (80 Stat. 1554)]

[(b) *Declarations of estimated tax.* In the case of a taxable year beginning before [December 30, 1969], if any taxpayer is required to make a declaration or amended declaration of estimated tax, or to pay any amount or additional amount of estimated tax, by reason of the amendments made by [the Tax Reform Act of 1969], such amount or additional amount shall be paid ratably on or before each of the remaining installment dates for the taxable year beginning with the first installment date on or after [January 29, 1970]. With respect to any declaration or payment of estimated tax before such first installment date, sections 6015 [and] 6654 \* \* \* of the Internal Revenue Code of 1954 shall be applied without regard to the amendments made by [the Tax Reform Act of 1969]. For purposes of this subsection, the term "installment date" means any date on which, under section 6153 \* \* \* of such Code \* \* \*, an installment payment of estimated tax is required to be made by the taxpayer. (Sec. 946(b), Tax Reform Act 1969 (83 Stat. 729))]

**§ 1.6015(j)-1 [Redesignated]**

PAR. 30. Section 1.6015(i)-1 is redesignated as § 1.6015(j)-1.

PAR. 31. The following new sections are inserted immediately after § 1.6015(h)-1:

**§ 1.6015(i) Statutory provisions; declaration of estimated income tax by individuals; nonresident alien individuals.**

(i) *Nonresident alien individuals.* No declaration shall be required to be made under this section by a nonresident alien individual unless—

(1) Withholding under chapter 24 is made applicable to the wages, as defined in section 3401(a), of such individual.

(2) Such individual has income (other than compensation for personal services subject to deduction and withholding under section 1441) which is effectively connected with the conduct of a trade or business within the United States, or

(3) Such individual is a resident of Puerto Rico during the entire taxable year.

[Sec. 6015(i) as added by sec. 103(j)(3), Foreign Investors Tax Act 1966 (80 Stat. 1554)]

**§ 1.6015(i)-1 Nonresident alien individuals.**

(a) *Exception from requirement of making a declaration.* No declaration of estimated income tax is required to be made under section 6015(a) and § 1.6015(a)-1 by a nonresident alien individual unless—

(1) Such individual has wages, as defined in section 3401(a), and the regulations thereunder, upon which tax is required to be withheld under section 3402,

(2) Such individual has income (other than compensation for personal services upon which tax is required to be withheld at source under section 1441) which is effectively connected for the taxable year with the conduct of a trade or business in the United States by such individual, or

(3) Such individual has been, or expects to be, a resident of Puerto Rico during the entire taxable year.

(b) *Rules applicable to nonresident alien individuals required to make a declaration—*(1) *Tests to be applied.* A nonresident alien individual who is not excepted by paragraph (a) of this section from the requirement of making a declaration of income tax is required to file a declaration if his gross income meets the requirements of section 6015(a) and § 1.6015(a)-1. In making the determination under section 6015(a)(1) as to whether the amount of the gross income of a nonresident alien individual is such as to require making a declaration of estimated income tax, only the tests of subparagraphs (A) (i) or (ii) and (B) (ii) of such section shall apply, since a nonresident alien individual may not make a joint declaration by reason of section 6015(b) and is not a head of household. Only in a rare case would a nonresident alien individual be a surviving spouse.

(2) *Determination of gross income.* To determine the gross income of a nonresident alien individual who is not, or does not expect to be, a resident of Puerto Rico during the entire taxable year, see section 872 and §§ 1.872-1 and 1.872-2. To determine the gross income of a nonresident alien individual who is, or ex-

pects to be, a resident of Puerto Rico during the entire taxable year, see section 876 and § 1.876-1. For purposes of applying paragraph (a)(2) of this section, income which is effectively connected for the taxable year with the conduct of a trade or business in the United States includes all income which is treated under section 871 (c) or (d) and § 1.871-9 (relating to students and trainees) or § 1.871-10 (relating to real property income) as income which is effectively connected for such year with the conduct of a trade or business in the United States.

(c) *Effective date.* This section shall apply for taxable years beginning after December 31, 1966. For corresponding rules applicable to taxable years beginning before January 1, 1967, see 26 CFR 1.6015(a)-1(d) (Rev. as of Jan. 1, 1971).

PAR. 32. Section 1.6061-1 is amended to read as follows:

**§ 1.6061-1 Signing of returns and other documents by individuals.**

(a) *Requirement.* Each individual (including a fiduciary) shall sign the income tax return required to be made by him, except that the return may be signed for the taxpayer by an agent who is duly authorized in accordance with paragraph (a)(5) or (b) of § 1.6012-1 to make such return. Other returns, statements, or documents required under the provisions of subtitle A or F of the Code or of the regulations thereunder to be made by any person with respect to any tax imposed by subtitle A of the Code shall be signed in accordance with any regulations contained in this chapter, or any instructions, issued with respect to such returns, statements, or other documents.

(b) *Cross references.* For provisions relating to the signing of returns, statements, or other documents required to be made by corporations and partnerships with respect to any tax imposed by subtitle A of the Code, see §§ 1.6062-1 and 1.6063-1, respectively. For provisions relating to the making of returns by agents, see paragraphs (a)(5) and (b) of § 1.6012-1; and to the making of returns for minors and persons under a disability, see paragraph (a)(4) of § 1.6012-1 and paragraph (b) of § 1.6012-3.

**PROCEDURE AND ADMINISTRATION REGULATIONS**

**[26 CFR Part 301]**

PAR. 33. Section 301.7701 is amended by revising section 7701(a)(20), by adding paragraphs (30), (31), (33), and (34) to section 7701(a), and by revising the historical note. These amended and added provisions read as follows:

**§ 301.7701 Statutory provisions; definitions.**

Sec. 7701. *Definitions.* (a) When used in this title where not otherwise distinctly expressed or manifestly incompatible with the intent thereof—

(20) *Employee.* For the purpose of applying the provisions of section 79 with respect to group-term life insurance purchased for

employees, for the purpose of applying the provisions of sections 104, 105, and 106 with respect to accident and health insurance or accident and health plans, for the purpose of applying the provisions of section 101(b) with respect to employees' death benefits, and for the purpose of applying the provisions of subtitle A with respect to contributions to or under a stock bonus, pension, profit-sharing, or annuity plan, and with respect to distributions under such a plan, or by a trust forming part of such a plan, the term "employee" shall include a full-time life insurance salesman who is considered an employee for the purpose of chapter 21, or in the case of services performed before January 1, 1951, who would be considered an employee if his services were performed during 1951.

(30) *U.S. person.* The term "United States person" means—

(A) A citizen or resident of the United States,

(B) A domestic partnership,

(C) A domestic corporation, and

(D) Any estate or trust (other than a foreign estate or foreign trust, within the meaning of section 7701(a)(31)).

(31) *Foreign estate or trust.* The terms "foreign estate" and "foreign trust" mean an estate or trust, as the case may be, the income of which, from sources without the United States which is not effectively connected with the conduct of a trade or business within the United States, is not includible in gross income under subtitle A.

(33) *Regulated public utility.* The term "regulated public utility" means—

(A) A corporation engaged in the furnishing or sale of—

(i) Electric energy, gas, water, or sewerage disposal services, or

(ii) Transportation (not included in subparagraph (C)) on an intrastate, suburban, municipal, or interurban electric railroad, on an intrastate, municipal, or suburban trackless trolley system, or on a municipal or suburban bus system, or

(iii) Transportation (not included in clause (ii)) by motor vehicle—

if the rates for such furnishing or sale, as the case may be, have been established or approved by a State or political subdivision thereof, by an agency or instrumentality of the United States, by a public service or public utility commission or other similar body of the District of Columbia or of any State or political subdivision thereof, or by a foreign country or an agency or instrumentality or political subdivision thereof.

(B) A corporation engaged as a common carrier in the furnishing or sale of transportation of gas by pipeline, if subject to the jurisdiction of the Federal Power Commission.

(C) A corporation engaged as a common carrier (i) in the furnishing or sale of transportation by railroad, if subject to the jurisdiction of the Interstate Commerce Commission, or (ii) in the furnishing or sale of transportation of oil or other petroleum products (including shale oil) by pipeline, if subject to the jurisdiction of the Interstate Commerce Commission or if the rates for such furnishing or sale are subject to the jurisdiction of a public service or public utility commission or other similar body of the District of Columbia or of any State.

(D) A corporation engaged in the furnishing or sale of telephone or telegraph service, if the rates for such furnishing or sale meet the requirements of subparagraph (A).

(E) A corporation engaged in the furnishing or sale of transportation as a common

carrier by air, subject to the jurisdiction of the Civil Aeronautics Board.

(F) A corporation engaged in the furnishing or sale of transportation by common carrier by water, subject to the jurisdiction of the Interstate Commerce Commission under part III of the Interstate Commerce Act, or subject to the jurisdiction of the Federal Maritime Board under the Intercoastal Shipping Act, 1933.

(G) A railroad corporation subject to part I of the Interstate Commerce Act, if (i) substantially all of its railroad properties have been leased to another such railroad corporation or corporations by an agreement or agreements entered into before January 1, 1954, (ii) each lease is for a term of more than 20 years, and (iii) at least 80 percent or more of its gross income (computed without regard to dividends and capital gains and losses) for the taxable year is derived from such leases and from sources described in subparagraphs (A) through (F), inclusive. For purposes of the preceding sentence, an agreement for lease of railroad properties entered into before January 1, 1954, shall be considered to be a lease including such term as the total number of years of such agreement may, unless sooner terminated, be renewed or continued under the terms of the agreement, and any such renewal or continuance under such agreement shall be considered part of the lease entered into before January 1, 1954.

(H) A common parent corporation which is a common carrier by railroad subject to part I of the Interstate Commerce Act if at least 80 percent of its gross income (computed without regard to capital gains or losses) is derived directly or indirectly from sources described in subparagraphs (A) through (F), inclusive. For purposes of the preceding sentence, dividends and interest, and income from leases described in subparagraph (G), received from a regulated public utility shall be considered as derived from sources described in subparagraphs (A) through (F), inclusive, if the regulated public utility is a member of an affiliated group (as defined in section 1504) which includes the common parent corporation.

The term "regulated public utility" does not (except as provided in subparagraphs (G) and (H)) include a corporation described in subparagraphs (A) through (F), inclusive, unless 80 percent or more of its gross income (computed without regard to dividends and capital gains and losses) for the taxable year is derived from sources described in subparagraphs (A) through (F), inclusive. If the taxpayer establishes to the satisfaction of the Secretary or his delegate that (i) its revenue from regulated rates described in subparagraph (A) or (D) and its revenue derived from unregulated rates are derived from the operation of a single interconnected and coordinated system or from the operation of more than one such system, and (ii) the unregulated rates have been and are substantially as favorable to users and consumers as are the regulated rates, then such revenue from such unregulated rates shall be considered, for purposes of the preceding sentence, as income derived from sources described in subparagraph (A) or (D).

(34) *Estimated income tax.* The term "estimated income tax" means—

(A) In the case of an individual, the estimated tax as defined in section 6015(c), or

(B) In the case of a corporation, the estimated tax as defined in section 6016(b).

[Sec. 7701 as amended by secs. 22 (g) and (h), Alaska Omnibus Act (73 Stat. 146, 147); secs. 18 (I) and (J), Hawaii Omnibus Act (74 Stat. 416); sec. 103(t), Social Security Amendments 1960 (74 Stat. 941); secs. 6(c) and 7(h), Rev. Act 1962 (76 Stat. 982, 988); sec. 5, Act of Oct. 23, 1962 (Public Law 87-

870, 76 Stat. 1161); secs. 204(a)(3) and 234 (b)(3), Rev. Act 1964 (78 Stat. 35, 114); sec. 102(b)(5), Tax Adjustment Act 1966 (80 Stat. 64); sec. 103(l)(1), Foreign Investors Tax Act 1966 (80 Stat. 1554)]

[FR Doc. 71-14520 Filed 10-4-71; 8:45 am]

## DEPARTMENT OF THE INTERIOR

### National Park Service

#### [ 36 CFR Part 2 ]

### APPALACHIAN NATIONAL SCENIC TRAIL AND OTHER TRAILS

#### Notice of Proposed Rule Making

The National Trails System Act of October 2, 1968 (82 Stat. 919; 16 U.S.C. 1241, et seq.), places a responsibility on the agency administering a national scenic or recreation trail to issue regulations that will govern the use and protection of that trail and to provide for the maintenance of good conduct on and along such trail.

The general regulations applicable to areas of the National Park System as contained in Parts 1 through 6 of Chapter I, Title 36, Code of Federal Regulations (especially Part 2 relating to public use and recreation), govern public use and provide for protection of the Appalachian Trail within any areas of the National Park System as well as other trails in such areas. Where special regulations have been adopted for specific areas traversed by any such trails those regulations, too, govern Appalachian Trail use, to the extent they are applicable.

However, in order to provide regulatory controls for segments of the Appalachian National Scenic Trail and for other national scenic trail segments within areas of the National Park System that will more fully implement the provisions and purposes of the National Trails System Act and to better reflect current policy for other trails, the general regulations contained in § 2.30 of Part 2 are being revised and amended as set forth below.

It is the policy of the Department of the Interior, whenever practicable to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments to the Director, National Park Service, Department of the Interior, Washington, D.C. 20240, within 60 days of the publication of this notice in the FEDERAL REGISTER.

Part 2 of Title 36 is revised as follows:

#### § 2.30 Travel on national scenic and other trails.

(a) *National scenic trails.* (1) The use of bicycles, motorcycles, snowmobiles, or motor vehicles by the general public is prohibited on national scenic trails.

(2) Horseback riding and the use of pack animals are permitted on national scenic trails subject to section 2.23 of these regulations: *Provided*, That such uses are permitted on the Appalachian National Scenic Trail only when the trail or trail section is posted as open for these

purposes. Where such uses are permitted, pedestrians shall remain quiet when saddle or pack animals are passing. Horses shall not be tied, hobbled, or corralled within 50 feet of the trail, or any trail structure or facility.

(b) *All other trails.* (1) The use of bicycles, motorcycles, snowmobiles, or other motor vehicles by the general public is prohibited on trails, except those which are designated specifically for such use by posted signs.

(2) Horseback riding and the use of pack animals are permitted on trails subject to § 2.23 of these regulations. Where these uses are permitted on trails, pedestrians shall remain quiet when saddle or pack animals are passing.

LAWRENCE C. HADLEY,  
Assistant Director,  
National Park Service.

SEPTEMBER 28, 1971.

[FR Doc.71-14574 Filed 10-4-71;8:51 am]

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

[7 CFR Part 1464]

TOBACCO

Advance Grade Rates for Price Support on 1971 Crop

Consideration will be given to data, views, and recommendations pertaining to the advance rates set out in this notice which are submitted in writing to the Director, Tobacco Division, Agriculture Stabilization and Conservation Service, U.S. Department of Agriculture, Washington, D.C. 20250. All submissions, in order to be sure of consideration, must be received not later than 30 days from the date of publication of this notice in the FEDERAL REGISTER.

Under the Tobacco Loan Program published June 18, 1970 (35 F.R. 1000), and amended June 17, 1971 (36 F.R. 11634, 12509), CCC proposes to establish advance rates by grades for the 1971-crop Fire-cured tobacco, types 21 and 22-23, Dark air-cured tobacco, types 35 and 36, and Virginia sun-cured tobacco, type 37, as set forth herein. These proposed rates, calculated to provide the levels of support of 48.5 cents per pound for the Fire-cured types and 43.1 cents per pound for the Dark air-cured and Virginia sun-cured types, as determined under section 106 of the Agricultural Act of 1949 (7 U.S.C. 1445), are as follows:

AUTHORITY: The provisions of §§ 1464.17-1464.20 issued under sec. 4, 62 Stat. 1070, as amended, sec. 5, 62 Stat. 1072, secs. 101, 106, 401, 403, 63 Stat. 1051, as amended, 1054, sec. 125, 70 Stat. 198, 74 Stat. 8; 7 U.S.C. 1441, 1445, 1421, 1423, 7 U.S.C. 1813, 15 U.S.C. 714b, 714c.

§ 1464.17 1971 crop—Virginia Fire-cured tobacco, type 21—advance schedule.<sup>1</sup>

(Dollars per hundred pounds, farm sales weight)

Grade	Length 46	Length 45	Length 44	Length 43
A1F	66.25	66.25		
A2F	62.25	63.25		
A1D	66.25	66.25		
A2D	62.25	63.25		
B1F	64.25	64.25		
B2F	60.25	60.25	53.25	
B3F	62.25	63.25	51.25	41.25
B4F	47.25	49.25	47.25	41.25
B4P	41.25	42.25	41.25	36.25
B1D	64.25	64.25		
B2D	59.25	60.25	53.25	
B3D	50.25	52.25	49.25	42.25
B4D	44.25	47.25	44.25	40.25
B5D	41.25	42.25	41.25	39.25
B3M	46.25	48.25	45.25	41.25
B4M	48.25	46.25	44.25	39.25
B5M	39.25	41.25	40.25	34.25
B3G	44.25	45.25	44.25	38.25
B4G	42.25	43.25	42.25	39.25
B5G	39.25	40.25	39.25	33.25
C1L	70.25	70.25		
C2L	66.25	66.25	57.25	
C3L	57.25	58.25	54.25	
C4L	49.25	51.25	49.25	
C5L	43.25	44.25	43.25	
C1F	70.25	70.25		
C2F	66.25	66.25	57.25	
C3F	56.25	59.25	52.25	
C4F	51.25	53.25	51.25	
C5F	45.25	46.25	45.25	
C2D	43.25	45.25	42.25	
C3D	42.25	42.25	41.25	
C4D	39.25	40.25	39.25	
C5D	34.25	35.25	34.25	
C3M	46.25	48.25	48.25	
C4M	43.25	46.25	44.25	
C5M	40.25	41.25	40.25	
C3G	40.25	43.25	40.25	
C4G	38.25	41.25	39.25	
C5G	36.25	39.25	37.25	

Grade	Grade	Grade	Grade
X1L	51.25	X3M 45	43.25
X2L	50.25	X4M	45.25
X3L	49.25	X4M 45	40.25
X4L	46.25	X5M	41.25
X5L	43.25	X5M 45	37.25
X1F	52.25	X3G	44.25
X2F	50.25	X3G 45	41.25
X3F	49.25	X4G	41.25
X4F	47.25	X4G 45	38.25
X5F	44.25	X5G	36.25
X1D	47.25	X5G 45	34.25
X2D	44.25	N1L	33.25
X3D	43.25	N1D	32.25
X4D	41.25	N1G	32.25
X5D	37.25	N2	23.25
X3M	47.25		

§ 1464.18 1971 crop—Kentucky-Tennessee Fire-cured tobacco, types 22 and 23—advance schedule.<sup>1</sup>

(Dollars per hundred pounds, farm sales weight)

Grade	Length 46	Length 45	Length 44	Length 43
A1F	69	69		
A2F	64	64		
A3F	56	56		
A1D	69	69		
A2D	64	64		
A3D	56	56		
B1F	60	60	55	
B2F	57	57	53	
B3F	53	53	50	44
B4F	50	50	47	40
B5F	46	46	43	37
B1D	59	59	54	
B2D	56	56	52	
B3D	55	55	52	45
B4D	49	49	46	39
B5D	45	45	41	35
B3M	51	51	47	42
B4M	47	47	43	36
B5M	41	41	38	31
B3VF	50	50	46	39
B4VF	48	48	45	38
B5VF	44	44	41	34
B3G	51	51	48	39
B4G	46	46	42	34
B5G	42	42	37	32
C1L	60	60	56	
C2L	57	57	54	
C3L	56	56	52	46
C4L	53	53	50	44
C5L	50	50	48	41
C1F	60	60	56	
C2F	57	57	54	
C3F	56	56	53	46
C4F	53	53	50	43
C5F	51	51	47	40
C1D	60	60	58	
C2D	52	52	48	
C3D	49	49	46	40
C4D	44	44	42	36
C5D	43	43	41	34
C3M	51	51	48	42
C4M	47	47	46	40
C5M	45	45	43	35
C3VF	52	52	49	43
C4VF	49	49	47	41
C5VF	47	47	45	36
C3G	47	47	44	39
C4G	44	44	40	35
C5G	40	40	37	34

Grade	Proposed price	Grade	Proposed price
X1L	52	X5D	40
X2L	50	X3M	45
X3L	49	X4M	43
X4L	46	X5M	40
X5L	44	X3VF	47
X1F	51	X4VF	45
X2F	49	X5VF	42
X3F	48	X3G	44
X4F	45	X4G	40
X5F	44	X5G	37
X1D	50	N1L	39
X2D	48	N1D	35
X3D	45	N1G	34
X4D	43	N2	30

<sup>1</sup> Only the original producer is eligible to receive advances. Tobacco graded "W" (doubtful keeping order), "No-G" (no grade), "U" (unsound), "D" (damaged), or scrap will not be accepted. The advance rate for grades of 47 length shall be the same as those for such grades in 46 length. The association is authorized to deduct 25 cents per 100 pounds to apply against overhead cost.

<sup>1</sup> Only the original producer is eligible to receive advances. Tobacco graded "No-G" (no grade), "U" (unsound), "D" (damaged), or scrap will not be accepted. Tobacco graded "W" (doubtful keeping order) will be accepted at advance rates 20 percent below the advance rates otherwise applicable. The advance rate for grades of 47 length shall be the same as those for such grades in 46 length.

- Sec.
- 1464.17 1971 crop—Virginia Fire-cured tobacco, type 21, advance schedule.
- 1464.18 1971 crop—Kentucky-Tennessee, Fire-cured tobacco, types 22 and 23, advance schedule.
- 1464.19 1971 crop—Dark air-cured tobacco, types 35 and 36, advance schedule.
- 1464.20 1971 crop—Virginia sun-cured, type 37 tobacco, advance schedule.

## PROPOSED RULE MAKING

§ 1464.19 1971 crop—Dark air-cured tobacco, types 35 and 36—advance schedule.<sup>1</sup>

[Dollars per hundred pounds, farm sales weight]

Grade	Length 46	Length 45	Length 44
A1F	60	60	
A1R	60	60	
A2F	56	56	
A2R	56	56	
A3F	51	51	
A3R	51	51	
B1F	56	56	53
B1R	55	55	53
B1D	55	55	53
B2F	52	52	51
B2R	51	51	50
B2D	51	51	50
B3F	50	50	48
B3R	48	48	47
B3D	48	48	47
B3M	47	47	46
B3G	46	46	45
B4F	47	47	46
B4R	46	46	45
B4D	47	47	46
B4M	43	43	42
B4G	43	43	42
B5F	43	43	42
B5R	43	43	42
B5D	42	42	41
B5M	39	39	38
B5G	39	39	38
C1L	56	56	55
C1F	56	56	55
C1R	54	54	53
C2L	55	55	54
C2F	54	54	53
C2R	52	52	51
C3L	53	53	52
C3F	52	52	51
C3R	49	49	47
C3M	47	47	46
C3G	48	48	46
C4L	49	49	48
C4F	49	49	48
C4R	44	44	43
C4M	41	41	40
C4G	42	42	41
C5L	42	42	41
C5F	43	43	42
C5R	39	39	38
C5M	38	38	37
C5G	38	38	37

Grade	Proposed loan rate prices	Grade	Proposed loan rate prices
T3F	43	X3R	45
T3R	43	X3D	46
T3D	43	X3M	43
T3M	42	X3G	42
T3G	41	X4L	47
T4F	38	X4F	46
T4R	39	X4R	41
T4D	39	X4D	41
T4M	37	X4M	40
T4G	36	X4G	38
T5F	31	X5L	44
T5R	31	X5F	44
T5D	31	X5R	39
T5M	30	X5D	39
T5G	30	X5M	39
X1L	52	X5G	35
X1F	52	N1L	38
X1R	52	N2L	32
X2L	50	N1R	33
X2F	50	N2R	30
X2R	49	N1G	32
X3L	49	N2G	30
X3F	47		

§ 1464.20 1971 crop—Virginia sun-cured tobacco, type 37—advance schedule.<sup>2</sup>

[Dollars per hundred pounds, farm sales weight]

Grade	Length 46	Length 45	Length 44
A1F	64.25	64.25	62.25
A2F	60.25	60.25	57.25
A3F	57.25	57.25	54.25
A1R	65.25	65.25	62.25
A2R	61.25	61.25	58.25
A3R	58.25	58.25	55.25
B1F	64.25	65.25	57.25
B2F	61.25	63.25	58.25
B3F	54.25	57.25	54.25
B4F	48.25	52.25	50.25
B5F	42.25	45.25	42.25
B1R	64.25	65.25	58.25
B2R	61.25	63.25	58.25
B3R	55.25	57.25	54.25
B4R	48.25	51.25	49.25
B5R	44.25	45.25	43.25
B1D	63.25	63.25	58.25
B2D	62.25	62.25	57.25
B3D	52.25	53.25	51.25
B4D	46.25	47.25	46.25
B5D	41.25	43.25	41.25
B3M	46.25	48.25	45.25
B4M	45.25	48.25	45.25
B6M	39.25	42.25	41.25
B3G	45.25	49.25	46.25
B4G	43.25	46.25	45.25
B5G	40.25	41.25	40.25
C1L	62.25	63.25	55.25
C2L	56.25	57.25	52.25
C3L	54.25	55.25	52.25
C4L	46.25	49.25	47.25
C5L	40.25	41.25	40.25
C1F	62.25	63.25	55.25
C2F	56.25	58.25	54.25
C3F	52.25	55.25	52.25
C4F	46.25	51.25	48.25
C5F	39.25	42.25	41.25
C1R	59.25	59.25	53.25
C2R	53.25	53.25	49.25
C3R	47.25	47.25	45.25
C4R	41.25	43.25	41.25
C5R	36.25	37.25	36.25
C3M	42.25	45.25	44.25
C4M	39.25	43.25	41.25
C5M	37.25	41.25	39.25
C3G	37.25	40.25	37.25
C4G	35.25	39.25	37.25
C5G	30.25	32.25	31.25

Grade	Loan rate	Grade	Loan rate
T3F	43.25	X4F	44.25
T4F	41.25	X5F	39.25
T5F	35.25	X1R	48.25
T3R	43.25	X2R	45.25
T4R	41.25	X3R	41.25
T5R	36.25	X4R	40.25
T3D	41.25	X5R	32.25
T4D	39.25	X3D	37.25
T5D	33.25	X4D	35.25
T3M	41.25	X5D	29.25
T4M	38.25	X3M	43.25
T5M	32.25	X4M	40.25
T3G	43.25	X5M	38.25
T4G	41.25	X3G	41.25
T5G	35.25	X4G	38.25
X1L	50.25	X5G	34.25
X2L	48.25	N1L	25.25
X3L	45.25	N2L	18.25
X4L	43.25	N1R	27.25
X5L	38.25	N2R	19.25
X1F	50.25	N1G	27.25
X2F	49.25	N2G	19.25
X3F	46.25		

<sup>1</sup> Only the original producer is eligible to receive advances. Tobacco graded "No-G" (no grade), "U" (unsound), "D" (damaged) or scrap will not be accepted. Tobacco graded "W" (doubtful keeping order) will be accepted at advance rates 20 percent below the advance rates otherwise applicable. Grades marked with the special factor "BH" shall have an advance rate 20 percent below the advance rate otherwise applicable without such special factor. Type 35 grades marked with the special factor "BL" shall

have an advance rate 20 percent below the advance rate otherwise applicable without such special factor. The advance rate for grades of 47 length shall be the same as those for such grades in 46 length.

<sup>2</sup> Only the original producer is eligible to receive advances. Tobacco graded "W" (doubtful keeping order), "No-G" (no grade), "U" (unsound), "D" (damaged), or scrap will not be accepted. The association is authorized to deduct 25 cents per 100 pounds to apply against overhead cost.

All written submissions received pursuant to this notice will be available for public inspection at such times and places and in a manner convenient to the public business (7 CFR 1.27(b)).

Effective date: Date of filing with the Office of the Federal Register.

Signed at Washington, D.C., on September 28, 1971.

CARROLL G. BRUNTHAVER,  
Acting Executive Vice President,  
Commodity Credit Corporation.

[FR Doc. 71-14615 Filed 10-4-71; 8:45 am]

### Consumer and Marketing Service

[7 CFR Part 984]

### WALNUTS GROWN IN CALIFORNIA, OREGON, AND WASHINGTON

#### Proposed Marketing Control Percentages for 1971-72 Marketing Year

Notice is hereby given of a proposal to establish marketable and surplus control percentages for walnuts for the 1971-72 marketing year. The year began August 1, 1971. The proposed percentages would be established in accordance with the provisions of the marketing agreement, as amended, and Order No. 984, as amended (7 CFR Part 984), regulating the handling of walnuts grown in California, Oregon, and Washington. The amended agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674).

The proposed marketable and surplus percentages are as follows: California (District 1), 78 percent and 22 percent, respectively; and Oregon and Washington (District 2), 89 percent and 11 percent, respectively. These percentages were unanimously recommended by the Walnut Control Board and are based on estimates of supply, and inshell and shelled trade demands adjusted for handler carryover, for the 1971-72 marketing year.

The total 1971-72 supply subject to regulation is estimated to be 124.0 million kernelweight pounds. Inshell and shelled trade demands adjusted for handler carryover are estimated at 28.9 and 67.8 million kernelweight pounds, respectively. The trade demand area includes the United States, Puerto Rico, and the Canal Zone.

Consideration will be given to any written data, views, or arguments pertaining to the proposal which are received by 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 should be in quadruplicate and will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The proposal is as follows:

**§ 984.218 Marketable and surplus percentages for walnuts during the 1971-72 marketing year.**

The marketable and surplus percentages during the marketing year beginning August 1, 1971, shall be as follows:

	California— District 1	Oregon— Washington— District 2
Marketable percentages.....	78	80
Surplus percentages.....	22	11

Dated: September 29, 1971.

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

[FR Doc.71-14593 Filed 10-4-71;8:52 am]

**Rural Electrification Administration**

[ 7 CFR Part 1701 ]

**CLEARING TRANSMISSION LINE  
RIGHT-OF-WAY**

**Proposed New REA Contract Form**

Notice is hereby given that, pursuant to the Rural Electrification Act, as amended (7 U.S.C. 901 et seq.), REA proposes to issue a supplement to REA Bulletin 40-8, providing for a new contract form (REA Form 203) for use in clearing transmission line right-of-way.

Persons interested in the provisions of this contract form may submit written data, views, or comments to the Director, Power Supply, Management and Engineering Standards Division, Room 3313, South Building, U.S. Department of Agriculture, Washington, D.C. 20250, not later than 30 days from 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 Director, Power Supply, Management and Engineering Standards Division during regular business hours.

A copy of proposed REA Form 203 may be secured in person or by written request from the Director, Power Supply, Management and Engineering Standards Division.

The text of the proposed supplement to REA Bulletin 40-8 is as follows:

**SUPPLEMENT TO REA BULLETIN 40-8**

**SUBJECT: A New Contract Form for Use in Clearing Transmission Line Right-of-Way.**

**I. General.** This supplement announces the availability of REA Form 203, Transmission System Right-of-Way Clearing Contract. This new standard form of contract can be used when the right-of-way clearing work is not to be included in REA Form 831, Electric Transmission Construction Contract.

**II. Provisions of REA Form 203.** A. The contract format, terms and conditions are similar to those in REA Form 831 with the existing standard units for clearing, brush disposal, and stump treatment in contract REA Form 831 retained.

B. The following items reflect the new contract provisions relating to environment which were not included in previous contracts.

1. Responsibilities for protection of the environment have been added to implement the criteria included in the publication, "Environmental Criteria for Electric Transmission Systems," published by the U.S. Departments of the Interior and Agriculture.

2. Two new types of clearing units have been included which provide for clearing of rights-of-way under the environment criteria. These units are as follows:

(a) TM-14, 14-1: These are 1000-foot clearing units for feathering the right-of-way. Drawing TM-13, 14, 14(1) in the attached contract shows this type of clearing.

(b) TM-15, 15-1: These are 1000-foot clearing units for "feathering" as well as providing undulating boundaries on the right-of-way. Drawing TM-13, 15, 15(1) in the attached contract shows this type of clearing.

3. All trees and brush to be removed will be marked by paint or blazes by the consulting engineers.

4. The consulting engineer will show the clearing units on the plan and profile.

Dated: September 29, 1971.

**JAMES N. MYERS,**  
*Assistant Administrator—Electric.*

[FR Doc. 71-14567 Filed 10-4-71;8:49 am]

**DEPARTMENT OF HEALTH,  
EDUCATION, AND WELFARE**

**Food and Drug Administration**

[ 21 CFR Part 191 ]

**BANNED HAZARDOUS SUBSTANCES**

**Proposed Classification of Household Products Containing Soluble Cyanide**

The Food and Drug Administration has a report of the death of an 18-month-old child who accidentally ingested a household soldering solution that contained cyanide and was being used to clean coins. The child died within minutes.

Since 1961, use of cyanide in household products has sharply decreased with manufacturers having almost ceased to produce such articles. The Commissioner of Food and Drugs, however, has determined on the basis of the report, FDA investigations, and other available information that a small number of household products containing cyanide are still being marketed. These products are primarily of interest to hobbyists.

The rapid fatal effect of accidental ingestion of a cyanide-containing household product virtually precludes any first-aid treatment. Industrial use of cyanide requires special training of personnel in specific first-aid and definitive treatment in case of accidental poisoning. The following statement is from "Industrial Hygiene and Toxicology," 2d edition, p. 1995 (1963), under "Treatment of Poisoning by Cyanide":

In order to use effectively such first-aid medical therapy, it is necessary that all personnel and all physicians and nurses be thoroughly familiar with the toxic effects of

cyanide and with the specific first-aid therapy. Because of the rapidity of onset, it is necessary to have first-aid kits in convenient locations in all areas where these materials are to be used.

Therefore, the Commissioner concludes that household products containing soluble cyanide salts should be classified as banned hazardous substances within the meaning of section 2(q)(1)(B) of the Federal Hazardous Substances Act because the degree or nature of the hazard involved in the presence or use of such substances in or around the household is such that the objective of the protection of the public health and safety can be adequately served only by keeping these substances out of interstate commerce.

Accordingly, pursuant to provisions of the Federal Hazardous Substances Act (sec. 2(q)(1)(B), (2), 74 Stat. 374, as amended 80 Stat. 1304-05; 15 U.S.C. 1261) and of the Federal Food, Drug, and Cosmetic Act (sec. 701(e), 52 Stat. 1055, as amended; 21 U.S.C. 371(e)), and under authority delegated to him (21 CFR 2.120), the Commissioner proposes that § 191.9(a) be amended by adding thereto a new subparagraph, as follows:

**§ 191.9 Banned hazardous substances.**

(a) \* \* \*

(5) Products containing soluble cyanide salts, excluding unavoidable manufacturing residues of cyanide salts in other chemicals that under reasonable and foreseeable conditions of use will not result in a concentration of cyanide greater than 25 parts per million.

Interested persons may, within 30 days after publication hereof in the FEDERAL REGISTER, file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 6-88, 5600 Fishers Lane, Rockville, Md. 20852, written comments (preferably in quintuplicate) regarding this proposal. Comments may be accompanied by a memorandum or brief in support thereof. Received comments may be seen in the above office during working hours, Monday through Friday.

Dated: September 28, 1971.

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

[FR Doc.71-14555 Filed 10-4-71;8:48 am]

**DEPARTMENT OF  
TRANSPORTATION**

**Coast Guard**

[ 33 CFR Part 117 ]

[CGFR 71-101]

**MATTAPONI, GREAT WICOMICO AND  
CHICKAHOMINY RIVERS, VA.**

**Proposed Drawbridge Operations**

The Coast Guard is considering revising the regulations for the Virginia Department of Highways drawbridge (1)

across the Mattaponi River at West Point to require 24 hours' notice at all times; (2) across the Great Wicomico River at Tipers Ferry to require 24 hours' notice for openings from 6 p.m. to 6 a.m., and (3) across the Chickahominy River at Barrets Ferry to require 24 hours' notice for openings from 11 p.m. to 7 a.m. The Tipers Ferry bridge would continue to open on signal from 6 a.m. to 6 p.m. and the Barrets Ferry bridge would continue to open on signal from 7 a.m. to 11 p.m. This change is being considered because of the infrequent openings of these bridges at the requested times.

Interested persons may participate in this proposed rule making by submitting written data, views, or arguments to the Commander, Fifth Coast Guard District (oan), Federal Building, 431 Crawford Street, Portsmouth, VA 23705. Each person submitting comments should include his name and address, identify the bridge, and give reasons for any recommended change in the proposal. Copies of all written communications received will be available for examination by interested persons at the office of the Commander, Fifth Coast Guard District.

The Commander, Fifth Coast Guard District, will forward any comments received before November 1, 1971, with his recommendations to the Chief, Office of Marine Environment and Systems, who will evaluate all communications received and take final action on this proposal. The proposed regulations may be changed in the light of comments received.

In consideration of the foregoing, it is proposed that Part 117 of Title 33 of the Code of Federal Regulations, be amended by revising § 117.245(f) (20) and § 117.245(f) (22-a) and adding § 117.245(f) (21) to read as follows:

§ 117.245 Navigable waters discharging into the Atlantic Ocean south of and including Chesapeake Bay and into the Gulf of Mexico, except the Mississippi River and its tributaries and outlets; bridges where constant attendance of drawtenders is not required.

(f) \* \* \*

(20) Great Wicomico River, Va.; Virginia Department of Highways bridge at Tipers Ferry. The draw shall open on signal from 6 a.m. to 6 p.m. and shall open on signal from 6 p.m. to 6 a.m. if at least 24 hours' notice has been given.

(21) Chickahominy River, Va.; Virginia Department of Highways at Barrets Ferry. The draw shall open on signal from 7 a.m. to 11 p.m. and shall open on signal from 11 p.m. to 7 a.m. if at least 24 hours' notice has been given.

(22-a) Mattaponi River, Va.:

(i) Virginia Department of Highways bridge on Route 629 at Walkerton. At least 24 hours' notice required. The drawtender service shall be increased to the degree determined to be adequate within 30 days after written notification is received from the District Commander to take such action.

(ii) Virginia Department of Highways bridge on Route 33 at West Point. At least 24 hours' notice required at all times.

(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), 33 CFR 1.05-1 (c) (4))

Dated: September 27, 1971.

D. H. LUZIUS,  
Acting Chief,  
Office of Operations.

[FR Doc.71-14576 Filed 10-4-71;8:51 am]

### [ 33 CFR Part 117 ]

[CGFR 71-100]

### OLD TAMPA BAY, FLA.

#### Proposed Drawbridge Operations

The Coast Guard is considering revising the regulations for the Courtney Campbell Causeway drawbridge on State Road 60 across Old Tampa Bay between Tampa and Clearwater. The draw is presently required to open on signal. The proposed revision would require that the draw open on signal from 7 a.m. to 7 p.m. and open on signal from 7 p.m. to 7 a.m. if at least 3 hours' advance notice has been given. This change is being considered because of infrequent openings from 7 p.m. to 7 a.m.

Interested persons may participate in this proposed rule making by submitting written data, views, or arguments to the Commander, Seventh Coast Guard District (oan), Room 1018, Federal Building, 51 Southwest Avenue, Miami, FL 33130. Each person submitting comments should include his name and address, identify the bridge, and give reasons for any recommended change in the proposal. Copies of all written communications received will be available for examination by interested persons at the office of the Commander, Seventh Coast Guard District.

The Commander, Seventh Coast Guard District, will forward any comments received before November 1, 1971, with his recommendations to the Chief, Office of Operations, who will evaluate all communications received and take final action on this proposal. The proposed regulations may be changed in the light of comments received.

In consideration of the foregoing, it is proposed that Part 117 of Title 33 of the Code of Federal Regulations, be amended by adding § 117.464 to read as follows:

§ 117.464 Old Tampa Bay, Fla., Courtney Campbell Causeway.

(a) The draw shall open on signal from 7 a.m. to 7 p.m. and shall open on signal from 7 p.m. to 7 a.m. if at least 3 hours' notice has been given.

(b) The owner of or agency controlling this bridge shall conspicuously post notice containing the provisions of these regulations both upstream and downstream of the drawbridge on the bridge or elsewhere in such a manner that they can easily be read at all times from an approaching vessel. The notice

shall state how the authorized representative may be reached.

(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), 33 CFR 1.05-1 (c) (4))

Dated: September 27, 1971.

D. H. LUZIUS,  
Acting Chief,  
Office of Operations.

[FR Doc.71-14575 Filed 10-4-71;8:51 am]

### Federal Aviation Administration

[ 14 CFR Part 39 ]

[Docket No. 11435]

### BRITISH AIRCRAFT CORPORATION MODEL BAC 1-11 200 AND 400 SERIES AIRPLANES

#### Proposed Airworthiness Directive

The Federal Aviation Administration is considering amending Part 39 of the Federal Aviation Regulations by adding an airworthiness directive applicable to British Aircraft Corp. Model BAC 1-11 200 and 400 series airplanes. There have been reports of failures of flap front inboard pickup assembly fitting spigots, P/N AB09-1723, that could result in flap malfunctions. Since this condition is likely to exist or develop in other airplanes of the same type design the proposed airworthiness directive would require periodic visual inspection of the pickup fitting assemblies for failure of the spigots; and replacement of spigots found to be failed or replacement of assemblies found to have failed spigots with improved assemblies. The proposal would permit the repetitive inspections to be discontinued after the installation of improved assemblies on Model BAC 1-11 200 and 400 series airplanes.

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the docket number and be submitted in duplicate to the Federal Aviation Administration, Office of the General Counsel, Attention: Rules Docket, GC-24, 800 Independence Avenue SW., Washington, DC 20591. All communications received on or before November 4, 1971, will be considered by the Administrator before taking action upon the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

In consideration of the foregoing, it is proposed to amend § 39.13 of Part 39 of the Federal Aviation Regulations by adding the following new airworthiness directive:

BRITISH AIRCRAFT CORP. Applies to Model BAC 1-11 200 and 400 series airplanes which do not have BAC Modification PM 4621 Part (b) incorporated on all flap sections.

Compliance is required as indicated. To prevent failures of the flap forward inboard pickup fitting assemblies (six per airplane), accomplish the following:



(a) For flap sections with a pick-up fitting assembly with a spigot having P/N AB09-1723 (pre-Mod. 4621) installed:

(1) Remove the lower inboard access panel and visually inspect the pickup fitting assembly for failure of the spigot in accordance with British Aircraft Corp. Model BAC 1-11 Alert Service Bulletin No. 57-A-PM 4621, Issue 2, dated July 27, 1970 or an FAA-approved equivalent as follows:

(i) On the inboard (No. 1) flap sections, within the next 650 landings after the effective date of this AD, or before the accumulation of 7,500 landings on the pickup fitting assembly spigot, whichever occurs later, and thereafter at intervals not to exceed 650 landings from the last inspection until the spigot is replaced in accordance with paragraph (a) (4) (ii), or the assembly is replaced in accordance with paragraph (a) (4) (iii).

(ii) On the center (No. 2) and outboard (No. 3) flap sections, within the next 2,000 landings after the effective date of this AD, or before the accumulation of 7,500 landings on the pickup assembly spigot, whichever occurs later, and thereafter at intervals not to exceed 2,000 landings from the last inspection until the spigot is replaced in accordance with paragraph (a) (4) (ii), or the assembly is replaced in accordance with paragraph (a) (4) (iii).

(2) If a failed spigot is found during an inspection required by paragraph (a) (1), before further flight comply with paragraph (a) (4).

(3) Within the next 1,000 landings after the effective date of this AD or before the accumulation of 25,000 landings on the pickup assembly spigot, whichever occurs later, comply with paragraph (a) (4).

(4) Comply with either subparagraph (i), (ii), or (iii).

(i) Replace an affected spigot with a serviceable spigot of the same part number and continue to inspect in accordance with paragraph (a) (1); or

(ii) Replace an affected spigot with an improved spigot, P/N AB09-3887 (BAC Modification PM 4621, Part (a)) in accordance with British Aircraft Corp. Model BAC 1-11 Service Bulletin No. 57-PM 4621, Issue 1, dated May 18, 1970 or an FAA-approved equivalent and inspect in accordance with paragraph (b) (1); or

(iii) Replace the assembly containing the affected spigot with a new assembly (BAC Modification PM 4621, Part (b)) in accordance with British Aircraft Corp. Model BAC 1-11 Service Bulletin No. 57-PM 4621, Issue 1, dated May 18, 1970 or an FAA-approved equivalent.

(b) For flap sections with a pickup fitting assembly with a spigot having P/N AB09-3887 (post-Mod. 4621, Part (a)) installed:

(1) Remove the lower inboard access panel and visually inspect the pickup fitting assembly for failure of the spigot in accordance with British Aircraft Corp. Model BAC 1-11 Alert Service Bulletin No. 57-A-PM 4621, Issue 2, dated July 27, 1970 or an FAA-approved equivalent as follows:

(i) On the inboard (No. 1) flap sections, within the next 650 landings after the effective date of this AD or before the accumulation of 20,000 landings on the pickup fitting assembly spigot, whichever occurs later, and thereafter at intervals not to exceed 650 landings from the last inspection until the assembly is replaced in accordance with paragraph (b) (4) (ii).

(ii) On the center (No. 2) and outboard (No. 3) flap sections, within the next 2,000 landings after the effective date of this AD or before the accumulation of 20,000 landings on the pickup fitting assembly, whichever occurs later, and thereafter at intervals not to exceed 2,000 landings from the last inspection, the assembly is replaced in accordance with paragraph (b) (4) (ii).

(2) If a failed spigot is found during an inspection required by paragraph (b) (1), before further flight comply with paragraph (b) (4).

(3) Within the next 1,000 landings after the effective date of this AD or before the accumulation of 30,000 landings on the pickup fitting assembly, whichever occurs later, comply with paragraph (b) (4).

(4) Comply with either subparagraph (i) or (ii).

(i) Replace an affected spigot with a serviceable spigot of the same part number and continue to inspect in accordance with paragraph (b) (1); or

(ii) Replace the assembly containing the affected spigot with a new assembly (BAC Modification PM 4621, Part (b)) in accordance with British Aircraft Corporation Model BAC 1-11 Service Bulletin No. 57-PM 4621, Issue 1, dated May 18, 1970 or an FAA-approved equivalent.

This amendment is proposed under the authority of sections 313(a), 601, and 603 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421, and 1423) and of section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Washington, D.C., on September 27, 1971.

WILLIAM G. SHREVE, JR.,  
Acting Director,  
Flight Standards Service.

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## [ 14 CFR Parts 61, 67, 121, 127, 183 ]

[Docket No. 11434; Notice 71-31]

### MEDICAL CERTIFICATION AND SURVEILLANCE: AIR CARRIER FLIGHT CREWMEMBERS

#### Notice of Proposed Rule Making

The Federal Aviation Administration is considering amending Parts 61, 67, 121, 127, and 183 of the Federal Aviation Regulations to provide for the medical certification and surveillance of air carrier flight crewmembers by designated air carrier physicians, without disturbing the reconsideration and review rights now available to applicants who are denied medical certificates.

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the Federal Aviation Administration, Office of the General Counsel, Attention: Rules Docket GC-24, 800 Independence Avenue SW., Washington, DC 20590. All communications received on or before February 2, 1972, will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

Each air carrier flight crewmember, as well as any other flight crewmember, now must hold a current medical certificate to exercise the privileges of his pilot, flight navigator, or flight engineer certifi-

cate. When he applies for a medical certificate, a flight crewmember may go to any authorized Aviation Medical Examiner (AME). However, it has been the FAA policy generally that an AME may not conduct medical examinations of an air carrier's flight crewmembers for FAA certification purposes if the AME is employed by, or is a regular consultant to, the air carrier. With the issuance of the amendments proposed by this notice, the FAA would discontinue that policy by providing that these examinations must be conducted by a designated air carrier physician.

At the Public Hearing on "Cardiovascular Disease in Civil Aviation" (Notice 66-42; 31 F.R. 15324), a representative of an air carrier group indicated that the major air carriers maintain health programs and health surveillance programs to insure that their flight crewmembers are in good health. The major airlines, that employ approximately 75 percent of the airline pilots, conduct these programs with their own medical facilities operated with adequate staffs under the supervision of a medical director. Most of the small air carriers have health surveillance programs under the supervision of physicians on a part-time or consulting basis. The objectives of these programs have been to improve the health, increase the proficiency, and prolong the career of the pilot with respect to flight status. These objectives have been achieved, in part, through selective screening on initial employment and frequent examination thereafter. This capability of the air carrier to maintain health programs parallels that of the military service, where a relatively high level of aviation safety is achieved through continuous and concentrated medical surveillance of flight personnel by flight surgeons.

In order to take advantage of this capability of the air carriers and to implement their responsibility to perform their services with the highest possible degree of safety, the FAA proposes to amend Parts 121 and 127 of the Federal Aviation Regulations to require periodic and certain other medical examinations performed by physicians who are full-time or part-time employees of air carriers or, in lieu thereof, by physicians who perform medical services for air carriers on a contractual or regular consulting basis. In this connection, the FAA proposes to amend Part 183 of the Federal Aviation Regulations to provide for the designation of air carrier physicians as medical examiners. To be a designated air carrier physician, a physician would be one employed by an air carrier holding an air carrier operating certificate issued under Part 121 or 127. Eligibility for this designation would not be limited to physicians who are full-time or part-time employees of an air carrier. A physician who performs medical services for an air carrier on a contractual or regular consulting basis also would be eligible to be a designated air carrier physician. To aid in the administrative process, it is contemplated that the FAA will designate at least one physician, recommended by each air carrier, as a

designated air carrier physician. The proposal would expressly require each air carrier to have its designated air carrier physician perform the required medical examinations, when now required as well as upon initial employment of flight crewmembers by it, and issue or deny FAA medical certificates to its flight crewmembers in accordance with the provisions of Part 67. However, the proposal also would allow other physicians employed by the air carrier to give the required examinations under the supervision of the designated air carrier physician, but not to issue medical certificates or other required reports.

This proposal would not alter the reconsideration of applications nor the review rights now available to an applicant in the event the designated air carrier physician denies him a medical certificate. Likewise, any suspension or revocation of a medical certificate held by a flight crewmember would still require appropriate action by the Administrator.

Proposed provisions would require the inclusion in the employer's records, and retention in its files, of a declaration on whether the flight crewmember meets or falls to meet the applicable FAA medical standards. The employer also would be required to furnish to the FAA the following: A copy of each medical certificate issued to a flight crewmember who qualifies under Part 67; a copy of any medical consultant's report when obtained; and a copy of each report of medical examination (FAA Form 8500-8), and of the required electrocardiogram and recorded findings (including any laboratory reports), when the flight crewmember does not qualify under Part 67. In addition, the employer would be required to retain in its files copies of these documents obtained in the examination of a flight crewmember.

Additionally, it is proposed to require each air carrier certificate holder to cause its designated air carrier physician to give to each person employed by it as a flight crewmember a medical examination to determine whether, in the judgment of the physician, that person has a physical deficiency, or increase thereof, that would make him unable to meet the physical requirements for his current medical certificate if that person is absent from flight duties for 20 or more consecutive days because of illness or injury, or if the air carrier certificate holder knows or reasonably should know that he has such a deficiency or increase thereof. The air carrier certificate holder would be required to enter in its appropriate records the results of this examination and a statement whether the flight crewmember has such a physical deficiency or increase thereof, and submit a copy thereof to the FAA within 10 days after the examination if the person examined is found unfit.

It is also proposed to require air carrier certificate holders to provide adequate medical facilities for performing each required medical examination. Air carriers already having medical departments could retain them. Air carriers without medical departments could meet this re-

quirement by obtaining the use of the facilities of private physicians or clinics, or of other air carriers that have them.

To make clear the responsibility of the air carriers for the continued "healthworthiness" of their flight crewmembers during operations, these proposals would also prohibit an air carrier from using a person as a flight crewmember if the air carrier knows, or reasonably should know, of a physical deficiency or increase thereof, that makes the flight crewmember unable to meet the physical requirements of his current medical certificate. In this respect, the proposals include a provision that the air carrier must report to the FAA any such condition that comes to its knowledge, within 10 days after obtaining the knowledge.

Under this proposal, for 1 year after the effective date of the amendments, an air carrier flight crewmember could obtain his required certification medical examinations from either an AME or from his employer's designated air carrier physician. However, after 1 year the new §§ 121.384 and 127.144 would require the flight crewmember to obtain his airman medical examinations only from his employer's designated air carrier physician.

Under § 121.7, this proposal would apply to those commercial operators conducting intrastate common carrier operations. Under § 135.2, the proposal would also apply to those air taxi operators conducting operations with large aircraft.

In consideration of the foregoing, it is proposed to amend Parts 61, 67, 121, 127, and 183 of the Federal Aviation Regulations as follows:

#### PART 61—CERTIFICATION: PILOTS AND FLIGHT INSTRUCTORS

1. By amending paragraphs (a) and (b) of § 61.43 to read as follows:

§ 61.43 Medical certificate: Duration.

(a) A first-class medical certificate expires—

- (1) Upon initial employment of a flight crewmember by an air carrier certificate holder where medical examination upon initial employment is required under § 121.384 or § 127.144 of this chapter; and
- (2) At the end of the last day of—

(i) The sixth month after the month in which it is issued, for operations requiring an airline transport pilot certificate;

(ii) The 12th month after the month in which it is issued, for operations requiring only a commercial pilot certificate; and

(iii) The 24th month after the month in which it is issued, for operations requiring only a private or student pilot certificate or a free balloon class rating.

(b) A second-class medical certificate expires—

- (1) Upon initial employment of a flight crewmember by an air carrier certificate holder where medical examination upon initial employment is required under § 121.384 or § 127.144 of this chapter; and

- (2) At the end of the last day of—
  - (i) The 12th month after the month in which it is issued, for operations requiring a commercial pilot certificate; and
  - (ii) The 24th month after the month in which it is issued, for operations requiring only a private or student pilot certificate or a free balloon class rating.

#### PART 67—MEDICAL STANDARDS AND CERTIFICATION

2. By amending Part 67 as follows:  
a. By amending § 67.23 to read as follows:

§ 67.23 Medical examinations: Who may give.

(a) *First class.* The following persons may give the examination for the first-class certificate:

(1) Any aviation medical examiner who is specifically designated for the purpose may give the examination for the first-class certificate.

(2) Any designated air carrier physician who is employed by, or performs medical services on a contractual or regular consulting basis for, an air carrier may give the examination for the first-class certificate to any flight crewmember of that air carrier.

(b) *Second class and third class.* The following persons may give the examination for second- or third-class certificate:

(1) Any aviation medical examiner may give the examination for the second- or third-class certificate.

(2) Any designated air carrier physician who is employed by, or performs medical services on a contractual or regular consulting basis for, an air carrier may give the examination for the second or third class certificate to any flight crewmember of that air carrier.

(c) *Identification.* Any interested person may obtain, from the FAA Regional Director of the area in which he is located, a list of—

(1) The aviation medical examiners in his area who are specifically authorized to give the medical examination for the first-class certificate;

(2) The other aviation medical examiners in his area; or

(3) The designated air carrier physicians in his area.

§ 67.25 [Amended]

b. By amending paragraphs (a) and (b) of § 67.25 as follows:

1. By striking out the word "examiners" in the flush sentence at the end of paragraph (a), and by inserting the words "examiners, to designated air carrier physicians," in place thereof.

2. By inserting the words "or designated air carrier physician" immediately after the words "aviation medical examiner" in the first and third sentences of paragraph (b).

§ 67.27 [Amended]

c. By amending paragraphs (a) and (b) of § 67.27 as follows:

1. By inserting the words "or designated air carrier physician" immediately after the words "aviation medical examiner" in paragraph (a).

2. By inserting the words "or designated air carrier physician" immediately after the words "aviation medical examiner" in subparagraph (1) of, and in the flush sentence at the end of, paragraph (b).

**PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT**

3. By amending Part 121 by inserting a new § 121.384 after § 121.383 to read as follows:

**§ 121.384 Air carrier flight crewmembers: Medical certification and surveillance; and operations during physical deficiency.**

(a) After (1 year after the effective date of the amendment), each air carrier certificate holder shall—

(1) Cause its designated air carrier physician (who is employed by, or performs medical services on a contractual or regular consulting basis for, it) to—

(i) Give to each flight crewmember, upon his initial employment and thereafter during his employment by it, the medical examinations required under Part 67 of this chapter;

(ii) Issue or deny the appropriate medical certificate; and

(iii) Enter in the appropriate records of the air carrier a declaration that the flight crewmember meets or fails to meet the applicable medical standards; and

(2) Within 10 days after each medical examination prescribed by subparagraph (1) of this paragraph furnish to the FAA the following, each signed by its designated air carrier physician:

(i) A copy of the medical certificate issued, if the flight crewmember qualifies under Part 67 of this chapter.

(ii) The Report of Medical Examination, FAA Form 8500-8, a copy of any medical consultant's report when obtained, a copy of each required electrocardiogram, and a copy of each required recorded finding (including laboratory reports), if the flight crewmember does not qualify under Part 67 of this chapter.

(b) After (1 year after the effective date of the amendment) no air carrier certificate holder may use a person as a flight crewmember unless its designated air carrier physician (who is employed by, or performs medical services on a contractual or regular consulting basis for, it) has given to that person the medical examination required by paragraph (a) of this section and issued to him an appropriate medical certificate, and the air carrier certificate holder has furnished to the FAA the reports required by that paragraph. This paragraph does not apply to a flight crewmember until the next medical examination required

after (1 year after the effective date of the amendment).

(c) After (1 year after the effective date of the amendment), if a flight crewmember is absent from flight duties for 20 or more consecutive days because of illness or injury, or if the air carrier certificate holder knows or reasonably should know that the flight crewmember has a physical deficiency, or increase of physical deficiency, that would make him unable to meet the physical requirements for his current medical certificate, the air carrier certificate holder shall—

(1) Cause its designated air carrier physician (who is employed by, or performs medical services on a contractual or regular consulting basis for, it) to give to that person a medical examination to determine whether, in the judgment of the physician, that person has such a physical deficiency, or increase thereof;

(2) Enter in its appropriate records the results of the examination and a statement whether that person has such a physical deficiency or increase thereof; and

(3) Submit a copy of those results to the FAA within 10 days after the examination if that person is found to have such a physical deficiency or increase thereof.

(d) Any physician employed by the air carrier certificate holder may, under the supervision of its designated air carrier physician, give the medical examinations prescribed by paragraphs (a) and (c) of this section. However, that physician may not issue medical certificates or other reports required under this section.

(e) No air carrier certificate holder may use a person as a flight crewmember if that air carrier knows, or reasonably should know, that the person has a physical deficiency, or increase of physical deficiency, that would make him unable to meet the physical requirements for his current medical certificate.

(f) After (1 year after the effective date of the amendment), each air carrier certificate holder shall provide adequate medical facilities for performing each medical examination required by paragraphs (a) and (c) of this section.

(g) Each air carrier certificate holder shall retain in its files each declaration required to be made by paragraph (a) (1) (iii) of this section; a copy of each medical certificate issued and of each report, electrocardiogram, and recorded finding specified in paragraph (a) (2) of this section; and a copy of the record required by paragraph (c) of this section.

(h) All reports and other medical information required to be made or furnished to the FAA under this section shall be sent to the Aeromedical Certification Branch, Civil Aeromedical Institute, Federal Aviation Administration, Post Office Box 25082, Oklahoma City, OK 73125.

(i) Each air carrier certificate holder shall allow the Administrator, at any reasonable time, to inspect its medical records pertaining to medical examinations required under this section.

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

4. By amending Part 127 by inserting a new § 127.144 after § 127.143 to read as follows:

**§ 127.144 Air carrier flight crewmembers: medical certification and surveillance; and operations during physical deficiency.**

(a) After (1 year after the effective date of the amendment), each air carrier certificate holder shall—

(1) Cause its designated air carrier physician (who is employed by, or performs medical services on a contractual or regular consulting basis for, it) to—

(i) Give to each flight crewmember, upon his initial employment and thereafter during his employment by it, the medical examinations required under Part 67 of this chapter;

(ii) Issue or deny the appropriate medical certificate; and

(iii) Enter in the appropriate records of the air carrier a declaration that the flight crewmember meets or fails to meet the applicable medical standards; and

(2) Within 10 days after each medical examination prescribed by subparagraph (1) of this paragraph furnish to the FAA the following, each signed by its designated air carrier physician:

(i) A copy of the medical certificate issued, if the flight crewmember qualifies under Part 67 of this chapter.

(ii) The Report of Medical Examination, FAA Form 8500-8, a copy of any medical consultant's report when obtained, a copy of each required electrocardiogram, and a copy of each required recorded finding (including laboratory reports), if the flight crewmember does not qualify under Part 67 of this chapter.

(b) After (1 year after the effective date of the amendment) no air carrier certificate holder may use a person as a flight crewmember unless its designated air carrier physician (who is employed by, or performs medical services on a contractual or regular consulting basis for, it) has given to that person the medical examination required by paragraph (a) of this section and issued to him an appropriate medical certificate, and the air carrier certificate holder has furnished to the FAA the reports required by that paragraph. This paragraph does not apply to a flight crewmember until the next medical examination required after (1 year after the effective date of the amendment).

(c) After (1 year after the effective date of the amendment), if a flight crewmember is absent from flight duties for 20 or more consecutive days because of illness or injury, or if the air carrier certificate holder knows or reasonably should know that the flight crewmember has a physical deficiency, or increase of physical deficiency, that would make him unable to meet the physical requirements for his current medical certificate, the air carrier certificate holder shall—

(1) Cause its designated air carrier physician (who is employed by, or performs medical services on a contractual or regular consulting basis for, it) to give to that person a medical examination to determine whether, in the judgment of the physician, that person has such a physical deficiency, or increase thereof;

(2) Enter in its appropriate records the results of the examination and a statement whether that person has such a physical deficiency or increase thereof; and

(3) Submit a copy of those results to the FAA within 10 days after the examination of that person has such a physical deficiency or increase thereof.

(d) Any physician employed by the air carrier certificate holder may, under the supervision of its designated air carrier physician, give the medical examinations prescribed by paragraphs (a) and (c) of this section. However, that physician may not issue medical certificates or other reports required under this section.

(e) No air carrier certificate holder may use a person as a flight crewmember if that air carrier knows, or reasonably should know, that the person has a physical deficiency, or increase of physical deficiency, that would make him unable to meet the physical requirements for his current medical certificate.

(f) After (1 year after the effective date of the amendment), each air carrier certificate holder shall provide adequate medical facilities for performing each medical examination required by paragraphs (a) and (c) of this section.

(g) Each air carrier certificate holder shall retain in its files each declaration required to be made by paragraph (a) (1) (iii) of this section; a copy of each medical certificate issued and of each report, electrocardiogram, and recorded finding specified in paragraph (a) (2) of this section; and a copy of the record required by paragraph (c) of this section.

(h) All reports and other medical information required to be made or furnished to the FAA under this section shall be sent to the Aeromedical Certification Branch, Civil Aeromedical Institute, Federal Aviation Administration, Post Office Box 25082, Oklahoma City, OK 73125.

(i) Each air carrier certificate holder shall allow the Administrator, at any reasonable time, to inspect its medical records pertaining to medical examinations required under this section.

#### PART 183—REPRESENTATIVES OF THE ADMINISTRATOR

5. By amending Part 183 as follows:

a. By amending § 183.11(a) to read as follows:

##### § 183.11 Selection.

(a) Selection of private persons for medical purposes is made as follows:

(1) The Federal Air Surgeon, or his authorized representative within the FAA, may select Aviation Medical Examiners from qualified physicians who apply.

(2) The Federal Air Surgeon may—

(i) Designate air carrier physicians recommended by air carriers holding air carrier operating certificates issued under Part 121 or 127 of this chapter, to conduct the examination and certificate procedures provided for in § 183.22; and

(ii) Designate qualified forensic pathologists to assist in the medical investigation of aircraft accidents.

##### § 183.13 [Amended]

b. By striking out the words "Examiner and to" in § 183.13(a), and by inserting the words "Examiner, each Designated Air Carrier Physician, and to," in place thereof.

##### § 183.15 [Amended]

c. By striking out the words "Examiner is" in § 183.15(a), and by inserting the words "Examiner or Designated Air Carrier Physician is", in place thereof.

d. By inserting a new § 183.22 after § 183.21 to read as follows:

##### § 183.22 Designated air carrier physicians.

The physician who is employed by, or performs medical services on a contractual or regular consulting basis for, an air carrier, and who is designated under § 183.11(a) may—

(a) Accept applications from flight crewmembers employed by that air carrier for medical examinations necessary for issuing medical certificates under Part 67 of this chapter;

(b) Under the general supervision of the Federal Air Surgeon or the appropriate regional flight surgeon, conduct medical examinations pursuant to paragraph (a) of this section, and as prescribed by § 121.384(c) or 127.144(c) of this chapter; and

(c) Issue or deny medical certificates to those flight crewmembers in accordance with Part 67 of this chapter, subject to reconsideration by the Federal Air Surgeon or his authorized representative within the FAA.

These amendments are proposed under the authority of sections 313(a), 314(a), 601, 602, and 604 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1355, 1421, 1422, 1424), and section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Washington, D.C., on September 28, 1971.

P. V. SIEGEL,  
Federal Air Surgeon.

[FR Doc. 71-14543 Filed 10-4-71; 8:47 am]

#### [ 14 CFR Part 67 ]

[Docket No. 11433; Notice 71-30]

### SEPARATION OF DISQUALIFYING MENTAL AND NEUROLOGIC CONDITIONS

#### Proposed Medical Standards for Issuing Certificates to Airmen

The Federal Aviation Administration is considering amending Part 67 of the

Federal Aviation Regulations (1) to revise the terminology used to denote mental and neurologic conditions that disqualify applicants for medical certificates, to conform with current usage in the medical profession; and (2) to separate what have been termed "nervous system" conditions into mental and neurologic disorders as two distinct groups of disqualifying conditions.

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to: Federal Aviation Administration, Office of the General Counsel, Attention: Rules Docket, GC-24, 800 Independence Avenue SW., Washington, DC 20590. All communications received on or before November 4, 1971, will be considered by the Administrator before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

Part 67 prescribes the medical standards for issuing medical certificates to airmen. These standards are based in part upon a study undertaken in 1956 by the Flight Safety Foundation, and consultation with the American Psychiatric Association and the Committee on Aviation Medicine of the American Medical Association. Funds for the Flight Safety Foundation study were provided by the Federal Government.

A medical history or clinical diagnosis of any of the following six identifiable medical deficiencies of the nervous system disqualifies an applicant for a medical certificate of any class: (i) A character or behavior disorder that is severe enough to have repeatedly manifested itself by overt acts; (ii) a psychotic disorder; (iii) chronic alcoholism; (iv) drug addiction; (v) epilepsy; (vi) a disturbance of consciousness without satisfactory medical explanation of the cause. Additionally, a general category of disqualifying conditions includes any disease of the nervous system, mental abnormality, or psychoneurotic disorder that the Federal Air Surgeon finds—(i) makes an applicant unable to safely perform the duties or exercise the privileges of the airman certificate that he holds or for which he is applying; or (ii) may reasonably be expected, within 2 years after the finding, to make him unable to perform those duties or exercise those privileges; and the findings are based on the case history and appropriate, qualified, medical judgment relating to the condition involved.

A disparity exists between the terminology used in the standards involving mental disorders and currently accepted psychiatric terminology. As a result, difficulty has existed in applying the latter terminology to these mental disabilities although the basic definitions have remained essentially unchanged.

To avoid the recurrence of difficulties that have arisen in enforcement actions through the use of terminology no longer used by psychiatrists, and to update the regulations, it is proposed to revise the terminology describing the mental requirements to conform with the terminology generally used by specialists in that branch of medicine. The Manual published by the American Psychiatric Association, "Diagnostic and Statistical Manual of Mental Disorders (second edition 1968)," was developed to facilitate communication within the medical profession, and to reduce confusion and ambiguity in the use and application of psychiatric terms, by enumerating and defining mental disorders for use in the current practice of psychiatry. It therefore appears advisable to use in Part 67 terminology from the Manual, since that is the terminology generally applied to recognized mental disorders by the medical profession.

Specifically, the term "character or behavior disorder" would be replaced by "personality disorder." As under the old terminology, the Manual characterizes this group of disorders as deeply ingrained maladaptive patterns of behavior. As in the Manual, a personality disorder may include conditions known to the medical profession as paranoid personality, cyclothymic personality, schizoid personality, explosive personality, obsessive compulsive personality, hysterical personality, asthenic personality, antisocial personality, passive-aggressive personality, and an inadequate personality.

The term "psychotic disorder" would be changed to "psychosis," as in the Manual, and would continue to include conditions known to the medical profession as schizophrenia, involuntional melancholia, manic-depressive illness, and paranoid states. Reactive psychoses would also be considered disqualifying.

The term "chronic alcoholism" would be changed to "alcoholism." Since this disorder, as set forth, has been subject to differing interpretations, the definition in the Manual would be stated in the rule to preclude further uncertainty. As used in this part, alcoholism would mean a condition in which a person's intake of alcohol is great enough to damage his physical health or personal or social functioning, or when alcohol has become a prerequisite to his normal functioning.

The term "drug addiction" would be changed to "drug dependence." A history or diagnosis under this category is indicated by evidence of addiction to or dependency on drugs other than alcohol, tobacco, or ordinary caffeine-containing beverages. As in the Manual, a history or diagnosis requires evidence of habitual use or a clear sense of need for the drug, and withdrawal symptoms would not be considered the only evidence of dependence.

The proposed changes have been reviewed and approved by a committee of the American Psychiatric Association, and that committee has indicated that

the changes may be considered essentially semantic.

In addition to the proposed changes in terminology, and as a means of clarifying the applicable standards as well as recognizing a division in professional specialization in disorders of a mental or neurologic nature, it is proposed to separate "mental condition" and "neurologic condition" under the applicable sections of Part 67. This separation would also facilitate the gathering and analysis of statistical information relating to airman applicants who have been issued or denied medical certificates where mental or neurologic histories or conditions are concerned. The neurologic terminology now used is acceptable, and no change in the enumeration of disqualifying neurologic disorders would be made.

In consideration of the foregoing, it is proposed to amend Part 67 of the Federal Aviation Regulations as follows:

1. By amending paragraph (d) of § 67.13 to read as follows:

§ 67.13 First-class medical certificate.

(d) *Mental and neurologic*—(1) *Mental*. (i) No established medical history or clinical diagnosis of any of the following:

(a) A personality disorder that is severe enough to have repeatedly manifested itself by overt acts.

(b) A psychosis.

(c) Alcoholism. As used in this section, "alcoholism" means a condition in which a person's intake of alcohol is great enough to damage his physical health or personal or social functioning, or when alcohol has become a prerequisite to his normal functioning.

(d) Drug dependence. As used in this section, "drug dependence" means a condition in which a person is addicted to or dependent on drugs other than alcohol, tobacco, or ordinary caffeine-containing beverages, as evidenced by habitual use or a clear sense of need for the drug.

(ii) No other personality disorder, neurosis, or mental condition that the Federal Air Surgeon finds—

(a) Makes the applicant unable to safely perform the duties or exercise the privileges of the airman certificate that he holds or for which he is applying; or

(b) May reasonably be expected, within 2 years after the finding, to make him unable to perform those duties or exercise those privileges;

and the findings are based on the case history and appropriate, qualified, medical judgment relating to the condition involved.

(2) *Neurologic*. (i) No established medical history or clinical diagnosis of either of the following:

(a) Epilepsy.

(b) A disturbance of consciousness without satisfactory medical explanation of the cause.

(ii) No other convulsive disorder, disturbance of consciousness, or neurologic

condition that the Federal Air Surgeon finds—

(a) Makes the applicant unable to safely perform the duties or exercise the privileges of the airman certificate that he holds or for which he is applying; or

(b) May reasonably be expected, within 2 years after the finding, to make him unable to perform those duties or exercise those privileges;

and the findings are based on the case history and appropriate, qualified, medical judgment relating to the condition involved.

2. By amending paragraph (d) of § 67.15 to read as follows:

§ 67.15 Second-class medical certificate.

(d) *Mental and neurologic*—(1) *Mental*. (i) No established medical history or clinical diagnosis of any of the following:

(a) A personality disorder that is severe enough to have repeatedly manifested itself by overt acts.

(b) A psychosis.

(c) Alcoholism. As used in this section, "alcoholism" means a condition in which a person's intake of alcohol is great enough to damage his physical health or personal or social functioning, or when alcohol has become a prerequisite to his normal functioning.

(d) Drug dependence. As used in this section "drug dependence" means a condition in which a person is addicted to or dependent on drugs other than alcohol, tobacco, or ordinary caffeine-containing beverages, as evidenced by habitual use or a clear sense of need for the drug.

(ii) No other personality disorder, neurosis, or mental condition that the Federal Air Surgeon finds—

(a) Makes the applicant unable to safely perform the duties or exercise the privileges of the airman certificate that he holds or for which he is applying; or

(b) May reasonably be expected, within 2 years after the finding, to make him unable to perform those duties or exercise those privileges;

and the findings are based on the case history and appropriate, qualified, medical judgment relating to the condition involved.

(2) *Neurologic*. (i) No established medical history or clinical diagnosis of either of the following:

(a) Epilepsy.

(b) A disturbance of consciousness without satisfactory medical explanation of the cause.

(ii) No other convulsive disorder, disturbance of consciousness, or neurologic condition that the Federal Air Surgeon finds—

(a) Makes the applicant unable to safely perform the duties or exercise the privileges of the airman certificate that he holds or for which he is applying; or

(b) May reasonably be expected, within 2 years after the finding, to make

him unable to perform those duties or exercise those privileges;

and the findings are based on the case history and appropriate, qualified, medical judgment relating to the condition involved.

3. By amending paragraph (d) of § 67.17 to read as follows:

**§ 67.17 Third-class medical certificate.**

(d) *Mental and neurologic*—(1) *Mental*. (i) No established medical history or clinical diagnosis of any of the following:

(a) A personality disorder that is severe enough to have repeatedly manifested itself by overt acts.

(b) A psychosis.

(c) *Alcoholism*. As used in this section, "alcoholism" means a condition in which a person's intake of alcohol is great enough to damage his physical health or personal or social functioning, or when alcohol has become a prerequisite to his normal functioning.

(d) *Drug dependence*. As used in this section "drug dependence" means a condition in which a person is addicted to or dependent on drugs other than alcohol, tobacco, or ordinary caffeine-containing beverages, as evidenced by habitual use or a clear sense of need for the drug.

(ii) No other personality disorder, neurosis, or mental condition that the Federal Air Surgeon finds—

(a) Makes the applicant unable to safely perform the duties or exercise the privileges of the airman certificate that he holds or for which he is applying; or

(b) May reasonably be expected, within 2 years after the finding, to make him unable to perform those duties or exercise those privileges;

and the findings are based on the case history and appropriate, qualified, medical judgment relating to the condition involved.

(2) *Neurologic*. (i) No established medical history or clinical diagnosis of either of the following:

(a) Epilepsy.

(b) A disturbance of consciousness without satisfactory medical explanation of the cause.

(ii) No other convulsive disorder, disturbance of consciousness, or neurologic condition that the Federal Air Surgeon finds—

(a) Makes the applicant unable to safely perform the duties or exercise the privileges of the airman certificate that he holds or for which he is applying; or

(b) May reasonably be expected, within 2 years after the finding, to make him unable to perform those duties or exercise those privileges; and the findings are based on the case history and appropriate, qualified, medical judgment relating to the condition involved.

4. By amending the first sentence in paragraph (d) of § 67.19 to read as follows:

**§ 67.19 Special issue: operational limitations.**

(d) Except for air traffic control tower operators, this section does not apply to an applicant who fails to meet the requirements of § 67.13(d)(1)(i), (d)(2)(i), (e)(1), or (f)(1), § 67.15(d)(1)(i), (d)(2)(i), (e), or (f)(1), or § 67.17(d)(1)(i), (d)(2)(i), (e), or (f)(1).

5. By amending the second sentence in paragraph (b) of § 67.25 to read as follows:

**§ 67.25 Delegation of authority.**

(b) \* \* \* Except where the applicant does not meet the standards of § 67.13(d)(1)(i), (d)(2)(i), (e)(1), or (f)(1), § 67.15(d)(1)(i), (d)(2)(i), (e), or (f)(1), or § 67.17(d)(1)(i), (d)(2)(i), (e), or (f)(1), any action taken under this paragraph other than by the Federal Air Surgeon is subject to reconsideration by the Federal Air Surgeon.

6. By amending the first sentence in paragraph (b)(3) of § 67.27 to read as follows:

**§ 67.27 Denial of medical certificate.**

(3) By the Chief, Aeromedical Certification Branch, Civil Aeromedical Institute, or a Regional Flight Surgeon is considered to be a denial by the Administrator under that section of the Act where the applicant does not meet the standards of § 67.13(d)(1)(i), (d)(2)(i), (e)(1), or (f)(1), § 67.15(d)(1)(i), (d)(2)(i), (e), or (f)(1), or § 67.17(d)(1)(i), (d)(2)(i), (e), or (f)(1).

These amendments are proposed under the authority of sections 313(a), 601, and 602 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421, 1422), and section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Washington, D.C., on September 28, 1971.

P. V. SIEGEL,  
Federal Air Surgeon.

[FR Doc. 71-14542 Filed 10-4-71; 8:47 am]

**[ 14 CFR Part 71 ]**

[Airspace Docket No. 71-GL-1]

**FEDERAL AIRWAY**

**Proposed Designation**

The Federal Aviation Administration (FAA) is considering an amendment to Part 71 of the Federal Aviation Regulations that would designate VOR Federal airway No. 347 from Ironwood, Mich., to Houghton, Mich.

Interested persons may participate in the proposed rule making by submitting such written data, views, or arguments as they may desire. Communications should

identify the airspace docket number and be submitted in triplicate to the Director, Great Lakes Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, 3166 Des Plaines Avenue, Des Plaines, IL 60018. All communications received within 30 days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. The proposal contained in this notice may be changed in the light of comments received.

An official docket will be available for examination by interested persons at the Federal Aviation Administration, Office of the General Counsel, Attention: Rules Docket, 800 Independence Avenue SW., Washington, DC 20591. An informal docket also will be available for examination at the office of the Regional Air Traffic Division Chief.

The FAA proposes to designate V-347 airway from Ironwood, Mich., to Houghton, Mich. This proposed airway would provide a route for air traffic operating between these points.

This amendment is proposed under the authority of section 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348(a)) and section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Washington, D.C., on September 27, 1971.

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

[FR Doc. 71-14545 Filed 10-4-71; 8:47 am]

**[ 14 CFR Part 71 ]**

[Airspace Docket No. 71-NE-6]

**CONTROL ZONE AND TRANSITION AREA**

**Proposed Designation**

The Federal Aviation Administration is considering amending §§ 71.171 and 71.181 of Part 71 of the Federal Aviation Regulations so as to alter the Montpelier, Vt., control zone (36 F.R. 2107) and transition area (36 F.R. 2236). The VOR Runway 35 Instrument Approach Procedure for the Edward F. Knapp (Barre-Montpelier) State Airport, Barre-Montpelier, Vt., has been revised in accordance with the U.S. Standard for Terminal Instrument Procedures. The revised procedure will require alteration of the control zone and 700-foot transition area to provide controlled airspace protection for aircraft executing the procedure.

Interested persons may submit such written data or views as they may desire. Communications should be submitted in triplicate to the Director, New England Region, Attention: Chief, Air Traffic Division, Department of Transportation, Federal Aviation Administration, 154 Middlesex Street, Burlington, MA 01803.

All communications received within 30 days after publication in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No hearing is contemplated at this time, but arrangements may be made for informal conferences with Federal Aviation Administration officials by contacting the Chief, Operations, Procedures and Airspace Branch, New England Region.

Any data or views presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official docket will be available for examination by interested persons at the Office of the Regional Counsel, Federal Aviation Administration, 154 Middlesex Street, Burlington, MA.

The Federal Aviation Administration, having completed a review of the airspace requirements for the terminal area of Montpelier, Vt., proposes the airspace action hereinafter set forth:

1. Amend § 71.171 of Part 71 of the Federal Aviation Regulations so as to delete the description of the Montpelier, Vt., Control Zone and insert the following in lieu thereof:

Within a 5-mile radius of the center, 44°12'15" N., 72°33'45" W., of Edward F. Knapp (Barre-Montpelier) State Airport, Barre-Montpelier, Vt.; within 3 miles each side of the Montpelier VOR 163° radial extending from the 5-mile radius zone to 8 miles south of the VOR; within 2 miles each side of the centerline of Runway 23 extending from the 5-mile radius zone to 8 miles southwest of the end of Runway 23.

2. Amend § 71.181 of Part 71 of the Federal Aviation Regulations so as to delete the description of the Montpelier, Vt., 700-foot transition area and insert the following in lieu thereof:

That airspace extending upward from 700 feet above the surface within a 10-mile radius of the center, 44°12'15" N., 72°33'45" W., of Edward F. Knapp (Barre-Montpelier) State Airport, Barre-Montpelier, Vt.; within 6.5 miles west and 5 miles east of the Montpelier VOR 163° radial extending from the 10-mile radius zone to 11.5 miles south of the VOR.

This amendment is proposed under section 307(a) of the Federal Aviation Act of 1958 (Stat. 749; U.S.C. 1348) and section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Burlington, Mass., on September 22, 1971.

FERRIS J. HOWLAND,  
Director, New England Region.

[FR Doc. 71-14537 Filed 10-4-71; 8:47 am]

#### [ 14 CFR Part 71 ]

[Airspace Docket No. 71-SO-151]

#### TRANSITION AREA

##### Proposed Designation

The Federal Aviation Administration is considering an amendment to Part 71 of the Federal Aviation Regulations that

would designate the Elkin, N.C., transition area.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Federal Aviation Administration, Southern Region, Air Traffic Division, Post Office Box 20636, Atlanta, GA 30320. All communications received within 30 days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Chief, Airspace and Procedures Branch. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in light of comments received.

The official docket will be available for examination by interested persons at the Federal Aviation Administration, Southern Region, Room 724, 3400 Whipple Street, East Point, GA.

The Elkin transition area would be designated as:

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Elkin Municipal Airport (lat. 36°16'40" N., long. 80°47'12" W.); within 3 miles each side of the 067° bearing from Zephyr RBN (lat. 36°18'30" N., long. 80°43'05" W.), extending from the 6.5-mile radius area to 8.5 miles northeast of the RBN.

The proposed designation is required to provide controlled airspace protection for IFR operations at Elkin Municipal Airport. A prescribed instrument approach procedure to this airport, utilizing the Zephyr (private) nondirectional radio beacon, is proposed in conjunction with the designation of the Elkin transition area.

This amendment is proposed under the authority of section 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348(a)) and of section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in East Point, Ga., on September 24, 1971.

JAMES G. ROGERS,  
Director, Southern Region.

[FR Doc. 71-14546 Filed 10-4-71; 8:48 am]

#### [ 14 CFR Part 71 ]

[Airspace Docket No. 71-WE-48]

#### CONTROL ZONE

##### Proposed Designation

The Federal Aviation Administration is considering an amendment to Part 71 of the Federal Aviation Regulations that would establish a new control zone at San Clemente Island, Calif.

Interested persons may participate in the proposed rule making by submitting such written data, views, or arguments as they may desire. Communications should be submitted in triplicate to the Chief, Airspace and Procedures Branch,

Federal Aviation Administration, 5651 West Manchester Boulevard, Post Office Box 92007, Worldway Postal Center, Los Angeles, CA 90009. All communications received within 30 days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Regional Air Traffic Division Chief. Any data, views, or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

A public docket will be available for examination by interested persons in the office of the Regional Counsel, Federal Aviation Administration, 5651 West Manchester Boulevard, Los Angeles, CA 90045.

The Department of the Navy has requested the establishment of a control zone at NALF San Clemente Island. The control zone will provide controlled airspace protection for Navy contract carriers and Naval aircraft conducting training operations under instrument flight rules at NALF San Clemente.

In consideration of the foregoing, the FAA proposes the following airspace action.

In § 71.171 (36 F.R. 2055) the following control zone is added.

#### SAN CLEMENTE ISLAND, CALIF.

Within a 5-mile radius of NALF San Clemente (latitude 33°01'20" N., longitude 118°35'15" W.) extending upward from the surface to and including 5,000 feet MSL, excluding that airspace beyond 3NM from and parallel to the shoreline. This control zone is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airmen's Information Manual.

This amendment is proposed under the authority of section 307(a) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1348 (a)), and of section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Los Angeles, Calif., on September 24, 1971.

ARVIN O. BASNIGHT,  
Director, Western Region.

[FR Doc. 71-14547 Filed 10-4-71; 8:48 am]

## CIVIL AERONAUTICS BOARD

#### [ 14 CFR Part 223 ]

[Docket No. 23866; EDR-213]

### TARIFFS OF AIR CARRIERS: FREE AND REDUCED-RATE TRANSPORTATION

#### Domestic Group Familiarization Tours

SEPTEMBER 29, 1971.

Notice is hereby given that the Civil Aeronautics Board has under consideration proposed amendments to Part 223

of its Economic Regulations (14 CFR Part 223) which would permit air carriers to furnish familiarization tours for travel agents to the Trust Territory of the Pacific Islands and familiarization tours from Canada.

The principal features of the proposed amendments are described in the attached Explanatory Statement, and the proposed amendments are set forth in the attached Proposed Rule. The amendments are proposed under the authority of sections 204(a), 403, 407, and 416 of the Federal Aviation Act of 1958, as amended (72 Stat. 743, 758 (as amended by 74 Stat. 445), 766 (as amended by 83 Stat. 103), 771; 49 U.S.C. 1324, 1373, 1377, 1386).

Interested persons may participate in the proposed rule making through submission of twelve (12) copies of written data, views, or arguments pertaining thereto, addressed to the Docket Section Civil Aeronautics Board, Washington, D.C. 20428. All such material which is relevant and is received on or before November 5, 1971, will be considered by the Board before taking final action on the proposed rule. Copies of such communications will be available for examination by interested persons in the Docket Section of the Board, Room 712 Universal Building, 1825 Connecticut Avenue NW., Washington, DC, upon receipt thereof.

By the Civil Aeronautics Board.

[SEAL]

HARRY J. ZINK,  
Secretary.

#### EXPLANATORY STATEMENT

Part 223 of the Economic Regulations presently provides that an air carrier may provide free or reduced-rate transportation to travel agents on domestic group familiarization tours between points on its certificated routes within the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, and Guam, subject to certain conditions. This blanket exemption has considerably reduced the burden on the carriers and the Board's staff from that which would result were it necessary for a carrier to apply for an individual exemption for each tour. At the same time the rules of Part 223 have enabled the Board to properly monitor these exempted tours.

Nevertheless, the Board still receives a significant number of exemption applications in connection with familiarization tours which originate in Canada or are destined for the U.S. Trust Territory in the Pacific, and are thus not within the purview of the present Part 223. Since these tours generally comply in all other respects with the requirements of Part 223 for domestic familiarization tours, the Board is of the tentative view that unnecessary burden would be eliminated, and no regulatory purpose would suffer, if Part 223 were expanded to include such tours. Additionally, since the distance to the Trust Territory from the U.S. mainland, Puerto Rico, the Virgin Islands, and Canada tends to be greater than the distances between most domestic points, and since

more time must be spent in transit within the Trust Territory than is the case with most familiarization tours, we are of the tentative view that the maximum length of time for tours to the Trust Territory from the U.S. mainland, Puerto Rico, the Virgin Islands, and Canada should be 9 days, rather than the 7-day maximum prescribed for other familiarization tours.

#### PROPOSED RULE

It is proposed to amend Part 223 of the Economic Regulations (14 CFR Part 223) as follows:

1. Amend the definition of "domestic group familiarization tour" in § 223.1 to read as follows:

#### § 223.1 Definitions.

(f) "Domestic group familiarization tour" means a tour organized and controlled by one or more air carriers for the purpose of promoting the sale of air transportation by familiarizing a group of travel agents with tourist attractions, accommodations, and recreational facilities in a particular area within the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, or the Trust Territory of the Pacific Islands.

2. Amend § 223.2(f) as follows:

§ 223.2 Persons to whom free and reduced-rate transportation may be furnished.

(f) Any air carrier authorized to engage in interstate or overseas air transportation of passengers or foreign air transportation of passengers to points in Canada is hereby exempted from section 403 of the Act and Part 221 of the Board's Economic Regulations to the extent necessary to enable it to provide free or reduced-rate transportation to travel agents on domestic group familiarization tours between points on its certificated routes within the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Trust Territory of the Pacific Islands, or from points on its certificated routes in Canada to points on its certificated routes within the stated domestic areas, subject to the following conditions:

(2) The tour shall be limited to a minimum of 1 day in addition to time spent in air transportation and a maximum of 7 days' total time, and no more than 4 days shall be spent at any point: *Provided however*, That tours to the Trust Territory of the Pacific Islands which originate in the continental United States, Puerto Rico, the Virgin Islands, or Canada shall be limited to a maximum of 9 days' total time.

(4) No part of the tour shall consist of transportation by any means to, be directed toward promoting travel to, or in any manner include or provide for visits to points outside the 50 States, the

District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, or the Trust Territory of the Pacific Islands.

[FR Doc.71-14581 Filed 10-4-71;8:51 am]

## ENVIRONMENTAL PROTECTION AGENCY

[ 45 CFR Part 1201 ]

### HEAVY-DUTY ENGINES

#### Proposed 1973 Emission Standards

On June 4, 1968, 45 CFR Part 85 relating to the control of air pollution from new motor vehicles and engines was amended to establish standards applicable to gasoline-fueled and diesel engines designed for use in vehicles having a gross vehicle rating of more than 6,000 pounds. Such standards were applicable to model years beginning with 1970.

On November 10, 1970, 45 CFR Part 85 (later redesignated as Part 1201) was amended to revise the regulations applicable to heavy-duty engines beginning with the 1972 model year. These amendments related primarily to the definition of a "heavy-duty vehicle," certification test fleet selection, information to be recorded during tests, allowable maintenance, and data reporting.

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

(a) Revise the labeling requirements applicable to heavy-duty engines.

(b) Revise exhaust emission standards for gasoline-fueled heavy-duty engines by making the hydrocarbons and carbon monoxide standards more stringent and adding an oxides of nitrogen standard.

(c) Describe analytical procedures and instrumentation for the measurement of oxides of nitrogen emissions from gasoline-fueled heavy-duty engines.

(d) Revise smoke emissions standards for heavy-duty diesel engines by making the standards for the acceleration and lugging modes more stringent and by adding a standard for peak opacity.

(e) Establish exhaust emission standards for heavy-duty diesel engines for hydrocarbons, carbon monoxide, and oxides of nitrogen.

(f) Describe analytical procedures and instrumentation for the measurement of exhaust hydrocarbons, carbon monoxide, and oxides of nitrogen from heavy-duty diesel engines.

(g) Revise the service accumulation schedule for gasoline-fueled heavy-duty engines to conform more closely to actual operating practices.

(h) Provide for the Administrator's option to perform all or any part of the service accumulation on test engines.

45 CFR Part 1201 as so amended would become effective 30 days after republication and would be applicable to 1973 and subsequent model year engines. The current regulations which appear at 45 CFR Part 1201 would remain in effect for the purpose of their applicability to 1972 and earlier model year engines.



Interested persons may submit written data, views, or arguments (in quadruplicate) in regard to the proposed regulations to the Administrator, Environmental Protection Agency, Attention: Office of Air Programs, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20852. All relevant material received not later than 60 days after publication of this notice will be considered. The Environmental Protection Agency is particularly interested in receiving data pertinent to the cost of complying with the proposed regulations, including costs to manufacturers and/or users of affected types of engines, as well as data on the ability of such engines to comply with the proposed regulations throughout their useful life.

This notice of proposed rule making is issued under the authority of section 202 of the Clean Air Act, as amended by section 6, Public Law 91-604, 84 Stat. 1690.

Dated: September 29, 1971.

WILLIAM D. RUCKELSHAUS,  
Administrator.

Part 1201 of Chapter XII, Title 45 of the Code of Federal Regulations is proposed to be amended as follows:

1. In § 1201.1, three new subparagraphs are added as follows:

§ 1201.1 Definitions.

(a) \* \* \*

(34) "Peak torque speed" means the speed at which an engine develops maximum torque.

(35) "Percent load" means the fraction of the maximum available torque at an engine speed.

(36) "Intermediate speed" means the peak torque speed or 60 percent of rated speed, whichever is higher.

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

§ 1201.2 Abbreviations.

- BSCO=Brake specific carbon monoxide.
- BSHC=Brake specific hydrocarbons.
- BSNO<sub>x</sub>=Brake specific oxides of nitrogen.
- Exh.=Exhaust.
- Hr.=Hour.
- M=Mass.
- WF=Weighting factor.
- Σ=Summation.

3. In § 1201.4, paragraphs (b) and (c) are revised. As amended, § 1201.4 reads as follows:

§ 1201.4 Labeling.

(b) (1) The manufacturer of any heavy-duty gasoline-fueled engine subject to any of the standards prescribed in this part shall, at the time of manufacture, affix a permanent, legible label, of the type and in the manner described below, containing the information hereinafter provided, to all production models of such engines available for sale to the public and covered by a certificate of conformity under § 1201.55(a).

(2) A plastic or metal label shall be welded, riveted, or otherwise permanently attached to the engine in a position in which it will be readily visible after installation in the vehicle.

(3) The label shall be affixed by the engine manufacturer who has been issued the certificate of conformity for such engine, in such a manner that it cannot be removed without destroying or defacing the label. It shall not be affixed to any equipment which is easily detached from such engine.

(4) The label shall contain the following information lettered in the English language in block letters and numerals which shall be of a color that contrasts with the background of the label:

(i) The label heading: Engine Exhaust Emission Control Information;

(ii) Full corporate name and trademark of manufacturer;

(iii) Engine displacement (in cubic inches) and engine family identification;

(iv) Date of engine manufacture (month and year);

(v) Engine tuneup specifications and adjustments as recommended by the manufacturer, including idle speed, ignition timing, and the idle air-fuel mixture setting procedure and value (e.g. idle CO, idle air-fuel ratio, idle speed drop) and valve lash. These specifications should indicate the proper transmission position during tuneup and what accessories (e.g. air conditioner) if any, should be in operation;

(vi) The statement: "This Engine Conforms to U.S. Environmental Protection Agency Regulations Applicable to (insert current year) Model Year Gasoline-Fueled Heavy-Duty Engines."

(c) (1) The manufacturer of any heavy-duty diesel engine subject to any of the standards prescribed in this part shall, at the time of manufacture, affix a permanent, legible label, of the type and in the manner described below, containing the information hereinafter provided, to all production models of such engines available for sale to the public and covered by a certificate of conformity under § 1201.55(a).

(2) A plastic or metal label shall be welded, riveted, or otherwise permanently attached to the engine in a position in which it will be readily visible after installation in the vehicle.

(3) The label shall be affixed by the engine manufacturer who has been issued the certificate of conformity for such engine, in such a manner that it cannot be removed without destroying or defacing the label. It shall not be affixed to any equipment which is easily detached from such engine.

(4) The label shall contain the following information lettered in the English language in block letters and numerals which shall be of a color that contrasts with the background of the label:

(i) The label heading: Engine Exhaust Emission Control Information;

(ii) Full corporate name and trademark of manufacturer;

(iii) Engine family identification and model;

(iv) Date of engine manufacture (month and year);

(v) Engine specifications:

Advertised hp. ----- @ ----- r.p.m.  
Fuel rate @ advertised hp. -----  
mm.<sup>3</sup>/stroke.

Valve lash ----- (inches).  
Initial injection timing (if adjustable) -----

(The information applicable to each engine is to be inserted on the appropriate line.)

(vi) The statement: This Engine Conforms to U.S. Environmental Protection Agency Regulations Applicable to (insert current year) Model Year Heavy-Duty Diesel Engines.

4. Section 1201.30 is revised to read as follows:

§ 1201.30 Applicability.

The provisions of this subpart are applicable to new gasoline-fueled heavy-duty engines beginning with the 1973 model year.

5. Section 1201.31 is revised to read as follows:

§ 1201.31 Standards for exhaust emissions.

(a) Exhaust emissions from new gasoline-fueled heavy-duty engines shall not exceed:

- (1) Hydrocarbons—160 p.p.m.
- (2) Carbon monoxide—0.8 percent by volume.
- (3) Oxides of nitrogen—2,000 p.p.m.

(b) The standards set forth in paragraph (a) of this section refer to a composite sample representing the operating cycle set forth in the applicable sections of "Test Procedures for Engine Exhaust Emissions (Gasoline-Fueled Heavy-Duty Engines)" of this part and measured in accordance with those procedures.

6. In § 1201.32, the second sentence is proposed to be revoked. As amended, § 1201.32 would read as follows:

§ 1201.32 Test procedures.

Every manufacturer of new motor vehicle engines subject to the standards prescribed in this subpart shall, prior to taking any of the actions specified in section 203(a)(1) of the Act, test or cause to be tested motor vehicle engines in accordance with test procedures prescribed in Subpart I of this part to ascertain that such test engines meet the requirements of § 1201.31.

7. Subpart E is revised to read as follows:

Subpart E—Exhaust Emissions  
(Heavy-Duty Diesel Engines)

- Sec. 1201.40 Applicability.
- 1201.41 Standards for exhaust smoke.
- 1201.42 Standards for exhaust gaseous emissions.
- 1201.43 Test procedures.

§ 1201.40 Applicability.

The provisions of this subpart are applicable to new heavy-duty diesel engines beginning with the 1973 model year.

§ 1201.41 Standards for exhaust smoke.

(a) The opacity of smoke emissions from new diesel engines subject to this subpart shall not exceed:

- (1) 20 percent during the engine acceleration mode.

## PROPOSED RULE MAKING

(2) 15 percent during the engine lugging mode.

(3) 50 percent during the peaks in either mode.

(b) The standards set forth in paragraph (a) of this section refer to exhaust smoke emissions generated under the conditions set forth in the "Test Procedures for Engine Exhaust Smoke Emissions (Heavy-Duty Diesel Engines)" of this part and measured and calculated in accordance with those procedures.

#### § 1201.42 Standards for exhaust gaseous emissions.

(a) Exhaust gaseous emissions from new heavy-duty diesel engines shall not exceed:

(1) Hydrocarbons—3.0 gm/BHP-hr.

(2) Carbon monoxide—7.5 gm/BHP-hr.

(3) Oxides of nitrogen—12.5 gm/BHP-hr.

(b) The standards set forth in paragraph (a) of this section refer to exhaust gaseous emissions generated under the conditions set forth in the "Test Procedures for Engine Exhaust Gaseous Emissions (Heavy-Duty Diesel Engines)" of this part and measured and calculated in accordance with those procedures.

#### § 1201.43 Test procedures.

Every manufacturer of new motor vehicle engines subject to the standards prescribed in this subpart shall, prior to taking any of the actions specified in section 203(a)(1) of the Act, test or cause to be tested motor vehicle engines in accordance with test procedures prescribed in Subparts J and K of this part to ascertain that such test engines meet the requirements of §§ 1201.41 and 1201.42.

8. In § 1201.100, paragraph (b) is revised to read as follows:

#### § 1201.100 Introduction.

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

9. In § 1201.104, paragraphs (a) and (b) are revised. As amended, § 1201.104 reads as follows:

#### § 1201.104 Sampling and analytical system for measuring exhaust emissions.

(a) *Schematic drawing.* The following (fig. 6) is a schematic drawing of the exhaust gas sampling and analytical system which shall be used for testing under the regulations in this subpart.

(b) *Component description.* The following components shall be used in sampling and analytical systems for testing under the regulations in this part.

(1) Flowmeters FL1, FL2, FL3, FL4, and FL5 for indicating the sample flow rate through the analyzers.

(2) Low-range hydrocarbon analyzer.

(3) Carbon monoxide analyzer.

(4) Carbon dioxide analyzer.

(5) High-range hydrocarbon analyzer.

(6) Nitric oxide analyzer.

(7) Pressure gauges G1, G2, G3, G4, and G5 for indicating the analyzer sample pressure.

(8) Needle valves N1, N2, N3, N4, and N5 for regulating the sample flow rate to the analyzers.

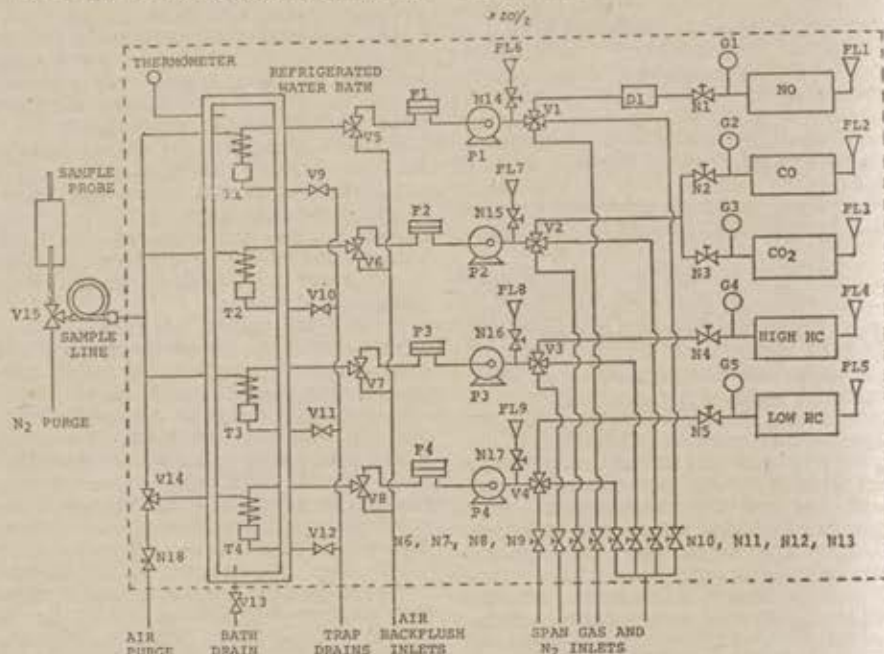


Figure 6 - Sampling and analytical system for measuring exhaust emissions.

(9) Drier D1 filled with a calcium sulfate drying agent for removing water vapor from the sample.

(10) Needle valves N6, N7, N8, N9, N10, N11, N12, and N13 for regulating the flow rates of N<sub>2</sub> and span gases to the analyzers.

(11) Ball valves V1, V2, V3, and V4 for directing either sample or span gases to the analyzers.

(12) Needle valves N14, N15, N16, and N17 for regulating the sample flow rate through the bypass system.

(13) Flowmeters FL6, FL7, FL8, and FL9 for indicating the flow rate through the bypass system.

(14) Pumps, P1, P2, P3, and P4 for forcing the sample through the analyzers.

(15) Filters F1, F2, F3, and F4 for removing contaminants from sample prior to analysis.

(16) Ball Valves V5, V6, V7, and V8 for directing sample gas to the analyzers or for backflushing the sampling system with air or nitrogen.

(17) Toggle Valves V9, V10, V11, V12, and V13 for draining the condensate traps and the refrigerated bath.

(18) Traps T1, T2, T3, and T4 for separating condensed water vapor from the cooled sample gases.

(19) Ball Valve V14 for diverting air to the low-range hydrocarbon analyzer during periods of high hydrocarbon concentrations in the exhaust sample.

(20) Needle Valve N18 for regulating the air flow to the low-range hydrocarbon analyzer during purge conditions.

(21) Thermometer for indicating the bath temperature.

(22) Refrigerated water bath for cooling the sample gases.

(23) Sample line for connecting the analysis system to sample probe.

(24) Sample probe for extracting a sample of the exhaust downstream of the muffler.

(25) Ball Valve V15 for directing nitrogen through the sampling system.

(c) *Hang-up reduction.* Stringent methods to reduce hang-up may be employed. All methods must be approved in advance by the Administrator.

10. In § 1201.106, paragraphs (a) (2) and (3) and (b) (2) are revised. As amended, § 1201.106 reads as follows:

#### § 1201.106 Calibration and instrument checks.

(a) \* \* \*

(2) Zero on nitrogen: Check each cylinder of N<sub>2</sub> for contamination with hydrocarbons. Set the instrument gain to give the desired range. Normal operating ranges are as follows:

Low-range hydrocarbon analyzer.	0-1,000 p.p.m. hexane equivalent.
High-range hydrocarbon analyzer.	0-10,000 p.p.m. hexane equivalent.
CO analyzer.	0-10 percent CO.
CO <sub>2</sub> analyzer.	0-16 percent CO <sub>2</sub> .
NO analyzer.	0-4,000 p.p.m. NO.

(3) Calibrate with the following calibration gases. Flow rates should be set at 10 c.f.h. on the hydrocarbon and nitric oxide analyzers and 5 c.f.h. on the car-

bon monoxide and carbon dioxide analyzers. The concentrations given indicate nominal concentrations, and ac-

tual concentrations should be known to within  $\pm 2$  percent of true value. Purified  $N_2$  is used as the diluent.

Low range HC analyzer— Hexane equivalent <sup>1</sup>	High range HC analyzer— Hexane equivalent	NO analyzer—NO	CO and CO <sub>2</sub> analyzers—Blend of CO and CO <sub>2</sub> containing—	
			CO plus CO <sub>2</sub>	
P.p.m.	P.p.m.	P.p.m.	Mole percent	Mole percent
100	600	500	0.5	16.0
200	1,000	1,000	1.0	15.0
300	1,500	1,500	2.0	14.0
400	2,500	2,000	3.0	13.0
600	4,000	2,500	4.0	12.0
800	6,000	3,000	6.0	10.0
1,000	8,000	3,500	8.0	8.0
	10,000	4,000	10.0	6.0

<sup>1</sup> The hexane equivalent of propane, when used as the normalizing gas for calibrating nondispersive infrared analyzers, is prescribed to be 0.52 (propane concentration  $\times 0.52 =$  hexane equivalent concentration). Minimum storage temperature of the cylinders shall be 60° F.; minimum use temperature shall be 68° F.

(b) \* \* \*

(2) Introduce the span gas and set the analyzer gain to match the response to the value indicated by the calibration curve. In order to avoid a correction for sample cell pressure, use the same flow rate as that used to calibrate the analyzer. The span gas should produce a signal from 80 to 100 percent of the full-scale response. The concentration of the span gas should be known within  $\pm 2$  percent of the actual gain. If gain has shifted significantly, check tuning. If necessary, check calibration. Recheck after test. Record actual concentrations on chart.

11. In § 1201.107, paragraph (b) is revised to read as follows:

§ 1201.107 Dynamometer test run.

- (b) The following steps shall be taken for each test:
- (1) Mount test engine on the engine dynamometer.
  - (2) Calibrate exhaust emission analyzer assembly.
  - (3) Check the condition of the drier in the nitric oxide analyzer sampling line. Replace the drying agent if necessary.
  - (4) Start cooling system, if it is to be used.
  - (5) Start engine and idle at 1,000-1,200 r.p.m. for 5 minutes.
  - (6) Obtain normal idle speed, record it and start exhaust sampling.
  - (7) Run four 9-mode cycles.

12. In § 1201.108, paragraphs (b), (c), and (e) are revised. As amended, § 1201.108 reads as follows:

§ 1201.108 Chart reading.

- (b) Time correlate the hydrocarbon, carbon monoxide, carbon dioxide, and nitric oxide charts. Determine the location on the chart of concentrations corresponding to each mode. Determine and compensate for trace abnormalities.
- (c) For all open throttle (3 inches, 10 inches, 16 inches, and 19 inches Hg) and idle modes, average the last 3 seconds of the HC, CO, CO<sub>2</sub>, and NO traces.
- (e) Average the complete HC, CO, CO<sub>2</sub>, and NO traces during the 43-second closed throttle mode of each cycle.

13. Section 1201.109 is revised to read as follows:

§ 1201.109 Calculations.

The final reported test results shall be derived through the following steps:

(a) Multiply the measured HC, CO, and NO values by the following exhaust dilution correction factor:

$$14.5$$

$$\%CO_2 + (0.5)\%CO + (1.8 \times 6)\%HC$$

(b) Multiply the dilution corrected NO values by the following humidity correction factor:

$$0.634 + 0.00654H - 0.0000222H^2$$

Where:

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

(c) Determine composite hydrocarbon, carbon monoxide, and nitric oxide concentrations for the first and second cycles. Average the results of these two cycles.

(d) Determine composite hydrocarbon, carbon monoxide, and nitric oxide concentrations for the third and fourth cycles. Average the results of these two cycles.

(e) Combine the results of paragraphs (c) and (d) of this section according to the formula: 0.35(c) plus 0.65(d).

14. In § 1201.110, a new paragraph (f) is added as follows:

§ 1201.110 Test engines.

(f) For purposes of testing under § 1201.112(g), the Administrator may require additional emission data engines and durability data engines identical in all material respects to engines selected in accordance with paragraphs (b) and (c) of this section: *Provided*, That the number of engines selected shall not increase the size of either the emission data fleet or the durability data fleet by more than 20 percent or one engine, whichever is greater.

15. In § 1201.112, a new third sentence is inserted in the first paragraph and a new paragraph (g) is added. As amended, § 1201.112 reads as follows:

§ 1201.112 Service accumulation and emission measurements.

The engine dynamometer service accumulation schedule will consist of several operating conditions which give the

same percentage of time at various manifold vacuums and the modes as specified in the emission test cycle. The average speed shall be between 1,650 and 1,700 r.p.m., with some operation at speeds in excess of 3,200 r.p.m. or governed speed, whichever is lower. Subject to the requirements as to average speed, there may be operation at speeds in excess of 3,200 r.p.m. (but not in excess of governed speed for governed engines or rated speed for nongoverned engines) for a cumulative maximum of 0.5 percent of the actual cycle time, excluding time in transient conditions. Maximum cycle time shall be 15 minutes. A cycle approved in advance by the Administrator shall be used.

(g) (1) The Administrator may elect to operate and test any test engine during all or any part of the service accumulation and testing procedure. In such cases, the manufacturer shall provide the engine(s) to the Administrator with all information necessary to conduct the testing.

(2) The test procedures (§§ 1201.101-1201.109) will be followed by the Administrator. The Administrator will test the engines at each test point. Maintenance may be performed by the manufacturer under such conditions as the Administrator may prescribe.

(3) The data developed by the Administrator for the engine-system combination shall be combined with any applicable data supplied by the manufacturer on other engines of that combination to determine the applicable deterioration factors for the combination. In the case of a significant discrepancy between data developed by the Administrator and that submitted by the manufacturer, the Administrator's data shall be used in the determination of deterioration factors.

16. The heading of Subpart J is revised to read as follows:

Subpart J—Test Procedures for Engine Exhausts Smoke Emissions (Heavy-Duty Diesel Engines)

17. In § 1201.128(a), a new subparagraph (4) is added as follows:

§ 1201.128 Chart reading.

(4) Locate and record the three highest  $\frac{1}{2}$ -second readings during each dynamometer cycle.

18. In § 1201.129, a new paragraph (c) is added as follows:

§ 1201.129 Calculations.

(c) Average the nine readings in § 1201.128(a) (4) and designate the value as "c".

19. In § 1201.130, a new paragraph (f) is added as follows:

§ 1201.130 Test engines.

(f) For purposes of testing under § 1201.132(g), the Administrator may require additional emission data engines and durability data engines identical in

all material respects to engines selected in accordance with paragraphs (b) and (c) of this section: *Provided*, That the number of engines selected shall not increase the size of either the emission data fleet or the durability data fleet by more than 20 percent or one engine, whichever is greater.

20. In § 1201.132, paragraphs (a) and (b) are revised and a new paragraph (g) is added. As amended, § 1201.132 reads as follows:

§ 1201.132 Service accumulation and emission measurements.

(a) Emission data engines: Each engine shall be operated on a dynamometer for 125 hours with the dynamometer and engine adjusted so that the engine is operating at 95-100 percent of rated speed and at least 95 percent of maximum rated horsepower. During such operation, the engine shall be run at the exhaust back pressure specified in § 1201.123(c) and the air inlet restriction specified in § 1201.123(d) except that the tolerance shall be  $\pm 0.5$  inches of Hg and  $\pm 3$  inches of water respectively. Exhaust emission tests shall be conducted at zero and 125 hours of operation.

(b) Durability data engines: Each engine shall be operated on a dynamometer for 1,000 hours with the dynamometer and engine adjusted so that the engine is operating at 95-100 percent of rated speed and at least 95 percent of maximum rated horsepower. During such operation, the engine shall be run at the exhaust back pressure specified in § 1201.123(c) and the air inlet restriction specified in § 1201.123(d) except that the tolerances shall be  $\pm 0.5$  inch of Hg and  $\pm 3$  inches of water respectively. Exhaust emission measurements shall be made at zero hours and at each 125 hours of operation. All results except the zero hour results shall be used to establish the deterioration factors (see § 1201.133).

(g) (1) The Administrator may elect to operate and test any test engine during all or any part of the service accumulation and testing procedure. In such cases, the manufacturer shall provide the engine(s) to the Administrator with all information necessary to conduct the testing.

(2) The test procedures (§§ 1201.120-1201.129) will be followed by the Administrator. The Administrator will test the vehicles at each test point. Maintenance may be performed by the manufacturer under such conditions as the Administrator may prescribe.

(3) The data developed by the Administrator for the engine-system combination shall be combined with any applicable data supplied by the manufacturer on other engines of that combination to determine the applicable deterioration factors for the combination. In the case of a significant discrepancy between data developed by the Administrator and that submitted by the manufacturer, the Administrator's data shall be used in the determination of deterioration factors.

21. In § 1201.133(c), subparagraphs (1) and (2) are revised. As amended, § 1201.133 reads as follows:

§ 1201.133 Compliance with emission standards.

(c) The procedure for determining compliance with exhaust smoke emission standards in heavy-duty diesel engines is as follows:

(1) Emission deterioration factors for the acceleration mode (designated as "A"), the lugging mode (designated as "B"), and the peak opacity (designated as "C") shall be established separately for each engine-system combination.

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

(a) All emission data from the tests required under § 1201.132(b), except the zero-hour tests. This shall include the official test results, as determined in § 1201.54, for all tests conducted on all durability engines of the combination selected under § 1201.130(c) (including all engines selected to be operated by the manufacturer under § 1201.130(c)(2)).

(b) All emission data from the tests conducted before and after the maintenance provided in § 1201.131(a)(1)(i).

(ii) All applicable results shall be plotted as a function of the hours on the system, rounded to the nearest hour, and the best fit-straight lines, fitted by the method of least squares, shall be drawn through these data points. The interpolated 125- and 1,000-hour points on this line must be within the standard provided in § 1201.41 or the data shall not be used in calculation of a deterioration factor.

(iii) The deterioration factors will be calculated as follows:

A—percent opacity "a", interpolated to 1,000 hours, minus percent opacity "a", interpolated to 125 hours.

B—percent opacity "b", interpolated to 1,000 hours, minus percent opacity "b", interpolated to 125 hours.

C—percent opacity "c", interpolated to 1,000 hours, minus percent opacity "c", interpolated to 125 hours.

(2) The "percent opacity" values to compare with the standards shall be the opacity values "a", "b", and "c" for each emission data engine within an engine-system combination to which are added the respective factors "A", "B", and "C" of subparagraph (1) of this paragraph for that engine-system combination: *Provided*, That if a deterioration factor as computed in subparagraph (1) of this paragraph is less than zero, that deterioration factor shall be zero for the purposes of this subparagraph.

22. A new subpart, Subpart K, is added as follows:

Subpart K—Test Procedures for Engine Exhaust Gaseous Emissions (Heavy-Duty Diesel Engines)

Sec.	
1201.140	Introduction.
1201.141	Diesel fuel specifications.
1201.142	Dynamometer operation cycle.
1201.143	Dynamometer and engine equipment.
1201.144	Instrumentation.
1201.145	Information to be recorded.
1201.146	Calibration and instrument check.
1201.147	Test run.

Sec.	
1201.148	Chart reading.
1201.149	Calculations.
1201.150	Test engines.
1201.151	Service accumulation; emission measurements; maintenance.
1201.152	Compliance with emission standards.

§ 1201.140 Introduction.

(a) The procedures described in this subpart will be the test program to determine the conformity of heavy-duty diesel engines with the applicable standards set forth in this part.

(b) The test procedure begins with a warm engine and consists of a prescribed sequence of engine operating conditions on an engine dynamometer with continuous examination of the exhaust gases. The test is applicable equally to controlled engines equipped with means for preventing, controlling, or eliminating gaseous emissions and to uncontrolled engines.

(c) The test is designed to determine the brake-specific emissions of hydrocarbons, carbon monoxide, and oxides of nitrogen when an engine is operated through a cycle which consists of idle modes and nine power modes at each of two speeds which span the typical operating range of diesel engines. The procedure requires the determination of the concentration of each pollutant, the exhaust flow and the power output during each mode. The measured values are weighted and used to calculate the grams of each pollutant emitted per brake-horsepower hour.

(d) When an engine is tested for exhaust emissions or is operated for durability testing on an engine dynamometer the complete engine shall be used with all standard accessories which might reasonably be expected to influence emissions to the atmosphere installed and functioning.

§ 1201.141 Diesel fuel specifications.

The requirements of § 1201.121 shall be applicable to testing under this subpart.

§ 1201.142 Dynamometer operation cycle.

(a) The following 21-mode cycle shall be followed in dynamometer operation tests of heavy-duty diesel engines:

Mode No.	Engine speed	Percent load	Time in mode-min.
1	Low idle	0	3
2	Intermediate	2.0	3
3	do	12.5	3
4	do	25.0	3
5	do	37.5	3
6	do	50.0	3
7	do	62.5	3
8	do	75.0	3
9	do	87.5	3
10	do	100.0	3
11	Low idle	0	3
12	Rated	100.0	3
13	do	87.5	3
14	do	75.0	3
15	do	62.5	3
16	do	50.0	3
17	do	37.5	3
18	do	25.0	3
19	do	12.5	3
20	do	2.0	3
21	Low idle	0	3

(b) For each mode the engine dynamometer shall be operated at a constant

speed with  $\pm 50$  r.p.m. of the specified speed and at the specified torque within  $\pm 2$  percent of maximum torque at that speed. For example, the torque for mode 5 shall be between 35.5 and 39.5 percent of the maximum torque measured at the intermediate speed.

§ 1201.143 Dynamometer and engine equipment.

The following equipment shall be used for emission testing of engines on engine dynamometers:

(a) An engine dynamometer with adequate characteristics to perform the test cycle described in § 1201.142.

(b) An engine cooling system having sufficient capacity to maintain the engine at normal operating temperatures during conduct of the prescribed engine tests.

(c) A noninsulated exhaust system extending  $12 \pm 2$  feet from the exhaust manifold of the engine and presenting an exhaust back pressure within  $\pm 0.2$  inch Hg of the upper limit at maximum rated horsepower, as established by the engine manufacturer in his sales and service literature for vehicle application. A conventional automotive muffler of a size and type commonly used with the engine being tested shall be employed in the exhaust system during emission testing.

(d) An engine air inlet system presenting an air inlet restriction within  $\pm 1$  inch of water of the upper limit for the engine operating condition which results in maximum airflow, as established by the engine manufacturer in his sales and service literature, for the engine being tested.

§ 1201.144 Instrumentation.

(a) Instrumentation shall be provided to measure the following engine operating data:

- (1) Engine speed, r.p.m.
- (2) Torque, lb.-ft.
- (3) Mass fuel consumption, lb./min.
- (4) Observed barometer, in. Hg.
- (5) Water vapor pressure, in. Hg.
- (6) Intake air restriction, in. water.
- (7) Exhaust back pressure, in. Hg.
- (8) Intake air temperature, °F.
- (9) Fuel temperature at pump inlet, °F.

(b) Instrumentation shall be provided to measure the engine intake airflow or exhaust flow and the concentration of carbon monoxide, nitric oxide, and hydrocarbons in the exhaust as follows:

(1) The determination of the carbon monoxide and nitric oxide concentrations shall be accomplished using sampling and analysis components as specified in sections 2.1 and 2.2 of SAE Recommended Practice No. J177 titled, "Measurement of Carbon Dioxide, Carbon Monoxide, and Oxides of Nitrogen in Diesel Exhaust," dated June 1970.

(2) The determination of the hydrocarbon concentrations shall be accomplished using sampling and analysis components as specified in sections 2.1 and 2.2 of SAE Recommended Practice No. J215 titled, "Continuous Hydrocarbon Analysis of Diesel Exhaust," dated November 1970.

(3) The determination of the intake airflow or exhaust flow shall be accomplished using SAE Recommended Practice No. J244 titled, "The Measurement of Intake or Exhaust Flow in Diesel Engines," dated May 1971.

(3) The determination of the intake airflow or exhaust flow shall be accomplished using SAE Recommended Practice No. J244 titled, "The Measurement of Intake or Exhaust Flow in Diesel Engines," dated May 1971.

§ 1201.145 Information.

The following information shall be recorded:

- (a) Test number.
- (b) Date and time of day.
- (c) Instrument operator.
- (d) Engine operator.
- (e) Engine identification numbers—date of manufacture—number of hours of operation accumulated on engine—engine family—exhaust pipe diameter—fuel injector type—advertised rated speed, horsepower at rated speed, peak torque speed at peak torque and low idle r.p.m.—air aspiration system—exhaust system back pressure—air inlet restriction.

(f) All pertinent instrument information such as tuning—gain—serial numbers—detector numbers—range.

(g) Recorder chart. Identify zero traces—calibration or span traces—emission concentration traces for each test mode—start and finish of each test.

(h) Ambient temperature in dynamometer testing room.

(i) Engine intake air temperature and humidity for each mode.

(j) Barometric pressure.

(k) Observed engine torque for each mode.

(l) Intake airflow or exhaust flow for each mode.

(m) Fuel flow for each mode.

§ 1201.146 Calibration and instrument checks.

Calibration and instrument checks shall be performed according to section 2.3.1 of SAE Recommended Practice No. J177, dated June 1970, and sections 3.1 and 7 of SAE Recommended Practice No. J215, dated November 1970, except that the instrument zeros need not be checked after each analysis, but as necessary to maintain test validity. Calibration and checks of other instruments used for the test shall be performed as necessary according to good practice.

§ 1201.147 Test run.

(a) The temperature of the air supplied to the engine shall be between 68° F. and 86° F. The observed barometric pressure shall be between 26.5 inches and 31 inches Hg. Higher air temperature or lower barometric pressure may be used, if desired, but no allowance shall be made for increased emissions because of such conditions.

(b) The governor and fuel system shall have been adjusted to provide engine performance at the levels specified by the engine manufacturer for maximum rated horsepower and maximum rated torque. These specifications shall be reported in accordance with § 1201.51 (b) (3).

(c) The following steps shall be taken for each test:

(1) Install instrumentation and sample probes as required.

(2) Start cooling system.

(3) Start the engine, warm it up and precondition it by running it at rated speed and maximum horsepower for 10 minutes or until all temperatures and pressures have reached equilibrium.

(4) Determine by experimentation the maximum torque at rated speed and intermediate speed to calculate the torque values for the specified test modes.

(5) Zero and span the emission analyzers.

(6) Start the test sequence of § 1201.142. Operate the engine and sample emissions continuously for at least 3 minutes in each mode, allowing up to 1 minute for engine speed or load change, at least 1 minute for emission stabilization and 1 minute for emission measurement.

(7) Read and record data as required for § 1201.145.

(8) Check and reset the zero and span settings of the emission analyzers as required but at least at the end of the second idle mode (mode No. 11) and at the end of the test. If a change of over 2 percent of full-scale response is observed, make necessary adjustments to the analyzers and repeat all test modes since the last zero and span check.

(9) Backflush condensate trap and replace filters as required.

§ 1201.148 Chart reading.

(a) Locate the last 60 seconds of each mode and determine the average chart reading for HC, CO, and NO over the 1-minute period.

(b) Determine the concentration of HC, CO, and NO during each mode from the average chart readings and the corresponding calibration data.

§ 1201.149 Calculations.

The final reported test results shall be derived through the following steps:

(a) Determine the exhaust gas mass-flow rate for each mode according to the SAE Recommended Practice J244 dated May 1971.

(b) Convert the measured carbon monoxide and nitric oxide concentrations to a wet basis by multiplying each value by the following correction factor:

$$1 - a(F/A)$$

Where:

a = y/x atom ratio in the fuel having the formula  $C_xH_y$ .

F/A = Fuel-air ratio.

(c) Multiply the corrected nitric oxide values by the following humidity correction factor:

$$\frac{1}{1 - 0.0025(H - 75)}$$

Where H is the humidity of the inlet air measured as grains of  $H_2O$  per pound of dry air.

(d) Calculate the mass emissions of HC, CO, and NO, in grams per hour for each mode as follows. The oxides of nitrogen mass calculation assumes that the density of oxides of nitrogen is that of  $NO_2$ .

(1)  $HC_{mass} = 0.0132 \times HC_{conc} \times \text{exhaust mass}$ .

(2)  $CO_{mass} = 0.0263 \times CO_{conc} \times \text{exhaust mass}$ .

(3)  $NO_{x\text{ mass}} = 0.0432 \times NO_{conc} \times \text{exhaust mass}$ .

(e) Calculate the weighted brake horsepower and HC, CO, and NO mass values as follows:

(1) Multiply the average of the three idle values by a weighting factor of 0.2.

(2) Multiply the values for all of the other modes by a weighting factor of 0.8/18.

(f) Calculate the brake specific emissions for HC, CO, and NO<sub>x</sub> for each set of data as follows:

$$BSHC = \frac{\Sigma(HC_{mass} \times WF)}{\Sigma(BHP \times WF)}$$

$$BSCO = \frac{\Sigma(CO_{mass} \times WF)}{\Sigma(BHP \times WF)}$$

$$BSNO_x = \frac{\Sigma(NO_{x\text{ mass}} \times WF)}{\Sigma(BHP \times WF)}$$

#### § 1201.150 Test engines.

The test engines selected for testing under § 1201.130 shall be used as the test engines for this subpart. The engines may be tested with the test procedure in Subpart J and the test procedure in this subpart consecutively at each test point irrespective of the requirements of §§ 1201.132(b) and 1201.151(a).

#### § 1201.151 Service accumulation; emission measurements; maintenance.

(a) Service accumulation and emission measurements shall be performed in accordance with the provisions of § 1201.132.

(b) Maintenance on test engines shall be performed in accordance with the provisions of § 1201.131.

#### § 1201.152 Compliance with emission standards.

(a) The exhaust gaseous emission standards in § 1201.42 apply to the emissions of engines for their useful life.

(b) Since emission control efficiency decreases with the accumulation of hours on the engine, the emission level of an engine which has accumulated 1,000 hours of dynamometer operation will be used as the basis for determining compliance with the standards.

(c) The procedure for determining compliance of a new engine with exhaust emission standards is as follows:

(1) Separate emission deterioration factors shall be determined from the emission results of the durability data engines for each engine-system combination. Separate factors shall be established for HC, CO and NO for each combination.

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

(a) All emission data from the tests required under § 1201.132(b) except the zero-hour tests. This shall include the official test results, as determined in § 1201.54 for all tests conducted on all durability engines of the combination selected under § 1201.130(c) (including all engines selected to be operated by the manufacturer under § 1201.130(c)(2)).

(b) All emission data from the tests conducted before and after the maintenance

provided in § 1201.131(a)(1)(i).

(ii) All applicable results shall be plotted as a function of the hours on the system, rounded to the nearest hour, and the best fit-straight lines, fitted by the method of least squares, shall be drawn through these data points. The interpolated 125- and 1,000-hour points on

this line must be within the standard provided in § 1201.42 or the data shall not be used in calculation of a deterioration factor.

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

$$\text{factor} = \frac{\text{exhaust emissions interpolated to 1,000 hours}}{\text{exhaust emissions interpolated to 125 hours}}$$

(2) The exhaust emission tests results for each emission data engine shall be multiplied by the appropriate deterioration factor: *Provided*, That if a deterioration factor as computed in subparagraph (1) of this paragraph is less than one, that deterioration factor shall be one for the purposes of this subparagraph.

(3) The emissions to compare with the standard shall be the adjusted emissions of subparagraph (2) of this paragraph for each emission data engine.

(4) Every test engine of an engine family must comply with all applicable standards, as determined in subparagraph (3) of this paragraph, before any engine in that family will be certified.

[FR Doc.71-14440 Filed 10-4-71;8:45 am]

## DEPARTMENT OF COMMERCE

Office of the Secretary

[15 CFR Part 7]

### MATTRESSES

#### Proposed Flammability Standard

In F.R. Doc. 71-13240 appearing at pages 18095-18098 in the issue for Thursday, September 9, 1971, at the end of the Proposed Flammability Standard for Mattresses (Doc. PFF 4-71), insert the following figures 1 and 2.

Issued: September 29, 1971.

JAMES H. WAKELIN, Jr.,  
Assistant Secretary for Science and Technology.

### MATTRESS PREPARATION CIGARETTE LOCATION

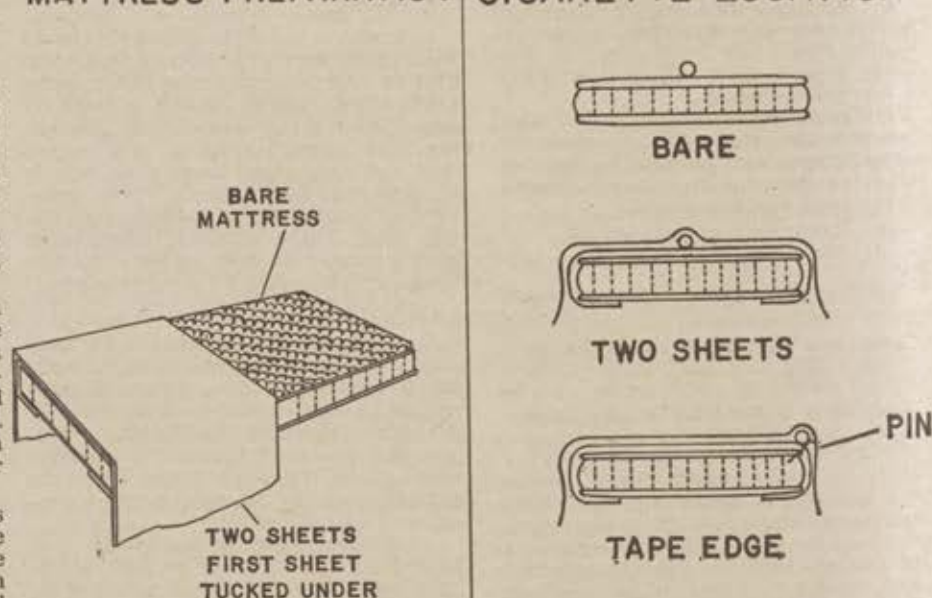


FIGURE 1

FIGURE 2

[FR Doc.71-14512 Filed 10-4-71;8:45 am]

# Notices

## DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs  
AREA DIRECTORS ET AL.  
Delegations of Authority

SEPTEMBER 21, 1971.

This notice is published in exercise of authority delegated by the Secretary of the Interior to the Commissioner of Indian Affairs by 230 DM 2 (32 F.R. 13938).

This delegation is issued under the authority delegated to the Commissioner by the Secretary in section 25 of Secretarial Order 2508 (10 BIAM 2.1).

10 BIAM 3 was published beginning at page 637 in the January 16, 1969, issue of the FEDERAL REGISTER (34 F.R. 637) and subsequently amended. Section 3.3E of 10 BIAM is being further amended to clarify those leasing authorities which have not been redelegated to the Area Directors.

10 BIAM 3.3E is hereby amended to read as follows:

3.3 *Exceptions.* The authorities redelegated in 3.1 above do not include the following:

E. *Real property management.* (1) The approval of surface leases pursuant to 25 CFR 131 which provide for a duration in excess of 65 years, inclusive of any provisions for extensions or renewals thereof at the option of the lessee.

(2) The approval of mineral leases of ceded or surplus lands unless title thereto has been restored to the tribe or the mineral leasing of such lands is authorized by a specific statute.

(3) The approval of royalty rates other than as authorized in 25 CFR regarding mineral leases and permits for oil, gas, and other minerals except sand, gravel, pumice, and building stone.

JOHN O. CROW,  
Deputy Commissioner.

[FR Doc.71-14528 Filed 10-4-71; 8:46 am]

## LAC COURTE OREILLES INDIAN RESERVATION, WIS.

### Ordinance Legalizing Introduction, Sale, or Possession of Intoxicants

SEPTEMBER 29, 1971.

In accordance with authority delegated by the Secretary of the Interior to the Commissioner of Indian Affairs by 230 DM 2, and in accordance with the Act of August 15, 1953, Public Law 277, 83d Congress, first session (67 Stat. 586), I certify that the following ordinance relating to the application of the Federal Indian Liquor Laws on the Lac Courte Oreilles Indian Reservation, Wis., was adopted on March 18, 1971, by the Lac Courte Oreilles Tribal Governing Board, which has jurisdiction over the area of

Indian country included in the ordinance, reading as follows:

Whereas, Public Law 277, 83d Congress, approved August 15, 1953, provides that sections 1154, 1156, 3113, 3488, and 3618 of title 18, United States Code, commonly referred to as the Federal Indian Liquor Laws, shall not apply to any act or transaction within any area of Indian country, provided such act or transaction is in conformity with both the laws of the State in which such act or transaction occurs and with an ordinance duly adopted by the Tribe having jurisdiction over such area of Indian country, certified by the Secretary of the Interior, and published in the FEDERAL REGISTER,

Therefore, be it resolved that the introduction, sale, or possession of intoxicating beverages shall be lawful within the Indian country under the jurisdiction of the Lac Courte Oreilles Band of Lake Superior Chippewa Indians: *Provided*, That such introduction, sale, or possession is in conformity with the laws of the State of Wisconsin.

Be it further resolved that any tribal laws, resolutions, or ordinances heretofore enacted which prohibit the sale, introduction or possession of intoxicating beverages are hereby repealed.

JOHN O. CROW,  
Deputy Commissioner  
of Indian Affairs.

[FR Doc.71-14562 Filed 10-4-71; 8:49 am]

## Bureau of Land Management IDAHO

### Notice of Filing of Plats of Survey

SEPTEMBER 28, 1971.

1. A plat of survey for the following described lands, accepted August 9, 1971, will be officially filed in the Idaho State Office, Boise, Idaho, effective 10 a.m. on November 2, 1971.

BOISE MERIDIAN, IDAHO

T. 23 N., R. 23 E.,  
Sec. 29, lots 1, 2, NE $\frac{1}{4}$ , E $\frac{1}{2}$  NW $\frac{1}{4}$ , S $\frac{1}{2}$ ;  
Sec. 32, E $\frac{1}{2}$ ;  
Sec. 33, all.

The area described aggregates 1,596.64 acres.

2. All of the lands described in paragraph 1 above are included in the Lemhi County Multiple Use Classification I-1639 and will therefore be opened only to such forms of disposition as are allowed under the provisions of the multiple use classification on the effective date of the filing of this plat.

3. The lands have been subject to the operation of the U.S. Mining Laws and Mineral Leasing Laws at all times.

Inquiries concerning the lands should be addressed to the Idaho State Office, Bureau of Land Management, 550 West Fort Street, Boise, ID 83702.

EUGENE E. BABIN,  
Chief, Branch of Records,  
Boise, Idaho.

[FR Doc.71-14563 Filed 10-4-71; 8:49 am]

## OUTER CONTINENTAL SHELF OFF LOUISIANA

### Oil and Gas Lease Sale

Pursuant to section 8 of the Outer Continental Shelf Lands Act (67 Stat. 462; 43 U.S.C. 1331 et seq.) and the regulations issued thereunder (43 CFR Part 3300) sealed bids addressed to the Manager, New Orleans Outer Continental Shelf Office, Bureau of Land Management, T-9003 Federal Office Building, 701 Loyola Avenue, New Orleans, LA, or Post Office Box 53226, New Orleans, LA 70153, will be received until 9:30 a.m., c.s.t., on November 4, 1971, for the lease of oil and gas in certain areas of the Outer Continental Shelf adjacent to the State of Louisiana. Bids will be opened on that date at 10 a.m., c.s.t., in the Grand Ballroom, Sheraton Charles Hotel, 211 St. Charles Street, New Orleans, LA, for the group of tracts designated herein. The opening of bids is for the sole purpose of publicly announcing and recording bids received and no bids will be accepted or rejected at that time.

Bidders are notified that leases issued pursuant to this notice will be on Form 3300-1 (February 1971). Copies of the lease form are available from the above listed Manager or the Manager, Eastern States Land Office, 7981 Eastern Avenue, Silver Spring, MD 20910.

Bidders are further notified that any lease issued for tracts No's La 2228, 2229, 2230, 2231, 2232, 2236, 2237, 2241, 2244, 2245, and 2246 will contain the following additional provisions:

No structure for drilling or production may be erected within the leased area until the Regional Supervisor, Geological Survey, has found that the structure is necessary, on the basis of existing geologic and engineering data, for the proper exploration, development, and production of the tract. The lessee's exploratory and development plans, filed under 30 CFR 250.34, shall identify the anticipated placement and grouping of necessary structures, showing how such placement and grouping will have the minimum practicable effect on commercial fishing operations. The Regional Supervisor may decline to approve the installation of a structure at a site which he determines will unreasonably interfere with other uses of the area.

Also any lease issued for Tracts No's La 2242, 2243, 2244, 2245, and 2246 will include the following additional provisions:

During all drilling and production activities on the leasehold, the lessee shall maintain, or have available under contract, adequate oil containment and cleanup equipment approved by the Regional Supervisor at a readily accessible site. Within 12 hours after the occurrence of a significant oil spill, as determined by the Regional Supervisor, the lessee shall have such equipment in use at the site of the oil spill, unless, because of weather and attendant safety of personnel,

the Regional Supervisor shall modify this requirement. The lessee shall monitor all drilling and production activities either with personnel in the immediate field area or by remote surveillance methods. The proposed method of monitoring and any proposed changes thereof shall be approved by the Regional Supervisor.

On November 4, 1971, bids may be delivered in person to the Manager, New Orleans Outer Continental Shelf Office, Bureau of Land Management, only at the Grand Ballroom in the Sheraton Charles Hotel between 8:30 a.m., c.s.t., and 9:30 a.m., c.s.t. Bids delivered by mail or in person after 9:30 a.m., c.s.t., on that date will be returned to the bidders unopened.

All bids must be submitted in accordance with applicable regulations, particularly 43 CFR 3302.2, 3302.4, and 3302.5. Each bidder must submit the certification required by 41 CFR 60-1.7(b) and Executive Order No. 11246 of September 24, 1965, on Form 1140-1 (November 1969) and Form 1140-7 (July 1971). Bidders are advised that all leases granted pursuant to this notice will include in their provisions a "Certification of Nonsegregated Facilities", and that, in submitting their bids, bidders are deemed to have agreed to the inclusion of this certification in any lease issued to them hereunder.

Bids may not be modified or withdrawn unless written modifications or withdrawals are received prior to the end of the period fixed for the filing of bids. Bidders are warned against violation of section 1860 of title 18 U.S.C. prohibiting unlawful combination or intimidation of bidders. Attention is directed to the non-discrimination clauses in section 3(h) and 3(i) of the lease agreement, Form 3300-1 (February 1971). Bidders must submit with each bid one-fifth of the amount bid in cash or by cashier's check, bank draft, certified check or money order, payable to the order of the Bureau of Land Management.

Bidders are notified that any cash, checks, drafts, or money order submitted with their bids may be deposited in an unearned escrow account in the Treasury during the period their bids are being considered, and that such deposit does not constitute, and shall not be construed as, acceptance of any bid on behalf of the United States. The leases will provide for a royalty rate of one-sixth, and yearly rental or minimum royalty of \$10 per acre or fraction thereof. The successful bidder will be required to pay the remainder of the bid and the first year's rental of \$10 per acre or fraction thereof and furnish an acceptable surety bond as required in 43 CFR 3304.1 prior to the issuance of each lease.

Bids will be considered on the basis of the highest cash bonus offered for a tract. The United States reserves the right and discretion to reject any and all bids, regardless of the amount offered. Oil payment, overriding royalty, logarithmic or sliding scale bids will not be considered. No bid for less than a full tract, as listed below, will be considered.

A separate bid, in a separate envelope, must be submitted for each tract. The

envelope should be endorsed "Sealed Bid for oil and gas lease, Louisiana (insert number of tract) not to be opened until 10 a.m. c.s.t., November 4, 1971."

Official leasing maps in a set of 26, which contains the maps for the areas in which the tracts being offered for lease may be located, can be purchased for \$5 per set. The official leasing maps and copies of the Compliance Report Certification Form 1140-1 (November 1969) and copies of the Affirmative Action Program Representation Form 1140-7 (July 1971) may be obtained from the above listed Manager or Manager, Eastern States Land Office, 7981 Eastern Avenue, Silver Spring, MD 20910.

The tracts offered for bid are as follows:

LOUISIANA  
OFFICIAL LEASING MAP, LOUISIANA MAP NO. 1  
(Approved June 8, 1954; Revised July 22, 1954; April 28, 1966)

West Cameron Area			
Tract No.	Block	Description	Acreage
La 2228.....	28	N $\frac{1}{2}$ ; N $\frac{1}{2}$ N $\frac{1}{2}$ E $\frac{1}{2}$	2,023
La 2229.....	67	SE $\frac{1}{4}$	1,250
La 2230.....	69	N $\frac{1}{2}$	2,500

OFFICIAL LEASING MAP, LOUISIANA MAP NO. 2  
(Approved June 8, 1954; Revised April 28, 1966)

East Cameron Area			
La 2231.....	16	E $\frac{1}{2}$ SE $\frac{1}{4}$	530.8
La 2232.....	33	S $\frac{1}{2}$ W $\frac{1}{2}$	3,750

OFFICIAL LEASING MAP, LOUISIANA MAP NO. 2A  
(Approved Sept. 8, 1959; Revised April 28, 1966)

East Cameron Area—South Addition			
La 2233.....	268	All	5,000

OFFICIAL LEASING MAP, LOUISIANA MAP NO. 3  
(Approved June 8, 1954; Revised June 25, 1954; July 22, 1954; April 28, 1966)

Vermilion Area			
La 2234.....	297	SE $\frac{1}{4}$	3,750
	298	S $\frac{1}{2}$	

OFFICIAL LEASING MAP, LOUISIANA MAP NO. 3C  
(Approved September 8, 1959; Revised April 28, 1966)

South Marsh Island Area—South addition			
La 2235.....	107	All	5,000

OFFICIAL LEASING MAP, LOUISIANA MAP NO. 4  
(Approved June 8, 1954; Revised July 22, 1954; April 28, 1966)

Eugene Island Area			
La 2236.....	157	E $\frac{1}{2}$	2,500
La 2237.....	159	All	5,000
La 2238.....	195	W $\frac{1}{2}$	2,500
La 2239.....	229	All	5,000

OFFICIAL LEASING MAP, LOUISIANA MAP NO. 5  
(Approved June 8, 1954; Revised April 28, 1966; July 22, 1968)

Ship Shoal Area			
La 2240.....	228	E $\frac{1}{2}$	2,500

OFFICIAL LEASING MAP, LOUISIANA MAP NO. 6  
(Approved June 8, 1954; Revised July 22, 1954; December 9, 1954; April 28, 1966)

South Timbalier Area			
La 2241.....	198	All	5,000

OFFICIAL LEASING MAP, LOUISIANA MAP NO. 8  
(Approved June 8, 1954; Revised April 28, 1966)

West Delta Area			
La 2242.....	89	NE $\frac{1}{4}$ NW $\frac{1}{4}$ ; N $\frac{1}{2}$ NE $\frac{1}{4}$	937.5

OFFICIAL LEASING MAP, LOUISIANA MAP NO. 9  
(Approved June 8, 1954; Revised July 22, 1954; April 28, 1966)

South Pass Area			
La 2243.....	45	NE $\frac{1}{4}$ ; E $\frac{1}{2}$ NW $\frac{1}{4}$	1874.95
La 2244.....	60	All	1761.63

OFFICIAL LEASING MAP, LOUISIANA MAP NO. 10  
(Approved June 8, 1954; Revised July 22, 1954; April 28, 1966)

Main Pass Area			
La 2245.....	7	N $\frac{1}{2}$ SW; S $\frac{1}{2}$ E $\frac{1}{2}$	3552.95
	18	N $\frac{1}{2}$	
La 2246.....	102	All	4994.55

<sup>1</sup> Portion in zone 2 only, as that zone is defined in the agreement between the United States and the State of Louisiana, Oct. 12, 1956.

<sup>2</sup> That portion of the S $\frac{1}{2}$ E $\frac{1}{2}$  of Block 7 and N $\frac{1}{2}$  Block 15 more than 3 geographical miles seaward of the line described in paragraph 1 of the Supplemental Decree of the U.S. Supreme Court entered Dec. 13, 1965, in United States v. Louisiana No. 9 original (382 U.S. 288) and that portion of the N $\frac{1}{2}$ SW $\frac{1}{4}$  of Block 7 lying in zone 1 as that zone was defined in the agreement between the United States and the State of Louisiana, dated Oct. 12, 1956, that is more than 3 geographical miles seaward of the line described in paragraph 1 of said supplemental decree.

<sup>3</sup> That portion landward of a line 3 geographical miles seaward of the line described in paragraph 1 of the Supplemental Decree of the U.S. Supreme Court entered Dec. 13, 1965, in United States v. Louisiana No. 9 original (382 U.S. 288).

Some of the tracts offered for lease may fall in fairway areas (including the prolongations thereof) or anchorage areas, or both, as designated by the District Engineer, New Orleans District, Corps of Engineers, U.S. Army. For the location of these areas and for operational restrictions imposed by the Agency, the District Engineer should be consulted.

Leases issued pursuant to this notice for lands which are on the date of their issuance, or are thereafter adjudicated to be subject to the exclusive jurisdiction and control of the United States, will be subject to all rules and regulations which the secretary of the Interior is authorized to prescribe and administer under the Outer Continental Shelf Lands Act (43 U.S.C. secs. 1331-1343) including rules and regulations for the prevention of waste and for conservation of the natural resources of the Outer Continental Shelf. The protection of correlative rights therein will be administered by the Secretary of the Interior in accordance with such rules and regulations.

In the event a cooperative agreement is concluded between the Secretary and the Conservation Agency of the State of Louisiana with respect to enforcement of



conservation laws, rules, and regulations pursuant to section 5 of the Act, the lessee will be given notice thereof by publication in the FEDERAL REGISTER.

It is suggested that bidders submit their bids in the following form:

Manager, Bureau of Land Management, Department of the Interior, Post Office Box 53226, T-9003 Federal Office Building, New Orleans, La. 70153.

**OIL AND GAS BID**

The following bid is submitted for an oil and gas lease on the land of the Outer Continental Shelf specified below:

Area..... Official Leasing Map No.....

Tract No.	Total amount bid	Amount per acre	Amount submitted with bid

.....  
(Signature)  
(Please type signer's name under signature)

No. Miscellaneous No..... Percent.....

.....  
(Company)

.....  
(Address)

**IMPORTANT**

The bid must be accompanied by one-fifth of the total amount bid. This amount may be cash, money order, cashier's check, certified check, or bank draft. A separate bid must be made for each tract.

**BURT SILCOCK,**  
*Director, Bureau of Land Management.*

Approved: October 1, 1971.

**HARRISON LOESCH,**  
*Assistant Secretary of the Interior*

[FR Doc.71-14630 Filed 10-4-71;8:52 am]

**Geological Survey  
CALIFORNIA**

**Known Geothermal Resources Areas**

Publication pursuant to section 21(a) of the Geothermal Steam Act of 1970 (34 Stat. 1566) of a partial list of lands determined to be included within known geothermal resources areas. In accordance with this statutory direction and pursuant to the authority under the Act of March 3, 1879 (43 U.S.C. 31), as supplemented by the Reorganization Plan No. 3 of 1950 (5 U.S.C. 481, note) and Order No. 2563 of the Secretary of the Interior (15 F.R. 3193), the following described lands are hereby defined as known geothermal resources areas effective September 3, 1971:

(5) California

**EAST MESA KNOWN GEOTHERMAL RESOURCES AREA**

- T. 15 S., R. 16 E.,  
Sec. 13, E½;  
Sec. 23, SE¼;  
Secs. 24 through 26, 35, and 36, all.
- T. 16 S., R. 16 E.,  
Secs. 1, 2, and 11 through 13, all;  
Sec. 14, E½;  
Sec. 24, N½.
- T. 15 S., R. 17 E.,  
Secs. 17 through 21, all;  
Sec. 22, W½;  
Sec. 27, W½;  
Secs. 28 through 33, all;  
Sec. 34, W½.

- T. 16 S., R. 17 E.,  
Sec. 3, W½;  
Secs. 4 through 9, all;  
Sec. 13, S½;  
Sec. 14, S½;  
Sec. 15, S½;  
Secs. 16 through 28, all;  
Sec. 29, E½, NW¼.
- T. 16 S., R. 18 E.,  
Sec. 17, SW¼;  
Sec. 18, S½;  
Secs. 19 and 20, all;  
Sec. 21, W½, SE¼;  
Sec. 27, W½, SE¼;  
Secs. 28 through 30, all;  
Sec. 31, E½, NW¼;  
Secs. 32 through 34, all;  
Sec. 35, W½.
- T. 17 S., R. 18 E.,  
Sec. 2, N½;  
Sec. 3, N½;  
Sec. 4, N½.

The area described aggregates 38,365 acres, more or less.

Dated: September 27, 1971.

**W. A. RADLINSKI,**  
*Acting Director.*

[FR Doc.71-14525 Filed 10-4-71;8:46 am]

**National Park Service  
NATIONAL REGISTER OF HISTORIC PLACES**

**Additions, Deletions, or Corrections**

By notice in the FEDERAL REGISTER of February 20, 1971, Part II, there was published a list of the properties included in the National Register of Historic Places. This list has been amended by a notice in the FEDERAL REGISTER of March 2 (pp. 3930-31), April 6 (pp. 6526-28), May 4 (pp. 8333-36), June 3 (pp. 10811-13), July 8 (pp. 12868-70), August 3 (pp. 14275-76), and September 8 (pp. 18016-19). Further notice is hereby given that certain amendments or revisions, in the nature of additions, deletions, or corrections to the previously published list are adopted as set out below.

It is the responsibility of all Federal agencies to take cognizance of the properties included in the National Register as herein amended and revised in accordance with section 106 of the National Historic Preservation Act of 1966, 80 Stat. 915, 16 U.S.C. 470.

The following properties have been added to the National Register since September 8 (those marked by an asterisk are National Historic Landmarks):

**CALIFORNIA**

**Mendocino County**

Mendocino, *Mendocino and Headlands Historic District*, bounded approximately by the Pacific Ocean on the west and south, Little Lake Street on the north, and U.S. 1 on the east.

**CONNECTICUT**

**New London County**

New London, \**Monte Cristo Cottage (Eugene O'Neill House)*, 325 Pequot Avenue.

**GEORGIA**

**Bibb County**

Macon, *Domingos House*, 1261 Jefferson Terrace.

- Macon, *Hatcher-Groover-Schwartz House*, 1144-1146 Georgia Avenue.
- Macon, *Monroe-Dunlap-Snow House*, 920 High Street.
- Macon, *Solomon-Smith-Martin House*, 2619 Vineville Avenue.
- Macon, *Willingham-Hill-O'Neal Cottage*, 535 College Street.

**KENTUCKY**

**Fayette County**

- Lexington, *Lincoln, Mary Todd, House*, 574 West Main Street.
- Lexington vicinity, *Waveland*, 5 miles south of Lexington off U.S. 27.

**Jefferson County**

Louisville, *Southern National Bank (Old Bank of Louisville)*, 320 West Main Street.

**LOUISIANA**

**Orleans Parish**

- New Orleans, *Hermann-Grima House*, 818-820 St. Louis Street.
- New Orleans, *St. Mary's Assumption Church*, 2030 Constance Street.

**MASSACHUSETTS**

**Middlesex County**

Lexington, \**Hancock-Clarke House*, 35 Hancock Street.

**Norfolk County**

Quincy, *United First Parish Church (Unitarian) of Quincy*, 1266 Hancock Street.

**MINNESOTA**

**Hennepin County**

Minneapolis, *American Swedish Institute (Svan J. Turnblad Residence)*, 2600 Park Avenue.

**Steele County**

Owatonna, *Security Bank and Trust Co. (National Farmers Bank of Owatonna)*, North Cedar Street and East Broadway.

**Washington County**

Stillwater, *Washington County Courthouse*, West Pine Street at South Third Street.

**NEW JERSEY**

**Burlington County**

- Bordentown, \**Hopkinson, Francis, House*, 101 Farnsworth Avenue.
- Medford vicinity, *Kirby's Mill (Haines Mill)*, Northeast of Medford at Church Road and Fostertown Road.

**Camden County**

Camden, *Pomona Hall (Cooper House)*, Park Boulevard and Euclid Avenue.

**Mercer County**

- Princeton, \**President's House (Maclean House)*, Nassau Street.
- Trenton, *Mercer Street Friends Center (Chesterfield Friends Meetinghouse)*, 151 Mercer Street.

**Passaic County**

Mountain View, *Van Dyne House*, 636 Fairfield Road.

**NEW YORK**

**Oneida County**

Westernville, \**Floyd, General William, House*, West side of Main Street.

**PENNSYLVANIA**

**Bucks County**

Morrisville, \**Summerseat (Thomas Barclay House)*, Clymer Street and Morris Avenue.

<i>Lehigh County</i>	Sec.	
Catasauqua, *Taylor, George, House, Front Street.	110.1.3	Assistant Secretary—Fish and Wildlife and Parks.
<b>RHODE ISLAND</b>	110.1.4	Assistant Secretary—Mineral Resources.
<i>Kent County</i>	110.1.5	Assistant Secretary—Public Land Management.
East Greenwich, Varnum, General James Mitchell, House, 57 Peirce Street.	110.1.6	Assistant Secretary—Water and Power Resources.
<b>SOUTH CAROLINA</b>	110.1.7	Assistant Secretary—Program Policy.
<i>Beaufort County</i>	110.1.8	Assistant Secretary—Management and Budget.
Beaufort, Verdier, John Mark, House, 801 Bay Street.	110.1.9	Solicitor.
<i>Charleston County</i>	110.3	Field Committees and Field Representatives.
Charleston, Russell, Nathaniel, House, 51 Meeting Street.	110.4	Office of the Science Adviser.
<i>Fairfield County</i>	110.5	Office of Communications.
Jenkinsville vicinity, Ebenezer Associate Reformed Presbyterian Church (Old Brick Church), 4.3 miles north of Jenkinsville on S.C. 213.	110.7	Office for Equal Opportunity.
Ridgeway, Century House (Brick House), S.C. 34, 1 block west of Main Street.	110.8	Office of Legislation.
<i>Greenville County</i>	110.24	Office of International Activities.
Greenville, Greenville City Hall, Northwest corner of Main and Broad Streets.	111.1	Organization—Other Departmental Offices.
<i>Lancaster County</i>	111.2	Office of the Solicitor.
Lancaster, Lancaster County Jail, 208 West Gay Street.	111.4	Office of Minerals and Solid Fuels.
<i>Newberry County</i>	111.5	Office of Oil and Gas.
Newberry, Old Courthouse, Newberry, 1207 Caldwell Street.	111.6	Office of Water Resources Research.
<i>York County</i>	111.7	Office of Saline Water.
McConnellsville vicinity, Brattonsville Historic District, east of McConnellsville on County Route 165, 2 miles south of the intersection with S.C. 322.	111.8	Oil Import Administration.
<b>VIRGINIA</b>	111.9	Defense Electric Power Administration.
Norfolk (independent city), Christ Church, 421 East Freemason Street.	111.10	Oil Import Appeals Board.
<b>WASHINGTON</b>	111.11	Office of Coal Research.
<i>King County</i>	111.13	Office of Hearings and Appeals.
Seattle, Building No. 105, Boeing Airplane Co. (E. W. Heath Shipyard), 200 Southwest Michigan Street.	115-175	Organization—Bureaus.
Seattle, Iron Pergola, First Avenue and Yesler Way.	115.1	Bureau of Mines.
<i>Pierce County</i>	120.1	Geological Survey.
Puyallup, Meeker, Ezra, Mansion, 321 Pioneer, East.	130.1	Bureau of Indian Affairs.
<b>ERNEST ALLEN CONNALLY,</b> <i>Director, Office of Archeology and Historic Preservation.</i>	135.1	Bureau of Land Management.
[FR Doc.71-14573 Filed 10-4-71;8:51 am]	140.1	United States Fish and Wildlife Service.
	142.1	Bureau of Sport Fisheries and Wildlife.
	145.1	National Park Service.
	148.1	Bureau of Outdoor Recreation.
	155.1	Bureau of Reclamation.
	160.1	Bonneville Power Administration.
	165.1	Southeastern Power Administration.
	170.1	Southwestern Power Administration.
	173.1	Alaska Power Administration.

110.1.1A *Assistants to the Secretary.* [Revised] An Executive Assistant to the Secretary serves as his personal aide and confidential adviser. Other Assistants or Special Assistants to the Secretary serve in varying capacities and/or head secretarial offices described in the following sections (Science Adviser, Office of Communications, Office of Legislation). The Assistant to the Secretary for Congressional Liaison is the Secretary's principal liaison with Members of the Congress and its committees.

110.1.5 *Assistant Secretary—Public Land Management.* [Revised] The Assistant Secretary—Public Land Management discharges the duties of the Secretary with respect to land utilization and management, territorial affairs, and Indian affairs. The Assistant Secretary exercises secretarial direction and supervision over the Bureau of Indian Affairs and the Bureau of Land Management.

110.1.7 *Assistant Secretary—Program Policy.* [Added] The Assistant Secretary—Program Policy discharges the duties of the Secretary with respect to

outdoor recreation and to Department-wide programs related to interagency and interdisciplinary subjects concerning natural resources management and environmental quality, regional planning matters, comprehensive planning, economic analyses of Departmental programs and natural and environmental resources issues, and the international activities of the Department. The Bureau of Outdoor Recreation and Secretarial Offices appropriately identified with the functions previously described are under his supervision.

110.1.8 *Assistant Secretary for Administration.* [Deleted]

110.1.8 *Assistant Secretary—Management and Budget.* [Added] The Assistant Secretary—Management and Budget discharges the duties of the Secretary with respect to all phases of administrative management including budget, finance, compliance, management research, personnel, procurement, property, audit, management operations, security, emergency preparedness, library services, automatic data processing, direction of the Department's Job Corps conservation program and related activities. Secretarial offices appropriately identified with these functions are under his supervision. Functions are carried out by the following Offices: Management operations, Survey and Review, Budget, Management Research, Personnel Management, Library Services, and Job Corps Coordination.

110.3 *Field Committees and Field Representatives.* [Revised] Field committees serving appropriate geographic areas are established to serve as an instrument for achieving Department policy objectives in coordination at field level. Field committees are composed of regional directors or other ranking officials appointed by the heads of bureaus and offices. The departmental field committees promote the development and execution of coordinated regional natural resource programs for the Department and facilitate the coordination of field activities which involve two or more bureaus or which have special significance to the Department's overall objectives. The field committees have no supervisory relationship or responsibility with respect to bureau programs and operations. The principal functions of the field representatives are to serve as observation posts for the Secretary, to maintain continuous surveillance over the entire range of the Department's program activities, and to provide leadership and assistance in the coordination of programs and policies of the Secretary. The field representatives chair the Department's field committees, and coordinate matters of program and policy in the field where more than one bureau or program interest is involved. The field representatives serve as departmental representatives on various inter-agency river basin committees and on Federal-State river basin commissions authorized by the Water Resources Planning Act of 1965.

## Office of the Secretary CENTRAL AND FIELD ORGANIZATION Organization and Functions

The organization statement for the Department of the Interior published at 36 F.R. 17125, and revised at 36 F.R. 1278 is further revised as shown below. A revised Section Table of Contents follows:

Sec.	
110.1	Organization—Office of the Secretary.
110.1.1	Secretary.
110.1.1A	Assistants to the Secretary.
110.1.2	Under Secretary.

## REGIONAL ASSIGNMENTS

Field committee area	Field representative address
Northeast.....	Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island, New York, Pennsylvania, Maryland, Delaware, Virginia, New Jersey, and West Virginia. J.F.K. Federal Bldg., Room 3003K, Government Center, Boston, Mass. 02203.
Southeast.....	Tennessee, Kentucky, North Carolina, South Carolina, Mississippi, Alabama, Georgia, and Florida. 404 Financial Services Bldg., 148 Cain St. NE., Atlanta, GA 30303.
North Central.....	Ohio, Indiana, Michigan, Illinois, Wisconsin, and Minnesota. 2510 Dempster St., Des Plaines, IL 60016.
Missouri Basin.....	North Dakota, South Dakota, Nebraska, Iowa, Missouri, Kansas, Colorado, Wyoming, Montana, and Utah. Building 67, Room 590, Denver Federal Center, Denver, Colo. 80225.
Southwest.....	Louisiana, Arkansas, Oklahoma, Texas, and New Mexico. 517 Gold Ave. SW., Federal Bldg., Albuquerque, N. Mex. 87101.
Pacific Southwest.....	Arizona, Nevada, California, and Hawaii. 450 Golden Gate Ave., Post Office Box 30098, San Francisco, CA 94102.
Pacific Northwest.....	Idaho, Oregon, and Washington. Federal Bldg., Room 107, 1002 Northeast Holladay St., Post Office Box 3621, Portland, OR 97208.
Alaska.....	Alaska. 338 Denali St., Suite 1407, Anchorage, AK 99501.

## DEPARTMENT OF AGRICULTURE

## Commodity Credit Corporation

## BAGGING AND BALE TIES USED IN WRAPPING COTTON

## Notice of Reconsideration of Specifications

Notice is hereby given that the specifications for jute bagging and bale ties used in wrapping upland and extra long staple cotton tendered to Commodity Credit Corporation (referred to in this notice as CCC) under its cotton loan program are being reviewed to determine whether, beginning with the 1972 crop of cotton, they should be continued, modified, or rescinded. The latest revision of these specifications was published in the FEDERAL REGISTER on May 7, 1969 (34 F.R. 7388), and a modification of the specifications was published in the FEDERAL REGISTER on July 24, 1971 (36 F.R. 13804).

## BACKGROUND

Traditionally, practically all U.S. cotton has been packaged in jute bagging and steel ties and buckles, and U.S. upland cotton so packaged has been traded domestically on a gross weight basis. Since 1966, CCC has had a requirement that when bales tendered for loans are wrapped in jute bagging, the jute bagging and bale ties and buckles must meet the CCC specifications. One of the main purposes of the specifications was to provide a uniform per bale tare weight of approximately 21 pounds—12 pounds for the bagging and 9 pounds for the ties and buckles.

Beginning with the 1971 crop of cotton, all U.S. cotton is traded, and CCC loans are made, on a net weight basis. Under net weight trading and loans, the need for a uniform tare weight is no longer critical. Ginners now certify bale tare weights to warehousemen (or enter the bale tare weight on each gin bale tag), and warehousemen enter such tare weight on the warehouse receipt. Considerable work already has been done in developing new lighter-weight packaging materials (both wrapping and tie materials) and more meaningful progress can be expected.

## ELIGIBILITY FOR CCC LOANS

The Cotton Loan Program Regulations (7 CFR 1427.1 et seq.) provide that all bales eligible for tender to CCC for loans must be packaged in materials that: (1) Will adequately protect the cotton during normal storage and handling conditions, (2) do not have salt or other corrosive material added, (3) do not contain hard fibers or any other material that would contaminate or adversely affect the cotton, and (4) completely cover the heads of bales. If the jute bagging and bale tie specifications are rescinded, effective with the 1972 crop of cotton, CCC would propose to retain these provisions of the Cotton Loan Program Regulations and add such

110.5 *Office of Information.* [Deleted]

110.5 *Office of Communications.*

[Added] The Office of Communications exercises technical and general functional supervision over all information activities of the Department. The Office of Communications, Northwest Regional Office located in Portland, Oreg., assists and directs the information programs of bureaus operating in that area.

110.6 *Office of Policy Planning and Research.* [Deleted]

110.8 *Office of Program Analysis.* [Deleted]

110.8 *Office of Legislation.* [Added]

The Office of Legislation is responsible for the unification and coordination of the Department's legislative program and its presentation to the Office of Management and Budget and the Congress. The Office reviews all legislative documents submitted by the bureaus and offices, prepares coordinated reports, and coordinates and arranges departmental representation at Congressional hearings.

110.9 *Office of International Activities.* [Deleted]

110.24 *Office of International Activities.* [Revised]

The Office of International Activities, under the direction of the Assistant Secretary—Program Policy, is responsible for providing staff support on all matters relating to international activities to the Secretary, Under Secretary, and Assistant Secretaries of the Interior. As the International Staff of the Secretariat, the Office maintains a systematic overview of the Department's international activities, providing a central point of contact for the Department's bilateral, multilateral, trade and tariff functions. The Office is responsible for the development of international activity policies and plans, assuring balanced and representative participation in international conferences, and coordinating the Department's international role with other Federal agencies.

111.2 *Office of the Solicitor.* [Revised] The Office of the Solicitor performs all legal work for the entire Department with the exception of that per-

formed by the Office of Hearings and Appeals, and specified territorial matters. In addition to the legal work directly concerned with the programs and activities of the Department, the Office of the Solicitor handles matters relating to torts, other claims, and inventions by personnel of the Department. The Solicitor is assisted by a Deputy Solicitor, eight Associate Solicitors, and a staff of attorneys in Washington. In the field, eight Regional Solicitors supervise field Solicitors and attorneys within their respective regions.

## REGIONAL OFFICES—OFFICE OF THE SOLICITOR

Office	Address
Anchorage, Alaska 99501.	Federal Building.
Denver, Colo. 80225.....	Denver Federal Center.
Los Angeles, Calif. 90012.	Federal Building.
Philadelphia, Pa. 19106.	Second Bank Building.
Portland, Oreg. 97208....	Federal Building.
Sacramento, Calif. 95825.	Federal Building.
Salt Lake City, Utah 84111.	Federal Building.
Tulsa, Okla. 74103.....	Post Office and Federal Building.

111.9 *Defense Electric Power Administration.* (The reference in paragraph one to "Assistant Secretary—Water and Power Development" is changed to "Assistant Secretary—Water and Power Resources.")

111.12 *Water Resources Council Representative Staff.* [Deleted]

148.1 *Bureau of Outdoor Recreation.* (The reference in the second sentence of paragraph one to "Assistant Secretary—Public Land Management" is changed to "Assistant Secretary—Program Policy.")

150.1 *Office of Territories.* [Deleted]

WARREN F. BRECHT,  
Deputy Assistant Secretary  
of the Interior.

SEPTEMBER 27, 1971.

[FR Doc.71-14493 Filed 10-4-71; 8:45 am]

other provisions of a general nature as are deemed appropriate—for example, provide an appropriate loan discount for bales of cotton that are tied with bands or ties that cannot be reused when the bales are later compressed to a higher density for domestic or export shipment. It is believed that such general provisions would be adequate to insure that cotton tendered to CCC for loans is properly packaged without requiring detailed specifications for existing or newly developed packaging materials.

#### SUBMISSION OF VIEWS

Prior to making any determination concerning this matter, consideration will be given to any data, views, and recommendations which are submitted in writing to the Director, Cotton Division, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture, Washington, D.C. 20250. In order to be sure of consideration, submissions must be received by the Director not later than October 26, 1971. All written submissions made pursuant to this notice will be made available for public inspection at such times and places and in a manner convenient to the public business (7.CFR 1.27(b)).

Signed at Washington, D.C., on September 30, 1971.

CARROLL G. BRUNTHAVER,  
*Acting Executive Vice President,  
Commodity Credit Corporation.*

[FR Doc.71-14594 Filed 10-4-71;8:52 am]

#### Forest Service

### UNCOMPAGRE PRIMITIVE AREA

#### Notice of Public Hearing

Notice is hereby given in accordance with provisions of the Wilderness Act of September 3, 1964 (78 Stat. 390-892; 16 U.S.C. 1131-1132), that a public hearing will be held beginning at 9 a.m. on November 15, 1971, at the Ramada Inn, 718 Horizon Drive, Grand Junction, CO, and continuing at 9 a.m. on November 17, 1971, at the Ouray County Court House, Ouray, Colo., on the proposal for the declassification of the Uncompagre Primitive Area.

The Uncompagre Primitive Area is located within the Uncompagre National Forest, in Hinsdale, Ouray and San Juan Counties, State of Colorado.

A brochure containing a map and information about the area and the management situation may be obtained from the Forest Supervisor, Grand Mesa-Uncompagre National Forest, 11th and Main Streets, Delta, CO 81416, or the Regional Forester, Building 85, Denver Federal Center, Denver, Colo. 80225.

Individuals or organizations may express their views by appearing at the hearing, or they may submit written comments for inclusion in the official record to the Regional Forester at the above address by December 14, 1971.

EDWARD P. CLIFF,  
*Chief, Forest Service.*

[FR Doc.71-14621 Filed 10-4-71;8:52 am]

### Office of the Secretary MEAT IMPORT LIMITATIONS Fourth Quarterly Estimates

Public Law 88-482, approved August 22, 1964 (hereinafter referred to as the Act), provides for limiting the quantity of fresh, chilled, or frozen cattle meat (TSUS 106.10) and fresh, chilled or frozen meat of goats and sheep, except lamb (TSUS 106.20), which may be imported into the United States in any calendar year. Such limitations are to be imposed when it is estimated by the Secretary of Agriculture that imports of such articles, in the absence of limitations during such calendar year, would equal or exceed 110 percent of the estimated quantity of such articles, prescribed by section 2(a) of the Act.

In accordance with the requirements of the Act, the following fourth quarterly estimates are published:

1. The estimated aggregate quantity of such articles which would, in the absence of limitations under the Act, be imported during calendar year 1971 is 1,160.0 million pounds.

2. The estimated quantity of such articles prescribed by section 2(a) of the Act during the calendar year 1971 is 1,025.0 million pounds.

Since the estimated quantity of imports continues to exceed 110 percent of the estimated quantity prescribed by section 2(a) of the Act, under the Act limitations for the calendar year 1971 on the importation of fresh, chilled, or frozen cattle meat (TSUS 106.10) and fresh, chilled, or frozen meat of goats and sheep (TSUS 106.20), are required to be imposed but may be suspended. Such limitations were imposed by Proclamation 4037 of March 11, 1971, and were suspended during the balance of the calendar year 1971 unless because of changed circumstances further action under the Act becomes necessary.

Done at Washington, D.C., this 30th day of September 1971.

CLIFFORD M. HARDIN,  
*Secretary of Agriculture.*

[FR Doc.71-14592 Filed 10-4-71;8:52 am]

## DEPARTMENT OF COMMERCE

### Office of Import Programs HARVARD UNIVERSITY ET AL.

#### Notice of Applications for Duty-Free Entry of Scientific Articles

##### Correction

In F.R. Doc. 71-14305 appearing at page 19129 in the issue for Wednesday, September 29, 1971, the phrase "Large angle coniometer stage" in the last paragraph should read "Large angle goniometer stage."

### Office of the Secretary

[Dept. Organization Order 10-3]

## ASSISTANT SECRETARY FOR DOMESTIC AND INTERNATIONAL BUSINESS

### Authority and Functions

The following order was issued by the Secretary of Commerce effective August 31, 1971. This material supersedes the material appearing at 36 F.R. 4553 of March 9, 1971; 31 F.R. 4169 of March 9, 1966; 31 F.R. 4170 of March 9, 1966; and 32 F.R. 11350 of August 4, 1967.

**SECTION 1. Purpose.** This order prescribes the scope of authority and the functions of the Assistant Secretary for Domestic and International Business.

**SEC. 2. Administrative designation.** The position of Assistant Secretary of Commerce, established by Public Law 90-191 (15 U.S.C. 1505), shall continue to be designated the Assistant Secretary for Domestic and International Business. The Assistant Secretary is appointed by the President by and with the advice and consent of the Senate.

**SEC. 3. Scope of authority.** .01 The Assistant Secretary for Domestic and International Business shall exercise policy direction and general supervision over the Bureau of Domestic Commerce and the Bureau of International Commerce. He shall also exercise direction over the Office of Import Programs and the Office of Textiles.

.02 Pursuant to the authority vested in the Secretary of Commerce by law, the following authorities of the Secretary are hereby delegated to the Assistant Secretary for Domestic and International Business:

a. The authorities contained in the Trade Expansion Act of 1962 (19 U.S.C. 1801 et seq.) and Executive Order 11075 of January 15, 1963, as amended by Executive Order 11106 of April 18, 1963, including the authority to make certifications pursuant to sections 302(b)(1) and 302(c) of the Act and to issue rules and regulations under section 401 of the Act.

b. The authorities contained in Title I of the Defense Production Act of 1950, as amended (50 U.S.C. App. 2071 et seq.), as conferred on the Secretary under Executive Order 10480, dated August 14, 1953, as amended, to issue or modify orders restricting transportation and discharge of certain commodities or for the prohibition of movement of American carriers to certain designated destinations, which authority has heretofore been implemented by the issuance of Transportation Orders T-1 and T-2.

c. The authorities contained in section 402 of the Act of June 30, 1949 (40 U.S.C. 512) as it relates to the authority of the Secretary of Commerce with respect to the importation of foreign excess property, section 601 of the Act of June 30, 1949 (40 U.S.C. 473) relating to the importation into the United States of surplus property sold in foreign areas before July 1, 1949, as delegated to the Secretary of Commerce pursuant to F.L.C. Reg. 8 (44 CFR 308.15), and the authority

to promulgate regulations pertaining thereto.

d. The authorities contained in the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651; 80 Stat. 897).

e. The authorities contained in headnote 6(d) of Schedule 7, part 2, subpart E of the Tariff Schedules of the United States (19 U.S.C. 1202), added by Public Law 89-805, pertaining to the allocation of watches and watch movements among producers located in the Virgin Islands, Guam, and American Samoa, respectively. Such allocations shall be made jointly with the Secretary of the Interior or his designated official.

.03 The Assistant Secretary may redelegate his authority, except the authorities delegated in subparagraph .02a of this section, subject to such conditions in the exercise of such authority as he may prescribe.

Sec. 4. *Functions.* The Assistant Secretary for Domestic and International Business shall serve as the principal officer of the Department to advise the Secretary on and to direct Commerce activities aimed at promoting progressive business policies and growth and at strengthening the international economic position of the United States. In this respect, the Assistant Secretary shall:

a. Propose general Federal policies for the Secretary to establish for promoting the business economy;

b. Develop and implement new programs to accomplish national objectives for improving and expanding the economic strength of the United States;

c. Exercise overall direction of Commerce functions involving: The expansion of exports; business-consumer relations; import quota administration; administration of export controls; trade adjustment assistance; the collection, analysis, and dissemination of selected information on various industries, commodities, and markets; the preparation and execution of plans for industrial mobilization readiness; and Federal recognition of and participation in international expositions and trade fairs;

d. Consult with and encourage cooperation and appropriate participation of the business community in the Department's domestic and international business programs; and

e. Coordinate the Department's domestic and international business programs with other Federal agencies.

Sec. 5. *Deputy Assistant Secretaries.* The Assistant Secretary for Domestic and International Business shall be assisted by the following officers in carrying out his responsibilities:

a. The Deputy Assistant Secretary and Director, Bureau of Domestic Commerce.

b. The National Export Expansion Coordinator who shall also be the Deputy Assistant Secretary and Director, Bureau of International Commerce. In his capacity as National Export Expansion Coordinator, he shall coordinate all aspects of the Federal effort to increase exports for the improvement of the U.S. balance of payments.

c. The Deputy Assistant Secretary for International Economic Policy who shall be the focal point of contact with Federal agencies on financial and international economic policy affecting U.S. business, and shall serve as liaison officer with the Council on International Economic Policy. He shall coordinate the development of Commerce's views on such policy issues as export financing and foreign investment, barter programs, domestic and international tax policies affecting trade, governmental lending activities and other aspects of domestic financial operations, and shall represent the Department in multilateral and bilateral trade negotiations.

d. The Deputy Assistant Secretary for Resources who shall be principally responsible for import policy matters and who shall directly supervise the Office of Import Programs and the Office of Textiles.

e. The Deputy Assistant Secretary for Business Development who shall have a major responsibility for consumer matters and related relationships of business with the public.

f. The Deputy Assistant Secretary for International Economic Research and Analysis who shall initiate and review research studies on developments affecting U.S. trade and commercial interests abroad, and formulate program and policy proposals.

Sec. 6. *Abolishment and transfers.*

.01 The Office of Administration for Domestic and International Business is abolished upon the effective date of this order and its current functions are transferred as provided below:

a. The functions performed by the Automatic Data Processing Division are transferred to the Departmental Office of Financial Management Services.

b. The records disposition function performed by the Administrative Services Division are transferred to the Departmental Office of Administrative Services.

c. The functions of the Personnel Division are transferred to the Office of Personnel for Domestic and International Business hereby established within the Office of the Assistant Secretary for Domestic and International Business.

d. The remaining functions of the Office of Administration for Domestic and International Business are transferred to the Bureau of International Commerce, the Bureau of Domestic Commerce, the Office of Import Programs, and the Office of Textiles to and consistent with the extent such functions were being performed for these operating units.

.02 The Assistant Secretary for Administration shall arrange for the disposition of personnel, funds, property, and records of the Office of Administration for Domestic and International Business consistent with the transfers of functions made herein.

Sec. 7. *Saving provision.* This order constructively amends Department Organization Orders 40-1A of February 14, 1971 and 40-2A of September 15, 1970 as relate to the provision of administrative

management and related services to the Bureau of Domestic Commerce and the Bureau of International Commerce.

Effective date: August 31, 1971.

LARRY A. JOBE,  
Assistant Secretary  
for Administration.

[FR Doc. 71-14548 Filed 10-4-71; 8:48 am]

[Dept. Organization Order 40-2B]

## BUREAU OF INTERNATIONAL COMMERCE

### Organization and Functions

This material amends the material appearing at 35 F.R. 16988 of November 4, 1970, and 32 F.R. 12128 of August 23, 1967.

Department Organization Order 40-2B of October 16, 1970 is hereby amended as follows:

1. In section 6. *Office of Export Control:*

a. Paragraph .04, the Export Clearance and Facilitation Division is deleted.

b. Paragraphs .05 through .07 are renumbered .04 through .06, respectively.

c. Paragraph .05, renumbered .04, the Investigations Division, is renamed the Compliance Division and amended to read:

“.04 The Compliance Division shall conduct the enforcement of export control regulation, including the development of intelligence information regarding areas of possible export control violations, investigation of suspected violations, and preparation of cases on violations for referral to the Compliance Commissioner through the Office of the General Counsel or to the Office of the General Counsel for other legal guidance or action; promote compliance with export control clearance regulations; develop and coordinate methods and systems to reduce paperwork and simplify export documentation and clearance procedures; and maintain liaison with the Bureau of Customs, U.S. Postal Service, and other Government and private organizations on export control compliance and facilitation matters.”

2. In section 8. *Office of International Trade Policy:* Paragraph 8.03 is amended to read:

“.03 The Legislation and Tariff Analysis Division shall develop and coordinate the Bureau's positions on proposed legislation affecting U.S. tariffs and trade measures; represent the Bureau and, as directed, the Department at interagency meetings and congressional committee hearings dealing with U.S. trade regulations and tariff legislation; develop proposals on new trade measures for executive or legislative branch action and review such proposals of other agencies; and prepare positions of the Department on all reports of the Tariff Commission to the President.”

3. The organization chart of October 16, 1970 is superseded by the chart attached to this amendment. (A copy of the organization chart is on file with the

original of this document with the Office of the Federal Register.)

4. In Appendix B, Public Information Appendix—Office of Export Control, dated July 18, 1967; Paragraph B.07 is amended to read:

“.07 The Compliance Division develops intelligence information regarding areas of possible violation, investigates suspected violations, and prepares compliance cases for referral through the Department of Commerce Office of General Counsel; develops methods to simplify export documentation and and clearance procedures; maintains liaison with the Bureau of Customs, U.S. Postal Service and other Government and private organizations; and promotes compliance with export control clearance regulations.”

Effective date: September 15, 1971.

LARRY A. JOBE,

Assistant Secretary for Administration.

[FR Doc.71-14549 Filed 10-4-71;8:48 am]

[Dept. Organization Order 202-294]

## OFFICIAL INFORMATION RELATING TO PERSONNEL

### Availability

This material supersedes the material appearing at 34 F.R. 14771 of September 25, 1969.

#### Sec.

- 1 Purpose.
- 2 General provisions.
- 3 Policy.
- 4 Department operations.
- 5 Medical information.
- 6 Recruitment and utilization of personnel.
- 7 Investigations.
- 8 Official personnel folder.
- 9 Appeals.
- 10 Leave records.
- 11 Miscellaneous guidelines.
- 12 Effect on other orders.

**SECTION 1. Purpose.** .01 This order sets forth the basic policy of the Department with respect to the availability or disclosure of information in the possession of or controlled by the Department of Commerce which relates to personnel of the Department or to personnel management in the Department. This order supplements Department Administrative Order 205-12, "Public Information."

.02 This revision brings the provisions of this order into alignment with recent amendments to Part 294 of the Civil Service Regulations, "Availability of Official Information" (5 CFR 294.101-294.1101) published in 33 F.R. 17947, December 4, 1968, 34 F.R. 12425, July 30, 1969, and 36 F.R. 11901, June 23, 1971. References in parentheses following certain captions are to pertinent Civil Service Regulations.

**SEC. 2. General provisions.**—.01 *Basic Legal Provisions.* a. Section 552 of title 5, United States Code, provides for public access to Government records with certain specified exceptions.

b. Subsection (b) of section 552 provides that section 552 shall not apply to matters that are—

- (1) Specifically required by Executive order to be kept secret in the interest of the national defense or foreign policy;
- (2) Related solely to the internal personnel rules and practices of an agency;
- (3) Specifically exempted from disclosure by statute;
- (4) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;
- (5) Interagency or intraagency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;
- (6) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;
- (7) Investigatory files compiled for law enforcement purposes except to the extent available by law to a party other than an agency;
- (8) Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or
- (9) Geological and geophysical information and data, including maps, concerning wells.

c. Part 294 of the Civil Service Regulations (5 CFR 294.101-294.1101) sets forth the policy and procedures of the Civil Service Commission, pursuant to 5 U.S.C. 552, with respect to the availability or disclosure of information in the possession of or controlled by the Commission which falls within the exemptions provided in 5 U.S.C. 552(b).

d. Department Administrative Order 205-12, "Public Information" (formerly Department Order 64), implements 5 U.S.C. 552, setting forth basic Department policy and procedure to carry out the requirements of that statute in all subject-matter areas. Section 6 of DAO 205-12 provides for the issuance of supplementary rules or instructions. This order is issued in accordance with that section, and relates to the availability or disclosure of information relating to personnel or personnel management which is in the possession of or under the control of the Department, which falls within the exemptions provided in 5 U.S.C. 552(b), and which is not controlled by the Civil Service Commission or other Federal agency.

e. A right under Part 294 of the Civil Service Regulations or under this order to the disclosure of, and to control the disclosure of, information personal to an employee, former employee, annuitant, or applicant passes on his death to the executor or administrator of his estate, or in the absence of an executor or administrator to his next of kin. (See Civil Service Regulation 294.109.)

.02 *Definitions.* For purposes of this order: a. "Personnel" means employees of the Department, applicants for employment, persons performing personal

services for the Department under contract, persons otherwise serving the Department (e.g., by invitation to advise or consult on official business of the Department), and persons associated with the Department for research, study, training, and other purposes (e.g., research associates, guest workers, students, cadets at the Merchant Marine Academy, and persons receiving training at the Department under Agency for International Development or similar programs); "Personnel" also means persons who have previously been included in any of the foregoing categories;

b. "Employee" means both officer and employee, and includes a member of the uniformed services;

c. "Information" means books, papers, manuals, records, photographs, tapes, and other documentary materials, regardless of physical form or characteristics, made in or received by or under the control of the Department in pursuance of law or in connection with the discharge of official business;

d. "Information available to the public" means information which, on request, may be examined and copied, or of which copies may be obtained in accordance with the basic legal provisions cited in paragraph .01 of this section by the public or representatives of the press regardless of interest and without specific justification; and

e. "Disclose" and "disclosure" mean making information available, on request, for examination and copying, or furnishing a copy of the information.

.03 *Legal custody.* a. All information which relates to personnel or to personnel management in the Department of Commerce, other than information which is in the legal custody, and hence subject to the control, of another agency, is deemed to be in the legal custody of the Secretary of Commerce and shall not be disclosed or released from such custody except as provided by DAO 205-12, by this order, or by decision of the Secretary.

b. All information which relates to personnel or to personnel management in the Department of Commerce and which is in the physical custody of the Department of Commerce but is in the legal custody of another agency shall be disclosed or released only in accordance with requirements established by the agency having legal custody of such information, and subject to such requirements, in accordance with this order or decision of the Secretary.

**SEC. 3. Policy.**—.01 *General policy.* a. Information relating to personnel or to personnel management which is in the possession or control of the Department is authorized to be exempted from the requirement for public disclosure by several of the provisions of 5 U.S.C. 552 (b), e.g., (b) (2), (b) (6), or as may be otherwise authorized by law.

Paragraph 3.02 of DAO 205-12 contains the general policy of the Department with respect to disclosure of information under law. That order also states—for example, with respect to determining the avail-

ability of identifiable records upon request (subparagraph 5.03b.1)—that it shall be ascertained not only whether the record requested or information contained in it is a matter which falls within one or more of the exemptions of 5 U.S.C. 552(b), but if so, whether it is not to be disclosed or whether it would be in the public interest to make the record available in whole or in part. Generally speaking, and without limitation, it would not be in the public interest to make available information relating to personnel of the Department or to personnel management to the extent that:

1. Part 294 of the Civil Service Regulations or other applicable regulations require its limited disclosure or nondisclosure;

2. Its disclosure is prohibited or restricted by law;

3. Its disclosure, in the judgment of the Department, would tend to:

(a) Result in an unwarranted invasion of personal privacy;

(b) Preclude or impair favorable relationships with personnel or with sources of information relating to personnel or personnel management; or

(c) Interfere with effective, efficient, or economical performance of the functions of the Department; or

4. Its disclosure is otherwise limited by the provisions of this administrative order.

b. Within the discretionary latitude permitted by law and regulation, the Department reserves the right to make exceptions to the general policy in particular instances giving due weight to the interest of the public or interested party to have access to the information sought and the particular governmental or personal interest involved.

c. No employee of the Department shall make known, or within the limits of his ability permit to be made known, to any person the contents of any information within the purview of this order, except in accordance with the provisions of this order applicable to the availability of information.

.02 *Administration.* a. Authority and responsibility for decisions on the availability of information is vested in employees designated in or pursuant to DAO 205-12, "Public Information," except as set forth in the following sentence. In the event of a difference between a member of the public and an employee of the Department concerning the availability of disclosure of information which is in the custody of the Department but is controlled by the Civil Service Commission, the matter shall be referred to the Civil Service Commission for a decision as provided in 5 CFR 294.105(b). Any such referral by an employee of the Department of Commerce shall be cleared with the Office of Personnel.

b. Procedure for obtaining access to information within the purview of this order and other related information, including service charges for furnishing information when appropriate, are set forth in DAO 205-12 and in supplementary regulations issued pursuant

thereto (e.g., Part 4, Subtitle A, Title 15, Code of Federal Regulations, 15 CFR 4.1-4.11).

.03 *Policy guidance and assistance.* Policy guidance and assistance on the availability of information within the purview of this order shall be furnished by the Office of Personnel, in conjunction with the Office of the General Counsel.

Sec. 4. *Department operations.* (294.-301) .01 Statements of Department personnel policy and departmentally adopted interpretations of laws and regulations administered by the Department in personnel management are information available to the public.

.02 Memoranda, correspondence, opinions, data, staff studies, information received in confidence, and similar documentary material prepared for the purpose of internal communication within the Department or between the Department and other agencies of the Government, other organizations, or persons, where it is essential that both parties be able to communicate with each other fully and frankly without publicity, and which are related to personnel or personnel management, are generally not information available to the public.

.03 Administrative manuals and other instructions for the staff of the Department relating to personnel or to personnel management, are not information available to the public when they contain confidential instructions to the staff of the Department which must be protected from disclosure in order to be effective in carrying out the work of the Department.

Sec. 5. *Medical information.* (294.401) .01 Medical information about personnel is not made available to the public.

.02 Medical information about personnel may be disclosed to the individual person to whom it relates, or to his representative designated in writing, except that medical information concerning a mental or other condition of such a nature that a prudent physician would hesitate to inform a person suffering from it of its exact nature and probable outcome may be disclosed only to a licensed physician designated in writing for that purpose by the individual or his designated representative.

Sec. 6. *Recruitment and utilization of personnel.* (294.501) .01 The names of applicants for civil service positions or eligibles on civil service registers, certificates, employment lists, or other lists of eligibles, or their ratings or relative standings are not information available to the public. However, information of that type may be disclosed to Members of Congress and the press under the specific conditions prescribed in the Administrative Manual of the Civil Service Commission.

.02 The names of applicants or candidates for other positions and their ratings or relative standings are not information available to the public.

.03 Test material and other material used in evaluating candidates for appointment or other internal personnel actions (e.g., selection for training or

promotion) are not information available to the public.

Sec. 7. *Investigations.* (294.601) .01 Subject to the provisions of paragraphs .02, .03, .04, and .05 of this section, the Department will disclose to the parties concerned any report of investigation under the control of the Commission or the Department, or an extract of the report, to the extent the report is involved in a proceeding under Part 352, "Reemployment Rights," Part 353, "Restoration After Military Duty," Part 771, "Administrative Appeals," or Part 772, "Appeals to the Commission," of the Civil Service Regulations, and the report of investigation in a proceeding under Part 713, "Equal Opportunity," of the Civil Service Regulations, except when the disclosure would violate the proscription against the disclosure of medical information in Civil Service Regulation 294.401 (5 CFR 294.401). For the purpose of this section, the "parties concerned" means the Government employee or former Government employee involved in the proceeding, his representative designated in writing, and the representative of the agency involved in the proceeding.

.02 The Department does not make a report of investigation or information from a report under the control of the Civil Service Commission or the Department available to the public, to witnesses, or except as provided in this section, to the parties concerned in the investigation.

.03 No report of investigation, or extract of the report, will be disclosed to the parties concerned in the investigation in any proceeding if it would violate a pledge of confidence. In determining whether disclosure would violate a pledge of confidence, the following guidelines, among others, shall be considered:

a. Subject to subparagraphs .03b and .03c of this section, the sources of information must not be disclosed to the person investigated. The information must not be discussed with him in a manner which would reflect or permit him to deduce the source of the information.

b. The restrictions in subparagraph .03a of this section do not apply to (1) information of public record; (2) information from law enforcement records available to the public; and (3) information from Federal personnel records which could be obtained on request by the employee.

c. The restrictions in subparagraph .03a of this section do not prohibit disclosing the source of the information if it is obtained independently without a pledge of confidence, such as by interviewing the employee concerned, by contacting other sources, or by obtaining permission from sources named in the investigative reports to use the information and to identify the source.

.04 Investigative reports which are the property of any other agency must be safeguarded in accordance with requirements established by such agency.

.05 Investigative reports which are the property of the Department of Commerce are subject to the following additional requirements:

a. They may not be transferred to another agency without prior approval of the Office of Investigations and Security;

b. The material must be safeguarded in a manner to prevent its unauthorized disclosure; and

c. Access must be limited to those persons whose official duties require it.

**Sec. 8. Official personnel folder.** (294.701) .01 *Information available to the public.* The name, present and past position titles, grades, salaries, and duty stations (which include room numbers, shop designations, or other identifying information regarding buildings or places of employment) of a Government employee is information available to the public, except when:

a. The release of that information is prohibited under law or Executive order in the interest of national defense or foreign policy;

b. The information is sought for the purpose of commercial or other solicitation; or

c. There is reason to believe that the information is sought for political purposes or purposes which may violate the political activity prohibitions in subchapter III, chapter 73, title 5, United States Code, relating to political activities, or which may violate other law.

.02 *Information available to a prospective employer or source of credit.* In addition to the information that may be made available under paragraph .01 of this section, the following information may be made available to a prospective employer of or source of credit for a Government employee or former Government employee:

a. Tenure of employment;

b. Civil Service status;

c. Length of service in the Department and the Government; and

d. When separated, the data and reason for separation shown on the "Notification of Personnel Action," SF-50 or CD-251 (furnished only to prospective employers).

.03 *Availability of home address to police or court official.* In addition to the information to be made available under paragraphs .01 and .02 of this section, the home address of an employee shall be made available to a police or court official on receipt of a proper request stating that an indictment has been returned against the employee or that a complaint, information, accusation, or other writ involving nonsupport or a criminal offense, has been filed against him and his address is needed for service of a summons, warrant, subpoena, or other legal process.

.04 *Availability of social security number and residence.* In addition to the information to be made available under paragraph .01 of this section, the social security number and place of actual residence shall be disclosed to a State or local taxing authority, or both, as provided in Office of Management and Budget Circular No. A-38, revised.

.05 *Availability of other information in the Official Personnel Folder.* a. Except as provided in paragraphs .01, .02, .03,

and .04 of this section, information which is required to be included in an Official Personnel Folder by the instructions of the Civil Service Commission and which is not otherwise available (e.g., from a public record or other available non-restricted source) is not available to the public.

b. Subject to the foregoing limitations, the Department may furnish, upon request, to appointing officers, investigating officers, and other appropriate officials of Government who have responsibilities in connection with personnel matters, information concerning the qualifications, service, conduct, and character of personnel of the Department, under appropriate pledges that any such information furnished will be treated as confidential unless the Department in individual cases grants consent to disclosure of information.

1. In the event any of the information might possibly be considered of a defamatory nature, disclosure of the information should be cleared in advance with appropriate legal counsel within the operating unit concerned or the Office of the General Counsel, as appropriate.

2. Information regarding character that is derived from investigative reports furnished by other agencies to the Department cannot, as a general rule, be released without the consent of the originating agency. However, whenever reference inquiries are received from other Government agencies, or from organizations engaged in a contract with a segment of the Department of Defense, concerning a person with respect to whom there is an indication that security-type or suitability-type information is contained in the files of the Office of Investigations and Security, the inquiries may be answered as fully as practicable in the operating unit concerned and a suggestion may be included in the reply substantially as follows:

In the event your organization is engaged in a contract with a segment of the Department of Defense, it is suggested that you have the cognizant security representative contact his Washington headquarters for a review of the files of the Office of Investigations and Security of the Department of Commerce.

c. Subject to the foregoing limitations, the Department will ordinarily make available to properly interested parties in private litigation, upon appropriate request, the information listed in paragraphs .01 and .02 of this section, together with any other strictly factual information requested, except that which under Civil Service Regulation or this order may not be disclosed.

d. Supervisors or other persons familiar with the work or character of an employee or former employee may prepare unofficial personal letters of recommendation or appraisal. Any such letters shall contain a statement substantially as follows:

This is a personal, not official, communication. The opinions expressed are based on my own personal acquaintance with the individual, and do not necessarily reflect all infor-

mation concerning him in the files of the Department.

Letters of reference or recommendation which may be construed as official communications of the Department may be signed only by an appointing officer listed in Department Administrative Order 202-250 or his designee.

e. As far as practicable, requests for information on a former employee, whose Official Personnel Folder has been transferred, should be answered from the SF-7, "Service Record Card," or equivalent record. Where this record contains insufficient information, the request should be referred to the agency which has custody of the Official Personnel Folder. The referral should be informal, and no report of the referral to the requesting office or individual is required.

.06 *Access to Official Personnel Folder.* a. The Official Personnel Folder of a Government employee or former Government employee shall be disclosed to him, or to his representative designated in writing, or to any other person who has the written consent of the employee or former employee or the written consent of the person who has this right under Civil Service Regulation 294.109 or subparagraph 2.01e of this order. However, the disclosure must be in the presence of a representative of the Department having physical custody of the Folder, and before disclosure the following information shall be removed from the Folder:

1. Medical information the disclosure of which is proscribed by Civil Service Regulation 294.401;

2. Test material and copies of certificates and other lists of eligibles the disclosure of which is proscribed by Civil Service Regulation 294.501; and

3. Investigative reports the disclosure of which is proscribed by Civil Service Regulation 294.601 or by this order.

b. On official request, an Official Personnel Folder may be disclosed to a Member of Congress, a representative of a congressional committee or subcommittee, or an official of the legislative or judicial branch or of the government of the District of Columbia. However, before disclosure, all material that relates to loyalty or security under Executive Order 9835 or 10450 or any other authority, and all information covered under subparagraphs .06a.1 through .06a.3 of this section, shall be removed from the folder. If a specific request for loyalty or security information is made by a congressional committee or subcommittee, or any source outside the executive branch, the request shall be transmitted to the General Counsel, Department of Commerce, who will forward it to the General Counsel, U.S. Civil Service Commission, for consultation with the Department of Justice pursuant to the President's Memorandum of March 24, 1969.

c. An Official Personnel Folder shall be disclosed to an official of the executive branch who has a need for the information in the performance of his official duties.



**SEC. 9. Appeals.** (294.801, Agency Administrative Appeals.) .01 An appeal file established under Civil Service Regulation 771.204 or a complaint file established under Civil Service Regulation 713.222 shall be disclosed to the parties concerned, subject to the prescription against the disclosure of medical information in Civil Service Regulation 294.401. For the purpose of this section, "the parties concerned" means the Government employee or former Government employee involved in the proceeding, his representative designated in writing, and the representatives of the agency or the Commission involved in the proceeding.

.02 The Department, when it has custody of an appeal or complaint file, upon a request which identifies the individual from whose file the information is sought, shall disclose the following information from such a file to a member of the public, except when the disclosure would constitute a clearly unwarranted invasion of personal privacy:

a. Confirmation of the name of the individual from whose file the information is sought and the names of the other parties concerned;

b. The status of the case;

c. The decision of the case;

d. The nature of the action appealed or the subject of the complaint; and

e. With the consent of the parties concerned, other specifically identified information from the file.

.03 The Department may fix reasonable times and places for disclosure under this section.

**Sec. 10. Leave Records.** (294.1101) The annual and sick leave record of an employee, or information from these records, is not made available to the public by the Civil Service Commission or other Government agency. However, the leave record, or information from it, shall be disclosed to the employee concerned, or with his written consent, to a representative of the employee or any other person that he authorizes to have the record.

**Sec. 11. Miscellaneous guidelines—01 Information restricted by other agencies.** Certain types of information relating to personnel or personnel management are subject to restrictions established by other agencies and may not be released except in accordance with the regulations or approval of the cognizant agency. Among these types of information are the following:

a. Information from a medical certificate or medical report on file subject to the control of the Civil Service Commission, which may be disclosed only as provided in the Federal Personnel Manual (see chapter 339, subchapter 1-4). The procedure described therein should be observed before any information of a medical nature is released. (See Civil Service Regulation 294.401 and section 5 of this order.)

b. Information contained in civil service examination papers and in confidential questionnaires attached thereto. (See Civil Service Regulation 294.501 and section 6 of this order.)

c. Information contained in investiga-

tive reports of the Federal Bureau of Investigation, Civil Service Commission, or Government intelligence agency. (See Civil Service Regulation 294.601 and section 7 of this order.)

d. Information relating to any claim filed with the Civil Service Commission under the Civil Service Retirement Act, which may be disclosed only as provided in 5 CFR 831.106. (See Civil Service Regulation 294.901.)

e. Information relating to claims pending before the Bureau of Employees' Compensation, Department of Labor.

f. Information relating to litigation by or against the Government, except as authorized by the Department of Justice.

.02 *Information and records not ordinarily available.* a. The following types of information relating to personnel or personnel management, which are exempt from a requirement of disclosure, will not be made available unless the Department determines in a particular instance that, on balance, disclosure (in full, in part, or otherwise subject to appropriate limitations) is necessary or desirable in the public interest:

1. Information, other than that specified above in sections 4 to 10, inclusive of this order, relating to individuals' personnel status or personal matters, including but not limited to the following:

(a) Information received in reference checks;

(b) Information received under a pledge of confidence;

(c) Information relating to personal history;

(d) Information relating to personal health;

(e) Information relating to private business activities and interests;

(f) Information relating to family or friends;

(g) Information relating to race, creed, color, or national origin;

(h) Personal addresses and telephone numbers; and

(i) Internal documents which express the views or recommendations of officials or employees relating to an individual's qualifications, performance of duty, or other factors similarly relevant to his employment status.

2. Intra-agency and interagency communications relating to personnel or to personnel management, intended for use within the executive branch of the Government (e.g., reports of evaluation of personnel management).

3. Records and reports of investigations, other than as specified in section 7 of this order.

4. Correspondence received in confidence by the Department relating to an alleged or possible violation of any statute, rule, regulation, order, instruction, or policy.

5. Correspondence with members or committees of Congress relating to personnel or personnel management.

b. No officer or employee of the Department shall produce or disclose the contents of any material that falls within the scope of this paragraph .02 except with the prior approval of the Office of Personnel, or with respect to any such

material which is under the control of the Office of Investigations and Security, except with the prior approval of that Office.

.03 *Release of security information or information involving Secretary's approval.* Nothing in this order shall be deemed to permit the release of information which is classified for national security or foreign relations purposes, except in accordance with applicable security laws and regulations; nor shall anything in this order be deemed to permit the release of any information which is required by law to be approved by the Secretary of Commerce.

.04 *Subpoenas—*a. *Information under the control of the Civil Service Commission.*

1. If a subpoena or other judicial order for information contained in an Official Personnel Folder in the physical custody of the Department is served on an employee of the Department responsible for the Folder, he shall disclose such information as is allowed under Part 294 of the Civil Service Regulations (5 CFR 294.101-294.1101). However, he should retain custody of the information and, as necessary, request permission of counsel or the court to furnish a certified copy for inclusion in the court record. (See 5 CFR 294.108(c).)

2. In an unusual situation or a situation in which information not available under Part 294 of the Civil Service Regulations is sought, the Department employee who received the subpoena shall immediately forward it and the Official Personnel Folder containing the information sought to the General Counsel of the Department for transmittal to the General Counsel, U.S. Civil Service Commission, Washington, D.C. 20415. When this is done, the Department employee shall inform the person who applied for the subpoena that the subpoena and the information sought have been sent to the Civil Service Commission pursuant to 5 CFR 294.108(c)(2) and, if necessary, and upon advice of the General Counsel of the Department, request a postponement of the scheduled appearance.

b. *Other information within the purview of this order.* When a subpoena duces tecum or other legal demand for the production of records or information relating to personnel other than as authorized pursuant to this order is served upon any officer or employee of the Department other than the Secretary, he shall comply with section 7, "Compulsory Process Requesting Documents or Testimony," of DAO 205-12, "Public Information."

**Sec. 12. Saving provision.** This order shall be deemed consistent with Department Administrative Order 205-12. Any other orders or parts of orders or delegations of authority which are inconsistent herewith are hereby superseded.

Effective date: September 17, 1971.

LARRY A. JOBE,  
Assistant Secretary  
for Administration.

[FR Doc.71-14550 Filed 10-4-71;8:48 am]

## DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

### Food and Drug Administration

[Docket No. FDC-D-363; NDA 10-866;  
NDA 11-444]

### CENTRAL PHARMACAL CO. AND WILLIAM S. MERRELL CO.

#### Neoparbel Tablets and Tace With Ergonovine Capsules; Notice of Op- portunity for Hearing on Proposal To Withdraw Approval of New- Drug Applications

In the FEDERAL REGISTER of October 24, 1970 (35 F.R. 16608), the Food and Drug Administration announced (DESI 10866) its conclusions pursuant to evaluation by the National Academy of Sciences-National Research Council, Drug Efficacy Study Group, of Neoparbel Tablets (NDA 10-866) containing pamabrom, pyrilamine maleate, homatropine methylbromide, hyoscyamine sulfate, scopolamine hydrobromide, and methamphetamine hydrochloride; and Tace with Ergonovine Capsules (NDA 11-444) containing chlorotriamterene and ergonovine maleate. The announcement stated that there is a lack of substantial evidence that the drugs are effective or effective as fixed combinations for the listed claims, and that the Commissioner of Food and Drugs intended to initiate proceedings to withdraw approval of the new-drug applications for the drugs. Interested persons were invited to submit any pertinent data bearing on the proposal within 30 days following publication of the announcement. There has been no response.

Therefore, notice is given to The Central Pharmacal Co., 116-128 East Third Street, Seymour, Indiana 47274, holder of NDA No. 10-866; William S. Merrell Co., Division Richardson-Merrell, Inc., 110 East Amity Road, Cincinnati, Ohio 54215, holder of NDA No. 11-444, and to any interested person who may be adversely affected that the Commissioner proposes to issue an order under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)) withdrawing approval of said applications and all amendments and supplements thereto on the grounds that new information before him with respect to the drugs, evaluated together with the evidence available to him when the applications were approved, shows there is a lack of substantial evidence that the drugs will have the effects they purport or are represented to have under the conditions of use prescribed, recommended, or suggested in their labeling.

In accordance with the provisions of section 505 of the Act (21 U.S.C. 355) and the regulations promulgated thereunder (21 CFR Part 130), the Commissioner will give the applicants, and any interested person who would be adversely affected by an order withdrawing such

approval, an opportunity for a hearing to show why approval of the new-drug applications should not be withdrawn. Any related drug for human use, not the subject of an approved new-drug application, may be affected by this action.

Within 30 days after publication hereof in the FEDERAL REGISTER, such persons are required to file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 6-88, 5600 Fishers Lane, Rockville, Md. 20852, a written appearance electing whether:

1. To avail themselves of the opportunity for a hearing; or
2. Not to avail themselves of the opportunity for a hearing.

If such persons elect not to avail themselves of the opportunity for a hearing the Commissioner without further notice will enter a final order withdrawing approval of the new-drug applications. Failure of such persons to file a written appearance of election within said 30 days will be construed as an election by such persons not to avail themselves of the opportunity for a hearing.

The hearing contemplated by this notice will be open to the public except that any portion of the hearing that concerns a method or process the Commissioner finds entitled to protection as a trade secret will not be open to the public, unless the respondent specifies otherwise in his appearance.

If such persons elect to avail themselves of the opportunity for a hearing they must file, within 30 days after publication of this notice in the FEDERAL REGISTER, a written appearance requesting the hearing, giving the reasons why approval of the new-drug application should not be withdrawn, together with a well-organized and full factual analysis of the clinical and other investigational data they are prepared to prove in support of their opposition. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that a genuine and substantial issue of fact requires a hearing. When it clearly appears from the data in the application and from the reasons and factual analysis in the request for the hearing that no genuine and substantial issue of fact precludes the withdrawal of approval of the application, the Commissioner will enter an order on these data, making findings and conclusions on such data.

If a hearing is requested and justified by the response to this notice, the issues will be defined, a hearing examiner will be named, and he shall issue, as soon as practicable after the expiration of such 30 days, a written notice of the time and place at which the hearing will commence (35 F.R. 7250, May 8, 1970; 35 F.R. 16631, October 27, 1970).

Received requests for a hearing, and/or elections not to request a hearing, may be seen in the office of the Hearing Clerk (address given above) during regular business hours, Monday through Friday.

This notice is issued pursuant to provisions of the Federal Food, Drug, and

Cosmetic Act (sec. 505, 52 Stat. 1052-53, as amended; 21 U.S.C. 355) and under the authority delegated to the Commissioner (21 CFR 2.120).

Dated: September 28, 1971.

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

[FR Doc. 71-14554 Filed 10-4-71; 8:48 am]

## CIVIL AERONAUTICS BOARD

[Docket No. 23105]

### AIR CAICOS, LTD.

#### Notice of Prehearing Conference and Hearing Regarding Renewal of Foreign Air Carrier Permit

Notice is hereby given that a prehearing conference in the above-entitled matter is assigned to be held on October 22, 1971, at 10 a.m. (local time) in Room 503, Universal Building, 1825 Connecticut Avenue NW., Washington, DC, before Examiner Joseph L. Fitzmaurice.

Notice is also given that the hearing may be held immediately following conclusion of the prehearing conference unless a person objects or shows reason for postponement on or before October 15, 1971.

Dated at Washington, D.C., September 30, 1971.

[SEAL] RALPH L. WISER,  
Chief Examiner.

[FR Doc. 71-14582 Filed 10-4-71; 8:52 am]

[Docket Nos. 21233, 23798; Order 71-9-112]

### FLYING TIGER CORP. ET AL.

#### Order of Tentative Approval

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 29th day of September 1971.

By Order 70-6-119, dated May 5, 1970, the Board approved various transactions within the purview of sections 408 and 401(h) of the Federal Aviation Act of 1958, as amended (the Act), as part of a plan for the corporate reorganization of Flying Tiger Line Inc. (Flying Tiger). Specifically, the Board approved the Flying Tiger Corp.'s (FTC) acquisition of control of New Tiger (FTL) which under a merger agreement with its predecessor Flying Tiger, was to receive all of the latter's properties and assets and assume all of its liabilities. The order also specifically approved the transfer of Flying Tiger's certificates of public convenience and necessity and all other operating authority to FTL. The Board's approval was made subject, inter alia, to the following condition:

6. The further acquisition of control of a common carrier or any person engaged in a phase of aeronautics by Flying Tiger Corp., New Tiger or any of their affiliates or sub-

subsidiaries, directly or indirectly, shall be submitted to the Board for prior approval;<sup>1</sup>

On September 3, 1971, FTC and its subsidiaries requested that the Board approve, under paragraph 6, Order 70-6-119, supra, the indirect acquisition of control by NAC of International Aerodyne Corp. (IAC) and its subsidiaries, of National Aircraft Leasing, Inc. (NAL) and of Maple Leaf Leasing Limited (Maple) through the acquisition by NAC of their parent, National Equipment Rental, Ltd. (NER).

On September 15, 1971, Alaska Airlines, Inc. (Alaska) filed an answer. On September 20, 1971, the applicants filed a motion for leave to file a reply which was attached thereto.<sup>2</sup>

On August 26, 1971, NAC entered into an agreement in principle with American Export Industries, Inc. (AEI) to purchase all of the stock of its wholly owned subsidiary, NER. NAC's acquisition of NER includes also the acquisition of Canberra Management Corp. (Canberra), a company owned by NER executives whose sole business is the management of NER.

NER and its subsidiaries are engaged generally in the business of leasing equipment.<sup>3</sup> Three of NER's wholly owned subsidiaries, IAC, NAL, and Maple are engaged in the business of leasing of aircraft and related activities.<sup>4</sup> Maple was formed to hold leases to Canadian companies and currently holds four jet aircraft leases to Pacific Western Airlines; it also holds about \$6 million in computer leases for Canadian companies. NAL holds title to the large jet aircraft currently leased to Seaboard World Airlines, and to Alaska Airlines, Inc. IAC is engaged in the business of leasing aircraft and aircraft engines and related activities, and as an incident to its leasing operations, it occasionally sells aircraft engines and aircraft parts. Further, IAC has two subsidiaries, Inter Air Parts Co. (Parts) which is in the business of selling IAC's store of piston parts and engines, and Liberty Air, Inc. (Liberty) which holds title to certain piston aircraft based and leased outside the United States. In addition, IAC, as a major creditor of Interior Airways, Inc. (Interior), an Alaskan airline presently involved in bankruptcy proceedings, holds 45 percent of the trustee's certificates.

<sup>1</sup> Following the consummation of the reorganization, FTC and its subsidiaries acquired control of all of the outstanding shares of North American Car Corp. (NAC), and the latter company has now been integrated as a subsidiary of FTC into its system of subsidiaries and affiliated companies.

<sup>2</sup> The requirements of Rule 4(f) of the Board's procedural regulations having been met, applicants' motion will be granted and the reply accepted for filing.

<sup>3</sup> The leases are of two types: finance leases where the lease payments over the life of the lease exceed the equipment cost and carrying charges; and shorter term rental equipment leases.

<sup>4</sup> Another NER wholly owned subsidiary, National Computer Rental, Ltd. (NCR) is the basic corporate vehicle through which NER leases data processing and related equipment.

The applicants state that the negotiated purchase price for all of the outstanding common shares of NER is \$23 million of which \$12 million is to be paid upon closing, \$4 million within 1 year thereafter, \$4 million within 2 years, and a final payment of \$3 million in 3 years; the interest rate on the unpaid principal is set at one-half point over the prime rate. Further, the applicants state that no part of the acquisition cost will be provided by FTL, nor will FTC or FTL guarantee the payment of the balance of the purchase price, and only NAC's resources will be engaged in the acquisition. The applicants further state that the acquisition is a sound and proper exercise of management discretion which can in no way burden the air transport enterprise, divert management's attention, energies or corporate resources from successfully pursuing its air transport services; that the interest in and successful operation of the airline business continue to be dominant; and that FTL is anticipating that 1971 will be one of its most successful years.

Relying upon the view that, except for the provisions of paragraph 6 of Order 70-6-119, a disclaimer of jurisdiction by the Board over the proposed transaction would be appropriate, the applicants request approval under the order. The request is based on the matters set forth in the application as hereinabove described and also expresses applicants' acquiescence in the imposition of various conditions on the Board's order of approval.

Alaska's answer requests that FTC and/or its subsidiaries be required to divest itself of any equity interest in Interior as a condition of approval of the transaction herein.

Turning first to the jurisdictional issue posed by the applicants, the Board finds that Canberra and all of the subsidiaries and affiliates of NER,<sup>5</sup> as well as NER itself,<sup>6</sup> by reason of their respective aviation supplier and other aeronautical activities, are persons engaged in a phase of aeronautics within the meaning of section 408 of the Federal Aviation Act of 1958, as amended (the Act). The Board further finds that the acquisition of control of Canberra and NER and the latter's system of subsidiaries by FTC, a person controlling an air carrier, through its affiliate, NAC, is subject to section 408 (a) (6) of the Act.<sup>7</sup>

<sup>5</sup> A possible exception is NCR, since on the basis of the present record, its aeronautical activities do not clearly appear. Interior is an intra-Alaska carrier which holds no certificate authority from the Board as an "air carrier" nor is it registered as an air taxi operator under Part 298.

<sup>6</sup> Cf. Otis Chandler (Times Mirror) and Pan American World Airways, Inc., Order 71-8-31, August 9, 1971.

<sup>7</sup> It is clear from the Board's language in Order 70-6-119, supra (see note 12), that no waiver of, or substitution for the filing of an application required under section 408 was intended. Specific conditions were imposed to remove any doubt as to acquisitions which would require at least the Board's administrative, if not statutory, approval. In any event, the procedural requirements of section 408(b) would still be applicable to the transaction herein.

However, upon consideration of the application and all of the facts of record, the Board has concluded tentatively that the acquisition of control of NER and its subsidiaries by FTC, through NAC, does not affect the control of an air carrier directly engaged in the operation of aircraft in air transportation within the meaning of the third proviso of section 408(b), does not result in creating a monopoly, and does not tend to restrain competition. Furthermore, no person disclosing a substantial interest is currently requesting a hearing and it is found that the public interest does not require a hearing.

The Board has stated that the dimensions of the extent to which air carriers may diversify are not yet delimited, and noted that diversifications may not be without some benefits.<sup>8</sup> The Board has also repeatedly expressed its concern with the possible consequences of permissible diversification of corporate activities, which include the conduct of air transportation, and its intention to monitor the means and extent of diversification. In the instant case, it does not appear that the activities of NER and its system of subsidiaries will involve Tiger's management in activities which are unrelated to its transportation expertise or resources;<sup>9</sup> and it does not appear that the operation of these companies will impair the financial strength and management of the air carrier.<sup>10</sup>

We find, therefore, that the conditions of section 408 of the Act will be fulfilled, and that the control relationships created by the proposed acquisition will not be inconsistent with the public interest, if approval thereof is made subject to appropriate conditions.

With respect to conditions, we believe first that any transfer of aircraft leasing business or subsidiaries of NER to any other company within the FTC system of subsidiaries and affiliated companies should be subject, as acquiesced in by the applicants, to prior Board approval and to the conditions set forth in paragraph 1 of Order 71-8-101, August 24, 1971. (The Flying Tiger Corp. and Tiger Leasing Corp.). Secondly, we believe that FTC and NER and their respective systems of subsidiaries and affiliated companies should be required, as contended by Alaska in its answer to the application and not opposed by the ap-

<sup>8</sup> The Flying Tiger Corp. and Tiger Leasing Corp., Order 71-6-106, June 21, 1971. The Flying Tiger Corp. and Flying Tiger Line Inc., Order 71-7-6, July 1, 1971.

<sup>9</sup> According to the applicants, present plans call for the transfer of all aircraft leasing business to Tiger Leasing with the full understanding that the ultimate disposition of the aeronautical interests of NER are fully subject to the Board's discretion in reviewing any transfer of these interests to Tiger Leasing Corp. and for the spinning off of other business to another corporation.

<sup>10</sup> In this connection, however, the Board has deferred action on an amendment previously filed in Docket 22768 (The Flying Tiger Corp. and Tiger Leasing Corp.) which requests Board approval of the transfer of \$9 million to FTC by FTL. Our action herein is not intended as any indication or present determination of the issue posed by that amendment.

plicants in their reply, to divest themselves of the trustee certificates of Interior, in such manner and at such time as the Board may in its final order of approval direct. Jurisdiction will be retained to take necessary further action.

On the basis of the foregoing, the Board tentatively concludes that it should approve without hearing under the third proviso of section 408(b) of the Act, subject to the conditions discussed above, the acquisition of control by FTC, through NAC, of IAC and its subsidiaries, of NAL and of Maple by NAC's acquisition of their parent, NER, and also of Canberra. In accordance therewith, this order, constituting notice of the Board's tentative findings will be published in the FEDERAL REGISTER and interested parties will be afforded an opportunity to file comments or request a hearing on the Board's tentative decision.

Accordingly, it is ordered, That:

1. FTC's acquisition of control, through NAC (of Canberra and of NER and its system of subsidiaries and affiliated companies under section 408(a) (6) of the Act and in accordance with the requirements of condition 6 of Order 70-6-119, May 5, 1971, be and it hereby is tentatively approved if made subject to the following conditions:

(a) The transfer of any aircraft leasing business or companies within the NER system of subsidiaries and affiliated companies to any other company within the FTC system of subsidiaries and affiliated companies shall be subject to prior Board approval and to the conditions set forth in paragraph 1 of Order 71-8-101, August 24, 1971, and the conditions, to the extent applicable, imposed in Order 70-6-119.

(b) The FTC and NER systems of subsidiaries and affiliated companies shall divest themselves of any and all interests in Interior Airways, Inc.

2. The motion of the applicants to file an otherwise unauthorized document be and it hereby is granted.

3. Interested persons are hereby afforded a period of 5 business days from the date hereof within which to file comments or request a hearing with respect to the Board's proposed action.<sup>21</sup>

4. The Attorney General of the United States be furnished a copy of this order within 1 day of publication.

This order shall be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] HARRY J. ZINK,  
Secretary.

[PR Doc.71-14580 Filed 10-4-71; 8:51 am]

<sup>21</sup> Comments so filed shall conform to the requirements of the Board's rules of practice (14 CFR Part 302).

[Docket No. 23314]

### NIPPON EXPRESS CO., LTD.

#### Notice of Prehearing Conference and Hearing Regarding Renewal of Foreign Indirect Air Carrier Permit

Notice is hereby given that a prehearing conference in the above-entitled matter is assigned to be held on November 1, 1971, at 10 a.m. (local time) in Room 805, Universal Building, 1825 Connecticut Avenue NW., Washington, DC, before Examiner Louis N. Sornson.

Notice is also given that the hearing may be held immediately following conclusion of the prehearing conference unless a person objects or shows reason for postponement on or before October 22, 1971.

Dated at Washington, D.C., September 29, 1971.

[SEAL] RALPH L. WISER,  
Chief Examiner.

[PR Doc.71-14583 Filed 10-4-71; 8:52 am]

### FEDERAL MARITIME COMMISSION

#### INDEPENDENT OCEAN FREIGHT FORWARDER LICENSES

##### Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as independent ocean freight forwarders, pursuant to section 44(a) of the Shipping Act, 1916 (75 Stat. 522 and 46 U.S.C. 841(b)).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to communicate with the Director, Bureau of Certification and Licensing, Federal Maritime Commission, Washington, D.C. 20573.

Hernando Rodriguez & Hugo Zambrano, Sur & Centro America (Freight Forwarding Inc.), 99-11 37th Avenue, Corona, NY 11368.

##### OFFICERS

Hernando Rodriguez, President; Hugo Zambrano, Export Manager.

Smith's Transfer & Storage Co., Inc., 611 South Pickett Street, Alexandria, VA 22304.

##### OFFICERS

Arthur C. Smith, Jr., President; Virgil A. Seward, Jr., Vice President; Marshall J. Summerlin, Vice President, Secretary/Treasurer; Julius Kliss, Assistant Secretary; Marie Varela, Assistant Treasurer.

C. A. Criley & Associates, Inc., 4044 128th Avenue SE., Bellevue, WA 98009.

##### OFFICERS AND DIRECTOR

C. A. Criley, President/Chairman of Board; R. G. Estes, Vice President/Director; R. J. Harshbarger, Director.

Interconex, Inc., 22 East 67 Street, New York, NY 10021.

##### OFFICERS AND DIRECTORS

Jon Thad Stephens, President; Lionel Achuck, Executive Vice President; Joe D. Stephens, Vice President; Viktor Bondarenko, Director; Renato de Bernardo, Director.

Dated: September 29, 1971.

By the Commission.

FRANCIS C. HURNEY,  
Secretary.

[PR Doc.71-14570 Filed 10-4-71; 8:50 am]

### FEDERAL RESERVE SYSTEM

#### MID AMERICA BANCORPORATION, INC.

#### Order Approving Acquisition of Bank Stock by Bank Holding Company

In the matter of the application of Mid America Bancorporation, Inc., St. Paul, Minn., for approval of acquisition of 90 percent or more of the voting shares of Mid America State Bank of Mendota Heights, Mendota Heights, Minn., a proposed new bank.

There has come before the Board of Governors, pursuant to section 3(a) (3) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(a) (3)) and § 222.3 (a) of Federal Reserve Regulation Y (12 CFR 222.3(a)), an application by Mid America Bancorporation, Inc., St. Paul, Minn., a registered bank holding company, for the Board's prior approval of the acquisition of 90 percent or more of the voting shares of Mid America State Bank of Mendota Heights, Mendota Heights, Minn. (Bank), a proposed new bank.

As required by section 3(b) of the Act, the Board gave written notice of receipt of the application to the Minnesota Commissioner of Banks and requested his views and recommendation. The Commissioner indicated that he would not object to this application.

Notice of receipt of the application was published in the FEDERAL REGISTER on August 3, 1971 (36 FR. 14284), 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.

The Board has considered the application in the light of the factors set forth in section 3(c) of the Act, including the effect of the proposed acquisition on competition, the financial and managerial resources and future prospects of the applicant and the banks concerned, and the convenience and needs of the communities to be served, and finds that:

Applicant controls four banks with aggregate deposits of approximately \$35 million, representing 0.4 percent of the total commercial bank deposits in the State, and is the fifth largest bank holding company group in Minnesota. (All banking data are as of December 31, 1970, and reflect holding company formations and acquisitions approved through August 31, 1971.) Since Bank is a proposed new bank, no existing competition would be eliminated by consummation of the proposal herein, nor would concentration be increased in any relevant area.

Bank will be located in a growing residential area 6 miles south of St. Paul. Bank's proposed site is adjacent to the first shopping complex in the Mendota Heights area. Applicant's closest subsidiary to Bank is located 5.7 miles northwest of Bank but is separated from Bank by competing banks and the Mississippi River. Applicant's existing Egan Township subsidiary is 7.2 miles southwest of Bank, and derives less than 5 percent of its business from the projected service area of Bank. The overlap apparently is due to the fact that no banks are located in the projected service area of Bank and that the Egan Township subsidiary is the bank closest to the southern portion of said area.

Consummation of the proposal would not give applicant a dominant position in the relevant market which is defined as the Minneapolis-St. Paul banking market. That market is one of the most concentrated in the country with 105 banks including six holding company groups which hold, in the aggregate, close to 74 percent of deposits, with applicant controlling the smallest percentage of deposits (0.7 percent). It appears that acquisition of Bank would enable applicant to compete more effectively with the larger organizations in the relevant market.

On the basis of the record before it, the Board concludes that consummation of the proposed acquisition would not adversely affect competition in any relevant area. The financial condition, management, and prospects of applicant and its subsidiary banks are regarded as generally satisfactory. Bank has no operating financial history. Its proposed capitalization is considered satisfactory, and Bank will be able to draw on applicant for management. Bank will receive from applicant technical and managerial resources, and aid in raising capital as needed. Bank's prospects appear favorable. The banking factors are consistent with approval. Bank's proposed location is in a service area where there are no banks and where residents and businesses generally do their banking by commuting out of the service area. The proposed bank would provide services more convenient to area customers, and should also stimulate business activity in the community. Considerations relating to the convenience and needs of the communities to be served lend some weight toward approval of the application. It is the Board's judgment that consummation of the proposed acquisition

would be in the public interest and that the application should be approved.

It is hereby ordered, On the basis of the record, that said application be and hereby is approved for the reasons summarized above, provided that the action so approved shall not be consummated (a) before the 30th calendar day following the date of this Order, or (b) later than 3 months after the date of this Order; and provided further that (c) Mid America State Bank of Mendota Heights, Mendota Heights, Minn., shall be opened for business not later than 6 months after the date of this Order. Each of the periods described in (b) and (c) may be extended for good cause by the Board, or by the Federal Reserve Bank of Minneapolis pursuant to delegated authority.

By order of the Board of Governors,<sup>1</sup>  
September 28, 1971.

[SEAL]

TYNAN SMITH,  
Secretary.

[FR Doc.71-14521 Filed 10-4-71;8:45 am]

### SECURITY NEW YORK STATE CORPORATION

#### Order Approving Acquisition of Bank Stock by Bank Holding Company

In the matter of the application of Security New York State Corp., Rochester, N.Y., for approval of acquisition of 100 percent of the voting shares of First Bank and Trust Company of Corning, Corning, N.Y.

There has come before the Board of Governors, pursuant to section 3(a)(3) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(a)(3)) and § 222.3 (a) of Federal Reserve Regulation Y (12 CFR 222.3(a)), an application by Security New York State Corp. (Applicant), Rochester, N.Y., for the Board's prior approval of the acquisition of 100 percent of the voting shares of First Bank and Trust Company of Corning (First Corning), Corning, N.Y.

As required by section 3(b) of the Act, the Board gave written notice of receipt of the application to the New York Superintendent of Banks and requested his views and recommendation. The New York State Banking Board approved an application involving the present proposal in accordance with the recommendation of the New York State Superintendent of Banks and advised the Board of its action.

Notice of receipt of the application was published in the FEDERAL REGISTER on June 24, 1971 (36 F.R. 12057), 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.

<sup>1</sup> Voting for this action: Vice Chairman Robertson and Governors Mitchell, Daane, Maisel, Brimmer, and Sherrill. Absent and not voting: Chairman Burns.

The Board has considered the application in the light of the factors set forth in section 3(c) of the Act, including the effect of the proposed acquisition on competition, the financial and managerial resources and future prospects of the applicant and the banks concerned, and the convenience and needs of the communities to be served, and finds that:

Applicant, the 19th largest banking organization and sixth largest multibank holding company in New York State, has six subsidiary banks with aggregate deposits of approximately \$478 million, representing 0.5 percent of total commercial bank deposits in the State. (All banking data are as of December 31, 1970, unless otherwise noted, and reflect all holding company formations and acquisitions approved by the Board through July 31, 1971.)

Applicant's principal subsidiary operates an extensive branch network throughout the State's Eighth Banking District and is the third largest of 31 banks located in that District, controlling 16.6 percent of that area's deposits. Consummation of this proposal, involving acquisition of the seventh largest bank in the District, would increase applicant's share of commercial bank deposits in that District to approximately 18 percent.

First Corning (deposits of \$28.6 million, constituting 11 percent of commercial bank deposits in the market) is the fourth largest of nine banks located in the Corning-Elmira area which approximates the relevant banking market.

Applicant's subsidiary located closest to First Corning is approximately 20 miles northwest of Corning in the village of Bath and is considered to operate in an adjacent market. Although there does not appear to be a significant amount of existing competition between applicant's Bath subsidiary and First Corning, some potential competition may be foreclosed by consummation of this proposal. It is likely that some increased competition between applicant's Bath subsidiary and First Corning may develop in the future absent consummation of this proposal. In addition, the proposal would eliminate First Corning as a vehicle for entry by a new competitor not now represented in the Eighth Banking District. While applicant could enter the Corning-Elmira market by establishing a de novo branch or by acquisition of a smaller bank, the present stagnant condition of the area's economy and the large number of banking offices already in the area makes these possibilities remote. Acquisition of First Corning by applicant will result in the removal of home office protection in Corning and thereby liberalize the branching possibilities in that city.

Affiliation with applicant will enable First Corning to compete more aggressively with the larger banks in the market and permit it to more adequately respond to the financial needs of the larger business firms in the area.

Although the members of the Board in varying degrees view the transaction as having an adverse effect on competition, there is unanimous agreement that the

anticompetitive effects 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. Consideration of the financial and managerial resources and future prospects of applicant and First Corning lends further weight to approval. Specifically, First Corning has experienced recent financial and managerial difficulties, and applicant proposes and appears able to undertake specific measures (including significant strengthening of First Corning's capital accounts) to improve First Corning's present financial condition and to continue to improve operating procedures. Applicant has been providing some managerial assistance to First Corning, and plans to continue to draw on its managerial resources to provide the additional assistance necessary to improve First Corning's present condition. Affiliation with applicant appears to offer the additional prospect that expanded and improved banking services, such as a more varied loan policy, will be provided to customers and First Corning's operations will be strengthened by special services provided by applicant.

*It is hereby ordered,* On the basis of the record, that said application be and hereby is approved for the reasons summarized above: *Provided,* That the action so approved shall not be consummated (a) before the 30th calendar day following the date of this order or (b) later than 3 months after the date of this order, unless such period is extended for good cause by the Board, or by the Federal Reserve Bank of New York pursuant to delegated authority.

By order of the Board of Governors,<sup>1</sup>  
September 28, 1971.

[SEAL]

TYNAN SMITH,  
Secretary.

[FR Doc.71-14522 Filed 10-4-71;8:45 am]

### UNITED BANKS OF COLORADO, 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 United Banks of Colorado, Inc., which is a bank holding company located in Denver, Colo., for prior approval by the Board of Governors of the acquisition by applicant of 80 percent or more of the voting shares of Colorado Commercial Bank, Colorado Springs, Colo.

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 Kansas City.

Board of Governors of the Federal Reserve System, September 28, 1971.

[SEAL]

TYNAN SMITH,  
Secretary of the Board.

[FR Doc.71-14523 Filed 10-4-71;8:45 am]

### UNITED CAROLINA BANCSHARES CORP.

#### Order Approving Acquisition of Bank Stock by Bank Holding Company

In the matter of the application of United Carolina Bancshares Corp., Whiteville, N.C., for approval of acquisition of 100 percent of the voting shares (less directors' qualifying shares) of the successor by merger to Cape Fear Bank & Trust Co., Fayetteville, N.C.

There has come before the Board of Governors, pursuant to section 3(a)(3) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(a)(3)), and § 222.3(a) of Federal Reserve Regulation Y (12 CFR 222.3(a)), an application by United Carolina Bancshares Corp., Whiteville, N.C., a registered bank holding company, for the Board's prior approval of the acquisition of 100 percent of the voting shares (less directors' qualifying shares) of the successor by merger to Cape Fear Bank & Trust Co., Fayetteville, N.C. (Bank). The bank into which Bank is to be merged has no significance except as a means of acquiring all of the shares of Bank. Accordingly, the proposed acquisition of the shares of the successor organization is treated herein as the proposed acquisition of the shares of Bank.

As required by section 3(b) of the Act, the Board gave written notice of receipt of the application to the Commissioner

of Banks of the State of North Carolina and requested his views and recommendation. The Commissioner recommended approval of the application.

Notice of receipt of the application was published in the FEDERAL REGISTER on August 3, 1971 (36 F.R. 14285), providing an opportunity for interested persons to submit comments and views with respect to the proposed transaction. A copy of the application was forwarded to the U.S. Department of Justice for its consideration. 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 applicant and the banks concerned, and the convenience and needs of the communities to be served. Upon such consideration the Board finds that:

Applicant, the eighth largest banking organization in North Carolina, controls two banks with deposits of \$169.9 million, representing approximately 2.3 percent of total commercial bank deposits in the State. (All banking data are as of December 31, 1970, adjusted to reflect holding company formations and acquisitions approved by the Board through August 31, 1971.) The acquisition of Bank (\$10.9 million deposits), would increase applicant's control of deposits in the State only insignificantly, and its present ranking among banking organizations in the State would remain unchanged.

Bank, with three offices, is the smallest of six banks operating in the Fayetteville-Clinton market, which is approximated by Cumberland County and the northern two-thirds of Sampson County, and holds 4.3 percent of market deposits. The five competing banks in the market are branches of banking institutions which are larger than applicant and rank among the State's seven largest banking organizations. One of applicant's subsidiary banks has an office in Robeson County, 22 miles south of Bank's main office, and neither it nor applicant's other subsidiary bank competes with Bank to any significant extent. It further appears that the proposed acquisition would not foreclose significant potential competition; a large number of existing banking institutions in the area and a low population-to-bank ratio mitigate against applicant's entry into the Fayetteville-Clinton market through the establishment of a new bank. It does not appear, therefore, that significant competition would be eliminated, nor significant potential competition foreclosed by consummation of applicant's proposal, nor that there would be adverse effects on any other bank.

The financial and managerial resources and prospects of applicant, its subsidiaries, and Bank are regarded as satisfactory and consistent with approval of the application. The major banking needs of the communities involved are

<sup>1</sup> Voting for this action: Vice Chairman Robertson and Governors Mitchell, Daane, Maisel, Brimmer, and Sherrill. Absent and not voting: Chairman Burns.

presently being met by the existing institutions; however, as a result of its affiliation with applicant, Bank would be able to offer expanded and improved services, including mortgage financing, auditing, business development, and trust and data processing services. These considerations relating to convenience and needs lend some weight in support of approval of the application. It is the Board's judgment that consummation of the proposed acquisition would be in the public interest, and that the application should be approved.

It is hereby ordered, On the basis of the record, that said application be and hereby is approved for the reasons summarized above: *Provided*, That the action so approved shall not be consummated (a) before the 30th calendar day following the date of this order or (b) later than 3 months after the date of this order, unless such period is extended for good cause by the Board or by the Federal Reserve Bank of Richmond pursuant to delegated authority.

By order of the Board of Governors,  
September 28, 1971.

[SEAL]

TYNAN SMITH,  
Secretary.

[FR Doc.71-14524 Filed 10-4-71;8:45 am]

## POSTAL RATE COMMISSION

[Docket No. R71-1]

### POSTAL RATE AND FEE INCREASES, 1971

#### Rescheduling of Conference

SEPTEMBER 30, 1971.

The post-hearing conference that was scheduled to be held at the Commerce Department on Thursday, September 30, 1971, has been canceled. It is rescheduled to meet on Wednesday, October 6, 1971, at the Post Office Department, Room 7134, at 10 a.m.

SEYMOUR WENNER,  
Chief Hearing Examiner.

[FR Doc.71-14566 Filed 10-4-71;8:49 am]

## SECURITIES AND EXCHANGE COMMISSION

### DOMINION PLAN—SERIES S, AND DOMINION PLAN—SERIES TS

[811-105, 811-106]

#### Notice of Proposal To Terminate Registration

SEPTEMBER 29, 1971.

Notice is hereby given that the Commission proposes, pursuant to section 8(f) of the Investment Company Act

<sup>1</sup> Voting for this action: Vice Chairman Robertson and Governors Mitchell, Daane, Maisel, Brimmer, and Sherrill. Absent and not voting: Chairman Burns.

of 1940 (Act), to declare by order on its own motion that The Dominion Plan—Series S and The Dominion Plan—Series TS (the Plans), c/o The Corporation Trust, Inc., First National Bank Building, Light and Redwood Streets, Baltimore, MD 21202, have ceased to be investment companies. The Plans both filed notifications of registration on Form N-8A on October 30, 1940, and were registered under the Act as unit investment trusts. Income Estates of America, Inc. (Estates), a Maryland corporation, was named in the Form N-8A registration statements as sponsor and principal underwriter of the Plans.

The Department of Assessments and Taxation of the State of Maryland has advised by letter dated April 1, 1971, that the charter of Estates was annulled on November 18, 1970, for nonpayment of franchise taxes. Furthermore, The First Pennsylvania Bank, custodian for the Plans, has advised that all of the assets of the Plans either have been distributed to registered holders of Plans' securities, or have escheated to the Commonwealth of Pennsylvania. Accordingly, it appears that the Plans and Estates have ceased to exist.

Section 8(f) of the Act provides, in pertinent part, that when the Commission, on its own motion, finds that a registered investment company has ceased to be an investment company, it shall so declare by order, and that upon the effectiveness of such order, which may be issued upon the Commission's own motion where appropriate, the registration of such company shall cease to be in effect.

Notice is further given that any interested person may, not later than October 22, 1971, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reasons for such request, and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission should order a hearing thereon. Any such communications should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon the Resident Agent at the address stated above. Proof of such service (by affidavit or in case of an attorney-at-law by certificate) shall be filed contemporaneously with the request. At any time after said date, as provided by Rule 0-5 of the rules and regulations promulgated under the Act, an order disposing of the application herein may be issued by the Commission upon the basis of the information stated in said application unless an order for hearing thereon shall be issued upon request or upon the Commission's own motion. Persons who request a hearing or advice as to whether a hearing is ordered will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

[SEAL]

RONALD F. HUNT,  
Secretary.

[FR Doc.71-14557 Filed 10-4-71;8:49 am]

[O-1368]

## PRODUCERS FINANCE COMPANY OF UTAH

### Notice of and Order for Hearing on Application for Exemption

SEPTEMBER 22, 1971.

Notice is hereby given that Producers Finance Company of Utah (applicant), 318 Valley National Bank Building, Mesa, Ariz. 85201, has filed an application pursuant to section 12(h) of the Securities Exchange Act of 1934, as amended (Exchange Act), for a finding that by reason of an overstatement of assets applicant was improperly caused to file a registration statement on Form 10 which became effective on July 30, 1965, with the Securities and Exchange Commission (Commission) and should, therefore, be granted an exemption from the provisions of the Exchange Act.

Section 12(g) of the Exchange Act requires the registration of the equity securities of every issuer which is engaged in, or in a business affecting interstate commerce, or whose securities are traded by use of the mails or any means or instrumentality of interstate commerce and, on the last day of its fiscal year, has total assets exceeding \$1 million and a class of equity security held of record initially by 750 or more persons, and after July 1, 1966, by 500 or more persons.

Section 12(h) empowers the Commission to exempt, in whole or in part, any issuer or class of issuers from the registration, periodic reporting and proxy solicitation provisions and to grant exemptions from the insider reporting and trading provisions of the Exchange Act if the Commission finds, by reason of the number of public investors, amount of trading interest in the securities, the nature and extent of the activities of the issuer, or otherwise, that such exemption is not inconsistent with the public interest or the protection of the investors.

The applicant's application states, in part:

1. That a certified audit report for the year ended December 31, 1965, reflects total assets as of that date to be \$831,366.

2. That a reduction in total assets of approximately \$300,000 occurred between the time the audits were performed for the fiscal years ending December 31, 1964, and December 31, 1965, which was caused by

- The repayment of over \$250,000 of the obligations of the company;
- The writeoff of bad debts and development expenses;
- The establishment of adequate reserves for bad debt losses on repossessed real property;
- The realization of what would have been a small amount of profit except for the foregoing losses.

3. It appears that the repayments, writeoffs and establishment of adequate reserves should have been performed prior to December 31, 1964. If this action had occurred, the company would not have shown a million dollars in assets at December 31, 1964, and, therefore, would not have filed a registration statement on Form 10 under section 12(g).

4. At the present time, the applicant is hopelessly insolvent.

5. At the present time, the applicant has between 1,600 and 1,700 shareholders.

All persons are referred to said application which is on file in the offices of the Commission at 500 North Capitol Street, Washington, DC, for a more complete presentation.

It is ordered, Pursuant to section 12(h) of the Exchange Act of 1934, as amended, that a hearing on the application of Producers Finance Company of Utah for an exemption from the requirements of section 12(g), 13, 14, 15(d), 16 and all other provisions of the Exchange Act be held on October 13, 1971, at 10 a.m. at the offices of the Securities and Exchange Commission, 500 North Capitol Street, Washington, DC. At such time the hearing room clerk will designate the room in which such hearing will be held. An officer will be designated later to preside at the hearing. Any person desiring to be heard is directed to file with the Secretary of the Commission his request, as provided by Rule 9(c) of the Commission's rules of practice, setting forth any issues of fact or law which he desires to controvert and/or setting forth any additional issues which he feels should be considered.

The Division of Corporation Finance advises that it has made a preliminary examination of the application and that, on the basis thereof, the following matters and questions are to be presented for consideration at the hearing:

1. Whether the number of public investors and the amount of trading interest, actual or potential, in applicant's securities is sufficiently limited to justify the requested exemptions;

2. Whether the nature and extent of the activities of the applicant are such to justify the requested exemptions;

3. Whether adequate information is and will be available to potential investors concerning the financial affairs of the applicant;

4. Generally whether the requested exemption or some form of a conditional exemption in modified form would be consistent with the public interest and with the protection of investors.

It is further ordered, That the Secretary of the Commission shall give notice of the aforesaid hearing by mailing a copy of this notice and order by registered mail to Producers Finance Company of Utah and that notice to all other persons be given by publication of this notice and order in the FEDERAL REGISTER, and that a general release of this Commission in respect to this notice and order be distributed to the press and mailed

to those persons whose names appear on the mailing list for releases.

By the Commission.

[SEAL] RONALD F. HUNT,  
Secretary.

[FR Doc.71-14558 Filed 10-4-71;8:49 am]

[File No. 2-37400(22-8086)]

### SCOTT PAPER CO.

#### Notice of Application and Opportunity for Hearing

SEPTEMBER 29, 1971.

Notice is hereby given that Scott Paper Co. (the Company) has filed an application under clause (ii) of section 310(b) (1) of the Trust Indenture Act of 1939 (the Act) for a finding that the trusteeship of Mortgage Guaranty Trust Company of New York (MG) under an indenture heretofore qualified under the Act, and a new indenture not qualified under the Act, is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify MG from acting as Trustee under both indentures.

Section 310(b) of the Act provides in part that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest it shall within 90 days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign. Subsection (1) of such section provides, in effect, with certain exceptions, that a trustee under a qualified indenture shall be deemed to have a conflicting interest if such trustee is trustee under another indenture under which any other securities of the same issuer are outstanding. However, under clause (ii) of subsection (1), there may be excluded from the operation of this provision another indenture under which other securities of the issuer are outstanding, if the issuer shall have sustained the burden of proving, on application to the Commission and after opportunity for hearing thereon, that trusteeship under such qualified indenture and such other indenture is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify such trustee from acting as trustee under either of such indentures.

The Company alleges that:

(1) It has issued \$100 million principal amount of 8 $\frac{3}{8}$  percent Sinking Fund Debentures due June 1, 2000 under an indenture dated as of June 1, 1970 (the 1970 Indenture) between the Company and MG. The indenture has been qualified under the Act.

(2) MG has entered into an Indenture dated as of July 1, 1971 (the 1971 Indenture) with Scott Paper Overseas Finance N.V. (Overseas), a Netherlands Antilles Co., and the Company, pursuant to which there have been issued \$20 million principal amount of Overseas' 8 $\frac{3}{4}$  percent guaranteed debentures due July 1, 1986,

which are unconditionally guaranteed by the Company. The Company is a party to the 1971 Indenture solely as a guarantor of the Debentures issued thereunder. Inasmuch as the Debentures issued under the 1971 Indenture have been offered and sold outside the United States, its territories and possessions to persons who are not nationals or residents thereof, such Debentures have not been registered under the Securities Act of 1933 and the 1971 Indenture has not been qualified under the Act.

(3) The 1970 Indenture and the 1971 Indenture are wholly unsecured and the Company is not in default under either Indenture. All Debentures issued under the 1970 Indenture rank equally with guarantee by the Company of the Debentures issued under the 1971 Indenture. Except for variations as to amounts, dates, interest rates and certain other figures, and with certain exceptions set forth in the application, the provisions of the 1970 and 1971 Indentures are substantially identical.

The Company has waived notice of hearing, and hearing, in connection with the matter referred to in this application.

For a more detailed statement of the matters of fact and law asserted, all persons are referred to the application, which is a public document on file in the offices of the Commission at 500 North Capitol Street NW., Washington, DC 20549.

Notice is further given that any interested person may, not later than October 22, 1971, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application which he desires to controvert, or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. At any time after said date, the Commission may issue an order granting the application, upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest and the interest of investors, unless a hearing is ordered by the Commission.

For the Commission by the Division of Corporation Finance, pursuant to delegated authority.

[SEAL] RONALD F. HUNT,  
Secretary.

[FR Doc.71-14559 Filed 10-4-71;8:49 am]

## TARIFF COMMISSION

[TEA-W-111]

### AMERICAN ZINC CO.

#### Workers' Petition for Determination of Eligibility To Apply for Adjustment Assistance; Notice of Investigation

On the basis of a petition filed under section 301(a) (2) of the Trade Expansion



Act of 1962, on behalf of the workers of the Dumas, Tex., plant of the American Zinc Co., the U.S. Tariff Commission, on September 28, 1971, instituted an investigation under section 301(c) (2) of the act to determine whether, as a result in major part of concessions granted under trade agreements, articles like or directly competitive with unwrought zinc, not alloyed (of the type provided for in item 626.02 of the Tariff Schedules of the United States), produced by said firm are being imported into the United States in such increased quantities as to cause, or threaten to cause, the unemployment or underemployment of a significant number or proportion of the workers of such plant.

The petitioners have not requested a public hearing. A hearing will be held on request of any other party showing a proper interest in the subject matter of the investigation, provided such request is filed within 10 days after the notice is published in the FEDERAL REGISTER.

The petition filed in this case is available for inspection at the Office of the Secretary, U.S. Tariff Commission, Eighth and E Streets NW., Washington, DC, and at the New York City Office of the Tariff Commission located in Room 437 of the Customhouse.

Issued: September 29, 1971.

By order of the Commission.

[SEAL] KENNETH R. MASON,  
Secretary.

[FR Doc.71-14533 Filed 10-4-71;8:46 am]

[TEA-W-113]

#### ARMSTRONG GLASS CO.

#### Workers' Petition for Determination of Eligibility To Apply for Adjustment Assistance; Notice of Investigation

Upon petition under section 301(a) (2) of the Trade Expansion Act of 1962 filed on behalf of the production and maintenance workers of Armstrong Glass Co., Erwin, Tenn., the U.S. Tariff Commission on September 28, 1971, instituted an investigation under section 301(c) (2) of the said act to determine whether, as a result in major part of concessions granted under trade agreements, articles like or directly competitive with rolled glass (of the types described in items 541.11, 541.21, and 541.31 of the Tariff Schedules of the United States) produced by the company are being imported into the United States in such increased quantities as to cause, or threaten to cause, the unemployment, or underemployment of a significant number or proportion of the workers of such company.

Pursuant to section 403(a) of the Trade Expansion Act of 1962, this investigation is consolidated with the investigation of the glass industry being conducted by the Tariff Commission under section 301(b) of the Trade Expansion Act (Investigation No. TEA-I-23). The industry investigation was in-

stituted by the Commission on August 16, 1971 (36 F.R. 16223), and a hearing is scheduled to be held at 10 a.m., e.s.t., on November 9, 1971, in the Hearing Room, Tariff Commission Building, Eighth and E Streets NW., Washington, DC.

The petition filed in this case is available for inspection at the Office of the Secretary, U.S. Tariff Commission, Eighth and E Streets NW., Washington, DC, and at the New York City Office of the Tariff Commission located in Room 437 at the Customhouse.

Issued: September 30, 1971.

By order of the Commission.

[SEAL] KENNETH R. MASON,  
Secretary.

[FR Doc.71-14569 Filed 10-4-71;8:50 am]

[TEA-W-112]

#### BIBB MANUFACTURING CO.

#### Workers' Petition for Determination of Eligibility To Apply for Adjustment Assistance; Notice of Investigation

On the basis of a petition filed under section 301(a) (2) of the Trade Expansion Act of 1962, on behalf of the workers of the Bibb Manufacturing Co., Macon, Ga., the U.S. Tariff Commission on September 28, 1971, instituted an investigation under section 301(c) (2) of the act to determine whether, as a result in major part of concessions granted under trade agreements, articles like or directly competitive with yarns, fabrics, and other articles (of the types described in the following provisions of the Tariff Schedules of the United States (TSUS): yarns—301.01-19, 302.01-19, and 310.01-02, -10, -11, -40, -50; fabrics—320.01-30, 321.01-30, 322.01-30, 323.01-30, 324.01-30, 325.01-30, and 357.80; sheets and pillow cases—363.30; and blankets—363.40, 363.45 and 363.85), produced by the Bibb Manufacturing Co., Macon, Ga., are being imported into the United States in such increased quantities as to cause, or threaten to cause, the unemployment or underemployment of a significant number or proportion of the workers of the firm.

The petitioners have not requested a public hearing. A hearing will be held on request of any other party showing a proper interest in the subject matter of the investigation, provided such request is filed within 10 days after the notice is published in the FEDERAL REGISTER.

The petition filed in this case is available for inspection at the Office of the Secretary, U.S. Tariff Commission, Eighth and E Streets NW., Washington, DC, and at the New York City Office of the Tariff Commission located in room 437 of the Customhouse.

Issued: September 29, 1971.

By order of the Commission.

[SEAL] KENNETH R. MASON,  
Secretary.

[FR Doc.71-14634 Filed 10-4-71;8:46 am]

[TEA-F-35]

#### J. H. BONCK CO., INC.

#### Petition for Determination of Eligibility To Apply for Adjustment Assistance; Notice of Investigation

*Investigation instituted.* Upon petition under section 301(a) (2) of the Trade Expansion Act of 1962, filed by J. H. Bonck Co., Inc., New Orleans, La., the U.S. Tariff Commission, on September 28, 1971, instituted an investigation under section 301(c) (1) of the said act to determine whether, as a result in major part of concessions granted under trade agreements, articles like or directly competitive with men's and boys' shirts, not knit, of the type produced by the aforementioned firm, are being imported into the United States in such increased quantities as to cause, or threaten to cause, serious injury to such firm.

The petitioner has not requested a public hearing. A hearing will be held on request of any other party showing a proper interest in the subject matter of the investigation, provided such request is filed within 10 days after the notice is published in the FEDERAL REGISTER.

*Inspection of petition.* The petition filed in this case is available for inspection at the Office of the Secretary, U.S. Tariff Commission, Eighth and E Streets NW., Washington, DC, and at the New York City office of the Tariff Commission located in Room 436 of the Customhouse.

Issued: September 29, 1971.

By order of the Commission.

[SEAL] KENNETH R. MASON,  
Secretary.

[FR Doc.71-14532 Filed 10-4-71;8:46 am]

[AA1921-81]

#### BICYCLES FROM WEST GERMANY

#### Notice of Investigation and Hearing

Having received advice from the Treasury Department on September 28, 1971, that bicycles from West Germany are being, or are likely to be, sold in the United States at less than fair value, the United States Tariff Commission has instituted an investigation under section 201(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)), to determine whether an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States.

*Hearing.* A public hearing in connection with the investigation will be held in the Tariff Commission's Hearing Room, Tariff Commission Building, Eighth and E Streets NW., Washington, D.C., beginning at 10 a.m., e.s.t., on November 16, 1971. All parties will be given opportunity to be present, to produce evidence, and to be heard at such hearing. Interested parties desiring to appear at the public hearing should notify the Secretary of the Tariff Commission, in

writing, at its offices in Washington, D.C., at least 5 days in advance of the date set for the hearing.

Issued: September 29, 1971.

By order of the Commission.

[SEAL] KENNETH R. MASON,  
Secretary.

[FR Doc.71-14530 Filed 10-4-71;8:46 am]

[AA1921-82]

### TUBELESS TIRE VALVES FROM CANADA

#### Notice of Investigation and Hearing

Having received advice from the Treasury Department on September 28, 1971, that tubeless tire valves from Canada are being, or are likely to be, sold in the United States at less than fair value, the U.S. Tariff Commission has instituted an investigation under section 201(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)), to determine whether an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States.

**Hearing.** A public hearing in connection with the investigation will be held in the Tariff Commission's Hearing Room, Tariff Commission Building, Eighth and E Streets NW., Washington, D.C., beginning at 10 a.m., e.s.t., on November 22, 1971. All parties will be given opportunity to be present, to produce evidence, and to be heard at such hearing. Interested parties desiring to appear at the public hearing should notify the Secretary of the Tariff Commission, in writing, at its offices in Washington, D.C., at least 5 days in advance of the date set for the hearing.

Issued: September 29, 1971.

By order of the Commission.

KENNETH R. MASON,  
Secretary.

[FR Doc.71-14531 Filed 10-4-71;8:46 am]

## INTERSTATE COMMERCE COMMISSION

### ASSIGNMENT OF HEARINGS

SEPTEMBER 30, 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.

Correction:

MC 126276 (Sub-No. 37), Fast Motor Service, Inc., in lieu of MC 126126 (Sub-No. 37), Fast Motor Freight, Inc., assigned November 2, 1971, in Room 1430, Everett McKinley Dirksen Building, 219 South Dearborn Street, Chicago, IL.

[SEAL] ROBERT L. OSWALD,  
Secretary.

[FR Doc.71-14588 Filed 10-4-71;8:50 am]

### ASSIGNMENT OF HEARINGS

SEPTEMBER 30, 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 issue 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 85465 Sub 36, West Nebraska Express, Inc., assigned December 6, 1971, in Room 1430, Federal Building, 1961 Stout Street, Denver, CO.

MC 111812 Sub 420, Midwest Coast Transport, Inc., assigned December 8, 1971, in Room 1430, Federal Building, 1961 Stout Street, Denver, CO.

MC 124211 Sub 181, Hilt Truck Line, Inc., assigned December 2, 1971, in Room 1430, Federal Building, 1961 Stout Street, Denver, CO.

MC 126183 Sub 3, Bowers Transfer & Storage Co., assigned November 29, 1971, in Room 1430, Federal Building, 1961 Stout Street, Denver, CO.

MC 134599 Sub 15, Interstate Contract Carrier Corp., assigned December 7, 1971, in Room 1430, Federal Building, 1961 Stout Street, Denver, CO.

MC 115826 Sub 214, W. J. Digby, Inc., assigned December 13, 1971, in Room 1430, Federal Building, 1961 Stout Street, Denver, CO.

MC 134738 Sub 1, Lawrence D. Willoughby and Robert Fritz, doing business as Solon Equipment, now assigned October 13, 1971, at Cleveland, Ohio, postponed indefinitely.

MC 127834 Sub 59, Cherokee Hauling & Rigging, Inc., now assigned October 4, 1971, at Louisville, Ky., canceled and application dismissed.

FD 26583 Detroit and Toledo Shore Line Railroad, petition for joint use of terminal facilities at Trenton, Mich., now assigned October 14, 1971, at Toledo, Ohio, postponed indefinitely.

MC 125474 Sub 29, Bulk Haulers, Inc., MC 124078 Sub 476, Schwerman Trucking Co., continued to October 26, 1971, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 129307 Sub 40, McKee Lines, Inc., now assigned October 26, 1971, at Chicago, Ill., advanced to October 12, 1971, in Room 4218, Federal Building, 234 Summit Street, Toledo, OH.

FD 26508 Penn Central Transportation Co., joint use of terminal facilities Detroit and

Toledo Shoreline Railroad Co. at Monroe, Mich., now assigned October 18, 1971, at Toledo, Ohio, is canceled.

[SEAL] ROBERT L. OSWALD,  
Secretary.

[FR Doc.71-14590 Filed 10-4-71;8:50 am]

### FOURTH SECTION APPLICATION FOR RELIEF

SEPTEMBER 30, 1971.

Protests to the granting of an application must be prepared in accordance with § 1100.40 of the general rules of practice (49 CFR 1100.40) and filed within 15 days from the date of publication of this notice in the FEDERAL REGISTER.

#### LONG-AND-SHORT HAUL

FSA No. 42283—*Superphosphate to East Clinton, Ill.* Filed by M. B. Hart, agent (No. A6283), for interested rail carriers. Rates on superphosphate (including diammonium phosphate and monoammonium phosphate), in carloads, as described in the application, from Aurora and Lee Creek, N.C., to East Clinton, Ill.

Grounds for relief—Market competition.

Tariff—Supplement 29 to Southern Freight Association, agent, tariff ICC S-948. Rates are published to become effective on November 5, 1971.

By the Commission.

[SEAL] ROBERT L. OSWALD,  
Secretary.

[FR Doc.71-14589 Filed 10-4-71;8:50 am]

[Notice 374]

### MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

SEPTEMBER 30, 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 (6) 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 79577 (Sub-No. 37 TA), filed September 22, 1971. Applicant: OIL-FIELDS TRUCKING COMPANY, 1601 South Union Avenue, Post Office Box 751, Bakersfield, CA 93302. Applicant's representative: Roland B. Ernst (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Distilled water*, from the following California points: Etiwanda, Cool Water, San Bernardino, Highgrove, San Onofre, Huntington Beach, Alamitos, Long Beach, Redondo Beach, El Segundo, Manadalay, and Ormond Beach, to the Southern California Edison Co. Mohave Power Generating Plant, Clark County, Nev., near Davis Dam, for 180 days. Supporting shipper: Southern California Edison Co., Post Office Box 800, Rosemead, CA 91770. Send protests to: Walter W. Strakosch, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 7708 Federal Building, 300 North Los Angeles Street, Los Angeles, CA 90012.

No. MC 97357 (Sub-No. 41 TA), filed September 23, 1971. Applicant: ALLYN TRANSPORTATION COMPANY, 14011 South Central Avenue, Los Angeles, CA 90059. Applicant's representative: Carl H. Fritze, 1545 Wilshire Boulevard, Los Angeles, CA 90017. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Distilled water*, in bulk, from the plantsites of Southern California Edison Co. at or near Los Alamitos, Daggett, El Segundo, Etiwanda, Highgrove, Huntington Beach, Long Beach, Oxnard, Redondo Beach, San Bernardino, and San Onofre, Calif., to the Mojave Steam Electric Plant of Southern California Edison Co., located in Clark County, Nev., near Bullhead City, Ariz., for 180 days. Supporting shipper: Southern California Edison Co., Post Office Box 800, Rosemead, CA 91770. Send protests to: Walter W. Strakosch, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 7708 Federal Building, 300 Los Angeles Street, Los Angeles, CA 90012.

No. MC 107403 (Sub-No. 824 TA), filed September 23, 1971. Applicant: MATLACK, INC., 10 West Baltimore Avenue, Lansdowne, PA 19050. Applicant's representative: John Nelson (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Cement*, in bulk, from Bayonne and Newark, N.J., to points in Connecticut, Delaware, Maryland, New Jersey, New York, Pennsylvania, and the District of Columbia, for 180 days. Supporting shipper: Atlantic Cement Co., Inc., Post Office Box 30, Stamford, CT 06904. Send protests to: Ross A. Davis, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 1518 Walnut Street, Room 1600, Philadelphia, PA 19102.

No. MC 108393 (Sub-No. 50 TA), filed September 23, 1971. Applicant: SIGNAL

DELIVERY SERVICE, INC., 930 North York Road, Room 214, Hinsdale, IL 60521. Applicant's representative: Eugene L. Cohn, 1 North La Salle Street, Chicago, IL 60602. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Parts of electrical and gas appliances, and equipment, materials, and supplies*, used in the manufacture, distribution and repair of electrical or gas appliances, for the account of Whirlpool Corp., from Goshen, Ind., to St. Joseph, Mich., Clyde, Marion, and Findlay, Ohio, for 180 days. Supporting shipper: Carl R. Anderson, Director of Traffic, Whirlpool Corp., Benton Harbor, Mich. 49022. Send protests to: William J. Gray, Jr., District Supervisor, Interstate Commerce Commission, Bureau of Operations, Everett McKinley Dirksen Building, 219 South Dearborn Street, Room 1086, Chicago, IL 60604.

No. MC 120028 (Sub-No. 4 TA), filed September 23, 1971. Applicant: CRAW CARTING, INC., 200 Exchange Street, Rochester, NY 14614. Applicant's representative: Raymond A. Richards, 23 West Main Street, Webster, NY 14580. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Wines and champagnes*, in glass, and *advertising material*, when moving in shipper or railroad trailers, and *empty trailers* in the reverse direction, from Hammondsport, N.Y., to Rochester, N.Y., for 180 days. Supporting shipper: Mr. Donald M. Green, sales service manager, The Taylor Wine Co., Inc., Hammondsport, N.Y. 14840. Send protests to: District Supervisor Morris H. Gross, Interstate Commerce Commission, Bureau of Operations, Room 104, O'Donnell Building, 301 Erie Boulevard West, Syracuse, NY 13202.

No. MC 126142 (Sub-No. 7 TA), filed September 20, 1971. Applicant: GLEASON TRANSPORTATION CO., INC., Post Office Box 907, White River Junction, VT 05001. Applicant's representative: Frederick T. O'Sullivan, 372 Granite Avenue, Milton, MA 02186. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Meat*, cooked, cured, smoked, dry salted, and (2) *sausages*, cooked, cured, or preserved, in mechanically refrigerated vehicles, from Springfield, Vt., to Claremont, N.H., for 180 days. Supporting shipper: Colonial Provision Co., Inc., 1100 Massachusetts Avenue, Boston, MA 02125. Send protests to: Martin P. Monaghan, Jr., district supervisor, Interstate Commerce Commission, Bureau of Operations, 52 State Street, Room 5, Montpelier, VT 05602. NOTE: Applicant states this can be tacked to applicant's Sub 1 and Sub 5, service from Boston, Mass.

No. MC 126483 (Sub-No. 19 TA), filed September 23, 1971. Applicant: HAROLD DICKEY TRANSPORT, INC., Packwood, Iowa 52580. Applicant's representative: Kenneth F. Dudley, Post Office Box 279, Ottumwa, IA 52501. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transport-

ing: (1) *Wine and champagnes*, from Fairfield, Iowa, to points in Texas; and (2) *bottles*, from Alton and Steator, Ill., to Fairfield, Iowa, for 180 days. Supporting shipper: Gino Wine Corp., Fairfield, Iowa 52556. Send protests to: Ellis L. Annett, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 677 Federal Building, Des Moines, Iowa 50309.

No. MC 126780 (Sub No. 6 TA), filed September 23, 1971. Applicant: MACK E. BURGESS, doing business as BUILDERS TRANSPORT, 409 14th Street SW., Post Office Box 1022, Great Falls, MT 59401. Applicant's representative: Howard C. Burton, 504 Strain Building, Great Falls, Mont. 59401. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Building materials, gypsum wallboard and gypsum products and materials and supplies used in the manufacture, distribution, and installation thereof*, from the plantside of Georgia Pacific Corp., located at or near Lovell, Wyo., to points in South Dakota and North Dakota (traversing Wyoming and Montana, with return of pallets, containers, and rejected or damaged shipments, for 120 days. Supporting shipper: Georgia Pacific Corp., 900 Southwest Fifth Avenue, Portland, OR. Send protests to: Paul J. Labane, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 251, U.S. Post Office Building, Billings, Mont. 59101. NOTE: Applicant does propose to give single carried service to points in Saskatchewan and Alberta, Canada where he holds authority.

No. MC 127170 (Sub-No. 9 TA), filed September 23, 1971. Applicant: CENTRAL STATES TRUCKING, INC., Post Office Box 26, 1201 Main Street, Donnellson, IA 52625. Applicant's representative: Thomas F. Kilroy, 2111 Jefferson Davis Highway, Arlington, VA. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Insecticides, fertilizers, fungicides, and herbicides*, in packages or containers, from Council Bluffs, Iowa, to points in Colorado and Wyoming, for 180 days. Supporting shipper: Chevron Chemical Co., Post Office Box 282, Ortho Way, Fort Madison, IA 52627. Send protests to: Ellis L. Annett, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 677 Federal Building, Des Moines, Iowa 50309.

No. MC 129663 (Sub-No. 6 TA), filed September 22, 1971. Applicant: BORIGHT TRUCKING CO., INC., Boright Avenue, Kenilworth, N.J. 07033. Applicant's representative: Sidney Ostrowitz (same address as above). Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Plastic articles*, from Kenilworth, N.J., to points in Texas, under continuing contract with Gilbert Plastics, Inc., Kenilworth, N.J., for 180 days. Supporting shipper: Gilbert Plastics, Inc., Boright Avenue, Kenilworth, N.J.

07033. Send protests to: District Supervisor Robert E. Johnston, Bureau of Operations, Interstate Commerce Commission, 970 Broad Street, Newark, NJ 07102.

No. MC 126473 (Sub-No. 19 TA), filed September 23, 1971. Applicant: NORTH STAR TRANSPORT, INC., Post Office Box 51, Thief River Falls, MN 56701. Applicant's representative: Robert P. Sack, Post Office Box 6010, West St. Paul, MN 55118. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Plastic sheet or slabs*, cellular or expanded, from Doylestown, Pa., to Moorhead, Minn., for 180 days. Supporting shipper: Arctic Enterprises, Inc., Thief River Falls, Minn. 56701. Send protests to: J. H. Amb, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Post Office Box 2340, Fargo, ND 58102.

No. MC 134714 (Sub-No. 2 TA), filed September 22, 1971. Applicant: TRANSPORTOR'S INC., 419 Dover Center Road, Bay Village, OH 44140. Applicant's representative: James E. Davis, 611 West Market Street, Akron, OH 44303. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Finished modular unit concrete slabs, with kitchen and bathroom facilities, walls and ceilings attached thereto*, carried on special carriers, from Akron, Ohio to Kalamazoo, Mich., and to Indianapolis, Ind., for 180 days. Supporting shipper: Core Systems, Inc., 420 Kenmore Boulevard, Akron, OH. Send protests to: District Supervisor G. J. Baccel, Interstate Commerce Commission, Bureau of Operations, 181 Federal Office Building, 1240 East Ninth Street, Cleveland, OH 44199.

No. MC 133884 (Sub-No. 1 TA), filed September 22, 1971. Applicant: BRUCE FULLER, 1710 Main Street, Buhl, ID 83316. Applicant's representative: Charles J. Kimball, Post Office Box 82028, Lincoln, NE 68501. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Blood flour and brewers dried yeast*, from Denver and Greeley, Colo., to Gardner, Pa., under contract with Ragen, Inc., for 180 days. NOTE: Applicant does not intend to tack authority with existing authority, nor interline with other carriers. Supporting shipper: Rangen, Inc., Buhl, Idaho. Send protests to: C. W. Campbell, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 455 Federal Building and U.S. Courthouse, Boise, Idaho 83702.

No. MC 134145 (Sub-No. 8 TA), filed September 23, 1971. Applicant: NORTH STAR TRANSPORT, INC., Post Office Box 51, Thief River Falls, MN 56701. Applicant's representative: Robert P. Sack, Post Office Box 6010, West St. Paul, MN 55118. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Boxes, fibreboard or pulpboard*, from Wichita, Kans., to Roseau, Minn., for 180 days. Supporting shipper: Polaris Industries,

Roseau, Minn. 56751. Send protests to: J. H. Amb, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Post Office Box 2340, Fargo, ND 58102.

No. MC 135529 (Sub-No. 3 TA), filed September 23, 1971. Applicant: COOK TRANSPORTS INC., 303 East Orleans Street, Post Office Box 153, Paxton, IL 60957. Applicant's representative: Charles R. Young, 4 West Seminary Street, Danville, IL 61832. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Dry fertilizer*, in bags, from Danville, Ill., to points in Indiana, Kentucky, Nebraska, Missouri, Ohio, Michigan, Wisconsin, Minnesota, and Iowa, for 180 days. Supporting shipper: Agrico Chemical Division, Continental Oil Co., Post Office Box 346, Memphis, TN 38101. Send protests to: Robert G. Anderson, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Everett McKinley Dirksen Building, 219 South Dearborn Street, Room 1086, Chicago, IL 60604.

No. MC 135659 (Sub-No. 1 TA), filed September 23, 1971. Applicant: ROCKET MOTOR FREIGHT LINES, INC., 1026 North Elmwood, Peoria, IL 61601. Applicant's representative: Routman & Lawley, 300 Reich Building, Springfield, Ill. 62701. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Gasoline*, in bulk, in tank vehicles, from Chilli-cothe, Ill., to Davenport, Iowa, for 180 days. Supporting shipper: Star Service and Petroleum Co., 800 North Skinker Boulevard, St. Louis, MO 63130. Send protests to: Raymond E. Mauk, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Everett McKinley Dirksen Building, 219 South Dearborn Street, Room 1086, Chicago, IL 60604.

No. MC 135942 (Sub-No. 1 TA), filed September 23, 1971. Applicant: MAX BRONES, doing business as BRONES LIVESTOCK, Joice, Iowa 50446. Applicant's representative: C. L. Wornson, 824 Brick and Tile Building, Mason City, Iowa 50401. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Corrugated plastic drainage tubing*, from Lake Mills, Iowa, to points in Illinois, Indiana, Kansas, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, and Wisconsin and, on return materials, equipment, and supplies used in the manufacture, distribution, and installation of corrugated plastic drainage tubing (except commodities in bulk), from points in Illinois, Indiana, Kansas, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, and Wisconsin to Lake Mills, Iowa, for 180 days. Supporting shipper: Certain-Teed/Daymond Co., Valley Forge, Pa. 19481. Send protests to: Ellis L. Annett, District Supervisor, Interstate Commerce Commission, Bureau

of Operations, 677 Federal Building, Des Moines, Iowa 50309.

No. MC 135956 (Sub-No. 1 TA), filed September 22, 1971. Applicant: A-1 COMPACTION, INC., 325 Yonkers Avenue, Yonkers, NY 10703. Applicant's representative: George Olsen, 69 Tonnele Avenue, Jersey City, NJ 07306. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Such commodities as is sold, used, or dealt in by mail order business houses and trash*, between points in the New York, N.Y., commercial zone, as defined by the Commission, Baltic, Conn., Providence, R.I., Webster and Springfield, Mass., White Plains, N.Y., under continuing contract with Bevis Industries, Inc., and its Subsidiaries, for 180 days. Supporting shipper: Bevis Industries, Inc., Attention: Mr. John Siciliano, Traffic Manager, Casper Division, 20 Bank Street, White Plains, NY 10606. Send protests to: Stephen P. Tomany, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 1807, New York, N.Y. 10007.

No. MC 136013 TA, filed September 22, 1971. Applicant: BAKERSFIELD EXPRESS, INC., 2501 South Alameda Street, Los Angeles, CA 90058. Applicant's representative: Ernest D. Salm, 3846 Evans Street, Los Angeles, CA 90027. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Plastic articles*, weighing not more than 4 pounds per cubic foot, from the plantsite of Mobil Chemical Co. at Oldale, Calif., to points in Arizona, Idaho, Nevada, and Utah, for 180 days. Supporting shipper: Mobil Chemical Co., Plastics Division, Post Office Box 2538, Bakersfield, CA 93303. Send protests to: Walter W. Strakosch, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 7708, Federal Building, 300 North Los Angeles Street, Los Angeles, CA 90012.

By the Commission.

[SEAL] ROBERT L. OSWALD,  
Secretary.

[FR Doc.71-14584 Filed 10-4-71;8:50 am]

[Notice 759]

## MOTOR CARRIER TRANSFER PROCEEDINGS

SEPTEMBER 30, 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-73131. By order of September 13, 1971, the Motor Carrier Board approved the transfer to James S. Edgell, Centuria, Wis., of the operating rights in Certificate No. MC-62679 issued June 17, 1959, to Leonard Erickson, Milltown, Wis., authorizing the transportation of livestock, from Luck, Lake Town, Eureka, Milltown, Bone Lake, Clam Falls, West Sweden, Lorain, McKinley, Sterling, Georgetown, Johnstown, St. Croix Falls, and Balsam Lake, Wis., to South St. Paul, and Newport, Minn.; feed, fertilizer, farm machinery, seed, twine, household goods, groceries, including flour, and oil, in containers, from South St. Paul, St. Paul, Newport, and Minneapolis, Minn., to the above-specified origin points; livestock, and agricultural commodities, from Milltown, Georgetown, Luck, Bone Lake, Eureka, Balsam Lake, and St. Croix Falls, Wis., to South St. Paul, St. Paul, Minneapolis, and Newport, Minn.; general commodities, from South St. Paul, St. Paul, Minneapolis, and Newport, Minn., to points specified immediately above, except St. Croix Falls, Luck, and Balsam Lake, and Centuria, Wis.; and meat scraps, from South St. Paul, Minn., to Luck, Wis. A. R. Fowler, registered practitioner, 2288 University Avenue, St. Paul, MN 55114, representative for applicants.

No. MC-FC-73134. By order of September 13, 1971, the Motor Carrier Board approved the transfer to Buckeye Motor Services, Inc., Troy, Ohio, of the operating rights in Permit No. MC-100448 issued November 25, 1941, to Daniel Morgan Gossett, doing business as Buckeye Motor Service, Troy, Ohio, authorizing the transportation of plain and gummed paper, gummed cloth, plain and gummed paper and cloth combined, and similar products of paper manufacturing plants, between Troy, Ohio, and Hamilton, Ohio. John A. Wannemacher, 6-8 South Plum Street, Troy, OH 45373, attorney for applicants.

No. MC-FC-73141. By order of September 13, 1971, the Motor Carrier Board approved the transfer to Ray Kurtz, Orange, Calif., of Corrected Certificate of Registration No. MC-120999 (Sub-No. 1) issued July 1, 1970, to Norma G. Williams and Carol G. Rothermel, a partnership, doing business as Nor-Cal Tank Lines, La Habra, Calif., evidencing a right to engage in transportation in interstate commerce as described in certificate No. 44399, dated June 20, 1950, transferred by Nos. 53350, 73536, and August 26, 1969, issued by the California Public Utilities Commission. Ernest D. Salm, registered practitioner, 3846 Evans

Street, Los Angeles, CA 90027, representative for applicants.

No. MC-FC-73146. By order of September 13, 1971, the Motor Carrier Board approved the transfer to Calvin T. Vernon, doing business as Emporia Motor Freight, Emporia, Kans., of the operating rights in Certificate No. MC-44750 issued December 11, 1970, to Raymond L. Kutz, doing business as Kutz Brothers Truck Line, Strong City, Kans., authorizing the transportation of livestock, from Strong City, Kans., to Kansas City, Mo., and general commodities, with usual exceptions, from Kansas City, Mo., to Strong City, Kans., serving Kansas City, Kans., as an intermediate point and North Kansas City, Mo., as an off-route point, in each instance, and numerous specified commodities, including automobile batteries and tires, refrigerators, carbon dioxide gas in containers, and empty sugar barrels, between Kansas City, Mo., and Emporia, Kans., serving the intermediate point of Kansas City, Kans., and from Kansas City, Mo., to Cottonwood Falls, Kans. John L. Richeson, First National Bank Building, Ottawa, Kans. 66067, attorney for applicants.

No. MC-FC-73147. By order of September 13, 1971, the Motor Carrier Board approved the transfer to Cornelius Spaans and Henry D. Spaans, a partnership, doing business as Spaans Bros., Stickney, S. Dak., of the operating rights in Certificates Nos. MC-31509 and MC-31509 (Sub-No. 1) issued January 21, 1952, and November 16, 1956, respectively, to Herbert Earl Mayhew, doing business as Mayhew Truck Line, Mitchell, S. Dak., authorizing the transportation of washing machines, lubricating oil and grease, hardware, farm machinery, binder twine, tankare, dressed poultry, fertilizer in bags, feed, livestock, grain, and seed, between and from and to points as specified in Iowa, South Dakota, Nebraska, and Minnesota; and emigrant movables and household goods, between Mitchell, S. Dak., and points within 30 miles thereof, on the one hand, and, on the other, points in Iowa, Minnesota, and Nebraska. A. R. Fowler, registered practitioner, 2288 University Avenue, St. Paul, MN 55114, representative for applicants.

No. MC-FC-73162. By order of September 13, 1971, the Motor Carrier Board approved the transfer to Svane and Company, a corporation, San Francisco, Calif., of Certificate of Registration No. MC-99980 (Sub-No. 1) issued November 13, 1964, to Peter Svane, doing business as Svane and Co., San Francisco, Calif., evidencing a right to engage in transportation in interstate commerce as described in Certificate No. 60844, dated October 4, 1960, issued by the Public Utilities Commission of California. E. H. Griffiths, registered practitioner,

433 Turk Street, San Francisco, CA 94102, representative for applicants.

[SEAL] ROBERT L. OSWALD,  
Secretary.  
[FR Doc.71-14585 Filed 10-4-71;8:50 am]

[Notice 759-A]

### MOTOR CARRIER TRANSFER PROCEEDINGS

SEPTEMBER 30, 1971.

Application filed for temporary authority under section 210a(b) in connection with transfer application under section 212(b) and Transfer Rules, 49 CFR Part 1132:

No. MC-FC-73219. By application filed September 24, 1971, DAN'S TRUCKING, INC., Post Office Box 49, Davis City, IA 50065, seeks temporary authority to lease the operating rights of ORCUTT TRANSPORT SYSTEM, INC. (Internal Revenue Service, Successor-in-Interest), 347 Federal Building, Des Moines, Iowa 50302, under section 210a(b). The transfer to DAN'S TRUCKING, INC., of the operating rights of ORCUTT TRANSPORT SYSTEM, INC., (Internal Revenue Service, Successor-in-Interest), is presently pending.

By the Commission.

[SEAL] ROBERT L. OSWALD,  
Secretary.  
[FR Doc.71-14586 Filed 10-4-71;8:50 am]

[Notice 759-B]

### MOTOR CARRIER TRANSFER PROCEEDINGS

SEPTEMBER 30, 1971.

Application filed for temporary authority under section 210a(b) in connection with transfer application under section 212(b) and Transfer Rules, 49 CFR Part 1132:

No. MC-FC-73225. By application filed September 29, 1971, DISTILLERY TRANSFER SERVICE, INC., Box 516, Bardstown, KY 40004, seeks temporary authority to lease the operating rights of MARIE RODGERS SADLER, EXECUTRIX, ESTATE OF FRED E. SADLER, doing business as SADLER TRUCK LINE, c/o C. V. SANDERS, Third and Buckman Streets, Shepherdsville, KY 40165, under section 210a(b). The transfer to DISTILLERY TRANSFER SERVICE, INC., of the operating rights of MARIE RODGERS SADLER, EXECUTRIX, ESTATE OF FRED E. SADLER, doing business as SADLER TRUCK LINE, is presently pending.

By the Commission.

[SEAL] ROBERT L. OSWALD,  
Secretary.  
[FR Doc.71-14587 Filed 10-4-71;8:50 am]

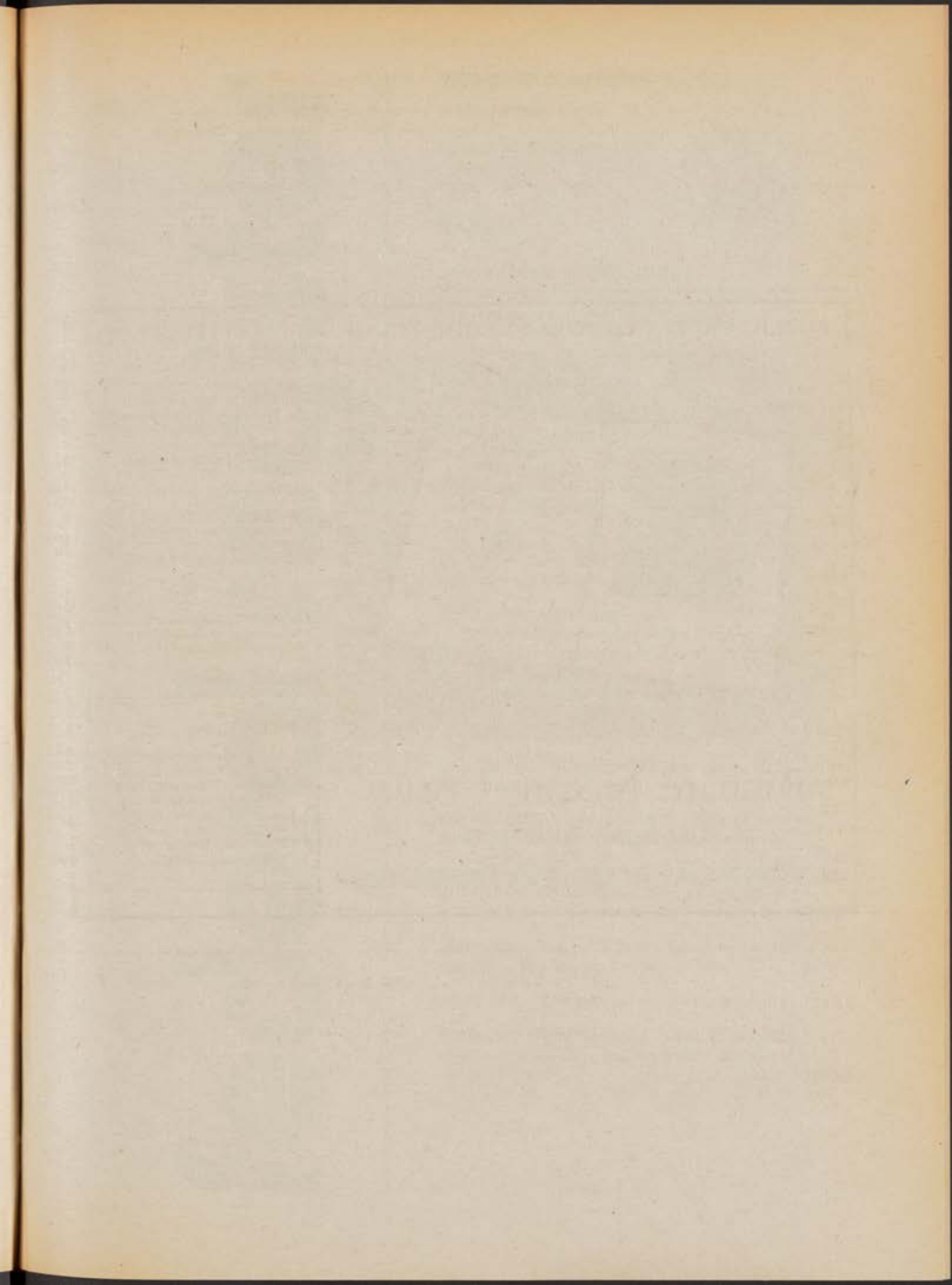
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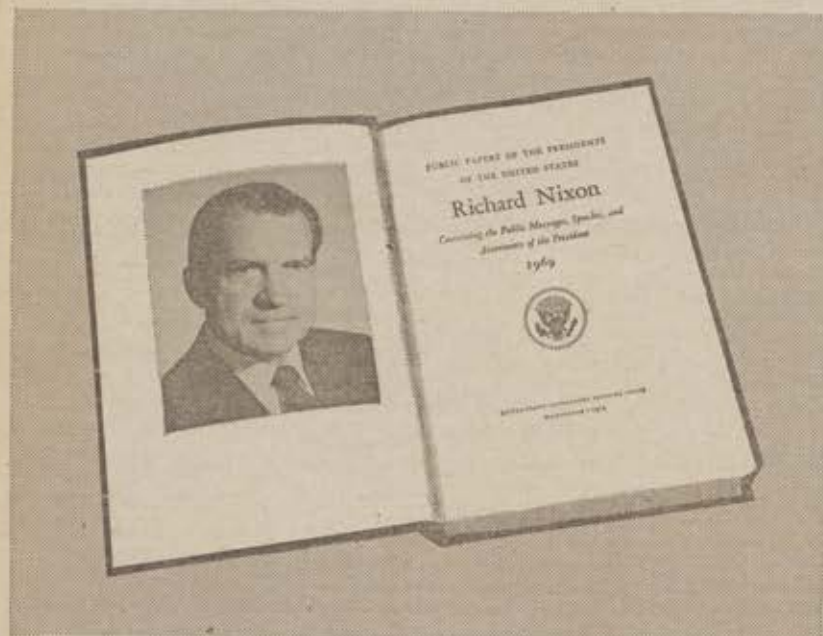
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