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Subpart—Tobacco Allotment and Marketing Quota Regulations, 1972–73 and Subsequent Marketing Years

Correction

In F.R. Doc. 72–1758 appearing at page 2745 in the issue for February 5, 1972, in the sixth line of § 724.95(h)(5)(i), the word "international" should read "intentional".

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

[Navel Orange Reg. 256]

PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

Limitation of Handling

§ 907.556 Navel Orange Regulation 256.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 907, as amended (7 CFR Part 907), regulating the handling of Navel oranges grown in Arizona and designated part of California, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and upon the basis of the recommendations and information submitted by the Navel Orange 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 Navel oranges, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule making procedure, and postpone the effective date of this section until 30 days after publication hereof in the FEDERAL REGISTER (5 U.S.C. 553) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The committee held an open meeting during the current week, after giving due notice thereof, to consider supply and market conditions for Navel oranges and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such meeting was held; the provisions of this section, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such Navel oranges; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period herein specified; and compliance with this section will not require any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on February 15, 1972.

(b) *Order.* (1) The respective quantities of Navel oranges grown in Arizona and designated part of California which may be handled during the period February 18, through February 24, 1972, are hereby fixed as follows:

(i) District 1: 913,000 cartons.

(ii) District 2: 187,000 cartons.

(iii) District 3: Unlimited.

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

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

Dated: February 16, 1972.

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

[FR Doc.72–2575 Filed 2–16–72;11:20 am]

Title 9—ANIMALS AND ANIMAL PRODUCTS

Chapter I—Animal and Plant Health Service, Department of Agriculture

SUBCHAPTER B—COOPERATIVE CONTROL AND ERADICATION OF LIVESTOCK OR POULTRY

PART 51—CATTLE DESTROYED BECAUSE OF BRUCELLOSIS (BANG'S DISEASE), TUBERCULOSIS, OR PARATUBERCULOSIS

Leverage To Obtain Prompt Identification and Slaughter of Reactors

Pursuant to the provisions of sections 3, 4, 5, 11, and 13 of the Act of May 29, 1884, as amended, sections 1 and 2 of the Act of February 2, 1903, as amended, section 3 of the Act of March 3, 1905, as amended, and section 3 of the Act of July 2, 1962 (21 U.S.C. 111–113, 114, 114a, 114a–1, 120, 121, 125, and 134b), Part 51, Title 9, Code of Federal Regulations, is hereby amended in the following respects:

1. Section 51.6 is amended to read:

§ 51.6 Time limit for slaughter.

(a) *Tuberculosis and paratuberculosis.* Payment of indemnity will be made under this part for cattle destroyed because of tuberculosis or paratuberculosis only if the animals are slaughtered or die otherwise within 15 days after the date of appraisal.

(b) *Brucellosis.* Payment of indemnity will be made under this part for cattle destroyed because of brucellosis only if the animals are slaughtered or die otherwise within 15 days after date of marking for identification as required under the provisions of § 51.9(l). The appropriate Veterinarian in Charge may, for reasons satisfactory to him, extend the 15-day period provided for disposition of cattle identified for slaughter under this subsection.

2. In § 51.9, paragraph (l) is amended to read:

§ 51.9 Claims not allowed.

* * * * *

(l) If the cattle were destroyed because of brucellosis, unless they were marked for identification within 15 days after being classified as reactors or of otherwise being condemned for brucellosis by branding the letter "B" on the left jaw, not less than 2 nor more than 3 inches high, and unless a metal tag bearing a serial number and inscription "U.S. Reactor" or a similar State reactor tag was suitably attached to the left ear of each animal. The appropriate Veterinarian in Charge, for reasons satisfactory to him, may extend the 15-day period for identification.

* * * * *

(Secs. 3, 4, 5, 23 Stat. 32, as amended; secs. 1 and 2, 32 Stat. 791–792, as amended; sec. 3, 33 Stat. 1265, as amended; sec. 2, 65 Stat. 693, sec. 11, 58 Stat. 734, as amended; sec. 3, 76 Stat. 130; 21 U.S.C. 111–113, 114, 114a, 114a–1, 120, 121, 125, 134b; 29 F.R. 16210, as amended, 36 F.R. 20707)

Effective date. The foregoing amendments shall become effective upon publication in the FEDERAL REGISTER (2–17–72).

The purpose of the amendments is to provide added leverage to obtain prompt identification and slaughter of reactors.

The amendments should be made effective promptly in order to facilitate the Federal-State cooperative brucellosis eradication programs. Accordingly, under the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to the amendments are impracticable and unnecessary, and good cause is found for making them effective less than 30 days after publication in the FEDERAL REGISTER.

Done at Washington, D.C., this 14th day of February 1972.

F. J. MULHERN,
Administrator,
Animal and Plant Health Service.

[FR Doc.72–2449 Filed 2–16–72;8:51 am]

Title 12—BANKS AND BANKING

Chapter V—Federal Home Loan Bank Board

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

[No. 72–189]

PART 563—OPERATIONS

Deferred Income With Respect to Mortgage Loans; Correction

FEBRUARY 10, 1972.

Resolved that in F.R. Doc. No. 72–560, amending certain portions of § 563.23–1 of the rules and regulations for Insurance of Accounts (12 CFR 563.23–1) relating to deferred income with respect to mortgage loans, published at pages 524 and 525 in the issue dated Thursday, January 13, 1972, the following corrections are hereby made in subparagraph (1) of paragraph (e) of said § 563.23–1: The word "shall" in the sixth line of said subparagraph is corrected to read "may"; and the last phrase of said subparagraph reading "and the profit or loss thereon shall be recognized as of such date or dates in 1971 or 1972 as the association may elect to use" is corrected to read "and, if so added or deducted, the profit or loss thereon shall be recognized as of December 31, 1971, or during calendar 1972 as the association may elect". As so corrected, said subparagraph (1) of paragraph (e) of § 563.23–1 shall read as follows:

§ 563.23–1 Premiums, charges, and credits with respect to mortgage loans; sale of real estate owned; and related items.

* * * * *

(e) *Sale or payoff of loans.* (1) If a loan has been sold or paid in full on or before December 31, 1971, any capitalized premium and/or any deferred acquisition credits or discount applicable to such loan as of December 31, 1971, may be added to or deducted from (as appropriate) the book value of such loan and, if so added or deducted, the profit or loss thereon shall be recognized as of December 31, 1971, or during calendar 1972 as the association may elect.

* * * * *

By the Federal Home Loan Bank Board.

[SEAL] EUGENE M. HERRIN,
Assistant Secretary.

[FR Doc.72–2455 Filed 2–16–72;8:51 am]

Chapter VII—National Credit Union Administration

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

Revision of Organization of Federal Credit Union; Correction

On Pages 2946–2947 of the February 10, 1972, edition of the FEDERAL REGISTER, there was published an effective revision of 12 CFR 701.1. In § 701.1(a)(4)(ii), following the word "accomplished", there should have been and is now hereby inserted: "(if these tasks cannot be accomplished at the first meeting):".

HERMAN NICKERSON, Jr.,
Administrator.

FEBRUARY 11, 1972.

[FR Doc.72–2387 Filed 2–16–72;8:45 am]

Title 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Administration, Department of Transportation

[Docket No. 71–SO–142, Amdt. 39–1394]

PART 39—AIRWORTHINESS DIRECTIVES

Piper Model 28–140 Series Airplanes

A proposal to amend Part 39 of the Federal Aviation Regulations to include an Airworthiness Directive requiring inspection or replacement of engine oil radiator hoses on Piper PA–28–140 series airplanes was published in 36 F.R. 21833.

Interested persons have been afforded an opportunity to participate in the making of the amendment. One commenter was concerned that paragraphs (a) and (c) of the proposal were unclear regarding which hoses must be removed and which could be used as replacements. The Airworthiness Directive has been extensively revised for other reasons which also satisfy this comment.

The manufacturer feels that the hose failures are primarily due to poor maintenance procedures, and that the proposed action would discriminate against them and the owners and operators of PA–28–140 series airplanes. They have referred to the preamble to Part 39, Amendment 106, regarding the issuance of airworthiness directives as a substitute for enforcement of maintenance rules. The FAA has taken the position, as stated in the preamble to Amendment 106 of Part 39, that the Federal Aviation Act justifies regulatory action to make any unsafe condition, whether resulting from maintenance, design defect, or otherwise the proper subject of an airworthiness directive. As a result of additional discussions held in the regional offices (Flight Standards Division), the FAA considers that certain of the manufacturer's comments have merit and has accordingly provided for a 100-hour repetitive inspection after 1,000 hours' time in service in lieu of mandatory replacement of hoses. The replacement provision has been retained as an alternative to repetitive inspection.

In the past 13 months, the FAA has on record 14 in-flight oil hose failures on PA–28–140 airplanes, all of which have resulted in forced landings. Four of these forced landings have resulted in accidents. In view of the oil hose failure history on the Piper Model PA–28–140, it is concluded that an unsafe condition does exist on these airplanes and that an airworthiness directive is warranted.

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

Piper: Applies to all Piper PA–28–140 airplanes certificated in all categories which have flexible engine-to-oil radiator hoses installed, Serial Nos. 28–20000 through 28–7125471.

Unless already accomplished, for airplanes with flexible oil hose installations having 950 hours or more time in service, compliance with this airworthiness directive is required within the next 50 hours' time in service after the effective date of this airworthiness directive.

NOTE: Early production airplanes equipped with rigid oil lines between oil radiator and engine are exempt from this airworthiness directive.

To prevent possible rupture of oil hose assemblies 63794–16 or 61413–02, comply as follows:

(a) Inspect hose assemblies 63794–16 or 61413–02 whichever is installed as follows:

(1) Visually inspect the fire sleeve to insure that it does not contain oil due to hose leakage or has not been discolored to a brown or whitish color due to heat. There must be no evidence of localized deterioration resulting from intense heat or brittleness, or of oil seepage. If these conditions exist or it appears that they are developing, the hose must be replaced.

CAUTION

Do not bend the hose severely or attempt to straighten out or change the radius of a bend in a hose that has already taken a

permanent set since this may shorten its service life substantially.

(2) If the hose and fire sleeve are judged to be in good condition by the above criteria, adjust the oil hoses to insure at least a minimum clearance of 1¾" between the oil hoses and the front exhaust stacks. Both oil lines must be tied firmly together where they pass below the exhaust stacks. As the hose is routed to the rear of the engine, it must pass underneath and behind the electrical ground cable in front of the lower of the two engine mount struts. The hose must be tied to the engine mount strut at this location so that a minimum clearance of at least 2 inches is maintained between the oil hose and exhaust stack.

(3) If the inspection in paragraph (a)(1) so indicates, hoses must be replaced with hose assembly Piper Part No. 63901-72 or equivalent hose assemblies approved by the Chief, Engineering and Manufacturing Branch, Federal Aviation Administration, Southern Region.

(4) Replacement hose assembly Part No. 63901-72 or approved equivalent is to be installed as outlined in paragraph (a)(2).

(5) After adjusting or reinstalling oil hoses, the engine should be run for a few minutes to insure that there are no oil leaks and that required clearance between oil hoses and the exhaust system will be maintained when the engine is warm.

(6) If hoses are not replaced, repeat the inspection required by paragraph (a)(1) and (a)(2) at intervals not to exceed 100 hours' time in service from the last inspection.

(b) Hoses may be replaced in accordance with paragraph (a)(4) and (a)(5) with no further mandatory inspection required.

(c) It is requested that notification, in writing, of all oil hoses replaced be forwarded to the Chief, Engineering and Manufacturing Branch, Southern Region, SO-210, Post Office Box 20636, Atlanta, GA 30320, stating condition of hoses, time in service of hoses, and airplane serial number (reporting approved by Bureau of the Budget under BOB No. 04-R0174).

(Piper Service Letter 604 covers this subject.)

NOTE: If hose assembly hours cannot be determined, airplane hours will be used.

This amendment becomes effective February 18, 1972.

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

Issued in East Point, Ga., on February 8, 1972.

JAMES G. ROGERS,
Director, Southern Region.

[FR Doc.72-2398 Filed 2-16-72;8:46 am]

[Airspace Docket No. 71-GL-19]

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

Alteration of Control Zone

On pages 22599 and 22600 of the FEDERAL REGISTER dated November 25, 1971, the Federal Aviation Administration published a notice of proposed rule making which would amend § 71.171 of Part 71 of the Federal Aviation Regulations so as to alter the control zone at Dayton, Ohio.

Interested persons were given 45 days to submit written comments, suggestions, or objections regarding the proposed amendment. Two comments were received. The Air Transport Association concurred with the proposal. The Department of the Air Force advised that IFR operations to Wright Field have been canceled and that portion of the zone should be deleted. A review of the Patterson AFB approaches was conducted and application of criteria indicated that the proposed extensions were not required. The resultant area of the required control zone for Patterson AFB and Springfield Municipal Airport is less than proposed.

Accordingly, the proposed amendment is hereby adopted as set forth below.

This amendment shall be effective 0901 G.m.t., April 27, 1972.

In § 71.171 (37 F.R. 2056), the following control zone is amended to read:

DAYTON, OHIO (WRIGHT-PATTERSON AFB)

Within a 5-mile radius of Patterson AFB (latitude 39°49'25" N., longitude 84°02'55" W.); within a 6-mile radius of the Springfield Municipal Airport (latitude 39°50'22" N., longitude 83°50'21" W.); within 3 miles each side of the 055° bearing from the airport extending from the 6-mile-radius zone to 9 miles northeast and within 3 miles each side of the 243° bearing from the airport extending from the 6-mile-radius zone to 8.5 miles southwest.

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

Issued in Des Plaines, Ill., on January 28, 1972.

R. O. ZIEGLER,
Acting Director,
Great Lakes Region.

[FR Doc.72-2405 Filed 2-16-72;8:47 am]

[Airspace Docket No. 71-GL-10]

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

Alteration of Transition Area

On pages 21415 and 21416 of the FEDERAL REGISTER dated November 9, 1971, the Federal Aviation Administration published a notice of proposed rule making which would amend § 71.181 of Part 71 of the Federal Aviation Regulations so as to alter the transition area at Eau Claire, Wis.

Interested persons were given 45 days to submit written comments, suggestions, or objections regarding the proposed amendment.

No objections have been received and the amendment as so proposed is hereby adopted, subject to the following change: The last line of the Eau Claire, Wis., transition area description recited as "north by V-265." is changed to read "north by V-26S."

This amendment shall be effective 0901 G.m.t., March 30, 1972.

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

Issued in Des Plaines, Ill., on January 28, 1972.

R. O. ZIEGLER,
Acting Director,
Great Lakes Region.

In § 71.181 (37 F.R. 2143), the following transition area is amended to read:

EAU CLAIRE, WIS.

That airspace extending upward from 700 feet above the surface within a 11½-mile radius of Eau Claire Municipal Airport (latitude 44°51'54" N., longitude 91°29'02" W.); and within 2 miles each side of the 202° radial of the Eau Claire VORTAC extending from the 11½-mile-radius area to 14 miles southwest of the VORTAC; and that airspace extending upward from 1,200 feet above the surface within a 20-mile radius of the Eau Claire VORTAC; and within 9½ miles northwest and 4½ miles southeast of the 45° bearing from the Colburn LOM extending from the 20-mile-radius area to 18½ miles northeast of the Colburn LOM; and within 9½ miles east and 4½ miles west of the 202° radial of the Eau Claire VORTAC extending from the 20-mile-radius area to 24½ miles southwest of the VORTAC; and that airspace extending upward from 4,000 feet MSL southwest of Eau Claire bounded on the east by V-129, on the southwest by V-2N, and on the north by V-26S.

[FR Doc.72-2404 Filed 2-16-72;8:47 am]

[Airspace Docket No. 71-RM-30]

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

Alteration of Transition Area

On December 17, 1971, a notice of proposed rule making was published in the FEDERAL REGISTER (36 F.R. 24005) stating that the Federal Aviation Administration was considering amendments to Part 71 of the Federal Aviation Regulations that would alter the description of the Pierre, S. Dak., 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 subject to the following changes:

Change the FEDERAL REGISTER citations for the transition area to read "§ 71.181 (37 F.R. 2143)".

Effective date. These amendments shall be effective 0901 G.m.t., April 27, 1972.

(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 Aurora, Colo., on February 10, 1972.

M. M. MARTIN,
Director, Rocky Mountain Region.

In § 71.181 (37 F.R. 2143) the description of the Pierre, S. Dak., transition area is amended to read as follows:

PIERRE, S. DAK.

That airspace extending upward from 700 feet above the surface within an 8-mile radius of Pierre Municipal Airport (latitude 44°22'50" N., longitude 100°17'15" W.); within 2 miles each side of the Pierre VOR

086° radial, extending from the 8-mile-radius area to 12 miles east of the VOR; and within 2 miles each side of the Pierre VOR 266° radial, extending from the 8-mile-radius area to 20 miles west of the VOR; and that airspace extending upward from 1,200 feet above the surface within a 35-mile radius of the Pierre VOR.

[FR Doc.72-2403 Filed 2-16-72;8:47 am]

[Airspace Docket No. 70-EA-113]

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

Designation of Area High Routes

On August 11, 1971, a notice of proposed rule making was published in the FEDERAL REGISTER (36 F.R. 14764) stating that the Federal Aviation Administration (FAA) was considering an amendment to Part 75 of the Federal Aviation Regulations that would designate two area high routes, J987R and J988R to be used between New York City and Montreal, Canada, as a part of the overall program to establish an area navigation route structure.

Both routes have now been successfully flight inspected and are being designated in this rule. Interested persons were afforded an opportunity to participate in the proposed rule making through the submission of comments. No adverse comments were received to the two routes.

The last waypoint in J987R, "Empire," was relocated to make it coincident with "Empire" intersection on low altitude airway V-36. Also, J988R was terminated at Plattsburgh, N.Y., VORTAC for compatibility with certain military training operations. Both of these changes are minor in nature even though some route realignment is involved.

In consideration of the foregoing, Part 75 of the Federal Aviation Regulations is amended, effective 0901 G.m.t., April 27, 1972, as hereinafter set forth.

In § 75.400 (37 F.R. 2400) the following area high routes are added:

J987R (MONTREAL, CANADA, TO J. F. KENNEDY INTERNATIONAL AIRPORT, N.Y.)

Waypoint name	Location North latitude/ West longitude	Reference facility
Frontier, N.Y.	44°57'35"/74°05'34"	Plattsburgh, N.Y.
Loon Lake, N.Y.	44°25'15"/74°12'19"	Do.
Countess, N.Y.	41°39'51"/73°49'20"	Hancock, N.Y.
Empire, N.J.	40°47'11"/74°02'36"	Do.

J988R (J. F. KENNEDY INTERNATIONAL AIRPORT, N.Y., TO MONTREAL, CANADA)

Belle Terre, N.Y.	41°02'17"/73°08'51"	Hampton, N.Y.
Cherry Plain, N.Y.	42°40'52"/73°18'11"	Albany, N.Y.
Plattsburgh, N.Y.	44°48'18"/73°24'54"	Massena, N.Y.

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

Issued in Washington, D.C., on February 11, 1972.

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

[FR Doc.72-2401 Filed 2-16-72;8:47 am]

[Docket No. 11721, Amdt. 796]

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

Miscellaneous Amendments

This amendment to Part 97 of the Federal Aviation Regulations incorporates by reference therein changes and additions to the Standard Instrument Approach Procedures (SIAP's) that were recently adopted by the Administrator to promote safety at the airports concerned.

The complete SIAP's for the changes and additions covered by this amendment are described in FAA Forms 3139, 8260-3, 8260-4, or 8260-5 and made a part of the public rule making dockets of the FAA in accordance with the procedures set forth in Amendment No. 97-696 (35 F.R. 5609).

SIAP's are available for examination at the Rules Docket and at the National Flight Data Center, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591. Copies of SIAP's adopted in a particular region are also available for examination at the headquarters of that region. Individual copies of SIAP's may be purchased from the FAA Public Document Inspection Facility, HQ-405, 800 Independence Avenue SW., Washington, DC 20591, or from the applicable FAA regional office in accordance with the fee schedule prescribed in 49 CFR 7.85. This fee is payable in advance and may be paid by check, draft, or postal money order payable to the Treasurer of the United States. A weekly transmittal of all SIAP changes and additions may be obtained by subscription at an annual rate of $125 per annum from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

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

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

1. Section 97.23 is amended by establishing, revising, or canceling the following VOR-VOR/DME SIAP's effective March 16, 1972:

Concord, Calif.—Buchanan Field; VOR Runway 19R, Amdt. 4; Revised.
Dublin, Va.—New River Valley Airport; VOR-A, Amdt. 4; Revised.
Fort Lauderdale, Fla.—Fort Lauderdale-Hollywood International Airport; VOR Runway 9L, Amdt. 12; Revised.
Fort Lauderdale, Fla.—Fort Lauderdale-Hollywood International Airport; VOR Runway 13, Amdt. 11; Revised.
Fort Lauderdale, Fla.—Fort Louderdale-Hollywood International Airport; VOR Runway 27R, Amdt. 6; Revised.
Hillsboro, Oreg.—Portland-Hillsboro Airport; VOR-1, Amdt. 7; Canceled.
Hillsboro, Oreg.—Portland-Hillsboro Airport; VOR-A, Original; Established.
Los Angeles, Calif.—Van Nuys Airport; VOR-A, Amdt. 1; Revised.
Meridian, Miss.—Akin Airport; VOR Runway 4, Original; Established.
Palmdale, Calif.—Palmdale production Flight/Test Installation AF Plant NR 42 Airport; VOR-A, Amdt. 2; Revised.
Sacramento, Calif.—Sacramento Executive Airport; VOR Runway 2, Amdt. 3; Revised.
St. Petersburg, Fla.—Albert Whitted Airport; VOR Runway 18, Original; Established.
Wells, Nev.—Harriet Field; VOR-A, Amdt. 1; Revised.
Bend, Oreg.—Bend Municipal Airport; VOR/DME Runway 16, Amdt. 2; Revised.
Dublin, Va.—New River Valley Airport; VOR/DME Runway 5, Amdt. 2; Revised.
Indianola, Miss.—Indianola Legion 126 Field; VOR/DME-A, Amdt. 3; Revised.
Los Angeles, Calif.—Van Nuys Airport; VOR/DME-B, Amdt. 1; Revised.
Palmdale, Calif.—Palmdale Production Flight/Test Installation AF Plant No. 42 Airport; VORTAC Runway 25, Amdt. 2; Revised.
Sacramento, Calif.—Sacramento Executive Airport; VOR/DME Runway 20, Amdt. 2; Revised.

2. Section 97.25 is amended by establishing, revising, or canceling the following SDF-LOC-LDA SIAP's effective March 16, 1972.

Dublin, Va.—New River Valley Airport; LOC Runway 5, Original; Established.
Fort Lauderdale, Fla.—Fort Lauderdale-Hollywood International Airport; LOC (BC) Runway 27R, Original; Established.
Sacramento, Calif.—Sacramento Executive Airport; LOC (BC) Runway 20, Amdt. 3; Revised.
Seattle, Wash.—Boeing Field International King County Airport; LOC (BC) Runway 31L, Amdt. 1; Revised.

3. Section 97.27 is amended by establishing, revising, or canceling the following NDB/ADF SIAP's, effective March 16, 1972.

Indianola, Miss.—Indianola Legion Field; NDB Runway 18, Amdt. 1; Revised.
Indianola, Miss.—Indianola Legion Field; NDB Runway 36, Amdt. 1; Revised.
Kelso, Wash.—Kelso-Longview Airport; NDB (ADF) Runway 12, Original; Canceled.
Kelso, Wash.—Kelso-Longview Airport; NDB-A, Original; Established.
Sacramento, Calif.—Sacramento Executive Airport; NDB Runway 2, Amdt. 3; Revised.
Seattle, Wash.—Boeing Field International King County Airport; NDB-A, Amdt. 1; Revised.
Seattle, Wash.—Boeing Field International King County Airport; NDB-B, Amdt. 1; Revised.
Statesboro, Ga.—Statesboro Municipal Airport; NDB Runway 13, Amdt. 1; Revised.

4. Section 97.29 is amended by establishing, revising, or canceling the following ILS SIAP's, effective March 16, 1972:

Erie, Pa.—Erie International Airport; ILS Runway 6, Amdt. 9; Revised.
Palmdale, Calif.—Palmdale Production Flight/Test Installation AF Plant No. 42 Airport; ILS Runway 25, Amdt. 4; Revised.
Sacramento, Calif.—Sacramento Executive Airport; ILS Runway 2, Amdt. 16; Revised.
Seattle, Wash.—Boeing Field International King County Airport; ILS Runway 13R, Amdt. 14; Revised.

5. Section 97.31 is amended by establishing, revising, or canceling the following Radar SIAP's, effective March 16, 1972:

Memphis, Tenn.—Memphis International Airport; Radar-1, Amdt. 22; Revised.
Seattle, Wash.—Boeing Field International King County Airport; Radar-1, Amdt. 3; Revised.
Sumter, S.C.—Sumter Municipal Airport; Radar-1, Amdt. 2; Revised.

6. Section 97.33 is amended by establishing, revising, or canceling the following RNAV SIAP's, effective March 16, 1972:

Savannah, Ga.—Savannah Municipal Airport; RNAV Runway 18, Original; Established.

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

Issued in Washington, D.C., on February 10, 1972.

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

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

[FR Doc.72-2272 Filed 2-16-72;8:45 am]

Title 15—COMMERCE AND FOREIGN TRADE

Chapter III—Bureau of International Commerce, Department of Commerce

SUBCHAPTER B—EXPORT REGULATIONS

[13th Gen. Rev. Export Reg. (Amdt. 33)]

PART 390—GENERAL ORDERS

Export Controls Applicable to People's Republic of China

Part 390 is amended to read as set forth below.

(Sec. 3, 63 Stat. 7; 50 U.S.C. App. 2023; E.O. 10945, 26 F.R. 4487, 3 CFR 1959–1963 Comp.; E.O. 11038, 27 F.R. 7003, 3 CFR 1959–1963 Comp.)

Effective date: February 15, 1972.

RAUER H. MEYER,
Director Office of Export Control.

For export control purposes, the People's Republic of China has been transferred from Country Group Z to Country Group Y. As a result, the lesser controls applicable to the Soviet Union and other Group Y countries are now applicable to the People's Republic of China. This action implements President Nixon's announcement of February 14, 1972. The following are the major revisions:

1. A greater number of commodities may now be exported in unlimited quantities to the People's Republic of China under the provisions of General License G-DEST, without the need of applying for, or obtaining, a validated export license. Therefore, any commodity on the Commodity Control List that does not include the code "Y" in the column headed "Validated License Required for Country Groups Shown Below" may now be exported to the People's Republic of China under the provisions of General License G-DEST.

2. General Licenses Gift, GTF-US, Crew, GLD, GLR, GTE, and GTDR now apply to the People's Republic of China to the same extent as they apply to Country Group Y.

3. Foreign-made products of U.S. technical data may now be exported to the People's Republic of China to the same extent that they may be exported to other destinations in Country Group Y.

4. Replacement parts may be exported or reexported to consignees in the People's Republic of China under the Service Supply License procedure.

Accordingly, a new § 390.6 is established in the Export Regulations to read as follows:

§ 390.6 Transfer of People's Republic of China from Country Group Z to Country Group Y.

Effective February 15, 1972, the People's Republic of China is transferred from Country Group Z to Country Group Y. Therefore, all export controls applicable to Country Group Y apply to the People's Republic of China.

[FR Doc.72-2491 Filed 2-16-72;8:52 am]

Title 26—INTERNAL REVENUE

Chapter I—Internal Revenue Service, Department of the Treasury

SUBCHAPTER A—INCOME TAX

[T.D. 7161]

PART 12—TEMPORARY INCOME TAX REGULATIONS UNDER THE REVENUE ACT OF 1971

Investment Credit, Public Utility Property Elections

The following temporary regulations are adopted in order to provide rules for making elections under section 46(e) of the Internal Revenue Code of 1954 as added by section 105 of the Revenue Act of 1971:

§ 12.3 Investment credit, public utility property elections.

(a) *Elections*—(1) *In general.* Under section 46(e), three elections may be made on or before March 9, 1972, with respect to section 46(e) property (as defined in subparagraph (3) of this paragraph). An election made under the provisions of section 46(e) shall be irrevocable.

(2) *Applicability of elections.* (i) Any election under section 46(e) shall be made with respect to all of the taxpayer's property eligible for the election whether or not the taxpayer is regulated by more than one regulatory body.

(ii) (*a*) Paragraph (1) of section 46(e) shall apply to all of the taxpayer's section 46(e) property in the absence of an election under paragraph (2) or (3) of section 46(e). If an election is made under paragraph (2) of section 46(e), paragraph (1) of such section shall not apply to any of the taxpayer's section 46(e) property.

(*b*) An election made under the last sentence of section 46(e)(1) shall apply to that portion of the taxpayer's section 46(e) property to which paragraph (1) of section 46(e) applies and which is short supply property within the meaning of § 1.46-5(b)(2) of this chapter (Income Tax Regulations) as set forth in a notice of proposed rule making published in 37 F.R. 3526 on February 17, 1971.

(iii) If a taxpayer makes an election under paragraph (2) of section 46(e), and makes no election under paragraph (3) of such section, the election under paragraph (2) of section 46(e) shall apply to all of its section 46(e) property.

(iv) If a taxpayer makes an election under paragraph (3) of section 46(e), such election shall apply to all of the taxpayer's section 46(e) property to which section 167(l)(2)(C) applies. Paragraph (1) or (2) of section 46(e) (as the case may be) shall apply to that portion of the taxpayer's section 46(e) property which is not property to which section 167(l)(2)(C) applies. Thus, for example, if a taxpayer makes an election under paragraph (2) of section 46(e), and also makes an election under paragraph (3) of section 46(e), paragraph (3) shall apply to all of the taxpayer's section 46(e) property to which section 167(l)(2)(C) applies and paragraph (2) shall apply to the remainder of the taxpayer's section 46(e) property.

(3) *Section 46(e) property.* "Section 46(e) property" is section 38 property which is both property described in section 50 and is—

(i) Public utility property within the meaning of section 46(c)(3)(B) (other than nonregulated communication property of the type described in the last sentence of section 46(c)(3)(B)), or

(ii) Property used predominantly in the trade or business of the furnishing or sale of (*a*) steam through a local distribution system or (*b*) the transportation of gas or steam by pipeline, if the rates for such furnishing or sale are established or approved by a governmental unit, agency, instrumentality, or commission described in section 46(c)(3)(B).

(b) *Method of making elections.* A taxpayer may make the elections described in section 46(e) by filing a statement, on or before March 9, 1972, with the district director or director of the internal revenue service center with whom the taxpayer ordinarily files its income tax return. For rules in the case of taxpayers filing consolidated returns, see § 1.1502-77(a) of this Chapter (Income Tax Regulations). Such statement shall contain the following information:

(1) The name, address, and taxpayer identification number of the taxpayer,

(2) The paragraph (or paragraphs) of section 46(e) under which the taxpayer is making the election,

(3) If an election is made under the last sentence of section 46(e)(1), the name and address of all regulatory bodies which have jurisdiction over the taxpayer with respect to the section 46(e) property covered by such election and a

statement setting forth the type of the public utility activity described in section 46(e)(5)(B) in which the taxpayer engages, and

(4) If an election is made under paragraph (3) of section 46(e), a statement indicating whether an election has been made by the taxpayer under section 167 (l)(4)(A).

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

(Secs. 46(e), 7805, Internal Revenue Code of 1954, 85 Stat. 503, 68A Stat. 917; 26 U.S.C. 46, 7805)

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

Approved: February 11, 1972.

FREDERIC W. HICKMAN,
Acting Assistant Secretary of the Treasury.

[FR Doc.72-2502 Filed 2-16-72;8:52 am]

Title 29—LABOR

Chapter XVII—Occupational Safety and Health Administration, Department of Labor

PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

PART 1926—SAFETY AND HEALTH REGULATIONS FOR CONSTRUCTION

Miscellaneous Amendments

Background. By notice published in the FEDERAL REGISTER on April 17, 1971 (36 F.R. 7410), interested persons were invited to petition for modification of the safety and health standards as they relate to light residential construction. Recommendations received from interested persons and proposals prepared by the Occupational Safety and Health Administration were submitted to the Advisory Committee on Construction Safety and Health for its review and recommendations.

This proceeding was commenced by a notice of proposed rule making which was published in the FEDERAL REGISTER on September 28, 1971 (36 F.R. 19083–19089). The notice set forth 41 proposed amendments to the safety and health regulations for construction. The proposed amendments largely reflected the recommendations of the Advisory Committee. Supplemental notice published October 1, 1971 (36 F.R. 19266), stated that the proposed amendments did not relate only to light residential construction, but would have general application. Opportunities were afforded for written and oral comments on the proposed amendments.

The regulations to which amendments were proposed have application under the Construction Safety Act (40 U.S.C. 333) and the Williams-Steiger Occupational Safety and Health Act of 1970 (29 U.S.C. 650, et seq.).

The notice of proposed rule making invited interested persons to submit data, views, and arguments concerning the proposed changes, both orally and in writing. Written data, views, and arguments were received by the Office of Safety and Health Standards, Occupational Safety and Health Administration, Department of Labor.

Oral data, views, and arguments were received by Hearing Examiner Rhea M. Burrow during an informal hearing held on November 10 and 11, 1971.

The certified record of the proceeding, including the written comments received from interested persons, as well as staff suggestions, were submitted to the Advisory Committee on Construction Safety and Health for its review and advice pursuant to 29 CFR 1911.18. The Advisory Committee has considered the proposed revisions and has submitted its recommendations to the Assistant Secretary of Labor for Occupational Safety and Health for decision.

The Advisory Committee recommended, among other things, that the record be kept open to receive additional comments on the proposed amendments to § 1518.550(a)(3) concerning the use of boom-angle indicators, load indicators, weight-moment devices and overload protection devices on cranes and derricks, particularly on the matter of the feasibility of the proposals in light of field testing and field experience. The record was opened for this purpose for a short period to receive additional comments. Subsequently, the record was again opened to receive comments on this issue upon the advice of the Advisory Committee and will remain open until May 1, 1972.

I have considered carefully all written and oral comments contained in the record and I have consulted with the Advisory Committee, the members of which were appointed upon the basis of their professional and technical experience in the construction safety and health field. (See section 107(e) of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333) concerning the statutory qualifications of members of the Advisory Committee.) Where substantive changes from the proposals have been made, they have been in response to comments which were regarded as persuasive. Where substantive changes from the proposals have been requested but have not been made, the decision is based in large part on the contrary recommendations of the Advisory Committee, on contrary recommendations of the Office of Safety and Health Standards, and on the intrinsic appropriateness of the adopted standards to assure a safe place of employment.

In some cases, minor changes in wording have been made to state a matter in a more precise and understandable manner. For example, in § 1926.602(a)(9)(i) and (ii), the requirement that horns and alarms be "audible above" the surrounding noise level was changed to "distinguishable from" the surrounding noise level. In other instances, provisions have been added to clarify questions of interpretation raised in the hearings or the comments. In §1926.152(b)(1) covering indoor storage of flammable and combustible liquids, the intent of that section is clarified by adding a cross reference to § 1926.153 which covers storage of liquid petroleum. Certain changes, such as that in § 1926.450(a)(7) on ladders, merely simplify the text. Other proposed sections and parts thereof have been rearranged so as to order their provisions in a more logical manner. See, for example, § 1926.652.

The major areas of concern to interested persons are discussed below.

Medical services and first aid. Comments concerning the proposed § 1518.50(c) stressing the difficulty in assuring that an injured employee can be transported to a hospital, clinic, or infirmary within 15 minutes show that the standard as proposed is too rigid. While it is clear that promptly rendered first-aid treatment often spells the difference between life and death after an accident, in some instances, such as where there is uncontrolled bleeding or stoppage of breathing, even 15 minutes may be too long to wait for first aid. Recognizing the importance of quick treatment, the standard is better phrased in terms of requiring the worksite presence of a person or person qualified to render first aid, in the absence of an infirmary, clinic, hospital or physician that is reasonably accessible to the worksite in terms of time and distance.

Further, certain persons, such as military medics, who may not have the prescribed Red Cross or Bureau of Mines certification may, on the basis of their previous training, be well equipped to render on-the-site first aid. The proposal is, therefore, modified to the extent indicated above.

Safety belts, lifelines, and lanyards. Many objections have been raised to the proposed § 1518.104, that lifelines, safety belts, and lanyards be removed from service after being exposed to in-service loading.

Suggested alternatives such as visual inspection are not acceptable as in most instances it is not possible to ascertain whether the belt, lifeline, or lanyard has become critically weakened or fatigued as a result of the in-service loading, and therefore incapable of further effective use as a lifeline. I find that this provision is necessary to assure continued employee safeguarding because there is no practical way to measure how much strength such article loses after in-service loading as a result of fatigue. Therefore, the standard, as proposed, is adopted.

Safety nets. The proposed § 1518.105(c) would have required safety nets to be rigged no more than 10 feet below the work surface where no other method could be used to protect a worker from falling. Persuasive evidence was submitted to show that, in some situations, such as bridge construction, it would not be feasible to rig a net 10 feet below a work surface. Accordingly, the standard

is modified to allow for such circumstances while at the same time limiting the distance an employee can fall before being stopped by the net. In addition, several minor changes are deemed necessary to provide clarification of the intent of the standard.

Fenders; mud flaps. Evidence concerning the proposed § 1518.601(b)(13) indicates that flying objects that may be propelled from the unprotected wheels of motor vehicle equipment present a hazard to employees working nearby. The proposal sought to eliminate this hazard by requiring all rubber-tired motor vehicle equipment to have fenders. The record indicates that certain rubber-tired vehicles are not designed for fenders. Therefore, it is appropriate to allow mud flaps to be used in lieu of fenders on such equipment to eliminate the above-described hazard. In addition, changes have been made in the dates contained in the proposal in order to provide adequate time for employers to familiarize themselves with the new requirement and arrange for the installation of the required equipment.

Temporary heating devices. On the basis of the presentations at the hearing, as well as the written comments submitted concerning § 1518.154(e)(3), it appears that space heaters that are properly maintained in good working order and that contain integral fuel tanks with capacities more than 5 gallons do not present a significant safety hazard. The presentations pointed out, among other things, the safety features common to such heaters, the fact that the fuel for such heaters has a relatively high flashpoint (between 100° and 140° F.), and the danger of spillage resulting from too frequent refueling of such heaters. In view of the above, limitation on the tank capacity of such heaters is removed.

The proposed change in § 1518.154(d) would continue to prohibit the use of solid fuel heaters in buildings and on scaffolds while removing the prohibition on the use of oil-fired salamanders. Solid fuel heaters present a substantially greater hazard than oil-fired salamanders because of the possibility of conflagration in case of an accident.

Tools—switches. In the standards, as originally promulgated, all hand-held power tools were required to be equipped with constant pressure switches. (See § 1518.300, 36 F.R. 7366, April 17, 1971.) As a result of numerous comments on the subject, the requirement was restudied and reconsidered in full. The proposed § 1518.300(d) separates the tools into categories based on the functions of the tools, and prescribes the type of safety devices that would be most appropriate to the functions and most appropriately protect the workers. Certain minor changes consistent with this rationale have been made and an explanatory note has been added to indicate clearly the classes of tools to which the standard was not intended to apply. Accordingly, the effective date of this standard is delayed until July 15, 1972, in order to afford adequate time to equip those power tools now in use with the prescribed switches. The evidence contained in the record as a whole convinces me that it is not feasible to implement this standard in a shorter period.

Rigging equipment. Petitions concerning the apparent blanket prohibition of the use of certain hooks and lifting accessories contained in § 1518.251(b)(3) (36 F.R. 7358, April 17, 1971) indicated that the standard should be reconsidered in view of current technology and field practice in the assembly of modular and prefabricated units. Thus, the objective of the proposed § 1518.251(b)(6) was to insure the safety of construction employees and at the same time allow the continued use of certain construction techniques which are safe. This standard, with minor typographical changes, is adopted as proposed.

Excavation. Some comments on § 1518.651 (36 F.R. 7389, April 17, 1971), dealing with the location of underground installations when excavating considered the standard too rigid to allow alternative safer methods to locate underground installations. The proposed § 1518.651(a) (36 F.R. 19088, September 28, 1971) was drafted to allow any safe method of locating underground installations to be used in excavation. Comments on the proposed amendment raised a question as to whether underground telephone lines were covered by this standard. To clarify the intent of this proposal and to avoid accidental employee exposure to the hazards caused by broken or severed underground utility installations, telephones have been added to the enumerated list of possible underground hazards to be avoided.

Amendments were proposed in § 1518.651(h) in order to allow more flexibility in storing and retaining excavated materials adjacent to an excavation, while at the same time insuring the safety of those employees working in the excavation site. Comments indicated that the proposals were still too rigid to allow employers digging shallow trenches (less than 5 feet in depth) with narrow rights-of-way to meet the requirement. Alternative methods of storing and retaining such material were suggested which would provide equivalent employee protection. As a result, the language of the proposals has been altered to permit all appropriate alternative methods which will protect employees working in excavations from the hazards of falling materials.

Specific trenching requirements. Generally, the shoring and sloping requirements in § 1518.652 were prescribed for trenches 4 feet or more in depth. The 4-foot rule is found to be more stringent than necessary to provide adequate employee protection where ground conditions are stable. Therefore, the proposal has been changed to permit the shoring and trenching requirements to begin at 5 feet. It is recognized, however, that where ground conditions are unstable, there may be substantial danger even in working in very shallow trenches. Therefore, to insure adequate protection for employees in every situation, language has been added to clarify the intent that where shallow trenches (less than 5 feet in depth) may be hazardous due to potential cave-ins caused by unstable ground conditions, they must be shored or sloped as required in all trenches deeper than 5 feet.

Further, § 1518.652 as initially issued (36. F.R. 7389, April 17, 1971) apparently caused some uncertainty as to whether portable trench boxes or sliding trench shields could be used in lieu of the prescribed shoring and sloping systems. The proposal clarifies the intent of this section and allows portable trench boxes or sliding trench shields to be used in lieu of sloping or shoring where such equipment provides equal or greater protection.

In view of the foregoing, I hereby adopt the following amendments to Parts 1910 and 1926 of Title 29, Code of Federal Regulations.

A. Amendments to Part 1910 of Title 29, Code of Federal Regulations:

1. Section 1910.12 is amended by revising paragraph (a) and adding thereto a new paragraph (c). As amended, § 1910.12 reads as follows:

§ 1910.12 Construction work.

(a) *Standards.* The standards prescribed in Part 1926 of this chapter are adopted as occupational safety and health standards under section 6 of the Act and shall apply, according to the provisions thereof, to every employment and place of employment of every employee engaged in construction work. Each employer shall protect the employment and places of employment of each of his employees engaged in construction work by complying with the appropriate standards prescribed in this paragraph.

* * * * *

(c) *Construction Safety Act distinguished.* This section adopts as occupational safety and health standards under section 6 of the Act the standards which are prescribed in Part 1926 of this chapter. Thus, the standards (substantive rules) published in Subpart C and the following subparts of Part 1926 of this chapter are applied. This section does not incorporate Subparts A and B of Part 1926 of this chapter. Subparts A and B have pertinence only to the application of section 107 of the Contract Work Hours and Safety Standards Act (the Construction Safety Act). For example, the interpretation of the term "subcontractor" in paragraph (c) of § 1926.13 of this chapter is significant in discerning the coverage of the Construction Safety Act and duties thereunder. However, the term "subcontractor" has no significance in the application of the Act, which was enacted under the Commerce Clause and which establishes duties for "employers" which are not dependent for their application upon any contractual relationship with the Federal Government or upon any form of Federal financial assistance.

2. Part 1910 is amended by adding to Subpart B thereof a new § 1910.18, reading as follows:

§ 1910.18 Changes in established Federal standards.

Whenever an occupational safety and health standard adopted and incorporated by reference in this Subpart B is changed pursuant to section 6(b) of the Act and the statute under which the standard was originally promulgated, and in accordance with Part 1911 of this chapter, the standard shall be deemed changed for purposes of that statute and this Subpart B, and shall apply under this Subpart B. For the purposes of this section, a change in a standard includes any amendment, addition, or repeal, in whole or in part, of any standard.

B. Amendments to Part 1926 (formerly Part 1518) of Title 29, Code of Federal Regulations:

1. Section 1926.13 is amended by revising paragraph (c) thereof to read:

§ 1926.13 Interpretation of statutory terms.

* * * * *

(c) The term "subcontractor" under section 107 is considered to mean a person who agrees to perform any part of the labor or material requirements of a contract for construction, alteration or repair. Cf. MacEvoy Co. v. United States, 322 U.S. 102, 108–9 (1944). A person who undertakes to perform a portion of a contract involving the furnishing of supplies or materials will be considered a "subcontractor" under this part and section 107 if the work in question involves the performance of construction work and is to be performed: (1) Directly on or near the construction site, or (2) by the employer for the specific project on a customized basis. Thus, a supplier of materials which will become an integral part of the construction is a "subcontractor" if the supplier fabricates or assembles the goods or materials in question specifically for the construction project and the work involved may be said to be construction activity. If the goods or materials in question are ordinarily sold to other customers from regular inventory, the supplier is not a "subcontractor." Generally, the furnishing of prestressed concrete beams and prestressed structural steel would be considered manufacturing; therefore a supplier of such materials would not be considered a "subcontractor." An example of material supplied "for the specific project on a customized basis" as that phrase is used in this section would be ventilating ducts, fabricated in a shop away from the construction jobsite and specifically cut for the project according to design specifications. On the other hand, if a contractor buys standard size nails from a foundry, the foundry would not be a covered "subcontractor." Ordinarily a contract for the supplying of construction equipment to a contractor would not, in and of itself, be considered a "subcontractor" for purposes of this part.

2. Section 1926.20 is amended by revising paragraph (b)(3) to read as follows:

§ 1926.20 General safety and health provisions.

* * * * *

(b) * * *

(3) The use of any machinery, tool, material, or equipment which is not in compliance with any applicable requirement of this part is prohibited. Such machine, tool, material, or equipment shall either be identified as unsafe by tagging or locking the controls to render them inoperable or shall be physically removed from its place of operation.

* * * * *

3. Section 1926.21(b)(6) is amended by placing its present text in a new subdivision (i) and by adding thereto a new subdivision (ii) to read as follows:

§ 1926.21 Safety training and education.

* * * * *

(b) * * *

(6) (i) All employees required to enter into confined or enclosed spaces shall be instructed as to the nature of the hazards involved, the necessary precautions to be taken, and in the use of protective and emergency equipment required. The employer shall comply with any specific regulations that apply to work in dangerous or potentially dangerous areas.

(ii) For purposes of subdivision (i) of this subparagraph, "confined or enclosed space" means any space having a limited means of egress, which is subject to the accumulation of toxic or flammable contaminants or has an oxygen deficient atmosphere. Confined or enclosed spaces include, but are not limited to, storage tanks, process vessels, bins, boilers, ventilation or exhaust ducts, sewers, underground utility vaults, tunnels, pipelines, and open top spaces more than 4 feet in depth such as pits, tubs, vaults, and vessels.

4. Section 1926.32 is amended by deleting the fourth sentence of paragraph (i) so that the paragraph reads as follows:

§ 1926.32 Definitions.

* * * * *

(i) "Employee" means every laborer or mechanic under the Act regardless of the contractual relationship which may be alleged to exist between the laborer and mechanic and the contractor or subcontractor who engaged him. "Laborer and mechanic" are not defined in the Act, but the identical terms are used in the Davis-Bacon Act (40 U.S.C. 276a), which provides for minimum wage protection on Federal and federally assisted construction contracts. The use of the same term in a statute which often applies concurrently with section 107 of the Act has considerable precedential value in ascertaining the meaning of "laborer and mechanic" as used in the Act. "Laborer" generally means one who performs manual labor or who labors at an occupation requiring physical strength; "mechanic" generally means a worker skilled with tools. See 18 Comp. Gen. 341.

* * * * *

5. Section 1926.50 is revised to read as follows:

§ 1926.50 Medical services and first aid.

(a) The employer shall insure the availability of medical personnel for advice and consultation on matters of occupational health.

(b) Provisions shall be made prior to commencement of the project for prompt medical attention in case of serious injury.

(c) In the absence of an infirmary, clinic, hospital, or physician that is reasonably accessible in terms of time and distance to the worksite which is available for the treatment of injured employees, a person who has a valid certificate in first-aid training from the U.S. Bureau of Mines, the American Red Cross, or equivalent training that can be verified by documentary evidence shall be available at the worksite to render first aid.

(d) (1) First-aid supplies approved by the consulting physician shall be easily accessible when required.

(2) The first-aid kit shall consist of materials approved by the consulting physician in a weatherproof container with individual sealed packages for each type of item. The contents of the first-aid kit shall be checked by the employer before being sent out on each job and at least weekly on each job to ensure that the expended items are replaced.

(e) Proper equipment for prompt transportation of the injured person to a physician or hospital, or a communication system for contacting necessary ambulance service, shall be provided.

6. Section 1925.51 is amended by adding a heading to Table D–1 of paragraph (c)(1), by revising paragraph (f), and by revoking paragraph (g) thereof to read as follows:

§ 1926.51 Sanitation.

* * * * *

(c) *Toilets at construction jobsites.* (1) Toilets shall be provided for employees according to the following table:

TABLE D–1

Number of employees	*Minimum number of facilities*
20 or less	1.
20 or more	1 toilet seat and 1 urinal per 40 workers.
200 or more.	1 toilet seat and 1 urinal per 50 workers.

* * * * *

(f) *Washing facilities.* The employer shall provide adequate washing facilities for employees engaged in the application of paints, coating, herbicides, or insecticides, or in other operations where contaminants may be harmful to the employees. Such facilities shall be in near proximity to the worksite and shall be so equipped as to enable employees to remove such substances.

(g) [Revoked]

7. Section 1926.52 is amended by revising paragraph (d)(2) to read as follows:

§ 1926.52 **Occupational noise exposure.**

* * * * *

(d) * * *

(2) (i) When the daily noise exposure is composed of two or more periods of noise exposure of different levels, their combined effect should be considered, rather than the individual effect of each. Exposure to different levels for various periods of time shall be computed according to the formula set forth in subdivision (ii) of this subparagraph.

(ii)

$$F_e=\frac{T_1}{L_1}+\frac{T_2}{L_2}+\cdots+\frac{T_n}{L_n}$$

where:

F_e=The equivalent noise exposure factor.
T=The period of noise exposure at any essentially constant level.
L=The duration of the permissible noise exposure at the constant level (from Table D–2).

If the value of F_e exceeds unity (1) the exposure exceeds permissible levels.

(iii) A sample computation showing an application of the formula in subdivision (ii) of this paragraph is as follows. An employee is exposed at these levels for these periods:

110 dbA ¼ hour.
100 dbA ½ hour.
90 dbA 1½ hours.

$$F_e=\frac{¼}{½}+\frac{½}{2}+\frac{1½}{8}$$

$F_e=0.500+0.25+0.188$
$F_e=0.938$

Since the value of F_e does not exceed unity, the exposure is within permissible limits.

* * * * *

8. Section 1926.55 is amended by revising paragraph (b) thereof to read as follows:

§ 1926.55 **Gases, vapors, fumes, dusts, and mists.**

* * * * *

(b) To achieve compliance with paragraph (a) of this section, administrative or engineering controls must first be implemented whenever feasible. When such controls are not feasible to achieve full compliance, protective equipment or other protective measures shall be used to keep the exposure of employees to air contaminants within the limits prescribed in this section. Any equipment and technical measures used for this purpose must first be approved for each particular use by a competent industrial hygienist or other technically qualified person. Whenever respirators are used, their use shall comply with § 1926.103.

9. Section 1926.57 is amended by revising paragraph (a) thereof to read as follows:

§ 1926.57 **Ventilation.**

(a) *General.* Whenever hazardous substances such as dusts, fumes, mists, vapors, or gases exist or are produced in the course of construction work, their concentrations shall not exceed the limits specified in § 1926.55(a). When ventilation is used as an engineering control method, the system shall be installed and operated according to the requirements of this section.

* * * * *

§ 1926.58 **[Revoked]**

10. Section 1926.58 is revoked.

11. Section 1926.100 is amended by revising paragraph (a) thereof to read as follows:

§ 1926.100 **Head protection.**

(a) Employees working in areas where there is a possible danger of head injury from impact, or from falling or flying objects, or from electrical shock and burns, shall be protected by protective helmets.

* * * * *

12. Section 1926.104 is amended by revising paragraph (a) thereof to read as follows:

§ 1926.104 **Safety belts, lifelines, and lanyards.**

(a) Lifelines, safety belts, and lanyards shall be used only for employee safeguarding. Any lifeline, safety belt, or lanyard actually subjected to in-service loading, as distinguished from static load testing, shall be immediately removed from service and shall not be used again for employee safeguarding.

* * * * *

13. Section 1926.105 is amended by revising paragraphs (c) and (d) thereof to read as follows:

§ 1926.105 **Safety nets.**

* * * * *

(c) (1) Nets shall extend 8 feet beyond the edge of the work surface where employees are exposed and shall be installed as close under the work surface as practical but in no case more than 25 feet below such work surface. Nets shall be hung with sufficient clearance to prevent user's contact with the surfaces or structures below. Such clearances shall be determined by impact load testing.

(2) It is intended that only one level of nets be required for bridge construction.

(d) The mesh size of nets shall not exceed 6 inches by 6 inches. All new nets shall meet accepted performance standards of 17,500 foot-pounds minimum impact resistance as determined and certified by the manufacturers, and shall bear a label of proof test. Edge ropes shall provide a minimum breaking strength of 5,000 pounds.

* * * * *

14. Section 1926.150 is amended by revising paragraphs (c)(1) and (d) (1) and (2) thereof to read as follows:

§ 1926.150 **Fire protection.**

* * * * *

(c) *Portable firefighting equipment*—(1) *Fire extinguishers and small hose lines.* (i) A fire extinguisher, rated not less than 2A, shall be provided for each 3,000 square feet of the protected building area, or major fraction thereof. Travel distance from any point of the protected area to the nearest fire extinguisher shall not exceed 100 feet.

(ii) One 55-gallon open drum of water with two fire pails may be substituted for a fire extinguisher having a 2A rating.

(iii) A ½-inch diameter garden-type hose line, not to exceed 100 feet in length and equipped with a nozzle, may be substituted for a 2A-rated fire extinguisher, provided it is capable of discharging a minimum of 5 gallons per minute with a minimum hose stream range of 30 feet horizontally. The garden-type hose lines shall be mounted on conventional racks or reels. The number and location of hose racks or reels shall be such that at least one hose stream can be applied to all points in the area.

(iv) One or more fire extinguishers, rated not less than 2A, shall be provided on each floor. In multistory buildings, at least one fire extinguisher shall be located adjacent to stairway.

(v) Extinguishers and water drums, subject to freezing, shall be protected from freezing.

(vi) A fire extinguisher, rated not less than 10B, shall be provided within 50 feet of wherever more than 5 gallons of flammable or combustible liquids or 5 pounds of flammable gas are being used on the jobsite. This requirement does not apply to the integral fuel tanks of motor vehicles.

(vii) Carbon tetrachloride and other toxic vaporizing liquid fire extinguishers are prohibited.

(viii) Portable fire extinguishers shall be inspected periodically and maintained in accordance with Maintenance and Use of Portable Fire Extinguishers, NFPA No. 10A–1970.

(ix) Fire extinguishers which have been listed or approved by a nationally recognized testing laboratory, shall be used to meet the requirements of this subpart.

(x) Table F–1 may be used as a guide for selecting the appropriate portable fire extinguishers.

* * * * *

(d) *Fixed firefighting equipment*—(1) *Sprinkler protection.* (i) If the facility being constructed includes the installation of automatic sprinkler protection, the installation shall closely follow the construction and be placed in service as soon as applicable laws permit following completion of each story.

(ii) During demolition or alterations, existing automatic sprinkler installations shall be retained in service as long as reasonable. The operation of sprinkler control valves shall be permitted only by properly authorized persons. Modification of sprinkler systems to permit alterations or additional demolition should be expedited so that the automatic protection may be returned to service as quickly as possible. Sprinkler control valves shall be checked daily at close of work to ascertain that the protection is in service.

(2) *Standpipes.* In all structures in which standpipes are required, or where standpipes exist in structures being altered, they shall be brought up as soon as applicable laws permit, and shall be

maintained as construction progresses in such a manner that they are always ready for fire protection use. The standpipes shall be provided with Siamese fire department connections on the outside of the structure, at the street level, which shall be conspicuously marked. There shall be at least one standard hose outlet at each floor.

* * * * *

15. Section 1926.152 is amended by amending subparagraphs (1) and (2) of paragraph (b) thereof as follows:

§ 1926.152 Flammable and combustible liquids.

* * * * *

(b) *Indoor storage of flammable and combustible liquids.* (1) No more than 25 gallons of flammable or combustible liquids shall be stored in a room outside of an approved storage cabinet. For storage of liquid petroleum gas, see § 1926.153.

(2) Quantities of flammable and combustible liquid in excess of 25 gallons shall be stored in an acceptable or approved cabinet meeting the following requirements:

* * * * *

16. Section 1926.154 is amended by revising paragraph (d) and revoking (e) (3) thereof, as follows:

§ 1926.154 Temporary heating devices.

* * * * *

(d) *Solid fuel salamanders.* Solid fuel salamanders are prohibited in buildings and on scaffolds.

(e) * * *

(3) [Revoked]

* * * * *

17. Section 1926.200 is amended by revising paragraph (i) thereof to read as follows:

§ 1926.200 Accident prevention signs and tags.

* * * * *

(i) *Additional rules.* American National Standards Institute (ANSI) Z35.1–1968, Specifications for Accident Prevention Signs, and Z35.2–1968, Specifications for Accident Prevention Tags, contain rules which are additional to the rules prescribed in this section. The employer shall comply with ANSI Z35.1–1968 and Z35.2–1968 with respect to rules not specifically prescribed in this subpart.

18. Section 1926.251 is amended by adding to paragraph (a) thereof a new subparagraph (4) to read as follows:

§ 1926.251 Rigging equipment for material handling.

(a) * * *

(4) Special custom design grabs, hooks, clamps, or other lifting accessories, for such units as modular panels, prefabricated structures and similar materials, shall be marked to indicate the safe working loads and shall be proof-tested prior to use to 125 percent of their rated load.

* * * * *

19. Section 1926.252 is amended by revising paragraph (a) thereof to read as follows:

§ 1926.252 Disposal of waste materials.

(a) Whenever materials are dropped more than 20 feet to any point lying outside the exterior walls of the building, an enclosed chute of wood, or equivalent material, shall be used. For the purpose of this paragraph, an enclosed chute is a slide, closed in on all sides, through which material is moved from a high place to a lower one.

* * * * *

20. Section 1926.300 is amended by revising paragraph (d) thereof to read as follows:

§ 1926.300 General requirements.

* * * * *

(d) *Switches.* (1) All hand-held powered platen sanders, grinders with wheels 2-inch diameter or less, routers, planers, laminate trimmers, nibblers, shears, scroll saws, and jigsaws with blade shanks one-fourth of an inch wide or less may be equipped with only a positive "on-off" control.

(2) All hand-held powered drills, tappers, fastener drivers, horizontal, vertical, and angle grinders with wheels greater than 2 inches in diameter, disc sanders, belt sanders, reciprocating saws, saber saws, and other similar operating powered tools shall be equipped with a momentary contact "on-off" control and may have a lock-on control provided that turnoff can be accomplished by a single motion of the same finger or fingers that turn it on.

(3) All other hand-held powered tools, such as circular saws, chain saws, and percussion tools without positive accessory holding means, shall be equipped with a constant pressure switch that will shut off the power when the pressure is released.

(4) The requirements of this paragraph shall become effective on July 15, 1972.

(5) Exception: This paragraph does not apply to concrete vibrators, concrete breakers, powered tampers, jack hammers, rock drills, and similar hand operated power tools.

21. Section 1926.303 is amended by revising paragraphs (b) and (d) thereof to read as follows:

§ 1926.303 Abrasive wheels and tools.

* * * * *

(b) *Grinding.* Grinding machines shall be equipped with safety guards in conformance with the requirements of American National Standards Institute, B7.1–1970, Safety Code for the Use, Care and Protection of Abrasive Wheels, and paragraph (d) of this section.

* * * * *

(d) *Other requirements.* All abrasive wheels and tools used by employees shall meet other applicable requirements of American National Standards Institute, B7.1–1970, Safety Code for the Use, Care and Protection of Abrasive Wheels.

22. Section 1926.351 is amended by revising paragraph (b)(4) to read as follows:

§ 1926.351 Arc welding and cutting.

* * * * *

(b) * * *

(4) Cables in need of repair shall not be used. When a cable, other than the cable lead referred to in subparagraph (2) of this paragraph, becomes worn to the extent of exposing bare conductors, the portion thus exposed shall be protected by means of rubber and friction tape or other equivalent insulation.

23. Section 1926.401 is amended by amending paragraphs (h), (i), and (j) (3) thereof as follows:

§ 1926.401 Grounding and bonding.

* * * * *

(h) *Temporary wiring.* All temporary wiring shall be effectively grounded in accordance with the National Electrical Code, NFPA No. 70–1968 (see Articles 200 and 250).

(i) *Construction site.* Precautions shall be taken to make any necessary open wiring inaccessible to unauthorized personnel.

(j) * * *

(3) Working spaces, walkways, and similar locations shall be kept clear of cords so as not to create a hazard to employees.

* * * * *

24. Section 1926.402 is amended by revising paragraph (d) thereof to read as follows:

§ 1926.402 Equipment installation and maintenance.

* * * * *

(d) *Transformers.* (1) Energized transformers and other related electrically energized equipment over 150 volts to ground shall be protected so as to prevent accidental contact with any person. Protection shall be provided by individual integrated housing or by an enclosure, such as an electrical substation fence, which accommodates a group of such equipment. Metallic enclosures shall be grounded.

(2) Access to energized equipment covered by subparagraph (1) of this paragraph shall be secured by lock or other fasteners requiring the use of tools to open them.

(3) Signs indicating danger and prohibiting unauthorized access shall be conspicuously displayed on the housing or other enclosure around the equipment.

(4) Transformers mounted on utility poles at a height of more than 12 feet from the ground are exempt from the requirements of this paragraph.

* * * * *

25. Section 1926.404 is amended by revising paragraph (b) thereof to read as follows:

§ 1926.404 Hazardous locations.

* * * * *

(b) Diversion ditches, dikes, or other equipment used in a hazardous location shall be chosen from among those listed by a nationally recognized testing laboratory, such as Underwriters' Laboratories, Inc., or Factory Mutual Engineering Corp., except custom-made components and utilization equipment.

* * * * *

26. Section 1926.450 is amended by revising paragraph (a)(7) thereof to read as follows:

§ 1926.450 Ladders.

(a) * * *

(7) Portable ladders shall be used at such a pitch that the horizontal distance from the top support to the foot of the ladder is about one-quarter of the working length of the ladder (the length along the ladder between the foot and the top support). Ladders shall not be used in a horizontal position as platforms, runways, or scaffolds.

* * * * *

27. Section 1926.451 is amended by revising paragraphs (a)(10), (b)(16), (h)(13), (m)(4), and (r)(3)(ii) to read as follows:

§ 1926.451 Scaffolding.

(a) * * *

(10) All planking shall be Scaffold Grades, or equivalent, as recognized by approved grading rules for the species of wood used. The maximum permissible spans for 2- x 10-inch or wider planks shall be as shown in the following:

* * * * *

(b) * * *

(16) All wood pole scaffolds 60 feet or less in height shall be constructed and erected in accordance with Tables L–4 to 10. If they are over 60 feet in height, they shall be designed by a qualified engineer competent in this field, and it shall be constructed and erected in accordance with such design.

* * * * *

(h) * * *

(13) When employees are at work on the scaffold and an overhead hazard exists, overhead protection shall be provided on the scaffold, not more than 9 feet above the platform, consisting of 2-inch planking, or material of equivalent strength, laid tight, and extending not less than the width of the scaffold.

* * * * *

(m) * * *

(4) No more than two employees shall occupy any given 8 feet of a bracket scaffold at any one time. Tools and materials shall not exceed 75 pounds in addition to the occupancy.

* * * * *

(r) * * *

(3) * * *

(ii) Planking 2 x 10 inches, with maximum span 7 feet for heavy duty and 10 feet for light duty or medium duty.

* * * * *

28. Section 1926.500 is amended by revising subparagraph (4) of paragraph (b) and subparagraph (2) of paragraph (d) thereof to read as follows:

§ 1926.500 Guardrails, handrails, and covers.

* * * * *

(b) * * *

(4) Wherever there is danger of falling through a skylight opening, it shall be guarded by a fixed standard railing on all exposed sides or a cover capable of sustaining the weight of a 200-pound person.

* * * * *

(d) * * *

(2) Runways shall be guarded by a standard railing, or the equivalent, as specified in paragraph (f) of this section, on all open sides, 4 feet or more above floor or ground level. Wherever tools, machine parts, or materials are likely to be used on the runway, a toe board shall also be provided on each exposed side.

* * * * *

29. Section 1926.502 is amended by adding thereto a new paragraph (o), reading as follows:

§ 1926.502 Definitions applicable to this subpart.

* * * * *

(o) "Wall opening"—An opening at least 30 inches high and 18 inches wide, in any wall or partition, through which persons may fall, such as a yard-arm doorway or chute opening.

30. Section 1926.550 is amended by revising paragraph (a)(16) and paragraph (e) thereof to read as follows:

§ 1926.550 Cranes and derricks.

(a) * * *

(16) No modifications or additions which affect the capacity or safe operation of the equipment shall be made by the employer without the manufacturer's written approval. If such modifications or changes are made, the capacity, operation, and maintenance instruction plates, tags, or decals, shall be changed accordingly. In no case shall the original safety factor of the equipment be reduced.

* * * * *

(e) *Derricks.* All derricks in use shall meet the applicable requirements for design, construction, installation, inspection, testing, maintenance, and operation as prescribed in American National Standards Institute B30.6–1969, Safety Code for Derricks.

* * * * *

31. Section 1926.552 is amended by revising paragraph (c)(16) thereof to read as follows:

§ 1926.552 Material hoists, personnel hoists, and elevators.

* * * * *

(c) * * *

(16) All personnel hoists used by employees shall be constructed of materials and components which meet the specifications for materials, construction, safety devices, assembly, and structural integrity as stated in the American National Standard A10.4–1963, Safety Requirements for Workmen's Hoists. The requirements of this subparagraph (16) do not apply to cantilever type personnel hoists.

* * * * *

32. Section 1926.600 is amended by revising paragraph (a)(3)(ii) thereof to read as follows.

§ 1926.600 Equipment.

(a) * * *

(3) * * *

(ii) Whenever the equipment is parked, the parking brake shall be set. Equipment parked on inclines shall have the wheels chocked and the parking brake set.

* * * * *

33. Section 1926.601 is amended by revising paragraph (b)(13) thereof as follows:

§ 1926.601 Motor vehicles.

* * * * *

(b) * * *

(13) (i) All rubber-tired motor vehicle equipment manufactured on or after May 1, 1972, shall be equipped with fenders. All rubber-tired motor vehicle equipment manufactured before May 1, 1972, shall be equipped with fenders not later than May 1, 1973.

(ii) Mud flaps may be used in lieu of fenders whenever motor vehicle equipment is not designed for fenders.

* * * * *

34. Section 1926.602 is amended by adding new subparagraphs (9) and (10) to paragraph (a) of this section, to read as follows:

§ 1926.602 Material handling equipment.

(a) * * *

(9) *Audible alarms.* (i) All bidirectional machines, such as rollers, compacters, front-end loaders, bulldozers, and similar equipment, shall be equipped with a horn, distinguishable from the surrounding noise level, which shall be operated as needed when the machine is moving in either direction. The horn shall be maintained in an operative condition.

(ii) No employer shall permit earthmoving or compacting equipment which has an obstructed view to the rear to be used in reverse gear unless the equipment has in operation a reverse signal alarm distinguishable from the surrounding noise level or an employee signals that it is safe to do so.

(10) *Scissor points.* Scissor points on all front-end loaders, which constitute a hazard to the operator during normal operation, shall be guarded.

* * * * *

35. Section 1926.651 is amended by changing the section heading thereof; by redesignating the present paragraphs (c) through (x) as paragraphs (d) through (y) respectively; by adding a new paragraph (c); and by revising paragraph (a) and the redesignated paragraph (i). As revised, § 1926.651 reads as follows:

§ 1926.651 Specific excavation requirements.

(a) Prior to opening an excavation, effort shall be made to determine whether underground installations; i.e., sewer, telephone, water, fuel, electric lines, etc., will be encountered, and if so, where such underground installations are located. When the excavation approaches the estimated location of such an installation, the exact location shall be determined and when it is uncovered,

proper supports shall be provided for the existing installation. Utility companies shall be contacted and advised of proposed work prior to the start of actual excavation.

(b) Trees, boulders, and other surface encumbrances, located so as to create a hazard to employees involved in excavation work or in the vicinity thereof at any time during operations, shall be removed or made safe before excavating is begun.

(c) The walls and faces of all excavations in which employees are exposed to danger from moving ground shall be guarded by a shoring system, sloping of the ground, or some other equivalent means.

(d) Excavations shall be inspected by a competent person after every rainstorm or other hazard-increasing occurrence, and the protection against slides and cave-ins shall be increased if necessary.

(e) The determination of the angle of repose and design of the supporting system shall be based on careful evaluation of pertinent factors such as: Depth of cut; possible variation in water content of the material while the excavation is open; anticipated changes in materials from exposure to air, sun, water, or freezing; loading imposed by structures, equipment, overlying material, or stored material; and vibration from equipment, blasting, traffic, or other sources.

(f) Supporting systems; i.e., piling, cribbing, shoring, etc., shall be designed by a qualified person and meet accepted engineering requirements. When tie rods are used to restrain the top of sheeting or other retaining systems, the rods shall be securely anchored well back of the angle of repose. When tight sheeting or sheet piling is used, full loading due to ground water table shall be assumed, unless prevented by weep holes or drains or other means. Additional stringers, ties, and bracing shall be provided to allow for any necessary temporary removal of individual supports.

(g) All slopes shall be excavated to at least the angle of repose except for areas where solid rock allows for line drilling or presplitting.

(h) The angle of repose shall be flattened when an excavation has water conditions, silty materials, loose boulders, and areas where erosion, deep frost action, and slide planes appear.

(i) (1) In excavations which employees may be required to enter, excavated or other material shall be effectively stored and retained at least 2-feet or more from the edge of the excavation.

(2) As an alternative to the clearance prescribed in subparagraph (1) of this paragraph, the employer may use effective barriers or other effective retaining devices in lieu thereof in order to prevent excavated or other materials from falling into the excavation.

(j) Sides, slopes, and faces of all excavations shall meet accepted engineering requirements by scaling, benching, barricading, rock bolting, wire meshing, or other equally effective means. Special attention shall be given to slopes which may be adversely affected by weather or moisture content.

(k) Support systems shall be planned and designed by a qualified person when excavation is in excess of 20 feet in depth, adjacent to structures or improvements, or subject to vibration or ground water.

(l) Materials used for sheeting, sheet piling, cribbing, bracing, shoring, and underpinning shall be in good serviceable condition, and timbers shall be sound, free from large or loose knots, and of proper dimensions.

(m) Special precautions shall be taken in sloping or shoring the sides of excavations adjacent to a previously backfilled excavation or a fill, particularly when the separation is less than the depth of the excavation. Particular attention also shall be paid to joints and seams of material comprising a face and the slope of such seams and joints.

(n) Except in hard rock, excavations below the level of the base of footing of any foundation or retaining wall shall not be permitted, unless the wall is underpinned and all other precautions taken to insure the stability of the adjacent walls for the protection of employees involved in excavation work or in the vicinity thereof.

(o) If the stability of adjoining buildings or walls is endangered by excavations, shoring, bracing, or underpinning shall be provided as necessary to insure their safety. Such shoring, bracing, or underpinning shall be inspected daily or more often, as conditions warrant, by a competent person and the protection effectively maintained.

(p) Diversion ditches, dikes, or other suitable means shall be used to prevent surface water from entering an excavation and to provide adequate drainage of the area adjacent to the excavation. Water shall not be allowed to accumulate in an excavation.

(q) If it is necessary to place or operate power shovels, derricks, trucks, materials, or other heavy objects on a level above and near an excavation, the side of the excavation shall be sheet-piled, shored, and braced as necessary to resist the extra pressure due to such superimposed loads.

(r) Blasting and the use of explosives shall be performed in accordance with Subpart U of this part.

(s) When mobile equipment is utilized or allowed adjacent to excavations, substantial stop logs, or barricades shall be installed. If possible, the grade should be away from the excavation.

(t) Adequate barrier physical protection shall be provided at all remotely located excavations. All wells, pits, shafts, etc., shall be barricaded or covered. Upon completion of exploration and similar operations, temporary wells, pits, shafts, etc., shall be backfilled.

(u) If possible, dust conditions shall be kept to a minimum by the use of water, salt, calcium chloride, oil, or other means.

(v) In locations where oxygen deficiency or gaseous conditions are possible, air in the excavation shall be tested. Controls, as set forth in Subparts D and E of this part, shall be established to assure acceptable atmospheric conditions. When flammable gases are present, adequate ventilation shall be provided or sources of ignition shall be eliminated. Attended emergency rescue equipment, such as breathing apparatus, a safety harness and line, basket stretcher, etc., shall be readily available where adverse atmospheric conditions may exist or develop in an excavation.

(w) Where employees or equipment are required or permitted to cross over excavations, walkways or bridges with standard guardrails shall be provided.

(x) Where ramps are used for employees or equipment, they shall be designed and constructed by qualified persons in accordance with accepted engineering requirements.

(y) All ladders used on excavation operations shall be in accordance with the requirements of Subpart L of this part.

36. Section 1926.652 is revised to read as follows:

§ 1926.652 Specific trenching requirements.

(a) Banks more than 5 feet high shall be shored, laid back to a stable slope, or some other equivalent means of protection shall be provided where employees may be exposed to moving ground or cave-ins. Refer to Table P–1 as a guide in sloping of banks. Trenches less than 5 feet in depth shall also be effectively protected when examination of the ground indicates hazardous ground movement may be expected.

(b) Sides of trenches in unstable or soft material, 5 feet or more in depth, shall be shored, sheeted, braced, sloped, or otherwise supported by means of sufficient strength to protect the employees working within them. See Tables P–1, P–2 [following paragraph (g) of this section].

(c) Sides of trenches in hard or compact soil, including embankments, shall be shored or otherwise supported when the trench is more than 5 feet in depth and 8 feet or more in length. In lieu of shoring, the sides of the trench above the 5-foot level may be sloped to preclude collapse, but shall not be steeper than a 1-foot rise to each ½-foot horizontal. When the outside diameter of a pipe is greater than 6 feet, a bench of 4-foot minimum shall be provided at the toe of the sloped portion.

(d) Materials used for sheeting and sheet piling, bracing, shoring, and underpinning, shall be in good serviceable condition, and timbers used shall be sound and free from large or loose knots, and shall be designed and installed so as to be effective to the bottom of the excavation.

(e) Additional precautions by way of shoring and bracing shall be taken to prevent slides or cave-ins when excavations or trenches are made in locations adjacent to backfilled excavations, or where excavations are subjected to vibrations from railroad or highway traffic, the operation of machinery, or any other source.

(f) Employees entering bell-bottom pier holes shall be protected by the installation of a removeable-type casing

of sufficient strength to resist shifting of the surrounding earth. Such temporary protection shall be provided for the full depth of that part of each pier hole which is above the bell. A lifeline, suitable for instant rescue and securely fastened to a shoulder harness, shall be worn by each employee entering the shafts. This lifeline shall be individually manned and separate from any line used to remove materials excavated from the bell footing.

(g) (1) Minimum requirements for trench timbering shall be in accordance with Table P–2.

(2) Braces and diagonal shores in a wood shoring system shall not be subjected to compressive stress in excess of values given by the following formula:

$$S = \frac{1300 - 20L}{D}$$

$$\text{Maximum ratio } \frac{L}{D} = 50$$

Where:
L = Length, unsupported, in inches.
D = Least side of the timber in inches.
S = Allowable stress in pounds per square inch of cross-section.

Table P - 1

APPROXIMATE ANGLE OF REPOSE
FOR SLOPING OF SIDES OF EXCAVATIONS

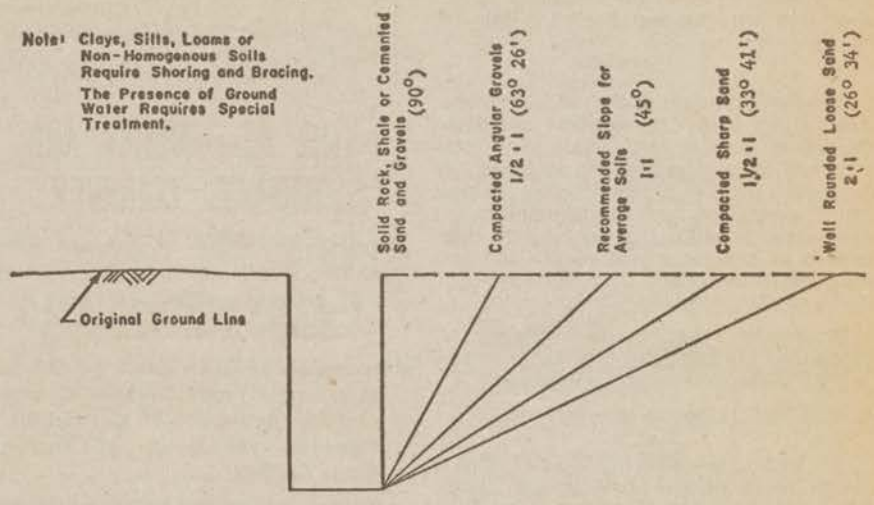


TABLE P–2

TRENCH SHORING—MINIMUM REQUIREMENTS

Depth of trench	Kind or condition of earth	Size and spacing of members										
		Uprights		Stringers		Cross braces [1]					Maximum spacing	
						Width of trench						
		Minimum dimension	Maximum spacing	Minimum dimension	Maximum spacing	Up to 3 feet	3 to 6 feet	6 to 9 feet	9 to 12 feet	12 to 15 feet	Vertical	Horizontal
Feet		Inches	Feet	Inches	Feet	Inches	Inches	Inches	Inches	Inches	Feet	Feet
5 to 10	Hard, compact	3 x 4 or 2 x 6	6			2 x 6	4 x 4	4 x 6	6 x 6	6 x 8	4	6
	Likely to crack	3 x 4 or 2 x 6	3	4 x 6	4	2 x 6	4 x 4	4 x 6	6 x 6	6 x 8	4	6
	Soft, sandy, or filled	3 x 4 or 2 x 6	Close sheeting	4 x 6	4	4 x 4	4 x 6	6 x 6	6 x 8	8 x 8	4	6
	Hydrostatic pressure	3 x 4 or 2 x 6	Close sheeting	6 x 8	4	4 x 4	4 x 6	6 x 6	6 x 8	8 x 8	4	6
10 to 15	Hard	3 x 4 or 2 x 6	4	4 x 6	4	4 x 4	4 x 6	6 x 6	6 x 8	8 x 8	4	6
	Likely to crack	3 x 4 or 2 x 6	2	4 x 6	4	4 x 4	4 x 6	6 x 6	6 x 8	8 x 8		6
	Soft, sandy, or filed	3 x 4 or 2 x 6	Close sheeting	4 x 6	4	4 x 6	6 x 6	6 x 8	8 x 8	8 x 10	4	6
	Hydrostatic pressure	3 x 6	Close sheeting	8 x 10	4	4 x 6	6 x 6	6 x 8	8 x 8	8 x 10	4	6
15 to 20	All kinds or conditions	3 x 6	Close sheeting	4 x 12	4	4 x 12	6 x 8	8 x 8	8 x 10	10 x 10	4	6
Over 20	All kinds or conditions	3 x 6	Close sheeting	6 x 8	4	4 x 12	8 x 8	8 x 10	10 x 10	10 x 12	4	6

[1] Trench jacks may be used in lieu of, or in combination with, cross braces.
Shoring is not required in solid rock, hard shale, or hard slag.
Where desirable, steel sheet piling and bracing of equal strength may be substituted for wood.

(h) Where employees are required to be in trenches 3 feet deep or more, ladders, extending from the floor of the trench excavation to at least 3 feet above the top of the excavation, shall be provided and so located as to provide means of exit without more than 25 feet of lateral travel.

(i) Bracing or shoring of trenches shall be carried along with the excavation.

(j) Cross braces or trench jacks shall be placed in true horizontal position, be spaced vertically, and be secured to prevent sliding, falling, or kickouts.

(k) Portable trench boxes or sliding trench shields may be used for the protection of personnel in lieu of a shoring system or sloping. Where such trench boxes or shields are used, they shall be designed, constructed, and maintained in a manner which will provide protection equal to or greater than the sheeting or shoring required for the trench.

(l) Backfilling and removal of trench supports shall progress together from the bottom of the trench. Jacks or braces shall be released slowly and, in unstable soil, ropes shall be used to pull out the jacks or braces from above after employees have cleared the trench.

37. Section 1926.700 is amended by amending paragraphs (b) (1) and (d) (3) thereof to read as follows:

§ 1926.700 General provisions.

* * * * *

(b) *Reinforcing steel.* (1) Employees working more than 6 feet above any adjacent working surfaces, placing and tying reinforcing steel in walls, piers, columns, etc., shall be provided with a safety belt, or equivalent device, in accordance with Subpart E of this part.

* * * * *

(d) * * *

(3) *Bull floats.* Handles on bull floats, used where they may contact energized electrical conductors, shall be constructed of nonconductive material, or insulated with a nonconductive sheath whose electrical and mechanical characteristics provide the equivalent protection of a handle constructed of nonconductive material.

* * * * *

38. Section 1926.750 is amended by amending paragraphs (b)(1)(i) and (c)(2) thereof to read as follows:

§ 1926.750 Flooring requirements.

* * * * *

(b) *Temporary flooring—skeleton steel construction in tiered buildings.* (1)(i) The derrick or erection floor shall be solidly planked or decked over its entire surface except for access openings. Planking or decking of equivalent strength, shall be of proper thickness to carry the working load. Planking shall be not less than 2 inches thick full size undressed, and shall be laid tight and secured to prevent movement.

* * * * *

(c) * * *

(2) For single wood floor or other flooring systems, the floor immediately below the story where the floor joists are being installed shall be kept planked or decked over.

39. Section 1926.800 is amended by revising paragraph (a)(4) thereof to read as follows:

§ 1926.800 Tunnels and shafts.

(a) * * *

(4) Access to unattended underground openings shall be restricted by gates or doors. Unused chutes, manways, or other openings shall be tightly covered, bulkheaded, or fenced off, and posted. Conduits, trenches, and manholes shall meet the requirements of Subparts M and P of this part.

* * * * *

40. Section 1926.859 is amended by revising paragraph (e) thereof to read as follows:

§ 1926.859 Mechanical demolition.

* * * * *

(e) When pulling over walls or portions thereof, all steel members affected shall have been previously cut free.

* * * * *

Effective date. These amendments shall become effective 30 days from the publication of this decision in the FEDERAL REGISTER.

(Sec. 1, 83 Stat. 96, adding sec. 107 to Public Law 87-581, 76 Stat. 347, 40 U.S.C. 333; Sec. Order No. 12-71, 36 F.R. 8754)

Signed at Washington, D.C., this 8th day of February 1972.

G. C. GUENTHER,
Assistant Secretary of Labor.

[FR Doc.72-2160 Filed 2-16-72;8:45 am]

Title 31—MONEY AND FINANCE: TREASURY

Chapter V—Office of Foreign Assets Control, Department of the Treasury

PART 500—FOREIGN ASSETS CONTROL REGULATIONS

Relaxation of Restriction on Offshore Shipments From Certain Countries to PRC; Removal of Restriction on Offshore Shipments of Technical Data to PRC

Section 500.541 is being amended to authorize American-controlled firms located abroad to ship strategic merchandise to the People's Republic of China when the shipment has been authorized by certain host countries, and to remove the restriction on American-controlled firms located abroad shipping technical data from any foreign country to the People's Republic of China.

Section 500.543 is being deleted as unnecessary in view of the amendment of § 500.541.

As amended, § 500.541 reads:

§ 500.541 Certain transactions by persons in foreign countries.

(a) Except as provided in paragraphs (b), (c), (e), and (f) of this section, all transactions incident to the conduct of business activities abroad engaged in by any individual ordinarily resident in a foreign country in the authorized trade territory, or by any partnership, association, corporation, or other organization which is organized and doing business under the laws of any foreign country in the authorized trade territory, are hereby authorized.

(b) This section does not authorize any transaction involving property subject to the jurisdiction of the United States as of May 6, 1971, in which there existed, or had existed at any time on or since the effective date, any direct or indirect interest of China or nationals thereof.

(c) This section does not authorize any transaction involving the purchase or sale or other transfer of:

(1) Merchandise or technical data of U.S. origin unless it is in compliance with § 500.533; and,

(2) Merchandise, regardless of origin, of a type included in the Commodity Control List of the U.S. Department of Commerce set forth in 15 CFR Part 399 and followed on that list by the letter "A" in the column headed "Special Provisions List", or of a type the unauthorized exportation of which from the United States is prohibited by any of the several regulations referred to in 15 CFR 370.10, unless the transaction is in compliance with § 505.31 of this chapter.

(d) [Deleted].

(e) This section does not authorize the supply of petroleum products to any vessel bound to or from North Korea, North Viet Nam, or Cuba.

(f) This section does not authorize any transaction involving North Korea or North Viet Nam or their nationals, or merchandise the country of origin of which is North Korea or North Viet Nam.

§ 500.543 [Deleted]

Section 500.543 is deleted.

[SEAL] STANLEY L. SOMMERFIELD,
Acting Director,
Office of Foreign Assets Control.

[FR Doc.72-2537 Filed 2-16-72;8:52 am]

PART 505—REGULATIONS PROHIBITING TRANSACTIONS INVOLVING THE SHIPMENT OF CERTAIN MERCHANDISE BETWEEN FOREIGN COUNTRIES

General License for Offshore Transactions To Authorize Certain Shipments to People's Republic of China

Section 505.31 of the Transaction Control Regulations is being amended to authorize shipments of certain strategic goods to the People's Republic of China.

As amended, § 505.31 reads as follows:

§ 505.31 General license for offshore transactions from certain countries.

(a) Except as provided in paragraph (b) of this section, transactions prohibited by § 500.201 of this chapter are authorized to the extent they comply with § 500.541 of this chapter and this section, and all other transactions prohibited by § 505.10 are hereby authorized provided:

(1) Shipment is to a country listed in the schedule of § 505.10, other than North Korea or North Viet Nam; and,

(2) Shipment is made from and licensed by one of the following foreign countries: Belgium, Canada, Denmark, Federal Republic of Germany, France, Greece, Italy, Japan, Luxembourg, The Netherlands, Norway, Portugal, Turkey, or the United Kingdom.

(b) This section does not authorize any transaction prohibited by Part 515 or Part 530 of this chapter.

[SEAL] STANLEY L. SOMMERFIELD,
Acting Director,
Office of Foreign Assets Control.

[FR Doc.72-2538 Filed 2-16-72;8:52 am]

Title 39—POSTAL SERVICE

Chapter I—U.S. Postal Service

PART 135—FOURTH CLASS

Books and Sound Recordings Mailed at Special Postage Rates; Permissible Enclosures

In the daily issue of December 18, 1971 (36 F.R. 24075), the Postal Service, complying voluntarily with the rule making requirements of the Administrative Procedure Act (5 U.S.C. 553), published proposed regulations affecting § 135.6(b) (1) and (2) of Title 39, Code of Federal Regulations. Regulations there codified deal with permissible enclosures in mailings of books and sound recordings at the special fourth-class and library rates of postage. It was proposed to restate those regulations for purposes of clarification, and to emphasize that incidental announcements mailed with books and recordings must relate exclusively to books and recordings.

Interested members of the public were given 30 days within which to submit written data, views, and arguments concerning the proposed regulations. After full consideration of all comments received, the Postal Service has determined to adopt the regulations, with changes. As changed the regulations permit the enclosure, with mailings of books or recordings, of announcements that describe the conditions and methods of ordering books or recordings, such as through membership in book or record clubs. Changes for purposes of clarification were also made.

Accordingly, the following amendments to the regulations of the Postal Service are hereby made, to be effective upon publication in the FEDERAL REGISTER (2–17–72).

In § 135.6 *Enclosures with items mailed at catalog, special fourth-class, and library rate,* amend subparagraphs (1) and (2) of paragraph (b), *Special fourth-class and library rate,* to read as follows:

§ 135.6 Enclosures with items mailed at catalog, special fourth-class, and library rate.

* * * * *

(b) * * *

(1) *Books.* The following items only are permissible enclosures with books mailed at the postage rates shown in § 135.1 (c) and (d):

(i) An invoice. (See § 135.5(b)(2).)

(ii) Either one envelope or one addressed post card. (If also serving as an order form, the envelope or card may be in addition to the order form listed in subdivision (iii) of this subparagraph.)

(iii) One order form. (If also serving as an envelope or post card, the order form may be in addition to the envelope or card listed in subdivision (ii) of this subparagraph.)

(iv) Announcements of books, appearing in book pages or as loose enclosures. These announcements of books must be incidental, and must be exclusively devoted to books. They may not contain extraneous advertising of book related materials or services, except that announcements may fully describe the conditions and methods of ordering books, such as through membership in book clubs, and may contain ordering instructions for use with the single order form permitted in subdivision (iii) of this subparagraph.

(2) *Sound recordings.* The following items only are permissible enclosures with sound recordings mailed at the postage rates shown in § 135.1 (c) and (d):

(i) An invoice. (See § 135.5(b)(2).)

(ii) Either one envelope or one addressed post card. (If also serving as an order form, the envelope or card may be in addition to the order form listed in subdivision (iii) of this subparagraph.)

(iii) One order form. (If also serving as an envelope or post card, the order form may be in addition to the envelope or card listed in subdivision (ii) of this subparagraph.)

(iv) Guides or scripts prepared solely for use with such recordings.

(v) Announcements of sound recordings appearing on title labels, on protective sleeves, on the carton or wrapper, or on loose enclosures. These announcements of sound recordings must be incidental, and must be exclusively devoted to sound recordings. They may not contain extraneous advertising of sound-recording related materials or services, except that announcements may fully describe the conditions and methods of ordering sound recordings, such as through membership in sound recording clubs, and may contain ordering instructions for use with the single order form permitted in subdivision (iii) of this subparagraph.

(39 U.S.C. 401)

LOUIS A. COX,
General Counsel.

[FR Doc.72-2396 Filed 2-16-72;8:46 am]

Title 41—PUBLIC CONTRACTS AND PROPERTY MANAGEMENT

Chapter 7—Agency for International Development, Department of State

PART 7–1—GENERAL

PART 7–16—PROCUREMENT FORMS

Small Business Concerns

To: Heads of AID Procuring Activities.

Subject: AIDPR Notice No. 72–1, Revision of Subpart 7–1.7 and amendment to Part 7–16 of the AID Procurement Regulations (41 CFR Part 7).

1. In keeping with the Agency's desire to increase the participation of small business, including small minority business enterprises, in the Foreign Aid Program, Subpart 7–1.7 (Small Business Concerns) and Part 7–16 (Procurement Forms) of the Agency for International Development Procurement Regulations (AIDPR) have been revised and amended, respectively. Accordingly, AID procuring activities are to comply with the new policy and procedures contained in paragraphs 2, 3, and 4 of this notice, in lieu of those currently appearing in the AIDPR (41 CFR 7).

2. Subpart 7–1.7 of Chapter 7 is revised to read as follows:

Subpart 7–1.7—Small Business Concerns

Sec.

7–1.702 Small business policies.
7–1.704 Agency program direction and operation.
7–1.704–1 General.
7–1.704–2 The AID Special Assistant for Small Business (hereinafter referred to as the Small Business Advisor).
7–1.704–3 AID Contracting Officers.
7–1.704–4 Heads of Procuring Activities.
7–1.704–5 Program/Project Officers.
7–1.704–6 Small Business screening procedure.
7–1.704–7 Reports on procurement actions that are exempted from screening.

AUTHORITY: The provisions of this Subpart 7–1.7 issued under sec. 621, 75 Stat. 445, as amended; 22 U.S.C. 2381.

§ 7–1.702 Small business policies.

(a) In keeping with section 602 of the Foreign Assistance Act of 1961 (22 U.S.C. 2352), as amended, AID shall, insofar as practicable and to the maximum extent consistent with the accomplishment of the purposes of said Act, assist U.S. small business to participate equitably in the furnishing of supplies and services for Foreign Assistance activities.

(b) It is the policy of AID to:

(1) Fully endorse and carry out the Government's small business program for placing a fair proportion of its purchases and contracts for supplies, construction (including maintenance and repair), research and development, and services (including personal, professional, and technical services) with small business, including minority small business, concerns; and

(2) Increase their participation in AID procurement.

(c) In furtherance of this policy:

(1) Program/project officers shall make positive efforts (see § 7–1.704–5) to identify potentially qualified small and minority business firms during precontract development of programs/projects and shall, with the responsible contracting officers, assure that such firms are given full opportunity to participate equitably;

(2) Small business set-asides shall be made for all AID/Washington executed contracts which qualify for small business set-aside action under Subpart 1–1.7 of Chapter I of this title; and

(3) Consideration shall be given in appropriate cases to the award of the contract to the Small Business Administration for subcontracting to small business firms pursuant to section 8(a) of the Small Business Act (15 U.S.C. 637(a)).

(d) This program shall be implemented by all AID/Washington procuring activities in order to attain these policy objectives. In accordance with § 7–1.704, all AID/Washington direct-procurement requirements which exceed $2,500 shall be

screened for small business opportunities by the Special Assistant for Small Business, except those:

(1) Set-aside unilaterally or by class set-aside;

(2) Where the Contracting Officer certifies in writing that the public exigency will not permit the delay incident to screening;

(3) That will result in an institution building contract (see § 7–1.704–6(a)(3)), with an educational or nonprofit institution; or

(4) Involving PIO/P's and PIO/T's for the payment of tuition and fees covering participant training at academic institutions.

(e) Where practicable and desirable, small business and minority business enterprise award goals will be established for the respective AID/Washington procuring activities to provide incentive for contracting personnel to increase awards to small firms. The goals will be set by the Special Assistant for Small Business after consultation with the respective Head of the Procuring Activity (see § 7–1.206).

(f) In the event of a disagreement between the Special Assistant for Small Business and the Contracting Officer concerning (1) a recommended set-aside, or (2) a request for modification or withdrawal of a class or individual set-aside, complete documentation of the case including the reasons for disagreement shall be transmitted within 5 working days to the Head of the Procuring Activity (see § 7–7.704–6(e) of this chapter) for a decision. Procurement action shall be suspended pending a decision.

(g) The above suspension shall not apply where the Contracting Officer:

(1) Certifies in writing, with supporting information, that in order to protect the public interest award must be made without delay;

(2) Promply provides a copy of said certification to the Special Assistant for Small Business; and

(3) Includes a copy of the certification in the contract file.

(h) The Special Assistant for Small Business shall be the Small Business Advisor and Minority Business Procurement Policy Manager for all AID/Washington procuring activities.

(i) The details on the Agency's direction and operation of the small business program are set forth in § 7–1.704.

(j) No decision rendered, or action taken, under the coverage set forth in § 7–1.704 shall preclude the Small Business Administration from appealing directly to the AID Administrator as provided for in Subpart 1–1.7 of Chapter 1 of this title.

(k) The Special Assistant for Small Business may delegate the responsibilities set forth in § 7–1.704–2(b) (8), (9), and (17) to the Director, Office of Administrative Services with the power to redelegate. The delegation shall cover only supplies and services authorized to be procured by the Contracts and Procurement Division (AS/CP). Responsibilities not delegated are reserved to the Special Assistant for Small Business.

§ 7–1.704 Agency program direction and operation.

§ 7–1.704–1 General.

The purpose of this section is to prescribe responsibilities and procedures for carrying out the small business program policy set forth in § 1–1.702 of Chapter 1 of this title and § 7–1.702. Small minority business enterprises (see the definition in § 1–1.1310–2 of Chapter 1 of this title) are included in the term "small business" when used in this subpart. Specific reference to minority business enterprises is for added emphasis.

§ 7–1.704–2 The AID Special Assistant for Small Business (hereinafter referred to as the Small Business Advisor).

(a) The Small Business Advisor is responsible for administering, implementing, and coordinating the Agency's small business (including minority business enterprises) program.

(b) The AID Office of Small Business, which is headed by the Small Business Advisor, shall be specifically responsible for:

(1) Developing policies, plans, and procedures for a coordinated Agency-wide small business and minority business enterprise procurement program;

(2) Advising and consulting regularly with AID/Washington procuring activities on all phases of their small business program, including, where practicable and desirable, the establishment of small business and minority business enterprise award goals;

(3) Collaborating with officials of the Small Business Administration (SBA), other Government agencies, and private organizations on matters affecting the Agency's small business program;

(4) Developing and maintaining a Contractor's Index of bidders/offerors (annotated to identify small business and minority business enterprise firms) capable of furnishing services for use by the AID procuring activities;

(5) Cooperating with contracting officers in administering the performance of contractors subject to the Small Business and Minority Business Enterprises Subcontracting Program clauses (see §§ 1–1.710–3(b) and 1–1.1310–2(b) of Chapter 1 of this title);

(6) Developing a plan of operation designed to increase the share of contracts awarded to small business concerns, including small minority business enterprises;

(7) Establishing small business class set-asides for types and classes of items or services where appropriate;

(8) Reviewing each procurement requisition (PIO/T, PIO/C, or other requisitioning document) to make certain individual or class set-asides are initiated on all suitable AID/Washington proposed contract actions in excess of $2,500 which are subject to screening (see § 7–1.704–6);

(9) Maintaining a program designed to:

(i) Locate capable small business sources for current and future procurements through SBA and other methods,

(ii) Utilize every source available to determine if an item is obtainable from small business, and

(iii) Develop adequate small business competition on all appropriate procurements;

(10) Taking action to assure that unnecessary qualifications, restrictive specifications, or other features (such as inadequate procurement leadtime) of the programing or procurement process, which may prevent small business participation in the competitive process, are modified to permit such participation where an adequate product or service can be obtained;

(11) Recommending that portions of large planned procurements or suitable components of end items or services be purchased separately so small firms may compete;

(12) On proposed noncompetitive procurements, recommending to the Contracting Officer that the procurement be made competitive when, in the opinion of the Small Business Advisor, there are small businesses or minority business enterprises believed competent to furnish the required goods or services, and supplying the Contracting Officer a list of such firms;

(13) Assisting small business concerns with individual problems;

(14) Promoting increased awareness by the technical staff of the availability of small business firms;

(15) Making available to SBA copies of solicitations when so requested;

(16) Counseling nonresponsive or nonresponsible small business bidders to help qualify them for future awards; and

(17) Examining bidders lists to make certain that small business firms are appropriately identified and adequately represented for both negotiated and advertised procurements.

§ 7–1.704–3 AID Contracting Officers.

With respect to procurement activities within their jurisdiction, Contracting Officers are responsible for:

(a) Being thoroughly familiar with Subpart 1–1.7 of Chapter 1 of this title and this subpart dealing with the small business program;

(b) Screening abstracts of bids and other award data to determine set-aside potential for future procurements;

(c) Assuring that small business concerns and minority business enterprises are appropriately identified on source lists and abstracts of bids or proposals by an "S" and "M", respectively, or other appropriate symbol;

(d) Reviewing types and classes of items and services to determine where small business set-asides can be applied;

(e) Recommending that portions of large planned procurements or suitable components of end items or services be purchased separately so small firms may compete;

(f) Making a unilateral determination for total or partial small business set-asides in accordance with § 1–1.706 of Chapter 1 of this title;

(g) Submitting proposed procurement actions (PIO/T's, PIO/C's or other requisitioning documents) for AID/Washington contracts to the Small Business Advisor for screening (see § 7–1.704–6);

(h) Taking action to assure that unnecessary qualifications, restrictive specifications, or other features (such as inadequate procurement leadtime) of the programing or procurement process which may prevent small business participation in the competitive process are modified to permit such participation where an adequate product or service can be obtained;

(i) Prior to rendering a final decision on a proposed noncompetitive procurement action, and as part of his findings and determination, the Contracting Officer shall consider the recommendations, if any, of the Small Business Advisor together with the latter's list of additional sources;

(j) As appropriate, referring small business concerns, including small minority business enterprises, to the Small Business Advisor for information and advice;

(k) Promoting increased awareness by the technical staff of the availability of small business concerns;

(l) Making available to the Small Business Advisor copies of solicitations when requested;

(m) Assisting the Small Business Advisor in counseling nonresponsive or nonresponsible small business bidders/offerors to help them to participate more effectively in future solicitations; and

(n) Including the Small Business and Minority Business Enterprises Subcontracting Program clauses in all contracts which meet the conditions prescribed in §§ 1–1.710–3(b) and 1–1.1310–2(b) of Chapter 1 of this title.

§ 7–1.704–4 Heads of Procuring Activities.

In order for the Agency small business program to be effective, the active support of top management is required. The Heads of the Procuring Activities (HPA's) shall be responsible for:

(a) Rendering decisions in cases resulting from nonacceptances by their Contracting Officers of set-aside recommendations made by the Small Business Advisor;

(b) Consulting with the Small Business Advisor in establishing small business and minority business enterprise award goals, where practicable and desirable; and

(c) Assuring that program/project officers discharge their responsibilities set forth in § 7–1.704–5.

§ 7–1.704–5 Program/Project Officers.

Since the procurement process starts with the establishment of a program/project requirement, the actions of the program/project officers can affect the opportunity of small business to participate equitably; therefore, each program/project officer shall, during the formulation of programs/projects which will require contractual implementation:

(a) Consult with the Small Business Advisor on the availability and capabilities of small business firms to permit making a tentative set-aside determination where appropriate; and

(b) Provide sufficient procurement leadtime in the program/project implementation schedule to allow potential small business participation.

§ 7–1.704–6 Small Business screening procedure.

(a) General: All AID/Washington proposed contract actions (PIO/T's, PIO/C's, or other requisitioning documents) in excess of $2,500 shall be screened by the Small Business Advisor, with the exception of:

(1) Class set-asides and those unilaterally set-aside by Contracting Officers (§ 7–1.704–3(f));

(2) Those where the Contracting Officer certifies in writing that the public exigency will not permit the delay incident to screening (§ 7–1.704–7(b));

(3) Contracts with educational or nonprofit institutions, the object of which is "institution building", i.e., the development of a counterpart capability in the host country by the educational or nonprofit institution; and

(4) Those involving the payment of tuition and fees for participant training at academic institutions.

(b) Preparation of AID Form 1410–14 (see §§ 7–16.801 and 7–16.960 of this chapter):

(1) The Contracting Officer shall prepare the subject form in an original and three copies and forward the original and two copies to the Small Business Advisor within 1 working day of receipt by his procuring activity of a procurement requisition (PIO/T, PIO/C, or other requisitioning document).

NOTE: An approved Noncapital Project Paper (PROP) may be substituted for the PIO/T or PIO/C if required by the urgency of the procurement.

(2) The Contracting Officer will attach to his transmittal a complete copy of the procurement request and a copy of the recommended source list as furnished by the technical office and supplemented by him.

(3) The Contracting Officer shall complete Blocks 2, 3, 4, 5, 9, and 10 (when appropriate) prior to submittal to the Small Business Advisor.

(c) Screening of AID Form 1410–14 by the Small Business Advisor:

(1) The Small Business Advisor will screen the Contracting Officer's recommendations on set-aside potential, small business subcontracting opportunities, and section 8(a) subcontracting, and furnish him with either a written concurrence in his recommendations or written counter recommendations on the original and duplicate copy within 5 working days from receipt of the form from the Contracting Officer.

(2) The Small Business Advisor will complete Blocks 1, 6, 7, 8, 11, and 12 (when appropriate) prior to returning the screened form to the Contracting Officer.

(d) Concurrence or rejection procedure:

(1) The Contracting Officer shall complete Block 13 upon receipt of the original and duplicate copy of the screened form from the Small Business Advisor.

(2) If the Contracting Officer rejects a Small Business Advisor counter-recommendation, he shall return the original and duplicate forms with his written reasons for rejection to the Small Business Advisor within 2 working days.

(3) Upon receipt of the Contracting Officer's rejection, the Small Business Advisor may (i) accept, or (ii) appeal, the rejection. In the case of acceptance of the Contracting Officer's rejection, the Small Business Advisor shall annotate Block 14 when he renders a decision and return the original form to the Contracting Officer within 2 working days.

(e) Appeal procedure:

(1) When informal efforts fail to resolve the set-aside disagreement between the Contracting Officer and the Small Business Advisor, the latter official may appeal the Contracting Officer's decision to the Head of the Procuring Activity. Such an appeal will be made within 5 working days after receipt of the Contracting Officer's rejection.

(2) In the case of an appeal, the Small Business Advisor will send the original and duplicate form, with the appeal noted in Block 14, directly to the Head of the Procuring Activity with his written reasons for appealing. The Contracting Officer will be notified of the Small Business Advisor's appeal by means of a copy of the written reasons for appealing.

(3) The Head of the Procuring Activity shall render a decision on the appeal (complete Block 15) within 3 working days after receipt of same and return the original to the Small Business Advisor and the duplicate to the Contracting Officer.

§ 7–1.704–7 Reports on procurement actions that are exempted from screening.

(a) *Unilateral and class set-asides.* The Contracting Officer shall prepare AID Form 1410–14 as stated in § 7–1.704–6, but forward only the duplicate copy with the documentation required by Block 5 of the form to the Small Business Advisor. The original will be filed in the contract file.

(1) If, upon review of the material submitted under this paragraph (a), the Small Business Advisor concludes that it would be practicable to accomplish all or a portion of the procurement involved under section 8(a) subcontracting, he shall so advise the Contracting Officer in writing within 5 days after receipt of such material.

(2) Such advice shall be considered a counter-recommendation and shall be processed in accordance with § 7–1.704–6 (d) and (e).

(b) *Public exigency exemption.* The Contracting Officer shall prepare AID Form 1410–14 as stated in § 7–1.704–6, but forward only the duplicate copy with

the documentation required by Block 5 of the form to the Small Business Advisor. In addition to the documentation called for in § 7–1.704–6, the Contracting Officer shall furnish a copy of his written determination exempting the procurement from screening. The determination shall cite the pertinent facts which led to his decision. This exemption is not intended to be used as a substitute for good procurement planning and lead time; the Small Business Advisor will report abuses of this exemption to the Head of the Procuring Activity for appropriate action in accordance with § 7–1.704–4(c).

(c) *Institution Building Contract (IBC) Exemption.* The Contracting Officer shall prepare AID Form 1410–14 as stated in § 7–1.704–6, but forward only the duplicate copy with the documentation required by Block 5 of the form to the Small Business Advisor.

3. Subpart 7–16.8 of Chapter 7 is revised to read as follows:

Subpart 7–16.8—Miscellaneous Forms

Sec.
7–16.800 Scope of subpart.
7–16.801 Small Business/Minority Business Enterprise Procurement Review Form.

AUTHORITY: The provisions of Subpart 7–16.8 issued under sec. 621, 75 Stat. 445, as amended; 22 U.S.C. 2381.

§ 7–16.800 Scope of subpart.

This subpart prescribes miscellaneous forms, other than procurement contract forms, for use in connection with the procurement of supplies and services. Illustrations of these forms are contained in Subpart 7–16.9.

§ 7–16.801 Small Business/Minority Business Enterprise Procurement Review Form.

AID Form 1410–14 (Small/Business Minority Business Enterprise Procurement Review Form) is prescribed for use in accordance with § 7–1.704–6 of this chapter.

4. Subpart 7–16.9, Illustrations of Forms, Chapter 7, is amended to add a new form (attached)[1] as follows:

§ 7–16.960 AID Form 1410–14 (Small Business/Minority Business Enterprise Procurement Review Form).

(Sec. 621, 75 Stat. 445, as amended, 22 U.S.C. 2381)

5. This notice should be filed with the current Subpart 7–1.7, which is supersedes.

6. *Authority.* AIDPR Notice No. 72–1 is an interim procurement instruction and is issued pursuant to AIDPR 7–1.104–4 (41 CFR Part 7–1).

7. *Effective date.* The notice shall be effective 15 days after publication in the FEDERAL REGISTER. It will be canceled and superseded upon publication of its contents in an amendment to the AIDPR (41 CFR Part 7).

JAMES F. CAMPBELL,
Assistant Administrator for Program and Management Services.

FEBRUARY 8, 1972.

[FR Doc.72–2397 Filed 2–16–72;8:46 am]

[1] Filed as part of the original document.

Chapter 101—Federal Property Management Regulations

SUBCHAPTER E—SUPPLY AND PROCUREMENT

PART 101–25—GENERAL

Use Standards for Draperies

Use standards are established for determining the areas for which draperies may be justified.

The table of contents for Part 101–25 is amended by the addition of the following new entry:

Sec.
101–25.302–7 Draperies.

Subpart 101–25.3—Use Standards

Section 101–25.302 is amended by adding § 101–25.302–7 as follows:

§ 101–25.302–7 Draperies.

Draperies are authorized for use where justified over other types of window coverings on the basis of cost, insulation, acoustical control, or to maintain an environment commensurate with the purpose for which the space is allocated, as when executive or unitized office furniture is authorized in § 101–25.302–1. Authorized draperies shall be of noncombustible or flame-retardant material. (See § 101–19.109–5.) Determining whether the use of draperies is justified is a responsibility of the agency occupying the building or space involved after consultation with the agency operating or managing the building.

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

Effective date. This regulation is effective upon publication in the FEDERAL REGISTER (2–17–72).

Dated: February 10, 1972.

ROD KREGER,
Acting Administrator of General Services.

[FR Doc.72–2407 Filed 2–16–72;8:47 am]

Title 49—TRANSPORTATION

Chapter I—Hazardous Materials Regulations Board, Department of Transportation

[Docket No. HM–68, Amdts. 173–60, 174–13, 177–20, 178–24]

PART 173—SHIPPERS

Portable Tank Specifications; Correction

On February 9, 1972, Docket No. HM–69; Amendments Nos. 173–60, 174–13, 177–20, 178–24 was published in the FEDERAL REGISTER (37 F.R. 2885). Footnote 1, referenced in §§ 173.128 (a)(3), 173.132(a)(2), and 173.239a, conflicts with the limitation set forth in § 173.32(d) and should read as follows:

[1] Use of existing tanks authorized. Construction not authorized after May 31, 1972.

ALAN I. ROBERTS,
Secretary, Hazardous Materials Regulations Board.

[FR Doc.72–2453 Filed 2–16–72;8:51 am]

[Docket No. HM–68, Amdts. 173–60, etc.]

PART 173—SHIPPERS

PART 174—CARRIERS BY RAIL FREIGHT

PART 177—SHIPMENT MADE BY WAY OF COMMON, CONTRACT, OR PRIVATE CARRIERS BY PUBLIC HIGHWAY

PART 178—SHIPPING CONTAINER SPECIFICATIONS

Portable Tank Specifications

Correction

In F.R. Doc. 72–1824, appearing at page 2885 of the issue for Wednesday, February 9, 1972, the following changes should be made at the end of the document:

1. The title for Mac E. Rogers should read *"Board Member, for the Federal Railroad Administration."*

2. The title for James F. Rudolph should read *"Board Member, for the Federal Aviation Administration."*

Title 50—WILDLIFE AND FISHERIES

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

PART 32—HUNTING

White River National Wildlife Refuge, Ark.

The following special regulations are issued and are effective on date of publication in the FEDERAL REGISTER (2–17–72).

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

ARKANSAS

WHITE RIVER NATIONAL WILDLIFE REFUGE

Public hunting of wild turkey on the White River National Wildlife Refuge, Ark., is permitted only on the areas designated by signs as open to hunting. These open areas are delineated on maps available at the refuge headquarters and from the office of the Regional Director, Bureau of Sport Fisheries and Wildlife, Peachtree-Seventh Building, Atlanta, Ga.

30323. Hunting shall be in accordance with all applicable State regulations and subject to the following special conditions:

(1) Four separate 2-day hunts will be held as follows: April 11–12, 13–14, 17–18, and 20–21. Permits are required. Permits are nontransferable.

(2) The bag limit per hunter for each 2-day hunt is a total of one gobbler. No other game may be taken.

(3) Hunting hours are daylight until 12 noon. Firearms are not allowed in the woods after 12 noon. Hunters may not return to the woods with firearms after their turkey is bagged.

(4) Shotguns only will be used.

(5) All turkeys must be checked out at official check stations.

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 April 30, 1972.

JACK E. HEMPHILL,
Acting Regional Director, Bureau of Sport Fisheries and Wildlife.

FEBRUARY 7, 1972.

[FR Doc.72-2418 Filed 2-16-72;8:48 am]

Proposed Rule Making

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR Parts 1, 12]

INCOME TAX

Investment Credit; Public Utility Property

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 six copies to the Commissioner of Internal Revenue, Attention: CC:LR:T, Washington, D.C. 20224, by March 20, 1972. 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 March 20, 1972. 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, unless the person or persons who have requested a hearing withdraw their requests for a hearing before notice of the hearing has been filed with the Office of the Federal Register. The proposed regulations are to be issued under the authority contained in sections 46(e) and 7805 of the Internal Revenue Code of 1954 (85 Stat. 503, 68A Stat. 917; 26 U.S.C. 46, 7805).

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

The following regulations are prescribed in order to conform the Income Tax Regulations (26 CFR Part 1) to certain amendments made by section 105 of the Revenue Act of 1971 (85 Stat. 503), relating to investment credit for regulated companies. Section 1.46–5 of the regulations hereby adopted supersedes the provisions of § 12.3 of this chapter which were prescribed by T.D. 7161, approved February 11, 1972 (37 F.R. 3511).

PARAGRAPH 1. Section 1.46 is amended by revising paragraph (3) of subsection (c), by adding a new subsection (e), and by revising the historical note. These revised and added provisions read as follows:

§ 1.46 Statutory provisions; amount of credit.

SEC. 46. *Amount of credit*—* * *

(c) *Qualified investment*—* * *

(3) *Public utility property.* (A) In the case of section 38 property which is public utility property, the amount of the qualified investment shall be ⅓ of the amount determined under paragraph (1).

(B) For purposes of subparagraph (A), the term "public utility property" means property used predominantly in the trade or business of the furnishing or sale of—

(i) Electrical energy, water, or sewage disposal services,

(ii) Gas through a local distribution system, or

(iii) Telephone service, telegraph service by means of domestic telegraph operations (as defined in section 222(a)(5) of the Communications Act of 1934, as amended; 47 U.S.C., sec. 222(a)(5)), or other communication services (other than international telegraph service),

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, or by a public service or public utility commission or other similar body of any State or political subdivision thereof. Such term also means communication property of the type used by persons engaged in providing telephone or microwave communication services to which clause (iii) applies, if such property is used predominantly for communication purposes.

(C) In the case of any interest in a submarine cable circuit used to furnish telegraph service between the United States and a point outside the United States of a taxpayer engaged in furnishing international telegraph service (if the rates for such furnishing have been established or approved by a governmental unit, agency, instrumentality, commission, or similar body described in subparagraph (B)), the qualified investment shall not exceed the qualified investment attributable to so much of the interest of the taxpayer in the circuit as does not exceed 50 percent of all interests in the circuit.

* * * * *

(e) *Limitation in case of certain regulated companies*—(1) *General rule.*—Except as otherwise provided in this subsection, no credit shall be allowed by section 38 with respect to any property described in section 50 which is public utility property (as defined in paragraph (5)) of the taxpayer—

(A) *Cost of service reduction.*—If the taxpayer's cost of service for ratemaking purposes is reduced by reason of any portion of the credit allowable by section 38 (determined without regard to this subsection); or

(B) *Rate base reduction.*—If the base to which the taxpayer's rate of return for ratemaking purposes is applied is reduced by reason of any portion of the credit allowable by section 38 (determined without regard to this subsection).

Subparagraph (B) shall not apply if the reduction in the rate base is restored not less rapidly than ratably. If the taxpayer makes an election under this sentence within 90 days after the date of the enactment of this paragraph in the manner prescribed by the Secretary or his delegate, the immediately preceding sentence shall not apply to property described in paragraph (5)(B) if any agency or instrumentality of the United States having jurisdiction for ratemaking purposes with respect to such taxpayer's trade or business referred to in paragraph (5)(B) determines that the natural domestic supply of the product furnished by the taxpayer in the course of such trade or business is insufficient to meet the present and future requirements of the domestic economy.

(2) *Special rule for ratable flow-through.*—If the taxpayer makes an election under this paragraph within 90 days after the date of the enactment of this paragraph in the manner prescribed by the Secretary or his delegate, paragraph (1) shall not apply, but no credit shall be allowed by section 38 with respect to any property described in section 50 which is public utility property (as defined in paragraph (5)) of the taxpayer—

(A) *Cost of service reduction.*—If the taxpayer's cost of service for ratemaking purposes or in its regulated books of account is reduced by more than a ratable portion of the credit allowable by section 38 (determined without regard to this subsection), or

(B) *Rate base reduction.*—If the base to which the taxpayer's rate of return for ratemaking purposes is applied is reduced by reason of any portion of the credit allowable by section 38 (determined without regard to this subsection).

(3) *Special rule for immediate flow-through in certain cases.*—In the case of property to which section 167(l)(2)(C) applies, if the taxpayer makes an election under this paragraph within 90 days after the date of the enactment of this paragraph in the manner prescribed by the Secretary or his delegate, paragraphs (1) and (2) shall not apply to such property.

(4) *Limitation*—(A) *In general.*—The requirements of paragraphs (1) and (2) regarding cost of service and rate base adjustments shall not be applied to public utility property of the taxpayer to disallow the credit with respect to such property before the first final determination which is inconsistent with paragraph (1) or (2) (as the case may be) is put into effect with respect to public utility property (to which this subsection applies) of the taxpayer. Thereupon, paragraph (1) or (2) shall apply to disallow the credit with respect to public utility property (to which this subsection applies) placed in service by the taxpayer—

(i) Before the date that the first final determination or a subsequent determination, which is inconsistent with paragraph (1) or (2) (as the case may be) is put into effect, and

(ii) On or after the date that a determination referred to in clause (i) is put into effect and before the date that a subsequent determination thereafter which is consistent with paragraph (1) or (2) (as the case may be) is put into effect.

(B) *Determinations.*—For purposes of this paragraph, a determination is a determination made with respect to public utility property (to which this subsection applies) by a governmental unit, agency, instrumentality, or commission or similar body described in subsection (c)(3)(B) which determines the effect of the credit allowed by section 38 (determined without regard to this subsection)—

(i) On the taxpayer's cost of service or rate base for ratemaking purposes, or

(ii) In the case of a taxpayer which made an election under paragraph (2), on the taxpayer's cost of service for ratemaking purposes or in its regulated books of account or rate base for ratemaking purposes.

(C) *Special rules.*—For purposes of this paragraph—

(i) A determination is final if all rights to appeal or to request a review, a rehearing, or a redetermination, have been exhausted or have lapsed,

(ii) The first final determination is the first final determination made after the date of the enactment of this subsection, and

(iii) A subsequent determination is a determination subsequent to a final determination.

(5) *Public utility property.*—For purposes of this subsection, the term "public utility property" means—

(A) Property which is public utility property within the meaning of subsection (c)(3)(B), and

(B) Property used predominantly in the trade or business of the furnishing or sale of (i) steam through a local distribution system or (ii) the transportation of gas or steam by pipeline, if the rates for such furnishing or sale are established or approved by a governmental unit, agency, instrumentality, or commission described in subsection (c)(3)(B).

(6) *Ratable portion.*—For purposes of determining ratable restorations to base under paragraph (1) and for purposes of determining ratable portions under paragraph (2)(A), the period of time used in computing depreciation expense for purposes of reflecting operating results in the taxpayer's regulated books of account shall be used.

(7) *Reorganizations, assets acquisitions, etc.*—If by reason of a corporate reorganization, by reason of any other acquisition of the assets of one taxpayer by another taxpayer, by reason of the fact that any trade or business of the taxpayer is subject to ratemaking by more than one body, or by reason of other circumstances, the application of any provisions of this subsection to any public utility property does not carry out the purposes of this subsection, the Secretary or his delegate shall provide by regulations for the application of such provisions in a manner consistent with the purposes of this subsection.

[Sec. 46 as added by sec. 2(b), Rev. Act 1962 (76 Stat. 963); as amended by sec. 201(d)(4), Rev. Act 1964 (78 Stat. 32); sec. 3, Act of Nov. 8, 1966 (Public Law 89-800, 80 Stat. 1514); sec. 2(a), Act of Dec. 27, 1967 (Public Law 90-225, 81 Stat. 731); sec. 105, Rev. Act 1971 (85 Stat. 503)]

PAR. 2. Section 1.46-3 is amended by revising paragraphs (g) (1) and (2) to read as follows:

§ 1.46-3 Qualified investment.

* * * * *

(g) *Public utility property*—(1) *In general.* In the case of section 38 property which is public utility property and which is described in section 50, the amount of the qualified investment with respect to such property shall be 4/7 of the amount otherwise determined under this section with respect to such property. In the case of all other section 38 property which is public utility property, the amount of the qualified investment with respect to such property shall be 3/7 of the amount otherwise determined under this section with respect to such property.

(2) *Definition.* (i) The term "public utility property" means property used predominantly in the trade or business of the furnishing or sale of—

(*a*) Electrical energy, water, or sewage disposal services,

(*b*) Gas through a local distribution system, or

(*c*) Telephone service, telegraph service by means of domestic telegraph operations (as defined in section 222(a)(5) of the Communications Act of 1934, as amended; 47 U.S.C., sec. 222(a)(5)), or, in the case of property described in section 50, other communication services (other than international telegraph service),

if the rates for such furnishing or sale, as the case may be, are regulated, i.e., have been established or approved by a regulatory body described in section 46(c)(3)(B). The term "regulatory body described in section 46(c)(3)(B)" means a State (including the District of Columbia) or political subdivision thereof, an agency or instrumentality of the United States, or a public service or public utility commission or other body of any State or political subdivision thereof similar to such a commission. The term "established or approved" includes the filing of a schedule of rates with a regulatory body which has the power to approve such rates, even though such body has taken no action on the filed schedule or generally leaves undisturbed rates filed by the taxpayer involved.

(ii)(*a*) In the case of property described in section 50, the term "public utility property" also means nonregulated communication property which is used predominantly for communication purposes, if it is clearly of the type ordinarily used to provide regulated telephone or microwave communication services to which subdivision (i)(*c*) of this subparagraph applies: The determination whether nonregulated communication property is clearly of such type must be made on the basis of the facts and circumstances of each particular case including, for example, the state of technology and pattern of ratemaking by regulatory bodies in the communications industry.

(*b*) Examples of nonregulated communication property which qualifies as public utility property under (*a*) of this subdivision are microwave transmission equipment, private communication equipment (other than land mobile radio equipment for which the operator must obtain a license from the Federal Communications Commission), private switchboard (PBX) equipment, communications terminal equipment connected to telephone networks, data transmission equipment, and communications satellites. Examples of nonregulated communications property which does not so qualify during 1972 are computer terminals or fascimile reproduction equipment which is connected to telephone lines to transmit data. For purposes of this subdivision (ii), the term communication property does not include office furniture, stands for communication property, tools, repair vehicles, and similar property even if exclusively used in providing nonregulated telephone or microwave communications services.

(iii) For purposes of this paragraph, the term "public utility activity" means any activity described in subdivision (i) of this subparagraph, which is regulated in a manner described in such subdivision, and any activity described in subdivision (ii) of this subparagraph, but only if the property used in such activity is considered "public utility property" under such subdivision. If property is used by a taxpayer both in a public utility activity and in another activity, the characterization of such property shall be based on the predominant use of such property during the taxable year in which it is placed in service.

* * * * *

PAR. 3. The following new section is added immediately after § 1.46-4:

§ 1.46-5 Limitation in case of certain regulated companies.

(a) *In general*—(1) *Disallowance.* Under section 46(e), no credit shall be allowed by section 38 in certain cases with respect to certain regulated public utility property referred to as "section 46(e) property". For purposes of this section, the term "section 46(e) property" is defined in paragraph (b)(1) of this section. Section 46(e)(4) and paragraph (f) of this section refer to circumstances under which a regulatory body may put into effect a determination which will result in the disallowance of the credit otherwise allowable under section 38. Such a determination will result in a disallowance of the credit otherwise allowable under section 38 only if paragraph (1) or (2) of section 46(e) applies to such property and such determination affects the taxpayer's cost of service or rate base in a manner which is inconsistent with paragraph (1) or (2) (whichever is applicable) of section 46(e). Under the provisions of paragraph (1) of section 46(e), in general, the credit allowable by section 38 may not be flowed through to income but in certain circumstances may be used to reduce rate base (provided that such reduction is restored not less rapidly than ratably). If an election is made under paragraph (2) of section 46(e), in general, such credit may be flowed through to income (but not more rapidly than ratably) and there shall not be any reduction in rate base. If an election is made under paragraph (3) of section 46(e), none of the limitations of paragraph (1) or (2) of that section apply to certain section 46(e) property of the taxpayer. For rules as to the manner of making on or before March 9, 1972, the 3 elections enumerated in section 46(e), see paragraph (h) of this section. For rules with respect to the treatment of corporate reorganizations, asset acquisitions, and taxpayers subject to the jurisdiction of more than one regulatory body, etc., see paragraph (j) of this section.

(2) *Nonapplication of prior law.* Under section 105(e) of the Revenue Act of 1971, section 203(e) of the Revenue Act of 1964, 78 Stat. 35, shall not apply to section 46(e) property.

(b) *Definitions*—(1) *Section 46(e) property.* "Section 46(e) property" is section 38 property which is both property described in section 50 and is—

(i) Public utility property within the meaning of section 46(c)(3)(b) (other than nonregulated communication property of the type described in paragraph (g)(2)(ii) of § 1.46-3), or

(ii) Property used predominantly in the trade or business of the furnishing or sale of (*a*) steam through a local distribution system or (*b*) the transportation of gas or steam by pipeline, if the rates for such furnishing or sale are established or approved by a regulatory body described in section 46(c)(3)(B).

For purposes of determining whether property is used predominantly in the trade or busines of transportation of gas by pipeline (or of transportation of gas by pipeline and of furnishing or sale of gas through a local distribution system), the rules prescribed in paragraph (g)(4) of § 1.46-3 apply except that accounts 365 through 371, inclusive (Transmission Plant), shall be added to the accounts enumerated in subdivision (i) of such paragraph (g)(4).

(2) *Cost of service.* (i) In determining whether or to what extent a credit allowable under section 38 (determined without regard to section 46(e)) reduces cost of service, reference shall be made to any accounting treatment that can affect cost of service. Examples of such treatment are reducing by all or a portion of such credit the amount of Federal income tax taken into account in computing the taxpayer's cost of service, reducing the depreciable bases of property by such credit for ratemaking purposes, and (for purposes of paragraph (2) of section 46(e)) requiring either such treatment on the taxpayer's regulated books of account.

(ii) For purposes of this section, a reduction in the taxpayer's rate base will be deemed not to result in a reduction in such taxpayer's cost of service for ratemaking purposes even though as a technical ratemaking term "cost of service" may include the cost of common stock investment, that is, the cost of capital rate assigned to such investment, multiplied by the amount of the investment.

(3) *Rate base.* For purposes of this section, the term "rate base" means the base to which the taxpayer's rate of return for ratemaking purposes is applied (i.e., the monetary amount which is used as the divisor in calculating rate of return or the amount which is multiplied by the fair rate of return to determine the allowable return in the fixing of rate levels). In determining whether or to what extent a credit allowed under section 38 (determined without regard to section 46(e)) reduces the rate base, reference shall be made to any accounting treatment of such credit that can affect the taxpayer's permitted profit on investment. Thus, for example, assigning a "cost of capital" rate to the amount of such credit which is less than the permissible overall rate of return (determined without regard to the credit) would be treated as, in effect, a rate base adjustment. What is the overall rate of return depends upon the practice of the regulatory body. Thus, for example, an overall rate of return may be a rate determined on the basis of an average or weighted average of allowable rates of return on investments by common stockholders, preferred stockholders, and creditors.

(c) *General rule*—(1) *In general.* Paragraph (1) of section 46(e) shall apply to all of the taxpayer's section 46(e) property except as otherwise provided in this section in cases where the taxpayer has made an election under paragraph (2) or (3) of section 46(e) in the manner prescribed in paragraph (h) of this section. Under paragraph (1) of section 46(e), the credit allowable by section 38 (determined without regard to section 46(e)) shall not be allowed with respect to the taxpayer's section 46(e) property if—

(i) Its cost of service for ratemaking purposes is reduced by reason of any portion of such credit, or

(ii) (*a*) Its rate base is reduced by reason of any portion of the credit and (*b*) such reduction in rate base is not restored or is restored less rapidly than ratably within the meaning of paragraph (g) of this section.

(2) *Insufficient natural domestic supply.* (i) The provisions of subparagraph (1)(ii)(*b*) of this paragraph shall not apply with respect to the taxpayer's "short supply property" if the taxpayer makes an election under the last sentence of paragraph (1) of section 46(e) on or before March 9, 1972, in the manner prescribed in paragraph (h) of this section. For purposes of this section, the term "short supply property" means section 46(e) property if—

(*a*) Such property is used by the taxpayer predominantly in the trade or business of the furnishing or sale of steam through a local distribution system or transportation of gas or steam by pipeline,

(*b*) Such gas or steam is a natural domestic product,

(*c*) The regulatory body described in section 46(c)(3)(B) having jurisdiction for ratemaking purposes with respect to such trade or business is an agency or instrumentality of the United States, and

(*d*) Such agency or instrumentality of the United States publishes in the FEDERAL REGISTER a determination that the natural domestic supply of gas or steam is insufficient to meet the present and future requirements of the domestic economy and such determination is in effect (within the meaning of subdivision (ii) of this subparagraph) on the date that such property is placed in service.

(ii) If a determination described in (*d*) of subdivision (i) of this subparagraph is made—

(*a*) On or before (90 days after publication in the FEDERAL REGISTER of permanent regulations under section 46(e)), such determination shall be considered to be in effect with respect to section 46(e) property placed in service at any time prior to the date that a revocation of such determination is published in the FEDERAL REGISTER, or

(*b*) After (90 days after publication in the FEDERAL REGISTER of permanent regulations under section 46(e)), such determination shall be considered to be in effect for a period beginning on the date that such determination is published in the FEDERAL REGISTER and ending on the date that a revocation of such determination is published in the FEDERAL REGISTER.

Thus, for example, if on or before (90 days after the date of publication in the FEDERAL REGISTER of permanent regulations under section 46(e)) the Federal Power Commission publishes such a determination with respect to the natural domestic supply of gas, and if the taxpayer properly made an election under the last sentence of paragraph (1) of section 46(e), then, with respect to the taxpayer's short-supply property placed in service on or before (such 90th day), no credit will be allowable under section 38 if the Federal Power Commission requires the taxpayer to reduce its rate base by any portion of the credit allowable by section 38 (determined without regard to section 46(e)) with respect to section 46(e) property used predominantly in the taxpayer's business of furnishing or selling the transportation by pipeline of gas which is a natural domestic product whether or not there is a restoration to rate base.

(d) *Special rule for ratable flow-through.* If an election is made under paragraph (2) of section 46(e) on or before March 9, 1972, in the manner prescribed in paragraph (h) of this section, such paragraph (2) shall apply to all of the taxpayer's section 46(e) property except as otherwise provided in paragraph (h) of this section with respect to an election under paragraph (3) of section 46(e). Under paragraph (2) of section 46(e), the credit allowable by section 38 (determined without regard to section 46(e)) shall not be allowed with respect to the taxpayer's section 46(e) property if—

(1) Its cost of service for ratemaking purposes or in its regulated books of account is reduced by more than a ratable portion of such credit, or

(2) The taxpayer's rate base is reduced by reason of any portion of such credit.

(e) *Flow-through property.* If a taxpayer makes an election under paragraph (3) of section 46(e) on or before March 9, 1972, in the manner prescribed by paragraph (h) of this section, paragraphs (1) and (2) of section 46(e) shall not apply to the taxpayer's section 46(e) property to which section 167(l)(2)(C) applies. Under such election, the credit is allowable under section 38 notwithstanding any determination by a regulatory body having jurisdiction over such taxpayer requiring that such credit be taken into account by adjusting in any manner the taxpayer's cost of service or rate base. In general, section 167(l)(2)(C) applies to property referred to as "post-1969 public utility property" with respect to which a "flow-through method

of accounting" within the meaning of section 167(l)(3)(H) is used to take into account the allowance for depreciation under section 167(a). For example, section 167(l)(2)(C) does not apply to property with respect to which an election under section 167(l)(4)(A) applies. Thus, such property does not qualify for an election under paragraph (3) of section 46(e).

(f) *Limitations*—(1) *Disallowance postponed.* There shall be no disallowance of the credit otherwise allowable by section 38 until the first final determination inconsistent with paragraph (1) or (2) (as the case may be) of section 46(e) is put into effect with respect to the taxpayer's section 46(e) property.

(2) *Conditions for disallowance.* Paragraph (1) or (2) (as the case may be) of section 46(e) shall apply to disallow the credit with respect to section 46(e) property placed in service (within the meaning of paragraph (d) of § 1.46–3) by the taxpayer—

(i) Before the date that the first final inconsistent determination, or a subsequent inconsistent determination (whether or not final), is put into effect, and

(ii) On or after such date and before the date that a subsequent determination consistent with paragraph (1) or (2) (as the case may be) of section 46(e) (whether or not final) is thereafter put into effect.

No amount of credit for a taxable year shall be disallowed under this subparagraph if for such year assessment of a deficiency is barred by any law or rule of law.

(3) *Notification and other requirements.* The taxpayer shall notify the district director of a disallowance of a credit under subparagraph (2) of this paragraph within 30 days of the date that the applicable determination is put into effect. In the case of such a disallowance, the taxpayer shall recompute its tax liability for any affected taxable year and such recomputation shall be made in the form of an amended return where necessary.

(4) *Credit.* As used in this paragraph, the term "credit" refers to a credit allowable by section 38 (determined without regard to section 46(e)).

(5) *Determinations.* For purposes of this paragraph, the term "determination" refers to determination made with respect to section 46(e) property (other than property to which an election under paragraph (3) of section 46(e) applies) by a regulatory body described in section 46(c)(3)(B) which determines the effect of the credit—

(i) For purposes of paragraph (1) of section 46(e), on the taxpayer's cost of service or rate base for ratemaking purposes, or

(ii) In the case of a taxpayer which made an election under paragraph (2) of section 46(e), (*a*) on its cost of service for ratemaking purposes or in its regulated books of account or (*b*) on its rate base for ratemaking purposes.

(6) *Types of determinations.* For purposes of this paragraph, the term—

(i) "Inconsistent" in reference to a determination refers to a determination which is inconsistent with paragraph (1) or (2) (as the case may be) of section 46(e). Thus, for example, a determination to reduce the taxpayer's cost of service by more than a ratable portion of the credit would be a determination which is inconsistent with such paragraph (1). For a further example, such a determination would also be inconsistent if such paragraph (2) applied because in such case no reduction in cost of service is permitted.

(ii) "Consistent" in reference to a determination refers to a determination which is consistent with such paragraph (1) or (2) (as the case may be).

(iii) "Final determination" means a determination with respect to which all rights to appeal or request a review, a rehearing, or a redetermination, have been exhausted or have lapsed.

(iv) "First final determination" means the first final determination put into effect after December 10, 1971.

(v) "Subsequent determination" is any determination put into effect after a first final determination.

(7) *Put into effect.* A determination is put into effect on the later of—

(i) The date it is issued (or, if a first final determination, the date it becomes final) or

(ii) The date it becomes operative.

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

Example (1). Corporation X, a calendar-year taxpayer engaged in a public utility activity is subject to the jurisdiction of regulatory body A. On September 15, 1971, X purchases section 46(e) property and places it in service on that date. For 1971, X takes the credit allowable by section 38 with respect to such property. X does not make any election permitted by section 46(e). On October 9, 1972, A makes a determination that X must account for the credit allowable by section 38 in a manner inconsistent with section 46(e)(1). The determination, which was the first determination by A after December 10, 1971, becomes final on January 1, 1973, and holds that X must retroactively adjust the manner in which it accounted for the credit allowable by section 38 starting with its taxable year which began on January 1, 1972. Since, under the provisions of subparagraph (7) of this paragraph, the determination by A is put into effect on January 1, 1973 (the date it becomes final), the credit allowable by section 38 (determined without regard to section 46(e)) will be retroactively disallowed with respect to any of X's section 46(e) property placed in service prior to January 1, 1973, on any date which occurs during a taxable year with respect to which an assessment of a deficiency has not been barred by any law or rule of law. In addition, the credit will be disallowed with respect to X's section 46(e) property placed in service on or after January 1, 1973, and before the date that a subsequent determination by A, which as to X is consistent with section 46(e)(1), is put into effect. Thus, X must amend its income tax return for 1971 to reflect the retroactive disallowance of the credit allowable by section 38 (determined without regard to section 46(e)) with respect to the section 46(e) property placed in service on September 15, 1971.

Example (2). The facts are the same as in example (1), except that the first inconsistent determination by A becomes final on April 5, 1972, and requires X to account for the credit allowable by section 38 for all taxable years beginning on or after January 1, 1973, in a manner inconsistent with section 46(e)(1). Under the provisions of subparagraph (7) of this paragraph, the determination was put into effect on January 1, 1973 (the date it became operative). The result is the same as in example (1).

Example (3). The facts are the same as in example (1), except that on June 1, 1975, A issues a determination that X shall retroactively account for the credit allowable by section 38 in a manner consistent with the provisions of section 46(e)(1) for taxable years beginning on or after January 1, 1971. The determination becomes final on January 5, 1976, in the same form as originally issued. The result is the same as in example (1) with respect to property X places in service before June 1, 1975. The credit will be allowed with respect to property X places in service on or after June 1, 1975 (the date that the consistent determination is put into effect) and before a subsequent inconsistent determination is put into effect.

(g) *Ratable methods*—(1) *In general.* Under this paragraph, rules are prescribed for purposes of determining (i) whether or not under paragraph (1) of section 46(e) a reduction in the taxpayer's rate base with respect to the credit allowed by section 38 (determined without regard to section 46(e)) is restored less rapidly than ratably or (ii) whether or not under paragraph (2) of section 46(e) the taxpayer's cost of service for rate making purposes is reduced by more than a ratable portion of such credit. Whether a restoration or a reduction is ratable depends upon the factors in subparagraph (2) of this paragraph.

(2) *Regulated depreciation expense.* For purposes of subparagraph (1) of this paragraph, what is "ratable" shall be determined with reference to the period of time actually used by the taxpayer in computing its regulated depreciation expense beginning with the year which includes the date the section 46(e) property was placed in service for purposes of computing such expense. For purposes of this paragraph, the term "regulated depreciation expense" means the depreciation expense computed pursuant to the rules (if any) prescribed or required by the regulatory body having jurisdiction over the taxpayer for purposes of reflecting operating results in the taxpayer's regulated books of account. Such period of time shall be expressed in units of years (or shorter periods), of production, or of machine hours, and shall be determined in accordance with the individual useful life system or composite (or other group asset) account system actually used by the taxpayer in computing its regulated depreciation expense. A method of restoring, or reducing, is ratable if the amount to be restored to rate base or to reduce cost of service (as the case may be) is allocated ratably in proportion to the number of such units. Thus, for example, assume that the regulated depreciation expense is computed under the straight line method by applying a composite annual percentage rate to "original cost" (as defined for purposes of computing regulated depreciation expense). See, for example, 47 CFR 31.02–80 (relating

to uniform system of accounts for Class A and Class B telephone companies). If, with respect to an item of section 46(e) property the amount to be restored annually to rate base is computed by applying such percentage to the amount by which the rate base was reduced, then the restoration is ratable. Similarly, if cost of service is reduced annually by an amount computed by applying the same percentage to the amount of the credit allowed under section 38 (determined without regard to section 46(e)), cost of service is reduced by a ratable portion. If such percentage were revised for purposes of computing regulated depreciation expense beginning with a particular accounting period, the computation of ratable restoration or ratable portion (as the case may be) must also be revised beginning with such period.

(h) *Elections*—(1) *In general.* Under section 46(e), three elections may be made on or before March 9, 1972, with respect to section 46(e) property. An election made under the provisions of section 46(e) shall be irrevocable.

(2) *Applicability of elections.* (i) Any election under section 46(e) shall be made with respect to all of the taxpayer's property eligible for the election whether or not the taxpayer is regulated by more than one regulatory body.

(ii) (*a*) Paragraph (1) of section 46(e) shall apply to all of the taxpayer's section 46(e) property in the absence of an election under paragraph (2) or (3) of section 46(e). If an election is made under paragraph (2) of section 46(e), paragraph (1) of such section shall not apply to any of the taxpayer's section 46(e) property.

(*b*) An election made under the last sentence of section 46(e)(1) shall apply to that portion of the taxpayer's section 46(e) property to which paragraph (1) of section 46(e) applies and which is short supply property within the meaning of paragraph (c)(2) of this section.

(iii) If a taxpayer makes an election under paragraph (2) of section 46(e), and makes no election under paragraph (3) of such section, the election under paragraph (2) of section 46(e) shall apply to all of its section 46(e) property.

(iv) If a taxpayer makes an election under paragraph (3) of section 46(e), such election shall apply to all of the taxpayer's section 46(e) property to which section 167(l)(2)(C) applies. Paragraph (1) or (2) of section 46(e) (as the case may be) shall apply to that portion of the taxpayer's section 46(e) property which is not property to which section 167(l)(2)(C) applies. Thus, for example, if a taxpayer makes an election under paragraph (2) of section 46(e) and also makes an election under paragraph (3) of section 46(e), paragraph (3) shall apply to all of the taxpayer's section 46(e) property to which section 167(l)(2)(C) applies and paragraph (2) shall apply to the remainder of the taxpayer's section 46(e) property.

(3) *Method of making elections.* A taxpayer may make the elections described in section 46(e) by filing a statement, on or before March 9, 1972, with the district director or director of the internal revenue service center with whom the taxpayer ordinarily files its income tax return. For rules with respect to taxpayers filing consolidated returns see, § 1.1502–77(a). Such statement shall contain the following information:

(i) The name, address, and taxpayer identification number of the taxpayer,

(ii) The paragraph (or paragraphs) of section 46(e) under which the taxpayer is making the election,

(iii) If an election is made under the last sentence of section 46(e)(1), the name and address of all regulatory bodies which have jurisdiction over the taxpayer with respect to the section 46(e) property covered by such election and a statement setting forth the type of the public utility activity described in section 46(e)(5)(B) in which the taxpayer engages, and

(iv) If an election is made under paragraph (3) of section 46(e), a statement indicating whether an election has been made by the taxpayer under section 167(l)(4)(A).

(i) [Reserved]

(j) *Reorganizations, asset acquisitions, multiple regulation, etc*—(1) *Taxpayers not entirely subject to jurisdiction of one regulatory body.* (i) If a taxpayer is required by a regulatory body having jurisdiction over less than all of its property to account for the credit allowable by section 38 (determined without regard to section 46(e)) under a determination which is inconsistent with paragraph (1) or (2) (as the case may be) of section 46(e), such credit shall be disallowed only with respect to property subject to the jurisdiction of such regulatory body.

(ii) For purposes of this paragraph, a regulatory body is considered to have jurisdiction over property of a taxpayer if the property is included in the rate base for which the regulatory body determines an allowable rate of return for ratemaking purposes or if expenses with respect to the property are included in cost of service as determined by the regulatory body for ratemaking purposes. For example, if regulatory body A, having jurisdiction over 60 percent of an item of X corporation's section 46(e) property, makes a determination which is inconsistent with section 46(e), and if regulatory body B, having jurisdiction over the remaining 40 percent of such item of property, makes a consistent determination (or if the remaining 40 percent is not subject to the jurisdiction of any regulatory body), then 60 percent of the credit allowable by section 38 (determined without regard to section 46(e)) with respect to such item will be disallowed. For a further example, if regulatory body A, having jurisdiction over 60 percent of X's section 46(e) property, has jurisdiction over 100 percent of a particular generator, 100 percent of the credit allowable by section 38 (determined without regard to section 46(e)) with respect to such generator will be disallowed.

(iii) For rules which provide that the 3 elections under section 46(e) may not be made with respect to less than all of the taxpayer's property eligible for the election, see paragraph (h)(2)(i) of this section.

(2) [Reserved]

[FR Doc.72-2503 Filed 2-16-72;8:52 am]

[26 CFR Parts 1, 301]

INCOME TAX

Income Averaging

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 six copies, to the Commissioner of Internal Revenue, Attention: CC: LR: T, Washington, D.C. 20224, by March 20, 1972. 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 March 20, 1972. 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 unless the person or persons who have requested a hearing withdraw their requests for a hearing before notice of the hearing has been filed with the Office 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) under sections 1301, 1302, 1303, 1304, and 6511(d)(2)(B), of the Internal Revenue Code of 1954 to section 311 of the Tax Reform Act of 1969 (83 Stat. 586), and to otherwise clarify such regulations, such regulations are amended as follows. The Income Tax Regulations under section 6511(d)(2)(B) of such Code are also amended to conform to section 232(d) of the Revenue Act of 1964 (78 Stat. 111).

PARAGRAPH 1. Section 1.1301 is amended by revising such section and the historical note to read as follows:

§ 1.1301 Statutory provisions; limitation on tax.

SEC. 1301. *Limitation on tax.* If an eligible individual has averagable income for the computation year, and if the amount of such income exceeds $3,000, then the tax imposed by section 1 for the computation year which is attributable to averagable income shall be

5 times the increase in tax under such section which would result from adding 20 percent of such income to 120 percent of average base period income.

(Sec. 1301 as amended by sec. 232(a), Rev. Act 1964 (78 Stat. 105); sec. 311(a), Tax Reform Act 1969 (83 Stat. 586))

PAR. 2. There is inserted immediately after § 1.1301 the following new section:

§ 1.1301–0 Taxable years affected.

The provisions of § 1.1301 through § 1.1305 apply to computation years beginning after December 31, 1969, and to base period years applicable thereto. See section 1302(c)(1) and § 1.1302–3(a) for the definition of "computation year". See section 1302(c)(3) and § 1.1302–3(c) for the definition of "base period year". See 26 CFR § 1.1301 through § 1.1305 (rev. as of Jan. 1, 1971) for the provisions applying to computation years beginning before January 1, 1970, and to base period years applicable thereto.

PAR. 3. Section 1.1301–1 is amended to read as follows:

§ 1.1301–1 Limitation on tax.

If, for a computation year beginning after December 31, 1969, an eligible individual has averagable income for such computation year, and if the amount of his averagable income for such year exceeds $3,000, then such individual may choose (pursuant to the provisions of section 1304(a) and § 1.1304–1) to compute the tax attributable to his averagable income under section 1301. The tax imposed by section 1 which is attributable to an individual's averagable income for the computation year is the amount of the tax equal to five times the increase in tax under section 1 which would result from adding 20 percent of such income to 120 percent of average base period income. See section 1303 and § 1.1303–1 for the definition of "eligible individual". See section 1302(a) and § 1.1302–1 for the definition of "averagable income." See section 1302(b) and § 1.1302–3(a) for the definition of "average base period income."

PAR. 4. Section 1.1302 is amended by revising section 1302 and the historical note to read as follows:

§ 1.1302 Statutory provisions; definition of averagable income; related definitions.

SEC. 1302. *Definition of averagable income; related definitions*—(a) *Averagable income*—(1) *In general.* For purposes of this part, the term "averagable income" means the amount by which taxable income for the computation year (reduced as provided in paragraph (2)) exceeds 120 percent of average base period income.

(2) *Reductions.* The taxable income for the computation year shall be reduced by—

(A) the amount (if any) to which section 72(m)(5) applies, and

(B) the amounts included in the income of a beneficiary of a trust under section 668(a).

(b) *Average base period income.* For purposes of this part—

(1) *In general.* The term "average base period income" means one-fourth of the sum of the base period incomes for the base period.

(2) *Base period income.* The base period income for any taxable year is the taxable income for such year—

(A) increased by an amount equal to the excess of—

(i) the amount excluded from gross income under section 911 (relating to earned income from sources without the United States) and subpart D of part III of subchapter N (sec. 931 and following, relating to income from sources within possessions of the United States), over

(ii) the deductions which would have been properly allocable to or chargeable against such amount but for the exclusion of such amount from gross income; and

(B) decreased by the amounts included in the income of a beneficiary of a trust under section 668(a).

(c) *Other related definitions.* For purposes of this part—

(1) *Computation year.* The term "computation year" means the taxable year for which the taxpayer chooses the benefits of this part.

(2) *Base period.* The term "base period" means the 4 taxable years immediately preceding the computation year.

(3) *Base period year.* The term "base period year" means any of the 4 taxable years immediately preceding the computation year.

(4) *Joint return.* The term "joint return" means the return of a husband and wife made under section 6013.

(Sec. 1302 as amended by sec. 232(a), Rev. Act 1964 (78 Stat. 105); sec. 311(b), Tax Reform Act 1969 (83 Stat. 586))

PAR. 5. Section 1.1302–1 is amended to read as follows:

§ 1.1302–1 Definition of averagable income.

(a) *In general.* The term "averagable income" means the amount (if any) by which taxable income for the computation year as modified in accordance with section 1302(a)(2) and section 1304(c)(3)(B) exceeds 120 percent of average base period income (as defined in section 1302(b) and § 1.1302–3(a)).

(b) *Modifications.* For purposes of paragraph (a) of this section, taxable income for the computation year shall be reduced by—

(1) Any amount described in section 72(m)(5)(A), to which a penalty under section 72(m)(5) and § 1.72–17(e) is applicable,

(2) Any amount which is included in the income of a beneficiary of a trust under section 668(a), and

(3) The excess (if any) of amounts includible in a separate return made by a married taxpayer for the computation year which constitutes earned income (within the meaning of section 911(b)) and is community income under community property laws over the amount of such income which would have been includible if such earned income did not constitute community income.

(c) *Example.* Paragraph (b)(3) of this section may be illustrated by the following example:

Example. The total income of a husband and wife for the computation year consists of $60,000 of community income attributable to personal services, $40,000 of which is earned by H. W makes a separate return for such year and reports gross income of $30,000, her share of the community income. W chooses the benefits of income averaging for such year. In determining her averageable taxable income for such year, W's taxable income must be reduced by $10,000, the excess of the community income attributable to personal services includible in her return ($30,000) over the amount of such income from personal services which would have been reportable by her if such income did not constitute community income ($20,000). The additional $10,000 of W's income for such year (which results from the application of local community property laws) is not subject to income averaging. For tax on such amounts, see paragraph (a)(3) and example 3 of § 1.1304–5(c).

§ 1.1302–2 [Deleted]

PAR. 6. Section 1.1302–2 is deleted.

PAR. 7. Section 1.1302–3 is redesignated as § 1.1302–2, and such redesignated section is amended by revising paragraph (b)(1) and (2) and paragraph (c) to read as follows:

§ 1.1302–2 Average base period income.

* * * * *

(b) *Base period income*—(1) *Definition.* Except as otherwise provided in subparagraph (3) of this paragraph, the term "base period income" means taxable income for any base period year first increased in accordance with section 1302(b)(2)(A) and paragraph (c)(1) of this section, and then decreased in accordance with section 1302(b)(2)(B) and paragraph (c)(2) of this section. Base period income for any taxable year may never be less than zero.

(2) *Base period income with respect to a computation year.* Base period income for each base period year must be determined in a manner consistent with the return for the computation year. The base period income with respect to a computation year for which an individual makes a separate return is the separate base period income of such individual. The base period income with respect to a computation year for which a husband and wife make a joint return is the sum of the base period incomes of both the husband and wife. Thus, if A and B, who are not married for the taxable years 1967–70 and made separate returns for such years, marry in 1971 and make a joint return for the computation year 1971, their base period income for each of the taxable years 1967–70 is the sum of the base period incomes for each such year of A (computed on the basis of his taxable income for each such year) and of B (similarly computed). If, however, they were married and made joint returns with each other for any of the base period years, their base period income for any such year may be computed on the basis of their aggregate taxable income. The base period income with respect to a computation year for which an individual makes a return as a surviving spouse (as defined in section 2(a) and § 1.2–2) is the sum of the base period incomes of the surviving spouse and the decedent with respect to whom such return is made.

* * * * *

(c) *Adjustments to taxable income*—(1) *Foreign and possessions income.* In determining base-period income for any taxable year, taxable income for such year shall be increased by an amount equal to the excess of the amount of income which was excluded from gross income under section 911 (relating to earned income from sources without the United States) and subpart D of part III of subchapter N (sec. 931 and following, relating to income from sources within possessions of the United States) over the deductions which would have been properly allocable to or chargeable against such amount but for the exclusion of such amount from gross income.

(2) *Certain trust income.* In determining base-period income for any taxable year, taxable income for such year shall be decreased by any amount which is included in the income of a beneficiary of a trust under section 668(a).

* * * * *

§ 1.1302–4 [Deleted]

PAR. 8. Section 1.1302–4 is deleted.

PAR. 9. Section 1.302–5 is redesignated as § 1.1302–3, and such redesignated section is amended by revising paragraph (b) to read as follows:

§ 1.1302–3 Other related definitions.

* * * * *

(b) *Base period.* See paragraph (a) of § 1.1302–2 for definition of the term "base period".

* * * * *

PAR. 10. Section 1.1303 is amended by revising section 1303(c)(2)(B) and the historical note to read as follows:

§ 1.1303 Statutory provisions; eligible individual.

* * * * *

(c) *Individuals receiving support from others*—* * *

(2) *Exemptions.* * * *

(B) More than one-half of the individual's taxable income for the computation year is attributable to work performed by him in substantial part during two or more of the base period years, or

* * * * *

[Sec. 1303 as amended by sec. 232(a), Rev. Act 1964 (78 Stat. 105); sec. 311(d), Tax Reform Act 1969 (83 Stat. 587)]

PAR. 11. Section 1.1303–1 is amended by revising paragraph (b), and paragraph (c) (1), (3), and (4)(i) to read as follows

§ 1.1303–1 Eligible individuals.

* * * * *

(b) *Nonresident alien individuals.* An individual is not an eligible individual for the computation year if, at any time during such year or his base period, he was a nonresident alien. The determination that an individual is a nonresident alien is made in accordance with § 1.871–2 through § 1.871–4. For example, if H, a U.S. citizen living abroad, married W, an alien, during 1967 and returned with her to live in the United States on December 31, 1969, they may not choose the benefits of income averaging if they file a joint return for the taxable year 1971 since W was a nonresident alien for 3-base-period years (1967–69). H, however, may make a separate return and may, if he is otherwise qualified, choose the benefits of income averaging.

(c) *Individuals receiving support from others*—(1) *Self-support rule.* Except as provided in section 1303(c)(2) and subparagraphs (2), (3), and (4) of this paragraph, to be an eligible individual for the computation year under this paragraph, an individual must, together with his spouse, have furnished 50 percent or more of his support during each of his 4-base-period years. For example, H and W are married for the computation year and the 4-base-period years. If H and W have provided more than 50 percent of their support during each of the 4-base-period years, both H and W are eligible individuals for the computation year.

* * * * *

(3) *Major accomplishment rule.* Notwithstanding the general rule contained in section 1303(c)(1) and subparagraph (1) of this paragraph, an individual may be an eligible individual for a computation year if more than 50 percent of his taxable income for the computation year is attributable to work performed by him in substantial part during two or more of his 4-base-period years. It is not necessary that the individual perform any of the work in his computation year.

(4) *Spouse supported by others.* (i) Notwithstanding the general rule contained in section 1303(c)(1) and subparagraph (1) of this paragraph, an individual may be an eligible individual for a computation year if—

(*a*) Such individual makes a joint return under section 6013 for such year, and

(*b*) Not more than 25 percent of the aggregate adjusted gross income of such individual and his spouse for such year is attributable to such individual.

For example, H and W, who are United States citizens and calendar year taxpayers, were married in August 1970. H supported himself from 1967 to 1971. W's parents furnished more than 50 percent of her support for each year prior to her marriage. For the taxable year 1971, H and W filed a joint return showing an aggregate adjusted gross income of $10,000, all of which is attributable to H. If H and W are otherwise qualified, they may choose the benefits of income averaging for 1971.

* * * * *

PAR. 12. Section 1.1304 is amended by revising such section and the historical note to read as follows:

§ 1.1304 Statutory provisions; special rules.

SEC. 1304. *Special rules*—(a) *Taxpayer must choose benefits.* This part shall apply to the taxable year only if the taxpayer chooses to have the benefits of this part for such taxable year. Such choice may be made or changed at any time before the expiration of the period prescribed for making a claim for credit or refund of the tax imposed by this chapter for the taxable year.

(b) *Certain provisions inapplicable.* If the taxpayer chooses the benefits of this part for the taxable year, the following provisions shall not apply to him for such year:

(1) Section 3 (relating to optional tax),

(2) Section 72(n)(2) (relating to limitation of tax in case of total distribution),

(3) Section 911 (relating to earned income from sources without the United States),

(4) Subpart D of part III of subchapter N (sec. 931 and following, relating to income from sources within possessions of the United States),

(5) Section 1201(b) (relating to alternative capital gains tax), and

(6) Section 1348 (relating to 50-percent maximum rate on earned income).

(c) *Failure of certain married individuals to make joint return, etc.*—(1) *Application of subsection.* Paragraphs (2) and (3) of this subsection shall apply in the case of any individual who was married for any base period year or the computation year; except that —

(A) such paragraphs shall not apply in respect of a base period year if—

(i) Such individual and his spouse make a joint return, or such individual makes a return as a surviving spouse (as defined in section 2(b)), for the computation year, and

(ii) Such individual was not married to any other spouse for such base period year, and

(B) Paragraph (3) shall not apply in respect of the computation year if the individual and his spouse make a joint return for such year.

(2) *Minimum base period income.* For purposes of this part, the base period income of an individual for any base period year shall not be less than 50 percent of the base period income which would result from combining his income and deductions for such year—

(A) With the income and deductions for such year of the individual who is his spouse for the computation year, or

(B) If greater, with the income and deductions for such year of the individual who was his spouse for such base period year.

(3) *Community income attributable to services.* In the case of amounts which constitute earned income (within the meaning of section 911(b)) and are community income under community property laws applicable to such income—

(A) The amount taken into account for any base period year for purposes of determining base period income shall not be less than the amount which would be taken into account if such amounts did not constitute community income, and

(B) The amount taken into account for purposes of determining taxable income for the computation year shall not exceed the amount which would be taken into account if such amounts did not constitute community income.

(4) *Marital status.* For purposes of this subsection, section 143(a) shall apply in determining whether an individual is married for any taxable year.

(d) *Dollar limitations in case of joint returns.* In the case of a joint return, the $3,000 figure contained in section 1301 shall be applied to the aggregate averagable income.

(e) *Treatment of certain other items*—

(1) *Section 72(m)(5).* Section 72(m)(5) (relating to penalties applicable to certain amounts received by owner-employees) shall be applied as if this part had not been enacted.

(2) *Other items.* Except as otherwise provided in this part, the order and manner in which items of income or limitations on tax shall be taken into account in computing the tax imposed by this chapter on the income of any eligible individual to whom section 1301 applies for any computation year shall be determined under regulations prescribed by the Secretary or his delegate.

(f) *Short taxable years.* In the case of any computation year or base period year which is a short taxable year, this part shall be applied in the manner provided in regulations prescribed by the Secretary or his delegate.

[Sec. 1304 as amended by sec. 232(a), Rev. Act 1964 (78 Stat. 105); sec. 311 (c) and (d), Tax Reform Act 1969 (83 Stat. 587)]

PAR. 13. Paragraphs (b) and (c) of § 1.1304–1 are amended to read as follows:

§ 1.1304–1 Choice of income averaging by taxpayer.

* * * * *

(b) *Subsequent qualification.* A taxpayer who was not qualified to choose the benefits of income averaging for a taxable year may subsequently become qualified for such taxable year. For example, if a taxpayer was not qualified to choose the benefits of income averaging for 1971 incurs a net operating loss in 1972, and the carryback of such loss reduces his income for 1969 and 1970 so that he is no longer ineligible under section 1301 to choose the benefits of income averaging for 1971, the taxpayer may recompute the tax imposed by chapter 1 of the Code on his income for 1971 as if he had originally chosen the benefits of income averaging.

(c) *Subsequent disqualification.* A taxpayer who has chosen the benefits of income averaging for a taxable year may subsequently become disqualified for such benefits for such taxable year. For example, if a taxpayer who chose the benefits of income averaging for 1971 incurs a net operating loss for 1972 and the carryback of such loss reduces his income for 1971 so that he is no longer qualified under section 1301 to choose the benefits of income averaging for that year, the taxpayer must recompute the tax imposed by chapter 1 of the Code on his income for 1971 as if he had not originally chosen the benefits of income averaging.

PAR. 14. Section 1.1304–2 is amended by adding at the end of paragraph (a)(4) the following new subparagraphs:

§ 1.1304–2 Provisions inapplicable if income averaging is chosen.

(a) *Provisions inapplicable.* * * *

(5) Section 1201(b) (relating to alternative capital gains tax). A taxpayer may not, therefore, make use of the alternative tax imposed by section 1201(b) for any taxable year after December 31, 1969, for which he chooses the benefits of income averaging.

(6) Section 1348 (relating to 50 percent maximum rate on earned income). A taxpayer may not, therefore, make use of the 50 percent maximum rate of tax contained in section 1348 for any taxable year for which he chooses the benefits of income averaging.

* * * * *

PAR. 15. Section 1.1304–3 is amended by revising paragraphs (b), (c)(1), (d), and (e), by deleting paragraph (f) and by redesignating paragraph (g) as paragraph (f). Such revised and redesignated paragraphs shall read as follows:

§ 1.1304–3 Special rules for computing base period income.

* * * * *

(b) *Minimum separate base period income.* In any case in which section 1304(c) and this section apply, the separate base period income of an individual for a base period year is the greatest of the following amounts:

(1) The individual's separate income and deductions (increased in accordance with section 1304(c)(3)(A), relating to community income) adjusted in accordance with § 1.1302–2(c);

(2) 50 percent of the base period income resulting from adjusting, in accordance with § 1.1302–2(c), the sum of the individual's separate income and deductions for the base period year (increased in accordance with section 1304(c)(3)(A), relating to community income) and the separate income and deductions for such years of the individual who is his spouse for the computation year; or

(3) 50 percent of the base period income resulting from adjusting, in accordance with § 1.1302–2(c), the sum of the individual's separate income and deductions for the base period year and the separate income and deductions of the individual who is his spouse for such base period year.

However, subparagraph (2) of this paragraph shall not apply in respect of a base period year if an individual and his spouse make a joint return for the computation year.

(c) *Separate income and deductions*—(1) *Definition.* The term "separate income and deductions" for a base period year means the excess of an individual's gross income over his allowable separate deductions. The separate income and deductions of an individual may never be less than zero.

* * * * *

(d) *Community income attributable to services.* Under section 1304(c)(3)(A), in any case in which paragraph (b)(2) or (3) of this section applies, an individual's separate income and deductions (as defined in paragraph (c)), shall be increased to take into account, in the case of amounts which constitute earned income (within the meaning of section 911(b)) and are community income under community property laws applicable to such income, not less than the net amount of such earned income which would be taken into account if such amounts of earned income did not constitute community income.

(e) *Example.* The provisions of this section may be illustrated by the following example.

Example. H and W are calendar year taxpayers who were married, residents of a common law State, and otherwise eligible to choose the benefits of income averaging for the taxable year 1970. They made a joint return for 1970. W, however, was married to and made a joint return with A for the taxable year 1966. H was unmarried for 1966. H, A, and W had taxable income for 1966 indicated in the table below. H and W compute their base period income for 1966 in the following manner:

	A	W	A and W joint return	H
Salary	$11,500	$3,000	$14,500	$3,000
Dividends	500	1,000	1,500	1,000
Adjusted gross income	12,000	4,000	16,000	4,000
Total deductions allowable in computing taxable income			4,000	1,500
Amount of total deductions allowable in computing separate income and deductions	3,000	1,000		1,500
Net of separate income and deductions	9,000	3,000	12,000	2,500
Foreign income excluded under section 911	10,000			
Separate base period income in accordance with paragraph (b)(1)	19,000	3,000		2,500

Separate base period income in accordance with paragraph (b):

(1) Net of W's separate income and deductions under paragraph (b)(1)		$3,000
(2) Net of W's separate base period income under paragraph (b)(3):		
(a) W and A's taxable income for 1966	$12,000	
(b) Adjustment under § 1.1302–2 (c)	10,000	
	22,000	
(c) 50 percent of combined base period income		11,000

W must take $11,000 into account as her separate base period income for 1966. Since H made a joint return with W in the computation year and was not married to another spouse in 1966, section 1304(c) and § 1.1304–3 do not apply to him for 1966. Therefore, his separate base period income for 1966 is $2,500. H and W's base period income, on a joint return basis, for 1966 is $13,500.

(f) *Marital status.* For purposes of section 1304(c) and this section, the rules of section 143 (relating to determination of marital status) and the regulations thereunder apply in determining whether an individual is married for any taxable year.

PAR. 16. Section 1.1304–4 is amended by revising such section to read as follows:

§ 1.1304–4 Dollar limitations in case of joint returns.

Under section 1301 an eligible individual may choose the benefits of income averaging only if his averagable income for the computation year exceeds $3,000. In the case of a joint return, the $3,000 limitation applies to the aggregate averagable income of the husband and wife making the joint return.

PAR. 17. Section 1.1304–5 is amended by revising paragraphs (a), (b), and (d) to read as follows:

§ 1.1304–5 Determination of total tax for the computation year.

(a) *Total tax.* The total amount of tax imposed by section 1 for the computation year on the income of an individual who chooses the benefits of income averaging for that year is the sum of the following amounts of tax:

(1) The tax imposed on the amount of income equal to 120 percent of average base period income,

(2) Five times the increase in tax resulting from adding 20 percent of averageable income to 120 percent of average base period income,

(3) The increase in tax resulting from adding the amount (if any) described in § 1.1302–1(b)(3) (relating to community income with respect to services) to the sum of 120 percent of average base period income plus 20 percent of averageable income,

(4) The partial tax (if any) provided by section 668(a) (2) and (3) on certain accumulation distributions from a trust, and

(5) The tax on the amount (if any) of income to which section 72(m)(5), relating to certain distributions to owner-employees which are subject to penalties, applies, computed in accordance with the rules of paragraph (b) of this paragraph.

(b) *Treatment of certain amounts received by owner-employees.* The amount of tax imposed by section 1 for the computation year attributable to amounts described in section 72(m)(5)(A), to which a penalty is applicable under section 72(m)(5) and paragraph (e) of § 1.72–17, is computed by determining the increase in tax which results under section 1 from the inclusion of such amounts in income without the use of the income averaging provisions.

(c) *Examples.* The application of the rules described in this section may be illustrated by the following examples:

Example (1). A, an eligible individual who was not married for the taxable years 1967 through 1971, has taxable income for those years as indicated in the table below. For the taxable years 1967 through 1970 all of his taxable income is from salary and capital gain. A's qualification to choose the benefits of income averaging and the amount of his averagable income for 1971 are determined in the following manner:

Year:	*Taxable income*
1967	$2,000
1968	4,000
1969	3,500
1970	2,500
1971	41,000

(1) Average base period income for years 1967–70 (the base period years):	
(a) 1967	$2,000
1968	4,000
1969	3,500
1970	2,500
Total	12,000
(b) Average base period income ($12,000÷4)	3,000
(2) Averagable income for 1971:	
(a) Taxable income	41,000
Less:	
(b) 120 percent of average base period income (120%×$3,000)	3,600
(c) Averagable income	37,400

Since A's averagable income exceeds $3,000, the entire amount ($37,400) of his averagable income is subject to averaging.

Computation of tax due for computation year (1971) (rounded to nearest dollar):

(1) Tax on 120 percent of average base period income:	
(a) 120 percent of the average base period income	3,600
(b) Tax on $3,600	614
(2) Tax attributable to averagable income:	
(a) 120 percent of the average base period income	3,600
(b) 20 percent of the averagable income (20% of $37,400)	7,480
(c) Total	11,080
(d) Tax on $3,600	614
(e) Tax on $11,080 ($3,600+$7,480)	2,382
(f) Increase in tax ($2,382—$614)	1,768
(g) Tax attributable to averagable income (5×$1,768)	8,840
(3) Total tax for 1971:	
(a) Tax on 120 percent of the average base period income (line (1) (b) above	614
(b) Tax attributable to averagable income (line (2) (g) above)	8,840
Total tax	9,454

Example (2). A, an eligible individual who was not married for the taxable years 1967 through 1971, has taxable income for those years as indicated in the table below. For the taxable year 1971, A's income includes $10,000 of income as a beneficiary of a trust which results in an additional tax of $866 under section 668(a). A's qualification to choose benefits of income averaging and the amount of his averagable income for 1971 are determined in the following manner:

Year	Salary and ½ of net long-term capital gain	Section 668(a) income	Total
1967	$4,500		$4,500
1968	3,000	$5,000	8,000
1969	3,500		3,500
1970	5,000		5,000
1971	20,000	10,000	30,000

(1) Average base period income for years 1967–70 (the base period years):	
(a) 1967	$4,500
1968	3,000
1969	3,500
1970	5,000
	16,000
(b) Average base period income ($16,000÷4)	4,000
(2) Averagable income for 1971:	
(a) Taxable income reduced by amount included in income under section 668(a)	20,000
Less:	
(b) 120 percent of average base period income (120%×$4,000)	4,800
(c) Averagable income	15,200

Since A's averagable income exceeds $3,000, the entire amount ($15,200) of his averagable income is subject to averaging.

Computation of tax due for computation year (1971) (rounded to the nearest dollar):

(1) Tax on 120 percent of average base period income:	
(a) 120 percent of average base period income	$4,800
(b) Tax on $4,800	858
(2) Tax attributable to averagable income:	
(a) 120 percent of average base period income	4,800
(b) 20 percent of averagable income (20%×$15,200)	3,040
(c) Total	7,840
(d) Tax on $4,800	858
(e) Tax on $7,840	1,552
(f) Increase in tax ($1,552—$858)	694
(g) Tax attributable to averagable income (5×$694)	3,470
(3) Partial tax on amount included in income under section 668(a)(2)	866
(4) Total tax for 1971:	
(a) Tax on 120 percent of average base period income (line (1)(b) above)	858
(b) Tax attributable to averagable income (line (2)(g) above)	3,470
(c) Partial tax on amount included in income under section 668(a)(2)	866
Total tax	5,194

Example (3). H and W were married during 1971, are calendar year taxpayers, and reside in a community property state for the taxable year 1971. The total income of H and W for the computation year consists of $60,000 of community income attributable to personal services, $40,000 of which is earned by H. W was not married to any other spouse for taxable years 1967 through 1970, and elects to choose the benefits of income averaging for taxable year 1971. W elects to file a separate return. Even though under the applicable State community property laws $30,000, one-half of the total community income, belongs to W, only $20,000 of W's $30,000 of taxable income for 1971 is subject to averaging under § 1.1302–1(b) and the remaining $10,000 is not. See § 1.1302–1(c). W's qualification to choose the benefits of income averaging and the amount of her averagable income for 1971 are determined in the following manner:

Year:	*Taxable income*
1967	$2,000
1968	1,500
1969	3,800
1970	2,700
1971	30,000

(1) Average base period income for years 1967 through 1970 (the base period years):	
(a) 1967	$2,000
1968	1,500
1969	3,800
1970	2,700
	10,000
(b) Average base period income ($10,000÷4)	2,500
(2) Averagable income for 1971:	
(a) Taxable income subject to averaging	20,000
Less:	
(b) 120 percent of average base period income (120%×$2,500)	3,000
(c) Averagable income	17,000

Since W's averagable income exceeds $3,000, the entire amount ($17,000) of her averagable income is subject to averaging.

Computation of tax due for computation year (1971) (rounded to nearest dollar):

(1) Tax on 120 percent of average base period income:	
(a) 120 percent of the average base period income	$3,000
(b) Tax on $3,000	500
(2) Tax attributable to averagable income:	
(a) 120 percent of the average base period income	3,000
(b) 20 percent of the averagable income (20% × $17,000)	3,400
(c) Total	6,400
(d) Tax on $3,000	500
(e) Tax on $6,400 ($3,000+$3,400)	1,230
(f) Increase in tax ($1,230−$500)	730
(g) Tax attributable to averagable income (5×$730)	3,650
(3) Tax on community income not subject to averaging:	
(a) Sum of 120 percent of average base period income and 20 percent of averagable income	6,400
(b) Community income not subject to averaging	10,000
(c) Total	16,400
(d) Tax on $6,400	1,230
(e) Tax on $16,400 ($6,400+$10,000)	4,498
(f) Increase in tax $4,498−$1,230	3,268
(4) Total tax for 1971:	
(a) Tax on 120 percent of base period income (line (1)(b) above)	500
(b) Tax attributable to averagable income (line (2)(g) above)	3,650
(c) Tax on community income not subject to averaging	3,268
Total tax	7,418

§ 1.1304–6 [Deleted]

Par. 18. Section 1.1304–6 is deleted.

Par. 19. Section 1.1304–7 is redesignated as § 1.1304–6 and such redesignated section is amended by revising subparagraph (4) of paragraph (a) to read as follows:

§ 1.1304–6 Short taxable years.

(a) *Change of annual accounting period.* * * *

(4) The application of the rules described in subparagraph (1) of this paragraph may be illustrated by the following example:

Example. A, an unmarried, eligible individual who had been a calendar year taxpayer, was allowed in 1971 to change his annual accounting period to a taxable year beginning on April 1, 1971. A made a return for the short period from January 1 to March 31, 1971. His taxable income for the taxable years 1967 to 1971 is as indicated in the table below. For the taxable years 1967 through 1970, all of A's income is ordinary income from salary. A's eligibility to choose the benefits of income averaging and the amount of his averagable income for 1971 are determined in the following manner:

Year:	*Taxable income*
1967	$12,000
1968	14,000
1969	17,500
1970	16,500
1971 (3 months)	15,000
(1) Taxable income for 1971 on annual basis ((($15,000×12)÷3)	60,000
(2) Average base period income for years (1967–70) (the base period years):	
(a) 1967	12,000
1968	14,000
1969	17,500
1970	16,500
	60,000
(b) Average base period income ($60,000÷4)	15,000
(3) Averagable income for 1971:	
(a) Taxable income	60,000
Less:	
(b) 120 percent of average base period income (120% × $15,000)	18,000
(c) Averagable income	42,000

Since A's averagable income exceeds $3,000, the entire amount ($42,000) of his averagable income is subject to averaging.

Computation of total tax due for computation year (1971) (rounded to the nearest dollar):

(1) Tax on 120 percent of the average base period income on annual basis:	
(a) 120 percent of the average base period income	$18,000
(b) Tax on $18,000	4,510
(2) Tax attributable to averagable income on annual basis:	
(a) 120 percent of average base period income	18,000
(b) 20 percent of the averagable income (20% × $42,000)	8,400
(c) Total	26,400
(d) Tax on $18,000	4,510
(e) Tax on $26,400 ($18,000+$8,400)	7,770
(f) Increase in tax ($7,770−$4,510)	3,260
(g) Tax attributable to averagable income (5×$3,260)	16,300
(3) Total tax for 1971:	
(a) Tax on 120 percent of the average base period income (line (1)(b) above)	4,510
(b) Tax attributable to averagable income (line (2)(g) above)	16,300
(c) Tax on annualized income	20,810
Total tax due (5/12×$20,810)	5,203

§§ 1.1301A—1.1307A–3 [Deleted]

PAR. 20. Sections 1.1301A through 1.1307A–3 are deleted.

PAR. 21. Section 301.6511(d)–2 is amended by revising paragraph (b) to read as follows:

§ 301.6511(d)–2 Overpayment of income tax on account of net operating loss carryback.

* * * * *

(b) *Barred overpayments.* (1) If the allowance of a credit or refund of an over-payment of tax attributable to a net operating loss carryback is otherwise prevented by the operation of any law or rule of law (other than section 7122, relating to compromises), such credit or refund may be allowed or made under the provisions of section 6511(d)(2)(B) if a claim therefor is filed within the period provided by section 6511(d)(2)(A) and paragraph (a) of this section for filing a claim for credit or refund of an overpayment attributable to a carryback. Similarly, if the allowance of an application, credit, or refund of a decrease in tax determined under section 6411(b) is otherwise prevented by the operation of any law or rule of law (other than section 7122), such application, credit, or refund may be allowed or made if an application for a tentative carryback adjustment is filed within the period provided in section 6411(a). Thus, for example, even though the tax liability (not including the net operating loss deduction or the effect of such deduction) for a given taxable year has previously been litigated before the Tax Court, credit or refund of an overpayment may be allowed or made despite the provisions of section 6512,a), if claim for such credit or refund is filed within the period provided in section 6511(d)(2)(A) and paragraph (a) of this section. In the case of a claim for credit or refund of an overpayment attributable to a carryback, or in the case of an application for a tentative carryback adjustment, the determination of any court, including the Tax Court, in any proceeding in which the decision of the court has become final, shall be conclusive except with respect to the net operating loss deduction, and the effect of such deduction, to the extent that such deduction is affected by a carryback which was not in issue in such proceeding.

(2) For purposes of the special period of limitation for filing a claim for credit or refund of an overpayment of tax with respect to a computation year (as defined in section 1302(c)(1)) by an individual who has chosen to compute his tax under sections 1301 through 1305 (relating to income averaging), such claim is determined to relate to an overpayment attributable to a net operating loss carryback when such carryback relates to any base period year (as defined in section 1302(c)(3)). Thus, if (i) an individual has a net operating loss for a taxable year subsequent to a taxable year for which he had chosen the benefits of income averaging, and (ii) such net operating loss carryback is wholly utilized in any one or more of his base period years (which would result in an increased amount of averagable income for such computation year), the special period of limitation with respect to such individual's computation year applies and a timely claim for credit or refund with respect to the computation year may be filed.

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DEPARTMENT OF AGRICULTURE

Consumer and Marketing Service

[7 CFR Parts 1061, 1068]

[Dockets Nos. AO-367-A4, AO-178-A27]

MILK IN MINNEAPOLIS-ST. PAUL AND SOUTHEASTERN MINNESOTA-NORTHERN IOWA (DAIRYLAND) MARKETING AREAS

Decision on Proposed Amendments to Marketing Agreements and to Orders

A public hearing was held upon proposed amendments to the marketing agreements and the orders regulating the handling of milk in the Minneapolis-St. Paul and Southeastern Minnesota-Northern Iowa (Dairyland) Marketing Areas. The hearing was held, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice (7 CFR Part 900), at Bloomington, Minn., August 17–18, 1971, pursuant to notice thereof issued on August 2, 1971 (36 F.R. 14476).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Deputy Administrator, Regulatory Programs, on January 20, 1972 (37 F.R. 1050), filed with the Hearing Clerk, U.S. Department of Agriculture, his recommended decision containing notice of the opportunity to file written exceptions thereto.

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

1. The discussion with respect to issue No. 6 is revised.

The material issues on the record relate to:

Issues concerning Order 68 (Minneapolis-St. Paul). 1. Charges on overdue accounts.

2. Provisions for pooling supply plants.

3. The need for emergency action on Issue No. 2.

4. Diversion of producer milk.

5. Mileage limitation on classification of transfers to nonpool plants.

6. Location adjustments.

7. Miscellaneous, administrative, and conforming changes.

Issues concerning Order 61 (Southeastern Minnesota-Northern Iowa (Dairyland)). 8. Distributing plant pooling standard.

9. Supply plant pooling standard.

10. Computation of supply plant pooling qualification.

The decision deals with all the issues listed above, except issues No. 2 and 3 for the Minneapolis-St. Paul order. These two issues were considered previously in an emergency final decision issued by the Assistant Secretary on September 10, 1971 (36 F.R. 18474).

Findings and Conclusions

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

1. *Charges on overdue accounts.* The rate charged on overdue accounts under the Minneapolis-St. Paul order should be raised from four-tenths of 1 percent to three-fourths of 1 percent per month.

A group of cooperatives, representing a majority of the producers, proposed the increase. A witness for the association testified that the current rate of four-tenths of 1 percent per month is unrealistic when compared with present-day commercial rates for borrowing money. Proponent stated that the increase to three-fourths of 1 percent would reflect more closely the current level of rates charged on commercial borrowings in the Minneapolis-St. Paul area for similar transactions. There was no opposition to the proposal either at the hearing or in briefs filed by interested parties.

A charge on overdue accounts was adopted in the order to encourage prompt payment of handler obligations. It is essential that all handler payments to the producer-settlement fund be made promptly in order that the market administrator will be able to make required payments from the producer-settlement fund. The charge applied to overdue accounts is not a substitute, however, for prompt payment as required by the order.

Proponent cited varying interest rates associated with credit transactions in the Minneapolis-St. Paul area, stating that most area department stores charge at the rate of 1½ percent per month (18 percent on an annual basis). Area banks charge their prime customers at the rate of about 6 percent annually. Bank loans at the prime rate are not general. When they are made such loans are secured. Accordingly, the rate charged on overdue accounts under the order that are already past due and are not secured should be somewhat higher than the prime rate.

The current order rate of 4.8 percent on an annual basis is below the prime rate and is not effective in insuring prompt payment. It permits a handler to use monies owed producers at an interest cost lower than the handler would have to pay if he obtained the funds through conventional money channels.

Handlers who pay late are, in effect, borrowing from producers through the producer-settlement fund. While the principal purpose of the interest charge is to discourage late payment, if a handler does obtain operating capital in this way, producers should be compensated in an amount consistent with what the handler would have to pay to borrow through conventional money channels.

Failure of a handler to pay his producer-settlement fund obligation promptly places a possible burden on other handlers who are entitled to draw money from such fund for their producers. Payments from the producer-settlement fund would have to be reduced pro rata until the overdue pool obligation is paid. If such receiving handler must borrow money to pay his producers in order to retain his milk supply, it is evident that he will pay a higher rate to obtain such funds than the delinquent handler currently is charged on the overdue account under the order.

The main thrust of proponent's case for raising the charge was the obvious opportunity for handlers to take advantage of the disparity between the rate charged on overdue accounts under the order and the interest rate charged on money borrowed from conventional sources.

Proponent stated, on the other hand, that late payments by handlers are not a serious problem in the market currently. However, a situation that occurred following the expansion of the marketing area about 2 years ago was cited. A handler who became fully regulated by the order at that time refused to pay his producer-settlement fund obligation. Before final settlement, almost 2 years later, this obligation involved a substantial amount of money and was subject only to the low rate on overdue accounts. During the 2 years there was significant disparity between the rate charged under the order and the rate charged on short term commercial credit transactions. Short term interest rates rose significantly during the 2-year period.

The order should continue to provide a carrying charge on overdue obligations of fully regulated handlers to the producer-settlement fund, including any adjustment resulting from audit by the market administrator of a handler's receipts and utilization. The charge should apply also to overdue obligations of partially regulated handlers, including audit adjustments. There should be no opportunity for financial advantage through delay in payments of obligations to the market administrator. Increasing the rate on overdue obligations as adopted herein will tend to preclude such situations from occurring.

A charge of three-fourths of 1 percent per month (9 percent on an annual basis) is a reasonable rate to encourage prompt settlement of accounts when due. It is in line with the prevailing rate on short-term commercial borrowings in this area.

This charge would continue to be applied to an obligation on the day following the date on which payment is due. Prompt application of the charge is necessary to discourage delays. In case a handler refuses or fails to file a report from which his obligation to the producer-settlement fund is computed, a charge should be applied to the payment due the market administrator as though the report had been filed when due. Otherwise, some handlers might find it advantageous to be delinquent in filing their reports.

The charge presently is applied to overdue handler obligations payable to individual producers and cooperative associations as well as to payments due the producer-settlement fund. However, the date payment actually is made to producers or cooperatives by handlers may not be available when the pool is computed. This can be particularly complicated if there are other transactions between the two parties involving monies owed one by the other, and the terms and allocation of payments among various

debt accounts are not known to the market administrator on a current basis. In fact, this information may not be ascertainable for several months. Moreover, verification of the actual date of payment, and the computation and collection of small increments of carrying charges for individual producers, would unduly burden order administration. Therefore, the application of the carrying charge to these types of obligations should not be continued.

The current order does not provide for a carrying charge on overdue handler obligations for marketing services or order administration. No change was proposed regarding the application of the carrying charge to these types of obligations, and therefore no revision is made at this time.

4. *Diversion of producer milk.* The Minneapolis-St. Paul order should be amended to provide for certain diversions of producer milk directly to nonpool plants without losing its eligibility for pooling as "producer milk" under the order.

The current order does not provide for diversions of milk to nonpool plants for Class II purposes. The order does provide that milk may be moved directly from farms to nonpool plants for Class I use. In this connection, the proposed diversion provision adopted herein would eliminate the need for §§ 1068.11(b) and 1068.44(c) of the current order, under which a cooperative, as a handler, may move milk directly from producers' farms to nonpool plants for Class I purposes. This change will enable the cooperative to divert within the specific limits, to a nonpool plant for use in either class.

Except for the above situation, all milk must be received at a pool plant to be eligible for pricing and pooling, as producer milk, under the present order. However, when milk is not needed in the market for Class I purposes, the movement of such milk to a nonpool plant for manufacturing purposes should be further facilitated.

Requiring all milk to be received at a pool plant to qualify as producer milk can result in uneconomic milk movements. In this circumstance, when milk is not needed at the pool plant, it must be reloaded and hauled to a nonpool plant for manufacturing. This can be a costly procedure. The order should be amended to eliminate to the extent possible the necessity for uneconomic handling of the market's production in excess of fluid needs.

A group of cooperatives proposed amending the order to accommodate diversions of producer milk to nonpool manufacturing plants. Proponents contended that this would meet the current needs of the market. There was no opposition to the proposal presented at the hearing or in briefs.

The diversion provisions provided herein basically follow those proposed. The association's proposal included a provision to allow a cooperative association, as a handler, to divert 10 percent of its total receipts of member milk during September–November and 25 percent of such receipts in the other months.

Proponent testified that the marketing situation with respect to handling the market's reserve supply has changed significantly in the past 2 years. Cooperatives supplying the market's fluid needs have assumed primary responsibility for disposal of the market's surplus. Two years ago the largest cooperative in the market did not operate a nonpool plant. Today most of the nonpool manufacturing outlets being used for this purpose are owned and operated by cooperatives supplying milk to the market. Many of these plants are located a considerable distance from the main consumption centers.

Because of the day-to-day and seasonal variation in both production and sales, a producer's milk may not always be needed at a pool plant each day. The day-to-day sales variation is influenced primarily by bottling plant operations that are conducted on a 5-day week. Milk purchases by consumers tend to be greater on the weekend than during the week. Therefore, daily bottling schedules at processing plants vary also.

Distributing plants tend to associate a supply of milk sufficient to meet their needs on peak bottling days. This leaves substantial quantities of milk produced on other than the peak bottling days, weekends and holidays, that must be moved to manufacturing outlets. Diversion provisions are provided to enable handlers operating pool plants and cooperative associations to divert producer milk on such occasions when the milk is not needed in the market for Class I purposes.

Prior to expansion of the marketing area in May 1969, the surplus handling problem was not so acute. Since the market utilization was considerably higher at that time and the available reserve could be processed in pool plants, lack of the diversion privilege for manufacturing use did not create significant problems for handlers.

Production has increased considerably since the marketing area expansion in May 1969. In June 1969, 167 million pounds of producer milk were pooled under the Minneapolis-St. Paul order. Of this total 35 percent was utilized in Class I. During June 1971, 193 million pounds of producer milk were pooled and only 33 percent was used in Class I. The increase in producer milk and a decrease in the portion used in Class I has resulted in a greater amount of surplus to be disposed of, and has required the use of distant nonpool plants for the manufacture of some of this surplus.

Also, the milk supply area for the market is gradually moving farther away from the central market of Minneapolis-St. Paul. Land near the city used for dairy farms in the past now is being used for suburban residential housing. As the milkshed moves farther away from the city, it becomes more efficient to ship milk in excess of fluid needs directly to a nearby nonpool plant than to require it to be received at a pool plant, reloaded and hauled back to a nonpool plant located nearer the producers' farms.

While it is appropriate to provide for diversions for Class II use, it is necessary also to provide limitations on the amount of milk that may be diverted in order that only milk genuinely associated with the market will be eligible for diversion, and that diversion will occur only to accommodate regular supplies when not needed in the market for Class I purposes. The "producer milk" definition is rewritten accordingly.

Diversion of producer milk by a cooperative association to a nonpool plant should be limited to 10 percent of the milk received from its producer-members at pool plants (including both the milk actually received at pool plants and diverted therefrom) during any month of September through November. Similarly, a pool plant operator other than a cooperative association should be in position to divert for his account up to 10 percent of the producer milk received from producers at his plant (including both the milk actually received at the pool plant and diverted from the plant) during any month of September through November. The pool plant operator may divert producers who are not members of a cooperative association diverting from such plant. As proposed, the percentage limits would be 25 percent during the December–August period.

The proposal provided that a cooperative be allowed to divert 10 percent of its total member milk during September through November and 25 percent in other months. Some of the cooperatives supplying the market also supply milk to other Federal order markets. Based on the market's present need to divert milk to nonpool plants for manufacturing the proposal to base diversion on total member milk is unnecessarily liberal. The market's diversion need for Class II purposes can be served adequately by providing a more limited provision that will still assure orderly marketing. Accordingly, the percentage adopted should be related only to the amount of member producer milk that a cooperative associates with the Minneapolis-St. Paul market.

Under the proposal, only a cooperative association could be the handler on diverted producer milk. It is deemed appropriate, however, that a pool plant operator should be afforded the same opportunity as a cooperative association to divert milk in excess of fluid needs to nonpool plants for Class II use. Accordingly, a pool plant operator may divert milk of producers who are not members of a cooperative association, subject to the same monthly limitations as the cooperative association.

Only milk genuinely associated with the market and available to the market on a continuing basis should be eligible to be diverted to nonpool plants. Therefore, it should be provided, in addition, that at least 6 days' production of the producer must be received at a pool plant during the month to qualify any of his production for diversion in the

same month within the limits described above. A producer shipping on an every-other-day basis thus would be required to deliver his milk to pool plants 3 days each month. The requirement herein adopted is sufficient to establish a producer's continuing association with the fluid market and still permit the necessary flexibility in diverting milk not needed for fluid use.

Milk diverted to nonpool plants in excess of the limitations provided would not be considered producer milk. Hence, eligibility for pricing and pooling under the order would be forfeited on any excess quantity. In such instances, the diverting handler would specify the milk that is ineligible as producer milk. If the handler fails to make such designation, thereby making it infeasible for the market administrator specifically to determine which milk was overdiverted, all milk diverted to nonpool plants by such handler would be ineligible as producer milk.

As proposed, diverted producer milk should be priced at the location of the plant to which diverted rather than the location of the pool plant to which it is customarily delivered. If such milk were priced at the pool plant from which diverted, producers regularly supplying the market could be placed in the position of "subsidizing" those producers whose milk is diverted to manufacturing plants. This would be particularly disadvantageous when the diverted milk both originates and is diverted at a great distance from the market center. A producer who does not incur the cost of transporting milk from his farm to the market center should not receive the f.o.b. market price as if he had incurred such cost, as do producers who actually pay to have their milk delivered to the main consumption center.

To carry out the intent of the diversion provisions provided herein, the "producer" definition needs to be revised. Since the present order does not provide for all types of diversions, the "producer" definition is silent concerning the producer status of a dairy farmer whose milk is diverted to a nonpool plant that is a pool plant under another order. As proposed herein, a dairy farmer will not be a producer under this order if his milk is moved directly from the farm to a pool plant regulated by another order. Such milk will be producer milk under the order where the milk is actually received. Otherwise the result might be that such dairy farmer would be a producer under both orders for the same milk.

In cases where milk may be diverted from pool plants under another order (such as the Dairyland order) to a Minneapolis-St. Paul pool plant, Order 68 should provide that the dairy farmer whose milk was so diverted would not obtain producer status under the Minneapolis-St. Paul order if both handlers request a Class II utilization on their reports of receipts and utilization filed with their respective market administrator, and the other order provides for such diversion of producer milk to other order plants. If the other order does not provide for such diversion of producer milk to other order plants, the dairy farmer whose milk is delivered directly from the farm to pool plants regulated by this order would be a producer under the Minneapolis-St. Paul order.

In addition, the definition of "handler" should be amended by adding a new paragraph to make a cooperative associaion the handler on milk diverted to a nonpool plant for the account of the association. Since cooperatives have assumed the primary responsibility for the market's surplus disposal, the order should provide that the cooperative may be the handler on diverted producer milk.

5. *Mileage limitation on classification of transfers to nonpool plants.* The mileage basis for classifying certain transfers to nonpool plants as Class I should be removed from the Minneapolis-St. Paul order.

The order now provides that milk transferred to any nonpool plant located more than 150 miles from the Minnesota Transfer Viaduct at University Avenue in St. Paul, Minn., shall be classified in Class I irrespective of the actual use of such milk at the nonpool plant.

The proponent, a group of cooperatives, testified that the mandatory Class I classification of transfers over 150 miles is unnecessary and inappropriate under today's marketing conditions. There was no opposition to the proposal at the hearing or in briefs.

When this provision was placed in the order, milk markets, including the Minneapolis-St. Paul market, tended to be smaller and more localized, and much of the milk supply moved in cans. Compared with manufactured dairy products, fluid milk is costly to transport because of its bulky, perishable nature. There were ample facilities in the Minneapolis-St. Paul milkshed for manufacturing reserve supplies. Accordingly, milk moved more than 150 miles from the market at that time was intended primarily for fluid use and it was classified as Class I milk.

As indicated by proponent, the milk marketing situation is different today. Milk has become increasingly more mobile. Milk travels in bulk tank trucks, and it is not unusual for milk to move from producers' farms to distant plants regularly not only for fluid use but also for manufacturing.

Proponent indicated that important outlets for surplus milk may be located beyond the 150-mile limit within which milk may be moved and classified as Class II under the present provisions. Proponent stated, as an example, there are times during the year when the cooperative would like to transfer surplus milk from its supply plant at Milaca, Minn., to a nonpool manufacturing plant located at Perham, Minn., to produce butter and nonfat dry milk or to a nonpool plant located at Hibbing, Minn., to be used in ice cream or cottage cheese. However, both Perham and Hibbing, Minn., are located beyond the 150-mile radius and all such transfers must be classified in Class I regardless of the end use of the milk.

In addition, milk handling facilities are being consolidated into fewer but larger units. These larger units may do business in several different market areas. The more widespread organizations become the more important it is to have uniform order provisions regarding classification. The change adopted herein will implement this procedure.

In earlier years, limiting distant movements of milk to Class I classification was appropriate not only in terms of the milk handling costs and practices of the period but also in terms of a saving in administrative cost. The costs involved in verifying utilization at distant plants is not a problem today, however, because the Federal milk order program is extensive. The 62 Federal milk orders operate in most of the larger cities and arrangements for checking utilization at distant nonpool plants are readily made through the cooperative efforts of the market administrators.

Removal of the automatic Class I classification for milk moved to nonpool plants located more than 150 miles from St. Paul will result in handlers accounting to the producer-settlement fund on the basis of use at the nonpool plant to which the milk is transferred or diverted. If a handler claims Class II utilization in his monthly report of receipts and utilization filed with the market administrator, the operator of the nonpool plant will be required to maintain records that must be made available to the market administrator upon request.

6. *Location adjustments.* The location adjustment provisions of the Minneapolis-St. Paul order should be amended to (a) expand to a radius of 35 miles from the St. Paul basing point the area within which no adjustment applies, and (b) revise the rate schedule.

The order now provides no price adjustment on milk received at plants located less than 15 miles in any direction from the basing point in St. Paul. The order also provides for reducing the Class I and uniform prices 3 cents for milk received at plants at least 15 miles but less than 20 miles from the basing point. Such prices are reduced further at the rate of 3 cents for each 10 miles or fraction thereof for milk received at plants located at least 20 but less than 50 miles from the St. Paul basing point. In addition, for distances 50 miles and over the prices are reduced in increments of 1 cent for each 10 miles or fraction thereof.

The purpose of location adjustments is to reflect the value of milk at the point of receipt at a plant. If a producer delivers his milk to a plant located in the zero zone, he bears the cost of hauling the milk all the way to the market, or consuming area, and should be compensated for such cost by receiving the zero zone price. Contrarily, if the producer delivers his milk to a plant located nearer his farm, the pay price to such a producer should not reflect the cost of moving the milk to the market center, since it is not he but the plant operator who must bear the cost of transporting the milk to the market.

The changes to expand the "no adjustment zone" and to revise the rate were proposed by a cooperative association representing a majority of producers on the market. At the hearing, the proponent contended that the 15-mile radius is no longer appropriate, stating that since the consuming area, and the area of competition among fluid milk handlers, have expanded substantially, the area where no location adjustment would apply should be expanded also.

In recent years, suburbs have expanded around the cities of Minneapolis and St. Paul. While these areas are outside the city limits of Minneapolis and St. Paul, they represent an extension of the market center, thereby changing the makeup of the total consuming area.

The population in a nine-county area surrounding the Twin-Cities has increased significantly over the past 10 years. Population increases in this nine-county area ranged from 12 percent in one county to 80 percent in another of the nine between 1960 and 1970. In 1960 about 1.6 million persons were residing in the nine-county area, while in 1970 the population was almost 2 million. During this same 10-year period the population for the State of Minnesota rose about 10 percent, while in the nine counties, the rate of population increase was more than double that rate, at 23 percent.

Under the order's present location adjustment provisions, plants located at least 15 miles but less than 40 miles from the basing point receive location adjustments ranging from minus 3 to minus 9 cents to cover the cost of transporting the milk into the consuming center. However, with the extension of the market center, it is not always necessary to move all milk to Minneapolis or St. Paul, because the distributing plants located at outlying points from such major cities are now serving these areas. Distributing plants located less than 15 miles from St. Paul, now receiving no location adjustment, are in strong competition in a common sales area with plants located up to 35 miles from the basing point that receive price adjustments ranging from minus 3 to minus 9 cents.

In addition, areas of milk procurement have moved somewhat farther away from the city as suburban areas have developed. Some land used for dairy farms in the past is now used for homes and shopping centers for an expanded population.

The changed circumstances in distribution resulting from population shifts, and changes in areas of milk procurement, warrant an extension of the base zone within which no location adjustment should apply. The recommended decision provided an expansion of the base zone to a radius of 40 miles. A corollary change recommended that mileage under the adjustment schedule be computed on the basis of nearest hard-surfaced road miles.

Producer groups excepted to changing the basis of computing the mileage to highway miles from the "straight line" method now used. They stated that the shortest hard-surfaced highway is not always available for use by milk trucks because of certain load, width, height, or other limitations. Since this point was not explored fully at the hearing, it is appropriate to defer, at this time, the proposed change in the method of computing mileage. For the purpose of establishing location adjustments, mileage distances between the basing point in St. Paul and various plant locations are those as determined by the market administrator. Current mileage determinations are made in terms of straight line distance between points. This procedure should be continued.

The proposed rate of 1.5 cents for each 10 miles is an appropriate measure of the cost of transporting bulk milk in this market. It is the same rate that has been widely accepted as a reasonable measure of the cost of transporting bulk milk, and is used as a standard in applying location adjustments in most Federal orders at the present time. No exception was taken to the use of this rate.

Establishing the base zone radius at 35 miles, in conjunction with the straight line computation of mileage, results in a location pricing schedule approximating that provided by the recommended decision on the basis of highway miles. Regulated plants located less than 35 miles from the St. Paul basing point would not be subject to location adjustments. The applicable Class I and uniform prices for milk received at plants located at least 35 but less than 45 miles from the St. Paul basing point would be reduced 6 cents. Further adjustments, at the rate of 1.5 cents for each 10 miles, or fraction thereof, would apply at plants located 45 miles or more from the St. Paul basing point.

7. *Miscellaneous, administrative, and conforming changes.* Three changes in the Minneapolis-St. Paul order were proposed for administrative improvement. A witness for the cooperatives testified on each of the proposals.

The first change deals with the requirement that a handler must have paid producers or cooperative associations for the prior month to have his report of receipts and utilization included in the next computation of the uniform price. This prerequisite should be eliminated.

The order now excludes from the computation of the uniform price the receipts and utilization of a handler: (1) who has not filed his report of receipts and utilization for the month; (2) who has not paid his producer-settlement fund obligation for the preceding month; and (3) who has not paid producers or cooperative associations for the preceding month.

Obviously, if a handler does not file a report of his receipts and utilization such data cannot be included in the current uniform price computation. Federal orders generally exclude a handler's utilization from the uniform price computation for the additional reason that the handler has failed to pay his previous month's obligation to the producer-settlement fund. If the handler reports, but has failed to pay his producer-settlement fund obligation for the preceding month, this fact is known to the market administrator prior to the time for computing a uniform price in the following month.

Except for a "de minimus" situation, it is reasonable to require that payment to the producer-settlement fund for the preceding month also be a prerequisite for including the handler's receipts and uses in the current pool. Failure to pay in the preceding month provides strong indication of the handler's intention for the current month, which could affect moneys available for payments out of the pool.

Excluding a handler's utilization from the computation of the uniform price, if he has not also paid producers or cooperative associations, presents obvious administrative difficulties. At the time the uniform price is computed, the market administrator may not know whether a handler has paid producers or cooperative associations for the prior month. Audit of such payments for the preceding month normally has not been made by the date of the current uniform price computation. Whether such payments have been made could involve disputed questions of fact or arrangements between producers or cooperative associations, and handlers. The market administrator may not know, prior to the next computation of the pool, the complete facts concerning a particular incident of payment. It may not be feasible to have such questions cleared up prior to the date on which the uniform price must be computed. For this reason, the order should be amended to eliminate payments to producers and cooperatives as a prerequisite to pooling in the current month.

The prompt and timely payment of producers and cooperative associations is essential, and these requirements will continue to be enforced. However, experience in a substantial number of markets demonstrates that it is not necessary to use such nonpayment for the preceding month as a criterion for excluding a handler's utilization from the uniform price computation the next month.

As a second administrative change, the order should be amended to eliminate the possibility of double charges on milk moving from a regulated plant to an unregulated plant and thence to a regulated plant.

More and more, plants are tending to specialize in the processing of certain products, or in the packaging of products in particular types of containers. It is not uncommon for milk to be transferred from a pool plant to a nonpool plant for special processing and the finished products to be moved back to a regulated plant. When the milk is initially priced at the Class I price, the market price structure is in no way undermined if this milk, or its equivalent, is disposed of by the nonpool plant in the regulated market.

The order should provide that the pool plant operator will have no obligation to the pool on such other source Class I milk. This is achieved through a revision of the allocation provisions and the procedure for computing the pool obligation

of the pool plant operator. Receipts of packaged fluid milk products at a pool plant from an unregulated supply plant would be allocated to the pool plant's Class I utilization to the extent that an equivalent amount of skim milk or butterfat disposed of to the unregulated plant by handlers fully regulated under any Federal order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order. This allocation would be made prior to any other allocation of receipts to the plant's Class I utilization, and no order obligation would apply to the milk so allocated to Class I. In the case of fluid milk products received at a pool plant from an unregulated supply plant in bulk form, the provisions setting forth a handler's pool obligation would specify that no payment would apply to any such milk allocated to Class I if, as just described for packaged milk, an equivalent amount of milk received at the unregulated plant had been priced as Class I milk under some order.

The provisions prescribing the obligation of a partially regulated distributing plant should be changed also in this regard. When such plant's obligation is computed as though it were a pool plant, proper recognition must be given to any transfers from the plant to a regulated plant that already have been priced as Class I milk under another Federal order. Also, in computing such a plant's pool obligation on route sales in the marketing area, recognition should be given to any receipt of milk at such plant from an unregulated plant if an equivalent amount of milk received at the latter plant already has been priced as Class I milk under another order.

The order now imposes a handler assessment for administering the order on all other source Class I milk, except that received in fluid form from a pool plant or an other order plant. This may include milk that already has been priced as Class I milk under some Federal order as described above. With the removal of a "double" Class I charge on such milk the order should be changed to remove any assessment on such milk for administrative expenses when such milk is subject to an administrative assessment under the order that initially priced the milk.

The third change would correct a cross-reference in paragraph (a)(6) of the allocation section (§ 1068.46) of the order. Also, in the proviso of paragraph (c) of the "pool plant" section (§ 1068.-9) August 1 should be changed to September 1. These changes are needed for clarification purposes.

Another change made herein is a corollary change to carry out the objective of better coordinating the pooling provisions among the orders in this region, and particularly between the Southeastern Minnesota-Northern Iowa order and the Minneapolis-St. Paul order. Changing the pool plant performance standards was an issue for each market at the hearing.

The corollary change would amend the provision for determining under which order a plant should be regulated when it qualifies as a pool plant under more than one order. The Minneapolis-St. Paul order would be changed so that the determination would be based on marketing area route disposition and on disposition to pool distributing plants in the respective markets.

ISSUES CONCERNING ORDER 61 SOUTHEASTERN MINNESOTA-NORTHERN IOWA (DAIRYLAND)

8. *Distributing plant pooling standard.* The proportion of a distributing plant's receipts of Grade A fluid milk products that must be disposed of as Class I milk on routes should be increased in the Southeastern Minnesota-Northern Iowa order as a basis for pooling qualification.

The order now provides that during the months of February–August distributing plants must dispose of at least 15 percent of such Grade A receipts as Class I milk either on routes or in the form of packaged fluid milk products moved to other plants in order to qualify for pool plant status. During the months of September–January the applicable percentage is 20 percent.

A cooperative association, representing a majority of producers supplying the market, proposed increasing the minimum standard for pooling distributing plants to 30 percent during the months of February–August, and 40 percent in the other months. The proposal is supported by five other cooperatives.

No change was proposed in the 10 percent minimum in-area sales performance standard for distributing plants.

The minimum Class I disposition performance standard for qualifying distributing plants regulated under this order is lower than the similar pooling standards included in nearby contiguous orders.

Under the Minneapolis-St. Paul order distributing plants must dispose of 30 percent of their Grade A receipts as Class I milk during the months of January–June, and 50 percent during July–December, to qualify for pooling. To qualify under the Chicago Regional order, distributing plants must dispose of 45 percent of their Grade A receipts as packaged fluid milk products on routes or moved to other plants. Under the Eastern South Dakota and Nebraska-Western Iowa orders, distributing plants must dispose of 35 percent of their Grade A receipts on routes as Class I milk to qualify as a pool plant. These compare with a performance standard of only 15–20 percent, as described earlier in this decision, for distributing plants regulated under this order.

The minimum pooling standard should be increased, as proposed, to coordinate more effectively the performance standard of this order with the performance standards provided in surrounding Federal order markets. Coordinating the pooling standards to the extent possible will promote a more uniform and orderly method for pooling distributing plants located in this region under the various regulatory programs.

At the present time, the Dairyland order provides that a distributing plant may obtain pool status when a specified proportion of its receipts of milk is disposed of on routes or moved as packaged fluid milk products to other plants. Better coordination, particularly with the Minneapolis-St. Paul order, can be achieved by limiting this standard to route disposition. This corollary change will insure that the pool distributing plant standard for each market will provide pooling for such plants on approximately the same basis in each market.

Increasing the minimum percentage standard to 30–40 percent, as proposed, would not affect the pool plant status of any distributing plant currently serving the market, because distributing plants regulated by the order are demonstrating a higher Class I utilization than that proposed.

9. *Supply plant pooling standard.* The minimum performance standard for pooling supply plants under the Southeastern Minnesota-Northern Iowa order should be changed.

The order now provides that a supply plant must deliver at least 15 percent of its Grade A receipts from dairy farmers to pool distributing plants to qualify for pool plant status. A cooperative, representing a majority of producers on the market, proposed increasing the shipping percentage to 30 percent. The proposal is supported by five other cooperatives. The witness for the proponent cooperative testified that undue quantities of milk have been attached to this market since the order was promulgated because of the low minimum performance standard.

During May 1969 there were 704 dairy farmers delivering producer milk to this market. In May 1970 the number increased to 909 and during May 1971 there were 1,109 producers. This represents an increase of 405 producers, or almost 60 percent.

In August 1970 a hearing was held to consider a proposal to increase the shipping percentage for supply plants. At that time only one supply plant was qualifying as a pool plant. The proposed increase was denied because it would have made ineligible for pooling, without adequate supporting reasons, the milk of a substantial number of producers who had been shipping to the market since the inception of the order.

Since the hearing in August 1970, four supply plants have been added to the market. At the time of the most recent hearing (August 1971) five supply plants were being pooled. Four of these plants came on the market during September 1970. Such plants could qualify easily under the relatively low performance standard provided in this order, even though the milk were not needed for fluid use, and certainly more easily than in other markets in this region with marketwide pooling provisions.

It is appropriate that the performance standard for pooling supply plants in this market be consonant with the standards in nearby Federal order markets. Some supply plants pooled under this order are so situated that they could become pool supply plants under the

Minneapolis-St. Paul order or the Chicago Regional order. Similarly, some supply plants regulated under such nearby orders readily could become pool plants under this order.

The monthly shipping standards for pooling supply plants in each of the surrounding markets are: 30 percent under the Minneapolis-St. Paul order; 40 percent during September–November and 30 percent in the other months under the Chicago Regional order; 35 percent under the Eastern South Dakota order; and 50 percent under the Nebraska-Western Iowa order. These compare with a shipping standard of 15 percent under this order.

Obviously, the shipping standard of this order is substantially lower than for the nearby markets. Such difference could cause any additional milk supply in the area that is attempting to find a market to gravitate in undue proportion to this market. This would result in a lower Class I utilization in this market, depressing the blend price for all producers serving the market as compared to the other markets drawing milk from the same general area.

Increasing the shipping standard to 30 percent, as proposed, will better coordinate the performance standards for qualifying supply plants with those of surrounding markets, and more specifically with the recently amended shipping standard for the Minneapolis-St. Paul order.

When markets draw milk from a common supply area, as is the case in this region, the respective markets should have substantially the same opportunity to draw supplies on the basis of relative prices and need. Under these circumstances, similar pooling standards will facilitate the opportunity for milk to gravitate toward the market that has the need. Relative blend prices are an efficient way to draw the milk to such market.

Two producer organizations opposed the proposal in their brief. They proposed increasing the shipping percentage in two steps, an increase to 20 percent for the 1972 qualifying period, and consideration of an increase to 30 percent at some future time. All supply plants that qualified during the September–November 1971 period have automatic pool status until September 1972. Supply plant operators consequently are afforded adequate time to reprogram their operations to accommodate the increase in the shipping percentage.

10. *Computation of supply plant pooling qualification.* The proposal to determine a supply plant's qualification under the Southeastern Minnesota-Northern Iowa order based on its "net" shipments to pool distributing plants should not be adopted.

The order now provides that a supply plant must deliver 15 percent of its Grade A receipts from dairy farmers to pool distributing plants to qualify as a pool plant. This decision changes the shipping performance standard to 30 percent of such receipts.

The change in the computational method used to determine whether a supply plant has met the shipping percentage was proposed by the same cooperative that proposed the increase in the shipping percentage. Five other cooperative associations supported the change.

Under the proposal, only the net amount of milk received at pool distributing plants would be counted toward meeting the minimum shipping percentage for qualifying a supply plant. Transfers and diversions of milk from the distributing plant for manufacturing purposes on the day of any receipt from a supply plant would be subtracted from the distributing plant's receipts from the supply plant in arriving at the "net" shipments from such plant.

Several examples of practices that could circumvent the intent of the shipping standard of an order were cited by proponent at the hearing. In some instances, shipments of milk from a supply plant to distributing plants might be made only for the purpose of qualifying the supply plant without relation to the utility of the milk in serving the Class I market. Also, a supply plant might make the necessary shipments to meet the minimum shipping percentage during the qualifying period only to get automatic pool status in the other months without making any shipments.

Further, a supply plant operator might make specific prearrangements with distributing plants that receive his milk to transfer an equivalent amount back to the supply plant or to a nonpool manufacturing plant for processing into manufactured products (Class II). Also, a supply plant operator might be willing to pay handling charges in various amounts to operators of distributing plants to pool his milk in this manner. These payments and the added hauling cost incurred could be offset by the benefits of pooling the milk, since the supply plant operator would account for the milk at the Class II price and be credited at the higher uniform price for payment to his producers.

Proponent indicated that the pooling practices described above are not a problem in this market at the present time, but that the proposed change is needed to insure the intent of the performance standard. Concern was expressed that some supply plants regulated under the Chicago order may attempt to become associated with this market. At this time, no such development has occurred and the problem is one of apprehension on the part of producers. Accordingly, we may not conclude that the proposed change is necessary at this time to maintain orderly marketing.

While it was pointed out that the Chicago Regional order provides for pooling a supply plant on the basis of its "net" shipments to distributing plants, the supply conditions of the Chicago market are quite different from those in this market. In the Chicago market, country supply plants and reload points are regularly used to assemble distant milk supplies for transshipment to the city to meet a large proportion of the fluid needs of the market. In the Southeastern Minnesota-Northern Iowa market there is an adequate supply of nearby milk available that may be moved directly from producers' farms to city plants to meet such needs.

Ruling on Objection

Prior to taking testimony on proposed amendments to Order No. 61 (Southeastern Minnesota-Northern Iowa), an attorney for a cooperative objected to this part of the proceeding on the ground that interested parties were not given an opportunity to submit additional proposals. The Hearing Examiner stated that reasonable time was provided between the publication of the hearing notice and the hearing date to enable interested parties to submit additional proposals or to request other action. Since no action was taken during this time period, he overruled the objection. The ruling of the Hearing Examiner is affirmed.

Rulings on Proposed Findings and Conclusions

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

General Findings

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

The following findings are hereby made with respect to each of the aforesaid tentative marketing agreements and orders:

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

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

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as,

and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

RULINGS ON EXCEPTIONS

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

MARKETING AGREEMENT AND ORDER

Annexed hereto and made a part hereof are documents, namely, a Marketing Agreement regulating the handling of milk in each of the specified orders, and an Order amending the orders regulating the handling of milk in the Minneapolis-St. Paul and Southeastern Minnesota-Northern Iowa (Dairyland) marketing areas, which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

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

DETERMINATION OF PRODUCER APPROVAL AND REPRESENTATIVE PERIOD

November 1971 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the orders, as amended and as hereby proposed to be amended, regulating the handling of milk in the Minneapolis-St. Paul and Southeastern Minnesota-Northern Iowa (Dairyland) marketing areas are approved or favored by producers, as defined under the terms of each of the orders, as amended and as hereby proposed to be amended, and who, during such representative period, were engaged in the production of milk for sale within the respective marketing areas.

Signed at Washington, D.C., on February 11, 1972.

RICHARD E. LYNG,
Assistant Secretary.

Order [1] Amending the Orders, Regulating the Handling of Milk in the Minneapolis-St. Paul and Southeastern Minnesota-Northern Iowa (Dairyland) Marketing Areas

FINDINGS AND DETERMINATIONS

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

The following findings are hereby made with respect to each of the aforesaid orders:

(a) *Findings.* A public hearing was held upon certain proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the Minneapolis-St. Paul and Southeastern Minnesota-Northern Iowa (Dairyland) marketing areas. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure (7 CFR Part 900).

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

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

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

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

Order relative to handling. It is therefore ordered that on and after the effective date hereof the handling of milk in the Minneapolis-St. Paul and Southeastern Minnesota-Northern Iowa (Dairyland) marketing areas shall be in conformity to and in compliance with the terms and conditions of each of the orders, as amended, and as hereby amended, as follows:

The provisions of the proposed marketing agreements and order amending each of the specified orders contained in the recommended decision issued by the Deputy Administrator, Regulatory Programs, on January 20, 1972, and published in the FEDERAL REGISTER on January 22, 1972 (37 F.R. 1050), shall be and are the terms and provisions of this order, amending the orders, and are set forth in full herein subject to the modifications made in §§ 1068.55 and 1068.82.

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

PART 1061—MILK IN SOUTHEASTERN MINNESOTA-NORTHERN IOWA (DAIRYLAND) MARKETING AREA

In § 1061.11, paragraph (a) (1) and (2) and the introductory text of paragraph (b) are revised as follows:

§ 1061.11 Pool plant.

* * * * *

(a) * * *

(1) Not less than 10 percent of such receipts is disposed of from such plant as Class I milk in the marketing area as route disposition. Such disposition is to be exclusive of receipts of packaged fluid milk products from other pool distributing plants; and

(2) Not less than 30 percent during the months of February–August and 40 percent during the months of September–January of such receipts is disposed of as Class I milk as route disposition. Such disposition is to be exclusive of receipts of packaged fluid milk products from other pool distributing plants.

(b) A supply plant from which not less than 30 percent of its total Grade A milk receipts from dairy farmers during the month is delivered as fluid milk products to pool plants pursuant to paragraph (a) of this section subject to subparagraphs (1) and (2) of this paragraph:

* * * * *

PART 1068—MILK IN MINNEAPOLIS-ST. PAUL, MINNESOTA MARKETING AREA

1. In § 1068.9, paragraph (c) is revised as follows:

§ 1068.9 Pool plant.

* * * * *

(c) Upon written request by the handler to the market administrator, received or postmarked on or before the last day of any month, any plant qualified as a pool plant pursuant to paragraph (b) of this section may be withdrawn from pool plant status beginning with the next month. Any such plant withdrawn from automatic pool plant status may not regain such status prior to the next September 1 and then only by meeting the requirements set forth in the first proviso of paragraph (b) of this section in the same manner as a plant qualifying for pool plant status for the first time.

2. Section 1068.11 is revised as follows:

§ 1068.11 Producer.

"Producer" means any person, other than a producer-handler as defined in any order (including this part) issued pursuant to the Act, who produces milk in compliance with the Grade A inspection requirements of a duly constituted health authority, and whose milk is received at a pool plant as producer milk directly from the farm; or diverted from a pool plant to a nonpool plant subject to the rules in § 1068.12. "Producer" shall not include the milk of any person produced by him which is diverted to a pool plant from an other order plant if the other order designates such person as a producer under that order and the

handler diverting such milk and the operator of the pool plant have each requested Class II classification on the reports filed with their respective market administrators. Neither shall it include the milk of any person produced by him which is diverted to an other order plant if such person is designated as a producer with respect to such milk under the other order.

3. Section 1068.12 is revised as follows:

§ 1068.12 Producer milk.

"Producer milk" means the skim milk and butterfat in Grade A milk:

(a) Received at a pool plant directly from a dairy farmer; and

(b) Diverted from a pool plant to a nonpool plant (except a producer handler plant or an other order plant) subject to the following conditions:

(1) Such milk shall be priced at the location of the nonpool plant to which diverted;

(2) In any month that less than 6 days' production of a producer is delivered to pool plants the quantity of milk of the producer diverted during the month that exceeds that delivered to pool plants shall not be producer milk;

(3) During the months of September through November, a cooperative association handler may divert for his account the milk of any member producer. The total quantity of producer milk diverted by such handler in excess of 10 percent of the milk received from member producers at pool plants during the month shall not be producer milk;

(4) During the months of December through August, a cooperative association handler may divert for his account the milk of any member producer. The total quantity of producer milk diverted by such handler in excess of 25 percent of the milk received from member producers at pool plants during the month shall not be producer milk;

(5) During the months of September through November, the operator of a pool plant, other than a cooperative association, may divert for his account the milk of any producer other than a member of a cooperative association. The total quantity of producer milk diverted by such handler in excess of 10 percent of the milk received at such pool plant during the month from producers who are not members of a cooperative association shall not be producer milk;

(6) During the months of December through August, the operator of a pool plant, other than a cooperative association, may divert for his account the milk of any producer other than a member of a cooperative association. The total quantity of producer milk diverted by such handler in excess of 25 percent of the milk received at such pool plant during the month from producers who are not members of a cooperative association shall not be producer milk; and

(7) The diverting handler shall designate the dairy farmers whose milk is not producer milk pursuant to subparagraphs (3), (4), (5), and (6) of this paragraph. If the handler fails to make such designation, no milk diverted by him shall be producer milk.

4. In § 1068.13, a new paragraph (a–1) is added as follows:

§ 1068.13 Handler.

* * * * *

(a–1) Any cooperative association with respect to milk of its members diverted for its account from a pool plant to a nonpool plant subject to the provisions of § 1068.12.

* * * * *

5. In § 1068.30, paragraph (a)(1) is revised and a new paragraph (d) is added as follows:

§ 1068.30 Monthly reports of receipts and utilization.

(a) * * *

(1) The quantities of skim milk and the quantities of butterfat contained in milk received from producers (including diverted milk, and such handler's own production) producer-handlers' and other pool plants.

* * * * *

(d) On or before the 10th day of each month and in detail as prescribed by the market administrator each handler specified in § 1068.13(a–1) shall report to the market administrator for the preceding month the utilization of all skim milk and butterfat in diverted producer milk pursuant to § 1068.12.

6. In paragraph (b)(5) of § 1068.41, a new subdivision (vii) is added as follows.

§ 1068.41 Classes of utilization.

* * * * *

(b) * * *

(5) * * *

(vii) 1.5 percent of producer milk diverted to a nonpool plant pursuant to § 1068.12 except that if the operator of the nonpool plant to which the milk is diverted accounts for such milk on the basis of farm weights, the applicable percentage shall be 2 percent; and

* * * * *

7. Section 1068.44 is revised as follows:

§ 1068.44 Transfers.

Skim milk or butterfat in the form of a fluid milk product shall be classified:

(a) At the utilization indicated by the operators of both plants, otherwise as Class I milk, if transferred from a pool plant to the pool plant of another handler, subject in either event to the following conditions:

(1) The skim milk or butterfat so assigned to either class shall be limited to the amount thereof remaining in such class in the transferee plant after computations pursuant to § 1068.46(a)(7) and the corresponding step of § 1068.46 (b);

(2) If the transferor plant received during the month other source milk to be allocated pursuant to § 1068.46(a)(3), the skim milk and butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor handler received during the month other source milk to be allocated pursuant to § 1068.46(a)(6) or (7) and the corresponding steps of § 1068.46(b), the skim milk and butterfat so transferred up to the total of such receipts shall not be classified as Class I milk to a greater extent than would be applicable to a like quantity of such other source milk received at the transferee plant;

(b) As Class I milk, if transferred from a pool plant to a producer-handler;

(c) As Class I milk, if transferred or diverted from a pool plant to a nonpool plant that is not an other order plant or a producer-handler plant unless the requirements of subparagraphs (1) and (2) of this paragraph are met, in which case the skim milk and butterfat so transferred or diverted shall be classified in accordance with the assignment resulting from subparagraph (3) of this paragraph.

(1) The transferring or diverting handler claims classification pursuant to the assignment set forth in subparagraph (3) of this paragraph in his report submitted to the market administrator pursuant to § 1068.30 for the month within which such transaction occurred;

(2) The operator of such nonpool plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for the purpose of verification; and

(3) The skim milk and butterfat so transferred or diverted shall be classified on the basis of the following assignment of utilization at such nonpool plant in excess of receipts of packaged fluid milk products from all pool plants and other order plants;

(i) Any Class I utilization disposed of on routes in the marketing area shall be first assigned to the skim milk and butterfat in fluid milk products so transferred or diverted from pool plants, next pro rata to receipts from other order plants and thereafter to receipts from dairy farmers who the market administrator determines constitute regular sources of supply of Grade A milk for such nonpool plant;

(ii) Any Class I utilization disposed of on routes in the marketing area of another order issued pursuant to the Act shall be first assigned to receipts from plants fully regulated by such order, next pro rata to receipts from pool plants and other order plants not regulated by such order, and thereafter to receipts from dairy farmers who the market administrator determines constitute regular sources of supply for such nonpool plant;

(iii) Class I utilization in excess of that assigned pursuant to subdivisions (i) and (ii) of this subparagraph shall be assigned first to remaining receipts from dairy farmers who the market administrator determines constitute the regular sources of supply for such nonpool plant and Class I utilization in excess of such receipts shall be assigned pro rata to unassigned receipts at such nonpool plant from all pool and other order plants; and

(iv) To the extent that Class I utilization is not so assigned to it, the skim milk and butterfat so transferred or

diverted shall be classified as Class II milk;

(d) As follows, if transferred to an other order plant in excess of receipts from such plant in the same category as described in subparagraph (1), (2), or (3) of this paragraph:

(1) If transferred in packaged form, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred in bulk form, classification shall be in the classes to which allocated as a fluid milk product under the other order (including allocation under the conditions set forth in subparagraph (3) of this paragraph);

(3) If the operators of both the transferor and transferee plants so request in the reports of receipts and utilization filed with their respective market administrators, transfers in bulk form shall be classified as Class II to the extent of the Class II utilization (or comparable utilization under such other order) available for such assignment pursuant to the allocation provisions of the transferee order;

(4) If information concerning the classification to which allocated under the other order is not available to the market administrator for purposes of establishing classification pursuant to this paragraph, classification shall be as Class I, subject to adjustment when such information is available;

(5) For purposes of this paragraph, if the transferee order provides for more than two classes of utilization, milk allocated to a class consisting primarily of fluid milk products shall be classified as Class I, and milk allocated to other classes shall be classified as Class II; and

(6) If the form in which any fluid milk product is transferred to an other order plant is not defined as a fluid milk product under such other order, classification shall be in accordance with the provisions of § 1068.41.

8. In § 1068.46(a), subparagraphs (1), (4), (5), and (6) are revised as follows:

§ 1068.46 Allocation of skim milk and butterfat classified.

* * * * *

(a) * * *

(1) Subtract from the total pounds of skim milk classified:

(i) From Class I the pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under this or any other order issued pursuant to the Act is classified and priced as Class I milk and is not used as an offset on any other payment obligation under this or any other order;

(ii) From Class II the pounds of skim milk classified as Class II milk pursuant to § 1068.41(b)(5);

* * * * *

(4) Subtract, in the order specified below, from the pounds of skim milk remaining in Class II, but not in excess of such quantity:

(i) Receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to subparagraph (1)(i) of this paragraph;

(*a*) For which the handler requests Class II utilization; or

(*b*) Which are in excess of the pounds of skim milk determined by subtracting from 125 percent of the pounds of skim milk remaining in Class I milk the sum of the pounds of skim milk in producer milk, receipts from a cooperative association as a handler pursuant to the proviso of § 1068.13(a), receipts from pool plants of other handlers, and receipts in bulk from other order plants; and

(ii) Receipts of fluid milk products in bulk from an other order plant in excess of similar transfers to such plant, if Class II utilization was requested by the operator of such plant and the handler;

(5) Add to the remaining pounds of skim milk the pounds subtracted pursuant to subparagraph (1)(ii) of this paragraph;

(6) Subtract from the pounds of skim milk remaining in each class, pro rata to such quantities, the pounds of skim milk in receipts of fluid milk products from unregulated supply plants which were not subtracted pursuant to subparagraph (1)(i) or (4)(i) of this paragraph;

* * * * *

9. Section 1068.55 is revised as follows:

§ 1068.55 Location adjustments to handlers.

The Class I price for producer milk and other source milk (for which a location adjustment is applicable) received at a plant located at least 35 miles (as determined by the market administrator) from the Minnesota Transfer Viaduct at University Avenue in St. Paul, Minn., shall be reduced by an amount indicated below.

Plant location (miles)	*Amount of deduction (cents)*
Less than 35	0
35 but less than 45	6

For distances of 45 miles or more, an additional 1.5 cents for each 10 miles or fraction thereof beyond 45 miles.

9a. In § 1068.62, paragraph (a) is revised as follows:

§ 1068.62 Milk under more than one Federal order.

* * * * *

(a) The Secretary determines that a greater quantity of milk in fluid form is disposed of from such plant to a regulated marketing area as defined in another order issued pursuant to the Act either on routes or to pool plants qualified on the basis of route disposition than is disposed of from such plant in the Minneapolis-St. Paul marketing area either on routes or to pool plants qualified on the basis of route disposition.

* * * * *

10. In § 1068.64, subdivision (i) of paragraph (a)(1) and paragraph (b)(2) are revised as follows:

§ 1068.64 Obligations of handlers operating a partially regulated distributing plant.

* * * * *

(a) * * *

(1)(i) The obligation that would have been computed pursuant to § 1068.70 at such plant shall be determined as though such plant were a pool plant. For purposes of such computation, receipts at such nonpool plant from a pool plant or an other order plant shall be assigned to the utilization at which classified at the pool plant or other order plant and transfers from such nonpool plant to a pool plant or an other order plant shall be classified as Class II milk if allocated to such class at the pool plant or other order plant and be valued at the uniform price of the respective order if so allocated to Class I milk. No obligation shall apply to Class I milk transferred to a pool plant or an other order plant if such Class I utilization is assigned to receipts at the partially regulated distributing plant from pool plants and other order plants at which such milk was classified and priced as Class I milk. There shall be included in the obligation so computed a charge in the amount specified in § 1068.70(d) and a credit in the amount specified in § 1068.84(b)(2) with respect to receipts from an unregulated supply plant, unless an obligation with respect to such plant is computed as specified below in this subparagraph.

* * * * *

(b) * * *

(2) Deduct the respective amounts of skim milk and butterfat received at the plant:

(i) As Class I milk from pool plants and other order plants, except that deducted under a similar provision of another order issued pursuant to the Act; and

(ii) From a nonpool plant that is not an other order plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such nonpool plant by handlers fully regulated under this or any other order issued pursuant to the Act is classified and priced as Class I milk and is not used as an offset on any other payment obligation under this or any other order;

* * * * *

11. In § 1068.70, paragraph (d) is revised as follows:

§ 1068.70 Computation of the net pool obligation of each pool handler.

* * * * *

(d) Add the value at the Class I price, adjusted for location of the nearest nonpool plant(s) from which an equivalent volume was received of the skim milk and butterfat subtracted from Class I pursuant to § 1068.46(a)(6) and the corresponding step of § 1068.46(b), excluding such skim milk or butterfat in bulk receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under this or any other order issued pursuant to the

Act is classified and priced as Class I milk and is not used as an offset on any other payment obligation under this or any other order.

12. In § 1068.71, paragraph (a) is revised as follows:

§ 1068.71 Computation of uniform price.

* * * * *

(a) Combine into one total the values computed pursuant to § 1068.70 for all handlers who filed reports pursuant to § 1068.30 for the month and who made the payments pursuant to § 1068.84 for the preceding month;

* * * * *

13. Section 1068.82 is revised as follows:

§ 1068.82 Location adjustments to producers and on nonpool milk.

(a) In making payments pursuant to § 1068.80 (b) and (c) for milk received at a pool plant located 35 miles or more from the Minnesota Transfer Viaduct at University Avenue in St. Paul, Minn., each handler shall deduct from the applicable price payable to such producers an amount in accordance with the location of the plant based on the rates set forth in § 1068.55; and

(b) For the purpose of computations pursuant to §§ 1068.84 and 1068.85, the uniform price shall be adjusted at the rates set forth in § 1068.55 applicable at the location of the nonpool plant from which the milk was received, except that the uniform price shall not be less than the Class II price.

14. Section 1068.90 is revised as follows:

§ 1068.90 Expense of administration.

As his pro rata share of the expense of administration of the order, each handler shall pay to the market administrator on or before the 15th day after the end of the month 3 cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to (a) producer milk (including such handler's own production); (b) other source milk allocated to Class I pursuant to § 1068.46(a) (3) and (6) and the corresponding steps of § 1068.46(b) except such other source milk on which no handler obligation applies pursuant to § 1068.70(d); and (c) Class I route disposition in the marketing area by partially regulated distributing plants that exceeds the Class I milk:

(1) Received during the month at such plant from pool plants and other order plants that is not used as an offset under a similar provision of another order pursuant to the Act; and

(2) Specified in § 1068.64(b) (2) (ii).

15. Section 1068.92 is revised as follows:

§ 1068.92 Adjustment of overdue accounts.

Any unpaid obligation of a handler pursuant to §§ 1068.64, and 1068.84, and 1068.86(a), for which remittance has not been made by the close of business on the next day following the date specified for such payment shall be increased three-fourths of 1 percent for each month and any remaining amount due shall be increased at a similar rate on the corresponding day of each month thereafter until paid. The amounts payable pursuant to this section shall be computed monthly on each unpaid obligation, which shall include any unpaid charges previously made pursuant to this section; and for the purpose of this section any obligation that was determined at a date later than prescribed by the order because of a handler's failure to submit a report to the market administrator when due, shall be considered to have been payable by the date it would have been due if the report had been filed when due.

[FR Doc.72-2409 Filed 2-16-72;8:47 am]

[7 CFR Part 1137]

MILK IN EASTERN COLORADO MARKETING AREA

Notice of Proposed Suspension of Certain Provisions of the Order

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), the suspension of certain provisions of the order regulating the handling of milk in the Eastern Colorado marketing area is being considered for the period February through May 1972.

All persons who desire to submit written data, views, or arguments in connection with the proposed suspension should file the same with the Hearing Clerk, Room 112-A, Administration Building, U.S. Department of Agriculture, Washington, D.C. 20250, not later than 5 days from the date of publication of this notice in the FEDERAL REGISTER. All documents filed should be in quadruplicate.

All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The provisions proposed to be suspended are as follows:

1. In the first sentence of paragraph (a) of § 1137.10, the provision, "from whom at least three deliveries of milk are received during the month at a distributing pool plant"; and

2. In the second sentence of paragraph (a) of § 1137.10, the provision "distributing".

The proposed suspension would remove the provision that three deliveries of producer milk be received at a distributing pool plant during the month to qualify producer milk for diversion to a nonpool plant. Also, the proposed suspension would remove the provision that a cooperative association may divert milk only from a distributing pool plant.

The suspension was requested by a cooperative association supplying the market. The basis for the request is that current marketing conditions require the association to handle an increasing quantity of the reserve supply of milk for the market. Without the proposed suspension, the association claims it would be forced to make uneconomic shipments of producer milk to qualify it for pooling.

Signed at Washington, D.C., on February 15, 1972.

JOHN C. BLUM,
Deputy Administrator,
Regulatory Programs.

[FR Doc.72-2539 Filed 2-16-72;9:16 am]

Food and Nutrition Service

[7 CFR Part 271]

FOOD STAMP PROGRAM

Requests by State Agencies for Simultaneous Operation of Food Stamp and Food Distribution Programs

Pursuant to the authority contained in the Food Stamp Act of 1964, as amended (78 Stat. 703, as amended; 7 U.S.C. 2011-2025), notice is hereby given that the Food and Nutrition Service, Department of Agriculture, proposes to amend the regulations governing the Food Stamp Program (7 CFR Part 271) to prescribe the procedure to be used by State agencies in submitting requests for the concurrent operation of the Food Stamp Program and the Food Distribution Program (7 CFR Part 250) in the same area, and to provide guidelines which will be used by the Department in passing upon such requests. The proposed Food Stamp Program amendment is set forth below. Upon final publication of the amendment, the Food and Nutrition Service will publish a counterpart amendment to the Food Distribution Program Regulations.

Interested persons may submit written comments, suggestions, or objections regarding the proposed amendment to James H. Kocher, Acting Director, Food Stamp Division, FNS, U.S. Department of Agriculture, Washington, D.C. 20250, so as to be received not later than the 30th day following date of publication of this notice in the FEDERAL REGISTER. Comments, suggestions, or objections will be open to public inspection pursuant to 7 CFR 1.27(b) at the office of the Acting Director during regular business hours (8:30 a.m.-5 p.m.).

1. In § 271.1, paragraph (a) (3) is revised to read as follows:

§ 271.1 General terms and conditions for State agencies.

(a) *Federally donated foods.* * * *

(3) On request of the State agency, under the following conditions:

(i) Factual information showing the need for concurrent operation of both programs in the same area is submitted by the State agency to the Secretary of Agriculture together with proposed amendments to the State agency's plan of operation which shall set forth, among other things, that:

(*a*) No funds received from this Department will be used in carrying out the administrative responsibilities of the

State agency in the handling and issuing of federally donated foods;

(b) The household eligibility requirements and certification procedures prescribed in this subchapter will be applied by the State agency in determining the eligibility of all applicant households whether for the Food Stamp Program or for federally donated foods.

(c) The State agency will establish controls which will prevent any household from participating in the program and also simultaneously receiving household distribution of federally donated foods; and

(ii) The Secretary determines that conditions in the area are such that the concurrent operation of both programs is needed in order to effectively provide food assistance to low income households in the area, and that the proposals of the State agency for local administration will meet this need and otherwise satisfy the requirements of this subparagraph (3). Such determination will be based upon all relevant information available, including that provided by the State agency as well as information obtained by the Department from other sources.

The State agency will be informed in writing of the Secretary's decision and the reasons therefor.

* * * * *

(78 Stat. 703, as amended; 7 U.S.C. 2011–2025)

Dated: February 9, 1972.

RICHARD E. LYNG,
Assistant Secretary.

[FR Doc.72-2451 Filed 2-16-72;8:51 am]

Rural Electrification Administration

[7 CFR Part 1701]

COMPLIANCE WITH CIVIL RIGHTS ACT

Borrower Reporting Requirements Under Title VI

Notice is hereby given that, pursuant to the Rural Electrification Act, as amended (7 U.S.C. 901, et seq.), REA proposed to issue a supplement to REA Bulletin 20–19 (Electric) : 320–19 (Telephone) amending REA reporting requirements for its borrowers under Title VI of the Civil Rights Act of 1964.

Persons interested in this amendment to REA Bulletin 20–19:320–19 may submit written data, views, or comments to the Civil Rights Coordinator, Rural Electrification Administration, Room 4123, 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 Civil Rights Coordinator.

A copy of the proposed supplement to REA Bulletin 20–19:320–19 and the related forms and instructions may be secured in person or by written request to the Civil Rights Coordinator.

The text of the proposed supplement to the bulletin is as follows:

SUBJECT: Revision of Title VI Reporting Requirements.

To: Electric and Telephone Borrowers.

REA Form 268 has been revised in order to obtain additional information with respect to compliance by REA borrowers with the Civil Rights Act of 1964 and the rules and regulations of the Department of Agriculture. This form is now designated "Report of Compliance and Participation." The reports to be submitted on this revised form will show more definitive information by ethnic groups with respect to new services connected, unserved areas, composition of boards of directors and the participation of members in annual meetings of members of cooperative type borrowers.

The methods to be used by borrowers in obtaining minority group data for the reports are not prescribed by REA. However, each borrower in determining the methods it will utilize, should attempt to obtain accurate data.

One method you may wish to use in obtaining the "Approximate Percentage of Persons From Minority Groups" of your existing patrons is by utilizing the sampling procedure given in the attachment to this memorandum. Individual identification of all your patrons in order to obtain this information is not necessary.

With respect to annual meetings, item 5c, REA Form 268, a "visual survey" will provide an acceptable estimate of the extent to which members from minority groups are in attendance.

With reference to new consumers or subscribers, item 6, REA Form 268, "new services connected," a "visual survey" of the applicants could be made by designated employees at the time an application is received or when service is connected in order to determine the ethnic group of each new patron. After the service has been connected, the application could be coded, if this was not previously done, in order that the actual count by ethnic groups can be determined at the time the annual report is compiled.

The following provides additional information concerning the manner of furnishing the Statement of Nondiscrimination as required by paragraph IV, B, of the Bulletin.

Paragraph IV, B, 1, a, requires borrowers to furnish the Statement to each patron upon first becoming subject to Title VI which is when a borrower received its first advance of loan funds after January 3, 1965. Most borrowers complied with this provision which was included in Appendix A to the original Bulletin issued in July 1965. A borrower which has complied with this provision in the past is not required to again furnish the Statement to its patrons. A borrower which has not furnished the Statement and new borrowers are required to publish the Statement within 60 days afer becoming subject to Title VI. (See paragraph IV, C, of the Bulletin.) This is a one-time endeavor and no revision has been made in this requirement.

Paragraph IV, B, 1, b, requires that each employee be furnished a copy of the Statement. This should be interpreted to include future new employees.

Paragraph IV, B, 2, now requires that once each calendar year the borrower publish its statement of nondiscrimination in a newspaper with wide circulation in each county in which the borrower operates facilities. The purpose of this requirement is to keep the general public, including new and potential patrons, informed of the borrower's civil rights commitment under Title VI. The publication, for this purpose, should generally be an individual notice by each borrower. The use of a statewide publication which is limited in its distribution to consumers or subscribers would not satisfy this requirement. There may be isolated cases where more than one borrower serves in a county. In this instance a joint statement could be published in that area. In such a case, the first line of the statement should be changed to read "The undersigned have each filed with the Federal Government * * *". The Statement should then be followed by the name and address of each borrower making the Statement.

The borrower's records on Title VI matters should include copies of the reports and of the statement of nondiscrimination, and should show the methods used for obtaining minority group data and the manner of furnishing and publishing the Statement.

The date "July 31," appearing in paragraph V, A, 2, of the Bulletin, is changed to "January 31." Reporting will now be on a calendar year basis.

The revised REA Form 268, "Report of Compliance and Participation," will be furnished to borrowers for reporting in January 1973, covering the calendar year 1972.

Your full cooperation in arranging for obtaining the information requested, and supplying it to us with your year-end reports, will be greatly appreciated.

Dated: February 11, 1972.

DAVID A. HAMIL,
Administrator.

[FR Doc.72-2452 Filed 2-16-72;8:51 am]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing Management

[24 CFR Part 420]

[Docket No. R-72-166]

ASSISTANCE PAYMENTS—HOMES FOR LOWER INCOME FAMILIES

Notice of Proposed Rule Making

The Department of Housing and Urban Development proposes to amend Title 24 of the Code of Federal Regulations to include a new Part 420 "Assistance Payments—Homes for Lower Income Families."

The proposed part changes recertification from a biennial event to an annual event. It introduces the requirement that each mortgagor beneficiary of assistance payments shall immediately report certain significant changes in family employment. The rule provides for a system of suspensions and terminations. Thus, payments are suspended to beneficiaries whose income rises above the prescribed limits, but during the next 3 years the rule provides for resumption of payments in the event the income again falls below the limits. If reinstatement does not occur within the 3-year period, the payment contract is terminated. Sections 420.2, 420.3, 420.4, 420.5, 420.6, and 420.7 appearing in this proposed part would revise requirements currently set forth in §§ 235.350, 235.355, 235.360, 235.365, 235.370, and 235.375 of

this title. When Part 420 is made effective, Part 235 will be amended to revoke these superseded sections and reflect other conforming changes.

Interested persons are invited to participate in the making of the proposed rule by submitting written data, views, or statements. Communications should be identified by the above docket number and title, and should be filed in triplicate with the Rules Docket Clerk, Office of the General Counsel, Room 10256, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. All relevant material received on or before March 20, 1972, will be considered before adoption of the final rule. Copies of comments submitted will be available for examination during business hours at the above address.

The proposed new part would read as follows:

PART 420—ASSISTANCE PAYMENTS—HOMES FOR LOWER INCOME FAMILIES

Sec.
420.1 Purpose and definitions.
420.2 Mortgagor's required recertification.
420.3 Mortgagor's optional recertification.
420.4 Adjustments in assistance payments.
420.5 Mortgagee records.
420.6 Effect of assignment of mortgage with an assistance payment contract.
420.7 Termination, suspension or reinstatement of the assistance payments contract.
420.8 Effect of amendments.

AUTHORITY: The provisions of this Part 420 issued under sec. 211, 52 Stat. 23, as amended, sec. 235, 82 Stat. 477, as amended; 12 U.S.C. 1715b, 1715z.

§ 420.1 Purpose and definitions.

(a) It is the purpose of this part to set forth the requirements for recertification of occupancy, employment, income and family composition by mortgagors or cooperative members receiving assistance payments pursuant to section 235 of the National Housing Act, and to set forth the procedures for termination, suspension and reinstatement of the assistance payment contract.

(b) The definitions contained in § 235.5 of this title shall apply to this part. In addition, the term "assistance payment" means that portion of a homeowner's or cooperative member's monthly mortgage payment which HUD becomes obligated to pay under an assistance payment contract.

§ 420.2 Mortgagor's required recertification.

The mortgagee shall obtain from the homeowner (or from the cooperative association on behalf of the cooperative member), on a form prescribed by the Assistant Secretary for Housing Management (hereinafter referred to as the Assistant Secretary), a recertification as to occupancy, employment, income, and family composition whenever one of the following events takes place:

(a) Annually, no earlier than 60 days before and no later than 30 days after the anniversary date of the mortgage or at such other anniversary date as set by the Assistant Secretary;

(b) No more than 30 days after the mortgagee is notified by the mortgagor or learns from any source, that the mortgagor or any adult (21 years or older) member of the family residing in the household changes or begins employment which results in an increase in the family income reported in the original application for assistance or the most recent recertification;

(c) At such other times as the Assistant Secretary may require.

§ 420.3 Mortgagor's optional recertification.

Upon request of the mortgagor or cooperative member, the mortgagee shall accept recertification whenever the mortgagor, his or her spouse or an adult (21 years or older) member of the family changes or loses employment which results in a decrease in the family income reported in the most recent certification or recertification. This recertification shall be on a form prescribed by the Assistant Secretary.

§ 420.4 Adjustment in assistance payments.

The mortgagee shall make appropriate adjustments in the amount of the requested assistance payments to reflect changes in family income reported in any required or optional recertification of the homeowner or cooperative member. The adjustment shall not be retroactive except at the discretion of the Assistant Secretary. The adjustment shall apply only to assistance payments beginning with the payment due no earlier than the first day of the month following and no later than the first day of the second month following the date the mortgagor's recertification is received by the mortgagee.

§ 420.5 Mortgagee records.

The mortgagee shall maintain such records as the Assistant Secretary may require with respect to the mortgagor's payments, the mortgage assistance payments received from the Assistant Secretary, and the annual recertifications of financial status from the homeowner or mortgagor. Such records shall be kept on file for a period of time and in a manner prescribed by the Assistant Secretary and shall be available, when requested, for review and inspection by the Assistant Secretary or the Comptroller General of the United States.

§ 420.6 Effect of assignment of mortgage with an assistance payments contract.

Where a mortgage covered by an assistance payment contract is sold to another approved mortgagee, the buyer shall succeed to all the rights and become bound by all the obligations of the seller under such a contract.

§ 420.7 Termination, suspension, or reinstatement of the assistance payments contract.

(a) *Termination.* The assistance payments contract shall be terminated when any of the following events occur:

(1) The contract of mortgage insurance is terminated, except when the mortgage has been assigned to the Secretary.

(2) The property is purchased by a homeowner not qualified to receive assistance payments.

(3) The cooperative member transfers his membership and occupancy rights to a new cooperative member not qualified to receive assistance payments.

(4) When the assistance payments contract has been suspended for a period of 3 years without reinstatement.

(b) *Suspension.* The assistance payments contract shall be suspended when any one of the following events occurs:

(1) The homeowner, or cooperative member ceases to occupy the property, except in the following instances:

(i) The property is purchased by a homeowner who immediately assumes the mortgage obligation with respect to which assistance payments have been made on behalf of the previous owner, and who meets the income and asset requirements prescribed by the Secretary.

(ii) The cooperative member transfers his membership and occupancy rights to a new member who meets the income and asset requirements prescribed by the Secretary.

(2) The mortgagee determines that the mortgagor or cooperative member ceases to qualify for the benefits of assistance payments by reason of his income increasing to an amount enabling him to pay the full monthly mortgage payment by using 20 percent of the family income.

(3) Foreclosure is instituted.

(4) The mortgage is unable to obtain from the homeowner (or from the cooperative association on behalf of the cooperative member) a required recertification of occupancy, employment, income, and family composition as prescribed in § 420.2.

(5) At such other times as the Assistant Secretary may require.

(c) *Effect of termination or suspension.* Upon termination or suspension of the assistance payments contract, the payment due on the first day of the month in which the termination or suspension occurs shall be the last payment to which the mortgagee shall be entitled; except that, in the case of a suspended contract, payment may be resumed after the contract is reinstated pursuant to paragraph (e) of this section.

(d) *Noneffect on mortgage insurance contract.* The termination or suspension of the assistance payments contract, where the mortgage insurance contract is not simultaneously terminated, shall have no effect on the mortgage insurance contract.

(e) *Reinstatement.* Where the assistance payments contract is suspended, it may be reinstated by the Assistant Secretary at his discretion and on such conditions as he may prescribe.

§ 420.8 Effect of amendments.

The regulations in this part may be amended by the Assistant Secretary at

any time from time to time, in whole or in part, but such amendment shall not adversely affect the interests of a mortgagee under an existing contract for assistance payments.

NORMAN V. WATSON,
Assistant Secretary for Housing Management.

[FR Doc.72-2395 Filed 2-16-72;8:46 am]

Office of Assistant Secretary for Housing Production and Mortgage Credit—Federal Housing Commissioner (Federal Housing Administration)

[24 CFR Part 235]

ASSISTANCE PAYMENTS—HOMES FOR LOWER INCOME FAMILIES

Notice of Proposed Rule Making

CROSS REFERENCE: For a document relating to assistance payments for homes for lower income families, see F.R. Doc. 72-2395, Department of Housing and Urban Development, Office of Assistant Secretary for Housing Management, *supra*.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Part 71]

[Airspace Docket No. 72-GL-2]

TRANSITION AREA

Proposed Alteration

The Federal Aviation Administration is considering amending Part 71 of the Federal Aviation Regulations so as to alter the transition area at Milwaukee, Wis.

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 Director, Great Lakes Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, 3166 Des Plaines Avenue, Des Plaines, IL 60018. All communications received within 45 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, Room 18, 3158 Des Plaines Avenue, Des Plaines, IL 60018.

A new public use instrument approach procedure has been developed and the other approach procedures have been revised for Horlick-Racine Airport, Milwaukee, Wis. Consequently, it is necessary to provide controlled airspace protection for aircraft executing this new approach procedure by altering the transition area at Milwaukee, Wis. The new procedure will become effective concurrently with the designation of the transition area.

In consideration of the foregoing, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations as hereinafter set forth:

In § 71.181 (37 F.R. 2056) the transition area at Milwaukee, Wis., is amended as follows: Delete, "within a 5½-mile radius of Horlick-Racine Airport (latitude 42°-45'45" N., longitude 87°49'00" W.); within 3 miles each size of the 027° bearing from Horlick-Racine Airport extending from the 5½-mile radius to 8 miles northeast of the airport" and insert in place "within a 7-mile radius of the Horlick-Racine Airport (latitude 42°45'-45" N., longitude 87°49'00" W.); within 3 miles each side of the 031° bearing from the airport extending from the 7-mile radius to 8 miles northeast of the airport".

This amendment is proposed under the authority of section 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348), and of section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Des Plaines, Ill., on January 28, 1972.

R. O. ZIEGLER,
Acting Director, Great Lakes Region.

[FR Doc.72-2400 Filed 2-16-72;8:46 am]

[14 CFR Part 71]

[Airspace Docket No. 72-GL-4]

TRANSITION AREA

Proposed Alteration

The Federal Aviation Administration is considering amending Part 71 of the Federal Aviation Regulations so as to alter the transition area at Lawrenceville, Ill.

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 Director, Great Lakes Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, 3166 Des Plaines Avenue, Des Plaines, IL 60018. All communications received within 45 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, 3166 Des Plaines Avenue, Des Plaines, IL 60018.

Two public instrument approach procedures have been revised for the Lawrenceville/Vincennes Municipal Airport, Lawrenceville, Ill. In addition, the criteria for designation of transition areas have been revised. Accordingly, it is necessary to alter the Lawrenceville transition area to adequately protect the aircraft executing the revised approach procedures and to comply with the revised transition area criteria.

In consideration of the foregoing, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations as hereinafter set forth:

In § 71.181 (37 F.R. 2143), the following transition area is amended to read:

LAWRENCEVILLE, ILL.

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Lawrenceville/Vincennes Municipal Airport (latitude 38°45'35" N., longitude 87°36'-27" W.) within 3 miles each side of the 189° bearing from the Lawrenceville/Vincennes Airport, extending from the 7-mile radius to 8 miles south; and 3 miles each side of the 355° bearing from the Lawrenceville/Vincennes Airport, extending from the 7-mile radius to 8 miles north; and within a 5.5-mile radius of O'Neal Airport (latitude 38°-41'28" N., longitude 87°33'12" W.) and within 3 miles each side of the 258° bearing from O'Neal Airport, extending from the 7-mile and 5½-mile radii to 8 miles west of the airport.

This amendment is proposed under the authority of section 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348), and of section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Des Plaines, Ill., on January 28, 1972.

R. O. ZIEGLER,
Acting Director, Great Lakes Region.

[FR Doc.72-2399 Filed 2-16-72;8:46 am]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 73]

[Docket No. 19401; FCC 72-130]

TABLE OF FM ASSIGNMENTS IN CERTAIN CITIES IN IOWA, WEST VIRGINIA, AND FLORIDA

Further Notice of Proposed Rule Making

In the matter of amendment of § 73.-202(b), *Table of Assignments*, FM Broad-

cast Stations. (Hampton, Pella, Cedar Rapids, and Charles City, Iowa; Keyser, W. Va.; Crystal River and Gainesville, Fla.), Docket No. 19401, RM–1750, RM–1756, RM–1757, RM–1777, RM–1790, RM–1829.

1. Further notice of proposed rule making is hereby given concerning the amendment of § 73.202(b) of the Commission's rules, the Table of FM Assignments. In the above-entitled proceeding, the Commission has under consideration, among others, a proposal to assign FM channels to Crystal River and Gainesville, Fla. In view of the proximity of the two communities, Channel 253 cannot be assigned to both communities, and the fact that a Class C channel is requested for Crystal River, where a Class A channel would be normally assigned, we instituted a rule making tentatively proposing to assign either Channel 224A or Channel 253 to Crystal River, and either Channel 253 or Channel 269A to Gainesville, Fla.

2. At the time the notice of proposed rule making in this proceeding was issued, we were not aware that a petition for rule making requesting assignment of Channel 224A at Ocala, Fla., had been submitted. This request conflicts with our tentative proposal to assign Channel 224A to Crystal River. However, this problem could be resolved by changing the proposed channel assignment to Crystal River from Channel 224A to Channel 237A. Channel 237A could be as utilized at Crystal River without affecting the channels listed in the present Table of Assignments. Thus, we now propose to assign tentatively either Channel 237A or Channel 253 to Crystal River, Fla.

3. In view of the foregoing, the proposed amendment to the Table of FM Assignments listed in paragraph 20 of the notice of proposed rule making, FCC 72–45, is amended, in so far as it relates to Crystal River, Fla., only, to read as follows:

City	Channel No.	
	Present	Proposed
Crystal River, Fla		237A or 253

4. Since the above change in the proposed assignments would affect filing of comments and reply comments, the dates for filing appropriate pleadings would be extended only to those parties affected by this change. *Accordingly, it is ordered,* That the time for filing comments in the above docket, RM–1757, RM–1777, and RM–1790, is extended to and including March 24, 1972, and for the filing of reply comments to and including April 5, 1972. Responses will be available for public inspection during regular business hours in the Commission's Broadcast and Docket Reference Room at its headquarters in Washington, D.C.

Adopted: February 9, 1972.

Released: February 14, 1972.

FEDERAL COMMUNICATIONS COMMISSION,[1]
[SEAL] BEN F. WAPLE,
Secretary.

[FR Doc.72–2419 Filed 2–16–72;8:49 am]

FEDERAL HOME LOAN BANK BOARD

[12 CFR Part 545]

[No. 72–181]

FEDERAL SAVINGS AND LOAN SYSTEM

Offices of Federal Savings and Loan Associations

FEBRUARY 10, 1972.

Resolved that the Federal Home Loan Bank Board considers it advisable to amend Part 545 of the rules and regulations for the Federal Savings and Loan System (12 CFR Part 545) relating to operations of Federal savings and loan associations for the purpose of providing for the establishment and operation by Federal savings and loan associations of an additional type of office facility to increase the viability of such associations in promoting thrift and housing financing. Accordingly, the Federal Home Loan Bank Board proposes to amend said Part 545 by adding a new § 545.14–5 immediately following present § 545.14–4 to read as follows:

§ 545.14–5 Satellite offices.

(a) *Nature of a satellite office.* An office of a Federal association which is not its home office or a branch office approved pursuant to § 545.14 shall be deemed to be a satellite office if it meets the requirements of a satellite office as described in this section and if it is a satellite of the association's home office or a branch office in that it is located in the same savings service area as such home office or branch office. Any business of a Federal association, as authorized by the association's board of directors, may be transacted at a satellite office.

(b) *General provisions.* A Federal association shall not establish a satellite office without prior approval by the Board or its Supervisory Agent, as provided in this section. All requests by a Federal association for advice or instructions with respect to any matter arising under this section shall be addressed to the Board's Supervisory Agent. As used in this section, the term "Supervisory Agent'" means the President of the Federal Home Loan Bank of the district in which the applicant association is located or any other officer or employee of such bank designated by the Board as agent as provided in § 501.10 or § 501.11 of this chapter. All recommendations by Supervisory Agents and by officers and employees of the Board in connection with applications for permission to establish a satellite office shall be deemed to be privileged and confidential and subject to the provisions of § 506.6 of this

(c) *Specific provisions.* Each application for permission to establish a satellite office will be considered or processed pursuant to the provisions of this section. Approval of such an application pursuant to this section will be subject to the following provisions and any other conditions, requirements, and limitations the Board may specify in a particular case:

(1) Except for a satellite office which meets the requirements of paragraph (i) of this section, a satellite office may be opened and operated only in association with another operation (hereinafter called "principal operation") which, in the opinion of the Board, or of the Supervisory Agent if approved by him pursuant to paragraph (g) of this section, is not inappropriate to the operation of a savings and loan activity in the same location. A principal operation may include, but is not limited to, a department store, discount store, or supermarket. The following requirements shall apply to the initial and continuing relationship between a principal operation and the operation of a satellite office:

(i) A satellite office shall not occupy more than one-third of the total floor space of the principal operation;

(ii) Any outside sign or other display or window display on behalf of the satellite office shall be subordinate to other signs and displays; and

(iii) Provision shall not be made for more than four teller stations of the satellite office.

(2) The operating Federal association may terminate the operation of a satellite office in its discretion and, if so terminated, such satellite office may not be reopened except upon a new application pursuant to this section.

(3) The operation of a satellite office may not be changed to a new location (other than a change of location within the same quarters of the principal operation) except upon a new application pursuant to this section.

(4) The operation of a satellite office shall not be continued for a period of longer than 3 years (or such shorter period as may be specified by the Board in its approval) from its initial opening except upon approval of a new application pursuant to this section. Paragraph (f) of this section, however, shall not be applicable to a renewal. The Board reserves the right to disapprove any such renewal application if in its opinion the continued operation of the satellite office is not in the public interest. A renewal application may be approved by the Board without a time limit on the future operation of the satellite office or with such time limit as the Board may determine.

[1] Commissioner Bartley, H. Rex Lee and Wiley absent.

(5) A Federal association may not establish or operate more than one satellite office of its home office and one satellite office of each of its branch offices, but in no event to exceed a total of five satellite offices.

(6) A satellite office may not be located more than 2 miles from the Federal association's home office or a branch office.

(d) *Application form; supporting information.* An application for permission to establish a satellite office shall be in form prescribed by the Board and may be obtained from the Supervisory Agent. Information shall be furnished in support of the application designed to show that the operation of a satellite office at its proposed location (1) will be located in the same savings service area as an existing branch or as the home office of the applicant association, and (2) will not cause undue injury to properly conducted existing local thrift and home-financing institutions.

(e) *Supervisory objection.* No application for permission to establish a satellite office shall be approved if, in the opinion of the Board, the policies, condition, or operation of the applicant association afford a basis for supervisory objection to the application.

(f) *Processing of application by Supervisory Agent; public notice; inspection.* (1) Upon determination by the Supervisory Agent that an application for permission to establish a satellite office is complete, and if it has been preliminarily determined that there is no basis for supervisory objection to approval of the application, the Supervisory Agent shall advise the applicant, in writing, to publish within 15 days from the date of such advice, in a newspaper printed in the English language and having general circulation in the community to be served by the satellite office at its proposed location, a notice of the filing of the application in the following form:

NOTICE OF FILING APPLICATION FOR PERMISSION TO ESTABLISH A SATELLITE OFFICE

Notice is hereby given that, pursuant to the provisions of § 545.14–5 of the rules and regulations for the Federal Savings and Loan System, the _____ Federal Savings and Loan Association, _____, _____,
(City) (State)
has filed an application for permission to establish a satellite office at or in the immediate vicinity of, _____,
(Street address)
_____, _____. The application
(City) (State)
has been delivered to the Office of the Supervisory Agent of the said Board, located at the Federal Home Loan Bank of _____,
(City)
_____, _____. Any person may
(Street address) (City)
file communications, including briefs, in favor or in protest of said application at the aforesaid office of the Supervisory Agent within 10 days (or within 30 days if advice is filed within the first 10 days stating that more time is needed to furnish additional information) after the date of this publication. Four copies of any communications should be filed. The application and all communications in favor or in protest thereof are available for inspection by any person at the aforesaid Office of the Supervisory Agent.

_____ FEDERAL SAVINGS AND LOAN ASSOCIATION _____

(2) Promptly after publication of the notice, the applicant shall transmit two copies thereof to the Supervisory Agent accompanied by two copies of a publisher's affidavit of publication.

(3) Within 10 days (or within 30 days if advice is filed within the first 10 days stating that more time is needed to furnish additional information) after the date of publication of said notice, any person may file, at the office of the Supervisory Agent designated in the notice, communications, including briefs, in protest of the application. In the event any communication is filed in protest of the application, the applicant may file information relevant to such protest within 15 days after the last date for filing communications pursuant to the preceding sentence or may waive the right to file such information. Information may be submitted in connection with an application only as provided in this section, unless additional information is requested by the Supervisory Agent or otherwise by or on behalf of the Board. Four copies shall be furnished of any communication or information filed pursuant to this subparagraph.

(4) The application, together with all communications in favor or in protest thereof, shall be available at the office of the Supervisory Agent during regular working hours for inspection by any person after the issuance to the applicant of advice to publish a notice. Prior thereto, the application and the fact that it has been filed shall be held as confidential.

(g) *Approval by Supervisory Agent.* The Supervisory Agent is authorized to approve, on behalf of the Board, an application for permission to establish a satellite office if the following conditions have been met:

(1) No protests have been made to the approval of the application;

(2) The Supervisory Agent is of the opinion that the satellite office will be located in the same savings service area as an existing branch or as the home office of the applicant association;

(3) The Supervisory Agent is of the opinion that the operation of the satellite office at its proposed location will not cause undue injury to properly conducted existing local thrift and home-financing institutions;

(4) The principal operation, in the opinion of the Supervisory Agent, is not inappropriate to the operation of a savings and loan activity in the same location;

(5) Operation of the satellite office will not cause the limitation in paragraph (c) of this section on the number of such offices to be exceeded; and

(6) There is no supervisory objection to approval of the application.

The Supervisory Agent shall disapprove any application which does not meet the requirements of subparagraph (5) of this paragraph, but shall forward to the Board for its consideration, together with his recommendation, any application which does not meet the other requirements of this paragraph. In addition, the Supervisory Agent shall forward to the Board an application which, in his opinion, should be approved for a shorter period than the 3-year limit specified in paragraph (c) of this section, together with his recommendation as to the shorter period for which the application should be approved. The Supervisory Agent is not required, in approving an application under this section, to obtain assurance that the requirements of subdivisions (ii) and (iii) of paragraph (c)(1) of this section will be met, since such requirements are continuing requirements to be observed by the Federal association.

(h) *Oral argument*—(1) *General provisions.* Oral argument on the merits of any application filed pursuant to this section shall be heard upon the written request of an applicant or of any person who has filed a communication in protest of an application within the time specified in subparagraph (3) of paragraph (f) of this section, if such request is received by the Supervisory Agent within 10 days after the expiration of the time specified in said subparagraph for filing communications in protest of an application. Such oral argument shall also be heard if the Supervisory Agent, after review of the application and all pertinent information, considers it desirable. When oral argument is to be held, the Supervisory Agent shall mail a notice, fixing the time and place thereof, to the applicant and to all persons who have filed a communication in protest of the application. Such oral argument shall be scheduled not less than 10 days after the mailing of the notice.

(2) *Procedure.* The Supervisory Agent, or any other person designated by the Board, shall have authority to hear oral argument and determine all matters relating to the conduct of such argument. The oral argument with respect to any such application may be made in person or by authorized representatives, but the oral argument should be based on written information which has been filed in connection with the application. A reasonable time shall be allowed for oral argument, but, unless waived, not less than 1 hour shall be allowed for all oral argument against an application and not less than 1 hour shall be allowed for all oral argument in favor of an application. A transcript shall be made of any oral argument and shall be included in the application file.

(i) *Fully automated satellite office.* If a satellite office is fully automated in that it is to be operated wholly by machines and without tellers or other personnel to handle transactions with the public, the requirement in paragraph (c)(1) of this section of association with a principal operation and the requirements in subdivisions (i) and (ii) of paragraph (c)(1) of this section shall not be applicable.

(j) *Reports.* Each Federal association shall furnish such reports to the Board

with respect to the operation of each satellite office as the Board may require, including a report on procurement of marketing data from account holders.

(Sec. 5, 48 Stat. 132, as amended; 12 U.S.C. 1464. Reorg. Plan No. 3 of 1947, 12 F.R. 4981, 3 CFR, 1943–48 Comp., p. 1071)

Resolved further that the Board also proposes to amend its statement of policy in § 556.5 of the rules and regulations for the Federal Savings and Loan System (12 CFR 556.5) to apply such statement to the satellite offices provided for in the proposal herein.

Resolved further that interested persons are invited to submit written data, views, and arguments to the Office of the Secretary, Federal Home Loan Bank Board, 101 Indiana Avenue NW., Washington, DC 20552, by March 17, 1972, as to whether this proposal should be adopted, rejected, or modified. Written material submitted will be available for public inspection at the above address unless confidential treatment is requested or the material would not be made available to the public or otherwise disclosed under § 505.6 of the general regulations of the Federal Home Loan Bank Board (12 CFR 505.6).

By the Federal Home Loan Bank Board.

[SEAL] EUGENE M. HERRIN,
Assistant Secretary.

[FR Doc.72-2456 Filed 2-16-72;8:51 am]

FEDERAL TRADE COMMISSION

[16 CFR Part 429]

COOLING OFF PERIOD FOR DOOR-TO-DOOR SALES

Notice of Opportunity To Submit Data, Views, or Arguments Regarding Proposed Trade Regulation Rule

Notice is hereby given that the Federal Trade Commission, pursuant to the Federal Trade Commission Act, as amended, 15 U.S.C. 41 et sq., and the provisions of procedures and rules of practice, 16 CFR 1.11 et seq., having previously initiated proceedings for the promulgation of a trade regulation rule concerning a cooling off period for door-to-door sales, received written comments and information, conducted public hearings in both Washington, D.C. (March 8–11, 1971), and Chicago, Ill. (March 22–24, 1971), and considered the record thereby produced, now provides opportunity for interested persons to submit data, views and arguments regarding the following as a revision of the proposed rule on the subject:

§ 429.1 The Rule.

In connection with any door-to-door sale, it constitutes an unfair and deceptive act or practice for any seller to:

(a) Fail to furnish the buyer with a fully completed receipt or copy of any contract pertaining to such sale at the time of its execution, which is in the same language, e.g., Spanish, as that principally used in the oral sales presentation and which shows the date of the transaction and contains the name and address of the seller, and in immediate proximity to the space reserved in the contract for the signature of the buyer or on the front page of the receipt and in boldface type of a minimum size of 10 points, a statement in substantially the following form:

You, the Buyer, May Cancel This Transaction at Any Time Prior to Midnight of the Third Business Day After the Date of This Transaction. See the Attached Notice of Cancellation Form for an Explanation of This Right.

(b) Fail to furnish each buyer, at the time he signs the door-to-door sales contract or otherwise agrees to buy consumer goods or services from the seller, a completed form in duplicate, captioned "Notice of Cancellation," which shall be attached to the contract or receipt and easily detachable, and which shall contain in 10-point boldface type the following information and statements in the same language, e.g., Spanish, as that used in the contract:

NOTICE OF CANCELLATION

(Enter date of transaction)

(Date)

You May Cancel This Transaction, Without any Penalty or Obligation, Within Three Business Days From the Above Date.

If You Cancel, any Property Traded in, any Payments Made by You Under the Contract or Sale, and any Negotiable Instrument Executed by You Will be Returned Within 10 Business Days Following Receipt by the Seller of Your Cancellation Notice, and any Security Interest Arising out of the Transaction Will Be Canceled.

If You Cancel, You Must Make Available to the Seller at the Place of Delivery, in Substantially as Good Condition as When Received, any Goods Delivered to You Under This Contract or Sale; or You May, if You Wish, Comply With the Instructions of the Seller Regarding the Return Shipment of the Goods at the Seller's Expense and Risk.

If You do not Return the Goods to the Seller or if the Seller does not Pick Them up Within 20 Days of the Date of Your Notice of Cancellation, You May Retain or Dispose of the Goods without Any Further Obligation.

To Cancel This Transaction, Mail or Deliver a Signed and Dated Copy of This Cancellation Notice or any Other Written Notice, or Send a Telegram, to _____, at
(Name of seller)
_____ not
(Address of seller's place of business)
Later Than Midnight of _____.
(Date)

I Hereby Cancel This Transaction.

_____ _____
(Date) (Buyer's signature)

(c) Fail, before furnishing copies of the "Notice of Cancellation" to the buyer, to complete both copies by entering the name of the seller, the address of the seller's place of business, the date of the transaction, and the date, not earlier than the third business day following the date of the transaction, by which the buyer may give notice of cancellation.

(d) Include in any door-to-door contract or receipt any confession of judgment or any waiver of any of the rights to which the buyer is entitled under this section including specifically his right to cancel the sale in accordance with the provisions of this section.

(e) Fail to inform each buyer orally, at the time he signs the contract or purchases the goods or services, of his right to cancel.

(f) Misrepresent in any manner the buyer's right to cancel.

(g) Fail or refuse to honor any valid notice of cancellation by a buyer and within 10 business days after the receipt of such notice, (1) to refund all payments made under the contract or sale; (2) to return any goods or property traded in, in substantially as good condition as when received by the seller; (3) to cancel and return any negotiable instrument executed by the buyer in connection with the contract or sale and to take any action necessary or appropriate to terminate promptly any security interest created in the transaction.

(h) Negotiate, transfer, sell, or assign any note or other evidence of indebtedness to a finance company or other third party prior to midnight of the fifth business day following the day the contract was signed or the goods or services were purchased.

(i) Fail, within 10 business days of receipt of the buyer's notice of cancellation, to notify him whether the seller intends to repossess or to abandon any shipped or delivered goods.

NOTE 1: *Definitions.* For the purposes of this section the following definitions shall apply:

(a) *Door-to-door sale.* A sale, lease, or rental of consumer goods or services with a purchase price of $25 or more, whether under single or multiple contracts, in which the seller or his representative personally solicits the sale, including those in response to or following an invitation by the buyer, and the buyer's agreement or offer to purchase is made at a place other than the place of business of the seller. The term "door-to-door sale" does not include a transaction:

(1) Made pursuant to prior negotiations in the course of a visit by the buyer to a retail business establishment having a fixed permanent location where the goods are exhibited or the services are offered for sale on a continuing basis; or

(2) In which the consumer is accorded the right of recission by the provisions of the Consumer Credit Protection Act (15 U.S.C. 1671–77) or regulations issued pursuant thereto; or

(3) In which the buyer has initiated the contact and the goods or services are needed to meet a bona fide immediate personal emergency of the buyer, and the buyer furnishes the seller with a separate dated and signed personal statement in the buyer's handwriting describing the situation requiring immediate remedy and expressly acknowledging and waiving the right to cancel the sale within 3 business days; or

(4) Conducted and consumated entirely by mail or telephone; and without any other contact between the buyer and the seller or its representative prior to delivery of the goods or performance of the services.

(b) *Consumer goods or services.* Goods or services purchased, leased, or rented primarily for personal, family, or household purposes, including courses of instruction or

training regardless of the purpose for which they are taken.

(c) *Seller.* Any person, partnership, corporation, or association engaged in the door-to-door sale of consumer goods or services.

(d) *Place of business.* The main or permanent branch office or local address of a seller.

(e) *Purchase price.* The total price paid or to be paid for the consumer goods or services, including all interest and service charges.

(f) *Business day.* Any calendar day except Saturday, Sunday, or the following business holidays: New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, and Christmas Day.

NOTE 2: *Effect on State laws and municipal ordinances.* (a) The Commission is cognizant of the significant burden imposed upon door-to-door sellers by the various and often inconsistent State laws which provide the buyer with the right to cancel door-to-door sales transactions. However, it does not believe that this constitutes sufficient justification for preempting all of the provisions of such laws or of the ordinances of the political subdivisions of the various States. The record in the proceedings supports the view that the joint and coordinated efforts of both the Commission and State and local officials are required to insure that a consumer who has purchased from a door-to-door seller something he does not want, does not need, or cannot afford, is accorded a unilateral right to rescind, without penalty, his agreement to purchase the goods or services.

(b) This section will not be construed to annul, or exempt any seller from complying with, the laws of any State, or of the ordinances of political subdivisions thereof, regulating door-to-door sales, except to the extent that such laws or ordinances, if they permit door-to-door selling, are directly inconsistent with the provisions of this section. Such laws or ordinances which do not accord the buyer, with respect to the particular transaction, a right to cancel a door-to-door sale which is substantially the same or greater than that provided in this section, or which permit the imposition of any fee or penalty on the buyer for the exercise of such right, or which do not provide for giving the buyer notice of his right to cancel the transaction in substantially the same form and manner provided for in this section, are among those which will be considered directly inconsistent.

All interested persons, including consumers and other members of the public, are hereby notified that they may file written data, views, or arguments concerning the revised proposed rule with the Assistant Director for Rules and Guides, Bureau of Consumer Protection, Federal Trade Commission, Pennsylvania Avenue and Sixth Street NW., Washington, DC 20580, not later than March 20, 1972. Such persons are urged to express approval or disapproval or to recommend further modifications giving the reasons therefor. Industry members and persons knowledgeable on the subject are specifically invited to provide information relative to the length of time the Commission should allow industry members to make the necessary arrangements to comply with the rule following its promulgation in final form.

All persons, firms, corporations, or others engaged in door-to-door sales, in commerce, as "commerce" is defined in the Federal Trade Commission Act, will be subject to the requirements of any trade regulation rule promulgated in the course of this proceeding.

All statements filed in this proceeding will be available for public inspection in Room 130 of the Division of Legal and Public Records, Federal Trade Commission, Washington, D.C. All such statements filed not later than March 20, 1972, will be considered by the Commission in determining the proper disposition of this matter.

Issued: February 17, 1972.

By Direction of the Commission.

[SEAL] CHARLES A. TOBIN,
Secretary.

[FR Doc.72-2353 Filed 2-16-72;8:45 am]

VETERANS ADMINISTRATION

[38 CFR Part 1]

PUBLIC PARTICIPATION IN RULE MAKING

Proposed Policy Statement

Notice is hereby given that the Veterans Administration will use notice of proposed rule making procedures in certain cases even though not required by law. Generally, before rules and regulations are issued by Government agencies, the Administrative Procedure Act (APA) provides that notice of the proposed rule making must be published in the FEDERAL REGISTER and interested persons must be given an opportunity to participate in the rule making through submission of written data, views, or arguments (5 U.S.C. 553).

The APA exempts from this requirement matters relating to public property, loans, grants, benefits, or contracts. The Administrative Conference of the United States has recommended, however, that Government agencies seek public participation in accordance with the APA provisions when formulating rules in the five exempt categories listed above (1969 Conference Recommendation No. 16). Our implementation of the Conference's recommendation should result in greater participation by the public in the formulation of the rules and regulations of the Veterans Administration. The public benefit from such participation should outweigh any administrative inconvenience or delay which may result from use of the public participation procedures in the five exempt categories.

The Veterans Administration proposes, therefore, to direct the use in general of the public participation procedures of the APA when issuing rules and regulations relating to public property, loans, grants, benefits, or contracts. Although the APA permits exceptions from these procedures when an agency for good cause finds that such procedures would be impracticable, unnecessary or contrary to the public interest, such exceptions would be used sparingly, as for example in emergencies and in instances where public participation would be useless or wasteful because proposed amendments to regulations cover minor technical or editorial matters.

Interested persons are invited to submit written comments, suggestions, or objections regarding these proposals to the Administrator of Veterans Affairs (232H), Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420. All relevant material received not later than 30 days after publication of this notice in the FEDERAL REGISTER will be considered. All comments received will be available for public inspection at the above address only between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays), during the mentioned 30-day period and for 10 days thereafter. Any person visiting Central Office for the purpose of inspecting any such comments will be received by the Central Office Veterans Assistance Unit in Room 132. Such visitors to any VA field station will be informed that the records are available for inspection only in Central Office and furnished the address and the above room number.

Notice is also given that it is proposed to make this regulation, when adopted, effective upon publication in the FEDERAL REGISTER.

It is proposed to amend Chapter I, Part 1 of Title 38, of the Code of Federal Regulations, to add material as follows:

§ 1.12 Public participation in rule making.

It is the policy of the Veterans Administration to afford the public general notice, published in the FEDERAL REGISTER, of proposed rule making, and an opportunity to participate in the rule making in accordance with the provisions of the Administrative Procedure Act (APA). All written comments received will be available for public inspection. Exceptions to the policy of permitting public partcipation in the rule making may be authorized by the Administrator or one of his Deputies if adequately justified and concurred in by the General Counsel. Such exceptions, unless public comment is required by statute, may be recommended when (a) the proposed regulations consist of interpretative rules, general statements of policy, or rules of Veterans Administration organization procedure or practice, or (b) when the Veterans Administration for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest. (5 U.S.C. 553)

Approved: February 11, 1972.

By direction of the Administrator.

[SEAL] FRED B. RHODES,
Deputy Administrator.

[FR Doc.72-2437 Filed 2-16-72;8:50 am]

Notices

DEPARTMENT OF STATE

Agency for International Development

DIRECTOR, OFFICE OF PROCUREMENT, ET AL.

Redelegation of Authority Regarding Contracting Functions

A. Pursuant to the authority delegated to me by Delegation of Authority No. 17, as amended (34 F.R. 6446), from the Administrator of the Agency for International Development, I hereby redelegate the following authority to certain officers of the Office of Procurement with respect to the rehabilitation by a contractor listed in the General Services Administration regional term contract price schedules of property acquired by the Agency for International Development pursuant to section 608 of the Foreign Assistance Act of 1961, as amended:

1. *To the Director and the Deputy Director, Office of Procurement, and the Chief, Government Property Resources Division.* To approve the issuance of purchase orders for services and supplies direct to the contractor for rehabilitation and spare parts support required in relation to the item being rehabilitated.

2. *To the Director and the Deputy Director, Office of Procurement, the Chief, Government Property Resources Division, and the Chiefs, domestic A.I.D. Field Offices.* a. To negotiate with the contractor to establish the estimated manhours of labor and the spare parts support required for rehabilitation of each item by the contractor.

b. To inspect and accept each item completed by the Contractor.

3. *To the Director and the Deputy Director, Office of Procurement, the Chief, Government Property Resources Division, and the Chief, Logistics Service Branch.* a. To approve the estimated man-hours of labor and the spare parts support required for rehabilitation of each item by the contractor.

b. To issue purchase orders approved by the Director or the Deputy Director, Office of Procurement, or the Chief, Government Property Resources Division for services and supplies direct to the contractor for rehabilitation and spare parts support required in relation to the item being rehabilitated.

c. To approve the contractor's invoices for direct payment to the contractor.

B. The authorities herein redelegated to the officers named above may not be redelegated further by those officers, but may be exercised by persons authorized by them to perform the functions of their office in an acting capacity.

C. The authorities herein redelegated are to be exercised in accordance with the Federal Property Management Regulations promulgated by the General Services Administration and with the policies, regulations, and procedures promulgated within the Agency for International Development.

D. This redelegation of authority supersedes Redelegation of Authority to the Director, Office of Government Property Resources et al., June 3, 1970 (35 F.R. 11272) and shall be effective immediately.

Dated: February 8, 1972.

JAMES F. CAMPBELL,
Assistant Administrator for Program and Management Services.

[FR Doc.72-2432 Filed 2-16-72;8:49 am]

DEPARTMENT OF THE TREASURY

Bureau of Customs

STAINLESS STEEL WIRE RODS FROM FRANCE

Antidumping Proceeding Notice

On December 9, 1971, information was received in proper form pursuant to §§ 153.26 and 153.27, Customs regulations (19 CFR 153.26, 153.27), indicating a possibility that stainless steel wire rods from France are being, or likely to be, sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160 et seq.).

There is evidence on record concerning injury to or likelihood of injury to or prevention of establishment of an industry in the United States.

Having conducted a summary investigation as required by § 153.29 of the Customs regulations (19 CFR 153.29) and having determined as a result thereof that there are grounds for so doing, the Bureau of Customs is instituting an inquiry to verify the information submitted and to obtain the facts necessary to enable the Secretary of the Treasury to reach a determination as to the fact or likelihood of sales at less than fair value.

A summary of information received from all sources is as follows:

The information received tends to indicate that the prices of the merchandise sold for exportation to the United States are less than the prices for home consumption.

This notice is published pursuant to § 153.30 of the Customs regulations (19 CFR 153.30).

[SEAL] EDWIN F. RAINS,
Acting Commissioner of Customs.

Approved: February 11, 1972.

EUGENE T. ROSSIDES,
Assistant Secretary of the Treasury.

[FR Doc.72-2410 Filed 2-16-72;8:47 am]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Colorado 14974]

COLORADO

Notice of Proposed Withdrawal and Reservation of Lands

FEBRUARY 10, 1972.

The Forest Service, U.S. Department of Agriculture, has filed an application, Serial No. C-14974, for the withdrawal of the lands described below, from prospecting, location and entry under the General Mining Laws only, subject to valid existing rights.

The applicant desires the lands for public recreation areas.

For a period of 30 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management, Department of the Interior, Colorado State Office, 700 Colorado State Bank Building, 1600 Broadway, Denver, CO 80202.

The Department's regulations (43 CFR 2351.4(c)) provide that the authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the lands and their resources. He will also undertake negotiations with the applicant agency with the view of adjusting the application to reduce the area to the minimum essential to meet the applicant's needs, to provide for the maximum concurrent utilization of the lands for purposes other than the applicant's, to eliminate lands needed for purposes more essential than the applicant's and to reach agreement on the concurrent management of the lands and their resources.

The authorized officer will also prepare a report for consideration by the Secretary of the Interior who will determine whether or not the lands will be withdrawn as requested by the applicant agency.

The determination of the Secretary on the application will be published in the FEDERAL REGISTER. A separate notice will be sent to each interested party of record.

If circumstances warrant, a public hearing will be held at a convenient time and place, which will be announced.

The lands involved in the application are:

SAN ISABEL NATIONAL FOREST
SIXTH PRINCIPAL MERIDIAN
Ponderosa Campground

T. 23 S., R. 68 W.,
Sec. 27, W½SW¼, SE¼SW¼;
Sec. 34, N½NE¼NW¼.

Aspen Meadows Campground

T. 24 S., R. 68 W.,
Sec. 8, SW¼NE¼, W½W½SE¼NE¼, N½NW¼SE¼, SW¼NW¼SE¼.

Little St. Charles Picnic Ground

T. 24 S., R. 68 W.,
Sec. 8, SW¼SE¼.

Porcupine Campground

T. 24 S., R. 68 W.,
Sec. 8, SE¼NE¼NE¼, E½SW¼NE¼NE¼, E½W½SE¼NE¼, E½SE¼NE¼;
Sec. 9, SW¼NW¼NW¼, W½SW¼NW¼.

North Hardscrabble Picnic Ground

T. 21 S., R. 69 W.,
Sec. 31, lot 4, W½W½SE¼SW¼.
T. 21 S., R. 70 W.,
Sec. 36, lot 16.
T. 22 S., R. 70 W.,
Sec. 1, lot 1.

Scraggy Peaks Campground

T. 22 S., R. 69 W.,
Sec. 24, SW¼SE¼;
Sec. 25, W½NE¼.

Squirrel Creek Campground

T. 23 S., R. 69 W.,
Sec. 10, S½SE¼SE¼;
Sec. 11, S. 10 chs. of lot 13;
Sec. 14, N. 5 chs. of lot 3, N. 10 chs. of lot 4.

Marion Lake Picnic Ground

T. 23 S., R. 69 W.,
Sec. 33, E½W½SW¼SE¼, E½SW¼SE¼, W½W½SE¼SE¼.

Willis Creek Picnic Ground

T. 23 S., R. 69 W.,
Sec. 36, S. 10 chs. of lot 3, lot 5, N. 5 chs. of lot 8, NW¼SE¼, N½N½SW¼SE¼.

Amethyst Creek Picnic Ground Addition

T. 24 S., R. 69 W.,
Sec. 10, S½SW¼NE¼, E½NE¼NE¼SW¼, N½NW¼SE¼, N½SW¼NW¼SE¼.

Halfmoon Campground Addition

T. 10 S., R. 81 W. (unsurveyed)—Protraction Diagram No. 10, accepted May 10, 1965,
Sec. 24, N½N½SE¼SW¼, E½SE¼SW¼SW¼;
Sec. 25, E½NE¼NW¼NW¼, N½NE¼NW¼.

Elbert Creek Camp and Picnic Ground Addition

T. 10 S., R. 81 W. (unsurveyed)—Protraction Diagram No. 10, accepted May 10, 1965,
Sec. 26, S½NW¼NE¼, S½NE¼NW¼, NE¼SW¼NW¼, N½SE¼NW¼.

Twin Peaks and Smith Gulch Campgrounds

T. 11 S., R. 81 W.,
Sec. 26, W½NE¼NW¼, NW¼NW¼, N½SW¼NW¼, NW¼SE¼NW¼;
Sec. 27, NE¼NE¼.
Except portions of mineral patents estimated to be 6.0 acres.

Rockdale Campground

T. 12 S., R. 81 W.,
A parcel of land lying in Secs. 23 and 24, described by metes and bounds, as follows:
Beginning at a point, from which point the junction of Sheep Gulch and Clear Creek bears E., 25 chs.; thence N., 20 chs.; W., 20 chs.; S., 20 chs.; E., 20 chs. to the point of beginning.

Independence Pass Observation Site

T. 11 S., R. 82 W.,
A parcel of land lying in Sec. 9, described by metes and bounds, as follows:
From a rock constructed Continental Divide marker beside State Highway No. 82, go due west 3.79 chains, to the point of beginning:
Thence due south 13.5 chains, thence due east 16.5 chains, thence due north 15.0 chains, thence due west 16.5 chains, thence due south 1.5 chains to point of beginning.

The areas described aggregate approximately 1,156.20 acres.

J. ELLIOTT HALL,
Chief, Division of Technical Services.

[FR Doc.72-2406 Filed 2-16-72;8:47 am]

IDAHO

Notice of Filing of Idaho Protraction Diagrams

Notice is hereby given that effective at and after 10 a.m. on March 16, 1972, the following protraction diagrams are officially filed of record in the Idaho State Office, Bureau of Land Management, Room 390, Federal Building, 550 West Fort Street, Boise, ID 83702. In accordance with Title 43, Code of Federal Regulations, these protractions will become the basic record for describing the land for all authorized uses. Until this date and time, the diagrams have been placed in open files and are available to the public for information only.

IDAHO PROTRACTION DIAGRAMS

Nos. 54, 65, 69, 71, 81 and 101 (revised)

BOISE MERIDIAN

Approved December 21, 1971

No. 54

Ts. 19 and 20 N., Rs. 11, 12, and 13 E.

No. 65

T. 14 N., Rs. 25 and 26 E.; T. 15 N., R. 25 E.

No. 69

T. 12 N., Rs. 36, 37, and 38 E.; T. 13 N., Rs. 37 and 38 E.

No. 71

T. 12 N., Rs 26 and 27 E.; T. 13 N., Rs. 25, 26, and 27 E.

No. 81

T. 10 N., Rs. 14, 15, and 16 E.; T. 11 N., R. 15 E.

No. 101

Ts. 14 and 15 S., R. 41 E.

Copies of these diagrams are for sale at two dollars ($2.00) each at the office indicated above.

EUGENE E. BABIN,
Chief, Branch of Records and Data Management.

[FR Doc.72-2436 Filed 2-16-72;8:49 am]

DEPARTMENT OF COMMERCE

Bureau of International Commerce

[Files 23-412, 23-510]

ADNAN KASSAR, ET AL.

Order Terminating Indefinite Denial Order

In the matter of Adnan Kassar, Adel Kassar, Middle East Cotton Co., Maarad Street, Kassar Building, Post Office Box 1531, Beirut, Lebanon, Respondent, Files 23-412; 23-510.

On April 15, 1957 (22 F.R. 2717), an order was entered against the above respondents denying them, for an indefinite period, all privileges of participating in transactions involving commodities or technical data exported or to be exported from the United States. This order was issued in accordance with § 388.15 of the Export Control Regulations (formerly § 382.15 of the export regulations) because respondents failed to answer interrogatories without showing adequate reason for such failure.

The respondents have now furnished essential information relating to the transaction in 1956 which was the subject of the interrogatories. It is found that there is adequate reason for failure to respond in detail to the interrogatories at this time.

Accordingly, the above-mentioned indefinite denial order of April 15, 1957, is hereby terminated.

Dated: February 14, 1972.

RAUER H. MEYER,
Director, Office of Export Control.

[FR Doc.72-2426 Filed 2-16-72;8:49 am]

[Case 336]

GEORGE KASTNER

Order Conditionally Restoring Export Privileges

In the matter of George Kastner, Rossauer Lande 25, Vienna IX, Austria, Respondent, Case No. 336.

By order dated December 3, 1964 (29 F.R. 17123), the above-named George Kastner, and also Ludwig Kastner were denied all U.S. export privileges for the duration of export controls. The order included a provision to the effect that 5 years after the date thereof the respondents might apply for modification of the denial order. The respondents filed such applications in February 1970 and by order dated March 16, 1970 (35 F.R. 5833), the export privileges of Ludwig Kastner were restored conditionally and he was placed on probation for the duration of export controls. The application of George Kastner was denied at that time.

The respondent George Kastner has again applied for modification of the denial order against him. The application was referred to the Compliance Commissioner and considered by him. He has reported that it appears from said respondent's representations and otherwise from information in possession of the

Compliance Division, Office of Export Control, that conditional restoration of said respondent's export privileges is consistent with the purposes of the export control program. The Compliance Commissioner has recommended that an order be entered conditionally restoring export privileges to said respondent.

The undersigned has considered the record herein and concurs with the Compliance Commissioner that conditional restoration of George Kastner's export privileges is consistent with the purposes of the U.S. Export Administration Act of 1969 and regulations.

Accordingly, it is hereby ordered, That the export privileges of George Kastner be and hereby are restored conditionally, and the said respondent is placed on probation for the duration of export controls. The conditions of probation are that the said respondent: (1) Shall fully comply with all of the requirements of the Export Administration Act of 1969, and all regulations, licenses, and orders issued thereunder; (2) shall on request of the Office of Export Control, or a representative of the U.S. Government acting on its behalf, promptly disclose fully the details of his participation in any and all transactions involving U.S.-origin commodities or technical data, including information as to the disposition or intended disposition of such commodities or technical data, and on such request shall also furnish all records and documents relating to such matters. Further, on such request, said respondent shall promptly disclose the names and addresses of his partners, agents, representatives, employees, and other persons associated with him in trade or commerce.

Upon a finding by the Director, Office of Export Control, or such other official as may be exercising the duties now exercised by him, that said respondent has failed to comply with any of the conditions of probation, said official, with or without prior notice to said respondent, by supplemental order, may revoke the probation of said respondent and deny to him all export privileges for such period as said official may deem appropriate. Such order shall not preclude the Bureau of International Commerce from taking further action for any violation as may be warranted.

Dated: February 9, 1972.

This order shall become effective forthwith.

RAUER H. MEYER,
Director, Office of Export Control.

[FR Doc.72-2408 Filed 2-16-72;8:47 am]

Maritime Administration

CONSTRUCTION OF LASH TYPE VESSELS

Computation of Foreign Cost; Notice of Intent

Notice is hereby given of the intent of the Maritime Subsidy Board to compute the estimated foreign cost of the construction of LASH type vessels (identified as MA Design C9–S–81d), pursuant to the provisions of section 502(b) of the Merchant Marine Act, 1936, as amended.

Any person, firm, or corporation having any interest (within the meaning of section 502(b)) in such computations may file written statements by the close of business on February 29, 1972, with the Secretary, Maritime Subsidy Board, Maritime Administration, Room 3099B, Department of Commerce Building, 14th and E Streets NW., Washington, D.C. 20235.

Dated: February 15, 1972.

By order of the Maritime Subsidy Board, Maritime Administration.

JAMES S. DAWSON, Jr.,
Secretary.

[FR Doc.72-2530 Filed 2-16-72;8:52 am]

CONVERSION OF SINGLE SCREW CARGO SHIPS TO BREAK BULK/CONTAINERSHIPS

Computation of Foreign Cost; Notice of Intent

Notice is hereby given of the intent of the Maritime Subsidy Board to compute the estimated foreign cost of conversion of single screw cargo ships to break bulk/containerships, pursuant to the provisions of section 502(b) of the Merchant Marine Act, 1936, as amended.

Any person, firm or corporation having any interest (within the meaning of section 502(b)) in such computations may file written statements by the close of business on February 29, 1972, with the Secretary, Maritime Subsidy Board, Maritime Administration, Room 3099B, Department of Commerce Building, 14th and E Streets NW., Washington, D.C. 20235.

Dated: February 15, 1972.

By order of the Maritime Subsidy Board, Maritime Administration.

JAMES S. DAWSON, Jr.,
Secretary.

[FR Doc.72-2531 Filed 2-16-72;8:52 am]

ATOMIC ENERGY COMMISSION

[Dockets Nos. 50-348, 50-364]

ALABAMA POWER CO.

Order Concerning Hearing Schedule

In the matter of Alabama Power Co. (Joseph M. Farley Nuclear Plant, Units 1 and 2), Dockets Nos. 50–348, 50–364.

The public hearing in the above matter will commence on Tuesday, February 29, 1972, at 10 a.m., local time, in the Fourth Floor Courtroom, Houston County Courthouse, Main and Oak Streets, Dothan, Ala. 36301.

The agenda for this evidentiary hearing will concern radiological health and safety matters. Environmental matters will be covered at a subsequent session of the hearing which will be scheduled at a later date.

Dated at Washington, D.C., this 14th day of February 1972.

For the Atomic Safety and Licensing Board.

JAMES R. YORE,
Chairman.

[FR Doc.72-2430 Filed 2-16-72;8:49 am]

[Dockets Nos. 50-324, 50-325]

CAROLINA POWER AND LIGHT CO.

Order Designating Time and Place for Hearing on Suspension of Certain Construction Activities Pending Completion of Environmental Review

In the matter of the Carolina Power and Light Co. (Brunswick Steam Electric Plant, Units 1 and 2), Dockets Nos. 50–324 and 50–325.

An order to show cause, dated November 18, 1971, was issued by the Director of Regulation of the Atomic Energy Commission which referred to the determination of the Director of Regulation that construction activities involving the offsite portion of the discharge canal and the offsite transmission lines at the Brunswick Steam Electric Plant, should be suspended pending completion of a review of the environmental impact of the construction of the discharge canal and the transmission lines under the Commission's regulations implementing the National Environmental Policy Act of 1969 (NEPA), 10 CFR Part 50, Appendix D, and ordered the Carolina Power and Light Co. to show cause why such construction activities at the Brunswick Steam Electric Plant should not be suspended pending completion of those portions of the NEPA environmental review. The order provided that the Carolina Power and Light Co. might file an answer and demand a hearing as provided in 10 CFR 2.202 within thirty (30) days after the date of the order.

Pursuant to 10 CFR 2.202(b), the Carolina Power and Light Co. on December 16, 1971, filed a timely answer requesting withdrawal or modification of the order to show cause, and demanding a hearing in the event that the requested relief was not granted.

In view of the foregoing, and pursuant to 10 CFR 2.202(c): *It is hereby ordered*, That a hearing to consider the issues specified in the order to show cause dated November 18, 1971, will be held at 10 a.m., local time, on March 14, 1972, in Room 115 of the Lafayette Building, 811 Vermont Avenue NW., Washington, DC. The hearing will be conducted by the Atomic Safety and Licensing Board designated by the Atomic Energy Commission, consisting of Dr. J. V. Leeds, Jr., Houston, Tex.; Dr. M. Stanley Livingston, Santa Fe, N. Mex.; and Charles A. Haskins, Esq., Bluemont, Va., Chairman. Dr. Paul W. Purdom, Philadelphia, Pa., has been designated as a technically qualified alternate, and James R. Yore,

Esq., Washington, D.C., has been designated as an alternate qualified in the conduct of administrative proceedings.

Dated at Germantown, Md., this 10th day of February 1972.

For the Atomic Energy Commission.

W. B. McCool,
Secretary of the Commission.

[FR Doc.72-2388 Filed 2-16-72;8:45 am]

[Docket No. 50-358]

CINCINNATI GAS & ELECTRIC CO. ET AL.

Notice of Availability of Applicants' Supplemental Environmental Reports

Pursuant to the National Environmental Policy Act of 1969 and the Atomic Energy Commission's regulations, notice is hereby given that reports entitled "Supplements No. 1, No. 2, and No. 3" to the "Applicants' Environmental Report—Construction Permit Stage—Wm. H. Zimmer Nuclear Power Station" submitted by The Cincinnati Gas & Electric Co., on behalf of itself, and as agent for Columbus and Southern Ohio Electric Co. and the Dayton Power and Light Co. are being placed in the Commission's Public Document Room at 1717 H Street NW., Washington, DC, and in the Clermont County Library, Third and Broadway Streets, Batavia, Ohio 45103. The reports are also being made available to the public at the Office of the Governor, Planning and Development Clearinghouse, Box 1001, Columbus, OH 43215 and at the Ohio-Kentucky-Indiana (OKI) Regional Planning Authority, 222 East Central Parkway, Cincinnati, OH 45202.

These reports discuss environmental considerations related to the proposed construction of the Wm. H. Zimmer Nuclear Power Station Unit 1 located on the eastern shore of the Ohio River, just north of Moscow and about 24 miles southeast of Cincinnati in Washington Township, Clermont County, Ohio.

Notice of the availability of the applicants' environmental report dated January 15, 1971, and the Commission's draft detailed statement on environmental considerations dated June 28, 1971, was published in the Federal Register on July 24, 1971 (36 F.R. 13805).

After the reports have been analyzed by the Commission's Director of Regulation or his designee, a draft detailed statement of environmental considerations related to the proposed action will be prepared. This statement will supersede the Commission's June 28, 1971, draft detailed statement. Upon preparation of the draft detailed statement, the Commission will, among other things, cause to be published in the Federal Register a summary notice of the availability of the draft detailed statement. The summary notice will request comments from interested persons on the proposed action and on the draft detailed statement. The summary notice will also contain a statement to the effect that the comments of Federal agencies and State and local officials thereon will be available when received.

Dated at Bethesda, Md., this 10th day of February 1972.

For the Atomic Energy Commission.

Roger S. Boyd,
Assistant Director for Boiling Water Reactors, Division of Reactor Licensing.

[FR Doc.72-2389 Filed 2-16-72;8:45 am]

[Docket No. 50-395]

SOUTH CAROLINA ELECTRIC & GAS CO.

Notice of Availability of Applicant's Environmental Report and Supplemental Environmental Report

Pursuant to the National Environmental Policy Act of 1969 and the Atomic Energy Commission's regulations in Appendix D to 10 CFR Part 50, notice is hereby given that the "Environmental Report" and the "Supplement to the Environmental Report," for the Virgil C. Summer Nuclear Station, Unit No. 1, submitted by the South Carolina Electric & Gas Co., have been placed in the Commission's Public Document Room at 1717 H Street NW., Washington, DC, and in the Fairfield County Library, Van Horst Street, Winnsboro, S.C. 29180. The reports are also being made available at the Office of the Governor, State Planning and Grants Division, Wade Hampton Office Building, Columbia, S.C. 29201, and at the Central Midlands Regional Planning Council, 1125 Blanding Street, Columbia, SC 29201.

These reports discuss environmental considerations related to the proposed construction of the Virgil C. Summer Nuclear Station, Unit No. 1, located in Fairfield County, S.C.

After the reports have been analyzed by the Commission's Director of Regulation or his designee, a draft detailed statement of environmental considerations related to the proposed action will be prepared. Upon preparation of the draft detailed statement, the Commission will, among other things, cause to be published in the Federal Register a summary notice of availability of the draft detailed statement. The summary notice will request comments from interested persons on the proposed action and on the draft statement. The summary notice will also contain a statement to the effect that the comments of Federal agencies and State and local officials thereon will be available when received.

Dated at Bethesda, Md., this 9th day of February 1972.

For the Atomic Energy Commission.

R. C. DeYoung,
Assistant Director for Pressurized Water Reactors, Division of Reactor Licensing.

[FR Doc.72-2411 Filed 2-16-72;8:48 am]

ENVIRONMENTAL PROTECTION AGENCY

4-(METHYLTHIO)-3,5-XYLYL METHYLCARBAMATE

Notice of Establishment of Temporary Tolerances

Chemagro Corp., Post Office Box 4913, Hawthorn Road, Kansas City, MO 64120, submitted a petition (PP 1G1030) requesting temporary tolerances for residues of the insecticide 4-(methylthio)-3,5-xylyl methylcarbamate in or on the raw agricultural commodities apples and pears at 7 parts per million and milk at 0.01 part per million (negligible residue).

The Fish and Wildlife Service, U.S. Department of the Interior, advised that they have no objection to the temporary tolerances.

It has been determined that temporary tolerances for residues of the insecticide in or on apples and pears at 7 parts per million and in milk at 0.01 part per million (negligible residue) are safe and will protect the public health.

These temporary tolerances are therefore established as requested on condition that the insecticide be used in accordance with the temporary permit being issued concurrently by the Environmental Protection Agency and which provides for distribution under the Chemagro Corp. name.

These temporary tolerances expire February 9, 1973.

This section is taken pursuant to provisions of the Federal Food, Drug, and Cosmetic Act sec. 408(j), 68 Stat. 516; 21 U.S.C. 346a(j)), the authority transferred to the Administrator of the Environmental Protection Agency (35 F.R. 15623), and the authority delegated by the Administrator to the Deputy Assistant Administrator for Pesticides Programs (36 F.R. 9038).

Dated: February 9, 1972.

William M. Upholt,
Deputy Assistant Administrator for Pesticides Programs.

[FR Doc.72-2427 Filed 2-16-72;8:49 am]

FEDERAL COMMUNICATIONS COMMISSION

[Dockets Nos. 19422-19430; FCC 72-124]

ALABAMA EDUCATIONAL TELEVISION COMMISSION

Memorandum Opinion and Order Designating Applications for Consolidated Hearing on Stated Issues

In regard applications of the Alabama Educational Television Commission for renewal of licenses for: Station WAIQ (ED-TV), Montgomery, Ala., Docket No. 19422, File No. BRET-69; Station WBIQ

(ED–TV), Birmingham, Ala., Docket No. 19423, File No. BRET–5; Station WCIQ (ED–TV), Cheaha State Park, Ala., Docket No. 19424, File No. BRET–7; Station WDIQ(ED–TV), Dozier, Ala., Docket No. 19425, File No. BRET–14; Station WEIQ(ED–TV), Mobile, Ala., Docket No. 19426, File No. BRET–87; Station WFIQ (ED–TV), Florence, Ala., Docket No. 19427, File No. BRET–130; Station WGIQ(ED–TV), Louisville, Ala., Docket No. 19428, File No. BRET–147; Station WHIQ(ED–TV), Huntsville, Ala., Docket No. 19429, File No. BRET–109; and for license to cover construction permit for Station WIIQ(ED–TV), Demopolis, Ala., Docket No. 19430, File No. BRET–267.

1. The Commission has before it for consideration (1) the above-captioned license renewal applications filed by the Alabama Educational Television Commission (hereinafter referred to as the AETC); (2) the Commission's action of June 24, 1970, released June 29, 1970, granting the above-captioned license renewal applications and dismissing several complaints against the AETC; (3) two petitions seeking reconsideration of the Commission's action, one of which was filed July 28, 1970, by Rev. Eugene Farrell, Linda Edwards, and Steven Suitts (hereinafter referred to as the Edwards petition), and the other of which was filed July 28, 1970, by Anthony Brown, in his individual capacity and as representative for the National Association of Black Media Producers, and William D. Wright, in his individual capacity and as representative for Black Efforts for Soul in Television (hereinafter referred to as the Brown petition); (4) AETC's opposition to the Edwards and Brown petitions, filed September 14, 1970; (5) replies to AETC's opposition pleading filed on October 9, 1970, by the Edwards and Brown petitioners; (6) a document dated April 27, 1971, received by the Commission on May 27, 1971, submitted by the AETC to the Department of Health, Education, and Welfare (HEW) setting forth its proposals for meeting the educational television needs of Alabama's black community; (7) comments on AETC's proposal filed June 25, 1971, by the Edwards and Brown petitioners; (8) supplemental information regarding its proposal filed by the AETC on August 2, 1971; and (9) comments on AETC's supplemental information and a request for an immediate ruling, filed August 16, 1971, by the Edwards petitioners.

2. In order to place the questions before the Commission in proper perspective, it is first necessary to summarize the events occurring both before and after the filing of the instant petitions. Initially, it is noted that the AETC is an affiliate of the National Educational Television Network (NET). Prior to July 1, 1969, the AETC delegated responsibility for the network's NET affiliation agreement to its University of Alabama program origination center. However, effective July 1, 1969, the AETC assumed full control over the NET affiliation agreement. This action resulted in the filing of several informal, letter complaints with the Commission.

3. The first letter, dated January 14, 1970, from the Chairman of the Faculty Senate, College of Arts and Sciences, University of Alabama, complained that the Program Board had never exercised any decision making power and that the AETC had discontinued the "Black Journal" series and preempted several other programs. Complainant requested the Commission to require the AETC to vest programing and policy in the Program Board, which he claimed was constituted for that purpose. The second letter, dated January 28, 1970, was received from Mrs. Judith A. Austin, a former employee of the AETC, to which there was attached a petition signed by 60 persons, including Steven Suitts. Mrs. Austin complained that the AETC engaged in racial discrimination by censoring several black oriented NET programs, including "Black Journal," "Soul," and "On Being Black."

4. In accordance with usual procedures when complaints of a general nature are received, the Commission forwarded the Faculty Senate and Austin letters to the AETC for its comments. In response, the AETC submitted two letters, both dated February 25, 1970, one of which was directed to the Faculty Senate letter and the other of which was directed to the Austin letter. In substance, the AETC denied charges of racial bias, explained why it had assumed control over the network's affiliation agreement, and why it had deleted certain net programs from its schedule. Thereafter, the Commission received a number of additional complaints regarding the AETC, including a letter from Linda Edwards dated March 9, 1970, and two letters from Reverend Eugene Farrell, one of which was dated March 12, 1970, and the other dated June 8, 1970. Miss Edwards, who identified herself as a black freshman at the University of Alabama, stated that the AETC "has prevented all liberal or black-oriented programs from being seen by Alabamians" by censoring programs such as "On Being Black," "Black Journal," and the "Denver Black Panther Trial." Miss Edwards also stated that "[i]t is not fair for a select group of racist politicians to command what shows be presented to the public according to their own bigoted views." Reverend Farrell's first letter was a copy of a letter he sent to Vice President Spiro T. Agnew, complaining of the AETC's censorship and asserting that "ETV in Alabama is surely becoming the media for White Supremacy." He further stated: "I have yet to see a black face on ETV," although he admits that he "cannot watch ETV all day long." Reverend Farrell's letter of June 8, 1970, to the Commission reiterated his complaint to the Vice President. The AETC in specific reference to Reverend Farrell's complaint, submitted to the Commission a list of integrated programing which had been broadcast over the network from September 1, 1969, through March 27, 1970. In this connection, the AETC noted that it had broadcast 257 integrated programs for a total of 217 hours of broadcast time during the period mentioned, namely: Christmas Special (one program, 1½ hr.); Stepping Into Rhythm (60 programs, 15 hr.); On Campus (30 programs, 15 hr.); Focus (six programs, 3 hr.); Huntsville Magazine (31 programs, 15½ hr.); Earning Through Learning (six programs, 3 hr.); Music Specials (three programs, 1½ hr.); Dialogue on Education (two programs, 1 hr.); Sportsmanlike Driving (one program, ½ hr.); Know Your News (10 programs, 5 hr.); Headliners (one program, ½ hr.); Medical Center (one program, ½ hr.); and Sesame Street (155 programs, 155 hr.).

5. The Commission, by letter dated June 29, 1970, dismissed the above-noted complaints and granted the AETC's above-captioned license renewal applications for the period ending April 1, 1973, stating:

> The Commission has reviewed the overall operations of the eight Alabama educational stations and the allegations raised by the complainants to determine if the public interest would be served by a grant of the applications. With respect to the issues of program selection and control, the Commission, barring certain exceptions, is not concerned with matters essentially of license taste or judgment. Cf. "Palmetto Broadcasting Co.," 33 FCC 250, 257 (1962). The licensee necessarily and properly has wide discretion in choosing the programing to meet the needs and interests of the community. The Commission regards the maintenance of control over programing as a most fundamental obligation of the licensee. Here we are dealing with a few programs which in the licensee's opinion contain certain offensive material.
>
> In view of the foregoing, there is no substantial problem warranting further inquiry, and the Commission has directed that the applications for renewal of license filed by the AETC be granted.[1]

6. Thereafter, as previously indicated, on July 28, 1970, the Edwards and Brown petitioners requested the Commission to reconsider its decision and order a hearing to determine whether a grant of the renewal applications would serve the public interest. Briefly, petitioners assert that AETC's license renewal applications should be designated for hearing on the grounds that licensee has (1) failed to ascertain and meet the needs and interests of Alabama's black community; (2) discriminated against Alabama's blacks in its employment practices; (3) violated the freedom of speech of Alabama's black community; and (4) failed to obtain authorization to assume control of the network's programing operations in violation of the terms of its license and section 310(b) of the Communications Act. The AETC filed an opposition to both petitions and petitioners filed replies to the opposition.

7. On the same date that these petitions were filed with the Commission, copies were sent to various other Government agencies and officials, including T. H. Bell, Acting U.S. Commissioner of Education, Department of Health, Education, and Welfare. In a letter to the Commission dated September 2, 1970, Mr.

[1] The Commission's decision was made on June 24, 1970, and released on June 29, 1970, with Commissioners Cox, Johnson, and H. Rex Lee dissenting and issuing statements. 25 FCC 2d 342.

Bell noted that the AETC was then receiving Federal financial assistance in the amount of $1 million, and had 10 applications pending for an additional $2,761,213. Mr. Bell also noted that the petitions raised a question whether the AETC was complying with the requirements of title VI of the Civil Rights Act of 1964, which prohibits discrimination on the ground of race, color, creed, or national origin in the operation of any federally assisted program. Mr. Bell also stated that the Office of Education was instituting an investigation into the operation of the AETC. As a result of a meeting between the AETC and officials of the Office of Civil Rights, Department of Health, Education, and Welfare, the AETC submitted a proposal, dated April 27, 1971, which included plans for ascertaining the needs of the Alabama black community, for production of specific programs to meet those needs, for a training program for a black engineer, and for an advisory committee "to reflect the community ETV needs and act as a sounding board to the AETC programing." Thereafter, on June 3 and September 12, 1971, HEW approved grants for the AETC in the amounts of $89,621 and $340,000, respectively.

8. On June 10 and 11, 1971, Commission representatives met separately with petitioners and the AETC in an effort to clarify the positions of the parties. The AETC's proposal to HEW formed a basis of those discussions. The substance of the matters discussed is contained in the subsequent submissions by the petitioners and the AETC to the Commission. That is, on June 25, 1971, the Edwards petitioners submitted their comments on the AETC's proposal to HEW. By letter dated July 16, 1971, the AETC informed the Commission of the progress it had made on its proposals. This letter, in turn, evoked comments from the Edwards petitioners and a request for an immediate ruling in this case.

BROWN-WRIGHT PETITION

9. Anthony Brown and William D. Wright did not avail themselves of the opportunity to file a pregrant petition to deny (47 U.S.C. 309(d)(1); 47 CFR 1.580(i)), or informal objection (47 CFR 1.587). They now seek reconsideration of the Commission's action on the grounds that they "* * * believe that the Commission's decision of June 29, 1970, * * * will frustrate the goals to which they and their organizations are devoted"; and, moreover, that "* * * the decision, if left standing, will impede the participation of blacks in both commercial and noncommercial broadcasting throughout the country." The Brown petitioners also state that, "* * * as black men and organizations composed of blacks, they have a clear interest in the plight of their brethren in Alabama." The Brown petitioners state further that they "* * * have not come forward before this (time) because they believed that the facts that had already been called to the attention of the Commission were sufficient to bar the Commission's action of June 29, 1970."

10. In its opposition pleading, the AETC asserts that the Brown-Wright petition for reconsideration must be dismissed in that,

> Neither was a party to the proceeding prior to grant; neither demonstrates any manner in which he could have aggrieved or adversely affected by the granting of the AETC's renewal applications; neither alleges any facts which were unknown (or which could not readily have been known) when the applications were under pregrant consideration; neither asserts any legally cognizable connection with the coverage areas of the AETC's stations; and neither has submitted any affidavit attesting to personal knowledge of any of the allegations made on their behalf.

The AETC asserts, therefore, that, "(i)n short, under any interpretation of § 1.106 (of the Commission's rules) the Brown and Wright petition should be dismissed without substantive consideration."

11. In their reply, the Brown petitioners state that "* * * as black men and as representatives of national black organizations, (they) believe that their relation to AETC is discernible." In this respect, the Brown petitioners state that they are not only taxpayers who support the AETC with Federal grants but, more importantly, "* * * their respective organizations are directly concerned with efforts in the communications field to meet black educational and cultural needs throughout the Nation." The Brown petitioners also state that, "(g)iven the fact that it is supported by Federal funds, the AETC cannot deny the interdependence of the levels of government or the impact which the Commission's decision in this matter may have in other states." Additionally, the Brown petitioners state that, "(a)t the time of the Commission's decision, petitioners were not aware of the Federal grants received by AETC and did not have access to other information * * *"; that "petitioners did not believe then that such information was necessary, since the facts of the initial complaints were believed to be sufficient to warrant denial of AETC's renewal applications," and, that "(b)ecause of information newly acquired, and because the Commission did renew AETC's license, petitioners now feel compelled to submit the new information and present a perspective on this matter which was heretofore lacking—the perspective of black men involved in the communications field and directly concerned with the treatment of black educational needs by noncommercial licensees.

12. The Brown petitioners, in their reply, also state that they realize that "* * * under different circumstances their failure to register pregrant complaints with the Commission may have warranted dismissal of their petition for reconsideration." The Brown petitioners assert, however, that they are not parties "with a potential financial interest in the particular license" but, rather, "* * * public intervenors who are concerned with the performance of a noncommercial educational licensee." The Brown petitioners assert further that dismissal of their petition "* * * will not make it unnecessary for the Commission to proceed further in this matter" since there is another petition for reconsideration also pending before the Commission concerning the AETC's license renewal grants. The Brown petitioners conclude, therefore, that the only effect of a dismissal of their petition "* * * will be to foreclose information and analyses relating to a matter the Commission will consider in any event."

13. The Brown-Wright petition for reconsideration will be dismissed. Section 405 of the Communications Act of 1934, as amended, 47 U.S.C. 405, as implemented by § 1.106 of the Commission's rules, 47 CFR 1.106, permits the filing of a petition for reconsideration by (1) any party to the proceeding and (2) any other person aggrieved or whose interests are adversely affected by the Commission's action. Section 1.106(b) of the Commission's rules requires a person who was not a party to the proceeding and who seeks reconsideration to "* * * show good reason why it was not possible for him to participate in the earlier stages of the proceeding." The Brown petitioners could have participated in the earlier stages of this proceeding by filing either a petition to deny or informal complaint against AETC's license renewal applications. As previously indicated, however, the Brown petitioners did not come forward at the time the Commission had the AETC's license renewal applications under consideration because, in their opinion, the facts already called to the Commission's attention were sufficient to bar a grant of the renewals and designate the applications for hearing. Without ruling on the question whether Brown and Wright would have had standing to protest the AETC's license renewal applications, if an individual has a right to participate in a proceeding before this Commission he cannot delay exercising that right until after the Commission has acted and then expect to be allowed to participate by filing a postgrant pleading. "Springfield Television Broadcasting Corporation v. Federal Communications Commission," 117 U.S. App. D.C. 214, 328 F. 2d 186 (1964); "Valley Telecasting Company, Inc. v. Federal Communications Commission," 118 U.S. App. D.C. 410, 336 F. 2d 914 (1964). As stated in "KIRO, Inc. v. Federal Communications Commission," 438 F. 2d 141 (1970), "we do not find in statute or case law any ground for accepting the premise that proceedings before administrative agencies are to be constituted as endurance contests modeled after relay races in which the baton of proceeding is passed on successively from one legally exhausted contestant to a newly arriving stranger." Accordingly, we find that the Brown-Wright petitioners have not met the more exacting standard which is required of a petitioner who comes in for the first time with a postgrant pleading and, therefore, their petition for reconsideration will be dismissed. We note, however, that contentions substantially similar to those advanced by the Brown-Wright petitioners have been raised by the Edwards petitioners.

EDWARDS PETITION

14. The Edwards petitioners acknowledge that, "[t]o date, the Commission has not required that noncommercial educational stations ascertain the community's needs in the same manner as commercial stations (Edwards Petition, p. 3). The Edwards' petitions maintain however that noncommercial broadcasters must, "at some point * * *, make a positive effort to understand the needs of the community and how those needs may be most appropriately satisfied." (Edwards Petition, p. 9.) The Edwards petitioners allege that the AETC has made no showing of an effort to understand or satisfy the needs of its community. The Edwards petitioners conclude that this failure to consult blacks about programing constitutes a violation of the AETC's responsibilities as a licensee.

15. The Edwards petitioners also contend that the AETC's program service is "inadequate to meet the educational and cultural needs of Alabama's blacks." (Edwards Petition, p. 11.) Thus, it is alleged that less than 10 percent of the broadcast time during the period between September 1, 1969, and March 27, 1970, was integrated. Moreover, the Edwards petitioners assert that of the 217½ hours of integrated programing telecast, 155 hours were occupied by "Sesame Street"; and 15 hours by "Stepping Into Rhythm," both children's programs. Thus, the Edwards petitioners state that only 47½ hours or less than 3 percent of AETC's broadcast time involved black adults and none of this time was "specifically related to blacks in general or to the black community in Alabama in particular." (Edwards Petition, p. 12.) The Edwards petitioners also allege that "of 937½ hours of instructional television during the period in question, only 15½ hours were integrated." (Edwards Petition, p. 13.) It is asserted that the AETC's refusal to carry program origination outside Alabama which are specifically intended for blacks raises serious questions in view of the AETC's own inadequate efforts to meet the needs of the black community. The Edwards petitioners conclude that, "when the licensee of a noncommercial educational station consciously or unconsciously discriminates against blacks and demonstrates by a comprehensive and systematic exclusion of relevant programing a lack of any intention or desire to understand or to satisfy the educational or cultural needs of 30 percent of its viewing audience, a substantial or material question of fact as to whether renewal would serve the public interest is raised." (Edwards Petition, p. 18.)

16. In the area of employment practices the Edwards petitioners allege that the AETC has discriminated against blacks since there are no blacks on the staff of forty nor is there any indication that the AETC "has established and maintained a continuing program to insure equal opportunities for blacks to be employed by the AETC." (Edward Petition, p. 20.) Thus, in this regard, it is alleged that the AETC has violated the provisions of § 73.680(a) of the Commission's rules, 47 CFR 73.680(a).

17. The Edwards petitioners further allege that the AETC has violated the freedom of speech of blacks by censoring programs of specific interest to blacks. Petitioners recognize the right of a licensee to select programing, and that refusal to carry a particular program does not, by itself, constitute evidence of censorship. However, the Edwards petitioners submit that "when that unwillingness attaches systematically to every adult program specifically related to blacks, the conclusion is inescapable that not only has the AETC discriminated, but it has also censored those programs even though many do not contain objectionable language or scenes * * *"

18. Finally, the Edwards petitioners submit that the Commission's decision to issue the AETC's original license was predicated upon the existence of a Program Board composed of educators from the State of Alabama. Petitioners contend that until July 1969, "(t)he Programing Board functioned under the direction of various educators associated with the University of Alabama." (Edwards Petition, p. 25.) However, petitioners assert, "on July 1, 1969, AETC suddenly stripped the persons of their program directing authority and transferred the authority to its own offices in Birmingham." (Edwards Petition, p. 25.) Petitioners conclude, therefore, that this assumption of programing control is "in violation of the conditions imposed * * * by the Commission." (Edwards Petition, p. 25.) Moreover, petitioners submit that this assumption of programing control was accomplished without notice to the Commission in violation of section 310(b) of the Communications Act. Petitioners also conclude "that the differing factual contentions in this matter must be resolved by the Commission in an evidentiary hearing." (Edwards Petition, p. 27.)

19. In opposition, the AETC asserts that "the allegations in both petitions boil down to one basic argument: A claim that the AETC improperly discriminated against Alabama blacks by virtue of its noncarriage of some or all four NET program offerings: 'Or Being Black,' 'Black Journal,' 'Soul,' and the 'Denver Black Panther Trial.' " (Opposition, p. 18.) The AETC states that it is particularly vulnerable to the type of complaint being made since it is unable to carry all NET programs as a result of its heavy schedule of locally originated programs. With regard to the programs, "On Being Black" and "Soul," the AETC asserts that they conflicted with its established schedule in addition to presenting problems from the standpoints of taste and overall worth. With regard to its selection of programs, the AETC refers to its program policy which states, in part, the controversial public affairs progams "* * * will have no vituperation, slander or personal attacks, but present only dignified discussion of issues." (Opposition, p. 21.) Also, the AETC asserts that its NET affiliation agreement imposes a "take it or leave it" policy in that an NET program must be broadcast in its entirety without any deletions. Thus, when the AETC finds certain material offensive, it must delete the entire program. The AETC concludes, with regard to program selection, "* * * that any licensee, knowing his area of service, has an obligation to determine whether a particular program will meet the needs of the public it serves. In every sense of the word, minority needs must be considered and met as well as majority needs. The decision, however, properly lies with the licensee and not with the FCC." (Opposition, pp. 22–23.)

20. The AETC states there has been no censorship or denial of anyone's freedom of speech. It also denies suppressing the expression of certain viewpoints. The AETC emphasizes that "when time is available NET programing such as 'Black Journal' is considered carefully by the AETC," but first priority is given to Alabama-oriented programing. (Opposition, p. 23.) The AETC notes that it now has a policy of taping "Black Journal," reviewing the tape, and then broadcasting it 1 week later if it is found acceptable.

21. With regard to its employment practices, the AETC asserts that the petitioners have no basis for their allegations. The AETC contends that, out of a total of about 50 employees, the AETC now employs five blacks including: One custodian, one secretary, one engineer, one production department assistant, and one program producer. Moreover, the AETC notes that it has recently arranged with the Jefferson County Committee for Economic Opportunity for a program to train black engineers. Finally, the AETC notes that it does not control the hiring practices of its production centers, since they are agencies under contract to the AETC.

22. The AETC asserts that its assumption of the NET affiliation was proper and, in fact, was in conformity with AETC's operational needs and realities. The University of Alabama had been the NET affiliate prior to July 1969. This arrangement was due, in part, to "an early lack of funds for the AETC." (Opposition, p. 4.) AETC states that the assumption of the NET affiliation was preceded by two developments. "First, NET began to provide its service by means of longlines * * *"; and, "Second, more and more of its programing came to be produced in color." (Opposition, p. 5.) Since "the microwave facilities between the University of Alabama production center at Tuscaloosa and the AETC's Birmingham switching point were (and are) technically inadequate for color transmission," AETC "became the NET affiliate, and began to receive NET programing at the key Birmingham switching point." (Opposition, p. 5.) This arrangement did not alter the ultimate control of programing which, the AETC submits, had always been in its hands.

23. The Edwards petitioners, in their reply, state that contrary to the implication by the AETC, petitioners do not "seek to have the Commission dictate to

AETC what programs must be broadcast." (Edwards Reply, p. 15.) Rather, "one of petitioners' essential contentions is that the AETC has discriminated against blacks and consequently has failed to meet the educational needs of the black community in Alabama." (Edwards Reply, p. 15.) It is noted that AETC has failed to explain the lack of locally produced black-oriented programing. With regard to AETC's reference to the "take it or leave it policy" contained in the NET affiliation agreement, the Edwards petitioners note that the agreement also has a provision for omitting objectionable material if prior consent is obtained from NET. Yet, petitioners note, "AETC makes no showing that it even once sought such permission from NET." (Edwards Reply, p. 17.) As to the prescreening procedure adopted for "Black Journal", the Edwards petitioners state "It defies credulity to assert that AETC could not have thought up such a simple procedure prior to the complaint were it motivated by a concern for the educational needs of blacks rather than by discriminatory predilections." (Edwards Reply, pp. 18–19.) The Edwards petitioners also state that the "take it or leave it" policy of NET does not explain why the AETC rejected a whole series of programs based upon objectionable material in one program. While recognizing the right of AETC to exercise its discretion in the selection of programing, the Edwards petitioners note that the AETC has not cited "a single instance where it has exercised its discretion to bar a NET program other than one relating to blacks." In this connection, the Edwards petitioners state that, "if this discretion were exercised on an impartial basis, there must be some instances where other programs were rejected" (footnote omitted) (Edwards Reply, p. 20.) Petitioner also noted that the AETC program policy contains no prohibition on refusing to accept programs on the basis of race.

24. The Edwards petitioners assert that AETC's compliance with the Commission's equal employment rules is still in doubt. Petitioners submit that it is inconsistent with AETC's public trust to contend that it has no right or obligation to insure compliance with the Commission's employment regulations by its program origination centers. Finally, the Edwards petitioners state their support for AETC's recent increase in black employees. The Edwards petitioners assert, however, that the Commission has a duty, in view of AETC's past failures, to investigate AETC's employment structure and practices.

25. In reiterating their assertions that AETC has infringed on constitutionally protected speech, the Edwards petitioners refer to AETC's opposition Exhibit 14. Included in the listing of profanities and vulgarities contained in a particular "Black Journal" program not carried by the AETC were the following: "Nixon is trying to strangle the second reconstruction" and "Malcolm X was a dissenter and they (the Establishment) killed him." Petitioners submit, "Omitting a program because of these passages is censorship of political speech—the cornerstone of the First Amendment and the public interest—and not an exercise of discretion based on bad taste or alleged indecency." (Edwards Reply, p. 25.)

26. Finally, petitioners contend "The precise function of the Program Board remains in dispute." (Edwards Reply, p. 26.) In this regard petitioners state, "Whether AETC effected a transfer of certain rights under its license by becoming the NET affiliate and by assuming certain legal and de facto rights with respect to programing decisions can only be resolved in a factual hearing where the testimony of those who were parties to the original license proceeding of AETC can be examined under oath. (Edwards Reply, pp. 27–28.)

27. As previously mentioned, the Commission also has before it for consideration the AETC's H.E.W. proposal for meeting the educational television needs of Alabama's black community; the Edwards petitioners' comments thereon; the AETC's progress report on its proposal; and the Edwards petitioners' comments on the progress report. The AETC proposal consists of several parts. First, a black assistant to the program director "will design and assist in conducting a personal interview-direct mail survey to be utilized in the determination of specific minority needs in programing." (AETC Proposal, p. 1.) The survey, which is intended to reach at least 500 black Alabamians, will be conducted by black college students from five geographical areas throughout the State. After analysis of the survey data, the AETC plans to "establish specific program or series priorities based on the results of the survey analysis." (AETC Proposal, p. 2.) Then each production studio will "be committed and responsible to the (AETC) for a program or series dealing with black needs * * *" (AETC Proposal, p. 2.) Provisions will be made for those who participated in the survey to preview the programs and make comments and suggestions. Last minute changes would then be made if necessary. Once an airdate has been selected for a particular program, promotion of the program will commence. The AETC citizens advisory committee will be asked for their evaluation of the programs broadcast. The broadcast time of these programs will be determined from the survey. Second, the AETC has made arrangements in cooperation with the Alabama Center for Higher Education (a consortium of black universities and colleges) by which these institutions will develop a series of programs "* * * which will reflect subject matter and treatment as they (the schools of the consortium) determine." (AETC Proposal, p. 4.) Third, the AETC has made contractual arrangements for on-the-job training of black electronic engineering personnel. There is presently one trainee who, after obtaining a first class license, will be given the first vacancy on the AETC engineering staff. Fourth, the relationship between the AETC and the Alabama State Department of Education is explained. Since that department is by law responsible for instruction programing in the public schools, the AETC defers to it in matters of instructional programing content, criteria and subject selection. Finally, the AETC states that the Citizens Advisory Committee has been reorganized. This committee will act as a sounding board for the community to the AETC programing. It presently consists of 19 members, six of whom are black.

28. The Edwards petitioners in their comments assert that the AETC proposal "is in fact designed as a means of prying loose an HEW grant." (Edwards Comments, p. 3.) They state, in this connection, that, "* * * whatever its merits in satisfying HEW, the Proposal is not adequate to discharge AETC's responsibilities as a Commission licensee." (Footnote omitted) (Edwards Comments, p. 4.) Although petitioners set forth numerous criticisms of the AETC proposal, they assert that their criticisms are not exhaustive. "Petitioners are merely attempting to focus the Commission's attention on the vapidness of the Proposal and its failure to reflect black input at any level." (Edwards Comments, p. 7.) It is asserted that the black AETC Assistant Program Director occupies no policy position. The Edwards petitioners also assert that this individual is expected to perform duties "* * * requiring no less than two and possibly three persons * * *" (Edwards Comments, p. 8.) Petitioners note that the questionnaire is to be developed with the assistance of Samford University, a predominantly white school. In this regard, petitioners question why the AETC couldn't have found a black university of equal competence. Petitioners state that there is a "total failure to provide for any black input in analysis of the survey returns." (Edwards Comments, p. 10.) Thus, according to petitioners, by the time blacks are introduced into the process of program production, it is too late to compensate for the white bias which has preceded. Petitioners also question the practicality of the proposal for having black individuals preview the newly designed programs in view of the desire of blacks to remain anonymous and the difficulty of taking time to travel to the AETC studios to watch the preview. Further, petitioners note "there are still no blacks making decisions with respect to the airing of nationally distributed programs of relevance, concern and/or interest to blacks' educational and cultural needs." (Edwards Comments, p. 15.) While commending the association with the consortium of black institutions, petitioners urge that "* * * a production contract should be arranged with one of the black colleges." (Edwards Comments, p. 16.) Petitioners further complain that the "* * * AETC has done nothing to assure adequate black employment at its production centers." (Edwards Comments, p. 17.) With regard to the Citizens Advisory Committee, petitioners assert that it is hardly a "grassroots sounding board," since its members are "professionals and representatives of traditional civic organizations." (Edwards Comments, p.

18.) Petitioners also question how the Board will function. Finally, petitioners state, "The Proposal cannot, in any event, allow AETC to escape the consequences of its past actions. Belated upgrading or pledges of improved service cannot, in the face of a license challenge, aid the licensee." (Edwards Comments, p. 20.)

29. In the AETC's letter of July 16, 1971, it advised the Commission of the progress which has been made implementing its April 27th proposal. It also has amplified its relation to the State Board of Education and has submitted more details concerning the Citizens Advisory Board's function. Thus, AETC notes that its survey form has been designed and it is in the process of making the final selection of 12 black college students to conduct the survey. The AETC further notes that it has established Alabama Agricultural and Mechanical University, a predominantly black school in Normal, Ala., as a contract program production agency. With regard to its cooperation with the consortium of black institutions for creation of a series of programs developed and produced by blacks, the AETC states that it now has expended its original plan to include all eight schools of the consortium. Each school will develop four programs for a 32-program series. Finally, "in order to reenforce its sincerity and dedication to the commitment of minority involvement and programing * * *" the AETC has submitted an equal opportunity program (section VI of the Renewal Form).

30. On August 16, 1971, the Edwards petitioners submitted comments on the AETC updated proposal. In essence, they conclude that the updating is not responsive to their comments on the proposal and note that the updating "reflects the same built-in biases of which petitioners have already complained."

CONCLUSIONS

31. As may be seen from the foregoing, this case has been further complicated by the fact that the issues raised on reconsideration extend well beyond the issues set forth in the initial complaints. Pursuant to § 1.106(c) of the Commission's rules 47 CFR 1.106(c), a petition for reconsideration which relies on facts not previously submitted to the Commission will be granted only if the facts relied upon (i) relate to circumstances which have changed since the last opportunity to present such matters, or (ii) were unknown to the petitioner until after his last opportunity to present such matters and could not have been ascertained through the exercise of ordinary diligence. For the most part the facts now relied upon by the Edwards petitioners were not previously presented to the Commission. Further, it is clear that the facts presented on reconsideration could have been ascertained prior to the Commission's action of June 24, 1969, had the Edwards petitioners exercised the requisite diligence. However, so that there may be no question about our full consideration of all matters raised, we have decided to consider and rule on every issue regardless of the time it was presented. While we are hopeful that the approach will not encourage the injection of new issues on reconsideration in future cases, we are satisfied that full consideration is justified in this case.

32. The first issue raised is whether the AETC's license renewal applications for the above-captioned stations should be designated for hearing on the grounds that the licensee has made no efforts to conduct a survey to determine the needs and interests of black Alabamians. It is well established that commercial broadcasters must conduct surveys to determine the needs and interests of their service areas. However, the Commission has never required noncommercial educational broadcasters such as the AETC to conduct community surveys. In fact, the Commission has specifically exempted noncommercial educational broadcasters from all of the requirements of its "Primer on Ascertainment of Community Problems by Broadcast Applicants," 27 FCC 2d 650 (1971), wherein we stated that,

> [g]iven the reservation of channels for specialized kinds of programing, educational stations manifestly must be treated differently than commercial stations.[2]

33. Therefore, since we have not imposed ascertainment requirements on noncommercial educational broadcasters, we believe it would be inappropriate to designate the AETC's license renewal applications for hearing on a survey issue. Instead, the subject of requiring noncommercial educational broadcasters to conduct some type of survey would be more appropriate for exploration in an overall rulemaking proceeding. Furthermore, we note that the AETC is now in the process of conducting an extensive survey to determine the needs and interests of black Alabamians. Despite petitioners' criticisms of the AETC's survey, we believe that the licensee is making an honest and good faith effort to determine the particular needs and interests of black Alabamians and that the Alabama educational television network's programing service for the State's black population will only benefit as a result of the licensee's efforts. We conclude, therefore, that the relief requested on this issue is not now appropriate.

34. The next issue raised is whether the AETC's assumption of control over the Alabama educational television network's programing operations, including its NET affiliation agreement, constitutes a violation of the terms of its broadcast authorizations and section 310(b) of the Communications Act of 1934, as amended. The Commission's records show that the AETC was created in 1953 by Act 81 of the Alabama State Legislature. The AETC is composed of five members appointed by the Governor of Alabama for 10-year terms, the term of one member expiring every 2 years. As a supplement to the AETC there is a Program Board, which is a policy interpreting body and acts in an advisory capacity to the AETC. Further, the Program Board is appointed by the AETC. There is nothing in the Commission's files, however, which indicates that this agency ever predicated a grant of a broadcast license to the AETC on the condition that a Program Board or some other interorganizational entity exercise responsibility over the licensee's programing operations, including its NET affiliation agreement. Instead, when the AETC was granted its first broadcast license, overall responsibility for programing, engineering and policy was vested in the AETC—the licensee. The AETC, of course, in carrying out its functions as a licensee, may delegate certain responsibilities just as any other broadcaster or corporate entity. However, the AETC, as licensee, also has ultimate control over every aspect of its broadcast operations; consequently, although the AETC may have delegated certain program functions to its Program Board or program production centers, these facts do not alter the rights vested in the AETC to revoke such delegations and to exercise full responsibility over its programing operations. Such action does not constitute a violation of section 310(b) of the Communications Act. We also conclude, therefore, that the relief requested on this issue is not appropriate.

35. The next issue raised concerns the AETC's programing performance. In sum, the petitioners argue that the AETC has systematically excluded all NET programs specifically relevant to blacks; and, further, has failed to provide a sufficient amount of local programing to compensate for the failure to broadcast NET black oriented programing. The petitioners also argue that the AETC has violated the freedom of speech of black Alabamians by deleting from its program schedule certain NET programs because of alleged vulgarities.

36. The AETC, as previously indicated, was created in 1953 for the purpose of establishing and maintaining an educational television network in the State of Alabama. Since its creation, the AETC has become the licensee of eight noncommercial television stations, namely: WAIQ (Montgomery), WBIQ (Birmingham), WCIQ (Cheaha State Park), WDIQ (Dozier), WEIQ (Mobile), WFIQ (Florence), WGIQ (Louisville), and WHIQ (Huntsville). The AETC is presently operating a ninth station, WIIQ, Demopolis, under program test authority. Also fully operational are three translator stations located in Hamilton (W7OAN), Winfield (W7ZAN), and Guin (W7YA). Over 1,000 miles of microwave facilities interconnect these stations and all programing is simulcast over the AETC's television stations. With regard to the AETC's programing, the licensee

[2] It is noteworthy that FCC Form 342, the renewal application for noncommercial educational AM, FM, and TV stations, does not request any information concerning a noncommercial broadcasters' efforts to ascertain the needs and interests of their service areas, which, as in this case, often encompass more than a single service area. Compare section IV of FCC Form 303, the renewal application for commercial broadcasters.

has entered into contracts with the University of Alabama, Auburn University, Montevallo University, the State Board of Education, the Huntsville City Board of Education, the Birmingham Board of Education, the Mobile Board of School Commissioners, and Alabama Agricultural and Mechanical University, each of which supplies "approximately an equal share of the more than 40 hours weekly of Alabama-originated television programing." [3] The AETC has also entered into agreements with the NET and Public Broadcasting Service for nationally produced programing.

37. The licenses for AETC's various television stations have been regularly renewed since beginning their broadcast operations. The Commission, of course, when reviewing a license renewal application, is obligated to consider the broadcaster's overall performance—both favorable and unfavorable—in determining whether a renewal should be granted. AETC's pending renewal applications, which set forth the licensee's operations for the preceding license term, disclose that during a typical week the Alabama educational television network presents 29 hours (38 percent) of instructional programing, 11 hours and 45 minutes (15 percent) of general educational programing, 6 hours and 30 minutes (9 percent) of performing arts programing, 19 hours (25 percent) of public affairs programing, and 10 hours and 15 minutes (13 percent) of all other programing. Of this programing, 50 hours and 30 minutes (69 percent) is produced by AETC's various program production cent) is provided by networks, and 7 hours and 45 minutes (10 percent) is provided by other sources. These figures disclose that the AETC's major effort has been in the areas of instructional and educational programing, a noteworthy effort since Alabama has the lowest per pupil expenditure for education than that of any other State. In this respect, the AETC produces and telecasts a large number of in-school educational programing, which teachers throughout the State use to supplement their regular classroom instruction. By way of example, the AETC presents programs dealing with science, handwriting, mathematics, word study, speech improvement, reading, and many other subjects which serve as instructional aid in grades one through 12.

38. The record also shows that the AETC has broadcast a number of integrated programs. That is, from September 1, 1969, through March 27, 1970, the AETC presented 257 integrated programs constituting 217 hours of broadcast time. The record also discloses that, for the period extending from September 1969 through July 1970, the AETC presented 554 integrated programs constituting 443 hours of its total broadcast time. The AETC also submits that it broadcast 635 programs constituting approximately 299 hours of its total broadcast schedule from September 1969 through July 1970 which were occasionally integrated but for which it did not know the number of isolated shows because no records were kept.

39. With regard to NET programing the AETC acknowledges that it has refused to broadcast a number of such programs because, in its opinion, such programs contained what it deemed to be offensive language. Thus, in its letter of February 25, 1970, the AETC stated:

> It is interesting to note that the programs being insisted upon as part of the AETC schedule by the U of A Faculty Senate, College of Arts and Sciences, and an employee of the U of A Broadcasting Services in their complaints to the FCC are by name: "Black Journal," "Soul," "The Show," "On Being Black," and others. It should also be noted that the NET affiliate contract requires a NET program be run in full. No editing is permitted.
>
> For documentation there are here listed quotes from some of the audio portions of those productions in addition to several visual sequence descriptions:
>
> The Show: (Program No. 3, January 25, 1970) Mason Williams said, "* * * The black man has endured a lot of bullshit really from * * * Lyrics of song by Mason Williams included, "In our birthday suits we had a few toots and I sure ain't talking about beers * * * you're the best shot I've seen in years * * * I'll bet I can beat you to bed again * * *"
>
> Black Journal: (Program No. 17, October 24, 1969) Contained the phrases "Screw your brother * * * go to hell * * * damn * * * rats leaving crap in the corner * * *"
>
> Hospital: (NET Special, February 2, 1970) Discussion by a man who stated that he was a male prostitute and that he was on welfare. A pelvic exam was being performed on a female (draped). A vomiting man exclaiming "shit" several times during his 2-minute seizure. A bloodsoaked man kept on camera for 3 minutes. A postcranium performed and the brain removed during the sequence.
>
> Soul: (Program No. 6, March 11, 1970) A poem about drugs: "* * * Dope is shit * * * put shit in your arm * * * mama's tears * * * what difference do it make, stay high sucker chump."
>
> In the Company of Men: (NET Journal No. 264, February 9, 1970) Contained several "goddamns" "* * * get your black ass out of here * * *" A statement by one of the participants to the effect that his foreman required him to perform perverted acts or lose his job.
>
> Hemiskringla: (NET Playhouse. No. 162, November 7, 1969) Male nude appeared on scene without any apparent motivation. Member of the DAR desecrating the U.S. flag. A group of virtually nude men and women in a pile biting the blood out of one another and licking the blood.
>
> On Being Black: ("Johnny Ghost," October 8, 1969) Had a nude male shower sequence, several profane expressions and a confrontation between the principal character and his wife because he wouldn't go to bed with her while in training.
>
> Soul: (Preview, January 26, 1970) Song containing "Proud songs of rebellion our fathers sang * * * whores * * * babies without fathers," Also, "If Wallace did not exist * * * If Agnew did not exist * * * beautiful, beautiful * * *" Then a poem, "* * * dine 'em, dance 'em, take 'em to bed * * *"

40. The NET affiliation agreement provides, in substance, that stations will broadcast its programs in full without any deletions, alterations, edits, or other changes. Here the AETC determined that a number of NET's programs were not suitable for broadcast, not because they pertained to blacks, but, instead, because in its judgment they were offensive. The AETC submits however that it has not systematically excluded all NET black oriented programing. As previously indicated, the AETC has adopted a preview procedure to determine whether NET programs are suitable for broadcast. Following this preview procedure, the Alabama Educational Television network has telecast at least three of NET's "Black Journal" programs and all of NET's "Black Frontier" series. These programs have been telecast since the AETC assumed full control over its NET affiliation agreement (i.e., after July 1, 1969).

41. In "Office Communication of United Church of Christ v. F.C.C.," 359 F. 2d 995 (1966), the court stated that the best criterion for determining whether a renewal should be granted is the licensee's past performance. The court stated further that the Commission could not make an affirmative public interest finding based on a "pious hope" for better performance because the licensee of WLBT–TV had neither promised or demonstrated any capacity or willingness to change. As to the need for a properly run station in Jackson, Miss., the court found that there was not sufficient evidence in the record to justify a "policy determination" that WLBT was needed in the community. However, licensing is also prospective in nature, in that it authorizes future operation. Accordingly, in "United Church of Christ, supra, the court indicated that the Commission had discretion to experiment and take calculated risks on renewal of broadcast licenses based on the applicant's proposals for the future. For the purposes of forecasting, of course, the Commission must review the applicant's background for evidence as to expectable performance. As previously noted, the record discloses that the AETC has broadcast a number of integrated programs. Clearly, this is a fact from which the Commission may draw inferences as to AETC's future probabilities.[4] Accordingly, we are of the opinion that it is entirely appropriate to examine the AETC's future proposals. This is especially true in a case such as this where one aspect of the licensee's programing performance has been questioned and the record discloses an otherwise outstanding service in the public interest; and, where, unlike the circumstances presented in "United Church of Christ, supra," we are concerned with a network of noncommercial educational television stations serving a statewide area and devoting a substantial amount of its broadcast time to instructional/educational programing (paragraphs 37–39, above).

42. As delineated in its proposal to HEW of April 1971 and amplified in its letter to the Commission of July 16, 1971, we note that the AETC is making a special effort to ascertain the needs and interests of Alabama's black population.

[3] See Opposition, p. 4.

[4] See, footnote 5 infra, paragraph 43.

We also note that the AETC has already made arrangements with eight predominately black colleges and universities to produce 32 programs concerned specifically with the needs of black Alabamians. In addition, the AETC has entered into a contractual arrangement with a predominately black university to provide an additional program origination center. Finally, we note that the AETC has undertaken efforts to open up additional channels of communications with the black community.

43. The Commission is thus faced with a difficult choice between two conflicting considerations. On the one hand, the AETC has established one of the best noncommercial educational television networks in the United States; and, further, produces and broadcasts a large number of educational/instructional programing designed to improve the quality of education for Alabamians. In this connection, we note that the AETC's in-school programs are received in 702 elementary schools and 309 high schools, and that the licensee's broadcasts are available to 10,025 teachers, 437,068 elementary students, and 471,295 high school students. The foregoing facts militate against a finding that AETC discriminated against blacks in its programing presentations. The record also discloses that the AETC is undertaking additional efforts to improve its service to meet the specific needs of Alabama's significant black population. On the other hand, however, there is a charge that the AETC has deliberately excluded a number of network programs on racial grounds and, also, has failed to compensate for its failure to broadcast network black-oriented programing. In short, it is claimed that AETC's programing performance has been wholly inadequate to meet the educational and cultural needs of Alabama's blacks. Although the record discloses that the AETC has broadcast some network offerings and rejected others, the facts available do not otherwise provide sufficient information for the Commission to decide this aspect of this proceeding on the bases of the pleadings. Accordingly, without a full record of facts and adversary views that an evidentiary hearing would provide, we believe that this aspect of this proceeding could best be resolved by having the AETC's above-captioned license renewal applications designated for hearing.[5]

44. Likewise, in view of the claim that the AETC has discriminated in its programing we believe that the questions raised regarding the AETC's compliance with § 73.680 of the Commission's rules could also best be resolved in an evidentiary hearing. In short, our rules regarding nondiscrimination in the employment practices of broadcast licensees have been designed to achieve equality of employment opportunities. Accordingly, issue 4 below is designed to explore whether the AETC has made reasonable and good faith efforts to comply with the provisions of § 73.680 of the Commission's rules. The issue set forth below however is not designed for the purpose of exploring whether the AETC is responsible for the employment policies and practices of its various program production centers. The record discloses that these centers are separate entities; e.g., the University of Alabama, Alabama Agricultural and Mechanical University, etc. There is, obviously, a close working relationship between the AETC and its progam production centers. However, since they are separate entities, petitioners' claim that the AETC is responsible for assuring that their production centers do not discriminate is not well founded. Clearly, the AETC cannot dictate to any independent organization, whether it be one of its program production centers, the NET, or some other separate entity, what their employment policies and practices should be. Also, our rules have no applicability whatsoever to the AETC's program production centers.

45. Our action here today, in effect, disposes of the Brown-Wright and Edwards petitions for reconsideration. The matters set forth in the Edwards petition and the relief sought have been considered in the issues we have adopted.

46. In view of the foregoing: *It is ordered,* That the petition for reconsideration filed by Anthony Brown and William D. Wright is dismissed.[6]

47. *It is further ordered,* That the petition for reconsideration filed by Reverend Eugene Farrell, Linda Edwards, and Steven Suitts, to the extent indicated above, is granted, and, in all other respects, is denied.

48. *It is further ordered,* That our action of June 24, 1970, granting the Alabama Educational Television Commission's license renewal applications for Stations WAIQ(ED–TV), WBIQ(ED–TV), WCIG(ED–TV), WDIQ(ED–TV), WEIQ(ED–TV), WFIQ(ED–TV), WGIQ (ED–TV), and WHIQ(ED–TV) is hereby rescinded.

49. *It is further ordered,* That, pursuant to section 309(e) of the Communications Act of 1934, as amended, the Alabama Educational Television Commission's above-captioned applications are designated for hearing, at a time and place to be specified in a subsequent order, upon the following issues:

(1) To determine whether the Alabama Educational Television Commission has followed a racially discriminatory policy in its overall programing practices.

(2) To determine whether the Alabama Educational Television Commission has broadcast programing serving the needs of Alabama's citizens.

(3) To determine the extent of efforts being undertaken by the Alabama Educational Television Commission to develop programing to serve the needs of Alabama's citizens.

(4) To determine whether the Alabama Educational Television Commission has made reasonable and good faith efforts to assure equal opportunities in its employment policies and practices in accordance with § 73.680 of the Commission's rules.

(5) To determine whether, in light of the evidence adduced pursuant to the foregoing issues, a grant of the Alabama Educational Television Commission's above-captioned applications would serve the public interest, convenience, and necessity.

50. *It is further ordered,* That Reverend Eugene Farrell, Linda Edwards, and Steven Suitts are made parties to the hearing ordered herein.

51. *It is further ordered,* That, in accordance with section 309(e) of the Communications Act of 1934, as amended, the burden of proceeding with the introduction of evidence and the burden of proof shall be upon the Alabama Educational Television Commission as to issues 1, 2, 3, and 4; and that the petitioners and then the Broadcast Bureau shall follow with any evidence in their possession relevant to those issues. Issue 5 is conclusionary.

52. *It is further ordered,* That, to avail themselves of the opportunity to be heard, the Alabama Educational Television Commission and petitioners Reverend Eugene Farrell, Linda Edwards, and Steven Suitts, in person or by attorney, shall, within twenty (20) days of the mailing of this order, file with the Commission, in triplicate, a written appearance pursuant to § 1.221(e) stating an intention to appear on the date set for the hearing and present evidence on the issues specified in this order.

53. *It is further ordered,* That, pursuant to section 311(a)(2) of the Communications Act of 1934, and § 1.594 of the Commission's rules, the Alabama Educational Television Commission shall give notice of the hearing within the time and manner prescribed in § 1.594 and thereafter advise the Commission of the publication thereof as required by said rule.

Adopted: February 8, 1972.

Released: February 11, 1972.

FEDERAL COMMUNICATIONS COMMISSION[7]

[SEAL] BEN F. WAPLE, *Secretary.*

[FR Doc.72-2423 Filed 2-16-72;8:48 am]

[5] As noted in paragraph 41, the Commission believes it is appropriate to explore what efforts are being undertaken by the AETC to develop programing to meet the needs of Alabama's citizens and, accordingly, an appropriate issue has been added. However, in light of the evidence adduced under Issues 1 and 2 herein, Issue 3 herein has been added without prejudice to the rights of the parties to argue, subsequently, what weight should be accorded the evidence adduced under Issue 3.

[6] See, however, 47 CFR 1.223 which provides, in substance, that any party in interest desiring to participate in any hearing may file a petition for leave to intervene. See, also, 47 CFR 1.225, which pertains to participation by nonparties.

[7] Chairman Burch concurring and issuing a statement in which Commissioner Reid joins; Commissioner Bartley dissenting and issuing a statement; Commissioner Johnson concurring in part and dissenting in part and issuing a statement; Commissioner H. Rex Lee absent; Commissioner Wiley abstaining from voting. Statements of Commissioners Johnson and Bartley filed as part of the original document.

[Dockets Nos. 19431–19433; FCC 72–128]

BLUE RIDGE BROADCASTING CO., INC., ET AL.

Memorandum Opinion and Order Designating Applications for Consolidated Hearing on Stated Issues

In regard applications of Blue Ridge Broadcasting Co., Inc., Sanford, Fla., Requests: 1190 kc., 250 w., Day, Docket No. 19431, File No. BP–18077; Hymen Lake, Pine Castle-Sky Lake, Fla., Requests: 1190 kc., 250 w., Day, Docket No. 19432, File No. BP–18491; S & S Broadcasting Co., Titusville, Fla., Requests: 1190 kc., 5 kw., DA. Day, for construction permits, Docket No. 19433, File No. —.

1. The Commission has before it for consideration (i) the above-captioned mutually exclusive applications; (ii) a petition to dismiss the application of Hymen Lake filed by S & S Broadcasting Co.; (iii) a petition to dismiss the application of S & S Broadcasting Co. filed by WRMF, Inc., licensee of station WRMF, Titusville, Fla.; (iv) an informal objection[1] to the application of Hymen Lake and S & S Broadcasting Co., filed by Blue Ridge Broadcasting Co., Inc.; and (v) pleadings in opposition and reply thereto.

2. Although WRMF, Inc., did not indicate its basis to challenge the S & S proposal for Titusville, standing will be presumed in this instance since petitioner is the licensee of station WRMF in Titusville and would compete for listeners and advertisers with the proposed new station. Therefore, it is a party in interest within the meaning of section 309(d)(1) of the Communications Act of 1934, as amended. "Federal Communications Commission v. Sanders Brothers Radio Station," 309 U.S. 470, 9 RR 2008 (1940).

3. The application of S & S Broadcasting Co. has not been accepted for filing because petitioner, WRMF, Inc., contends that the proposal would be in contravention of the acceptability criteria set out in § 73.37(a) of the Commission's rules. On the basis of the conductivity value indicated by Figure M–3 of the rules, the proposed 0.5 mv/m contour of S & S Broadcasting would receive overlap from the 0.025 mv/m contour of station WAVS, Ft. Lauderdale, Fla., in violation of § 73.37(a) of the rules. In an attempt to establish that a violation of § 73.37(a) is not involved, S & S has submitted field intensity measurement data made on a test transmitter installation located near its proposed site for the purpose of establishing the extent of its proposed 0.5 mv/m service area in the general direction of WAVS. In addition, the applicant submitted measurements made in September 1970, on WAVS on a direct path (347.8°) towards the S & S antenna site for the purpose of determining the extent of the WAVS 0.025 mv/m contour towards its proposed 0.5 mv/m contour. On the basis of this measured radial, it appears that the WAVS 0.025 mv/m contour would be virtually tangent with the proposed S & S 0.5 mv/m contour. Measurements were made also by the applicant on station WRBD, Pompano Beach, Fla. (located approximately 5.5 miles from WAVS), to indicate that the effective soil conductivity over several paths towards the S & S 0.5 mv/m contour is less than indicated by Figure M–3. In a petition to dismiss filed on July 16, 1969, and in supplements thereto, WRMF, Inc., contends that the S & S proposal would receive overlap from station WAVS in violation of the rules. WRMF submitted field intensity measurement data made on WAVS along the same radial (347.8°) as measured by S & S. The WAVS radial was measured by WRMF in September 1970, and again in April 1971, and both sets of measurement data indicate that the 0.025 mv/m contour of WAVS would not only overlap the S & S proposed 0.5 mv/m contour but would extend approximately 12 miles beyond the proposed antenna site. WRMF also submitted measurements made on WRBD in the direction of Titusville as well as measurements made on WQAM, Miami, Fla. The measured radial on WQAM passes through the site of WAVS on almost a direct line towards the proposed S & S antenna site. These measurements likewise indicate a conductivity value which would result in the 0.025 mv/m contour of WAVS overlapping the S & S 0.5 mv/m contour. We also note that in addition to the field intensity measurement data made by S & S and WRMF on station WAVS, measurements have been made by Blue Ridge Broadcasting Co., Inc., in support of its application. The data include a measured radial made on WAVS along the same bearing (347.8°) as measured by S & S and WRMF. The extent of the WAVS 0.025 mv/m contour, as determined by Blue Ridge, is in substantial agreement with that determined by the measurements submitted by WRMF and also indicate that the WAVS 0.025 mv/m contour would overlap the S & S 0.5 mv/m contour.

4. From the foregoing, it is apparent that extensive measurement data have been filed regarding the question of prohibited overlap. On the WAVS 347.8° radial alone, no less than four sets of measurement data have been made during the months of February, April, September, and November. The measurements were made by three different engineers and extend to a distance as great as 185.3 miles from the WAVS site. Three of the four sets of measurement data on this radial are in reasonable agreement and indicate that the 0.025 mv/m contour of WAVS extends to a distance greater than 180 miles on that azimuth and overlaps the S & S proposed 0.5 mv/m contour to a significant degree. The measurement data filed by S & S on this radial, however, are in great disagreement with the other three sets of data, especially at distances greater than 100 miles from the WAVS antenna, and indicate that the WAVS 0.025 mv/m contour extends only 159 miles. Since the inconsistencies in the measurement data are irreconcilable, an evidentiary hearing must be held to resolve the matter.[2] If evidence received in hearing establishes that the S & S proposal would involve overlap in violation of § 73.37(a) of the rules, the application will be dismissed. If on the other hand it is established that the S & S proposal would not violate that section the application will be accepted for filing, and in order that the application herein may proceed to hearing without further delay, we are designating it for hearing at this time. The Hearing Examiner shall hear issues number 10 and 11, pertaining to acceptability, and if he finds S & S Broadcasting Co. acceptable for filing, his finding will be determinative of that question and the hearing shall proceed on that basis. In such event, the Commission will issue a public notice announcing the acceptance of the application for filing and interested parties will have 30 days from that date to file petitions to deny.

5. The S & S Broadcasting proposal does not comply with § 1.569 of the Commission rules in that the proposed transmitter site is located outside the 500-mile extension of the 0.5 mv/m-50 percent nighttime contour of a class I-A station, KSL, Salt Lake City, Utah. This proposal, however, under § 1.569 is concerned only with the frozen channel 1160 kc., which is 30 kc. removed from the applicant's proposed frequency. In keeping with our general policy in such cases, we conclude that a finding of material prejudice to possible II–A assignments under these circumstances would be unrealistic. Accordingly, a waiver of § 1.569 will be granted. "Peter L. Pratt," 16 FCC 2d 967 (1969).

6. S & S Broadcasting proposes to use an antenna ground system consisting of 120 radials each 207 feet in length equally spaced around the base of each antenna tower. Examination, however, of Figure 2A of the applicant's engineering exhibit (antenna site plat) indicates that some of the radials will be much shorter than 207 feet due to property limitations. Accordingly, an issue regarding the antenna site will be included.

7. According to § 73.37(b) of the Commission rules, an application may be granted notwithstanding overlap of the proposed 0.5 mv/m contour and the 0.025 mv/m contour of another cochannel station, where the applicant would be the first standard broadcast facility in a community of any size wholly outside of an urbanized area or the first standard broadcast facility in a community of 25,000 or more population wholly or partly within an urbanized area. The Commission, by letter, informed Hymen Lake that on the basis of the measurement data on file the 0.025 mv/m contour of station WAVS, Fort Lauderdale, Fla., would overlap the proposed 0.5 mv/m contour in contravention of § 73.37(b). In response to the Commission inquiry, Hymen Lake acknowledges the overlap but claims that it does

[1] Hymen Lake contends that the objections raised in a letter filed by Blue Ridge Broadcasting Co., Inc., constitute a petition to deny and is unacceptable since it was not timely filed. The Commission, however, will accept the letter as an informal objection according to § 1.587 of the Commission rules.

[2] "Harvest Radio Corporation," 22 FCC 2d 820, 19 RR 2d 12 (1970).

not render his application ineligible for a grant. He claims that his proposal is in conformity with the rule because he proposes a cocommunity of license that would provide the first standard broadcast facility for the community of Sky Lake, which lies wholly outside the Orlando urbanized area, and for the community of Pine Castle, which has a population in excess of 25,000 and lies within the Orlando urbanized area. In support of his argument, Hymen Lake states that the number of charitable and civic organizations in Sky Lake distinguish it as a community from Orlando and the Orlando urbanized area. In addition, he claims that the boundaries of Pine Castle are the same as the boundaries of the Pine Castle Fire and Flood Control District which, Hymen Lake maintains, is in the Orlando urbanized area and has a population in excess of 25,000 according to the Pine Castle Fire and Flood Control District Census.

8. In an engineering amendment attached to its informal objection, Blue Ridge Broadcasting, Inc., asserts that Hymen Lake does not comply with § 73.37(b) because Sky Lake, as shown in Hymen Lake's own amendment, is partly within the Orlando urbanized area, and Pine Castle is part of the Pine Castle Civil Division with a total population of 12,136 according to the preliminary 1970 U.S. census. In defense of his position, Hymen Lake states that the Commission should utilize the latest census data available at the time the application was filed, and not the preliminary 1970 map of the Orlando urbanized area. Moreover, he claims that if the 1970 figures incorporate Sky Lake into the Orlando urbanized area it would be inequitable to use the 1970 census data and reject Sky Lake as a community of license. With respect to Pine Castle, he states that depicting the boundaries of the Pine Castle Fire and Flood Control District as the boundaries of the Pine Castle community is a more reasonable designation than the Pine Castle Division shown on the preliminary 1970 U.S. census map of the Orlando urbanized area.

9. In light of the conflicting claims over the population, location, and character of the communities of Pine Castle and Sky Lake, and the Commission's recent ruling [3] upholding the use of the most recent and reasonable population figures available, the matter will be decided in hearing. Accordingly, a § 73.37(b) issue will be specified, and if evidence received in hearing establishes that the proposal would violate § 73.37(b) of the rules, the application will be dismissed.[4]

10. In its petition to dismiss Hymen Lake, S & S Broadcasting asserts that neither Pine Castle nor Sky Lake is a recognized community for allocation purposes.[5] In an affidavit attached to the petition, S & S Broadcasting states that neither community has a municipal form of government, that there are no road signs or telephone listings indicating the existence of Sky Lake as a distinct community or any public agencies in Pine Castle. In opposition, Hymen Lake claims that the mere fact that the communities are unincorporated does not mean that they are not recognized communities. Lake further contends that an allocation to Pine Castle-Sky Lake would be consistent with a number of Commission decisions on the question.

11. In the absence of an evidentiary hearing, a determination cannot be made that either Pine Castle or Sky Lake qualifies as a community for allocation purposes under § 73.30(a) of the rules, and an appropriate issue will be included. Risner Broadcasting, Inc., 13 FCC 2d 781, 13 RR 2d 912 (1968). In addition, an applicant must make certain showings in accordance with § 73.30(b) of the rules in order for a station to be licensed to serve more than one community. The Hymen Lake application is within the purview of this section and must demonstrate its ability to meet these requirements. Accordingly, a § 73.30(b) issue will also be added.

12. S & S Broadcasting argues also that the Hymen Lake proposal would not place a 25 mv/m signal over the entire business district of Pine Castle as required by § 73.188(b)(1) of the rules. In opposition, the applicant questions the accuracy of the 25 mv/m contour as drawn by the petitioner and concludes that the required signal would cover almost all of the business district. In view of this discrepancy, a coverage issue will be specified.

13. S & S Broadcasting submitted engineering data showing that the proposed 5 mv/m contour of Hymen Lake would penetrate the city of Orlando, Fla., which has a population of 99,006 according to the 1970 census. Petitioner claims that the total population of Pine Castle and Sky Lake is approximately 20,000, and the presumption arises, therefore, that the applicant intends realistically to serve the city of Orlando rather than its designated communities. "Policy Statement on Section 307(b) Considerations for Standard Broadcast Facilities Involving Suburban Communities," 2 FCC 2d 190, 6 RR 2d 1901 (1965).

14. In opposition, Hymen Lake states that the area penetrated by the 5 mv/m contour consists of 1.4 square miles and 6,169 people, or 7 percent of the total area and population of Orlando, and the proposal is not the type that the Policy Statement is designed to discourage. In addition, the applicant's engineer claims that to eliminate the penetration of Orlando would adversely affect the proposal. He states that the requested power is the minimum permitted by a class II facility; that the transmitter site is ideally situated for service to the main business areas of Pine Castle-Sky Lake and that a change in site would either increase the 5 mv/m envelopment of Orlando, reduce or eliminate the 25 mv/m coverage of Pine Castle or Sky Lake, or increase the interference received from Fort Lauderdale.

15. Since the Hymen Lake proposed 5 mv/m contour penetrates the city of Orlando, a presumption that the applicant is realistically proposing to serve the larger community is raised under the Commission's Policy Statement. Although the applicant's engineer states, in effect, that the 5 mv/m penetration of Orlando is unavoidable, Hymen Lake has not attempted to make a detailed showing in rebuttal of the presumption. Accordingly, a 5 mv/m-suburban issue will be included.

16. Blue Ridge Broadcasting Co., Inc., has failed to submit an exhibit showing the location of the principal business district of Sanford and its relation to the proposed 25 mv/m contour. Since an applicant must provide for a minimum field intensity of 25 mv/m over the business area of its city of designation in accordance with § 73.188(b)(1) of the rules, an appropriate issue will be included.

17. Examination of the financial plans of Blue Ridge Broadcasting Inc., indicates that $67,640 will be needed to construct and operate the proposed facility for 1 year, consisting of: Down payment on equipment, $6,260; first-year payments with interest, $7,380; miscellaneous costs, $6,000; and first-year operating expenses, $48,000. To meet construction and operation costs, the applicant relies on $38,800 available cash, and $25,000 notes receivable, for a total of $63,800. In addition to not meeting its requirements by approximately $4,000, the applicant's reliance on notes receivable is misplaced since they are not sufficiently liquid. Accordingly, a financial issue will be included.

18. Financial data on file with the Hymen Lake proposal reveals that $85,400 will be needed to meet first-year construction and operation costs, consisting of down payment on equipment, $4,950; first-year equipment payments with interest, $5,450; building costs, $20,000; miscellaneous costs, $5,000; and first-year operating expenses, $50,000. The applicant plans to meet construction and operation costs with available cash, $28,000, and his share of cash available in another corporation, $62,000, for a total of $90,000. The applicant's financial data, however, is not current and an issue will be added to determine the applicant's present financial position.

19. An analysis of the financial section of the S & S Broadcasting proposal discloses that it will require $131,400 to meet first-year construction and operation costs, consisting of down payment on equipment, $12,375; first-year equipment payments with interest, $13,525; building, $2,500; miscellaneous costs, $5,000; loan payments with interest,

[3] "Albert L. Crain, et al.," 28 FCC 2d 381 at 384, 21 RR 2d 607 at 611 (1971).

[4] Hymen Lake has stated that if it is found that he does not comply with § 73.37(b), an issue should be added to determine whether a waiver is justified. The applicant, however, has not provided a sufficient basis to support its request, and, consistent with Commission policy, the application will be dismissed if it violates § 73.37(b).

[5] Section 73.30(a)(1) states that * * * "each standard broadcast station will be licensed to serve primarily a particular city, town, political subdivision, or community which will be specified in the station license * * *"

$13,000; and first-year working capital, $85,000. To meet these costs, the applicant intends to rely on available cash, $62,000, and a bank loan, $100,000, for a total of $162,000. The bank loan commitment letter states that the applicant's majority shareholder will endorse the loan, but there is no statement by the shareholder that he is willing to assume this obligation. Thus, a financial issue will also be specified as to this applicant.

20. The programing plans submitted by two of the applicants fail to meet the criteria of the "Primer on Ascertainment of Community Problems by Broadcast Applicants," 27 FCC 2d 650, 21 RR 2d 1507 (1971). The principals of Blue Ridge Broadcasting, Inc., contacted approximately 103 community spokesmen, but failed to supply sufficient data to enable us to determine whether those individuals contacted represented a cross-section of the minority, racial or ethnic groups in Sanford. Since S & S Broadcasting failed to provide reliable data on the composition of the proposed community of license, a Suburban[6] issue will be specified as to both the applications of Blue Ridge Broadcasting, Inc., and S & S Broadcasting.

21. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

22. *Accordingly, it is ordered,* That, pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent Order, upon the following issues:

(1) To determine the areas and populations which would receive primary service from the proposed operations and the availability of other primary aural (1 mv/m or greater in the case of FM) service to such areas and populations.

(2) To determine whether the proposal of Hymen Lake would serve primarily a particular city, town, or other political subdivision as contemplated by § 73.30(a) of the Commission rules and, if not, whether circumstances exist which would warrant a waiver of said section.

(3) To determine whether the proposal of Hymen Lake is consistent with the requirements of § 73.30(b) of the Commission rules, to warrant an authorization for dual-city operation.

(4) To determine whether the proposal of Hymen Lake will realistically provide a local transmission facility for its specified station location or for another larger community, in light of all the relevant evidence, including, but not necessarily limited to, the showing with respect to:

(a) The extent to which the specified station location has been ascertained by the applicant to have separate and distinct programing needs;

(b) The extent to which the needs of the specified station location are being met by existing aural broadcast stations;

(c) The extent to which the applicant's program proposal will meet the specific unsatisfied programing needs of its specified station location; and

(d) The extent to which the projected sources of the applicant's advertising revenues within its specified station location are adequate to support its proposal, as compared with its projected sources from all other areas.

(5) To determine, in the event that it is concluded pursuant to the foregoing issue that the proposal will not realistically provide a local transmission service for its specified station location, whether such proposal meets all of the technical provisions of the rules for standard broadcast stations assigned to the most populous community for which it is determined that the proposal will realistically provide a local transmission service, namely Orlando, Fla.

(6) To determine whether the antenna site proposed by S & S Broadcasting Co. will accommodate the proposed antenna ground system and, if not, whether this will adversely affect operation of the proposed directional antenna system.

(7) To determine whether the proposal of Blue Ridge Broadcasting, Inc., would provide coverage of the city sought to be served, as required by § 73.188(b)(1) of the Commission rules, and, if not, whether circumstances exist which would warrant a waiver of said section.

(8) To determine whether the proposal of Hymen Lake would provide coverage of the city sought to be served, as required by § 73.188(b)(1) of the Commission rules, and, if not, whether circumstances exist which would warrant a waiver of said section.

(9) To determine whether overlap would occur between the proposed 0.5 mv/m contour of Hymen Lake and the 0.025 mv/m contour of station WAVS, Fort Lauderdale, Fla., in contravention of § 73.37 of the Commission rules.

(10) To determine whether overlap would occur between the proposed 0.5 mv/m contour of S & S Broadcasting Co. and the 0.025 mv/m contour of station WAVS, Fort Lauderdale, Fla., in contravention of § 73.37 of the Commission rules.

(11) To determine, in light of the evidence adduced pursuant to 10, above, whether the application of S & S Broadcasting Co. is acceptable for filing.

(12) To determine with respect to the application of Blue Ridge Broadcasting Co., Inc.:

(a) Whether the notes receivable are sufficiently liquid to be relied upon to meet first-year construction and operation costs;

(b) Whether there are sufficient additional funds available to the applicant to construct and operate its proposal; and

(c) Whether, in light of the evidence adduced pursuant to (a) and (b), above, Blue Ridge Broadcasting Co., Inc., is financially qualified.

(13) To determine with respect to the application of Hymen Lake:

(a) The present availability of funds to meet construction costs and operating expenses;

(b) Whether, in light of the evidence adduced pursuant to (a), above, Hymen Lake is financially qualified.

(14) To determine with respect to the application of S & S Broadcasting Co.:

(a) Whether Charles F. Sebastian is willing to assume his obligation under the terms of the bank loan commitment letter;

(b) Whether, in light of the evidence adduced pursuant to the foregoing (a), above, the applicant is financially qualified.

(15) To determine the efforts made by Blue Ridge Broadcasting Co., Inc., and S & S Broadcasting Co. to ascertain the community needs and interests of the areas to be served and the means by which they propose to meet those needs and interests.

(16) To determine, in light of section 307(b) of the Communications Act of 1934, as amended, which of the proposals would best provide a fair, efficient and equitable distribution of radio service.

(17) To determine in light of the evidence adduced pursuant to the foregoing issues, which, if any, of the applications should be granted.

23. *It is further ordered,* That the petition to deny the application of S & S Broadcasting Co., filed by WRMF, Inc., licensee of station WRMF, Titusville, Fla., is granted to the extent indicated above and is denied in all other respects.

24. *It is further ordered,* That WRMF, Inc., licensee of station WRMF, Titusville, Fla., is made a party to the proceeding.

25. *It is further ordered,* That the petition to deny the application of Hymen Lake filed by S & S Broadcasting Co. is granted to the extent indicated above and is denied in all other respects.

26. *It is further ordered,* That the informal objections to the applications of Hymen Lake and S & S Broadcasting Co. filed by Blue Ridge Broadcasting Co., Inc., is granted to the extent indicated above and is denied in all other respects.

27. *It is further ordered,* That, to avail themselves of the opportunity to be heard, the applicants and party respondent herein, pursuant to § 1.221(c) of the Commission rules, in person or by attorney, shall within 20 days of the mailing of this order, file with the Commission in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this order.

28. *It is further ordered,* That the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 1.594 of the Commission rules, give notice of the hearing, either individually or, if feasible, and consistent with the rules, jointly, within the time and in the manner prescribed in such rule, and shall advise the Commission of the publication of such

[6] Suburban Broadcasters, 30 FCC 1021, 20 RR 951 (1961).

notice as required by § 1.594(g) of the rules.

Adopted: February 9, 1972.

Released: February 14, 1972.

FEDERAL COMMUNICATIONS COMMISSION,[1]
[SEAL] BEN F. WAPLE,
Secretary.

[FR Doc.72-2424 Filed 2-16-72;8:48 am]

[FCC 72-105]

FEDERAL AVIATION ADMINISTRATION

Unauthorized Broadcast of Communications by Broadcasters and Other Federal Communications Commission Licensees

FEBRUARY 2, 1972.

The Commission has been notified by the Federal Aviation Administration in connection with recent aircraft hijackings that some broadcasters and other Federal Communications Commission licensees have engaged in monitoring of Federal Aviation Administration air-to-ground communications and divulging their content to the public, in some instances by broadcasting live or taped reproduction of such conversations. The Federal Aviation Administration has not authorized such activities and has reported that the widespread public dissemination of these radio transmissions could seriously hinder law enforcement activities during an actual aircraft hijacking and therefore jeopardize the lives of passengers and crew. Moreover, such radio transmissions serve to alert potential hijackers to the modus operandi of law enforcement and provide blueprints for future hijackings with increased danger to the public.

The Commission recognizes that there is a strong public interest in the free gathering and dissemination of news and does not wish to discourage broadcast stations or other news media in their proper efforts to serve such public interest. However, it must also be recognized that there is a strong public interest in public safety, and that the divulgence of public safety communications in news bulletins or other use of such intercepted communications is contrary to law unless authorized.

Section 605 of the Communications Act, with limited and specified exceptions, prohibits any person, not authorized by the sender, from intercepting and divulging or using radio communications of this character. This prohibition is applicable to the practice of monitoring such Federal Aviation Administration communications for the purpose of obtaining information as to events worthy of on-the-spot news coverage, to making other beneficial use of such interceptions, and to the divulgence of the content of such transmissions either in verbatim form or in news bulletins.

Federal Aviation Administration officials are of course desirous of cooperating with the news media to the extent consistent with public safety and the discharge of law enforcement responsibilities. Therefore, licensees should contact the officials of the Federal Aviation Administration who are authorized to grant the necessary authority for the interception and divulgence of Federal Aviation Administration air-ground communications, and ascertain the conditions under which monitoring and divulgence would be appropriate. Licensees must give all due consideration to the conditions imposed.

Broadcasters and other licensees are advised that unauthorized use or divulgence of Federal Aviation Administration air-ground communications is a violation of section 605 of the Communications Act and could subject licensees and others involved to criminal prosecutions or other sanctions under the Communications Act of 1934, as amended.

Action by the Commission February 2, 1972.[2]

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

[FR Doc.72-2420 Filed 2-16-72;8:49 am]

[FCC 72-79]

STATION KSL-TV, SALT LAKE CITY, UTAH

Order Regarding "Prime Time Rule" Waiver

In the matter of request for waiver of the "Prime Time Access Rule," § 73.658 (k), filed by Station KSL-TV, Salt Lake City, Utah.

1. The Commission here considers a request filed February 3, 1972, by KSL, Inc. (KSL), licensee of Station KSL-TV, Salt Lake City, Utah, for "one-time" waiver of the prime time access rule, § 73.658(k) of the Commission's rules. The waiver is sought for Thursday, February 10, 1972, and is occasioned by the fact that on that evening the CBS movie, normally 2 hours, will run 2½ hours, 9 to 11:30 p.m., e.t. In the rest of the United States other than the mountain zone, this "overrun" beyond the usual 2 hours will occur after prime time ends, and no problem is created; but KSL-TV carries this program normally from 8 to 10 p.m., m.t., so that the half-hour "overrun" will occur during prime time in its case. With an earlier hour of CBS prime time network material from 7 to 8 p.m., m.t. (the "Sonny and Cher" program), this would mean 3½ hours during prime time on this particular evening. Thus, the situation reflects the problem common to mountain zone stations where they have not chosen to redesignate their "prime hours" as 6 to 10 instead of 7 to 11—the need to present during prime hours network material which in the rest of the United States occurs after prime time ends. The three Salt Lake City stations are in this situation, not having chosen to redesignate their hours.

2. Last summer KSL opposed the efforts of some other mountain zone stations to change the "prime hours" in that zone from 7–11 to 6–10, m.t., and, as indicated, neither it nor the other two Salt Lake City stations have chosen to take advantage of the permission given last October to mountian zone stations to do this. KSL has not previously requested any waivers of the rule, although two other Salt Lake City stations, with which it competes, have done so and received waivers (KCPX in connection with an ABC football game plus news last fall, and KUTV in connection with two NBC "specials" on one evening and again for two evenings of NBC Winter Olympic coverage this month).[1] KSL asserts in support of its request both the unique mountain zone scheduling problems mentioned above, and the competitive disadvantage which has affected it because of grant of the waivers to the two competing stations.

3. Under all of the above-mentioned circumstances, we consider that waiver is warranted, and are granting it as requested. It is to be noted that we have the whole subject of possible rule modification to deal with these unique mountain zone stations under consideration, and a more general statement may be forthcoming shortly.

4. In view of the foregoing: *It is ordered,* That waiver of § 73.658(k) of the Commission's rules, the "prime time access rule," is granted to Station KSL-TV, Salt Lake City, Utah, to present up to 3½ hours of CBS network programs during prime hours on Thursday, February 10, 1972.

Adopted and released: February 10, 1972.

FEDERAL COMMUNICATIONS COMMISSION,[2]
[SEAL] BEN F. WAPLE,
Secretary.

[FR Doc.72-2422 Filed 2-16-72;8:47 am]

[FCC 72-98]

WESTERN UNION OF HAWAII, INC.

Memorandum Opinion and Order Regarding Declaratory Ruling

In the matter of Western Union of Hawaii, Inc., request for declaratory ruling concerning the applicability of section 222 of the Communications Act.

1. The Commission has under consideration a request filed by Western Union of Hawaii (W.U.-Hawaii),[3] seeking a

[1] Commissioners Bartley, H. Rex Lee, and Wiley absent.

[1] Commissioners Burch (Chairman), Bartley, Robert E. Lee, Reid, and Wiley, with Commissioner Johnson concurring.

[1] KUTV has also recently filed requests, now under consideration, for six dates in February and March 1972, to accommodate six NBC Saturday night movie overruns.

[2] Commissioners Bartley and H. Rex Lee absent; Commissioner Johnson dissenting.

[3] W.U.-Hawaii was incorporated in the State of Hawaii on Jan. 26, 1971. Both W.U.-Hawaii and Western Union Telegraph Co. (WUTC) are wholly owned subsidaries of Western Union Corp. (WUC).

declaratory ruling pursuant to 5 U.S.C. 554(e) and § 1.2 of the Commission's rules, as to whether its proposed intrastate communications service in the State of Hawaii is precluded by prohibitions contained in section 222 of the Communications Act of 1934. W.U.-Hawaii now has pending before the Hawaii Public Utility Commission (Hawaii PUC) an application to be declared a public utility under Hawaiian State law. W.U.-Hawaii proposes a Switched Data Exchange Service which will enable subscribers to exchange printed communications within the State of Hawaii, as well as to transmit and receive such communications to and from points beyond Hawaii through interconnection with overseas carriers.

2. Western Union International Inc. (WUI),[2] RCA Global Communications Inc. (RCA Globcom), and Hawaiian Telephone Co. (HTC) were granted permission to intervene in the proceedings before the Hawaii PUC. WUI and HTC raised the question of whether Western Union Corp., through a wholly owned subsidiary (W.U.-Hawaii), is precluded by section 222 from providing intrastate record communications service in Hawaii, and this question was argued and briefed for the Hawaii PUC. Matters of State law are also in issue before that body, but have no bearing on the question presented to this Commission.

3. While the matter was pending before the Hawaii PUC, W.U.-Hawaii submitted a request to the Commission to issue a declaratory opinion concerning the applicability of section 222 to its proposed service.[3] W.U.-Hawaii, by its request, is not seeking authorization from this Commission to commence operations under the Communications Act. The reason for submiting the request was the realization that an interpretation of federal law was involved and that any determination reached by the Hawaii PUC with respect to intrastate operations of W.U.-Hawaii would not be binding on this Commission in any action it may wish to take under section 222 vis-a-vis W.U.-Hawaii.

4. By letter dated September 10, 1971, the communication carriers who had intervened before the Hawaii PUC, as well as all other carriers who might be affected by a decision as to the applicability of section 222, were notified as to W.U.-Hawaii's request for a declaratory ruling and given the opportunity to file briefs and comments regarding this question. WUI, HTC, and RCA Globcom responded by filing briefs which they had submitted to the Hawaii PUC and supplemental comments.

5. The carriers in their supplemental comments raised a number of issues. WUI asked that the Commission first act on its application (File No. T-C-2236) to extend its service between the islands of Oahu and Hawaii. RCA Globcom and WUI both asked the Commission not to confine its opinion solely to the section 222 issue, but rather to determine whether it would be in the public interest to permit W.U.-Hawaii, rather than some other carrier, provide the service. Lastly, RCA Globcom in particular was concerned as to the possibility of W.U.-Hawaii engaging in discriminatory interconnection practices in Hawaii with the international carriers which provide service between Hawaii and points outside Hawaii.

6. In considering these issues raised by the carriers in their comments, we wish to stress the limits of the question presented. We deem it appropriate under the present circumstances to render a declaratory ruling on whether section 222, or any other section of the Communications Act, bars W.U.-Hawaii from providing telegraph service within the State of Hawaii. This is the sole question now before us. W.U.-Hawaii is not seeking authority from this Commission to operate within the State of Hawaii and, absent any bar under the Communications Act, it is for the Hawaii PUC to determine whether it would be consistent with Hawaiian law and in the public interest for W.U.-Hawaii to operate within that State. Moreover, the question of possible discrimination by W.U.-Hawaii in interconnecting with the international carriers operating out of Hawaii is not before us. It is sufficient to note that if W.U.-Hawaii is granted authority to operate within the State of Hawaii, this Commission will have ample authority with respect to any interconnection, including the question of whether its interconnection practices are discriminatory. See, e.g., sections 201 and 202 of the Communications Act. Finally, we can see no reason why our declaratory ruling, limited solely to the legal question as to the applicability of section 222, must await action on WUI's pending application concerning the extension of its interstate and foreign service from the Island of Oahu to the Island of Hawaii.

7. We next consider the argument of W.U.-Hawaii that section 2(b)(2) of the Act exempts its proposed service from the prohibitions contained in section 222. Even assuming, arguendo, that W.U.-Hawaii would be a section 2(b)(2) carrier, we are unable to accept this argument.

Section 2(b)(2) exempts from Commission jurisdiction "any carrier engaged in interstate or foreign communication solely through physical connection with the facilities of another carrier not directly or indirectly controlling or controlled by, or under direct or common control with such carrier."[4] However, we are not dealing here with a question of Commission jurisdiction, but rather with the applicability of certain prohibitions governing the operations of the merged domestic telegraph carrier. The merged carrier, W.U.-Hawaii's parent, cannot escape any prohibitions which section 222 may impose simply by forming a subsidiary.[5] However, as indicated below, we believe that section 2(b) is relevant to determining whether section 222 bars W.U.-Hawaii's proposed intrastate service, to the extent section 2(b) embodies the principle of leaving regulation of intrastate communications to State regulatory bodies to the maximum extent.

8. We turn then to consider section 222, which WUI and HTC contend bars W.U.-Hawaii from offering telegraph service within the State of Hawaii.[6] The key to such consideration is an analysis of the background and purposes of section 222. In our report and order "In the Matter of Amendment of the Communications Act of 1934, As Amended, Relating to Telegraph Service" to Hawaii, 28 F.C.C. 599 (1960), which dealt solely with the question of the carriage of telegraph traffic by WUTC between Hawaii and the mainland, we set forth, in extenso, the background and purposes of section 222. We there stated (28 F.C.C. at 602-604):

PURPOSE OF SECTION 222

* * * * *

11. Prior to 1943, Western Union and Postal Telegraph, Inc., were the two principal telegraph carriers providing service, by means of landlines, between points on the U.S. mainland, and between such points and points in other countries in North America. Western Union also provided telegraph service between the U.S. mainland and oversea points by means of its ocean-cable system. It carried on this oversea service in competition with a number of other telegraph carriers which were primarily engaged in such oversea service.[6] Since these latter carriers had only limited facilities for the collection of traffic from, and delivery of traffic to, the public on the U.S. mainland, they were dependent on and had contractural arrangements with either Western Union or Postal Telegraph for the collection and delivery of their traffic at places they did not serve.

12. Section 222 was added to the act to permit Western Union to acquire Postal Telegraph. At the time such legislation was being considered, Congress was concerned, among other things, that after such merger, with the resultant disappearance of Postal Telegraph competition for the mainland handling of the oversea telegraph traffic of these other carriers, Western Union would be able to favor either its own cable system or a particular oversea carrier, to the detriment of others, with respect to pickup and delivery

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[2] WUI is an independent company which in 1963 acquired the overseas operations of the Western Union Telegraph Co. on their divestment pursuant to section 222(c)(2) of the Communications Act.

[3] W.U.-Hawaii on Sept. 13, 1971, filed a motion with the Hawaii PUC requesting it to defer further action on its application pending a ruling by the FCC. On Sept. 29, 1971, the Hawaii PUC granted the motion and deferred action pending a ruling by this Commission.

[4] Except for sections 201-205 and 301 of the Act. However, W.U.-Hawaii has not established that it can qualify as a section 2(b)(2) carrier—in view of the relationship to WUC and WUTC.

[5] Section 222(a)(2) defines the term "domestic telegraph carrier" to include "a corporation owning or controlling any such common carrier."

[6] Section 222 was added to the Act by Public Law No. 4, 78th Cong., first session (1943).

[6] It is to be noted, however, that Western Union did not serve Hawaii via its own facilities, but turned over Hawaiian traffic to the other telegraph carriers in the United States in the same fashion as it turned over traffic destined to all oversea and foreign points which it did not serve.

at mainland points not served by the limited facilities of such carriers.

13. To prevent this, Congress determined that Western Union should divest itself of its oversea telegraph operations (that is, in which it competed with these carriers), and further determined that Western Union should distribute equitably among these oversea carriers such traffic as was filed with it for delivery at points they served outside the U.S. mainland.

14. Congress was unable to attain the purposes it sought by use of the concepts of interstate communication and foreign communication which were defined in section 3 of the act, since these concepts did not distinguish telegraph service between points in North America from telegraph service between points in North America and oversea points, whether such oversea points were United States or foreign. Thus, subsection 3(e) defines interstate communication, in essence, as being between points in the United States, including its Territories and possessions,[7] and subsection 3(f) defines foreign communication, in essence, as being between the United States, as above, and a foreign country.

15. As can be seen, the section 3 definitions distinguished interstate communication from foreign communication by a political criterion, that is, whether the communication was solely between U.S. points, or whether it was between a U.S. point and a foreign point. It was immaterial to these section 3 definitions whether or not the communication involved oversea transmission or whether the U.S. point was a State, Territory, or possession. Political affiliation with the United States rather than geographic location determined whether the service was interstate or foreign.

16. But whether communications involved an oversea transmission, i.e., the geographic location of the point rather than the political affiliation, was the very thing that Congress considered determinative of those telegraph operations which Western Union must divest on merger, and those telegraph operations that it could retain after merger. It therefore was unable to use the section 3 definitions for the purpose of section 222, but found it necessary to create, on a geographic basis, two new concepts—domestic telegraph operations and international telegraph operations—under which telegraph operations are distinguished by the test of whether they involve an oversea transmission regardless of the political control exercised over the oversea point.

17. The definitions of domestic telegraph operations and international telegraph operations are essential to section 222. The former, insofar as is relevant hereto, encompassed the telegraph operations carried on over the landline facilities of Western Union and included service taking place entirely within the area composed of the "continental United States, Alaska, Canada, St. Pierre-Miquelon, Mexico, [and] Newfoundland."[8] The latter, on the other hand, so far as is revelant hereto, are those operations taking place between the above area and points outside it.[9] The "continental United States" is defined as the "several States and the District of Columbia."[10]

18. As can be seen, these definitions separated telegraph operations conducted by landlines on the North American Continent from telegraph operations which involved an oversea transmission to points outside the North American Continent.[11]

19. The absence of any political basis in distinguishing the definition of domestic telegraph operations from the definition of international telegraph operations is strikingly apparent. Thus, service between the mainland United States and the points in Canada, Newfoundland, St. Pierre-Miquelon, and Mexico, all foreign points, is defined as a domestic operation. On the other hand, service between the U.S. mainland and Hawaii, Puerto Rico, the Virgin Islands, or any other U.S. possession, is defined as an international telegraph operation, although service with Alaska is a domestic telegraph operation. The two definitions distinguish, without regard to the political status of points, landline operations on North America from oversea operations.

* * * * *

21. The definitions of domestic telegraph operations and international telegraph operations underlie the entire legislative scheme of section 222. Thus, they are used to distinguish the telegraph carriers, i.e., domestic, who may merge under the section from those who cannot, i.e., international;[16] the properties, facilities, and operations that such a merged carrier may acquire from a carrier not primarily a telegraph carrier or from an international telegraph carrier;[17] the operations that the consolidated or merged carrier must divest;[18] and the carriers among whom the consolidated or merged carrier must distribute traffic destined to points outside the continental United States.[19]

22. We must conclude therefore that in section 222 Congress intended that, as a condition to its merger with Postal Telegraph, Western Union, as a domestic telegraph carrier, must withdraw from competition with the international telegraph carriers to oversea points, whether they be foreign points or interstate points under section 3.

9. In its 1960 decision, the Commission went on to conclude that service between the State of Hawaii and the mainland of North America must be considered to be an international telegraph service under the provisions of section 222 (28 F.C.C. at 608). However, that conclusion is not dispositive of the question presently before us, which solely concerns intrastate telegraph service within the State of Hawaii. As indicated in the above-recited background and purpose of section 222, Congress was concerned that a merged domestic telegraph carrier not be in a position to compete unfairly with the international telegraph carriers, and thus moved to bar any merged domestic carrier from those areas where it would be competing with the international carriers. To effectuate this goal Congress adopted, for purposes of section 222, special definitions of "domestic" and "international" telegraph operations based on geographic rather than political principles. Thus, it included under "international" all service between the mainland and overseas points, regardless of whether the latter might be politically part of the United States, because the international carriers served such points.

10. We find no Congressional intent or purpose, however, to address itself to purely intrastate telegraph operations which would not involve competition with the international carriers. Further, the legislative history of the 1960 amendment to section 222(a)(10)[7] buttresses the conclusion that it was not the purpose and intent of Congress to address itself to the status of telegraphic traffic within the State of Hawaii, but rather to insure that, with the advent of Hawaiian statehood, mainland-Hawaii telegraph service continued to be classified as "international" for the purposes of that section. Thus, the Congressional Committee reports state that the amendment to section 222(a)(10) was intended to provide "for maintenance * * * of the treatment of telegraphic operations between the mainland and Hawaii as international rather than domestic in character * * *"[8]

11. Absent a clear congressional mandate that the merged telegraph carrier be foreclosed from providing intrastate service in Hawaii or any other State, we are of the view that section 222 should not be construed as foreclosing the State of Hawaii from authorizing Western Union to provide telegraph service within that State, should the Hawaii PUC determine that such authorization is otherwise consistent with State law and would serve the public interest. We deem this conclusion to be consistent with the general scheme of the Communications Act to leave intrastate common carrier regulation to the States where such regulation will not interfere or be inconsistent with the Act.[9] Moreover, the conclusion is particularly applicable to the State of Hawaii. Thus, the Act of March 18, 1959, providing for Hawaiian statehood, states: "the State of Hawaii is hereby declared to be a State of the United States of America, is declared admitted to the Union, on an equal footing with the other States in all respects whatever * * *."[10] The legislative history of the 1960 amendment to section 222(a)(10), which

[7] Except the Canal Zone.
[8] Subsection 222(a)(5).
[9] Subsection 222(a)(6).
[10] Subsection 222(a)(10). (This section was subsequently amended. See paragraph 10 infra.)

[11] As set forth below (see par. 23), Western Union contends that Hawaii now is one of the States comprising the continental United States so that telegraph service between it and North America is a domestic telegraph operation. There is no doubt that under section 222 such service was an international telegraph operation while Hawaii was a territory.

[16] Subsection 222(b)(1) makes it lawful, after approval of this Commission, for "two or more domestic telegraph carriers" to consolidate or merge. Subsection 222(a)(2) defines such a carrier as one "the major portion of whose traffic and revenues is derived from domestic telegraph operations." Subsection 222(a)(3) defines an international telegraph carrier as one "the major portion of whose traffic and revenues is derived from international telegraph operations." Subsection 222(b)(1) prohibits consolidation or merger between an international telegraph carrier and a domestic telegraph carrier.
[17] Subsection 222(b) (1) and (2).
[18] Subsection 222(c)(2).
[19] Subsection 222(e)(1).

[7] Section 222(a)(10) originally read: "The term 'continental United States' means the several States and the District of Columbia." Public Law 86-624 (1960), amended the provision to read: "The term 'Continental United States' means the District of Columbia and the States of the Union, except Hawaii".
[8] Sen. Rep. No. 1681, 86th Cong., second session, p. 5; H. Rep. No. 1564, 86th Cong., second session, p. 3. See, also, Sen. Rep. No. 1681, pp. 18-19 and H. Rep. No. 1564, pp. 17-18.
[9] See section 2(b) of the Act.
[10] Public Law No. 86-3 (1959).

excluded Hawaii from the definition of "Continental United States", makes clear that it is an exception to the "equal footing" doctrine.[11] We believe that the exception should be construed narrowly, so as to accomplish the stated congressional purpose, i.e., maintain mainland to Hawaii telegraph service as international, while at the same time avoiding any unnecessary circumscription of the State of Hawaii's authority over its intrastate telegraphic service. Accordingly, we conclude that neither section 222 nor any other section of the Act bars WU-Hawaii from providing telegraph service between points in the State of Hawaii.

12. Finally, we wish to stress again the narrow scope of this declaratory ruling. It is addressed solely to the applicability of section 222 to the proposed intrastate telegraphic operations of W.U.-Hawaii in the State of Hawaii. We are not determining whether W.U.-Hawaii should, in fact, be authorized to provide the proposed service and we are not, of course, making any ruling on the far different question, raised in some of the pleadings, of whether section 222 would bar W.U.-Hawaii from itself providing telegraphic service from Hawaii to points outside Hawaii (other than the continental United States). Authority for such extension of service would be required from the Commission. Similarly, we are not ruling on the question of whether W.U.-Hawaii may interconnect at Hawaii with a carrier providing service between Hawaii and the mainland or other points outside Hawaii, a matter also subject to the jurisdiction of this Commission.

13. In view of the foregoing, the request of W.U.-Hawaii for a declaratory ruling is granted as indicated above.

Adopted: February 2, 1972.

Released: February 4, 1972.

FEDERAL COMMUNICATIONS COMMISSION,[12]
[SEAL] BEN F. WAPLE,
Secretary

[FR Doc.72-2425 Filed 2-16-72;8:48 am]

[Report 582]

COMMON CARRIER SERVICES INFORMATION [1]

Domestic Public Radio Services Applications Accepted for Filing [2]

FEBRUARY 7, 1972.

Pursuant to §§ 1.227(b)(3) and 21.30 (b) of the Commission's rules, an application, in order to be considered with any domestic public radio services application appearing on the list below, must be substantially complete and tendered for filing by whichever date is earlier: (a) The close of business 1 business day preceding the day on which the Commission takes action on the previously filed application; or (b) within 60 days after the date of the public notice listing the first prior filed application (with which subsequent applications are in conflict) as having been accepted for filing. An application which is subsequently amended by a major change will be considered to be a newly filed application. It is to be noted that the cutoff dates are set forth in the alternative—applications will be entitled to consideration with those listed below if filed by the end of the 60-day period, only if the Commission has not acted upon the application by that time pursuant to the first alternative earlier date. The mutual exclusivity rights of a new application are governed by the earliest action with respect to any one of the earlier filed conflicting applications.

The attention of any party in interest desiring to file pleadings pursuant to section 309 of the Communications Act of 1934, as amended, concerning any domestic public radio services application accepted for filing, is directed to § 21.27 of the Commission's rules for provisions governing the time for filing and other requirements relating to such pleadings.

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

APPLICATIONS ACCEPTED FOR FILING

DOMESTIC PUBLIC LAND MOBILE RADIO SERVICE

4370-C2-ML-72—Thomaston Telephone Co. (KIR201), change the base frequency to 152.75 MHz, located atop Brooks Mountain, 5 miles west-northwest of Thomaston, Ga.

4677-C2-P-(2)-72—The Pacific Telephone & Telegraph Co. (KMA400), change the antenna system operating on 454.575 and 454.625 MHz at location No. 4: 420 South Grand Avenue, Los Angeles, CA.

4686-C2-P-(3)-72—Two-Way Radio of Carolina, Inc. (KUA277), relocate facilities operating on 152.12 MHz to Dunn Mountain, 3 miles southeast of Salisbury, N.C.; change the antenna system for same; add repeater facilities to operate on 459.30 MHz and add control facilities at a new location described as location No. 2: Baugh Building, 112 South Tryon Street, Charlotte, NC, to operate on 452.30 MHz.

4687-C2-P-(5)-72—Two-Way Radio of Carolina, Inc. (KIY754), change frequencies to 152.15 MHz for the base and 72.96 MHz for repeater; change the antenna system for same and relocate facilities at location No. 1 to: 1,500 feet northeast of Highway No. 211, 7 miles southeast of Aberdeen, N.C.; change the antenna system and relocate the control facilities operating on 452.05 MHz at location No. 2 to: 135 West Hampshire Avenue, Southern Pines, NC, and add control facilities to operate on 75.98 MHz at a new location to be described as location No. 3: Baugh Building, 112 Tyron Street, Charlotte, NC.

4688-C2-P-72—Ten-Four Communications (New), for a new two-way station to be located at 719 Peachtree Road, Mesquite, TX, to operate on 454.350 MHz.

4749-C2-P-72—Westcol Radio Dispatch (New), for a new one-way station to be located at 241 South 14th Street, Grand Junction, CO, to operate on 152.24 MHz.

4750-C2-TC-72—Mobile Telephone Company of New Jersey, consent to transfer of control from Mobile Telephone Co., Transferor, to Robert L. Starer, Transferee. Station: KRS620, Philadelphia, Pa.

4751-C2-P-(2)-72—RAM Broadcasting of Missouri, Inc. (New), for a new one-way station to be located at 7777 Bonhomme Street, Clayton, MO, to operate on 43.22 and 43.58 MHz.

4844-C2-P-(2)-72—RCA Alaska Communications, Inc. (New), for a new two-way station to be located at Tatalina AFS Radome 13 miles, 260° Tn from McGrath, Alaska, to operate on 152.51 and 152.60 MHz.

4850-C2-P-72—Telephone Answering Exchange (KGC404), for additional facilities to operate on 152.06 MHz, located Bald Mountain, WNEP-TV, Scranton, Pa.

4851-C2-P-72—TRi-Cities Answering Service, Inc. (KEK296), change the antenna system operating on 158.70 MHz and relocate to 0.26 mile north of Pierce Hill Road, on Country Road, Binghamton, N.Y.

4852-C2-P-72—ComEx, Inc. (New), for a new two-way station to be located at Steele Hill, Sanbornton, N.H., to operate on 454.075 MHz.

4853-C2-TC-72—Philadelphia Mobile Telephone Co., consent to transfer of control from Mobile Telephone Co., Transferor, to Robert L. Starer, Transferee. Station: KGI775, Philadelphia, Pa.

RURAL RADIO SERVICE

4689-C1-P/L-72—Henry Bonham (New), for a new rural subscriber station to be located at 6.4 miles north-northwest of Appleton, Wash., to operate on 157.89 MHz.

4845-C1-P-72—RCA Alaska Communications, Inc. (New), for a new rural subscriber station to be located at the Post Office Building, Nikolai, Alaska, to operate on 157.77 and 157.86 MHz.

4846-C1-P-72—RCA Alaska Communications, Inc. (New), for a new rural subscriber station to be located at approximately 16 miles west (258° magnetic heading) of McGrath, Takotna, Alaska, to operate on 157.77 and 157.86 MHz.

POINT-TO-POINT MICROWAVE RADIO SERVICE

4679-C1-P-72—Southwestern Bell Telephone Co. (New), C.P. for a new station to be located 1.75 miles northwest of Cat Spring, Tex. Latitude 29°51'52" N., longitude 96°20'39" W. Frequency 4130V MHz toward Pattison "R", Tex.

4680-C1-P-72—Southwestern Bell Telephone Co. (New), C.P. for a new station to be located 8.6 miles north of Pattison, Tex. Latitude 29°56'51" N., longitude 96°00'36" W. Frequency 4150H MHz toward Independence "R", Tex.

4681-C1-P-72—Southwestern Bell Telephone Co. (New), C.P. for a new station to be located 1.9 miles east of Independence, Tex. Latitude 30°19'05" N., longitude 96°18'55" W. Frequency 4110V MHz toward College Station KAMU-TV, Tex.

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[11] Sen. Rep. No. 1681, 86th Cong., second session, p. 5; H. Rep. No. 1564, 86th Cong., second session, p. 3.

[12] Commissioner H. Rex Lee absent.

[1] All applications listed below are subject to further consideration and review and may be returned and/or dismissed if not found to be in accordance with the Commission's rules, regulations, and other requirements.

[2] The above alternative cutoff rules apply to those applications listed below as having been accepted in Domestic Public Land Mobile Radio, Rural Radio, Point-to-Point Microwave Radio, and Local Television Transmission Services (Part 21 of the rules).

POINT-TO-POINT MICROWAVE RADIO SERVICE—continued

4682–C1–P–72—American Telephone & Telegraph Co. (KAK78), 3 miles southeast of Zimmerman, Minn. Latitude 45°24'59" N., longitude 93°32'42" W. C.P. to add frequencies 3750H, 3830H, 3910H, 3950H, 4030H, 4150H, and 4198H MHz toward Cambridge, Minn.

4683–C1–P–72—American Telephone & Telegraph Co. (New), C.P. for a new station to be located 0.5 mile southeast of Cambridge, Minn. Latitude 45°33'31" N., longitude 93°12'34" W. Frequencies 3710H, 3790H, 3870H, 3950H, 4030H, 4110H, and 4190H MHz toward Zimmerman, Minn., and 3710H, 3790H, 3870H, 3950H, 4030H, 4110H, and 4190H MHz toward Wyoming, Minn.

4684–C1–P–72—American Telephone & Telegraph Co. (KAK48), 2 miles northeast of Wyoming, Minn. Latitude 45°21'54" N., longitude 92°59'26" W. Frequencies 3750H, 3830H, 3910H, 3990H, 4070H, 4150H, and 4198H MHz toward Cambridge, Minn.

4685–C1–P–72—First Television Corp. (KGN77), 5 miles northwest of Salisbury, Md., at latitude 38°24'13" N., longitude 75°37'28" W. C.P. to add frequency 6167.6V MHz on azimuth 91°09' toward Berlin, Md. Applicant requests waiver of 21.701(i) of the Commission's rules. Applicant proposes to provide the television signal of Station WBFF(TV) to Eastern Shore CATV, operator of the CATV system in Berlin, Md.

4754–C1–P–72—General Telephone Co. of Florida (KIN50), Cleveland Avenue and Bettly Lane, Clearwater, Fla. C.P. to add frequency 3910.0H MHz toward Odessa, Fla.

4755–C1–P–72—General Telephone Co. of Florida (KYJ43), two blocks west of intersection of Gunn Highway and Florida Highway 54, Odessa, Fla. C.P. to add frequency 3870H MHz toward Clearwater, Fla., and 3870H MHz toward Zephyrhills, Fla.

4756–C1–P–72—General Telephone Co. of Florida (KYJ44), 201 South Gall Boulevard, Zephyrhills, FL. C.P. to add frequencies 3910H MHz toward Odessa, Fla., and 6063.8H MHz toward Eva, Fla.

4757–C1–P–72—General Telephone Co. of Florida (KGP53), on Florida Highway 33, 2.3 miles south of Eva, Fla. C.P. to add frequency 6315.84H MHz toward Zephyrhills, Fla.

The following applicants propose to establish omnidirectional facilities for the provision of common carrier "Subscriber-Programmed" television service.

4678–C1–P–72—Microband Corp. of America (New), First National Tower Building, 106 South Main Street, Akron, OH. Latitude 41°04'50" N., longitude 81°31'07" W. Frequencies 2152.325 (visual) and 2150.20 (aural) toward various receiving points of system and 2158.50 (visual) and 2154.00 (aural) toward various receiving points of system.

4752–C1–P–72—Electro-Media Multipoint Service, Inc. (New), Kennecott Building, South Temple and Main Streets. Latitude 40°46'07" N., longitude 111°53'28" W. Frequencies 2152.325 (visual) 2150.20 (aural) toward various receiving points of system and 2158.50 (visual) 2154.00 (aural) toward various receiving points of system.

4753–C1–P–72—Schenectady Cablevision Inc. (New), no number Beaver Dam Road, New Scotland, N.Y. Latitude 42°38'12" N., longitude 73°59'45" W. Frequencies 2152.325 (visual) 2150.20 (aural) toward various receiving points of system and 2158.50 (visual) 2154.00 (aural) toward various receiving points of system.

4847–C1–P–72—Newhouse Alabama Microwave Inc. (New), Radio Park, Red Mountain, Ala. Latitude 33°29'28" N., longitude 86°47'47" W. Frequencies: 2150.20 (aural) 2152.325 (visual) toward various receiving points within the system and 2154.00 (aural) 2158.50 (visual) toward various receiving points within the system.

4848–C1–P/ML–72—New York Telephone Co. (KEH95), operating at any temporary fixed location within the territory of the grantee. C.P. and modification of license to replace transmitters and increase output power for frequency band 5925–6425 MHz. All other terms same as Developmental License File No. 1852–C1–P/ML–72.

4854–C1–P–72—American Telephone & Telegraph Co. (KQF42), 2 miles northeast of Atlas, Mich. C.P. to add frequency 3930H MHz toward Dryden, Mich., on azimuth 90°19'.

4855–C1–P–72—American Telephone & Telegraph Co. (KQO62), 1.4 miles west of Dryden, Mich. C.P. to add frequencies 3970H MHz toward Atlas, Mich., on azimuth 270°33' and 3890H MHz toward Lamb, Mich., on azimuth 94°46'.

4856–C1–P–72—American Telephone & Telegraph Co. (KQO63), 2.75 miles southeast of Lamb, Mich. C.P. to add frequencies 4010H MHz toward Dryden, Mich., on azimuth 275°06' and 3930H MHz toward Wallaceburg, Ontario, on azimuth 125°24'.

INFORMATIVE: It appears that the following applications may be mutually exclusive and subject to the Commission's rules regarding ex parte presentations, by reasons of potential electrical interference.

New York

New Scotland:
Eastern Microwave, Inc. (New), File No. 3087–C1–P–72.
Schenectady Cablevision Inc. (New), File No. 4753–C1–P–72.

Alabama

Red Mountain:
Western Tele-Communications, Inc. (New), File No. 4167–C1–P–72.
Newhouse Alabama Microwave Inc. (New), File No. 4847–C1–P–72.

Major Amendments

INFORMATIVE: Nebraska Consolidated Communications Corp. is amending 26 of its previously filed applications proposing specialized common carrier service in mid-United States with service to Minneapolis, Omaha, Lincoln, Kansas City, St. Louis, Dallas, Austin, Houston, and San Antonio. The applications were filed Apr. 14, 1970, and appeared on Public Notice Apr. 20, 1970, FCC Report No. 488. Subsequent amendments appeared on public notice Aug. 30, 1971, FCC Report No. 559.

6190–C1–P–70—Nebraska Consolidated Communications Corp., Sherburn, Minn., Site No. 6, correct coordinates to latitude 43°38'50" N., longitude 94°44'45" W.; delete frequency 6345.5H MHz toward Spirit Lake, Minn.; change frequency to 6345.5H MHz toward Winnebago; correct azimuth toward Spirit Lake to 242°17' and toward Winnebago to 74°47'.

6197–C1–P–70—Nebraska Consolidated Communications Corp., Sioux City, Iowa, Site No. 13, change frequency toward Wakefield to 5960.0H MHz and toward Vermillion to 5989.7H MHz and delete frequencies 6093.5H and 6093.5V MHz.

6201–C1–P–70—Nebraska Consolidated Communications Corp., Columbus, Nebr., Site No. 17, change frequencies toward Rogers to 6167.6H MHz and delete frequencies 6093.5H and 6093.5V MHz.

6204–C1–P–70—Nebraska Consolidated Communications Corp., Gretna, Nebr., Site No. 20, change frequencies toward Greenwood to 11,345V MHz; toward Omaha to 11,385H MHz; toward Fremont to 6212.0V MHz; and delete frequencies 11,115V, 10,915H, and 6345.5V MHz; correct azimuths toward Greenwood to 208°16'; toward Omaha to 61°00'; toward Fremont to 316°40'; and toward Avoca to 167°46'.

6212–C1–P–70—Nebraska Consolidated Communications Corp., Malcolm, Iowa, Site No. 28, delete frequencies 6345.5H and 6345.5V and correct azimuth toward Williamsburg, Iowa, to 101°51'.

6213–C1–P–70—Nebraska Consolidated Communications Corp., Williamsburg, Iowa, Site No. 29, correct coordinates to latitude 41°39'20" N., longitude 92°05'14" W.; delete frequencies 6093.5V and 6093.5H; correct azimuths toward Malcolm to 282°10' and toward Iowa City to 87°35'.

6214–C1–P–70—Nebraska Consolidated Communications Corp., Iowa City, Iowa, Site No. 30, correct coordinates to latitude 41°40'24" N., longitude 91°28'31" W.; delete frequencies 6345.5V and 6345.5H MHz; correct azimuths toward Williamsburg to 267°59' and toward Muscatine to 120°59'.

6215–C1–P–70—Nebraska Consolidated Communications Corp., Muscatine, Iowa, Site No. 31, change frequency toward Davenport to 5974.8V MHz and delete frequencies 6093.5V and 6093.5H MHz; correct azimuth to 301°18'.

6220–C1–P–70—Nebraska Consolidated Communications Corp., De Kalb, Ill., Site No. 36, change frequency toward Oregon to 6197.2V MHz and delete frequencies 6345.5V and 6345.5H MHz; correct azimuths toward Oregon to 293°20' and toward Elgin to 68°46'.

6221–C1–P–70—Nebraska Consolidated Communications Corp., Elgin, Ill., Site No. 37, change frequency toward De Kalb to 6137.9V MHz and delete frequency 6093.5V and 6093.5H MHz; correct azimuth toward De Kalb to 249°08' and toward Glendale to 137°48'.

6245–C1–P–70—Nebraska Consolidated Communications Corp., Troy, Kans., Site No. 61, delete frequencies 6345.5V and 6345.5H MHz; correct azimuth toward Falls City to 317°18'.

6247–C1–P–70—Nebraska Consolidated Communications Corp., Kansas City, Mo., Site No. 63, correct coordinates to latitude 39°04'57" N., longitude 94°28'46" W.; change frequencies toward Dearborne to 6226.9V MHz and delete frequencies 6345.5V and 6345.5H MHz; correct azimuths toward Hillsdale to 210°54' and toward Dearborne to 330°23'.

6250–C1–P–70—Nebraska Consolidated Communications Corp., Fort Scott, Kans., Site No. 66, change frequencies toward Lamar to 5974.8V MHz and toward Pleasanton to 5974.8H MHz and delete frequencies 6093.5V and 6093.5H MHz; correct azimuth toward Lamar to 133°30'.

Major Amendments—Continued

6288–C1–P–70—Nebraska Consolidated Communications Corp., Claremore, Okla., Site No. 104, correct coordinates to latitude 36°17'18" N., longitude 95°34'15" W.; change frequencies toward Sand Springs to 6226.9H MHz and toward Vinita to 6226.9V MHz and delete frequencies 6345.5V and 6345.5H MHz; correct azimuth toward Vinita to 40°06'.

6293–C1–P–70—Nebraska Consolidated Communications Corp., Oklahoma City, Okla., Site No. 109. Correct coordinates to latitude 35°30'58" N., longitude 97°25'43" W.; change frequency toward Blanchard to 5989.7H MHz and delete frequencies 6093.5H and 6093.5V MHz; correct azimuth to 58°51'.

6300–C1–P–70—Nebraska Consolidated Communications Corp., Dallas, Tex., Site No. 116, change frequency toward Alvarado to 6219.5H MHz and toward Aubrey to 6226.9H MHz and delete frequency 6338.1V and 6360.3H MHz; correct azimuth toward Alvarado to 215°49' and toward Aubrey to 340°00'.

6301–C1–P–70—Nebraska Consolidated Communications Corp., Alvarado, Tex., Site No. 117, correct coordinates to latitude 32°25'07" N., longitude 97°10'49" W.; change frequency toward Hillsboro to 5982.3H MHz and delete frequencies 6093.5V and 6093.5H MHz; correct azimuths toward Hillsboro to 168°40' and toward Dallas to 35°37'.

6302–C1–P–70—Nebraska Consolidated Communications Corp., Hillsboro, Tex., Site 118, correct coordinates to latitude 31°59'05" N., longitude 97°04'42" W.; change frequencies toward Waco to 6226.9H MHz and toward Alvarado to 6234.3H MHz and delete frequencies 6345.5V and 6345.5H MHz; correct azimuth toward Waco to 212°03' and toward Alvarado to 12°44'.

6303–C1–P–70—Nebraska Consolidated Communications Corp., Waco, Tex., Site No. 119, correct coordinates to latitude 31°32'56" N., longitude 97°23'48" W.; change frequencies toward Temple to 5982.3V MHz and toward Hillsboro to 5967.4H and delete frequencies 6093.5V and 6093.5H MHz; correct azimuths toward Temple to 169°23' and toward Hillsboro to 31°53'.

6304–C1–P–70—Nebraska Consolidated Communications Corp., Temple, Tex., Site No. 120, correct coordinates to latitude 31°08'08" N., longitude 97°18'24" W.; change frequency toward Theon to 6234.3H MHz and delete frequencies 6345.5V and 6345.5H MHz; correct azimuths toward Theon to 216°32' and toward Waco to 349°26'.

6305–C1–P–70—Nebraska Consolidated Communications Corp., Theon, Tex., Site No. 121, correct coordinates to latitude 30°45'24" N., longitude 97°37'53" W.; change frequencies toward Austin to 5982.3H MHz and toward Temple to 6004.5H MHz and delete frequencies 6093.5V and 6093.5H MHz; correct azimuths toward Austin to 198°35' and toward Temple to 36°22'.

6307–C1–P–70—Nebraska Consolidated Communications Corp., Bastrop, Tex., Site No. 123, correct coordinates to latitude 30°07'30" N., longitude 97°18'09" W.; change frequency toward La Grange to 5974.8H MHz and delete frequencies 6093.5V and 6093.5H MHz; correct azimuths toward La Grange to 123°28' and toward Austin to 291°51'.

6308–C1–P–70—Nebraska Consolidated Communications Corp., La Grange, Tex., Site No. 124, correct coordinates to latitude 29°52'45" N., longitude 96°52'37" W.; change frequency toward Cat Springs to 6226.9H MHz and delete frequencies 6345.5V and 6345.5H MHz; correct azimuths toward Cat Springs to 98°27' and toward Bastrop to 303°41'.

6309–C1–P–70—Nebraska Consolidated Communications Corp., Cat Springs, Tex., Site No. 125, correct coordinates to latitude 29°48'24" N., longitude 96°19'34" W.; delete frequencies 6093.5V and 6093.5H MHz; correct azimuths toward Katy to 92°05' and toward La Grange to 278°43'.

6310–C1–P–70—Nebraska Consolidated Communications Corp., Katy, Tex., Site No. 126, correct coordinates to latitude 29°49'23" N., longitude 95°49'18" W.; delete frequencies 6345.5V and 6345.5H MHz; correct azimuths toward Houston to 99°05' and toward Cat Springs to 272°20'.

6312–C1–P–70—Nebraska Consolidated Communications Corp., San Marcos, Tex., Site No. 128, correct coordinates to latitude 29°54'24" N., longitude 98°00'07" W.; change frequency toward Austin to 5945.2V MHz and delete frequencies 6093.5H and 6093.5V MHz; correct azimuths toward New Braunfels to 226°28' and toward Austin to 23°07'.

2714–C1–P–71—United Video, Inc. (New), 0.2 mile northeast of Mount Pleasant, Iowa: Application amended (a) to change station location to latitude 40°58'34" N., longitude 91°32'27" W; (b) to delete 11,345H MHz (KPLR–TV) toward Fairfield, Iowa; and (c) to change azimuth to 278°39' toward Fairfield, Iowa.

2715–C1–P–71—United Video, Inc. (New), 2 miles northeast of Fairfield, Iowa: Application amended (a) to change designation of proposed station at Ottumwa, Iowa, from drop/relay to drop; and (b) to delete 11,135V MHz (KPLR–TV) toward Ottumwa, Iowa.

[FR Doc.72–2246 Filed 2–16–72;8:45 am]

FEDERAL POWER COMMISSION

NATIONAL GAS SURVEY SUPPLY-TECHNICAL ADVISORY TASK FORCE-NATURAL GAS SUPPLY

Order Designating an Additional Member

FEBRUARY 11, 1972.

The Federal Power Commission by order issued December 21, 1971 established the Technical Advisory and Coordinating Committee Task Forces of the National Gas Survey.

1. Membership. An additional member to the Supply-Technical Advisory Task Force-Natural Gas Supply, as selected by the Chairman of the Commission with the approval of the Commission, is as follows:

Dr. Morris A. Adelman, Professor of Economics, Massachusetts Institute of Technology.

By the Commission.

[SEAL] KENNETH F. PLUMB, *Secretary.*

[FR Doc.72–2447 Filed 2–16–72;8:50 am]

NATIONAL GAS SURVEY SUPPLY-TECHNICAL ADVISORY TASK FORCE—LIQUEFIED NATURAL GAS (LNG)

Order Designating Additional Members

FEBRUARY 11, 1972.

The Federal Power Commission by order issued December 21, 1971, established the Technical Advisory and Coordinating Committee Task Forces of the National Gas Survey.

1. Membership. Additional members to the Supply-Technical Advisory Task Force—Liquefied Natural Gas (LNG), as selected by the Chairman of the Commission with the approval of the Commission, are as follows:

Amanullah R. Khan, Senior Advisor, Institute of Gas Technology.

Clayton Norris, Senior Project Officer, Export-Import Bank of the United States.

By the Commission.

[SEAL] KENNETH F. PLUMB, *Secretary.*

[FR Doc.72–2448 Filed 2–16–72;8:50 am]

[Docket No. RP70–30 etc.]

ALGONQUIN GAS TRANSMISSION CO.

Order Accepting Tracking Increase for Filing, Allowing Proposed Revised Tariff Sheets to Become Effective Subject to Further Orders and Consolidating Proceedings

FEBRUARY 8, 1972.

On December 23, 1971, Algonquin Gas Transmission Co. (Algonquin) filed an increase in its charges for jurisdictional sales and services of $115,242 annually. The filing tracks the increase filed by Texas Eastern Transmission Corp. on December 23, 1971, pursuant to the stipulation and agreement approved by Commission order issued March 24, 1971, in Docket No. RP70–29 et al. Algonquin requests waiver of the 30 day notice provisions of the Commission's regulations to permit the revised tariff sheets[1] to become effective on January 22, 1972, or such other date as the increased rates proposed by Texas Eastern become effective.

In support of its filing, Algonquin refers to the data which it submitted in support of its tracking increase in Docket No. RP72–70 and states that there has been no material change in facilities, sales volumes, or cost of service other than cost of gas since its filing in Docket No. RP72–70.

[1] Original Volume No. 1, 24th Revised Sheet No. 5; 24th Revised Sheet No. 10; 25th Revised Sheet No. 11–A; 25th Revised Sheet No. 12; 24th Revised Sheet No. 14; 21st Revised Sheet No. 15–J. Original Volume No. 2, 25th Revised Sheet No. 4; 22nd Revised Sheet No. 57.

In view of the fact that the purpose of Algonquin's filing is to track its supplier's rate increase we will accept Algonquin's revised tariff sheets for filing to become effective January 22, 1972, or such later date as the proposed increased rates tendered by Texas Eastern on December 23, 1971, become effective, and consolidate Docket No. RP72–93 with Docket No. RP70–30 et al.

The Commission finds:

(1) It is appropriate and in the public interest for the proceedings in Dockets Nos. RP70–30 et al., and RP72–93 to be consolidated for decision.

(2) It is necessary and proper in the public interest to permit Algonquin to track the filed increase in cost of purchased gas.

(3) Good cause exists to waive the notice provisions of § 154.22 of the Commission's regulations under the Natural Gas Act.

The Commission orders:

(A) The proceedings in Dockets Nos. RP70–30 et al., and RP72–93 are consolidated.

(B) Algonquin is permitted to place into effect the above revised tariff sheets on January 22, 1972, or such other date as the increased rates proposed by Texas Eastern become effective, subject to flow-through of its supplier's refunds and rate reductions and to orders issued in Docket No. RP70–30, et al.

(C) Good cause exists to waive the notice requirements of § 154.22 of the Commission's regulations under the natural Gas Act to permit the tendered sheets to become effective January 22, 1972, or on such other date as the increased rates proposed by Texas Eastern become effective.

The rate increase allowed to become effective by this order merely passes on an increase from Algonquin's gas supplier and is an incremental increase over and above the level of rates of which the justness and reasonableness has not yet been determined by the Commission. Therefore the Commission at this time is unable to make the appropriate certification with regard to this increase under § 300.16(e) of the Price .Commission's regulations.

By the Commission.

[SEAL] MARY B. KIDD,
Acting Secretary.

[FR Doc.72–2438 Filed 2–16–72;8:50 am]

[Project 2514, Virginia]

APPALACHIAN POWER CO.

Notice of Availability of Environmental Statement for Inspection

FEBRUARY 14, 1972.

Notice is hereby given that on September 21, 1971, an agency draft statement pursuant to section 7 of the Guidelines of the Council on Environmental Quality (36 F.R. 7724, April 23, 1971) was placed in the public files of the Federal Power Commission. This statement deals with an application for license filed by Appalachian Power Co. for the Byllesby and Buck Project No. 2514, pursuant to the Federal Power Act. This statement is available for public inspection in the Commission's Office of Public Information, Room 2523, General Accounting Office, 441 G Street NW., Washington, DC. Copies will be available from the National Technical Information Service, Department of Commerce, Springfield, Va. 22151.

The project is located on the New River in the region of Galax and Austinville, Carroll County, Va. The Byllesby Development consists of: (1) A concrete dam approximately 47 feet high and 528 feet long composed of a spillway section, two trash sluice sections, and an integral dam and powerhouse section; (2) a side channel spillway, extending approximately 180 feet upstream, connected to the integral dam and powerhouse; (3) a reservoir of approximately 260 acres in size and having a volume of about 2,060 acre-feet; (4) an integral powerhouse containing four generating units each rated at 5,400 kw.

The Buck Development consists of: (1) A concrete dam approximately 44.4 feet high and about 352 feet long composed of trash sluices and an integral dam and powerhouse; (2) a separate spillway composed of tainter gate sections and flashboard sections; (3) a reservoir of approximately 70 acres in size and having a volume of about 640 acre-feet; (4) an integral powerhouse containing three generating units each rated at 2,835 kw.

Any person desiring to present evidence regarding environmental matters in this proceeding must file with the Federal Power Commission a petition to intervene, and also file an explanation of their environmental position, specifying any difference with the environmental statement upon which the intervenor wishes to be heard, including therein a discussion of the factors innumerated in § 2.80 of Order 415–B. Written statements by persons not wishing to intervene may be filed for the Commission's consideration. The petitions to intervene or comments should be filed with the Commission on or before 60 days from February 17, 1972. The Commission will consider all responses to the statement.

KENNETH F. PLUMB,
Secretary.

[FR Doc.72–2434 Filed 2–16–72;8:49 am]

[Docket No. CP72–190]

COLUMBIA GAS TRANSMISSION CORP.

Notice of Application

FEBRUARY 11, 1972.

Take notice that on January 26, 1972, Columbia Gas Transmission Corp. (applicant), 20 Montchanin Road, Wilmington, DE 19807, filed in Docket No. CP72–190 an application pursuant to section 7 (c) and (b) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas transmission facilities and for permission for and approval of the abandonment of certain natural gas facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant seeks authorization to construct and operate the following facilities to replace and supplement unsafe, obsolete, or inadequate facilities and to assure continued operating flexibility:

1. Approximately 1.7 miles of 12-inch gas transmission pipeline to replace an existing 8-inch pipeline in Sandusky County, Ohio;

2. Approximately 1.2 miles of 20-inch gas transmission pipeline to replace an existing 12-inch pipeline in Richland County, Ohio;

3. Approximately 2 miles of 16-inch gas transmission pipeline to replace in three separate sections an existing 12-inch pipeline in Ashland, Wayne, and Medina Counties, Ohio;

4. Approximately 0.5 mile of 8-inch gas transmission pipeline to replace an existing 4-inch pipeline in Athens County, Ohio;

5. Approximately 5.7 miles of 20-inch gas transmission pipeline to replace an existing 16-inch pipeline in Beaver County, Pa.;

6. Approximately 1.6 miles of 20-inch gas transmission pipeline to replace an existing 14-inch pipeline in Pike County, Pa.;

7. One additional 2,000 horsepower gas engine driven compressor unit at Pavonia Compressor Station, Richland County, Ohio; and

8. Approximately 19.5 miles of 8-inch and 10-inch gas transmission pipeline in Pike County, Ky., and Buchanan County, Va.

Applicant also seeks authorization to abandon the following facilities which it states are no longer used or useful in its operations:

1. Approximately 1.1 miles of 10-inch gas transmission pipeline in Greene County, Pa.;

2. Approximately 6.4 miles of 8-inch gas transmission pipeline in Washington County, Pa.;

3. Approximately 10.9 miles of 16-inch gas transmission pipeline in Beaver County, Pa.;

4. Approximately 0.4 mile of 6-inch gas transmission in Barbout County, W. Va.; and

5. Approximately 32.2 miles of 6-, 8-, and 16-inch gas transmission pipeline in Somerset, Bedford, and Adams Counties. Pa.

Applicant estimates the total cost of the proposed project at $4,207,200 which it plans to finance with internally generated funds.

Applicant states that the purpose of the proposed project is to maintain maximum daily firm deliveries of natural gas to existing customers at the level presently authorized by the Commission.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 3, 1972, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure

(18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and permission and approval for the proposed abandonment are required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.72-2439 Filed 2-16-72;8:50 am]

[Docket No. CP72-189]

COLUMBIA GULF TRANSMISSION CO.

Notice of Application

FEBRUARY 8, 1972.

Take notice that on January 25, 1972, Columbia Gulf Transmission Co. (applicant), Post Office Box 683, Houston, Tex. 77001, filed in Docket No. CP72-189 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of facilities and the transportation of natural gas for Consolidated Gas Supply Corp. (Consolidated), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant seeks authorization to transport for 20 years up to a maximum of 65,000 Mcf of natural gas per day for Consolidated from points in Block 227, Eugene Island Area, and Block 248, Vermilion Area, offshore Louisiana, to a point of delivery near Egan, La., through applicant's capacity entitlement in the Offshore Header and Western Shore Line of the Blue Water Project facilities; to transport up to 20,000 Mcf of the 65,000 Mcf per day from Eugene Island Block 250 to the Offshore Header in Eugene Island Block 227 through applicant's existing pipeline; and to construct and operate a metering station near Egan, La., for use after October 31, 1972. Applicant proposes to deliver the gas through October 31, 1972, to Transcontinental Gas Pipeline Corp. for Consolidated in Acadia and Evangeline Parishes, La., and after October 31, 1972, to deliver the gas to Consolidated at a new metering station to be constructed near Egan, La. Applicant proposes to charge Consolidated a demand rate of 12 cents per month for each Mcf transported from Block 250 to the Offshore Header in the Eugene Island Area and a demand rate of $1.40 per month for each Mcf transported through the Blue Water Project facilities.

Applicant estimates the total cost of the measuring facilities to be installed near Egan, La., for use after October 31, 1972, at $130,000 which it plans to finance through the use of current funds.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 3, 1972, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.72-2416 Filed 2-16-72;8:48 am]

[Docket No. RP70-6, etc.]

LAWRENCEBURG GAS TRANSMISSION CORP.

Order Accepting Tracking Increase for Filing, Allowing Proposed Revised Tariff Sheets To Become Effective Subject to Further Orders and Consolidating Proceedings

FEBRUARY 8, 1972.

Lawrenceburg Gas Transmission Corp., Dockets Nos. RP70-6, RP70-26, RP70-44, RP71-95, RP71-113, RP72-48, RP72-92.

Lawrenceburg Gas Transmission Corp. (Lawrenceburg), on December 22, 1971, tendered for filing in Docket No. RP72-92 proposed changes in its FPC Gas Tariff, Original Volume No. 1,[1] designed solely to track the rate increase filed by its supplier, Texas Gas Transmission Corp. (Texas Gas), to become effective January 22, 1972, but requests that if its filing is suspended, such suspension not extend beyond the date on which Texas Gas' rate filing becomes effective. Lawrenceburg's proposed rate changes would increase charges under its two jurisdictional rate schedules, CDS-1 and EX-1, by approximately $16,923 annually based on volumes for the 12 months ended June 30, 1969.

Lawrenceburg requests waiver of § 154.66(b) of the Commission's regulations under the Natural Gas Act in order to file a change in its tariff which is under suspension in Docket No. RP72-48 and waiver of the Commission's 30 day notice requirements to permit the proposed increased rates to become effective on January 22, 1972.

In support of its filing, Lawrenceburg submitted cost of service and other data substantially identical to that which it submitted in support of its rate increase filings in the above-captioned dockets.

In view of the fact that the purpose of Lawrenceburg's filing is to track its supplier's rate increase we will accept Lawrenceburg's revised tariff sheets for filing and allow them to become effective January 22, 1972, or such later date as Texas Gas' filing becomes effective, subject to further orders of the Commission in Docket No. RP70-6 et al., as consolidated herein.

The cost and related data relied upon by Lawrenceburg in support of its filing in Docket No. RP72-92 and in each of the other above-captioned dockets are substantially the same and issues of law and fact are common to each proceeding. Under these circumstances, it is appropriate that Docket No. RP72-92 be consolidated with the latter proceedings for purposes of hearing and decision.

The Commission finds:

(1) It is reasonable and appropriate that Lawrenceburg's requested waiver of the Commission's regulations be granted and the proposed revised tariff sheets contained in footnote 1, above, be accepted for filing and allowed to become effective January 22, 1972, or such later date as Texas Gas' filing becomes effective.

(2) In view of all the facts and circumstances in this case, the Commission's action herein is consistent with the Economic Stabilization Act of 1970, as amended, and regulations existing thereunder.

The Commission orders:

(A) The Commission's 30 day notice requirements, as contained in § 154.22 of the Commission's regulations, and the provisions of § 154.66(b) of the regulations are waived and Substitute Ninth

[1] The proposed revised tariff sheets are Second Substitute Ninth Revised Sheets Nos. 4 and 12.

Revised Sheets Nos. 4 and 12 of Lawrenceburg's FPC Gas Tariff, Original Volume No. 1, are accepted for filing, to become effective January 22, 1972, or such later date as Texas Gas' filing becomes effective, subject to further orders of the Commission as may be issued in the proceedings in Docket No. RP70–6 et al., as consolidated herein.

(B) The proceedings in Dockets Nos. RP72–92 and RP70–6, et al., are hereby consolidated.

The rate increase allowed to become effective by this order merely passes on an increase from Lawrenceburg's gas supplier and is an incremental increase over and above the level of rates of which the justness and reasonableness has not yet been determined by the Commission. Therefore the Commission at this time is unable to make the appropriate certification with regard to this increase under § 300.16(e) of the Price Commission's regulations.

By the Commission.

[SEAL] MARY B. KIDD,
Acting Secretary.

[FR Doc.72–2440 Filed 2–16–72;8:50 am]

[Docket No. CP72–68]

MICHIGAN POWER CO. AND GREAT LAKES GAS TRANSMISSION CO.

Order Granting Petition To Intervene, Setting Date for Filing Case-in-Chief, and Setting Dates for Prehearing Conference and Hearing

FEBRUARY 14, 1972.

On September 20, 1971, Michigan Power Co. (Michigan Power) filed in Docket No. CP72–68 an application pursuant to section 7(a) of the Natural Gas Act[1] for an order of the Commission directing Great Lakes Gas Transmission Co. (Great Lakes) to establish physical connection of its natural gas transmission facilities with the facilities to be constructed by Michigan Power, and to sell and deliver up to 3,000 Mcf of natural gas per day to Michigan Power, all as more fully set forth in the application. On October 21, 1971, Great Lakes filed an answer in opposition to Michigan Power's application, citing as its reason for opposition the unavailability of the necessary natural gas.

Notice of Michigan Power's application was issued by the Commission September 29, 1971, and published in the FEDERAL REGISTER on October 7, 1971 (36 F.R. 19534). The notice set October 19, 1971, as the date by which any protests or petitions to intervene were to be filed.

An untimely notice of intervention was filed by the Michigan Public Service Commission on October 26, 1971. An untimely petition to intervene on behalf of Michigan Power was filed by the city of Manistique (Manistique) on November 12, 1971. In its petition to intervene Manistique cites the recent appointment of its city attorney as the reason for its late filing.

The Commission finds:

(1) Good cause exists to permit the filing of the untimely notice of intervention by the Michigan Public Service Commission.

(2) Good cause exists to permit the late intervention of the city of Manistique in this proceeding in order that it may establish the facts and the law from which the nature and validity of its alleged rights and interests may be determined and show what further action may be appropriate under the circumstances in the administration of the Natural Gas Act.

The Commission orders:

(A) The above-named petitioner is permitted to intervene in this proceeding subject to the rules and regulations of the Commission: *Provided, however,* That the participation of such intervener shall be limited to matters affecting asserted rights and interests as specifically set forth in said petition for leave to intervene: *And provided, further,* That the admission of such intervener shall not be construed as recognition by the Commission that it might aggrieved because of any order or orders of the Commission entered in this proceeding.

(B) Pursuant to the provisions of § 2.62(c) of the Commission's rules of practice and procedure, the applicant shall serve copies of its filings upon all interveners promptly, unless such service has already been effected pursuant to Part 156 of the regulations of the Natural Gas Act.

(C) Michigan Power Co. shall file with the Commission and serve on all parties and the Commission staff, on or before February 29, 1972, its case-in-chief including the exhibits and prepared testimony upon which it relies in support of its application.

(D) Great Lakes Gas Transmission Co. shall file with the Commission and serve on all parties and the Commission staff, on or before March 14, 1972, its case-in-chief including the exhibits and prepared testimony upon which it relies in opposition to the application of Michigan Power Co.

(E) Any intervener that proposes to offer prepared testimony and exhibits shall file such testimony and exhibits with the Commission and serve them on all parties and the Commission staff on or before March 14, 1972.

(F) Pursuant to the provisions of Section 1.18 of the Commission's rules of practice and procedure, a prehearing conference before a duly designated Presiding Examiner shall commence at 10 a.m., e.s.t., on April 4, 1972, in a hearing room of the Federal Power Commission, 441 G Street NW., Washington, DC 20426 for the purpose of effectuating the expeditious disposition of this proceeding. The purpose of such conference shall be to consider all matters at issue in the above docket and to consider any and all matters which might contribute to an expeditious disposition of this proceeding. The applicant, the respondent, the Commission staff, and all persons who have been permitted to intervene by the Commission shall be entitled to participate in that conference.

(G) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held immediately following the conclusion of the aforeordered prehearing conference in a hearing room of the Federal Power Commission, 441 G Street NW., Washington, DC, concerning the matters involved in and the issues presented by Michigan Power Co.'s application.

By the Commission.

[SEAL] KENNETH F. PLUMB,
Secretary.

[FR Doc.72–2441 Filed 2–16–72;8:50 am]

[Docket No. CP72–196]

TENNESSEE GAS PIPELINE CO.

Notice of Application

FEBRUARY 11, 1972.

Take notice that on January 31, 1972, Tennessee Gas Pipeline Co., a division of Tenneco Inc. (applicant), Post Office Box 2511, Houston, TX 77001, filed in Docket No. CP72–196 an application pursuant to section 7 (c) and (b) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas pipeline facilities and for permission for and approval of the abandonment of certain natural gas pipeline facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant seeks authorization to abandon in place approximately 22.4 miles of 24-inch pipeline in Putman County, W. Va., on its Line No. 2 between Main Line Valves No. 117 and 119 and to construct and operate approximately 12.7 miles of pipeline in Putnam County, W. Va., as an extension of its Line No. 3 from Main Line Valve 118 to 119 and as a replacement for the pipeline to be abandoned. Applicant states that the route of the 24-inch pipeline to be abandoned is highly congested with residences, schools and commercial buildings and if it is to remain operative at its design capacity, it would be necessary to carry out an extensive rehabilitation program on this section of pipeline in order to meet Federal safety regulations. Applicant estimates that if it undertook such a rehabilitation program, its cost would exceed the cost of building a new pipeline and there would be a 7- or 8-day interruption of service. Applicant estimates the cost of the proposed replacement line at $4,412,700 which it plans to finance from general company funds and from its revolving credit agreements.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 6,

[1] 52 Stat. 824 (1938); U.S.C. section 717f (a).

1972, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and permission and approval for the proposed abandonment are required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.72-2443 Filed 2-16-72;8:50 am]

[Docket No. RP72-98]

TEXAS EASTERN TRANSMISSION CORP.

Suspension of Proposed Increased Pipeline Rates

FEBRUARY 11, 1972.

Order accepting tariff sheets containing purchased gas adjustment provision, suspending such sheets, rejecting certain other sheets, providing for hearing, and granting petitions to intervene.

On January 14, 1972, Texas Eastern Transmission Corp. (Texas Eastern) tendered for filing two sets of its FPC Gas Tariff, Third Revised Volume No. 1, and four revised tariff sheets[1] to its Original Volume No. 2. The Company proposes an increase in rates which would add $32.8 million annually to its jurisdictional revenues or approximately 6.4 percent based on operations for the 12-month period ended September 30, 1971, as adjusted.[2] One set of tariff sheets includes a purchased gas adjustment provision; the second, or alternative set excludes such a provision. Texas Eastern request waiver of § 154.38(d)(3) of the Commission's regulations to permit the submitted tariff sheets containing the purchased gas adjustment provision to become effective as of February 13, 1972. In event the waiver is not granted, Texas Eastern requests that the alternative set be permitted to become effective as of that date.

Texas Eastern bases its increased rates on increases in the cost of labor, supplies, expenses, and construction, and an increase in the rate of return to 8½ percent together with the increase in associated income taxes. Also reflected are several changes in the provisions of its presently effective tariff including (1) a definition of "Curtailed Maximum Daily Quantity"; (2) a section which provides that whenever Texas Eastern, due to compliance with directives of governmental agencies, must curtail deliveries to its customers, Texas Eastern shall not be obligated to reduce charges otherwise payable; and (3) an increase in the interest rate for the late payment of bills from 5 percent to 7 percent.

The reasonableness of including a purchased gas adjustment provision in a pipelines' tariff is before us in rule making Docket No. R-406. Under these circumstances, we deem it appropriate and proper at this time to waive § 154.38(d)(3) of our regulations to permit the filing of tariff sheets containing such a provision at this time, subject to such future modification as may be required to conform such provision with § 154.38(d)(4)(vi) of the Commission's proposed regulations, or any substitution or modification thereof, should be adopted by the Commission in said rule making Docket No. R-406.

Review of the rate filing indicates that the issues therein raised require development in evidentiary hearing. The proposed increased rates and charges have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential or otherwise unlawful.

Notices and petitions to intervene were filed by the persons listed below.

The Commission finds:

(1) It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the rates and charges contained in Texas Eastern's FPC Gas Tariff, as proposed to be amended in Docket No. RP72-98, and that the alternative set of tariff sheets which contain a purchased gas adjustment provision be suspended as hereinafter provided.

(2) The disposition of this proceeding should be expedited in accordance with the procedures set forth below.

(3) The participation of the named petitioners below may be in the public interest.

The Commission orders:

(A) Section 154.38(d)(3) of the Commission's regulations is hereby waived to permit the filing of Texas Eastern's tariff sheets containing the purchased gas adjustment provision.

(B) Texas Eastern's tariff sheets as filed on January 14, 1972, containing the purchased gas adjustment provision are hereby accepted for filing subject to the provisions of this order, and those tariff sheets excluding the purchased gas adjustment provision are hereby rejected.

(C) Pursuant to the authority of the Natural Gas Act, particularly sections 4 and 5 thereof, the Commission's rules of practice and procedure, and the Regulations Under the Natural Gas Act (18 CFR, Chapter I), a public hearing shall be held commencing with a prehearing conference on June 20, 1972, at 10 a.m., e.d.t., in a hearing room of the Federal Power Commission, 441 G Street NW., Washington, DC 20426, concerning the lawfulness of the rates, charges, classifications, and services contained in Texas Eastern's FPC Gas Tariff, as proposed to be revised herein.

(D) Pending hearing and decision thereon, Texas Eastern's tariff sheets filed on January 14, 1972, containing said purchased gas adjustment provision are hereby suspended and the use thereof deferred until July 14, 1972, and such further time as such may be made effective in the manner prescribed by the Natural Gas Act.

(E) The tariff sheets accepted herein shall be subject to such modification as may be required to conform with § 154.38(d)(4)(vi) of the Commission's proposed regulations or any substitution or modification thereof, should such be adopted by the Commission in Docket No. R-406.

(F) At the prehearing conference on June 20, 1972, Texas Eastern's prepared testimony (Statement P) together with its entire rate filing shall be admitted to the record as its complete case-in-chief subject to appropriate motions, if any, by parties to the proceeding. All parties will be expected to come to the conference fully prepared to effectuate the provisions of §§ 1.18 and 2.59 of the Commission's rules of practice and procedure, including a useful discussion of all problems involved in the proceeding, both procedural and substantive, and fully authorized to make commitments with respect thereto.

(G) On or before June 2, 1972, the Commission Staff shall serve its prepared testimony and exhibits. The prepared testimony and exhibits of any and all intervenors shall be served on or before June 16, 1972. Any rebuttal evidence by Texas Eastern shall be served on or befor June 30, 1972. Cross-examination on the evidence filed will commence on July 11, 1972.

(H) A Presiding Examiner to be designated by the Chief Examiner for that purpose (see Delegation of Authority, 18

[1] Fourth Revised Sheet No. 241, Eighth Revised Sheets Nos. 232 and 235, and Ninth Revised Sheet No. 322.

[2] Pursuant to outstanding orders in Docket No. RP70-29, Texas Eastern is authorized to track approximately $20 million of additional costs prior to the end of the suspension period herein provided.

CFR 3.5(d), shall preside at the hearing in this proceeding; shall prescribe relevant procedural matters not herein provided, and shall control this proceeding in accordance with the policies expressed in § 2.59 of the Commission's rules of practice and procedure.

(I) The petitioners named in Appendix A are hereby permitted to intervene in this proceeding, subject to the rules and regulations of the Commission: *Provided, however,* That the participation of such intervenors shall be limited to matters affecting the rights and interests specifically set forth in the respective petitions to intervene: *And provided, further,* That the admission of such intervenors shall not be construed as recognition that they or any of them might be aggrieved because of any order or orders issued by the Commission in this proceeding.

By the Commission.

[SEAL] KENNETH F. PLUMB, *Secretary.*

TEXAS EASTERN TRANSMISSION CORP.

[Docket No. RP72-98]

Petitions to Intervene or Notices of Intervention filed by:

New Jersey Natural Gas Co.
Public Service Electric and Gas Co.
Columbia Gas of Ohio, Inc.
Memphis Light, Gas and Water Division, city of Memphis, Tenn.
Indiana Gas Co., Inc.
Consolidated Edison Company of New York, Inc.
United Cities Gas Co.
Columbia Gas Transmission Corp.
The Brooklyn Union Gas Co.
The Public Service Commission for State of New York.
Transcontinental Gas Pipe Line Corp.
Providence Gas Co.
Rochester Gas & Electric Corp.
Central Illinois Public Service Co.
Tennessee Public Service Commission.
Central Hudson Gas & Electric Corp.
Philadelphia Electric Co.
General Services Administration.
Municipal Defense Group (Chambersburg, Pa.; Huntingburg, Ind.; and Franklin, Smyrna, Lebanon, and Pulaski, Tenn.).
Philadelphia Gas Works of UGI.
Consolidated Gas Supply Corp.
United Natural Gas Co.
Orange and Rockland Utilities, Inc.
Equitable Gas Co.
Texas Gas Transmission Corp.
Algonquin Gas Transmission Co.
Elizabethtown Gas Co.
Missouri Utilities Co.
Mississippi Valley Gas Co.
Arkansas-Missouri Power Co., and Associated Natural Gas Co. (jointly).
The Dayton Power and Light Co.
New England Group: (Boston Gas Co.; Bristol and Warren Gas Co.; Brockton Taunton Gas Co.; Buzzards Bay Gas Co.; Commonwealth Gas Co.; The Connecticut Gas Co.; Connecticut Natural Gas Corp.; Fall River Gas Co.; The Hartford Electric Light Co.; town of Middleborough, Municipal Gas and Electric Department; New Bedford Gas and Edison Light Co.; The Newport Gas Light Co.; North Attleboro Gas Co.; city of Norwich, Department of Public Utilities; Pequot Gas Co.; South County Gas Co.; The Southern Connecticut Gas Co.; and Tiverton Gas Co., jointly).

[FR Doc.72-2444 Filed 2-16-72;8:50 am]

[Project 1989]

WISCONSIN PUBLIC SERVICE CORP.

Notice of Application for New License for Constructed Project

FEBRUARY 9, 1972.

Public notice is hereby given that application for new minor license has been filed under the Federal Power Act (17 U.S.C. 791a–825r) by Wisconsin Public Service Corp. (correspondence to Mr. C. A. McKenna, Secretary, Wisconsin Public Service Corp., 1029 North Marshall Street, Milwaukee, WI 53201), for its constructed Merrill Project No. 1989, located in Lincoln County, Wis., within the city of Merrill, on the Wisconsin River. The project affects navigable waters of the United States.

The existing Merrill Project consists of: (1) A concrete dam about 400 feet long and about 18 feet high with twenty-six 12-foot wide and 7-foot high steel lift gates, (2) a reservoir of about 373 acres, extending approximately 3½ miles upstream, (3) a headrace 305 feet long and 115 feet wide at the North end of the dam, (4) a powerhouse containing two generators with total capacity of 840 kw., and (5) all other facilities and interests appurtenant to operation of the project.

According to the application: (1) The estimated net investment is $103,000, which is less than its estimate of fair value, (2) the estimated severance damages in the event of "takeover" are $55,000, and (3) the annual taxes paid to State and local governments are estimated to be about $4,000.

Because the Merrill Project is located within the city limits of Merrill, Wis., some recreational activities are limited or prohibited. The city of Merrill has developed two parks, one within and one adjacent to the project boundaries. Both have access to the reservoir, each has a play ground area and a picnic area, and one park has a bathing area. A constant level is maintained on the pond to encourage boating and fishing. The land owned in fee is not posted, but hunting is limited due to the shortage of game and because it is prohibited by city ordinance. There is a State park adjacent to the west boundary of the project. No further recreational development is proposed or contemplated by the State or local agencies or the applicant.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 24, 1972, file with the Federal Power Commission, in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceedings. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules. The application is on file with the Commission and is available for public inspection.

MARY B. KIDD, *Acting Secretary.*

[FR Doc.72-2445 Filed 2-16-72;8:50 am]

FEDERAL RESERVE SYSTEM

CITIZENS BANK OF SCHOOLFIELD

Order Approving Merger of Banks

Citizens Bank of Schoolfield, Danville, Va., a proposed member State bank of the Federal Reserve System, has applied pursuant to the Bank Merger Act (12 U.S.C. 1828(c)), for the Board's prior approval to merge with Schoolfield Bank & Trust Co., Danville, Va., under the charter of the former and the name of the latter.

As required by the Act, notice of the proposed merger, in form approved by the Board, has been published and the Board has requested reports on competitive factors from the Attorney General, the Comptroller of the Currency, and the Federal Deposit Insurance Corporation. The Board has considered all relevant material contained in the record in the light of the factors set forth in the Act.

On the basis of the record, the application is approved for the reasons summarized in the Board's order of this date relating to the application of First Virginia Bankshares Corp., Arlington, Va., to acquire voting shares of the successor by merger to Schoolfield Bank and Trust Co., Danville, Va. The transaction 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,[1] February 11, 1972.

[SEAL] TYNAN SMITH, *Secretary of the Board.*

[FR Doc.72-2412 Filed 2-16-72;8:48 am]

FIRST VIRGINIA BANKSHARES CORP.

Order Approving Acquisition of Bank

First Virginia Bankshares Corp., Arlington, Va., a bank holding company within the meaning of the Bank Holding Company Act, has applied for the Board's approval under section 3(a)(3) of the Act (12 U.S.C. 1842(a)(3)) to acquire 100 percent of the voting shares (less directors' qualifying shares) of the successor by merger to Schoolfield Bank & Trust Co., Danville, Va. (Bank).

The bank into which Bank is to be merged has no significance except as a means of acquiring the voting shares of

[1] Voting for this action: Vice Chairman Robertson and Governors Daane, Brimmer, and Sheehan. Absent and not voting: Chairman Burns and Governors Mitchell and Maisel.

Bank. Accordingly, the proposed acquisition of the shares of the successor organization is treated as the proposed acquisition of the shares of Bank.

Notice of receipt of the application has been given in accordance with section 3(b) of the Act, and the time for filing comments and views has expired. The Board has considered the application and all comments received in the light of the factors set forth in section 3(c) of the Act (12 U.S.C. 1842(c)) and finds that:

Applicant, the sixth largest banking organization in Virginia, controls 19 banks with aggregate deposits of $540.8 million, representing 6.4 percent of total commercial bank deposits in the State.[1] The acquisition of Bank ($14.2 million deposits) would not represent an appreciable increase in applicant's control of deposits in the State or change its present classification.

Bank controls 8.9 percent of total deposits among the 9 banks and 20 banking offices operating in the relevant market, which approximates the southern half of Pittsylvania County.[2] Bank operates its two offices in the city of Danville, where it ranks as fourth largest of the seven city banks. The nearest of applicant's subsidiaries to Bank is located 150 miles from Danville. No significant present competition exists between Bank and any office of applicant, and it appears that consummation of the proposal would not foreclose the development of potential competition because of the distances involved and Virginia's restrictive branching laws.

The financial and managerial resources of applicant and Bank are satisfactory and prospects for each appear favorable. Banking factors lend some support for approval since applicant will assist Bank in securing replacements for the recent loss of two officers of Bank. Convenience and needs considerations also lend weight toward approval because of new and expanded services planned by applicant, which will improve Bank's ability to compete with representatives of the larger banking organizations in the area. Applicant's planned new services would include an overdraft checking service for Bank and trust services; assistance would also be provided Bank in its staff training program, investment portfolio management, and data processing service. It is the Board's judgment that consummation of the proposal would be in the public interest, and that the application should be approved.

On the basis of the record, the application is approved for the reasons summarized above. The transaction 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,[3] February 11, 1972.

[SEAL] TYNAN SMITH,
Secretary of the Board.

[FR Doc.72-2413 Filed 2-16-72;8:48 am]

[1] Banking data are as of June 30, 1971, and reflect holding company formations and acquisitions approved through Dec. 31, 1971.

[2] Includes Chatham and the independent city of Danville.

[3] Voting for this action: Vice Chairman Robertson and Governors Daane, Brimmer, and Sheehan. Absent and not voting: Chairman Burns and Governors Mitchell and Maisel.

MIDLAND MORTGAGE CORP.

Proposed Continuation of Mortgage Company Activities

Midland Mortgage Corp., Detroit, Mich., has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y, for permission to continue to engage in the activities of a mortgage company. Notice of the application was published on January 13, 1972, in the Detroit Free Press, a newspaper circulated in Detroit, Mich.

Applicant states that it would continue to engage in the following activities: the making or acquiring, for its own account or for the account of others, of real estate mortgage loans and the servicing of real estate mortgage loans. Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question should be accompanied by a statement summarizing the evidence the person requesting the hearing proposes to submit or to elicit at the hearing and a statement of the reasons why this matter should not be resolved without a hearing.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than March 13, 1972.

Board of Governors of the Federal Reserve System, February 11, 1972.

[SEAL] TYNAN SMITH,
Secretary of the Board.

[FR Doc.72-2414 Filed 2-16-72;8:48 am]

UNITED JERSEY BANKS

Acquisition of Bank

United Jersey Banks, Hackensack, N.J., has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire up to 100 percent of the voting shares of Madison State Bank, Madison Township, N.J. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the office of the Board of Governors or at the Federal Reserve Bank of New York. Any person wishing to comment on the application should submit his views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than March 13, 1972.

Board of Governors of the Federal Reserve System, February 11, 1972.

[SEAL] TYNAN SMITH,
Secretary of the Board.

[FR Doc.72-2415 Filed 2-16-72;8:48 am]

SECURITIES AND EXCHANGE COMMISSION

[File No. 500-1]

COATINGS UNLIMITED, INC.

Order Suspending Trading

FEBRUARY 10, 1972.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock, $0.01 par value, of Coatings Unlimited, Inc., being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

It is ordered, Pursuant to section 15(c)(5) of the Securities Exchange Act of 1934, that trading in such securities otherwise than on a national securities exchange be summarily suspended, this order to be effective for the period from February 15, 1972, through February 24, 1972.

By the Commission.

[SEAL] RONALD F. HUNT,
Secretary.

[FR Doc.72-2390 Filed 2-16-72;8:45 am]

[70-5140]

COLUMBIA GAS SYSTEM, INC.

Notice of Proposed Issue and Sale of Debentures at Competition Bidding

FEBRUARY 11, 1972.

Notice is hereby given that the Columbia Gas System, Inc. (Columbia), 20 Montchanin Road, Wilmington, DE 19807, a registered holding company, has filed a declaration and amendments thereto with this Commission pursuant

to the Public Utility Holding Company Act of 1935 (Act), designating sections 6(a) and 7 of the Act and Rule 50 promulgated thereunder as applicable to the following proposed transaction. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transaction.

Columbia proposes to issue and sell, subject to the competitive bidding requirements of Rule 50 under the Act, $50 million principal amount of ------ percent Debentures, Series due March 1997. The interest rate of the debentures (which shall be a multiple of one-eighth of 1 percent) and the price, exclusive of accrued interest, to be paid to Columbia (which shall be not less than 98½ percent nor more than 101½ percent of the principal amount thereof), will be determined by the competitive bidding. The debentures will be issued under an Indenture between Columbia and Morgan Guaranty Trust Company of New York, Trustee, dated as of June 1, 1961, as heretofore supplemented by various indentures and as to be further supplemented by an 18th Supplemental Indenture to be dated as of March 1, 1972. Columbia will not have the right to redeem many of the debentures prior to March 1, 1977, directly or indirectly, with borrowed funds, or in anticipation of funds to be borrowed, having an effective annual interest cost to Columbia of less than the effective annual interest cost of the debentures to Columbia.

The net proceeds from the sale of the debentures will be added to the general funds of Columbia and, together with funds then available and funds to be generated from operations, will be used by Columbia to finance, among other things, part of the cost of its subsidiary companies' 1972 construction program, estimated at $250 million.

It is stated that no State commission and no Federal commission, other than this Commission, has jurisdiction over the proposed transaction. A statement of the fees, commissions, and expenses related to the proposed transaction is to be filed by amendment.

Notice is further given that any interested person may, not later than March 6, 1972, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon the declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration, as amended or as it may be further amended, may be permitted to become effective as provided in Rule 23 of the general rules and regulations promulgated under the Act, or the Commission may grant exemption from its rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

[SEAL] RONALD F. HUNT,
Secretary.

[FR Doc.72-2391 Filed 2-16-72;8:46 am]

[File No. 500-1]

CONTINENTAL VENDING MACHINE CORP.

Order Suspending Trading

FEBRUARY 10, 1972.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock, 10 cents par value of Continental Vending Machine Corp., and the 6 percent convertible subordinated debentures due September 1, 1976, being trading otherwise on a national securities exchange is required in the public interest and for the protection of investors;

It is ordered, Pursuant to section 15(c)(5) of the Securities Exchange Act of 1934, that trading in such securities otherwise than on a national securities exchange be summarily suspended, this order to be effective for the period February 15, 1972, through February 24, 1972.

By the Commission.

[SEAL] RONALD F. HUNT,
Secretary.

[FR Doc.72-2392 Filed 2-16-72;8:46 am]

[812-3121]

INTERNATIONAL UTILITIES OVERSEAS CAPITAL CORP.

Notice of Filing of Application of the Act for Order Exempting Company From All Provisions of the Act

FEBRUARY 11, 1972.

Notice is hereby given that International Utilities Overseas Capital Corp. (Applicant), 3219 Philadelphia Pike, Claymont, DE 19703, a Delaware corporation, has filed an application pursuant to section 6(c) of the Investment Company Act of 1940 (Act) for an order exempting Applicant from all provisions of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations therein, which are summarized below.

Applicant was incorporated on February 16, 1966, in the State of Delaware. Applicant has paid-in capital of $300,000 represented by 3,000 shares of authorized and outstanding capital stock, par value $100 per share, all of which are held by International Utilities Corporation (International).

Applicant now proposes to issue up to $25 million aggregate principal amount of 15-year bonds (the "1972 Series Bonds"), to be guaranteed by Gotaas-Larsen Shipping Corp. (Gotaas-Larsen), a Delaware corporation or, alternatively, by International. Like Applicant, Gotaas-Larsen is a wholly owned subsidiary of International.

The payment of the principal of and interest and premium, if any, on the 1972 Series Bonds will be fully and unconditionally guaranteed by Gotaas-Larsen, and its guarantee will be in turn secured by mortgage upon vessels owned by subsidiaries of Gotaas-Larsen, or by pledge of stock of such subsidiaries or by assignments of the rights of such subsidiaries under charter of vessels owned by them or by a combination of such forms of collateral security. Provision will be made for termination of the liability of Gotaas-Larsen as guarantor and for the release of the collateral security for its guarantee upon the substitution of International's guarantee of payment of the 1972 Series Bonds, which in turn may be supplanted by the reinstatement of Gotaas-Larsen's guarantee with the requisite security, all at the option of Applicant.

In connection with the distribution of the 1972 Series Bonds steps will be taken to assure that the Bonds will not be distributed within the United States or its territories or possessions or to nationals or residents thereof. Applicant is advised by counsel that U.S. persons will be required to report and to pay interest equalization tax with respect to the acquisition of the 1972 Series Bond, except where a specific statutory exemption is available.

Applicant contends that the proposed issue of Applicant's 1972 Series Bonds is consistent with the conditions set forth in Rule 6c-1 in all respects, except that the Bonds will initially be guaranteed by, and may throughout their life continue to be guaranteed by, Gotaas-Larsen, rather than by International, which is the "parent company" of Applicant, as defined by the rule.

Applicant represents that the purpose of the proposed issue of its 1972 Series Bonds is to finance the operations of the Gotaas-Larsen group of companies, and that the Bonds are to be guaranteed by Gotaas-Larsen rather than by International because of a fixed corporate policy of International of requiring its subsidiary companies, where they are able to do so, to meet their capital requirements on their own without reliance on or involvement of International's credit. This, Applicant further contends, Gotaas-Larsen is fully able to do so. Provision will be made for the substitution of International's guarantee of the 1972 Series Bonds for that of Gotaas-Larsen, enabling International thus to free the Gotaas-Larsen, guarantee when and if the future financing requirements of

Gotaas-Larsen and the prevailing market conditions make it significantly advantageous to do so.

Applicant further represents that International organized it to enable International to pursue the objective of developing and expanding its foreign operations through substantial investments in foreign companies, while complying with the regulations of the Office of Foreign Direct Investments of the Department of Commerce and the voluntary balance of payments program which preceded those regulations. Except for balance-of-payments considerations, International could carry out this program itself or through subsidiaries such as Gotaas-Larsen without any necessity of registering under the Investment Company Act of 1940. Such direct investments by International or Gotaas-Larsen in its foreign operations would, applicant contends, present no question of registration under the Act.

Applicant represents that the existing equity investment of international in Applicant has been used by Applicant to finance expansions of International's foreign operations, and that the additional equity investment to be made by International in connection with the proposed financing, as well as the net proceeds of the 1972 Series Bonds, will be used by Applicant primarily to finance further projected expansion of such foreign operations through the lending thereof to foreign subsidiaries of Gotaas-Larsen to finance further ship construction and for general corporate purposes.

Applicant contends that it is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act for the Commission to enter an order exempting the Applicant from each and every provision of the Act because (i) the chief purpose of the Applicant is to assist in improving the balance-of-payments program of the United States and to achieve compliance with the Foreign Direct Investment Regulations of the Department of Commerce by obtaining funds for foreign operations in foreign countries; (ii) the payment of the Applicant's Bonds does not depend on the operation or investment policy of Applicant, for the bondholders may ultimately look to the business enterprise of International or Gotaas-Larsen, as guarantors; (iii) none of the securities of the Applicant, other than debt securities, will be held by any person other than International or a wholly owned subsidiary of International, and any additional debt securities of the Applicant issued to or held by the public will be properly guaranteed; (iv) Applicant will not deal or trade in any securities; (v) the Bonds of the Applicant have been and will be sold only to foreign nationals, and the burden of the interest equalization tax will discourage resale to any U.S. national or resident; and (vi) Applicant is qualified in all respects for exemption from all the provisions of the Investment Company Act under the provisions of Rule 6c-1 except for the fact that its proposed 1972 Series Bonds are to be guaranteed by Gotaas-Larsen, rather than by International, a departure from the literal requirement of the rule which does not conflict with the intent and purpose of the rule.

The Applicant requests an exemption from each and every provision of the Act pursuant to section 6(c) thereof, subject to the conditions that:

(1) Any public offering of the securities of Applicant is made pursuant to underwriting or distribution agreements, the terms of which prohibit the offer or sale thereunder of such securities to nationals or residents of the United States or its territories or possessions;

(2) Any securities of Applicant which are convertible or exchangeable shall only be convertible or exchangeable for securities of International and such conversion or exchange shall not take place prior to 6 months from the date of issuance or such shorter period of time as the Secretary of the Treasury or his delegate may approve in writing to Applicant or International;

(3) Upon completion of the long-term investment program of Applicant, at least 80 percent of its assets, exclusive of U.S. Government securities and cash items, will consist of investments in or loans to foreign companies (or domestic companies, substantially all the business of which is conducted outside the United States);

(4) At least 90 percent of the assets of Applicant, exclusive of U.S. Government securities and cash items and short-term investments in foreign government and commercial paper, will be invested in or loaned to companies at least 10 percent of the equity securities of which are, or at the completion of the investment will be, owned, directly or indirectly, by International, and any assets of Applicant not invested in such companies will only be invested in or loaned to companies which are customers or suppliers of International or a subsidiary of International; and any of the assets invested in or loaned to investment companies will only be invested in or loaned to investment companies which are wholly owned subsidiaries of International;

(5) Applicant will not deal or trade in securities;

(6) At the time of their issuance, the securities issued by Applicant (except to International or to a subsidiary of International which is not an investment company) would, if purchased by nationals or residents of the United States, its territories or possessions, be subject to the Interest Equalization Tax or another tax providing a comparable deterrent to the purchase of Applicant's securities by U.S. nationals or residents in the event that the U.S. Interest Equalization Tax expires, is repealed or the rate thereof is reduced to zero, and such fact will be prominently indicated on such securities;

(7) Applicant will not issue, without an order of the Commission, any securities (except to International or to a subsidiary of International which is not an investment company) in the event the U.S. Interest Equalization Tax expires, is repealed or the rate thereof is reduced to zero and such tax is not replaced by another comparable tax; and

(8) Applicant will not issue in a public distribution, without an order of the Commission, any debt securities not guaranteed by International or Gotaas-Larsen as to payment of principal, interest and premium, if any, or any preferred stock not unconditionally guaranteed by International or Gotaas-Larsen as to payment of dividends, payment of the liquidation preference in the event of liquidation, and sinking fund payments, if any.

Section 6(c) of the Act, as here pertinent, authorizes the Commission, by order upon application, conditionally or unconditionally to exempt any person or any class or classes of persons from any provision or provisions of the Act if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than February 22, 1972, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon Applicant at the address stated above. Proof of such service (by affidavit or in case of any 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 information stated in said application, unless an order for hearing upon said application shall be issued upon request or upon the Commission's own motion. Persons who request a hearing or advice as to whether a hearing is ordered, will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

By the Commission.

[SEAL] RONALD F. HUNT, *Secretary.*

[FR Doc.72–2393 Filed 2–16–72;8:46 am]

[70-5136]

OHIO EDISON CO.

Notice of Proposed Issue and Sale of 363,700 Shares of Preferred Stock at Competitive Bidding, Issue of Bonds for Sinking Fund Purposes, Proposed Charter Amendment and Solicitation of Proxies in Connection Therewith

FEBRUARY 11, 1972.

Notice is hereby given that Ohio Edison Co. (Ohio Edison), 47 North Main Street, Akron, OH 44308, a registered holding company and a public-utility company, has filed a declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 (Act), designating sections 6(a), 7, and 12(e) of the Act and Rules 50 and 62 promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transactions.

Ohio Edison proposes to issue and sell, subject to the competitive bidding requirements of Rule 50 under the Act, 363,700 shares of its ——— percent Series Preferred Stock, $100 par value per share. The dividend rate of the preferred stock (which will be a multiple of 0.04 percent) and the price, exclusive of accrued interest, to be paid to Ohio Edison (which will not be less than $100 nor more than $102.75 per share) will be determined by the competitive bidding. The terms will include a prohibition until March 1, 1977, against refunding the issue, directly or indirectly, with the proceeds of funds derived from the issuance of debt securities at a lower effective interest cost or of other preferred stock at a lower effective dividend cost.

The proceeds from the sale of the preferred stock will be used for the acquisition of property, the construction, completion, extension, renewal, or improvement of Ohio Edison's facilities or for the improvement of its service, including advances in connection with the development of a new coal mine, or for repayment of unsecured short-term debt, estimated to be outstanding at the time of issue in the amount of $25 million, or for the reimbursement of its treasury for expenditures made for such purposes.

Ohio Edison also proposes, on or about May 1 and November 1, 1972, to issue $7,066,000 principal amount of its First Mortgage Bonds 3¼ percent Series of 1955 due 1985, under the provisions of its 12th Supplemental Indenture dated as of May 1, 1955, and to surrender such bonds to the Trustee in accordance with the sinking fund provisions. The bonds are to be indentical with those authorized by the Commission on June 1, 1971 (Holding Company Act Release No. 17145), and are to be issued on the basis of unfunded property additions. Ohio Edison estimates that, after giving effect to the issuance of the sinking fund bonds, unfunded net property additions will amount to approximately $170 million as of December 31, 1971.

Ohio Edison also proposes to amend its corporate charter in order to increase the number of shares of cumulative preferred stock, par value $100 per share, which it is authorized to issue from its present authorization of 1 million shares (of which 636,300 shares are now outstanding) to 1,800,000 shares. It is stated that the increase in the number of shares is being sought in order that Ohio Edison will be in a position to issue and sell, from time to time, additional series of cumulative preferred stock to facilitate the financing of its construction program. The present estimated cost of Ohio Edison's construction program is approximately $121,720,000 for 1972. Ohio Edison anticipates that if the proposed charter amendment is approved, the 800,000 shares of preferred stock will be substantially utilized not later than December 31, 1975.

The declaration states that the proposed increase in the authorized cumulative preferred stock of Ohio Edison will require the favorable vote of the holders of at least two-thirds of the total number of outstanding shares of common stock.

It is stated that the issue and use of the sinking fund bonds and the issue and sale of the preferred stock are subject to the jurisdiction of the Public Utilities Commission of Ohio and that no other State commission and no Federal commission, other than this Commission, has jurisdiction over the proposed transactions. The fees and expenses to be paid in connection with the sinking fund bonds are estimated at $1,600, including counsel fees of $500. The fees and expenses to be paid in connection with the increase in the number of shares of authorized preferred stock are estimated at $9,515, including counsel fees of $4,000. The fees and expenses to be paid in connection with the issuance and sale of the preferred stock will be filed by amendment.

Notice is further given that any interested person may, not later than March 3, 1972, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon the declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the declaration as filed or as it may be amended, may be permitted to become effective as provided in Rule 23 of the general rules and regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

[SEAL] RONALD F. HUNT,
Secretary.

[FR Doc.72-2394 Filed 2-16-72;8:46 am]

SMALL BUSINESS ADMINISTRATION

[Licensee No. 02/02-0251]

KENT CAPITAL CORP.

Notice of Surrender of License

Notice is hereby given that Kent Capital Corp., 530 Morgan Avenue, Brooklyn, NY 11222, incorporated under the laws of the State of New York on May 6, 1964, has surrendered its License No. 02/02-0251, issued by the Small Business Administration (SBA) on June 26, 1964.

Kent Capital Corp. has complied with all conditions set forth by SBA for surrender of its license.

Therefore, under the authority vested by the Small Business Investment Act of 1958, as amended, and pursuant to the regulations promulgated thereunder, the surrender of the license of Kent Capital Corp. is hereby accepted and it is no longer licensed to operate as a small business investment company.

Dated: February 10, 1972.

A. H. SINGER,
Associate Administrator for Investment.

[FR Doc.72-2428 Filed 2-16-72;8:49 am]

[Delegation of Authority No. 30 (Revision 13) Amdt. 10]

SUPERVISORY LOAN OFFICER, LOS ANGELES DISTRICT OFFICE

Delegation of Authority To Conduct Program Activities in Field Offices

Delegation of Authority No. 30 (Revision 13) (36 F.R. 5881), as amended (36 F.R. 7625, 36 F.R. 11129, 36 F.R. 13713, 36 F.R. 14712, 36 F.R. 15769, 36 F.R. 22876, 36 F.R. 23421, 36 F.R. 25194, and 37 F.R. 2615) is further amended by revising Part 1, Section A, paragraph 2, as follows:

2. Economic Opportunity (EO) Loans. To approve or decline economic opportunity loans not exceeding $25,000 (SBA share): All officials as shown in subparagraphs. a. through m. of Paragraph 1, of this Section A.

Effective date: January 3, 1972.

THOMAS S. KLEPPE,
Administrator.

[FR Doc.72-2429 Filed 2-16-72;8:49 am]

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

CONSTRUCTION SAFETY ADVISORY COMMITTEE

Notice of Meeting

Notice is hereby given that the Advisory Committee on Construction Safety and Health established under section 107 of the Contract Work Hours and Safety Standards Act (86 Stat. 96; 40 U.S.C. 433), commonly known as the Construction Safety Act, will meet at 9 a.m., on February 23, 1972, in Conference Room 216 A, B, C, and D, of U.S. Department of Labor Building, 14th and Constitution Avenue NW., Washington, D.C. The meeting is open to the public.

The Advisory Committee will take up (1) the request of the Assistant Secretary of Labor for Occupational Safety and Health for advice on the record of the proceeding now pending with regard to proposed rules requiring roll-over protective structures and overhead protection on certain construction equipment (36 F.R. 20772, October 29, 1971) and (2) the request of the Assistant Secretary for advice on a proposed rule on access roadways and grades in the same proceeding. The Advisory Committee will also take up such other matters as the Assistant Secretary may wish to bring before it.

Signed at Washington, D.C., this 16th day of February 1972.

GEORGE C. GUENTHER,
Assistant Secretary of Labor.

[FR Doc.72-2547 Filed 2-16-72;10:35 am]

INTERSTATE COMMERCE COMMISSION

ASSIGNMENT OF HEARINGS

FEBRUARY 14, 1972.

Cases assigned for hearing, postponement, cancellation or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested.

MC 111545 Sub 160, Home Transportation Co., Inc., continued to March 21, 1972, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 134082 Sub 6, K. H. Transport, Inc., MC 42261 Sub 111, Langer Transport Corp., MC 116073 Sub 185, Barrett Mobile Home Transport, MC 133327 Sub 2, Melburn Truck Lines Co., Ltd., now being assigned May 1, 1972, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 56679 Sub 48, Brown Transport Corp., assigned for hearing March 20, 1972, in Room 305, 1252 West Peachtree Street NW., Atlanta, GA.

MC 128273 Sub 94, Midwestern Express, Inc., assigned February 17, 1972, at Chicago, Ill., is canceled and the application is dismissed.

FD 25896, Bush Terminal Railroad Co., Entire Line Abandonment in Kings County, N.Y., and Hudson County, N.J. is now being assigned February 28, 1972, in Room No. 4, U.S. Customs Court, 1 Federal Plaza, New York, NY.

MC 125433 Sub 12, F-B Truck Line, Application dismissed.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.72-2459 Filed 2-16-72;8:51 am]

FOURTH SECTION APPLICATION FOR RELIEF

FEBRUARY 14, 1972.

Protests to the granting of an application must be prepared in accordance with Rule 1100.40 of the general rules of practice (49 CFR 1100.40) and filed within 15 days from the date of publication of this notice in the FEDERAL REGISTER.

LONG-AND-SHORT HAUL

FSA No. 42351—*Grain and related articles from points in southwestern, Texas-Louisiana and WTL Territories.* Filed by Southwestern Freight Bureau, agent (No. B-291), for interested rail carriers. Rates on grain, alfalfa meal or pellets and soybeans, in bulk, in carloads, as described in the application, from points in southwestern, Texas-Louisiana and western trunkline territories, to West Lake Charles, La., and Steeltown, Tex.

Grounds for relief—Rate relationship.

Tariffs—Supplement 4 to the Atchison, Topeka, and Santa Fe Railway Co. tariff ICC 15044, and 9 other schedules named in the application. Rates are published to become effective on March 15, 1972.

By the Commission.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.72-2460 Filed 2-16-72;8:51 am]

[Notice 16]

MOTOR CARRIER TRANSFER PROCEEDINGS

FEBRUARY 14, 1972.

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-73413. By order of February 8, 1972, the Motor Carrier Board approved the transfer to Davis Moving Service, Inc., Middletown, R.I., of certificate No. MC-18921 issued July 18, 1968, to Board's Moving and Storage Co., a corporation, Phila., Pa., authorizing the transportation of: Household goods, between Philadelphia, Pa., on the one hand, and, on the other, points in Delaware, Maryland, Virginia, New York, New Jersey, and the District of Columbia, Edwin L. Scherlis, attorney, 15th and Locusts Street, Lewis Tower, Phila., PA 19102

No. MC-FC-73438. By order of February 7, 1972, the Motor Carrier Board approved the transfer to Tipton Moving, Inc., Belmont, Mass., of a portion of certificate No. MC-108199 issued December 14, 1948 to Roger W. Brown, Inc., Woburn, Mass., authorizing transportation of: Household goods, between Brockton, Mass., and 25 miles thereof, on the one hand, and, on the other, points in Massachusetts, Rhode Island, New Hampshire, Vermont, New York, and Connecticut, Fran J. Weiner, attorney, 6 Beacon Street, Boston, Mass. 02108.

No. MC-FC-73442. By order of February 10, 1972, the Motor Carrier Board approved the transfer to Morley Transfer Co., a corporation, Forest Lake, Minn., of certificate of registration No. MC-120217 (Sub-No. 1) issued September 1, 1964, to Malcolm M. Morley and John M. Morley, a partnership, doing business as Morley Transfer, Forest Lake, Minn., evidencing a right to engage in transportation in interstate or foreign commerce, of: Freight, between specified points solely within the State of Minnesota, John H. LeMay, attorney, 525 Osborn Building, Wabasha at Fifth, St. Paul, Minn. 55102.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.72-2461 Filed 2-16-72;8:51 am]

[Notice 12]

MOTOR CARRIER, BROKER, WATER CARRIER, AND FREIGHT FORWARDER APPLICATIONS

FEBRUARY 11, 1972.

The following applications are governed by § 1100.247 [1] of the Commission's general rules of practice (49 CFR, as amended), published in the FEDERAL REGISTER issue of April 20, 1966, effective May 20, 1966. These rules provide, among other things, that a protest to the granting of an application must be filed with the Commission within 30 days after date of notice of filing of the application is published in the FEDERAL REGISTER. Failure seasonably to file a protest will be construed as a waiver of opposition and

[1] Copies of Special Rule 247 (as amended) can be obtained by writing to the Secretary, Interstate Commerce Commission, Washington D.C. 20423.

participation in the proceeding. A protest under these rules should comply with section 247(d)(3) of the rules of practice which requires that it set forth specifically the grounds upon which it is made, contain a detailed statement of protestant's interest in the proceeding (including a copy of the specific portions of its authority which protestant believes to be in conflict with that sought in the application, and describing in detail the method—whether by joinder, interline, or other means—by which protestant would use such authority to provide all or part of the service proposed), and shall specify with particularity the facts, matters, and things relied upon, but shall not include issues or allegations phrased generally. Protests not in reasonable compliance with the requirements of the rules may be rejected. The original and one (1) copy of the protest shall be filed with the Commission, and a copy shall be served concurrently upon applicant's representative, or applicant if no representative is named. If the protest includes a request for oral hearing, such requests shall meet the requirements of section 247(d)(4) of the special rules, and shall include the certification required therein.

Section 247(f) of the Commission's rules of practice further provides that each applicant shall, if protests to its application have been filed, and within 60 days of the date of this publication, notify the Commission in writing (1) that it is ready to proceed and prosecute the application, or (2) that it wishes to withdraw the application, failure in which the application will be dismissed by the Commission.

Further processing steps (whether modified procedure, oral hearing, or other procedures) will be determined generally in accordance with the Commission's general policy statement concerning motor carrier licensing procedures, published in the FEDERAL REGISTER issue of May 3, 1966. This assignment will be by Commission order which will be served on each party of record. Broadening amendments will not be accepted after the date of this publication except for good cause shown, and restrictive amendments will not be entertained following publication in the FEDERAL REGISTER of a notice that the proceeding has been assigned for oral hearing.

No. MC 111 (Sub-No. 13), filed January 17, 1972. Applicant: VIGEANT MOTOR FREIGHT, INC., Post Office Box 157, Castleton-on-Hudson, NY 12033. Applicant's representative: Wilmot E. James, Post Office Box 1319, Albany, NY 12201. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Bananas*, from Albany, N.Y., to points in Connecticut, Massachusetts, Maine, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, and Vermont. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Albany or New York, N.Y.

No. MC 1184 (Sub-No. 20), filed January 10, 1972. Applicant: GEORGE F. BURNETT COMPANY, INC., 902 West Ireland Road, Post Office Box 2538, Station A, South Bend, IN 46613. Applicant's representative: Harold G. Hernly, 2030 North Adams Street, Suite 510, Arlington, VA 22201. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Buses, bus chassis, and parts thereof*, in driveaway and truckaway service, from points in St. Joseph County, Ind., to points in the United States (except Alaska and Hawaii). NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C., or Chicago, Ill.

No. MC 2421 (Sub-No. 11), filed January 11, 1972. Applicant: NEWTON TRANSPORTATION COMPANY, INC., Post Office Box 678, Greer Street, Lenoir, NC 28645. Applicant's representative: James E. Wilson, 1032 Pennsylvania Building, Pennsylvania Avenue and 13th Street NW., Washington, D.C. 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Veneer*, from Dubuque, Iowa, to points in North Carolina on and west of U.S. Highway 29. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill.

No. MC 2900 (Sub-No. 219), filed January 20, 1972. Applicant: RYDER TRUCK LINES, INC., 2050 Kings Road, Jacksonville, FL 32203. Applicant's representative: Robert H. Cleveland, Post Office Box 2508, Jacksonville, FL 32203. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, livestock, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving the plantsite of Monsanto Co. located in Marshall County, Ala., as an off-route point in connection with applicant's regular route authority to and from Huntsville, Ala. NOTE: Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at St. Louis, Mo.; Birmingham, Ala., or Washington, D.C.

No. MC 5470 (Sub-No. 66), filed January 11, 1972. Applicant: TAJON, INC., Rural Delivery 5, Box 146, Mercer, PA 16137. Applicant's representative: Donald Cross, Munsey Building, 1329 E Street NW., Washington, DC 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Alloys and ores*, in dump vehicles, between Birdsboro, Pa., on the one hand, and, on the other, points in Connecticut, New Jersey, New York, Rhode Island, New Hampshire, and Massachusetts. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C., or New York, N.Y.

No. MC 8964 (Sub-No. 28), filed January 7, 1972. Applicant: WITTE TRANSPORTATION COMPANY, a corporation, 2481 Cleveland Avenue North, St. Paul, MN 55113. Applicant's representative: William S. Rosen, 630 Osborn Building, St. Paul, Minn. 55102. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, household goods as defined by the Commission, in *Practices of Motor Common Carriers of Household Goods*, 17 M.C.C. 467, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading), (1) Between Kansas City, Mo., and Albert Lea, Austin, and Spring Valley, Minn.: (a) From Kansas City, Mo., over Interstate Highway 35 to Albert Lea, Minn., thence over Interstate Highway 90 to Austin, Minn.; thence over Interstate Highway 90 to the junction with U.S. Highway 16, thence over U.S. Highway 16 to Spring Valley, Minn., and return over the same route, serving no intermediate points, (b) from Kansas City, Mo., over U.S. Highway 69 to Albert Lea, Minn., thence over U.S. Highway 16 to Austin, Minn., thence over U.S. Highway 16 to Spring Valley, Minn., and return over the same route, serving no intermediate points, and (c) from Kansas City, Mo., over Interstate Highway 35 or U.S. Highway 69 to Des Moines, Iowa; thence over Interstate Highway 80 or U.S. Highway 6 to the junction with U.S. Highway 63, thence over U.S. Highway 63 to Spring Valley, Minn., and return over the same route, serving no intermediate points, restricted against the traffic originating at or destined to Minneapolis-St. Paul, Minn. NOTE: Applicant states it intends to tack at Austin, Albert Lea, and Spring Valley, Minn., to provide a through service between Kansas City and all points within applicant's existing service territory, except the Twin Cities. Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at La Crosse, Wis., Minneapolis, Austin, and Albert Lea, Minn., and Kansas City, Mo.

No. MC 25869 (Sub-No. 111), filed January 18, 1972. Applicant: NOLTE BROS. TRUCK LINE, INC., 4734 South 27th Street, Post Office Box 7184, Omaha, NE 68107. Applicant's representative: Donald L. Stern, Suite 530 Univac Building, 7100 West Center Road, Omaha, NE 68106. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen foods*, from New Hampton, Iowa, to points in Colorado, Illinois, Indiana, Iowa, Nebraska, Kansas, Michigan, Missouri, Ohio, Utah, Wisconsin, and Wyoming. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Omaha, Nebr., or Chicago, Ill.

No. MC 28307 (Sub-No. 18), filed January 10, 1972. Applicant: FREDERICKSON MOTOR EXPRESS CORPORATION, 3400 North Graham Street, Post Office Box 21098, Charlotte, NC 28206. Applicant's representative: J. Ruffin Bailey, Post Office Box 2246, Raleigh, NC 27602. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except those requiring special vehicles or special equipment for hauling, loading, or unloading or any special or unusual service in connection therewith) (1) between Marion and Rutherfordton, N.C.: From Marion over U.S. Highway 221 to Rutherfordton, N.C., and return over the same route, serving no intermediate points, as an alternate route for operating convenience only; (2) between Mount Airy and Winston-Salem, N.C.: From Mount Airy over U.S. Highway 52 to Winston-Salem, N.C., and return over the same route, serving no intermediate points, as an alternate route for operating convenience only; (3) between U.S. Highway 29 and Interstate Highway 85 over County Road 1305; from intersection of County Road 1305 and U.S. Highway 29 near Concord, N.C., over County Road 1305 to the intersection of County Road 1305 and County Road 1394 at Interstate Highway 85, and return over the same route, serving all intermediate points; and (4) between Lincolnton and Gastonia, N.C.: From Lincolnton over U.S. Highway 321 to Gastonia, N.C., and return over the same route, serving all intermediate points. NOTE: If a hearing is deemed necessary, applicant requests it be held at Raleigh, N.C., or Washington, D.C.

No. MC 30837 (Sub-No. 449), filed January 19, 1972. Applicant: KENOSHA AUTO TRANSPORT CORPORATION, 4200 39th Avenue, Kenosha, WI 53140. Applicant's representative: Paul F. Sullivan, 711 Washington Building, Washington, D.C. 20005. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Mobile derricks*, in initial moves, in driveaway service, from Olathe, Kans., to points in the United States including Alaska (but excluding Hawaii). NOTE: Applicant states that the requested authority connot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Kansas City, Mo., or Chicago, Ill.

No. MC 30844 (Sub-No. 387), filed January 12, 1972. Applicant: KROBLIN REFRIGERATED XPRESS, INC., 2125 Commercial Street, Waterloo, IA 50412. Applicant's representative: Truman A. Stockton, Jr., 1650 Grant Street Building, Denver, CO 80203. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Canned and preserved foodstuffs*, from Hartford, Braun, and Bailey, Mich., to Cheyenne, Wyo., restricted to shipments originating at the plantsites and warehouse facilities of Duffy Mott Corp.; (2) *cocoa and cocoa powder* from New York City, N.Y., and points in the commercial zone thereof, to Momence, Ill., Humboldt, Tenn., and New Orleans, La., restricted to shipments originating at the facilities of De Zaan, Inc., and destined to the above named points; (3) *materials, and supplies* used and produced by the food processing industry from the plantsites and facilities of Welch Food Processors at Springdale, Ark., to points in Oklahoma, Colorado, North Carolina, South Carolina, Georgia, Florida, Alabama, and Louisiana, restricted to shipments originated by Welch Food Processors; and (4) *canned and preserved foodstuffs* from Hamlin, Holley, and Williamstown, N.Y., to points in Alabama, Florida, Georgia, Tennessee, Mississippi, and Virginia, and from Aspers, Pa., to the above named States restricted to shipments originating at the plantsites and warehouse facilities of Duffy Mott Corp. NOTE: Common control may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C., or New York, N.Y.

No. MC 33953 (Sub-No. 8), filed January 23, 1972. Applicant: RED LINE TRANSFER CO., INC., 829 North 29th Street, Philadelphia, PA 19130. Applicant's representative: V. Baker Smith, 123 South Broad Street, Philadelphia, PA 19109. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Bananas*, from Baltimore, Md., to points in Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont, and New Jersey (except Camden and Bridgeton, N.J.). NOTE: Common control may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at New York, N.Y.

No. MC 35807 (Sub-No. 23) (Correction), filed November 18, 1971, published in the FEDERAL REGISTER, issue of December 23, 1971, and republished in part, as corrected this issue. Applicant: WELLS FARGO ARMORED SERVICE CORPORATION, 210 Baker Street NW., Atlanta, GA 30302. Applicant's representative: Harry J. Jordan, 1000 16th Street NW., Washington, DC 20036. NOTE: The sole purpose of this partial republication is to show that applicant is seeking *contract carrier* authority in lieu of *common carrier* authority shown erroneously in previous publication. The rest of the application remains the same.

No. MC 51146 (Sub-No. 252), filed January 20, 1972. Applicant: SCHNEIDER TRANSPORT, INC., 2661 South Broadway, Post Office Box 2298, Green Bay, WI 54304. Applicant's representative: Charles Singer, 33 North Dearborn, Chicago, IL 60602. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foundry sand, viz, chrome sand and zircon sand;* also *foundry sand additives* consisting of clay, or various mixtures of clay, ground coal, wood flour, or other binding or treating ingredients, (1) from Albion, Mich., to points in Illinois and Michigan; (2) from Granite City, Ill., to points in Kentucky, Missouri, Iowa, Wisconsin, Michigan, Indiana, and Kansas; and (3) from Columbus, Ohio, to points in Indiana, Michigan, Kentucky, West Virginia, Virginia, New York, Pennsylvania, New Jersey, Delaware, Maryland, District of Columbia, Tennessee, and North Carolina. NOTE: Applicant states that the requested authority could be tacked with various subs of MC 51146 and it will tack with its MC 51146 where feasible. No duplicate authority is sought. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill.

No. MC 51146 (Sub-No. 253), filed January 20, 1972. Applicant: SCHNEIDER TRANSPORT, INC., 2661 South Broadway, Green Bay, WI 54304. Applicant's representative: Charles Singer, 33 North Dearborn, Chicago, IL 60602. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs* (except in bulk), from Lockport, N.Y., to South Bend, Ind. NOTE: Applicant states that the requested authority could be tacked with various subs of MC 51146 and applicant will tack with its MC 51146 where feasible. Applicant has various duplicative items of authority under various subs but does not seek duplicative authority. Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill.

No. MC 59457 (Sub-No. 24), filed January 11, 1972. Applicant: SORENSEN TRANSPORTATION COMPANY, INC., Old Amity Road, Bethany, Conn. Applicant's representative: Thomas W. Murrett, 342 North Main Street, West Hartford, CT 06117. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Bananas*, from Albany, N.Y., to points in Massachusetts, Rhode Island, Connecticut, New York, and New Jersey. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Hartford, Conn., or New York, N.Y.

No. MC 61592 (Sub-No. 258), filed January 11, 1972. Applicant: JENKINS TRUCK LINE, INC., 3708 Elm Street, Bettendorf, IA 52722. Applicant's representative: Donald Smith, 900 Circle Tower Building, Indianapolis, Ind. 46204. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Roofing materials*, from Salt Lake City, Woods Cross, and North Ogden, Utah, to points in Montana and those points in Idaho south of Idaho County, Idaho. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Salt Lake City, Utah.

No. MC 84212 (Sub-No. 33), filed December 29, 1971. Applicant: DORN'S TRANSPORTATION INC., Railroad Avenue Extension (Colonie), Albany, N.Y. 12205. Applicant's representative:

Irving Klein, 280 Broadway, New York, NY 10007. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), (1) between Harrisburg, Pa., and Buffalo, N.Y.: From Harrisburg, Pa., over U.S. Highway 15 to junction of U.S. Highway 15 with New York Highway 63, thence over New York Highway 63 to its junction with New York Highway 5 at or near Batavia, N.Y., thence over New York Highway 5 to Buffalo (or over New York Highway 63 to junction with U.S. Highway 20, thence over New York Highway 20 to Buffalo) and return over the same routes, serving no intermediate points and serving Harrisburg for purposes of joinder only; (2) between Harrisburg, Pa., and Rochester, N.Y.: From Harrisburg, Pa., over U.S. Highway 15 to its junction with U.S. Highway 15–A, thence over U.S. Highway 15A to Rochester, N.Y., and return over the same routes, serving no intermediate points and serving Harrisburg, Pa., for purposes of joinder only; (3) between Harrisburg, Pa., and Du Bois, Pa.: From Harrisburg, Pa., over U.S. Highway 15 to its junction with Interstate Highway 80, thence over Interstate Highway 80 to Du Bois, Pa., and return over the same route, serving no intermediate points and serving Harrisburg and Du Bois, Pa., for the purpose of joinder only;

(4) Between Philadelphia, Pa., and Du Bois, Pa.: From Philadelphia, Pa., over the northeast extension of the Pennsylvania Turnpike to its junction with Interstate Highway 80, thence over Interstate Highway 80 to Du Bois, Pa., and return over the same route, serving no intermediate points and serving Du Bois, Pa., for the purpose of joinder only; (5) between New York, N.Y., and Du Bois, Pa.: From New York, N.Y., via the Lincoln Tunnel, thence over New Jersey Highway 3 to its junction with New Jersey Highway 17, thence over New Jersey Highway 17 to its junction with Interstate Highway 80, thence over Interstate Highway 80 to its junction with the northeast extension of the Pennsylvania Turnpike, thence over Interstate Highway 80 to Du Bois, Pa., and return over the same route, serving no intermediate points, serving the off-route points of Passaic, Kearney, Newark, and Jersey City, N.J., serving the junction of Interstate Highway 80 and the northeast extension of the Pennsylvania Turnpike and Du Bois, Pa., for the purposes of joinder only; (6) between Salamanca, N.Y., and Hamburg, N.Y.: From Salamanca, N.Y., over U.S. Highway 219 to Hamburg, N.Y., and return over the same route, serving no intermediate points; (7) between Philadelphia, Pa., and Syracuse, N.Y.: From Philadelphia, Pa., over the northeast extension of the Pennsylvania Turnpike to Scranton, Pa., thence over Interstate Highway 81 to Syracuse, N.Y., and return over the same route, serving no intermediate points, as alternate routes for operating convenience only; and (8) between Hartford, Conn., and Springfield, Mass.: From Hartford over Interstate Highway 91 to Springfield, Mass., and return over the same route. NOTE: Applicant states the authority above sought under item (8) involves a conversion from irregular route authority between the same points. Applicant presently holds authority to operate between Hartford, Conn., and Springfield, Mass., over irregular routes but because of the conduct of regular service over that route, applicant seeks a conversion thereof to a regular route. Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 87966 (Sub-No. 15), filed January 19, 1972. Applicant: ELEVELD CHICAGO FURNITURE SERVICE, INC., 4020 West 24th Street, Chicago, IL 60623. Applicant's representative: George S. Mullins, 4704 West Irving Park Road, Chicago, IL 60641. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Furniture*, upholstered, from the plantsite and warehouse of LA-Z-BOY Chair Co., at Monroe, Mich., and Neosha, Mo., to points in Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Nebraska, Ohio, and Wisconsin. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill.

No. MC 89723 (Sub-No. 63), filed December 16, 1971. Applicant: MISSOURI PACIFIC TRUCK LINES, INC., 210 North 13th Street, St. Louis, MO 63103. Applicant's representative: Robt. S. Davis (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities*, between Memphis, Tenn., and points in Arkansas as presently authorized in applicant's certificate MC 89723 (Sub-No. 14), in service auxiliary to and supplemental of rail service of Missouri Pacific Railroad Co. NOTE: The instant application seeks authority solely to eliminate Memphis, Tenn., as a key point in said certificate but remaining auxiliary to and supplemental of rail service and subject to remaining key points and all other restrictions in said certificate. No new routes or points are sought to be served. Applicant is a wholly owned subsidiary of Missouri Pacific Railroad Co. If a hearing is deemed necessary, applicant requests it be held at Memphis, Tenn.

No. MC 95490 (Sub-No. 32), filed January 11, 1972. Applicant: UNION CARTAGE COMPANY, a corporation, 9A Southwest Cutoff, Worcester, Mass. 01604. Applicant's representative: Leonard A. Jaskiewicz, 1730 M Street NW., Suite 501, Washington, DC 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Wine*, in containers from points in Middlesex County, Mass., to points in Maine. NOTE: Applicant states it will join at Middlesex County, Mass., to serve points in Maine. If a hearing is deemed necessary, applicant does not specify a location.

No. MC 95540 (Sub-No. 831), filed January 13, 1972. Applicant: WATKINS MOTOR LINES, INC., 1120 West Griffin Road, Lakeland, FL 33801. Applicant's representative: Paul E. Weaver (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Bananas, coconuts, and pineapples*, from Charleston, S.C., to points in Georgia, Illinois, Indiana, Iowa, Kentucky, Michigan, Missouri, North Carolina, Ohio, South Carolina, Tennessee, Virginia, and West Virginia. NOTE: Applicant states that the requested authority can be tacked with its Sub 768 via Doraville, Ga., to perform a through service to points in Arkansas, Colorado, Kansas, Oklahoma, and Texas. Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at New Orleans, La.

No. MC 95540 (Sub-No. 832), filed January 13, 1972. Applicant: WATKINS MOTOR LINES, INC., 1120 West Griffin Road, Lakeland, FL 33801. Applicant's representative: Paul E. Weaver (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Candy and confectionery and advertising equipment, premiums, materials and supplies* when shipped therewith (except in bulk), from points in Reading and Berks County, Pa., to points in Washington, Oregon, Utah, Idaho, Montana, Colorado, and Nevada. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 95540 (Sub-No. 833), filed January 13, 1972. Applicant: WATKINS MOTOR LINES, INC., 1120 West Griffin Road, Lakeland, FL 33801. Applicant's representative: Paul E. Weaver (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, meat byproducts and articles distributed by meat packinghouses*, as described in sections A and C of appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except hides and commodities in bulk, in tank vehicles), from the plantsites and storage facilities utilized by Swift & Co., at Clovis, N. Mex., to points in Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, West Virginia, Virginia, and the District of Columbia, restricted to shipments originating at plantsite of Swift & Co., Clovis, N. Mex., and destined to the above named States. NOTE: Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill.

No. MC 104654 (Sub-No. 148), filed January 21, 1972. Applicant: COMMERCIAL TRANSPORT, INC., Post Office Box 469, Belleville, IL 62222. Applicant's representative: Lee K. Mathews, 418 Olive Street, Suite 1000, St. Louis, MO 63102. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Cement*, from the plantsite of Missouri Portland Cement Co. at or near St. Louis, Mo., to points in Iowa, Kansas, Nebraska, and Indiana. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at St. Louis, Mo., or Washington, D.C.

No. MC 107012 (Sub-No. 139), filed January 24, 1972. Applicant: NORTH AMERICAN VAN LINES, INC., Lincoln Highway East and Meyer Road, Post Office Box 988, Fort Wayne, IN 46801. Applicant's representative: Donald C. Lewis, Post Office Box 988, Fort Wayne, IN 46801. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *New furniture*, from Sardis, Miss., to points in the United States (except Alaska and Hawaii). NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. Common control and dual operations may be involved. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 107012 (Sub-No. 140), filed January 24, 1972. Applicant: NORTH AMERICAN VAN LINES, INC., Lincoln Highway East and Meyer Road, Post Office Box 988, Fort Wayne, IN 46801. Applicant's representative: Donald C. Lewis (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *New furniture*, crated and uncrated, and *new commercial and institutional fixtures*, uncrated, from points in Arizona to points in the United States (except Alaska and Hawaii). NOTE: Common control and dual operations may be involved. Applicant states that the requested authority can be tacked with its existing authority in Arizona to provide a through service from California and Nevada to points in the United States (except Alaska and Hawaii). If a hearing is deemed necessary, applicant requests it be held at Phoenix, Ariz.

No. MC 107012 (Sub-No. 141), filed January 13, 1972. Applicant: NORTH AMERICAN VAN LINES, INC., Post Office Box 988, Lincoln Highway East and Meyer Road, Fort Wayne, IN 46801. Applicant's representative: Donald C. Lewis (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Voting machines*, uncrated, *and accessories*, between points in Marion County, S.C., on the one hand, and, on the other, points in Alabama, Arkansas, California, Colorado, Florida, Georgia, Idaho, Iowa, Kentucky, Louisiana, Maine, Minnesota, Mississippi, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Texas, Utah, Washington, Wisconsin, and Wyoming. NOTE: Common control and dual operations may be involved. Applicant states that the requested authority can be tacked with its existing authority at Tulsa, Okla., to serve points in Kansas. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 107012 (Sub-No. 142), filed January 13, 1972. Applicant: NORTH AMERICAN VAN LINES, INC., Post Office Box 988, Fort Wayne, IN 46801. Applicant's representative: Terry G. Fewell (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *New pianos, and new piano benches and accessories*, uncrated, from the plant and warehouse facilities of Grand Piano Co., Inc., at or near Morganton, N.C., to points in the United States (except Alaska and Hawaii), and *damaged, rejected and return shipments*, on return. NOTE: Common control and dual operations may be involved. Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 107295 (Sub-No. 580) (Amendment), filed November 15, 1971, published in the FEDERAL REGISTER issue of December 23, 1971, and republished as amended this issue. Applicant: PRE-FAB TRANSIT, Post Office Box 146, Farmer City, IL 61842. Applicant's representative: Dale L. Cox (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Pipe* (other than iron and steel) and *fittings and accessories* therefor, from Calhoun County, Ark., to points in the United States (except Alaska and Hawaii). NOTE: Applicant states that the requested authority can be tacked with its existing authority but indicates that it has no present intention to tack and therefore does not identify the points or territories which can be served through tacking. Persons interested in the tacking possibilities are cautioned that failure to oppose the application may result in an unrestricted grant of authority. No duplicating authority sought. The purpose of this republication is to reflect a change in the origin point as Calhoun County, Ark., in lieu of Ouachita County, Ark. If a hearing is deemed necessary, applicant requests it be held at Little Rock, Ark., or Memphis, Tenn.

No. MC 107460 (Sub-No. 32), filed January 24, 1972. Applicant: WILLIAM Z. GETZ, INC., 3055 Yellow Goose Road, Lancaster, PA 17601. Applicant's representative: Donald D. Shipley (same address as applicant). Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Paper and paper articles* (except commodities in bulk), from the plantsite and warehouses of the Georgia-Pacific Corp. located in West Hempfield Township, Lancaster County, Pa., to points in Connecticut, Delaware, Florida, Georgia, Kentucky, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia, and the District of Columbia, under contract with Georgia-Pacific Corp. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C., or Harrisburg, Pa.

No. MC 107460 (Sub-No. 33), filed January 25, 1972. Applicant: WILLIAM Z. GETZ, INC., 3055 Yellow Goose Road, Lancaster, PA 17601. Applicant's representative: Donald D. Shipley (same address as applicant). Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Metal roofing and siding and fabricated metal products* (except commodities in bulk), between the plantsite of Howmet Corp. in East Hempfield Township, Lancaster County, Pa., on the one hand, and, on the other, points in Alabama, Arkansas, Connecticut, Delaware, the District of Columbia, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Vermont, Virginia, West Virginia, and Wisconsin, under contract with Howmet Corp. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C., or Harrisburg, Pa.

No. MC 107460 (Sub-No. 34), filed January 25, 1972. Applicant: WILLIAM Z. GETZ, INC., 3055 Yellow Goose Road, Lancaster, PA 17601. Applicant's representative: Donald D. Shipley (same address as applicant). Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Paper and paper products* (except commodities in bulk), from the plantsites of the Georgia-Pacific Corp. located at Kalamazoo and Portage, Mich., to the plantsite of the Georgia-Pacific Corp. located in West Hempfield Township, Lancaster County, Pa., under contract with Georgia-Pacific Corp. NOTE: If a hearing is deemed necessary, applicant requests it be held at Washington, D.C., or Chicago, Ill.

No. MC 107882 (Sub-No. 25), filed January 11, 1972. Applicant: ARMORED MOTOR SERVICE CORPORATION, 160 Ewingville Road, Trenton, NJ 08638. Applicant's representative: Herbert Alan Dubin, 1319 H Street NW., Washington, DC 20006. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Coins*, between Coral Gables, Fla., on the one hand, and, on the other, Boston, Mass.; West Point and Buffalo, N.Y.;

Philadelphia, Pa.; Cleveland and Cincinnati, Ohio; Pittsburgh, Pa.; Baltimore, Md.; Culpeper and Richmond, Va.; Charlotte, N.C.; Atlanta, Ga.; Birmingham, Ala.; New Orleans, La.; Chicago, Ill.; Detroit, Mich.; St. Louis, Mo.; Little Rock, Ark.; Louisville and Fort Knox, Ky.; Nashville and Memphis, Tenn.; Minneapolis, Minn.; Helena, Mont.; Kansas City, Mo.; Denver, Colo.; Oklahoma City, Okla.; Omaha, Nebr.; Dallas, El Paso, San Antonio, and Houston, Tex.; San Francisco and Los Angeles, Calif.; Portland, Oreg.; Salt Lake City, Utah; Seattle, Wash., and the District of Columbia, under a contract with General Services Administration. NOTE: Applicant holds common carrier authority under MC 125729, therefore, dual operations may be involved. If a hearing is deemed necessary, applicant requests it be held at Trenton, N.J., or Washington, D.C.

No. MC 108449 (Sub-No. 338), filed January 21, 1972. Applicant: INDIANHEAD TRUCK LINE, INC., 1947 West County Road C, St. Paul, MN 55113. Applicant's representative: W. A. Myllenbeck (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading), serving Marshall, Mich., as an off-route point in connection with carrier's regular-route operations authorized in its (Sub-No. 292) from and to Coldwater, Mich., restricted to traffic originating at and destined to a point other than Marshall, Mich. NOTE: Applicant states that the purpose of instant application is to allow Indianhead to interline shipments with other carriers at Marshall, Mich., as an off-route point. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill.

No. MC 109365 (Sub-No. 37), filed January 21, 1972. Applicant: RONALD A. PATTERSON, doing business as ANTHONY & PATTERSON TRUCK LINE, Post Office Box No. 5, Ashdown, AR 71822. Applicant's representative: Louis Tarlowski, 914 Pyramid Life Building, Little Rock, Ark. 72201. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lumber and lumber products*, from points in Cass County, Tex., to points in Arkansas, Kansas, Louisiana, and Oklahoma. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Little Rock, Ark.

No. MC 110525 (Sub-No. 1024), filed January 21, 1972. Applicant: CHEMICAL LEAMAN TANK LINES, INC., 520 East Lancaster Avenue, Dowingtown, PA 19335. Applicant's representative: Leonard A. Jaskiewicz, 1730 M Street NW., Suite 501, Washington, DC 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Commodities*, in bulk, from the site of Bulk Distribution Centers, Inc., at or near Chattanooga, Tenn., to points in Alabama, Arkansas, Florida, Georgia, Illinois, Indiana, Kentucky, Mississippi, Missouri, North Carolina, South Carolina, Tennessee, Virginia, and West Virginia, restricted to traffic which originates at the above-indicated origin point and destined to the described destination points. NOTE: If a hearing is deemed necessary, applicant requests it be held at Louisville, Ky., or Washington, D.C.

No. MC 111812 (Sub-No. 466), filed January 3, 1972. Applicant: MIDWEST COAST TRANSPORT, INC., 405½ East Eighth Street, Post Office Box 1233, Sioux Falls, SD 57101. Applicant's representative: Donald L. Stern, 530 Univac Building, 7100 West Center Road, Omaha, NE 68106. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Candy, confectionery, and related items*, from Elizabethtown, Pa., to points in Arizona, California, Colorado, Missouri, Oregon, Utah, and Washington. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Harrisburg, Pa.

No. MC 112750 (Sub-No. 284), filed January 18, 1972. Applicant: AMERICAN COURIER CORPORATION, 2 Nevada Drive, Lake Success, NY 11040. Applicant's representative: John M. Delany (same address as applicant). Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Commercial papers, documents, written instruments, and business records* (except currency and negotiable securities) as are used in the business of banks and banking institutions, (1) between Freeport, Ill., on the one hand, and, on the other, points in Dane, Grant, Green, Iowa, Jefferson, Kenosha, Lafayette, Racine, Rock, Walworth, and Waukesha Counties, Wis.; and (2) between Robinson, Ill.; on the one hand, and, on the other, points in Clay, Crawford, Daviess, Dubois, Gibson, Greene, Knox, Lawrence, Martin, Orange, Owen, Perry, Pike, Posey, Putnam, Spencer, Sullivan, Vanderburgh, Vermillion, Vigo, and Warrick Counties, Ind., under contract with various banks and banking institutions. NOTE: Applicant holds common carrier authority under MC 111729 and subs thereunder, therefore, dual operations and common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C., or Chicago, Ill.

No. MC 112822 (Sub-No. 223), filed January 19, 1972. Applicant: BRAY LINES INCORPORATED, Post Office Box 1191, 1401 North Little Street, Cushing, OK 74023. Applicant's representative: K. Charles Elliott (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lubricating oils*, in bulk, in tank vehicles, from Kansas City, Mo., to points in Texas. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Kansas City, Mo., or Denver, Colo.

No. MC 112822 (Sub-No. 224), filed January 26, 1972. Applicant: BRAY LINES INCORPORATED, Post Office Box 1191, 1401 North Little Street, Cushing, OK 74023. Applicant's representative: K. Charles Elliott (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen foods*, from the plantsite and warehouse facilities utilized by Kitchens of Sara Lee at or near New Hampton, Iowa, to points in Arizona, California, Idaho, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming. NOTE: Applicant states that the requested authority can be tacked with its existing authority but indicates that it has no present intention to tack and therefore does not identify the points or territories which can be served through tacking. Persons interested in the tacking possibilities are cautioned that failure to oppose the application may result in an unrestricted grant of authority. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill., or Oklahoma City, Okla.

No. MC 112822 (Sub-No. 225), filed January 26, 1972. Applicant: BRAY LINES INCORPORATED, Post Office Box 1191, 1401 North Little Street, Cushing, OK 74023. Applicant's representative: K. Charles Elliott (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen foods*, from the plantsite and warehouse facilities utilized by Kitchens of Sara Lee at or near New Hampton, Iowa, to points in Alabama, Arkansas, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee. NOTE: Applicant states there are tacking possibilities; however, none are intended at this time. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill., or Oklahoma City, Okla.

No. MC 113460 (Sub-No. 5), filed January 11, 1972. Applicant: CARL P. BLACKFORD, 3909 East 29th Street, Des Moines, IA 50317. Applicant's representative: William L. Fairbank, 900 Hubbell Building, Des Moines, Iowa 50309. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Malt beverages*, from Newark, N.J., to points in Iowa; and (2) from South Bend, Ind., and Detroit, Mich., to Des Moines, Iowa. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Des Moines, Iowa, or Omaha, Nebr.

No. MC 113678 (Sub-No. 442) (Amendment), filed October 27, 1971, published in the FEDERAL REGISTER, issue of December 2, 1971, and republished as amended, this issue. Applicant: CURTIS, INC., Post Office Box 16004, Stockyards Station, Denver, CO 80216. Applicant's representative: Duane W. Acklie, Post Office Box 80806, Lincoln, NE 68501. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs*, from points in Maine, New Hampshire, Vermont, Connecticut, Rhode Island, Massachusetts, New York, New Jersey, Pennsylvania, Maryland, Delaware, and the District of Columbia, to points in Colorado, Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, Nebraska, Ohio, and Wisconsin. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. No duplicating authority is sought. The purpose of this republication is to redescribe the authority sought. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C., New York, N.Y., or Denver, Colo.

No. MC 113678 (Sub-No. 448), filed January 10, 1972. Applicant: CURTIS, INC., 4810 Pontiac Street, Post Office Box 16004, Stockyards Station, Denver, CO 80216. Applicant's representatives: Duane Acklie and Richard A. Peterson, Post Office Box 80806, Lincoln, NE 68501. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meat, meat products, and meat byproducts* as described in sections A and C of appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except hides, in bulk, in tank vehicles), from Hawarden, Iowa, to points in Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia, and the District of Columbia. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Omaha, Nebr., or Denver, Colo.

No. MC 113678 (Sub-No. 449), filed January 10, 1972. Applicant: CURTIS, INC., 4810 Pontiac Street, Post Office Box 16004, Stockyards Station, Denver, CO 80216. Applicant's representative: Duane W. Acklie, Post Office Box 80806, Lincoln, NE 68510. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Candy, confectionery, advertising materials, supplies, display materials, and premiums*, when moving at the same time and in the same vehicle with the commodities described herein above, from Hackettstown, N.J., to points in Colorado, Indiana, Illinois, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, Nebraska, Ohio, and West Virginia. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C., or Denver, Colo.

No. MC 114211 (Sub-No. 167), filed January 19, 1972. Applicant: WARREN TRANSPORT, INC., 324 Manhard, Post Office Box 420, Waterloo, IA 50704. Applicant's representative: Charles W. Singer, Suite 1625, 33 North Dearborn, Chicago, IL 60602. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Bus bodies*, and (2) *parts, attachments and accessories* for bus bodies, between points in St. Joseph County, Ind., on the one hand, and, on the other, ports of entry on the international boundary line between the United States and Canada at Noyse, Minn., and Sault Ste. Marie, Mich. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. Applicant further states that no duplicating authority is being sought. If a hearing is deemed necessary, applicant does not specify a location.

No. MC 114457 (Sub-No. 123), filed January 10, 1972. Applicant: DART TRANSIT COMPANY, a corporation, 780 North Prior Avenue, St. Paul, MN 55104. Applicant's representative: Richard A. Kerwin, 127 North Dearborn Street, Chicago, IL 60602. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen foods*, from the plant and warehouse facilities of Kitchens of Sara Lee, Inc., located at or near New Hampton, Iowa, to points in Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, Tennessee, and Wisconsin. Restriction: The authority sought is restricted to the transportation of shipments originating at the above-described origin points and destined to the above-described destinations. NOTE: If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill.

No. MC 115162 (Sub-No. 242) (Correction), filed December 29, 1971, published FEDERAL REGISTER issue of February 10, 1972, corrected and republished as corrected this issue. Applicant: POOLE TRUCK LINE, INC., Post Office Drawer 500, Evergreen, AL 36401. Applicant's representative: Robert E. Tate (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Composition board and moldings*, from the plantsite of, and the facilities utilized by U.S. Plywood-Champion Papers Inc., at Charleston and Orangeburg, S.C., to points in Alabama, Arkansas, Florida, Louisiana, Mississippi, Missouri, Tennessee, and Texas, and (2) *Plywood*, from the plantsites of, and the facilities utilized by U.S. Plywood-Champion Papers Inc., at Charleston and Orangeburg, S.C., to points in Arkansas, Missouri, and Tennessee. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. The purpose of this republication is to add "plywood" to the commodity description, which was inadvertently omitted from the previous publication. If a hearing is deemed necessary, applicant requests it be held at Atlanta, Ga., or Birmingham, Ala.

No. MC 115311 (Sub-No. 130), filed January 24, 1972. Applicant: J & M TRANSPORTATION CO., INC., Post Office Box 488, Milledgeville, GA 31061. Applicant's representative: Paul M. Daniell, Post Office Box 872, Atlanta, GA 30301. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Building and roofing slabs*, (1) from Brunswick, Ga., to points in South Carolina, Alabama, Mississippi, Florida, Tennessee, Arkansas, and Louisiana, and (2) from Terry, Miss., to points in Louisiana, Arkansas, Florida, Tennessee, Alabama, Georgia, and South Carolina. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Jacksonville, Fla.

No. MC 116628 (Sub-No. 16), filed January 11, 1972. Applicant: SUBURBAN TRANSFER SERVICE, INC., Post Office Box 168, Rutherford, NJ 07070. Applicant's representative: William P. Sullivan, 1819 H Street NW., Washington, DC 20006. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *General commodities*, except commodities in bulk and articles requiring special equipment, between points in New York, New Jersey, Florida, Michigan, Illinois, Colorado, and California, limited to a transportation service to be performed under a continuing contract or contracts with Abercrombie and Fitch of New York, N.Y. NOTE: If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 116859 (Sub-No. 11), filed January 24, 1972. Applicant: CLARK TRANSFER, INC., 829 North 29th Street, Philadelphia, PA 19130. Applicant's representative: V. Baker Smith, 123 North Broad Street, Philadelphia, PA 19109. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Bananas*, from Baltimore, Md., to points in Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont, and New Jersey (except Camden and Bridgeton, N.J.). NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at New York, N.Y.

No. MC 117686 (Sub-No. 129), filed December 20, 1971. Applicant: HIRSCHBACH MOTOR LINES, INC., 3324 U.S. Highway 75 North, Sioux City, IA 51102. Applicant's representative: A. J. Swanson, Post Office Box 417, Sioux City, IA 51102. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen foodstuffs*, from New Hampton, Iowa, to points in Alabama, Arkansas, Florida, Georgia, Kansas, Louisiana, Mississippi,

North Carolina, South Carolina, Oklahoma, Tennessee, and Texas. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill., or Des Moines, Iowa.

No. MC 117765 (Sub-No. 142), filed January 10, 1972. Applicant: HAHN TRUCK LINE, INC., 5315 Northwest Fifth, Oklahoma City, OK 73107. Applicant's representative: R. E. Hagan, (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Nonfrozen foodstuffs*, in containers, (1) from Arlington and Plainview, Minn., to points in Alabama, Arkansas, Kansas, Louisiana, Mississippi, Missouri, Oklahoma, Tennessee, and Texas; and (2) from Ortonville, Minn., to points in Alabama, Arkansas, Iowa, Kansas, Louisiana, Mississippi, Missouri, Nebraska, North Dakota, Oklahoma, South Dakota, Tennessee, and Texas. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Oklahoma City, Okla.

No. MC 117799 (Sub-No. 24), filed January 21, 1972. Applicant: BEST WAY FROZEN EXPRESS, INC., Room 205, 3033 Excelsior Boulevard, Minneapolis, MN 55416. Applicant's representative: Val M. Higgins, 1000 First National Bank Building, Minneapolis, Minn. 55402. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Cleaning compounds, and soap and soap products*, from Turbotville, Pa., to Auburn, Wash.; Albuquerque, N. Mex.; Bell, Calif.; Clearfield, Utah; Denver, Colo.; Duluth, Ga.; Chicago Ill.; Fort Worth, Tex.; Hingham, Mass.; Kansas City, Mo.; Norfolk, Va.; Shelby, Ohio; Stockton, Calif., and Government installations at or near the above-named points. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. Common control and dual operations may be involved. If a hearing is deemed necessary, applicant requests it be held at Philadelphia, Pa., or Washington, D.C.

No. MC 117799 (Sub-No. 25), filed January 24, 1972. Applicant: BEST WAY FROZEN EXPRESS, INC., Room 205, 3033 Excelsior Boulevard, Minneapolis, MN 55416. Applicant's representative: Val M. Higgins, 1000 First National Bank Bldg., Minneapolis, Minn. 55402. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Foodstuffs;* and (2) *agricultural commodities and commodities* the transportation of which falls within the partial exemption of section 203(b)(6) of the Interstate Commerce Act, when moving in mixed loads with commodities specified in (1) above, from points in Pennsylvania, to points in Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. Common control and dual operations may be involved. If a hearing is deemed necessary, applicant requests it be held at Philadelphia, Pa., or Washington, D.C.

No. MC 117940 (Sub-No. 66) (Amendment), filed July 26, 1971, published in the FEDERAL REGISTER, issue of September 10, 1971, and republished as amended this issue. Applicant: NATIONWIDE CARRIERS, INC., Post Office Box 104, Maple Plain, MN 55359. Applicant's representative: Donald L. Stern, 530 Univac Building, Omaha, Nebr. 68106. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Envelopes, advertising materials, circulars, paper bags, periodical inserts and business forms, newsprint and newspaper supplements* which are otherwise exempt from economic regulations in mixed loads with regulated commodities which are otherwise authorized, from Metuchen, N.J., to points in California, Illinois, Indiana, Iowa, Kentucky, Michigan, Missouri, and Wisconsin. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. Applicant holds contract carrier authority under MC 114789 and subs thereunder, therefore dual operations may be involved. The purpose of this republication is to clarify the commodity description by adding newspaper supplements and to amend the territory involved, by deleting the States of Georgia, Maryland, New York, North Carolina, Ohio, Pennsylvania, and Texas. If a hearing is deemed necessary, applicant requests it be held at New York, N.Y.

No. MC 118253 (Sub-No. 8), filed January 3, 1972. Applicant: S. F. DOUGLAS, doing business as S. F. DOUGLAS TRUCK LINE, 587 Southwest First Street, New Brighton, MN 55112. Applicant's representative: Joseph J. Dudley, W-1260 First National Bank Building, St. Paul, Minn. 55101. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Canned goods*, from the plantsite of Green Giant Co. at Glencoe, Minn., to points in North Dakota, South Dakota, Montana, Wisconsin, and Upper Peninsula, Mich. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at St. Paul or Minneapolis, Minn.

No. MC 118989 (Sub-No. 69), filed January 10, 1972. Applicant: CONTAINER TRANSIT, INC., 5223 South Ninth Street, Milwaukee, WI 53211. Applicant's representative: Albert A. Andrin, 29 South La Salle Street, Chicago, IL 60603. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Containers, container ends, and incidental parts of containers*, between Ripon, Milwaukee, Racine, and Waupun, Wis., on the one hand, and, on the other, Niles, Mich., restricted to the transportation of traffic originating at or destined to the plant and storage facilities utilized by the Green Giant Co. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill., or Milwaukee, Wis.

No. MC 119774 (Sub-No. 39), filed January 24, 1972. Applicant: MARY ELLEN STIDHAM, N. M. STIDHAM, A. E. MANKINS (INEZ MANKINS, EXECUTRIX) AND JAMES E. MANKINS, SR., doing business as EAGLE TRUCKING COMPANY, Post Office Box 471, Kilgore, TX 75662. Applicant's representative: Bernard H. English, 6270 Firth Road, Fort Worth, TX 76116. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Plastic pipe, tubing, conduit, valves, fittings, compounds, joint sealer, bonding cement, primer coating, thinner and hand tools*, used in the installation of such products (except commodities in bulk, in tank vehicles), from New Orleans and Slidell, La., to points in the United States (except Alaska and Hawaii), and (2) *material, equipment, supplies, and fittings* used in the manufacture and installation of such products, from points in the United States (except Alaska and Hawaii), to New Orleans and Slidell, La. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at New Orleans, Shreveport, or Baton Rouge, La.

No. MC 123048 (Sub-No. 205), filed January 19, 1972. Applicant: DIAMOND TRANSPORTATION SYSTEM, INC., 1919 Hamilton Avenue, Racine, WI 53401. Applicant's representative: Paul C. Gartzke, 121 West Doty Street, Madison, WI 53703. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Bus bodies*, and (2) *parts, attachments, and accessories* for bus bodies, between points in St. Joseph County, Ind., on the one hand, and, on the other, ports of entry on the international boundary line between the United States and Canada at Noyes, Minn., and Sault Ste. Marie, Mich. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill.

No. MC 124111 (Sub-No. 38), filed January 10, 1972. Applicant: OHIO EASTERN EXPRESS, INC., Post Office Box 2297, 300 West Perkins Avenue, Sandusky, OH 44870. Applicant's representative: John P. McMahon, 100 East Broad Street, Columbus, OH 43215. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Bananas and agricultural commodities* exempt from economic regulation under section 203(b)(6) of the Act when transported in mixed loads with bananas, from Baltimore, Md., and its commercial zone to points in Connecticut, Pennsylvania, New Jersey, New York, Ohio, Indiana, Illinois, Michigan, Wisconsin, West

Virginia, Louisville, Ky., and its commercial zone and St. Louis, Mo., and its commercial zone. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests to be held at Washington, D.C., or New York City, N.Y.

No. MC 124111 (Sub-No. 39), filed January 21, 1972. Applicant: OHIO EASTERN EXPRESS, INC., Post Office Box 2297, 300 West Perkins Avenue, Sandusky, OH 44870. Applicant's representative: John P. McMahon, 100 East Broad Street, Columbus, OH 43215. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen foods* and *bakery products*, from Detroit and Livonia, Mich., and their commercial zones, to points in Connecticut, District of Columbia, Maryland, Massachusetts, New York, Pennsylvania, Rhode Island, and Virginia. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Detroit, Mich.

No. MC 124151 (Sub-No. 4), filed January 11, 1972. Applicant: VANGUARD TRANSPORTATION INCORPORATED, Post Office Box 157, Avenel, NJ 07001. Applicant's representative: Morton E. Kiel, 140 Cedar Street, New York, NY 10006. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fluorocarbons*, in bulk, from Hillside, N.J., to points in Massachusetts, Rhode Island, Connecticut, Pennsylvania, and New York. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at New York, N.Y.

No. MC 126305 (Sub-No. 38), filed January 19, 1972. Applicant: BOYD BROTHERS TRANSPORTATION CO., INC., Clayton, Ala. 36016. Applicant's representative: George A. Olsen, 69 Tonnele Avenue, Jersey City, NJ 07306. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Plywood, moulding, trim, advertising, display materials, paint, stains, varnishes, nails, and equipment materials and supplies* used or useful in the installation and sale of the foregoing commodities, between points in Jackson County, Miss., on the one hand, and, on the other, points in the United States in and east of North Dakota, South Dakota, Nebraska, Kansas, Oklahoma, and Texas. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Birmingham, Ala., or New Orleans, La.

No. MC 127042 (Sub-No. 92), filed January 21, 1972. Applicant: HAGEN, INC., 4120 Floyd Building, Post Office 98-Leeds Station, Sioux City, IA 51108. Applicant's representative: Joseph W. Harvey (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading), from Fort Madison, Iowa, to points in Oregon, Washington, Colorado, Nevada, Utah, and Arizona. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill.

No. MC 127834 (Sub-No. 69), filed January 24, 1972. Applicant: CHEROKEE HAULING & RIGGING, INC., 540–42 Merritt Avenue, Nashville, TN 37203. Applicant's representative: M. Bryan Stanley (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Aluminum and aluminum articles*, from points in Carroll County, Ky., to points in the United States (except Alaska and Hawaii), and (2) *material, equipment and supplies* (except commodities in bulk), used in connection with the manufacturing of the commodities named in (1) above, from points in the United States (except Alaska and Hawaii) to points in Carroll County, Ky. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority: If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 128116 (Sub-No. 1), filed January 11, 1972. Applicant: RANCH AND FARM, M & M TRUCKING, INC., Box 451, Williston, ND 58801. Applicant's representative: Ray H. Walton, Post Office Box 726, Williston, ND 58801. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Beer, pop, and ale with empties, malt beverages, soft drinks, articles normally handled by beverage distributors* (tomato juice, rock spring water, advertising material, coolers, new bottles, etc.), from St. Paul, Minn.; Milwaukee, Wis.; St. Louis, Mo.; La Crosse, Wis.; Belleview, Alton, and Sterling, Ill.; and Sapulpa, Okla., to Williston, Crosby, and Dickinson, N. Dak., under contract with Powers Creameries, Crighton Distributors Inc., Coca Cola Bottling Co., Dickinson, N. Dak., and Coca Cola Bottling Co., Williston, N. Dak. NOTE: If a hearing is deemed necessary, applicant requests it be held at Bismarck and Fargo, N. Dak., St. Paul, Minn., and Chicago, Ill.

No. MC 128616 (Sub-No. 7) (Correction), filed November 12, 1971, published in the FEDERAL REGISTER issue of December 23, 1971, and republished as corrected this issue. Applicant: BANKERS DISPATCH CORPORATION, 4970 South Archer Avenue, Chicago, IL 60632. Applicant's representative: Arnold Burke, 127 North Dearborn Street, Suite 1133, Chicago, IL 60602. Authority sought to operate as a *contract carrier*, by motor vehicle over irregular routes, transporting: *Commercial papers, documents and written instruments* (except coins, currency, and negotiable securities) as are used in the conduct and operation of banks and banking institutions, between Wichita, Kans., on the one hand, and, on the other, points in Garfield, Kay, Woodward, Tulsa, Alfalfa, Woods, Ellis, and Grant Counties, Okla., under continuing contracts with various banks. NOTE: The purpose of this republication is to reflect representative's new address and to republish notice to agree with carrier's existing authorities by deleting names of banks and indicating that the service is to be performed under continuing contracts with various banks. Applicant also holds common carrier authority under MC 114533 and subs thereunder, therefore dual operations may be involved. If a hearing is deemed necessary, applicant requests it be held at Wichita, Kans., or Kansas City, Mo.

No. MC 128616 (Sub-No. 8) Clarification), filed November 26, 1971, published in the FEDERAL REGISTER issue of December 30, 1971, and republished as clarified this issue. Applicant: BANKERS DISPATCH CORPORATION, 4970 South Archer Avenue, Chicago, IL 60632. Applicant's representative: Arnold Burke, 127 North Dearborn Street, Chicago, IL 60602. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Commercial papers, documents and written instruments* (except coins, currency and negotiable securities) as are used in the conduct and operation of banks and banking institutions, between St. Joseph, Mo., on the one hand, and, on the other, points in Kansas, under contract with various banks. NOTE: Applicant holds common carrier authority under MC 114533 and subs thereunder, therefore, dual operations may be involved. The purpose of this republication is to reflect applicant's representative new address and to show that applicant is under contract with various banks. If a hearing is deemed necessary, applicant requests it be held at Kansas City or St. Louis Mo., or Chicago, Ill.

No. MC 128886 (Sub-No. 32), filed January 18, 1972. Applicant: B & B TRUCKING, INC., Post Office Box 128, Cherry Hill, NJ 08034. Applicant's representative: J. Michael Farrell, 1815 H Street NW., No. 512, Washington, DC 20006. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Aluminum foil and sheet*, from the plantsite of Consolidated Aluminum Corp., and Jackson, Tenn., to the plantsites of Penny Plate, Inc., at Cherry Hill, N.J., and Searcy, Ark., and (2) *scrap aluminum, defective or damaged aluminum foil and sheet, skids, pallets, and aluminum cores*, from the plantsites of Penny Plate, Inc., at Cherry Hill, N.J., and Searcy, Ark., to the plantsite of Consolidated Aluminum Corp., Jackson, Miss., under contract with Penny Plate, Inc. NOTE: If a hearing is deemed necessary, applicant requests it be held at Washington, D.C., or Philadelphia, Pa.

No. MC 129631 (Sub-No. 25) (Correction), filed December 7, 1971, published in the FEDERAL REGISTER issue of January 13, 1972, and republished as corrected this issue. Applicant: PACK TRANSPORT, INC., Post Office Box 17233, Salt Lake City, UT 84117. Applicant's representative: Max D. Eliason, Post Office Box 2602, Salt Lake City, UT 84110. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Lumber, lumber mill products and wood products*, from points in Washington, points in Baker County, Oreg., Wyoming, and Utah; (2) *fencing materials*, from points in Baker County, Oreg., to points in Oregon and Washington, and (3) *fencing materials*, from Idaho Falls, Idaho, to points in Montana and Washington. NOTE: Applicant presently holds contract carrier authority under MC 101741. Applicant states it will tack the authority in (1) and (2) above with its presently held authority in MC 129631 Sub 18 wherein it conducts operations in the transportation of building materials, between Baker, Oreg., on the one hand, and, on the other, points in Idaho. Applicant also indicates in (3) above there are tacking possibilities with its base certificate at Idaho Falls, Idaho. The purpose of this republication is to (1) include the tacking information, and (2) to delete the words "The purpose of the instant application is to convert said contract carrier authority to that of common". If a hearing is deemed necessary, applicant requests it be held at Salt Lake City, Utah.

No. MC 133106 (Sub-No. 12), filed January 11, 1972. Applicant: NATIONAL CARRIERS, INC., 1501 East Eighth Street, Post Office Box 1358, Liberal, KS 67901. Applicant's representative: Frederick J. Coffman, 521 South 14th Street, Post Office Box 80806, Lincoln, NE 68501. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (a) *Pipe fittings and connections and pipe hangers* from the plants, warehouses, and storage facilities used by Grinnell Corp. at or near Atlanta, Ga., to points in Wyoming, Montana, Idaho, Washington, Oregon, California, Nevada, Utah, and Arizona, (b) *Iron and steel pipe* from the plants, warehouses, and storage facilities used by Grinnell Corp. at or near Kernersville, N.C., to points in the above named destination States, and (c) *pipe fittings and connections, pipe hangers, indicator posts, hydrants, pipe, bars and rods, valves with or without operating apparatus, castings, water motor alarms, pipe cement, joint compound, automatic sprinkler heads and automatic fire protection, and prevention systems* (except those commodities which because of size or weight, require the use of special equipment), from the plants and warehouses, and storage facilities used by Grinnell Corp. at or near Cleveland, N.C., to points in the named destination States in (a) above, under continuing contract with Grinnell Corp. and its parent corporation. NOTE: If a hearing is deemed necessary, applicant requests it be held at Lincoln, Nebr., or Kansas City, Mo.

No. MC 133106 (Sub-No. 13), filed January 11, 1972. Applicant: NATIONAL CARRIERS, INC., 1501 East Eighth Street, Post Office Box 1358, Liberal, KS 67901. Applicant's representative: Frederick J. Coffman, 521 South 14th Street, Post Office Box 80806, Lincoln, NE 68501. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Pipe fittings and connections, pipe hangers, indicator posts, hydrants, pipe, bars and rods, valves with or without operating apparatus, castings, water motor alarms, pipe cement, joint compound, automatic sprinkler heads, automatic fire protection and prevention systems, and air heaters, blowers, and parts* (except those commodities which, because of size and weight, require the use of special equipment), from the plants, warehouses, and storage facilities utilized by Grinnell Corp. at or near Cranston and West Kingston, R.I., Elmira, N.Y., Columbia and Wrightsville, Pa., to points in Montana, Wyoming, Utah, Arizona, Idaho, Nevada, Washington, Oregon, California, North Dakota, and South Dakota, under continuing contract with Grinnell Corp. and its parent corporation. NOTE: If a hearing is deemed necessary, applicant requests it be held at Lincoln, Nebr., or Kansas City, Mo.

No. MC 133397 (Sub-No. 2), filed January 10, 1972. Applicant: GEORGE JENKINS, Brickyard Road, Post Office Box 873, Phenix, City, AL 36867. Applicant's representative: Richard Y. Bradley, Fifth Floor, The Ralston Center, Post Office Box 2707, Columbus, GA 31902. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Brick, tile, ceramic, and related products*, (1) between points in Russell and Jefferson Counties, Ala., and Cobb County, Ga., on the one hand, and, on the other, points in Alabama, Georgia, Mississippi, Tennessee, and those points in Florida in and west of Hamilton, Suwannee, Lafayette, and Dixie Counties, Fla.; and (2) between points in Escambia County, Fla., on the one hand, and, on the other, points in Alabama, Georgia, Mississippi, and Tennessee, under contract with Bickerstaff Clay Products Co., Inc. NOTE: If a hearing is deemed necessary, applicant requests it be held at Birmingham, Ala.

No. MC 133480 (Sub-No. 1) (Amendment), filed January 3, 1972, published in the FEDERAL REGISTER issue of February 10, 1972, amended and republished as amended, this issue. Applicant: A. VIZZI, 17 Crescent Street, Keansburg, NJ 07734. Applicant's representative: George A. Olsen, 69 Tonnele Avenue, Jersey City, NJ 07306. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Roofing cement, rust prevention coating, asphalt emulsion, acoustical coatings, plasticizer, corking or glazing compounds, paint, weather strip, floor covering compounds, adhesive, sewer pipe joint compounds, washers or gaskets, and packing devices*, from Perth Amboy, N.J., to points in New York, N.Y. commercial zone, Nassau, Suffolk, Westchester, Orange, and Rockland Counties, N.Y., Albany, N.Y., Hartford, Conn., Norfolk, Va., and points in Pennsylvania. Restriction: The operations authorized are limited to a transportation service to be performed under a continuing contract or contracts with Mortell Co., Perth Amboy, N.J. NOTE: The purpose of this republication is to broaden the scope of authority sought. If a hearing is deemed necessary, applicant requests it be held at New York, N.Y., or Washington, D.C.

No. MC 133937 (Sub-No. 11), filed January 21, 1972. Applicant: CAROLINA CARTAGE COMPANY, INC., 424 Airport Road, Post Office Box 1075, Greenville, SC 29602. Applicant's representative: Leonard A. Jaskiewicz, 1730 M Street NW., Suite 501, Washington, DC 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Automotive parts* (excluding motor vehicles), between Ford Parts Depot at or near Atlanta, Ga., and the Ford Parts Depot at or near Charlotte, N.C. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Charlotte, N.C., or Atlanta, Ga.

No. MC 135177 (Sub-No. 1), filed January 11, 1972. Applicant: SECURITY STORAGE & VAN LINES, INC., 2100 East Market Street, Charlottesville, VA 22902. Applicant's representative: Herbert Alan Dubin, 1819 H Street NW., Washington, DC 20006. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Used household goods, unaccompanied baggage and personal effects*, between points in city of Charlottesville, counties of Albermarle, Allegheny, Amherst, Appomattox, Augusta, Bath Buckingham, Culpeper, Cumberland, Farquier, Fluvanna, Goochland, Greene, Highland, Loudon, Louisa, Madison, Nelson, Orange, Rappahannock, Rockbridge, and Rockingham, Va., restricted to the transportation of traffic having a prior or subsequent movement, in containers, beyond the points named above, and to the performance of pickup and delivery service in connection with packing, crating, and containerization, or unpacking, uncrating, and decontainerization of such traffic. NOTE: If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 135763 (Sub-No. 3), filed January 21, 1972. Applicant: ARKANSAS LOUISIANA LIMESTONE CORPORATION, Post Office Box 70, Foreman, AR 71836. Applicant's representative: Louis Tarlowski, 914 Pyramid Life Building, Little Rock, Ark. 72201. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Dry fertilizer and dry fertilizer ingredients*, in bulk, from the warehouse and distribution facilities of Arkla Chemical Corp. at or near Paris, Tex., to points in Arkansas, Louisiana, and Oklahoma, under a continuing contract with

Arkla Chemical Corp. NOTE: If a hearing is deemed necessary, applicant requests it be held at Little Rock, Ark.

No. MC 135811, filed December 29, 1971. Applicant: GARDNER TRUCKING CO., INC., 320 Woodlawn, Waterboro, S.C. 29488. Applicant's representative: Theodore Polydoroff, 1140 Connecticut Avenue NW., Washington, DC 20036. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Welding rods and welding wire*, (2) *electric welders and parts, materials and supplies* used in connection therewith, from Hanover, Pa., Monticello, Ind., and Charlottesville, Va., to points in Texas, Arizona, California, Washington, and Oregon, restricted to service under contract with Chemetron Corp. NOTE: If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 135996, filed August 18, 1971. Applicant: STRESS FREE SAFETY TRANSFER CO., Post Office Box 2722 AMF, Miami, FL 33159. Applicant's representative: Jack Funakoshi (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Modular homes, mobile homes, boats, and general commodities, in containers*, between points in the United States including Alaska (but excluding Hawaii). NOTE: If a hearing is deemed necessary, applicant requests it be held at Miami, Fort Lauderdale, or Palm Beach, Fla.

No. MC 136012, filed January 5, 1972. Applicant: UNITED STATES TRANSPORTATION, INC., 8345 Clough Pike, Cincinnati, OH 45244. Applicant's representative: Frank B. Hand, Jr., The Union Trust Building, 740 15th Street NW., Washington, DC 20005. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid fertilizer*, in bulk, in tank vehicles, from Midland, Ohio, to points in Kentucky and Indiana. NOTE: If a hearing is deemed necessary, applicant requests it be held at Cincinnati, Ohio, or Washington, D.C.

No. MC 136038 (Sub-No. 1), filed January 11, 1972. Applicant: ALASKA SEA-VAN, INC., 18800 South Center Parkway, Seattle, WA 98168. Applicant's representative: Alan F. Wholstetter, 1800 K Street NW., Washington, DC 20006. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Used household goods*, between points in King, Pierce, Snohomish, Skagit, and Whatcom Counties, Wash., restricted to shipments having a prior or subsequent movement beyond said points in containers, and further restricted to pickup and delivery service in connection with packing, crating, and containerization, or unpacking, uncrating, and decontainerization of such traffic. NOTE: Applicant intends to interline Alaska traffic at Seattle, Wash. Common control may be involved. If a hearing is deemed necessary, applicant does not specify a location.

No. MC 136056, filed January 10, 1972. Applicant: JACKIE L. PERRY, doing business as J. L. PERRY TRUCKING COMPANY, Post Office Box 301, Linton, IN 47441. Applicant's representative: Robert W. Loser, 1001 Chamber of Commerce Building, Indianapolis, Ind. 46204. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Malt beverages*, from the brewery and distribution facilities of Theodore Hamm Co., St. Paul, Minn., to points in Indiana on and south of Indiana Highway 28, except points in Marion County, Ind., used malt beverages containers, from the above destinations to the above origin. NOTE: If a hearing is deemed necessary, applicant requests it be held at Indianapolis, Ind.

No. MC 136156 (Sub-No. 1), filed January 11, 1972. Applicant: TODD NORTH AMERICAN, INC., 9 Derwood Circle, Rockville, MD 20850. Applicant's representative: Thomas R. Kingsley, 1819 H Street NW., Washington, DC 20006. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Used household goods, unaccompanied baggage, and personal effects*, between points in the District of Columbia; Anne Arundel, Charles, Montgomery, and Prince Georges Counties, Md.; Alexandria and Falls Church, Va.; and Arlington, Fairfax, Loudoun, and Prince William Counties, Va., restricted to the transportation of traffic having a prior or subsequent movement, in containers, beyond the points authorized, and further restricted to the performance of pickup and delivery service in connection with packing, crating, and containerization, or unpacking, uncrating, and decontainerization of such traffic. NOTE: If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 136158 (Sub-No. 1), filed January 11, 1972. Applicant: COLEMAN TRANSFER & STORAGE, INC., 2804 North 13th Street, Omaha, NE 68101. Applicant's representative: Thomas R. Kingsley, 1819 H Street NW., Washington, DC 20006. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Used household goods, unaccompanied baggage, and personal effects*, between points in Harrison, Pottawattamie, Mills, Freemont, Crawford, Shelby, Montgomery, Page, Audubon, Cass, Adams, and Taylor Counties, Iowa, and Polk, York, Fillmore, Thayer, Colfax, Butler, Seward, Saline, Jefferson, Dodge, Saunders, Lancaster, Gage, Washington, Douglas, Sarpy, Cass, and Otoe Counties, Nebr., restricted to the transportation of traffic having a prior or subsequent movement, in containers, beyond the points authorized and further restricted to the performance of pickup and delivery service in connection with packing, crating, and containerization, or unpacking, uncrating, and decontainerization of such traffic. NOTE: Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C., or Omaha, Nebr.

No. MC 136212 (Sub-No. 1), filed January 24, 1972. Applicant: JENSEN TRUCKING COMPANY, INC., 213 South Washington Street, Post Office Box 37, Papillion, NE 68046. Applicant's representative: Frederick J. Coffman, 521 South 14th Street, Post Office Box 80806, Lincoln, NE 68501. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, meat byproducts, and articles distributed by meat packinghouses* as described in sections A and C of appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766, from the plantsite of American Beef Packers or its subsidiaries located at or near (1) Fort Morgan, Colo., and Harlan, Iowa, to points in Nebraska, Iowa, Illinois, Indiana, Ohio, Michigan, Pennsylvania, Minnesota, Kansas, and Missouri; (2) from Omaha, Nebr., to points in Iowa, Nebraska, Illinois (except Chicago and its commercial zone), Indiana, Ohio, Michigan, Minnesota, Kansas, and Missouri; and (3) from Oakland, Iowa, to points in Nebraska, Ohio, Michigan, Minnesota, Kansas, and Missouri. NOTE: If a hearing is deemed necessary, applicant requests it be held at Lincoln or Omaha, Nebr.

No. MC 136246 (Sub-No. 1), filed January 24, 1972. Applicant: GEORGE BROS., INC., Post Office Box 492, Sutton, NE 68979. Applicant's representative: Donald L. Stern, 530 Univac Building, Omaha, Nebr. 68106. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Anhydrous ammonia*, from the terminals and storage facilities located on the Gulf Central Pipeline Co. at or near Murphy, Nebr., to points in Colorado, Iowa, Kansas, Minnesota, Missouri, North Dakota, South Dakota, and Wyoming. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Omaha, Nebr.

No. MC 136270 (Sub-No. 1) (Amendment), filed November 19, 1971, published FEDERAL REGISTER, issues of December 23, 1971, and January 20, 1972, and republished as amended this issue. Applicant: DONALD E. HIRTLE TRANSPORT, LIMITED, Post Office Box 88, Blockhouse, Lunenburg County, NS Canada. Applicant's representative: Francis E. Barrett, Jr., 10 Industrial Park Road, Hingham, MA 02043. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (a) *Bananas*, when moving in the same vehicle with commodities declared to be exempt under the provisions of section 203(b)(6) of the Interstate Commerce Act, from Chelsea, Mass., to ports of entry on the international boundary line between the United States and Canada located at or near Calais and Houlton, Maine, and to Bar Harbor and Portland, Maine, restricted to traffic moving in foreign commerce; (b) *fresh and processed fish*, when moving in the same vehicle with

commodities declared to be exempt under the provisions of section 203(b)(6) of the Interstate Commerce Act, from ports of entry on the international boundary line between the United States and Canada located at or near Calais and Houlton, Maine, and from Bar Harbor and Portland, Maine, to Boston and Glouchester, Mass., Jersey City, N.J., and Philadelphia and Pittsburgh, Pa., and points in New York, restricted to traffic moving in foreign commerce, and (c) *bananas*, from Albany, N.Y., and points in the New York, N.Y. commercial zone to ports of entry on the international boundary line between the United States and Canada located at or near Calais and Houlton, Maine, and to Bar Harbor and Portland, Maine, restricted to traffic moving in foreign commerce. NOTE: Applicant states authority sought to and from Bar Harbor and Portland, Maine, to cover service by ferry. The purpose of this republication is to amend the application to include the request for additional authority as stated under item (c) and to reflect under item (b) points in New York as destinations in lieu of New York, N.Y., as previously shown. If a hearing is deemed necessary, applicant requests it be held at Boston, Mass., or Portland, Maine.

No. MC 136297 (Sub-No. 1), filed January 5, 1972. Applicant: CHARLES F. CAMPBELL, 612 North Walnut, Champaign, IL 61820. Applicant's representative: George B. Gillespie, 217 South Seventh Street, Springfield, IL 62701. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except in bulk) on traffic having a prior or subsequent movement by air, between Champaign-Urbana, Ill., and O'Hare International Airport, Chicago, Ill., and within a 10-mile radius thereof. NOTE: If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill., or St. Louis, Mo.

No. MC 136301, filed December 16, 1971. Applicant: MER-LOU TRANSPORTATION, INC., East Edison Avenue at State Farmers Market, Fort Myers, Fla. 33902. Applicant's representative: John P. Bond, 30 Giralda Avenue, Coral Gables, FL 33134. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (a) *Pickled products vegetables*, in jars and containers, other than frozen; from Millsboro, Del., to all States lying east of the Mississippi River, including Washington, D.C., and points in Louisiana and Missouri, but excluding points in Minnesota; *empty glass jars and containers and cans and related items* such as caps and corks and any other ingredients necessary to effect the processing of pickled products, on return; (b) *pickled products and vegetables*, in jars and containers, other than frozen, from the processing plants at Imlay City, Bridgeport, Memphis, and Carson City, Mich., to the plantsite in Millsboro, Del., and (c) *pickled products*, in brine in specialized containers, from points in all States lying east of the Mississippi River including the District of Columbia and points in Louisiana and Missouri but excluding points in Minnesota, to the processing plants located in Imlay City, Bridgeport, Memphis, and Carson City, Mich., and Millsboro, Del., under contract with Vlasic Foods, Inc. NOTE: If a hearing is deemed necessary, applicant requests it be held at Detroit, Mich., or Miami, Fla.

No. MC 136312 (Sub-No. 1), filed January 10, 1972. Applicant: HASKELL FOODS COMPANY OF OKLAHOMA, INC., Haskell, Okla. 74436. Applicant's representative: James B. Blair, 111 Holcomb Street, Springdale, AR 72764. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs and beverages*, from the warehouse site of R. J. R. Foods, Inc., in Haskell, Okla., to points in Arkansas, Kansas, Mississippi, Missouri, New Mexico, Oklahoma, and Texas, under contract with R. J. R. Foods, Inc. NOTE: If a hearing is deemed necessary, applicant requests it be held at Oklahoma City, Okla., Kansas City, Mo., or Dallas, Tex.

No. MC 136319 (Sub-No. 1), filed January 26, 1972. Applicant: CUSTOM TRANSIT, INC., 2406 Glenbrook South, Garland, TX 75040. Applicant's representative: Glen M. White, 3100 Fidelity Union Tower, Dallas, Tex. 75201. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Glass*, automobile or boat, cut to shape; *mineral wool; and mineral wool conduits or pipe*, from Dallas, Tex., to points in Arkansas, Colorado, Iowa, Kansas, Louisiana, Mississippi, Missouri, Nebraska, New Mexico, Oklahoma, Tennessee, and Texas, under contract with PPG Industries, Inc. NOTE: If a hearing is deemed necessary, applicant requests it be held at Dallas or Fort Worth, Tex.

No. MC 136354, filed January 7, 1972. Applicant: LIZZA TRUCKING CO., a corporation, Route 30 East, 1085 East Pittsburgh Street, Greensburg, PA 15601. Applicant's representative: Henry M. Wick, Jr., 2310 Grant Building, Pittsburgh, Pa. 15219. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Toilet preparations, toilet articles and premiums, cosmetics, drugs, cleaning compounds, buffing or polishing compounds, disinfectants and household products* (except commodities in bulk); and (2) *materials and supplies* used in the manufacture or sales and distribution of the commodities named in (1) above (except commodities in bulk), between Fort Madison, Iowa, Danville, Ill., and Jackson, Miss., on the one hand, and, on the other, points in Minnesota, Wisconsin, Nebraska, Illinois, Indiana, Michigan, Ohio, Missouri, Tennessee, Iowa, Arkansas, Kansas, Kentucky, Mississippi, Texas, Oklahoma, Louisiana, Georgia, and Alabama. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at Washington, D.C.

No. MC 136358, filed January 10, 1972. Applicant: JOHN S. BADGER, JR., doing business as ECONOMY MOVERS, Post Office Box 7001, Colorado Springs, CO 80907. Applicant's representative: Henry V. Ellwood, The 1650 Grant Street Building, Denver, CO 80203. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Used household goods*, between points in El Paso County, Colo., restricted to the transportation of traffic having a prior or subsequent movement in containers, and further restricted to the performance of pickup and delivery service in connection with packing, crating, and containerization, or unpacking, uncrating, and decontainerization of such traffic. NOTE: If a hearing is deemed necessary, applicant requests it be held at Denver, Colo.

No. MC 136359, filed January 12, 1972. Applicant: EASTERN OIL TRANSPORT, INC., Post Office Box 996, Wilmington, NC 28402. Applicant's representative: Chester A. Zyblut, 1522 K Street NW., Washington, DC 20005. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (a) *Asphalt, asphalt cutback, No. 2 fuel oil, No. 5 oil and No. 6 oil*, in bulk, from Wilmington, N.C., to points in Williamsburg, Horry, Marion, Florence, Darlington, Chesterfield, Lancaster, Marlboro, Dillon, and Georgetown Counties, S.C.; and (b) *asphalt products*, in bulk, from Savannah, Ga., to Wilmington, N.C. NOTE: If a hearing is deemed necessary, applicant requests it be held at Raleigh, N.C.

MOTOR CARRIER OF PASSENGERS

No. MC 2835 (Sub-No. 37), field January 11, 1972. Applicant: ADIRONDACK TRANSIT LINES, INC., 495 Broadway, Kingston, NY 12401. Applicant's representative: James E. Wilson, 1032 Pennsylvania Building, Pennsylvania Avenue and 13th Street NW., Washington, DC 20004. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *Passengers and their baggage and express and newspapers* in the same vehicle with passengers, between the junction of New Jersey Highway 17 and Interstate Highway 80 and the junction of New Jersey Highway 3 and Interstate Highway 95 as follows: From the junction of New Jersey Highway 17 and Interstate Highway 80 over Interstate Highway 80 to junction Interstate Highway 95, thence over Interstate Highway 95 to junction New Jersey Highway 3 and return over the same route, as an alternate route for operating conveniences only in connection with applicant's regular-route operations, and serving no intermediate points: NOTE: Common control may be involved. If a hearing is deemed necessary, applicant requests it be held at New York, N.Y.

No. MC 31422 (Sub-No. 6), filed January 4, 1972. Applicant: BESSEMER HILLSVILLE BUS COMPANY, INC., 310 East Liberty Street, Lowellville, OH 44436. Applicant's representative: Frank Robb (same address as above). Authority sought to operate as a *common*

carrier, by motor vehicle, over irregular routes, transporting: *Passengers and their baggage* in the same vehicle with passengers, in special round trip, sightseeing tours and pleasure tours, beginning and ending at points in Mahoning County, Ohio, and Lawrence County, Pa., and extending to points in the United States (including Alaska and Hawaii). NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Youngstown, Ohio, or Pittsburgh, Pa.

No. MC 112699 (Sub-No. 2), filed January 10, 1972. Applicant: TRIANGLE TRANSPORTATION CO., INC., 1531 De Mers Avenue, East Grand Forks, MN 56721. Applicant's representative: Thomas J. Van Osdel, 502 First National Bank Building, Fargo, N. Dak. 58102. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *Passengers and their baggage and express, mail and newspapers* in the same vehicle with passengers, between Grand Forks and Langdon, N. Dak., serving all intermediate points: From Grand Forks over U.S. Highway 81 to Hamilton, N. Dak., and junction North Dakota Highway 5, thence over North Dakota Highway 5 to Langdon, and return over the same route. NOTE: Applicant states that the requested authority cannot be tacked with its existing authority. If a hearing is deemed necessary, applicant requests it be held at Fargo, N. Dak., or St. Paul, Minn.

APPLICATION OF FILING BROKERAGE LICENSE

No MC 130162, filed January 5, 1972. Applicant: PAULINE B. CHAPUT AND ARVILLA V. SMITH, a partnership, doing business as GEM TOURS, 7681 Padova Drive, Goleta, CA 93017. For a license (BMC-5) to engage in operations as a broker at Goleta, Calif., in arranging for transportation in interstate or foreign commerce of *passengers and their baggage*, as individuals and groups, in charter operations, beginning and ending at points in California and extending to points in the United States, including Alaska and Hawaii.

APPLICATIONS IN WHICH HANDLING WITHOUT ORAL HEARING HAS BEEN REQUESTED

No. MC 1515 (Sub-No. 172), filed January 19, 1972. Applicant: GREYHOUND LINES, INC., 1400 West Third Street, Cleveland, OH 44113. Applicant's representative: Barrett Elkins (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *Passengers and their baggage and express and newspapers* in the same vehicle with passengers, (1) between Chicago, Ill., and the junction of U.S. Highway 66 and Interstate Highway 55 near Burr Ridge, Ill., serving all intermediate points and for purposes of joinder with applicant's authorized service route: From Chicago over Interstate Highway 55 to junction U.S. Highway 66 at Burr Ridge, Ill., and return over the same route. In connection with (1) above, authority is sought to abandon U.S. Highway 66 between Chicago and the junction of U.S. Highway 66 and Interstate Highway 55 at Burr Ridge, Ill. This authority is found in MC 1515, Sub 6, Route 1. Applicant requests that this abandonment be effective simultaneously with the granting of the authority sought in (1) above; (2) between the junction of U.S. Highway 5 and Worthington Ridge Road near Berlin and New Britain, Conn., serving all intermediate points: From the junction of U.S. Highway 5 and Worthington Ridge Road near Berlin, Conn., over U.S. Highway 5 to interchange with Connecticut Highway 72, thence over Connecticut Highway 72 to New Britain, Conn., and return over the same route. In connection with (2) above, authority is sought to abandon old U.S. Highway 72 (now designated Connecticut Highway 572) and Worthington Ridge Road (former U.S. Highway 5) between the junction of Worthington Ridge Road and U.S. Highway 5 near Berlin, Conn., over Worthington Ridge Road to junction Connecticut Highway 572, thence over Connecticut Highway 572 to New Britian, Conn. This authority is found in MC 1515, Sub 56, Sheet No. 4, the last paragraph and has been redesignated per letter notice of redesignation of highway, September 1968 filed with the Commission. Applicant requests that this abandonment be effective simultaneously with the granting of the authority sought in (2) above:

(3) Between the junction of Virginia Highway 30 with U.S. Highway 1 at or near Doswell, Va., and the junction of Virginia Highway 30 with U.S. Highway 60 west of Williamsburg over the following routes: From the junction of Virginia Highway 30 with U.S. Highway 1 over Virginia Highway 30 to West Point, thence over Virginia Highway 33 to its junction with Virginia Highway 168, thence over Virginia Highway 168 to Barhamsville, thence over Virginia Highway 30 to its junction with U.S. Highway 60. Restriction: No passenger or parcel will be picked up at West Point or at any point within 5 miles of West Point to be discharged or delivered at Richmond and no passenger or parcel will be picked up at Richmond to be discharged or delivered at West Point or at any point within 5 miles of West Point; (4) between the junction of U.S. Highway 41 and Alternate U.S. Highway 41 approximately 2 miles south of Nortonville, Ky., and the junction of Interstate Highway 65 and U.S. Highway 62 just northeast of Elizabethtown, Ky., serving no intermediate points except the junction of the Western Kentucky Parkway and U.S. Highway 41 just southeast of Elizabethtown, Ky., for the purpose of joinder with applicant's authorized service route, and subject to the further restriction shown below, as follows: From the junction of U.S. Highway 41 and Alternate U.S. Highway 41 approximately 2 miles south of Nortonville, Ky., over U.S. Highway 41 to its junction with the Western Kentucky Parkway, thence over the Western Kentucky Parkway to its junction with Interstate Highway 65, thence over Interstate Highway 65 to its junction with the Kentucky Turnpike and U.S. Highway 62 just northeast of Elizabethtown, Ky., and return over the same routes.

Restriction: No traffic may be transported under this authority which originates at or is destined to Nortonville or Elizabethtown, Ky., and (5) between New Philadelphia, Ohio, and the junction of U.S. Highway 250 and Ohio Highway 259 (former U.S. Highway 250) near Midvale, Ohio, serving all intermediate points: From New Philadelphia (South Broadway Interchange) over U.S. Highway 250 to junction Ohio Highway 259 near Midvale, Ohio, and return over the same route. In connection with (5) above, authority is sought to abandon Ohio Highway 259 (former U.S. Highway 250) from New Philadelphia to its junction with U.S. Highway 250 near Midvale, Ohio. This authority is found in MC 1515, Sub 6, Sheet No. 17, Route No. 64. Applicant requests that this abandonment be effective simultaneously with the granting of the authority sought in (5) above. NOTE: Common control may be involved.

No. MC 35628 (Sub-No. 326), filed January 10, 1972. Applicant: INTERSTATE MOTOR FREIGHT SYSTEM, a corporation, 134 Grandville SW., Grand Rapids, MI 49502. Applicant's representative: Leonard D. Verdier, Jr., 900 Old Kent Building, Grand Rapids, Mich. 49502. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading), between Worcester, Mass., and points in Essex, Middlesex, Suffolk, and Norfolk Counties, Mass. NOTE: Applicant states that tacking is intended at Worcester, Mass., with service to and from all points presently authorized. Applicant further states the purpose of instant application is to use Worcester as a gateway in addition to present authority to and from points in said counties via Somersworth, N.H.

No. MC 125562 (Sub-No. 6), filed January 6, 1972. Applicant: EDWIN S. LEHMAN AND DENNIS D. LEHMAN, a partnership, doing business as LEHMAN TRUCKING CO., Box 103, Kidron, OH 44636. Applicant's representative: Sheldon M. Gisser, 840 Terminal Tower, Cleveland, Ohio 44113. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Aluminum truck body kits*, knocked down, and *cabs and fabricated parts for construction machinery*, in shipper owned trailers, from Kidron, Ohio, to points in Kansas and South Dakota, and *damaged or defective shipments and materials and supplies* used in the manufacture of the commodities described above from points in Kansas and South Dakota to Kidron, Ohio, under contract with Kidron Body Co.

By the Commission.

[SEAL] ROBERT L. OSWALD, *Secretary*.

[FR Doc.72-2372 Filed 2-16-72;8:45 am]

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PART II

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Service

■

Hog Cholera and Other Communicable Swine Diseases

Title 9—ANIMALS AND ANIMAL PRODUCTS

Chapter I—Animal and Plant Health Service,[1] Department of Agriculture

SUBCHAPTER C—INTERSTATE TRANSPORTATION OF ANIMALS (INCLUDING POULTRY) AND ANIMAL PRODUCTS

PART 76—HOG CHOLERA AND OTHER COMMUNICABLE SWINE DISEASES

On November 11, 1971, there was published in the FEDERAL REGISTER (36 F.R. 21652–21658) a notice of proposed rule making with respect to a proposed revision of the Hog Cholera Regulations as contained in Part 76, Title 9, Code of Federal Regulations. After due consideration of all relevant material, including that submitted in connection with such notice, and pursuant to the provisions of the Act of May 29, 1884, as amended, the Act of February 2, 1903, as amended, the Act of March 3, 1905, as amended, the Act of September 6, 1961, and the Act of July 2, 1962 (21 U.S.C. 111–113, 114a, 114g, 115, 117, 120, 121, 123–126, 134b, 134f), said Part 76 is hereby revised to read as follows:

GENERAL PROVISIONS

Sec.
76.1 Definitions.
76.2 Notice relating to existence of the contagion of hog cholera and other swine diseases; prohibition of movement of any hog cholera virus, exceptions; spread of disease through raw garbage; regulations; quarantines; Eradication States; Free States.
76.3 General restrictions.
76.4 Interstate movement of hog cholera virus prohibited, except as provided.
76.5 Interstate movement of swine affected with or exposed to hog cholera.
76.6 Interstate movement of certain swine not affected with or exposed to hog cholera.
76.7 Interstate movement of vaccinated swine.
76.8 Interstate movement of swine from a quarantined area.
76.9 Interstate movement of swine products from a quarantined area.
76.10 Movement of swine and swine products from a quarantined area to a nonquarantined area of the same State.
76.11 Movement of swine and swine products through quarantined areas.
76.12 Schedules of restrictions and conditions.
76.13 Interstate movement of specially processed swine products.
76.14 Special processing of swine products.
76.15 Special requirements for interstate movement of swine fed raw garbage and products from swine fed raw garbage.
76.16 Authorization of other movements.
76.17 Serum prophylaxis treatment of swine.
76.18 Approval of livestock markets.
76.30 Cleaning and disinfecting of means of conveyance.
76.31 Cleaning and disinfecting livestock markets and other facilities.
76.32 Disinfectants to be used.

AUTHORITY: The provisions of this Part 76 issued under the Act of May 29, 1884, as amended; the Act of February 2, 1903, as amended; the Act of March 3, 1905, as amended; the Act of September 6, 1961; and the Act of July 2, 1962 (21 U.S.C. 111–113, 114a, 114g, 115, 117, 120, 121, 123–126, 134b, 134f).

GENERAL PROVISIONS

§ 76.1 Definitions.

For purposes of this part, the following terms shall have the meanings set forth in this section.

(a) *Administrator.* The Administrator of the Animal and Plant Health Service, U.S. Department of Agriculture, or any other official of such Service to whom authority has heretofore been delegated or may hereafter be delegated to act in his stead.

(b) *Deputy Administrator.* The Deputy Administrator, Veterinary Services, Animal and Plant Health Service, or any other Veterinary Services official to whom authority has heretofore been delegated or may hereafter be delegated to act in his stead.

(c) *Veterinary services.* Veterinary Services, Animal and Plant Health Service, U.S. Department of Agriculture.

(d) *Hog cholera.* The contagious, infectious and communicable disease of swine commonly known as hog cholera.

(e) *Exposed swine.* Any swine that have been in contact with animals known to be or suspected of being affected with hog cholera; any swine which have been inoculated with modified live virus vaccine after Janary 1, 1970; any swine which have been inoculated with any other virulent hog cholera virus at any time; any swine which have been inoculated with killed or inactivated hog cholera virus vaccine other than as provided in paragraph (w) of this section; or any swine which have been in contact with such vaccinates.

(f) *Virulent hog cholera virus.* The living agent capable of causing hog cholera found:

(1) In the clear serum, plasma, defibrinated blood, whole blood or other tissue derived from pigs affected with hog cholera; or

(2) In any material used as a medium for perpetuating such living agent; or

(3) In living hog cholera virus vaccine commonly known as modified live virus vaccine.

(g) *Modified live virus vaccine.* A living hog cholera virus vaccine produced from a modified or attenuated strain of hog cholera virus and prepared under license from the Secretary of Agriculture, issued pursuant to Subchapter E of this chapter.

(h) *Killed or inactivated hog cholera virus vaccine.* A vaccine produced from killed or inactivated hog cholera virus and prepared under license from the Secretary of Agriculture, issued pursuant to Subchapter E of this chapter.

(i) *Garbage.* Waste consisting in whole or in part of animal waste, including any waste animal carcasses or the offal from such carcasses, or parts thereof, but excluding waste from ordinary household operations which is fed directly to swine on the same premises where such household is located.

(j) *Raw garbage.* Garbage that has not been heated throughout to boiling or equivalent temperature (usually 212° F. at sea level) for 30 minutes, or heated according to a method approved in specific cases by the Deputy Administrator[1] as adequate to prevent the spread of hog cholera.

(k) *Food waste.* Edible waste (for animal use) derived from garbage that has been heated throughout to boiling or equivalent temperature (usually 212° F. at sea level) for 30 minutes, or heated according to a method approved in specific cases by the Deputy Administrator[1] as adequate to prevent the spread of hog cholera.

(l) *State.* Any State, Puerto Rico, or the District of Columbia.

(m) *Interstate.* From any State into or through any other State.

(n) *Quarantined area.* A State, or portion of a State, quarantined under § 76.2 (e) because of hog cholera or other contagious, infectious, or communicable disease of swine.

(o) *Nonquarantined area.* Any State, or portion of a State, not quarantined under this part.

(p) *Person.* Any individual, corporation, company, association, firm, partnership, society, or joint stock company or other legal entity.

(q) *Moved.* Shipped, transported, or otherwise moved, or delivered or received for movement, by any person, by land, water, or air.

(r) *Approved livestock market.* A stockyard, livestock market, buying station, concentration point or any other premises, under State or Federal veterinary supervision where swine are assembled for sale or sale purposes, and which has been approved by the Deputy Administrator under § 76.18.

(s) *Nonapproved livestock market.* A stockyard, livestock market, buying station, concentration point or any other premises, other than an approved livestock market, where swine are assembled for sale or sale purposes.

(t) *Recognized slaughtering establishment.* A slaughtering establishment where State or Federal meat inspection is available.

(u) *Swine product.* Any carcass, part or offal of swine, or product thereof.

(v) *Special processing.* Subjecting a swine product to heat treatment in accordance with the requirements contained in § 76.14.

(w) *Official vaccinates.* Swine which are permanently identified as official vaccinates; were reported at the time of vaccination to the appropriate State or

[1] The functions prescribed in Part 76 of Chapter I, 9 CFR, have been transferred from the Agricultural Research Service, U.S. Department of Agriculture, to the Animal and Plant Health Service of the Department (36 F.R. 20707).

[1] Requests for approval of other methods may be made to the Veterinarian in Charge, Animal Health Programs, Animal and Plant Health Service, U.S. Department of Agriculture, for the State in question.

Federal agency; have never received official serum prophylaxis; and were vaccinated against hog cholera prior to July 1, 1969, with a modified live virus hog cholera vaccine approved under this part prior to July 1, 1969, administered in accordance with the recommendations on the vaccine label, or were vaccinated prior to January 1, 1970, with a killed or inactivated hog cholera virus vaccine administered in accordance with the recommendations on the vaccine label.

(x) *Official serum prophylaxis.* The inoculation of swine with anti-hog-cholera serum or hog cholera antibody concentrate, as prescribed in § 76.17, under the supervision of a Federal or State veterinary official, with permanent identification of such swine as having been so inoculated.

(y) *Farm of origin.* A farm where the swine to be shipped interstate were born and which has not been used within the 6 months prior to such shipment to assemble, buy, or sell swine brought in from other sources.

(z) *Slaughter market.* An approved livestock market in a quarantined area, the approval of which has been suspended as provided in § 76.18(c), or an approved livestock market not located within a quarantined area at which swine for sale and shipment for slaughter are handled only on days when no swine are handled for sale and shipment for feeding or breeding purposes, and which is cleaned and disinfected in accordance with the requirements of this part before any swine for feeding or breeding purposes are handled thereat.[2]

(aa) *Eradication State.* Any State listed in § 76.2(f).

(bb) *Free State.* Any State listed in § 76.2(g).

(cc) *Veterinary services inspector.* A veterinarian or livestock inspector employed by Veterinary Services, Animal and Plant Health Service, U.S. Department of Agriculture, in animal health activities, who is authorized to perform the function involved.

(dd) *State inspector.* A veterinarian or livestock inspector regularly employed in animal health activities by a State or a political subdivision thereof, authorized by such State or political subdivision to perform the function involved under a cooperative agreement with the United States Department of Agriculture.

(ee) *Accredited veterinarian.* An accredited veterinarian as defined in Part 160 of this Chapter.

(ff) *State animal health official.* The State animal health official responsible for livestock and poultry disease control and eradication programs.

(gg) *Veterinarian in charge.* The veterinary official of Veterinary Services, Animal and Plant Health Service, U.S. Department of Agriculture, who is assigned by the Deputy Administrator to supervise and perform the official animal health work of the Animal and Plant Health Service in the State concerned.

[2] Information concerning slaughter markets can be obtained from the Veterinarian in Charge, Animal Health Programs, Animal and Plant Health Service, U.S. Department of Agriculture, for the State in question.

§ 76.2 Notice relating to existence of the contagion of hog cholera and other swine diseases; prohibition of movement of any hog cholera virus, exceptions; spread of disease through raw garbage; regulations; quarantines; Eradication States; Free States.

(a) Notice is hereby given that the contagion of hog cholera exists in each area specified in paragraph (e) of this section and that the contagion of hog cholera and other communicable diseases of swine may exist in each State.

(b) Notice is hereby given that the Administrator has determined that the prohibition of the interstate movement of any hog cholera virus, except as specified in § 76.4, is necessary in order to effectuate the eradication of hog cholera.

(c) Notice is hereby given that there is reason to believe raw garbage is one of the primary media through which the contagion of hog cholera, swine erysipelas, trichinosis, tuberculosis, and other contagious, infectious, or communicable diseases of swine is disseminated. Further, there is reason to believe that if certain foreign diseases, such as foot-and-mouth disease and African swine fever, gain entrance into the United States, the contagion of such diseases may be spread through the medium of raw garbage. Therefore, the regulations in this part with respect to raw garbage are deemed necessary in order to more effectually prevent, suppress, and extirpate such diseases, to prevent the interstate spread thereof, and to guard against the dissemination of diseases from foreign countries.

(d) Notice is hereby given that in order to effectually suppress and extirpate hog cholera and other contagious, infectious, and communicable diseases of swine, to prevent the spread and dissemination of the contagion thereof and to protect the livestock of the United States, the regulations in this part are promulgated to govern the interstate movement of swine and swine products.

(e) *Notice of quarantine.* Notice is hereby given that because of the existence of the contagion of hog cholera and the nature and extent of such contagion, the following areas are quarantined:

(1) *Texas.* That portion of the State of Texas comprised of Atascosa, Bee, Bexar, Cameron, De Witt, Duval, Goliad, Gonzales, Hidalgo, Jackson, Karnes, Starr, Victoria, Webb, Willacy, and Wilson Counties.

(2) *The Commonwealth of Puerto Rico.* Entire Commonwealth.

(f) Notice is hereby given that systematic procedures have been in effect for at least 3 months in the States listed below to detect and eradicate the disease of hog cholera; that a period of more than 3 months has passed since there has been clinical evidence that the contagion of the disease exists within such States; and that such States are hereby designated as hog cholera Eradication States. Once designated as a hog cholera Eradication State, the State will retain such status so long as there is no clinical evidence that the contagion of hog cholera exists within such State, other than in primary unrelated instances where the infected herd is promptly depopulated, or until such State is listed in paragraph (g) of this section. Any State which is removed from listing in paragraph (f) because of this secondary spread of the contagion of hog cholera within such State may requalify for such listing when systematic procedures to detect and eradicate the disease have been in effect for 3 consecutive months following herd depopulation of the last positive case, and no clinical evidence of the contagion of the disease has been detected within such State. The following States are classified as Eradication States:

Arkansas.
Illinois.
Indiana.
Massachusetts.
Minnesota.
Mississippi.
Missouri.
New Jersey.
North Carolina.
Ohio.
Oklahoma.
Rhode Island.
Virginia.
Commonwealth of Puerto Rico.

(g) Notice is hereby given that systematic procedures have been in effect for at least 1 year in the States listed below to detect and eradicate the disease of hog cholera; that a period of more than 1 year has passed since there has been clinical evidence that the contagion of the disease exists within such States; and that such States are hereby designated as hog cholera Free States. Once designated as a hog cholera Free State, the State will retain such status so long as there is no clinical evidence that the contagion of hog cholera exists within such State, other than in primary unrelated instances where the infected herd is promptly depopulated. A State removed from listing in this paragraph because of secondary spread of the contagion of hog cholera within such State may requalify for listing when systematic procedures to detect and eradicate the disease have been in effect for 6 consecutive months following herd depopulation of the last positive case, and no clinical evidence of the contagion of the disease has been detected. The following States are hereby classified as hog cholera Free States:

Alabama.
Alaska.
Arizona.
California.
Colorado.
Connecticut.
Delaware.
Florida.
Georgia.
Hawaii.
Idaho.
Iowa.
Kansas.
Kentucky.
Louisiana.
Maine.
Maryland.
Michigan.
Montana.
Nebraska.
Nevada.
New Hampshire.
New Mexico.
New York.
North Dakota.
Oregon.
Pennsylvania.
South Carolina.
South Dakota.
Tennessee.
Utah
Vermont.
Washington.
West Virginia.
Wisconsin.
Wyoming.
District of Columbia.

§ 76.3 General restrictions.

Swine or swine products referred to in this part shall not be moved interstate except in accordance with the regulations in this part.

§ 76.4 Interstate movement of hog cholera virus prohibited, except as provided.

Virulent hog cholera virus shall not be moved interstate, except that: In specific cases and under such conditions as he may impose to prevent the interstate spread of hog cholera and to effectuate the hog cholera eradication program, the Deputy Administrator may authorize the interstate movement of stated quantities of virulent hog cholera virus for research, diagnostic, biologics production, or export purposes if he determines that such movement will not endanger swine or impair the hog cholera eradication program. When so moved for purposes other than export, such virus shall be accompanied by a permit from the appropriate official of the State of destination and shall in all cases, including export, be accompanied by a certificate issued by the Deputy Administrator specifying any conditions imposed regarding the specific shipment.

§ 76.5 Interstate movement of swine affected with or exposed to hog cholera.

(a) Swine affected with hog cholera may not be moved interstate for any purpose.

(b) Exposed swine (as defined in § 76.1(e)) may be moved interstate from any point in any State to a recognized slaughtering establishment for immediate slaughter and special processing in accordance with Schedule A of § 76.12.

§ 76.6 Interstate movement of certain swine not affected with or exposed to hog cholera.

(a) Swine not known to be affected with or exposed to hog cholera may be moved interstate from any point in any nonquarantined area to a recognized slaughtering establishment for immediate slaughter, or to an approved livestock market for sale for immediate slaughter without further restriction under this part.

(b) Swine not known to be affected with or exposed to hog cholera may be moved interstate from any nonquarantined area for feeding and breeding purposes as provided in this paragraph (b):

(1) From an approved livestock market in any State:

(i) To an approved livestock market in accordance with Schedule B of § 76.12.

(ii) To any point other than a nonapproved livestock market in accordance with Schedule B of § 76.12.

(2) From a farm of origin in any State:

(i) To an approved livestock market in accordance with Schedule C of § 76.12.

(ii) To any point other than a nonapproved livestock market in accordance with Schedule C of § 76.12.

(3) From any premises in any State, other than a farm of origin or an approved or nonapproved livestock market:

(i) To an approved livestock market in accordance with Schedule D of § 76.12.

(ii) To any point other than a nonapproved livestock market in accordance with Schedule D of § 76.12.

(4) From an approved livestock market in an Eradication or Free State which receives swine only from Eradication or Free States:

(i) To an approved livestock market in accordance with Schedule E of § 76.12.

(ii) To any point other than a nonapproved livestock market in accordance with Schedule E of § 76.12.

(5) From a farm of origin in an Eradication or Free State:

(i) To an approved livestock market in accordance with Schedule F of § 76.12.

(ii) To any point other than a nonapproved livestock market in accordance with Schedule F of § 76.12.

(6) From any premises in an Eradication or Free State, other than a farm of origin, or an approved or nonapproved livestock market:

(i) To an approved livestock market in accordance with Schedule G of § 76.12.

(ii) To any point other than a nonapproved livestock market in accordance with Schedule G of § 76.12.

(c) Swine not known to be affected with or exposed to hog cholera may be moved interstate from any nonquarantined area for exhibition purposes as provided in paragraph (b) of this section.

§ 76.7 Interstate movement of vaccinated swine.

(a) Official vaccinates may be moved interstate in accordance with the same restrictions and conditions which apply to nonvaccinated swine under the provisions of this part.

(b) Notwithstanding any other provisions of this part, swine treated with approved modified live virus vaccine after July 1, 1969, but prior to January 1, 1970, or treated with other virulent hog cholera virus prior to April 1, 1966, may be moved interstate only from a nonquarantined area and if they are not known to be affected with or otherwise exposed to hog cholera and are consigned to a recognized slaughtering establishment for immediate slaughter.

§ 76.8 Interstate movement of swine from a quarantined area.

Swine may be moved interstate from a quarantined area in accordance with the provisions of this section.

(a) Exposed swine (as defined in § 76.1(e)) may be moved interstate as provided in § 76.5(b).

(b) Swine not known to be affected with or exposed to hog cholera may be moved interstate from a quarantined area as provided in this paragraph only for immediate slaughter or for sale and shipment for immediate slaughter. Such swine may be so moved interstate:

(1) From any point other than an approved or nonapproved livestock market:

(i) To a recognized slaughtering establishment in accordance with Schedule H of § 76.12.

(ii) To a slaughter market (as defined in § 76.1(z)) in accordance with Schedule H of § 76.12.

(2) From a slaughter market (as defined in § 76.1(z)) to a recognized slaughtering establishment in accordance with Schedule H of § 76.12.

(c) *Quarantine of swine or detention of swine products moving interstate in violation of regulations.* The Deputy Administrator may order the quarantine of swine or the detention of swine products found to be moving interstate in violation of regulations contained in this part. Release from quarantine or other disposition of such quarantined swine or release of swine products detained to prevent the spread of disease will be subject to the requirement of special processing in accordance with § 76.14 or any other conditions which may be specified by the Deputy Administrator as necessary to prevent the spread of hog cholera or other communicable diseases of livestock. Except for supervision, no expense incurred in quarantining or otherwise disposing of quarantined swine or in detaining or disposing of detained swine products will be borne by the Department of Agriculture.

§ 76.9 Interstate movement of swine products from a quarantined area.

Swine products not derived from swine affected with or exposed to hog cholera may be moved interstate from a quarantined area if they were produced in a federally inspected slaughtering establishment operating under the provisions of the Federal Meat Inspection Act, as amended (21 U.S.C. 601 et seq.).

§ 76.10 Movement of swine and swine products from a quarantined area to a nonquarantined area of the same State.

Swine and swine products moved from the quarantined area of a State to a nonquarantined area of the same State may be moved interstate only as specified in §§ 76.8 and 76.9.

§ 76.11 Interstate movement of swine and swine products through quarantined areas.

Swine and swine products may be moved interstate from nonquarantined areas through quarantined areas without compliance with §§ 76.8 and 76.9 if (a) such movement is continuous and direct and such swine and swine products are not unloaded in the quarantined areas; or (b) if all facilities used in connection with the unloading have been approved for such purpose by a Veterinary Services inspector as having been cleaned and disinfected before such use, as prescribed in §§ 76.30–76.32, under the supervision of a person authorized for the purpose by the inspector.

§ 76.12 Schedules of restrictions and conditions.[2]

SCHEDULE A

Schedule A applies to the interstate movement of swine for immediate slaughter and special processing as provided in §§ 76.5(b) and 76.15 and requires that:

[2] In each instance the regulations of the State of destination should be consulted.

1. The swine must be moved to a recognized slaughtering establishment for immediate slaughter and special processing.

2. The recognized slaughtering establishment must be designated by the Deputy Administrator to slaughter specific shipments of exposed swine.

3. The means of conveyance must be sealed during transit with Department seals or accompanied by a representative of Veterinary Services or a person specifically authorized for the purpose by the Deputy Administrator.

4. The seals must not be removed or broken except by a meat inspector employed by the Consumer and Marketing Service of the U.S. Department of Agriculture or other persons specifically authorized for this purpose by the Deputy Administrator.

5. The swine must be accompanied by a certificate of a Veterinary Services inspector showing that the establishment to which the animals are consigned has been specifically approved by the Deputy Administrator, that the inspector has inspected all swine on the premises of origin within 48 hours of shipment interstate, and that the swine are apparently free of hog cholera and other contagious, infectious, or communicable diseases.

SCHEDULE B

Schedule B applies to the interstate movement of feeder and breeder swine as provided in § 76.6(b)(1) and requires that:

1. The swine must be permanently identified to the premises of origin by individual ear tag, ear notch, tattoo or similar individual identification.

2. The swine must be inspected by a Veterinary Services or State inspector or an accredited veterinarian at the point of origin of the interstate shipment immediately prior to such shipment, and found to be apparently free of hog cholera and other contagious, infectious or communicable diseases.

3. The swine must be accompanied by an inspection certificate issued by the Veterinary Services or State inspector or accredited veterinarian showing:

(a) Place and date of issuance.

(b) Consignee and consignor.

(c) Record of official vaccination or official serum prophylaxis, when applicable.

(d) The permanent and individual identification of the swine to the premises of origin.

(e) That the swine have been inspected by the Veterinary Services or State inspector or accredited veterinarian and found to be apparently free of hog cholera and other contagious, infectious or communicable diseases.

4. A copy of the inspection certificate must be forwarded to the appropriate Animal Health official of the State of destination.

5. The interstate movement must be to a State of destination which provides for the segregation or quarantine of imported feeder and breeder swine for not less than 21 days.[4]

6. Swine moved from an approved livestock market must be transported, in a means of conveyance which has been cleaned and disinfected as provided in §§ 76.30 and 76.32; *Provided, however,* That if the means of conveyance is not regularly used to transport livestock, disinfection is not required.

7. The owner and shipper must maintain for 1 year after the interstate movement a record of the origin, destination, and identification of all such swine and shall afford access to such records at any reasonable time to Veterinary Services and State inspectors designated by the Deputy Administrator.

SCHEDULE C

Schedule C applies to the interstate movement of feeder and breeder swine as provided in § 76.6(b)(2) and requires that:

1. The interstate movement must be continuous.

2. The interstate movement must be in the same means of conveyance in its entirety.

3. The interstate movement must be to a State of destination which provides for the segregation or quarantine of imported feeder or breeder swine for not less than 21 days.[4]

4. The swine must be permanently identified to the farm of origin by individual ear tag, ear notch, tattoo, or similar individual identification.

5. The swine must be inspected by a Veterinary Services or State inspector or an accredited veterinarian at the point of origin of the interstate shipment immediately prior to such shipment, and found to be apparently free of hog cholera and other contagious, infectious or communicable diseases.

6. The swine must be accompanied by an inspection certificate issued by the Veterinary Services or State inspector or accredited veterinarian showing:

(a) Place and date of issuance.

(b) Consignee and consignor.

(c) Record of official vaccination or official serum prophylaxis, when applicable.

(d) The permanent and individual identification of the swine to the farm of origin.

(e) That the swine have been inspected by the Veterinary Services or State inspector or accredited veterinarian, and found to be apparently free of hog cholera and other contagious, infectious or communicable diseases.

(f) That the swine are being moved interstate from the farm where they were born and such farm has not been used within the past 6 months to buy, sell or assemble swine brought in from other sources; and that all swine on the farm of origin at the time of shipment have been located there for not less than 21 days.

7. A copy of the inspection certificate must be forwarded to the appropriate Animal Health official of the State of destination.

SCHEDULE D

Schedule D applies to the interstate movement of feeder and breeder swine as provided in § 76.6(b)(3) and requires that:

1. The interstate movement must be continuous.

2. The interstate movement must be in the same means of conveyance in its entirety.

3. The interstate movement must be to a State of destination which provides for the segregation or quarantine of imported feeder or breeder swine for not less than 21 days.[4]

4. The swine must be permanently identified to the premises of origin by individual ear tag, ear notch, tattoo, or similar individual identification.

5. The swine must be inspected by a Veterinary Services or State inspector or an accredited veterinarian at the point of origin of the interstate shipment immediately prior to such shipment and found to be apparently free of hog cholera and other contagious, infectious, or communicable diseases.

6. The swine must be accompanied by an inspection certificate issued by the Veterinary Services or State inspector or accredited veterinarian showing:

(a) Place and date of issuance.

(b) Consignee and consignor.

(c) Record of official vaccination or official serum prophylaxis, when applicable.

(d) The permanent and individual identification of the swine to the premises of origin.

(e) That the swine have been inspected by a Veterinary Services or State inspector or accredited veterinarian and found to be apparently free of hog cholera and other contagious, infectious or communicable diseases.

7. A copy of the inspection certificate must be forwarded to the appropriate Animal Health official of the State of destination.

8. The owner and shipper must maintain for 1 year after the interstate movement a record of the origin, destination, and identification of all such swine and shall afford access to such records at any reasonable time to Veterinary Services and State inspectors designated by the Deputy Administrator.

SCHEDULE E

Schedule E applies to the interstate movement of feeder and breeder swine as provided in § 76.6(b)(4) and requires that:

1. The interstate movement must be continuous.

2. The interstate movement must be in the same means of conveyance in its entirety.

3. The swine must be inspected by a Veterinary Services or State inspector or an accredited veterinarian at the point of origin of the interstate shipment immediately prior to such shipment, and found to be apparently free of hog cholera and other contagious, infectious, or communicable diseases.

4. The swine must be accompanied by an inspection certificate issued by the Veterinary Services or State inspector or accredited veterinarian showing:

(a) Place and date of issuance.

(b) Consignee and consignor.

(c) Record of official vaccination or official serum prophylaxis, when applicable.

(d) That the swine have been inspected by the Veterinary Services or State inspector or accredited veterinarian, and are apparently free of hog cholera and other contagious, infectious, or communicable diseases.

5. A copy of the inspection certificate must be forwarded to the appropriate Animal Health official of the State of destination.

6. The approved livestock market from which the shipment originates must handle swine only from Eradication or Free States.

7. The swine must not be brought into contact with swine from non-Eradication or non-Free States.

8. Swine moved from an approved livestock market must be transported in a vehicle cleaned and disinfected as provided in §§ 76.30 and 76.32; *Provided, however,* That if the vehicle is not regularly used to transport livestock, disinfection is not required.

SCHEDULE F

Schedule F applies to the interstate movement of feeder and breeder swine as provided in § 76.6(b)(5) and requires that:

1. The interstate movement must be continuous.

2. The interstate movement must be in the same means of conveyance in its entirety.

3. The swine must not be brought into contact with swine from non-Eradication or non-Free States.

SCHEDULE G

Schedule G applies to the interstate movement of feeder and breeder swine as provided in § 76.6(b)(6) and requires that:

1. The interstate movement must be continuous.

2. The interstate movement must be in the same means of conveyance in its entirety.

3. The swine must be inspected by a Veterinary Services or State inspector or accredited veterinarian at the point of origin of the interstate shipment immediately prior to such shipment and found to be apparently free of hog cholera and other contagious, infectious or communicable diseases.

[4] Information as to the rules of States of destination can be obtained from the Veterinarian in Charge, Animal Health Programs, Veterinary Services, Animal and Plant Health Service, U.S. Department of Agriculture, for such State.

4. The swine must not be brought into contact with swine from non-Eradication or non-Free States.

5. The premises of origin must not have been used in the 21 days preceding the interstate movement to receive, buy or sell swine from a non-Eradication or non-Free State.

6. The swine must be accompanied by an inspection certificate issued by the Veterinary Services or State inspector or accredited veterinarian showing:

(a) Place and date of issuance.

(b) Consignee and consignor.

(c) Record of official vaccination or official serum prophylaxis, when applicable.

(d) That the swine have been inspected by the Veterinary Services or State inspector or accredited veterinarian and are apparently free from hog cholera and other contagious, infectious or communicable diseases.

7. A copy of the inspection certificate must be forwarded to the appropriate Animal Health official of the State of destination.

SCHEDULE H

Schedule H applies to the movement of swine from a quarantined area for slaughter purposes as provided in § 76.8(b) and requires that:

1. A permit for the movement must be obtained from the appropriate Animal Health official of the State of destination.

2. (a) The swine must be identified by an individual ear tag to the premises of origin or by a red mark at least 4" x ½" above the shoulder on the back of each animal, or (b) the means of conveyance in which the swine are moved interstate must be sealed with Department seals.

3. If the means of conveyance is sealed, the seals must not be removed or broken except by a meat inspector employed by the Consumer and Marketing Service of the U.S. Department of Agriculture or by other persons authorized for this purpose by the Deputy Administrator.

4. All swine on the premises of origin, including the swine to be moved interstate, must be inspected on the premises of origin by a Veterinary Services or State inspector or an accredited veterinarian within 24 hours prior to the time the interstate movement is to begin and all swine on the premises must be found to be apparently free of hog cholera and other contagious, infectious and communicable diseases, and known exposure thereto.

5. The swine must be moved for immediate slaughter directly to a federally inspected slaughtering establishment operating under the provisions of the Federal Meat Inspection Act, as amended (21 U.S.C. 601 et seq.), or to a State inspected slaughtering establishment which has inspection by a State inspector at the time of slaughter; or to a slaughter market (as defined in § 76.1(z) for sale and shipment for immediate slaughter; they must be moved without contact at any point with feeding or breeding swine; they shall not be unloaded en route; and they shall not be diverted.

6. The swine must be accompanied by an inspection certificate issued by a Veterinary Services or State inspector or an accredited veterinarian showing:

(a) That all swine on the premises of origin, including those covered by the certificate, were inspected by him as prescribed in paragraph 4 of this Schedule H and found to be apparently free from hog cholera and other contagious diseases and from known exposure thereto.

(b) Consignee and consignor.

(c) Number of swine covered by the certificate.

(d) The individual eartag identification numbers of the swine or the existence of the red color mark on each animal covered by the certificate as prescribed in paragraph 2 of this Schedule H.

(e) That the swine covered by the certificate must be moved directly to the federally or State inspected slaughtering establishment or slaughter market specified on the certificate.

(f) That the swine must be moved without contact at any point with feeding or breeding swine and shall not be unloaded or diverted enroute.

7. A copy of the inspection certificate must be forwarded to the appropriate Animal Health official of the State of destination.

8. The means of conveyance used to transport the swine interstate must be placarded by affixing conspicuously thereto a durable placard not less than 5 x 8 inches in size on which are printed in block bold faced letters not less than 1½ inches in height, the words "Swine For Slaughter Only."

9. The means of conveyance must be cleaned and disinfected in accordance with §§ 76.30 and 76.32 under supervision by a Veterinary Services or State inspector immediately following unloading, except that the Deputy Administrator may, in specific cases, approve other points for such cleaning and disinfection when he finds that such procedure will not hamper the hog cholera eradication program.

§ 76.13 Movement of specially processed swine products.

Except as provided in §§ 76.9, 76.10, 76.11, and 76.15, swine products which have been specially processed may be moved interstate without restriction under this part.

§ 76.14 Special processing of swine products.

All swine products required under the regulations of this part to be specially processed shall be heated to an internal temperature of at leasts 156° F. for 30 minutes or to an internal temperature of 177° F. for 3 minutes.

§ 76.15 Special requirements for interstate movement of swine fed raw garbage and products from swine fed raw garbage.

(a) *Movement of swine.* Swine which have been fed any raw garbage may be moved interstate under this part only in accordance with Schedule A of § 76.12 to a slaughtering establishment specifically approved for the purpose by the Deputy Administrator in each case, for immediate slaughter and special processing at such establishment in a manner approved by the Deputy Administrator as adequate to prevent the spread of communicable livestsock diseases.

(b) *Movement of swine products.* (1) Swine products produced at an establishment operating under the Federal Meat Inspection Act, as amended (21 U.S.C. 601 et seq.), which handles products of swine fed raw garbage but specially processes all such products separate and apart from other swine products, keeps the products properly identified and otherwise handles the products in a manner approved by the Deputy Administrator as adequate to prevent the spread of communicable livestock diseases, may be moved interstate without further restriction under this section, but in accordance with the other provisions of this part.

(2) Swine products produced at an establishment operating under the Federal Meat Inspection Act, as amended (21 U.S.C. 601 et seq.), which handles any products of swine fed any raw garbage and does not handle all such products as specified in subparagraph (1) of this paragraph, may be moved interstate only if accompanied by a certificate signed by a meat inspector of the Consumer and Marketing Service, U.S. Department of Agriculture (i) identifying the products to be moved interstate and stating that, insofar as he has been able to determine, the particular products were derived from swine which had not been fed any raw garbage, or (ii) identifying the products to be moved interstate and stating that the particular products have been handled as specified in subparagraph (1) of this paragraph.

§ 76.16 Authorization of other movements.

The Deputy Administrator, in specific cases, may authorize the interstate movement of swine or swine products not otherwise authorized under this part, under such conditions as he may prescribe to prevent the spread of hog cholera or other contagious, infectious, or communicable diseases, and when so moved, the swine or swine products must be accompanied by a permit from the appropriate Animal Health official of the State of destination and a permit from Veterinary Services specifying any conditions imposed regarding such movement.

§ 76.17 Serum prophylaxis treatment of swine.

Although there is no requirement under this part that swine be treated with anti-hog-cholera serum or hog cholera antibody concentrate prior to interstate movement, if swine do receive serum prophylaxis prior to interstate movement they shall be inoculated with anti-hog-cholera serum or hog cholera antibody concentrate prepared under license from the Secretary of Agriculture issued pursuant to Subchapter E of this chapter; they shall meet all other applicable provisions of this part; and the permitted dosage of anti-hog-cholera serum or hog cholera antibody concentrate shall be as follows:

Weight of swine (pounds)	Minimum dose of serum (cubic centimeters)	Minimum dose of antibody concentrate (cubic centimeters)
Under 20	20	10
20 to 40	30	15
40+ to 90	35	18
90+ to 120	45	23
120+ to 150	55	28
150+ to 180	65	33
Over 180	75	38

NOTE: Except for swine under 30 pounds in weight, the dosage of serum should not exceed 1 cc. per pound body weight, or one-half cc. per pound body weight if antibody concentrate is used.

§ 76.18 Approval of livestock markets.

(a) Notices containing lists of livestock markets approved for the purposes of the regulations in this part will be published in the FEDERAL REGISTER. Information with respect to those livestock markets may also be obtained from Veterinary Services.

(b) The Deputy Administrator is authorized to approve any livestock market for the purposes of the regulations in this part when he determines that the operator of such livestock market has executed an appropriate agreement as set forth in subparagraph (1) or (2) of this paragraph and that the livestock market meets the standards specified in such agreement. Request for such approval may be made to the Veterinarian in Charge, Animal Health Programs, Animal and Plant Health Service, U.S. Department of Agriculture, for the State in which the livestock market is located, and the executed agreement shall be filed with said Veterinarian in Charge. The Deputy Administrator is authorized to promulgate notices listing approved livestock markets in accordance with paragraph (a) of this section. The Deputy Administrator may withdraw approval and remove any livestock market from such list when he determines that such livestock market no longer complies with the requirements of the agreement applicable to its operations, or that the operator has terminated such agreement.[5]

(1)

AGREEMENT FOR APPROVAL TO HANDLE INTERSTATE SHIPMENTS OF ANY CLASS OF SWINE

To: Veterinary Services, Animal and Plant Health Service, U.S. Department of Agriculture:

The undersigned operator of the livestock market known as _____, (Name) located at _____, hereby (Address) requests approval to handle interstate shipments of feeder or breeder and/or slaughter swine in accordance with the regulations in 9 CFR Part 76, (from any State) (from hog cholera Eradication States currently listed in § 76.2(f) or Free States currently listed in § 76.2(g) of the regulations).[6] Said operator agrees to:

1. Provide Veterinary Services with a schedule of sale days and cooperate with Veterinary Services in obtaining compliance by livestock shippers with applicable State and Federal regulations.

2. Provide well-constructed and well-lighted impervious surfaced pens, alleys, and sales rings for holding, inspecting and otherwise handling swine, and keep all swine handling facilities clean and in good repair.

3. Require all swine received at the livestock market to be given an inspection by a Veterinary Services or State inspector or an accredited veterinarian, and refuse to sell any swine that show any signs of any infectious, contagious, or communicable disease upon such inspection except as authorized by a Veterinary Services or State inspector or an accredited veterinarian.

4. Separate from the other swine all swine found upon inspection to be, or suspected of being, affected with any contagious, infectious, or communicable disease and immediately notify a Veterinary Services or State inspector, or an accredited veterinarian, of the presence of such swine at the livestock market.

5. Maintain feeder and breeder swine separately from slaughter swine; and if these two classes of swine are yarded in adjoining pens, separate the classes by solid partitions with no drainage from the slaughter swine pens into the feeder and breeder swine pens.[7]

6. Sell feeder and breeder swine before the sales ring is used for slaughter swine if the sales ring is used for both purposes on the same day.[7]

7. Permit no feeder or breeder swine to remain in the livestock market for more than 72 hours and permit no slaughter swine to remain in the livestock market for more than 120 hours.

8. Issue no release for removal of feeder and breeder swine from the livestock market until the swine are identified[7] in accordance with applicable requirements of Federal or State regulations and have been inspected by a Veterinary Services or State inspector, or an accredited veterinarian, and certified in accordance with applicable Federal or State regulations.

9. Issue no release for removal of slaughter swine from the livestock market unless consigned for immediate slaughter and identify the consignee on the release document.

10. Clean pens, alleys, sales rings, docks, and scales before each day's sale of feeder or breeder swine and disinfect such facilities when required under §§ 71.4 or 76.31, with a disinfectant specified in § 76.32.[7]

11. Provide facilities and services for cleaning and disinfecting means of conveyance as prescribed in §§ 76.30 and 76.32.

12. Permit no swine to be inoculated at the livestock market with any modified live virus hog cholera vaccine or any other virulent hog cholera virus.

13. Maintain, for one year after the transaction involved, a record of the origin and destination of all swine, and also of the identification[7] of all swine other than slaughter swine, handled through the livestock market and afford Veterinary Services and State inspectors access to such records at all reasonable times.

_____
(Name of operator of livestock market)

_____
(Address)

_____
(Signature and title)

_____
(Date)

The Veterinary Services, Animal and Plant Health Service, U.S. Department of Agriculture, has approved this application effective_____.
(Date)

_____
(Veterinarian in charge)

_____
(Address)

_____
(Date)

(2) See the following example:

AGREEMENT FOR APPROVAL TO HANDLE INTERSTATE SHIPMENTS OF SLAUGHTER SWINE

To: Veterinary Services, Animal and Plant Health Service, U.S. Department of Agriculture:

The undersigned operator of the livestock market known as _____, (Name) located at _____, hereby (Address) requests approval to handle interstate shipments of slaughter swine only, in accordance with the regulations in 9 CFR, Part 76. Said operator agrees to:

1. Provide Veterinary Services with a schedule of sale days and cooperate with Veterinary Services in obtaining compliance by livestock shippers with applicable State and Federal regulations.

2. Separate from other swine all swine suspected of being affected with any contagious, infectious, or communicable disease and immediately notify a Veterinary Services or State inspector, or an accredited veterinarian, of the presence of such swine at the livestock market.

3. Issue no releases for removal of any swine from the livestock market unless consigned for immediate slaughter and identify the consignee on the release document.

4. Permit no swine to be inoculated at the livestock market with any modified live virus hog cholera vaccine or any other virulent hog cholera virus.

5. Maintain, for one year after the transaction involved, a record of the origin and destination of all swine handled through the livestock market and afford Veterinary Services and State inspectors access to such records at all reasonable times.

_____
(Name of operator of livestock market)

_____
(Address)

_____
(Signature and title)

_____
(Date)

The Veterinary Services, Animal and Plant Health Service, U.S. Department of Agriculture, has approved this application effective _____.
(Date)

_____
(Veterinarian in charge)

_____
(Address)

_____
(Date)

(c) *Approval of livestock markets in a quarantined area.* The approved status of all livestock markets approved for the purposes of the regulations in this part under this section which are located in an area placed under quarantine because of hog cholera, shall be suspended (only for purposes of this part) when such area is placed under quarantine and shall be restored when such area is released from quarantine only upon compliance with all provisions of this section: *Provided,* That such livestock markets which qualify under § 76.1(z) may operate as slaughter markets for the purpose of receiving interstate shipments of slaughter swine and releasing slaughter swine for interstate shipment, in accordance with § 76.8, directly to a federally inspected slaughtering establishment operating under the provisions of the Federal Meat Inspection Act, as amended (21 U.S.C. 601 et seq.), or to

[5] The standards contained in these agreements are minimal and agreements within individual States may be adjusted to conform to more restrictive State laws or regulations.

[6] Delete inapplicable term.

[7] The requirements of paragraphs 5, 6, and 10 and the identification requirements of paragraphs 8 and 13 do not apply to livestock markets that are located in a hog cholera Eradication or Free State and that receive swine only from Eradication or Free States. If any livestock market is approved to handle swine under the lesser requirements provided by this footnote on the basis of being located in, and handling only swine from a hog cholera Eradication or Free State and if any such State involved loses its status as an Eradication or Free State, all of the requirements of this agreement shall apply to such livestock market until the State regains its status as an Eradication or Free State.

a State inspected slaughtering establishment which has inspection by a State inspector at the time of slaughter.

§ 76.30 Cleaning and disinfecting of means of conveyance.

(a) All means of conveyance and their associated equipment used for receiving, shipping, loading, unloading, and delivering swine and for feeding, watering, and resting swine, in connection with the interstate movement of swine, shall be kept clean.

(b) Any means of conveyance and its associated equipment which has been used to move swine interstate which are affected with any contagious, infectious, or communicable disease, shall be cleaned and disinfected under the supervision of a Veterinary Services or State inspector or an accredited veterinarian as follows: Remove all litter, feed, and manure from all portions of each means of conveyance, including all ledges and framework inside and outside, and handle such litter, feed, and manure in such manner as not to expose livestock to any disease contained therein; clean the interior and the exterior of such vehicle or other means of conveyance and its associated equipment; and saturate the entire interior surface, including all doors, endgates, portable chutes, and similar equipment with a disinfectant prescribed in § 76.32.

(c) The Deputy Administrator may, in specific cases, require the thorough cleaning and disinfecting, under the supervision of a Veterinary Services or State inspector or an accredited veterinarian in the manner provided in paragraph (b) of this section, of any means of conveyance which has been used to move interstate any swine which have been fed any raw garbage, or any swine products derived from such swine, or swine exposed to hog cholera or other contagious, infectious or communicable livestock disease, or which the Deputy Administrator has reason to believe may have been otherwise infected with or exposed to such a disease, when he determines that such cleaning and disinfecting is necessary to guard against the spread of any such disease.

(d) The carrier shall be responsible for cleaning and disinfecting all means of conveyance and associated equipment as required by this section and such cleaning and disinfecting shall be done without expense to the Department of Agriculture.

(e) Such cleaning and disinfecting shall be done before the means of conveyance is moved from the place where the swine or swine products are unloaded, unless the Deputy Administrator, in specific cases, authorizes its movement to another location and cleaning and disinfecting is carried out at such location in accordance with this section.

§ 76.31 Cleaning and disinfecting livestock markets and other facilities.

(a) All livestock markets and other facilities, including facilities for receiving, shipping, loading, unloading, and delivering swine and for feeding, watering, and resting swine, used in connection with the interstate movement of swine shall be kept clean.

(b) All livestock markets and other facilities, or any portion thereof, which have been used in connection with the interstate movement of swine which are affected with any contagious, infectious, or communicable disease, shall be cleaned and disinfected under the supervision of a Veterinary Services or State inspector or an accredited veterinarian as follows: Empty all troughs and other feeding and watering appliances; remove all litter, feed, and manure from the floors, posts, or other parts, and handle such litter, feed, and manure in such manner as not to expose livestock to any disease contained therein; and saturate the entire surface of the fencing, troughs, chutes, floors, walls, and all other parts with a disinfectant as prescribed in § 76.32.

(c) The Deputy Administrator, in specific cases, may require the thorough cleaning and disinfecting, under the supervision of a Veterinary Services or State inspector or an accredited veterinarian, in the manner provided in paragraph (b) of this section, of any livestock market and other facility, or any portion thereof, which has been used in connection with the interstate movement of any swine which have been fed any raw garbage or swine products derived from such swine, or swine exposed to hog cholera or other contagious, infectious, or communicable disease, or which the Deputy Administrator has reason to believe may have been otherwise infected with or exposed to such a disease, when he determines that such cleaning and disinfecting is necessary to guard against the spread of any such disease.

(d) The owner of such livestock markets and other facilities shall be responsible for cleaning and disinfecting as required under this section, and the cleaning and disinfecting shall be done without expense to the Department of Agriculture.

(e) All livestock markets or other facilities, or any portion thereof, required to be cleaned and disinfected under this section shall not be used for handling swine until after the cleaning and disinfecting has been done.

§ 76.32 Disinfectants to be used.

Disinfection required under the regulations in this part shall be performed with one of the following:

(a) A permitted brand of sodium orthophenylphenate used in a proportion of at least 1 pound to 12 gallons of water, as prescribed in § 71.12 of this chapter.

(b) A permitted cresylic disinfectant in the proportion of at least 4 fluid ounces to 1 gallon of water, as prescribed under §§ 71.10(b) and 71.11 of this chapter.

(c) A permitted general disinfectant (which meets the specifications of § 71.10(a)(5) of this chapter) and which has been shown to be virucidal against the virus of hog cholera, as determined by the Deputy Administrator,[8] may be used at the dilution and otherwise in accordance with directions for use as shown on the label of such disinfectant.

The foregoing revision clarifies, strengthens, and updates the regulations in 9 CFR Part 76. The regulations as set forth herein are substantially the same as those proposed in the notice of rule making with the exception of certain changes in text and format made for purposes of clarification and to reflect authority for seizure and disposal of swine and swine products moving interstate in violation of the regulations in this part as provided in the Act of July 6, 1962.

The revision incorporates requirements deemed necessary to prevent the interstate spread of hog cholera and should be made effective as soon as possible in order to afford maximum protection to the swine industry of the United States. Therefore, under the administrative procedure provision of 5 U.S.C. 553 it is found upon good cause that further notice and other public procedure with respect to the revision are unnecessary, and good cause is found for making it effective less than 30 days after its publication in the FEDERAL REGISTER.

NOTE: The recordkeeping and reporting requirements contained herein have been approved by the Office of Management and Budget in accordance with the Federal Reports Act of 1942.

Effective date. The amendments shall become effective upon publication in the FEDERAL REGISTER (2–17–72).

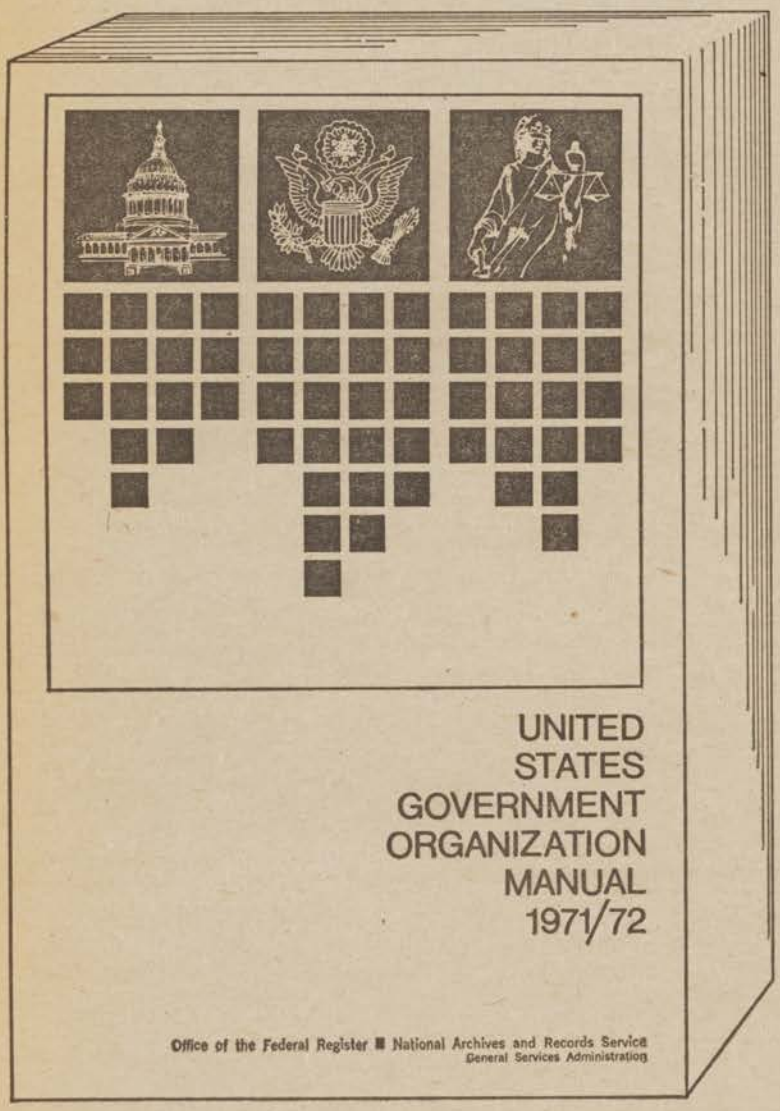
Done at Washington, D.C., this 11th day of February 1972.

F. J. MULHERN,
Administrator, Animal and Plant Health Service.

[FR Doc.72–2367 Filed 2–16–72;8:45 am]

[8] Information as to the names of such disinfectants may be obtained from the Veterinarian in Charge or a Veterinary Services inspector.

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