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List of CFR Parts Affected

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

A cumulative guide is published separately at the end of each month. The guide lists the parts and sections affected by documents published since January 1, 1972, and specifies how they are affected.

Rules and Regulations

Title 6—ECONOMIC STABILIZATION

Chapter III—Price Commission

PART 300—PRICE STABILIZATION

Custom Products and Custom Services

The purpose of this amendment is to add a new § 300.410 "Custom products and custom services" to Part 300 of the regulations of the Price Commission. The new section defines the terms "custom product" and "custom service" and provides a general rule for determining the base price for those products and services. In general, they are defined to mean a product or service specifically produced to the buyer's or buyers' specifications and not reasonably comparable to that manufactured or furnished at any previous time. Buyer specified changes or additions to a noncustom product or service would qualify as custom, to the extent they are not reasonably comparable to any changes or additions to the basic product or service furnished by the manufacturer or service organization at any previous time.

A manufacturer or service organization may determine its base price for a custom product or service by following its customary pricing practices, if any, reflecting allowable costs, subject to the requirement that this price does not result in an increase in its profit margin over that of its base period. The customary pricing practices to be applied would be those applicable to the firm's custom products or services, if it has such customary pricing practices. If it has no such pricing practices for custom products or services, it would use the pricing practices, if any, applicable to its products or services in general.

The amendment is made applicable to the determination of base prices for all custom products or services after March 12, 1972, regardless of the date of the contract for the product or service.

Because the purpose of this amendment is to provide immediate guidance and information as to the price stabilization rules in effect for custom products and custom services, it is hereby found that notice and public procedure thereon is impracticable and that good cause exists for making it effective less than 30 days after publication.

(Economic Stabilization Act of 1970, as amended, Public Law 91-379, 84 Stat. 799; Public Law 91-558, 84 Stat. 1468; Public Law 92-8, 85 Stat. 13; Public Law 92-15, 85 Stat. 38; Economic Stabilization Act Amendments of 1971, Public Law 92-210; Executive Order No. 11640, 37 F.R. 1213, Jan. 27, 1972; Cost of Living Council Order No. 4, 36 F.R. 20202, October 16, 1971)

In consideration of the foregoing, Part 300 of Title 6 of the Code of Federal Regulations is amended as set forth below, effective March 13, 1972.

Issued in Washington, D.C., on March 8, 1972.

C. JACKSON GRAYSON, Jr.,
Chairman, Price Commission.

§ 300.51 [Amended]

1. The first two sentences of paragraph (a) of § 300.51 are revised to read as follows: "A manufacturer or service organization which is a prenotification firm may not charge a price in excess of the base price, determine a base price (with respect to a contract or group of related contracts involving an amount in excess of $1,000,000) for custom products or services under § 300.410, or charge an increased price as a result of the calculation of a base price under Subpart F of this part, until the Price Commission has approved that price in excess of the base price, determination of base price, or increased price. If the Price Commission does not act upon a request under this paragraph within 30 days after receiving it, that price in excess of the base price, determination of base price, or increased price may go into effect without Commission action."

2. Paragraph (d) of § 300.51 is amended by inserting the words "or determine a base price (with respect to a contract or group or related contracts involving an amount in excess of $1,000,000) for custom products or services under § 300.410" before the period at the end of the first sentence; and by inserting the words "or that base price" before the period at the end of the second sentence.

§ 300.52 [Amended]

3. The second sentence of paragraph (a) of § 300.52 is amended by striking out the "with respect to price changes" and inserting the words "each determination of a base price (with respect to a contract or group of related contracts involving an amount in excess of $1,000,000) for custom products or services under § 300.410, and each price change" in place thereof.

4. Section 300.409 is amended by adding the following new paragraph (d) at the end thereof:

§ 300.409 New property and new services.

* * * * *

(d) This section does not apply to any custom product or service covered by § 300.410.

5. The following new section is added after § 300.409:

§ 300.410 Custom products and custom services.

(a) *Definitions.* The following definitions apply in this section:

"Custom product" means a product (other than one specified in § 101.34 (c)(2) of this title) specially produced by a manufacturer to the buyer's or buyers' specifications and not reasonably comparable to any product manufactured at any previous time by the same manufacturer or its predecessors in interest, including any buyer-specified changes or additions to a noncustom product to the extent that they are not reasonably comparable to any changes or additions manufactured, with respect to that noncustom product, at any previous time by the same manufacturer or its predecessors in interest.

"Custom service" means a service (other than one specified in § 101.34(c)(2) of this title) specially produced by a service organization to the buyer's or buyers' specifications and not reasonably comparable to any service provided at any previous time by the same service organization or its predecessors in interest, including any buyer-specified changes or additions to a noncustom service to the extent that they are not reasonably comparable to any changes or additions furnished, with respect to that noncustom service, at any previous time by the same service organization or its predecessors in interest.

(b) *General rule.* A manufacturer or service organization may determine a base price for a custom product or service, in conformity with its customary pricing practices, if any, which—

(1) Reflects only allowable costs incurred or to be incurred, as determined under Price Commission regulations or decisions; and

(2) Does not result in an increase in its profit margin over that which prevailed during the base period.

For the purposes of this paragraph, the base price shall be considered to reflect allowable costs only to the extent that the costs incurred in the manufacture of the product or in the furnishing of the service for which the price is charged are allowable, as determined under Price Commission regulations or decisions.

EXAMPLE: A custom product is produced under a formula provision in a contract which sets the price for the product at $10,000. Labor costs incurred in the manufacture of this product total $5,000, of which $400 are nonallowable. The highest price which may be charged for the product under the contract is $9,600, assuming that the price does not result in the profit margin of the firm exceeding that which prevailed during the base period.

(c) *Effective date.* This section applies to the determination of base prices for all custom products or services after March 9, 1972, regardless of the date of the contract, if any, under which the product or service is sold.

[FR Doc.72-3734 Filed 3-10-72;8:47 am]

Title 7—AGRICULTURE

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

[Lemon Reg. 524]

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

Limitation of Handling

§ 910.824 Lemon Regulation 524.

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

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule making procedure, and postpone the effective date of this section until 30 days after publication hereof in the FEDERAL REGISTER (5 U.S.C. 553) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The committee held an open meeting during the current week, after giving due notice thereof, to consider supply and market conditions for lemons and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such meeting was held; the provisions of this section, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such lemons; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period herein specified; and compliance with this section will not require any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on March 8, 1972.

(b) *Order.* (1) The quantity of lemons grown in California and Arizona which may be handled during the period March 12, 1972, through March 18, 1972, is hereby fixed at 220,000 cartons.

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

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

Dated: March 8, 1972.

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

[FR Doc.72-3783 Filed 3-10-72;8:49 am]

Chapter X—Consumer and Marketing Service (Marketing Agreements and Orders; Milk), Department of Agriculture

[Milk Order 124; Docket No. AO 368-A4]

PART 1124—MILK IN THE OREGON-WASHINGTON MARKETING AREA

Order Amending Order

Correction

In F.R. Doc. 71-18379 appearing at page 23894 in the issue for December 16, 1971, the introductory paragraph of § 1124.9(b) should read as follows:

(b) A supply plant from which not less than 50 percent in any month of October, November, and December, not less than 40 percent in any month of September, January, and February, and not less than 30 percent in any month of March through August, of the total quantity of milk that is physically received at such plant from dairy farmers eligible to be producers pursuant to § 1124.11 (excluding milk received at such plant as diverted milk from another plant, which milk is classified in class III under this order and is subject to the pricing and pooling provisions of this or another order issued pursuant to the Act) or diverted as producer milk to another plant pursuant to § 1124.13, is shipped in the form of a fluid milk product (except as filled milk) to a pool distributing plant or is a route disposition in the marketing area of fluid milk products (except filled milk) processed and packaged at such plant; *Provided*, That:

Title 21—FOOD AND DRUGS

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

SUBCHAPTER B—FOOD AND FOOD PRODUCTS

PART 27—CANNED FRUITS AND FRUIT JUICES

Diluted Orange Juice Beverages

In the matter of establishing standards of identity for diluted fruit juice beverages:

Four orders establishing identity standards for these beverages were published in the FEDERAL REGISTER of May 7, 1968 (33 F.R. 6862–66). An order in the FEDERAL REGISTER of July 27, 1968 (33 F.R. 10713) stayed the effective dates of these standards pending resolution of issues at a public hearing.

Although a number of objections had been filed to provisions of all the standards promulgated in these four orders, most of them were directed to one or more provisions of the identity standards for diluted orange juice beverages. Individuals from the major orange-producing areas as well as the packers of diluted orange juice beverages recognized that their differences would only result in a lengthy and costly hearing, and therefore requested a delay in the scheduling of the hearing in order to attempt to resolve their differences at informal meetings.

They were unable to reach full agreement on any one set of proposals. Consequently, a notice of proposed rule making was published in the FEDERAL REGISTER of September 9, 1971 (36 F.R. 18098), setting forth proposals by the Florida Canners Association (FCA), the National Juice Products Association (NJPA), and the Commissioner of Food and Drugs (FDA) to revise the stayed standards for diluted orange juice beverages (§§ 27.120, 27.121, 27.122) and to establish additional standards of identity for certain related products.

Two hundred and sixty-one comments were received in response to the proposals published on September 9, 1971. One hundred and ninety-three of these comments were from consumers; nine were from consumer associations; 24 were from State and Federal officials; 23 were from manufacturers of diluted fruit juice beverages; five were from manufacturers of ingredients; and seven were from industry associations.

Of the 193 consumer comments, 32 favored the FCA proposal, 32 favored the FDA proposal, and one favored the NJPA proposal. The remaining 128 consumer comments were general in nature.

The majority of the consumer comments expressed support for the prominent declaration of the percentage of orange juice on the label but, at the same time, criticized the fact that FDA proposed a range of percentages for each beverage with a declaration of only the minimum percentage of each range rather than a declaration of the exact percentage of orange juice and/or water contained in the beverage. Comments from industry were divided fairly evenly on the question of whether (1) the percentage of orange juice should be declared in increments of 5 or 10 percent or (2) a declaration of only the minimum of the ranges as proposed by FDA should be required for each beverage. In view of these comments, the Commissioner concludes that it will be in the interest of consumers to require manufacturers to declare the percentage of orange juice in the beverage in percentage increments as set forth below. Since there were no adverse comments to

prominently declaring a percentage figure concerning the orange juice content of the beyerages, this order provides that this percentage declaration be included as part of the name of each beverage.

Regarding the descriptive name for these products, several consumers opposed the use of the words "orange" or "juice," but most consumers remained silent on their preference for names and stated only that they should not be misleading. Most consumer associations favored the FDA proposal which basically advocated the one-name approach (i.e. "diluted orange juice drink" or alternatively "orange drink"). Industry, except for two manufacturers, supported adoption of category names for the beverages as proposed by FDA and NJPA.

The Commissioner is of the opinion that consumers will compare these beverages both on the basis of the percentage of orange juice declared on the label and on the basis of any fanciful or descriptive name. Consequently, he has ruled that the full name of each of these products shall consist of (1) a category name which in his opinion is not misleading and will promote honesty and fair dealing in the interest of consumers and (2) a declaration concerning the percentage of orange juice in the beverage.

The Commissioner has taken into consideration all the comments received and has adopted suggestions where, in his opinion, such suggestions would be in the interest of consumers. On the other hand, he feels it would not be in the interest of consumers to adopt some suggested modifications such as reducing type size requirements for letters used in the name to enable manufacturers who use bottle caps as labels to get all the information required on the cap. The Commissioner has not revised the standards to provide for the use of a range of vitamins and minerals as requested, since such a modification would entail considerable study to determine the vitamins and minerals and their quantities appropriate in diluted orange juice beverages.

In the notice of proposed rule making published in the FEDERAL REGISTER of September 9, 1971 (36 F.R. 10098), the Commissioner did not propose an identity standard for those products containing less than 2 percent orange juice as did the FCA and NJPA. The Commissioner now concludes that all orange flavored beverages containing less than 10 percent but more than 0 percent orange juice ingredient should be combined in one standard as set out below. Further, the Commissioner is presently preparing a document proposing to require manufacturers of products containing no orange juice but containing any ingredient that gives the appearance of orange juice content to declare on the principal display panel of the label that the product contains no orange juice.

There is now general agreement among industry, consumers, and FDA that there should be no difference in labeling the ingredients in standardized and nonstandardized foods. Accordingly, since all of the ingredients in the products covered by this order are optional (in the sense that no one ingredient must be present), the order provides that the products will be labeled in accordance with the same requirements for declaring all ingredients in nonstandardized foods. Because of the multiplicity of orange ingredients, however, the various types of juice products may be declared as "orange juice," and the other types of orange ingredients may be declared as "orange components." Sugar and invert sugar may also be declared as "sweetener," and sweeteners made from corn may be declared as "corn sweeteners."

On the basis of the information submitted by the FCA and the NJPA, the comments received, and other relevant information available to him, the Commissioner concludes that it will promote honesty and fair dealing in the interest of consumers to establish definitions and standards of identity for diluted orange juice beverages, their dehydrated and concentrated counterparts, and certain orange juice ingredients as set forth below. These standards include new material as well as the revision of material in the stayed standards (§§ 27.120, 27.121, 27.122). In order to keep these related regulations together, the stayed standards are being deleted and all of these regulations are being assigned a block of section numbers in Part 27.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 401, 701, 52 Stat. 1046, 1055–56 as amended by 70 Stat. 919 and 72 Stat. 948; 21 U.S.C. 341, 371) and under authority delegated to the Commissioner (21 CFR 2.120): *It is ordered*, That Part 27 be amended as follows:

§§ 27.120, 27.121, 27.122 [Deleted]

1. By deleting the following sections: Section 27.120 *Orange juice-drink; identity; label statement of optional ingredients*, § 27.121 *Orangeade; identity; label statement of optional ingredients*, and § 27.122 *Orange drink; identity; label statement of optional ingredients.*

2. By adding the following new sections:

§ 27.150 Water-extracted soluble orange solids; identity; label statement of optional ingredients.

(a) Water-extracted soluble orange solids is the food prepared for further manufacturing use from the unfermented excess pulp removed during the production of one or more of the orange juice products provided for in § 27.105 through § 27.115. The orange juice adhering to the excess pulp is extracted from the excess pulp in the presence of water. Seeds (except embryonic seeds and small fragments of seeds that cannot be separated by good manufacturing practice) and part of the spent pulp are removed. Water may be removed. The food may be preserved by freezing; by refrigerating; by adding a safe and suitable optional preservative ingredient; by heating to reduce substantially the enzymatic activity and the number of viable micro-organisms; or by heating, either before or after sealing in containers, to prevent spoilage.

(b) An optional ingredient is considered to be safe if it is not a food additive as defined in section 201(s) of the Federal Food, Drug, and Cosmetic Act, or if it is a food additive as so defined and is used in conformity with regulations established pursuant to section 409 of the act.

(c) The name of the food is "water-extracted soluble orange solids __° Brix," the blank being filled in with the figure showing the percent by weight of total soluble orange solids in the food expressed in degrees Brix. However, if the food is concentrated to 20° Brix or more, the word "concentrated" shall precede the name of the food.

(d) If one or more of the optional preservative ingredients are added, the label shall bear the statement "_____ added as a preservative," the blank being filled in with the name of the preservative.

(e) For the purpose of calculating the percentage of orange juice in a beverage to which this food is added as an optional orange juice ingredient use the weight of only the soluble portion of this food in calculating the percentage of orange juice soluble solids that may be contributed to the beverage by this food.

§ 27.151 Dehydrated water-extracted soluble orange solids; identity; label statement of optional ingredients.

(a) Dehydrated water-extracted soluble orange solids is the dehydrated food for further manufacturing use prepared by removing water from water-extracted soluble orange solids as defined in § 27.150. Orange essence and orange oil may be added. It may contain one or more of the safe and suitable ingredients specified in paragraph (b) of this section. The moisture content is not greater than 7 percent of the weight of the finished food. It may be refrigerated or frozen.

(b) The optional ingredients suitable for use in the dehydrated food are the following:

(1) Anticaking agents.
(2) Antioxidants.
(3) Foaming agents.
(4) Browning inhibitors.
(5) Drying agents.

For the purposes of this section, an optional ingredient is considered to be safe when it complies with the requirements of § 27.150(b).

(c) The common name of each of the ingredients used shall be declared on the label as required by the applicable sections of Part 1 of this chapter and shall appear in letters not less than one-half the size required by § 1.8b of this chapter for the declaration of net quantity of contents.

(d) The name of the food is "dehydrated water-extracted soluble orange solids."

(e) For the purpose of calculating the percentage of orange juice in a beverage

to which this food is added as an optional orange juice ingredient, use only the weight of the soluble portion of the food in calculating the percentage of orange juice soluble solids that may be contributed to the beverage by this food.

§ 27.152 Comminuted oranges; identity; label statement of optional ingredients.

(a) Comminuted oranges is the food puree for further manufacturing use prepared by comminuting whole mature oranges of the species *Citrus sinensis*. The amount of orange oil may be adjusted in accordance with good manufacturing practice. Orange essence may be added. The food may be preserved by freezing; by refrigerating; by adding a safe and suitable preservative; by heating to reduce substantially the enzymatic activity and the number of viable micro-organisms; or by heating, either before or after sealing in containers, to prevent spoilage.

(b) For the purposes of this section, a preservative is considered to be safe when it complies with the requirements of § 27.150(b).

(c) The name of the food is "comminuted oranges _____ percent Brix," the blank being filled in with the figure showing the percent by weight of total soluble orange solids in the food expressed in degrees Brix.

(d) If a preservative is added the label shall bear the statement "_____ added as a preservative," the blank being filled in with the name of the preservative.

(e) For the purpose of calculating the percentage of orange juice in a beverage to which this food is added as an optional orange juice ingredient, use only the weight of the soluble portion of the food in calculating the percentage of orange juice soluble solids that may be contributed to the beverage by this food.

§ 27.153 Dehydrated comminuted oranges; identity; label statement of optional ingredients.

(a) Dehydrated comminuted oranges is the dehydrated food for further manufacturing use prepared by removing water from comminuted oranges as defined in § 27.152. The food complies with the requirements for composition and labeling of optional ingredients prescribed for dehydrated water-extracted soluble orange solids by § 27.151, except that it is made from comminuted oranges as defined in § 27.152 and except that the moisture content is not greater than 10 percent of the weight of the finished food.

(b) The name of the food is "dehydrated comminuted oranges."

(c) For the purpose of calculating the percentage of orange juice in a beverage to which this food is added as an optional orange juice ingredient, use only the weight of the soluble portion of the food in calculating the percentage orange juice soluble solids that may be contributed to the beverage by this food.

§ 27.154 Extract of comminuted oranges; identity; label statement of optional ingredients.

(a) Extract of comminuted oranges is the liquid food prepared for further manufacturing use from the fluids obtained from comminuted oranges as defined in § 27.152. Water may be used in the extraction process. Excess peel, pulp, flavido, and seed fragments are removed. Water may be removed. The amount of orange oil may be adjusted in accordance with good manufacturing practice. Orange essence may be added. The food may be preserved by freezing; by refrigerating; by adding a safe and suitable preservative; by heating to reduce substantially the enzymatic activity and the number of viable microorganisms; or by heating, either before or after sealing in containers, to prevent spoilage.

(b) For the purposes of this section, a preservative is considered to be safe if it complies with the requirements of §27.150(b).

(c) The name of the food is "extract of comminuted oranges, _____° Brix," the blank being filled in with the figure showing the percent by weight of total soluble solids in the food expressed in degrees Brix.

(d) If a preservative is added the label shall bear the statement "_____ added as a preservative," the blank being filled in with the name of the preservative.

(e) For the purpose of calculating the percentage of orange juice in a beverage to which this food is added as an optional orange juice ingredient, use only the weight of the soluble portion of the food in calculating the percentage of orange juice soluble solids that may be contributed to the beverage by this food.

§ 27.155 Dehydrated extract of comminuted oranges; identity; label statement of optional ingredients.

(a) Dehydrated extract of comminuted oranges is the dehydrated food for further manufacturing use prepared by removing water from extract of comminuted oranges as defined in § 27.154. The food complies with the requirements for composition and labeling of optional ingredients prescribed for dehydrated water-extracted soluble orange solids by § 27.151 except that it is made from extract of comminuted oranges as defined in § 27.154.

(b) The name of the food is "dehydrated extract of comminuted oranges."

(c) For the purpose of calculating the percentage of orange juice in a beverage to which this food is added as an optional orange juice ingredients, use only the weight of the soluble portion of the food in calculating the percentage of orange juice soluble solids that may be contributed to the beverage by this food.

§ 27.156 Juicy orange pulp for manufacturing, pulpy orange juice for manufacturing; identity; label statement of optional ingredients.

(a) Juicy orange pulp for manufacturing and pulpy orange juice for manufacturing is the class of pulpy moist foods or pulpy liquid foods prepared for further manufacturing use from the unfermented juice and the pulp of mature oranges of the species *Citrus sinensis*. The pulp has not been washed. Seeds (except embryonic seeds and small fragments of seeds that cannot be separated by good manufacturing practice) are removed. Orange juice, orange pulp, and orange oil may be adjusted in accordance with good manufacturing practice. Orange essence and orange juice products as defined in §§ 27.105 through 27.115 may be added. The food may be preserved by freezing; by refrigerating; by adding a preservative; by heating to reduce substantially the enzymatic activity and the number of viable micro-organisms; or by heating, either before or after sealing in containers, to prevent spoilage.

(b) For the purposes of this section, a preservative is considered to be safe if it complies with the requirements of § 27.150(b).

(c) The name of the food is "juicy orange pulp for manufacturing," if the percentage of pulp exceeds 50 percent or the name of the food is "pulpy orange juice for manufacturing," if the percentage of pulp is 50 percent or less.

(d) If a preservative is added, the label shall bear the statement "_____ added as a preservative," the blank being filled in with the name of the preservative.

(e) For the purpose of calculating the percentage of the orange juice in a beverage to which this food is added as an optional orange juice ingredient, use only the weight of the soluble portion of the food in calculating the percentage of orange juice soluble solids that may be contributed to the beverage by this food.

§ 27.157 Dehydrated juicy orange pulp for manufacturing, dehydrated pulpy orange juice for manufacturing; identity; label statement of optional ingredients.

(a) Dehydrated juicy orange pulp for manufacturing and dehydrated pulpy orange juice for manufacturing is the class of dehydrated foods for further manufacturing use prepared by removing water from juicy orange pulp for manufacturing or pulpy orange juice for manufacturing as defined in § 27.156. The food complies with the requirements for composition and labeling of optional ingredients prescribed for dehydrated water-extracted soluble orange solids by § 27.151, except that it is made from juicy orange pulp or pulpy orange juice rather than from dehydrated water extracted soluble orange solids and except that the moisture content is not greater than 10 percent of the weight of the finished food.

(b) The name of the food is "dehydrated juicy orange pulp for manufacturing," if it is made from juicy orange pulp for manufacturing, or the name of the food is "dehydrated pulpy orange juice for manufacturing," if it is made from pulpy orange juice for manufacturing, both as defined in § 27.156.

(c) For the purpose of calculating the percentage of orange juice in a beverage

to which this food is added as an optional orange juice ingredient use only the weight of the soluble portion of the food in calculating the percentage of orange juice soluble solids that may be contributed to the beverage by this food.

§ 27.158 Orange juice drink; identity; label statement of optional ingredients.

(a) Orange juice drink is the beverage prepared by adding water to one or more of the unfermented orange juice ingredients which are specified in paragraph (b) of this section and which are used in quantities as indicated by paragraph (d)(2) of this section. One or more of the safe and suitable ingredients specified in paragraph (c) of this section may be added to the beverage. Vitamin C shall be added in a quantity which will insure that the total vitamin C in each 6 fluid ounces of the finished beverage amounts to 60 milligrams. Orange juice drink may be preserved by freezing; by refrigerating; by heating to reduce substantially the enzymatic activity and the number of viable micro-organisms; by sealing in containers and, either before or after sealing, heating to prevent spoilage; or by adding a preservative. For the purposes of this section orange juice drink contains less than 70 percent but not less than 35 percent equivalent single strength orange juice calculated as prescribed by paragraph (d)(2) of this section. This requirement is considered to have been met if the content of orange juice soluble solids (exclusive of soluble solids other than orange juice soluble solids), amounts to less than 8.26 percent but not less than 4.13 percent by weight of the finished beverage. The weight of the total solids is not less than 12 percent of the weight of the finished beverage.

(b) The classes of unfermented orange juice ingredients referred to in paragraph (a) of this section are:

(1) Orange juice products defined in §§ 27.105 through 27.115 subject to the restriction that those defined in §§ 27.113 and 27.115 are used only in preparing orange juice drink which contains an added preservative as provided for in paragraph (a) of this section and that orange juice products so processed by heat as to prevent spoilage are used only in the canned form of the orange juice drink.

(2) Dehydrated orange juice made from oranges of the species *Citrus sinensis*.

(3) Water-extracted soluble orange solids as defined in § 27.150.

(4) Dehydrated water-extracted soluble orange solids as defined in § 27.151.

(5) Comminuted oranges as defined in § 27.152.

(6) Dehydrated comminuted oranges as defined in § 27.153.

(7) Extract of comminuted oranges as defined in § 27.154.

(8) Dehydrated extract of comminuted oranges as defined in § 27.155.

(9) Pulpy orange juice for manufacturing or juicy orange pulp for manufacturing as defined in § 27.156.

(10) Dehydrated pulpy orange juice for manufacturing or dehydrated juicy orange pulp for manufacturing as defined in § 27.157.

(11) Orange juice ingredients which conform to the compositional requirements of any one of the classes of orange juice ingredients described in subparagraphs (1) through (10) of this paragraph, except that the oranges from which they are made are oranges of the species *Citrus reticulata, Citrus aurantium,* hybrids thereof, or hybrids of the species *Citrus sinensis*.

(c) The safe and suitable ingredients provided for in paragraph (a) of this section that may be added to orange juice drink are one or more of the following:

(1) Nutritive sweeteners.
(2) Organic acids.
(3) Thickeners.
(4) Stabilizers.
(5) Clouding agents.
(6) Emulsifiers.
(7) Buffers.
(8) Orange pulp.
(9) Orange peel.
(10) Natural and artificial flavors.
(11) Natural and artificial colors.
(12) Preservatives.

For the purposes of this paragraph, an ingredient may be used in orange juice drink in such proportion as reasonably necessary to accomplish is intended effect. The ingredients of this paragraph are considered safe if they are not food additives or color additives within the meaning of section 201 (s) or (t) of the Federal Food, Drug, and Cosmetic Act or if they are food additives or color additives as so defined and are used in conformity with regulations established pursuant to section 409 or 706 of the act.

(d) (1) The name of the beverage consists of the following two phrases which shall appear together:

(i) The words "Orange Juice Drink" which shall be printed on a single line and shall all be in type of the same size and style.

(ii) The words "Containing ____ percent Orange Juice" which shall have the blank filled in with the number 35 or a number which is a multiple of 5 higher than 35 but not higher than 65 or greater than the percentage of equivalent single strength orange juice in the finished beverage. The word "Containing" may be on the line below "Orange Juice Drink." The words "____ percent Orange Juice" shall all be on the line below "Containing" and shall be in bold condensed caps in letters all of the same size, the height of which is not less than:

(*a*) 12-point type if the container in which it is sold contains less than 16 ounces of the finished beverage and 14-point type if the container in which it is sold contains 16 ounces or more of the finished beverage; or

(*b*) One-half the height of the largest letters in which the words "juice" or "orange" appear anywhere on the labeling either directly or indirectly, such as by appearing as another form or derivative thereof or by the words "juice" or "orange" or any form or derivative thereof appearing as a part of a compound or fanciful word or name, or otherwise; whichever is the larger. All of the words in the name shall be in the same color type and on the same color contrasting background. If the beverage is preserved by freezing, the name shall be preceded by the word "frozen." If refrigeration is required to preserve the beverage the words "Keep Refrigerated" shall appear on the principal display panel.

(2) The percentage of orange juice in the finished beverage is determined by adding the weight of orange juice soluble solids (exclusive of the weight of soluble solids other than orange juice soluble solids) contributed to the finished beverage by each of the added orange juice ingredients and dividing the sum of those weights by the product obtained by multiplying 11.8 percent by the total weight of the finished beverage. For the purpose of calculating the percentage of orange juice that shall be declared on the label, if the sum of the weights of the orange juice soluble solids contributed to the finished beverage by the orange juice ingredients described in paragraph (b) (3) through (11) of this section exceeds 1.18 percent of the weight of the finished beverage, then only so much of the sum of those weights as equals 1.18 percent of the weight of the finished beverage shall be counted as orange juice. The remaining orange juice soluble solids declared on the label must be contributed by one or more of the orange juice ingredients described in paragraph (b) (1) or (2) of this section.

(e) The common name of each of the ingredients used shall be declared on the label as required by the applicable sections of Part 1 of this chapter, and the vitamin C shall be declared as such in conformity with the requirements prescribed in the regulations established pursuant to section 403(j) of the act except that:

(1) If an orange juice product or products provided for in paragraph (b) (1) and (2) of this section is used, the words "orange juice" may be used in lieu of the common or usual name of the orange juice product provided for by the applicable section.

(2) If an orange juice ingredient or ingredients provided for in paragraph (b) (3) through (11) is used, the words "orange component" may be used in lieu of the common or usual name of the orange juice ingredient provided for by the applicable section.

(3) If sugar (sucrose) or invert sugar is used the term "sweetener" may be used, and if the sweetener is derived from corn the term "corn sweetener" may be used.

Further, the declaration of the ingredients on the label as set out in this paragraph shall appear in letters not less than one-half of that required by § 1.8b of this chapter for the declaration of net quantity of contents.

§ 27.159 Concentrate for orange juice drink; identity; label statement of optional ingredients.

Concentrate for orange juice drink is the beverage concentrate which, when diluted according to label directions, conforms to all of the requirements for composition and labeling prescribed by § 27.158 for orange juice drink except that:

(a) The name of the concentrated beverage base consists of the following two phrases which shall appear together:

(1) The words "Concentrate for" which shall be on a single line immediately above the words "Orange Juice Drink."

(2) The words "Containing ____ percent Orange Juice" which shall have the blank filled in with the number 35 or a number which is a multiple of 5 higher than 35 but not higher than 65 or greater than the percentage of equivalent single strength orange juice in the beverage made by diluting the beverage concentrate as directed on the label.

(b) The dilution ratio of the beverage shall be not less than 3 plus 1. For the purpose of this section the "dilution ratio" is the whole number of volumes of water per volume of concentrate for orange juice drink required to produce orange juice drink conforming to the requirements for composition prescribed by § 27.158.

§ 27.160 Powdered orange juice drink; identity; label statement of optional ingredients.

Powdered orange juice drink is the dehydrated beverage base which, when reconstituted according to label directions, conforms to all of the requirements for composition and labeling as prescribed by § 27.158 for orange juice drink except that:

(a) The name of the beverage base consists of the following two phrases which shall appear together:

(1) The word "Powdered" or any appropriate descriptive word used in lieu of the word "Powdered" which shall be on a line immediately above the words "Orange Juice Drink."

(2) The words "Continuing _____ percent Orange Juice" which shall have the blank filled in with the number 35 or a number which is a multiple of 5 higher than 35 but not higher that 65 or greater than the percentage of equivalent single strength orange juice in the beverage made by reconstituting the powdered base as directed on the label.

(b) Safe and suitable anticaking agents, foaming agents, browning inhibitors, and drying agents may be added.

§ 27.161 Orange juice drink blend; identity; label statement of optional ingredients.

Orange juice drink blend is the beverage that conforms to all of the requirements for composition and labeling prescribed by § 27.158 for orange juice drink, except that:

(a) It is prepared by adding water to a blend of the orange juice ingredients set forth in § 27.158(b) and derived from fruit grown in two or more geographic orange producing regions with a minimum of 20 percent of the orange juice soluble solids derived from fruit grown in any one producing region. Orange juice soluble solids derived from the orange juice ingredients set forth in § 27.158(b) (3) to (11) are not counted toward the above requirement for the minimum of 20 percent of the orange juice soluble solids to be derived from fruit grown in any one producing region but may be added in quantities as indicated in § 27.158(d)(2).

(b) It contains less than 95 percent but not less than 70 percent equivalent single strength orange juice calculated as indicated in § 27.158(d)(2). This requirement is considered to have been met if the content of orange juice soluble solids (exclusive of soluble solids other than orange juice soluble solids) amounts to less than 11.2 percent but not less than 8.26 percent by weight of the finished beverage.

(c) Thickeners, stabilizers, clouding agents, emulsifiers, and buffers may not be added to orange juice drink blend.

(d) The name of the beverage consists of the following two phrases which shall appear together:

(1) The words "Orange Juice Drink Blend" which shall be printed on a single line.

(2) The words "Containing ____ percent Orange Juice" which shall have the blank filled in with the number 70 or a number which is a multiple of 5 higher than 70 but not higher than 95 or greater than the percentage of equivalent single strength orange juice in the beverage.

§ 27.162 Powdered orange juice drink blend; identity; label statement of optional ingredients.

Powdered orange juice drink blend is the dehydrated beverage base which, when reconstituted according to label directions, conforms to all of the requirements for composition and labeling prescribed by § 27.161 for orange juice drink blend except that:

(a) The name of the beverage base consists of the following two phrases which shall appear together:

(1) The word "Powdered" or any appropriate descriptive word used in lieu of the word "Powdered" which shall be on a line immediately above the words "Orange Juice Drink Blend."

(2) The words "Containing ____ percent Orange Juice" which shall have the blank filled in with the number 70 or a number which is a multiple of 5 higher than 70 but not higher than 95 or greater than the percentage of equivalent single strength orange juice contained in a beverage made by reconstituting the powdered base as directed on the label.

(b) Safe and suitable anticaking agents, foaming agents, browning inhibitors, and drying agents may be added.

§ 27.163 Orange drink; identity; label statement of optional ingredients.

Orange drink is the beverage that conforms to all of the requirements for composition and labeling prescribed by § 27.158 for orange juice drink except that:

(a) It contains less than 35 percent but not less than 10 percent equivalent single strength orange juice calculated as set forth in § 27.158(d)(2). This requirement is considered to have been met if the content of orange juice soluble solids (exclusive of soluble solids other than orange juice soluble solids) amounts to less than 4.13 percent but not less than 1.18 percent by weight of the finished beverage.

(b) The minimum orange juice soluble solids requirement of 1.18 percent for orange drink may be contributed solely by one or more of the orange juice ingredients described in § 27.158(b) (3) through (11). The remaining orange juice soluble solids declared on the label, if more than 10 percent is declared, must be contributed by one or more of the orange juice ingredients described in § 27.158(b) (1) and (2).

(c) The weight of the total soluble solids is not less than 10 percent by weight of the finished beverage.

(d) The name of the beverage consists of the following two phrases which shall appear together:

(1) The words "Orange Drink" which shall be printed on a single line.

(2) The words "Containing ____ percent Orange Juice" which shall have the blank filled in with the number 10 or a number which is a multiple of 5 higher than 10 but not higher than 30 or greater than the percentage of equivalent single strength orange juice contained in the finished beverage.

§ 27.164 Concentrate for orange drink; identity; label statement of optional ingredients.

Concentrate for orange drink is the beverage concentrate which, when diluted according to label directions, conforms to all of the requirements for composition and labeling prescribed by § 27.163 for orange drink except that:

(a) The name of the concentrated beverage base consists of the following two phrases which shall appear together:

(1) The words "Concentrate for" which shall be on a single line immediately above the words "Orange Drink."

(2) The words "Containing ____ percent Orange Juice" which shall have the blank filled in with the number 10 or a number which is a multiple of 5 higher than 10 but not higher than 30 or greater than the percentage of equivalent single strength orange juice in the beverage made by diluting the beverage concentrate as directed on the label.

(b) The dilution ratio of the beverage shall be not less than 3 plus 1. For the purposes of this section, the "dilution ratio" is the whole number of volumes of water per volume of concentrate for orange drink required to produce orange drink conforming to the requirements for composition prescribed by § 27.163.

§ 27.165 Powdered orange drink; identity; label statement of optional ingredients.

Powdered orange drink is the dehydrated beverage base which, when reconstituted according to label directions, conforms to all of the requirements for

composition and labeling prescribed by § 27.163 for orange drink except that:

(a) The name of the beverage base consists of the following two phrases which shall appear together:

(1) The word "Powdered" or any appropriate descriptive word used in lieu of the word "Powdered" which shall be on a line immediately above the words "Orange Drink."

(2) The words "Containing ____ percent Orange Juice" which shall have the blank filled in with the number 10 or a number which is a multiple of 5 higher than 10 but not higher than 30 or greater than the percentage of equivalent single strength orange juice in a beverage made by reconstituting the powdered base as directed on the label.

(b) Safe and suitable anticaking agents, foaming agents, browning inhibitors, and drying agents may be added.

§ 27.166 Orange flavored drink; identity; label statement of optional ingredients.

Orange flavored drink is the beverage that conforms to all of the requirements for composition and labeling prescribed by § 27.158 for orange juice drink except that:

(a) It contains less than 10 percent but more than 0 percent equivalent single strength orange juice calculated as set forth in § 27.158(d)(2) of this chapter. This requirement is considered to have been met if the content of orange juice soluble solids (exclusive of soluble solids other than orange juice soluble solids) amounts to less than 1.18 percent but more than 0 percent by weight of the finished beverage.

(b) The orange juice soluble solids requirements for orange flavored drink may be contributed solely by one or more of the orange juice ingredients described in § 27.158(b) (1) through (11).

(c) The weight of the total soluble solids is not less than 10 percent by weight of the finished beverage.

(d) The name of the beverage consists of the following two phrases which shall appear together:

(1) The words "Orange Flavored Drink" which shall be printed on a single line.

(2) The words "Containing ____ percent Orange Juice" which shall have the blank filled in with the words "less than 2" if the beverage contains less than 2 percent but more than 0 percent orange juice or with the number 2 or a number which is a multiple of 2 higher than 2 but not higher than 8 or greater than the percentage of equivalent single strength orange juice contained in the finished beverage.

§ 27.167 Concentrate for orange flavored drink; identity; label statement of optional ingredients.

Concentrate for orange flavored drink is the beverage concentrate which, when diluted according to label directions, conforms to all of the requirements for composition and labeling prescribed by § 27.166 for orange flavored drink except that:

(a) The name of the concentrated beverage base consists of the following two phrases which shall appear together:

(1) The words "Concentrate for" which shall be on a single line immediately above the words "Orange Flavored Drink."

(2) The words "Containing ____ percent Orange Juice" which shall have the blank filled in with the words "less than 2" or with the number 2 or a number which is a multiple of 2 higher than 2 but not higher than 8 or greater than the percentage of equivalent single strength orange juice in a beverage made by diluting the beverage concentrate as directed on the label.

(b) The dilution ratio of the beverage shall not be less than 3 plus 1. For the purpose of this section the "dilution ratio" is the whole number of volumes of water per volume of concentrate for orange flavored drink required to produce orange flavored drink conforming to the requirements for composition prescribed by § 27.166.

§ 27.168 Powdered orange flavored drink; identity; label statement of optional ingredients.

Powdered orange flavored drink is the dehydrated beverage base which when reconstituted according to label directions conforms to all of the requirements for composition and labeling as prescribed by § 27.166 for orange flavored drink except that:

(a) The name of the beverage base consists of the following two phrases which shall appear together:

(1) The word "Powdered" or any appropriate descriptive word used in lieu of the word "Powdered" which shall be on a line immediately above the words "Orange Flavored Drink."

(2) The words "Containing ____ percent Orange Juice" which shall have the blank filled in with the words "less than 2" or with the number 2 or a number which is a multiple of 2 higher than 2 but not higher than 8 or greater than the percentage of equivalent single strength orange juice in a beverage made by reconstituting the powdered base as directed on the label.

(b) Safe and suitable anticaking agents, foaming agents, browning inhibitors, and drying agents may be added.

Any person who will be adversely affected by the foregoing order may at any time within 30 days after its date of publication in the FEDERAL REGISTER file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 6-88, 5600 Fishers Lane, Rockville, Md. 20852, written objections thereto. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and such objections must be supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof. All documents shall be filed in six copies.

Effective date. This order shall become effective 180 days after its date of publication in the FEDERAL REGISTER, except as to any provisions that may be stayed by the filing of proper objections. Notice of the filing of objections or lack thereof will be given by publication in the FEDERAL REGISTER.

(Secs. 401, 701, 52 Stat. 1046, 1055-56 as amended by 70 Stat. 919 and 72 Stat. 948; 21 U.S.C. 341, 371)

Dated: March 7, 1972.

JAMES D. GRANT,
Deputy Commissioner of Food and Drugs.

[FR Doc.72-3706 Filed 3-10-72;8:45 am]

SUBCHAPTER D—HAZARDOUS SUBSTANCES

PART 191—HAZARDOUS SUBSTANCES: DEFINITIONS AND PROCEDURAL AND INTERPRETATIVE REGULATIONS

Classification of Certain Lead-Containing Paints and Other Similar Surface-Coating Materials as Banned Hazardous Substances

In the matter of classifying certain lead-containing paints and other surface-coating materials as banned hazardous substances:

In the FEDERAL REGISTER of November 2, 1971 (36 F.R. 20985), the Commissioner of Food and Drugs published a notice proposing to declare, under section 3(a) of the Federal Hazardous Substances Act, paints and other surface-coating materials containing more than specified levels of lead and other named heavy metals to be hazardous substances (§ 191.5(a)(2)) and to be products requiring special labeling under section 3(b) of the act (§ 191.7(b)(7)). This is referred to below as the Commissioner's proposal.

In the same issue of the FEDERAL REGISTER (36 F.R. 20986), a notice was published on behalf of petitioners Joseph A. Page et al., which proposed that paint for household use containing more than minute traces of lead be classified as a banned hazardous substance pursuant to sections 2(q)(1)(B) and 3(a)(2) of the act. This is referred to below as the Page proposal.

Approximately 200 comments were received from consumers, consumer and public interest groups, the paint and chemical industries, trade associations, physicians, medical schools, professional societies, Federal, State, and local government agencies, and others. The principal comments are as follows:

The American Academy of Pediatrics, relying on published studies with lead and data respecting the maximum daily permissible intake of lead from all sources, recommended that paints containing more than 0.06 percent of lead be banned if intended for use on interior surfaces, toys, or other children's articles. The Academy agreed with the Commissioner that small amounts of lead in paints when considered in conjunction

with other sources of lead in the environment constitute a substantial addition to the body burden that can reasonably be avoided and that any unnecessary exposure should be eliminated or minimized. It also stated that the labeling of paint containers would have little effect in preventing lead poisoning and that paint containing 0.5 percent lead will not provide sufficient protection for children 1 to 3 years of age. The Academy stated that it is estimated that approximately 50 percent of these children repetitively ingest nonfood substances and that abdominal X-rays obtained in the diagnostic evaluation of children suspected of having lead poisoning indicate that very large quantities of foreign substances such as paint, putty, and plaster may be ingested, often without the parent's awareness.

The Bureau of Community Environmental Management, Health Services and Mental Health Administration, Department of Health, Education, and Welfare, commented that cautionary labeling does not provide adequate protection, that the availability of lead in paint to children should be held to the lowest concentration possible with current technology and consistent with reasonably good manufacturing practices, and that the maximum concentration of lead in paints intended for use on interior surfaces readily available to children should not exceed 0.06 percent.

The Environmental Protection Agency submitted an in-house technical report which concluded that lead in paint in excess of 0.05 percent could constitute a danger to the health of children with pica. They stated that cautionary labeling would be inadequate to protect the public health and safety and recommended that lead-based paint be banned from interstate commerce.

The medical community generally endorsed the Page proposal and supported the recommendation of the American Academy of Pediatrics. Some physicians from medical centers located in large metropolitan areas submitted the results of their own clinical findings and studies which indicate the hazard posed by lead in paint. Other physicians cited studies which indicate that children can accumulate toxic levels of lead over an extended period of time from paints containing 0.5 percent or less lead. Two physicians cited cases of children with excessive body burdens of lead which they could attribute only to paint containing less than 1 percent lead. The medical community generally commented that the labeling proposed by the Commissioner would not provide adequate protection because subsequent occupants of dwellings would not know what paints were applied by previous residents and because labeling may be totally disregarded or misinterpreted.

Nearly all comments from consumers, consumer and public interest groups, and Government agencies (other than those discussed above) endorsed the Page proposal. Some stated that the Commissioner's proposal would not provide sufficient protection against interior use of lead paints, while others suggested that lead paints for interior use be banned and that cautionary labeling be required for other lead paints. Comments from the public health departments for the cities of Philadelphia and New York state that the labeling ordinances and regulations of their cities, which are similar to those in the Commissioner's proposal, have been inadequate to protect children. Both the American Public Health Association and the health departments for the State of New York and the county of Los Angeles support the recommendation of the American Academy of Pediatrics. Some comments suggested other maximum levels for lead in paint. For example, the Congressional Black Caucus recommended that all lead from household paints be banned; the Natural Resources Defense Council and the Department of Public Health of the city of Philadelphia recommended 0.05 percent as a maximum level for lead in paint.

Paint chemical manufacturers and their trade associations generally supported the Commissioner's proposal and opposed the Page proposal. With respect to the Commissioner's proposal, several comments requested clarification of the labeling statement and sufficient time to reformulate and relabel their products. With respect to the Page proposal, many comments stated that the language "minute traces of lead" is vague and nonspecific; that the data relied on by the petitioners and by the American Academy of Pediatrics is based on lead ingestion studies done with lead compounds other than the lead compounds used in paints and coatings; that scientific data or human experience has not proven that paints containing 1 percent lead are hazardous; that lead is used as a dryer and the substitution of other compounds for lead may be hazardous; and that implementation would cause a severe economic hardship because it is not within the existing state-of-the-art of the paint industry to eliminate all lead from all paint. Several comments contended that the statutory procedures for banning have been ignored in the Page proposal in that only after labeling has been proven inadequate can consideration be given to banning. Other comments stated that warning labels are adequate protection because they prevent misapplication of paint products and serve the public interest by allowing useful, needed paint products to remain on the market. Some comments stated that lead is a necessary component of certain products (e.g., certain exterior primers, rust inhibitors, and automobile touchup paint).

A number of paint manufacturers and their trade associations commented that the inclusion of heavy metals other than lead in the Commissioner's proposal is inappropriate. They stated that the toxicity of different forms of these metals has not been established and suggest that action be deferred pending further scientific investigation. Some manufacturers submitted data which they contend shows that certain heavy metal compounds other than lead are not hazardous, while others stated that adequate test methods need to be developed. Another manufacturer stated that certain of these heavy metals are necessary in the manufacture of fire-retardant coatings and warning colors. Only a few other comments were received that expressed an opinion concerning the Commissioner's proposal as it related to other heavy metals, and none of these were supported by scientific data.

The Commissioner, having considered the comments and other relevant material, concludes as follows:

Although paints and other surface-coating materials containing lead do not present an imminent hazard to the public health, they must be considered on the basis of cumulative toxicity over extended periods of time and in conjunction with other sources of lead in the environment. Based on the currently available scientific and medical data, regulatory action must be taken to minimize the health hazard to future generations.

The health hazard from lead will not be effectively eliminated by cautionary labeling requirements. The statute does not provide that such labeling must be tried and proven inadequate before a hazardous substance can be banned. Instead, section 2(q)(1)(B) explicitly provides for banning products from interstate commerce on the basis of a specific finding "notwithstanding such cautionary labeling as is or may be required." Cautionary labeling has not been proven effective in eliminating lead poisoning in many cities which presently have such requirements. In any event, the hazard persists long after the product has been separated from its labeling.

The prudent course of action is to reduce, as rapidly as possible, the amount of lead to which children are exposed. The Commissioner agrees that limiting the amount of lead to "minute traces," as set forth in the Page proposal, is not feasible because that phrase is vague and would not provide manufacturers with specific standards, and it could not be effectively enforced by the Food and Drug Administration. In addition, limiting regulatory action only to paint is inadequate to protect the public health and safety because other surface-coating materials containing lead are used in and around the household and are accessible to children.

The preponderance of medical opinion supports a regulation limiting the amount of lead in products intended for interior surfaces and for toys or other children's articles to 0.06 percent because that level will provide a margin of safety. However, such a regulation would not prevent the use of products containing higher amounts of lead on exterior surfaces. These surfaces are generally as accessible to children as interior surfaces, and, as the comments points out, children have been subjected to lead poisoning by ingesting products containing lead that were applied to exterior surfaces. In addition, if products containing lead are available for exterior use, they may be misused for interior surfaces.

The Commissioner recognizes that restrictions placed upon the use of lead may result in economic hardship and in the substitution of other components for use as dryers. The statute makes no exception for economic hardship. Several compounds have been suggested as substitutes for lead. Each manufacturer, prior to marketing consumer products, must take steps to determine that any substitute for lead has been adequately tested for safety and shown to be safe. Any banning order should therefore provide a reasonable time to test substitutes for lead and establish their safety, and at the same time provide adequate protection to the public.

Th National Paint and Coatings Association, which represents more than 900 companies, has notified the Commissioner that it anticipates its members can produce by January 1974 interior products not exceeding the 0.06 percent maximum lead level and can produce by January 1975 exterior products not exceeding the 0.06 percent maximum lead level. Some paint and chemical manufacturers have notified the Commissioner that they can reformulate their products to meet the 0.06 percent maximum lead level in a shorter time period. On February 19, 1972, a notice was published in the FEDERAL REGISTER (37 F.R. 3780) requesting that additional information from the industry be submitted by April 7, 1972. If, after considering this information, the Commissioner finds that lead can be eliminated from paints and other surface-coating materials more rapidly than the implementation dates specified in the following order, an appropriate amendment will be made.

Therefore, the Commissioner finds that, notwithstanding such cautionary labeling as is or may be required under the Federal Hazardous Substances Act, the degree or nature of the hazard involved in the presence or use of lead in paints and other surface-coating materials in households is such that the objective of the protection of the public health and safety can be adequately served only by keeping such substances, when so intended or packaged, out of the channels of interstate commerce. Under section 2(q)(1) of the act, this will have the additional effect of banning such products from use on any toy or other article intended for use by children.

Since lead may be a necessary component of products intended for particular uses, as suggested by several comments, the Commissioner is prepared to consider petitions proposing amendment of the regulation. Pursuant to 21 CFR 191.201, petitions showing reasonable grounds will be published in the FEDERAL REGISTER. Consideration will also be given in late 1973 to petitions for extension of the implementation date upon a showing that the public health will not be jeopardized and that technological necessity requires additional time to meet the 0.06 percent maximum lead level.

At this time, further information is required before a final order can be promulgated regarding the use of certain elements, other than lead, in paint and other surface-coating materials. Additional data on the use of these materials will be obtained in response to the FEDERAL REGISTER notice of February 19, 1972 (37 F.R. 3780), and these products will be considered at a later date.

Therefore, pursuant to provisions of the Federal Hazardous Substances Act (secs. 2(f)(1)(A), (q); 74 Stat. 372, as amended, 80 Stat. 1304–05; 15 U.S.C. 1261(f)(1)(A), (q)) and the Federal Food, Drug, and Cosmetic Act (sec. 701 (e), (f), (g); 52 Stat. 1055–56 as amended by 70 Stat. 919 and 72 Stat. 948; 21 U.S.C. 371 (e), (f), (g)), and under authority delegated to the Commissioner (21 CFR 2.120): *It is ordered*, That Part 191 be amended by adding a new subparagraph (6) to § 191.9(a), as follows:

§ 191.9 Banned hazardous substances.

(a) Under the authority of section 2(q)(1)(B) of the act, the Commissioner declares as banned hazardous substances the following articles because they possess such a degree of hazard that adequate cautionary labeling cannot be written and the public health and safety can be served only by keeping such articles out of interstate commerce:

* * * * *

(6) (i) Any paint or other similar surface-coating material intended, or packaged in a form suitable, for use in or around the household that:

(*a*) Is shipped in interstate commerce after December 31, 1973, and contains lead compounds of which the lead content (calculated as the metal) is in excess of 0.06 percent of the total weight of the contained solids or dried paint film; or

(*b*) Is shipped in interstate commerce between December 31, 1972, and December 31, 1973, and contains lead compounds of which the lead content (calculated as the metal) is in excess of 0.5 percent of the total weight of the contained solids or dried paint film.

(ii) Any toy or other article intended for use by children that:

(*a*) Is shipped in interstate commerce after December 31, 1973, and bears any paint or other similar surface-coating material containing lead compounds of which the lead content (calculated as the metal) is in excess of 0.06 percent of the total weight of the contained solids or dried paint film; or

(*b*) Is shipped in interstate commerce between December 31, 1972, and December 31, 1973, and bears any paint or other similar surface-coating material containing lead compounds of which the lead content (calculated as the metal) is in excess of 0.5 percent of the total weight of the contained solids or dried paint film.

Any person who will be adversely affected by the foregoing order may at any time within 30 days after its date of publication in the FEDERAL REGISTER file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 6–88, 5600 Fishers Lane, Rockville, Maryland 20852, written objections thereto. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and such objections must be supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof. All documents shall be filed in six copies. Received objections may be seen in the above office during working hours, Monday through Friday.

Effective date. This order shall become effective 45 days after its date of publication in the FEDERAL REGISTER, except as to any provisions that may be stayed by the filing of proper objections. Notice of the filing of objections or lack thereof will be given by publication in the FEDERAL REGISTER.

(Secs. 2(f)(1)(A), (q), 74 Stat. 372, as amended 80 Stat. 1304–05, 15 U.S.C. 1261(f)(1)(A), (q); sec. 701 (e), (f), (g), 52 Stat. 1055–56 as amended by 70 Stat. 919 and 72 Stat. 948; 21 U.S.C. 371 (e), (f), (g))

Dated: March 8, 1972.

JAMES D. GRANT,
Deputy Commissioner of Food and Drugs.

[FR Doc.72-3750 Filed 3-10-72;12:30 p.m.]

Title 26—INTERNAL REVENUE

[T.D. 7167]

Chapter I—Internal Revenue Service, Department of the Treasury

SUBCHAPTER A—INCOME TAX

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

Rehabilitation of Low-Income Housing

On August 4, 1970, notice of proposed rule making with respect to the amendment of the Income Tax Regulations (26 CFR Part 1) to conform the regulations to the provisions of section 521(a) of the Tax Reform Act of 1969 (83 Stat. 651), relating to rehabilitation of low-income housing, was published in the FEDERAL REGISTER (35 F.R. 12400). After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, the amendment as proposed is hereby adopted, subject to the changes which follow: Sections 1.167(k)–1 through 1.167(k)–4 are revised to read as set forth below.

(Sec. 167(k), Internal Revenue Code of 1954, 83 Stat. 651; 26 U.S.C. 167; sec. 7805, Internal Revenue Code of 1954, 68A Stat. 917; 26 U.S.C. 7805)

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

Approved: March 2, 1972.

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

In order to conform the Income Tax Regulations (26 CFR Part 1) to the provisions of section 521(a) of the Tax Reform Act of 1969 (83 Stat. 651), the following new sections are added immediately after § 1.167(i)-1 to read as follows:

§ 1.167(j) Statutory provisions; depreciation; special rules for section 1250 property.

SEC. 167. *Depreciation.* * * *

(j) *Special rules for section 1250 property*—(1) *General rule.* Except as provided in paragraphs (2) and (3), in the case of section 1250 property, subsection (b) shall not apply and the term "reasonable allowance" as used in subsection (a) shall include an allowance computed in accordance with regulations prescribed by the Secretary or his delegate, under any of the following methods:

(A) The straight line method,

(B) The declining balance method, using a rate not exceeding 150 percent of the rate which would have been used had the annual allowance been computed under the method described in subparagraph (A), or

(C) Any other consistent method productive of an annual allowance which, when added to all allowances for the period commencing with the taxpayer's use of the property and including the taxable year, does not, during the first two-thirds of the useful life of the property, exceed the total of such allowances which would have been used had such allowances been computed under the method described in subparagraph (B).

Nothing in this paragraph shall be construed to limit or reduce an allowance otherwise allowable under subsection (a) except where allowable solely by reason of paragraph (2), (3), or (4) of subsection (b).

(2) *Residential rental property*—(A) *In general.* Paragraph (1) of this subsection shall not apply, and subsection (b) shall apply in any taxable year, to a building or structure—

(i) Which is residential rental property located within the United States or any of its possessions, or located within a foreign country if a method of depreciation for such property comparable to the method provided in subsection (b) (2) or (3) is provided by the laws of such country, and

(ii) The original use of which commences with the taxpayer.

In the case of residential rental property located within a foreign country, the original use of which commences with the taxpayer, if the allowance for depreciation provided under the laws of such country for such property is greater than that provided under paragraph (1) of this subsection, but less than that provided under subsection (b), the allowance for depreciation under subsection (b) shall be limited to the amount provided under the laws of such country.

(B) *Definition.* For purposes of subparagraph (A), a building or structure shall be considered to be residential rental property for any taxable year only if 80 percent or more of the gross rental income from such building or structure for such year is rental income from dwelling units (within the meaning of subsection (k)(3)(C)). For purposes of the preceding sentence, if any portion of such building or structure is occupied by the taxpayer, the gross rental income from such building or structure shall include the rental value of the portion so occupied.

(C) *Change in method of depreciation.* Any change in the computation of the allowance for depreciation for any taxable year, permitted or required by reason of the application of subparagraph (A), shall not be considered a change in a method of accounting.

(3) *Property constructed, etc., before July 25, 1969.* Paragraph (1) of this subsection shall not apply, and subsection (b) shall apply, in the case of property—

(A) the construction, reconstruction, or erection of which was begun before July 25, 1969, or

(B) For which a written contract entered into before July 25, 1969, with respect to any part of the construction, reconstruction, or erection or for the permanent financing thereof, was on July 25, 1969, and at all times thereafter, binding on the taxpayer.

(4) *Used section 1250 property.* Except as provided in paragraph (5), in the case of section 1250 property acquired after July 24, 1969, the original use of which does not commence with the taxpayer, the allowance for depreciation under this section shall be limited to an amount computed under—

(A) The straight line method, or

(B) Any other method determined by the Secretary or his delegate to result in a reasonable allowance under subsection (a), not including—

(i) Any declining balance method,

(ii) The sum of the years-digits method, or

(iii) Any other method allowable solely by reason of the application of subsection (b)(4) or paragraph (1)(C) of this subsection.

(5) *Used residential rental property.* In the case of section 1250 property which is residential rental property (as defined in paragraph (2)(B)) acquired after July 24, 1969, having a useful life of 20 years or more, the original use of which does not commence with the taxpayer, the allowance for depreciation under this section shall be limited to an amount computed under—

(A) The straight line method,

(B) The declining balance method, using a rate not exceeding 125 percent of the rate which would have been used had the annual allowance beeen computed under the method described in subparagraph (A), or

(C) Any other method determined by the Secretary or his delegate to result in a reasonable allowance under subsection (a), not including—

(i) The sum of the years-digits method,

(ii) Any declining balance method using a rate in excess of the rate permitted under subparagraph (B), or

(iii) Any other method allowable solely by reason of the application of subsection (b)(4) or paragraph (1)(C) of this subsection.

(6) *Special rules.* (A) Under regulations prescribed by the Secretary or his delegate, rules similar to the rules provided in paragraphs (5), (9), (10), and (13) of section 48(h) shall be applied for purposes of paragraphs (3), (4), and (5) of this subsection.

(B) For purposes of paragraphs (2), (4), and (5), if section 1250 property which is not property described in subsection (a) when its original use commences, becomes property described in subsection (a) after July 24, 1969, such property shall not be treated as property the original use of which commences with the taxpayer.

(C) Paragraphs (4) and (5) shall not apply in the case of section 1250 property acquired after July 24, 1969, pursuant to a written contract for the acquisition of such property or for the permanent financing thereof, which was, on July 24, 1969, and at all times thereafter, binding on the taxpayer.

[Sec. 167(j), as added by sec. 521(a), Tax Reform Act of 1969 (83 Stat. 649)]

§ 1.167(j)-1 [Reserved]

§ 1.167(k) Statutory provisions; depreciation; depreciation of expenditures to rehabilitate low-income rental housing.

SEC. 167. *Depreciation.* * * *

(k) *Depreciation of expenditures to rehabilitate low-income rental housing*—(1) *60-month rule.* The taxpayer may elect, in accordance with regulations prescribed by the Secretary or his delegate, to compute the depreciation deduction provided by subsection (a) attributable to rehabilitation expenditures incurred with respect to low-income rental housing after July 24, 1969, and before January 1, 1975, under the straight line method using a useful life of 60 months and no salvage value. Such method shall be in lieu of any other method of computing the depreciation deduction under subsection (a), and in lieu of any deduction for amortization, for such expenditures.

(2) *Limitations.* (A) The aggregate amount of rehabilitation expenditures paid or incurred by the taxpayer with respect to any dwelling unit in any low-income rental housing which may be taken into account under paragraph (1) shall not exceed $15,000.

(B) Rehabilitation expenditures paid or incurred by the taxpayer in any taxable year with respect to any dwelling unit in any low-income rental housing shall be taken into account under paragraph (1) only if over a period of 2 consecutive years, including the taxable year, the aggregate amount of such expenditures exceeds $3,000.

(3) *Definitions.* For purposes of this subsection—

(A) *Rehabilitation expenditures.* The term "rehabilitation expenditures" means amounts chargeable to capital account and incurred for property or additions or improvements to property (or related facilities) with a useful life of 5 years or more, in connection with the rehabilitation of an existing building for low-income rental housing; but such term does not include the cost of acquisition of such building or any interest therein.

(B) *Low-income rental housing.* The term "low-income rental housing" means any building the dwelling units in which are held for occupancy on a rental basis by families and individuals of low or moderate income, as determined by the Secretary or his delegate in a manner consistent with the policies of the Housing and Urban Development Act of 1968 pursuant to regulations prescribed under this subsection.

(C) *Dwelling unit.* The term "dwelling unit" means a house or an apartment used to provide living accommodations in a building or structure, but does not include a unit in a hotel, motel, inn, or other establishment more than one-half of the units in which are used on a transient basis.

[Sec. 167(k) as added by sec. 521(a), Tax Reform Act of 1969 (83 Stat. 651)]

§ 1.167(k)-1 Depreciation of property attributable to rehabilitation expenditures.

(a) *In general.* (1) In the case of property attributable to rehabilitation expenditures incurred with respect to low-income rental housing after July 24, 1969, and before January 1, 1975, a taxpayer may elect under section 167(k) to compute the depreciation deduction provided by section 167(a) by using the straight line method, a useful life of 60 months, and no salvage value, in lieu of

any other method of computing the reasonable allowance referred to in section 167(a). The expenditures must meet the conditions and limitations contained in §§ 1.167(k)–2 and 1.167(k)–3 and the election must be made as prescribed in § 1.167(k)–4. If a proper election with respect to any portion of the basis of property is ir effect under section 167(k), no deduction for depreciation or amortization shall be allowed with respect to that portion of the basis of such property under any other provision of the Code. For example, the additional first-year depreciation allowance for small business allowed under section 179 shall not be allowed with respect to that portion of the basis of property for which a proper election under section 167(k) is in effect. The provisions of this subparagraph may be illustrated by the following example:

Example. In 1970, a calendar-year taxpayer buys an existing building and spends $60,000 to rehabilitate 10 dwelling units. The property attributable to the expenditures is placed in service on January 1, 1971. If the conditions of § 1.167(k)–2 (relating to minimum and maximum limitations) and § 1.167(k)–3 (relating to definitions) are met in 1971, the taxpayer may make an election under section 167(k) and claim a depreciation deduction of $12,000 (12/60×$60,000) for 1971.

(2) Any property attributable to expenditures which are incurred before July 25, 1969, or after December 31, 1974, will not qualify for an election under section 167(k). For purposes of determining whether rehabilitation expenditures are incurred after July 24, 1969, and before January 1, 1975, each dwelling unit (see § 1.167(k)–3(c)) shall be considered separately. An expenditure is incurred, for purposes of this section, on the date such expenditures would be considered incurred under the accrual method of accounting, regardless of the method of accounting used by the taxpayer with respect to other items of income and expense. Thus, even though a taxpayer is on the cash receipts and disbursements method of accounting, expenditures shall be considered incurred, for purposes of this section, on the date that all events have occurred which establish the fact of the taxpayer's liability for such expenditures, and the amount of such expenditures can be determined with reasonable accuracy. The method used by a taxpayer on the cash receipts and disbursements method of accounting, in determining when expenditures are incurred, will be acceptable if it accords with any generally recognized and accepted accrual basis income tax accounting principles. The method so adopted must be applied consistently by the taxpayer for purposes of this subparagraph. (See section 446(c) and § 1.446–1(c)(1)(ii).) The principles of this subparagraph may be illustrated by the following example:

Example. On June 30, 1969, A, a taxpayer on the cash receipts and disbursements method of accounting, signs a contract with a builder for the rehabilitation of an apartment house. If (under this subparagraph) any expenditures under the contract are considered incurred before July 25, 1969, property attributable to such expenditures does not qualify for the election under section 167(k).

(3) If an election under section 167(k) is made with respect to property, see sections 1245 and 1250 for treatment of gain on disposition of the property. See section 57(a)(2) for treatment of depreciation under section 167(k) as an item of tax preference, for purposes of the minimum tax contained in section 56.

(b) *Rehabilitation expenditures treated as paid or incurred by the taxpayer.* (1) Generally, the taxpayer is considered to have paid or incurred rehabilitation expenditures only if the rehabilitation is performed by him or for him in accordance with his specifications. However, where rehabilitation expenditures are paid or incurred by a person (or persons) and the taxpayer acquires the property attributable to such expenditures (or an interest therein) before such property is placed in service, the taxpayer will be treated as having paid or incurred the expenditures and the portion of the basis of property attributable to such expenditures may be included in an election by the taxpayer under section 167(k). The rehabilitation expenditures must meet the requirements of this section and § 1.167(k)–2 (relating to minimum and maximum limitations) and § 1.167(k)–3 (relating to definitions). This paragraph shall apply only if the rehabilitated property is not placed in service during the period beginning with the date the expenditures were paid or incurred and ending on the date the taxpayer acquired an interest in the property. For example, assume that A pays or incurs rehabilitation expenditures of $10,000 with respect to an existing building on January 1, 1971, and then sells the building to B on June 1, 1971. If the property attributable to the expenditures is not placed in service by A during the period from January 1, 1971, to June 1, 1971, B will be treated as having paid or incurred the expenditures.

(2) The amount of rehabilitation expenditures treated as paid or incurred by the taxpayer under this paragraph is the lesser of—

(i) The rehabilitation expenditures paid or incurred before the date on which the taxpayer acquired an interest in the property attributable to the expenditures, or

(ii) The taxpayer's cost or other basis for the property attributable to the rehabilitation expenditures paid or incurred before such date.

The portion of the basis of property which is not attributable to rehabilitation expenditures paid or incurred by the taxpayer may not be depreciated under section 167(k), but may be subject to depreciation under section 167(a). Thus, a portion of the basis of property may be subject to depreciation under the method provided by section 167(k) and another portion of the basis of that property may be subject to depreciation under a method provided by section 167(b). For purposes of section 167(k), property is acquired when reduced to physical possession, or control, that is, on the date the taxpayer first bears the burdens and enjoys the benefits of ownership.

(3) (i) Property is placed in service on the date that it is first placed in a condition or state of readiness and availability for a specifically assigned function, whether in the production of income, in a tax-exempt activity, or in a personal activity. For purposes of determining when property attributable to rehabilitation expenditures is placed in service, each dwelling unit shall be considered separately. Rehabilitated property which is attributable solely to a single dwelling unit is placed in service on the date that dwelling unit is placed in service. Rehabilitated property which relates to more than one dwelling unit, or which relates to common areas or related facilities and is allocated to more than one dwelling unit under § 1.167(k)–2(d), will be considered as placed in service on the earliest date a significant number of such units are placed in service. For example, if a taxpayer reconstructs or replaces the roof of a building with 20 dwelling units, the property relates to the entire building and, accordingly, the new or reconstructed roof is placed in service on the earliest date a significant number of such dwelling units are placed in service. As a further example, assume that the first floor of a three-story building is operated for commercial purposes, and that the taxpayer rehabilitates the remaining two floors for dwelling units. In connection with the rehabilitation, the taxpayer constructs a parking lot for the use of the occupants of the building. The expenditures for the parking lot may be considered as rehabilitation expenditures (see § 1.167(k)–3(b)) and the property (parking lot) attributable to the expenditures allocated to dwelling units is treated as placed in service on the date the parking lot is available for use by the tenants of a significant number of such dwelling units.

(ii) If dwelling units are occupied on a rental basis at the same time that rehabilitation expenditures allocated to those units are paid or incurred, the property attributable to these expenditures will be considered placed in service on the date that the rehabilitation of such units is substantially completed.

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

Example (1). A, a taxpayer using the cash receipts and disbursements method of accounting, begins the rehabilitation of a three-story building on January 11, 1971. Prior to May 1, 1971, he pays rehabilitation expenditures of $12,000, $1,000 of which is allocated to each of 12 dwellings units in accordance with the allocation rules of § 1.167(k)–2(d). On May 3, 1971, taxpayer A sells the building, the land, and the property attributable to the rehabilitation expenditures to taxpayer B for $35,000. The purchase price is allocated as follows:

Land	$8,000
Existing building	11,000
Property attributable to rehabilitation expenditures	16,000
Total purchase price	35,000

The property attributable to the rehabilitation expenditures is placed in service by B on September 5, 1971. Taxpayer B may treat a portion of the $35,000 purchase price as rehabilitation expenditures paid or incurred by him. Since the rehabilitation expenditures paid by A ($12,000) are less than the portion of the purchase price allocable to property attributable to these expenditures ($16,000), B may treat only $12,000 as rehabilitation expenditures paid or incurred by him. The excess of the purchase price allocable to rehabilitation expenditures ($16,000) over the rehabilitation expenditures paid by A ($12,000), or $4,000, does not qualify for treatment under section 167(k), but may qualify for the allowance for depreciation provided by section 167(a).

Example (2). The facts are the same as in example (1) except that the purchase price allocable to the property attributable to rehabilitation expenditures is $10,000. Under these circumstances, taxpayer B may treat only $10,000 of A's $12,000 expenditures as rehabilitation expenditures paid or incurred by him. The excess of the rehabilitation expenditures paid by A ($12,000) over the purchase price allocable to rehabilitation expenditures ($10,000), or $2,000, does not qualify for treatment under section 167(k).

Example (3). C, a taxpayer using the cash receipts and disbursements method of accounting, begins the rehabilitation of an existing building on April 1, 1970. The building consists of five dwelling units. The tenants remain in the dwelling units during and after the rehabilitation. Assume that the units are rehabilitated individually and that unit 1 is rehabilitated first. The rehabilitation consists of painting, replacing plumbing facilities, installing light fixtures and appliances. The rehabilitation of this unit is substantially completed on May 1, 1970, and the property attributable to these expenditures is considered placed in service on that date. If the five units were rehabilitated at one time the property would be placed in service when the work was substantially completed with respect to all the units.

(c) *Election by partnership.* An election under section 167(k) with respect to property held by a partnership shall be made by the partnership. See section 703(b).

§ 1.167(k)–2 Limitations.

(a) *In general.* The amount of rehabilitation expenditures that may be taken into account with respect to any dwelling unit shall be subject to the limitations described in paragraphs (b) and (c) of this section. Rehabilitation expenditures treated as paid or incurred by the taxpayer by reason of § 1.167(k)–1(b) shall be taken into account in applying the limitations of this section. Rehabilitation expenditures incurred before July 25, 1969, or after December 31, 1974, will be taken into account in applying the limitation of paragraph (b) of this section. In the case of a partnership, these limitations shall apply to the partnership, not to the individual partners. The taxpayer shall maintain detailed records which permit specific identification of the rehabilitation expenditures paid or incurred and which permit allocation of these expenditures to individual dwelling units in the manner prescribed in paragraph (d) of this section.

(b) *Minimum amount.* (1) Rehabilitation expenditures paid or incurred by the taxpayer in any taxable year with respect to any dwelling unit may be taken into account only if the sum of (i) such expenditures, and either (ii) the rehabilitation expenditures paid or incurred by the taxpayer with respect to such dwelling unit in the immediately preceding taxable year, or (iii) the rehabilitation expenditures paid or incurred by the taxpayer with respect to such dwelling unit in the immediately succeeding taxable year, exceeds $3,000. Thus, with respect to any dwelling unit the taxpayer must pay or incur rehabilitation expenditures of more than $3,000 over a period of 2 consecutive taxable years. See paragraph (e) of this section for special rule where no taxable year of the taxpayer includes the date on which the expenditures were paid or incurred.

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

Example (1). A, a calendar-year taxpayer, spends $7,000 in 1970 to rehabilitate two dwelling units, of which $5,000 is attributable to unit 1 and $2,000 to unit 2. The expenditures qualify as rehabilitation expenditures under § 1.167(k)–3. The property attributable to the $5,000 spent on unit 1 would qualify for the election under section 167(k). The property attributable to the $2,000 spent on unit 2 may qualify only if an amount in excess of $1,000 is expended solely on unit 2 in either 1969 or 1971.

Example (2). The facts are the same as in example (1) except that in 1972 A spends $4,000 to further rehabilitate units 1 and 2. The $4,000 is allocated to the two units equally and qualifies as rehabilitation expenditures under § 1.167(k)–3. In the absence of any expenditures in 1971 or 1973, none of the property attributable to the expenditures in 1972 would qualify for an election under section 167(k).

(c) *Maximum amount.* (1) The maximum amount of rehabilitation expenditures paid or incurred by the taxpayer with respect to any dwelling unit which may be taken into account under section 167(k) is $15,000. Property attributable to amounts in excess of $15,000 may qualify for the reasonable allowance provided by section 167(a). All amounts with respect to which a proper election is filed will be taken into account in applying the limitation of this paragraph, including rehabilitation expenditures treated as paid or incurred by the taxpayer by reason of § 1.167(k)–1(b) and rehabilitation expenditures covered by an election revoked or considered revoked under § 1.167(k)–4(d).

(2) This paragraph may be illustrated by the following example:

Example. B, a calendar-year taxpayer, spends the following amounts (per dwelling unit) in 4 consecutive taxable years beginning in 1970: $500, $2,000, $5,000, and $9,000. The expenditures qualify as rehabilitation expenditures under § 1.167(k)–3. All of the property attributable to the expenditures in 1971 and 1972 qualifies for an election under section167(k). If the taxpayer makes an election for such years, property attributable to only $8,000 of the expenditures for 1973 qualifies for the election since the total qualified amount may not exceed $15,000. The $500 expenditure in 1970 is not taken into account.

(d) *Allocation rules.* (1) Expenditures which are attributable to more than one dwelling unit shall be allocated among those individual dwelling units in the same ratio as the area of each such dwelling unit bears to the total area of all dwelling units to which the expenditures are attributable. Expenditures for related facilities attributable solely to dwelling units, such as parking facilities for tenant use, shall be allocated among the dwelling units to which they relate in the same manner. Expenditures attributable to commercial units, or to related facilities attributable solely to commercial units, shall not be allocated to dwelling units. Expenditures for related facilities attributable in part to dwelling units and in part to nondwelling units shall be allocated among the particular dwelling and nondwelling units to which they relate. Expenditures attributable to common areas such as stairways, halls, and entranceways shall be allocated among the particular dwelling and nondwelling units to which they relate. In any case where the taxpayer can demonstrate the actual amount of expenditures paid or incurred with respect to a particular dwelling unit, the allocation rules of this subparagraph shall not apply to such expenditures.

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

Example (1). A taxpayer spends $60,000 to replace the roof of an existing structure and to install a new heating system. There are 25 dwelling units of varying size in the structure. Unit 1 contains 1,000 square feet and unit 2 contains 2,000 square feet. The entire building contains 36,000 square feet. The dwelling units occupy 25,000 square feet, a retail store occupies 5,000 square feet, and common areas occupy the remainder. Of the 6,000 square feet of common areas, 1,000 square feet (5,000/30,000×6,000) are allocated to the commercial store and 5,000 (25,000/30,000×6,000) to the dwelling units. Since five-sixths of the total floor space (30,000/36,000) is attributable to dwelling units, the dwelling units are allocated $50,000 (⅚×$60,000) and the commercial units $10,000 (⅙×$60,000). Thus, unit 1 is allocated $2,000 (1,000/25,000×$50,000) and unit 2 is allocated $4,000 (2,000/25,000 ×$50,000).

Example (2). The facts are the same as in example (1) except that the entire building is devoted to dwelling units. In this case the allocation may be made without regard to the common areas. Thus, unit 1 is allocated $2,000 (1,000/30,000×$60,000), and unit 2 is allocated $4,000 (2,000/30,000×$60,000), of the rehabilitation expenditures.

Example (3). A taxpayer who owns a three-story apartment building spends $1,000 to install new paneling, carpeting, and lighting in the hallway on a floor containing five dwelling units of equal size. Each dwelling unit is allocated $200 of the total expenditure. Since the expenditure is attributable only to the floor containing the five dwelling units, none of the expenditure is allocable to other areas of the building.

Example (4). A taxpayer spends $5,000 to install new fixtures and new window glass in a commercial store on the first floor of a five-story building. The other floors are occupied by dwelling units. None of the expenditure is allocable to the dwelling units.

Example (5). A owns a three-story apartment building and enters into a contract under which B agrees to paint 10 dwelling units of equal size in the building. The contract price is $5,000. Unless the taxpayer establishes the amount spent with respect to each unit, the expenditure will be allocated equally to each unit.

(e) *Special rule.* (1) For purposes of applying the limitations of this section, rehabilitation expenditures treated as having been paid or incurred by the taxpayer by reason of § 1.167(k)–1(b) shall be deemed to have been paid or incurred on the date on which such expenditures were actually paid or incurred (determined in accordance with the method of accounting used by the person that actually paid or incurred the expenditures). If no taxable year of the taxpayer includes such date, then the limitations of this section shall be applied by taking into account the period ending 24 full months after such date.

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

Example. B, a calendar-year taxpayer, uses the cash receipts and disbursements method of accounting. B spends $20,000 in 1969 and 1970 to rehabilitate a building containing four dwelling units. The expenditures are allocated to each dwelling unit equally. The $20,000 qualifies as rehabilitation expenditures under § 1.167(k)–3 and is paid in the form of progress payments on the following dates:

Aug. 20, 1969	$4,000
Mar. 1, 1970	5,000
May 1, 1970	7,000
Oct. 20, 1970	4,000

Taxpayer C purchases the building on November 10, 1970, and the property attributable to the expenditures is placed in service on December 1, 1970. Taxpayer C reports on the basis of a taxable year ending September 30 and uses the accrual method of accounting. For purposes of applying the minimum amount limitation of paragraph (b) of this section, the rehabilitation expenditures paid by B on August 20, 1969, are considered incurred in taxpayer C's taxable year ending September 30, 1969. The rehabilitation expenditures paid by B on March 1 and May 1, 1970, are considered incurred in taxpayer C's taxable year ending September 30, 1970. The expenditures paid by B on October 10, 1970, are considered incurred in taxpayer C's taxable year ending September 30, 1971. Thus, the property attributable to the expenditures in August 1969 would qualify for an election under section 167(k) since $16,000, or $4,000 per dwelling unit, was incurred within taxpayer C's two taxable years ending on September 30, 1969, and September 30, 1970. The property attributable to the expenditures deemed incurred in C's taxable year ending September 30, 1971, would also qualify.

§ 1.167(k)–3 Definitions.

(a) *Rehabilitation expenditures*—(1) *In general.* The term "rehabilitation expenditures" means amounts chargeable to capital account for depreciable property with a useful life of 5 years or more, in connection with the rehabilitation of an existing building for low-income rental housing. The existing building need not have been used for residential purposes prior to the rehabilitation. Expenditures attributable to a dwelling unit shall not qualify as rehabilitation expenditures unless following the completion of rehabilitation the dwelling unit is held for occupancy on a rental basis by tenants meeting the requirements of paragraph (b) of this section. Expenditures for the purchase of land, or incurred to purchase the existing building or any interest in the building (such as a leasehold interest), do not qualify as rehabilitation expenditures. Expenditures attributable to a commercial unit, such as a grocery store, do not qualify as rehabilitation expenditures. An amount need not be actually spent on a dwelling unit or a building in order to qualify provided the expenditure is in connection with the rehabilitation of an existing building and not attributable to a commercial unit. For example, expenditures to pave a parking lot for use by the tenants could qualify. Such expenditures must meet the limitations of section 167(k)(2) and will be allocated in accordance with § 1.167(k)–2(d).

(2) *New construction distinguished.* Expenditures attributable to a building which are for new construction do not qualify as rehabilitation expenditures. Whether expenditures are attributable to the rehabilitation of an existing structure, or attributable to new construction, will be determined upon the basis of all the facts and circumstances. Expenditures will generally be considered attributable to rehabilitation if the foundation and outer walls of the existing building are retained. Where the internal structural framework of a building is replaced and one or more outer walls are also replaced, the expenditures will generally constitute new construction, even though the construction may be considered rehabilitation under local law. Other factors that may be relevant in this determination include: The amount paid to acquire the existing building; and the amount of material remaining from the existing building.

(3) *Enlargement of existing building.* The total area occupied by the dwelling units in a rehabilitated building may not exceed the total area of the existing building prior to rehabilitation, and any enlargement of this area for dwelling units will be considered new construction which will not qualify as rehabilitation. Expenditures which are attributable to the construction of a related facility, such as a garage, sidewalk, or parking lot, will not be considered the enlargement of a building for dwelling units, even if such facility is physically attached to the building.

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

Example (1). The taxpayer owns a two-story apartment building with an empty attic, which he plans to rehabilitate. In addition to rehabilitating the existing units, he constructs two new apartments in the space formerly occupied by the attic. The expenditures may qualify as rehabilitation expenditures. However, if the taxpayer adds a third story to the building, the expenditures for the third story do not qualify as rehabilitation expenditures.

Example (2). The taxpayer owns an apartment building. In addition to rehabilitating the existing structure, the taxpayer adds a new wing to the building occupied by dwelling units. The expenditures attributable to the new wing do not qualify as rehabilitation expenditures.

Example (3). The taxpayer owns an apartment building. As part of the rehabilitation of the existing structure, the taxpayer constructs a garage for the use of tenants. The expenditures attributable to the garage may qualify as rehabilitation expenditures. If the garage is used by tenants of dwelling units and other persons, an allocation of expenditures will be made.

(b) *Low-income rental housing*—(1) *In general.* (i) The term "low-income rental housing" means any dwelling unit in a building which is held for occupancy by families and individuals of low or moderate income (as defined in subparagraph (2) of this paragraph). If a dwelling unit fails to qualify as low-income rental housing at any time during the 60-month election period, any election with respect to any property attributable to rehabilitation expenditures allocated to such unit shall be considered revoked by the taxpayer. (See § 1.167(k)–4(d) for revocation of election.)

(ii) If a dwelling unit is rented for one or more periods during the taxable year, beginning after the date the property attributable to rehabilitation expenditures allocated to such unit is placed in service, it shall be considered low-income rental housing only if it is occupied by families and individuals of low or moderate income (as defined in subparagraph (2) of this paragraph) during each such period.

(iii) If a dwelling unit is not rented for some period during the taxable year, beginning after the date the property attributable to rehabilitation expenditures allocated to such unit is placed in service, it shall be considered low-income rental housing only if at all times during such period the rental at which the unit is offered indicates that such unit is held for occupancy by families and individuals of low or moderate income (as defined in subparagraph (2) of this paragraph). Generally, if the rental at which the unit is offered does not exceed 30 percent of the low or moderate income level (determined under subparagraph (2) of this paragraph), for the number of persons occupying comparable units, the unit will be considered low-income rental housing.

(2) *Definition of low or moderate income.* For purposes of section 167(k) and this section—

(i) The occupants of a dwelling unit shall be considered families and individuals of low or moderate income only if their adjusted income (computed in the manner prescribed in subparagraph (3) of this paragraph) does not exceed 90 percent of the income limits prescribed by the Secretary of Housing and Urban Development for occupants of projects financed with mortgages insured under section 221(d)(3) of the National Housing Act (12 U.S.C. 1715l) which bear interest at the below-market interest rate prescribed in the proviso of section 221(d)(5) of such Act.

(ii) Notwithstanding subdivision (i) of this subparagraph, the occupants of

a dwelling unit shall not qualify under this subparagraph if all such occupants are students (as defined in section 151(e)(4)), no one of whom is entitled to file a joint return under section 6013. All determinations under this subparagraph shall be made as of the first day the unit is occupied on a rental basis after the close of the certification year (as defined in subparagraph (3) of this paragraph).

(3) *Adjusted income.* (i) The taxpayer may compute the "adjusted income" of a family or individual under the method described in subdivision (ii) of this subparagraph, or under the method described in subdivision (iii) of this subparagraph. The adjusted income of a family or individual shall be computed solely from the income certifications required by subparagraph (4) of this paragraph and shall be computed with respect to the "certification year" of such person. Adjusted income is not affected by income earned in any year other than the certification year. The "certification year" for any person is the last taxable year of such person which ends before the later of (*a*) the date on which the property attributable to the expenditures allocated to the dwelling unit occupied by such person is placed in service (see § 1.167(k)-1(b)(3)), or (*b*) the date on which the person first occupies such unit on a rental basis, or signs a lease with respect to such unit, whichever occurs first. Adjusted income must be determined with respect to the actual occupants of the dwelling unit. The taxpayer must use the same method of computing adjusted income with respect to each occupant of a dwelling unit during the taxable year, but may use one method with respect to the occupants of one dwelling unit and the other method with respect to the occupants of another dwelling unit. The taxpayer shall include a statement in the election under section 167(k) setting forth which method of determining adjusted income has been used with respect to each dwelling unit during the year.

(ii) For purposes of this subdivision, the adjusted income of a family or individual is the gross income of such family or individual for the certification year reduced by the amount of any trade or business expenses claimed as a deduction under section 162 on the income tax return filed for such year.

(iii) For purposes of this subdivision, the adjusted income of a family or individual is the total annual income of each member of the family or each individual from all sources for the certification year reduced by the sum of (*a*) 5 percent of such income, (*b*) all unusual or temporary income received during the certification year, (*c*) the total annual income for the certification year of each family member who is a minor and who proposes to live in the dwelling unit after the close of the certification year, and (*d*) $300 multiplied by the number of family members who are minors and who propose to live in the dwelling unit after the close of the certification year. For purposes of section 167(k), a minor is any person who has not attained the age of 21 years prior to the close of the certification year. The term "family", for purposes of section 167(k), means two or more persons related by blood, marriage, or operation of law.

(iv) The principles of this subparagraph may be illustrated by the following example:

Example. (*a*) Assume that Family X consists of a father, H, wife, W, and two minor children A and B. Family X first occupies a rehabilitated dwelling unit on January 1, 1970. All members of the family use the calendar year as their taxable year and thus the "certification year" for each member of the family is the calendar year 1969. According to the income certification, H had a gross income of $8,400 in 1969, including $800 of nonrecurring extraordinary overtime earned as a result of production following a plant closing. A earned $500 during the year. Neither W nor B has any income during the year and no member of the family claims trade or business expenses as a deduction under section 162.

(*b*) The adjusted income of Family X under subdivision (ii) of this subparagraph would be $8,900, that is, H's income ($8,400) plus the child's income of $500.

(*c*) The adjusted income of Family X under subdivision (iii) of this subparagraph would be $6,555, computed as follows:

Total annual income:		
H's wages	$8,400	
A's income	500	
	8,900	$8,900
Reductions:		
A's income	$500	
Deductions for 2 minors	600	
5 percent of $8,900	445	
Temporary wages	800	
	2,345	2,345
Adjusted income		6,555

(4) *Income certifications.* A taxpayer electing to compute depreciation under section 167(k) with respect to any property contained in a dwelling unit, shall secure an income certification from the tenant covering each person who proposes to live in such unit after the close of the certification year. If a dwelling unit is subleased during the taxable year and the taxpayer elects to compute depreciation under section 167(k) with respect to any property contained in such unit, the taxpayer shall secure an income certification from the subtenant covering each person who proposes to live in the dwelling unit after the close of the certification year. If the dwelling unit is rented to a new tenant or subtenant during the 60-month election period, the taxpayer shall secure an income certification from the new tenant (or subtenant) covering each person who proposes to live in the unit after the close of the certification year. The income certification shall state the gross income from all sources for the certification year (as defined in subparagraph (3) of this paragraph) of each person who proposes to live in the dwelling after the close of the certification year. If the taxpayer elects to use the method described in subparagraph (3)(ii) of this paragraph, the income certification shall state the business expenses claimed as a deduction for the certification year by the persons who propose to occupy the dwelling unit. If the taxpayer elects to use the method described in subparagraph (3)(iii) of this paragraph, the income certification shall state the number of minors who propose to live in the dwelling unit after the close of the certification year, the income earned by such minors during the certification year, and any unusual or temporary income earned during the certification year and the circumstances and nature of such income. The income certification must be sworn to before an official authorized to administer oaths (such as a notary public) and shall be maintained by the taxpayer as part of his books and records.

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

Example (*1*). The maximum income level established as the standard for eligibility for housing assisted under section 221(d)(3) of the National Housing Act in a particular area is $10,000 for a family of four. During 1970, the taxpayer spends in excess of $3,000 per unit in rehabilitating three two-bedroom dwelling units. All such units are placed in service on January 1, 1971, and are advertised for rental at $200 per month. Two of the units are rented at this price to tenant A and tenant B, each of whom is married and has two children. At the time of the signing of the lease, tenants A and B certify that their families' adjusted income for 1970 (their certification year) was $9,000 and $10,000, respectively. The low or moderate income level for purposes of this paragraph is $9,000 (90 percent of the $10,000 maximum local eligibility level). Since family A's adjusted income of $9,000 does not exceed this amount, rehabilitation expenditures allocated to the dwelling unit rented to family A could qualify under section 167(k). However, the rehabilitation expenditures allocated to the dwelling unit rented to family B could not qualify, since tenant B's adjusted income ($10,000) is in excess of the low or moderate income level for that area.

Example (*2*). The facts are the same as in example (1). During 1971, tenant A's wife takes a job and earns $3,000, giving the family a total income of $12,000. Even though A's adjusted income would not qualify in 1971 under subparagraph (2) of this paragraph, the original election with respect to property contained in unit A will remain valid as long as tenant A occupies the unit. The remaining unit is vacant throughout 1971. The unit will be considered low-income rental housing since the rental at which the unit is offered ($2,400 per year) does not exceed 30 percent of the low or moderate income level for a family of four, $2,700 (30% × $9,000).

(c) *Dwelling unit*—(1) *In general.* The term "dwelling unit" means a house or apartment used to provide living accommodations in a building or structure. It is not required that the dwelling unit be occupied subject to a lease.

(2) *Exception.* The term "dwelling unit" does not include any unit in a hotel, motel, inn, or other establishment more than one-half of the dwelling units in which are used on a transient basis. A dwelling unit is used on a transient basis if, for more than one-half of the days in which the unit is occupied on a rental basis during the taxpayer's taxable year, it is occupied by a tenant or series of tenants each of whom occupies the unit for less than 30 days. If a dwelling unit is occupied subject to a sublease for any portion of the taxable

year, the determination of whether the unit is occupied on a transient basis shall be made with respect to the sublessee who occupies the unit, not with respect to the lessee.

§ 1.167(k)–4 Time and manner of making election.

(a) *Manner of election*—(1) *In general.* An election under section 167(k) shall be made by attaching a statement to the income tax return filed for the first taxable year in which the taxpayer computes the depreciation deduction using a 60-month useful life. An information statement shall be attached to the income tax return filed for each subsequent taxable year in which the taxpayer computes depreciation under section 167(k). The 60-month election period shall begin with the date the property is placed in service, unless the taxpayer adopts an averaging convention in accordance with § 1.167(a)–10(b) which permits the use of some other date. Except as provided in subparagraph (2) of this paragraph, no election may be made until all the conditions and limitations of §§ 1.167(k)–2 and 1.167(k)–3 are satisfied.

(2) *Special rule.* The rules contained in this subparagraph shall apply only if the taxpayer does not satisfy the $3,000 minimum amount limitation of section 167(k)(2)(B) in the taxable year in which property is placed in service and in the immediately preceding taxable year. The taxpayer may make an election under section 167(k) for the taxable year in which property is placed in service, by filing the election within the time and in the manner prescribed in this section and by enclosing a separate written statement disclosing an intent to fulfill the $3,000 minimum amount limitation in the succeeding taxable year. If the taxpayer does not make an election under the preceding sentence for the taxable year the property is placed in service, an amended return to make the election may be filed for such year, provided that such amended return is filed within the time and in the manner prescribed in paragraph (c)(2) of this section. The principles of this subparagraph may be illustrated by the following example:

Example. A, a calendar-year taxpayer, spends $2,000 per dwelling unit in 2 consecutive taxable years, beginning in 1970, and the expenditures qualify as rehabilitation expenditures under § 1.167(k)–3. An election under this subparagraph may be made with respect to the property placed in service in 1970, even though the income tax return for 1970 is due before any expenditures have been paid or incurred in 1971: *Provided,* That A files a statement of intent to spend more than $1,000 per dwelling unit in 1971. Alternatively, A may file an amended return for 1970.

(b) *Information required*—(1) *Election year.* The election to compute depreciation under section 167(k) with respect to any property must contain the following information:

(i) Taxpayer's name, address, and identification number.

(ii) Description of property with respect to which an election is made, and the date such property was placed in service (see § 1.167(k)–1(b)(3)).

(iii) Location and description of building being rehabilitated.

(iv) Number of dwelling units in the structure, and the number of such units occupied on a transient basis (see § 1.167(k)–3(c)(2)).

(v) Date rehabilitation expenditures were incurred (see § 1.167(k)–1(a)(2)).

(vi) Statement that all income certifications required by § 1.167(k)–3(b)(4) have been obtained.

(vii) For each dwelling unit which the taxpayer seeks to qualify as low-income housing for purposes of the election under section 167(k):

(*a*) Rehabilitation expenditures allocated to such unit (see § 1.167(k)–2(d)),

(*b*) For each period of occupancy during the taxable year, the number of occupants, the maximum income level permissible under § 1.167(k)–3(b)(2) for that number of occupants, the adjusted income of the occupants of such unit (determined solely from the income certifications required by § 1.167(k)–3(b)(4)), the method by which such income was determined, and the rent charged for such unit, and

(*c*) For each period in which such unit is vacant during the taxable year, a description of each such unit (as to number of rooms), the low- or moderate-income level in that area for the number of persons occupying comparable units, and the rental at which each vacant unit is offered.

(viii) If allocation is required under § 1.167(k)–2(d), the area occupied by dwelling units and nondwelling units.

(ix) If applicable, statement of intent to fulfill $3,000 minimum amount limitation (see § 1.167(k)–4(a)(2)).

(x) If the taxpayer is treated as having paid or incurred expenditures by reason of § 1.167(k)–1(b), the amount of such expenditures, the date the expenditures were incurred, the date the property attributable to the expenditures was placed in service, the method of accounting used by the person that made the expenditures, and the purchase price for the property attributable to the expenditures.

(2) *Subsequent years.* For each taxable year in which depreciation is computed under section 167(k) after the taxable year of the election, the statement required by this section must state the rental charges for each occupied unit and the rental charge at which each vacant unit is offered. In addition, if any such unit is rented to a new tenant during the taxable year, such statement must also contain the following information:

(i) A statement that such tenant has signed an income certification (§ 1.167(k)–3(b)(4)), and

(ii) The number of occupants in the unit, the maximum income level permissible under § 1.167(k)–3(b)(2) for that number of occupants, and the total adjusted income of such occupants, determined solely from the income certifications required by § 1.167(k)–3(b)(4).

(c) *Time for filing election*—(1) *General rule.* In general, the election to compute depreciation under section 167(k) with respect to any property attributable to rehabilitation expenditures must be filed no later than the time prescribed by law (including extensions thereof) for filing the taxpayer's return for the taxable year in which the property is placed in service, provided that the rehabilitation expenditures meet the requirements of §§ 1.167(k)–2 and 1.167(k)–3 in that year, taking into account expenditures of the preceding taxable year for purposes of the $3,000 minimum amount limitation. The statement required for subsequent years must be filed no later than the time prescribed by law (including extensions thereof) for filing the return for such subsequent years. However, if the taxpayer does not file a timely return for the year in which the property is placed in service, the election shall be filed at the time the taxpayer files his first return for such year. For information required in the election and subsequent years, see paragraph (b) of this section. If the taxpayer fails to make an election within the time prescribed by this paragraph, no election may be made with respect to such property by the filing of an amended return or in any other manner.

(2) *Special rule.* If an election is filed with an amended return permitted by paragraph (a)(2) of this section it must be filed no later than time prescribed by law (including extensions thereof) for filing a return for the first taxable year following the year in which the property is placed in service. The principles of this subparagraph may be illustrated by the following example:

Example. A, a calendar-year taxpayer, spends the following amounts (per dwelling unit) in 4 consecutive taxable years beginning in 1970: $2,000, $3,000, $4,000, and $5,000. The expenditures qualify as rehabilitation expenditures under § 1.167(k)–3 and the property attributable to the expenditures in each of the 4 taxable years would qualify for an election under section 167(k). A does not file an election under section 167(k) for 1970 or 1971 and the property attributable to the rehabilitation expenditures for those years may qualify for depreciation allowable under section 167(a). A may make an election under section 167(k) for the property attributable to the expenditures made in 1972 and 1973.

(d) *Revocation of election*—(1) *In general.* An election under section 167(k) may be revoked by the taxpayer at any time prior to the time prescribed by law (including extensions thereof) for filing a tax return for the last taxable year in which any portion of the 60-month election period falls. Such revocation shall be made by filing a statement in writing with the district director or director of the Internal Revenue service center with which the election was filed. If an election is revoked under this paragraph, the revocation shall not affect taxable years for which a tax return was filed computing a depreciation deduction under section 167(k). The revocation shall be effective on the date specified by the taxpayer. Such revocation may apply to any property attributable to rehabilitation expenditures allocated to any dwelling unit in the building or

structure or to all such property. An election revoked under this subparagraph may not be reinstated.

(2) *Failure to meet requirements of section 167(k).* An election under section 167(k) with respect to property attributable to a dwelling unit shall be considered revoked with respect to such property if at any time during the taxable year—

(i) Such unit is rented to (or held for occupancy by) a family or individual not meeting the definition of low or moderate income (see § 1.167(k)–3(b)(2));

(ii) More than one-half of the dwelling units in the building are rented on a transient basis (see § 1.167(k)–3(c)); or

(iii) Expenditures which are required in order to meet the $3,000 minimum amount limitation for the preceding taxable year are insufficient (see § 1.167(k)–2(b)).

The revocation shall be deemed to occur on the first day in which the dwelling unit does not meet the requirements of section 167(k) during the taxable year. Any revocation of an election under this subparagraph shall not affect prior taxable years for which a tax return computing depreciation under section 167(k) was filed if all the conditions of section 167(k) were met for those years. An election considered revoked under this subparagraph may not be reinstated.

(3) *Effect of revocation.* The taxpayer may not compute the depreciation deduction using the 60-month useful life permitted under section 167(k) for any portion of any taxable year beginning after the date on which a revocation is effective under this paragraph. The depreciation deduction allowed under section 167(k) for the taxable year in which a revocation is effective shall be the amount such deduction would have been for such year if no revocation had occurred, multiplied by a fraction consisting of (i) the number of days in the taxable year prior to the date of the revocation, over (ii) the number of days of the 60-month election period which fall within such year. The taxpayer shall continue to use the straight line method of depreciation, but shall use the estimated remaining useful life and salvage value of the property (determined without regard to section 167(k)) as of the date such revocation is deemed to occur. If the taxpayer wishes to adopt another method of depreciation following a revocation of an election, such new method is a change in a method of accounting which requires the consent of the Secretary or his delegate under section 446(e). Generally, the straight line method of depreciation using the property's remaining useful life determined without regard to section 167(k) will be the only method of depreciation which will be accepted following a revocation.

(4) *Example.* The principles of this paragraph may be illustrated by the following example:

Example. Beginning after July 24, 1969, a calendar-year taxpayer spends $5,000 per dwelling unit to rehabilitate the three dwelling units in an apartment house. The property attributable to these expenditures is placed in service on January 1, 1970. The dwelling units qualify as low-income rental housing and the taxpayer elects to compute depreciation under section 167(k). The dwelling units continue to qualify as low-income rental housing throughout 1970, 1971, and 1972. On March 15, 1973, the three units cease to qualify as low-income rental housing and the election under section 167(k) is considered revoked on that date. The amount of the depreciation deduction computed under section 167(k) for 1973 with respect to these three units is the amount such depreciation would have been absent a revocation, $3,000 ($\frac{1}{5} \times \$15,000$), multiplied by the number of days of the taxable year before the revocation, 73, over the number of days of the 60-month election period within the taxable year, 365. Thus, the depreciation deduction for 1973 under section 167(k) is $600 ($\frac{73}{365} \times \$3,000$). For the remainder of 1973, the taxpayer must compute depreciation under the straight line method, using the estimated useful life and the salvage value of the property on March 15, 1973. The adjusted basis of the property on March 15, 1973, is $5,400, the property's unadjusted basis ($15,000), minus the depreciation allowed under section 167(k) ($9,600). Assume that the property's estimated remaining useful life is 20 years and that the salvage value is $1,000. The depreciation deduction for the remainder of 1973 under section 167(a) is the amount the depreciation would have been for 1973 under the straight line method, $220 ($\frac{1}{20} \times \$4,400$), multiplied by the number of days following the revocation, 292, over the number of days of the taxable year, 365. Thus, the taxpayer would be allowed a deduction of $176 under section 167(a) for the period of 1973 following the revocation ($\frac{292}{365} \times \$220$). The depreciation allowed for 1973 with respect to the property is the sum of the depreciation computed under section 167(k) before the revocation ($600) plus the depreciation allowed under section 167(a) after the revocation ($176), or $776.

(e) *Effective date.* The provisions of section 167(k) apply to taxable years ending after July 24, 1969. A taxpayer will be permitted to make an election or revoke an election under section 167(k) on or before June 9, 1972. The election will be permitted under this paragraph for any taxable year ending after July 24, 1969, notwithstanding the fact that the period prescribed by paragraph (c) of this section for filing an election for such taxable year has expired. The provisions of paragraph (a)(1) of this section shall apply for purposes of determining the beginning of the 60-month election period. If the taxpayer is permitted to revoke an election with respect to any property within the 90-day period specified in this paragraph, the taxpayer may adopt any method of depreciation permitted under section 167 for such property, beginning with the date the property was placed in service, using the estimated useful life of the property on such date, determined without regard to section 167(k).

[FR Doc.72-3738 Filed 3-10-72;8:47 am]

[T.D. 7166]

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

Special Rules for Section 1250 Property

On January 5, 1971, notice of proposed rule making with respect to the amendment of the Income Tax Regulations (26 CFR Part 1) to conform the regulations to the provisions of section 521(a) of the Tax Reform Act of 1969 (83 Stat. 649), relating to special rules for section 1250 property, was published in the FEDERAL REGISTER (36 F.R. 99). After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, the amendment as proposed is hereby adopted, subject to the following changes:

PARAGRAPH 1. Section 1.167(j)–3 is changed by revising paragraphs (b) and (c) (1) and (2).

PAR. 2. Section 1.167(j)–4 is revised.

PAR. 3. Section 1.167(j)–5 is revised.

PAR. 4. Section 1.167(j)–6 is revised.

PAR. 5. Section 1.167(j)–7 is changed by revising paragraphs (a) (2), (3)(i), and (4), and (c).

(Secs. 167(j), 83 Stat. 649; 26 U.S.C. 167, 7805, 68A Stat. 917; 26 U.S.C. 7805, Internal Revenue Code of 1954)

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

Approved: March 2, 1972.

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

In order to conform the Income Tax Regulations (26 CFR Part 1) to the provisions of section 521(a) of the Tax Reform Act of 1969 (83 Stat. 649), such regulations are amended as follows:

PARAGRAPH 1. The following new sections are added immediately after § 1.167(j) to read as follows:

§ 1.167(j)–1 Special rules for section 1250 property.

(a) *Depreciation of section 1250 property—(1) General.* In the case of section 1250 property, section 167(j) provides limitations on the methods of depreciation which will be considered to result in a reasonable allowance under section 167(a). Generally, in the case of section 1250 property the original use of which commences with the taxpayer after July 24, 1969, the 200 percent declining balance and sum of the years-digits methods of depreciation are available only with respect to residential rental property (sec. 167(j)(2)); other such property is limited to the straight line method, the 150 percent declining balance method, or any other consistent method described in subparagraph (C) of section 167(j)(1) (sec. 167(j)(1)). Under section 167(j)(3), if construction of section 1250 property has begun before July 25, 1969, or if there is a written contract binding on the taxpayer for construction or permanent financing on that date, the property is not subject to the limitations of section 167(j)(1). In the case of section 1250 property acquired after July 24, 1969, the original use of which does not commence with the taxpayer, section 167(j)(4) provides that the straight line method of depreciation generally is the only method which will be considered to result in a reasonable allowance under section 167(a); except that, under section 167(j)(5), if such property has a useful life of 20 years or more and qualifies as residential rental

property, the 125 percent declining balance method may be used. Section 167(j)(6)(C) provides that if used section 1250 property is acquired after July 24, 1969, pursuant to a written contract for acquisition or for permanent financing which was, on July 24, 1969, and at all times thereafter, binding on the taxpayer, such property is not subject to the limitations of section 167(j) (4) and (5). Section 167(j)(6)(A) provides that rules similar to the rules contained in paragraphs (5), (9), (10), and (13), of section 48(h) shall be applied for purposes of paragraphs (3), (4), and (5) of section 167(j).

(2) *Meaning of terms.* For purposes of this section and §§ 1.167(j)–2 through 1.167(j)–7—

(i) The term "section 1250 property" means any real property (other than sec. 1245 property, as defined in sec. 1245 (a)(3)) which is or has been property of a character subject to the allowance for depreciation provided in section 167; and

(ii) The term "original use" means the first use to which the property is put, whether or not such use corresponds to the use of the property by the taxpayer. (See § 1.167(c)–1(a).)

§ 1.167(j)–2 Depreciation of new section 1250 property.

(a) *Depreciation of new section 1250 property*—(1) *General rule.* Except as provided in §§ 1.167(j)–3 and 1.167(j)–4, section 167(b) shall not apply in the case of section 1250 property the original use of which commences with the taxpayer after July 24, 1969, and the methods of depreciation described in paragraph (b) of this section shall be deemed to produce a reasonable allowance for depreciation. Any other reasonable and consistently applied method of computing depreciation may be used unless such method is allowable solely by reason of paragraph (2), (3), or (4) of section 167(b). The reasonableness of any claim for depreciation shall be determined upon the basis of conditions known to exist at the end of the period for which the return is made. Generally, depreciation deductions so claimed will be changed only where there is a clear and convincing basis for the change. It is the responsibility of the taxpayer to establish the reasonableness of the deduction for depreciation claimed. Regardless of the method used in computing depreciation, deductions for depreciation shall not exceed such amounts as may be necessary to recover the unrecovered cost or other basis less salvage during the remaining useful life of the property.

(2) *Application of methods.* For principles governing the application of composite accounts, see § 1.167(b)–0(c). methods to item, group, classified, or

(b) *Depreciation methods*—(1) *Straight line method.* For principles governing the computation of depreciation under the straight line method, see § 1.167(b)–1.

(2) *Declining balance method.* (i) Under the declining balance method a uniform rate is applied each year to the unrecovered cost or other basis of the property. The unrecovered cost or other basis is the basis provided by section 167(g), adjusted for depreciation previously allowed or allowable, and for all other adjustments provided by section 1016 and other applicable provisions of law. The declining balance rate may be determined without resort to formula. Such rate determined under section 167(j)(1)(B) shall not exceed 150 percent of the appropriate straight line rate computed without adjustment for salvage. While salvage is not taken into account in determining the annual allowances under this method, in no event shall an asset (or an account) be depreciated below a reasonable salvage value.

(ii) In the declining balance method when a change is justified in the useful life estimated for an account, subsequent computations shall be made as though the revised life had been originally estimated. For example, assume that an account has an estimated useful life of 10 years and that the declining balance method using a 15 percent rate (150 percent of the straight line rate computed without adjustment for salvage (10 percent)) is adopted. If, at the end of the fourth year, it is determined that the remaining useful life of the account is 8 years, computations shall be made as though the estimated useful life was originally determined as 12 years. Accordingly, the applicable depreciation rate will be 12½ percent (150 percent×½). This rate is thereafter applied to the uncovered cost or other basis.

(3) *Other methods.* (i) Under section 167(j)(1)(C), a taxpayer may use any consistent method of computing depreciation, such as the sinking fund method, provided depreciation allowances computed in accordance with such method do not result in accumulated allowances at the end of any taxable year greater than the total of the accumulated allowances which would have resulted from the use of the declining balance method described in section 167(j)(1)(B). This limitation applies only during the first two-thirds of the useful life of the property. For example, an asset costing $320, having a useful life of 6 years, may be depreciated under the declining balance method in accordance with subparagraph (2) of this paragraph at a rate of 25 percent. During the first 4 years (two-thirds of the useful life), maximum depreciation allowances under this method would be as follows :

	Current depreciation	Accumulated depreciation	Balance
Cost of asset			$320.00
First year	$80.00	$80.00	240.00
Second year	60.00	140.00	180.00
Third year	45.00	185.00	135.00
Fourth year	33.75	218.75	101.25

An annual allowance computed by any other method under section 167(j)(1)(C) could not exceed $80 for the first year, and at the end of the second year the total allowances for the 2 years could not exceed $140. Likewise, the total allowances for the first 3 years could not exceed $185 and for the first 4 years could not exceed $218.75. This limitation would not apply in the fifth and sixth years.

(ii) It shall be the responsibility of the taxpayer to establish to the satisfaction of the Commissioner that a method of depreciation under section 167(j)(1)(C) is both a reasonable and consistent method and that it does not produce depreciation allowances in excess of the amount permitted under the limitations provided in such section.

§ 1.167(j)–3 Residential rental property.

(a) *In general.* Section 167(j)(1) shall not apply and section 167(b) shall apply (subject to the limitations of section 167(c)) in the case of residential rental property (as defined in section 167(j)(2)(B)) the original use of which commences with the taxpayer: *Provided,* That—

(1) Such property is located in the United States or any of its possessions, or

(2) Such property is located within a foreign country, and the laws of such country provide a method of depreciation for such property comparable to the declining balance or sum of the years-digits method of depreciation. If this subparagraph applies to property located within a foreign country, and if the allowance for depreciation provided under the laws of such country is greater than that provided under section 167(j)(1), but less than the maximum depreciation allowance computed under section 167(b), then the amount of depreciation computed under section 167(b) shall not exceed the amount of depreciation computed under the laws of such foreign country.

For purposes of this paragraph, a method of depreciation shall be considered comparable to the declining balance or sum of the years-digits method only if such method results in depreciation allowances during the first two-thirds of the useful life of the property (determined under § 1.167(a)–1(b)) which are greater than depreciation allowances computed under the declining balance method of depreciation using 150 percent of the straight line rate computed without adjustment for salvage.

(b) *Definition of residential rental property*—(1) *In general.* (i) The term "residential rental property" means, for any taxable year, a building or structure used to provide living accommodations on a rental basis: *Provided,* That 80 percent or more of the gross rental income (as defined in subparagraph (2) of this paragraph) for such taxable year from such building or structure is rental income from dwelling units. Generally, a dwelling unit is a house or an apartment used to provide living accommodations but does not include any unit in a hotel, motel, inn, or other establishment more than one-half of the units in which are used on a transient basis (see § 1.167(k)–3(c)).

(ii) In any case where two or more buildings or structures on a single tract

or parcel (or contiguous tracts or parcels) of land are operated as an integrated unit (as evidenced by their actual operation, management, financing, and accounting), they may be treated as a single building for purposes of this paragraph. For example, if the gross rental income from two such buildings were $1 million and $5 million respectively, and if the gross rental income from dwelling units in such buildings were $900,000 and $3,900,000 respectively, the buildings could be considered residential rental property because 80 percent ($4,800,000/$6,000,000) of the gross rental income from the two buildings is from dwelling units.

(2) *Gross rental income defined.* (i) For purposes of this paragraph, the term "gross rental income" means, generally, the gross amounts received from the use of or the right to use real property. If an amount is received with respect to property consisting of both real and personal property, such as a furnished house or apartment, that portion of the rent attributable to the personal property does not constitute gross rental income.

(ii) If an amount is received with respect to a facility located outside a building, such amount may constitute gross rental income from the building or buildings which the facility serves, provided—

(*a*) The facility is of the kind that customarily is associated with the occupancy of a living accommodation, such as a parking lot, swimming pool, or recreation area;

(*b*) The facility is principally for the benefit of tenants of the building (or buildings); and

(*c*) If separate charges are made to the tenants for the use of the facility, at least 80 percent of the gross income from the facility is from such tenants. If less than 80 percent of the gross income from a facility outside the building is from tenants of the building (or buildings), none of the income from the facility is gross rental income from the building (or buildings).

A grocery store, drugstore, commercial laundry, or other commercial operation is not associated with the occupancy of a living accommodation.

(iii) The gross amount attributable to the furnishing of services which are usually or customarily attributable to the use of or right to use real property constitutes gross rental income from the building. However, the gross amount attributable to the performance of significant services for the occupant which are other than those usually or customarily rendered in connection with the mere rental of rooms or other space for occupancy does not constitute gross rental income from the building. Amounts attributable to the performance of maid service, for example, do not constitute gross rental income, whereas amounts attributable to the furnishing of heat and light, the cleaning of public entrances, exits, stairways, and lobbies, the collection of trash, etc., would generally constitute gross rental income. Where an amount is paid by the tenant directly to an independent contractor, such as an amount paid to a public utility for electricity or gas, such amount does not constitute gross rental income from the building.

(3) *Gross rental income from a dwelling unit.* Gross rental income from a building is gross rental income from a dwelling unit in such building only if it is attributable to or ordinarily associated with the use of, or the right to use, such unit as a living accommodation. The right to use a parking space or a swimming pool is ordinarily associated with the right to use a dwelling unit as a living accommodation. Accordingly, an amount paid by the tenant of a dwelling unit for such a parking space or swimming pool is gross rental income from a dwelling unit. If a portion of the building is used for a drugstore, grocery store, commercial laundry, or other commercial operation, the rent paid for such portion (including any amount paid for services in connection with such a commercial operation) is not rental income from a dwelling unit. Similarly, if pursuant to the terms of a lease or other agreement, a portion of a house or apartment is used as office space, such as a doctor's office, the rent paid with respect to such portion is gross rental income from the building but is not rental income from a dwelling unit.

(4) *Special rules.* (i) For purposes of computing the gross rental income from a building or structure, the rental at which a vacant unit is offered is not taken into account.

(ii) Rent supplement payments under section 221(d)(3) of the National Housing Act and interest reduction payments under section 236 of the National Housing Act made on behalf of tenants occupying dwelling units, will be taken into account as gross rental income from dwelling units.

(iii) If any portion of a building or structure is occupied by the taxpayer, the fair rental value of such portion shall be included in gross rental income in determining whether the building or structure qualifies as residential rental property. Thus, if the taxpayer uses space in the building for the operation of a drug store the fair rental value of the space is treated as gross rental income from the building but not as rent from a dwelling unit.

(iv) If the taxpayer reserves space in a building for a rental office, for the storage of tools and equipment, for occupancy by a resident manager or maintenance personnel, or for other similar purposes, such space is not treated as occupied by the taxpayer.

(v) For purposes of determining whether property qualifies as residential rental property for a taxable year under section 167(j)(2)(B), only the gross rental income attributable to that portion of the year in which the taxpayer is entitled to compute depreciation with respect to the property shall be taken into account. (For period when depreciation is allowable, see § 1.167(a)–10.) Thus, if a calendar year taxpayer acquires a building on June 15, 1970, which had been placed in service on January 1, 1970, only the rent attributable to the period from June 15, 1970, to December 31, 1970, shall be taken into account for 1970 for purposes of section 167(j)(2)(B).

(5) *Certain records required.* The taxpayer shall maintain a record of the gross rental income derived from a building, and the portion thereof which constitutes gross rental income from dwelling units, in addition to the records required under § 1.167(a)–7(c) with respect to property in a depreciation account.

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

Example (*1*). A constructs a six-story building, beginning after July 24, 1969. The building is placed in service in 1970. The first floor is rented to a commercial store and the remaining area, consisting of 25 dwelling units, is rented to tenants for living accommodations. The gross rental income from the store during 1970 is $15,000 and the gross rental income from the dwelling units is $60,000. Since 80 percent ($60,000/$75,000) of the gross rental income constitutes rental income from dwelling units, the building qualifies as residential rental property for 1970.

Example (*2*). The facts are the same as in example (1), except that A operates the commercial store himself and lives in one of the dwelling units. Assuming that the fair rental value for the commercial store and for the dwelling units are the amounts set forth in example (1), the building qualifies as residential rental property for 1970, since the fair rental value of the commercial store and of the dwelling unit are treated as rental income from the building.

Example (*3*). The facts are the same as in example (1). In 1971, the gross rental income from the store is $18,000 and the gross rental income from the dwelling units is $64,000. Since only 78.05 percent ($64,000/$82,000) of the gross rental income is rental income from dwelling units, the building does not qualify as residential rental property for 1971.

(c) *Change in depreciation method*—(1) *In general.* Any change in the computation of the allowance for depreciation with respect to any section 1250 property for any taxable year, permitted or required by reason of the qualification or disqualification of such property as residential rental property under paragraph (b) of this section, shall not be considered a change in a method of accounting. For purposes of this paragraph, a change in the computation of the allowance for depreciation is permitted in any taxable year without consent only if property qualifies as residential rental property for such year and did not qualify as residential rental property in the first taxable year in which the current method of depreciation with respect to such property was adopted. Further, for purposes of this paragraph, a change in the computation of the allowance for depreciation is required in any taxable year only if the property is subject to the limitations of section 167(j)(1) (or section 167(j)(4) in the case of used section 1250 property) for such year and the current method of depreciation with respect to the property is not permitted

under section 167(j)(1) (section 167(j)(4) in the case of used section 1250 property). If a change in the computation of the allowance for depreciation is not permitted or required under this paragraph, such change is considered a change in a method of accounting for which the taxpayer must secure the consent of the Secretary or his delegate. (See section 446(e).) However, see section 167(e) for special rules relating to certain changes in the method of computing depreciation which do not require such consent. See § 1.167(a)-11(c)(1) for special rule for change in depreciation method with respect to property for which an election under § 1.167(a)-11 has been made. The principles of this subparagraph may be illustrated by the following examples:

Example (1). In 1970, A constructs a building which qualifies as residential rental property and adopts the sum of the years-digits method of depreciation. In 1971, the building does not qualify as residential rental property. A is required to adopt a method of depreciation permitted under section 167(j)(1) for 1971 with respect to the building, such as the declining balance method using 150 percent of the straight line rate computed without adjustment for salvage. The change of depreciation method for 1971 is not considered a change in a method of accounting.

Example (2). The facts are the same as in example (1). In 1972, the building again qualifies as residential rental property. A may adopt any method of depreciation described in section 167(b) for 1972, subject to the limitations of section 167(c), and this change of depreciation method is not considered a change in a method of accounting.

Example (3). The facts are the same as in example (1), except that in 1970 the taxpayer adopts the 150 percent declining balance method of depreciation. Any change in the computation of the allowance for depreciation for any subsequent year would be considered a change in a method of accounting.

(2) *Computation of depreciation after change in method.* If a change in the computation of the allowance for depreciation is permitted or required under subparagraph (1) of this paragraph, the unrecovered cost or other basis (less a reasonable estimate for salvage if required under the new method of depreciation) shall be recovered through annual allowances over the estimated remaining useful life of the property. The rate of depreciation for property changed to the straight line or sum of the years-digits method of depreciation shall be based upon the estimated remaining useful life of the property at the time of the change. The rate of depreciation for property changed to any declining balance method shall be based upon the estimated useful life of such property as of the date such property was placed in service by the taxpayer. The taxpayer shall furnish a statement with respect to the property which is the subject of the change showing the date of acquisition, cost or other basis, amounts recovered through depreciation and other allowances, the estimated salvage value, the character of the property, the estimated useful life of the property, and such other information as may be required. The statement shall be attached to the taxpayer's return for the taxable year in which the change is made. If a change in the computation of the allowance for depreciation is made, the new method of depreciation must be adhered to for the entire taxable year of the change and for all subsequent taxable years unless in a subsequent year—

(i) The taxpayer is permitted or required to change to a different method of depreciation under subparagraph (1) of this paragraph, or

(ii) A change in depreciation method is made with the consent of the Commissioner (see section 446(e) and § 1.167(a)-11(c)(1)).

(3) *Example.* The principles of this paragraph may be illustrated by the following example.

Example. (i) Beginning after July 24, 1969, B constructs a building which is placed in service on January 1, 1970. The building has a cost of $100,000, a 40-year useful life, and a $10,000 salvage value. In 1970, the building does not qualify as residential rental property and B adopts the declining balance method of depreciation using 150 percent of the straight line rate computed without adjustment for salvage. B may claim a depreciation deduction of $3,750 for 1970 ($0.0375 \times \$100,000$).

(ii) In 1971, the building qualifies as residential rental property and B adopts the sum of the years-digits method of depreciation. At that time, the property has a remaining estimated useful life of 39 years, a salvage value of $10,000, and an adjusted basis of $96,250. Table I of § 1.167(b)-3(a) shows that the decimal equivalent for a 39-year useful life under the sum of the years-digits method is 0.0500. Since the adjusted basis less salvage value is $86,250, B may claim a depreciation deduction of $4,312.50 ($0.05 \times \$86,250$) for 1971.

(iii) In 1972, the building does not qualify as residential rental property and B adopts the declining balance method of depreciation using 150 percent of the straight line rate computed without adjustment for salvage. The adjusted basis of the property is now $91,937.50 ($96,250 minus $4,312.50) and B may claim a depreciation deduction of $3,447.66 for 1972 ($0.0375 \times \$91,937.50$).

§ 1.167(j)-4 Property constructed, etc., before July 25, 1969.

(a) *Construction, reconstruction, or erection*—(1) *General rule.* Section 167(j)(3)(A) provides that section 167(j)(1) shall not apply and section 167(b) shall apply (subject to the limitations contained in section 167(c)) in the case of any section 1250 property the construction, reconstruction, or erection of which (whether or not by the taxpayer) was begun before July 25, 1969. Where construction, reconstruction, or erection was begun before July 25, 1969, the limitations of section 167(j)(1) do not apply to the completed building (including structural components necessary to the operation of the building, such as a furnace and central air conditioning unit), provided that the building is completed substantially in accordance with the building description in the contract on July 24, 1969. If there is a substantial modification in the building described in the contract after July 24, 1969 (other than a modification required by a Federal, State, or local agency), any section 1250 property which was not an integral part of the building as described in the contract on July 24, 1969, shall not qualify under this subparagraph. (See, however, § 1.167(j)-7.) A substantial modification will be considered to have occurred only if the size, estimated cost, or estimated rental value of the building subject to the contract is changed by more than 20 percent. Any property which is an integral part of the building described in the contract on July 24, 1969, may qualify under this paragraph even if such property is attributable to a modification that is not considered substantial under this subparagraph. For example, if the taxpayer begins the construction of a 25-unit motel before July 25, 1969, but changes his plans after July 24, 1969, and constructs a 40-unit motel, the section 1250 property which is a part of, or attributable to, the construction of the additional 15 units does not qualify under this subparagraph. The principles of this subparagraph may be illustrated by the following example:

Example. C begins the contruction of a building before July 25, 1969. Prior to completion, the building is sold to D. Upon completion, D may adopt any method of depreciation described in section 167(b), since the construction began before July 25, 1969, and the original use of the property commenced with D. The result would be the same if D acquired the building after completion of construction, but before the building was placed in service.

(2) *Commencement of construction.* For purposes of this section, the construction, reconstruction, or erection of section 1250 property begins upon the commencement of physical work at the building site, as distinguished from the beginning of, or engaging in, certain preliminary activities, and this determination shall be based upon all of the facts and circumstances of a particular case. Thus, activities such as test drilling to determine soil conditions, the preparation of architect's sketches, and similar preliminary work does not constitute the beginning of construction, reconstruction, or erection of a building. On the other hand, the grading of land, the digging of the footings of a building, the excavation of a building site for the purpose of sinking a foundation shoring composite wall, or the driving of foundation piles would constitute the beginning of physical construction of a building. The principles of this subparagraph may be illustrated by the following example:

Example. On February 15, 1969, M Corporation acquires property. On April 10, 1969, M engages the N Construction Co. to construct a community center consisting of theaters, office buildings, and a subterranean garage, the size, estimated cost, and rental value of which are described in the contract entered into on that date. On July 24, 1969, N has completed approximately 25 percent of the excavation for the purpose of sinking a foundation-shoring composite wall. Prior to July 25, 1969, M has made two progress payments to N totaling in excess of $200,000. The excavation prior to July 25, 1969, of a portion of the dirt to be removed for the purpose of sinking the foundation-shoring composite wall, constitutes the beginning of physical construction for purposes of this section.

(b) *Binding contract for construction*—(1) *General rule.* Section 167(j)(3)(B) provides that section 167(j)(1) shall not apply and section 167(b) shall apply (subject to the limitations contained in section 167(c)) in the case of any section 1250 property for which a written contract with respect to any part of the construction, reconstruction, or erection, or for a substantial portion of the permanent financing, was on July 25, 1969, and at all times thereafter, binding on the taxpayer. A contract for construction, reconstruction, or erection shall not be considered a binding contract under section 167(j)(3)(B) unless such contract meets the requirements of subparagraphs (2) through (7) of this paragraph. A contract with respect to permanent financing shall not be considered a binding contract for purposes of section 167(j)(3)(B), unless such contract meets the requirements of paragraph (c) of this section.

(2) *Type of contract.* (i) A contract for the construction, reconstruction, or erection of property will qualify under this paragraph only if—

(*a*) The construction, reconstruction, or erection of such property is the subject matter of the contract.

(*b*) The contract provides that the property is to be constructed, reconstructed, or erected by or for the taxpayer (or his assignor if the assignment occurred before July 25, 1969),

(*c*) The contract (or related documents) contains a description of the building sufficient to determine the size, estimated cost, and estimated rental value of the property to be constructed, reconstructed, or erected, and either

(*d*) The parties to the contract are the taxpayer (or his assignor if the assignment occurred before July 25, 1969), and the person who is to construct, reconstruct, or erect property for the taxpayer, or

(*e*) The parties to the contract are the taxpayer (or his assignor if the assignment occurred before July 25, 1969), and the person with whom or for whom the taxpayer agrees to construct, reconstruct, or erect property.

(ii) Section 167(j)(3)(B) does not apply if a person who is a party to a binding contract under this paragraph transfers rights in such contract (or in the property to which such contract relates) after July 25, 1969, to another person, even though the first person retains a right to use the property under a lease with such other person. For example, if, after July 25, 1969, A begins the construction of a building for B under a contract entered into before July 25, 1969, and B then sells his rights under the contract to C, this paragraph does not apply to the property in C's hands, even though this paragraph would have applied to the property in B's hands. See § 1.167(j)–7(a)(3) for certain cases where a transfer of property which is subject to a binding contract will be disregarded.

(3) *Legal formality.* (i) An agreement shall be considered as a contract binding on the taxpayer, for purposes of this paragraph, only if such agreement is in writing, constitutes a contract under applicable State or local law, and is enforceable against the taxpayer under such law. A contract which does not represent a bona fide agreement negotiated at arm's length shall not be considered a binding contract under this paragraph. In any case where a person that is named as a party to the contract is acting solely as a mere nominee, the real party in interest shall be considered a party to the contract.

(ii) The principles of this subparagraph may be illustrated by the following examples:

Example (1). A is the owner of a parcel of land. B owns and operates department stores. On July 1, 1969, A and B enter into a contract under which B agrees to lease the land from A and to build and operate a department store on the leased property. If the contract adequately describes the building to be constructed, the contract between A and B may qualify as a binding contract under this subparagraph.

Example (2). C and D each owns and operates department stores. On March 21, 1969, C and D enter into a contract under which each party agrees to construct a building on land owned by E. If the contract adequately describes the buildings to be constructed, the contract between C and D may qualify as a binding contract for purposes of this subparagraph.

(4) *Liability for and amount of damages.* A contract will not be considered to be binding upon the taxpayer for purposes of this paragraph unless (i) the taxpayer's failure to perform would subject him or his property to liability for damages or to a forfeiture of a down payment or a deposit, and (ii) the amount of such liability for damages is not limited by the terms of the contract or, if the contractually limited, the liability or forfeiture is more than nominal. If the deposit, liquidated damages, or down payment is consistent with the normal commercial practices in the locality, the contract may qualify under this paragraph. It is not required that the taxpayer be subject to personal liability for such damages. For example, if the taxpayer's liability is limited and enforceable only against the taxpayer's property, the contract may still qualify under this subparagraph.

(5) *Continuing existence of contract and its terms.* A contract shall qualify as a binding contract for purposes of this paragraph only if such contract is (i) binding upon the taxpayer on July 25, 1969, and at all times thereafter until performance under the contract is completed, and (ii) performance is substantially in accordance with the terms of the contract as such terms existed on July 24, 1969. A contract whose terms are substantially modified after July 24, 1969 (other than by a modification required by a Federal, State, or local agency), will not be considered a binding contract for purposes of this paragraph with respect to any property which was not an integral part of the building as described in the contract on July 24, 1969. (See, however, § 1.167(j)–7.) A modification of a contract will be considered substantial only if the size, estimated cost, or estimated rental value of the building is changed by more than 20 percent. Property attributable to a modification that is not considered substantial may qualify under this paragraph. A modification of a contract in which the lessee of property becomes the purchaser, or the purchaser of property becomes the lessee, would not be considered a substantial modification in the absence of any other factors. On the other hand, if a contract which provides for the construction of a three-story office building is modified to provide for the construction of an eight-story office building, such modification would be a substantial modification, and therefore, the contract would be considered binding only with respect to the property subject to the contract before the modification.

(6) *Contract with undetermined terms or conditions.* A contract may be binding upon the taxpayer under this paragraph even if some of its terms are to be determined at a date later than July 25, 1969, provided that the determination of such terms is not within the unrestricted control of the taxpayer, and such terms are in fact subsequently determined. Similarly, a contract may be binding upon the taxpayer under this paragraph even if it is subject to the happening of certain contingencies which have not occurred by July 25, 1969, provided that the happening of such contingencies is not within the unrestricted control of the taxpayer, and the contingencies in fact occur.

(7) *Extent of taxpayer's obligations.* A contract with respect to the construction, reconstruction, or erection of property will meet the requirements of this paragraph only if performance of the contract would be considered the commencement of construction under paragraph (a)(2) of this section and the building is adequately described in the contract on July 24, 1969. Thus, for example, a contract for the preparation of architect's sketches, or for test drilling to determine soil conditions, would not be considered a binding contract for construction. On the other hand, if performance of a contract would be considered the commencement of construction under paragraph (a)(2) of this section and if the size, esitmated cost, and estimated rental value of the building to be constructed are determinable from the provisions of the contract on July 24, 1969, the completed building (including structural components necessary for the operation of the building, such as a furnance and central air conditioning unit) may qualify under section 167(j)(3)(B). It is not required that detailed construction plans and specifications be in existence on July 24, 1969. Thus, for example, if a taxpayer enters into a contract for the construction of a building shell on July 1, 1969, and the size, estimated cost, and estimated rental value of the building are determinable on July 24, 1969, the completed building, including plumbing and heating not subject to such contract, may qualify under section 167(j)(3)(B). On the other hand, if the size, estimated cost, or estimated rental value of the building is not determinable on July 24, 1969, only the property which is specifically described in

the contract may qualify under section 167(j)(3)(B). (See, however, § 1.167(j)-7.)

(c) *Contract for permanent financing*—(1) *General rule.* Section 167(j)(3)(B) provides that section 167(j)(1) shall not apply and section 167(b) shall apply (subject to the limitations of section 167(c)) in the case of any section 1250 property for which a written contract with respect to a substantial portion of the permanent financing of such property was binding on the taxpayer on July 25, 1969, and at all times thereafter. A contract for permanent financing will qualify under section 167(j)(3)(B) only if such contract meets the requirements of subparagraphs (2) through (7) of this paragraph.

(2) *Nature of permanent financing contract.* A contract will qualify under this paragraph only if (i) the contract specifically describes the property to be constructed, reconstructed, or erected as to size, estimated cost, and estimated rental value, (ii) the parties to the contract are the taxpayer and an independent lender, (iii) the contract provides permanent financing after the scheduled completion of the project and the liquidation of interim construction financing, and (iv) the contract provides funds covering a substantial portion of the permanent financing of the property to be constructed, reconstructed, or erected. Generally, a financing agreement will be considered to cover a substantial portion of the permanent financing of the property if the terms of the agreement provide for lending of an amount in excess of 40 percent of that portion of the reasonably estimated cost of construction, reconstruction, or erection of the property, which is to be financed by borrowing. A financing agreement may qualify under this paragraph if funds are provided in the form of a loan, a purchase of the property coupled with a lease-back to the taxpayer, or any similar type of transaction in the nature of a loan. For purposes of this subparagraph, an independent lender need not necessarily be a bank, building and loan association, or other financing institution, provided that the agreement represents a bona fide commitment of funds on behalf of a financially responsible person or organization, negotiated at arm's length.

(3) *Legal formality.* In order for a financing agreement to qualify as permanent financing under this paragraph, such agreement must be in writing, must constitute a contract under applicable State or local law, and must be enforceable against the taxpayer or his property under such law. In any case where a person is acting solely as a mere nominee, the real party in interest shall be considered a party to the contract.

(4) *Continuing existence of contract and its terms.* In order for a financing agreement to qualify under this paragraph, the terms of such agreement must not be substantially modified after July 24, 1969 (other than by a modification required by a Federal, State, or local agency). Among the modifications which will ordinarily be considered substantial are an increase of more than 20 percent in the amount of the loan (other than to reflect the actual costs of construction), or the term for repayment, unless such modifications are pursuant to a contract provision in effect on July 24, 1969. Changes in the rate of interest on the loan will ordinarily not be considered a substantial modification absent other factors. Even if there is a substantial modification in a financing agreement, the agreement may still qualify under this paragraph if circumstances exist which show that the modification does not reduce the taxpayer's obligation under the financing agreement.

(5) *Extent of taxpayer's obligations.* If an agreement qualifies as permanent financing under this paragraph, the completed building or buildings which constitute the underlying subject matter of the financing agreement will qualify under section 167(j)(3)(B), provided that the agreement identifies and describes the size, estimated cost, and estimated rental value of the property to be constructed, reconstructed, or erected, and the building is completed in accordance with the terms of the contract in existence on July 24, 1969. Thus, if an agreement represents a general line of credit, the agreement will not be considered a contract for permanent financing under this paragraph, since the property to be constructed is not identified. Further, if there is a substantial modification in the terms of the contract after July 24, 1969 (other than a modification required by a Federal, State, or local agency), only the property which was an integral part of the building described in the contract on July 24, 1969, shall qualify under this paragraph. A substantial modification in the terms of a contract which relate to the property to be constructed, reconstructed, or erected will be considered to have occurred only if the size, estimated cost, or estimated rental value of the building subject to the contract is changed by more than 20 percent.

(6) *Contracts with undetermined terms or conditions.* A financing agreement may qualify under this paragraph even though some of its terms are to be determined after July 24, 1969, provided that the determination is not within the unrestricted control of the taxpayer, and such terms are in fact determined. Similarly, a financing agreement may be considered binding upon the taxpayer even if it is subject to the happening of certain contingencies which have not occurred by July 25, 1969: *Provided,* That the happening of the contingencies is not within the unrestricted control of the taxpayer, and the contingencies in fact occur. For example, a permanent financing agreement which provides for a variable rate of interest may qualify under this paragraph.

(7) *Liability for damages.* A financing agreement will not qualify under this paragraph unless (i) the taxpayer's failure to perform would subject him to liability for damages or to a forfeiture of a down payment, commitment fee, or deposit, and (ii) the amount of such liability or forfeiture is more than nominal. If the down payment, commitment fee, or deposit is consistent with normal commercial practices in the locality, the contract may qualify under this paragraph. Thus, if a commitment fee is paid to a lender at the time a permanent financing arrangement is entered into, the fee is forfeitable if the taxpayer fails to consummate the loan, and the size of the commitment fee is consistent with normal commercial practices in the locality, the agreement may qualify as permanent financing under this paragraph even though the taxpayer is not legally obligated to consummate the loan.

§ 1.167(j)-5 Depreciation of used section 1250 property.

Except as provided in § 1.167(j)-6, in the case of section 1250 property acquired after July 24, 1969, the original use of which does not commence with the taxpayer, the reasonable allowance for depreciation provided by section 167(a) shall not exceed an amount computed under (a) the straight line method of depreciation, or (b) any other reasonable and consistently applied method of computing depreciation other than (1) any declining balance method, (2) the sum of the years-digits method, or (3) any other method allowable solely by reason of section 167(b)(4) or 167(j)(1)(C). Generally, a method of depreciation will be considered reasonable under this section if depreciation allowances computed in accordance with such method do not, during the first two-thirds of the useful life of the property, result in accumulated allowances at the end of any taxable year greater than the total of the accumulated allowances which would have resulted under the straight line method of depreciation. For purposes of this section, property shall be deemed to be acquired on the date when it is reduced to physical possession, or control, that is, on the date the taxpayer first bears the burdens and enjoys the benefits of ownership. For special rules with respect to used property acquired after July 24, 1969, pursuant to a binding written contract in effect on such date, see sections 167(j)(6)(C) and 1.167(j)-7(c).

§ 1.167(j)-6 Depreciation of used residential rental property.

In the case of section 1250 property which is residential rental property (as defined in section 167(j)(2)(B)) for the taxable year, acquired after July 24, 1969, which has an estimated useful life of 20 years or more in the hands of the taxpayer at the time of such acquisition, and the original use of which does not commence with the taxpayer, the reasonable allowance provided by section 167(a) shall not exceed an amount computed under one of the following methods of depreciation: (a) The straight line method; (b) the declining balance method using a rate not exceeding 125 percent of the appropriate straight line

rate computed without adjustment for salvage; or (c) any other reasonable and consistently applied method of computing depreciation, not including (1) the sum of the years-digits method, (2) any declining balance method using a rate greater than 125 percent of the straight line rate computed without adjustment for salvage, or (3) any other member allowable solely by reason of section 167(b)(4) or 167(j)(1)(C). A change in the computation of the allowance for depreciation with respect to used section 1250 property may be permitted or required by reason of the qualification or disqualification of such property as residential rental property under section 167(j)(2)(B). (See § 1.167(j)-3(c).) Generally, a method of depreciation will be considered reasonable under this section if depreciation allowances computed in accordance with such method do not, during the first two-thirds of the useful life of the property, result in accumulated allowances at the end of any taxable year greater than the total of the accumulated allowances which would have resulted under the declining balance method of depreciation, using a rate not exceeding 125 percent of the appropriate straight line rate computed without adjustment for salvage. For purposes of this section, property shall be deemed to be acquired when reduced to physical possession, or control, that is, on the date the taxpayer first bears the burdens and enjoys the benefits of ownership. For special rules with respect to used residential rental property acquired after July 24, 1969, pursuant to a binding written contract in effect on such date, see sections 167(j)(6)(C) and 1.167(j)-7(c).

§ 1.167(j)-7 Special operating rules.

(a) *Special exceptions for section 1250 property*—(1) *In general.* Under section 167(j)(6)(A), certain special rules similar to the rules contained in paragraphs (5), (9), (10), and (13) of section 48(h) are, under regulations prescribed by the Secretary or his delegate, to be applied for purposes of paragraphs (3), (4), and (5) of section 167(j). The operation of the special rules contained in section 167(j)(6)(A) is described in subparagraphs (2) through (5) of this paragraph.

(2) *Completed building rule.* If section 167(j)(3) applies to section 1250 property (generally where such property is subject to a binding written contract, or where construction, reconstruction, or erection of property has begun) section 167(j)(1) does not apply and the methods of depreciation described in section 167(b) (subject to the limitations contained in section 167(c)) are deemed to produce a reasonable allowance for depreciation. Under the completed building rule of this subparagraph, certain section 1250 property may qualify under section 167(j)(3) which, but for this subparagraph, would not qualify under such section. Under the rule of this subparagraph, if the building is not adequately identified as to size, estimated cost, or estimated rental value on July 24, 1969, but there is a contract or a permanent financing agreement which otherwise meets the requirements of § 1.167(j)-4 (b) or (c) and more than 50 percent of the cost of the completed building is subject to such contract, then the completed building will qualify under section 167(j)(3)(B). Likewise, if construction, reconstruction, or erection of property has begun before July 25, 1969, and more than 50 percent of the cost of the completed building is subject to a contract or construction plans in existence on July 24, 1969, but the building is not adequately described as to size, estimated cost, or estimated rental value on such date, all the section 1250 property in the completed building will qualify under section 167(j)(3)(A).

(3) *Transfers to be disregarded*—(i) *Transfers by death or certain transactions.* If section 1250 property or rights under a contract (which meets the requirements of paragraphs (b) and (c) of § 1.167(j)-4) are transferred in a transfer by reason of death or in a transaction described in subdivision (ii) of this subparagraph, and such property (or the property acquired under such contract) would have qualified (but did not actually qualify) under section 167(j)(3), (4), (5), or (6)(C), in the hands of the decedent or the transferor, such property shall qualify under such sections in the hands of the transferee. For purposes of determining whether property would have qualified in the hands of the decedent or transferor, the principles contained in section 167(j)(3), (4), (5), and (6)(C), and this section apply. This subparagraph shall not apply to property placed in service by the decedent or transferor. The term "transfer by reason of death" means, for purposes of this subparagraph, a transfer of property which, in the hands of the transferee, has a basis determined under the provisions of section 1014(a) (relating to basis of property acquired from a decedent) because of the death of the transferor.

(ii) *Transactions covered.* The transactions referred to in subdivision (i) of this subparagraph are transactions as a result of which the basis of property in the hands of the transferee is determined by reference to its basis in the hands of the transferor by reason of the application of any of the following provisions:

(*a*) Section 332 (relating to distributions in liquidation of an 80 percent or more controlled subsidiary corporation);

(*b*) Section 351 (relating to transfers to a corporation controlled by the transferor);

(*c*) Section 361 (relating to exchanges pursuant to certain corporate reorganizations);

(*d*) Section 371(a) (relating to exchanges pursuant to certain receivership and bankruptcy proceedings);

(*e*) Section 374(a) (relating to exchanges pursuant to certain railroad reorganizations);

(*f*) Section 721 (relating to transfers to a partnership in exchange for a partnership interest);

(*g*) Section 731 (relating to distributions by a partnership to a partner).

(iii) *Transactions to which section 334(b)(2) applies.* If property or rights under a contract are acquired in a transaction to which section 334(b)(2) (relating to certain liquidations of a subsidiary) applies, and such property (or the property acquired under such contract) would have qualified under section 167(j)(3) or 167(j)(6)(C) in the hands of the transferor corporation, then such property shall also qualify in the hands of the transferee corporation. This subparagraph shall apply only if 80 percent or more of the stock of the corporation making the distribution under section 334(b)(2) was acquired by the distributee before July 25, 1969, or pursuant to a written contract which was binding on the distributee on July 25, 1969.

(4) *Section 1250 property acquired from affiliated corporation.* If section 1250 property or rights under a contract are acquired after July 24, 1969, by a corporation which is a member of an affiliated group from another member of the same affiliated group, the acquiring corporation shall be treated as having (i) acquired the property on the date it was acquired by the other member, (ii) entered into a binding written contract for the construction, reconstruction, erection, acquisition, or permanent financing of the property on the date on which the other member entered into such a binding contract, and (iii) commenced construction, reconstruction, or erection of the property on the date on which the other member commenced such construction, reconstruction, or erection. Thus, in general, the determination of whether section 1250 property qualifies under section 167(j)(3), (4), (5), or (6)(C) in the hands of the acquiring corporation depends upon whether the property would have qualified (but did not actually qualify) under such sections in the hands of the transferor corporation. This subparagraph shall not apply to property which has been placed in service by the transferor corporation. For purposes of this subparagraph, the term "affiliated group" shall have the same meaning as in section 1504(a), except that all corporations are to be treated as includible corporations (without any exclusion under section 1504(b)). The provisions of this subparagraph shall apply whether or not the affiliated group elects to file a consolidated return.

(5) *Certain replacement property.* Under this subparagraph, section 1250 property may qualify under section 167(j)(3) or 167(j)(6)(C) if such property is placed in service to replace property which was destroyed or damaged by fire, storm, shipwreck, or other casualty, or stolen. This rule shall apply only to the extent that the cost or other basis of the replacement section 1250 property does not exceed the adjusted basis of the property which was destroyed, damaged, or stolen. The property which is replaced must have been section 1250 property in the hands of the taxpayer, and the replacement property must be similar or related in service or use to the replaced property.

(b) *Property considered as used property*—(1) *General rule.* If section 1250 property which is not property described in section 167(a) when its original use commences becomes property described in section 167(a) after July 24, 1969, such property shall not be considered property the original use of which commences with the taxpayer for purposes of section 167(j) (1) and (2) and shall be subject to the provisions of section 167(j) (4) or (5).

(2) *Example.* Subparagraph (1) of this paragraph may be illustrated by the following example:

Example. A buys a new house in January of 1969, occupies the house as a personal residence until November of 1969, and then rents the house. The property is considered as property the original use of which does not commence with the taxpayer.

(c) *Binding contract with respect to used property.* Under section 167(j) (6) (C), sections 167(j) (4) and 167(j) (5) shall not apply in the case of section 1250 property acquired after July 24, 1969, pursuant to a written contract for the acquisition of such property, or for a substantial portion of the permanent financing thereof, which was on July 24, 1969, and at all times thereafter binding on the taxpayer. Thus, if this paragraph applies, property may be depreciated under a method of depreciation described in § 1.167(b)–0(b), such as the declining balance method using a rate not exceeding 150 percent of the appropriate straight line rate. For purposes of this paragraph, a contract for the acquisition of property or for a substantial portion of the permanent financing of property shall not be considered binding on the taxpayer unless such contract meets the requirements of paragraph (b) or (c) of § 1.167(j)–4, whichever is applicable. For purposes of this paragraph, property shall be deemed to be acquired when reduced to physical possession, or control, that is, on the date the taxpayer first bears the burdens and enjoys the benefits of ownership.

PAR. 2. Section 1.167(e)–1 is amended by revising paragraphs (a) and (b) thereof, and by adding a new paragraph (d), to read as follows:

§ 1.167(e)–1 Change in method.

(a) *In general.* Any change in the method of computing the depreciation allowances with respect to a particular account (other than a change in method permitted or required by reason of the operation of section 167(j) (2) and § 1.167(j)–3(c)) is a change in method of accounting, and such a change will be permitted only with the consent of the Commissioner, except that certain changes to the straight line method of depreciation will be permitted without consent as provided in section 167(e) (1), (2), and (3). Except as provided in paragraphs (c) and (d) of this section, a change in method of computing depreciation will be permitted only with respect to all the assets contained in a particular account as defined in § 1.167 (a)–7. Any change in the percentage of the current straight line rate under the declining balance method, as for example, from 200 percent of the straight line rate to any other percent of the straight line rate, or any change in the interest factor used in connection with a compound interest or sinking fund method, will constitute a change in method of depreciation. Any request for a change in method of depreciation shall be made in accordance with section 446 and the regulations thereunder and shall state the character and location of the property, method of depreciation being used and the method proposed, the date of acquisition, the cost or other basis and adjustments thereto, amount recovered through depreciation and other allowances, the estimated salvage value, the estimated remaining life of the property, and such other information as may be required. For rules covering the use of depreciation methods by acquiring corporations in the case of certain corporate acquisitions, see section 381(c) (6) and the regulations thereunder.

(b) *Declining balance to straight line.* In the case of an account to which the method described in section 167(b) (2) is applicable, a taxpayer may change without the consent of the Commissioner from the declining balance method of depreciation to the straight line method at any time during the useful life of the property under the following conditions. Such a change may not be made if a provision prohibiting such a change is contained in an agreement under section 167(d). When the change is made, the unrecovered cost or other basis (less a reasonable estimate for salvage) shall be recovered through annual allowances over the estimated remaining useful life determined in accordance with the circumstances existing at the time. With respect to any account, this change will be permitted only if applied to all the assets in the account as defined in § 1.167(a)–7. If the method of depreciation described in section 167(b) (2) (the declining balance method of depreciation using a rate not exceeding 200 percent of the straight line rate) is an acceptable method of depreciation with respect to a particular account, the taxpayer may elect under this paragraph to change to the straight line method of depreciation even if with respect to that particular account the declining balance method is permitted under a provision other than section 167(b) (2). Thus, for example, in the case of section 1250 property to which section 167(j) (1) is applicable, section 167(b) does not apply, but the declining balance method of depreciation using 150 percent of the straight line rate is an acceptable method of depreciation under section 167(j) (1) (B). Accordingly, the taxpayer may elect under this paragraph to change to the straight line method of depreciation with respect to such property. Similarly, if the taxpayer acquired used property before July 25, 1969, and adopted the 150 percent declining balance method of depreciation permitted with respect to such property under § 1.167(b)–0(b), the taxpayer may elect under this paragraph to change to the straight line method of depreciation with respect to such property. The taxpayer shall furnish a statement with respect to the property which is the subject of the change showing the date of acquisition, cost or other basis, amounts recovered through depreciation and other allowances, the estimated salvage value, the character of the property, the remaining useful life of the property, and such other information as may be required. The statement shall be attached to the taxpayer's return for the taxable year in which the change is made. A change to the straight line method must be adhered to for the entire taxable year of the change and for all subsequent taxable years unless, with the consent of the Commissioner, a change to another method is permitted.

* * * * *

(d) *Change with respect to section 1250 property.* (1) In respect of his first taxable year beginning after July 24, 1969, a taxpayer may elect, without the consent of the Commissioner, to change the method of depreciation of section 1250 property (as defined in section 1250(c)) from any declining balance method or sum of the years-digits method to the straight line method. With respect to any account (as defined in § 1.167(a)–7) this change may be made notwithstanding any provision to the contrary in an agreement under section 167(d), but such change will constitute (as of the first day of such taxable year) a termination of such agreement as to all property in such account. With respect to any account, this change will be permitted only if applied to all the section 1250 property in the account. The election shall be made by a statement on, or attached to, the return for such taxable year filed on or before the last day prescribed by law, including extensions thereof, for filing such return.

(2) When an election under this paragraph is made in respect of section 1250 property in an account, the unrecovered cost or other basis (less a reasonable estimate for salvage) of all the section 1250 property in the account shall be recovered through annual allowances over the estimated remaining useful life determined in accordance with the circumstances existing at that time. If there is other property in such account, the other property shall be placed in a separate account and depreciated by using the same method as was used before the change permitted by this paragraph, but the estimated useful life of such property shall be redetermined in accordance with § 1.167(b)–2 or § 1.167(b)–3, whichever is applicable. The taxpayer shall maintain records which permit specific identification of the section 1250 property in the account with respect to which the election is made and any other property in such account. The records shall also show for all the property in the account the date of the acquisition, cost or other basis, amounts recovered through depreciation and other allowances, the estimated salvage value, the character of the property, and the estimated remaining useful life of the property. A change to the straight line method under

this paragraph must be adhered to for the entire taxable year of the change and for all subsequent taxable years unless, with the consent of the Commissioner, a change to another method is permitted.

PAR. 3. Section 1.381(c)(6)-1 is amended by revising paragraphs (a) and (b) to read as follows:

§ 1.381(c)(6)-1 Depreciation method.

(a) *Carryover requirement*—(1) *Distributions in taxable years ending before July 25, 1969.* (i) Section 381(c)(6) provides that if, in a transaction in a taxable year which ends before July 25, 1969, to which section 381(a) applies, an acquiring corporation acquires depreciable property from a distributor or transferor corporation which computes its allowance for the depreciation of the property under section 167(b) (2), (3), or (4), the acquiring corporation shall compute its depreciation allowance by the same method used by the distributor or transferor corporation with respect to such property. Thus, if the distributor or transferor corporation used the sum of the years-digits method under section 167(b)(3) with respect to an asset distributed or transferred to an acquiring corporation, the acquiring corporation will be required to use the sum of the years-digits method with respect to such asset acquired. The computation of the depreciation allowance with respect to the property acquired shall be made under the provisions of section 167 and the regulations thereunder.

(ii) The rules provided in section 381(c)(6) and subdivision (i) of this subparagraph will apply only with respect to that part or all of the basis of the property in the hands of the acquiring corporation immediately after the date of distribution or transfer as does not exceed the basis of the property in the hands of the distributor or transferor corporation on the date of the distribution or transfer. For this purpose, the basis of the property in the hands of the distributor or transferor corporation shall be the adjusted basis provided in section 1011 for the purpose of determining gain on the sale or other disposition of such property. For provisions defining the date of distribution or transfer see § 1.381(b)-1(b).

(2) *Distributions in taxable years ending after July 24, 1969.* (i) Section 381(c)(6) provides that if, in a transaction in a taxable year ending after July 24, 1969, to which section 381(a) applies, an acquiring corporation acquires depreciable property from a distributor or transferor corporation which computes its allowances for the depreciation of the property under subsection (b), (j) or (k) of section 167, the acquiring corporation shall compute its depreciation allowance by the same method used by the distributor or transferor corporation with respect to such property. Thus, if the distributor or transferor corporation used the straight line method under section 167(b)(1) with respect to an asset distributed or transferred to an acquiring corporation, the acquiring corporation will be required to use the straight line method with respect to such asset. Similarly, if the distributor or transferor corporation elected to compute depreciation under section 167(k) with respect to property attributable to rehabilitation expenditures, and such property is transferred to an acquiring corporation, the acquiring corporation will be required to compute depreciation under section 167(k) with respect to the property acquired. The computation of the depreciation allowance with respect to the property acquired shall be made under the provisions of section 167 and the regulations thereunder.

(ii) The rules provided in section 381(c)(6) and subdivision (i) of this subparagraph shall apply only with respect to that part or all of the basis of the property in the hands of the acquiring corporation immediately after the date of distribution or transfer as does not exceed the basis of the property in the hands of the distributor or transferor corporation on the date of the distribution or transfer. For this purpose, the basis of the property in the hands of the distributor or transferor corporation shall be the adjusted basis provided in section 1011 for the purpose of determining gain on the sale or other disposition of such property. For provisions defining the date of distribution or transfer see § 1.381-1(b).

(b) *Portion in excess of distributor or transferor corporation's basis*—(1) *General rule.* With respect to that part of the basis of the depreciable property (other than certain section 1250 property described in subparagraph (2) of this paragraph) which in the hands of the acquiring corporation exceeds the adjusted basis to the distributor or transferor corporation, the acquiring corporation may use any reasonable method of computing depreciation, other than the methods provided in section 167(b) (2), (3), or (4). See paragraph (b) of § 1.167(b)-0 for methods which are acceptable under section 167(a) with respect to such property. See also sections 334(b)(1) and 362(b) for the determination of basis of property in the hands of the acquiring corporation in connection with a transaction to which section 381(a) applies.

(2) *Section 1250 property.* With respect to that part of the basis of section 1250 property acquired after July 24, 1969, which in the hands of the acquiring corporation exceeds the adjusted basis to the distributor or transferor corporation, the acquiring corporation shall be subject to the limitations contained in section 167(j)(4) (relating to used section 1250 property) or 167(j)(5) (relating to used residential rental property). Thus, for example, if section 1250 property which is not residential rental property is acquired in a section 381(a) transaction after July 24, 1969, the straight line method of depreciation (or other method allowable under section 167(j)(4)(B)) is the only acceptable method with respect to that portion of the basis of the property which, in the hands of the acquiring corporation, exceeds the adjusted basis to the transferor or distributor corporation.

* * * * *

[FR Doc.72-3737 Filed 3-10-72;8:47 am]

Title 28—JUDICIAL ADMINISTRATION

Chapter I—Department of Justice

[Administrative Division Memos 482, 658]

PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

Subpart O—Administrative Division

REVOCATION OF CERTAIN AUTHORITY DELEGATIONS

Under and by virtue of the authority vested in me by § 0.76(k) of Title 28, Code of Federal Regulations, Administrative Division Memo No. 482, delegating certain authority with respect to training by, in, or through non-Government facilities, and Memo No. 658, delegating authority for taking personnel actions on positions in grade GS-14, are hereby revoked. These redelegations are being published in the internal Department of Justice directives system, Order 1250.3.

Dated: March 3, 1972.

L. M. PELLERZI,
Assistant Attorney General for Administration.

[FR Doc.72-3709 Filed 3-10-72;8:45 am]

Title 29—LABOR

Chapter V—Wage and Hour Division, Department of Labor

PART 570—CHILD LABOR REGULATIONS, ORDERS AND STATEMENTS OF INTERPRETATION

Periods and Conditions of Employment

Regional Manpower Administrators are now performing the functions previously performed by the Administrator of the Bureau of Work Programs. Accordingly it is necessary, pursuant to Secretary Orders Nos. 13-71 (36 F.R. 8755) and 15-71 (36 F.R. 8755), to amend 29 CFR 570.35(b) to reflect this change.

As this change is to bring up to date a rule of agency organization, and as it gives public notice of a change already made, I find that notice of proposed rule making and delay in the effective date is contrary to the public interest. Accordingly this change shall be effective upon publication in the FEDERAL REGISTER (3-11-72).

Paragraph (b) of § 570.35 is revised as follows:

§ 570.35 Periods and conditions of employment.

* * * * *

(b) In the case of enrollees in work training programs conducted under part B of title I of the Economic Opportunity Act of 1964, there is an exception to the requirement of paragraph (a)(1) of this section if the employer has on file with his records kept pursuant to Part 516 of this chapter an unrevoked written statement of the Regional Manpower Administrator or his representative setting out the periods which the minor will

work and certifying that his employment confined to such periods will not interfere with his health and well-being, countersigned by the principal of the school which the minor is attending with his certificate that such employment will not interfere with the minor's schooling.

Signed at Washington, D.C., this 25th day of February 1972.

HORACE E. MENASCO,
Deputy Assistant Secretary for Employment Standards and Administrator of the Wage and Hour Division.

[FR Doc.72-3710 Filed 3-10-72;8:45 am]

Title 32—NATIONAL DEFENSE

Chapter XVIII—Office of Civil Defense, Office of the Secretary of the Army

PART 1813—AVAILABILITY TO THE PUBLIC OF OFFICE OF CIVIL DEFENSE INFORMATION

Chapter XVIII of Title 32 of the Code of Federal Regulations is amended by adding new Part 1813 as follows:

Sec.
1813.1 Purpose.
1813.2 Applicability.
1813.3 Authority.
1813.4 Responsibilities.
1813.5 Requests.
1813.6 "For Official Use Only" records.

AUTHORITY: The provisions of this Part 1813 are issued under 5 U.S.C. 552 and 50 U.S.C. App. 2251-2297.

§ 1813.1 Purpose.

This part establishes procedures to make available the maximum amount of information to the public concerning the operations and activities of the Office of Civil Defense (OCD) and to carry out the policies in DOD Regulation "Availability to the Public of Department of Defense Information," Part 286 of this title (herein called the DOD Regulation).

§ 1813.2 Applicability.

This part is applicable to Headquarters, OCD and OCD Field Activities.

§ 1813.3 Authority.

This part is published in accordance with the authority contained in the DOD Regulation.

§ 1813.4 Responsibilities.

(a) The Assistant Director for Management, Headquarters OCD will:

(1) Subject to the exemptions set forth in § 286.8 of the DOD Regulation or unless readily available elsewhere in published form and incorporated by reference in the FEDERAL REGISTER, arrange for the publication on an up-to-date basis in the FEDERAL REGISTER, of those OCD documents required to be published, including instructions, guides and notices, and other appropriate material including that setting forth the OCD functions and informing all interested persons how to deal effectively with the Agency.

(2) Make material described in §§ 286.6 and 286.7 of the DOD Regulation available for public inspection and copying. Material will be located or made available in Room 1D-511 at the Pentagon, Washington, D.C. 20310. This material will be indexed in accordance with the provisions of the DOD Regulation.

(b) The Deputy Directors of Civil Defense, Assistant Directors, and comparable officials, Comptroller, OCD Regional Directors and Director, Staff College will (1) respond to requests from private persons for records subject to exemptions set forth in § 286.8 of the DOD Regulation, and (2) if the initial determination is that availability of the record should be denied, refer the matter to the General Counsel, Headquarters OCD. Denial is subject to the procedures specified in § 286.10 of the DOD Regulation.

(c) The General Counsel, Headquarters OCD will review such determination and if he determines that availability of the record should be denied, advise the requestor of the basis for the determination and of the right to appeal the decision to the Director of Civil Defense. If such an appeal is taken, the basis for the determination by the Director of Civil Defense will be in writing.

§ 1813.5 Requests.

Requests for documents are to be submitted in writing, either in person or by mail addressed to the Staff Director, Management Division, Room 1D-511, The Pentagon, Washington, D.C. 20310, and will be in sufficient detail to identify the intent of the request and the material sought.

§ 1813.6 "For Official Use Only" Records.

The designation of "For Official Use Only" will be applied to documents and other material only as authorized by § 286.9 of the DOD Regulation.

Effective: March 1, 1972.

JOHN E. DAVIS,
Director of Civil Defense.

[FR Doc.72-3739 Filed 3-10-72;8:48 am]

Title 41—PUBLIC CONTRACTS AND PROPERTY MANAGEMENT

[Federal Procurement Regs., Temporary Reg. 25]

Chapter 1—Federal Procurement Regulations

PART 1-12—LABOR

PART 1-16—PROCUREMENT FORMS

Labor Standards Clauses

To: Heads of Federal agencies.

1. *Purpose.* This regulation prescribes revised labor standards clauses for construction contracts.

2. *Effective date.* This regulation is effective January 30, 1972.

3. *Expiration date.* This regulation will continue in effect until canceled.

4. *Background.* The Department of Labor, by regulation dated September 27, 1971 (36 F.R. 19305, Oct. 2, 1971), prescribed clauses to be inserted in appropriate construction contracts for the purpose of promoting the full realization of training opportunities on Federal and federally assisted construction programs. Employment requirements were set forth for apprentices and trainees, appropriate ratios for the number of apprentices and trainees hired as against the number of journeymen employed were stated, and criteria for the measurement of "diligent effort" in the attempted hiring of apprentices and trainees were prescribed. The Department of Labor regulation is applicable to federally assisted construction contracts as well as to Federal construction contracts. Consequently, the provisions of this regulation, which are mandatory with respect to Federal construction contracts, may also be applied to federally assisted construction contracts.

5. *Explanation of changes.* a. Section 1-12.403-1 is revised as follows:

§ 1-12.403-1 Clauses for general use.

Except as provided in § 1-12.403-3, every construction contract in excess of $2,000 (or in excess of $10,000 in the case of paragraph (c) of the clause entitled "Apprentices and Trainees") for work within the United States shall include the following clauses:

(a) *Davis-Bacon Act (40 U.S.C. 276a—276a-7).*

DAVIS-BACON ACT (40 U.S.C. 276a—276a-7)

(a) All mechanics and laborers, including apprentices and trainees, employed or working directly upon the site of the work shall be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by the Copeland Regulations (29 CFR Part 3)), the full amounts due at time of payment computed at wage rates not less than the aggregate of the basic hourly rates and the rates of payments, contributions, or costs for any fringe benefits contained in the wage determination decision of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor or subcontractor and such laborers and mechanics. A copy of such wage determination decision shall be kept posted by the Contractor at the site of the work in a prominent place where it can be easily seen by the workers.

(b) The Contractor may discharge his obligation under this clause to workers in any classification for which the wage determination decision contains:

(1) Only a basic hourly rate of pay, by making payment at not less than such basic hourly rate, except as otherwise provided in the Copeland Regulations (29 CFR Part 3); or

(2) Both a basic hourly rate of pay and fringe benefits payments, by making payment in cash, by irrevocably making contributions pursuant to a fund, plan, or program for, and/or by assuming an enforceable commitment to bear the cost of,

bona fide fringe benefits contemplated by the Davis-Bacon Act, or by any combination thereof. Contributions made, or costs assumed, on other than a weekly basis shall be considered as having been constructively made or assumed during a weekly period to the extent that they apply to such period. Where a fringe benefit is expressed in a wage determination in any manner other than as an hourly rate and the Contractor pays a cash equivalent or provides an alternative fringe benefit, he shall furnish information with his payrolls showing how he determined that the cost incurred to make the cash payment or to provide the alternative fringe benefit is equal to the cost of the wage determination fringe benefit. In any case where the Contractor provides a fringe benefit different from any contained in the wage determination, he shall similarly show how he arrived at the hourly rate shown therefor. In the event of disagreement between or among the interested parties as to an equivalent of any fringe benefit, the Contracting Officer shall submit the question, together with his recommendation, to the Secretary of Labor for final determination.

(c) The assumption of an enforceable commitment to bear the cost of fringe benefits, or the provision of any fringe benefits not expressly listed in section 1(b)(2) of the Davis-Bacon Act or in the wage determination decision forming a part of the contract, may be considered as payment of wages only with the approval of the Secretary of Labor pursuant to a written request by the Contractor. The Secretary of Labor may require the Contractor to set aside assets, in a separate account, to meet his obligations under any unfunded plan or program.

(d) The Contracting Officer shall require that any class of laborers or mechanics, including apprentices and trainees, which is not listed in the wage determination decision and which is to be employed under the contract shall be classified or reclassified conformably to the wage determination decision, and shall report the action taken to the Secretary of Labor. If the interested parties cannot agree on the proper classification or reclassification of a particular class of laborers or mechanics to be used, the Contracting Officer shall submit the question, together with his recommendation, to the Secretary of Labor for final determination. Apprentices and trainees may be added under this clause only where they are employed pursuant to an apprenticeship or trainee program meeting the requirements of the Apprentices and Trainees clause below.

(e) In the event it is found by the Contracting Officer that any laborer or mechanic, including apprentices and trainees, employed by the Contractor or any subcontractor directly on the site of the work covered by this contract has been or is being paid at a rate of wages less than the rate of wages required by paragraph (a) of this clause, the Contracting Officer may (1) by written notice to the Government Prime Contractor terminate his right to proceed with the work, or such part of the work as to which there has been a failure to pay said required wages, and (2) prosecute the work to completion by contract or otherwise, whereupon such Contractor and his sureties shall be liable to the Government for any excess costs occasioned the Government thereby.

(f) Paragraphs (a) through (e) of the clause shall apply to this contract to the extent that it is (1) a prime contract with the Government subject to the Davis-Bacon Act, or (2) a subcontract also subject to the Davis-Bacon Act under such prime contract.

(b) *Contract Work Hours and Safety Standards Act—Overtime Compensation (40 U.S.C. 327–333).*

CONTRACT WORK HOURS AND SAFETY STANDARDS ACT—OVERTIME COMPENSATION (40 U.S.C. 327–333)

(a) The Contractor shall not require or permit any laborer or mechanic, including apprentices, trainees, watchmen, and guards, in any workweek in which he is employed on any work under this contract to work in excess of 8 hours in any calendar day or in excess of 40 hours in such workweek on work subject to the provisions of the Contract Work Hours and Safety Standards Act unless such laborer or mechanic, including apprentices, trainees, watchmen, and guards, receives compensation at a rate not less than 1½ times his basic rate of pay for all such hours worked in excess of 8 hours in any calendar day or in excess of 40 hours in such workweek, whichever is the greater number of overtime hours. The "basic rate of pay," as used in this clause, shall be the amount paid per hour, exclusive of the Contractor's contribution or cost for fringe benefits, and any cash payment made in lieu of providing fringe benefits, or the basic hourly rate contained in the wage determination, whichever is greater.

(b) In the event of any violation of the provisions of paragraph (a), the Contractor shall be liable to any affected employee for any amounts due, and to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including an apprentice, trainee, watchman, or guard, employed in violation of the provisions of paragraph (a) in the sum of $10 for each calendar day on which such employee was required or permitted to be employed on such work in excess of 8 hours or in excess of the standard workweek of 40 hours without payment of the overtime wages required by paragraph (a).

(c) *Apprentices and trainees.*

APPRENTICES AND TRAINEES

(a) Apprentices shall be permitted to work as such only when they are registered, individually, under a bona fide apprenticeship program registered with a State apprenticeship agency which is recognized by the Bureau of Apprenticeship and Training, U.S. Department of Labor; or if no such recognized agency exists in a State, under a program registered with the aforesaid Bureau of Apprenticeship and Training. The allowable ratio of apprentices to journeymen in any craft classification shall not be greater than the ratio permitted to the Contractor as to his entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate who is not a trainee as defined in paragraph (b) of this clause, and who is not registered as above, shall be paid the wage rate determined by the Secretary of Labor for the classification of work he actually performed. The Contractor shall furnish to the Contracting Officer written evidence of the registration of his program and apprentices, as well as of the appropriate ratios allowed and the wage rates required to be paid thereunder for the area of construction, prior to using any apprentices in the contract work. The term "apprentice" means (1) a person employed and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Bureau of Apprenticeship and Training, or with a State apprenticeship agency recognized by the Bureau, or (2) a person in his first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training, or a State Apprenticeship Council (where appropriate) to be eligible for probationary employment as an apprentice.

(b) Trainees shall be permitted to work as such when they are bona fide trainees employed pursuant to a program approved by the U.S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training. The term "trainee" means a person receiving on-the-job training in a construction occupation under a program which is approved (but not necessarily sponsored) by the U.S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training, and which is reviewed from time to time by the Manpower Administration to insure that the training meets adequate standards.

(c) In connection with contracts in excess of $10,000, the Contractor agrees as follows:

(1) The Contractor shall make a diligent effort to hire for performance of work under this contract a number of apprentices or trainees, or both, in each occupation, which bears to the average number of the journeymen in that occupation to be employed in the performance of the contract the applicable ratio as set forth in paragraph (d) of this clause.

(2) The Contractor shall insure that 25 percent of such apprentices or trainees in each occupation are in their first year of training, where feasible. Feasibility here involves a consideration of (i) the availability of training opportunities for first year apprentices, (ii) the hazardous nature of the work for beginning workers, and (iii) excessive unemployment of apprentices in their second and subsequent years of training.

(3) The Contractor shall, during the performance of the contract, to the greatest extent possible, employ the number of apprentices or trainees necessary to meet currently the requirements of paragraph (c)(1) and (c)(2) of this clause.

(4) The Contractor shall maintain records of employment on this contract by trade of the number of apprentices and trainees, apprentices and trainees in first year of training, and of journeymen, and the wages paid and hours of work of such apprentices, trainees, and journeymen. In addition, the Contractor who claims compliance based on the criterion set forth in paragraph (c)(6)(ii) of this clause shall maintain such records of employment on all his construction work in the same labor market area, both public and private, during the performance of this contract. In each of the above cases the Contractor shall make such records available for inspection upon request of the Department of Labor or the Contracting Officer.

(5) The Contractor shall supply one copy of each of the written notices required in accordance with paragraph (c)(6)(iii) of this clause at the request of the Contracting Officer. The Contractor also agrees to supply at 3-month intervals during the performance of the contract and after completion of contract performance a statement describing steps taken toward making a diligent effort and containing a breakdown by craft, of hours worked and wages paid for first year apprentices and trainees, other apprentices and trainees, and journeymen. One copy of the statement will be sent to the Contracting Officer and one copy to the Secretary of Labor.

(6) The Contractor will be deemed to have made a "diligent effort" as required by paragraph (c)(1) if during the performance of this contract, he accomplishes at least one of the following three objectives: (i)

The Contractor employs under this contract a number of apprentices and trainees by craft, at least equal to the ratios established in accordance with paragraph (d) of this clause, or (ii) the Contractor employs, on all his construction work, both public and private, in the same labor market area, an average number of apprentices and trainees by craft at least equal to the ratios established in accordance with paragraph (d) of this clause, or (iii) the Contractor (A) if covered by a collective bargaining agreement, before commencement of any work on the project, has given written notice to all joint apprenticeship committees, the local U.S. Employment Security Office, local chapter of the Urban League, Workers Defense League, or other local organizations concerned with minority employment, and the Bureau of Apprenticeship and Training Representative, U.S. Department of Labor, for the locality of the work; (B) if not covered by a collective bargaining agreement, has given written notice to all of the groups stated above, except joint apprenticeship committees, and will in addition notify all nonjoint apprenticeship sponsors in the labor market area; (C) has employed all qualified applicants referred to him through normal channels (such as the Employment Service, the Joint Apprenticeship Committees, and where applicable, minority organizations and apprentice outreach programs who have been delegated this function) at least up to the number of such apprentices and trainees required by paragraph (d) of this clause; (D) notice, as referred to herein, will include at least the Contractor's name and address, the agency designation, the contract number, jobsite address, value of the contract, expected starting and completion dates, the estimated average number of employees in each occupation to be employed over the duration of the contract work, and a statement of his willingness to employ a number of apprentices and trainees at least equal to the ratios established in accordance with paragraph (d) of this clause.

(d) The Secretary of Labor has determined that the applicable ratios of apprentices and trainees to journeymen in any occupation for the purpose of this clause shall be as follows: (1) In any occupation the applicable ratio of apprentices and trainees to journeymen shall be equal to the predominant ratio for the occupation in the area where the construction is being undertaken, set forth in collective bargaining agreements, or other employment agreements, and available through the Bureau of Apprenticeship and Training Representative, U.S. Department of Labor, for the applicable area; (2) for any occupation for which no ratio is found, the ratio of apprentices and trainees to journeymen shall be determined by the Contractor is accordance with the recommendations set forth in the Standards of the National Joint Apprentice Committee for the occupation, which are on file at offices of the U.S. Department of Labor's Bureau of Apprenticeship and Training; and (3) for any occupation for which no such recommendations are found, the ratio of apprentices and trainees to journeymen shall be at least one apprentice or trainee for every five journeymen.

(d) *Payrolls and basic records.*

PAYROLLS AND BASIC RECORDS

(a) The Contractor shall maintain payrolls and basic records relating thereto during the course of the work and shall preserve them for a period of 3 years thereafter for all laborers and mechanics, including apprentices, trainees, watchmen, and guards, working at the site of the work. Such records shall contain the name and address of each such employee, his correct classification, rate of pay (including rates of contributions for, or costs assumed to provide, fringe benefits), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Contractor has obtained approval from the Secretary of Labor as provided in paragraph (c) of the clause entitled "Davis-Bacon Act," he shall maintain records which show the commitment, its approval, written communication of the plan or program to the laborers or mechanics affected, and the costs anticipated or incurred under the plan or program.

(b) The Contractor shall submit weekly a copy of all payrolls to the Contracting Officer. The Government Prime Contractor shall be responsible for the submission of copies of payrolls of all subcontractors. The copy shall be accompanied by a statement signed by the Contractor indicating that the payrolls are correct and complete, that the wage rates contained therein are not less than those determined by the Secretary of Labor, and that the classifications set forth for each laborer or mechanic, including apprentices and trainees, conform with the work he performed. Submission of the "Weekly Statement of Compliance" required under this contract and the Copeland Regulations of the Secretary of Labor (29 CFR Part 3) shall satisfy the requirement for submission of the above statement. The Contractor shall submit also a copy of any approval by the Secretary of Labor with respect to fringe benefits which is required by paragraph (c) of the clause entitled "Davis-Bacon Act."

(c) The Contractor shall make the records required under this clause available for inspection by authorized representatives of the Contracting Officer and the Department of Labor, and shall permit such representatives to interview employees during working hours on the job.

(e) *Compliance with Copeland Regulations.*

COMPLIANCE WITH COPELAND REGULATIONS

The Contractor shall comply with the Copeland Regulations of the Secretary of Labor (29 CFR Part 3) which are incorporated herein by reference.

(f) *Withholding of funds.*

WITHHOLDING OF FUNDS

(a) The Contracting Officer may withhold or cause to be withheld from the Government Prime Contractor so much of the accrued payments or advances as may be considered necessary (1) to pay laborers and mechanics, including apprentices, trainees, watchmen, and guards, employed by the Contractor or any subcontractor on the work the full amount of wages required by the contract, and (2) to satisfy any liability of any Contractor for liquidated damages under paragraph (b) of the clause entitled "Contract Work Hours and Safety Standards Act—Overtime Compensation."

(b) If any Contractor fails to pay any laborer, mechanic, apprentice, trainees, watchmen, or guard, employed or working on the site of the work, all or part of the wages required by the contract, the Contracting Officer may, after written notice to the Government Prime Contractor, take such action as may be necessary to cause suspension of any further payments or advances until such violations have ceased.

(g) *Subcontracts.*

SUBCONTRACTS

The Contractor agrees to insert the clauses hereof entitled "Davis-Bacon Act," "Contract Work Hours and Safety Standards Act—Overtime Compensation," "Apprentices and Trainees," "Payrolls and Basic Records," "Compliance with Copeland Regulations," "Withholding of Funds," "Subcontracts," and "Contract Termination—Debarment" in all subcontracts. The term "Contractor" as used in such clauses in any subcontract shall be deemed to refer to the subcontractor except in the phrase "Government Prime Contractor."

(h) *Contract termination—debarment.*

CONTRACT TERMINATION—DEBARMENT

A breach of the clauses hereof entitled "Davis-Bacon Act," "Contract Work Hours and Safety Standards Act—Overtime Compensation," "Apprentices and Trainees," "Payrolls and Basic Records," "Compliance with the Copeland Regulations," "Withholding of Funds," and "Subcontracts" may be grounds for termination of the contract, and for debarment as provided in 29 CFR 5.6.

b. Section 1–16.401 is amended to change paragraph (b) as follows:

§ 1–16.401 Forms prescribed.

* * * * *

(b) Labor Standards Provisions—Applicable to Contracts in Excess of $2,000 (Standard Form 19–A, April 1965 edition). Pending the publication of a new edition of the form, the provisions of Standard Form 19–A shall be deleted and the provisions prescribed by paragraph 5(a) of this temporary regulation shall be substituted therefor.

6. *Exemptions and enforcement.* a. Exemptions from any requirement of the clause entitled "Apprentices and Trainees" may be granted when such action is necessary and proper in the public interest, or to prevent injustice, or undue hardship. A request for a variation, tolerance, or exemption may be made in writing by any interested person to the Secretary of Labor, Washington, D.C. 20210.

b. Enforcement activities, including the investigation of complaints of violations, to insure compliance with the requirements of the clause entitled "Apprentices and Trainees" shall be the primary duty of the agency awarding the contract or providing the Federal assistance. The Department of Labor will coordinate its efforts with agencies, as may be necessary, to insure consistent enforcement of the requirements of the clause entitled "Apprentices and Trainees."

7. *Agency comments.* Agencies are invited to comment, if they wish, within 60 days from the date of publication of this regulation in the FEDERAL REGISTER regarding the changes effected by paragraphs 5 and 6. Such views will be considered prior to any codification of the change in the Federal Procurement Regulations.

8. *Implementation by agencies.* Agencies shall implement the provisions of this regulation with respect to new solicitations and contracts issued after the publication of the regulation in the FEDERAL REGISTER.

Dated: March 6, 1972.

ROD KREGER,
Acting Administrator of General Services.

[FR Doc.72-3742 Filed 3-10-72;8:48 am]

Chapter 114—Department of the Interior

PART 114–47—UTILIZATION AND DISPOSAL OF REAL PROPERTY

Subpart 114–47.3—Surplus Real Property Disposal

RECORDS AND REPORTS

Pursuant to the authority of the Secretary of the Interior contained in 5 U.S.C. 301 and section 205(c), 63 Stat. 390; 40 U.S.C. 486(c), Chapter 114, Title 41 of the Code of Federal Regulations, is amended as set forth below.

This amendment shall become effective on the date of publication in the FEDERAL REGISTER (3–11–72).

WARREN F. BRECHT,
Deputy Assistant Secretary of the Interior.

MARCH 6, 1972.

Section 114–47.301–5 is amended to read as follows:

§ 114–47.301–5 Records and reports.

A Report of Surplus Real Property Disposals and Inventory, GSA Form 1100, shall be prepared annually on a fiscal year basis by each Bureau and Office holding real property. The report shall be prepared and submitted in accordance with FPMR 101–47.4903 and the following supplemental instructions:

(a) *Preparation.* (1) The report should include only surplus real property inventory and disposals which are being transacted by Interior Bureaus and Offices pursuant to disposal authorities delegated to the Department in FPMR 101–47.302–2, 101–47.603, and any special one-time disposal authority which may be delegated by the General Services Administration.

(2) Transfers of available real property between Interior Bureaus and transfers of excess real property to other Federal agencies outside Interior should not be reported on GSA Form 1100. However, in the event real property is withdrawn from the surplus inventory for further Federal agency utilization, the transaction should be reported on Line 13 of the form.

(3) Note that disposal transactions, as well as inventory data, are to be reported on the basis of "locations"—not number of transactions, parcels of land, buildings, etc.

(b) *Submission and due date.* GSA Form 1100 shall be submitted in original only, to the Director of Management Operations by not later than the 25th of July of each year. Negative reports are required and may be submitted in the form of a memorandum in lieu of GSA Form 1100.

[FR Doc.72–3727 Filed 3–10–72;8:46 am]

Title 49—TRANSPORTATION

Chapter III—Federal Highway Administration, Department of Transportation

SUBCHAPTER B—MOTOR CARRIER SAFETY REGULATIONS

[Docket No. MC–8; Notice 72–3]

PART 393—PARTS AND ACCESSORIES NECESSARY FOR SAFE OPERATION

Brake System and Emergency Brake Performance Rules

On September 23, 1971, the Director of the Bureau of Motor Carrier Safety issued revisions of §§ 393.40, 393.51, and 393.52 of the Motor Carrier Safety Regulations (36 F.R. 20297). Those sections deal with braking systems required on commercial motor vehicles operated in interstate or foreign commerce, with the warning systems and monitoring devices used in connection with those braking systems, and with the minimum performance required of commercial vehicle braking systems.

Five petitions for reconsideration have been timely filed. Acting upon those petitions, and on his own motion, the Director is amending some of the new rules. He is also denying several petitions in whole or in part.

Noting that the amendment to § 393.52 decreased the allowable stopping distances for both vehicles in use and vehicles to be manufactured in the future, several petitioners sought to have the rules changed so that the more restrictive requirements would apply only to vehicles manufactured after the effective date of the new rules. They contended that, because § 393.40(b) requires all commercial vehicles to have a service brake system that enables the vehicles to conform to the stopping distance requirements of § 393.52(d), older vehicles—manufactured at a time when the parameters were less restrictive—might have to undergo substantial modification in order to conform. The Bureau has concluded that these fears are groundless. The overwhelming majority of vehicles presently in use can meet the new requirements if they are properly inspected and maintained. Indeed, much of the data used to compute the allowable stopping distances in the new rules was derived from actual braking tests conducted in 1963. Except as indicated below, it is the Bureau's view that the stopping distances specified in the revised § 393.52(d) are not unduly restrictive as applied to vehicles now on the highways. Furthermore, the revised rule sets a standard of performance that should be achieved in order to assure safe operation of commercial motor vehicles. This aspect of the petitions is denied.

The Director is, however, changing the table in § 393.52(d) to establish a separate, and less restrictive, category of performance criteria for the braking systems of larger buses. The 25-foot allowable stopping distance for those buses, as originally found in the revision, was based upon a misunderstanding of several comments on the notice of proposed rule making. The allowable stopping distance is being increased to 35 feet.

Several petitioners asked the Director to withhold any action in this docket until the National Highway Traffic Safety Administration makes its final decision on petitions for reconsideration of Motor Vehicle Safety Standard No. 121 (Air Brakes) and the extension of Motor Vehicle Safety Standard No. 105 (Hydraulic Braking Systems) to heavy commercial vehicles. Petitioners argued that the issuance of new Motor Carrier Safety Regulations pertaining to braking systems before NHTSA completes its work might impose an impossible or unnecessarily costly burden on vehicle manufacturers who will be bound to comply with the Motor Vehicle Safety Standards.

If the revised braking system rules in the Motor Carrier Safety Regulations imposed new requirements that demanded extensive retooling or technological innovation on the part of manufacturers, the argument might have merit. In the absence of extraordinary circumstances, the Director would not normally issue rules that have the effect of requiring manufacturers to make extensive changes in tooling or methods of production in the face of a strong probability that amendments to the Motor Vehicle Safety Standards will render their efforts and expenditures obsolete or useless shortly afterwards. The new brake system rules present an entirely different picture, however. There is no evidence that their impact will necessitate extensive retooling or vast new expenditures by manufacturers. In essence, they will merely extend the requirement for an emergency braking system to lightweight trucks and will require the installation of gages and warning devices that are now in production and available for installation in commercial vehicles. Furthermore, the rules contain a number of provisions which make it clear that, after final action by the National Highway Traffic Safety Administration, vehicles manufactured in conformity with the applicable Safety Standard will thereby conform to the brake system requirements of the Motor Carrier Safety Regulations. As a result, the possibility that conflicting requirements will be imposed on manufacturers is absent. For these reasons, and because the public interest in highway safety demands upgrading of brake performance regulations at the earliest practicable data, the Director is denying requests for an additional stay of proceedings in this docket.

Two petitions sought clarification of § 390.40(c), which requires a vehicle having interconnected brake systems to be capable of stopping upon application of the brakes when any part of the "operating mechanism" of one or more systems, except the service brake actuation pedal or valve, fails. The intent of the quoted language was to exclude foundation brake components. The Bureau recognizes that if some part of the foundation brakes, such as shoes, cams, or springs,

fails, the vehicle may not have operative brakes at the wheel where the component is located. However, the purport of the rule is not to include those foundation brake components in the words "operating mechanism." The language used is substantially identical to the wording of the prior rule, which the Bureau has consistently interpreted in the above-mentioned manner.

The Director was also asked to eliminate the requirement of a warning signal for vehicles having nondual hydraulic braking systems without power assist. The petition said that the driver of such a vehicle will be given ample warning of system failure by the movement and feel of the brake pedal. The difficulty with the contention is that it addresses itself to a moot question. All vehicles to which the warning signal requirement applies will be manufactured with either a dual system or an emergency brake system. The need for a warning to the driver in the event of failure of a partial system is acknowledged. Hence, there is no real basis for the amendment that the petitioner has sought.

One petitioner sought an amendment to § 393.51 to eliminate the exemption for the warning signal requirement for lightweight trucks having air brakes. The request may have merit as a matter of sound safety policy. However, it seeks rule making action that was not included in the notice of proposed rule making or adequately discussed in docket comments. The Director believes that it would be inappropriate to eliminate this longstanding exemption at this stage of the proceedings. The suggestion will be considered for future rule making.

All but one of the petitions raised questions regarding the proper construction of the language of the new rules. Amendments are being made in several instances to eliminate semantic problems. For example, specific provisions are being added to deal with air-assisted or vacuum-assisted hydraulic brakes.

The effective date of several requirements is moved forward from January 1, 1973, to July 1, 1973, to compensate for the period of time during which the petitions have been under consideration.

In consideration of the foregoing, Part 393 of the Motor Carrier Safety Regulations (Subchapter B of Chapter III in Title 49, CFR) is amended as set forth below.

This amendment is issued under the authority of section 204 of the Interstate Commerce Act, as amended, 49 U.S.C. 304, section 6 of the Department of Transportation Act, 49 U.S.C. 1655, and the delegations of authority at 49 CFR 1.48 and 389.4.

Issued on February 28, 1972.

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

I. In § 393.40, the introductory clause of paragraph (b)(2), subdivision (ii) of paragraph (c)(1), and the introductory clause of paragraph (c)(2) are revised to read as follows:

§ 393.40 Required brake systems.

* * * * *

(b) *Specific systems required.* * * *

(2) A bus, truck, truck tractor, or a combination of motor vehicles manufactured on or after July 1, 1973, must have an emergency brake system that conforms to the requirements of § 393.52(b) and consists of either—

* * * * *

(c) *Interconnected systems.* (1) If the brake systems specified in paragraph (b) of this section are interconnected in any way, they must be designed, constructed, and maintained so that, upon the failure of any part of the operating mechanism of one or more of the systems (except the service brake actuation pedal or valve)—

(i) The vehicle will have operative brakes; and

(ii) In the case of a vehicle manufactured on or after July 1, 1973, the vehicle will have operative brakes capable of performing as specified in § 393.52(b).

(2) A motor vehicle to which the emergency brake system requirements of Motor Vehicle Safety Standard No. 105 (§ 571.105 of this title) applied at the time of its manufacture conforms to the requirements of subparagraph (1) of this paragraph if—

* * * * *

II. § 393.51 is revised to read as follows:

§ 393.51 Warning devices and gauges.

(a) *General.* In the manner and to the extent specified in paragraphs (b), (c), (d), and (e) of this section, a bus, truck, or truck tractor must be equipped with a signal that provides a warning to the driver when a failure occurs in the vehicle's service brake system.

(b) *Hydraulic brakes.* A vehicle manufactured on or after July 1, 1973, and having service brakes activated by hydraulic fluid must be equipped with a warning signal that performs as follows:

(1) If Motor Vehicle Safety Standard No. 105 (§ 571.105 of this title) was applicable to the vehicle at the time it was manufactured, the warning signal must conform to the requirements of that standard.

(2) If Motor Vehicle Safety Standard No. 105 was not applicable to the vehicle at the time it was manufactured, the warning signal must become operative, before or upon application of the brakes in the event of a hydraulic-type complete failure of a partial system. The signal must be readily audible or visible to the driver.

(c) *Air brakes.* Except as provided in paragraph (g) of this section, a vehicle (regardless of the date it was manufactured) having service brakes activated by compressed air (air-mechanical brakes) or a vehicle towing a vehicle having service brakes activated by compressed air (air-mechanical brakes) must be equipped, and perform, as follows:

(1) The vehicle must have a low air pressure warning device that conforms to the requirements of either subdivision (i) or (ii) of this subparagraph.

(i) If Motor Vehicle Safety Standard No. 121 (§ 571.121 of this title) was applicable to the vehicle at the time it was manufactured, the warning device must conform to the requirements of that standard.

(ii) If Motor Vehicle Safety Standard No. 121 was not applicable to the vehicle at the time it was manufactured, the vehicle must have a device that provides a readily audible or visible continuous warning to the driver whenever the pressure of the compressed air in the braking system is below a specified pressure, which must be at least one-half of the compressor governor cutout pressure.

(2) The vehicle must have a pressure gauge which indicates to the driver the pressure in pounds per square inch available for braking.

(d) *Vacuum brakes.* Except as provided in paragraph (g) of this section, a vehicle (regardless of the date it was manufactured) having service brakes activated by vacuum or a vehicle towing a vehicle having service brakes activated by vacuum must be equipped with—

(1) A device that provides a readily audible or visible continuous warning to the driver whenever the vacuum in the vehicle's supply reservoir is less than 8 inches of mercury; and

(2) A vacuum gauge which indicates to the driver the vacuum in inches of mercury available for braking.

(e) *Hydraulic brakes applied or assisted by air or vacuum.* Except as provided in paragraph (g) of this section, a vehicle having a braking system in which hydraulically activated service brakes are applied or assisted by compressed air or vacuum must be equipped with both a warning signal that conforms to the requirements of paragraph (b) of this section and a warning device that conforms to the requirements of either paragraph (c) or paragraph (d) of this section.

(f) *Maintenance.* The warning signals, devices, and gauges required by this section must be maintained in operative condition.

(g) *Exceptions.* The rules in paragraphs (c), (d), and (e) of this section do not apply to the following vehicles:

(1) Buses having a seating capacity of 10 persons (including the driver) or less; and

(2) Property-carrying vehicles and combinations of property-carrying vehicles which have less than three axles and either—

(i) Were manufactured before July 1, 1973; or

(ii) Have a manufacturer's gross vehicle weight rating of 10,000 pounds or less.

III. The table in § 393.52(d) is revised to read as follows [the note following the table remains unchanged]:

§ 393.52 Brake performance.

* * * * *

(d) * * *

Type of motor vehicle	Service brake systems			Emergency brake systems
	Braking force as a percentage of gross vehicle or combination weight	Deceleration in feet per second per second	Application and braking distance in feet from initial speed of 20 m.p.h.	Application and braking distance in feet from initial speed of 20 m.p.h.
A. *Passenger-carrying vehicles.*				
(1) Vehicles with a seating capacity of 10 persons or less, including driver, and built on a passenger car chassis	65.2	21	20	54
(2) Vehicles with a seating capacity of more than 10 persons, including driver, and built on a passenger car chassis; vehicles built on a truck or bus chassis and having a manufacturer's GVWR of 10,000 pounds or less	52.8	17		66
(3) All other passenger-carrying vehicles	43.5	14	35	85
B. *Property-carrying vehicles.*				
(1) Single unit vehicles having a manufacturer's GVWR of 10,000 pounds or less	52.8	17	25	66
(2) Single unit vehicles having a manufacturer's GVWR of more than 10,000 pounds, except truck tractors. Combinations of a 2-axle towing vehicle and trailer having a GVWR of 3,000 pounds or less. All combinations of 2 or less vehicles in driveaway or towaway operation	43.4	14	35	85
(3) All other property-carrying vehicles and combinations of property-carrying vehicles	43.5	14	40	90

[FR Doc.72-3658 Filed 3-10-72;8:45 am]

Chapter X—Interstate Commerce Commission

SUBCHAPTER A—GENERAL RULES AND REGULATIONS

[No. MC-C-4000 (Sub-No. 5)]

PART 1047—EXEMPTIONS

Exempt Zone (Passengers)—Savannah, Ga., Airport

Order. At a session of the Interstate Commerce Commission, Review Board Number 3, Members Bilodeau, Beddow, and Grossman, held at its office in Washington, D.C., on the 17th day of December 1971.

It appearing, that the limits of the exempt zone for the motor transportation of passengers incidental to transportation by aircraft of the Savannah, Ga., Airport are presently defined by the general definition in 49 CFR 1047.45; that the exempt zone, as pertinent, includes all points within a 25-mile radius of the Savannah Airport; that the limits of such "exempt" zone of Savannah Airport divide Hilton Head Island, S.C., in half, with the southern half of the island being within said limits; and that the only bridge connecting Hilton Head Island with the mainland is located at the island's northern end at a point beyond the limits of the "exempt" zone;

It further appearing, that by petition filed September 30, 1971, Yellow Cab Company of Savannah, Inc., seeks an individual determination of the "exempt" zone of the Savannah Airport, as it relates to the transportation of passengers who have had or will have an immediately prior or immediately subsequent movement by air, pursuant to 49 CFR 1047.45(c) so as to have all portions of Hilton Head Island included within the limits of the said zone;

It further appearing, that pursuant to section 553 of the Administrative Procedure Act, notice of the said petition was published in the FEDERAL REGISTER on November 3, 1971, which notice stated that no oral hearings were contemplated; that persons desiring to participate in the proceeding were invited to file representations supporting or opposing the proposal; that statements in support of the relief sought were filed individually by petitioner and jointly by the Yellow Cab Co. and the Airline Limousine Company of Savannah; and that Robert E. Williamson, Jr., doing business as Hilton Head Island Transportation Center filed a representation opposing the proposal;

It further appearing, that the intervener in opposition does not possess any permanent operating authority to serve the area under consideration, and his interest herein appears to be minimal;

And it further appearing, that the evidence of record clearly warrants a granting of the relief sought so that motor carriers of passengers traversing the northern end of Hilton Head Island may serve all the developments there which they presently must pass en route to the southern half of the Island;

Wherefore, and good cause appearing therefor:

It is ordered, That 49 CFR 1047.45, be, and it is hereby, amended to include the following subparagraph (2) in paragraph (d) thereunder:

§ 1047.45 Motor transportation of passengers incidental to transportation by aircraft.

* * * * *

(d) * * *

(2) *Savannah, Ga., Airport.* The transportation by motor vehicle, in interstate or foreign commerce, of passengers, having an immediately prior or subsequent movement by air, between Savannah, Ga., Airport and all points on Hilton Head Island, S.C., is partially exempt from regulation under section 203(b)(7a) of the Interstate Commerce Act. (49 U.S.C. 303.)

It is further ordered, That this order shall become effective on February 14, 1972, and shall continue in effect until further order of the Commission.

And it is further ordered, That notice of this order shall be given to the general public by depositing a copy thereof in the Office of the Secretary of the Commission, at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register.

By the Commission, Review Board Number 3.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.72-3745 Filed 3-10-72;8:48 am]

Title 50—WILDLIFE AND FISHERIES

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

PART 33—SPORT FISHING

Certain National Wildlife Refuges in Certain Southern States

The following special regulations are issued and are effective on date of publication in the FEDERAL REGISTER (3-11-72).

§ 33.5 Special regulations; sport fishing; for individual wildlife refuge areas.

ALABAMA

CHOCTAW NATIONAL WILDLIFE REFUGE

Sport fishing on the Choctaw National Wildlife Refuge, Jackson, Ala., is permitted only on the areas designated by signs as open to fishing. These open areas are shown on a map 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. Sport fishing shall be in accordance with all applicable State regulations except the following special conditions:

(1) The sport fishing season is open year-round on all refuge waters except those posted as closed by signs.

(2) Fishing is permitted during daylight hours only.

ARKANSAS

HOLLA BEND NATIONAL WILDLIFE REFUGE

Sport fishing is permitted on all waters of Holla Bend National Wildlife Refuge. Sport fishing shall be in accordance with all applicable State and Federal regulations covering the fishing, subject to the following special conditions:

(1) Fishing is permitted only during the period March 15 through September 30, daylight hours only.

FLORIDA

ST. VINCENT NATIONAL WILDLIFE REFUGE

Sport fishing on the St. Vincent National Wildlife Refuge, Franklin County, Apalachicola, Fla., is permitted only on the areas designated by signs as open to fishing. These open areas, comprising 360 acres, are delineated on a map 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. Sport fishing shall be in accordance with all applicable State regulations.

(1) The sport fishing season extends from date of this announcement through October 30, 1972.

(2) Fishermen are permitted on the refuge from 1 hour before sunrise to 1 hour after sunset.

(3) No motors of any type may be used.

(4) Users must follow designated routes of travel from the beach to the open fishing area.

(5) Boats may be left on the island at designated points during the open season provided they are identified with their owner's name and address. Boats must be removed from the refuge no later than October 30, 1972.

(6) Use of live minnows as bait is prohibited.

LOUISIANA

CATAHOULA NATIONAL WILDLIFE REFUGE

Sport fishing on the Catahoula National Wildlife Refuge, Jena, La., is permitted only on the area designated by signs as open to fishing. The open area, comprised primarily of the Cowpen Bayou impoundments is delineated on a map 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. Sport fishing shall be in accordance with all applicable State regulations except the following special conditions:

(1) The sport fishing season on the refuge extends from March 25, 1972 through October 15, 1972.

(2) Fishing permitted from 30 minutes before sunrise to 30 minutes after sunset.

(3) Gasoline powered outboard motors are not allowed. Electric trolling motors may be used.

(4) Boats may not be left in the refuge overnight.

(5) No camping or campfires permitted.

MARYLAND

BLACKWATER NATIONAL WILDLIFE REFUGE

Sport fishing and crabbing on the Blackwater National Wildlife Refuge, Cambridge, Md., is permitted only on those areas designated by signs as open to fishing. These open areas, comprising approximately 2,700 acres, are delineated on a map available at the refuge headquarters and from the Regional Director, Bureau of Sport Fisheries and Wildlife, Peachtree-Seventh Building, Atlanta, Ga. 30323. Sport fishing and crabbing shall be in accordance with all applicable State regulations except for the following special conditions.

(1) Season: April 1–September 30. Daylight hours only.

(2) Boat launching from refuge lands prohibited.

(3) All fish and crab lines must be attended. No set tackle may be used.

(4) Use of airboats prohibited.

NORTH CAROLINA

MACKAY ISLAND NATIONAL WILDLIFE REFUGE

Sport fishing on the Mackay Island National Wildlife Refuge, N.C., is permitted only on the areas designated by signs as open to fishing. These open areas, comprising 720 acres, are delineated on a map 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. Sport fishing shall be in accordance with all applicable State regulations except the following special conditions:

(1) The sport fishing season on the refuge extends from March 16, 1972 through October 17, 1972. Fishing is permitted in Corey's Ditch and in the canal adjacent to the Knotts Island Causeway on a year-round basis, for bank fishing only.

(2) Fishing permitted during daylight hours only.

(3) Use of airboats prohibited.

TENNESSEE

HATCHIE NATIONAL WILDLIFE REFUGE

Sport fishing on the Hatchie National Wildlife Refuge, Brownsville, Tenn., is permitted only on the areas designated by signs as open to fishing. These open areas, comprising 100 acres, are delineated on a map available at the refuge headquarters and from the Regional Director, Bureau of Sport Fisheries and Wildlife, Peachtree-Seventh Building, Atlanta, Ga. 30323. Sport fishing shall be in accordance with all applicable State regulations except the following special conditions:

(1) The sport fishing season on the refuge extends from April 1, 1972 through November 14, 1972.

(2) Fishing permitted during daylight hours only.

(3) Boats powered with electric outboard motors are permitted. Gasoline outboard motors are prohibited.

(4) Methods of fishing are limited to pole and line or rod and reel, using natural or artificial baits.

(5) Vehicles may be used on refuge roads and trails to reach fishing area.

(6) Footpaths may be used to reach all lakes from Hatchie River.

(7) Firearms prohibited.

(8) Boats must be removed from refuge no later than November 30.

VIRGINIA

MACKAY ISLAND NATIONAL WILDLIFE REFUGE

Sport fishing on the Mackay Island National Wildlife Refuge, Va., is permitted only on the areas designated by signs as open to fishing. These open areas, comprising 720 acres, are delineated on a map 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. Sport fishing shall be in accordance with all applicable State regulations except the following special conditions:

(1) The sport fishing season on the refuge extends from March 16, 1972 through October 17, 1972. Fishing is permitted in Corey's Ditch and in the canal adjacent to the Knotts Island Causeway on a year-round basis for bank fishing only.

(2) Fishing permitted during daylight hours only.

(3) Use of airboats prohibited.

The provisions of these special regulations supplement the regulations which govern fishing on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 33, and are effective through December 31, 1972.

C. EDWARD CARLSON,
Regional Director, Bureau of Sport Fisheries and Wildlife.

MARCH 3, 1972.

[FR Doc.72-3728 Filed 3-10-72;8:47 am]

Title 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Administration, Department of Transportation

[Airworthiness Docket No. 72-WE-3-AD, Amdt. 39-1407]

PART 39—AIRWORTHINESS DIRECTIVES

Boeing Model 747-100 Series and 747-200B Series Airplanes

On February 11, 1972, § 39.13 of Part 39 of the Federal Aviation Regulations was amended by adding a new airworthiness directive AD-72-4-1 (Amendment 39-1392; 37 F.R. 2880), that required all United States operators of Boeing Model 747-100 series and 747-200B series airplanes to inspect the stabilizer trim system. Based on receipt of additional information, AD 72-4-1 was amended by telegraphic airworthiness directive dated February 10, 1972, effective immediately, for all recipients of said telegram. The telegraphic airworthiness directive deleted the words in paragraph (a) "without 'B' suffix identification following the unit serial number" and deleted paragraph (c) in its entirety.

After issuing the telegraphic amendment, above, the agency determined that new information submitted by the manufacturer would allow termination of the periodic inspections upon accomplishment of stabilizer trim system modifications. Therefore, Airworthiness Directive AD-72-4-1 is being further amended by updating the reference to manufacturer service bulletins and adding a terminating action for the required inspection. Additionally, this amendment will incorporate the previously referenced provisions of the telegraphic airworthiness directive.

Since it was found that immediate corrective action was required, notice and

public procedure thereon was impracticable and contrary to the public interest, and good cause existed for making the airworthiness directive effective immediately as to all known U.S. operators of Boeing Model 747–100 series and 747–200B series airplanes by individual telegrams dated February 10, 1972. These conditions still exist and the airworthiness directive is hereby published in the FEDERAL REGISTER as an amendment to § 39.13 of Part 39 of the Federal Aviation Regulations to make it effective as to all persons.

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (31 F.R. 13697), § 39.13 of Part 39 of the Federal Aviation Regulation is further amended by amending Airworthiness Directive AD 72–4–1 as follows:

1. Delete words, wherever they appear, "Boeing Service Bulletin 27–2054, Revision 2, dated January 14, 1972" and insert in lieu thereof the following: "Boeing Service Bulletin 27–2054, Revision 3, dated February 15, 1972."

2. In paragraph (a) delete the words "without 'B' suffix identification following the unit serial number."

3. Delete paragraph (c) in its entirety and add a new paragraph (c), to read as follows:

(c) The inspections required per (a), above, may be discontinued after accomplishment of the following:

(1) Replace stabilizer trim modules, Boeing P/N 60B80027–2 and 60B80027–3, with stabilizer trim modules modified with improved arming and control valve seals and steel retainer caps, per Boeing Service Bulletin 27–2054, Revision 3, dated February 15, 1972, or later FAA approved revisions or equivalent modifications approved by the Chief, Aircraft Engineering Division, FAA Western Region.

NOTE: Boeing Service Bulletin 27–2054, Revision 3, dated February 15, 1972, incorporates LTV Electrosystems Service Bulletins 27–6, 27–8, and 27–9, in "Part II, Terminating Action."

(2) Replace stabilizer trim motor, Boeing P/N 60B00250–1, without suffix "D" identification following unit serial number identification, with stabilizer trim motors modified with solid locking pins, per Boeing Service Bulletin 27–2054, Revision 3, dated February 15, 1972, or later FAA approved revisions or equivalent modifications approved by the Chief, Aircraft Engineering Divison, FAA Western Region.

NOTE: Boeing Service Bulletin 27–2054, Revision 3, dated February 15, 1972, incorporates Vickers Service Bulletin 910274–4, dated February 10, 1972.

This amendment becomes effective March 14, 1972.

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

Issued in Los Angeles, Calif., on March 1, 1972.

ROBERT O. BLANCHARD,
Acting Director,
FAA Western Region.

[FR Doc.72–3712 Filed 3–10–72;8:46 am]

[Airspace Docket No. 72–EA–12]

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

Alteration of Transition Areas

The Federal Aviation Administration is amending § 71.181 of Part 71 of the Federal Aviation Regulations so as to alter the Doylestown, Pa. (37 F.R. 2184) and Quakertown, Pa. (37 F.R. 2270) transition areas.

The Central Bucks County and Upper Bucks County Airports were recently renamed Doylestown and Quakertown Airports respectively. This will require a change in the transition area descriptions.

Since the foregoing is editorial in nature, notice and public procedure hereon are impractical and the amendment may be made effective upon publication in the FEDERAL REGISTER (3–11–72).

1. Amend § 71.181 of Part 71, Federal Aviation Regulations by substituting, "Doylestown Airport" for "Central Bucks County Airport" in the description of the Doylestown, Pa. 700-foot floor transition area.

2. Amend § 71.181 of Part 71, Federal Aviation Regulations by substituting "Quakertown Airport" for "Upper Bucks County Airport" in the description of the Quakertown, Pa. 700-foot floor transition area.

(Sec. 307(a), Federal Aviation Act of 1958, 72 Stat. 749; 49 U.S.C. 1348; and sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c))

Issued in Jamaica, N.Y., on February 25, 1972.

ROBERT H. STANTON,
Acting Director, Eastern Region.

[FR Doc.72–3713 Filed 3–10–72;8:46 am]

[Docket No. 11432, Amdt. 121–86]

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

Aviation Security; Certain Air Carriers and Commercial Operators—Security Programs and Other Requirements

The purpose of this amendment is to make immediately effective the recently adopted Amendment 121–85 to § 121.538 of the Federal Aviation Regulations requiring each of certain air carriers and commercial operators operating large aircraft (other than helicopters) to (1) prepare in writing and submit for approval to the Administrator its security program; (2) notify the pilot in command of aircraft being operated and conduct certain security inspections, when it receives a bomb or air piracy threat; and (3) immediately notify the Administrator upon receipt of information that an act or suspected act of aircraft piracy has been committed.

Amendment 121–85 issued February 28, 1972 (37 F.R. 4904) was to become effective April 6, 1972. However, because of the recent alarming increase in hijackings, and the bomb threats and actual bombing of aircraft, the Administrator is of the opinion that an emergency requiring immediate action exists in respect of safety in air commerce, and that this amendment is essential in the interest of safety in air commerce particularly in air transportation, to meet the emergency. On March 9, 1972, the President issued a statement summarizing newly directed actions to tighten air security and announcing that Amendment 121–85 would take effect at once. Accordingly, the effective date of Amendment 121–85 is being changed from April 6, 1972, to March 9, 1972, and each certificate holder is being required to immediately adopt and put its security program into use. Also, the 60-day period for submission of security programs for approval is being changed to reflect the new effective date, and consequently the affected certificate holders operating before March 9, 1972, are now required to submit their security program for approval no later than May 8, 1972.

Because of the emergency nature of the threat to the safety of persons and property carried in air commerce due to hijacking and bomb threats, I find that notice and public procedure on this amendment are impracticable and contrary to the public interest and good cause exists for making this amendment effective in less than 30 days.

In consideration of the foregoing, effective March 9, 1972, the effective date of Amendment 121–85, published in the FEDERAL REGISTER (37 F.R. 4094) on March 7, 1972, is changed to March 9, 1972; the dates "April 6, 1972," "June 5, 1972," and "April 5, 1972" appearing in paragraph (d) of § 121.538 are changed to "March 9, 1972," "May 8, 1972," and "March 8, 1972," respectively; and the following sentence is added in paragraph (b) of § 121.538:

§ 121.538 Aircraft security.

* * * * *

(b) * * * Each certificate holder shall immediately adopt and put into use its security program prescribed in paragraph (c) of this section.

* * * * *

(Sections 313(a), 601, 604, and 1005 of the Federal Aviation Act of 1958; 49 U.S.C. 1354(a), 1421, 1424, 1485. Section 6(c) of the Department of Transportation Act; 49 U.S.C. 1655(c))

Issued in Washington, D.C., on March 9, 1972.

J. H. SHAFFER,
Administrator.

[FR Doc.72–3841 Filed 3–10–72;9:36 am]

Proposed Rule Making

DEPARTMENT OF AGRICULTURE

Office of Plant and Operations

[41 CFR Part 4–7]

CONTRACT CLAUSES

Proposed Service Contract Clauses

Pursuant to the authority in 5 U.S.C. 301, 553 and 40 U.S.C. 486(c), it is proposed to establish a new subpart to the Agriculture Procurement Regulations (Subpart 4–7.52, Title 41, Chapter 4, Code of Federal Regulations), and to prescribe new contract clauses for use only in Service Contracts (§§ 4–7.5200—4–7.5201–2).

The proposed clauses titled "Termination for Default—Damages for Delay—Time Extensions" and "Inspection and Acceptance" were derived from the like titled clauses in the Federal Procurement regulations §§ 1–8.709–1 and 1–16.901–23A(10) respectively. The clauses have been modified, however, for use only in service contracts.

In most service contracts of the Department of Agriculture, it may be necessary to terminate the contract for failure to perform without delay in order to meet the requirements of the program being served. The new "Termination for Default—Damages for Delay—Time Extensions" clause permits contract terminations for default with less than a 10-day cure notice period for the contractor event where there may be excusable causes of delays. In administering contracts under this clause, Contracting Officers will be expected to give the Contractors whatever cure notice time that the program requirements will permit—up to 10 days notice in which to meet the performance requirements of the contract.

The proposed change to the "Inspection and Acceptance" clause eliminates language from the standard clause which is not pertinent to service contracts.

The proposed clauses, if adopted, will be incorporated into the Department of Agriculture's "Form AD–377: General Provisions (Service Contract)." These clauses may also be used to supplement Departmental Service Contracts where the Form AD–377 is not used as part of the contract.

The new Subpart 4–7.52 would read as follows:

Subpart 4–7.52—Service Contracts

§ 4–7.5200 Scope of subpart.

This subpart sets forth certain clauses for use in departmental service contracts.

§ 4–7.5201 Clauses.

These clauses are contained in AD Form 377: General Provisions (Service Contract). The clauses may also be used in service contracts in place of other "Default" or "Inspection" clauses where the AD Form 377 is not made a part of the contract.

§ 4–7.5201–1 Termination for default; damages for delay; time extensions.

TERMINATION FOR DEFAULT—DAMAGES FOR DELAY—TIME EXTENSIONS

(a) If the Contractor refuses or fails to prosecute the work, or any separable part thereof, with such diligence as will insure its completion within the time specified in this contract, or any extension thereof, or fails to complete said work within such time, the Government may, by written notice to the Contractor, terminate his right to proceed with the work or such part of the work as to which there has been delay. In such event the Government may take over the work and prosecute the same to completion, by contract or otherwise, and may take possession of and utilize in completing the work such materials, appliances, and plant as may be on the site of the work and necessary therefor. Whether or not the Contractor's right to proceed with the work is terminated, he and his sureties shall be liable for any damage to the Government resulting from his refusal or failure to complete the work within the specified time.

(b) If fixed and agreed liquidated damages are provided in the contract and if the Government so terminates the Contractor's right to proceed, the resulting damage will consist of such liquidated damages until such reasonable time as may be required for final completion of the work together with any increased costs occasioned the Government in completing the work.

(c) If fixed and agreed liquidated damages are provided in the contract and if the Government does not so terminate the Contractor's right to proceed, the resulting damage will consist of such liquidated damages until the work is completed or accepted.

(d) The Contractor's right to proceed shall not be so terminated nor the Contractor charged with resulting damage if:

(1) The delay in the completion of the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to, acts of God, acts of the public enemy, acts of the Government in either its sovereign or contractual capacity, acts of another contractor in the performance of a contract with the Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather, or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of both the Contractor and such subcontrators or suppliers; and

(2) The Contractor, within the time specified by the Contracting Officer (10 days from the beginning of the delay unless otherwise specified), notifies the Contracting Officer of the causes of delay.

The Contracting Officer shall ascertain the facts and the extent of the delay and extend the time for completing the work when, in his judgment, the findings of fact justify such an extension. Where the Contractor's right to proceed with all or part of the work is terminated within less than 10 days from the beginning of the delay, the contractor shall have 10 days from the beginning of any such delay (unless the Contracting Officer grants a further period of time before the date of final payment under the contract) to notify the Contracting Officer in writing of the causes of delay. The Contracting Officer shall ascertain the facts and the extent of the delay and when, in his judgment, the findings of fact justify a conclusion that the delay was excusable under the provision of this clause, the rights and obligations of the parties shall be those stated in (e) below. Any findings of fact by the Contracting Officer under the above provisions shall be final and conclusive on the parties, subject only to appeal as provided in the "Disputes" clause of the General Provisions.

(e) If, after notice of termination of the Contractor's right to proceed under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, or that the delay was excusable under the provisions of this clause, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience of the Government be the same as if the notice of termination had been issued pursuant to such clause. If, in the foregoing circumstances, this contract does not contain a clause providing for termination for convenience of the Government, the contract shall be equitably adjusted to compensate for such termination and the contract modified accordingly; failure to agree to any such adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes."

(f) The rights and remedies of the Government provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

(g) As used in paragraph (d)(1) of this clause, the term "Subcontractors or Suppliers" means subcontractors or suppliers at any tier.

§ 4–7.5201–2 Inspection and acceptance.

INSPECTION AND ACCEPTANCE

(a) Except as otherwise provided in this contract, inspection and test by the Government of material and workmanship required by this contract shall be made at reasonable times and at the site of the work, unless the Contracting Officer determines that such inspection or test of material which is to be incorporated in the work shall be made at the place of production, manufacture, or shipment of such material. To the extent specified by the Contracting Officer at the time of determining to make offsite inspection or test, such inspection or test shall be conclusive as to whether the material involved conforms to the contract requirements. Such offsite inspection or test shall not relieve the Contractor of responsibility for damage to or loss of the material prior to acceptance, nor in any way affect the continuing rights of the Government after acceptance of the completed work under the terms of paragraph (e) of this clause, except as hereinabove provided.

(b) The Contractor shall, without charge, replace any material or correct any workmanship found by the Government not to conform to the contract requirements, unless in the public interest the Government consents to accept such material or workmanship with an appropriate adjustment in contract price. The Contractor shall

promptly segregate and remove rejected material from the premises.

(c) If the Contractor does not promptly replace rejected material or correct rejected workmanship, the Government (1) may, by contract or otherwise, replace such material or correct such workmanship and charge the cost thereof to the Contractor, or (2) may terminate the Contractor's right to proceed in accordance with the "Termination for Default—Damages for Delay—Time Extensions" clause of the General Provisions.

(d) The Contractor shall furnish promptly, without additional charge, all facilities, labor, and material reasonable needed for performing such safe and convenient inspection and test as may be required by the Contracting Officer. All inspection and test by the Government shall be performed in such manner as not unnecessarily to delay the work. Special, full size, and performance tests shall be performed as described in this contract. The Contractor shall be charged with any additional cost of inspection when material and workmanship are not ready at the time specified by the Contractor for its inspection.

(e) Unless otherwise provided in this contract, acceptance by the Government shall be made as promptly as practicable after completion and inspection of all work required by this contract. Acceptance shall be final and conclusive except as regards latent defects, fraud, or such gross mistakes as may amount to fraud, or as regards the Government's rights under any warranty or guarantee.

Interested persons may submit written statements, data, views, or arguments in regard to this proposed new subpart to the Agriculture Procurement Regulations by mailing them to the Director, Office of Plant and Operations, U.S. Department of Agriculture, Washington, D.C. 20250, within 30 days after this notice is published in the FEDERAL REGISTER.

Signed in Washington, D.C., this 8th day of March 1972.

T. M. BALDAUF,
Director of Plant and Operations.

[FR Doc.72-3744 Filed 3-10-72;8:48 am]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Part 39]

[Docket No. 72-EH-2]

PIPER AIRCRAFT

Proposed Airworthiness Directive

The Federal Aviation Administration is considering amending § 39.13 of Part 39 of the Federal Aviation Regulations so as to issue a rule which revokes AD 69-23-1 applicable to Piper PA-23 type aircraft and promulgates in lieu thereof a revised version.

Subsequent to the issuance of AD 69-23-1 it has been determined that AD 69-23-1 should be expanded to include additional aircraft and prescribe inspections on aircraft incorporating "ball joint" exhaust stacks and new type alternate air crossover shrouds.

Interested parties are invited to participate in the making of the proposed rule by submitting written data and views. Communications should identify the docket number and be submitted in duplicate to the Office of Regional Counsel, FAA, Federal Building, John F. Kennedy International Airport, Jamaica, N.Y. 11430.

All communications received within 30 days after publication in the FEDERAL REGISTER will be considered before taking action upon the proosed rule. The proposals contained in this notice may be changed in light of comments received. All comments will be available in the Office of Regional Counsel for examination by interested parties.

In consideration of the foregoing, it is proposed to issue a new airworthiness directive as hereinafter set forth:

1. Revoke AD 69-23-1 and insert in lieu thereof the following new airworthiness directive:

PIPER—Applies to PA-23-250 and PA-E23-250 series airplanes Serial No. 27-2505 and up equipped with nonsupercharged engines and certificated in all categories.

Compliance required as indicated.

(a) For ariplanes not equipped with "ball joint" exhaust stacks and new type alternate air crossover shroud per Piper Service Spares Letter No. SP-301 and Service Bulletin No. 319—

Within the next 25 hours' time in service after the effective date of this AD, unless already accomplished within the last 25 hours' time in service and thereafter at 50-hour intervals, visually inspect both engine exhaust system stacks, manifolds, support braces and the slip joint inside the alternate air heat shroud. Inspect for cracks, corrosion, flaking, or burning. Parts found cracked, corroded, flaked, or burned must be replaced with a serviceable part prior to further flight.

(b) For airplanes that are equipped with "ball joint" exhaust stacks and new type alternate air crossover shroud in accordance with Piper Service Spares Letter No. SP-301 and Service Bulletin No. 319—

Within the next 50 hours' time in service after the effective date of this AD, unless already accomplished within the last 50 hours' time in service and thereafter at intervals not to exceed 100 hours, visually inspect, align, and adjust both engine exhaust system components in accordance with paragraph (a) above and Piper Service Bulletin No. 319 dated April 19, 1971, or later approved revision.

(c) Upon request with substantiating data submitted through an FAA maintenance inspector, the compliance time specified in this AD may be increased by the Chief, Engineering and Manufacturing Branch, FAA, Eastern Region.

(Piper Service Spares Letter No. SP-301 dated November 11, 1969, and Service Bulletin No. 319 dated April 19, 1971, pertain to this subject)

This amendment is made under the authority of sections 313(a), 601, and 603 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421, and 1423), and section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Jamaica, N.Y., on March 2, 1972.

ROBERT H. STANTON,
Acting Director, Eastern Region.

[FR Doc.72-3714 Filed 3-10-72;8:46 am]

[14 CFR Part 71]

[Airspace Docket No. 72-EA-11]

CONTROL ZONE

Proposed Alteration

The Federal Aviation Administration is considering amending § 71.171 of Part 71 of the Federal Aviation Regulations so as to alter the Martinsburg, W. Va., control zone (37 F.R. 2104).

A review of the Martinsburg terminal airspace requirements indicates that an alteration of the control zone will be required so as to protect aircraft executing approach and departure instrument procedures.

Interested parties may submit such written data or views as they may desire. Communications should be submitted in triplicate to the Director, Eastern Region, Attention: Chief, Air Traffic Division, Department of Transportation, Federal Aviation Administration, Federal Building, John F. Kennedy International Airport, Jamaica, N.Y. 11430. All communications received within 30 days after publication in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment.

No hearing is contemplated at this time, but arrangements may be made for informal conferences with Federal Aviation Administration officials by contacting the Chief, Airspace and Procedures Branch, Eastern Region.

Any data or views presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official docket will be available for examination by interested parties at the Office of Regional Counsel, Federal Aviation Administration, Federal Building, John F. Kennedy International Airport, Jamaica, N.Y.

The Federal Aviation Administration, having completed a review of the airspace requirements for the terminal area of Martinsburg, W. Va., proposes the airspace action hereinafter set forth:

1. Amend § 71.171 of Part 71 of the Federal Aviation Regulations so as to delete the description of the Martinsburg, W. Va., control zone and insert the following in lieu thereof:

Within a 5.5-mile radius of the center 39°24'03" N., 77°59'09" W. of Martinsburg Municipal Airport, Martinsburg, W. Va.; within a 9.5-mile radius of the center of the airport, extending clockwise from a 230° bearing from the airport to a 269° bearing from the airport; within an 8-mile radius of the center of the airport, extending clockwise from a 269° bearing to a 285° bearing from the airport; within a 7-mile radius of the center of the airport, extending clockwise from a 285° bearing to a 315° bearing from the airport; within an 8-mile radius of the center of the airport, extending clockwise from a 315° bearing to a 003° bearing from the airport.

This amendment is proposed under section 307(a) of the Federal Aviation Act of 1958 (72 Stat. 749; 49 U.S.C. 1348)

and section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Jamaica, N.Y., on March 1, 1972.

ROBERT H. STANTON,
Acting Director, Eastern Region.

[FR Doc.72-3715 Filed 3-10-72;8:46 am]

[14 CFR Part 71]

[Airspace Docket No. 72-EA-19]

TRANSITION AREA

Proposed Alteration

The Federal Aviation Administration is considering amending § 71.181 of Part 71 of the Federal Aviation Regulations so as to alter the Endicott, N.Y., transition area (37 F.R. 2188).

A review of the terminal airspace requirements for the Endicott terminal area indicates that alteration of the 700-foot floor transition area will be required to protect IFR arrivals and departures at Tri-Cities Airport.

Interested parties may submit such written data or views as they may desire. Communications should be submitted in triplicate to the Director, Eastern Region, Attention: Chief, Air Traffic Division, Department of Transportation, Federal Aviation Administration, Federal Building, John F. Kennedy International Airport, Jamaica, N.Y. 11430. All communications received within 30 days after publication in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment.

No hearing is contemplated at this time, but arrangements may be made for informal conferences with Federal Aviation Administration officials by contacting the Chief, Airspace and Procedures Branch, Eastern Region.

Any data or views presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official docket will be available for examination by interested parties at the Office of Regional Counsel, Federal Aviation Administration, Federal Building, John F. Kennedy International Airport, Jamaica, N.Y.

The Federal Aviation Administration, having completed a review of the airspace requirements for the terminal area of Endicott, N.Y., proposes the airspace action hereinafter set forth:

1. Amend § 71.181 of Part 71 of the Federal Aviation Regulations so as to delete the description of the Endicott, N.Y., 700-foot floor transition area and insert the following in lieu thereof:

That airspace extending upward from 700 feet above the surface within a 10-mile radius of the center 42°04'42" N., 76°05'49" W. of Tri-Cities Airport, Endicott, N.Y.; within a 10.5-mile radius of the center of the airport, extending clockwise from a 020° bearing to a 090° bearing from the airport; within a 12-mile radius of the center of the airport, extending clockwise from a 090° bearing to a 125° bearing from the airport; within a 13-mile radius of the center of the airport, extending clockwise from a 125° bearing to a 235° bearing from the airport; within a 10.5-mile radius of the center of the airport, extending clockwise from a 235° bearing to a 263° bearing from the airport and within 3.5 miles each side of the Binghamton, N.Y., VORTAC 340° radial, extending from the 10-mile radius area to 11.5 miles north of the VORTAC.

This amendment is proposed under section 307(a) of the Federal Aviation Act of 1958 (72 Stat. 749; 49 U.S.C. 1348) and section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Jamaica, N.Y., on February 25, 1972.

ROBERT H. STANTON,
Acting Director, Eastern Region.

[FR Doc.72-3716 Filed 3-10-72;8:46 am]

[14 CFR Part 71]

[Airspace Docket No. 72-GL-5]

FEDERAL AIRWAYS

Proposed Alteration

The Federal Aviation Administration (FAA) is considering amendments to Part 71 of the Federal Aviation Regulations that would alter VOR Federal airways Nos. 173 and 233.

Interested persons may participate in the proposed rule making by submitting such written data, views, or arguments as they may desire. Communications should identify the airspace docket number and be submitted in triplicate to the Director, Great Lakes Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, 3166 Des Plaines Avenue, Des Plaines, IL 60018. All communications received within 30 days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendments. The proposals contained in this notice may be changed in the light of comments received.

An official docket will be available for examination by interested persons at the Federal Aviation Administration, Office of the General Counsel, Attention: Rules Docket, 800 Independence Avenue SW., Washington, DC 20591. An informal docket will also be available for examination at the office of the Regional Air Traffic Division Chief.

The FAA proposes the following airspace action:

1. Realign V-173 airway from Capital, IL., via intersection of Capital 058° T (054° M) and Peotone, IL., 219° T (217° M) radials; intersection of Peotone, 219° T (217° M) and Roberts, IL., 008° T (006° M) radials; intersection of Roberts 008° T (006° M) and Joliet, IL., 067° T (065° M) radials; Kedzie, IL., radio beacon.

2. Extend VOR Federal airway No. 233 from Roberts, IL., to Capital, IL.

These proposed airway changes are designed to facilitate the movement of air traffic operating between the Chicago, IL., and Springfield, IL., terminal areas.

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

Issued in Washington, D.C., on March 6, 1972.

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

[FR Doc.72-3717 Filed 3-10-72;8:46 am]

CIVIL AERONAUTICS BOARD

[14 CFR Part 374a]

[Docket No. 24275]

EXTENSION OF CREDIT TO POLITICAL CANDIDATES

Notice of Proposed Rule Making

For the reasons set forth in the attached Explanatory Statement, the Board has determined to issue a notice of proposed rule making to adopt a new Part 374a pursuant to section 401 of the Federal Election Campaign Act of 1971, with respect to the extension of credit to political candidates by persons regulated by the Civil Aeronautics Board.

The principal features of the proposal are described in the Explanatory Statement and the proposed amendments are set forth in the proposed rule. The amendments are proposed under sections 204(a), 401, 403, 404(b), 407, and 416 of the Federal Aviation Act of 1958, as amended (72 Stat. 743, 754 (as amended by 76 Stat. 143, 82 Stat. 867), 758 (as amended by 74 Stat. 445), 760, 766 (as amended by 83 Stat. 103), 771; 49 U.S.C. 1324, 1371, 1373, 1374, 1377, 1386); and section 401 of the Federal Election Campaign Act of 1971, Public Law 92-225, 86 Stat. 19, ____ U.S.C. _____.

Interested persons may participate in the rule making through submission of twelve (12) copies of written data, views, or arguments pertaining thereto, addressed to the Docket Section, Civil Aeronautics Board, Washington, D.C., 20428. All relevant material in communications received on or before March 27, 1972, and reply comments received on or before April 5, 1972, will be considered by the Board before taking final action on the proposed rules. Copies of such communications will be available for examination by interested persons in the Docket Section of the Board, Room 712 Universal Building, 1825 Connecticut Avenue NW., Washington, D.C., upon receipt thereof.

It should be noted that because the proposed rule is to be adopted pursuant to section 401 of the Federal Election Campaign Act of 1971, the Board intends to move forward as expeditiously as possible in order to put into effect a final rule thereon by May 7, 1972, the deadline prescribed by Congress in said section 401. Therefore, the Board does not contemplate the granting of any extensions

of time for the filing of initial or reply comments with respect to this matter.

Dated: March 8, 1972.

By the Civil Aeronautics Board.

[SEAL] HARRY J. ZINK, *Secretary.*

EXPLANATORY STATEMENT

Section 401 of the Federal Election Campaign Act of 1971, Public Law 92-225, 86 Stat. 19, ____ U.S.C. ____, approved February 7, 1972 (hereinafter referred to as the "Election Campaign Act"), reflects recognition by Congress of the historical fact that political candidates, as a class, and regardless of party affiliation, have been particularly—and even uniquely—slow in discharging their debts to air carriers and other regulated industries which have extended credit to persons purchasing their services for campaign purposes. The section therefore provides in pertinent part, as follows: [1]

SEC. 401. The Civil Aeronautics Board * * * shall * * * promulgate, within 90 days after the date of enactment of this Act, its own regulations with respect to the extension of credit, without security, by any person regulated by such Board * * * to any candidate for Federal office (as such term is defined in section 301(c) of the Federal Election Campaign Act of 1971), or to any person on behalf of such a candidate, for goods furnished or services rendered in connection with the campaign of such candidate for nomination for election, or election, to such office.[2]

In order to comply with this directive, we propose a new part of the Board's special regulations (14 CFR Part 374a) to be entitled "Regulations pursuant to section 401 of the Federal Election Campaign Act of 1971, with respect to extension of unsecured credit to persons regulated by the Civil Aeronautics Board," to be applicable to all certificated air carriers, including supplemental air carriers. We are tentatively considering the following various alternative and complementary provisions (§§ 374a.4 through 374a.7 and 374a.9)[3] with a view to adopting such of them as we determine to be appropriate in light of the comments thereon: (1) Prohibit the furnishing of air transportation unless the political candidates, or persons acting on their behalf, make full payment in advance or provide full security in advance; (2) prohibit the furnishing of air transportation to such political candidates unless they maintain an account for air transportation on a current billing basis, i.e., billings to be made semimonthly with full payment remitted within 14 days after billing; (3) permit carriers to refuse to extend unsecured credit, so that carriers may refuse to provide transportation for political campaign purposes unless there is full payment in advance or full security in advance; (4) permit carriers to extend credit on such reasonable terms and conditions as the carrier in its judgment deems appropriate, so long as the same terms and conditions apply uniformly to all candidates for political office; and (5) require carriers to file special reports with respect to credit extended to political candidates. We are requesting that comments filed herein indicate clearly which of the above proposals are preferred, the order of preference, and the reasons for such preference.[4]

Although, as indicated, the Board may decide ultimately to adopt only the above reporting requirement, we have tentatively concluded that, should one or more of the other described proposals be adopted, we would add thereto such reporting requirement.

The proposed reporting requirement would provide that, during the period from 6 months before nomination, if any, or from 6 months before election, until the date of election a semimonthly report must be filed by the carrier with the Board. Each report will cover the previous half-month period ending on the 15th day or the last day of each calendar month, as the case may be. It will list every account with a principal balance of over $5,000 on the last day of the reporting period, with respect to which there would be included in the report: (1) Name of account and identification of candidate; (2) the credit limit, if any, established for such account; (3) the balance, if any, as of the last day of the half-month covered by the report, of the amount payable for services not paid for in advance of such services being furnished; (4) the unpaid balance, if any, of the charge for such services as of the last day of such reported period; and (5) a description of the type and value of any bond, collateral, or other security securing such unpaid balance.

The proposed reporting rule would further provide that, should the Board permit carriers to choose to extend credit to candidates on a nondiscriminatory basis, on such reasonable terms and conditions as the particular carrier in its judgment thinks appropriate, then the carrier shall, within 30 days after deciding to offer credit on such terms and conditions, notify the Board of such decision and set forth in detail the manner in which, and the terms and conditions upon which, the extension of credit would be granted.

The proposed rule to be set forth in the new Part 374a would be prospective only, i.e., it would apply only to the extensions of credit to political candidates, or to persons acting on their behalf, which are granted by certificated carriers subsequent to the effective date of the part, and not to debts resulting from past extensions of credit which remain unpaid on the effective date of the part.

Promulgate a new Part 374a entitled "Regulations pursuant to section 401 of the Federal Election Campaign Act of 1971 with respect to persons regulated by the Civil Aeronautics Board" as follows:

PART 374a—REGULATIONS PURSUANT TO SECTION 401 OF THE FEDERAL ELECTION CAMPAIGN ACT OF 1971 WITH RESPECT TO PERSONS REGULATED BY THE CIVIL AERONAUTICS BOARD

Sec.

AUTHORITY: The provisions of this Part 374a are issued under sections 204(a), 401, 403, 404(b), 407, and 416 of the Federal Aviation Act of 1958, as amended, 72 Stat. 743, 754 [as amended by 76 Stat. 143, 82 Stat. 867], 758 [as amended by 74 Stat. 445], 760, 766 [as amended by 83 Stat. 103], 771; 49 U.S.C. 1324, 1371, 1373, 1374, 1377, 1386; and section 401 of the Federal Election Campaign Act of 1971, Public Law 92-225; 86 Stat. 19, —— U.S.C. ——, approved Feb. 7, 1972.

§ 374a.1 Purpose.

Section 401 of the Federal Election Campaign Act of 1971 (Public Law 92-225, 86 Stat. 19, ____ U.S.C. ____, enacted February 7, 1972, and hereafter referred to as the "Election Campaign Act") directs the Civil Aeronautics Board to promulgate, within 90 days after enactment, regulations with respect to the extension of unsecured credit by any person regulated by the Board to any candidate for Federal office, or to any person on behalf of such a candidate, for goods furnished or services rendered in connection with the campaign of such candidate for nomination for election, or election, to such office. The purpose of this part is to issue rules pursuant to said Section 401 of the Election Campaign Act in accordance with the Civil Aeronautics Board's responsibility thereunder.

§ 374a.2 Applicability.

This regulation shall be applicable to all air carriers as defined herein.

§ 374a.3 Definitions.

"Adequate security" means (a) a bond in an amount not less than one hundred

[1] This provision applies also to the Federal Communications Commission and the Interstate Commerce Commission.

[2] The cited Section 301(c) defines Federal office as the office of President or Vice President of the United States; or of Senator or Representative in, or Delegates or Resident Commissioner to, the Congress of the United States.

[3] Although these five provisions are presented as different sections of a single proposed rule, we do not intend thereby to suggest that all five provisions would, or could, be adopted in the final rule. Each of these provisions is to be considered separately, and in the final rule any one or more of them may be adopted.

[4] While we have tentatively concluded that there is no practical need to extend this regulation to carriers serving by exemption, we request comments on whether we should so extend the regulation.

and fifty percent (150%) of the established credit limit for such account, which bond must comply with the standards provided for surety bonds in Part 378 of the Board's Special Regulations (14 CFR Part 378); or (b) collateral with a market value equal to one hundred and fifty percent (150%) of the established credit limit for such account, which collateral must be deposited in escrow and which must consist of Federal, State or municipal bonds or other negotiable securities which are publicly traded on a securities exchange.

"Air carrier" means any air carrier holding a certificate of public convenience and necessity issued under section 401 of the Federal Aviation Act of 1958, as amended.

"Candidate" means an individual who seeks nomination for election, or election, to Federal office, whether or not such individual is elected. For purposes of this part, an individual shall be deemed to seek nomination for election, or election, if he has (a) taken the action necessary under the law of a State to qualify himself for nomination for election, or election, to Federal office; or (b) received contributions or made expenditures, or given his consent for any other person to receive contributions or make expenditures, with a view to bringing about his nomination for election, or election, to such office.

"Election" means (a) a general, special, primary, or runoff election; (b) a convention or caucus of a political party held to nominate a candidate; (c) a primary election held for the selection of delegates to a national nominating convention of a political party; or (d) a primary election held for the expression of a preference for the nomination of persons for election to Federal office.

"Established credit limit" means the dollar limit of credit established by the carrier extending credit.

"Federal office" means the office of President or Vice President of the United States, or of Senator or Representative in, or Delegate or Resident Commissioner to, the Congress of the United States.

"Person acting on behalf of a candidate" means (a) a political committee acting on behalf of, or a person employed by such candidate or by such political committee to act on behalf of, such candidate in connection with such candidate's campaign for nomination for election, or election, to Federal office; (b) a person acting under a contract with, or as an agent of, such candidate or political committee to engage in activities in connection with such candidate's campaign for nomination for election, or election, to Federal office; or (c) a person for whom such candidate or political committee pays, directly or indirectly, for services purchased by such person.

"Payment in advance" means payment by cash, check, money order, or by credit card (if the issuer of such card is not the person from whom air transportation or services are purchased, or a subsidiary, parent, or affiliate corporation thereof) prior to performance of such air transportation or services by an air carrier.

"Political committee" means any committee, association, or organization which accepts contributions, or makes expenditures, for the purpose of supporting a candidate or candidates for nomination for election, or election, to Federal office.

§ 374a.4 Prohibition of services unless advance payment is made or adequate security is provided.[5]

No air carrier shall furnish air transportation, or services in connection therewith, to any person it knows or has reason to know to be a candidate, or a person acting on behalf of a candidate, in connection with his campaign for nomination for election, or election, to Federal office, unless advance payment is made, or adequate security is furnished in advance: *Provided, however,* That this prohibition shall not be applicable if the air carrier knows, or has reason to know, that the air transportation or service which will be rendered is not to be used in connection with the campaign of such candidate for nomination for election, or election, to such office.

§ 374a.5 Extension of credit without advance payment or adequate security when account is maintained on a current billing basis.[5]

If an air carrier submits semimonthly statements for air transportation, or services connected therewith, furnished to any candidate, or a person acting on behalf of such candidate, then the air carrier may continue to extend unsecured credit to such candidate so long as no semimonthly statement remains unpaid for more than 14 days after the date of its submission. Semimonthly statements hereunder shall be submitted no later than the 15th day and the last day of each calendar month for the previous half-month period covered by the statement.

§ 374a.6 Authority to refuse credit to candidates for Federal office.[5]

Any air carrier may refuse to furnish air transportation, or services connected therewith, to a candidate, or to any person acting on his behalf, in connection with his campaign for nomination for election, or election, to Federal office, unless advance payment is made, or adequate security is furnished in advance.

§ 374a.7 Extension of credit on reasonable and nondiscriminatory terms and conditions.[5]

An air carrier may extend credit for air transportation, or services connected therewith, to a candidate, or to any person acting on his behalf, in connection with his campaign for nomination for election, or election, to Federal office, upon such reasonable terms and conditions as the carrier in its judgment determines to be appropriate: *Provided, however,* That such terms and conditions must be made available to every such candidate, and to every person acting on his behalf: *And provided, further,* That the reporting requirements of § 374a.9 are complied with.

§ 374a.8 Exemption authority.

Air carriers are exempt from the following provisions of title IV of the Federal Aviation Act of 1958, as amended: (a) section 403; (b) subsection 404(b); and any and all other provisions of title IV of the Federal Aviation Act of 1958, as amended, to the extent necessary to enable air carriers to comply with the regulations in this part.

§ 374a.9 Reporting requirements.[5]

(a) Air carriers shall make semimonthly reports to the Board with respect to the extension of credit for air transportation, or services connected therewith, furnished to political candidates, or persons acting on behalf of political candidates, for the period from 6 months before nomination, if any, or from 6 months before election, until the date of election. The reports shall cover only accounts with an indebtedness balance of over $5,000 on the last day of the half-month to which the report pertains. The indebtedness accounts reported shall be those which the air carrier knows, or has reason to know, have been incurred by or on behalf of a candidate for Federal office in connection with the campaign of such candidate for nomination for election, or election, to such office.

(b) The reports required by this section shall be filed with the Board's Bureau of Accounts and Statistics not later than the 10th day following the end of the half-month to which the report appertains. They shall include the following data: (1) Name of account and identification of candidate; (2) the credit limit established for such account; (3) the balance, if any, of the amount payable for air transportation or services not paid for in advance; (4) any unpaid balance of the charge for such services as of the last day of the half-month covered by the report; and (5) a description of the type and value of any bond, collateral, or other security securing such unpaid balance.

(c) If the air carrier decides to extend credit to candidates for Federal office, or to persons acting on behalf of such candidates, under § 347a.7, such carrier shall, within 30 days after it has so decided, notify the Board's Bureau of Accounts and Statistics of this decision, setting forth in detail the manner in which, and the terms and conditions upon which, the extension of credit would be provided.

[5] See footnote following § 374a.10.

§ 374a.10 Provisions of part are prospective only.[6]

The provisions of this part shall apply only to the extension of credit by an air carrier to a candidate, or to a person acting on his behalf, which is made subsequent to the effective date of this part, and shall not be applicable to debts incurred prior to such date and remaining unpaid as of the effective date of this part.

[FR Doc.72-3740 Filed 3-10-72;8:48 am]

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 120]

INTERSTATE WATERS OF STATE OF ALABAMA

Proposed Water Quality Standards

Notice is hereby given that, pursuant to the authority of section 10(c)(2) of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1160(c)(2)), and pursuant to due notice (36 F.R. 3085) and conference held in Montgomery, Ala., on April 5-7, 1971, required by the provisions thereof, regulations setting forth standards of water quality to be applicable to the interstate waters of the State of Alabama are proposed to be promulgated. Such proposed water quality standards are in addition to the water quality standards established by Alabama on May 5, 1967, and which were determined to meet the criteria of section 10(c)(3) of the Federal Water Pollution Control Act, as amended, by the Secretary of the Interior on February 15, 1968, and published in the FEDERAL REGISTER (33 F.R. 9877, July 10, 1968) in the paragraph entitled "Alabama;" except that where these proposed regulations are inconsistent with such established standards, the regulations, when promulgated, will supersede the standards to the extent of the inconsistency.

Interested persons may submit written data, views, or arguments in triplicate in regard to the proposed regulations to the Deputy Assistant Administrator for Water Programs, Office of Water Programs, Washington, D.C. 20460. All relevant material received not later than ninety (90) days after the date of this publication in the FEDERAL REGISTER will be considered.

The regulation will become effective immediately upon republication.

The regulations in Chapter I of Title 40, Code of Federal Regulations, are amended as follows:

1. Part 120 would be amended to add § 120.12 as follows:

§ 120.12 Alabama water quality standards.

(a) *Waters.* The water quality standards of this section are applicable to the interstate waters of Alabama, including:

Hurricane Creek, Mill Creek, Turkey Creek, Suck Branch, Estill Fork, Burks Creek, Larkin Spring Branch, Hall Branch, Pigeon Creek, Marting Branch, Mountain Fork, Jenney River, Hester Creek, Donneby Branch, Flint River, Slate Rock Branch, Walker Creek, Fowler Creek, Copeland Creek, Huckelberry Branch, Brief Fork, Limestone Creek, Tyrone Creek, Davis Branch, Smith Branch, Little Limestone Creek, Piney Creek, Holland Creek, Ragsdale Creek, Cave Branch, Elk River, Jenkins Creek, Shoal Creek, Scarce Grease Branch, Holsey Branch, Sugar Creek, Warren Branch, Polebridge Branch, Birch Branch, Cotts Creek, Second Creek, Crossroads Branch, L. Bluewater Creek, Hurricane Creek, Bluewater Creek, L. Bluewater Creek, Wolf Creek, Shoal Creek, Cole City Creek, Nickajack Creek, Hogjaw Creek, Big Culvert Creek, Tennessee River, Graham Branch, Jones Creek, Long Hollow Branch, Dry Creek, Willis Branch, Crow Creek, Little Crow Creek, Salt River, Kettle Branch, Little Coon Creek, Mancher Creek, Butler Creek, Sour Branch, Little Butler Creek, Little Cypress Creek, Dry Branch, Middle Cypress Creek, May Branch, Greenbrier Branch, Dulin Branch, Cypress Creek, Copper Branch, Threet Creek, Second Creek, Manbone Creek, Kennedy Branch, Bumpass Creek, Dry Creek, Mill Creek, Bear Creek, Clear Creek, Pennywinkle Creek, Cripple Deer Creek, Johnson Branch, Cedar Creek, Mill Branch, Gibbs Branch, Panther Mill Branch, Rocky Branch, Crossway Branch, Mann Branch, Harris Branch, Fowler Branch, Brumley Branch, Gee Branch, Lookout Creek, Reeves Creek, Buck Creek, Williams Spring Branch, Duncan Creek, Higdon Creek, Bullard Branch, Crawfish Creek, Allison Creek, Red River Branch, Dry Creek, Coosa River, West Fork Little River, East Fork of West Fork of Little River, Cannon Branch, Middle Fork Little River, East Fork Little River, Little River, Mills Creek, Alpine Creek, unnamed tributary to Mills Creek, Panther Creek, Chattooga River, Spring Creek, Mud Creek, Little Terrapin Creek, Terripan Creek, Duncan Creek, Tallapossa River, Kemp Creek, Lost Creek, Big Indian Creek, Little Tallapoosa River, Hungary Creek, unnamed tributary to Shoal Creek, Shoal Creek, Alabama River, Bull Mountain Creek, Hurricane Creek, unnamed tributary to Chubby Creek, Chubby Creek, Sipsey Creek, Buttahatchee River, Lost Reed Creek, Yellow Creek, Mud Creek, Luzapalila Creek, Magby Creek, Ellis Creek, Nash Creek, Kincaid Creek, Lindsey Branch, Miss., Woodwards Creek, Noxubee River, Bodka Creek, Scooba Creek, Hatchet Creek, Sucarnoochee Creek, Sucarnoochee River, Ponta Creek, Toomsuba Creek, Alamuchee Creek, Okatuppa Creek, unnamed tributary to Okatuppa Creek, Yantley Creek, Tuckabum Creek, Boguelichitta Creek, Tombigbee River, Mobile River, Turkey Creek, Red Creek, Bucatuuna Creek, Brusby Creek, Pond Creek, Flat Creek, Escatawpa River, Big Creek, Nobodies Creek, Franklin Creek, Chatahoochee River, Chipola River, Marshall Creek, Choctawhatchee River, Hurricane Creek, Ten Mile Creek, Wright Creek, Holmes Creek, Yellow River, Blackwater River, Juniper Creek below Sweetwater, Sweetwater Creek, Coldwater Creek below East Fork, East Fork of Coldwater Creek, Conecuh River, Big Escambia Creek, Perdido River, Brushy Creek, Spring Creek, Alamuchee Creek, Escatawpa River, Big Creek, Brushy Creek, Red Creek, Bear Creek, Cypress Creek, L. Cypress Creek, Butler Creek, Bluewater Creek, Second Creek, Sugar Creek, Elk River, Flint River, Crow Creek, tidal portions of Bay Minette Creek, Tensaw River, Chicasaw Creek, W. Fowl River, Fowl River, tidal estuaries of Perdido Bay, Wolf Bay, Oyster Bay, Bon Secour Bay, Mobile Bay, Portersville Bay, Grand Bay, Pelican Bay.

(b) *Antidegradation.* The quality of all interstate waters of Alabama will not be lowered below that which existed on the effective date of duly established water quality standards unless and until it has been affirmatively demonstrated to the Water Improvement Commission that the lowering of such quality is justifiable for the necessary "growth and development of the State in industry, agriculture, health, recreation and conservation of natural resources"[1] and will not interfere with or become injurious to the present and future uses of the waters as described in the standards. In addition, under no conditions will water quality be reduced to less than fish and aquatic life usage.

(1) In no case will developments constituting a new or increased source of pollution to high quality waters be allowed to install or operate less than the highest and best degree of treatment available under existing technology. This degree of treatment for industrial and municipal waste is generally considered to be a minimum of secondary treatment as described in Alabama Water Quality Standards. Where necessary to protect existing and future beneficial uses, a higher degree of treatment may be required.

(2) In applying these policies and requirements, the State of Alabama will recognize and protect the interests of the Federal Government in interstate (including coastal) waters. Toward this end the Commission will consult and cooperate with the Environmental Protection Agency on all matters affecting the Federal interest.

(c) *Temperature.* For interstate waters with water use classifications of public water supply, swimming and other whole body water contact sports, shellfish harvesting, fish and wildlife, and agriculture and industrial water supply, the temperature requirements are as follows:

Temperature: The maximum temperature rise above natural temperatures before the addition of artificial heat shall not exceed 5° F. in streams, lakes, and reservoirs nor shall the maximum water temperature exceed 90° F., except that in the Tennessee River Basin and portions of the Tallapoosa River Basin which have been designated by the Alabama Department of Conservation as supporting smallmouth bass, sauger, and walleye, the temperature shall not exceed 86° F. In lakes and reservoirs, there shall be no withdrawals from or discharge of heated waters to the hypolimnion unless it can be shown that such discharge will be beneficial to water quality. In all waters the normal daily and seasonal temperature variations

[6] Although the provisions of §§ 374a.4 through 374a.7 and 374a.9 are set forth here serially, it is noted that not all of these provisions would, or could, appear together in the final rule, and they are therefore to be regarded as separate, alternative proposals. It should further be noted that each of these proposed sections, if adopted, would be revised to include language such as is now utilized in § 374a.4 to make clear that an air carrier will not be charged with constructive knowledge that a person is in fact a candidate, but that there will be a rebuttable presumption that a known candidate intends to use air transportation, or service connected therewith, for campaign purposes.

[1] Code of Alabama title 22, sec. 140.

that were present before the addition of artificial heat shall be maintained.

The discharge of any heated waste into any coastal or estuarine waters shall not raise water temperatures more than 4° F. above natural during the period October through May nor more than 1.5° F. above natural for the months June through September. There shall be no thermal block to the migration of aquatic organisms.

In the application of temperature criteria referred to above, temperature shall be measured at a depth of 5 feet in waters 10 feet or greater in depth; and for those waters less than 10 feet in depth temperature criteria will be applied at mid depth.

(d) *Dissolved oxygen.* For interstate waters with water use classifications of public water supply, recreation, shellfish harvesting, and fish and wildlife, the dissolved oxygen requirements are as follows:

Dissolved oxygen: For a diversified warm water biota, including game fish, daily dissolved oxygen concentrations shall not be less than 5 mg./l. at all times, except under extreme conditions it may range between 5 mg./l. and 4 mg./l. for short periods of time provided that the water quality is favorable in all other parameters. The normal seasonal and daily fluctuations shall be maintained above these levels. In no event shall the dissolved oxygen level be less than 4 mg./l. due to discharges from existing impoundments. All new impoundments shall be designed so that the discharge will contain at least 5 mg./l. dissolved oxygen where practicable and technologically possible. The Environmental Protection Agency in cooperation with the State of Alabama and parties responsible for impoundments, shall develop a program to improve the design of existing facilities.

In coastal waters surface dissolved oxygen concentrations shall not be less than 5 mg./l. except where natural phenomena cause the value to be depressed.

In estuaries and tidal tributaries dissolved oxygen concentrations shall not be less than 5 mg./l. except in dystrophic waters or where natural conditions cause the value to be depressed.

(e) *Bacteria.* (1) For interstate waters with the water use classification of Public Water Supply, the bacteria requirements are as follows:

Bacteria: Bacteria of the fecal coliform group shall not exceed a geometric mean of 2,000/100 ml.; nor exceed a maximum of 4,000 per 100 ml. in any sample.

(2) For interstate waters with the water use classification of swimming and other whole body water contact sports, the bacteria requirements are as follows:

Bacteria: Waters in the immediate vicinity of discharges of sewage or other wastes likely to contain bacteria harmful to humans, regardless of the degree of treatment afforded these waters, are not acceptable for swimming or other whole body water contact sports.

In all other areas, the bacterial quality of water is acceptable when a sanitary survey reveals no source of dangerous pollution and when the geometric mean fecal coliform organism density does not exceed 100/100 ml. in coastal waters and 200/100 ml. in other waters. When the geometric mean fecal coliform organism density exceeds these levels, the bacterial water quality shall be considered acceptable only if a second detailed sanitary survey and evaluation discloses no significant public health risk in the use of the waters.

The policy of nondegradation of high quality waters shall be stringently applied to bacterial quality of recreational waters.

(3) For interstate waters with the water use classification of fish and wildlife, the bacteria requirements are as follows:

Bacteria: Bacteria of the fecal coliform group shall not exceed a geometric mean of 1,000/100 ml. on a monthly average value; nor exceed a maximum of 2,000/100 ml. in any sample.

(4) The geometric mean shall be calculated from no less than five samples collected at a given station over a 30-day period at intervals not less than 24 hours. The membrane filter counting procedure will be preferred, but the multiple tube technique (five-tube) is acceptable.

(f) *Radioactivity*—(1) *Public water supply.* No radionuclide or mixture of radionuclides shall be present at concentrations greater than those specified by the EPA (USPHS) drinking water standards.

(2) *Other uses.* The concentrations of radioactive materials present shall not exceed the radiation protection guides recommended by the Criteria and Standards Division, Office of Radiation Protection, EPA (formerly Federal Radiation Council).

(g) *Turbidity.* There shall be no turbidity of other than natural origin that will cause substantial visible contrast with the natural appearance of waters or interfere with any beneficial uses which they serve. Furthermore, in no case shall turbidity exceed 50 Jackson units above background. Background will be interpreted as the natural condition of the receiving waters without the influence of manmade or man induced causes. Turbidity levels caused by natural runoff will be included in establishing background levels.

(h) *Toxicity.* All references to toxicity in the water quality standards of Alabama which refer to median tolerance limits are amended to include one-tenth of the 96-hour median tolerance limit.

(i) *Waste treatment requirements.* The following treatment requirements apply to all industrial waste discharges, sewage treatment plants, and combined waste treatment plants, including the present "grandfather" treatment facilities:

As a minimum secondary treatment shall be applied to all waste discharges. The term "secondary treatment" is applied to biologically degradable waste and is interpreted to mean a facility which at design flow is capable of removing substantially all floating and settleable solids and to achieve a minimum removal of 85 percent of both the 5-day biochemical oxygen demand and suspended solids, with disinfection where required. A comparable degree of treatment for industrial waste not amendable to biological treatment will be provided. In all cases an analysis of water use and flow characteristics for the receiving stream shall be provided to determine the degree of treatment required. Where indicated by the analysis, a higher degree of treatment to meet applicable criteria shall be provided. The minimum 7-day low flow that occurs once in 10 years shall be the basis for design criteria.

(j) *Implementation plan.* (1) The existing State plan of implementation for waste discharges, approved by the Secretary of the Interior on February 15, 1968, as a part of the water quality standards of Alabama, shall remain in effect until and unless revised pursuant to the procedures prescribed by State and Federal law and regulations applicable to water quality standards revisions.

(2) The State may submit to the Regional Administrator, Region IV, a copy of the existing plan of implementation revised, pursuant to Federal law and regulations applicable to water quality standards revisions, to include a listing of all dischargers by name, all interim and final compliance dates, and all other information indicated in the form set forth in subparagraph (6) of this paragraph. Such submittal shall be in accordance with subparagraph (4) of this paragraph.

(3) If the State desires revisions in the existing plan of implementation the Governor may submit to the Administrator such proposed revisions, which shall include a listing of all dischargers by name, all interim and final compliance dates, and all other information indicated in the form set forth in subparagraph (6) of this paragraph. Such submittal shall be in accordance with subparagraph (4) of this paragraph.

(4) (i) Implementation plan submittals under this paragraph shall include the following:

(*a*) A copy of the existing implementation plan, on which copy matter proposed to be deleted, if any, shall be indicated by hyphens through such matter and matter proposed to be added, if any, shall be inserted as proposed and shall be underlined.

(*b*) A summary of each public hearing held by the State regarding such revisions, accompanied by certification by the Chairman of each such hearing as to notice and the conduct of such public hearing. The summary shall include a description of the waters covered by the implementation plan which was the subject of the hearing.

(*c*) An opinion by the Attorney General of the State that the proposed revisions were duly adopted by the State and, if approved by the Administrator, will be valid and enforceable revisions to the existing implementation plan.

(*d*) If the Administrator determines that a full transcript of the hearing, if

any, and supporting data are necessary to his review of the proposed revisions, the State shall supply such transcript and data.

(ii) After receipt of an implementation plan submittal, the Administrator shall proceed according to Federal law and regulations applicable to water quality standards revisions.

(5) If the State does not submit a completed or revised plan as provided in subparagraphs (2)–(4) of this paragraph within 6 months of the date of this notice of proposed regulations, the Administrator intends to publish in the FEDERAL REGISTER a completed or revised implementation plan for the State. In promulgating such plan, the Administrator shall proceed according to Federal law and regulations applicable to water quality standards revisions.

(6) The implementation plan of the State shall be completed in accordance with the attached example form.

WILLIAM D. RUCKELSHAUS,
Administrator,
Environmental Protection Agency.

MARCH 6, 1972.

IMPLEMENTATION PLAN—STATE OF ALABAMA

MODEL RIVER—MAJOR RIVER BASIN

Location Municipal/City	Source	Type waste	Volume (MGD)	Receiving stream			Stream miles	Treatment		Interim dates						Date of refuse act permit	Remarks
				Name	Class C[1]	Class F[2]		Current	Required	Preliminary plans	Financing arranged	Site acquisition	Final plans	Begin construction	Complete construction		
Universal Brown City.	Municipal	Sanitation	3.2	Jones Creek	C	A	10.3	Primary	Secondary	Complete	Complete	Complete	9–71	11–71	1–73		
	Williams Co	Inorganic	1.5	Red River	C	B	21.8	Pretreat	Secondary	1–72	3–72	4–72	10–72	12–72	3–74		
Penn Hills Lim City.	Paul's Bike Co	Plating	1.0	Sandy Creek	C	B	101.0	None	Secondary	1–72	4–72	5–72	12–72	1–73	10–74		
North City, King David City.	Municipal	Sanitation	1.3	Turtle Creek	D	C	91.5	Primary	Secondary	3–72	4–72	11–72	5–73	7–72	12–74		
Bowie Hill City	Bowie Papers	Paper	1.1	West River	D	C	16.9	Primary	Secondary	4–72	6–72	6–72	12–72	2–73	1–74		

[1] C–Current.
[2] F–Future.

[FR Doc.72–3653 Filed 3–10–72;8:45 am]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 73]

[Docket No. 19391]

TABLE OF ASSIGNMENTS, NAPLES, FLA.

Order Extending Time for Filing Reply Comments

In the matter of amendment of § 73.606 *Table of Assignments,* Television Broadcast Stations (Naples, Fla.), Docket No. 19391, RM–1785, RM–1797.

1. The notice of proposed rule making in the above-entitled proceeding was adopted January 5, 1972, released January 7, 1972, and published in the FEDERAL REGISTER, January 13, 1972, 37 F.R. 541. The date for filing comments has expired and the date for filing reply comments is March 3, 1972.

2. On March 1, 1972, Broadcasting-Telecasting Services, Inc. (Broadcasting-Telecasting), filed a request for an extension of time to and including March 14, 1972, in which to file reply comments. Broadcasting-Telecasting states that additional time is necessary because a complete set of comments was not placed in the docket in the Public Reference Room until February 29, 1972.

3. We are of the view that the requested extension is warranted and would serve the public interest: *Accordingly, it is ordered,* That the time for filing reply comments in the above docket is extended to and including March 14, 1972.

4. This action is taken pursuant to authority found in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, and § 0.281(d)(8) of the Commission's rules and regulations.

Adopted: March 3, 1972.

Released: March 6, 1972.

[SEAL] WALLACE E. JOHNSON,
Chief, Broadcast Bureau.

[FR Doc.72–3736 Filed 3–10–72;8:47 am]

Notices

DEPARTMENT OF THE INTERIOR

Geological Survey

ENVIRONMENTAL STATEMENTS

Issuance of Directives Regarding Preparation

The procedures published in the FEDERAL REGISTER, January 7, 1972 (37 F.R. 233), have been revised.

Notice is given of the publication of the revised procedures of the Geological Survey to implement the policy and directives of section 102(2)(C) of the National Environmental Policy Act of 1969 (Public Law 91-190, 83 Stat. 852, January 1, 1970); section 2(f) of Executive Order 11514 (March 5, 1970); the guidelines issued by the Council on Environmental Quality (36 F.R. 7724, April 23, 1971); Office of Management and Budget Bulletin No. 72-6 (September 14, 1971), and Department of the Interior Manual (516 DM 2, September 27, 1971).

Set forth below is the Geological Survey Manual Part 516, Chapter 2, entitled "Environmental Impact Statements." The numbering system used is that of the Survey Manual.

V. E. MCKELVEY,
Director.

ENVIRONMENTAL QUALITY

Part 516—Survey Program Policies

Chapter 2—Environmental Impact Statements

.1 *Purpose.* These procedures are to implement the policy and directives of the National Environmental Policy Act of 1969, and to provide guidance in the preparation of environmental statements for major Federal actions conducted or supervised by the Geological Survey that significantly affect the quality of the human environment (Department of the Interior Manual 516 DM2).

.2 *Policy.* All major actions proposed or recommended by the Geological Survey will be assessed for their environmental impact at an early stage in the decision making process. Environmental impact statements will be prepared on all legislation or major actions proposed by the Survey that are determined to have significant impact on the quality of the environment or that involve controversial issues. When suitable, Geological Survey Circular No. 645 will be used as a basic guide in making such determinations. The decision that any specific major action does not require an environmental impact statement will be documented and incorporated in the case record.

.3 *Scope.* In addition to new major actions, the provisions of this chapter apply to continuing major actions that have a significant effect on the environment even though they arise from projects or programs that began before the effective date of the National Environmental Policy Act of 1969.

A. *Actions that will require environmental impact statements.* Major actions that involve operations that could have a significant effect on the environment or that involve highly controversial environmental issues will require an environmental impact statement before a decision is made to approve or undertake a specific activity. Such actions include but are not limited to applications for major radioactive tracer investigations; extensive earthquake-control experiments; and extensive new exploratory drilling program or mining operations in environmentally sensitive areas on Federal lands.

B. *Actions that may require an environmental impact statement.* Proposed actions, though minor, that may threaten harm or damage to the environment will be carefully assessed. If it is determined that such action will have a significant environmental impact, an environmental statement will be prepared. If it is concluded that the proposed action will not have a significant impact on the environment, this determination will be documented in the case record or field examination report.

Examples of such actions include applications to conduct geological or geophysical exploration utilizing explosives on the Outer Continental Shelf; applications to drill exploratory oil and gas and geothermal wells on Federal lands; original mining plans and major changes in mining plans on existing Federal leases; and applications for financial assistance under the Minerals Discovery Loan Program. In the last case, the Field Examination Report, prepared by the Survey Examiner, will include a statement covering environmental considerations of the proposed project.

C. *Program areas that generally will not require environmental impact statements.* Activities that generally will not require an environmental impact statement include:

(1) Mapping and surveying activities;

(2) Field and laboratory activities in connection with geologic and mineral resources investigations;

(3) Stream gaging, routine hydrologic test drilling, well logging, aquifer response testing, and similar data-gathering activities in connection with water resources investigations;

(4) Development drilling, secondary recovery projects, and pressure maintenance projects on Federal leases.

4. *Responsibilities.* A. The Director, in consultation with the Assistant Director—Research and appropriate Division Chief(s), shall designate the officials responsible for reviewing Survey actions that have been identified as having a significant impact on the environment and for preparing the environmental impact statement. He may assign primary responsibility to individuals or to organizational units, in the field or at headquarters level, for coordinating the viewpoints of all interested Survey organizational units, as well as other governmental or private groups, and for preparing the statement. He may also assign this responsibility to a task force under the chairmanship of the organizational unit having primary interest.

B. Division Chiefs or heads of other Survey organizational units shall be responsible for identifying proposed actions that have a significant impact on the environment among the activities to be initiated or implemented in their Divisions or organizational units.

C. Officials designated as responsible for preparation of impact statements shall be responsible for: (1) Consulting with appropriate bureaus or offices, other Federal agencies, and other appropriate sources of special environmental expertise not available within the Survey;

(2) Preparing the proposed draft statements and ensuring that they fully consider and reflect the information obtained;

(3) Transmitting copies of draft environmental statements, as endorsed by the Assistant Secretary—Program Policy, to Federal agencies with jurisdiction by law or special environmental expertise, to State and local agencies authorized to develop or enforce environmental standards, and to private organizations with an expressed or known interest in the proposal;

(4) Giving public notice in the manner provided in Department of the Interior Manual (516 DM 2) of the availability of draft environmental statements and inviting comments;

(5) Consulting with all bureaus and offices and other Federal agencies submitting comments, where appropriate;

(6) Preparing proposed final environmental statements and insuring that all relevant comments are considered therein;

(7) Transmitting copies of final environmental statements, as endorsed by the Assistant Secretary—Program Policy, to all Interior Department bureaus and offices; other Federal, State, and local agencies; and private organizations from whom comments were solicited.

.5 *Procedures.* All environmental impact statements shall be prepared and processed in accordance with guidelines contained in Department of the Interior Manual (516 DM 2).

[FR Doc.72-3729 Filed 3-10-72;8:47 am]

DEPARTMENT OF AGRICULTURE

Consumer and Marketing Service

GRAIN STANDARDS

Lewiston, Idaho, Grain Inspection Point

Statement of considerations. Harold and Virginia Whitcomb, Lewiston, Idaho, have proposed that their designation under section 3(m) of the U.S. Grain Standards Act (7 U.S.C. 75(m)) to operate the official grain inspection agency at Lewiston, Idaho, be transferred.

Edwin T. Matchey, Lewiston, Idaho, has applied for designation (in accordance with § 26.97 of the regulations (7 CFR 26.97) under the U.S. Grain Standards Act) to operate the official grain inspection agency at Lewiston, Idaho. This application does not preclude other interested agencies and persons from making similar applications.

Other interested persons are hereby given opportunity to make application for designation to operate an official inspection agency at Lewiston, Idaho, according to the requirements in § 26.97 of the regulations (7 CFR 26.97) under the U.S. Grain Standards Act. NOTE: Section 7(f) of the Act (7 U.S.C. 79(f)) generally provides that not more than one inspection agency shall be operative at any one time for any one city, town, or other area.

Members of the grain industry who wish to submit views and comments are requested to include the name of the person or agency which they recommend to be designated to operate an official inspection agency at Lewiston, Idaho.

Opportunity is hereby afforded all interested persons to submit written data, views, or arguments with respect to this matter to the Hearing Clerk, U.S. Department of Agriculture, Washington, D.C. 20250. All written submissions shall be in duplicate and shall be mailed to the Hearing Clerk not later than 30 days after this notice is published in the FEDERAL REGISTER. All 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)). Consideration will be given to the written data, views, or arguments so filed with the Hearing Clerk and to other information available to the U.S. Department of Agriculture before final determination is made with respect to this matter.

Done in Washington, D.C., on March 7, 1972.

G. R. GRANGE,
Acting Administrator.

[FR Doc.72-3743 Filed 3-10-72;8:48 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[Docket No. FDC-D-452; NADA Nos. 11-295V et al.]

DIETHYLSTILBESTROL LIQUID PREMIXES

Notices of Opportunity for Hearing

Notice is hereby given to the firms listed below and to any interested persons who may be adversely affected that the Commissioner of Food and Drugs proposes to issue an order under section 512(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(e)) withdrawing approval of the following listed new animal drug applications with respect to diethylstilbestrol liquid premixes for use in the manufacture of feeds for cattle and sheep:

1. Hess and Clark, Division of Rhodia, Inc., Ashland, Ohio 44805; NADA Nos. 11-295V, 45-981V, and 45-982V.

2. Merck Sharp & Dohme Research Laboratories, Division of Merck & Co., Inc., Rahway, N.J. 07065; NADA Nos. 39-772V and 42-840V.

3. Dawes Laboratories, 4800 South Richmond Street, Chicago, Ill. 60632; NADA No. 34-916V.

4. Elanco Products Co., Post Office Box 1750, Indianapolis, Ind. 46206; NADA No. 42-162V.

5. Bresley-Koelling, Inc., Ord, Nebr. 68862; NADA No. 39-491.

6. Dale Alley Co., Post Office Box 444, St. Joseph, Mo. 64502; NADA No. 36-671V.

7. Feed Additives, Inc., Freemont, Nebr. 68025; NADA No. 36-313V.

The Commissioner, based on an evaluation of new information before him with respect to such drugs together with the evidence available to him when the applications were approved, concludes that the drugs are not shown to be safe under the conditions of use upon the basis of which the applications were approved.

Information available to the Commissioner establishes that the drugs, when used in the manufacture of finished feeds have resulted in contamination of feeds not intended to contain diethylstilbestrol.

In accordance with the provisions of section 512 of the act (21 U.S.C. 360b), the Commissioner hereby gives the applicants and any interested persons who would be adversely affected by an order withdrawing such approval an opportunity for a hearing at which time such persons may produce evidence and arguments to show why approval of the above listed new animal drug applications should not be withdrawn insofar as such applications provide for the manufacture of liquid feed premixes. Any such drug or any animal feed bearing or containing such drug then on the market would be subject to regulatory proceedings.

Within 30 days after publication hereof in the FEDERAL REGISTER, such persons are required to file with the Hearing Clerk, Department of Health, Education, and Welfare, Office of the General Counsel, Food, Drug, and Environmental Health Division, Room 6-88, 5600 Fishers Lane, Rockville, Md. 20852, a written appearance electing whether:

1. To avail themselves of the opportunity for a hearing; or

2. Not to avail themselves of the opportunity for a hearing.

If such persons elect not to avail themselves of the opportunity for a hearing, the Commissioner, without further notice, will enter a final order withdrawing approval of said applications.

Failure of such persons to file a written appearance of election within 30 days will be construed as an election by such persons not to avail themselves of the opportunity for a hearing.

The hearing contemplated by this notice will be open to the public except that any portion of the hearing concerning a method or process that the Commissioner finds is entitled to protection as a trade secret will not be open to the public, unless the respondent specifies otherwise in his appearance.

If such persons elect to avail themselves of the opportunity for a hearing, they must file a written appearance requesting the hearing and giving the reasons why the approval of the new animal drug applications should not be withdrawn together with a well-organized and full-factual analysis of the data they are prepared to prove in support of their opposition to the grounds for the notice of opportunity for a hearing. A request for a hearing may not rest upon mere allegations or denials but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. When it clearly appears from the data in the application and from the reasons and factual analysis in the request for the hearing that there is no genuine and substantial issue of fact which precludes the withdrawal of approval of the application, the Commissioner will enter an order stating his findings and conclusions on such data. If a hearing is requested and is justified by the response to this notice, the issues will be defined, a hearing examiner will be named, and he shall issue a written notice of the time and place at which the hearing will commence.

Responses to this notice will be available for public inspection in the Office of the Hearing Clerk (address given above) during regular business hours, Monday through Friday.

This notice is issued pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 512, 82 Stat. 343-51; 21 U.S.C. 360b) and under authority delegated to the Commissioner (21 CFR 2.120).

Dated: March 9, 1972.

JAMES D. GRANT,
Deputy Commissioner of Food and Drugs.

[FR Doc.72-3822 Filed 3-10-72;8:49 am]

Office of the Secretary

DIVISION OF CONSOLIDATED FUNDING, OFFICE OF THE ASSISTANT SECRETARY, COMPTROLLER

Statement of Organization, Functions, and Delegations of Authority

Part I of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health, Education, and Welfare is amended to add a new statement for the Division of Consolidated Funding in the Office of the Deputy Assistant Secretary, Budget, Office of the Assistant Secretary, Comptroller to read as follows:

SECTION 1W1004.00 *Organization.* The Director, Division of Consolidated Funding, is under the supervision of the Deputy Assistant Secretary, Budget, who reports to the Assistant Secretary, Comptroller.

SEC. 1W1004.10 *Functions.* The Division of Consolidated Funding:

A. Plans and implements a Department-wide system of consolidated funding designed to provide a single funding source for the support of integrated social services projects.

B. Develops policy and procedures for application, reporting, management, and appraisal of projects funded through this system.

C. Reviews and evaluates consolidated funding applications; assures that consultation is provided to prospective grantees; identifies programs with interest in the proposal; develops funding matrix; and assigns applications to appropriate agencies and staff elements for review.

D. Administers a formal departmental review and approval process for consolidated funding projects, including establishment of priorities for the types of

projects to be funded. Approves or disapproves applications subject to the grantmaking authorities of the agency heads.

E. Assigns management responsibilities for approved grants and oversees execution of award documents. Approves or disapproves changes and reprogramings subject to the grantmaking authority of the agency heads.

F. Establishes liaison with various components of the Department as well as other Federal agencies.

Dated: March 3, 1972.

RODNEY H. BRADY,
Assistant Secretary for Administration and Management.

[FR Doc.72-3719 Filed 3-10-72;8:46 am]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. D-72-106]

REGIONAL ADMINISTRATORS ET AL.

Redelegation of Authority Regarding Community Renewal Program

SECTION A. *Authority delegated.* Each Regional Administrator and Deputy Regional Administrator, and each Area Director and Deputy Area Director of the Department of Housing and Urban Development is hereby authorized to exercise the following power and authority under section 103(d) of title I, Housing Act of 1949, as amended (42 U.S.C. 1450), with respect to the Community Renewal Program: (1) To approve amendments to existing grants; (2) to approve requisitions for grant payments; (3) to approve third party contracts; and (4) to execute contracts and related documents.

SEC. B. *Supersedure.* This redelegation of authority supersedes sections A and D of the redelegation of authority with respect to the Slum Clearance and Urban Renewal Program made by the Acting Assistant Secretary for Renewal and Housing Management (35 F.R. 16102, October 14, 1970) only as these sections relate to the Community Renewal Program.

(Secretary's delegation of authority to the Assistant Secretary for Community Planning and Management, 36 F.R. 5004, Mar. 16, 1971)

Effective date. This redelegation of authority is effective upon publication in the FEDERAL REGISTER (3-11-72).

SAMUEL C. JACKSON,
Assistant Secretary for Community Planning and Management.

[FR Doc.72-3726 Filed 3-10-72;8:46 am]

ATOMIC ENERGY COMMISSION

[Docket No. 50-341]

DETROIT EDISON CO.

Notice of Availability of AEC Draft Environmental Statement for Enrico Fermi Atomic Power Plant

Pursuant to the National Environmental Policy Act of 1969 and the regulations of the Atomic Energy Commission (the Commission) in 10 CFR Part 50 Appendix D, notice is hereby given that a draft environmental statement related to the proposed issuance of a construction permit to the Detroit Edison Co. for the Enrico Fermi Atomic Power Plant Unit 2 located on the western shore of Lake Erie in Frenchtown Township, Monroe County, Mich., has been prepared and has been made available for public inspection in the Commission's Public Document Room at 1717 H Street NW., Washington, DC, and in the Monroe County Library System, 3700 South Custer Road, Monroe, MI 48161. The draft environmental statement is also being made available to the public at the Office of Planning Coordination, Executive Office of the Governor, Lewis Cass Building, Lansing, Mich. 48713, and at the South East Michigan Council of Governments, 810 Book Building, Detroit, MI 48226.

Notices of the availability of the Applicant's environmental report and supplements 1 and 2 thereto were published in the FEDERAL REGISTER on October 13, 1970 (35 F.R. 16060), and on February 11, 1972 (37 F.R. 3083), respectively.

Copies of the Commission's draft environmental statement may be obtained upon request addressed to the U.S. Atomic Energy Commission, Washington, D.C. 20545, Attention: Director, Division of Radiological and Environmental Protection.

Pursuant to sections A.6, A.7, and D of Appendix D to 10 CFR Part 50, interested persons may, within thirty (30) days from date of publication of this notice in the FEDERAL REGISTER, submit comments for the Commission's consideration on the draft environmental statement. Federal and State agencies are being provided with copies of the draft environmental statement (local agencies may obtain this document on request), and when comments thereon of the Federal, State, and local officials are received, they will be made available for public inspection at the above-designated locations. Comments on the draft environmental statement from interested members of the public should be addressed to the U.S. Atomic Energy Commission, Washington, D.C. 20545, Attention: Director, Division of Radiological and Environmental Protection.

Dated at Bethesda, Md., this 6th day of March 1972.

For the Atomic Energy Commission.

ROGER S. BOYD,
Assistant Director for Boiling Water Reactors, Division of Reactor Licensing.

[FR Doc.72-3673 Filed 3-10-72;8:45 am]

[Docket No. 40-8102]

HUMBLE OIL & REFINING CO.

Notice of Availability of Applicant's Supplemental Environmental Report

Pursuant to the National Environmental Policy Act of 1969 and the Atomic Energy Commission's regulations, notice is hereby given that a copy of a report entitled "Supplement to Applicant's Environmental Report—Highland Uranium Mill," submitted by Humble Oil & Refining Co. and dated January 1972, is being placed for public inspection in the Commission's Public Document Room, 1717 H Street NW., Washington, DC. A copy of the supplemental report is also being placed for public inspection in the Wyoming State Clearinghouse, State Planning Coordinator, Office of the Governor, Capitol Building Cheyenne, Wyo., and in the Converse County Library, Douglas, Wyo. The report involves the application by Humble Oil & Refining Co. for an AEC license to authorize uranium milling activities in Converse County, Wyo. Comments on the report may be submitted by interested persons to the Director, Division of Materials licensing, U.S. Atomic Energy Commission, Washington, D.C. 20545.

Notice of availability of the original environmental report entitled "Applicant's Environmental Report—Highland Uranium Mill" (dated July 1971), was published in the FEDERAL REGISTER on November 5, 1971 (36 F.R. 21298). On July 23, 1971, the U.S. Court of Appeals for the District of Columbia Circuit held in Calvert Cliffs' Coordinating Committee, Inc., et al. vs. United States Atomic Energy Commission et al. that AEC regulations for the implementation of the National Environmental Policy Act of 1969 did not comply in several specified respects with the dictates of the Act and remanded the proceedings to AEC for rule making consistent with the court's opinion. Accordingly, the Commission's regulation 10 CFR Part 50, "Licensing of Production and Utilization Facilities," Appendix D, was amended September 9, 1971, to conform with the Court's decision. Under the provisions of the amended regulations, it was required that Humble Oil & Refining Co. furnish additional information for consideration by the Commission. It is in conformity with that requirement that the supplemental environmental report described in the first paragraph above has been submitted.

After the reports have been reviewed by the Commission's regulatory staff, a

draft detailed statement on environmental considerations related to the proposed activity will be prepared. Upon completion of the draft detailed statement, the Commission will, among other things, cause to be published in the FEDERAL REGISTER a summary notice of its availability. The summary notice will request, within seventy-five (75) days or such longer period as the Commission may determine to be practicable, 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 made available when received.

Dated at Bethesda, Md., this sixth day of March 1972.

For the Atomic Energy Commission.

C. T. EDWARDS,
Assistant to the Director,
Division of Materials Licensing.

[FR Doc.72-3707 Filed 3-10-72;8:45 am]

[Docket No. 40-8084]

RIO ALGOM CORP.

Notice of Availability of Applicant's Supplemental Environmental Report

Pursuant to the National Environmental Policy Act of 1969 and the Atomic Energy Commission's regulations, notice is hereby given that a copy of a report entitled "Applicant's Supplemental Environmental Report—Operating License Stage for Uranium Concentrator" submitted by the Rio Algom Corp. and received by the Atomic Energy Commission on December 22, 1971, is being placed for public inspection in the Commission's Public Document Room, 1717 H Street NW., Washington, DC. A copy of the report is also being placed for public inspection in the Utah State Clearinghouse, Utah State Planning Coordinator, State Capitol Building, Salt Lake City, Utah, and in the San Juan County Library, Monticello, Utah. The report involves the application by Rio Algom Corp. for an AEC license to authorize uranium milling activities in San Juan County, Utah. Comments on the report may be submitted by interested persons to the Director, Division of Materials Licensing, U.S. Atomic Energy Commission, Washington, D.C. 20545.

Notice of availability of the original environmental report entitled "Applicant's Environmental Report—Operating License Stage for Uranium Concentrator (received by the Atomic Energy Commission on August 31, 1971) was published in the FEDERAL REGISTER on November 5, 1971 (36 F.R. 21299). On July 23, 1971, the U.S. Court of Appeals for the District of Columbia Circuit held in Calvert Cliffs' Coordinating Committee, Inc., et al. vs. United States Atomic Energy Commission et al. that AEC regulations for the implementation of the National Environmental Policy Act of 1969 did not comply in several specified respects with the dictates of the Act and remanded the proceedings to AEC for rule making consistent with the court's opinion. Accordingly, the Commission's regulation 10 CFR Part 50, "Licensing of Production and Utilization Facilities," Appendix D, was amended September 9, 1971, to conform with the Court's decision. Under the provisions of the amended regulations, it was required that Rio Algom Corporation furnish additional information for consideration by the Commission. It is in conformity with that requirement that the supplemental environmental report described in the first paragraph above has been submitted.

After the reports have been reviewed by the Commission's regulatory staff, a draft detailed statement on environmental considerations related to the proposed activity will be prepared. Upon completion of the draft detailed statement, the Commission will, among other things, cause to be published in the FEDERAL REGISTER a summary notice of its availability. The summary notice will request, within seventy-five (75) days or such longer period as the Commission may determine to be practicable, 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 made available when received.

Dated at Bethesda, Md., this 6th day of March 1972.

For the Atomic Energy Commission.

C. T. EDWARDS,
Assistant to the Director,
Division of Materials Licensing.

[FR Doc.72-3708 Filed 3-10-72;8:45 am]

[Docket No. 50-271]

VERMONT YANKEE NUCLEAR POWER CORP.

Order Changing Location of Hearing in Brattleboro, Vt.

In the matter of Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), Docket No. 50-271.

On February 3, 1972, the Atomic Safety and Licensing Board set the next evidentiary hearing in the above proceeding to convene at 2:30 p.m. on Monday, March 13, 1972, in the Vermont National Guard Armory in Brattleboro, Vt. Since the date of the issuance of that order, the hand fired coal boiler in the Armory has ruptured and at the present time is not serviceable, and consequently a change must be made in location for the aforesaid hearing:

Wherefore, it is ordered, In accordance with the Atomic Energy Act, as amended, and the rules of practice of the Commission, that the next evidentiary session of hearings in this proceeding shall convene at 2:30 p.m. on Monday, March 13, 1972, in the Masonic Temple on the Main Floor at 196 Main Street, Brattleboro, Vt.

Issued: March 6, 1972, Germantown, Md.

ATOMIC SAFETY AND LICENSING BOARD,
SAMUEL W. JENSCH,
Chairman.

[FR Doc.72-3672 Filed 3-10-72;8:45 am]

[Docket No. 50-280]

VIRGINIA ELECTRIC AND POWER CO.

Order Changing Location for Evidentiary Hearing

In the matter of Virginia Electric and Power Co. (Surry Power Station Unit 1), Docket No. 50-280.

On February 28, 1972, the Board issued an order scheduling the time and place for the evidentiary hearing in this matter.

The purpose of this order is to revise the location for the hearing. The evidentiary hearing will be held on March 20, 1972, at 10 a.m., local time, in the Surry County Courthouse, Circuit Courtroom, Surry, Va. 23883.

Dated at Washington, D.C., this 7th day of March 1972.

For the Atomic Safety and Licensing Board.

JAMES R. YORE,
Chairman.

[FR Doc.72-3725 Filed 3-10-72;8:46 am]

HEAVY WATER

Increase in Price

1. The U.S. Atomic Energy Commission (AEC) hereby announces an increase in the sale price and in the base charge for heavy water from $30 to $39 per pound, f.o.b. Savannah River Plant, Aiken, S.C. Additional charges will continue to be made to customers for packaging and handling. The base charge is the figure used in leasing arrangements by the AEC in applying its annual use-charge rate to the value of the material.

2. In view of the limited U.S. production capacity, the AEC has not attempted to meet worldwide long-term requirements for this material as it has for enriched uranium. However, to the extent heavy water is available in excess of the needs of AEC-sponsored programs, the AEC will contract to supply heavy water for peaceful purposes to domestic and overseas customers on a first-come first-served basis.

This notice is effective upon publication in the FEDERAL REGISTER (3-11-72).

Dated at Germantown, Md., this 9th day of March 1972.

For the U.S. Atomic Energy Commission.

W. B. MCCOOL,
Secretary of the Commission.

[FR Doc.72-3823 Filed 3-10-72;9:17 am]

CIVIL AERONAUTICS BOARD

[Docket No. 23333; Order 72-2-94]

INTERNATIONAL AIR TRANSPORT ASSOCIATION

Order Regarding Passenger Fares

Issued under delegated authority February 29, 1972.

An agreement has been filed with the Board pursuant to section 412(a) of the Federal Aviation Act of 158 (the Act) and Part 261 of the Board's economic regulations, between various air carriers, foreign air carriers, and other carriers, embodied in the resolutions of Joint Conferences 2-3 and 1-2-3 of the International Air Transport Association (IATA). The agreement, which was adopted by mail vote, has been assigned the above-designated CAB agreement number.

The agreement is technically readopting in nature and would result in maintaining through March 31, 1972, except with respect to traffic moving between Europe and India/Pakistan/Ceylon/Afghanistan/Nepal, the effectiveness of certain fares and related resolutions initially adopted for general application between points in Europe/Africa/Middle East and other points in the Eastern Hemisphere. Our interest in the agreement is limited to the extent it would have application to/from Guam, Okinawa, and American Samoa.

Pursuant to authority duly delegated by the Board, in the Board's regulations, 14 CFR 385.14, it is not found, on a tentative basis to the extent they apply in transportation as defined by the Act, that Resolutions JT23(Mail 292)002k, and JT123(Mail 681)002k, (TC2-TC3 via TC1), which are incorporated in agreement CAB 2298 are adverse to the public interest or in violation of the Act.

Accordingly, it is ordered, That:

1. Insofar as agreement CAB 22928 would apply in air transportation as defined by the Act, action be and hereby is deferred with a view toward eventual approval; and

2. Except to the extent ordered in paragraph 1 above, Agreement CAB 22928 be and hereby is approved.

Persons entitled to petition the Board for review of this order, pursuant to the Board's regulations, 14 CFR 385.50, may, within 10 days after the date of service of this order, file such petitions in support of or in opposition to our proposed action herein.

This order will be published in the FEDERAL REGISTER.

[SEAL] HARRY J. ZINK,
Secretary.

[FR Doc.72-3741 Filed 3-10-72;8:48 am]

INTERAGENCY TEXTILE ADMINISTRATIVE COMMITTEE

CERTAIN COTTON TEXTILES AND COTTON TEXTILE PRODUCTS PRODUCED OR MANUFACTURED IN MEXICO

Entry or Withdrawal From Warehouse for Consumption

FEBRUARY 29, 1972.

On June 29, July 30, August 23, and September 24, 1971, the Chairman of the President's Cabinet Textile Advisory Committee wrote letters to the Commissioner of Customs, establishing levels of restraint applicable to certain specified categories of cotton textiles and cotton textile products produced or manufactured in Mexico and exported to the United States during the 12-month period beginning May 1, 1971. As set forth in those letters, the levels of restraint are subject to adjustment pursuant to paragraphs 5 and 15 of the bilateral cotton textile agreement of June 29, 1971 between the Governments of the United States and Mexico which provide that within the aggregate and applicable group limits, limits on certain categories may be exceeded by not more than five (5) percent; and for administrative arrangements. The aforementioned letters also provided that any such adjustment in the levels of restraint would be made to the Commissioner of Customs by letter from the Chairman of the Interagency Textile Administrative Committee.

Accordingly, at the request of the Government of Mexico and pursuant to the provisions of the bilateral agreement referred to above, there is published below a letter of February 29, 1972, from the Chairman of the Interagency Textile Administrative Committee to the Commissioner of Customs amending the levels of restraint applicable to cotton textiles and cotton textile products in the specified Categories for the 12-month period which began on May 1, 1971.

STANLEY NEHMER,
Chairman, Interagency Textile Administrative Committee and Deputy Assistant Secretary for Resources.

ASSISTANT SECRETARY OF COMMERCE

INTERAGENCY TEXTILE ADMINISTRATIVE COMMITTEE

COMMISSIONER OF CUSTOMS,
Department of the Treasury,
Washington, D.C. 20226.

FEBRUARY 29, 1972.

DEAR MR. COMMISSIONER: On June 29, July 30, August 23, and September 24, 1971, the Chairman of the President's Cabinet Textile Advisory Committee, directed you to prohibit entry of cotton textiles and cotton textile products in Categories 1 through 64, produced or manufactured in Mexico and exported to the United States on or after May 1, 1971, in excess of designated levels of restraint. The Chairman further advised you that in the event that there were any adjustments[1] in the levels of restraint you would be so informed by letter from the Chairman of the Interagency Textile Administrative Committee.

Under the terms of the Long-Term Arrangement Regarding International Trade in Cotton Textiles done at Geneva on February 9, 1962, pursuant to paragraphs 5 and 15 of the bilateral cotton textile agreement of June 29, 1971, between the Governments of the United States and Mexico, in accordance with Executive Order 11052 of September 28, 1962, as amended by Executive Order 11214 of April 7, 1965, and under the terms of the aforementioned directives, the levels of restraint in those directives for cotton textiles and cotton textile products in the Categories set forth below, produced or manufactured in Mexico, for the period beginning May 1, 1971, and extending through April 30, 1972, are hereby amended as follows, to be effective as soon as possible:

The combined level of restraint for Categories 1, 2, 3, and 4 shall be 12,164,130 pounds.

The overall level of restraint for Categories 5 through 27 and part of 64 (knit fabrics) shall be 36,745,000 square yards equivalent.

Within the overall level of restraint for Categories 5 through 27 and part of 64 (knit fabrics), the following specific levels of restraint shall apply:

Category	*12-Month level of restraint*[2]
9/10	12,262,500 square yards.
22/23	12,875,625 square yards.
26/27 and part of 64 (knit fabrics).	11,606,875 square yards (but not more than 7,087,500 square yards in Categories 26 and 27 shall be in duck[3] and not more than 656,250 square yards equivalent shall be in knit fabrics, T.S.U.S.A. Nos. 345.1020, 345.1040, 346.4560, 353.-5014, and 359.1040).

[2] These levels have not been adjusted to reflect any entries on or after May 1, 1971.

[3] Only T.S.U.S.A. Nos.:
320--01 through 04, 06, 08
321--01 through 04, 06, 08
322--01 through 04, 06, 08
326--01 through 04, 06, 08
327--01 through 04, 06, 08
328--01 through 04, 06, 08

The overall level of restraint for Categories 28 through 63, and 64 (excluding knit fabrics) shall be 7,400,000 square yards equivalent.

Within the overall level of restraint for Category 28 through 63, and 64 (excluding knit fabrics), the following specific levels of restraint shall apply:

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[1] The term "adjustments" refers to those provisions of the bilateral cotton textile agreement of June 29, 1971, between the Governments of the United States and Mexico which provide in part that within the aggregate and applicable group limits, limits on certain categories may be exceeded by not more than five (5) percent; for the limited carryover of shortfalls in certain categories to the next agreement year; and for administrative arrangements.

Category	12-month level of restraint [1]
31	2,946,629 no.
49	22,321 dozen.
62	146,832 pounds.
64 (excluding knit fabrics). [2]	478,261 pounds (of which not more than 391,304 pounds shall be in zipper tapes T.S.U.S.A. Nos. 347.3340).

[1] All of Category 64, except T.S.U.S.A. Nos. 345.1020, 345.1040, 346.4560, 353.5014, and 359.1040.

The actions taken with respect to the Government of Mexico and with respect to imports of cotton textiles and cotton textile products from Mexico have been determined by the President's Cabinet Textile Advisory Committee to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, being necessary to the implementation of such actions, fall within the foreign affairs exception to the notice provisions of 5 U.S.C. 553. This letter will be published in the FEDERAL REGISTER.

Sincerely yours,

STANLEY NEHMER,
Chairman, Interagency Textile Administrative Committee, and Deputy Assistant Secretary for Resources.

[FR Doc.72-3735 Filed 3-10-72;8:47 am]

OFFICE OF ECONOMIC OPPORTUNITY

[OEO Contract B00-5104]

NEIGHBORHOOD HEALTH CENTER PROGRAM AT SELECTED CENTERS

Notice of Reported Findings

It is announced that as a result of OEO Contract No. B00-5104, Geomet, Inc., Rockville, Md., has furnished to the Agency a report entitled, "Study to Evaluate the OEO Neighborhood Health Center Program at Selected Centers."

The study finds that while there is considerable variation from center to center, the Program is achieving its major objectives of providing comprehensive, family-oriented ambulatory health care in a dignified way to the poor. Across all 21 Centers in the study, an average of about two-thirds of all eligible individuals have used the Neighborhood Health Centers. About three-quarters of all Center users are receiving preventive as well as crisis care. In general, the higher performing Centers in terms of patient satisfaction and patterns of utilization, are those Centers which: (1) Exhibit greater community involvement; (2) put greater emphasis on outreach activities; (3) serve smaller target population; and (4) spend more dollars per person served than do the lower performing Centers.

A copy of this report has been filed with the National Technical Information Service, U.S. Department of Commerce, Springfield, Va. 22151.

WESLEY L. HJORNEVIK,
Deputy Director.

[FR Doc.72-3711 Filed 3-10-72;8:45 am]

SECURITIES AND EXCHANGE COMMISSION

[70-5155]

GEORGIA POWER CO.

Notice of Proposed Issue of First Mortgage Bonds for Sinking Fund Purposes

MARCH 7, 1972.

Notice is hereby given that Georgia Power Co., 270 Peachtree Street NW., Atlanta, GA 30303 (Georgia), a public utility subsidiary company of The Southern Co., a registered holding company, has filed a declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 (Act), designating sections 6(a) and 7 thereof as applicable to the proposed transaction. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transaction.

Georgia proposes, on or prior to June 1, 1972, to issue $9,754,000 principal amount of its First Mortgage Bonds, 2⅞ percent Series due 1980, under the provisions of its Indenture dated as of March 1, 1941, between Georgia and Chemical Bank, as Trustee, as amended and supplemented, and to surrender such bonds to the Trustee in accordance with the sinking fund provisions. The sinking fund bonds are to be of the same series and identical in all respects to the bonds which were the subject of the Commission's order dated March 15, 1971 (Holding Company Act Release No. 17047) and are to be issued on the basis of unfunded net property additions, thus making available for construction an other purposes cash which would otherwise be required to satisfy the sinking fund requirement or to purchase bonds for such purpose.

The fees and expenses to be paid by Georgia in connection with the issuance of the bonds are estimated at $1,150, including $650 for charges of the Trustee and counsel fee of $250. It is stated that the issuance of the sinking fund bonds will be expressly authorized by the Georgia Public Service Commission and that no other State commission, and no Federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Notice is further given that any interested person may, not later than March 31, 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.72-3731 Filed 3-10-72;8:47 am]

[812-3144]

SHAMROCK FUND

Notice of Application and Order Granting Temporary Relief

MARCH 7, 1972.

Notice is hereby given that Shamrock Fund, 1800 East Bridgegate, Westlake Village, CA 91361 (Applicant), an open-end, diversified investment company registered under the Investment Company Act of 1940 (Act), has filed an application for an order pursuant to section 22(e)(3) of the Act permitting (a) suspension of the right of redemption of its outstanding redeemable securities, and (b) suspension of payment for shares which have been submitted for redemption for which payment has not been made as of the date of the requested order, until either:

(1) 10 days after Applicant gives the Commission notice of intention to resume redemptions and payments therefor, or

(2) 30 days from the date of the order or until such later time as the Commission shall by order determine upon an application filed in good faith by the Applicant demonstrating the necessity for the continued suspensions.

In support of its application, Applicant states that the independent directors have requested on numerous occasions information concerning the Applicant's portfolio securities, which include a substantial amount of restricted securities, and they have systematically been denied this information by Applicant's employees, officers and inside directors. Accordingly, Applicant contends that there is not sufficient information available to it to properly value the assets, thus creating a situation contemplated by subparagraphs (2) and (3) of section 22(e) of the Act.

Section 22(e)(3) provides that the Commission may by order permit, for the protection of the security holders of a registered investment company, the suspension of the right of redemption or

postponement of the date of payment or satisfaction upon redemption.

The Commission has considered the matter and hereby finds, on the basis of information stated in the application, that an immediate emergency exists as a result of which it is not reasonably practicable for Applicant to determine the value of its net assets. Furthermore, the Commission finds that it is necessary for the protection of security holders of Applicant that there be issued together with the notice of the application a temporary order permitting the suspension of the right of redemption and postponement of payment until further order of the Commission.

Accordingly, it is ordered, Pursuant to section 22(e)(3) of the Act, that Applicant be and is hereby permitted (1) to suspend the right of redemption of its outstanding redeemable securities, effective at the opening of business on this date and (2) to suspend payment for shares which have been submitted for redemption on or after February 29, 1972, for which payment has not been made prior to this date, both suspensions to remain in effect until 10 days after Applicant gives the Commission notice of its intention to resume redemptions and payments therefor; provided, however, that in no event shall the suspensions remain in effect longer than 30 days from the date of this order or until such later time as the Commission shall by order determine upon application filed in good faith by the Applicant demonstrating the necessity for the continued suspensions.

Notice is further given that any interested person may, not later than March 27, 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 reasons for such request and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission 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 an attorney at law by certificate) shall be filed contemporaneously with the request. At any time after said date, as provided by Rule 0-5 of the rules and regulations promulgated under the Act, a further order may be issued by the Commission upon the basis of the information stated in said application, unless an order for hearing upon said application shall be issued upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

By the Commission.

[SEAL] RONALD F. HUNT, *Secretary.*

[FR Doc.72-3732 Filed 3-10-72;8:47 am]

SMALL BUSINESS ADMINISTRATION

[Delegation of Authority No. 4.4-1 (Region I) for Disaster No. 881]

MANAGER, BOSTON, MASS., DISASTER BRANCH OFFICE

Delegation of Authority

I. Pursuant to the authority delegated to the regional director by Delegation of Authority No. 4.4 (Revision 1) (36 F.R. 7291), the following authority is hereby redelegated to the position as indicated herein:

A. *Manager, Boston, Mass., Disaster Branch Office.* 1. To decline direct disaster and immediate participation disaster loans in any amount and to approve such loans up to the total SBA funds of (a) $50,000 per household for repairs or replacement of the home and/or not to exceed an additional $10,000 allowable for household goods and personal items, but in no event may the money loaned exceed $55,000 for a single disaster on home loans, except for funds to refinance prior liens or mortgages, which may be approved in addition to the foregoing limits for amounts up to $50,000; and (b) $350,000 on disaster business loans except to the extent of refinancing of a previous SBA disaster loan.

2. To approve disaster guaranteed loans up to an SBA guarantee of $350,000, and to decline such loans in any amount.

3. To execute loan authorizations for Central, regional, and district office approved loans and disaster loans approved under delegated authority, said execution to read as follows:

(*Name*), *Administrator,*
By ----------
Manager, Disaster Branch Office

4. To cancel, reinstate, modify, and amend authorizations for disaster loans approved under delegated authority.

5. To disburse unsecured disaster loans.

6. To extend the disbursement period on disaster loan authorizations or undisbursed portions of disaster loans.

II. The authority delegated herein may not be redelegated.

III. All authority delegated herein to a specific position may be exercised by an SBA employee designated as acting in that position.

Effective date: February 24, 1972.

DAVID P. HEILNER,
Regional Director,
Region I, Boston, Mass.

[FR Doc.72-3730 Filed 3-10-72;8:47 am]

INTERSTATE COMMERCE COMMISSION

ASSIGNMENT OF HEARINGS

MARCH 8, 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 133789, Big Sky Farmers and Ranchers Marketing Cooperative of Montana, assigned for hearing July 17, 1972, at Los Angeles, Calif., in a hearing room to be later designated.

MC 107295 Sub 300, Pre-Fab Transit Co., now assigned March 20, 1972, at Washington, D.C., canceled transferred to modified procedure.

MC 121060 Sub 8, Arrow Truck Lines, now assigned March 13, 1972, at Birmingham, Ala., is postponed to April 17, 1972, at The Top of 21 Motor Inn (formerly Sheraton Motor Inn) 2040 Highland Avenue, Birmingham, AL.

MC-C-7182, Illinois-California Express, Inc.—Investigation of certificates, now assigned April 10, 1972, at Albuquerque, N. Mex., canceled and reassigned to April 10, 1972, in the Blue Room of the Downtowner Motor Inn, 325 North Kansas Street, El Paso, TX.

MC 5632 Sub 12, Arrow Trucking Co., assigned for hearing March 13, 1972, in Room 8212 Federal Building, 515 Rusk Street, Houston, TX.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.72-3747 Filed 3-10-72;8:48 am]

FOURTH SECTION APPLICATIONS FOR RELIEF

MARCH 8, 1972.

Protests to the granting of an application must be prepared in accordance with § 1100.40 of the general rules of practice (49 CFR 1100.40) and filed within 15 days from the date of publication of this notice in the FEDERAL REGISTER.

LONG-AND-SHORT HAUL

FSA No. 42367—*Brewers' dried spent grains from Memphis, Tenn.* Filed by Southwestern Freight Bureau, agent (No. B-302), for interested rail carriers. Rates on brewers' dried spent grains, in carloads, as described in the application, from Memphis, Tenn., to points in southwestern territory.

Grounds for relief—Market competition, motor competition, and rate relationship.

Tariff—Supplement 148 to Southwestern Freight Bureau, agent, tariff ICC 4819. Rates are published to become effective on April 5, 1972.

FSA No. 42368—*Brick and related articles from Waukegan, Ill.* Filed by Southwestern Freight Bureau, agent (No. B-301), for interested rail carriers. Rates on brick and related articles, in carloads, as described in the application, from Waukegan, Ill., to points in southwestern territory.

Grounds for relief—Market competition.

Tariff—Supplement 23 to Southwestern Freight Bureau, agent, tariff ICC 4944. Rates are published to become effective on April 4, 1972.

FSA No. 42369—*Liquid caustic soda and chlorine to Covington and Franklin, Va.* Filed by M. B. Hart, Jr., agent (No. A6300), for interested rail carriers. Rates on sodium (soda), caustic (sodium hydroxide), and chlorine, in tank carloads, as described in the application, from Charleston, Tenn., and Nixon, Ga., to Covington and Franklin, Va.

Grounds for relief—Market competition and rate relationship.

Tariffs—Supplements 79 and 341 to Southern Freight Association, agent, tariffs ICC S-938 and S-484, respectively. Rates are published to become effective on April 13, 1972.

FSA No. 42370—*Chlorine from Evans City, Ala.* Filed by M. B. Hart, Jr., agent (No. A6301), for interested rail carriers. Rates on chlorine, in tank carloads, as described in the application, from Evans City, Ala., to Naheola, Ala.

Grounds for relief—Rate relationship.

Tariff—Supplement 80 to Southern Freight Association, agent, tariff ICC S-938. Rates are published to become effective on April 20, 1972.

By the Commission.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc. 72-3749 Filed 3-10-72;8:48 am]

[Notice 26]

MOTOR CARRIER TRANSFER PROCEEDINGS

MARCH 8, 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-73059. By order of March 3, 1972, the Motor Carrier Board approved the transfer to Ray E. Cagle, doing business as Cagle Bros., Phoenix, Ariz., of the operating rights in certificates Nos. MC-119295 (Sub-No. 2) and MC-119295 (Sub-No. 5) issued August 16, 1971 and January 9, 1969, respectively, to Ray E. Cagle and Forrest L. Cagle, a partnership, doing business as Cagle Bros. Trucking Service, Phoenix, Ariz., authorizing the transportation of lumber from points in Washington and Oregon to points in Arizona and between points in Arizona, on the one hand, and, on the other, points in California, and chemical fire retardants from Phoenix, Ariz., to points in California, Colorado, Idaho, Montana, Nevada, Oregon, Utah, Washington, and Wyoming. Pete H. Dawson, 4453 East Piccadilly Road, Phoenix, AZ 85018, attorney for applicants.

No. MC-FC-73323. By order of March 6, 1972, the Motor Carrier Board approved the transfer to Dale Ross, Concordia, Kans. 66901, of the operating rights in certificate No. MC-77542 issued November 13, 1970, to Norman Poppe and Willis R. Poppe, doing business as N & W Farms, Chester, Nebr., authorizing the transportation of livestock, from points in Clay, Cloud, Dickinson, Ellsworth, Jewell, Lincoln, Mitchell, Osborne, Ottawa, Republic, Saline, Smith, and Washington Counties, Kans., to Chester, Fairbury, Grand Island, and Omaha, Nebr., and Carroll, and Marshalltown, Iowa; and between Mahaska, Kans., and points within 30 miles of Mahaska, and Kansas City, Kans., Kansas City and St. Joseph, Mo., and points in Nebraska; agricultural commodities, feed, building materials, hardware, and agricultural implements and parts, from Omaha, Nebr., Kansas City, Kans., and St. Joseph, and Kansas City, Mo., to Mahaska, Kans., and points within 30 miles of Mahaska; livestock, agricultural commodities, wood, agricultural machinery and parts, building materials, and household goods, between Mahaska, Kans., and points in Kansas within 30 miles of Mahaska, and points in Nebraska within 30 miles of Mahaska; and junk, agricultural machinery and parts, agricultural implements and parts, grain bins and parts, windmills, pumps, and tanks, between Mahaska, Kans., and Lincoln and Beatrice, Nebr. Clyde N. Christey, 641 Harrison, Topeka, KS 66603 attorney for applicants.

No. MC-FC-73418. By order entered March 6, 1972, the Motor Carrier Board approved the transfer to Leonard Bros. Trucking & Rigging Co., Inc., Orlando, Fla., of those portions of the operating rights as set forth in certificates Nos. MC-19227 (Sub-No. 32), MC-19227 (Sub-No. 38), and MC-19227 (Sub-No. 76), issued June 14, 1949, April 22, 1955, and September 8, 1967, respectively, in the name of Leonard Bros. Trucking Co., Inc., Miami, Fla., authorizing the transportation of: Airplanes and airplane parts and airplane supplies and equipment; commodities which because of size or weight require the use of special equipment; structural steel, contractor's equipment and machinery, concrete and metal culverts, tanks, farm equipment and machinery, piling and poles, and road building equipment; and self-propelled articles, each weighing 15,000 pounds or more, and related machinery, tools, parts, and supplies moving in connection therewith, between points in Florida. William O. Turney, 2001 Massachusetts Avenue NW., Washington, DC 20036, attorney for applicants.

No. MC-FC-73435. By order of March 6, 1972, the Motor Carrier Board approved the transfer to Ronald E. Watson, Ross, Ohio, of the operating rights in permits Nos. 17605 and MC-17605 Sub-No. 1 issued August 17, 1943, January 12, 1939, respectively to Edgar M. Druck, Fairfield, Ohio, authorizing the transportation of various commodities between Hamilton, Ohio, and points in Ohio, Illinois, Indiana, and specified points and areas in Michigan, Pennsylvania, and New York, Norbert B. Flick, Executive Building, Cincinnati, Ohio 45202, representative of applicants.

No. MC-FC-73482. By order of March 6, 1972, the Motor Carrier Board approved the transfer to Capitol Moving & Storage Co., Inc., Annapolis, Md., of certificate No. MC-120397 (Sub-No. 2), issued September 10, 1971, to Carolina Dispatching Service, Inc., Charleston, S.C., authorizing the transportation of: Household goods, between Washington, D.C., on the one hand, and, on the other, points in New York, New Jersey, Pennsylvania, Delaware, West Virginia, Maryland, and Virginia; and between points in the New York, N.Y., commercial zone as defined by the Commission in 1 M.C.C. 665, on the one hand, and, on the other, points in New York, Connecticut, Maryland, Massachusetts, New Jersey, Pennsylvania, and Rhode Island. Paul F. Sullivan, 711 Washington Building, Washington, D.C. 20005, attorney for applicants.

No. MC-FC-73500. By order of March 6, 1972, the Motor Carrier Board approved the transfer to Jerry L. Harris, Taneytown, Md., of the operating rights in certificates Nos. MC-125152 and MC-125152 (Sub-No. 2) issued September 3, 1963, and October 7, 1966, respectively, to Charles William Koontz, Union Bridge, Md., authorizing the transportation of various commodities from and to specified points in Maryland, Pennsylvania, and Ohio. J. Robert Johnson, 16 Court Street, Westminster, MD 21157, attorney for applicants.

No. MC-FC-73507. By order of March 6, 1972, the Motor Carrier Board approved the transfer to Thomas G. Bailey, doing business as Triangle Transfer Co., Sanger, Calif., of the operating rights set forth in Certificate of Registration No. MC-58832 (Sub-No. 1), issued October 30, 1963, to Onan H. Marbut, doing business as Triangle Transfer Co., Sanger, Calif., evidencing a right to engage in operations in interstate commerce corresponding in scope to certificate of public convenience and necessity granted in Decision No. 7075, dated February 5, 1920, and Decision No. 22834, dated September 3, 1930, and transferred in Decision No. 38416, dated November 20, 1945, by the Railroad Commission of the State of California. William H. Kessler, 638 Divisadero Street, Fresno, CA 93721, attorney for applicants.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.72-3746 Filed 3-10-72;8:48 am]

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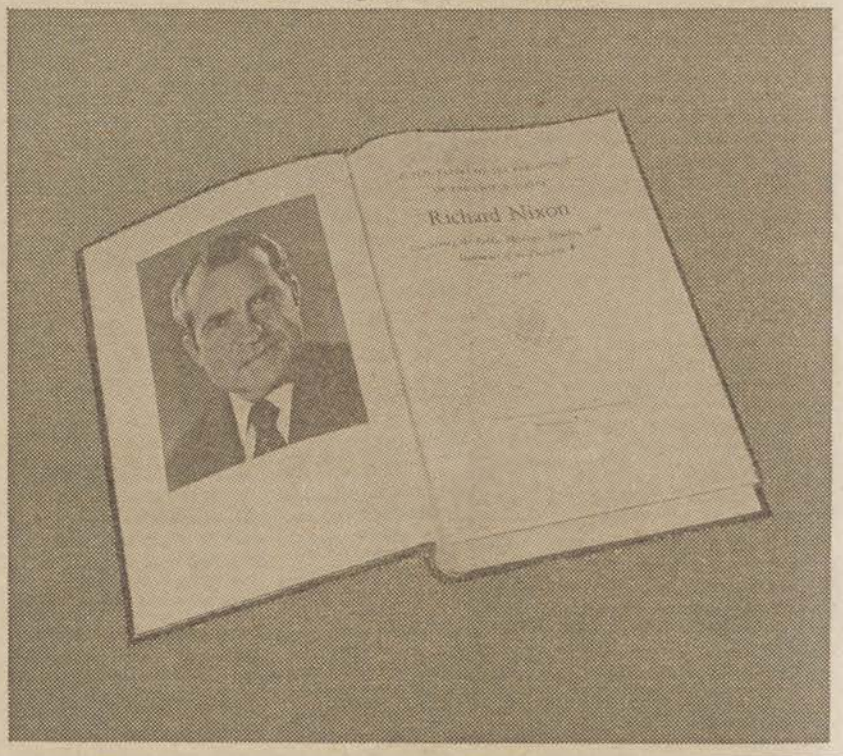

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