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(Part II begins on page 7671)

HIGHLIGHTS OF THIS ISSUE

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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 7—AGRICULTURE

Chapter VIII—Agricultural Stabilization and Conservation Service (Sugar), Department of Agriculture

SUBCHAPTER G—DETERMINATION OF PROPORTIONATE SHARES

[Amdt. 1]

PART 855—MAINLAND CANE SUGAR AREA

Proportionate Shares for Farms; 1972 Crop

Pursuant to the provisions of the Sugar Act of 1948, as amended, Part 855 of Chapter VIII, Title 7 of the Code of Federal Regulations, published October 28, 1971 (36 F.R. 20666) is amended by revising § 855.79 and paragraph (a) of § 855.84 to read as follows:

§ 855.79 State acreage allocations.

The acreage allocation shall be 252,320 acres for Florida and 394,712 acres for Louisiana, which includes the acreage made available under § 855.86 for new producer farms, § 855.87 for fulfilling appeals and correcting errors, and for Louisiana the acreage made available under § 855.84 to compensate for unused proportionate share acreage.

§ 855.84 Acreage reserve for farms in Louisiana.

(a) *Acreage available.* To offset proportionate share acreage which will be unused on farms in Louisiana, there are available 28,796 acres for increasing shares of old-producer farms established pursuant to §§ 855.81 and 855.83.

* * * * *

(Secs. 301, 302, 403, 61 Stat. 929, 930 as amended, 932; 7 U.S.C. 1131, 1132, 1153)

STATEMENT OF BASES AND CONSIDERATIONS

The determination of proportionate shares for the 1972 crop, issued on October 28, 1971, established State acreage allocations of 240,306 acres in Florida and 375,916 acres in Louisiana.

That action, although taken about 5 weeks after Hurricane "Edith" struck the Louisiana sugarcane area anticipated larger production that was subsequently attained. It was based on estimated production from the 1971 crop of 1,265,000 tons and estimated marketings in 1972 of 1,556,000 tons. Final production data for the 1971 crop indicates total sugar production of about 1,200,000 tons of sugar, raw value, or about 65,000 tons less than originally estimated. Also, marketings for the area in 1972 may be about 122,000 tons higher than originally estimated.

The 5 percent increase in acreage established by this amendment will provide each State the opportunity to add some sugar to the supply availabilities in calendar 1972. It will also give producers having excess acreage the opportunity of harvesting such acreage instead of having to plow it out.

The acreage increase for Louisiana is assigned to the acreage reserve. This increases the reserve from 10,000 acres to 28,796 acres. The increase is handled in this manner since there is no reallotment procedure for unused acreage in Louisiana.

If acreage is restricted for the 1973 crop, consideration will be given to establishing 1973-crop farm bases for old-producer farms at the level of the 1972 crop original share as adjusted by this action if the operator utilized at least 85 percent (instead of the customary 90 percent) of such share or a lesser percentage because of reasons beyond his control. This would protect the interests of those growers who may not have extra sugarcane for harvest from the 1972 crop.

The production of sugar resulting from this action will not make available a quantity of sugar greater than that needed to meet quota and inventory requirements.

Accordingly, I hereby find and conclude that the foregoing regulation will effectuate the applicable provisions of the Sugar Act of 1948, as amended.

Effective date: Date of publication (4–18–72).

Signed at Washington, D.C., on April 12, 1972.

KENNETH E. FRICK,
Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc.72–5821 Filed 4–17–72;8:47 am]

SUBCHAPTER H—DETERMINATION OF WAGE RATES

PART 862—WAGE RATES; SUGAR BEETS

Pursuant to the provisions of section 301(c)(1) of the Sugar Act of 1948, as amended (herein referred to as "act"), after investigation and consideration of the evidence obtained at the public hearings held during December 1971, the following determination is hereby issued.

The regulations previously appearing in these sections under "Determination of Wage Rates; Sugar Beets" remain in full force and effect as to the crops to which they were applicable.

Sec.

AUTHORITY: The provisions of this Part 862 issued under secs. 301, 403, 61 Stat. 929, as amended, 932; 7 U.S.C. 1131, 1153.

§ 862.9 General requirements.

A producer of sugar beets shall be deemed to have complied with the wage provisions of the act if all persons employed on the farm in the production, cultivation, or harvesting of sugar beets, as provided in § 862.12, shall have been paid in accordance with the following:

§ 862.10 Wage rates.

All such persons shall have been paid in full for all such work and shall have been paid wages therefor at rates required by existing legal obligations, regardless of whether those obligations resulted from an agreement (such as a labor union agreement) or were created by State or Federal legislative action, or at rates as agreed upon between the producer and the worker, but not less than the following, which shall become effective on April 24, 1972, and shall remain in effect until amended, superseded, or terminated:

(a) When employed on a time basis: For the hand labor operations of thinning, hoeing, hoe-trimming, blocking and thinning, weeding, pulling, topping, loading, or gleaning: $2 per hour: *Provided*, That for workers 14 or 15 years of age the hourly rate specified herein may be reduced by not more than 15 percent.

(b) When employed on a piecework basis for the hand labor operations in the following table:

Hand labor operations:	*Rate per acre*
A. Thinning: Removing excess beets with a hoe only	$14.50
B. Hoeing: Removing weeds and excess beets with a hoe only	19.00
C. Hoe-Trimming: Removing weeds with a hoe and by hand and removing excess beets with a hoe only	22.50
D. Weeding: Removing weeds with a hoe and by hand following either A, B, or C above, E below, or following the operation specified in paragraph (c) of this section	12.00
and in the State of California only:	
E. Blocking and Thinning: Removing weeds and excess beets with a hoe and by hand	32.00

Wide row planting: The above rates and the rate provided for in paragraph (c) of this section may be reduced by not more than the indicated percentages for the following row spacing: 28 inches or more but less than 31 inches, 20 percent; 31 inches or more but less than 34 inches, 25 percent; 34 inches or more, 30 percent.

Narrow row planting: The above rates and the rate provided for in paragraph (c) of this

section shall be increased by not less than the indicated percentages for the following row spacing: 19 inches or less but not more than 16 inches, 25 percent; 16 inches or less, 35 percent.

(c) In the fields that have been completely machine-thinned and on which chemical herbicides have been applied, removing weeds with a hoe only may be employed as a first operation: *Provided,* That the applicable piecework rate therefor shall be not less than $12 per acre.

(d) When employed on a piecework basis for hand labor operations not specified or defined, or for harvesting: The piecework rate for blocking and thinning in States other than California, weeding not qualified as a first operation under paragraph (c) of this section or not preceded by A, B, C, or E or paragraph (b) of this section, and any other hand labor operation involving the removal of beets or weeds which is not defined above, and for the operations of pulling, topping, loading, or gleaning, shall be as agreed upon between the producer and the worker: *Provided,* That the average hourly rate of earnings of each worker for each operation shall be not less than $2 per hour computed on the basis of the total time such worker is employed on the farm for such operation.

(e) When employed on a time or piecework basis for other operations: For all other operations in the production, cultivation, or harvesting of sugar beets for which no minimum rate is provided for herein, the rate shall be as agreed upon between the producer and the worker.

§ 862.11 Compensable working time.

For work performed under § 862.10, compensable working time includes all time which the worker spends in the performance of his duties except time taken out for meals during the workday. Compensable working time commences at the time the worker is required to start work in the field and ends upon completion of work in the field. However, if the producer requires the operator of mechanical equipment, or any other class of worker to report to a place other than the field, such as an assembly point, tractor shed, etc., located on the farm, the time spent in transit from such place to the field and from the field to such place is compensable working time. Any time spent in performing work directly related to the principal work performed by the worker, such as servicing equipment, is compensable working time. Time of the worker while being transported from a central labor recruiting point or labor camp to the farm is not compensable working time.

§ 862.12 Applicability of wage requirements.

The wage requirements of this part apply to all persons who are employed or who work on the farm in operations directly connected with the production, cultivation, or harvesting of sugar beets on any acreage from which sugar beets are marketed or processed for the production of sugar, or any acreage which qualifies as bona fide abandoned. Such persons include field overseers or supervisors while directing other workers, and those workers employed by a custom operator who performs the above services on the farm. The wage requirements are not applicable to persons who voluntarily perform work without pay on the farm for a religious or charitable institution or organization; inmates of a prison who work on a farm operated by the prison; truckdrivers employed by a contractor engaged by the producer only in hauling sugar beets; members of a cooperative arrangement among producers for the exchange of labor to be performed by themselves or members of their families; persons who have an agreement with the producer to perform all work on a specified acreage in return for a share of the crop proceeds if such share, including the share of any Sugar Act payments, results in earnings at least as much as would otherwise be received in accordance with the requirements of this part for the work performed; custom operators and members of their immediate families; or workers performing services which are indirectly connected with the production, cultivation, or harvesting of sugar beets, including but not limited to mechanics, welders, and other maintenance workers and repairmen.

§ 862.13 Payment of wages.

(a) The producer shall make payment of wages in accordance with the following requirements: (1) Workers shall be paid by check or in currency for all work performed and shall be paid upon completion of work; (2) deductions from payments are permitted and may be made for cash advances made only by producers to workers and, in reasonable amounts agreed upon by the producer and worker, for items furnished by the producer such as meals and transportation, and for mandatory deductions or withholdings required by law; (3) deductions may not be made from wages for payment of debts originally incurred with someone other than the producer, except as required and provided under applicable garnishment statutes or by other legal process; and (4) deductions may not be made for payment to a labor contractor or supervisor for his services, or for any items which the producer agreed to furnish the worker free of charge.

(b) The producer shall furnish the worker at the time of payment of wages or, if payment of wages is made through a labor contractor or crew leader, require the labor contractor or crew leader to furnish the worker at the time of payment of wages a statement showing the producer's and worker's names, the gross earnings, the items and amounts of deductions, and the net earnings of the worker, and the producer or the labor contractor or crew leader shall obtain the worker's signature acknowledging receipt of the amount of wages received which shall in no event be less than that required by this part.

§ 862.14 Evidence of compliance.

Each producer subject to the provisions of this part shall keep and preserve, for a period of 3 years following the date on which his application for a Sugar Act payment is filed, such wage records as will demonstrate that each worker has been paid in full in accordance with the requirements of this part. Wage records should set forth dates work was performed, the class of work performed, units of work (piecework or hours), agreed upon rates per unit of work, total earnings, and any permissible deductions, and the amount paid each worker. The producer shall furnish upon request to the appropriate Agricultural Stabilization and Conservation County Committee such records or other evidence as may satisfy such committee that the requirements of this part have been met.

§ 862.15 Employment of workers through a labor contractor or crew leader.

(a) If a producer employs workers through a labor contractor or crew leader, the producer may make payment of workers' wages through such labor contractor or crew leader: *Provided,* That the producer obtain from such contractor or crew leader and have on file (1) a written record that he is registered or licensed as derived from examination of a valid certificate of registration or a farm labor contractor employee identification card; (2) a copy of his authorization signed by each worker to collect wages due each such worker; (3) a copy of each worker's statement of earnings as required by § 862.13, or a wage record sheet such as the "Wage Record Sheet Sugarbeet Program" shown in Exhibit 9 of Handbook 1–SU, available in county ASCS offices, showing the names of the producer and workers, dates work was performed, description of work performed, units of work, agreed upon rates per unit, and the amounts of wages due each such worker; and (4) the signature of each worker acknowledging receipt of wages received which shall in no event be less than those required by this part. The producer is responsible for paying to the labor contractor or crew leader the fee for his services, and the producer shall have on file a statement signed by the labor contractor or crew leader showing the amount of the fee being paid by the producer to the labor contractor or crew leader for his services, and showing that such fee is over and above the wages agreed upon by the contractor and the producer which shall in no event be less than those provided by this part.

(b) Responsibility for insuring that workers actually receive the minimum wage or the agreed upon wage, whichever is higher, less only deductions authorized by this part, rests with the producer. Whenever it appears that a worker has received less than the minimum or agreed upon wage, whichever is higher, less deductions authorized by this part, the producer shall not have met the requirements of this part for eligibility for payment under the act until it is determined that all workers on the farm have been paid in full: *Provided, however,* That a producer who having acted in

good faith to fulfill his obligation to insure that the minimum or agreed upon wage is actually received by the workers, has obtained and has on file documents which meet the requirements set forth in paragraph (a) of this section and which show payment of wages in accordance with this part, shall have met the requirements of this part, except that in cases where the worker files a claim in the county ASCS office that he has not been paid wages in accordance with this part and it is found by the county committee that the worker's signature has been forged or he has been forced to sign under duress or by fraud, the producer shall not have met the requirements of this part for eligibility for payment under the act until the county committee determines that all workers on the farm have been paid in full.

§ 862.16 Subterfuge.

The producer shall not reduce the wage rates to workers below those determined herein, through any subterfuge or device whatsoever.

§ 862.17 Claim for unpaid wages.

Any person who believes he has not been paid in accordance with this part may file a wage claim with the Agricultural Stabilization and Conservation Service County Office against the producer on whose farm the work was performed. Detailed instructions and wage claim forms are available at the county ASCS office. Such claim must be filed within 2 years from the date the work with respect to which the claim is made was performed. Upon receipt of a wage claim the county ASCS office shall thereupon notify the producer against whom the claim is made concerning the representation made by the worker. The county ASC committee shall arrange for such investigation as it deems necessary and the producer and worker shall be notified in writing of its recommendations for settlement of the claim. If either party is not satisfied with the recommended settlement, an appeal may be made to the State Agricultural Stabilization and Conservation Service Office. The address of the State ASCS Office will be furnished by the local county ASCS office. Upon receipt of the appeal the State ASC committee shall likewise consider the facts and notify the producer and worker in writing of its recommendations for settlement of the claim. If the recommendation of the State ASC committee is not acceptable, either party may file an appeal with the Deputy Administrator, State and County Operations, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture, Washington, D.C. 20250. All such appeals shall be filed within 15 days after receipt of the recommended settlement of the respective committee, otherwise such recommended settlement will be applied in making payments under the act. If a claim is appealed to the Deputy Administrator, State and County Operations, his decision shall be binding on all parties insofar as payments under the act are concerned. Appeals procedures are set forth and explained fully in Part 780 of this title.

§ 862.18 Failure to pay all wages in full.

(a) Notwithstanding the provisions of this part requiring that all persons employed on the farm in the production, cultivation, or harvesting of sugar beets be paid in full for all such work as one of the conditions to be met by a producer for payment under the act, if the producer has failed to meet this condition but has met all other conditions, a portion of such payment representing the remainder after deducting from the payment the amount of accrued unpaid wages, may be disbursed to producer(s) upon a determination by the county committee (1) that the producer had made full disclosure to the county committee or its representatives of any known failure to pay all workers on the farm wages in full as a condition for payment under the Sugar Act; and (2) that either (i) the failure to pay all workers their wages in full was caused by the financial inability of the producer, or (ii) the failure to pay all workers in full was caused by an inadvertent error or was not the fault of the producer or his agent, and the producer has used reasonable diligence to locate and to pay in full the wages due all such workers. If the county committee makes the determination as heretofore provided in this section, such committee shall cause to be deducted from the payment for the farm the full amount of the unpaid wages which shall be paid promptly to each worker involved if he can be located, otherwise the amount due shall be held for his account, and the remainder of the payment for the farm, if any, shall be made to the producer. If the county committee determines that the producer did not pay all workers in full because of an inadvertent error that was not discovered until after he received his Sugar Act payment, the producer shall be placed on the claims control record for the total amount of the unpaid wages.

(b) Except as provided in paragraph (a) of this section, if upon investigation the county committee determines that the producer failed to pay all workers on the farm the required wages, the entire Sugar Act payment with respect to such farm shall be withheld from the producer until such time as evidence is presented to the county committee which will satisfy the county committee that all workers have been paid in full the wages earned by them, or if unpaid workers cannot be located and the county committee determines that the producer used reasonable diligence to locate such workers, the amounts of unpaid wages shall be deducted from the Sugar Act payment computed for the farm and the balance released to the producer after the expiration of 1 year from the date payment would otherwise be made. If payment has been made to the producer prior to the county committee's determination that all workers on the farm have not been paid in full, the producer shall be placed on the claims control record for the total payment until the county committee determines that all workers on the farm have been paid in full, the producer refunds the entire amount of the debt, or a setoff in the amount of the debt is made from a program payment otherwise due the producer, or the county committee after determining that the producer used reasonable diligence to locate such workers has recovered from such producer the amount of unpaid wages computed for the farm.

§ 862.19 Child labor.

Notwithstanding any of the foregoing provisions of this part, the act provides that the employment of workers under 14 years of age, or the employment of workers 14 and 15 years of age for more than 8 hours per day (except a member of the immediate family of a person who was the legal owner of not less than 40 percent of the crop at the time work was performed), will result in a deduction from Sugar Act payments to the producer.

§ 862.20 Checking compliance.

The procedures to be followed by county ASCS offices in checking compliance with the wage requirements of this part are set forth under the applicable sections of Handbook 1–SU issued by the Deputy Administrator, State and County Operations, ASCS. Copies of Handbook 1–SU may be inspected at local county ASCS offices and copies may be obtained from State Agricultural Stabilization and Conservation Service offices. The address of the State ASCS office will be furnished by the local county ASCS office.

STATEMENT OF BASES AND CONSIDERATIONS

General. The foregoing determination provides fair and reasonable wage rates to be paid for work performed by persons employed on the farm in the production, cultivation, or harvesting of sugar beets as one of the conditions with which producers must comply to be eligible for payments under the act.

Requirements of the act and standards employed. Section 301(c)(1) of the act requires that all persons employed on the farm in the production, cultivation, or harvesting of sugar beets with respect to which an application for payment is made, shall have been paid in full for all such work, and shall have been paid wages therefor at rates not less than those that may be determined by the Secretary to be fair and reasonable after investigation and due notice and opportunity for public hearing; and in making such determination the Secretary shall take into consideration the standards therefor formerly established by him under the Agricultural Adjustment Act, as amended (i.e., cost of living, prices of sugar and byproducts, income from sugar beets and cost of production), and the differences in conditions among the various sugar producing areas.

Wage determination. This determination differs from the prior determination in that the minimum wage rate for specified hand labor operations performed on a time basis is increased 15

cents to $2 per hour; and minimum piecework rates are increased $1 per acre for thinning and for weeding, $1.50 per acre for hoeing and for hoe-trimming, and $2.50 per acre for blocking and thinning (applicable only in the State of California).

Public hearings were held in San Francisco, Calif.; Moorhead, Minnesota; Ann Arbor, Mich.; San Benito, Tex.; and Salt Lake City, Utah, during the period December 6 through December 17, 1971. These hearings afforded interested persons the opportunity to present testimony and make recommendations relating to fair and reasonable wage rates for sugar beet workers. Testimony was presented by representatives of both sugar beet producers and workers.

Several producer representatives recommended that the minimum hourly and piecework wage rates established in 1971 remain unchanged for 1972. One representative recommended that rates not be increased unless the price of sugar beets is increased by a comparable percentage, and that the guidelines under phase II of the Economic Stabilization Act weigh heavily in making a determination. One producer representative recommended that wages be increased up to 5.5 percent or about 10 cents per hour. Another stated that growers are rapidly turning to mechanical thinning and chemical weed control; and that any further increase in wages will speed this along, and then migrants will be unemployed in sugar beet work.

A representative of producers in one region recommended the following piecework operations and rates per acre:

A. Thinning—removing excess beets, $13.50.

B. Thinning and weeding—removing excess beets and weeds, $17.50.

C. Weeding—removing weeds (either first operation following complete machine thinning or a subsequent operation following A or B), $11.

D. Late weeding—removing weeds after July 1 and after C above, $5.

The witness stated that it is no longer necessary to specify the method of removing excess beets and weeds (with hoe or by hand) because the use of the long handled hoe has become standard, and the worker stoops to pull an occasional weed or beet because it is faster for him than using his hoe; that the hoe-trimming operation has become obsolete; that it is unfair to sugar beet growers for the wage rates for work in beets to have been set higher than the prevailing rates for other farm work; and that piecework rates are generally more satisfactory for both the worker and the grower because fast workers are not held to the earnings of slow workers, and slow workers are not denied the privilege of working.

Representatives of workers recommended that the minimum hourly wage be increased to rates ranging from $2.25 to $3, with the majority recommending that all workers be guaranteed a minimum hourly wage when working on a piecework basis. One worker representative recommended the following piecework operations and rates per acre:

Thinning	$15.00
Hoeing and hoe-trimming—combined into one operation	23.50
Blocking and thinning—applicable to all States	32.00
Weeding—after effective mechanical thinning and herbicide control	13.00
Weeding—as first operation	15.00

The witness also recommended a guaranteed minimum hourly rate of $2.50; that growers be required not only to pay for all work performed but to provide all the work promised in a written contract; and that arbitrators be appointed to handle wage disputes between growers and workers, with the grower appointing a representative, the worker appointing a representative, and both parties agreeing upon an attorney who would be the chief arbitrator, except that if both parties agreed the three-man panel could be disregarded and only the lawyer act as arbitrator. The witness also recommended that a producer be denied his Sugar Act payment if he knowingly hires illegal aliens, or if he retaliates against workers for filing a wage claim. He further recommended that growers be required to provide written contracts, signed by the grower and the worker or family head, which include the number of acres to be worked, the specific job to be performed, conditions for bonuses, whether the worker will perform the second hoeing or not, the wage rate, and a description of the housing to be provided; that the grower be required to furnish to the worker without cost, housing which complies with regulations being applied under the Wagner-Peyser Act and the Occupational Safety and Health Act of 1970, any violation to result in a $100 deduction from the grower's Sugar Act payment; and that growers who recruit interstate workers be required to pay 10 cents per mile to and from the point of recruitment and the worksite and also provide travel insurance.

Several worker representatives testified that large numbers of illegal aliens were being hired for sugar beet work which prevented legal workers from getting jobs; that workers were not paid the rates they were promised; and that workers are reluctant to take grievances to county ASC committees since they are made up of growers.

One witness testified that families of workers prefer piecework rates so that children can work, and if wage rates were high enough it would not be necessary for children to work. Department representatives pointed out to the witness that the Sugar Act prohibits the employment of children below the age of 14 years and of children 14 or 15 years of age for more than 8 hours a day. The witness said that these regulations apparently are not enforced, because he knew of many instances where children below 14 were still working; however, he did not cite specific examples. It should be noted that the employment of child labor subjects the grower to a reduction in his Sugar Act payment of $10 for each child for each day of employment.

Supplemental briefs filed on behalf of workers concurred in most of the worker recommendations made at the hearing and, in addition, recommended that the Department set minimum wage rates that produce annual earnings above the maximum level at which a family of four is eligible for welfare payments; that are based on wages paid for similar work in nonagricultural industries; that are sufficient to attract workers to all phases of sugar production in all areas of the nation; and that account for increases in the cost of living and productivity. It was also recommended that the Department require as a condition for a Sugar Act payment that all workers benefit from all State and Federal laws which now protect nonagricultural workers.

Consideration has been given to all recommendations and testimony presented at the public hearing; to the returns, costs, and profits of producing sugar beets obtained by field survey for a prior crop and recast in terms of price and production conditions likely to prevail for the 1972 crop; and to other generally related standards normally considered in wage determinations, including the cost of living and the producers' ability to pay wages. During the past year the cost of living has increased over 4 percent. Present prospects indicate favorable sugar beet prices for the 1972 crop and a favorable overall profit position for producers. Analysis of all data and relevant factors indicates that the minimum wage rates established in this determination are fair and reasonable and within producers' ability to pay.

The Economic Stabilization Act Amendments of 1971 provided exceptions for wages of any individual whose earnings are substandard or who is a member of the working poor until such time as the earnings are no longer substandard or he is no longer a member of the working poor. The Cost of Living Council has ruled that wages below that provided in the Fair Labor Standards Act are "substandard." It has also ruled that those earning less than $1.90 per hour are members of the "working poor." The minimum hourly rate established in this determination is approximately 8 percent above the $1.85 rate established in the prior determination which became effective April 12, 1971, and 5.3 percent above the $1.90 level. That portion of the increase above $1.90 is within the Pay Board's general standard for annual wage increases of 5.5 percent. The increases in piecework rates parallel that for the hourly rate.

The recommendations of producers that the wage scale remain unchanged or increased by not more than 5.5 percent, and the recommendations of labor representatives for increases in the hourly rate of from 35 to 62 percent have not been adopted. The increases in piecework rates provided in this determination which average about 8 percent are somewhat less than those recommended by worker representatives and somewhat more than the highest in-

crease suggested by any producer representative.

The recommendations that the "Hoeing" and "Hoe-trimming" operations be combined, and that the method of removing weeds or beets (with a hoe or by hand) not be specified have not been followed. Information available to the Department indicates that each operation specified in the determination is used in one or more sections of the sugar beet area. To abolish an operation or to combine two operations to fit in with the practices in one section could upset the practices in another section. It is believed that no changes should be made in the hand labor operations until all sections of the sugar beet area have an opportunity to thoroughly study the matter and to express their views. Therefore, a proposal for a change in the operations will be issued by the Department for discussion at the next series of wage hearings.

Worker representatives have again recommended that Sugar Act payments be reduced or denied producers who knowingly employ illegal aliens, retaliate against workers for filing wage claims, do not provide written employment contracts, and fail to comply with housing and sanitation regulations; and that appointed arbitrators rather than farmer committees handle wage disputes between growers and workers.

There is a major question initially whether the Secretary has legal authority to promulgate these regulations. It is contended by those urging their adoption that legal authority exists for their promulgation in the provision of the Sugar Act authorizing the Secretary to make payments to producers who pay their workers in full "at rates not less than those that may be determined by the Secretary to be fair and reasonable." Since the enactment of the original Sugar Act in 1937, the Department has consistently interpreted that phrase as being confined to actual wage payments, and consequently not to authorize reducing or denying Sugar Act payments to producers because of their acts in the subject area of fair labor practices (except for employing child labor prohibited by an express statutory provision), labor-management relations, employment of aliens, or unacceptable housing or sanitation conditions.

The Department's interpretation is based upon the legislative history of the Sugar Act provisions requiring payment of fair and reasonable rates, the Congressional Report issued at the time of the original enactment defining these duties, and the debates which occurred in the House of Representatives when the same provision was reenacted in the Sugar Act of 1948. During the congressional hearings held in 1971 on extension and amendment of the Sugar Act, representatives of workers recommended that the Act be amended to include these same provisions which are now urged for adoption as regulations. Both the House and the Senate Committees heard testimony concerning such amendments, but refused to recommend their adoption. An amendment to the Sugar Act constituting these same proposals was then introduced on the Senate floor, but the Senate voted to defeat the amendment.

However, the U.S. District Court of Colorado in Eduardo Angel, et al. v. Clifford Hardin, No. C-2784, December 9, 1971, held that the Department did have authority to issue such regulations, but left for the Department's determination whether such regulations are desirable. While still of the opinion that legal authority to issue such regulations under the Sugar Act is absent, the Department has considered the advisability of issuing such regulations.

In determining the advisability of issuing such regulations it is important to note that each of the proposed regulations falls within a subject area that is regulated by another Act, and by another department or agency. The proposed regulation penalizing an employer who retaliates against workers for filing a complaint concerning wages or other employment conditions relates to an unfair labor practice. The Fair Labor Standards Act, administered by the Secretary of Labor, deals extensively with this subject, but Congress specifically exempted employers of various classes of agricultural workers from its provisions.

A second proposed regulation penalizing an employer who fails to enter into a written contract enters the field of labor-management relations. The National Labor Relations Act, administered by the National Labor Relations Board, deals extensively with what constitutes unfair labor relations by management. But neither this nor any other Act of which we are aware imposes a general requirement that employers must enter into a written contract. It may be noted that the Sugar Act itself authorizes the Secretary to make recommendations with respect to the terms and conditions of contracts, but it does not require anyone to accept the Secretary's recommendations nor does it require that they enter into a written contract.

A third proposed regulation penalizing an employer who knowingly hires illegal aliens appears to conflict with the terms of the Immigration and Nationality Act, administered by the Immigration Service under the Attorney General. That Act makes unlawful the "harboring" of certain aliens, but as enacted by Congress, the Act declares that employment does not constitute harboring. Several bills are now before Congress to prohibit employment of illegal aliens, but none have been enacted as of this date.

A fourth proposed regulation would penalize employers who do not comply with the housing and sanitation regulations issued under the Wagner-Peyser Act. Actually, much more comprehensive legislation covering housing and sanitation conditions of employment was enacted as the Occupational Safety and Health Act, administered by the Secretary of Labor. He has issued a proposed rule which would adopt in that Act the regulations issued previously under the Wagner-Peyser Act, as well as other new regulations which cover housing and sanitation conditions of agricultural workers.

In light of the comprehensive treatment by Congress of the general subject areas in which the proposed regulations would fall, this Department deems it inadvisable for it to promulgate regulations which would prohibit and penalize producer actions within these subject areas.

First, the Department believes, in order to have uniform laws respecting these subject matters, applicable not merely to one class of agricultural employer, and because the proposed regulations chart a new direction having widespread impact on our society, that such proposals should be considered by and acted upon only by Congress, and not this Department. Second, the proposed regulations, if not inconsistent with the present will of Congress, would at least be inconsistent with the regulations promulgated by those departments and agencies which Congress has delegated specific authority to promulgate regulations in these subject areas. To this might be added a doubt whether this Department is as well qualified as other departments or agencies, with their many experts in such fields as labor-management relations and unfair labor practices, to draft such regulations.

Nor is it deemed advisable for this Department to attempt enforcement of the statutes entrusted to, or the regulations promulgated by other departments or agencies. This would require investigations, hearings, findings, and conclusions by this Department, which might well lead to conflicting, uncoordinated, confusing enforcement, to the detriment of those persons who seek and will be benefited by enforcement. To this might be added the inability of this Department, as a practical matter, because of limitations in personnel and money, to enforce immigration laws, housing and sanitation standards, fair labor practices, and employment conditions.

Finally, it is not deemed advisable to penalize producers by reducing or denying Sugar Act payments for violating these particular proposed regulations. It may be noted that each of the other Acts mentioned above provides its own schedule of penalties for violations. Some of these penalties are severe, but Congress did not see fit to add in the penalty provisions of those other Acts a possible loss of Sugar Act payments. The Department believes it unwise, and possibly unfair, to introduce its own penalty, in addition to, or in substitution of those already fixed by Congress. This in no way suggests that the Department does not favor the enforcement of those other statutes and regulations by other and more proper means.

In conclusion, the Department rejects adoption of these proposed regulations not only because it believes they are not authorized by the Sugar Act, but even if they were authorized, they are deemed to be impractical and undesirable for the reasons stated above.

Worker representatives have objected to the use of county ASC committees in

wage disputes between the producer and the worker, stating that such committees are composed of producers and are, therefore, biased. Analysis of wage claims filed in the past indicates that the claim of the worker has been upheld in the vast majority of cases. Although the committee members are farmers, they are, nevertheless, competing with other producers, and they do not condone unfavorable practices by their competitors. The State and county farmer committee system was established for the purpose of administering, in the field, the provisions of the various farm programs carried out by this Department. The Sugar Act authorizes the Secretary to utilize such committees to administer the provisions of the sugar program. Arbitrators appointed by individuals are not one of the agencies specified in the Act for carrying out its provisions.

The Department has not adopted the recommendation that growers who recruit interstate workers be required to pay travel allowances and provide travel insurance. The wages established in wage determinations are cash wages, and extra items such as travel allowances and insurance are matters for negotiation between the producer and the worker. In many areas workers do receive travel allowances between their home and place of employment.

The recommendation that all workers be guaranteed a minimum hourly wage has also been rejected. The Department believes that because of the makeup of the field labor force and the nature of the operation, piecework rates without a minimum hourly guarantee are necessary. It would be extremely difficult to keep accurate time records for individuals in family groups of workers, where workers are in and out of the field at all times. Fast workers should be given the opportunity to earn up to their capabilities, and slow workers should not be denied the privilege of working which might be the case with guaranteed hourly earnings. This recommendation was also considered and rejected last year by the Congress when the Sugar Act was amended and extended.

On the basis of an examination of all relevant factors, the provisions of this determination are deemed to be fair and reasonable. Accordingly, I hereby find and conclude that the foregoing wage determination will effectuate the wage provisions of the Sugar Act of 1948, as amended.

NOTE: The recordkeeping and reporting requirements of these regulations have been approved by, and subsequent recordkeeping and reporting requirements will be subject to the approval of the Office of Management and Budget in accordance with the Federal Reports Act of 1942.

Effective date. This determination shall become effective on April 24, 1972.

Signed at Washington, D.C., on April 12, 1972.

KENNETH E. FRICK,
Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc.72-5822 Filed 4-17-72;8:47 am]

Chapter IX—Agricultural Marketing Service [1] (Marketing Agreements and Orders; Fruits, Vegetables, Nuts), Department of Agriculture

[Orange Regulation 69, Amdt. 10]

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

Limitation of Shipments

Findings. (1) Pursuant to the marketing agreement, as amended, and Order No. 905, as amended (7 CFR Part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, 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 of the committees established under the aforesaid amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of shipments of Temple and Murcott Honey oranges, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) The recommendation by the Growers Administrative Committee for less restrictive grade and size limitations on fresh shipments of Murcott Honey oranges is consistent with the external appearance and available supply of smaller size fruit in the production area and the current and prospective demand for such fruit by fresh market outlets. The minimum size requirement specified for Temple oranges is consistent with the available supply of and current and prospective demand for such smaller sizes of Temple oranges by fresh market outlets.

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

Order. The provisions of paragraph (a) (6), (7), (8) and paragraph (c) of § 905.536 (Orange Regulation 69; 36 F.R. 20215, 22054, 22666, 23353, 23617, 23575, 25401; 37 F.R. 2660, 5813, 6729) are amended to read as follows:

§ 905.536 Orange Regulation 69.

(a) * * *

(6) Any Temple oranges, grown in the production area, which are of a size smaller than 2 1/16 inches in diameter, except that a tolerance of 10 percent, by count, of Temple oranges smaller than such minimum diameter shall be permitted, which tolerance shall be applied in accordance with the provisions for the application of tolerances specified in said U.S. Standards for Florida Oranges and Tangelos;

(7) Any Murcott Honey oranges, grown in the production area, which do not grade at least Florida No. 2 grade for Murcotts; and

(8) Any Murcott Honey oranges, grown in the production area, which are of a size smaller than 2 1/16 inches in diameter, except that a tolerance of 10 percent, by count, of Murcott Honey oranges smaller than such minimum diameter shall be permitted, which tolerance shall be applied in accordance with the provisions for the application of tolerances specified in said U.S. Standards for Florida Oranges and Tangelos.

* * * * *

(c) Terms used in the amended marketing agreement and order shall, when used herein, have the same meaning as given to the respective terms in said amended marketing agreement and order; Florida No. 1 grade for oranges and Florida No. 2 grade for murcotts shall have the same meanings as provided in section (1) (a) and (b), respectively, of Regulation 105–1.02, as amended, effective January 19, 1972, of the regulations of the Florida Citrus Commission, and all other terms relating to grade and diameter, as used herein, shall have the same meanings as given to the respective terms in the U.S. Standards for Florida Oranges and Tangelos (§§ 51.1140–51.1178 of this title).

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

Dated April 13, 1972, to become effective April 14, 1972.

PAUL A. NICHOLSON,
Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc.72-5861 Filed 4-17-72;8:50 am]

[Grapefruit Regulation 71, Amdt. 3]

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

Limitation of Shipments

Findings. (1) Pursuant to the marketing agreement, as amended and Order No. 905, as amended (7 CFR Part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, 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 of the committees established under the aforesaid amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of shipments of grapefruit, as here-

[1] Formerly Consumer and Marketing Service. Name changed to Agricultural Marketing Service effective April 2, 1972, 37 F.R. 6327.

inafter provided, will tend to effectuate the declared policy of the act.

(2) The recommendation by the Growers Administrative Committee for less restrictive size limitations on fresh shipments of grapefruit is consistent with the available supply of and current and prospective demand for such smaller sizes of grapefruit by fresh market outlets. The recommended size regulation is necessary to provide a supply of grapefruit to consumers and to improve overall returns to producers.

(3) It is hereby further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice, engage in public rulemaking procedure, and postpone the effective date of this amendment until 30 days after publication thereof in the FEDERAL REGISTER (5 U.S.C. 553) in that the time intervening between the date when information upon which this amendment is based became available and the time when this amendment must become effective in order to effectuate the declared policy of the act is insufficient; and this amendment relieves restrictions on the handling of grapefruit grown in Florida.

(a) *Order.* In § 905.535 (Grapefruit Regulation 71, 36 F.R. 20215, 22054, 24111) the provisions of paragraph (a) (5) are amended to read as follows:

§ 905.535 Grapefruit Regulation 71.

(a) * * *

(5) Any seedless grapefruit, grown in the production area, which are smaller than $3\frac{7}{16}$ inches in diameter, except that a tolerance of 10 percent, by count, of seedless grapefruit smaller than such minimum size shall be permitted, which tolerance shall be applied in accordance with the provisions for the application of tolerances, specified in said U.S. Standards for Florida Grapefruit.

* * * * *

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

Dated April 13, 1972, to become effective April 14, 1972.

PAUL A. NICHOLSON,
Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc.72–5860 Filed 4–17–72;8:50 am]

[Lemon Reg. 528, Amdt. 1]

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

Limitation of Handling

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

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

(b) *Order, as amended.* The provision in paragraph (b)(1) of § 910.828 (Lemon Regulations 528, 37 F.R. 7076) during the period April 9, 1972, through April 15, 1972, is hereby amended to read as follows:

§ 910.828 Lemon Regulation 528.

* * * * *

(b) *Order.* (1) * * * 250,000 cartons.

* * * * *

(Secs. 1–19, 48 Stat., 3, as amended; 7 U.S.C. 601–674)

Dated: April 12, 1972.

PAUL A. NICHOLSON,
Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc.72–5819 Filed 4–17–72;8:47 am]

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

[Milk Order 36]

PART 1036—MILK IN THE EASTERN OHIO-WESTERN PENNSYLVANIA MARKETING AREA

Order Suspending Certain Provisions

This suspension order is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and of the order regulating the handling of milk in the Eastern Ohio-Western Pennsylvania marketing area.

It is hereby found and determined that for the months of May 1972 and through October 1972 the following provisions of the order do not tend to effectuate the declared policy of the Act:

1. In § 1036.41(c)(6)(iv), "and bulk cream;"

2. In § 1036.41(c)(6)(vii), "and bulk cream;" and

3. In § 1036.42(b)(1), "and bulk cream."

STATEMENT OF CONSIDERATION

This suspension will change the amount of allowable Class III shrinkage on bulk cream transferred from a pool plant to other plants. It continues the same effect of previous suspension orders effective from May 1971 through April 1972. The present order limits Class III shrinkage, at the transferor plant, on cream derived from a handler's receipts of producer milk and transferred to other plants to 0.5 percent of the cream. Suspension will increase the allowable Class III shrinkage at the transferor plant to 2 percent of the cream.

A cooperative association, which handles at its pool balancing plant a substantial proportion of the market's reserve supplies of milk, has requested continued suspension of the provisions set forth hereinbefore. The cooperative receives producer milk, at farms weights and tests, separates it, and transfers the cream to other plants for churning. As stated in the suspension order effective November 1, 1971, the activities performed by the cooperative usually result in more than one-half percent loss on the cream transfers involved.

A greater loss (or shrinkage) of product occurs in handling cream than in handling fluid milk. However, the present shrinkage provisions do not distinguish between cream and fluid milk on the amount of Class III shrinkage allowed at the plant separating the cream.

It is hereby found and determined that notice of proposed rule making, public proceedings thereon, and 30 days' notice of the effective date hereof are impractical, unnecessary, and contrary to the public interest in that:

(a) This suspension is necessary to reflect current marketing conditions and to maintain orderly marketing conditions in the marketing area in that the present Class III shrinkage allowance does not reflect operating experience in cream handling;

(b) This suspension order does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Producers requested amendment of the order to this effect at a public hearing held on January 25, 1972. A specific proposal to amend the aforesaid provisions was included in the hearing notice (37 F.R. 465) and is currently under consideration. Interim action is necessary during the pendency of amendatory procedures. Therefore, good cause exists for making this order effective on May 1, 1972.

It is therefore ordered, That the aforesaid provisions of the order are hereby suspended for the months of May through October 1972.

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

Effective date: May 1, 1972.

Signed at Washington, D.C., on April 13, 1972.

RICHARD E. LYNG,
Assistant Secretary.

[FR Doc.72–5820 Filed 4–17–72;8:47 am]

Title 8—ALIENS AND NATIONALITY

Chapter I—Immigration and Naturalization Service, Department of Justice

MISCELLANEOUS AMENDMENTS TO CHAPTER

The following amendments to Chapter I of Title 8 of the Code of Federal Regulations are hereby prescribed:

PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

In § 212.6, paragraph (b) is amended by inserting a new sentence between the existing fourth and fifth sentences. As amended, § 212.6(b) reads as follows:

§ 212.6 Nonresident alien border crossing cards.

* * * * *

(b) *Application.* A citizen of Canada or a British subject residing in Canada shall apply on Form I–75 for a nonresident alien border crossing card, supporting his application with evidence of Canadian or British citizenship, residence in Canada, and two photographs, size 1½" x 1½". Form I–75 shall be submitted to an immigration officer at a Canadian border port of entry. A citizen of Mexico shall apply on Form I–190 for a nonresident alien border crossing card, supporting his application with evidence of Mexican citizenship and residence, a valid unexpired passport or a valid Mexican Form 13, and one photograph, size 1½" x 1½". Form I–190 shall be submitted to an immigration officer at a Mexican border port of entry or to an American consular officer in Mexico, other than one assigned to a consulate situated adjacent to the border between Mexico and the United States. If the application is made to an American consular officer, Form FS–257 may be used in lieu of Form I–190. Each applicant under this paragraph, except a child under 14 years of age, shall appear in person before an immigration officer or a consular officer prior to the adjudication of his application and be interrogated concerning his eligibility for a nonresident alien border crossing card. If the applicant is a child under 14 years of age who seeks to commute daily to attend school in the United States, the child must appear with his parent or legal guardian for the required interview. If the application is denied the applicant shall be given a notice of denial with the reasons therefor on Form I–180. There shall be no appeal from such denial but such denial shall be without prejudice to a subsequent application for a visa or for admission to the United States.

* * * * *

PART 214—NONIMMIGRANT CLASSES

Section 214.3 is amended in the following respects: The sixth sentence of paragraph (b) is revised, and the first sentence of paragraph (c) is revised. As amended, § 214.3 (b) and (c) read, in part, as follows:

§ 214.3 Petitions for approval of schools.

* * * * *

(b) *Supporting documents.* A petitioning school or school system owned and operated as a public educational institution or system by the United States or a State or political subdivision thereof shall submit a certification to that effect signed by the appropriate public official who shall certify that he is authorized to do so. A petitioning private or parochial elementary or secondary school system shall submit a certification signed by the appropriate public official who shall certify that he is authorized to do so to the effect that it meets the requirements of the State or local public educational system. Any other petitioning school shall submit a certification by the appropriate licensing, approving, or accrediting official who shall certify that he is authorized to do so to the effect that it is licensed, approved, or accredited. In lieu of such certification a school which is recognized by a State-approving agency as an "educational institution" for study for veterans under the provisions of Public Law 550 (82d Congress) may submit a statement of recognition signed by the appropriate official of the State approving agency who shall certify that he is authorized to do so so. A charter shall not be considered a license, approval, or accreditation. Except in connection with a petition submitted by a school or school system owned and operated as a public educational institution or system by the United States or a State or political subdivision thereof, or by a school listed in the current U.S. Office of Education publications, "Accredited Postsecondary Institutions and Programs" or "Education Directory, Higher Education," or by a secondary school operated by or as part of a school so listed, a school catalog, if one is issued, shall also be submitted with each petition. * * *

(c) *Consultation with U.S. Office of Education.* The U.S. Office of Education has been consulted by the Service and has advised that each of the following is considered an established institution of learning or other recognized place of study, is operating a bona fide school, and has the necessary facilities, personnel, and finances to instruct in recognized courses: (1) A school (or school system) owned or operated as a public educational institution by the United States or a State or political subdivision thereof; (2) a school listed in the current U.S. Office of Education publications, "Accredited Postsecondary Institutions and Programs" or "Education Directory, Higher Education"; or (3) a secondary school operated by or as part of an institution of higher learning listed in the current U.S. Office of Education publications, "Accredited Postsecondary Institutions and Programs" or "Education Directory, Higher Education." Before a decision is made on a petition filed by any other school, the district director shall consult the U.S. Office of Education by transmitting to that Office the petition, supporting documents and any report of interview or other inquiry conducted by the Service, with a request for advice as to whether the petitioner is an established institution of learning or other recognized place of study, is operating a bona fide school, and has the necessary facilities, personnel, and finances to instruct in recognized courses.

* * * * *

PART 238—CONTRACTS WITH TRANSPORTATION LINES

§ 238.3 [Amended]

The listing of transportation lines in paragraph (b) *Signatory lines* of § 238.3 *Aliens in immediate and continuous transit* is amended by adding the following transportation line in alphabetical sequence: "Companhia Nacional de Navegacao, S.A.R.L."

PART 343b—SPECIAL CERTIFICATE OF NATURALIZATION FOR RECOGNITION BY A FOREIGN STATE

In § 343b.4, the second sentence is revised. As amended, § 343b.4 reads as follows:

§ 343b.4 Applicant outside of United States.

If the application is received by a Service officer stationed outside the United States, he shall, when practicable, interrogate the applicant before the application is forwarded to the district director in the United States having jurisdiction over the applicant's place of residence for issuance of the certificate. When such interrogation is not practicable, or is not conducted because the application is submitted directly to the Commissioner or a district director of the Service in the United States, the certificate may nevertheless be issued and the recommendation conditioned upon satisfactory interrogation by a State Department representative. When forwarding the certificate in such a case, the Secretary of State shall be informed that the applicant has not been interviewed, and requested to have his representative abroad interview the applicant regarding identity and possible expatriation. If identity is not established or if expatriation has occurred, the request shall be made that the certificate be returned to the Service.

(Sec. 103, 66 Stat. 173; 8 U.S.C. 1103)

This order shall be effective on the date of its publication in the FEDERAL REGISTER (4–18–72). Compliance with the

provisions of section 553 of Title 5 of the United States Code (80 Stat. 383), as to notice of proposed rule making and delayed effective date, is unnecessary in this instance and would serve no useful purpose because the amendments to §§ 212.6(b), 214.3, and 343b.4 relate to agency procedure and the amendment to § 238.3(b) adds a transportation line to the listing.

Dated: April 12, 1972.

RAYMOND F. FARRELL,
Commissioner of Immigration and Naturalization.

[FR Doc.72-5815 Filed 4-17-72;8:47 am]

Title 12—BANKS AND BANKING

Chapter II—Federal Reserve System

SUBCHAPTER A—BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

SECURITIES CREDIT TRANSACTIONS

Requirements for Continued Inclusion on List of OTC Margin Stocks

In the FEDERAL REGISTER of February 26, 1972 (37 F.R. 4097), the Board of Governors published a notice of proposed rule making to implement the requirements for a stock's continued inclusion on the List of OTC Margin Stocks. The proposal would amend Parts 207, 220, and 221 (the Board's Regulations G, T, and U, respectively).

Following consideration of all comments received, the amendments as so proposed are hereby adopted, subject to the following changes:

1. Paragraph (e) of § 220.2 should read "(e) OTC margin stock: * * *" rather than "(e) * * *".

2. Subparagraph (1) of § 207.5(e); subparagraph (1) of § 220.8(h); and subparagraph (1) of § 221.4(e), are changed to read as set forth below.

Effective date. This amendment is effective May 15, 1972.

By order of the Board of Governors, April 11, 1972.

[SEAL] MICHAEL A. GREENSPAN,
Assistant Secretary.

PART 207—SECURITIES CREDIT BY PERSONS OTHER THAN BANKS; BROKERS; OR DEALERS

1a. Section 207.2(f)(3) of Part 207, Securities Credit by Persons other than Banks, Brokers, or Dealers, is amended as set forth below:

§ 207.2 Definitions.

* * * * *

(f) OTC margin stock:

* * * * *

(3) The Board shall from time to time remove from the list described in subparagraph (2) of this paragraph (f) stocks that cease to:

(i) Exist or of which the issuer ceases to exist, or

(ii) Meet substantially the provisions of subparagraph (1) of this paragraph (f) and § 207.5(e) (the Supplement to Regulation G).

* * * * *

b. Paragraph (e) of § 207.5 is added as set forth below:

§ 207.5 Supplement.

* * * * *

(e) *Requirements for continued inclusion on list of OTC margin stock.* Except as provided in subparagraph (4) of § 207.2(f), such stock shall meet the requirements that:

(1) The stock continues to be subject to registration under section 12(g)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78*l*(g)(1), or if issued by an insurance company such issuer continues to be subject to section 12(g)(2)(G) (15 U.S.C. 78*l*(g)(2)(G) and has at least $1 million of capital and surplus,

(2) Four or more dealers stand willing to, and do in fact, make a market in such stock including making regularly published bona fide bids and offers for such stock for their own accounts, or the stock is registered on a securities exchange that is exempted by the Securities and Exchange Commission from registration as a national securities exchange pursuant to section 5 of the Securities and Exchange Act of 1934 (15 U.S.C. 78e),

(3) There continue to be 1,000 or more holders of record of the stock who are not officers, directors, or beneficial owners of 10 percent or more of the stock,

(4) The issuer continues to be a U.S. Corporation,

(5) Daily quotations for both bid and asked prices for the stock are continuously available to the general public; and shall meet three of the four additional requirements that:

(6) 400,000 or more shares of such stock remain outstanding in addition to shares held beneficially by officers, directors, or beneficial owners of more than 10 percent of the stock,

(7) The shares described in subparagraph (6) of this paragraph continue to have a market value in the aggregate of at least $5 million,

(8) The minimum average bid price of such stock, as determined by the Board, is at least $5 per share, and

(9) The issuer continues to have at least $2.5 million of capital, surplus, and undivided profits.

PART 220—CREDIT BY BROKERS AND DEALERS

2a. Section 220.2(e)(3) of Part 220, Credit by Brokers and Dealers, is amended as set forth below:

§ 220.2 Definitions.

* * * * *

(e) * * *

(3) The Board shall from time to time remove from the list described in subparagraph (2) of this paragraph (e) stocks that cease to:

(i) Exist or of which the issuer ceases to exist, or

(ii) Meet substantially the provisions of subparagraph (1) of this paragraph (e) and of § 220.8(h) (the Supplement to Regulation T).

* * * * *

b. Paragraph (h) of § 220.8 is added as set forth below:

§ 220.8 Supplement.

* * * * *

(h) *Requirements for continued inclusion on list of OTC margin stock.* Except as provided in subparagraph (4) of § 220.2(e), OTC margin stock shall meet the requirements that:

(1) The stock remains subject to registration under section 12(g)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78*l*(g)(1), or if issued by an insurance company such issuer continues to be subject to section 12(g)(2)(G) (15 U.S.C. 78*l*(g)(2)(G) and has at least $1 million of capital and surplus,

(2) Four or more dealers stand willing to, and do in fact, make a market in such stock including making regularly published bona fide bids and offers for such stock for their own accounts, or the stock is registered on a securities exchange that is exempted by the Securities and Exchange Commission from registration as a national securities exchange pursuant to section 5 of the Securities and Exchange Act of 1934 (15 U.S.C. 78e),

(3) There continue to be 1,000 or more holders of record of the stock who are not officers, directors, or beneficial owners of 10 percent or more of the stock,

(4) The issuer continues to be a U.S. Corporation,

(5) Daily quotations for both bid and asked prices for the stock are continuously available to the general public; and shall meet 3 of the 4 additional requirements that:

(6) 400,000 or more shares of such stock remain outstanding in addition to shares held beneficially by officers, directors, or beneficial owners of more than 10 percent of the stock,

(7) The shares described in subparagraph (6) of this paragraph continue to have a market value in the aggregate of at least $5 million,

(8) The minimum average bid price of such stock, as determined by the Board, is at least $5 per share, and

(9) The issuer continues to have at least $2.5 million of capital, surplus, and undivided profits.

PART 221—CREDIT BY BANKS FOR THE PURPOSE OF PURCHASING OR CARRYING MARGIN STOCKS

3a. Section 221.3(d)(3) of Part 221, Credit by Banks for the Purpose of Purchasing or Carrying Margin Stock, is amended as set forth below:

§ 221.3 Miscellaneous provisions.

* * * * *

(d) *OTC margin stock.* * * *

(3) The Board shall from time to time remove from the list described in subparagraph (2) of this paragraph (d) stocks that cease to:

(i) Exist or of which the issuer ceases to exist, or

(ii) Meet substantially the provisions of subparagraph (1) of this paragraph (d) and of § 221.4(e) (the Supplement to Regulation U).

b. Paragraph (e) of § 221.4 is added as set forth below:

§ 221.4 Supplement.

* * * * *

(e) *Requirements for continued inclusion on list of OTC margin stock.* Except as provided in subparagraph (4) of § 221.3(d), OTC margin stock shall meet the requirements that:

(1) The stock remains subject to registration under section 12(g)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78*l*(g)(1), or if issued by an insurance company such issuer continues to be subject to section 12(g)(2)(G) (15 U.S.C. 78*l*(g)(2)(G) and has at least $1 million of capital and surplus,

(2) Four or more dealers stand willing to, and do in fact, make a market in such stock including making regularly published bona fide bids and offers for such stock for their own accounts, or the stock is registered on a securities exchange that is exempted by the Securities and Exchange Commission from registration as a national securities exchange pursuant to section 5 of the Securities and Exchange Act of 1934 (15 U.S.C. 78e),

(3) There continue to be 1,000 or more holders of record of the stock who are not officers, directors, or beneficial owners of 10 percent or more of the stock,

(4) The issuer continues to be a U.S. Corporation,

(5) Daily quotations for both bid and asked prices for the stock are continuously available to the general public; and shall meet three of the four additional requirements that:

(6) 400,000 or more shares of such stock remain outstanding in addition to shares held beneficially by officers, directors, or beneficial owners of more than 10 percent of the stock,

(7) The shares described in subparagraph (6) of this paragraph continue to have a market value in the aggregate of at least $5 million,

(8) The minimum average bid price of such stock, as determined by the Board, is at least $5 per share, and

(9) The issuer continues to have at least $2.5 million of capital, surplus, and undivided profits.

[FR Doc.72-5840 Filed 4-17-72;8:51 am]

Title 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Administration, Department of Transportation

[Airspace Docket No. 71-AL-9]

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

Alteration of Control Zone, Revocation of Control Area Extension, and Designation of Transition Area

On October 28, 1971, a notice of proposed rule making was published in the FEDERAL REGISTER (36 F.R. 20703) stating that the Federal Aviation Administration (FAA) was considering amendments to Part 71 of the Federal Aviation regulations that would alter the Kotzebue, Alaska, control zone, revoke the Kotzebue, Alaska, control area extension, and designate the Kotzebue, Alaska, transition area.

Interested persons were afforded an opportunity to participate in the proposed rule making through the submission of comments. There were no comments received.

Since these actions involve, in part, the designation of navigable airspace outside the United States, the Administrator has consulted with the Secretary of State and the Secretary of Defense in accordance with the provisions of Executive Order No. 10854.

In consideration of the foregoing, Part 71 of the Federal Aviation regulations is amended, effective 0901 G.m.t., May 25, 1972, as hereinafter set forth.

1. In § 71.171 (37 F.R. 2056) the Kotzebue, Alaska, control zone is amended to read as follows:

Within a 5-mile radius of Wien Memorial Airport, Kotzebue, Alaska (lat. 66°53'02" N., long. 162°36'05" W.) within 3 miles each side of the 048° bearing from the Kotzebue RBN extending from the 5-mile radius zone to 7 miles northeast of the RBN; within 3 miles each side of the Kotzebue VORTAC 278° radial extending from the 5-mile radius zone to 10 miles west of the VORTAC; and within 3 miles each side of the Kotzebue VORTAC 090° radial extending from the 5-mile radius zone to 8 miles east of the VORTAC.

2. In § 71.165 (37 F.R. 2055) the Kotzebue, Alaska, control area extension is revoked.

3. In § 71.181 (37 F.R. 2143) the Kotzebue, Alaska, transition area is designated as follows:

That airspace extending upward from 700 feet above the surface within a 19-mile radius of the Kotzebue VORTAC; that airspace extending upward from 1,200 feet above the surface within 5 miles each side of the Kotzebue VORTAC 103° radial extending from the VORTAC to 43 miles east of the VORTAC; that airspace extending upward from 5,500 MSL within 5 miles each side of the Kotzebue VORTAC 103° radial extending from a point 43 miles east of the VORTAC to 59 miles east, and that airspace extending upward from 7,500 MSL within 5 miles each side of the Kotzebue 103° radial at 59 miles east of the VORTAC widening to 8.5 miles each side of the 103° radial at 111 miles east of the Kotzebue VORTAC.

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

Issued in Washington, D.C., on April 12, 1972.

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

[FR Doc.72-5807 Filed 4-17-72;8:46 am]

Title 16—COMMERCIAL PRACTICES

Chapter I—Federal Trade Commission

[Docket No. C-2169]

PART 13—PROHIBITED TRADE PRACTICES

George B. Eipper et al.

Subpart—Advertising falsely or misleadingly: § 13.73 *Formal regulatory and statutory requirements:* 13.73-92 Truth in Lending Act. Subpart—Misrepresenting oneself and goods—Goods: § 13.1623 *Formal regulatory and statutory requirements:* 13.1623-95 Truth in Lending Act. Subpart—Neglecting, unfairly or deceptively, to make material disclosure: § 13.1852 *Formal regulatory and statutory requirements:* 13.1852-75 Truth in Lending Act; § 13.1892 *Sales contract, right-to-cancel provision:* § 13.1905 *Terms and conditions: 13.-1905-60 Truth in Lending Act.*

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended, 82 Stat. 146, 147; 15 U.S.C. 45, 1601-1605) [Cease and desist order, George B. Eipper et al., Seattle, Wash., Docket No. C-2169, March 9, 1972]

In the Matter of George B. Eipper, an Individual Trading as Seattle Siding Co., and John M. Small, an Individual.

Consent order requiring a Seattle, Wash., seller and installer of residential siding to cease violating the Truth in Lending Act by failing to disclose the sum of the cash price and all charges included in the amount financed, using a form waiver of the right of recission, and make all other disclosures required by Regulation Z of said Act.

The order to cease and desist, including further order requiring report of compliance therewith, is as follows:

It is ordered, That respondents George B. Eipper, an individual trading as Seattle Siding Co., or under his own or any other name or names, and John M. Small, an individual, and respondents' agents, representatives, employees, successors and assigns, directly or through any corporate or other device, in connection with any consumer credit sale, as "consumer credit" and "credit sale" are defined in Regulation Z (12 CFR Part 226) of the Truth in Lending Act (Public Law 90-321, 15 U.S.C. 1601 et seq.), do forthwith cease and desist from:

1. Failing to disclose accurately the sum of the cash price, all charges which are included in the amount financed but which are not part of the finance charge, and the finance charge, and to describe that sum as the "deferred payment price," as required by § 226.8(c)(ii) of Regulation Z.

2. Utilizing a printed form waiver of the right of rescission in violation of § 226.9(e)(3) of Regulation Z.

3. Failing, in any consumer credit transaction or advertisement, to make all disclosures, determined in accordance with §§ 226.4 and 226.5 of Regulation Z, in the manner, form, and amount required by §§ 226.6, 226.7, 226.8, 226.9, and 226.10 of Regulation Z.

It is further ordered, That respondents deliver a copy of this order to cease and desist to all present and future personnel of respondents engaged in the consummation of any extension of consumer credit or in any aspect of preparation, creation, or placing of advertising, and that respondents secure a signed statement acknowledging receipt of said order from each such person.

It is further ordered, That the respondents shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist contained herein.

Issued: March 9, 1972.

By the Commission.

[SEAL] CHARLES A. TOBIN, *Secretary.*

[FR Doc.72-5801 Filed 4-17-72;8:45 am]

[Docket No. C-2170]

PART 13—PROHIBITED TRADE PRACTICES

Groff Importers, Inc., and William F. Groff

Subpart—Importing, selling, or transporting flammable wear: § 13.1060 *Importing, selling, or transporting flammable wear.*

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended, 67 Stat. 111, as amended; 15 U.S.C. 45, 1191) [Cease and desist order, Groff Importers, Inc., et al., San Diego, Calif., Docket No. C-2170, March 9, 1972]

In the Matter of Groff Importers, Inc., a Corporation, and William F. Groff, Individually and as an Officer of Said Corporation

Consent order requiring a San Diego, Calif., seller of women's and misses' wearing apparel, including ladies' scarves, to cease violating the Flammable Fabrics Act by importing and selling any fabric which fails to conform to the standards of said Act.

The order to cease and desist, including further order requiring report of compliance therewith, is as follows:

It is ordered, That the respondents, Groff Importers, Inc., a corporation, its successors and assigns, and its officers and William F. Groff, individually and as an officer of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from selling, offering for sale, in commerce, or importing into the United States, or introducing, delivering for introduction, transporting or causing to be transported in commerce, or selling or delivering after sale or shipment in commerce, any product, fabric, or related material; or selling or offering for sale, any product made of fabric or related material which has been shipped or received in commerce as "commerce," "product," 'fabric," and "related material" are defined in the Flammable Fabrics Act, as amended, which product, fabric, or related material fails to conform to an applicable standard or regulation issued, amended or continued in effect, under the provisions of the aforesaid Act.

It is further ordered, That respondents notify all of their customers who have purchased or to whom have been delivered the products which gave rise to the complaint, of the flammable nature of said products, and effect the recall of said products from such customers.

It is further ordered, That the respondents herein shall either process the products which gave rise to the complaint so as to bring them into conformance with the applicable standard of flammability under the Flammable Fabrics Act, as amended, or destroy said products.

It is further ordered, That the respondents herein shall, within ten (10) days after service upon them of this order, file with the Commission a special report in writing setting forth the respondents' intentions as to compliance with this order. This special report shall also advise the Commission fully and specifically concerning (1) the identity of the products which gave rise to the complaint, (2) the number of said products in inventory, (3) any action taken and any further actions proposed to be taken to notify customers of the flammability of said products, and effect the recall of said products from customers, and of the results thereof, (4) any disposition of said products since February 22, 1971, and (5) any action taken or proposed to be taken to bring said products into conformance with the applicable standard of flammability under the Flammable Fabrics Act, as amended, or destroy said products, and the results of such action. Such report shall further inform the Commission as to whether or not respondents have in inventory any product, fabric, or related material having a plain surface and made of paper, silk, rayon, and acetate, nylon and acetate, rayon, cotton or any other material or combinations thereof in a weight of 2 ounces or less per square yard, or any product, fabric, or related material having a raised fiber surface. Respondents shall submit samples of not less than 1 square yard in size of any such product, fabric or related material with this report.

It is further ordered, That respondents notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent, such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of this order.

It is further ordered, That the respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions.

It is further ordered, That the respondents herein shall within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

Issued: March 9, 1972.

By the Commission.

[SEAL] CHARLES A. TOBIN, *Secretary.*

[FR Doc.72-5802 Filed 4-17-72;8:45 am]

[Docket No. C-2171]

PART 13—PROHIBITED TRADE PRACTICES

Joseph H. Lambert et al.

Subpart—Misrepresenting oneself and goods—Goods: § 13.1623 *Formal regulatory and statutory requirements:* 13.1623-95 Truth in Lending Act. Subpart—Neglecting, unfairly or deceptively, to make material disclosure: § 13.1852 *Formal regulatory and statutory requirements:* 13.1852-75 Truth in Lending Act; § 13.1905 *Terms and conditions:* 13.1905-60 Truth in Lending Act.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended, 82 Stat. 146, 147; 15 U.S.C. 45, 1601-1605) [Cease and desist order, Joseph H. Lambert et al., Stockton, Calif., Docket No. C-2171, March 10, 1972]

In the Matter of Joseph H. Lambert, Leo A. Lambert, and Dean E. Lambert, Individually and as Copartners Doing Business as H & L Investment Co.

Consent order requiring a Stockton, Calif., firm making loans for the purchase of used cars to cease violating the Truth in Lending Act by failing to disclose the number of payments scheduled, failing to describe those which are "balloon payments," failing to use the term finance charge where required, and failing to make all other disclosures required by Regulation Z of said Act.

The order to cease and desist, including further order requiring report of compliance therewith, is as follows:

It is ordered, That respondents Joseph H. Lambert, Leo A. Lambert, and Dean E. Lambert, individuals and copartners doing business as H & L Investment Co., or under any other name or names, and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with any consumer credit extension as "consumer credit" is defined in Regulation Z (12 CFR Part 226) of the Truth in Lending Act (Public Law 90-321, 15 U.S.C. 601 et seq.), do forthwith cease and desist from:

1. Failing to disclose the "annual percentage rate" accurately to the nearest quarter of 1 percent, in accordance with § 226.8(b)(2) of Regulation Z.

2. Failing to disclose the number of payments scheduled to repay the indebtedness, and failing to describe payments which are more than twice the amount of an otherwise scheduled equal payment by the term "balloon payment" as required by § 226.8(b)(3) of Regulation Z.

3. Failing to print the term "finance charge", where required by Regulation Z to be used, more conspicuously than other required terminology as required by § 226.6(a) of Regulation Z.

4. Failing to describe the type of security interest in property held, retained or acquired in connection with extensions of credit, as required by § 226.8(b)(5) of Regulation Z.

5. Failing, in any consumer credit transaction or advertisement, to make all disclosures determined in accordance with §§ 226.4 and 226.5 of Regulation Z, in the manner, form, and amount required by §§ 226.6, 226.8, 226.9, and 226.10 of Regulation Z.

It is further ordered, That respondents deliver a copy of this order to cease and desist to all present and future personnel of respondents, and other persons engaged in the consummation of any extension of consumer credit or in any aspect of preparation, creation, or placing of advertising, and that respondents secure a signed statement acknowledging receipt of said order from each such person.

It is further ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with this order.

Issued: March 10, 1972.

By the Commission.

[SEAL] CHARLES A. TOBIN, *Secretary.*

[FR Doc.72-5803 Filed 4-17-72;8:46 am]

[Docket No. C-2172]

PART 13—PROHIBITED TRADE PRACTICES

Charles Edwin Porter et al.

Subpart—Advertising falsely or misleadingly: § 13.71 *Financing:* 13.71-10 Truth in Lending Act; § 13.73 *Formal regulatory and statutory requirements:* 13.73-92 Truth in Lending Act. Subpart—Misrepresenting oneself and goods—Goods: § 13.1623 *Formal regulatory and statutory requirements:* 13.1623-95 Truth in Lending Act. Subpart—Neglecting, unfairly or deceptively, to make material disclosure: § 13.1852 *Formal regulatory and statutory requirements:* 13.1852-75 Truth in Lending Act; § 13.1905 *Terms and conditions:* 13.1905-60 Truth in Lending Act.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended, 82 Stat. 146, 147; 15 U.S.C. 45, 1601-1605) [Cease and desist order, Charles Edwin Porter et al., Tampa, Fla., Docket No. C-2172, March 17, 1972]

In the Matter of Charles Edwin Porter, Individually and Doing Business as Florida Training Center and Commercial Training Institute

Consent order requiring a Tampa, Fla., individual offering courses in key punch operations and bank teller techniques to cease violating the Truth in Lending Act in his consumer credit transactions by failing to disclose the total number of payments, the cash price, the unpaid balance of cash price, the amount financed, the deferred payment price, and other disclosures required by Regulation Z of said Act.

The order to cease and desist, including further order requiring report of compliance therewith, is as follows:

It is ordered, That respondent Charles Edwin Porter, individually and doing business as Florida Training Center and Commercial Training Institute, and his agents, representatives, and employees, directly or through any corporate or other device, in connection with any extension of consumer credit or any advertisement to aid, promote, or assist directly or indirectly any extension of consumer credit, as "consumer credit" and "advertisement" are defined in Regulation Z (12 CFR Part 226) of the Truth in Lending Act (Public Law 90-321, 15 U.S.C. 1601 et seq.), do forthwith cease and desist from:

1. Failing to make all disclosures required to be made by § 226.8 of Regulation Z clearly, conspicuously and in a meaningful sequence, as required by § 226.6(a) of Regulation Z.

2. Failing to disclose the number of payments scheduled to repay the indebtedness and the sum of such payments using the term "total of payments," as required by § 226.8(b)(3) of Regulation Z.

3. Failing to disclose the price at which respondent, in the regular course of business, offers to sell for cash the property or services which are the subject of the credit sale, and to describe that price as the "cash price," as required by § 226.8(c)(1) of Regulation Z.

4. Failing to disclose the amount of any downpayment in money, and to describe that amount as the "cash downpayment," as required by § 226.8(c)(2) of Regulation Z.

5. Failing to disclose the difference between the "cash price" and the "total downpayment," and to describe that difference as the "unpaid balance of cash price," as required by § 226.8(c)(3) of Regulation Z.

6. Failing to disclose the amount of credit extended, and to describe that amount as the "amount financed," as required by § 226.8(c)(7) of Regulation Z.

7. Failing to use the term "deferred payment price" to describe the sum of the cash price, all other charges which are part of the amount financed but are not part of the finance charge, and the finance charge, as required by § 226.8(c)(8)(ii) of Regulation Z.

8. Failing, in any consumer credit transaction or advertisement, to make all disclosures, determined in accordance with §§ 226.4 and 226.5 of Regulation Z, in the manner, form, and amount required by §§ 226.6, 226.8, and 226.10 of Regulation Z.

It is further ordered, That a copy of this order to cease and desist be delivered to all present and future personnel of respondent engaged in the consummation of any extension of consumer credit or in any aspect of preparation, creation or placing of advertising, and that respondent secure a signed statement acknowledging receipt of said order from each such person.

It is further ordered, That respondent notify the Commission at least thirty (30) days prior to any proposed change in respondent's business organization such as dissolution; assignment or sale resulting in the emergence of a successor business, corporate or otherwise; the creation of subsidiaries; any change of business name or trade style; or any other change which may affect compliance obligations arising out of the order.

It is further ordered, That the respondent herein shall, within sixty (60) days after service upon him of this order file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with the order to cease and desist contained herein.

Issued: March 17, 1972.

By the Commission.

[SEAL] CHARLES A. TOBIN, *Secretary.*

[FR Doc.72-5804 Filed 4-17-72;8:46 am]

[Docket No. C-2168]

PART 13—PROHIBITED TRADE PRACTICES

Times Furniture Co. and Samuel Barbas

Subpart—Advertising falsely or misleadingly: § 13.71 *Financing:* 13.71-10 Truth in Lending Act, § 13.73 *Formal regulatory and statutory requirements:* 13.73-92 Truth in Lending Act. Subpart—Misrepresenting oneself and goods—Goods: § 13.1623 *Formal regulatory and statutory requirements:* 13.1623-95 Truth in Lending Act. Subpart—Neglecting, unfairly or deceptively, to make material disclosure: § 13.1852 *Formal regulatory and statutory requirements:* 13.1852-75 Truth in Lending Act: § 13.1892 *Sales contract, right-to-cancel provision;* § 13.1905 *Terms and conditions:* 13.1905-60 Truth in Lending Act. Subpart—Securing signatures wrongfully: § 13.2175 *Securing signatures wrongfully.*

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended, 82 Stat. 146, 147; 15 U.S.C. 45, 1601-1605) [Cease and desist order, Times Furniture Co., et al., Los Angeles, Calif., Docket No. C-2168, March 9, 1972]

In the Matter of Times Furniture Co., a Corporation, and Samuel Barbas, Individually and as an Officer of Said Corporation

Consent order requiring a Los Angeles, Calif., seller and distributor of

furniture to cease violating the Truth in Lending Act by failing in its credit transactions to make disclosures required by Regulation Z of said Act. Respondent is also required where credit customer is charged with credit life insurance to mail to such customer a letter explaining the insurance and giving customer the option of canceling it.

The order to cease and desist, including further order requiring report of compliance therewith, is as follows:

It is ordered, That respondents Times Furniture Co., a corporation, and Samuel Barbas, individually and as an officer of said corporation, and respondents' agents, representatives, and employees, directly or through any corporate or other device, in connection with any extension of consumer credit or any advertisement to aid, promote or assist directly or indirectly any extension of consumer credit, as "consumer credit" and "advertisement" are defined in Regulation Z (12 CFR Part 226) of the Truth in Lending Act (Public Law 90–321, 15 U.S.C. 1601 et seq.), do forthwith cease and desist from:

1. Failing to make the disclosures required by § 226.8 before the transaction is consummated, as prescribed by § 226.8 (a) of Regulation Z.

2. Failing to include in the finance charge any charges or premiums for credit life, accident, health, or loss of income insurance, as prescribed by § 226.4 (a) of Regulation Z.

3. Failing to furnish the customer with a duplicate of the instrument containing the disclosures required by § 226.8 or a statement by which the required disclosures are made at the time those disclosures are made, as prescribed by § 226.8(a) of Regulation Z.

4. Stating, in any advertisement, the amount of the downpayment required or that no downpayment is required, the amount of any installment payment, the dollar amount of any finance charge, the number of installments or the period of repayment, or that there is no charge for credit, unless it states all of the following items in terminology prescribed under § 226.8 of Regulation Z, as required by § 226.10(d) (2) of Regulation Z:

(a) The cash price;

(b) The amount of the downpayment required or that no downpayment is required, as applicable;

(c) The number, amount, and due dates or period of payments scheduled to repay the indebtedness if the credit is extended;

(d) The amount of the finance charge expressed as an annual percentage rate; and

(e) The deferred payment price.

5. Failing in any consumer credit transaction or advertisement to make all disclosures, determined in accordance with §§ 226.4 and 226.5 of Regulation Z, in the manner, form, and amount prescribed by §§ 226.6, 226.7, 226.8, 226.9, and 226.10 of Regulation Z.

It is further ordered, That respondent, in connection with each sale of credit life insurance written in connection with its credit sales on or after July 1, 1969, in which respondent failed to obtain a specific dated and separately signed affirmative written indication of the customer's desire for such insurance and thereafter failed to include the charges for such insurance in the amount of finance charge debited to the customer's account monthly, shall mail to each customer to whom such sale of credit life insurance was made and whose account is in open or current status, the following notice, and accompanying letter.

We hereby supply you with the following information concerning your credit life insurance policy:

1. The cost of credit life insurance which has been charged to you since you opened this account with Times Furniture Co. is (to be provided by respondent).

2. Such insurance was not and is not required as a condition to Times' extending credit to you.

3. You have a right to request cancellation of this policy. You may exercise your right to cancel by signing (on line 1) that portion of the enclosed notice canceling your credit life insurance policy and returning it to Times Furniture Co., in the accompanying self-addressed envelope. Such cancellation is effective when received by Times Furniture Co. You understand that once having canceled you will have no rights under the policy even though the policy may have been in effect up to the time of cancellation.

4. If you desire to continue your credit life insurance policy, you should sign that portion of the enclosed notice (on line 2) which indicates your desire for insurance coverage and return it to Times Furniture Co. in the accompanying self-addressed envelope.

CREDIT LIFE INSURANCE NOTICE

I hereby request cancellation of my credit life insurance covering the above account. I understand that upon receipt of this cancellation I will have no benefits under any insurance policy with respect to the above account.

(1)_____
(Signature of customer in whose name account is recorded)

Date_____

I desire to continue my credit life insurance policy

(2)_____
(Signature of customer in whose name account is recorded)

Date_____

It is important that you return this notice before _____

Respondent's obligations under this provision shall not be fulfilled until each customer affected by it has returned the notice specified herein, provided that as long as respondents can demonstrate that any such customer cannot be contacted or that any such customer failed to reply after respondents expended reasonable efforts, in writing or orally, to effect such reply monthly for a period of 4 consecutive months after mailing the notice to such customer, respondents shall have complied with this provision.

It is further ordered, That respondents deliver a copy of this order to cease and desist to all present and future personnel of respondents engaged in the consummation of any extension of consumer credit or in any aspect of preparation, creation or placing of advertising, and that respondents secure a signed statement acknowledging receipt of said order from each such person.

It is further ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with this order.

It is further ordered, That respondents notify the Commission at least thirty (30) days prior to any proposed change in respondents' business such as dissolution, assignment or sale resulting in the emergence of a successor business, corporation or otherwise, the creation of subsidiaries or any other change which may affect compliance obligations arising out of the order.

Provided further, That entry of this order by the Commission does not constitute an admission by respondents that they have violated the law as alleged in the complaint which the Commission has issued.

Issued: March 9, 1972.

By the Commission.

[SEAL] CHARLES A. TOBIN, *Secretary.*

[FR Doc.72-5805 Filed 4-17-72;8:46 am]

Title 17—COMMODITY AND SECURITIES EXCHANGES

Chapter II—Securities and Exchange Commission

[Release No. IC-7137]

PART 270—GENERAL RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

Sales of Debentures Guaranteed by Small Business Administration

The Securities and Exchange Commission has adopted Rules 3c-3 and 18c-2 (17 CFR 270.3c-3, 270.18c-2) under the Investment Company Act of 1940 (Act) (15 U.S.C. 18a-1 et seq.) effective April 17, 1972. On March 20, 1972, the Commission published notice (Investment Company Act Release No. 7070, 37 F.R. 6211) that it had under consideration the adoption of the rules to enable small business investment companies licensed under the Small Business Investment Act of 1958 (15 U.S.C. 671 et seq., 72 Stat. 690) to make full use of new statutory power of the Small Business Administration (SBA) to guarantee debentures issued by such SBICs without violating certain provisions of the Investment Company Act.

The adoption of these rules is proposed by the Commission in response to a request from the SBA. The SBA's request was prompted by the enactment December 22, 1971 of Public Law 92-213 (85 Stat. 776). The statute, in pertinent part, reads as follows:

To encourage the formation and growth of small business investment companies the

administration is authorized (but only to the extent that the necessary funds are not available to said company from private sources on reasonable terms) when authorized in appropriate Acts, to purchase, or to guarantee the timely payment of all principal and interest as scheduled on, debentures issued by such companies. Such purchases or guarantees may be made by the Administration on such terms and conditions as it deems appropriate, pursuant to regulations issued by the Administration. The full faith and credit of the United States is pledged to the payment of all amounts which may be required to be paid under any guarantee under this subsection * * *

Section 3(c)(1) of the Act (15 U.S.C. 80a–3(c)(1)) excepts from the definition of investment company any issuer whose outstanding securities are beneficially owned by not more than 100 persons and which is not making and does not presently propose to make a public offering. Beneficial ownership by a company is deemed to be beneficial ownership by one person unless the company owns 10 percent or more of the outstanding voting securities of the issuer in which case beneficial ownership is deemed to be that of the holders of such company's outstanding securities. Rule 3c–2 (17 CFR 270.3c–2), however, provides that beneficial ownership by a company owning 10 percent or more of the outstanding voting securities of an SBIC will be deemed beneficial ownership by one person so long as the value of all securities of SBIC's owned by such company does not exceed 5 percent of the value of its total assets.

The SBA has requested that the Commission adopt a rule which would provide that SBIC's not now subject to the Act by virtue of the section 3(c)(1) exception from the definition of investment company would not become subject to the Act if they sell SBA guaranteed debentures in a public offering and also, if as a result of such sale, the number of their security holders should exceed 100.

Section 18(c) of the Act (15 U.S.C. 80a–18(c)) provides, among other things, that it is unlawful for any registered closed-end investment company to issue and sell more than one class of senior security representing indebtedness. Such a company may issue indebtedness in one or more series provided that no such series shall have a preference or priority over any other series upon distribution of assets or with respect to payment of interest or dividends.

Therefore, the SBA has requested an extension of the exemption afforded by Rule 18c–1 (17 CFR 270.18c–1) which permits SBIC's, notwithstanding the provisions of section 18(c), to have outstanding more than one class of debt securities provided all such securities are privately held by the SBA or institutional investors, not publicly distributed, and without equity features.[1] The extension of the exemption to cover issuance of SBA guaranteed debentures to the public is necessary because some SBIC's are indebted to SBA on subordinated and unsubordinated debt instruments, and, in addition, some SBIC's may be indebted to private and institutional investors under yet another class of debt instruments.

In the Commission's view, the guarantee of a Government agency backed by the full faith and credit of the United States removes securities so guaranteed from the area of concern for investor protection that is the primary purpose of the Investment Company Act. The guarantee will bring those securities bearing it within the definition of "Government security" contained in section 2(a)(16) of the Act (15 U.S.C. 80a–2(a)(16)).[2] Section 3(a)(2) of the Securities Act of 1933 (15 U.S.C. 77c(a)(2)) exempts such securities from that Act's registration provisions. There is no comparable exception under the Investment Company Act for issuers of Government securities, however, and, therefore, it is necessary to provide exemptions which will permit their issuance without violating the Act or causing an issuer who would not otherwise have to do so to register as an investment company.

Rule 3c–2 provides that the term "public offering" as used in section 3(c)(1) of the Act would not be deemed to include an offer and sale of a debenture having no equity features, issued by a licensed SBIC, guaranteed by the SBA and backed by the full faith and credit of the United States. The rule also provides that holders of such securities will be counted as one person for the purpose of section 3(c)(1).

Rule 18c–2 exempts from the provisions of section 18(c) of the Act additional classes of senior securities representing indebtedness issued by licensed SBIC's provided they are guaranteed by the SBA, are backed by the full faith and credit of the United States, have no equity features and are subordinated to any other unsecured debt securities not issued pursuant to the rule or, if not subordinated, by their terms provide that they will have no preference over other unsecured debt. The provision on subordination was included because an SBA claim against the SBIC in case the guarantee is invoked might raise questions as to the Government's priority over other creditors.[3] Although debentures purchased or guaranteed by the SBA are subordinated to any other debts of an SBIC issuer, the SBA has authority to elect not to subordinate.[4] While it appears under present law that the SBA as guarantor would not have greater rights than the original holder of the security, this provision of the rule was added to insure protection of holders of other unsecured debt issued by the SBIC. Also, because some SBIC's received orders of the Commission exempting them from the provisions of the Investment Company Act on condition that they not issue and sell their securities to any person other than the SBA, the rule provides that sales of SBA guaranteed securities to the public as covered by the rule would not cause such SBIC's to lose their exemptions.

Only one comment on the rules has been received, a letter from the SBA expressing appreciation for the effective resolution of the problems under the Investment Company Act inherent in the new guarantee authority. Accordingly, the Commission is adopting the rules in the same form in which they were proposed.

The text of the rules adopted pursuant to authority granted to the Commission in sections 6(c) and 38(a) of the Act (15 U.S.C. 80a–6(c), 80a–37(a)) is as follows:

Commission action. Part 270 of Chapter II of Title 17 of the Code of Federal Regulations is amended by adding a new § 270.3c–3[5] and a new § 270.18c–2 reading as follows:

§ 270.3c–3 Definition of certain terms used in section 3(c)(1) of the Act with respect to certain debt securities offered by small business investment companies.

The term "public offering" as used in section 3(c)(1) of the Act shall not be deemed to include the offer and sale by a small business investment company, licensed under the Small Business Investment Act of 1958, of any debt security issued by it which is (a) not convertible into, exchangeable for, or accompanied by any equity security, and (b) guaranteed as to timely payment of principal and interest by the Small Business Administration and backed by the full faith and credit of the United States. The holders of any securities offered and sold as described in this section shall be counted, in the aggregate, as one person for purposes of section 3(c)(1) of the Act.

§ 270.18c–2 Exemptions of certain debentures issued by small business investment companies.

(a) The issuance or sale of any class of senior security representing indebtedness by a small business investment company licensed under the Small Business Investment Act of 1958 shall not be prohibited by section 18(c) of the Act provided such senior security representing indebtedness is (1) not convertible into, exchangeable for, or accompanied by an option to acquire any equity security; (2) fully guaranteed as to timely payment of all principal and interest by the Small Business Administration and

[1] See Investment Company Act Releases 3324 and 3361, Sept. 12 and Nov. 17, 1961 (26 F.R. 8912, 11240).

[2] Section 2(a)(16) (of the Act) defines "Government security" as "any security issued or guaranteed as to principal or interest by the United States, or by a person controlled or supervised by and acting as an instrumentality of the Government of the United States pursuant to authority granted by the Congress of the United States; or any certificate of deposit for any of the foregoing."

[3] 31 U.S.C. 191 (R.S. 3466).

[4] 15 U.S.C. 683 (72 Stat. 692, as amended, 75 Stat 752, 78 Stat. 146, 81 Stat. 270).

[5] A former § 270.3c–3 relating to an exemption for certain group annuity contracts which provided for administration of funds held by an insurance company in a segregated account was rescinded by the Commission effective July 1, 1971, Release No. IC–6430, 36 F.R. 7898.

backed by the full faith and credit of the United States; and (3) subordinated to any other debt securities not issued pursuant to this section or, if such security is not so subordinated, that such security, according to its own terms, will not be preferred over any other unsecured debt securities in the payment of principal and interest: *And further provided,* That all other debt securities then outstanding issued by such small business investment company were issued as permitted by § 270.18c–1 or this section.

(b) Any security issued and sold as permitted by paragraph (a) of this section shall be deemed for purposes of § 270.18c–1 to be privately held by the Small Business Administration and for purposes of § 270.18c–1 shall not be deemed to be publicly held outstanding indebtedness.

(c) The issuance or sale of any security as permitted by paragraph (a) of this section shall not be deemed to be a sale to any person other than the Small Business Administration by any small business investment company licensed under the Small Business Investment Company Act of 1958 which is exempt from any provision of the Investment Company Act, if such exemption is conditioned on such company not offering or selling its securities to any person other than the Small Business Administration.

(Secs. 6(c), 38(a), 54 Stat. 800, 841, 15 U.S.C. 80a–6(c), 80a–37(a))

Rules 3c–3 and 18c–2 have been adopted effective April 17, 1972, as permitted by section 553 (d)(1) and (d)(3) of the Administrative Procedure Act (5 U.S.C. 553(d) (1), (3)) since they grant exemptions or relieve restrictions and are necessary to carry out the congressional intent expressed in Public Law 92–213. The Commission finds that good cause exists for making these rules effective without further delay, and that further notice and procedure as specified in 5 U.S.C. 553 are unnecessary. Accordingly, the foregoing rules shall be effective on April 17, 1972.

By the Commission.

[SEAL] RONALD F. HUNT, *Secretary.*

APRIL 13, 1972.

[FR Doc.72-5916 Filed 4-17-72;8:52 am]

Title 18—CONSERVATION OF POWER AND WATER RESOURCES

Chapter I—Federal Power Commission

SUBCHAPTER E—REGULATIONS UNDER NATURAL GAS ACT

[Docket No. R-393; Order 428-C]

PART 157—APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

Small Producers; Filing of Contracts

APRIL 10, 1972.

The Commission in Order No. 428 issued March 18, 1971 (36 F.R. 5598, March 25, 1971) in the above-entitled proceeding established a blanket certificate procedure for small producers pursuant to which they are authorized to make small producer sales nationwide under existing and future contracts at the price specified in each such contract. In this connection, the Commission revised, inter alia, § 157.40 of its regulations under the Natural Gas Act relating to small producer certificates.

Section 157.40(g) of the regulations required pipeline purchasers, and large producer purchasers to file with this Commission each new contract and each contract amendment, dated on or after March 18, 1971, for the sale of natural gas to them by a small producer. By this order we are amending that provision to require the purchaser to submit with each filing, pertaining to the dedication of additional natural gas, the estimated purchase volumes and rate for the first full year after the commencement of deliveries. This data is not ascertainable from the contracts, but can be estimated readily by the purchaser. The amendment should create no burden for purchasers because the information is available to them and is insignificant in quantity.

The additional data will enable the Commission to determine more quickly and more accurately the amounts of new gas coming into the interstate market as a result of the small producer program enacted in Order No. 428. The additional requirement will be effective as of the date of issuance of this order and will apply to all contract filings involving the dedication of additional natural gas made pursuant to § 157.40(g) on or after such effective date.

The Commission finds:

(1) In view of the minor amendment herein to the Commission's regulations, the notice and public procedure provisions of 5 U.S.C. section 553 do not apply to this order.

(2) In view of the purpose, intent, and effect of the amendment herein ordered, good cause exists for making the amendment effective upon issuance of this order.

(3) The action taken herein is necessary and appropriate for the administration of the Natural Gas Act.

The Commission, acting pursuant to the provisions of the Natural Gas Act, as amended, particularly sections 4, 5, 7, and 16 (52 Stat. 822, 823, 824, 825, and 830; 56 Stat. 83, 84; 61 Stat. 459; 76 Stat. 72, 15 U.S.C. 717c, 717d, 717f, and 717o) orders:

(A) Paragraph (g) of § 157.40 in Part 157, Subchapter E, of Chapter I, Title 18 of the Code of Federal Regulations, is amended to read:

§ 157.40 Exemption of small producers from certain filing requirements.

* * * * *

(g) *Filing of contracts and notification of abandonment.* Pipeline purchasers and large producer purchasers shall file, within 60 days of the execution thereof, each new contract and each contract amendment dated on or after March 18, 1971, for the sale of natural gas to them by a small producer pursuant to the exemption authorized hereunder, together with an estimate of the purchase volumes and the rate to be charged for the first full year after the commencement of deliveries with respect to each new contract and each contract amendment dedicating additional natural gas, and shall notify this Commission of the cessation of deliveries made by a small producer pursuant to the exemption authorized hereunder within 60 days of such cessation.

(B) The Secretary of the Commission shall cause prompt publication of this order to be made in the FEDERAL REGISTER.

(C) The amendment adopted herein shall be effective upon the issuance of this order.

By the Commission.

[SEAL] KENNETH F. PLUMB, *Secretary.*

[FR Doc.72-5795 Filed 4-17-72;8:45 am]

Title 19—CUSTOMS DUTIES

Chapter I—Bureau of Customs, Department of the Treasury

[T.D. 72-105]

PART 1—GENERAL PROVISIONS

Extension of Boundaries of Port of Entry, Milwaukee, Wis.

In order to provide better Customs service to carriers and the importing community in the State of Wisconsin, it is considered desirable to extend the existing port limits of Milwaukee, Wis.

Accordingly, by virtue of the authority vested in the President by section 1 of the Act of August 1, 1914, 38 Stat. 623, as amended (19 U.S.C. 2), which was delegated to the Secretary of the Treasury by the President in Executive Order No. 10289, September 17, 1951 (3 CFR Ch. 11), and pursuant to authorization provided by Treasury Department Order No. 190, Rev. 7 (34 F.R. 15846), the geographical limits of the Customs port of Milwaukee, Wis., in the Milwaukee, Wis., Customs district (region IX), which encompass the county of Milwaukee, Wis., are extended to include all the territory within the counties of Milwaukee and Waukesha, Wis.

Section 1.2(c) of the Customs regulations is amended by deleting "(including the territory described in T.D. 67–31)" after "Milwaukee" in the column headed "Ports of Entry" for the Milwaukee, Wis., district (region IX), and inserting in lieu thereof "(including the territory described in T.D. 72–105)."

(80 Stat. 379, sec. 1, 37 Stat. 434, sec. 1, 38 Stat. 623, as amended, R.S. 251, as amended, sec. 624, 46 Stat. 759; 5 U.S.C. 301, 19 U.S.C. 1, 2, 66, 1624)

The purpose of this extension of existing port of entry limits is to provide better service to importers, carriers, and the public. Notice and public procedure under 5 U.S.C. 553(b) is found, therefore, to be unnecessary.

Effective date. This Treasury Decision shall become effective 30 days after publication in the FEDERAL REGISTER.

[SEAL] EUGENE T. ROSSIDES,
Assistant Secretary of the Treasury.

APRIL 10, 1972.

[FR Doc.72-5871 Filed 4-17-72;8:50 am]

[T.D. 72-106]

PART 8—LIABILITY FOR DUTIES; ENTRY OF IMPORTED MERCHANDISE

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

Reporting of Importer Numbers

On August 25, 1971, a notice of proposed rule making was published in the FEDERAL REGISTER (36 F.R. 16661) to prescribe the reporting of a number on each Entry Record, Customs Form 5101, and the filing of such number on a notification of or application for importer's number, or notice of change of name or address, Customs Form 5106, in order to identify the "owner of the merchandise" on each dutiable formal entry. The amendment will permit the Bureau of Customs to identify the owner or ultimate consignee of merchandise associated with formal entries without reference to the records and files of customhouse brokers.

After consideration of all relevant matter presented by interested persons, in order to clarify the proposed amendments, the more commonly used term "ultimate consignee" is substituted for the term "owner of merchandise" where it appears, and the second sentence of proposed section 8.8(c) is changed to use the term "importer number of the importer of record." Editorial changes have also been made.

Accordingly, the proposed amendments are hereby adopted as set forth below:

In § 8.8, paragraph (c) is amended to read as follows:

§ 8.8 **Requirements on entry.**

* * * * *

(c) A copy of Customs Form 5101, Entry Record, shall be prepared and presented by the importer with each dutiable consumption, warehouse, appraisement, vessel repair, or drawback entry. The importer number of the importer of record and the importer number of the ultimate consignee shall be reported for each such entry filed other than a consolidated entry covering the shipment of several ultimate consignees. When the importer of record and the ultimate consignee are one and the same, the importer number shall be entered in both spaces provided on Customs Form 5101. When a consolidated entry is filed, the notation "consolidated" shall be entered in the space for the importer number of the ultimate consignee. If an importer of record desires to have refunds, bills, or notices of liquidation pertaining to his entry mailed in care of his agent, the agent's importer number shall also be reported on the Customs Form 5101. In such a case, the importer of record shall file, or shall have filed previously, a Customs Form 4811 authorizing the mailing of refunds, bills, or notices of liquidation to the agent.

* * * * *

(Sec. 484, 46 Stat. 722, as amended; 19 U.S.C. 1484)

In § 24.5, paragraph (a) is amended to read as follows:

§ 24.5 **Filing identification number.**

(a) Each person, business firm, Government agency, or other organization shall file Customs Form 5106, notification of or application for importer's number, or notice of change of name or address, with the first dutiable formal entry which he submits or the first request for services that will result in the issuance of a bill or a refund check upon adjustment of a cash collection. Notification of or application for importer's number, or notice of change of name or address, Customs Form 5106, shall also be filed for the ultimate consignee for which such entry is being made.

* * * * *

(R.S. 251, as amended, sec. 624, 46 Stat. 759; 19 U.S.C. 66, 1624)

To allow an initial 6-month period for importers of record to secure importer numbers of ultimate consignees, the importer numbers of ultimate consignees which are not available at the time of entry of merchandise during the first 6 months after this amendment becomes effective shall be submitted on an amended Customs Form 5101, Entry Record, to the port where the entry was filed, by the end of the first 6 months after this amendment becomes effective. Following such 6-month period, the identification of the ultimate consignee on each dutiable formal entry is a mandatory requirement with the submission of such entries.

Effective date. This amendment shall become effective 30 days after publication in the FEDERAL REGISTER.

[SEAL] G. R. DICKERSON,
Acting Commissioner of Customs.

Approved: April 10, 1972.

EUGENE T. ROSSIDES,
Assistant Secretary of the Treasury.

[FR Doc.72-5872 Filed 4-17-72;8:50 am]

[T.D. 72-107]

PART 171—FINES, PENALTIES, AND FORFEITURES

PART 172—LIQUIDATED DAMAGES

Signatures on Petitions

Sections 171.11(b) and 172.11(b) of the Customs Regulations provide that a petition for remission or mitigation of a fine, penalty, or forfeiture, or a petition for relief from liquidated damages be signed by the petitioner or if the petitioner is a corporation, be signed by an officer thereof. However, it would greatly facilitate the filing of these petitions to permit them to be signed by an attorney representing the petitioner, and, if the petitioner is a corporation, by a responsible supervisory employee thereof.

Accordingly, Parts 171 and 172 of the Customs Regulations are amended as follows:

Paragraph (b) of § 171.11 is amended to read:

§ 171.11 **Petition for relief.**

* * * * *

(b) *Signature.* The petition for remission or mitigation shall be signed by the petitioner or his attorney at law. If the petitioner is a corporation, the petition may be signed by an officer or responsible supervisory employee thereof, or an attorney at law representing the corporation.

* * * * *

(R.S. 251, as amended, secs. 618, 624, 46 Stat. 757, as amended, 759; 19 U.S.C. 66, 1618, 1624)

Paragraph (b) of § 172.11 is amended to read:

§ 172.11 **Petition for relief.**

* * * * *

(b) *Form.* A petition for relief need not be in any particular form. Such petition shall set forth the facts relied upon by the petitioner to justify cancellation of the claim for liquidated damages, and shall be signed by the petitioner or his attorney at law. If the petitioner is a corporation, the petition may be signed by an officer or responsible supervisory employee thereof, or an attorney at law representing the corporation.

(R.S. 251, as amended, secs. 623, 624, 46 Stat. 759, as amended; 19 U.S.C. 66, 1623, 1624)

This amendment will eliminate a requirement which has been found to be unnecessarily restrictive. Therefore, notice and public procedure under 5 U.S.C. 553(b) is found to be unnecessary and, since the amendment will relieve a present restriction, good cause is found for making it effective at the earliest possible date.

Effective date. This amendment shall be effective upon publication in the FEDERAL REGISTER (4-18-72).

[SEAL] LEONARD LEHMAN,
Acting Commissioner of Customs.

Approved: April 10, 1972.

EUGENE T. ROSSIDES,
Assistant Secretary of the Treasury.

[FR Doc.72-5873 Filed 4-17-72;8:50 am]

Title 21—FOOD AND DRUGS

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

SUBCHAPTER B—FOOD AND FOOD PRODUCTS

PART 121—FOOD ADDITIVES

Subpart C—Food Additives Permitted in Feed and Drinking Water of Animals or for the Treatment of Food-Producing Animals

SUBCHAPTER C—DRUGS

PART 135e—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

Sulfadimethoxine, Ormetoprim and 3-Nitro-4-Hydroxyphenylarsonic Acid

The Commissioner of Food and Drugs has evaluated a supplemental new animal drug application (41-984V) filed by Hoffmann-LaRoche, Inc., Nutley, N.J. 07110, proposing an amendment to the regulations to provide for an additional use of sulfadimethoxine, ormetoprim, and 3-nitro-4-hydroxyphenylarsonic acid as an aid in the prevention of fowl cholera in broiler chickens. The supplemental application is approved.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347; 21 U.S.C. 360b(i)) and under authority delegated to the Commissioner (21 CFR 2.120), Part 121 and 135e are amended as follows:

1. In Part 121, § 121.262(c) is amended in the "Limitations" and "Indications for use" columns in table 1 for item 1.15 as follows:

§ 121.262 3-Nitro-4-hydroxyphenylarsonic acid.

* * * * *

(c) * * *

TABLE 1—3-NITRO-4-HYDROXYPHENYLARSONIC ACID IN COMPLETE CHICKEN AND TURKEY FEED

Principal ingredient	Grams per ton	Combined with—	Grams per ton	Limitations	Indications for use
* * *	* * *	* * *	* * *	* * *	* * *
1.15 * * *	* * *	* * *	* * *	For broiler chickens only; withdraw 5 days before slaughter; as sole source of organic arsenic.	As an aid in the prevention of coccidiosis caused by all *Eimeria* species known to be pathogenic to chickens, namely, *E. tenella*, *E. necatrix*, *E. acervulina*, *E. brunetti*, *E. mivati*, and *E. maxima*, and bacterial infections due to *H. gallinarum* (infectious coryza), *E. coli* (colibacillosis); and *P. multocida* (fowl cholera); growth promotion and feed efficiency; improving pigmentation.
* * *	* * *	* *	* * *	* * *	* * *

2. Part 135e is amended in § 135e.55(e) by revising item 2 in the "Indications for use" column to read as follows:

§ 135e.55 Sulfadimethoxine, ormetoprim.

* * * * * * *

(e) * * *

TABLE 1—3-NITRO-4-HYDROXYPHENYLARSONIC ACID IN COMPLETE CHICKEN AND TURKEY FEED

Principal ingredient	Grams per ton	Combined with—	Grams per ton	Limitations	Indications for use
* * *	* * *	* * *	* * *	* * *	* * *
2. * * *	* * *	* * *	* * *	* * *	As an aid in the prevention of coccidiosis caused by all *Eimeria* species known to be pathogenic to chickens, namely *E. tenella*, *E. necatrix*, *E. acervulina*, *E. brunetti*, *E. mivati*, and *E. maxima*, and bacterial infections due to *H. gallinarum* (infectious coryza), *E. coli*, (colibacillosis); and *P. multocida* (fowl cholera); growth promotion and feed efficiency; improving pigmentation.
* * *	* * *	* * *	* * *	* * *	* * *

Effective date. This order shall be effective upon publication in the FEDERAL REGISTER (4-18-72).

(Sec. 512(i), 82 Stat. 347; 21 U.S.C. 360b(i))

Dated: April 7, 1972.

C. D. VAN HOUWELING,
Director,
Bureau of Veterinary Medicine.

[FR Doc.72-5725 Filed 4-17-72;8:45 am]

Title 22—FOREIGN RELATIONS

Chapter VIII—Employee-Management Relations Commission

[Dept. Reg. 108.658]

EMPLOYEE-MANAGEMENT RELATIONS

On February 23, 1972, there was published in the FEDERAL REGISTER (37 F.R. 3870), a notice of proposed rule making to add Chapter VIII to Title 22 of the Code of Federal Regulations, in order to implement Executive Order 11636 (36 F.R. 24901). Interested persons were invited to submit written comments, suggestions, or objections, regarding the proposed regulations not later than March 24, 1972. After consideration of all relevant matter presented, the Employee-Management Relations Commission has decided to adopt the proposed regulations with the following changes:

1. The titles and definitions of §§ 801.11 and 801.12 are expanded to conform with Executive Order 11636.

2. In §§ 802.5(b) and 802.18(b), specific requirements are placed upon the foreign affairs agencies to bring promptly to the attention of employees notices which are dispatched to the field by telegraph.

3. Section 802.10 is amended by adding a new paragraph (c) to establish a procedure for Hearing Officers to be disqualified from participating in a representation hearing.

4. Section 803.6(a) is expanded to clarify the circumstances under which settlements of unfair practice charges may be approved by the Commission.

5. A new § 803.10(c) is added to specify the circumstances under which a Hearing Examiner may be disqualified in an unfair practice proceeding.

6. Section 804.2 is changed to conform to the current standards of conduct regulations issued by the Assistant Secretary of Labor for Labor-Management Relations.

7. The title of § 805.12 is deleted.

8. In § 806.1, a new paragraph (b) is added to permit the extension of any period of time prescribed in the regulations, if such extension is necessary to take into account foreign holidays where actions cannot be taken because of such holidays.

Pursuant to sections 5 and 12 of Executive Order 11636 (36 F.R. 24901), Title 22 of the Code of Federal Regulations is amended by addition of a new Chapter VIII to read as set forth below.

Effective date. This part shall become effective April 12, 1972.

DAVID P. TAYLOR,
Chairman, Employee-Management Relations Commission.

APRIL 12, 1972.

1. The table of contents of Chapter VIII reads as follows:

Part
801 General.
802 Representation proceedings.
803 Unfair practice proceedings.
804 Standards of conduct.
805 Consultation proceedings.
806 Miscellaneous.

PART 801—GENERAL

Subpart A—Purpose and Scope

Sec.
801.1 Purpose and scope.

Subpart B—Meanings of Terms as Used in This Chapter

801.10 Order.
801.11 Employee, management official, confidential employee, foreign affairs agency, organization, Board, Secretary, Commission.
801.12 Eligible employee.
801.13 Recognition, unfair practices.
801.14 Standards of conduct for organizations.
801.15 Director.
801.16 Hearing Officer.
801.17 Hearing Examiner.
801.18 Chief Hearing Examiner.
801.19 Party.
801.20 Intervenor.
801.21 Certification.
801.22 Secret ballot.
801.23 Showing of interest.

AUTHORITY: The provisions of this Part 801 issued under secs. 5, 12, E.O. 11636, 36 F.R. 24901.

Subpart A—Purpose and Scope

§ 801.1 Purpose and scope.

The regulations contained in this chapter prescribe procedures and basic principles which the Employee-Management Relations Commission shall utilize in:

(a) Deciding questions relating to the eligibility of organizations for recognition under the order;

(b) Supervising elections to determine whether an organization is the choice of a majority of the eligible voters in a foreign affairs agency as their exclusive representative, and certifying the results;

(c) Effectuating the provisions of the order relating to standards of conduct required for organizations;

(d) Deciding complaints of alleged unfair practices, and alleged violations of the standards of conduct for organizations;

(e) Deciding questions of whether an obligation to consult exists under section 8 of the order with respect to particular issues.

Subpart B—Meanings of Terms as Used in This Chapter

§ 801.10 Order.

"Order" means Executive Order 11636, entitled "Employee Management Relations in the Foreign Service of the United States."

§ 801.11 Employee, management official, confidential employee, foreign affairs agency, organization, Board, Secretary, Commission.

"Employee," "management officials," "confidential employee," "foreign affairs agency," "organization," "Board," "Secretary," and "Commission" have the meanings set forth in section 2 of the order.

§ 801.12 Eligible employee.

"Eligible employee" means employee but does not include any management official or confidential employee.

§ 801.13 Recognition, unfair practices.

"Recognition" and "unfair practices" have the meanings as set forth in sections 7 and 13, respectively, of the order.

§ 801.14 Standards of conduct for organizations.

"Standards of conduct for organizations" shall have the meaning as set forth in section 12 of the order, as amplified in Part 804 of this chapter.

§ 801.15 Director.

"Director" means the Director of the Office of Labor-Management and Welfare-Pension Reports.

§ 801.16 Hearing Officer.

"Hearing Officer" means the individual designated by the Commission to conduct a hearing involving a question concerning representation matters as may be assigned.

§ 801.17 Hearing Examiner.

"Hearing Examiner" means the Chief Hearing Examiner or an individual designated by the Chief Hearing Examiner to conduct a hearing in cases under sections 12 and 13 of the order and such other matters as may be assigned.

§ 801.18 Chief Hearing Examiner.

"Chief Hearing Examiner" means the Chief Hearing Examiner, Department of Labor, Washington, D.C. 20210.

§ 801.19 Party.

"Party" means any person, employee, group of employees, organization, or foreign affairs agency: (a) Filing a complaint, petition, request, or application; (b) named in a complaint, petition, request or application; or (c) whose intervention in a proceeding has been permitted or directed by the Commission, Director, Hearing Officer, Chief Hearing Examiner, or Hearing Examiner, as the case may be.

§ 801.20 Intervenor.

"Intervenor" means a party in a proceeding whose intervention has been permitted or directed by the Commission, Director, Hearing Officer, Chief Hearing Examiner, or Hearing Examiner, as the case may be.

§ 801.21 Certification.

"Certification" means the determination by the Commission, of the results of an election held under the order and the regulations in this chapter.

§ 801.22 Secret ballot.

"Secret ballot" means the expression by ballot, voting machine or otherwise, but in no event by proxy of a choice with respect to any election or vote taken upon any matter, which is cast in such a manner that the person expressing such choice cannot be identified with the choice expressed, except in that instance in which any determinative challenged ballot is opened or where a unanimous ballot discloses the intent of all voters.

§ 801.23 Showing of interest.

"Showing of interest" means eligible employees" signed and dated authorization cards or petitions authorizing an organization to represent them for purposes of exclusive recognition; eligible employees' executed allotment of dues forms; current certification; employees' signed and dated petitions or cards indicating that they no longer desire to be represented for the purposes of exclusive recognition by the currently certified organization or other evidence approved by the Commission.

PART 802—REPRESENTATION PROCEEDINGS

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802.22 Runoff elections.
802.23 Inconclusive elections.

AUTHORITY: The provisions of this Part 802 issued under sec. 5, E.O. 11636, 36 F.R. 24901.

§ 802.1 Who may file petitions.

(a) A petition for exclusive recognition may be filed by an organization requesting an election to determine whether it should be recognized as the exclusive representative of eligible employees of a foreign affairs agency or should replace another organization as the exclusive representative of such employees.

(b) A petition for an election to determine if an organization should cease to be the exclusive representative because it does not represent a majority of eligible employees of a foreign affairs agency may be filed by a foreign affairs agency or by any employee(s) or any individual acting on their behalf.

§ 802.2 Contents of petition, filing and service of petition; challenges to petition.

(a) *Petition for exclusive recognition.* A petition by an organization for exclusive recognition shall contain the following;

(1) The name of the foreign affairs agency, its address, and the person to contact, title, and telephone number, if known.

(2) Name, address, and telephone number of the certified representative, if any, and the date of its certification, if known to the petitioner;

(3) Names, addresses, and telephone numbers of any other interested organizations, if known to the petitioner;

(4) Name and affiliation, if any, of the petitioner and its address and telephone number;

(5) A statement that the petitioner has submitted to the Commission a current roster of its officers and representatives, a copy of its constitution and bylaws and a statement of its objectives;

(6) A declaration by the person signing the petition, under the penalties of the Criminal Code (18 U.S.C. 1001) that its contents are true and correct to the best of his knowledge and belief;

(7) The signature of the petitioner's representative, including title and telephone number;

(8) The petition shall be accompanied by a showing of interest of not less than twenty-five (25) percent of the eligible employees of a foreign affairs agency and an alphabetical list of names constituting such showing;

(9) A statement that the petitioner is in full compliance with the requirements of the order and the regulations under this chapter.

(b) *Petition for an election to determine if an organization should cease to be the exclusive representative.* (1) A petition by a foreign affairs agency shall contain the information set forth in paragraph (a) of this section, except paragraph (a) (5), (8), and (9) of this section, and a statement that the foreign affairs agency has a good faith doubt that the currently certified organization represents a majority of its eligible employees. Such a statement must contain a detailed explanation of the reasons supporting the good faith doubt;

(2) A petition by employees or an individual acting on behalf of employees shall contain the information set forth in paragraph (a) of this section, except paragraph (a) (5), (8), and (9) of this section, and it shall be accompanied by a showing of interest of not less than twenty-five (25) percent of the employees indicating that the employees of the foreign affairs agency no longer desire to be represented for the purpose of exclusive recognition by the currently certified organization and an alphabetical list of names constituting such showing.

(c) *Filing and service of petition and copies.* (1) An original and four copies of a petition shall be filed with the Commission.

(2) The petitioner shall supply with its petition two (2) copies of a statement of any other relevant facts and of all correspondence relating to the question concerning representation.

(3) Simultaneously with the filing of a petition, copies of the petition together with the attachments referred to in subparagraph (2) of this paragraph shall be served by the petitioner on all known interested parties, and a written statement of such services shall be filed with the Commission. The showing of interest submitted with the petition shall not be furnished to the foreign affairs agency or to any of the organizations listed in the petition.

(d) *Adequacy and validity of showing of interest.* The Commission shall determine the adequacy of the showing of interest administratively, and such decision shall be final and not subject to collateral attack at a representation hearing. Any party challenging the validity of showing of interest of the petitioner or of an intervenor must file its challenge with the Commission, with respect to the petitioner, within fifteen (15) days after the initial date of posting and dispatch of the notice of petition as provided in § 802.5(b) and with respect to any intervenor, within fifteen (15) days of service of a copy of the request for intervention, and support the challenge with evidence including signed statements of employees and any other written evidence. The Commission shall investigate the challenge and take such action as it deems appropriate.

(e) *Challenge to status of an organization.* Any party challenging the status of an organization under the order must file its challenge with the Commission and support the challenge with evidence. With respect to the petitioner, such a chalelnge must be filed within fifteen (15) days after the initial date of posting and dispatch of the notice of petition as provided in § 802.5(b) and with respect to an intervenor within fifteen (15) days of service of a copy of the request for intervention. The Commission shall investigate the challenge and take such action as it deems appropriate.

§ 802.3 Timeliness of petition.

(a) When there is no certified exclusive representative of the eligible employees, a petition will be considered timely filed provided the petition is not for a foreign affairs agency in which a valid election has been held within the preceding twelve (12) month period.

(b) A petition for exclusive recognition or other election petition will not be considered timely if filed within two (2) years after a valid certification has come into effect unless unusual circumstances exist which will substantially affect the voting unit or the majority representation.

(c) A petitioner who withdraws a petition after the opening of a hearing, or after the approval of an agreement for a consent election, shall be barred from filing another petition for six (6) months.

§ 802.4 Effect of certification.

When a secret ballot election has resulted in the certification of an exclusive representative for the eligible employees in a foreign affairs agency, such certification shall remain valid for a period of not less than two (2) years, unless such certification is earlier revoked for proper cause by the Commission. After the expiration of two (2) years following the effective date of a certification, such certification shall remain in effect until (a) successfully challenged by a timely petition and election, or (b) revoked for proper cause by the Commission.

§ 802.5 Investigation and notice of petition.

(a) Upon the filing of a petition the Commission shall make such investigation as it deems necessary.

(b) Upon the request of the Commission, after the filing of a petition, the foreign affairs agency shall post at its headquarters copies of a notice to all employees in places where notices are normally posted affecting the employees of the agency. In addition, the foreign affairs agency shall, simultaneously with the date of posting, dispatch telegraphic notice of the petition to Foreign Service posts abroad. Such telegraphic notice shall be brought promptly to the attention of the agency's employees at such posts.

(c) Such notice shall set forth: (1) The name of the petitioner and (2) a statement that all interested parties are to advise the Commission in writing of their interest within fifteen (15) days from the date of initial posting and dispatch of such notice.

(d) The posted notice shall remain posted for a period of fifteen (15) days. The notice shall be posted conspicuously and shall not be covered by other material, altered, or defaced.

(e) The foreign affairs agency shall furnish the Commission and all known interested parties with the following: (1) Name, address, and telephone number of any organization known to represent the employees; (2) a copy of all correspondence relevant to the petition; (3) a copy of a current certification, if any, covering the employees of the foreign affairs agency; (4) a current alphabetized list of eligible employees, their rank and positions of assignment; and (5) a separate, current alphabetized list of management officials and confidential employees, their rank and positions of assignment.

(f) Within fifteen (15) days following the receipt of a copy of the petition, unless an extension of time has been granted by the Commission, the foreign affairs agency may file a response thereto with the Commission raising any matter which is relevant to the petition. A copy of such response, if any, shall be served simultaneously on the parties and a statement of such service shall be filed with the Commission.

(g) The Commission shall take appropriate measures which, among other things, may consist of one of the fol-

lowing: (1) The approval of a withdrawal request; (2) the dismissal of the petition; (3) direction of an election; or (4) the issuance of a notice of hearing.

§ 802.6 Intervention.

(a) Subject to the provisions of paragraph (b) of this section and § 802.7(b), an organization will be permitted to intervene as a matter of right in any proceeding pursuant to this part if it has submitted a showing of interest of five (5) percent or more of the eligible employees of the foreign affairs agency together with an alphabetical list of names constituting such showing or has submitted evidence of a current certification as exclusive representative of the eligible employees of a foreign affairs agency.

(b) No organization may participate in any representation proceeding unless it has notified the Commission in writing, accompanied by its showing of interest or by evidence of a current certification, as specified in paragraph (a) of this section of its desire to intervene within fifteen (15) days after the initial posting and dispatch of the notice of petition as provided in § 802.5 (b) unless good cause is shown for extending the period. Simultaneously with the filing of a request for intervention, copies of such request, excluding the showing of interest, shall be served on all known interested parties, and a written statement of such service shall be filed with the Commission.

(c) Any organization intervening must supply a statement to the Commission that it is in full compliance with the order and these regulations and that it has submitted to the foreign affairs agency a current roster of its officers and representatives, a copy of its constitution and bylaws and a statement of its objectives.

(d) Intervention by any party which does not meet the requirements of this section shall be at the discretion of the Commission.

§ 802.7 Withdrawal, dismissal, or deferral of petitions; consolidation of cases; denial of intervention.

(a) If the Commission determines after an investigation that the petition has not been filed timely, the petitioner has not made a sufficient showing of interest, the petition is not otherwise actionable, or an intervention is not appropriate, it may request the petitioner or intervenor to withdraw the petition or the intervention or, in the absence of such withdrawal within a reasonable period of time, it may dismiss the petition or deny the request for intervention.

(b) If the Commission determines, after investigation, that a valid issue has been raised by a challenge under § 802.2 (d) or (e), it may take such action as it deems appropriate including a request to the petitioner to withdraw the petition, dismissal of the petition, denial of the request for intervention, deferral of action upon the petition or request for intervention until such time as those issues have been resolved pursuant to this part, or consolidation of such issues with the representation matter for resolution of all issues.

(c) If the Commission dismisses the petition or denies the request for intervention, it shall furnish the petitioner or the party requesting intervention with a written statement of the grounds for the dismissal or the denial, sending a copy of such statement to the foreign affairs agency, and to any other parties as appropriate.

§ 802.8 Agreement for consent election.

(a) Subsequent to the filing of a petition and after expiration of the fifteen (15) day posting period of the notice of petition as provided in § 802.5(d), the foreign affairs agency, petitioner and any intervenors who have complied with the requirements set forth in § 802.6, and paragraph (d) of this section may agree that a secret ballot election shall be conducted and such agreement in a form approved by the Commission, shall be filed with the Commission. Any qualified intervenor who refuses to sign an agreement for a consent election may express his objections to the agreement in writing to the Commission. The Commission, after careful consideration of the agreement and of such objections, if any, may approve the agreement or take such other action as it deems appropriate. If the Commission approves the agreement, the election shall be conducted by the foreign affairs agency, under the supervision of the Commission in accordance with § 802.18 to determine whether the eligible employees desire to be represented for purposes of exclusive recognition by any or none of the organizations involved.

(b) The parties shall agree on the eligibility period for employee participation in the election, the dates of the election, the designations on the ballot and other related election procedures.

(c) In the event that the parties cannot agree on the matters contained in paragraph (b) of this section, the Commission, after careful consideration of the views of the parties, shall decide these matters.

(d) All parties desiring to participate in an election being conducted pursuant to this section, or pursuant to § 802.17, including intervening organizations which have met the requirements of § 802.6, must sign an agreement providing for such an election in a form prescribed by the Commission.

§ 802.9 Notice of hearing.

The Commission may issue a notice of hearing to resolve any questions relating to the representation matter. A notice of hearing providing for at least ten (10) days notice, except in unusual circumstances, shall be served on all interested parties and shall include:

(a) A statement of the time, place, and nature of the hearing;

(b) The name of the foreign affairs agency, petitioner and intervenors, if any;

(c) A statement of the authority and jurisdiction under which the hearing is to be held.

§ 802.10 Conduct of hearing.

(a) The Commission, in its sole discretion and on its own motion, may sit en banc and conduct the hearing. Where the Commission hears the case sitting en banc, it will issue a decision on the record in the case after the close of the hearing. The Commission in such cases will have all the powers of a Hearing Officer and will advise the parties (notwithstanding § 802.15) whether briefs will be permitted. If the Commission does not elect to sit en banc, it shall designate a Hearing Officer.

(b) Hearings shall be open to the public unless otherwise ordered by the Hearing Officer for good cause, stated in writing, and made a part of the record. When requested to do so by the head of the foreign affairs agency, the Commission shall direct that the hearing be conducted as a closed hearing, in whole or in part, in order to prevent the disclosure of information that would be injurious to the national security or foreign policy. It shall be the duty of the Hearing Officer to inquire fully into all matters in issue and the Hearing Officer shall obtain a full and complete record upon which the Commission can make an appropriate decision.

(c) At any time another Hearing Officer may be substituted for the Hearing Officer previously presiding. A Hearing Officer may withdraw from a proceeding whenever he deems himself disqualified. Any party may request the Hearing Officer, at any time following his designation and before transmittal of the case to the Commission, to withdraw on grounds of personal bias or disqualification by filing with him promptly upon discovery of alleged facts forming a basis for doing so an affidavit stating in detail the matters alleged to constitute grounds for disqualification. If, in the opinion of the Hearing Officer, such affidavit is filed with due diligence and is sufficient on its face, he shall forthwith disqualify himself and withdraw from the proceeding. If he does not disqualify himself and withdraw from the proceeding he shall so rule upon the record, stating the grounds for his ruling.

(d) An official reporter shall make the only official transcript of such proceedings. Copies of the official transcript will not be provided to the parties but may be purchased by arrangement with the official reporter or arrangements may be made with the Commission to examine the transcript during normal working hours. The transcript of any portion of the proceeding which has been conducted as a closed hearing for reasons of national security or foreign policy shall be classified or administratively controlled in accordance with the security regulations of the foreign affairs agency concerned.

(e) Hearings under this section are considered investigatory and not adversary. Their purpose is to develop a full and complete factual record. The rules of relevancy and materiality are paramount; there are no burdens of proof and the technical rules of evidence do not apply.

§ 802.11 Motions.

(a) All motions shall be in writing, or, if made at the hearing may be stated orally on the record and shall state briefly the order or relief sought and the grounds for such motion. An original and two copies of written motions shall be filed and a copy thereof simultaneously shall be served on the other parties to the proceedings. Motions made prior to the hearing shall be filed with the Commission, and motions made during the hearing shall be filed with the Hearing Officer. After the transfer of the case to the Commission, except as otherwise provided, all motions shall be filed with the Commission. Other parties may file responses to such motions within five (5) days of service. The Commission may rule upon all motions filed with it causing a copy of said ruling to be served on the parties, or it may refer the motion to the Hearing Officer. The Hearing Officer shall rule, either orally on the record or in writing, upon all motions filed at the hearing or referred to him as hereinabove provided, except that all motions to dismiss petitions shall be referred for appropriate action at such time as the record is considered by the Commission.

(b) Motions to intervene will not be entertained by the Hearing Officer.

(c) All motions, rulings and orders shall become a part of the record. Rulings by the Hearing Officer shall be considered by the Commission when the case is transferred to it for decision.

(d) The right to make motions or to make objections to rulings on motions shall not be deemed waived by participation in the proceeding.

§ 802.12 Rights of the parties.

(a) Any party shall have the right to appear at any hearing in person, by counsel, or by other representative, and and party shall have the right to examine and cross-examine witnesses and to introduce into the record documentary and other evidence. Two (2) copies of documentary evidence shall be submitted and a copy furnished simultaneously to the other parties. Stipulations of fact may be introduced in evidence with respect to any issue.

(b) Any party shall be entitled, upon request, to a reasonable period at the close of the hearing for oral argument, which shall be included in the stenographic report of the hearing.

§ 802.13 Duties and powers of the Hearing Officer.

It shall be the duty of the Hearing Officer to inquire fully into the facts as they relate to the matters presented. With respect to cases assigned to the Hearing Officer between the time he or she is designated and the transfer of the case to the Commission, the Hearing Officer shall have the authority to:

(a) Grant requests for appearance of witnesses or production of records;

(b) Rule upon offers of proof and receive relevant evidence;

(c) Take or cause depositions to be taken whenever the ends of justice would be served thereby;

(d) Limit lines of questioning or testimony which are immaterial, irrelevant, customarily privileged, or unduly repetitious;

(e) Regulate the course of the hearing and, if appropriate, exclude from the hearing persons who engage in misconduct;

(f) Strike all related testimony of witnesses refusing to answer any questions ruled to be proper;

(g) Hold conferences for the settlement or simplification of the issues by consent of the parties or upon his or her own motion;

(h) Dispose of procedural requests, motions, or similar matters which shall be made part of the record of the proceeding, including motions referred to the Hearing Officer by the Commission and motions to amend petitions;

(i) Examine and cross-examine witnesses and to introduce into the record documentary or other evidence;

(j) Request the parties at any time during the hearing to state their respective positions concerning any issue in the case or theory in support thereof;

(k) Continue the hearing from day-to-day, or adjourn it to a later date or to a different place, by announcement thereof at the hearing or by other appropriate notice;

(l) Correct or approve proposed corrections of the official transcript, when deemed necessary;

(m) Take any other action necessary under the foregoing and not prohibited by these regulations.

§ 802.14 Objections to conduct of hearing.

Any objection to the introduction of evidence may be stated orally or in writing and shall be accompanied by a short statement of the grounds of such objection, and included in the record. No such objection shall be deemed waived by further participation in the hearing. Automatic exception will be allowed to all adverse rulings.

§ 802.15 Filing of briefs.

(a) Any party desiring to file a brief with the Commission shall file the original and two (2) copies within fourteen (14) days after the close of the hearing: *Provided, however,* That prior to the close of the hearing and for good cause, the Hearing Officer may allow time not to exceed fourteen (14) additional days for the filing of briefs with the Commission. Copies thereof shall be served simultaneously on all other parties to the proceeding. No reply brief may be filed except by special permission of the Commission.

(b) Requests for additional time in which to file a brief under authority of this section not addressed to the Hearing Officer during the hearing shall be made to the Commission in writing, and copies thereof shall be served simultaneously on the other parties, and a statement of such service shall be filed with the Commission. Requests for extension of time under this subsection shall be in writing and received not later than three (3) days before the date such briefs are due.

§ 802.16 Transfer of case to the Commission; contents of record.

Upon the close of the hearing the case is transferred automatically to the Commission. The record of the proceeding shall include the petition, notice of hearing, service sheet, motions, rulings, orders, official transcript of the hearing with any corrections thereto, stipulations, objections, depositions, exhibits, documentary evidence, and any briefs or other documents submitted by the parties.

§ 802.17 Decision.

The Commission will issue a decision directing an election or dismissing the petition, or making other disposition of the matters before it.

§ 802.18 Election procedure.

This section governs all elections conducted under the supervision of the Commission, pursuant to § 802.8 or § 802.17.

(a) Appropriate notices of election shall be posted by the foreign affairs agency in places where notices are normally posted affecting employees of the agency. Such notices shall set forth the details and procedures for the election, the eligibility period, the date(s) of the election, and shall contain a sample ballot. In addition, the foreign affairs agency shall, simultaneously with the date of such posting, dispatch telegraphic notice thereof to Foreign Service posts abroad. Such telegraphic notice shall include all materials contained in the posted notice except the sample ballot and shall be brought promptly to the attention of the agency's employees at such posts.

(b) The reproduction of any document purporting to be a copy of the official ballot, other than one completely unaltered in form and content and clearly marked "sample" on its face, which suggests either directly or indirectly to employees that the Commission endorses a particular choice, may constitute grounds for setting aside an election upon objections properly filed.

(c) All elections shall be by secret ballot. An exclusive representative shall be chosen by a majority of the valid ballots cast.

(d) Whenever two or more organizations are included as choices in an election, any intervening organization may request, in writing, the Commission to remove its name from the ballot. The request must be received not later than ten (10) days after the decision and direction of the election or the Commission's notification of approval of agreement for an election. Such request shall be subject to the approval of the Commission, whose decision shall be final: *Provided, however,* That in a proceeding involving a petition filed under § 802.2 (b) an organization currently certified may not have its name removed from the ballot without giving the aforementioned request in writing to all parties and the Commission, disclaiming any representation interest among the employees.

§ 802.19 Challenged ballots.

A representative of any organization on the ballot, of the foreign affairs agency, or of the Commission may challenge, for good cause, the eligibility of any person to vote in the election. The ballots of such challenged persons shall be impounded.

§ 802.20 Tally of ballots.

Upon the conclusion of the election, the Commission shall furnish to the parties a tally of ballots.

§ 802.21 Certifications; objections to election; determination on objections and challenged ballots.

(a) The Commission shall issue to the parties a certification of the results of the election, or a certification of representative, where appropriate: *Provided,* That no objections are filed within the time limit set forth below; the challenged ballots are insufficient in number to affect the results of the election; and no runoff or rerun election is to be held.

(b) Within five (5) days after the tally of ballots has been furnished, or proffered when service has been refused, any party may file with the Commission an original and four (4) copies of objections to the procedural conduct of the election, or to conduct which may have improperly affected the results of the election, supported by a clear and concise statement of the reason therefor. Such filing must be timely whether or not the challenged ballots are sufficient in number to affect the results of the election. Within ten (10) days of the filing of the objections, unless an extension of time has been granted by the Commission, the objecting party shall furnish the Commission with evidence, which may include but shall not be limited to signed statements, documentary evidence, and other materials supporting the objections. The objecting party shall bear the burden of proof at all stages of the proceedings, regarding all matters alleged in its objections. Copies of such objections and copies of any subsequently furnished evidence in support thereof shall be served on the other parties by the party filing them. Such service shall be stimultaneous with the filing of the objections and/or supporting evidence and a statement of such service shall be filed with the Commission.

(c) If objections are filed, or if the challenged ballots are sufficient in number to affect the results of the election, the Commission shall cause to be investigated the objections or challenges, or both.

(d) When the Commission determines that no relevant issue of fact exists, it (1) shall find whether improper conduct occurred of such a nature as to warrant the setting aside of the election and, if so, shall set aside the election, or (2) shall rule on determinative challenges to ballots, if any, or both. The Commission shall serve simultaneously any such findings upon all parties to the proceeding and shall state therein any additional pertinent matters such as its decision to rerun the election or count ballots at a specified date, time, and place, and shall cause to be issued a revised tally of ballots.

(e) Where it appears to the Commission that the objections or challenged ballots raise any relevant question of fact which may have affected the results of the election, the Commission shall issue a notice of hearing specifying either that it will conduct the hearing in accordance with § 803.10(a) of this chapter or that a Hearing Examiner, designated by the Chief Hearing Examiner, will take evidence, make factual findings and recommendations with respect to the objections and/or challenged ballots, and report these findings and recommendations to the Commission and the parties. Such proceedings shall be conducted in accordance with §§ 803.10 through 803.24 of this chapter.

(f) The Commission shall decide whether to adopt or modify the Hearing Examiner's recommendations. In accord with the Commission's final determinations, it shall issue a certification of the results of the election, certification of representative, or a decision setting aside the election or directing the opening and counting of challenged ballots, whichever is appropriate.

§ 802.22 Runoff elections.

(a) The foreign affairs agency shall conduct a runoff election under supervision of the Commission when an election in which the ballot provided for not less than three (3) choices (i.e., at least two representatives and "neither" or "none") results in no choice receiving a majority of the valid ballots cast, and any objections which had been filed have been disposed of, and any challenged ballots have been disposed of or are not sufficient in number to affect the results of the election, as provided herein. Only one runoff election shall be held pursuant to this section.

(b) Employees who were eligible to vote in the original election and who also are in an eligible category on the date of the runoff election shall be eligible to vote in the runoff election.

(c) The ballot in the runoff election shall provide for a selection between the two choices receiving the largest and second largest number of votes.

§ 802.23 Inconclusive elections.

(a) An inconclusive election is one in which none of the choices on the ballot has received a majority of the valid ballots cast and § 802.22 is not applicable. If there are no challenged ballots that would affect the results of the election, the Commission may declare the election a nullity and may order another election, providing for a selection from among the choices afforded in the previous ballot in the following situations:

(1) The ballot provided for a choice among two or more representatives and "neither" or "none," and the votes are equally divided among the several choices; or

(2) The number of ballots cast for one choice in an election is equal to the number cast for another choice but less than the number cast for the third choice; or

(3) The runoff ballot provided for a choice between two representatives and the votes are equally divided.

(b) Only one further election pursuant to this section may be held.

PART 803—UNFAIR PRACTICE PROCEEDINGS

Sec.

AUTHORITY: The provisions of this Part 803 issued under sec. 5 E.O. 11636, 36 F.R. 24901.

§ 803.1 Who may file complaints.

A complaint that a foreign affairs agency or an organization has engaged in any act prohibited under section 13 of the order or has failed to take any action required by the order, may be filed by an employee, a foreign affairs agency, or an organization.

§ 803.2 Action to be taken before filing a complaint with the Commission.

(a) Any charge of an alleged unfair practice must be in writing and shall be filed directly with the party or parties against whom the charge is directed, hereinafter referred to as the respondent(s), within six (6) months of the occurrence of the alleged unfair practice, except as otherwise provided in § 805.12 of this chapter. The charge shall contain a clear and concise statement of the facts constituting the alleged unfair practice, including the time and place of occurrence of the particular acts. The alleged unfair practice shall be investigated by the parties involved and informal attempts to resolve the matter shall be made by the parties. If informal attempts are unsuccessful in disposing of the matter within thirty (30) days,

after a charge has been filed, a party may file a complaint requesting the Commission to issue a decision in the matter: *Provided, however,* That if a final decision by the respondent is served on the charging party, the charging party may file a complaint immediately thereafter but in no event later than sixty (60) days from the date of service of the respondent's written final decision on the charging party: *Provided, further,* That to be considered timely a complaint to the Commission shall be filed within nine (9) months of the occurrence of the alleged unfair practice or within sixty (60) days of the service of the written final decision on the charging party, whichever is the shorter period of time.

(b) The thirty (30) day charge period as required under paragraph (a) of this section shall not be applicable to allegations of violations of section 13(b)(4) of the order. In such a situation, a complaint may be filed immediately with the Commission.

(c) In complaints alleging violations of section 13(b)(4), the Commission shall conduct a priority investigation.

§ 803.3 Contents of the complaint and supporting documents.

(a) A complaint alleging a violation of section 13 of the order shall contain the following:

(1) The name, address, and telephone number of the employee, foreign affairs agency, or organization making the complaint hereinafter referred to as the complainant;

(2) The name, address, and telephone number of the foreign affairs agency or organization against whom the complaint is made;

(3) A clear and concise statement of the facts constituting the alleged unfair practice, including the time and place of occurrence of the particular acts, the names and addresses of the individuals involved, and a statement of the section and subsection of the order alleged to have been violated;

(4) A statement of any other procedure invoked involving the subject matter of the complaint and the results, if any;

(5) A declaration by the person signing the complaint, under the penalties of the Criminal Code (18 U.S.C. 1001), that its contents are true and correct to the best of his or her knowledge and belief.

(b) The entire report of investigation by the complainant, pursuant to § 803.2, including, among other things, the pre-complaint charge, copies of relevant correspondence, other written materials, statements of witnesses, summaries of meetings and discussions, offers of settlement by the respondent and settlement proposals advanced by the complainant, shall be filed with the complaint.

§ 803.4 Filing and service of copies.

(a) An original and four copies of a complaint and two (2) copies of the entire report of investigation shall be filed with the Commission.

(b) Simultaneously with the filing of a complaint and the complainant's report of investigation, copies of each shall be served by the complainant on the respondent, and a written statement of such service shall be filed with the Commission.

§ 803.5 Investigation of the complaint; stipulation of facts.

(a) Within fifteen (15) days following the service of a copy of the complaint, unless an extension of time has been granted by the Commission, the respondent shall file a response thereto, including the entire report of its investigation, raising any matter which is relevant to the complaint. The response shall be filed with the Commission and copies thereof shall be served simultaneously on the other parties. Upon the filing of a complaint the Commission shall cause such additional investigation to be made as it deems necessary.

(b) The parties may submit to the Commission a stipulation of facts and their request for a decision by the Commission without a hearing.

(c) The complainant shall bear the burden of proof at all stages of the proceedings regarding matters alleged in its complaint.

§ 803.6 Preliminary action by the Commission.

(a) The Commission shall take appropriate measures which may consist of the following: (1) approval of a withdrawal request; (2) dismissal of the complaint; (3) approval of a settlement agreed upon by the parties; (4) approval, after careful consideration of the views of the parties, of the respondent's offer of settlement made any time prior to the close of a hearing, if any; (5) approval of a stipulation of facts pursuant to § 803.5(b); or (6) the issuance of a notice of hearing.

(b) In cases involving complaints alleging a violation of section 13(b)(4) of the order, if the Commission determines, based upon the evidence adduced, that a reasonable basis for a complaint exists and no satisfactory offer of settlement has been made, it shall issue an expedited notice of hearing. The complainant shall bear the burden of proof at the hearing.

(c) Cases involving complaints alleging violations of section 13(a)(2) of the order shall be given priority over all other unfair practice cases except cases of like character and cases under paragraph (b) of this section.

§ 803.7 Withdrawal or dismissal of complaint.

(a) If the Commission determines that the complaint has not been timely filed, that a reasonable basis for the complaint has not been established, that a satisfactory settlement agreement has been reached, or a satisfactory offer of settlement has been made by the respondent, or for other appropriate reasons, it may request the complainant to withdraw the complaint and in the absence of such withdrawal within a reasonable time, it may dismiss the complaint.

(b) If the Commission dismisses the complaint, it shall furnish the complainant with a written statement of the grounds for dismissal, sending a copy of the statement to the respondent. If the dismissal is based on approval of an offer of settlement which is satisfactory to the Commission, such statement shall set forth the terms of settlement and the implementation thereof.

§ 803.8 Notice of hearing.

The Commission may cause a notice of hearing to be issued if, after the filing of a complaint, it finds, based on the allegations and the reports of investigation by the parties and any additional investigation, that there is a reasonable basis for the complaint and that no satisfactory offer of settlement has been made.

§ 803.9 Contents of the notice of hearing; attachments.

(a) The notice of hearing shall include:

(1) A statement of time and place of the hearing which shall be not less than ten (10) days after service of the notice of hearing, except in extraordinary circumstances;

(2) A statement of the nature of hearing;

(3) A statement of the authority and jurisdiction under which the hearing is to be held;

(4) A reference to the particular sections of the order and regulations involved.

(b) Attached to the notice of hearing shall be a copy of the complaint and the respondent's answer.

(c) The reports of investigation by the parties referred to in § 803.8 shall be furnished to the Hearing Examiner; however, the reports of investigation will not thereby become evidence, and any party wishing to rely upon anything contained therein must make an appropriate submission at the hearing.

§ 803.10 Conduct of hearing.

(a) The Commission in its sole discretion and on its own motion, may sit en banc and conduct the hearing. Where the Commission hears the case sitting en banc, it will issue a decision on the record in the case after the close of the hearing. The Commission in such cases will have all the powers of a Hearing Examiner and will advise the parties (notwithstanding § 803.21) whether briefs will be permitted. Where the Commission has decided to hear the case en banc the rules concerning the filing of exceptions to Hearing Examiners' reports and recommendations do not apply to its decisions. If the Commission does not elect to sit en banc, it shall inform the Chief Hearing Examiner, who will designate a Hearing Examiner to conduct the hearing.

(b) Hearings shall be open to the public unless otherwise ordered by the Hearing Examiner for good cause, stated in writing and made a part of the record. When requested to do so by the head of

the foreign affairs agency, the Commission shall direct that the hearing be conducted, in whole or in part, as a closed hearing, in order to prevent the disclosure of information that would be injurious to the national security or foreign policy.

(c) A Hearing Examiner may withdraw from a proceeding whenever he deems himself disqualified. Any party may request the Hearing Examiner at any time following his designation and before submission of the report and recommendations to the Commission, to withdraw on grounds of personal bias or disqualification by filing with him promptly upon discovery of alleged facts forming a basis for doing so an affidavit stating in detail the matters alleged to constitute grounds for disqualification. If, in the opinion of the Hearing Examiner, such affidavit is filed with due diligence and is sufficient on its face, he shall forthwith disqualify himself and withdraw from the proceeding. If he does not disqualify himself and withdraw from the proceeding he shall so rule upon the record, stating the grounds for his ruling.

(d) An official reporter shall make the only official transcript of such proceedings. Copies of the official transcript will not be provided to the parties but may be purchased by arrangement with the official reporter or arrangements may be made with the Commission to examine the transcript during normal working hours in Washington, D.C., or at the post or posts directly involved. The transcript of any portion of the proceeding which has been conducted as a closed hearing for reasons of national security or foreign policy shall be classified or administratively controlled in accordance with the security regulations of the foreign affairs agency concerned.

§ 803.11 Intervention.

Any person desiring to intervene in any proceeding shall file a motion in writing with the Chief Hearing Examiner or the designated Hearing Examiner, or, if made at the hearing, may move orally on the record, stating the grounds upon which such person claims an interest. Prior to the hearing, such a motion shall be filed with the Commission; during the hearing such motion shall be made to the Hearing Examiner. An original and two copies of written motions shall be filed. Simultaneously upon filing such motion, the moving party shall serve a copy thereof on the other parties. The Commission shall rule upon all such motions filed prior to the hearing, and shall cause a copy of such rulings to be furnished to the other parties, or may refer the motion to the Hearing Examiner for ruling. The Hearing Examiner shall rule upon all such motions made at the hearing or referred to the Hearing Examiner by the Commission. When the Hearing Examiner rules, before the hearing, on a motion referred to the Hearing Examiner by the Commission, he shall furnish copies of such ruling to the parties. The Commission or Hearing Examiner, as the case may be, may permit intervention in person or by counsel or other representative to such extent and upon such terms as may be deemed proper.

§ 803.12 Rights of parties.

Any party shall have the right to appear at such hearing in person, by counsel, or by other representative, to examine and cross-examine witnesses, and to introduce into the record documentary or other relevant evidence, except that the participation of any party shall be limited to the extent prescribed by the Hearing Examiner. Two copies of documentary evidence shall be submitted and a copy furnished to each of the other parties. Stipulations of fact may be introduced in evidence with respect to any issue.

§ 803.13 Rules of evidence.

The technical rules of evidence do not apply. Any evidence may be received, except that a Hearing Examiner may exclude any evidence or offer of proof which is immaterial, irrelevant, unduly repetitious, or customarily privileged. Every party shall have a right to present its case by oral and documentary evidence and to submit rebuttal evidence.

§ 803.14 Burden of proof.

A complainant in asserting a violation of the order shall have the burden of proving the allegations of the complaint by a preponderance of the evidence.

§ 803.15 Duties and powers of the Hearing Examiner.

It shall be the duty of the Hearing Examiner to inquire fully into the facts as they relate to the matter before him or her. Upon assignment to the Hearing Examiner and before transfer of the case to the Commission, the Hearing Examiner shall have the authority to:

(a) Grant requests for appearance of witnesses or production of documents;

(b) Rule upon offers of proof and receive relevant evidence;

(c) Take or cause depositions to be taken whenever the ends of justice would be served thereby;

(d) Limit lines of questioning or testimony which are immaterial, irrelevant, customarily privileged, or unduly repetitious;

(e) Regulate the course of the hearing and, if appropriate, exclude from the hearing persons who engage in misconduct and strike all related testimony of witnesses refusing to answer any questions ruled to be proper;

(f) Hold conferences for the settlement or simplification of the issues by consent of the parties or upon his or her own motion and, where appropriate, transmit to the Commission offers of settlement by a party or parties;

(g) Dispose of procedural requests, motions, or similar matters which shall be made part of the record of the proceeding, including motions referred to the Chief Hearing Examiner or to the designated Hearing Examiner by the Commission and motions to amend pleadings, also to recommend dismissal of cases or portions thereof, and to order hearings reopened prior to issuance of the Hearing Examiner's report and recommendations;

(h) Examine and cross-examine witnesses and to introduce into the record documentary or other evidence;

(i) Request the parties at any time during the hearing to state their respective positions concerning any issue in the case or theory in support thereof;

(j) Continue the hearing from day to day, or adjourn it to a later date or to a different place, by announcement thereof at the hearing or by other appropriate notice;

(k) Prepare, serve, and submit his or her report and recommendations pursuant to § 803.22;

(l) Take official notice of any material fact not appearing in evidence in the record, which is among the traditional matters of judicial or official notice: *Provided*, That the parties shall be given adequate notice, at the hearing or by reference in the Hearing Examiner's decision of the matters so noticed, and shall be given adequate opportunity to show the contrary;

(m) Correct or approve proposed corrections of the official transcript when deemed necessary;

(n) Take any other action necessary under the foregoing and not prohibited by these regulations.

§ 803.16 Unavailability of Hearing Examiners.

In the event of the Hearing Examiner designated to conduct the hearing becomes unavailable, the Chief Hearing Examiner shall designate another Hearing Examiner for the purpose of further hearing or issuance of a report and recommendations on the record as made, or both.

§ 803.17 Objection to conduct of hearing.

(a) Any objection with respect to the conduct of the hearing, including any objection to the introduction of evidence, may be stated orally or in writing accompanied by a short statement of the grounds for such objection, and included in the record. No such objection shall be deemed waived by further participation in the hearing. Such objection shall not stay the conduct of the hearing.

(b) Automatic exceptions will be allowed to all adverse rulings. Rulings by the Hearing Examiner shall not be appealed prior to the transfer of the case to the Commission, but shall be considered by the Commission only upon the filing of exceptions to the Hearing Examiner's report and recommendations in accordance with § 803.22

§ 803.18 Motions before or after a hearing.

(a) All motions made before a hearing shall be made in writing to the Commission. All motions made after the hearing but prior to the transfer of the case to the Commission shall be filed with the Hearing Examiner. All motions made after the transfer of the case to the Commission, except motions to correct the record under § 803.15(m) shall be made in writing to the Commission. The

moving party shall serve simultaneously a copy of all motion papers on all other parties. A statement of service shall accompany the motion. Answering affidavits, if any, must be served on all parties and the originals thereof, together with two (2) copies and a statement of service, shall be filed with the Commission before the hearing, with the Hearing Examiner after the hearing begins and before transfer of the case to the Commission and with the Commission after transfer of the case to it; within five (5) days after service of the moving papers unless it is otherwise directed.

(b) The Commission may rule upon all motions filed with it before the hearing, causing a copy of such ruling to be served on the parties, or it may refer such motions to the Chief Hearing Examiner or to the Hearing Examiner if one has been designated by the Chief Hearing Examiner. The Hearing Examiner may rule upon all motions referred to him or her prior to the hearing by the Commission or by the Chief Hearing Examiner and may rule upon all motions filed after the beginning of the hearing and before transfer of the case to the Commission. Such motions may be ruled upon by the Chief Hearing Examiner in the absence of the Hearing Examiner.

§ 803.19 Waiver of objections.

Any objection not made before a Hearing Examiner shall be deemed waived.

§ 803.20 Oral argument at the hearing.

Any party shall be entitled, upon request, to a reasonable period prior to the close of the hearing for oral argument, which shall be included in the official transcript of the hearing.

§ 803.21 Filing of brief.

Any party desiring to submit a brief to the Hearing Examiner shall file the original and two (2) copies within fourteen (14) days after the close of the hearing: *Provided, however,* That prior to the close of the hearing and for good cause, the Hearing Examiner may grant a reasonable extension of time. Copies thereof shall be served simultaneously on all other parties to the proceeding, and a statement of such service shall be filed with the Hearing Examiner. Requests for additional time in which to file a brief under authority of this section not addressed to the Hearing Examiner during the hearing shall be made to the Chief Hearing Examiner, in writing at least three (3) days before the briefs are due and copies shall be served simultaneously on the other parties. A statement of such service shall be furnished. No reply brief may be filed except by special permission of the Hearing Examiner.

§ 803.22 Submission of the Hearing Examiner's report and recommendations to the Commission; exceptions.

(a) After the close of the hearing, and the receipt of briefs, if any, the Hearing Examiner shall prepare a report and recommendations expeditiously. The report and recommendations shall contain findings of fact, conclusions, and the reasons or basis therefor including credibility determinations, and recommendations as to the disposition of the case including, where appropriate, the remedial action to be taken and notices to be posted.

(b) The Hearing Examiner shall cause the report and recommendations to be served promptly on all parties to the proceeding. Thereafter, the Hearing Examiner shall transfer the case to the Commission, including the report and recommendations and the record. The record shall include the complaint, notice of hearing, service sheet, motions, rulings, orders, official transcript of the hearing, stipulations, objections, depositions, exhibits, documentary evidence, and any briefs or other documents submitted by the parties.

(c) An original and two (2) copies of any exceptions to the Hearing Examiners' report and recommendations may be filed by any party with the Commission within ten (10) days after service of the report and recommendations: *Provided, however,* That the Commission may for good cause shown extend the time for filing such exceptions. Requests for additional time in which to file exceptions shall be in writing; copies thereof shall be served simultaneously on the other parties and a statement of such service shall be furnished to the Commission. Requests for extension of time must be received no later than three (3) days before the date the exceptions are due. Copies of such exceptions and any supporting briefs shall be served simultaneously on all other parties, and a statement of such service shall be furnished to the Commission.

§ 803.23 Contents of exceptions to Hearing Examiner's report and recommendations.

(a) Exceptions to a Hearing Examiner's report and recommendations shall:

(1) Set forth specifically the questions upon which exceptions are taken;

(2) Identify that part of the Hearing Examiner's report and recommendations to which objection is made;

(3) Designate by precise citation of page the portions of the record relied on, state the grounds for the exceptions, and include the citation of authorities unless set forth in a supporting brief.

(b) Any exception to a ruling, finding, conclusion, or recommendation which is not specifically urged shall be deemed to have been waived. Any exception which fails to comply with the foregoing requirements may be disregarded.

§ 803.24 Briefs in support of exceptions.

(a) Any brief in support of exceptions shall contain only matters included within the scope of the exceptions and shall contain, in the order indicated, the following:

(1) A concise statement of the case containing all that is material to the consideration of the questions presented;

(2) A specification of the questions involved and to be argued;

(3) The argument, presenting clearly the points of fact and law relied on in support of the position taken on each question, with specific page reference to the transcript and the legal or other material relied on.

(b) Answering briefs to the exceptions and cross-exceptions and supporting briefs may be filed at the discretion of the Commission.

§ 803.25 Action by the Commission.

(a) After considering the Hearing Examiner's report and recommendations, the record, and any exceptions filed, the Commission shall issue its decision affirming or reversing the Hearing Examiner, in whole or in part, or making such other disposition of the matter as it deems appropriate: *Provided, however,* That unless exceptions are filed which are timely and in accordance with § 803.23, the Commission may, at its discretion, adopt without discussion the report and recommendations of the Hearing Examiner, in which event the findings, conclusions, and recommendations of the Hearing Examiner, as contained in his report and recommendations shall, upon appropriate notice to the parties, automatically become the decision of the Commission.

(b) Upon finding a violation of the order the Commission may order the respondent to cease and desist from conduct violative of the order and may require the respondent to take such affirmative corrective action as it deems appropriate to effectuate the policies of the order.

(c) Upon finding no violation of the order, the Commission shall dismiss the complaint.

§ 803.26 Compliance with decisions and orders of the Commission.

When remedial action is ordered, the respondent shall report to the Commission within a specified period that the required remedial action has been effected. When the Commission finds that the required remedial action has not been effected, it may take such action as it deems appropriate including referring the matter to the Board of the Foreign Service.

PART 804—STANDARDS OF CONDUCT

Sec.

804.1 Substantive requirements concerning standards of conduct.

804.2 Proceedings for enforcing standards of conduct.

AUTHORITY: The provisions of this Part 804 issued under secs. 5 and 12, E.O. 11636, 36 F.R. 24901.

§ 804.1 Substantive requirements concerning standards of conduct.

(a) The provisions of Subpart A of 29 CFR Part 204 "Substantive Requirements Concerning Standards of Conduct" are hereby incorporated by reference and shall be applicable to all organizations, members thereof, and other persons subject to the order, except that all duties, responsibilities, and authority directly allocated to the Assistant Secretary for Labor-Management Relations shall under the regula-

tions in this part be assumed by the Commission.

(b) The reference to Executive Order 11491 in § 204.2(a)(5)(b) of Title 29 shall be deemed to read Executive Order 11636.

§ 804.2 Proceedings for enforcing standards of conduct.

The provisions of Subpart B of 29 CFR Part 204 "Proceedings for Enforcing Standards of Conduct" are hereby incorporated by reference and shall be applicable to all organizations, members thereof, and other persons subject to the order, with the following exceptions: (a) Those portions of Subpart B which provide for reports by the Area Administrator to the Regional Administrator or by the Regional Administrator to the Director shall not be applicable; (b) all functions which in Subpart B are performed by an Area Administrator or Regional Administrator shall be performed by the Director or his agents; (c) 29 CFR 203.25(c) shall be deleted; (d) the duties, responsibilities, and authority allocated to the Assistant Secretary under Subpart B shall under these regulations be assumed by the Commission; (e) 29 CFR 204.73 shall be deleted; (f) the reference to the Council in 29 CFR 203.26 is amended to read "the Board of the Foreign Service;" and (g) the last phrase of 29 CFR 203.10(b) is revised to read "or arrangements may be made with the Commission to examine the transcript during normal working hours."

PART 805—CONSULTATION PROCEEDINGS

Sec.

AUTHORITY: The provisions of this Part 805 issued under sec. 5, E.O. 11636, 36 F.R. 24901.

§ 805.1 Priority of consideration.

Because of their importance to the effectuation of the purposes of the order, proceedings to determine whether an obligation to consult exists with respect to particular issues will ordinarily be given priority over all other matters before the Commission, except for proceedings involving complaints alleging a violation of section 13(a)(2) or section 13(b)(4) of the order, as specified in § 803.6(c) of this chapter. Decisions in such cases will be rendered as expeditiously as the orderly conduct of proceedings will permit.

§ 805.2 Who may file an application.

An application for a decision by the Commission concerning a question as to whether or not an obligation to consult exists under the order with respect to particular issues may be filed by a foreign affairs agency or a certified organization.

§ 805.3 Action to be taken before filing an application with the Commission.

Any application for a decision by the Commission as to whether or not an obligation to consult exists under the order with respect to particular issues, must be filed with the Commission by the party seeking consultation within thirty (30) days after an alleged denial of an obligation to consult by the other party.

§ 805.4 Contents of application and attachments.

(a) An application filed under this section shall contain the following:

(1) The name of the foreign affairs agency involved, its address, telephone number, and the person to contact and title, if known;

(2) The name, address, and telephone number of the certified organization;

(3) A clear and concise statement of the issues in dispute;

(4) A statement of any other procedures invoked involving the subject matter of the dispute and the results, if any;

(5) A declaration by the person signing the application, under the penalties of the Criminal Code (18 U.S.C. 1001), that its contents are true and correct to the best of that person's knowledge and belief, and the signature of the applicant or the applicant's representative, including title, address, and telephone number.

(b) The applicant shall furnish with the application, two (2) copies of the following: (1) A statement of any other relevant facts; and (2) all correspondence between the parties relating to the disputed issue(s), and may, in addition, file a memorandum or brief in support of its position.

§ 805.5 Filing and service of copies.

(a) An original and four (4) copies of an application, including two (2) copies of all attachments, shall be filed with the Commission.

(b) Simultaneously with the filing of an application, a copy of the application and all materials submitted therewith shall be served on the other party, and a written statement of such service shall be filed with the Commission.

§ 805.6 Investigation of the application.

(a) After the application has been filed, the other party shall file two (2) copies of a response with the Commission within fifteen (15) days following the service of a copy of the application, unless an extension of time has been granted by the Commission. The other party may file with its response a memorandum or brief in support of its position.

(b) The response shall cover any matter which is relevant to the application and shall include any supporting evidence on the issue(s) raised by the application and the attachments thereto. A copy of such response and all material submitted therewith shall be served simultaneously on the other party and a written statement of such service shall be filed with the Commission.

(c) Upon the filing of an application, the Commission shall cause such additional investigation to be made as it deems necessary.

(d) The parties shall, whenever possible, submit to the Commission a stipulation of facts together with their request for a decision by the Commission without a hearing.

§ 805.7 Action by the Commission.

(a) The Commission shall take appropriate measures which may consist of:

(1) Approval of a request for withdrawal of the application; or

(2) Dismissal of the application if it determines that the application has not been timely filed or otherwise is not actionable; or

(3) Issuance of a report and findings on the questions involved, on the basis of the material before it, including information obtained from oral argument, if requested by the Commission.

(b) The Commission may, in addition to, or in lieu of, the actions described in paragraph (a) of this section, issue a notice of hearing as provided by § 805.8.

§ 805.8 Notice of hearing.

The Commission may cause a notice of hearing to be issued providing for a hearing before a Hearing Examiner if, at any time after the filing of an application, it finds that the issues cannot otherwise be resolved.

§ 805.9 Contents of notice of hearing; attachments.

(a) The notice of hearing shall include:

(1) A statement of the time and place of the hearing, which shall be not less than ten (10) days after service of the notice of hearing, except in extraordinary circumstances;

(2) A statement of the nature of the hearing;

(3) A statement of the authority and jurisdiction under which the hearing is to be held;

(4) A reference to the particular sections of the order and regulations involved.

(b) Attached to the notice of hearing shall be a copy of the application and attachments and the response(s) thereto.

(c) The attachments to the application referred to in § 805.4(b) and the responses thereto shall be furnished to the Hearing Examiner, but will not thereby become evidence, and any party wishing to rely upon anything contained therein must make an appropriate submission at the hearing.

§ 805.10 Hearing and posthearing procedures.

Hearing procedures shall be in accordance with §§ 803.10 through 803.20 with the exception of § 803.14 of this chapter. There shall be no burden of proof in hearings conducted under this part. The procedures after the close of the hearing shall be in accordance with §§ 803.18 through 803.24 with the ex-

ception of §§ 803.19 and 803.20 of this chapter. After considering the Hearing Examiner's report and recommendations and the record and any exceptions filed thereto; the Commission shall issue its decision affirming or reversing the Hearing Examiner, in whole or in part, or make any other disposition of the matter it deems appropriate.

§ 805.11 Compliance with a decision of the Commission.

(a) When a decision is made that an obligation to consult exists with respect to a particular issue or issues, the parties shall report to the Commission, within a specified period, that the required consultation is being undertaken.

(b) When the Commission finds that the consultation required pursuant to a decision of the Commission has not been effected, the Commission may refer the matter to the Board of the Foreign Service, or take such other action as appropriate.

PART 806—MISCELLANEOUS

Sec.
806.1 Computation of time for filing papers.
806.2 Additional time after service by mail.
806.3 Documents in a proceeding.
806.4 Service of pleading and other papers under this chapter.
806.5 Consolidation of cases.
806.6 Request for appearance of witnesses and production of documents at hearing.
806.7 Rules to be construed liberally.
806.8 Petitions for amendment of regulations.

AUTHORITY: The provisions of this Part 806 issued under secs. 5, 12, E.O. 11636, 36 F.R. 24901.

§ 806.1 Computation of time for filing papers.

(a) In computing any period of time prescribed by or allowed by these regulations, the date of the act, event, or default after which the designated period of time begins to run, shall not be included. The last day of the period so computed is to be included unless it is a Saturday, Sunday, or Federal legal holiday in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or a Federal legal holiday. When the period of time prescribed, or allowed is less than seven (7) days, intermediate Saturdays, Sundays, and Federal legal holidays shall be excluded from the computations. When these regulations require the filing of any paper, such document must be received by the Commission or the officer or agent designated to receive such matter before the close of business of the last day of the time limit, if any, for such filing or extension of time that may have been granted.

(b) The Commission may, upon request, extend any period of time prescribed by or allowed by these regulations to take into account the effect of the occurrence of foreign holidays upon the adequacy of time period so prescribed or allowed.

§ 806.2 Additional time after service by mail.

Whenever a party has the right or is required to do some act pursuant to these regulations within a prescribed period after required service of a notice or other paper upon him and the notice or paper is served on him by mail, three (3) days in the case of domestic mail and seven (7) days in the case of international mail shall be added to the prescribed period: *Provided, however,* That such additional days shall not be added if any extension of time has been granted.

§ 806.3 Documents in a proceeding.

(a) *Title.* Documents in any proceeding under these regulations including correspondence shall show the title of the proceeding and the case number, if any.

(b) *Number of copies; form.* Except as provided in these regulations any documents or papers shall be filed with four (4) copies in addition to the original. All matters filed shall be printed, typed, or otherwise legibly duplicated; carbon copies of typewritten matter will be accepted if they are clearly legible.

(c) *Signature.* The original of each document required to be filed under these regulations shall be signed by the party or by an attorney or representative of record for the party, or by an officer of the party, and shall contain the address and telephone number of the person signing it.

§ 806.4 Service of pleading and other papers under this chapter.

(a) *Method of service.* Notices of hearing, decisions, orders, and other papers may be served personally or by registered or certified mail or by telegraph.

(b) *Upon whom served.* All papers, except as herein otherwise provided, shall be served upon all counsel of record and upon parties not represented by counsel or by their agents designated by them or by law and upon the Commission, or its designated officer, or agent or examiner, where appropriate. Service upon such counsel or representative shall constitute service upon the party, but a copy also shall be transmitted to the party.

(c) *Statement of service.* The party or person serving the papers or process shall submit simultaneously to the Commission or other designated representative, or to the individual conducting the proceeding, a written statement of such service; failure to file a statement of service shall not affect the validity of the service. Proof of service shall be required only if subsequent to the receipt of a statement of service a question is raised with respect to proper service.

§ 806.5 Consolidation of cases.

In any matter arising pursuant to these regulations, whenever it appears necessary in order to effectuate the purposes of the order or to avoid unnecessary costs or delays, the Commission may consolidate cases.

§ 806.6 Request for appearance of witnesses and production of documents at hearing.

(a) The Commission, Hearing Officers, or Hearing Examiners, as appropriate, upon their own motion, or upon motion of any parties to a proceeding, may issue a request for appearance of witnesses or request for production of documents at a hearing held pursuant to Parts 802, 803, and 805 of this chapter. When it is impracticable for a witness to appear personally at a hearing, the Commission, Hearing Officer, or Hearing Examiner, as appropriate, may provide for the taking of testimony by deposition in response to written or oral interrogatories.

(b) A party's motion to the Commission shall be in writing and filed with the Commission prior to the opening of a hearing or with a Hearing Officer or Hearing Examiner during the hearing, and shall name and identify the witness(es) or document(s) sought, or both, and state the reasons therefor. Simultaneously with the filing of a request with the Commission, copies shall be served on the other parties and a written statement of such service shall be filed with the Commission.

(c) Within five (5) days after service of the motion, a party may file its objection to the motion with the Commission and state its reasons therefor. Simultaneously with the filing of the objection with the Commission, copies shall be served on the other parties and a written statement of such service shall be filed with the Commission. The Commission may rule upon the motion or refer it to the Hearing Officer or Hearing Examiner for an appropriate ruling.

(d) Objections to a motion referred to or filed with a Hearing Officer or Hearing Examiner may be stated orally on the record.

(e) A motion shall be granted by the Commission, Hearing Officer, or Hearing Examiner, after careful consideration of any objections and upon determination that the testimony or documents appear(s) to be necessary to the matters under investigation and describe(s) with sufficient particularity the documents sought. Service of an approved request for appearance of witnesses or request for production of documents is the responsibility of the requesting party. Upon the failure of any party, or officer, or official, of any party to comply with such request(s), the Commission, Hearing Officer, or the Hearing Examiner, may disregard all related evidence offered by the party failing to comply or take such other action as may be appropriate.

(f) A denial of a motion shall be explained fully and it shall become a part of the hearing record.

§ 806.7 Rules to be construed liberally.

(a) The regulations in this chapter may be construed liberally to effectuate the purposes and provisions of the order.

(b) When an act is required or allowed to be done at or within a specified time, the Commission may at any time order the period altered where it shall be manifest that strict adherence will work surprise or injustice or interfere with the proper effectuation of the order.

§ 806.8 Petitions for amendment of regulations.

Any interested person may petition the Commission in writing for amendments to any portion of these regulations. Such petition shall identify the portion of the regulations involved and provide the specific language of the proposed amendment together with a statement of grounds in support of such petition.

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Title 24—HOUSING AND URBAN DEVELOPMENT

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

SUBCHAPTER B—NATIONAL FLOOD INSURANCE PROGRAM

PART 1914—AREAS ELIGIBLE FOR THE SALE OF INSURANCE

List of Eligible Communities

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

§ 1914.4 List of eligible communities.

* * * * * * *

State	County	Location	Map No.	State map repository	Local map repository	Effective date of authorization of sale of flood insurance for area
* * *	* * *	* * *	* * *	* * *	* * *	* * *
California	Los Angeles	South Pasadena	I 06 037 3720 01	Department of Water Resources, Post Office Box 388, Sacramento, CA 95802. California Insurance Department, 107 South Broadway, Los Angeles, CA 90012, and 1407 Market St., San Francisco, CA 94103.	Department of Public Works, 1414 Mission St., South Pasadena, CA 91030.	Apr. 14, 1972.
Connecticut	Hartford	Wethersfield				Do.
Illinois	Cook	Markham				Do.
Indiana	Lake	Griffith	I 18 089 1970 03 through I 18 089 1970 05	Division of Water, Department of Natural Resources, 608 State Office Bldg., Indianapolis, Ind. 46204. Indiana Insurance Department, 509 State Office Bldg., Indianapolis, Ind. 46204.	Office of the Clerk Treasurer, Town of Griffith, 111 North Broad St., Griffith, IN 46319.	Do.
Minnesota	Isanti	Unincorporated areas.				Do.
Do	Scott	do				Do.
New Jersey	Cumberland	Maurice River Township.				Do.
Pennsylvania	Cumberland	Hampden Township.				Do.
Do	Crawford	West Mead Township.				Do.
Do	Montgomery	Whitpain Township.				Do.
Tennessee	Marion	South Pittsburg	I 47 115 2300 01	Tennessee State Planning Commission, Room C2-208, Central Services Bldg., Nashville, Tenn. 37219. Tennessee Department of Insurance and Banking, 114 State Office Bldg., Nashville, Tenn. 37219	City Hall, City of South Pittsburg, South Pittsburg, Tennessee 37380.	Do.
Vermont	Windsor	Windsor				Do.

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

Issued: April 10, 1972.

GEORGE K. BERNSTEIN,
Federal Insurance Administrator.

[FR Doc.72-5743 Filed 4-17-72;8:45 am]

PART 1915—IDENTIFICATION OF SPECIAL HAZARD AREAS

List of Communities With Special Hazard Areas

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

§ 1915.3 **List of communities with special hazard areas.**

* * * * * * *

State	County	Location	Map No.	State map repository	Local map repository	Effective date of identification of areas which have special flood hazards
* * *	* * *	* * *	* * *	* * *	* * *	* * *
California	Los Angeles	South Pasadena	H 06 037 3720 01	Department of Water Resources, Post Office Box 388, Sacramento, CA 95802. California Insurance Department, 107 South Broadway, Los Angeles, CA 90012, and 1407 Market St., San Francisco, CA 94103.	Department of Public Works, 1414 Mission St., South Pasadena, CA 91030.	April 16, 1971.
Connecticut	Hartford	Wethersfield				Apr. 14, 1972.
Illinois	Cook	Markham				Do.
Indiana	Lake	Griffith	H 18 089 1970 03 through H 18 089 1970 05	Division of Water, Department of Natural Resources, 608 State Office Bldg., Indianapolis, Ind. 46204. Indiana Insurance Department, 509 State Office Bldg., Indianapolis, Ind. 46204.	Office of the Clerk Treasurer, Town of Griffith, 111 North Broad St., Griffith, IN 46319.	Feb. 26, 1971.
Minnesota	Isanti	Unincorporated areas.				Apr. 14, 1972.
Do.	Scott	do.				Do.
New Jersey	Cumberland	Maurice River Township.				Do.
Pennsylvania	Cumberland	Hampden Township.				Do.
Do.	Crawford	West Mead Township.				Do.
Do.	Montgomery	Whitpain Township.				Do.
Tennessee	Marion	South Pittsburg	H 47 115 2300 01	Tennessee State Planning Commission, Room C2-208, Central Services Bldg., Nashville, Tenn. 37219. Tennessee Department of Insurance and Banking, 114 State Office Bldg., Nashville, Tenn. 37219.	City Hall, City of South Pittsburg, South Pittsburg, Tennessee 37380.	July 10, 1971.
Vermont	Windsor	Windsor				Apr. 14, 1972.

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

Issued: April 10, 1972.

GEORGE K. BERNSTEIN,
Federal Insurance Administrator.

[FR Doc.72-5744 Filed 4-17-72;8:45 am]

Title 37—PATENTS, TRADEMARKS, AND COPYRIGHTS

Chapter I—Patent Office, Department of Commerce

PART 2—RULES OF PRACTICE IN TRADEMARK CASES

Trademark Inter Partes Procedure

A proposal was published at 36 F.R. 18002 to revise, amend, redesignate, or revoke §§ 2.99, 2.104, 2.112, 2.117, 2.119, 2.120, 2.122–2.125, and 2.127–2.129 of the Rules of Practice in Trademark Cases. Pursuant to the notice, written comments have been received and a public hearing was held October 22, 1971. Full consideration has been given to all matter presented and changes in the text of the original proposal have been made in view thereof.

Amendments to the present text of the rules are described below. In cases where the amendment differs from that set forth in the notice of proposed rule making, that change is also described below.

Sections 2.104 and 2.112 are being revised by adopting language from the Federal rules requiring a short and plain statement showing how the party would be damaged. The proposal required a statement "tending to show why" the party would be damaged.

Section 2.117 is being redesignated as § 2.116 and is being revised to clarify the applicability of the Federal Rules of Civil Procedure to Patent Office proceedings.

A new § 2.117 authorizing suspension of proceedings by the Trademark Trial and Appeal Board when the parties are engaged in civil litigation which may be dispositive of the case, has been added. The new rule gives the Board discretion in matters of suspension whereas the proposed rule required a mandatory suspension.

Section 2.119 is being amended by incorporating the substance of § 1.248 in a new paragraph.

Section 2.120 is being revised to adopt the Federal Rules of Civil Procedure insofar as they are applicable to Patent Office proceedings. The numbers of the applicable Federal rules are not listed since they are incorporated by reference in § 2.120. For example, § 2.120(a)(3) as adopted does not refer to Federal Rule 32 which governs use of discovery depositions.

Section 2.120(a) sets forth restrictions on deposition procedures, discovery of a foreign party and use of discovery depositions.

Existing § 2.120(b) is being deleted and the proposed paragraph is not being adopted. Rule 36 of the Federal Rules of Civil Procedure will govern requests for admissions. A new paragraph (b) governing use of admissions and answers to interrogatories is being adopted.

Existing § 2.120 paragraphs (c) through (e) are being deleted.

Section 2.120(f) is also deleted and proposed § 2.120(c) is not being adopted. Rule 33 of the Federal Rules of Civil Procedure will govern the interrogatory practice. It is believed that the Federal rule will provide uniformity in practice and a body of law which will serve as a guideline to both attorneys and the Board. Some comments were received, however, which expressed a preference for limited interrogatories. In view of such comments, the Office plans to evaluate on a continuing basis the effective-

ness and utilization of Federal Rule 33. If instances arise in which Rule 33 does not appear to be fully satisfactory, it may be that consideration will be given to a more limited practice.

A new § 2.120(c) entitled "Failure to Make Discovery: Sanctions" has been added.

Section 2.122(b) is being revised to state that before a pleaded registration will be received in evidence, two copies of the registration showing its status and title or an order for such copies must accompany the opposition or petition to cancel.

Section 2.123(c) relating to printed publications and official records, is being redesignated as § 2.122(c) and revised to incorporate § 1.282 (Patent Rule 282).

A new § 2.122(d) is being added and incorporates the substance of § 1.283 (Patent Rule 283).

Section 2.123 has been completely revised to incorporate the provisions of §§ 1.273–1.281, 1.285, and 1.286 (Patent Rules 273–281, 285, and 286). Portions of the Patent Rules which are not applicable to trademark practice have been omitted and in some instances the Federal Rules of Civil Procedure apply. A few changes have been made in this section as originally proposed; they are as follows:

The title of § 2.123 is being amended by inserting the word "trial" before "testimony."

Proposed § 2.123(e)(5) is being revised to permit a witness to sign a deposition before any officer authorized to administer oaths.

Proposed § 2.123(f)(5) is being deleted and § 2.123(f)(6) is being redesignated as § 2.123(f)(5).

Section 2.124(b) is being amended to require testimony by written questions to be prepared with each answer preceded by its corresponding question.

Section 2.124a is being revoked. Testimony in foreign countries will be covered in § 2.124(d) which provides that such testimony will be taken by depositions upon written questions.

Reference numbers in § 2.125 have been changed and the reference to "the original transcript" in the second sentence of paragraph (a) is being changed to read "the certified transcript."

Section 2.127(a) provides that the Trademark Trial and Appeal Board may treat a motion as conceded when a party fails to file a brief in opposition to the motion. Sections 2.127(b) and 2.129(c) are amended by adding a sentence requiring briefs in opposition to petitions for reconsideration to be filed within 15 days.

Section 2.128(b) includes certain changes with respect to the form required for briefs.

In consideration of the comments and pursuant to the authority contained in section 41 of the Act of July 5, 1946 (60 Stat. 440; 15 U.S.C. 1123) and section 6 of the Act of July 19, 1952 (66 Stat. 793, 35 U.S.C. 6), Part 2 of Chapter I of Title 37 of the Code of Federal Regulations is hereby amended as follows:

1. In § 2.99, a new paragraph (d) is added and reads as follows:

§ 2.99 Application to register as concurrent user.

* * * * *

(d) When concurrent registration is sought on the basis of a court determination of the rights of the parties to use the marks in commerce, the application shall be examined by the Examiner of Trademarks. If the applicant it entitled to registration subject only to the concurrent lawful use of a party to the court proceeding, the Examiner of Trademarks may publish or allow the application, provided the court decree specifies the rights of the parties.

2. Section 2.104 is revised to read as follows:

§ 2.104 Contents of opposition.

The opposition must set forth a short and plain statement showing how the opposer would be damaged by the registration of the opposed mark and state the grounds for opposition. A duplicate copy of the opposition including exhibits shall be filed.

3. Section 2.112 is revised to read as follows:

§ 2.112 Petition for cancellation.

The petition to cancel, which must be verified, or include a declaration in accordance with § 2.20, must set forth a short and plain statement showing how the petitioner is or will be damaged by the registration, state the grounds for cancellation, and indicate the respondent party to whom notice shall be sent. A duplicate copy of the petition, including exhibits, shall be filed with the petition. Applications to cancel different registrations owned by the same party may be joined in one petition when appropriate, but the fee for each application to cancel a registration must accompany the petition.

4. Section 2.117 is redesignated as § 2.116 and paragraph (a) is revised. As amended, § 2.116 reads as follows:

§ 2.116 Federal Rules of Civil Procedure.

(a) Except as otherwise provided, and wherever applicable and appropriate, procedure and practice in inter partes proceedings shall be governed by the Federal Rules of Civil Procedure.

* * * * *

5. A new § 2.117 is added and reads as follows:

§ 2.117 Suspension of proceedings.

Whenever it shall come to the attention of the Trademark Trial and Appeal Board that parties to a pending case are engaged in a civil action which may be dispositive of the case, proceedings before the Board may be suspended until termination of the civil action.

6. Section 2.119 is amended as follows: Paragraph (a) is revised, paragraph (b) is redesignated as paragraph (c), and a new paragraph (b) is added. As amended, § 2.119 reads as follows:

§ 2.119 Service of papers.

(a) Every paper filed in the Patent Office in inter partes cases, including notice of appeal, must be served upon the other parties except the notice of interference (§ 2.93), the notice of opposition (§ 2.105), the petition for cancellation (§ 2.113), and the notice of a concurrent use proceeding (§ 2.99), which are mailed by the Patent Office. Proof of such service must be made before the paper will be considered by the Office. A statement signed by the attorney or agent, attached to or appearing on the original paper when filed, clearly stating the date and manner in which service was made will be accepted as prima facie proof of service.

(b) Service of papers must be on the attorney or agent of the party if there be such or on the party if there is no attorney or agent, and may be made in either of the following ways: (1) By delivering a copy of the paper to the person served; (2) by leaving a copy at the usual place of business of the person served, with someone in his employment; (3) when the person served has no usual place of business, by leaving a copy at his residence, with a member of his family over 14 years of age and of discretion; (4) transmission by first-class mail, which may also be certified or registered. Whenever it shall be satisfactorily shown to the Commissioner that none of the above modes of obtaining service or serving the paper is practicable, service may be by notice published in the Official Gazette.

(c) When service is made by mail, the date of mailing will be considered the date of service. Whenever a party is required to take some action within a prescribed period after the service of a paper upon him by another party and the paper is served by mail, 5 days shall be added to the prescribed period.

7. Section 2.120 is revised to read as follows:

§ 2.120 Discovery procedure.

The provisions of the Federal Rules of Civil Procedure relating to discovery shall apply in inter partes trademark cases except as otherwise provided in this section. The trademark Trial and Appeal Board will specify the closing date for the taking of discovery.

(a) *Depositions for discovery*—(1) *Procedure.* The deposition of a person shall be taken in the Federal judical district where he resides or is regularly employed. The responsibility for securing the attendance of a proposed deponent, other than a party or anyone who at the time set for the taking of the deposition was an officer, director, or managing agent of a party, or a person designated under Rule 30(b)(6) or 31(a) of the Federal Rules of Civil Procedure to testify on behalf of a party, rests wholly with the interested party. See 35 U.S.C. 24.

(2) *Discovery of foreign party.* The discovery deposition of a party or an officer, director, or managing agent of a party, or a person designated under Rule

30(b)(6) or 31(a) of the Federal Rules of Procedure to testify on behalf of a party, domiciled in a foreign country may be taken in the manner prescribed by § 2.124.

(3) *Use of discovery depositions.* A discovery deposition shall not be considered as part of the record in the case unless the party offering the deposition, or any part thereof, files the same before the close of his testimony period (testimony-in-chief or rebutal as appropriate) and also files a notice of reliance thereon. A discovery deposition should not be filed in the Patent Office in the absence of a notice of reliance. Objections, including any made during the examination, will be considered only if made or renewed at the hearing.

(b) *Use of admission or answer to interrogatory.* No admission or answer to an interrogatory shall be considered as part of the record in the case unless the party propounding the request for admission or interrogatory files, before the close of his testimony period (testimony-in-chief or rebuttal, as appropriate), a copy of the admission and the request therefor and/or a copy of the interrogatory and its answer and also files a notice of reliance thereon.

(c) *Failure to make discovery: Sanctions.* If any party fails or refuses to answer any proper question in taking discovery depositions or fails or refuses to answer any proper question propounded by interrogatories or fails or refuses to comply with a request to produce and permit the inspection and copying of designated things, the party seeking discovery may apply to the Trademark Trial and Appeal Board for an order compelling discovery. If a party or an officer, director, or managing agent of a party, or a person designated under Rule 30(b)(6) or 31(a) of the Federal Rules of Civil Procedure to testify on behalf of a party, fails to obey an order to provide or permit discovery, the Trademark Trial and Appeal Board may strike out all or any part of any pleading of that party, dismiss the action or proceeding, or deny any part thereof, enter judgment as by default against that party or take any such other action as may be deemed appropriate.

8. In § 2.122, paragraph (b) is revised and new paragraphs (c) and (d) are added. As amended, those paragraphs of § 2.122 read as follows:

§ 2.122 Matters in evidence.

* * * * *

(b) A registration of the opposer or petitioner pleaded in an opposition or petition to cancel will be received in evidence and made part of the record if two copies showing status and title of the printed registration or an order for such copies accompany the opposition or petition.

(c) Printed publications, such as books and periodicals, available to the general public in libraries or of general circulation, and official records, if competent evidence and pertinent to the issue, may be introduced in evidence by filing in the Patent Office a notice to that effect during the period for the taking of the testimony of the party (during the period for taking of testimony-in-chief if such matters are not in rebuttal), specifying the record or the printed publication, the page or pages to be used, indicating generally its relevance, and accompanied by the record or authenticated copy or the printed publication or a copy. When a copy of an official record of the Patent Office is filed, it need not be a certified copy. The notice and copy of the record or publication must be served on each of the other parties.

(d) Upon motion duly made and granted, testimony taken in another proceeding, or testimony taken in a suit between the same parties or those in interest, may be used in a proceeding, so far as relevant and material, subject, however, to the right of any contesting party to recall or demand the recall of witnesses whose testimony has been taken, and to take other testimony in rebuttal of the testimony.

9. Section 2.123 is revised to read as follows:

§ 2.123 Trial testimony in inter partes cases.

(a) Manner of taking testimony: Testimony of witnesses in inter partes cases may be taken (1) by depositions upon oral examination as provided by this section, or (2) by depositions upon written questions in accordance with the requirements of this section and § 2.124.

(b) Stipulations: If the parties so stipulate in writing, depositions may be taken before any person authorized to administer oaths, at any place, upon any notice, and in any manner, and when so taken may be used like other depositions. By agreement of the parties, the testimony of any witness or witnesses of any party, may be submitted in the form of an affidavit by such witness or witnesses. The parties may stipulate what a particular witness would testify to if called, or the facts in the case of any party may be stipulated.

(c) Notice of examination of witnesses: Before the depositions of witnesses shall be taken by a party, due notice in writing shall be given to the opposing party or parties, as provided in § 2.119(b), of the time when and place where the depositions will be taken, of the cause or matter in which they are to be used, and the name and address of each witness to be examined; if the name of a witness is not known, a general description sufficient to identify him or the particular class or group to which he belongs, together with a satisfactory explanation, may be given instead. Neither party shall take depositions in more than one place at the same time, nor so nearly at the same time that reasonable opportunity for travel from one place of examination to the other is not available.

(d) Persons before whom depositions may be taken: Depositions may be taken before persons designated by Rule 28 of the Federal Rules of Civil Procedure.

(e) Examination of witnesses:

(1) Each witness before testifying shall be duly sworn according to law by the officer before whom his deposition is to be taken.

(2) The deposition shall be taken in answer to questions, with the questions and answers recorded in their regular order by the officer, or by some other person (who shall be subject to the provisions of Rule 28 of the Federal Rules of Civil Procedure) in the presence of the officer except when his presence is waived on the record by agreement of the parties. The testimony shall be taken stenographically and transcribed, unless the parties present agree otherwise. In the absence of all opposing parties and their attorneys or agents, depositions may be taken in longhand, typewriting, or stenographically.

(3) The opposing party shall have full opportunity to cross-examine the witnesses. If the opposing party shall attend the examination of witnesses not named in the notice, and shall either cross-examine such witnesses or fail to object to their examination, he shall be deemed to have waived his right to object to such examination for want of notice.

(4) All objections made at the time of the examination to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings, shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objections.

(5) When the deposition has been transcribed, the deposition shall be carefully read over by the witness or by the officer to him, and shall then be signed by the witness in the presence of any officer authorized to administer oaths unless the reading and the signature be waived on the record by agreement of all parties.

(f) Certification and filing by officer. The officer shall annex to the deposition his certificate showing:

(1) Due administration of the oath by the officer to the witness before the commencement of his deposition;

(2) The name of the person by whom the deposition was taken down, and whether, if not taken down by the officer, it was taken down in his presence;

(3) The presence or absence of the adverse party;

(4) The place, day, and hour of commencing and taking the deposition;

(5) The fact that the officer was not disqualified as specified in Rule 28 of the Federal Rules of Civil Procedure.

If any of the foregoing requirements are waived, the certificate shall so state. The officer shall sign the certificate and affix thereto his seal of office, if he has such a seal. Unless waived on the record by agreement, he shall then, without delay, securely seal in an envelope all the evidence, notices, and paper exhibits, inscribe upon the envelope a certificate

giving the number and title of the case, the name of each witness, and the date of sealing, address the package, and forward the same to the Commissioner of Patents. If the weight or bulk of an exhibit shall exclude it from the envelope, it shall, unless waived on the record by agreement of all parties, be authenticated by the officer and transmitted in a separate package marked and addressed as provided in this section.

(g) Form of deposition:

(1) The pages of each deposition must be numbered consecutively, and the name of the witness plainly and conspicuously written at the top of each page. The deposition may be written on legal-size or letter-size paper, with a wide margin on the left hand side of the page, and with the writing on one side only of the sheet. The questions propounded to each witness must be consecutively numbered and each question must be followed by its answer.

(2) Exhibits must be numbered or lettered consecutively and each must be marked with the number and title of the case and the name of the party offering the exhibit. Entry and consideration may be refused to improperly marked exhibits.

(h) Depositions must be filed. All depositions which are taken must be duly filed in the Patent Office. On refusal to file, the Office at its discretion will not further hear or consider the contestant with whom the refusal lies; and the Office may, at its discretion, receive and consider a copy of the withheld deposition, attested by such evidence as is procurable.

(i) Inspection of depositions: After the depositions are filed in the Office, they may be inspected by any party to the case, but they cannot be withdrawn for the purpose of printing. They may be printed by someone specially designated by the Office for that purpose, under proper restrictions.

(j) Effect of errors and irregularities in depositions: Notice will not be taken of merely formal or technical objections which shall not appear to have wrought a substantial injury to the party raising them; and in case of such injury it must be made to appear that, as soon the party became aware of the ground of objection, he gave notice thereof. Rule 32(d) (1), (2), and (3) (a) and (b) of the Federal Rules of Civil Procedure shall apply to errors and irregularities in depositions.

(k) Objections to admissibility: Subject to the provisions of paragraph (j) of this section, objection may be made to receiving in evidence any deposition or part thereof, or any other evidence, for any reason which would require the exclusion of the evidence according to the established rules of evidence, which will be applied strictly by the Office.

(l) Evidence not considered: Evidence not obtained and filed in compliance with these sections will not be considered.

10. In § 2.124, paragraphs (a) and (b) are revised and a new paragraph (d) is added. As amended, § 2.124 reads as follows:

§ 2.124 Testimony by depositions upon written questions.

(a) A party may take the testimony of a witness by written questions to be propounded by an officer before whom depositions may be taken. See Rule 28 of the Federal Rules of Civil Procedure. The questions shall be served upon the other party within 10 days after the opening date set for taking the testimony of the party submitting the questions, together with a notice stating the name and address of the person who is to answer them and the name or descriptive title and address of the officer before whom the deposition is to be taken. Within 10 days thereafter, a party so served may serve cross questions upon the party proposing to take the deposition. Within 5 days thereafter, the latter may serve redirect questions upon a party who has served cross questions. Within 3 days after being served with redirect questions a party may serve recross questions upon the party proposing to take the depositions. Written objections to questions may be served on the party propounding the questions, and in response thereto substitute questions may be served, within 3 days.

(b) A copy of the notice and copies of all questions served shall be delivered by the party taking the testimony to the officer designated in the notice, who shall proceed to take the testimony of the witness in response to the questions and to prepare each answer immediately preceded by its corresponding question, then certify, and file the deposition, attaching thereto the copy of the notice and the questions received by him. Such depositions are subject to the same rulings for filing and serving copies as other depositions.

* * * * *

(d) Testimony in foreign countries shall be taken only by depositions upon written questions unless the parties stipulate otherwise in writing. Rule 28(b) of the Federal Rules of Civil Procedure shall apply to the taking of testimony in foreign countries.

§ 2.124a [Revoked]

11. Section 2.124a is revoked.

12. Section 2.125 is revised to read as follows:

§ 2.125 Copies of testimony.

(a) One copy of the transcript of testimony (taken in accordance with § 2.123 (e) through (h) or § 2.124), together with copies of documentary exhibits, shall be served on each adverse party within 30 days after completion of the taking of such testimony. The certified transcript and exhibits and one copy of the transcript shall be filed in the Patent Office as promptly as possible.

(b) Each transcript and the copies thereof shall comply with § 2.123(g) as to arrangement, indexing and form.

13. In § 2.127, paragraphs (a) and (b) are revised. As amended, § 2.127 reads as follows:

§ 2.127 Motions.

(a) Motions shall be made in writing and shall contain a full statement of the grounds therefor. Any brief or memorandum in support of a motion shall accompany or be embodied in the motion. Briefs in opposition to a motion shall be filed within 15 days from the date of service of the motion unless another time is specified by the Trademark Trial and Appeal Board or the time is extended on request. Where a party fails to file a brief in opposition to a motion, the Trademark Trial and Appeal Board may treat the motion as conceded. Oral hearings will not be held on motions except on order of the Trademark Trial and Appeal Board.

(b) Any petition for reconsideration or modification of a decision, if it is not appealable, must be filed within 10 days after the decision or, if the decision is appealable, within the time specified in § 2.129(c). Any brief in opposition shall be filed within 15 days after service of the petition.

* * * * *

14. In § 2.128, paragraph (b) is revised. As amended, § 2.128 reads as follows:

§ 2.128 Final hearings and briefs.

(b) Briefs shall be submitted in typewritten or printed form, double spaced on letter or legal size paper. Without leave of the Trademark Trial and Appeal Board, no brief shall contain more than 50 pages of argument and, in case of the reply brief, the entire brief shall not exceed 25 pages. Each brief shall contain an alphabetical index of cases therein.

* * * * *

15. In § 2.129, paragraph (c) is revised. As amended, § 2.129 reads as follows:

§ 2.129 Oral argument.

* * * * *

(c) Any petition for rehearing, reconsideration, or modification of a decision must be filed within 30 days from the date thereof. Any brief in opposition shall be filed within 15 days after service of the petition.

Effective date. This revision shall be applicable to all proceedings instituted on or after July 1, 1972.

Date: April 5, 1972.

ROBERT GOTTSCHALK,
Commissioner of Patents.

Approved: April 11, 1972.

JAMES H. WAKELIN, Jr.,
Assistant Secretary for Science and Technology.

[FR Doc.72-5830 Filed 4-17-72;8:52 am]

Title 41—PUBLIC CONTRACTS AND PROPERTY MANAGEMENT

Chapter 5A—Federal Supply Service, General Services Administration

PART 5A–1—GENERAL

Price Stabilization

The table of contents of Part 5A–1 is amended to add the following new entry:

Sec.
5A–1.321–8 Maximum permissible escalation in wage and price standards.

Subpart 5A–1.3—General Policies

1. Section 5A–1.321 is amended as follows:

§ 5A–1.321 Stabilization of prices, rents, wages, and salaries.

* * * * *

(c) Executive Order 11640, dated January 26, 1972, supersedes the prior orders described in (a) and (b), above, and provides for the confirmation and ratification of all orders, regulations, circulars, or other directives issued and all other actions taken pursuant to the prior orders, as if issued under Executive Order 11640.

(d) This section prescribes procedures for carrying out the purpose of the Executive Order and shall apply to all procurements of the Federal Supply Service.

2. Section 5A–1.321–1 is revised as follows:

§ 5A–1.321–1 Solicitations (IFB/RFP).

(a) The following price certification shall be included in all solicitations (invitations for bids and requests for proposals) and resulting contracts, excluding small purchases under $2,500 (see § 5A–1.321–1(b)).

PRICE CERTIFICATION

(a) By submission of this bid (offer), bidder (offeror) certifies that he is in compliance and will continue to comply with the requirements of Executive Order 11640, January 26, 1972, for the duration thereof and further certifies that the prices bid (offered) herein conform to the requirements of Executive Order 11640, January 26, 1972, or shall be reduced accordingly at the time of any billings that are made during the effective period of the Executive order.

(b) Prior to the payment of invoices under this contract, the Contractor shall place on or attach to each invoice submitted the following certification:

"I hereby certify that amounts invoiced herein do not exceed the lower of (i) the contract price, or (ii) maximum levels established in accordance with Executive Order 11640, January 26, 1972."

(c) The Contractor agrees to insert the substance of this clause, including this paragraph (c), in all subcontracts for supplies or services issued under this contract.

(b) The following price certification shall be included in all solicitations involving small purchases under $2,500 and in all purchase orders issued pursuant to small purchase procedures (Subpart 5A–8.6). When the solicitation is made by telephone, the offeror shall be advised of the above mandatory requirements to be included in any resulting contract or purchase order and that failure to accept will result in rejection of the offer (for purchases made with imprest funds see § 5A–1.321–6).

PRICE CERTIFICATION (SMALL PURCHASES)

(a) By submission of this offer, offeror certifies that he is in compliance and will continue to comply with the requirements of Executive Order 11640, January 26, 1972, for the duration thereof.

(b) Prior to payment of invoices under this contract, Contractor must place on or attach to each invoice submitted the following certification:

"I hereby certify that amounts invoiced herein do not exceed the lower of (i) the contract price, or (ii) maximum levels established in accordance with Executive Order 11640, January 26, 1972."

(c) Payments will not be made on invoices unless certification, as prescribed above, has been completed.

3. Section 5A–1.321–4 is revised as follows:

§ 5A–1.321–4 Violations.

Reported and suspected violations of Executive Order 11640, January 26, 1972, which are brought to the attention of contracting personnel, shall be reported through channels to the Commissioner, FSS.

4. Section 5A–1.321–6 is revised as follows:

§ 5A–1.321–6 Imprest funds.

Individuals authorized to place imprest fund orders shall not place such orders with concerns which are in known violation of Executive Order 11640, January 26, 1972. Further, such individuals shall report violations in accordance with § 5A–1.321–4.

5. Section 5A–1.321–8 is added as follows:

§ 5A–1.321–8 Maximum permissible escalation in wage and price standards.

(a) Contracting officers shall provide for an appropriate notice to be included with all solicitations or contract awards which exceed $2,500 to insure that contractors are familiar with the guidelines established by the Pay Board and the Price Commission regarding maximum escalation permitted in wage rates and in price increases, as follows:

NOTICE OF MAXIMUM PERMISSIBLE ESCALATION IN WAGE AND PRICE STANDARDS

Bidders are advised of standards established under Executive Orders 11615, 11627, and 11640 setting maximum permissible percentages of escalation in wage rates and price increases. Such standards call for wage rate increases of no more than 5.5 percent per annum unless specific exceptions have been granted by the Pay Board. The price standard established by the Price Commission has the objective of holding economywide price increases to 2.5 percent per annum (3 percent per annum in the case of small business firms). To achieve this target, firms are allowed to increase prices to reflect allowable costs incurred since the last price increase or since January 1, 1971, whichever was later, and such costs as firms are continuing to incur, adjusted to reflect productivity gains. These price increases may not result in profit margins on sales which exceed the firm's profit margins for the highest 2 of the last 3 fiscal years ending before August 15, 1971. Average productivity gains are estimated to be 3 percent or higher for the economy annually for 1972 and 1973.

(b) In the evaluation of cost or pricing data, submitted in support of the pricing of contracts, contracting officers shall not recognize any amounts for annual aggregate pay increases in excess of 5.5 percent unless the prospective contractor can demonstrate that such increases have been allowed by the Pay Board. Lesser amounts should be negotiated to the extent practicable.

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

Effective date. These regulations are effective upon publication in the FEDERAL REGISTER (4–18–72).

Dated: April 3, 1972.

M. S. MEEKER,
Commissioner,
Federal Supply Service.

[FR Doc.72–5852 Filed 4–17–72;8:49 am]

Title 47—TELECOMMUNICATION

Chapter I—Federal Communications Commission

[Docket No. 16979; FCC 72–288]

PART 0—COMMISSION ORGANIZATION

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

Interdependence of Computer and Communication Services and Facilities

Memorandum opinion and order. In the matter of regulatory and policy problems presented by the interdependence of computer and communication services and facilities, Docket No. 16979.

1. We have before us petitions for reconsideration of our final decision and order herein (36 F.R. 5345), released March 18, 1971, 28 FCC 2d 267, together with numerous pleadings in response thereto.

2. Petitions for reconsideration were filed on various dates in April 1971, by the Western Union Telegraph Co.; International Telephone & Telegraph Co.; Bunker Ramo Corp.; Continental Telephone Co.; RCA Global Communications, Inc., First National Bank, San Angelo, Tex.; West Side National Bank, San Angelo, Tex.; Texas State Bank, San Angelo, Tex.; Wabash Data Services, Inc., Wabash, Ind.; Ligonier Telephone Co., Inc., Ligonier, Ind.; Florida Analytical Services, Winter Park, Fla.; the First National Bank of Pennsylvania, Erie, Pa.; Housing Service Center, Erie, Pa.; Columbia Service Bureau, Inc., Columbia, Mo.; and J. K. Hoover, Inc., Professional Data Services, Cedar Rapids, Iowa.

3. We also have before us various oppositions and responses to the aforementioned petitions for reconsideration and other supplementary pleadings which were filed in April and May, 1971, by Bunker Ramo Corp.; Business Equipment Manufacturers' Association; Computer Time-Sharing Services Section (CTSS) of the Association of Data Processing Service Organizations, Inc. (ADAPSO); the Western Union Telegraph Co.; International Telephone & Telegraph Co.; Mankato Citizens Telephone Co., Mankato, Minn.; the New Ulm Rural Telephone Co., New Ulm, Minn.; the Blue Earth Valley Telephone Co., Blue Earth, Minn.; the Eckles Telephone Co., Blue Earth, Minn.; Computoservice, Inc., Mankato, Minn.; and GTE Data Services, Inc.[1]

QUESTIONS PRESENTED

4. The principal questions raised by the petitions for reconsideration may be stated as follows:

a. Did the Commission err in deciding not to impose a complete bar on communications common carriers engaging directly or indirectly in data processing services?

b. Assuming that the Commission was correct in permitting communications common carriers to engage in data processing services through separate entities, were the safeguards imposed thereon to prevent anticompetitive, discriminatory, and cross-subsidization practices, too rigid or not rigid enough?

c. Does the Commission have sufficient jurisdiction and statutory authority to take the action it has taken?

CONTENTIONS OF PETITIONERS

5. In its petition the Bunker Ramo Corp. (Bunker Ramo) contends that we have not set forth specifically our rationale for permitting carriers entry into data processing services and that the enforcement of the safeguards we have imposed will generate an unforeseen regulatory burden on the Commission.

6. The Western Union Telegraph Co. (WU) contends that the safeguards we have imposed are to rigid and unfair to the carriers, referring particularly to the requirement that a carrier may not purchase data processing services from an affiliate that also wants to sell to others, the restrictions on the use of a carrier's name or symbol in the data processing company's promotional activities or enterprises, and to the requirements that carriers submit information to the Commission concerning proposed hybrid data processing and hybrid communications offerings of itself and its affiliated companies.

7. International Telephone & Telegraph Co. (ITT) contends that it will lose a valuable property right and goodwill attached thereto if it cannot use "ITT" in the name of both its communications subsidiary (i.e. ITT World Communications, Inc.) and its separate data processing division (ITT Data Services).

8. RCA Global Communications, Inc. (RCA), urges us to clarify or amend our decision so that (a) a carrier may directly (without using separate corporate entities) furnish data processing services, on a cost-sharing basis, to its carrier affiliates "and to other communications entities" in connection with intercarrier arrangements and traffic, (b) a computer system or systems utilized by a carrier for communications purposes (e.g. message switching) may also be used for "in-house" purposes that are unrelated to furnishing of communications services, and (c) a carrier's parent corporation such as RCA Corp., which employs computers for its own internal operations, may continue to make available to others, during off-peak hours, spare capacity from these computers.

9. Continental Telephone Corp. (Continental), is a holding company. It contends that all but eight of the 86 operating telephone companies owned by Continental are "connecting carriers" as defined in section 2(b)(2) of the Act and that these carriers are therefore not subject to the Commission's jurisdiction; that "local" data processing does not involve the use of communications facilities and is thus not subject to our jurisdiction; that "remote access" data processing by the use of communications facilities located physically within the same State is intrastate in nature and thus not subject to Commission jurisdiction under section 2(b)(1) of the Act; and that "remote access" data processing by the use of communications facilities that cross State lines is performed, in the case of Continental companies, only through physical connection with unaffiliated carriers and thus such activity is not subject to the Commission's jurisdiction under section 2(b)(2) of the Act. Furthermore, Continental contends that the Commission's attempt to regulate it, as the parent corporation, is improper since it is not an operating telephone company and the Act authorizes the Commission to regulate only common carriers. Moreover, Continental argues that the Commission does not have primary jurisdiction in antitrust matters and thus cannot adopt regulations for the purpose of preserving competition; that the record in this proceeding is devoid of any present or prospective abuses by telephone companies furnishing data processing services; and that any form of cross-subsidization or anticompetitive action by telephone companies would be prevented by State regulatory commissions in the States where the Continental companies operate.

10. Continental further contends that the rules we have adopted will seriously injure the Continental companies in that they will not be able to create a data processing affiliate that can provide service to both the operating telephone companies of Continental and to the nontelephone, noncommunications subsidiaries of Continental (e.g., the manufacturing affiliate); they will not be able to create a data processing affiliate that can provide service both to the general public and to the affiliated operating telephone companies; they will not be able to obtain all economies of scale flowing from the sharing by affiliates of the same computer facilities, operating personnel, officers, and records; they will have to make reports and submit information to the Commission that will not be required of unregulated data processing services; they will not be able to lease their communications computers during off-peak hours; they will not be able to make full use of the valuable property right in the words or symbols contained in the names of the operating telephone companies; and they will not be able to promote the sales or activities of the data processing affiliate. Continental urges us to vacate and annul our decision in its entirety and adopt a case-by-case approach for the reason that "if, and when, any particular carrier subject to the Commission's jurisdiction engages in any wrongful activity, the Commission or one of its sister agencies can act under its existing authority."

11. The remaining petitions for reconsideration were submitted by banks, data service bureaus, and other customers who presently use or propose to use the data processing services pro- (GTEDS). These petitioners contend that our decision and rules deprive them of the opportunity to obtain "local" data processing services that are essential to their businesses because GTEDS, a carrier-related data processor, would not be permitted to provide data processing services to them and its carrier affiliates. The contention is made that a shift by these petitioners to new or alternative data processing services would be costly, inefficient and a hardship on petitioners. Accordingly, they urge us to reconsider that part of our decision that prevents a carrier-related data processor from providing "local" data processing services to both the general public and carrier affiliates.

RESPONSES TO PETITIONS FOR RECONSIDERATION

12. Following the receipt of the above-described petitions for reconsideration, oppositions were submitted by the Computer Time-Sharing Services Section of the Association of Data Processing Service Organizations, Inc. (ADAPSO), Business Equipment Manufacturers Association (BEMA), and Bunker Ramo.

13. ADAPSO, which filed no petition for reconsideration, opposes the petitions of ITT and Western Union and contends that the relief requested by these carriers would lead to deterioration in communications service, cross-subsidization, and unfair competitive practices. Bunker Ramo objects to the petitions of Western Union, ITT, and Continental and reiterates its earlier position that there should be total pre-

[1] Additional pleadings pending before us have also been considered herein to the extent relevant and material but will be disposed of by separate order in due course. They are Comsat's petition for clarification and waiver, filed July 9, 1971; CTED's request for official notice filed Sept. 24, 1971, and oppositions thereto filed by Bunker Ramo Corp. and CTSS; and GT&E Corp.'s request for interpretation and contingent request for reconsideration, filed Oct. 19, 1971.

clusion of carrier participation, directly or indirectly, in data processing services.

14. BEMA opposes the petitions of ITT and Western Union on the grounds that these petitions merely restate earlier arguments and contentions that were carefully considered and rejected by the Commission and that there is therefore no basis for reconsideration, citing our decision in "WWIZ, Inc.," 3 RR 316 (1964), among others. BEMA also contends that Western Union should not be heard to complain that carrier-related data processors would be required to submit certain reports to the Commission that would not be required of other data processors. BEMA asserts that Western Union is the holder of a monopoly franchise which gives Western Union and other carriers a competitive leverage not enjoyed by noncarrier affiliated data processing companies and should expect to be required to submit such reports.

15. In addition to the aforementioned oppositions addressed specifically to the petitions for reconsideration, a number of other pleadings were submitted. ITT filed a reply to the opposition of ADAPSO and repeated ITT's contention that it should be permitted to continue to use "ITT" in the names of both its communications and data companies. Western Union filed a general response to earlier pleadings which it does not specifically identify. In its further pleading, Western Union restates its earlier arguments that the safeguards we imposed for carriers and carrier-related data processors are too rigid. In addition, Western Union contends, for the first time, that the Commission lacks power to impose any restraints whatsoever on the conduct of a carrier's noncommunications business unless there is a showing of actual or potential abuse; that such a showing is lacking in the record of this proceeding; and that the Commission lacks power to regulate transactions between carriers and their noncarrier affiliates. The company requests oral argument before the Commission on the jurisdictional contentions made by it. Bunker Ramo also filed another pleading by way of reply to the aforementioned general response of Western Union in which Bunker Ramo makes certain contentions about a pending formal complaint that it has filed against Western Union alleging, inter alia, certain discriminatory actions by the carrier and requesting monetary damages. This complaint is currently in hearing status in Docket No. 19206.

16. GTEDS filed a statement in support of the petitions for reconsideration that were filed by banks and others who are currently using or propose to use the "local" data processing services of GTEDS. Although the pleading does not identify the intercorporate relationship of GTEDS to telephone carriers, we take official notice that it is a data processing affiliate of the General Telephone System, the largest non-Bell telephone system in the United States. GTEDS asserts that its data centers are generally located where no other reasonable source of data processing services is available to the petitioners; that such petitioners will be faced with the decision of returning to manual methods, using in-house systems, or converting their operations and rewriting programs to fit the equipment of another supplier, if one is available; that some service bureaus leasing block time from GTEDS may be forced out of business; that the allocation of costs of computers or computer system between communications usage, on the one hand, and "local" data processing usage, on the other hand, would be fairly simple and the potential for cross-subsidization and other improprieties would be negligible; and that GTEDS or its affiliate carriers ought to be able to provide data processing services to unaffiliated telephone companies. GTEDS filed no petition for reconsideration. Nevertheless, it urges us to modify our decision to at least allow carriers or carrier-related affiliates to provide "local" data processing to both the public and carrier affiliates, and to allow carriers or carrier-related affiliates to furnish all kinds of data processing services to both nonaffiliated telephone companies and carrier affiliates.

17. The Mankato Citizens Telephone Co., New Ulm Rural Telephone Co., Blue Earth Valley Telephone Co., Eckles Telephone Co., and Computoservice, Inc. filed a joint pleading in which they assert that they have formed a data processing service company, named Computoservice, Inc. (CSI), which provides data processing service to small telephone companies and to other businesses as well. These petitioners specifically oppose the petition for reconsideration filed by Bunker Ramo. Although this joint petition does not object to any part of our decision or rules, it is assumed that the companies object to our decision to the extent that it would bar their carrier-related data processing affiliate (Computoservice, Inc.) from providing data processing services to both the affiliated carriers and the public.

Discussion

18. We discuss first the contention of Bunker Ramo that our decision does not set forth our rationale for concluding that communications common carriers should be permitted to engage in data processing.

19. We believe that Bunker Ramo's objection stems primarily from its apparent failure to recognize that our earlier tentative decision, with modifications, was adopted as a part of our final decision and that the two documents must be read together. In our tentative decision, we started off with the proposition that "In this country we rely upon the 'free enterprise' system with the maximum possible latitude for individual initiative to enter into any given enterprise and compete for available business" (paragraph 19); that "the offering of data processing services is essentially competitive" (paragraph 20); and that "the market for these services will continue to burgeon and flourish best in the existing competitive environment" (paragraph 22). We further found that, except with respect to the Bell System, there is no provision of law that prohibits or bars a carrier from engaging in any nonregulated service and that many carriers do, in fact, provide such services (paragraphs 24, 27). We alluded to the SRI study that set forth the possible benefits from permitting carriers to enter into data processing (paragraph 31) and we concluded that "the additional competitive services provided by carrier participation in data processing can and should, with the specific safeguards, promote innovation, efficiency, economy, and diversity with resulting new and improved services at lower prices to the users of data processing" (paragraph 33).

20. In paragraph 11 of our final decision, we specifically reaffirmed our tentative decision in the foregoing respects and concluded that there was no basis for us to adopt an outright prohibition against carriers providing data processing services directly or indirectly. We stated that it would be an extreme sanction that would be contrary to our established policy of generally permitting carriers to engage in nonregulated business, subject to safeguard; and that we expected that the "competition afforded by carriers in the provision of computer services could and would provide benefits in such matters as new and improved services and lower prices." Finally, we concluded that "we cannot find the necessary social, economic, or policy considerations which would require or even justify an outright prohibition against the furnishing of data processing services by common carriers."

21. Bunker Ramo argues further that total preclusion of carriers from data processing is the best practical alternative for the Commission to follow to achieve the objective of preventing cross-subsidization, discrimination, and anticompetitive practices by carriers. The reasons given are that, in order to make the safeguards work, the Commission must maintain a staff and related resource adequate to monitor the activities of the carriers and their data affiliates to assure that they abide by the safeguard rules and that they do not in fact engage in such improper practices; that the Commission does not now have and isn't likely to have the resources necessary to do the job adequately; and that total preclusion of the carriers from data processing would remove the necessity for any safeguard rules or for the enforcement thereof. Thus, for example, it is contended that a carrier could deny service to such competitors or extend other forms of preferential treatment to the carrier's affiliate and, although such actions would be unlawful, the remedies under the Act for such unlawful actions are allegedly inadequate. We gave careful consideration to this argument in our final decision, and stated, inter alia, that we expect the carriers to live up to the spirit as well as the letter of their obligations and that we would take prompt action should we find our confidence in this regard misplaced (paragraphs 21–22).

Contrary to Bunker Ramo's assertion, we are convinced that the various provisions in the Act for forfeitures, sanctions, penalties, and other remedies are quite adequate to assure that the carriers will conform to the requirements of the Act in providing communications service to the public. Accordingly, we reject the contentions that the safeguards we are imposing should be made more rigid. Our conclusion is that these safeguards are adequate and that they will afford reasonable assurance for the immediately foreseeable future that the provision of data processing services by carriers will neither adversely affect the statutory obligation of such carriers to provide adequate communications service under terms and conditions that are just and reasonable and free of undue discrimination or preference, nor impair effective competition in the sale of data processing services. Moreover, we make it clear in our final decision that we shall be prepared to make an changes in our rules and take such action as may be necessary or desirable if we find that the safeguards are not achieving the aforesaid public interest objectives.

22. In view of the foregoing, it appears to us that Bunker Ramo's argument, in substance and effect, is that it should be sheltered by the Commission from any competition whatsoever from carrier-related data processing rivals. We believe that Bunker Ramo is urging an untenable position that would be clearly anticompetitive and contrary to the public interest, particularly in view of the numerous safeguards we are imposing to protect companies like Bunker Ramo from any substantial danger of improper competitive actions by common carriers.

23. As heretofore stated, parties other than Bunker Ramo that submitted petitions for reconsideration, contend that the specific safeguards we have imposed, are, in one or more respects, too stringent. These parties are Western Union, ITT, RCA, Continental, and the aforementioned customers of GTEDS. We have summarized all of these various contentions in preceding paragraphs 6–10 hereof. Numerous comments were also filed in opposition to or in support of these contentions and these are also summarized in preceding paragraphs 16–17 hereof. Most of these objections and comments thereon are addressed to the merits of the specific safeguards that we proposed in our tentative decision, and as to which all interested parties had ample opportunity to submit comments thereon and on which oral argument was held en banc before the Commission. Thus, insofar as the petitions herein are directed to the safeguards proposed in our tentative decision, we are of the view that they are repetitious and that the parties have offered nothing new in the way of factual matter or other consideration to warrant additional or further discussion by the Commission. We carefully considered all of these contentions and gave our reasons for adopting the aforementioned safeguards in our tentative and final decisions. Accordingly, reconsideration thereof will be denied. "WWIZ, Inc." 3 RR 2d 316 (1964). However, there are certain contentions made by the petitions for reconsideration that warrant further discussion by us and these relate to the actions we took in our final decision to extend the safeguards we originally proposed in our tentative decision.

24. In our Tentative Decision we proposed to prohibit a carrier from engaging in the sale or promotion of data processing activities of its data processing affiliate (paragraph 36; § 64.702 (b)(3)). We considered this to be an essential ingredient of our regulatory scheme of "maximum separation of activities which are subject to regulation from nonregulated activities involving data processing" (paragraph 35). In our Final Decision we agreed with the reasoning of several parties that this particular restriction should be made more effective by making it clear that it would be impermissible for a data affiliate to use in its name any of the carrier's name or symbol (see paragraph 18). In their petitions for reconsideration, Western Union, ITT, and Continental object to this particular expansion of our earlier proposed rule. However, none of these parties raise any objections to the basic requirement, proposed in our Tentative Decision, that a carrier shall not engage in the sale or promotion of the services of its data affiliate. We find this to be somewhat inconsistent. We think it clear that the use of a carrier's name or symbol in the name of a data affiliate could negate the objectives of our basic rule and would result in the carrier indirectly promoting the services of its data affiliates. The arguments made by the carriers bear this out because they stress the great value and goodwill in the carrier's name or symbol which will be lost to and not available to the data affiliate under our rule. We are of the opinion that we should adhere to our expanded requirement for the reasons stated above and in our Final Decision (see paragraph 18). We shall therefore reject the requests that we reconsider and delete this requirement.

25. As we made clear in our Tentative Decision, the objectives of our "maximum separation" safeguard rules are to assure that we, as well as State regulatory agencies, could discharge our regulatory responsibilities with respect to maintaining adequate and efficient communications services at reasonable and nondiscriminatory rates and practices, and that foreseeable anticompetitive carrier practices could be prevented without the necessity of taking corrective measures that might otherwise be called for (paragraphs 35–37). Accordingly, we gave careful consideration to the contentions of several parties commenting on our Tentative Decision that we could not achieve these objectives unless we made it clear that carrier-related data affiliates should not provide data processing services both to their related carriers and to others. We agreed with these contentions in our Final Decision as a logical and necessary extension of our "maximum separation" safeguards and adopted § 64.702(c)(5) which would prohibit such transactions (paragraphs 19 and 20).

26. Western Union, Continental, and GTEDS' customers request our reconsideration of the aforementioned safeguard rule prohibiting carriers from obtaining data processing services from data affiliates and providing service to others. ITT and RCA raise no objection thereto. Western Union asserts that our action in this regard imposes on a carrier's data affiliate a competitively inferior status; that unregulated companies and regulated utilities other than communications carriers, may purchase at will from their data affiliates; and that a larger market is made available to unrelated data processing companies to the unfair competitive disadvantage of carrier-related data companies. Continental states that the rule would not affect their present operation but that their operating telephone companies should have an option in the future, if desirable, to purchase data processing from their affiliated data processing company (Continental Data Services Corp.) which sells data processing service to the public. At present, the Continental telephone companies obtain all of their "in-house" data processing services from another data processing affiliate (Continental Telephone Service Corp.), which does not sell data processing service to the public. Continental contends that there is no reason why its carriers should not be able, if they wish, to buy data processing services from the same affiliate that also sells to the public. It makes essentially the same argument as Western Union and relies upon the dissenting statement of the three Commissioners. The customers of GTEDS (supported by a subsequent pleading filed by GTEDS) assert that they will not be able to obtain "local" data processing service from GTEDS "so long as GTEDS continues to provide data processing services to its telephone affiliate." They state that it will be difficult and costly for them to shift to other data processing services. Thus, both GTEDS and their customers object to the extension of our safeguard rules that prevent a carrier from purchasing data processing services from a data affiliate that also sells to others. Finally, as heretofore stated, the four non-Bell System telephone companies (Mankato Citizens Telephone Co. et al.) who have formed Computoservice, Inc., indicate by their pleading herein that they wish to continue to be able, through their data affiliate, to provide data processing service to both the owner companies and to the public.

27. All of the aforementioned contentions advanced by Western Union, Continental, GTEDS, customers of GTEDS, and Mankato, et al. in opposition to § 64.702(5) were carefully considered by the Commission before it took action. The essence of all of these arguments was clearly articulated in the opinion of the three Commissioners dissenting from our final decision. Nothing new has been added by petitioners to warrant any

change in our conclusion that adoption of this expanded requirement is a natural, logical, and necessary amplification of our rules if we are effectively to implement "maximum separation." Moreover, the pleadings that have been submitted by GTEDS and its customers lend added support to the correctness of our action in adopting § 64.702(5) for reasons which we shall state.

28. One of our concerns in adopting our "maximum separation" is that there be no adverse effect of carrier entry on competition in the data processing market. Both GTEDS and its customers contend that currently there are no other "reasonable" alternative data processing sources for customers of GTEDS to turn to if GTEDS is required to comply with our rule by limiting its service exclusively to the operating telephone companies of the General Telephone System. If these statements are correct, serious and substantial questions are raised as to whether the General Telephone System may not have already achieved a dominant position in the data processing markets or submarkets now being served by GTEDS with adverse consequences on the competitiveness of such markets.

29. As heretofore stated the General Telephone System is the largest telephone system in the United States, outside of the Bell System. The parent corporation, General Telephone & Electronics Corp. (GTE) is a holding company which owns and controls a number of telephone, manufacturing, research, directory, and service companies with operations in 39 States and 18 foreign countries. GTEDS is a wholly owned subsidiary of GTE. At the end of 1970, GTE had total assets of $7.7 billion, including net property, plant and equipment of $6.1 billion. Gross telephone plant (before deduction of depreciation reserve of $1.2 billion) amounted to $7 billion. Gross investment in manufacturing facilities totalled $702 million before accumulated depreciation of $337 million. The telephone operations of GTE produced revenues in 1970 totaling $1.7 billion and net income of $166 million. Manufacturing operations reported sales of $1.7 billion and net income of $70 million. Consolidated revenues and sales of GTE amounted to $3.4 billion with consolidated income of $205 million. In the United States, accordingly to "Forbes" (May 15, 1971), GTE ranked 23d in terms of assets at the end of 1970, for the year 1970, 26th in terms of sales and revenues and 18th in terms of net income.

30. The nationwide computer system of GTEDS consists of large-scale computers located at approximately 13 regional centers throughout the United States. Typical of these installations is the one at San Angelo, Tex. In its pleading, GTEDS describes the situation at San Angelo as follows:

> Specifically, the GTEDS data center in San Angelo, Tex., is the only sizeable EDP operation in a 100-mile radius. There are only two (2) service bureaus in that area and they operate with a 1401 and a small scale 360/20 computer; and one of the banks in San Angelo has a small Burroughs 350. GTEDS presently has IBM 360/50 and 360/40 computers at the San Angelo location. These computers are much larger than the three above mentioned and therefore have the capability of running larger, more sophisticated, and more complicated programs. Most of the applications run by GTEDS on these computers could not be run on the smaller computers above mentioned. The market potential for EDP services in the San Angelo area indicates that very few if any service bureaus would invest the capital required to acquire and operate this equipment which is necessary to service the needs of the community.

31. From the above-quoted statements by GTEDS it would appear reasonable to conclude that the principal factor that militates against the existence of comparable alternative competitive sources in the San Angelo area is the fact that GTEDS, which was formed for the purpose of serving the operating telephone companies of the General Telephone System, now provides service to the public thereby making it difficult if not impossible for alternative sources to exist. We note from GTEDS' statement that there might indeed be a "few" service bureaus that would be willing to make the investment and supply the data processing services needed by the public if GTEDS' services were not offered to the public. Accordingly, rather than supporting arguments against our rule, we believe that the information submitted by GTEDS and its customers does just the opposite and strongly supports our action in adopting § 64.702(5). If in fact, GTEDS or its parent company has serious concerns about the availability of computer services to the customers now served by GTEDS, there is nothing in our decision to prevent the parent company from providing such services through an affiliate which does not serve the telephone carriers of the General Telephone System.

32. The responsive pleading filed jointly by the four non-Bell System telephone companies owning Computoservice, Inc. (CSI), is directed primarily to urging us to deny Bunker Ramo's petition for reconsideration. This we have done. However, the pleading also expresses concern over the effect of our decision on the future operations of CSI. It appears that CSI would not be able, under our rules, to continue to provide service to both the public and to all of the four telephone company owners. This is because at least one of the owners (the Mankato Co.) has revenues that exceed $1 million a year and thus would not be exempt under § 65.702(b). To the extent that the other owners of CSI are exempt under § 65.702(b), they will be permitted to purchase data processing service from CSI even though CSI also sells to others. Thus, the only change in CSI's operation that would appear required under our rules, assuming CSI elects to serve others, would be for CSI to discontinue furnishing data processing service to Mankato and any other owner that is not exempt. CSI alternatively could devote all of its operations to its owners. We do not believe that the changes that may be required in CSI's operations constitute sufficient grounds to warrant our reconsideration of our decision in this respect.

32a. As indicated above, we are of the view that, if data processing affiliates serve both their related communications companies and nonrelated companies, they would be in a peculiarly advantageous structural position to absorb the markets now served by other data processing companies. With an assured market furnished by a carrier affiliate (sales of data processing services would be expenses to the communications carrier and passed on to the communications user), it is reasonable to expect that the data processing affiliate would gain a competitive advantage over its nonaffiliated rivals and the risk would be that the data processing market would gravitate to communications data processing affiliates and eventually be "captured" by them. This is what has already happened in some degree in the areas served by GTEDS and we are concerned that this tendency would increase as computers and communications became more and more interdependent. Accordingly, we reject the contentions of petitioners in this respect.

33. Western Union objects to the requirement that carriers or carrier-related data companies must file with us reports of any proposed "hybrid" service 90 days before engaging therein (§ 64.702 (e) and (b)). These reports must include a complete description of the proposed service. One of the purposes of these rules is to assist the Commission in developing on an ad hoc basis the guidelines that will be helpful to industry and interested parties in determining the specific factual situations under which hybrid services would fall into either the category of hybrid communications (regulated) or hybrid data services (unregulated) (see paragraphs 33–36 of final decision). Western Union contends that competitors of carriers will be able to see these reports well in advance of the inauguration of the service and learn of the business plans and purposes of the carriers whereas noncarriers will not be required to make similar disclosures. Western Union's objection to public disclosure of these reports at the time they are submitted is well taken. However, our existing rules provide ample means whereby any needed protection to the carriers and carrier-related companies may be provided in any case where a showing can be made that premature public disclosure of such reports would be inappropriate (see § 0.459). Accordingly, we will give consideration to any requests made, at the time any of these reports are submitted, for confidential treatment and will decide such requests on their individual merits. However, it should be understood that our policy will be to make public all of these reports (and any Commission ruling thereon) within a reasonable period after they are submitted so that industry may have the benefit of the guidelines developed from the regulatory treatment accorded to the specific factual situations

covered in these reports. For the foregoing reasons, we shall reject Western Union's request that we reconsider and amend § 64.702 (e) and (f).

34. RCA's petition for reconsideration asks modification of our rules to permit a carrier itself to provide data processing services on a cost-sharing basis directly to its common carrier affiliates. No change is required for this purpose as the rules permit this to be done. However, RCA goes further and asks that a carrier itself be permitted to provide such services directly to both its common carrier affiliates "and to other communications entities in connection with intercarrier arrangements and traffic." RCA does not state what companies are intended in the somewhat broad term "other communications entities" nor does it otherwise provide any factual support for this proposal. We shall therefore reject it as an unjustified deviation from our general rule that a carrier not otherwise exempt may provide data processing services to others only through separate corporations in accordance with our "maximum separation" principle.

35. RCA also asks that we make it clear that a carrier may use its own "in-house" computer or computer systems not only for purposes incidental to the provision of public communication services but for any purpose incidental to any permissible nonregulated undertaking of the carrier. We think it clear that our rules do not prohibit such usage. Carriers are permitted to engage in certain nonregulated activities (e.g. Western Union's flower and time services). Paragraph 20 of our final decision states that a carrier's in-house computer system may be used to accommodate a carrier's particular needs. The language in paragraph 15 of our final decision to which RCA refers, was not intended to limit the use of a carrier's "in-house" computers to the regulated activities of the carrier. Similarly our rules would permit RCA's parent corporation, for example, to provide off-peak capacity from its in-house computers to persons other than an affiliated carrier. RCA's requests for clarification are granted to the extent indicated above.

36. Finally, we turn to the jurisdictional arguments made by Continental and Western Union. We summarize the contentions of these parties in preceding paragraphs 9 and 15. None of the other parties firing pleadings with us have questioned our power to take the action we have taken herein.

37. In our tentative and final decisions we dealt at some length with the various jurisdictional questions that had been raised by the parties (see e.g. tentative decision paragraphs 14, 17–19, 27a–29; final decision paragraphs 4–9, 23, 28, 30). Neither Continental nor Western Union present any new factual or legal arguments that have not been considered by us and discussed in our tentative and final decision. Ordinarily we would be disposed to engage in no further elaboration with respect thereto. However, some additional comments should be made with respect to certain aspects of these contentions.

38. Continental, for example, continues to rely heavily on its allegation that all but eight of its 86 operating telephone companies are classified as section 2(b)(2) "connecting carriers" and that, for this alleged reason, we have no jurisdiction over such carriers. We discussed this argument in our final decision (see paragraph 23 of final decision), but Continental continues to dispute our holding that we have jurisdiction over any carrier that is in fact a section 2(b)(2) carrier. However, Continental, in quoting 2(b)(2) of the Act in its petition omits language therein that section 2(b)(2) companies are fully subject without exemption to section 301 of the Act thereby ignoring the requirement that any 2(b)(2) carrier that is licensed by us to operate radio facilities may do so only if it meets the public interest requirements imposed by the Act and the rules and regulations which we promulgate in the public interest. Continental also omits that portion of section 2(b)(2) that states that "connecting carriers" are subject generally to the requirements of sections 201–205 of the Act including inter alia that these carriers shall not engage in any practice for and in connection with its interstate communications services that is unjust or unreasonable or unduly discriminatory or preferential. Continental also overlooks the statutory provisions that make section 2(b)(2) carriers subject to our direct antitrust jurisdiction, insofar as sections 2, 3, and 7 of the Clayton Act are concerned (47 U.S.C. 602(d)) and that only this Commission can grant antitrust immunity to 2(b)(2) and other carriers involved in mergers and acquisitions (47 U.S.C. 221(a)).

39. Western Union's arguments on jurisdiction are not entirely clear. First, it states that the Commission does indeed have broad powers. However, it states that "what is contended by the carriers is that the exercise of such powers to prohibit carrier procurement of affiliate-supplied data processing and the shared use of common corporate names is an abuse of discretion." It appears to argue that we abused our discretion by not utilizing other measures open to us. We disagree. By the preceding paragraphs hereof and in our prior decisions we have set forth our carefully considered reasons for our action in these regards in lieu of the alternative courses of action recommended by Western Union. The company argues additionally that we have no statutory authority to impose the restrictions we have imposed. We also disagree with this. At the risk of repetition, we reassert that our statutory authority is broad and imposes heavy responsibilities upon us, inter alia, to insure (a) that common carriers, presently and in the future, provide adequate communications service, at just and reasonable and nondiscriminatory rates and that they employ practices, and classifications and regulations that are just, reasonable and nondiscriminatory, sections 47 U.S.C., 151, 201–202, 211, 213–215, 218–220; (b) that they operate all radio facilities in accordance with the public interest requirements of the Act, and the rules and regulations thereunder, section 47 U.S.C. 301 et seq.; and (c) that they comply with sections 2, 3, and 7 of the Clayton Act, 47 U.S.C. 602(d). Further, we have the statutory duty to consider and evaluate all relevant factors with respect to the foregoing, including, but not limited thereto, national policies relating to competition, monopolies or combinations, contracts or agreement in restraint of trade 47 U.S.C. 221(a), 313, 602(d); and sections 2, 3, and 7 of the Clayton Act.

40. For the reasons stated above and in our decisions we shall deny the petitions for reconsideration and shall make no modifications at this time in our rules. In this connection we affirm the interpretation of our rules by the Chief, Common Carrier Bureau, in a letter to GTE dated March 23, 1971, from the Chief, Common Carrier Bureau, copy of which is appended hereto.[2]

CONCLUSION

41. *Accordingly, it is ordered,* That the aforementioned petitions for reconsideration are denied and our final decision is affirmed.

Adopted: March 28, 1972.

Released: March 30, 1972.

FEDERAL COMMUNICATIONS COMMISSION,[3]
[SEAL] BEN F. WAPLE,
Secretary.

[FR Doc.72-5832 Filed 4-17-72;8:51 am]

Title 50—WILDLIFE AND FISHERIES

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

PART 32—HUNTING

PART 33—SPORT FISHING

Upper Mississippi River Wild Life and Fish Refuge, Ill., and Certain Other States

The following special regulations are issued and are effective on date of publication in the FEDERAL REGISTER (4-18-72).

§ 32.12 Special regulations; migratory game birds; for individual wildlife refuge areas.

ILLINOIS, IOWA, MINNESOTA, AND WISCONSIN

UPPER MISSISSIPPI RIVER WILD LIFE AND FISH REFUGE

The public hunting of migratory game birds on the Upper Mississippi River Wild Life and Fish Refuge, Illinois, Iowa, Minnesota, and Wisconsin, is permitted on the areas designated by signs as "open"

[2] Letter filed as part of the original document.

[3] Commissioners Burch, Chairman; and Robert E. Lee dissenting; Commissioner Bartley concurring in the result; Commissioners Reid and Wiley not participating.

to hunting. Hunting of migratory game birds is not permitted on the areas designated by signs as "closed" to hunting. The "open" areas comprising 153,000 acres are delineated on maps available at the refuge headquarters, Winona, Minn. 55987, and from the Regional Director, Bureau of Sport Fisheries and Wildlife, Federal Building, Fort Snelling, Twin Cities, Minn. 55111.

Hunting shall be subject to the following special conditions:

(1) Hunting of migratory game birds on designated "open" areas concurrent with applicable State and Federal seasons is permitted.

(2) The hunting of migratory game birds shall be in accordance with all applicable State regulations which are adopted herein and made a part of this regulation.

The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 32, and are effective until June 30, 1973.

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

ILLINOIS, IOWA, MINNESOTA, AND WISCONSIN

UPPER MISSISSIPPI RIVER WILD LIFE AND FISH REFUGE

The public hunting of upland game birds, upland game animals, and raccoon, groundhogs, foxes, and crows on the Upper Mississippi River Wild Life and Fish Refuge, Illinois, Iowa, Minnesota, and Wisconsin is permitted on the areas designated by signs as "open" to hunting. Restricted hunting of these species is also permitted on the areas designated by signs as "closed" to hunting, except that the Goose Island Closed Area in Pool 8 is closed at all times to hunting and the discharge of guns is prohibited thereon. The "open" areas comprising 153,000 acres, and the "closed" areas comprising 41,000 acres are delineated on maps available at the refuge headquarters, Winona, Minn. 55987 and from the Regional Director, Bureau of Sport Fisheries and Wildlife, Federal Building, Fort Snelling, Twin Cities, Minn. 55111.

Hunting shall be subject to the following special conditions:

(1) Hunting on designated "open" areas concurrent with applicable State seasons is permitted, but only during the period from the first day of the earliest fall State game bird or game animal season applicable to the geographic area concerned, until the end of the applicable State seasons, or until the next succeeding March 1, whichever occurs first.

(2) Except for the Goose Island Closed Area which is closed to hunting at all times, hunting on designated "closed" areas concurrent with applicable State seasons is permitted, but only during the period from the first day after the close of the last hunting season for ducks applicable to the geographic area concerned, until the end of the applicable State seasons, or until the next succeeding March 1, whichever occurs first.

(3) The hunting of upland game birds, upland game animals, and raccoon, groundhogs, fox and crows shall be in accordance with all applicable State regulations which are adopted herein and made a part of this regulation.

(4) Except with permission in writing obtained from the Refuge Manager, the discharge of guns of all types is prohibited on all lands and waters of the Upper Mississippi River Wild Life and Fish Refuge during the period from March 1 until the first day of the earliest fall State game bird or game animal season applicable to the geographic area concerned.

The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 32, and are effective until June 30, 1973.

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

ILLINOIS, IOWA, MINNESOTA, AND WISCONSIN

UPPER MISSISSIPPI RIVER WILD LIFE AND FISH REFUGE

The public hunting of deer on the Upper Mississippi River Wild Life and Fish Refuge, Illinois, Iowa, Minnesota, and Wisconsin is permitted on the areas designated by signs as "open" to hunting. Restricted hunting of deer is also permitted on the areas designated by signs as "closed" to hunting, except that the Goose Island Closed Area in Pool 8 is closed to all hunting at all times. The "open" areas comprising 153,000 acres, and the "closed" areas comprising 41,000 acres are delineated on maps available at the refuge headquarters, Winona, Minn. 55987 and from the Regional Director, Bureau of Sport Fisheries and Wildlife, Federal Building, Fort Snelling, Twin Cities, Minn. 55111.

Hunting shall be subject to the following conditions:

(1) Bow and gun deer hunting on designated "open" areas is permitted concurrent with applicable State seasons.

(2) Except for the Goose Island Closed Area which is closed to hunting at all times, bow and gun deer hunting on designated "closed" areas concurrent with applicable State seasons is permitted, but only during the period from the first day after the close of the last hunting season for ducks applicable to the geographic area concerned, until the end of the applicable State seasons, or until the next succeeding March 1, whichever occurs first.

(3) The hunting of white-tailed deer shall be in accordance with all applicable State regulations which are adopted herein and made a part of this regulation.

The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 32, and are effective until June 30, 1973.

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

ILLINOIS, IOWA, MINNESOTA, AND WISCONSIN

UPPER MISSISSIPPI RIVER WILD LIFE AND FISH REFUGE

Sport fishing, commercial fishing, and the taking of frogs, turtles, crayfish, and clams on the Upper Mississippi River Wild Life and Fish Refuge, Illinois, Iowa, Minnesota, and Wisconsin, is permitted on all water areas of the refuge. The refuge water areas comprising 125,000 acres are delineated on maps available at the refuge headquarters, Winona, Minn. 55987, and from the office of the Regional Director, Bureau of Sport Fisheries and Wildlife, Federal Building, Fort Snelling, Twin Cities, Minn. 55111. All fishing is subject to the following conditions:

(1) Unless further restrictions are imposed by this regulation, all fish, frogs, turtles, crayfish, and clams shall be taken in accordance with all applicable State regulations and seasons which are adopted herein and made a part hereof.

(2) All sport and commercial fishing and all travel by boat or any other means across, through, or on the Spring Lake Closed Area of the Upper Mississippi River Wild Life and Fish Refuge in Carroll County, Ill. is prohibited from October 1 through December 20.

(3) All persons, including their helpers, exercising the privilege of commercial fishing on the Spring Lake Closed Area must possess a valid commercial fishing permit issued by the refuge Manager authorizing such commercial fishing, and must comply with all conditions as prescribed by the Refuge Manager which are set forth in the permit.

The provisions of this special regulation 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 until June 30, 1973.

Dated: April 11, 1972.

CHARLES A. HUGHLETT,
Acting Regional Director.

[FR Doc.72-5853 Filed 4-17-72;8:51 am]

Title 6—ECONOMIC STABILIZATION

Chapter II—Pay Board

PART 201—STABILIZATION OF WAGES AND SALARIES

Computation of Annual Increase in Base Compensation

Title 6, Chapter II, Part 201, Code of Federal Regulations is amended by adding a new Subpart C thereto, relating to computation of annual increase in base compensation (including those fringe benefits described in section 203(g), Economic Stabilization Act of 1970, as amended, Public Law 92-210, 85 Stat.

743) and by making miscellaneous changes of a clarifying or technical nature. Since such amendments, as set forth below, are essential to the expeditious implementation of the Economic Stabilization Act of 1970, as amended, and Executive Order No. 11640, as amended, the Board finds that the time for the submission of written comments by interested persons in accordance with usual rule making procedures is impracticable and that good cause exists for promulgating them in less than 30 days. However, written comments are solocited for consideration by the Pay Board. Such comments may be submitted by [15 days after date of publication] to: Chairman of the Pay Board, Attention: Office of General Counsel, 2000 M Street NW., Washington, DC 20508.

(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; Public Law 92-210, 85 Stat. 743); Executive Order No. 11640 (37 F.R. 1213, January 27, 1972), as amended; and Cost of Living Council Orders No. 3 (36 F.R. 20202, October 16, 1971) and No. 6 (37 F.R. 2727, February 4, 1972))

Effective date. These amendments are effective on and after November 14, 1971. However, if prior to April 18, 1972, a computation was made in good faith reliance upon and in accordance with the instructions contained on a Form PB-1 or PB-2, the computation made shall not be considered a violation of Pay Board regulations within the meaning of § 201.17; provided that any computations relating to those certain benefits specified in section 203(g) of the Economic Stabilization Act of 1970, as amended, made on or after March 1, 1972, comply with the Pay Board policy as published in PB-51 dated February 23, 1972, and incorporated in these regulations.

GEORGE H. BOLDT,
Chairman of the Pay Board.

PARAGRAPH 1. Section 201.1 is revised to read as follows:

§ 201.1 Purpose and scope.

The purpose of these regulations is to establish rules and standards to stablize wages and salaries, as defined in § 201.3, in accordance with the provisions of Executive Order No. 11627 (36 F.R. 20139, October 16, 1971), as amended, and Executive Order No. 11640 (37 F.R. 1213, January 27, 1972), as amended. Moreover, the purpose of these regulations is to provide guidance and procedures for an orderly transition from the 90-day general freeze imposed by Executive Order No. 11615 (36 F.R. 15727, August 15, 1971), as amended. All persons are required by law to comply, and are expected to do so voluntarily, with the provisions of the Economic Stabilization Act of 1970, as amended, and all Executive Orders, regulations, circulars, and orders issued thereunder. These regulations shall be construed in a manner consistent with the policies of the Act, and every person subject to the provisions of these regulations shall be required to interpret and apply such provisions in good faith to carry out such policies. The policies governing pay adjustments, adopted by the Pay Board on November 8, 1971, are attached as an appendix to this part.

PAR. 2. Section 201.3 is amended by revising the language preceding the first definition, by revising the definitions of "person" and "tandem relationship," and by adding new definitions to be inserted alphabetically. These amended and added provisions read as follows:

§ 201.3 Definitions.

As used in this part, unless the context indicates otherwise, the term:

* * * * *

"Base date" means, with respect to an appropriate employee unit, the day prior to the first day of a control year.

"Base payroll period" means, with respect to an appropriate employee unit, the most recent payroll period which ends on or before the base date, or, if such payroll period is not representative because of seasonal variations or for other valid reasons, the most recent payroll period prior to the base date which, under all the facts and circumstances, fairly represents the base year. A payroll period may be a week, 2 weeks, month, or other accepted time period, in accordance with demonstrated practices.

"Base year" means, with respect to an appropriate employee unit, the 12-month period ending on the base date.

"Chargeable increases" means those increases or adjustments in the average straight-time hourly rate or average hourly benefit rate which are included in the amount used to determine whether the maximum permissible annual aggregate wage and salary increase has been exceeded with respect to an appropriate employee unit.

"Code" means the Internal Revenue Code of 1954, as amended.

"Control year" means, with respect to an appropriate employee unit, the period of time determined pursuant to § 201.53.

* * * * *

"Maximum permissible annual aggregate wage and salary increase" means, with respect to an appropriate employee unit during any control year, the limitation on increases in the base compensation rate. This limitation is the general wage and salary standard described in § 201.10 or, if appropriate, any exception thereto pursuant to § 201.11, including any decision of the Pay Board relating to such unit pursuant to paragraph (d) of such section.

* * * * *

"Person" includes any individual, estate, trust, sole proprietorship, partnership, association, company, joint venture, corporation, fiduciary, labor organization, State or local governmental unit or instrumentality of such governmental unit, or a charitable, educational, or other such institution; however, the term does not include a foreign or domestic corporation in a foreign country, or an organization that includes within its membership foreign governments or instrumentalities thereof, or a foreign government, or an instrumentality thereof, except to the extent that such instrumentality is doing business in the United States.

"Tandem relationship" means, for purposes of § 201.13(f), a well-established and consistently maintained practice whereby the precise timing, amount, and nature of general increases in wages and salaries of a given appropriate employee unit have so followed those of another such unit of employees of the same employer or of other employers within a commonly recognized industry (such as a Standard Industrial Classification two-digit category) that a general increase, in the normal operation of the practice, would have been put into effect and have been applicable to work performed on or before November 13, 1971, but for the operation of the freeze.

* * * * *

PAR. 3. Section 201.11 is amended by revising paragraph (a) (3) and (4), by adding new paragraph (a) (6) and (7), and by revising paragraphs (b) and (c). These amended and added provisions read as follows:

§ 201.11 Criteria for exceptions.

(a) *In general.* * * *

(3) *Catchup increases.* (i) If the aggregate percentage of wage and salary increases in the employment contract expiring prior to the new contract for which an exception is claimed is less than the sum of a percentage increase of 7 percent per year for each year of the prior contract, the difference between such aggregate and such sum shall be added to 5.5 percent to determine the maximum permissible annual aggregate wage and salary increase for the appropriate control year.

(ii) If, in the absence of an employment contract, the aggregate percentage of wage and salary increases in the preceding 3 years is less than the sum of a percentage increase of 7 percent per year for each of the 3 years, the difference between such aggregate and such sum shall be added to 5.5 percent to determine the maximum permissible annual aggregate wage and salary increase for the appropriate control year.

(iii) The exceptions provided in subdivisions (i) and (ii) of this subparagraph shall expire June 30, 1972. Such exceptions may be claimed only in regard to employment contracts entered into or pay practices established prior to July 1, 1972.

(iv) The maximum permissible annual aggregate wage and salary increase under subdivisions (i) and (ii) of this subparagraph shall not exceed 7 percent.

(4) *Cost of living allowance calculation.* (i) If a wage and salary increase in a new contract or pay practice is composed of two parts, wages and salaries other than cost of living adjustments and cost of living adjustments pursuant to and justified by a generally accepted escalator formula, the wage and salary part shall be calculated by the sum of the percentage increases method, and the cost of living part shall be calculated by multiplying each cost of living adjustment by a fraction, the numerator of

which shall be the number of months within the appropriate control year such cost of living adjustment is in effect, and the denominator of which shall be the number of months in such control year. These two parts shall be added together to determine the aggregate wage and salary increase pursuant to this subparagraph.

(ii) The annual aggregate increase, calculated pursuant to the method in subdivision (i) of this subparagraph shall not exceed the general wage and salary standard.

(5) *Merit increases.* [Reserved]

(6) *Federal agency wage determinations.* In any case to which the provisions of § 201.57(f) (relating to exclusions from adjustment computations in the case of Federal agency wage determinations) apply, the Pay Board (or its delegate) may grant an exception to the general wage and salary standard in order to permit an increase for those employees in the same appropriate employee unit who work at the same site, plant, or location who have not received an increase pursuant to such section sufficient to maintain average historical wage and salary differentials among jobs, job classifications, or positions. For purposes of the preceding sentence, the average historical wage and salary differential shall be determined over the preceding 3 years and must be consistent with prior practice during such period. Such differential must have been in effect within the unit for at least 3 years. In the event that such unit has been in existence for less than 3 years or if the average historical wage and salary differential is not representative because of corrections made in such differentials to end inequities during the preceding 3 years, the Pay Board (or its delegate) may determine the average historical wage and salary differential by reference to the period of the unit's existence or by reference to the differential existing after any such corrections.

(7) *Tandem qualified benefit plans.* In any case to which the provisions of § 201.57(g) (relating to exclusions from adjustment computations in the case of certain employer contributions to qualified benefit plans) apply, the Pay Board (or its delegate) may (subject to the provisions of paragraph (c) of this section) grant an exception to the general wage and salary standard to a tandem-claiming appropriate employee unit, if the following conditions are met:

(i) The contract or pay practice covering the qualified benefit plan (see § 201.58) to which a tandem relationship is claimed became effective not more than 12 months prior to the effective date of the contract or pay practice providing for the increase in qualified benefits in the tandem-claiming unit,

(ii) The nature and levels of qualified benefits in the tandem-claiming unit have been generally equal or closely comparable to, and the timing of changes in benefits has been directly related to, those of another employee unit of the same employer, or of the employers within the same commonly recognized industry, local labor market area, or established unit or reference group of employees for determination of qualified benefits, and

(iii) The tandem relationship has been established as a past practice for 5 consecutive years or in the immediately preceding two collective bargaining agreements.

(b) *Overall limitation on exceptions.* Except as provided in paragraph (a)(4), (6), and (7) of this section, the maximum permissible annual aggregate wage and salary increase with respect to an appropriate employee unit, whether any or all of the above exceptions are applicable, shall not exceed 7 percent.

(c) *Procedures for exceptions.* Exceptions pursuant to subparagraphs (1), (2), (6), and (7) of paragraph (a) of this section shall require prior approval of the Pay Board (or its delegate). Exceptions pursuant to subparagraphs (3) and (4) of paragraph (a) of this section shall be self-executing for Catagories II and III wage and salary increases, but reports of all such wage and salary increases shall be made to the Pay Board (or its delegate). Category I wage and salary increases, including those pursuant to subparagraphs (3) and (4) of paragraph (a) of this section shall require prior approval of the Pay Board (or its delegate).

* * * * *

PAR. 4. Section 201.13 is amended by revising paragraph (f)(2) to read as follows:

§ 201.13 Scheduled increases in wages and salaries for services rendered on or after August 15, 1971, and before November 14, 1971.

* * * * *

(f) *Tandem relationships.* * * *

(2) (i) The prior employment contract of the unit to which a tandem relationship is claimed expired no more than 3 months before the expiration of the prior employment contract of the tandem-claiming unit; or

(ii) In the case of a pay practice, the effective date of the increase with respect to which a tandem relationship is claimed was consistent with past pay practice, no more than three months prior to the scheduled effective date of the increase of the tandem-claiming unit.

* * * * *

PAR. 5. Part 201 is amended by adding a new Subpart C immediately following Subpart B and before Subpart D of such part, to read as follows:

Subpart C—Computation Rules

Sec.
201.51 General.
201.52 Formula for computation of annual aggregate increase in the base compensation rate.
201.53 Determination of control year.
201.54 Base compensation rate.
201.55 Average straight-time hourly rate.
201.56 Average hourly benefit rate.
201.57 Exclusions from adjustment computations.
201.58 Qualified benefit plans.

AUTHORITY: The provisions of this Subpart C issued under 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; Public Law 92-210, 85 Stat. 743); Executive Order No. 11640 (37 F.R. 1213, Jan. 27, 1972), as amended; and Cost of Living Council Orders No. 3 (36 F.R. 20202, Oct. 16, 1971) and No. 6 (37 F.R. 2727, Feb. 4, 1972).

§ 201.51 General.

(a) *Purpose.* The purpose of the provisions of this subpart is to set forth the methods of computation of pay adjustments which shall be used under the applicable provisions of this chapter with respect to the periods of time called "control years" for which such computations are made. The methods of computation described in this subpart shall be used, among other things, to examine the relationship of pay adjustments to the maximum permissible annual aggregate increase in the base compensation rate for an appropriate employee unit during any control year (§ 201.53). Every person who makes any computation pursuant to the provisions of this subpart shall be required to make such computation in good faith and in a manner consistent with the policies of the Act.

(b) *Scope.* The provisions of this subpart include the method of computing a base compensation rate (§ 201.54) consisting of an average straight-time hourly rate (§ 201.55) and an average hourly benefit rate (§ 201.56). Additional rules are provided to compute increases in such components of the base compensation rate. The objective of these computations is to determine a percentage relationship between the total of the increases (excluding those increases specified in § 201.57) in such components during a control year and the base compensation rate applicable for that control year. See § 201.11(a)(4) for the method of computing increases due to cost of living adjustments.

(c) *Limitation on wage and salary increases.* Except as otherwise provided in this title, an appropriate employee unit's aggregate percentage increase in the base compensation rate (as determined pursuant to § 201.52) for any control year may not exceed its maximum permissible annual aggregate wage and salary increase (as defined in § 201.3). However, the wage and salary increases of an individual employee in an appropriate employee unit may exceed such maximum so long as the aggregate increase in the base compensation rate for such unit as a whole does not exceed such maximum.

§ 201.52 Formula for computation of annual aggregate increase in the base compensation rate.

In any case in which a computation is required to determine the annual aggregate increase in the base compensation rate with respect to an appropriate employee unit for any control year (determined pursuant to § 201.53), such increase shall be stated as a percentage which is determined by dividing the sum of—

(a) The total adjustment during such control year in the average straight-time hourly rate (determined pursuant to paragraph (b) of § 201.55), plus

(b) The total adjustment during such control year in the average hourly benefit rate (determined pursuant to paragraph (b) of § 201.56), by such unit's base compensation rate (determined pursuant to § 201.54) applicable to such control year. See § 201.57 for exclusions from adjustment computations.

§ 201.53 Determination of control year.

(a) *In general.* This section provides rules to determine the time period for computing the annual aggregate wage and salary increase for an appropriate employee unit. These rules preserve, as nearly as possible, both contractual and established pay relationships. In some instances, provision has been made for a first control year of less than 12 months. In this period of less than 12 months, the maximum permissible annual aggregate wage and salary increase for a full control year shall be allowed.

(b) *Pay practices*—(1) *First control year.* Except as provided in paragraph (c)(1)(ii) of this section, the first control year for an appropriate employee unit which was not covered by the terms of an employment contract in effect on November 13, 1971 shall be—

(i) The period from November 14, 1971 through November 13, 1972, or

(ii) If the unit was covered on November 13, 1971, by an established pay practice (not set by contract) whereby prospective wage and salary increases for the unit are determined for a period of 12 months or more beginning on a fixed date (other than November 14), at the election of the employer, the period of less than 12 months from November 14, 1971 through the day before the annual anniversary of such fixed date.

(2) *Succeeding control years.* Each succeeding control year shall be the 12-month period beginning on November 14, or, in the case of an established pay practice where the election described in subparagraph (1)(ii) of this paragraph is made, on an annual anniversary of the fixed date referred to in such subparagraph.

(c) *Employment contracts*—(1) *First control year*—(i) *General rule.* The first control year for an appropriate employee unit which was covered by the terms of an employment contract in effect on November 13, 1971, shall be the period of 12 months or less which begins on November 14, 1971 and ends—

(*a*) Where the expiration date of that contract is on or before November 13, 1972, on the expiration date of that contract;

(*b*) Where the expiration date of that contract is after November 13, 1972, on the annual anniversary of the expiration date of the prior succeeded contract, or, at the election of the parties, on the annual anniversary of the day prior to the first wage increase that was provided under the terms of the contract in effect on November 13, 1971; or

(*c*) Where the expiration date of that contract is after November 13, 1972 and there was no prior succeeded contract (e.g., the existing contract is the first contract between the parties), on the day prior to the annual anniversary of the effective date of the contract in effect on November 13, 1971 or, at the election of the parties, on the annual anniversary of the day prior to the first wage increase that was provided under the terms of the contract in effect on November 13, 1971.

(ii) *Special rule.* Where there was no contract in effect on November 13, 1971, but there was an established bargaining relationship between the parties on such date and the parties had a prior contract which had expired, the first control year shall end on the annual anniversary of the expiration date of the prior succeeded contract or, at the election of the parties, on the day before the effective date of the new contract.

(2) *Succeeding control years.* Each succeeding control year shall be the 12-month period ending on the annual anniversary of the date of the end of the first control year.

The term "expiration date" as used in this section refers to such date specified in the contract originally negotiated by the parties and not to a later extension or modification of such date.

(d) *Limitations.* (1) The base date for the first and succeeding control years established under the provisions of paragraph (b) or (c) of this section shall not thereafter be changed even though the appropriate employee unit goes from a pay practice status to an employment contract status or from an employment contract status to a pay practice status after November 13, 1971. Notwithstanding the preceding sentence, in any case in which a newly organized unit is employed by an employer who, himself or through an association, is bound by a master employment contract which provides that newly organized units of the same employer shall be subject to all the terms and conditions of the master contract, the control year of such newly organized unit may, at the election of the parties, be changed to conform to the control year typical for units covered by the master agreement.

(2) There shall be no retroactive payments of an increase in wages or salaries prior to a base date established under the provisions of the preceding subparagraph or paragraph (b) or (c) of this section unless allowable under new Pay Board regulations or orders.

(e) *Manner of election.* Any election described in this section shall be evidenced by filing such forms as may be prescribed by the Pay Board.

(f) *Tandem relationship.* An appropriate employee unit claiming a tandem relationship to another unit shall not conform its control year to the control year of such other unit solely on account of such tandem claim.

§ 201.54 Base compensation rate.

The base compensation rate applicable for any control year shall be an average rate of pay, stated in dollars and cents per hour, which is equal to the sum of the average straight-time hourly rate (determined pursuant to paragraph (a) of § 201.55) plus the average hourly benefit rate (determined pursuant to paragraph (a) of § 201.56).

§ 201.55 Average straight-time hourly rate.

(a) *General rule.* For purposes of § 201.54 the average straight-time hourly rate for an appropriate employee unit shall be the amount, stated in dollars and cents per hour, which is determined by dividing the total straight-time payroll expenditures for the base payroll period by the total man-hours paid for (including all paid leave hours) during such period. For purposes of this section, the term "total straight-time payroll expenditures" shall include payments for base payroll period wages and salaries made retroactively pursuant to §201.13 or § 201.15 or made retroactively pursuant to Pay Board decision under § 201.11(d) where such decision specifically allows the payment to be included in the base. Such term shall include payments for man-hours not worked at the straight-time rates applicable had the hours been worked (e.g., sick, vacation, and holiday leave, reporting and call-in pay, etc.) in addition to payments for man-hours actually worked. Such term shall exclude payments attributable to shift differentials, premiums for overtime, weekend, vacation, and holiday pay (but shall include the straight-time pay for such work), severance pay, bonuses, supplemental unemployment benefits, and any other direct or indirect benefits. For purposes of this paragraph, the term shall include straight-time payments which are excludable under § 201.57. All man-hours paid for shall be taken into account at the straight-time hourly rate, including the man-hours paid for of those employees in the unit who are not paid on an hourly rate basis. For purposes of this section "man-hours paid for" shall be the actual man-hours for which employees in the unit receive compensation during the payroll period in question. For those employees who are not on fixed hourly schedules, a reasonabl estimate shall be made as to the hours for which they receive compensation during the payroll period.

(b) *Adjustment in average straight-time hourly rate.* The total adjustment in the average straight-time hourly rate (referred to in paragraph (a) of § 201.52) for an appropriate employee unit is the amount of increase, if any, of such rate in effect during the last payroll period of the control year which follows the base date compared to such rate in effect during the base payroll period. (See § 201.57 for items excluded from adjustment computations and § 201.11(a)(4) for the method of computation in the case of cost of living adjustments.) Such total adjustment shall be—

(1) In the case of an adjustment computation made at or after the end of the control year in question relating to a wage and salary practice or employment contract, which includes merit adjustments pursuant to a merit plan, practice, or contract provision which existed on November 13, 1971, an amount, stated in dollars and cents per man-hour, which is equal to the excess, if any, of—

(i) The amount determined by dividing the total straight-time payroll ex-

penditures incurred for the last payroll period of the control year in question at the pay rates then in effect, by the actual man-hours paid for during such payroll period, over

(ii) The amount of such average straight-time hourly rate determined with respect to the base payroll period (see paragraph (a) of this section).

A compensating adjustment may be made to offset any increase in the wage and salary rate caused by changes in the composition of an appropriate employee unit with respect to average length of service or average skill levels.

(2) In the case of an adjustment computation relating to a wage and salary practice or employment contract, which does not include any merit adjustment pursuant to a plan, practice, or contract provision which existed on November 13, 1971, an amount, stated in dollars and cents per man-hour, which is equal to the excess, if any, of—

(i) The amount determined by dividing the projected total straight-time payroll expenditures which would be incurred for the last payroll period of the control year in question (computed by applying the pay rates which would be in effect during such last payroll period to the work force composition and years of service which existed during the base payroll period and by assuming, in the case of piece-rate or incentive systems, no change in output per worker) by the actual man-hours paid for during the base payroll period, over

(ii) The amount of such average straight-time hourly rate as determined with respect to the base payroll period (see paragraph (a) of this section).

(3) In the case of an adjustment computation for a situation referred to in subparagraph (1) of this paragraph which is made prior to the end of a control year, the following two computations shall be made:

(i) The computation as described in subparagraph (2) of this paragraph; and,

(ii) The computation as described in subparagraph (1) of this paragraph, but using in subdivision (i) of such subparagraph reasonable and supportable estimates for the total straight-time payroll expenditures expected to be incurred for the last payroll period of the control year and the reasonable and supportable estimate of the actual man-hours expected to be paid for during such last payroll period. Such estimates shall be made in good faith and shall be subject to documentation.

§ 201.56 Average hourly benefit rate.

(a) *General rule.* For purposes of § 201.54, the average hourly benefit rate of an appropriate employee unit shall be an amount, stated in dollars and cents per hour, which is determined by dividing the total cost of benefits which would have been incurred with respect to the base year, computed by costing each benefit item at the rate in effect on the last day of such base year, by the total number of man-hours actually worked by employees in such unit (excluding paid leave hours) during such base year. For purposes of this section, the term "total cost of benefits" shall include payments made retroactively pursuant to § 201.13 or § 201.15 or made retroactively pursuant to Pay Board decision under § 201.11(d) where such decision specifically allows the payment to be included in the base, payments attributable to shift differentials, and premiums for overtime, weekend, vacation, and holiday work. The term shall also include other premium payments, and vacation, sick, holiday, and other paid leave (e.g., jury duty, funeral, voting, etc.) severance pay, bonuses, supplemental unemployment benefits, and other direct or indirect benefits (except incentive compensation as provided in Subpart D of this part). For purposes of this paragraph, the term shall include benefits which are excludable under § 201.57 (except for paragraph (d) of such section relating to certain employer contributions to Federal or State plans). For purposes of this section, "man-hours worked" shall be the aggregate man-hours actually worked by members of the unit during the base year. A reasonable estimate shall be made as to the hours actually worked during the base year for those employees who are not on fixed hourly schedules.

(b) *Adjustment in average hourly benefit rate.* The total adjustment in the average hourly benefit rate (referred to in paragraph (b) of § 201.52) for an appropriate employee unit is the amount of increase, if any, with respect to such rate in effect at the end of the control year in question as compared to the rate in effect at the end of the base year. (See § 201.57 for items excluded from adjustment computations. Further, amounts saved because of a decrease of benefit costs or because of elimination or reduction of benefit levels may be used to offset other increased benefit costs due to new or improved benefits.) Such total adjustment shall be an amount stated in dollars and cents per man-hour, which is equal to the excess, if any, of—

(1) The amount determined by dividing the total cost of benefits for the control year in question which would have been incurred assuming the same work force composition and years of service existed during the control year as that which existed during the base year, computed by costing each benefit item at the rate which would be in effect on the last day of such control year, including increases benefit costs resulting from increases in the average straight-time hourly rate during such control year, by the total number of man-hours worked by employees in the appropriate employee unit during the base year, over

(2) The amount of such average hourly benefit rate as determined with respect to the base year (see paragraph (a) of this section).

§ 201.57 Exclusions from adjustment computations.

For purposes of determining any adjustment pursuant to § 201.55(b) (relating to adjustment in the average straight-time hourly rate) or § 201.56(b) (relating to adjustment in the average hourly benefit rate), the following items or factors shall be excluded:

(a) *Promotion.* Increases due to promotion where the duties and responsibilities of an employee in the appropriate employee unit have materially changed from the duties and responsibilities of such employee in the job, job classification, or position previously held.

(b) *Longevity.* Longevity increases in an employment contract in effect on November 13, 1971, or in a pay practice previously set forth and in existence on such date. These longevity increases must be solely related to the employee's length of service and must operate without significant affirmative exercise of employer discretion or subjective evaluation of the employee's work performance. The only conditions which can attach to the increase are satisfactory work performance and length of service. If it is an established practice that once an individual's work performance for a certain length of time is determined to be satisfactory and the amount of the increase as determined in advance is not subject to any discretionary adjustment, the increase is due to longevity.

(c) *Automatic in-grade progression.* Progression increases in accordance with a step or series of steps for a given job classification (including increases pursuant to a progression schedule for newly hired employees which meets the requirements of this paragraph) contained in an employment contract in effect on November 14, 1971, or in a pay practice previously set forth and in existence on such date. These progression increases must be solely related to the employee's length of service in a particular job classification and must operate without significant affirmative exercise of employer discretion or subjective evaluation of the employee's work performance. The only conditions which may attach to the increase are satisfactory work performance and length of service in a particular job classification. If it is an established practice that once an individual's work performance for a certain length of time in a particular job classification is determined to be satisfactory and the amount of the resulting increase as determined in advance is not subject to any discretionary adjustment, the increase is due to automatic in-grade progression.

(d) *Employer contributions to certain Federal or State plans.* Employer contributions for—

(1) Any Federal public plans (e.g., social security, Railroad Retirement Act, Federal Insurance Contribution Act, Federal Unemployment Tax Act); or

(2) Any workman's compensation or unemployment insurance plan pursuant to State law whether the participation of the employer is optional or obligatory.

(e) *Fair Labor Standards Act.* Any increases required to be paid pursuant to the Fair Labor Standards Act of 1938, 52 Stat. 1060, as amended, or as a result of an enforcement action under such Act.

(f) *Federal agency wage determinations.* That portion of any increase in wages and salaries required to be paid as a result of wage determinations made by any agency in the executive branch of the Federal Government pursuant to law for work (1) performed under contract with, or to be performed with financial assistance from, the United States or the District of Columbia, or any agency or instrumentality thereof, or (2) performed by aliens who are immigrants or who have been temporarily admitted to the United States pursuant to the Immigration and Nationality Act, 66 Stat. 166, as amended, which, with respect to an appropriate employee unit, would (except for the application of this paragraph) cause the total of wage and salary increases to exceed the maximum permissible annual aggregate wage and salary increase.

(g) *Certain employer contributions to qualified benefit plans.* Employer contributions to qualified benefit plans which are excluded contributions pursuant to § 201.58.

(h) *Pay adjustments to those individuals earning less than $1.90 per hour.* Any increase or portion thereof paid to employees earning less than $1.90 per hour to the extent that such increase or portion thereof does not cause an employee's wage to exceed $1.90 per hour.

(i) *Certain professional sports contests.* Amounts paid, either directly or indirectly, to the employees of a professional sports organization which are customarily paid from post-season playoff contests or for participation in all-star exhibitions.

(j) *Incentives.* [Reserved.]

(k) *New or revised job classifications.* [Reserved.]

(l) *Apprenticeship, training and learning programs.* [Reserved.]

In the case of exclusions claimed pursuant to paragraphs (e) and (f) of this section the prenotification and reporting rules of Part 202 of this chapter shall specifically apply. Thus, pay adjustments given involving these exclusions must be separately prenotified or reported, as appropriate for the pay adjustment category of the unit involved.

§ 201.58 Qualified benefit plans.

(a) *General rule.* The excluded contributions referred to in § 201.57(g) are those employer contributions to qualified benefit plans, which are described in paragraph (c) of this section.

(b) *Qualified benefit plan defined.* The term "qualified benefit plan" means—

(1) A pension, profit-sharing, or annuity and savings plan which meets the requirements of section 401(a), 403(b), or 404(a)(2) of the Code.

(2) A group insurance plan, or

(3) A disability and health plan.

(c) *Excluded contributions.* For purposes of this part, excluded contributions are increases in employer contributions (pursuant to qualified benefit plans) which are either—

(1) Necessary to maintain existing benefit levels under such plans (but not those required as the secondary effect of an increase in the average straight-time hourly rate), or

(2) Those other increased contributions which in the aggregate do not exceed the qualified benefits standard (as defined in paragraph (d) of this section for an appropriate employee unit.

For purposes of subparagraph (2) of this paragraph, the term "other increased contributions" includes increases in the average hourly benefit rate (determined pursuant to § 201.56) which are necessary to support new employer qualified benefit plans and benefit improvements in existing qualified plans except to the extent that the cost of such new or improved benefits are offset by cost savings attributable to favorable plan experience or to changes in the plan or plans; required as the secondary effect of an increase in the average straight-time hourly rate (see §§ 201.55 and 201.56); a result of pension funding actuarial assumptions or changes in amortization of past service liability inconsistent with those permitted by the Internal Revenue Service; a result of discretionary payments to qualified deferred profit-sharing plans not based on formula; or a result of a reduction in employee contributions.

(d) *Qualified benefits standard.* For purposes of paragraph (c)(2) of this section, the term "qualified benefits standard" means, with respect to an appropriate employee unit, an amount equal to the greater of—

(1) The sum of—

(i) 0.7 percent of such unit's base compensation rate (determined pursuant to § 201.54) with respect to the base payroll period, plus

(ii) The catchup percentage multiplied by the base compensation rate for the first control year. For purposes of this subdivision the "catchup percentage" is a percentage equal to the excess (if any) of 1.5 percent over the sum of the percentage increases in base compensation resulting from new or improved qualified benefit plans during the 3 years preceding such first control year (such sum of the percentage increases shall be calculated by using the base compensation rate in effect immediately prior to each of the qualified benefit adjustments during the prior 3-year period); or

(2) Five percent of such unit's base compensation rate (determined pursuant to § 201.54) for a base payroll period, but only to the extent that the employer's resulting total contributions to qualified benefit plans with respect to such unit do not exceed 10 percent of such base compensation rate.

For purposes of subparagraph (1) of this paragraph, the 0.7 percent referred to in subdivision (i) of such subparagraph may be used in future control years to the extent not utilized in a prior control year. For purposes of such subparagraph the 1.5 percent referred to in subdivision (ii) of such subparagraph may be credited only in the first control year of a new pay practice or new employment contract. To the extent the amount credited is not utilized in such first control year the excess may be utilized in the second control year, but not thereafter.

PAR. 6. The appendices following Part 201 are amended by deleting therefrom the following items:

Item (1) of Appendix B—Interpretative Decisions Adopted by the Pay Board.
Item (2) of Appendix C—Definitional Decisions Adopted by the Pay Board.
Items (1) and (2) of Appendix D—Procedural Decisions Adopted by the Pay Board.

[FR Doc.72-5965 Filed 4-17-72;9:07 am]

[Pay Board Order No. 3]

PART 201—STABILIZATION OF WAGES AND SALARIES

Appendix B—Delegations of Authority

MISCELLANEOUS AMENDMENTS

The purpose of these amendments is to make certain miscellaneous and technical changes, some of which are required by reason of the reduction in the number of members of the Pay Board pursuant to Executive Order No. 11660 (37 F.R. 6175, March 25, 1972) which amended Executive Order No. 11640 (37 F.R. 1213, January 27, 1972). The amendments in Part 201 (6 CFR Part 201) relate both to the number of Board members required to challenge certain proposed retroactive payments and to the time period (which is extended from 14 to 28 days) within which such challenges may be made. The amendments in Title 6, Appendix B—Delegations of Authority relate to the number of Board members required to initiate a review of appeals from decisions of the Chairman with respect to certain requests for exception and with respect to certain proposed retroactive payments

The amendments set forth below are prescribed pursuant to the authority vested in the Pay Board by the 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; Public Law 92-210, 85 Stat. 743), Executive Order No. 11627 (36 F.R. 20139, October 16, 1971, as amended), Executive Order No. 11640, (37 F.R. 1213, January 27, 1972, as amended), Executive Order No. 11660 (37 F.R. 6175, March 25, 1972), and Cost of Living Council Order No. 3 (36 F.R. 20202, October 16, 1971, as amended).

Because of the need for immediate implementation of the rule making amendments to Part 201 contained herein, it is hereby found impractical to issue such amendments with notice and public procedure thereon under 5 U.S.C., section 553(b), or subject to the effective date limitation in 5 U.S.C., section 553(d).

Effective dates. The amendments with respect to the number of Board members required to initiate a review of appeals, and to make challenges in the case of certain proposed retroactive payments, shall be effective on and after March 25, 1972. The amendments extending the time period (from 14 to 28 days), within which a challenge may be made by a party at interest or members of the Board for prenotified retroactive payments, shall be effective on and after April 18, 1972.

GEORGE H. BOLDT,
Chairman of the Pay Board.

PARAGRAPH 1. Section 201.13 is amended by revising subdivisions (i) and (ii) of paragraph (b)(4) to read as follows:

§ 201.13 Scheduled increases in wages and salaries for services rendered on or after August 15, 1971, and before November 14, 1971.

* * * * *

(b) *Certain conditions for retroactive payment; section 203(c)(2) of the Act.* * * *

(4) (i) The aggregate of such increases does not exceed seven percent (7%) and (*a*) in case of a Category II pay adjustment or a Category III pay adjustment (as defined in §§ 101.23 and 101.25 of this title) the employer certifies by letter to the appropriate district director of Internal Revenue within 20 days subsequent to payment that the requirements of this paragraph have been fulfilled or (*b*) in case of a Category I pay adjustment (as defined in § 101.21 of this title), the Board has received prenotification of such adjustment and a challenge to determine that the provisions of subparagraphs (1), (2), and (3) of this paragraph have been met or that the increase does not exceed seven percent (7%) has not been made by a party at interest or two or more members of the Board within 28 days of such prenotification or within 28 days of providing any additional proof requested by the Board, or

(ii) The aggregate of such increases does exceed seven percent (7%), and the Board has received prenotification of the proposed payment and there has not been a challenge by a party at interest or two or more members of the Board within 28 days of such prenotification, or within 28 days of providing any additional proof requested by the Board. In computing the 28-day period prescribed by this section, the rules provided for in § 205.5 of this chapter will apply.

For the purposes of determining the percentage of the aggregate increases under this paragraph, the base compensation shall be the average cost of wages, salaries, and benefits per man hour for the appropriate employee unit affected by the increases on the day before the wage and salary increase pursuant to this paragraph was scheduled to take effect.

* * * * *

PAR. 2. Section 201.15 is amended by revising paragraph (b)(1) to read as follows:

§ 201.15 Wage increases provided for prior to August 15, 1971, for which funds have been raised or provided.

* * * * *

(b) *Determinations*—(1) *By Category I employers.* Any person who desires to make payments of wage and salary increases described in paragraph (a) of this section may do so provided (i) he is an employer whose pay adjustments qualify as Category I pay adjustments (as defined in § 101.21 of this title), (ii) he believes the requirements of paragraph (a) of this section have been met, and (iii) he files a prenotification in the manner prescribed by the Pay Board of his intent to make such payment detailing the factual basis for qualification under paragraph (a) of this section. The payment of such an increase may begin 28 days after the prenotification is filed with the Board, or (if appropriate) 28 days after any additional proof requested by the Board has been furnished to the Board unless a challenge is made by a party at interest or two or more members of the Board. In computing the 28-day period prescribed by this section, the rules provided for in § 205.5 of this chapter will apply.

* * * * *

DELEGATIONS OF AUTHORITY

PAR. 3. Pay Board Order No. 3 (37 F.R. 3791, February 19, 1972), relating to delegation of authority to the Chairman of the Pay Board, is amended by revising the last sentence of paragraph c of section 4 to delete the word "seven" and add in its place the word "three," and by revising the last sentence of section 5 to delete the word "seven" and add in its place the word "three."

[FR Doc.72-5914 Filed 4-14-72;12:43 pm]

Chapter III—Price Commission

PART 300—PRICE STABILIZATION

PART 301—RENT STABILIZATION

Miscellaneous Amendments

The purpose of these amendments is to make several changes and additions of a perfecting and clarifying nature to Parts 300 and 301 of the Price Commission's regulations.

AMENDMENTS TO PART 300

Section 300.1(c), relating to the geographic applicability of Part 300 is amended to conform to § 101.1(e) of Title 6, CFR, which provides that, for the purposes of the Economic Stabilization Program, sales of goods and services by firms in the several States and the District of Columbia to firms in the Commonwealth of Puerto Rico are are covered activities.

Sections 300.13(b)(1)(ii) and 300.13a(c)(1) are each amended to make it clear that a retailer may post the base price of more items than the 40 items which accounted for the greatest dollar sales volume in a department.

Section 300.13a is also amended by adding two new paragraphs providing alternate methods of catalogue price posting requirements for supplemental catalogues and sale catalogues, under certain circumstances.

Section 300.18(b)(1) is amended by changing the term "total revenues" to read "total operating revenues" so as to exclude from consideration those revenues derived from other than operating sources during the base period.

Section 300.16(d)(4) is amended to make it clear that productivity gains may be taken into consideration, but that a specific determination is not required in every case.

Section 300.18(c)(1) is amended by changing the word "part" to "section," with respect to prices previously authorized by the provider of health services.

Section 300.18(c)(2) is amended to reflect the recent adoption of new procedures relating to application for exceptions, my changing the reference to § 300.511 to Subpart C of Part 305.

Section 300.18(d)(1) is amended by changing the date "November 13, 1971," to "November 8, 1971' 'to conform to the date of applicable administrative decisions relating to allowable wage increases.

Section 300.18(g) is amended by deletin gthe last sentence, containing a prohibition on increasing a price before price schedules are posted. This deletion does not constitute authority to raise prices without compliance with the section and paragraph (g). It was necessary, however, only during the initial days of the effectiveness of the regulation. The requirement of a schedule and posting of prices remains unchanged.

Section 300.31(a) is amended to make it clear that "average total capital" does not include investments, the income of which is included in nonoperating income, and that only "covered" activities (as defined in part II to the instructions to Form PC-50 in Appendix 1) are to be included in computations under the section.

Section 300.31(e) is amended to make it clear that the prenotification requirement is for Price Commission information. Firms covered by the section are not required to wait for Price Commission action on the prenotification.

Section 300.52(c) is amended to state that its reporting requirements (for Tier II firms) do not apply to providers of health services.

A new § 300.125 is added to provide a procedure for the reduction of price increases, made before November 14, 1971, based on prospective wage and salary increases that did not go into effect because of the freeze or because of the action of an agency administering a part of the Economic Stabilization Program.

Section 300.410(a) is amended to correct on error in the citation to the section of the regulations of the Cost of Living Council relating to custom products.

Section 300.410(b) is amended to apply to allowable costs as determined under the Economic Stabilization Program, and not just those determined under Price Commission regulations or decisions. Similarly, two new examples have been

placed in paragraph (b) for clarity and to reflect the broader coverage.

Section 300.501 is amended to add a new paragraph (c) to include a positive statement that, upon proper request, a person who increases a price or applies for a price increase is required to specify the records that comply with paragraph (a) of that section and to justify that price increase or increased price, by positive action, and not merely to turn over the records pertaining thereto.

Section 300.511, relating to delegations of authority to perform functions under this part to District Directors of Internal Revenue, is revised to provide that the Price Commission will obtain the approval of the Secretary of the Treasury before making such a delegation and will note that approval in the preamble to the amendment making the delegation.

Paragraph (e) of Appendix 1 is amended to change the words "medical service" to "health service" to conform to other paragraphs of the appendix.

AMENDMENTS TO PART 301

Section 301.1(b), relating to exemptions of certain rentals of real property is amended to conform to § 101.33 of the regulations of the Cost of Living Council, governing real estate exemptions under the Price Stabilization Program. The reference in the introductory language of paragraph (b) of § 301.1 is amended to refer to the current section of the Cost of Living Council Regulations (§ 101.33(b)) governing exemptions of rental properties. Section 301.1(b)(1) is amended to conform to the requirement in § 101.33(b)(2)(iii) of the Cost of Living Council regulations that rehabilitated dwellings are exempt only if the cost of rehabilitation exceeds one-half of either the undepreciated cost or the fair market value of the dwelling preceding the rehabilitation.

Section 301.611, relating to delegations of authority to perform functions under this part to District Directors of Internal Revenue, is revised to provide that the Price Commission will obtain the approval of the Secretary of the Treasury before making such a delegation and will note that approval in the preamble to the amendment making the delegation.

Because the purpose of these amendments is to make clarifications and corrections, to set forth certain intragovernmental procedures, and to provide immediate guidance and information as to the price and rent stabilization rules in effect, it is hereby found that notice and public procedure thereon is impracticable and that good cause exists for making them 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, Oct. 16, 1971)

In consideration of the foregoing, Chapter III of Title 6 of the Code of Federal Regulations is amended as set forth below, effective April 17, 1972.

Issued in Washington, D.C., on April 13, 1972.

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

A. Part 300 is amended as follows:

§ 300.1 [Amended]

1. Section 300.1(c) is amended by striking out the word "This" at the beginning thereof and inserting the words "Except for sales of goods and services by firms in the several States and the District of Columbia to firms in the Commonwealth of Puerto Rico, this" in place thereof.

2. Section 300.13(b) (1) and (2)(i) are amended to read as follows and (b)(2)(iii) is amended by inserting the words "or food product" immediately after the words "retail food".

* * * * *

§ 300.13 Retailers and wholesalers.

(b) *Posting requirements*—(1) *General.* Each retailer shall display prominently in its place of sale, base prices with respect to—

(i) All of its foods or food products, except those offered for sale for the first time after the list is posted; and

(ii) At least those 40 items in each department which had the highest dollar sales during its last fiscal year ending before January 1, 1972, or those items which accounted for at least 50 percent of its total dollar sales in each department during that fiscal year, whichever is less.

(2) *Posting guidelines*—(i) *Retail food or food product stores.* The base prices which a retail food or food products store is required to post under subparagraph (1) of this paragraph are considered to be displayed prominently if they are available for inspection at a convenient central location in the store, to which the public has access without having to obtain the permission or assistance of a store employee, and if a sign is prominently posted in each department clearly indicating the location of the central base price list.

* * * * *

§ 300.13a [Amended]

3. Section 300.13a(a) is amended by striking out the word "Each" and inserting the words "Except as provided in paragraphs (d) and (e) of this section, each" in place thereof.

4. Section 300.13a(c)(1) is amended by striking out the words "those 40 items" and inserting the words "at least those 40 items" in place thereof.

5. Section 300.13a is amended by adding the following new paragraphs at the end thereof:

(d) *Supplemental catalogues.* A retailer is not required to comply with paragraph (b) or (c) of this section for a supplemental edition of a general catalogue if—

(1) It is distributed to substantially the same customers as the general catalogue;

(2) It contains a substantial number of the items that appear in the general catalogue; and

(3) The general catalogue contains the base price information required by paragraph (b) or (c) of this section.

In place of the base price information required by paragraph (b) or (c) of this section the supplemental catalogue shall include a statement directing the user to the general catalogue for base price information and offer to furnish base price information in accordance with paragraph (b) or (c) of this section.

(e) *Sale catalogs.* A retailer is not required to comply with paragraph (b) or (c) of this section for a sale catalog (a catalog that is not a general or supplemental catalog or a catalog that contains most of the items sold by the retailer), if that sale catalog contains—

(1) A description of how the retailer's prices are controlled under the Price Stabilization Program; and

(2) A statement as to how information regarding the lawful base price for any item in the catalog may be obtained.

The retailer shall comply with paragraph (d) of § 300.13 with respect to each request for base price information that it receives pursuant to subparagraph (2) of this paragraph.

§ 300.16 [Amended]

6. Section 300.16(d)(4) is amended to read as follows:

(4) In computing the projected rate of return under subparagraph (3) (i) through (iv) of this paragraph, expected or obtainable productively gains may be taken into account, and labor and other cost increases which are in excess of those allowed by Price Commission policies may not be counted.

§ 300.18 [Amended]

7. Section 300.18(b)(1) is amended by striking out the words "total revenues" and inserting the words "total operating revenues" in place thereof.

8. Section 300.18(c)(1) is amended by striking out the word "part" and inserting the word "section" in place thereof.

9. Section 300.18(c)(2) is amended by striking out the reference to "§ 300.511" and inserting the reference "Subpart C of Part 305" in place thereof.

10. Section 300.18(d)(1) is amended by striking out the date "November 13, 1971" and inserting the date "November 8, 1971" in place thereof.

11. Section 300.18(g) is amended by deleting the last sentence thereof.

§ 300.31 [Amended]

12. The introductory language to the table is § 300.31(a) is amended to read as follows:

The capital turnover ratio is computed by dividing the net sales for the year by the average total capital (long-term debt plus owner's equity, less investments, the income of which is included in non-operating income). For the purposes of this section, only "covered" activities (as defined in Part II of the instructions to Form PC-50 in Appendix 1) are included. The average total capital for any fiscal year is computed by adding the outstand-

ing total capital at the beginning of that fiscal year to the outstanding total capital at the end of that fiscal year, and dividing by two:

13. Section 300.31(e) is amended by adding the following new sentence at the end thereof: "However, the prenotification shall consist only of making the necessary filing before increasing a price under this section, without the necessity of waiting for or obtaining Price Commission approval thereof."

§ 300.52 [Amended]

14. Section 300.52(c) is amended by inserting the words ", providers of health services covered by § 300.18 or § 300.19," immediately after the reference to "§ 300.16a".

15. The following new section is added at the end of Subpart A:

§ 300.125 Reduction of price increases based on wage and salary increases which did not go into effect.

If before November 14, 1971, a person increased a price on a product or service in anticipation of a scheduled increase in wages and salaries for services to be rendered by employees on or after that date, and either all or a part of that wage and salary increase was not put into effect—

(a) Because of the freeze in effect after August 15, 1971, and before November 14, 1971; or

(b) Because of any action or regulation after November 13, 1971, of an agency administering a part of the Economic Stabilization Program;

The person shall, before May 8, 1972, reduce the price of that product or service by an amount equal to the amount it was so increased but was not actually reflected in the scheduled increase in wages and salaries which was put into effect; except to the extent that the person has authority under this part to increase the price of that product or service but has failed to exercise it.

§ 300.410 [Amended]

16. The definition of "Custom product" in § 300.410(a) is amended by striking out the reference to "§ 101.34(c)(2) of this title" and inserting the reference "§ 101.34(c)(1) of this title" in place thereof.

17. The last sentence of § 300.410(b) is amended by striking out the words "under Price Commission regulations or decisions" and inserting the words "under regulations or decisions issued pursuant to the Economic Stabilization Program" in place thereof.

18. Section 300.410(b) is amended by striking out the Example and inserting the following new examples in place thereof:

EXAMPLE 1. Labor costs to be incurred in the making of a custom product were estimated to be $2 million. However, $200,000 of this estimated cost was found to be nonallowable under Price Commission regulations or decisions (or by other action of an agency administering a part of the Economic Stabilization Program). Therefore, the highest amount of allowable costs for labor that may be included in determining the base price chargeable for the product is $1,800,000.

EXAMPLE 2. Labor costs to be incurred in the construction of an office building were estimated to be $2 million. Because of the action of an agency administering a part of the Economic Stabilization Program, $100,000 of this estimated cost was found to be nonallowable because it exceeded wage rates approved under a contract subject to the Program. Pursuant to another action of an agency administering a part of the Economic Stabilization Program, negotiated and approved changes in work rules resulted in an increase in labor costs of $50,000. Therefore, the highest amount of allowable costs for labor that may be included in determining the base price chargeable for the construction is $1,950,000.

19. Section 300.501 is amended by inserting the following new paragraph after paragraph (b):

§ 300.501 Records.

* * * * *

(c) *Justification.* Upon the request of an officer or employee of the Internal Revenue Service or the Price Commission, each person who applies for a price increase or increases a price, under this part, shall—

(1) Specify the records that comply with paragraph (a) of this section; and

(2) Justify that price increase or increased price.

20. Section 300.511 is revised to read as follows:

§ 300.511 Delegations to Internal Revenue Service.

Whenever the Price Commission states in this part that a function is to be performed by the appropriate District Director of Internal Revenue, the approval of the regulation by the Secretary of the Treasury constitutes a redelegation of that function from the Secretary through the Commissions of Internal Revenue to the District Director. The approval will be indicated in the preamble to the regulation stating the purpose of the amendment.

21. Paragraph (e) of Appendix 1 is amended by striking out the words "medical service" and inserting the words "health service" in place thereof.

B. Part 301 is amended as follows:

§ 301.1 [Amended]

1. Section 301.1(b) is amended by striking out the reference, in the introductory clause, to "§ 101.32(g)(2) of this title" and inserting the reference to "§ 101.33(b) of this title" in place thereof; and by revising subparagraph (3) to read as follows:

(3) Rehabilitated dwellings offered for rent in the newly rehabilitated condition for the first time after August 15, 1971, if the cost of rehabilitation exceeds one-half of either the undepreciated cost or the fair market value of the dwelling preceding the rehabilitation.

2. By revising § 301.611 to read as follows:

§ 301.611 Delegations to Internal Revenue Service.

Whenever the Price Commission states in this part that a function is to be performed by the appropriate District Director of Internal Revenue, the aproval of the regulation b ythe Secretary of the Treasury constitutes a redelegation of that function from the Secretary through the Commissioner of Internal Revenue to the District Director. The approval will be indicated in the preamble to the regulation stating the purpose of the amendment.

[FR Doc.72-5964 Filed 4-14-72;4:51 pm]

PART 305—PROCEDURAL REGULATIONS

The purpose of this amendment is to make multiple changes and additions of a perfecting and clarifying nature in Part 305 of the Commission's regulations.

Section 305.3 is revised to permit a person to name anyone he wishes to represent him before the Commission.

Section 305.21 is revised to make it clear that a person found by the Internal Revenue Service to be in violation of the Economic Stabilization Act of 1970, as amended, or the regulations of the Commission may not file an appeal to the Commission.

Sections 305.26(c) and 305.36(e) are added to make it clear that, although generally a record on reconsideration is composed of the evidence considered initially, the Commission on its own motion may consider additional evidence which it considers relevant and which in its opinion the party did not have a reasonable opportunity to present previously.

Section 305.41 is added to specify what the record will be composed of when a formal hearing is held. Sections 305.32 and 305.71 are revised to make clear that reconsideration is available only to a person whose initial request was denied in whole or in part, by the Commission.

Other minor changes of an editorial or clarifying nature have been made.

Because this amendment relates to procedural matters only, notice and public procedure thereon is not necessary and it may be made effective less than 30 days after publication.

In consideration of the foregoing, Part 305 of Title 6 of the Code of Federal Regulations is amended as set forth below, effective April 17, 1972.

Issued in Washington, D.C., on April 13, 1972.

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

Subpart A—General

Subpart B—Appeals From Adverse Actions

AUTHORITY: The provisions of this Part 305 issued under 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, Oct. 16, 1971.

Subpart A—General

§ 305.1 Purpose and scope.

(a) This part establishes procedures for—

(1) Appealing from adverse actions by the Internal Revenue Service;

(2) Initial action on requests for exception and reconsideration of denials of such requests in whole or in part;

(3) Formal hearings on price or rent increases or proposed price or rent increases;

(4) Public comments on or objections to Price Commission regulations and rulings;

(5) Appointment of Hearing Officers; and,

(6) Obtaining reconsideration of initial decisions made by the Price Commission on matters other than exceptions.

(b) This part applies to any person aggrieved by a denial of a requested action by IRS or the Commission made on and after the effective date of this part.

(c) When any small business enterprise within the meaning of section 214(a) of the Economic Stabilization Act Amendments of 1971 files a request, application or appeal under the provisions of this part, it will be accorded expedited handling by affording it priority on the dockets maintained by the Commission for the orderly conduct of its business.

§ 305.2 Definitions.

For the purpose of this part—

"Act" means the Economic Stabilization Act of 1970, as amended.

"Adverse action" means an action by the Commission or IRS denying a requested action in whole or in part or an interpretation issued by IRS or ruling issued by the Chief Counsel's office for IRS which is contrary to the position asserted by the person seeking the interpretation or ruling.

"Commission" means the Price Commission established pursuant to Executive order or its delegate.

"District Director" means the district director of the IRS.

"Exception" means an order issued by the Commission to an individual firm waiving the specific requirements of a rule, regulation, or order issued pursuant to the Act.

"Hearing Officer" means a person appointed by the Commission to conduct a hearing.

"IRS" means the Internal Revenue Service.

"Person aggrieved" means a person who increased or seeks to increase a price or rent or a person who is required to pay an increase in rent.

"Price adjustment" means a change in the unit price or a decrease in the quality or quantity without a proportionate change in the unit price of substantially the same property or services.

"Price Commission Ruling" means a Price Commission ruling as defined in § 401.2 of this title.

"Regulation" means a regulation issued by the Commission which appears in Chapter III of Title 6, Code of Federal Regulations.

§ 305.3 Representation.

Any action which by this part is required of or permitted to be taken by a person, unless otherwise directed by the Commission, may be taken on his behalf by any person whom the person has designated to represent him.

§ 305.4 Filing of documents.

A document required to be filed with the Commission under this part is considered filed if it has been received at the Commission offices, 2000 M Street NW., Washington, DC 20508. Documents received after regular business hours are deemed filed on the next regular business day.

§ 305.5 Computation of time.

Except as otherwise provided by law, in computing a period of time prescribed or allowed by this part for the doing of any act, the day of the act, event, or default on which the designed period of time begins to run shall not be counted.

(a) If the last day of the period falls on a Saturday, Sunday, or Federal legal holiday, the period shall be extended to the next day which is not a Saturday, Sunday, or Federal legal holiday.

(b) If the period prescribed or allowed is 7 days or less, an intervening Saturday, Sunday, or Federal legal holiday shall not be counted.

§ 305.6 Service.

(a) All documents required to be served under this part shall be served personally or by registered or certified mail on the person specified in the regulations in this part.

(b) Whenever a person is represented by a duly authorized representative, service on the representative shall constitute service on the person.

(c) A certificate of service shall be filed for each document served.

§ 305.7 Extensions of time.

When an action is required to be taken within a prescribed time, an extension of time will be granted only upon good cause shown and only where the application is made before the expiration of the time prescribed.

§ 305.8 Subpenas; witness fees.

The Chairman of the Commission or a Hearing Officer may issue subpenas on written application of a party to the proceedings or on his own motion.

(a) A subpena may require the attendance of witnesses or the production of relevant papers, books, and documents in the possession or under the control of the person served or both.

(b) A subpena may be served by any person who is not a party and is not less than 18 years of age.

(c) The original subpena bearing a certificate of service shall be filed with the Commission.

(d) A witness subpenaed by any party shall be paid the same fees and mileage as are paid to witnesses in District Courts of the United States. The witness fees and mileage shall be paid by the party at whose instance the subpena was issued.

§ 305.9 Consolidations.

Upon its own initiative or upon the motion of a party, the Commission, the Chairman of the Commission or the Hearing Officer may consolidate two or more appeals or requests for exception which involve substantially the same parties or issues which are closely related, if it or he finds that such consolidation will expedite the proceedings.

Subpart B—Appeals From Adverse Actions

§ 305.20 Purpose and scope.

This subpart establishes the rules of the Commission governing the conduct of its administrative review proceedings.

(a) The Commission has jurisdiction to consider and decide appeals from adverse actions by IRS.

(b) The Commission may review all relevant questions of law and fact.

(c) Review will be limited to the evidence in the record before the IRS or

the Chief Counsel's office for IRS at the time the adverse action was taken, except as otherwise directed by the Commission.

§ 305.21 Who may appeal.

Any person aggrieved by an action by IRS issued pursuant to Part 401 of this title other than a person found by IRS to be in violation of the Act or Regulations, may file an appeal with the Commission.

§ 305.22 Where to file appeal.

An appeal shall be filed with the Price Commission, 2000 M Street NW., Washington, DC 20508, and a copy of the appeal shall be sent to the IRS official who issued the adverse action appealed from.

§ 305.23 When to file appeal.

An appeal must be filed within 30 days of service by IRS of the adverse action upon which the appeal is based. Appellant must have exhausted his administrative remedies within IRS before filing an appeal.

§ 305.24 Contents of appeal.

(a) An appeal must include the following—

(1) The name and address of the appellant;

(2) A clear designation of the document as an appeal to the Commission;

(3) A copy of the adverse action appealed from;

(4) A concise statement of the facts and contentions; and

(5) A statement of the grounds for appeal and the relief requested.

(b) Appeals may be accompanied by briefs.

(c) Envelopes containing appeals should be clearly marked "Appeal."

§ 305.25 Screening of appeals.

The Commission will determined whether the appeal contains a prima facie showing that the adverse action was erroneous in law or in fact.

(a) When the Commission determines that the appeal is not timely the Commission may summarily reject the appeal.

(b) When the Commission determines that the appellant has failed to make a prima facie showing with regard to the requirements specified in this section, the Commission may summarily reject the appeal, notifying the applicant of its action and advise him that he has exhausted his administrative remedies. He then may seek judicial review under the Act.

(c) When the Commission determines that the appeal is timely and that appellant has established a prima facie showing of an erroneous determination, it will proceed in accordance with the provisions of §§ 305.26 through 305.28.

§ 305.26 Obtaining record.

(a) Upon receipt of a copy of an appeal, the office which took the adverse action which is the subject of the appeal will forward to the Commission its entire record in the matter.

(b) This record, together with the appeal and briefs, if any, and any statement submitted by IRS will constitute the record on appeal.

(c) The Commission on its own motion may consider any additional evidence that it deems relevant and which in its opinion the party did not have a reasonable opportunity to present below.

§ 305.27 Hearing.

(a) If the Commission in its discretion deems that a hearing is advisable, it will direct that a hearing be held before a Hearing Officer, or where the Commission deems it appropriate, before the Commission in the first instance.

(b) When a hearing has been directed in accordance with paragraph (a) of this section, it will be conducted not less than 10 days after written notice has been served on the appellant, at such time and place as the Commission may direct.

(c) When a hearing is conducted in accordance with this section, the appellant may present oral argument and submit such additional documentary evidence as the Hearing Officer allows.

(d) When administratively feasible, within 10 days after the close of the hearing, the Hearing Officer will submit to the Commission a report and any recommendation he deems appropriate with respect to the appellant's request for relief.

§ 305.28 Decision by Commission.

When administratively feasible, within 30 days of receipt of an appeal or within 30 days of receipt of a Hearing Officer's report when a hearing has been directed—

(a) The Commission will issue a decision in writing directed to the appellant setting forth the facts, conclusions of law, its decision, the basis therefor, and an appropriate order.

(b) A copy of the decision and order will be served upon each party to the proceedings.

(c) When the decision denies the relief requested, in whole or in part, a party may seek judicial review under the Act.

Subpart C—Requests for Exceptions

§ 305.30 Purpose and scope.

(a) Except for those filed by prenotification firms (as defined in § 300.5 of this chapter) which shall be filed directly with the Price Commission, requests for exceptions are initiated pursuant to Subpart D of Part 401 of this title.

(b) This subpart establishes the rules of practice of the Commission governing initial actions on requests for exceptions and the reconsideration of denials of such requests, in whole or in part.

(c) The Commission will not consider that an applicant has exhausted his administrative remedies until he has filed a request for reconsideration under §§ 305.32 to 305.35 and final action thereon has been taken by the Commission under § 305.38.

§ 305.31 Initial action on request for exception.

After considering the record, the Commission will issue a decision in writing and an appropriate order:

(a) When the Commission grants an exception it will serve upon the applicant a copy of its decision and order.

(b) When the Commission refuses to grant an exception in whole or in part, it will serve upon the applicant a copy of its written decision setting forth the facts, conclusions of law, its decision, the basis therefor, and an appropriate order.

§ 305.32 Who may request reconsideration.

A person whose request for exception was denied in whole or in part may request reconsideration.

§ 305.33 Where to file.

A request for reconsideration shall be filed with the Price Commission, 2000 M Street NW., Washington, DC 20508.

§ 305.34 When to file.

A request for reconsideration must be filed within 30 days of service of the decision refusing to grant the exception, in whole or in part.

§ 305.35 Contents of request.

A request for reconsideration shall—

(a) Be in writing and signed by the appellant;

(b) Be designated clearly as a request for reconsideration;

(c) Contain a concise statement of the grounds for reconsideration and the requested relief;

(d) Be accompanied by briefs, if any; and

(e) Be marked on the outside of the envelope — "Reconsideration — Exception."

§ 305.36 Review by Commission.

(a) The Commission will reconsider its decision and order denying an exception in whole or in part if a request for reconsideration—

(1) Is made by the person whose request for exception was denied in whole or in part;

(2) Is timely; and

(3) Makes a prima facie showing that the Commission's initial action was erroneous in fact or in law.

(b) The Commission may summarily reject a request for reconsideration which is not timely or which was filed by a person other than the one whose request for exception was denied in whole or in part.

(c) The Commission may summarily reject a request for reconsideration which fails to make a prima facie showing that the Commission's initial action was erroneous in fact or in law, in which case it will notify the applicant of its action. Such applicant may seek judicial review under the Act.

(d) When a petition for reconsideration meets the requirements set forth in paragraph (a), the Commission will proceed in accordance with §§ 305.37 through 305.38.

(e) The Commission on its own motion may consider any additional evidence that it deems relevant and which in its opinion the party did not have a reasonable opportunity to present previously.

§ 305.37 Hearing.

(a) If the Commission in its discretion deems that a hearing is advisable, it will, within 10 days of receiving the request for reconsideration, direct that a hearing be held before a Hearing Officer, or where the Commission deems it appropriate, before the Commission in the first instance.

(b) When a hearing has been directed in accordance with paragraph (a) of this section, it will be conducted not less than 10 days after written notice has been served on the appellant, at such time and place as the Commission may direct.

(c) When a hearing is conducted in accordance with this section, the appellant may present oral argument and submit such additional documentary evidence as the Hearing Officer allows.

(d) Within 10 days after the close of the hearing, the Hearing Officer will submit to the Commission a report and any recommendation he deems appropriate with respect to the appellant's request for reconsideration.

§ 305.38 Decision by Commission.

When administratively feasible, within 30 days of receipt of a request for reconsideration, or within 30 days of a Hearing Officer's report, when a hearing has been directed, the Commission will issue a decision.

(a) When the decision grants the requested relief, a copy of the decision and order will be served upon the party to the proceedings.

(b) When the decision denies the requested relief in whole or in part, the Commission will set forth the facts, conclusions of law, its decision, the basis therefor, and an appropriate order. The party thereafter may seek judicial review under the Act.

Subpart D—Formal Hearings

§ 305.40 Purpose and scope.

(a) To the maximum extent possible, the Commission will conduct formal hearings for the purpose of hearing arguments or acquiring information bearing on a price or rent increase or proposed price or rent increase where such increase or proposed increase has or may have a significantly large impact upon the national economy.

(b) Normally, a formal hearing held pursuant to this section will be open to the public, but a private formal hearing may be held to receive information considered confidential under section 205 of the Act.

(c) Normally, a hearing held pursuant to this section will be held before a Hearing Officer and conducted as described in §§ 305.60 through 305.62. In extraordinary cases, however, the Commission itself may hold a hearing.

§ 305.41 Record.

(a) The record of formal hearings will consist of minutes made at the hearing, a summary account of the proceedings of such hearing, and all documents and exhibits submitted during the course of the hearing, and if ordered by the Commission a stenographic transcript of the proceedings.

(b) The Commission will determine whether a stenographic transcript of the hearing is to be made.

(c) A copy of the transcript of a hearing, if one is made, may be obtained by any interested person upon payment of the fee fixed therefor by the transcriber, unless the hearing is considered by the Commission to involve confidential information. If the hearing involves confidential information a copy of the transcript can be obtained only by a party to the proceeding.

Subpart E—Public Comments on or Objections to Price Commission Regulations and Rulings

§ 304.50 Purpose and scope.

(a) The provisions of 5 U.S.C. 553 will be followed for the issuance of all regulations or amendments to regulations by the Commission, to the extent such provisions apply.

(b) In addition, the Commission will accept from interested persons written comments on or written objections to its regulations or its published rulings at any time. If in the opinion of the Commission such comments or objections warrant a proceeding similar to a rule making proceeding as provided by 5 U.S.C. 553, the Commission will conduct such a proceeding pursuant to notice published in the FEDERAL REGISTER.

§ 305.51 Who may file.

Any interested person may file a comment on or objection to a regulation or published ruling at any time.

§ 305.52 Where to file.

A written comment or objection shall be filed with the Price Commission, 2000 M Street NW., Washington, DC 20508.

Subpart F—Hearing Officers

§ 305.60 Appointment of Hearing Officer.

When a hearing is directed, it will be presided over by a Hearing Officer appointed by the Commission unless the Commission decides to conduct the hearing itself. If the Commission conducts a hearing itself, it shall have all the powers of a Hearing Officer set forth hereunder.

§ 305.61 Notice of appointment of Hearing Officer.

All parties entitled to notice will be notified of the appointment of the Hearing Officer and, thereafter, all motions, applications and other papers and documents shall be filed with the Hearing Officer.

§ 305.62 Powers and duties of the Hearing Officer.

(a) A Hearing Officer will have the powers in addition to any other specified in this part:

(1) To hold prehearing conferences;

(2) To administer oaths and affirmations;

(3) To examine or cross-examine witnesses;

(4) To issue subpenas authorized by the Act and to take or cause depositions to be taken;

(5) To rule upon offers of proof and receive evidence;

(6) To regulate the course and conduct of the hearing, including—

(i) Continuing the hearing from day to day or adjourning it to a later date or different place by announcement thereof at the hearing or by other appropriate notice;

(ii) Take official notice of any material fact not appearing in evidence in the record;

(iii) Excluding from the hearing persons who engage in misconduct; and,

(iv) Striking all related testimony of a witness who refuses to answer questions ruled to be proper;

(7) To hold conferences, before or during the hearing, for the settlement or simplification of issues;

(8) To rule on motions and to dispose of procedural requests or similar matters;

(9) Where appropriate, to make a report and recommendation to the Commission; and

(10) To render decisions.

(b) The Hearing Officer will conduct the hearing and make final disposition of the matter before him as expeditiously as possible.

(c) The Hearing Officer's authority will terminate:

(1) Upon the filing of an appeal from his decision or upon the expiration of the period within which an appeal to the Commission from his decision may be filed; or

(2) Upon transmission to the Commission of his report and recommendation with the record of the hearing conducted in behalf of the Commission.

Subpart G—Review of Initial Commission Decisions on Matters Other Than Exceptions

§ 305.70 Purpose and scope.

(a) Requests for obtaining initial decisions by the Commission other than for exceptions are initiated pursuant to Part 300 of this chapter.

(b) This subpart establishes the rules of the Commission governing reconsideration of denials of such requests, in whole or in part.

(c) Commission will not consider that an applicant has exhausted his administrative remedies until he has filed a request for reconsideration under §§ 305.71–305.74 and final action thereon has been taken by the Commission under § 305.38.

§ 305.71 Who may request reconsideration.

A person whose request for initial action by the Commission (other than request for exception) was denied in whole or in part may request reconsideration.

§ 305.72 Where to file.

A request for reconsideration shall be filed with the Price Commission, 2000 M Street NW., Washington, DC 20508.

§ 305.73 When to file.

A request for reconsideration must be filed within 30 days of service of the initial decision by the Commission.

§ 305.74 Contents of request.

A request for reconsideration shall—

(a) Be in writing and signed by the appellant;

(b) Be designated clearly as a request for reconsideration;

(c) Contain a concise statement of the grounds for reconsideration and the requested relief;

(d) Be accompanied by briefs, if any;

(e) Be marked on the envelope "Reconsideration—Other."

§ 305.75 Review by Commission.

(a) The Commission will reconsider its initial decision denying an initial action (other than request for exception) in whole or in part, if the request for reconsideration—

(1) Is made by the person whose original request was denied in whole or in part;

(2) Is timely; and

(3) Makes a prima facie showing that the Commission's initial action was erroneous in fact or in law.

(b) The Commission may summarily reject a request for reconsideration which is not timely or which is filed by a person other than the person whose original request was denied in whole or in part.

(c) The Commission may summarily reject a request for reconsideration which fails to make a prima facie showing that the Commission's initial action was erroneous in fact or in law, in which case it will notify the applicant of its action and advise him that he has exhausted his administrative remedies. Such applicant may seek judicial review under the Act.

(d) When a petition for reconsideration meets all three requirements set forth in paragraph (a) of this section the Commission will proceed in accordance with the provisions of §§ 305.37 and 305.38.

[FR Doc.72-5913 Filed 4-14-72;11:43 am]

Proposed Rule Making

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service [1]

[7 CFR Part 953]

IRISH POTATOES GROWN IN SOUTHEASTERN STATES

Proposed Expenses and Rate of Assessment

Consideration is being given to the approval of the expenses and rate of assessment, hereinafter set forth, which were unanimously recommended by the Southeastern Potato Committee established pursuant to Marketing Agreement No. 104 and Order No. 953, both as amended (7 CFR Part 953). This marketing order program regulates the handling of Irish potatoes grown in certain designated counties of Virginia and North Carolina effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.).

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

§ 953.209 Expenses and rate of assessment.

(a) The expenses the Secretary finds may be necessary to be incurred by the Southeastern Potato Committee, established pursuant to Marketing Agreement No. 104, as amended and this part, to enable such committee to carry out its functions pursuant to provisions of the aforesaid amended marketing agreement and order, during the fiscal period ending March 31, 1973, will amount to $11,125.

(b) The rate of assessment to be paid by each handler in accordance with the amended Marketing Agreement and this part shall be one-fourth of one cent ($0.0025) per hundredweight of potatoes handled by him as the first handler thereof during the said fiscal period: *Provided*, That potatoes for canning, freezing, and "other processing" as defined in the February 15, 1972, amendment to the act (Public Law 92–233) shall be exempt.

(c) Unexpended income in excess of expenses for the fiscal period may be carried over as a reserve.

(d) Terms used in this section shall have the same meaning as when used in the said amended marketing agreement and this part.

Dated: April 13, 1972.

PAUL A. NICHOLSON,
Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc.72-5865 Filed 4-17-72;8:50 am]

[7 CFR Part 966]

TOMATOES GROWN IN FLORIDA

Notice of Extension of Time for Filing Exceptions to Recommended Decision on Proposed Amendment of Marketing Agreement and Order

Pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674), and the applicable rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders (7 CFR Part 900), notice is hereby given that the time fixed in the recommended decision, dated March 31, 1972 (37 F.R. 6857, April 5, 1972), with respect to the proposed amendment of Marketing Agreement No. 125 and Order No. 966, both as amended (7 CFR Part 966), regulating the handling of Florida tomatoes, for filing written exceptions to such decision is hereby extended 15 days, to and including May 5, 1972.

This extension is being granted to accommodate a request for additional time by the counsel for importers of Mexican tomatoes.

Dated: April 13, 1972.

JOHN C. BLUM,
Deputy Administrator, Regulatory Programs.

[FR Doc.72-5866 Filed 4-17-72;8:50 am]

DEPARTMENT OF COMMERCE

Office of the Secretary

[15 CFR Part 7]

CHILDREN'S SLEEPWEAR

Proposed Sampling Plan

On August 14, 1971, there was published in the FEDERAL REGISTER (36 F.R. 15465) a notice of finding that an amendment to the Standard for the Flammability of Children's Sleepwear, DOC FF 3–71 (36 F.R. 14062), may be needed to provide for sampling plans to detect noncomplying fabrics and garments before they are placed on the market in order to provide increased protection to the public against unreasonable risk of the occurrence of fire leading to death or personal injury or significant property damage, and that confirmation of the need would require appropriate amendment of that Standard.

PROPOSED STATISTICAL SAMPLING PLAN

After review and analysis of the comments received, analysis of information developed through further research and consultations with an ad hoc subcommittee of the National Advisory Committee for the Flammable Fabrics Act, it is hereby found that an amendment of the Standard for the Flammability of Children's Sleepwear, DOC FF 3–71 (36 F.R. 14062) is needed to provide for a sampling plan under the standard.

It is preliminarily found that the plan which is set out in full at the end thereof as Appendix I is:

(a) Needed for young children's sleepwear to protect the public against unreasonable risk of the occurrence of fire leading to death, personal injury, or significant property damage;

(b) Reasonable, technologically practicable, and appropriate, and is stated in objective terms; and

(c) Limited to young children's sleepwear, and fabrics or related materials which are intended or promoted for use in children's sleepwear, and which have been determined to present the unreasonable risk specified in (a) above.

BASIS FOR PROPOSED STATISTICAL SAMPLING PLAN

The finding of need to amend the Standard for the Flammability of Children's Sleepwear to include a statistical sampling plan is based on the objective of giving maximum practicable assurance that the product which reaches the marketplace meets established flammability requirements. The test method which has been developed for this standard involves a destructive test, thus precluding the testing of all items covered under the standard. It is, therefore, essential to have some type of statistical sampling procedure. By providing as part of the testing procedure in the children's sleepwear standard a statistically based sampling plan for fabrics and garments, children can be given increased protection. This proposed sampling plan would also provide a framework for premarket testing, and thus assist greatly in detecting noncomplying fabrics and garments before they are placed on the market. The proposed plan, which is appended hereto, is based on well recognized statistical sampling procedures. The proposed plan would amend sections .1 and

[1] Formerly Consumer and Marketing Service. Name changed to Agricultural Marketing Service effective Apr. 2, 1972, 37 F.R. 6327.

.4(b) of the Standard for the Flammability of Children's Sleepwear (DOC FF 3-71), by adding additional definitions to section .1 and by replacing section .4(b) in its entirety.

EFFECTIVE DATE OF PROPOSED AMENDMENT

The present children's sleepwear standard (DOC FF 3-71) becomes effective July 29, 1972, with a proviso temporarily requiring a permanent and conspicuous caution label for noncomplying goods manufactured during the 12-month period after the effective date of the standard. All goods manufactured 24 months after promulgation of the children's sleepwear standard (July 29, 1973) are required to comply. An amendment to a flammability standard issued under the Flammable Fabrics Act normally becomes effective 12 months from the date on which such amendment is promulgated unless the Secretary of Commerce finds that for good cause shown that an earlier or later date is in the public interest and publishes the reason for such finding. Thus, under the normal statutory requirements of the Flammable Fabrics Act this proposed amendment could not be effective at the same time and in the same manner as the children's sleepwear standard. However, as information received by this Department indicates that compliance with the children's sleepwear standard will be substantially accelerated by the sampling plan, the Secretary proposes to make this amendment effective at the same time and in the same manner as the children's sleepwear standard.

PARTICIPATION IN PROCEEDINGS

All interested persons are invited to submit written comments relative to the proposed sampling plan within 30 days after the date of publication of this notice in the FEDERAL REGISTER. Written comments should be submitted in at least four (4) copies to the Assistant Secretary for Science and Technology, Room 3862, U.S. Department of Commerce, Washington, D.C. 20230, and may include any data or other information pertinent to the subject.

INSPECTION OF RELEVANT DOCUMENTS

The written comments received pursuant to this notice and a background document will be available for public inspection at the Central Reference and Records Inspection Facility of the Department of Commerce, Room 7046, Main Commerce Building, 14th Street between E Street and Constitution Avenue NW., Washington, DC 20230.

Issued: April 13, 1972.

JAMES W. WAKELIN, Jr.,
Assistant Secretary
for Science and Technology.

PROPOSED AMENDMENT TO CHILDREN'S SLEEPWEAR STANDARD

Section 0.1 is amended by adding the following definition:

.1 *Definitions.* * * *

* * * * *

(i) "Fabric piece" (piece) means a continuous, unseamed length of fabric, several of which make up a unit.

(j) "Fabric production unit" (unit) means any quantity of fabric up to 5,000 yards for normal sampling or 10,000 yards for reduced sampling which has a specific identity that remains unchanged throughout the unit.

(k) "Garment production unit" (unit) means any quantity of finished garments up to 500 dozen which have a specific identity that remains unchanged througout the unit except for size.

(l) "Sample" means five test specimens from the appropriate production unit.

(m) "Specimen" means an 8.9 x 25.4 cm. (3.5 x 10 in.) section of fabric. For garment testing the specimen will include a seam or trim.

Section 0.4(b) is revised to read as follows:

.4(b) *Specimens and sampling*—(1) *General.* The acceptance criteria of .3(b) shall be used in conjunction with the following fabric and garment sampling plan, or any other approved by the Department of Commerce that provides at least the equivalent level of fire safety to the consumer. Alternate sampling plans submitted for approval shall have operating characteristics such that the probability of unit acceptance at any percentage defective does not exceed the corresponding probability of unit acceptance of the following sampling plan in the region of the latter's operating characteristic curves that lies between 5 and 95 percent acceptance probability.

Different colors or different print patterns of the same fabric may be included in a single fabric or garment production unit, provided such colors or print patterns demonstrate char lengths and residual flame times that are not significantly different from each other.

For fabrics whose flammability characteristics are not dependent on chemical additives, the laundering requirement of .4(d)(4) is met on subsequent fabric production units if results of testing an initial fabric production unit demonstrate acceptability according to the criteria of .3(b) both before and after the appropriate laundering.

If the fabric has been shown to meet the laundering requirement .4(d)(4), the garments are not required to be laundered.

(2) *Fabric sampling.* A fabric production unit (unit) is either accepted or rejected in accordance with the following plan:

Normal sampling. Select one sample from the beginning of the first fabric piece (piece) in the unit and one sample from the end of the last piece in the unit. Test the two selected samples. If both samples meet all the acceptance criteria of .3(b), accept the unit. If either or both of the samples fail the 17.8 cm. (7.0 in.) average char length criterion, reject the unit. If two or more of the individual specimens, from the 10 selected specimens, fail the 25.4 cm. (10 in.) char length and/or the 10-second residual flame time criteria, reject the unit. If only one individual specimen, from the 10 selected specimens, fails the 25.4 cm. (10 in.) char length and/or the 10-second residual flame time criteria, select five additional specimens from the same end of the piece in which the failure occurred. If this additional sample passes all the acceptance criteria, accept the unit. If this additional sample fails any part of the acceptance criteria, reject the unit.

Reduced sampling. The level of sampling required for fabric acceptance may be reduced provided the preceding 15 units of the fabric have all been accepted using the normal sampling plan.

The reduced sampling plan shall be the same as for normal sampling except that the quantity of fabric in the unit may be increased to 10,000 yards.

Select and test two samples in the same manner as in normal sampling. Accept or reject the unit on the same basis as with normal sampling.

Reduced sampling shall be discontinued and normal sampling resumed if a unit is rejected.

Tightened sampling. The level of sampling required for acceptance shall be increased when a unit is rejected under the normal sampling plan. The tightened sampling shall be the same as normal sampling except that one additional sample shall be selected and cut from a middle piece in the unit. Neither the piece at the beginning nor the piece at the end of the unit shall be selected for the additional sample. Test the three selected samples. If all three selected samples meet all the acceptance criteria of .3(b), accept the unit. If one or more of the three selected samples fail the 17.8 cm. (7.0 in.) average char length criterion, reject the unit. If two or more of the individual specimens, from the 15 selected specimens, fail the 25.4 cm. (10 in.) char length and/or the 10-second residual flame time criteria, reject the unit. If only one individual specimen, of the 15 selected specimens, fails the 25.4 cm. (10 in.) char length and/or the 10-second residual flame time criteria, select five additional specimens from the same end of the same piece in which the failure occurred. If this additional sample passes all the acceptance criteria, accept the unit. If this additional sample fails any part of the acceptance criteria, reject the unit. Tightened sampling may be discontinued and normal sampling resumed after five consecutive units have all been accepted using tightened sampling. If tightened inspection remains in effect for 15 consecutive units, production must be discontinued until that part of the process or component which is causing failure has been identified and the quality of the end product has been improved.

Disposition of rejected units. The piece or pieces which have failed and resulted in the initial rejection of the unit may not be reinspected, used or promoted for use in children's sleepwear as defined in .1(a) except after reworking to improve the flammability characteristics and subsequent retesting in accordance with the procedures set forth in this subsection.

The remainder of a rejected unit, after removing the piece or pieces the failure of which resulted in unit rejection, may be accepted if the following test plan is successfully concluded at all required locations. The required locations are those adjacent to each such failed piece. (Required locations exist on both sides of the "middle piece" tested in tightened sampling if failure of that piece resulted in unit rejection.) Failure of a piece shall be deemed to have resulted in unit rejection if unit rejection occurred and a sample or specimen from the piece failed any acceptance criterion of .3(b):

Select and cut a sample from each end of each adjoining piece beginning adjacent to the piece which failed. Test the two samples from the piece. If both samples meet all the acceptance criteria of .3(b), the piece is acceptable. If one or both of the two selected samples fail the 17.8 cm. (7.0 in.) average char length criterion, the piece is unacceptable. If two or more of the individual specimens, from the 10 selected specimens, fail the 25.4 cm. (10 in.) char length and/or the 10-second residual flame time criteria, the piece is unacceptable. If only one individual specimen, from the 10 selected specimens, fails the 25.4 cm. (10 in.) char length and/or the 10-second residual flame time criteria, select five additional specimens from the same end of the piece in which the failure occurred. If this additional sample passes all the acceptance criteria, the piece is acceptable. If this additional sample fails any part of the acceptance criteria, the piece is unacceptable.

Continue testing adjoining pieces until a piece has been found acceptable. Then continue testing adjoining pieces until three successive adjoining pieces, not including the first acceptable piece, have been found acceptable or until five such pieces not including the first acceptable piece, have been tested, whichever occurs sooner. Unless three successive adjoining pieces have been found acceptable among five such pieces, testing shall be stopped and the entire unit rejected without further testing.

The pieces of a unit rejected after retesting may not be reinspected, used or promoted for use in children's sleepwear as defined in .1(a) except after reworking to improve the flammability characteristics, and subsequent retesting in accordance with the procedures set forth in this subsection.

Records. Records of all unit sizes, test results, and the disposition of rejected pieces and units must be maintained by the manufacturer, in accordance with rules and regulations established by the Federal Trade Commission.

(3) *Garment sampling.* The garment sampling plan is made up of two parts: (1) Prototype testing, and (2) production testing. Prior to production, prototypes must be tested to assure that the design characteristics of the garment meet the acceptance criteria. Garment production units (units) are then accepted or rejected on an individual unit basis.

Prototype testing. Preproduction prototypes of a garment style or type shall be tested to assure that satisfactory garment specifications in terms of flammability are set up prior to production.

Seams. Make three samples (15 specimens) using the longest seam and three samples using each other seam, 10 inches or longer that is to be included in the garment. Test each set of three samples and accept or reject each seam design in accordance with the following plan:

If all three samples meet all the acceptance criteria of .3(b), accept the seam design. If one or more of the three samples fail the 17.8 cm. (7.0 in.) average char length criterion, reject the seam design. If three or more of the individual specimens from the 15 selected specimens fail the 25.4 cm. (10 in.) char length and/or the 10-second residual flame time criteria, reject the seam design. If only one of the individual specimens from the 15 selected specimens fail the 25.4 cm. (10 in.) char length and/or the 10-second residual flame time criteria, accept the seam design.

If two of the individual specimens, from the 15 selected specimens, fail the 25.4 cm. (10 in.) char length and/or the 10-second residual flame time criteria, select three more samples (15 specimens) and retest. If all three additional samples meet all the acceptance criteria of .3(b), accept the seam design. If one or more of the three additional samples fail the 17.8 cm. (7.0 in.) average char length criterion, reject the seam design. If two or more of the individual specimens, from the 15 selected specimens, fail the 25.4 cm. (10 in.) char length and/or the 10-second residual flame time criteria, reject the seam design. If only one of the individual specimens, from the 15 selected specimens, fails the 25.4 cm. (10 in.) char length and/or the 10-second residual flame time, accept the seam design.

Trim. Make three samples (15 specimens) from each type of trim to be included in the garment. Specimens shall be prepared by sewing or attaching the trim to the center of the vertical axis of an appropriate section of untrimmed fabric, beginning the sewing or attachment at the lower edge of each specimen. The sewing or attachment shall be made in the manner in which the trim is to be attached in the garment. Sewing or otherwise attaching the trim shall be done with thread or fastening material of the same composition and size to be used for this purpose in the garment and using the same stitching or seam type. The trim shall be sewn or fastened the entire length of the specimen. Test the sets of three samples. Accept or reject the type of trim and design on the same basis as seam design.

Production testing. A unit is either accepted or rejected according to the following plan:

From each unit select at random at least three garments and cut three samples (15 specimens) from the longest seam. Test the three selected samples. If all three samples meet all the acceptance criteria of .3(b), accept the unit. If one or more of the three samples fail the 17.8 cm. (7.0 in.) average char length criterion, reject the unit. If four or more of the individual specimens, from the 15 selected specimens, fail the 25.4 cm. (10 in.) char length and/or the 10-second residual flame time criteria, reject the unit. If three or less of the individual specimens, from the 15 selected specimens, fail the 25.4 cm. (10 in.) char length and/or the 10-second residual flame time criteria, accept the unit.

Disposition of rejected units. Rejected units shall not be reinspected, used or promoted for use in children's sleepwear as defined in .1(a) except after reworking to improve the flammability characteristics and subsequent retesting in accordance with the procedures set forth in this subsection.

Records. Records of all unit sizes, test results, and the disposition of rejected units must be maintained by the manufacturer, in accordance with rules and regulations established by the Federal Trade Commission.

[FR Doc.72-5793 Filed 4-17-72;8:47 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Parts 141, 141a, 141b, 148j]

NOVOBIOCIN

Buffer Used in Potency Assay and Storage Time of Stock Solution

Pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 507, 59 Stat. 463, as amended; 21 U.S.C. 357) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 2.120), it is proposed that Parts 141, 141a, 141b, and 148j be revised as follows to provide changes in the buffer used in the potency assay of novobiocin and in the storage time of the standard stock solution:

1. It is proposed that Part 141 be amended in the table in § 141.110(b) by revising the entry for novobiocin to read as follows:

§ 141.110 Microbiological agar diffusion assay.

* * * * *

(b) * * *

Antibiotic	Working standard stock solution: Drying conditions (method number as listed in § 141.501)	Initial solvent	Diluent (solution number as listed in § 141.102(a))	Final concentration units or milligrams per milliliter	Storage time under refrigeration	Standard response line concentrations: Diluent	Final concentrations, units or micrograms of activity per milliliter
* * *	* * *	* * *	* * *	* * *	* * *	* * *	* * *
Novobiocin	5	10,000 μg. per ml. in absolute ethyl alcohol.	3	1 mg	5 days	6	0.320, 0.400, 0.500, 0.625, 0.781 μg.
* * *	* * *	* * *	* * *	* * *	* * *	* * *	* * *

2. It is proposed that Part 141a be amended:

a. In § 141a.21 by revising paragraphs (a)(2) and (c)(1) to read as follows:

§ 141a.21 Capsules penicillin and novobiocin.

(a) * * *

(2) *Novobiocin content.* Proceed as directed in § 141.110 of this chapter, preparing the sample for assay as follows: Place a representative number of capsules into a high-speed glass blender jar containing sufficient 0.1 *M* potassium phosphate buffer, pH 8.0 (solution 3), to give a stock solution of convenient concentration. Blend for 3 to 5 minutes. To an aliquot add sufficient penicillinase to inactivate the penicillin, further dilute with 10 percent potassium phosphate buffer, pH 6.0 (solution 6) to give a reference concentration of 0.5 microgram of novobiocin per milliliter (estimated) and allow to stand for one-half hour at 37° C. Its content of novobiocin is satisfactory if it contains not less than 85 percent of the number of milligrams per capsule that it is represented to contain.

* * * * *

(c) *Novobiocin used in making the capsules*—(1) *Potency.* Proceed as directed in § 141.110 of this chapter, preparing the sample for assay as follows: Dissolve an accurately weighed sample in sufficient 0.1 *M* potassium phosphate buffer, pH 8.0 (solution 3), to give a stock solution of convenient concentration. Further dilute an aliquot of the stock solution with 10 percent potassium phosphate buffer, pH 6.0 (solution 6), to the reference concentration of 0.5 microgram of novobiocin per milliliter (estimated).

* * * * *

b. In § 141a.100 by revising paragraphs (b)(1) (iii) and (iv) to read as follows:

§ 141a.100 Potassium phenethicillin.

* * * * *

(b) * * *

(1) * * *

(iii) *Standard curve.* Using the stock solution, further dilute with pH 7.8 to 8.0 buffer to get final concentrations of 0.064, 0.08, 0.1, 0.125, and 0.156 unit per milliliter, and proceed as described in § 141.110 (c) and (d) of this chapter.

(iv) *Assay.* Dissolve a weighing of the sample in sufficient pH 7.8 to 8.0 buffer to give a convenient stock solution. Further dilute with buffer to give an estimated concentration equivalent to 0.1 unit per milliliter of the L-α-phenoxyethyl, penicillin potassium standard and then proceed as described in § 141.110(c) of this chapter.

* * * * *

§ 141a.108 [Amended]

c. In § 141a.108 *Procaine penicillin-novobiocin - polymyxin - dihydrostreptomycin in oil,* in the second sentence of paragraph (a)(2) by changing the words "1 percent potassium phosphate buffer, pH 6.0," to read "10 percent potassium phosphate buffer, pH 6.0 (solution 6)."

§ 141a.109 [Amended]

d. In § 141a.109 *Procaine penicillin G-novobiocin-neomycin-dihydrostreptomycin in oil,* in the third sentence of paragraph (a)(2)(i) by changing the words "1 percent potassium phosphate buffer, pH 6.0," to read "10 percent potassium phosphate buffer, pH 6.0 (solution 6)."

3. It is proposed that Part 141b be amended:

§ 141b.112 [Amended]

In § 141b.112 *Streptomycin-polymyxin-bacitracin tablets,* in the first sentence of paragraph (b)(1)(iv) by revising the reference "§ 141a.21(c)(1)(vii)" to read "§ 141.110 (b), (c), and (d)."

4. It is proposed that Part 148j be amended:

§ 148j.1 [Amended]

a. In § 148j.1 *Nonsterile sodium novobiocin,* in the second sentence of paragraph (b)(1) by changing the words "1 percent potassium phosphate buffer, pH 6.0 (solution 1)," to read "10 percent potassium phosphate buffer, pH 6.0 (solution 6),".

§ 148j.1a [Amended]

b. In § 148j.1a *Sterile sodium novobiocin,* in the second sentence of paragraph (b)(1) by changing the words "1 percent potassium phosphate buffer, pH 6.0 (solution 1)," to read "10 percent potassium phosphate buffer, pH 6.0 (solution 6),".

§ 148j.2 [Amended]

c. In § 148j.2 *Calcium novobiocin,* in the second sentence of paragraph (b)(1) by changing the words "1 percent potassium phosphate buffer, pH 6.0 (solution 1)," to read "10 percent potassium phosphate buffer, pH 6.0 (solution 6),".

§ 148j.3 [Amended]

d. In § 148j.3 *Sodium novobiocin tablets,* in the second sentence of paragraph (b)(1) by changing the words "1 percent potassium phosphate buffer, pH 6.0 (solution 1)," to read "10 percent potassium phosphate buffer, pH 6.0 (solution 6),".

§ 148j.5 [Amended]

e. In § 148j.5 *Calcium novobiocin oral suspension,* in the third sentence of paragraph (b)(1) by changing the words "1 percent potassium phosphate buffer, pH 6.0 (solution 1)," to read "10 percent potassium phosphate buffer, pH 6.0 (solution 6),".

§ 148j.6 [Amended]

f. In § 148j.6 *Sodium novobiocin for injection,* in the fourth sentence of paragraph (b)(1) by changing the words "1 percent potassium phosphate buffer, pH 6.0 (solution 1)," to read "10 percent potassium phosphate buffer, pH 6.0 (solution 6),".

§ 148j.7 [Amended]

g. In § 148j.7 *Sodium novobiocin capsules,* in the third sentence of paragraph (b)(1) by changing the words "1 percent potassium phosphate buffer, pH 6.0 (solution 1)," to read "10 percent potassium phosphate buffer, pH 6.0 (solution 6),".

Interested persons may, within 60 days after publication hereof in the FEDERAL REGISTER, file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 6-88, 5600 Fishers Lane, Rockville, Md. 20852, written comments (preferably in quintuplicate) regarding this proposal. Comments may be accompanied by a memorandum or brief in support thereof. Received comments may be seen in the above office during working hours, Monday through Friday.

Dated: April 5, 1972.

H. E. SIMMONS,
Director, Bureau of Drugs.

[FR Doc.72-5724 Filed 4-17-72;8:45 am]

[21 CFR Part 295]

HOUSEHOLD SUBSTANCES IN LIQUID FORM CONTAINING METHYL ALCOHOL (METHANOL)

Proposed Child Protection Packaging Standards

Through investigations by the Food and Drug Administration and from other available information, the Commissioner of Food and Drugs has determined that the accidental ingestion of household substances in liquid form containing 4 percent or more of methyl alcohol (methanol) has been a cause of serious personal injury and serious ill-

ness to children under 5 years of age.

Methyl alcohol, also known as wood alcohol, is a constituent of a number of household substances including windshield washer antifreeze, automobile gasline antifreeze, certain paint thinners, paint and varnish removers, paint brush cleaners, and shellac solvents.

The unique toxicity of methyl alcohol and the resultant adverse effects following its ingestion have resulted in hundreds of deaths and numerous cases of blindness which are well known and thoroughly documented in medical literature. This substance is rapidly absorbed from the gastrointestinal tract and slowly eliminated from the body. The symptoms of methyl alcohol poisoning are visual disturbance ranging from mild blurring to total loss of light perception, nausea, vomiting, excruciating abdominal pain, shock, cyanosis, dyspnea, and coma. Death is usually due to respiratory failure or circulatory collapse and may be prompt or delayed a few days. The mortality rate from this type of poisoning is reported to be high. Permanent visual impairment or blindness is not uncommon following survival.

The action of methyl alcohol and its metabolites is reported to damage the gastrointestinal tract (particularly the stomach), the lungs, the kidneys, the liver, the pancreas, and most markedly the eyes. The high water content of the eye and the great solubility of methyl alcohol in water is reported to be the basis for the affinity of methyl alcohol for the eye. The toxic effects of methyl alcohol in humans are attributed to three factors: (a) Central nervous system depression, (b) a severe acidosis, and (c) a specific action of methyl alcohol metabolites on the retinal cells and optic nerve.

Data from the National Clearinghouse for Poison Control Centers on accidental ingestions of substances containing methyl alcohol by children under 5 years of age, for the 3-year period 1968–70, show 44 ingestions and three hospitalizations.

After review of the above information and upon consultation, pursuant to section 3, with the Technical Advisory Committee convened in accordance with section 6 of the Poison Prevention Packaging Act of 1970, the Commissioner finds that the nature of the hazard to children posed by liquid household substances containing 4 percent or more of methyl alcohol, by reason of their availability and packaging, is such that special packaging is necessary to protect children from serious personal injury or serious illness resulting from ingesting such substances.

On the basis of reports and data from industry and other relevant information, and pursuant to section 3(a)(2) of the act, the Commissioner finds that the special packaging proposed herein is:

1. Technically feasible because technology exists to produce special packaging conforming to these standards. At least 15 different special packages have been tested in accordance with § 295.10 *Testing procedure for special packaging* (21 CFR 295.10; 36 F.R. 22151, 37 F.R. 741) that meet or exceed the effectiveness specifications of § 295.3(b).

2. Practicable in that it is susceptible to modern mass production and assembly line techniques. Reported production data indicate a capability adequate to meet the needs of affected industries.

3. Appropriate since such special packaging is not detrimental to the integrity of the substance and will not interfere with its storage or use.

Accordingly, pursuant to provisions of the Poison Prevention Packaging Act of 1970 (secs. 2(4), 3, 5, 84 Stat. 1670–72; 15 U.S.C. 1471(4), 1472, 1474) and under authority delegated to him (21 CFR 2.120), the Commissioner proposes that a new subparagraph be added to § 295.2(a) as follows (§§ 295.2 and 295.3 were promulgated in the FEDERAL REGISTER of February 16, 1972; 37 F.R. 3427):

§ 295.2 Substances requiring "special packaging."

(a) *Substances.* The Commissioner of Food and Drugs has determined that the degree or nature of the hazard to children in the availability of the following substances, by reason of their packaging, is such that special packaging is required to protect children from serious personal injury or serious illness resulting from handling, using, or ingesting such substances, and that the special packaging herein required is technically feasible, practicable, and appropriate for these substances:

* * * * *

(8) *Methyl alcohol (methanol).* Household substances in liquid form containing 4 percent or more by weight of methyl alcohol (methanol) shall be packaged in accordance with the provisions of § 295.3 (a) and (b).

* * * * *

Interested persons may, within 60 days after publication hereof in the FEDERAL REGISTER, file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 6–88, 5600 Fishers Lane, Rockville, Md. 20852, written comments (preferably in quintuplicate) regarding this proposal. Comments may be accompanied by a memorandum or brief in support thereof. Received comments may be seen in the above office during working hours, Monday through Friday.

Dated: April 13, 1972.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.72-5892 Filed 4-17-72;8:52 am]

Public Health Service

[42 CFR Part 53]

MEDICAL SERVICES FOR PERSONS UNABLE TO PAY: NONDISCRIMINATION

Proposed Standards for Determining Compliance

Notice is hereby given that the Administrator, Health Services and Mental Health Administration, with the approval of the Secretary of Health, Education, and Welfare, and subject to the approval of the Federal Hospital Council, proposes to revise § 53.111 of Title 42, CFR, entitled "Services for persons unable to pay."

The principal purpose of the revision is to establish more specific standards, guidelines, and procedures for determining compliance with, and enforcing, assurances to provide a reasonable volume of services to persons unable to pay therefor previously given by recipients of, or to be given by applicants for, assistance under Title VI of the Public Health Service Act as amended (42 U.S.C. 291 et seq.).

Interested persons are invited to submit written comments, suggestions, or objections regarding the proposed revision of 42 CFR Part 53, Subpart L, to the Health Care Facilities Service, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20852, within 30 days after the date of publication of this notice in the FEDERAL REGISTER. Comments received will be available for public inspection at Room 9–05, Parklawn Building, between the hours of 8:30 a.m. and 5 p.m., Monday through Friday.

This proposed revision of Title 42 CFR 53.111 is issued under authority of section 603 of the Public Health Service Act as amended, 78 Stat. 451, 42 U.S.C. 291c.

It is therefore proposed to revise 42 CFR 53.111 to read as set forth below.

Dated: April 12, 1972.

VERNON E. WILSON,
Administrator, Health Services and Mental Health Administration.

Approved: April 15, 1972.

ELLIOT L. RICHARDSON,
Secretary.

§ 53.111 Services for persons unable to pay.

(a) *Applicability.* The provisions of this section apply to every applicant which heretofore has given or hereafter will give an assurance that it will make available a reasonable volume of services to persons unable to pay therefor.

(b) *Definitions.* As used in this section:

(1) The term "facility" includes hospitals, facilities for long-term care, outpatient facilities, rehabilitation facilities, and public health centers;

(2) The term "applicant" means an applicant for, or recipient of, a grant, a loan guarantee or a loan under the Act;

(3) "Fiscal year" means the fiscal year of the applicant;

(4) The term "operating costs" means the actual operating costs of the applicant for a fiscal year as determined in accordance with cost determination principles and requirements under Title XVIII of the Social Security Act (42 U.S.C. 1395): *Provided,* That such "operating costs" shall be determined for the applicant's entire facility and for all patients regardless of the source of payment for such care: *And provided further,* That in determining such operating costs there shall be deducted the amount of all actual or estimated reim-

bursements, as applicable, for services received or to be received pursuant to Title XVIII and XIX of the Social Security Act (42 U.S.C. 1395 and 1396);

(5) The term "net income" means the net income of the applicant determined in accordance with the applicant's usual accounting methods provided that such methods are consistently applied and are compatible with accounting principles generally accepted in hospital and related fields;

(6) The term "reasonable cost" means the cost of providing services to a specific patient determined in accordance with the cost determination principles and requirements under title XVIII of the Social Security Act (42 U.S.C. 1395) and Subpart D of the regulations thereunder (20 CFR 405, 401 et seq.);

(7) The term "uncompensated services" means services which are made available to persons unable to pay therefor without charge or at a charge which is less than the reasonable cost of such services. The level of such services is measured by the difference between the amount charged for such services and the reasonable cost thereof;

(8) "Reasonable volume of services to persons unable to pay therefor" means a level of uncompensated services which meets a need for such services in the area served by an applicant and which is within the financial ability of such applicant to provide.

(c) *Assurance.* Before an application under this part is recommended by a State agency to the Secretary for approval, the State agency shall obtain an assurance from the applicant that there will be made available in the facility or portion thereof to be constructed or modernized a reasonable volume of services to persons unable to pay therefor. The requirement of an assurance from an applicant shall be waived if the applicant demonstrates to the satisfaction of the State agency, subject to subsequent approval by the Secretary, that such a requirement is not feasible from a financial viewpoint.

(d) *Presumptive compliance guideline.* An applicant which, for a fiscal year, budgets for the support of, and makes available on request, uncompensated services at a level not less than the higher of 5 percent of operating costs or 25 percent of net income shall, subject to the provisions of paragraph (h) of this section, be deemed in presumptive compliance with its assurance.

(e) *Compliance reports.* (1) Each applicant shall, not later than 120 days after the end of a fiscal year, unless a longer period is approved by the State agency for good cause shown, file with the State agency a copy of its annual statement for such year as required by section 646 of the Act and § 53.128(q), which shall set forth its operating costs and the amount of uncompensated services provided in such year. The provision of a level of uncompensated services in such year which equals or exceeds the level established pursuant to paragraph (h) of this section for such year shall constitute compliance with the assurance. If the level of services provided was less than the level of uncompensated services established pursuant to paragraph (h) of this section, the applicant shall submit with such statement (i) a justification therefor, showing that the provision of such lower level of uncompensated services was reasonable under the circumstances and (ii) a description of the steps it proposes to take to assure the availability and utilization of the level of uncompensated services to be established for the current fiscal year, which shall include an affirmative action plan, utilizing available media of mass communication as well as other appropriate means, to bring to the attention of the public the availability of such uncompensated services and the conditions of eligibility therefor.

(2) Each applicant shall file with its annual statement a copy of that portion of its adopted budget for the current fiscal year relating to the support of uncompensated services in such year. Such budget for uncompensated services shall be based on the operating costs of the applicant for the preceding fiscal year and shall give due cognizance to probable increases in operating costs. If the budget statement does not conform to the presumptive compliance guidelines, the applicant shall submit with its statement (i) a justification therefor, showing that such lower level of uncompensated services is reasonable under the circumstances, and (ii) a plan to increase such uncompensated services to meet the presumptive compliance guideline or such other level of uncompensated services as may have been established or as it requests the State agency to establish in accordance with paragraph (h) of this section.

(3) The applicant shall also submit such additional reports related to compliance with its assurance as the State agency may reasonably require.

(f) *Qualifying services.* (1) In determining the amount of uncompensated services provided by an applicant, there shall be included only those services provided to an individual with respect to whom the applicant has made a formal written determination prior to the provision of such services that such individual is unable to pay therefor under the criteria established pursuant to paragraph (g) of this section except that such determination may be made after the provision of the services where (i) there has been a change in circumstances, e.g., the patient's financial condition has changed or the cost of the services provided is greater than anticipated, (ii) an emergency or an urgent need for services has precluded a determination of the patient's ability to pay therefor or (iii) the applicant has for other good cause been unable to complete its investigation and determination prior to the provision of the services: *Provided,* That a statement of such good cause be made a part of the applicant's written determination.

(2) There shall be excluded from the computation of uncompensated services:

(i) Any amount which the applicant has received, or is entitled to receive, from a third party insurer or under a governmental program; and

(ii) The reasonable cost of any services for which payment in whole or in mental program (e.g., Medicare and part would be available under a govern-Medicaid) in which the applicant, although eligible to do so, does not participate, but only to the extent of such otherwise available payment.

(g) *Persons unable to pay for services.* (1) The State agency shall set forth in its State plan, subject to approval by the Secretary, criteria for identifying persons unable to pay for services, which shall include persons who are otherwise self-supporting but unable to pay the full charge for needed services. Such criteria shall be based on the following or similar factors:

(i) The health and medical care insurance coverage, personal or family income, the size of the patient's family, and other financial obligations and resources of the patient or the family in relation to the reasonable cost of the services;

(ii) Generally recognized standards of need such as (*a*) the State standard for the medically needy as determined for the purposes of the Aid for Families with Dependent Children program; (*b*) the current Social Security Administration poverty income level; (*c*) the current Office of Economic Opportunity Income Poverty Guidelines applicable in the area; or

(iii) Any other equivalent measures which are found by the Secretary to provide a reasonable basis for determining an individual's ability to pay for medical and hospital services.

(2) A copy of such criteria shall be provided by the applicant, upon request, to any patient or former patient of the applicant and to any person seeking services from the applicant.

(3) The State agency shall provide a copy of such criteria to any person requesting it.

(h) *Level of uncompensated services.* (1) The State agency shall set forth in its State plan procedures for the determination for each applicant of the level of uncompensated services which constitutes a reasonable volume of services to persons unable to pay therefor.

(2) The State agency shall for the purpose of making such determination, review, and evaluate the annual statement, the budget and the related documents submitted by each aplicant pursuant to paragraph (e) of this section, by applying the following criteria:

(i) The financial status of the applicant, taking account of income from all sources, and its financial ability to provide uncompensated services;

(ii) The nature and quantity of services provided by the applicant;

(iii) The need within the applicant's service area for the provision, without charge or at charge which is less than reasonable cost, for services of the nature provided or to be provided by the applicant; and

(iv) The extent and nature of joint or cooperative programs with other facil-

ities for the provision of uncompensated services, and the extent and nature of outreach services directed to the needs of underserved areas.

(3) In accordance with its findings made after such review and evaluation, the State agency shall, within 60 days after receipt of the annual statement and related documents required by paragraph (e) of this section, for each fiscal year of an applicant which begins following the expiration of 90 days after the effective date of this regulation:

(i) Establish a level of uncompensated services for each applicant which may be equal to or less than the presumptive compliance guideline: *Provided*, That if the State agency determines, in accordance with subparagraph (2) of this paragraph, that (*a*) there is a need in the area served by an applicant for a level of uncompensated services greater than the level proposed in the applicant's budget statement, and (*b*) the applicant is financially able to provide such greater level of uncompensated services, the State agency shall establish such greater level as the level applicable to the applicant; and

(ii) Accept or modify a plan submitted pursuant to paragraph (e) of this section.

(4) The State agency shall notify the applicant in writing of the level of uncompensated services which it has established for the applicant for the fiscal year. At the time of notifying the applicant, the State agency shall also publish as a public notice in a newspaper of general circulation within the community served by the applicant the rate that has been established, a statement that the documents upon which the agency based its determination are available for public inspection at a location and time prescribed, and that persons wishing to object to the rate can do so by writing to the State agency within 20 days after publication of the notice.

(5) The applicant or any person or persons residing or located within the service area of the applicant, or any organization on behalf of such person or persons, may submit to the State agency within 20 days of the publication and sending of the notice objections to the rate established by the State agency for the applicant. Such objections may be supported in writing by factual information and argument. The State agency may, if it believes that determination of the objections will be assisted by oral evidence or by oral argument, set a public hearing on the objections and shall give notice of such hearing to all interested parties and to the public. If no hearing is set, the State agency shall give public notice of the receipt of the objections and shall make the objections and their supporting documents available for public inspection and comment. The State agency shall rule promptly upon the objections in writing, stating its reasons for sustaining or overruling them, in whole or in part, and establishing finally the rate of uncompensated services either the same as, above, or below the rate previously established, as may best accord with all of the evidence on file with or heard by the State agency. Notice of the final determination shall be mailed to all parties who filed objections or who participated in the proceedings leading to the redetermination.

(6) Within 20 days of receipt of written notice of the final determination of a State agency after ruling on objections to the rate established by the State agency, the applicant or any other interested person or organization may submit to the Secretary a written request for review of the State agency determination. Such review shall be made upon the record of the State agency determination which shall be sustained if supported by substantial evidence and is not otherwise arbitrary or capricious. If the Secretary or his designee determines that the rate established by the State agency is unsupported by the evidence in the record or is otherwise arbitrary or capricious, the Secretary or his designee shall, upon the basis of the record or upon other evidence or information which is before him or which he may obtain, establish a level of uncompensated services which he determines, in accordance with the criteria set out in subparagraph (2) of this paragraph, is appropriate.

(7) The level of uncompensated services established for an applicant under this section for any fiscal year shall constitute a reasonable volume of services to persons unable to pay therefor with respect to such applicant for such fiscal year.

(i) *Evaluation and enforcement.* The State plan shall provide for evaluation and enforcement of the assurance in accordance with the following requirements:

(1) The State agency shall, (i) at least anually, perform evaluations of the services provided in each facility with respect to which Federal assistance has been provided under the Act, to determine whether such assurance is being complied with; and (ii) establish procedures for the investigation of complaints that such assurance is not being complied with.

(2) Evaluation pursuant to subparagraph (1) of this paragraph shall be based on the annual budget of each facility for uncompensated services and on financial statements of such facilities filed pursuant to section 646 of the Act and § 53.128(q), and on such other information, including reports of investigations and hearing decisions, as the State agency deems relevant and material.

(3) The State plan shall provide for adequate methods of enforcement of the assurance, including effective sanctions to be applied against any facility which fails to comply with such assurance. Such sanctions may include, but need not be limited to, license revocation, termination of State assistance, and court action.

(j) *Reports.* (1) The State agency shall, not less often than annually, report in writing to the Secretary its evaluation of each facility's compliance with the assurance, the disposition of each complaint received by the State agency, proposed remedial action with respect to each facility found by the State agency to be not in compliance with the assurance, and the status of such remedial action.

(2) In addition, the State agency shall promptly report to the Regional Attorney and Regional Health Director of the Department of Health, Education, and Welfare the institution of any legal action against a facility or the State agency involving compliance with the assurance.

[FR Doc.72-5966 Filed 4-17-72;9:31 am]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Part 71]

[Airspace Docket No. 72-CE-10]

TRANSITION AREA

Proposed Alteration

The Federal Aviation Administration is considering amending Part 71 of the Federal Aviation Regulations so as to alter the transition area at Dubuque, Iowa.

Interested persons may participate in the proposed rule making by submitting such written data, views, or arguments as they may desire. Communications should be submitted in triplicate to the Director, Central Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, Federal Building, 601 East 12th Street, Kansas City, MO 64106. All communications received within 45 days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Regional Air Traffic Division Chief. Any data, views, or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

A public docket will be available for examination by interested persons in the Office of the Regional Counsel, Federal Aviation Administration, Federal Building, 601 East 12th Street, Kansas City, MO 64106.

The VOR/DME approach to Runway 21 at the Clinton, Iowa, Municipal Airport overlies a small area of uncontrolled airspace. Consequently, the Dubuque, Iowa, transition area is being altered to include within it that airspace.

In consideration of the foregoing, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations as hereinafter set forth:

In § 71.171 (37 F.R. 2143), the following transition area is amended to read:

DUBUQUE, IOWA

That airspace extending upward from 700 feet above the surface within an 8½-mile radius of Dubuque Municipal Airport (latitude 42°24'10" N., longitude 90°42'32" W.); and within 4½ miles northeast and 9½ miles southwest of the Dubuque VORTAC 321°

radial, extending from the VORTAC to 18½ miles northwest of the VORTAC; and that airspace extending upward from 1,200 feet above the surface bounded by a line beginning at latitude 42°05'00" N., longitude 91°00'00" W., thence west along latitude 42°05'00" N., to and north along longitude 92°15'00" W., to and counterclockwise along the arc of a 29-mile-radius circle centered on the Waterloo, Iowa, VORTAC, to and east along the south edge of V-100, to and clockwise along the arc of a 29-mile-radius circle centered on the Dubuque VORTAC, to and southeast along the southwest edge of V-218, to and south along longitude 89°55'00" W., to and southwest along the northwest edge of V-216, to 90°08'00" W., and south to the north edge of V-172, to and north along longitude 91°00'00" W., to the point of beginning, excluding the portion which overlies the State of Illinois.

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

Issued in Kansas City, Mo., on March 24, 1972.

JOHN M. CYROCKI,
Director, Central Region.

[FR Doc.72-5810 Filed 4-17-72;8:46 am]

[14 CFR Part 71]

[Airspace Docket No. 72-CE-11]

CONTROL ZONE AND TRANSITION AREA

Proposed Alteration

The Federal Aviation Administration is considering amending Part 71 of the Federal Aviation Regulations so as to alter the control zone and transition area at Jefferson City, Mo.

Interested persons may participate in the proposed rule making by submitting such written data, views, or arguments as they may desire. Communications should be submitted in triplicate to the Director, Central Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, Federal Building, 601 East 12th Street, Kansas City, Mo. 64106. All communications received within 45 days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendments. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Regional Air Traffic Division Chief. Any data, views, or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposals contained in this notice may be changed in the light of comments received.

A public docket will be available for examination by interested persons in the Office of the Regional Counsel, Federal Aviation Administration, Federal Building, 601 East 12th Street, Kansas City, MO 64106.

Since designation of controlled airspace at Jefferson City, Mo., new and revised approach procedures are being developed for the Jefferson City Memorial Airport. Accordingly, it is necessary to alter the Jefferson City control zone and transition area to adequately protect aircraft executing the new and revised approach procedures.

In consideration of the foregoing, the Federal Aviation Administration proposes to alter Part 71 of the Federal Aviation Regulations as hereinafter set forth:

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

JEFFERSON CITY, MO.

Within a 5-mile radius of the Jefferson City Memorial Airport (latitude 38°35'33" N., longitude 92°09'39" W.), and within 2 miles each side of the Jefferson City VOR 308° radial, extending from the 5-mile-radius zone to 8 miles northwest of the VOR, and within 2.5 miles each side of the 118° bearing from the Jefferson City RBN facility (latitude 38°33'20" N., longitude 92°04'40" W.) and 2.5 miles each side of the 124° bearing from the Jefferson City RBN, extending from the 5-mile-radius zone to 16 miles southeast of the VOR. This control zone shall be effective during the times established by Notice to Airmen and continuously published in the Airman's Information Manual.

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

JEFFERSON CITY, MO.

That airspace extending upward from 700 feet above the surface within an 8-mile radius of the Jefferson City Memorial Airport (latitude 38°35'33" N., longitude 92°09'39" W.) and within 3.5 miles either side of the 118° bearing from the Jefferson City RBN facility (latitude 38°33'20" N., longitude 92°-04'40" W.) and 3.5 miles each side of the 124° bearing from the Jefferson City RBN, extending from the 8-mile-radius zone to 17.5 miles southeast of the VOR.

These amendments are proposed under the authority of section 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1348), and of section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Kansas City, Mo., on March 23, 1972.

JOHN M. CYROCKI,
Director, Central Region.

[FR Doc.72-5811 Filed 4-17-72;8:46 am]

[14 CFR Part 71]

[Airspace Docket No. 72-SW-9]

TRANSITION AREA

Proposed Alteration

On February 18, 1972, a notice of proposed rule making was published in the FEDERAL REGISTER (37 F.R. 3645) stating the Federal Aviation Administration proposed to alter the Johnson City, Tex., 700-foot transition area.

Subsequent to publication of the notice of proposed rule making (Airspace Docket No. 72-SW-9), it was found that the Johnson City 700-foot transition area, as depicted on the latest issuance (January 6, 1972) of the San Antonio Sectional Aeronautical Chart, had been charted incorrectly. The portion of this sectional chart, which was provided as an attachment to Airspace Docket No. 72-SW-9, depicted the 700-foot Johnson City transition area as a 7-mile-radius area of the Johnson City Airport having a 4-mile southerly extension. This incorrect depiction was an apparent oversight since, on July 22, 1971, an amended Johnson City 700-foot transition area became effective. This amended Johnson City transition area (Airspace Docket No. 70-SW-57) described the transition area as an area extending upward from 700 feet above the surface within a 7-mile radius of the Johnson City Airport and within 4.5 miles west and 9.5 miles east of the 175° and 355° bearings from the Johnson City RBN extending from 18.5 miles south to 10 miles north of the RBN. Attachment No. 1 to the supplementary notice indicates the correct configuration of the current Johnson City transition area. Also indicated is the incorrect transition area which is currently depicted on the latest issuance of the San Antonio Sectional Chart.

In response to the initial Airspace Docket No. 72-SW-9, several written responses were received, all favorable; however, a review of the instrument approach procedures was made to determine if the significant increase in airspace was necessary to accommodate the approach procedure for Johnson City Airport and for the Shepherd Farm Airport.

It was found that only Category A aircraft (stall speed in a landing configuration less than 91 knots and aircraft weight less than 30,001 pounds) will utilize the Shepherd Farm Airport. This fact will permit the reduction of the procedure turn area from 10 miles to 5 miles and could therefore reduce the need for a 10.5-mile radius on the east as was indicated in the notice.

It was also found that the approach procedure for Johnson City Airport could be altered by using 4,000 feet rather than 3,000 as the procedure turn altitude. This would place the approaching aircraft within the 1,200-foot transition area. The southerly extension could therefore be reduced by 3.5 miles.

A 5-mile-radius area of the Shepherd Farm Airport would be added to the transition area. Although this would enlarge the transition area to the southwest, it would also obviate the need for an increase from a 7-mile radius to a 10.5-mile radius as was initially proposed. This change back to a 7-mile-radius area, while still affording airspace necessary to accommodate the two approach procedures, will permit a substantial reduction in the extent of controlled airspace as was previously proposed.

Attachment No. 2 of this supplementary notice indicates the extent of airspace initially proposed having a 10.5-mile radius (hatched lines) and also the reduced 700-foot transition area which is now being proposed for the Johnson City area.

In consideration of the foregoing, it is the intent of this supplemental notice to amend Part 71 of the Federal Aviation Regulations as hereinafter set forth:

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

JOHNSON CITY, TEX.

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Johnson City Airport (latitude 30°15'05" N., longitude 98°37'21" W.); within a 5-mile radius of Shepherd Farm Airport (latitude 30°12'30" N., longitude 98°43'20" W.) and within 2.5 miles each side of the 175° bearing from the Johnson City RBN (latitude 30°-12'32" N., longitude 98°37'05" W.) extending from the 7-mile-radius area to 8 miles south of the RBN.

Interested persons may submit such written data, views, or arguments as they may desire. Communications should be submitted in triplicate to Chief, Airspace and Procedures Branch, Southwest Region, Federal Aviation Administration, Post Office Box 1689, Fort Worth, TX 76101. All communications received within 30 days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Chief, Airspace and Procedures Branch. Any data, views, or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official docket will be available for examination by interested persons at the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, Forth Worth, Tex. An informal docket will also be available for examination at the Office of the Chief, Airspace and Procedures Branch.

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

Issued in Fort Worth, Tex., on April 6, 1972.

R. V. REYNOLDS,
Acting Director, Southwest Region.

[FR Doc.72-5812 Filed 4-17-72;8:46 am]

[14 CFR Part 71]

[Airspace Docket No. 72-CE-6]

TRANSITION AREA

Proposed Alteration

The Federal Aviation Administration is considering amending Part 71 of the Federal Aviation Regulations so as to alter the transition area at Kirksville, Mo.

Interested persons may participate in the proposed rule making by submitting such written data, views, or arguments as they may desire. Communications should be submitted in triplicate to the Director, Central Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, Federal Building, 601 East 12th Street, Kansas City, MO 64106. All communications received within 45 days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Regional Air Traffic Division Chief. Any data, views, or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

A public docket will be available for examination by interested persons in the Office of the Regional Counsel, Federal Aviation Administration, Federal Building, 601 East 12th Street, Kansas City, MO 64106.

A VOR/DME instrument approach is being established for the Clarence Cannon Memorial Airport, Kirksville, Mo. Accordingly, it is necessary to alter the Kirksville, Mo., transition area in order to provide adequate airspace protection for aircraft executing these new instrument approaches.

In consideration of the foregoing, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations as hereinafter set forth:

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

KIRKSVILLE, MO.

That airspace extending upward from 700 feet above the surface within a 6½-mile radius of Clarence Cannon Memorial Airport (latitude 40°05'45" N., longitude 92°32'50" W.); within 3 miles each side of the Kirksville VORTAC 316° radial, extending from the 6½-mile-radius area to 8 miles northwest of the VORTAC; and within 5 miles each side of the 360° bearing from Clarence Cannon Memorial Airport, extending from the 6½-mile-radius area to 11½ miles north of the airport; and that airspace extending upwards from 1,200 feet above the surface within a 21-mile radius of the Kirksville, Mo., VORTAC and 9.5 miles northeast and 4.5 miles southwest of the 135° radial of the Kirksville, Mo., VORTAC extending from 21 miles to 29 miles.

This amendment is proposed under the authority of section 307(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1655(c)).

Issued in Kansas City, Mo., on March 24, 1972.

JOHN M. CYROCKI,
Director, Central Region.

[FR Doc.72-5809 Filed 4-17-72;8:46 am]

[14 CFR Part 71]

[Airspace Docket No. 72-WE-16]

CONTROL ZONE

Proposed Alteration

The Federal Aviation Administration is considering an amendment to Part 71 of the Federal Aviation Regulations that would alter the description of the Torrance, Calif., control zone.

Interested persons may participate in the proposed rule making by submitting such written data, views, or arguments as they may desire. Communications should be submitted in triplicate to the Chief, Airspace and Procedures Branch, Federal Aviation Administration, 5651 West Manchester Boulevard, Post Office Box 92007, Worldway Postal Center, Los Angeles, CA 90009. All communications received within 30 days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Regional Air Traffic Division Chief. Any data, views, or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

A public docket will be available for examination by interested persons in the office of the Regional Counsel, Federal Aviation Administration, 5651 West Manchester Blvd., Los Angeles, CA 90045.

On or about July 20, 1972, a localizer course to serve Runway 29R at Torrance Municipal Airport, Torrance, Calif., will be commissioned. The localizer will be alined 293° M (308° T) and an instrument approach procedure will be published coincidental with the commissioning date of the facility. In order to provide controlled airspace protection for aircraft executing the prescribed instrument approach procedure while operating below 1,000 feet above the surface, a small control zone extension will be required.

In consideration of the foregoing, the FAA proposes the following airspace action.

In § 71.171 (37 F.R. 2056) the description of the Torrance, Calif., control zone is amended to read as follows:

TORRANCE, CALIF.

Within a 3-mile radius of Torrance Municipal Airport (latitude 33°48'10" N., longitude 118°20'20" W.), within 2 miles each side of the Los Angeles VORTAC 150° radial, extending from the 3-mile-radius zone to 7 miles southeast of the VORTAC, and within 1 mile each side of the Torrance localizer course extending from the 3-mile-radius zone to 5 miles southeast of the lift-off end of Runway 11L. This control zone shall be effective during the specific dates and times established in advance by a Notice to Air-

men. The effective date and time will thereafter be continuously published in the Airman's Information Manual.

This amendment is proposed under the authority of section 307(a) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1348(a)), and of section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Los Angeles, Calif., on April 6, 1972.

ROBERT O. BLANCHARD,
Acting Director, Western Region.

[FR Doc.72-5813 Filed 4-17-72;8:46 am]

[14 CFR Parts 71, 73]

[Airspace Docket No. 71-AL-25]

RESTRICTED AREA AND CONTINENTAL CONTROL AREA

Proposed Designation and Alteration

The Federal Aviation Administration (FAA) is considering amendments to Parts 71 and 73 of the Federal Aviation Regulations that would designate a new joint-use restricted area near Blair Lakes, Alaska, and include it in the continental control area.

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, Alaskan Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, 632 Sixth Avenue, Anchorage, AK 99501. 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 document will be available for examination by interested persons at the Federal Aviation Administration, Office of the General Counsel, Attention: Rules Docket, 800 Independence Avenue SW., Washington, DC 20591. An informal docket also will be available for examination at the office of the Regional Air Traffic Division Chief.

The Department of the Air Force has requested the designation of a joint-use restricted area near Blair Lakes, Alaska, extending from the surface to FL 220 north of an E/W line at latitude 64°20'00" N., and 1,000 feet AGL to FL 220 south of this line. The purpose of the restricted area is to provide an area for tactical aircraft engaged in the delivery of air-to-ground training ordnance.

The shared use of Restricted Area R-2202 has been attempted and found unsuitable by the Air Force. This was due to U.S. Army priorities which have precluded the extensive range utilization required by the Alaskan Air Command.

In consideration of the foregoing, the Federal Aviation Administration proposes the airspace actions as hereinafter set forth.

1. The Blair Lakes, Alaska, restricted area would be designated as follows:

Boundaries.—Beginning at latitude 64°33'-00" N., longitude 147°45'00" W.; to latitude 64°04'00" N., longitude 146°49'00" W.; thence along the east bank of the Little Delta River to latitude 63°50'50" N., longitude 146°47'30" W.; to latitude 63°56'00" N., longitude 147°02'00" W.; to latitude 64°-25'00" N., longitude 147°58'00" W.; to latitude 64°29'32" N., longitude 147°54'45" W.; to point of beginning (see chart).

Time of designation.—0730 to 1730 local time Monday through Friday, other times by NOTAM issued at least 24 hours in advance.

Designated altitudes.—Within the boundaries of the proposed restricted area as follows:

A. North of an E/W line at latitude 64°-20'00" N., surface to FL 220.

B. South of an E/W line at latitude 64°-20'00" N., 1,000 feet AGL to FL 220.

Controlling agency.—Federal Aviation Administration, Eielson RAPCON.

Using agency.—Alaskan Air Command.

2. The description of the continental control area would be altered to include the Blair Lakes, Alaska, restricted area.

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 April 12, 1972.

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

[FR Doc.72-5808 Filed 4-17-72;8:46 am]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 91]

[Docket No. 13930; FCC 72-312]

BUSINESS RADIO SERVICE

Availability of Certain "Tertiary" Channels

Order. In the matter of amendment of § 91.554(a) of Part 91 (formerly § 11.554 (a) of Part 11), Subpart L, of the Commission's rules governing the Business Radio Service whereby certain "tertiary" channels in the 151-155 MHz band will be made available on a regular basis, Docket No. 13930.

1. On its own initiative, the Commission issued a notice of proposed rule making on February 6, 1961, asking for comments relative to making 13 new "tertiary" or 15 kHz channels available in the 150 MHz band in the Business Radio Service. The notice was published in the FEDERAL REGISTER on February 10, 1961 (FCC 61-132; 26 F.R. 1191).

2. Since the Commission issued its proposal in this proceeding, rules have been adopted in Docket No. 17703 (FCC 71-606; 36 F.R. 12102) concerning the use of tertiary frequencies in the 150-162 MHz band under Parts 89, 91, and 93 of the rules. In the proceeding, the Commission concluded that operation in the 150 MHz band with 15 kHz spacing is possible if the stations on the adjacent channels are geographically separated. Rules adopted in the proceeding made tertiary frequencies available in radio services with frequency coordination. A minimum geographical separation of 10 miles between base stations was required for Part 91.

3. The basis for the final rules in Docket No. 17703 is relevant to disposal of the Commission's proposal in this proceeding. While several parties filing comments in Docket No. 13930 did favor adoption of our proposed rules without change, the comments generally indicated that implementation of 15 kHz tertiary channels on a same area basis requires suitable geographical separation. Under the Commission's proposal there was no requirement for frequency coordination or any arrangement to maintain geographical separation between base stations operating on 15 kHz adjacencies.

4. We have decided to withdraw our proposals in this proceeding for several reasons. Our action in Docket No. 17703 established the need for geographical separation of stations operating on frequencies separated by 15 kHz and specified minimum distances in the interest of controlling interference. We have concluded that in an uncoordinated and highly shared radio service, such as the Business Radio Service at 150 MHz, the geographical spacing needed to permit use of 15 kHz spaced assignments with equipment standards based on 30 kHz spacing, would be extremely difficult to maintain. The frequency records of the Commission are not, at this time, intended to provide the current data that would be needed for case-by-case review of applications for 15 kHz assignments. Further, allocation of the proposed tertiary frequencies with a geographical spacing limitation would be of questionable usefulness. The great number of existing stations in urban areas on adjacent frequencies would be expected in most cases to preclude the availability of the tertiary frequencies in the areas where they are most needed.

5. In view of the considerations and limitations related above and pursuant to the authority contained in section 4(i) and 303 of the Communications Act of 1934, as amended: *It is ordered,* That the proposal made by the Commission in Docket No. 13930 is withdrawn and the proceeding in the docket is hereby terminated.

Adopted: April 5, 1972.

Released: April 11, 1972.

FEDERAL COMMUNICATIONS COMMISSION,[1]
[SEAL] BEN F. WAPLE,
Secretary.

[FR Doc.72-5833 Filed 4-17-72;8:51 am]

[1] Commissioner Robert E. Lee absent; Commissioner Johnson concurring in the result.

FEDERAL POWER COMMISSION

[18 CFR Ch. I]

[Docket No. R-438]

DEVELOPMENT OF FULLY AUTOMATED COMPUTER REGULATORY INFORMATION SYSTEM

Notice of Proposed Rule Making

APRIL 13, 1972.

The Federal Power Commission hereby gives notice pursuant to the provisions of the Administrative Procedure Act, 5 U.S.C. 553, that the Commission will undertake a series of rule making actions in the above entitled matter for the purpose of developing a fully automated computer regulatory information system. The fully automated information system will be prescribed in aid of the Commission's duties and responsibilities arising inter alia under the provisions of the Federal Power Act, 16 U.S.C. 791a et seq., and the Natural Gas Act, 15 U.S.C. 717 et seq.

The actions proposed to be taken will be phased. Generally speaking, the various Federal Power Commission reporting procedures and report forms will be adapted to computer regulatory format with accounting and other data gathering requirements to follow. Transitional periods will be used wherein existing and proposed computer reporting techniques will be observed, and thereafter, existing processes would be eliminated.

This notice is intended to initiate this overall change. The following portions of this notice describe the new reporting arrangement, the computer concepts involved, the reasons for the proposed change, the anticipated results and uses thereof. Attached appendix A lists the various existing Federal Power Commission "Approved Forms" which will be affected.[1] However, it should be noted that before any existing form or data reporting requirement is changed, the Commission proposes to give appropriate further public notice. This notice is intended to solicit comments upon the overall arrangement and thereby to provide a basis for further implementing actions. Accordingly, the Commission now advises that it proposes to:

1. Establish and operate a centralized electronic information data bank of all Federal Power Commission regulatory and administrative information.

2. Restructure the current methods of reporting data to the Commission by using Electronic Data Processing (EDP) technology.

3. Develop the Commission's regulatory computer applications (programs) utilizing the centralized data bank.

4. Apply to Commission operations the latest technology of computers, terminals, and data communications.

5. Issue Agency EDP standards related to respondent's submission of data.

[1] See 18 CFR 3.142, 3.170. Appendix A is filed as part of the original document.

The system will permit the Commission and its staff access to process data via terminals or other devices for the express purpose of regulation as provided in the Federal Power Act, 16 U.S.C. 791a, the Natural Gas Act, 15 U.S.C. 717 et seq., the National Environmental Policy Act of 1969, 42 U.S.C. 4321, and all other applicable laws and requirements.

Outline of the general plan. The major features of the fully automated computer regulatory information system plan include the following. The Commission proposes establishing and operating a centralized, electronic information data bank of all Federal Power Commission regulatory and administrative information. The Commission, having concluded that a central electronic data bank will best serve its needs, presently envisions that the bank will contain six major data files. These are:

1. *Corporate and economic information file.* This file will include, but not be limited to, data concerning balance sheet entries, summaries of utility plant and accumulated depreciation, income statements, retained earnings, source and application of funds, principal officers and points of contact, and corporate structure. In addition, this file will be structured to contain general economic and industry data which affects the regulated industries.

2. *Electric operating information file.* This file will consist of data concerning electric generating plant details, electric sales and purchases, high voltage transmission, and substation capabilities and costs, projected facility construction, existing as well as proposed pooling relationships, and related technical data.

3. *The gas operating information file.* This section of the data bank will include details on producer and transmission natural gas plant facilities, sales, purchases, contracts, reservoirs, reserves, underground storage, and other technical considerations of significance.

4. *Environmental information file.* This file will include data on current and proposed operations relating to fuel, air and water quality, plant-related recreational facilities, existing as well as projected operations of the electric power and natural gas industries with regard to the implementation of environmental requirements.

5. *The legal information data file.* This file will contain information relating to cases and dockets stemming from Commission activities, e.g., proposed projects, certification, rates, licensing, and status of current cases.

6. *Internal administrative information file.* This file will consist of data required within the Commission to support its own operations and will include data concerning personnel, payroll, projects status, and other miscellaneous data.

The establishment of this central data bank will include the conversion of existing data at the Commission so that all data can be accessed by a computer software system (data management system). The objectives of the central electronic data bank design will be:

1. To further eliminate duplication in information now collected;

2. To provide the speed of access which is required by public interest priorities and available through full computer technology;

3. To facilitate further evaluation and analysis of all data;

4. To facilitate reduction of the quantity of existing manual files; and

5. To accommodate the development of new regulatory techniques.

In developing regulatory computer applications utilizing the centralized data bank, the staff of the Commission will utilize one central information system and unified data files for the development of computer applications. Early planning of new staff projects and assignments will include the use of this central information system for implementation of the tasks. All regulatory activities will be evaluated under a continuing management program to allow computer processing of data and information retrieval. The resulting computer applications will be integrated into the general EDP management plan of the Commission.

In applying the latest technology of computers, terminals and data communications to Commission operations, the Commission plans to install the necessary terminals and communication devices in each of its organizational entities to facilitate the use of the central data bank. The installation of this equipment will be in accordance with the Commission's EDP management plan and under the direction of the Commission's EDP unit. The EDP unit will be the focal point of new computer applications within the Commission as well as maintaining state-of-the-art knowledge of computers, terminals, communications, and software as applicable to regulatory functions.

The Commission contemplates the issuance of FPC agency EDP standards. It is proposed that this will be in accordance with the requirements of Public Law 89-306 and Office of Management and Budget (OMB) Circular No. A-86, and other Federal standards. The Commission intends to issue references to Federal EDP standards and to promulgate FPC agency standards consisting of data elements and codes for respondent use when submitting data to the Commission.

Transitional arrangements. This program is to prepare for specific implementation of this plan and give all affected persons an opportunity to develop a course of action designed to comply with such action. The Commission directs attention to Appendix A hereto and the listed "Approved Forms" under the Federal Power and Natural Gas Acts. It is contemplated that a parallel reporting procedure will be used during transitional periods. The first format will continue to be as defined in the existing rules and regulations of the Commission, the second will be in electronic data processing compatible format based on data elements and as shown below under General Background, or as

defined in rulemakings currently under consideration by the Commission. Detailed formats with reporting schedules will also be proposed and made available through additional rulemaking actions.

It is anticipated that the parallel reporting mentioned above will not exceed 2 years. It is further anticipated that the Commission will issue proposed rulemakings with EDP formats and reporting schedules within 6 months of the issuance of this proposed rulemaking.

In restructuring the current methods of reporting data to the Commission by using EDP technology, the Commission contemplates the ultimate elimination of all existing "hard-copy" public use forms with appropriate exception when EDP submission is impractical. Reporting of public use form information will be replaced by the submission of individual data elements within a general data element and code scheme which will be compatible with EDP media and data communications technology. It is anticipated that this major systems revision will have as a result the reduction of the total number of data items currently transmitted to the Commission by the respondents. This proposed rulemaking does not affect any other rules or rulemakings regarding the submission of data in EDP format.

In recognizing that those utilities reporting data to the Commission also report similar data to State or other governmental agencies, the Commission will coordinate this plan with the appropriate State and other governmental agencies.

Although the public use forms will no longer be maintained in the Office of Public Information, the same data will be available on high speed microfilm readers located in OPI. It is envisioned that this will have the effect of making specific information available rapidly. Hard copy printout will also be available.

General background. Important developments in the electric and gas industry, coupled with the technological advances in the state-of-the-art of computers and communications since the installation in 1964 of the Commission's computer facility, support the need for the rule now being proposed.

In 1962, the Commission established a data processing program to meet pressing needs related to area rate regulation, natural gas reserves, costs, electric power and natural gas publications. From the beginning, this program emphasized support of regulatory activities (in contrast to internal administrative procedures) and it is planned to continue this fundamental policy as delineated in this proposed rulemaking.

During the intervening years, the Commission has expanded its computer program to accommodate a large increase in the volume of data, changes in regulatory requirements and data interchange with other governmental agencies. Simultaneously, there has been a technological revolution in the general use of computers and communications by electric power and natural gas companies, as well as Government agencies.

In general, the two industries have been making greater and more extensive use of electronic data processing. The utility industry, in particular, has been one of the more sophisticated users of electronic data processing. Some of the more common processing programs include: Automated customer service centers, load studies, tower design, automatic load dispatching, microwave communications, mathematical and financial company models, and work scheduling.

The availability of solid-state hardware and improved software combined with the initiative of utility companies has extended the use of Electronic Data Processing into sales analysis, demand forecasting, stores inventory, engineering and production control. In addition, in recent years utilities have placed great emphasis on new areas of computer application such as: Resource optimization, transformer loading programs, and power plant control.

Computers have been used by the Commission on a project-by-project and case-by-case approach to support substantial regulatory areas, such as natural gas reserves, electric power studies, pipeline design, rate analysis, etc. These initial efforts were directed at replacing and supplementing, in part, existing manual processes at the Commission.

In addition to a significant growth of the existing systems, there have been extensive new technological developments in the computer field including data management systems, operating systems, information retrieval, engineering and simulation software. The Commission, being fully aware of these developments, recognizes that they must be applied to regulatory activities in the public interest.

Another significant innovation in regulation has been a shift from annual or short-range studies to more comprehensive trend studies embracing many years of past data and projections of future events.

Concomitant with the technological computer revolution, the Commission recognizes that new national priorities relating to energy resources are coming to the foreground necessitating the collection of large amounts of new data. Regulatory responsiveness in these new areas has become a major concern. For example, natural gas supply reserves require extensive reservoir data; electric power system reliability has become increasingly important and requires future projection of generating capacity; and environmental considerations continue to have a significant role in proceedings before the Commission.

The increased consumption of energy throughout the Nation and the dependence of consumers on an uninterrupted flow of electric power and natural gas demand that the Commission have rapid access to all relevant data. The Commission has concluded that it must have at its disposal the most advanced computer system practicable in order to discharge its duties and responsibilities.

The data which is essential for the Commission's activities originate from several sources. These include, but are not limited to, numerous public use forms, thousands of filings and applications annually from industry, response to specific Commission orders and data received from other Federal agencies or governmental bodies. As a consequence, the volume of data collected and processed each year is extremely large, resulting in millions of data items processed by the staff. Much of this information is operating information about the utilities (i.e., statistical and technical information). Segments of these data will continue to be interchanged or made available to other Federal agencies and interested parties in computer media for their own use.

This program, as contemplated by the Commission, provides a common data base and a new data element and data code concept. The concept evolved, is a standard data vocabulary with each data word, called a "data element," having a single unique definition and abbreviation; a homogeneous list of subunits or values called "data items"; logical coding structures or codes; and "use identifiers" for reference purposes.

This Data Element and Code standardization program provides the basis for the centralized data bank prescribed herein. The following illustrations examine more specifically what the components of the standard data vocabulary mean:

"Data items" are defined as "the smallest meaningful pieces or subunits or information appearing in a reporting or data system and which cannot be further subdivided and retain significant meaning." Examples are "red," "Texas," "311–10–2771," "male."

A "data element" is a unit of information or data class composed of a logical grouping of homogeneous pieces or subunits of information such that:

1. Each unit has a meaning in terms of "what it is" different from any other unit of information.

2. The individual subunits (data items) in such groupings are mutually exclusive.

3. In most cases, the data items of each group are exclusive to that unit of information.

When two like data items are grouped together, such as "New York," "Akron," and a group heading put over them that describes what the group of data items are, in this case "city," a logical grouping of homogeneous pieces or subunits of information or a "data element" has been established. Another example is the group of like data items, "Australia, Brazil, and France," grouped under "country."

A "data code" is a letter, a number, or a combination of alphanumeric characters, used to represent data items in facilitating machine processing.

A "data use identifier" (DUI) is the name given to a descriptive modification of a basic data element, reflecting a specific use of or reference to it, within a data system. A DUI may be the name of a field on a card or tape or column on a report form or format. It is the

name given to the data element within the system design.

"Data chains" are any combination of two or more data elements or date use identifiers.

Exhibit 1 is an example of data elements with numeric values and Exhibit 2 shows the relationship of the unique data element to its origin. Specifically, in Exhibit 2 the column headings have the following meanings:

Form ID: The identification of the FPC form number in which the data element is to be found.

Category: Identification of the broad classification of subject matters with which the data element is associated.
- A—Accounting.
- T—Technical.
- E—Environmental.
- G—General.

Size: The physical size of the data element, i.e., the maximum number of characters to be allocated, e.g., 012–12 spaces will be used to represent the data element.

Type: Type of data to be shown in association with the data element.
- A—alphabetic.
- N—numeric.
- AN—alphanumeric.

Class: Classification of data associated with the elements to facilitate processing.
- N—nonvariable.
- V—variable.
- S—subtotal.
- T—total.
- C—computable.

Account No.: The Uniform System of Accounts identifier associated with the data element.

In summary, the Commission finds that the time is appropriate to promulgate the aforesaid outline of the plan for the automation of regulatory and administrative information used by the Commission. The policies herein established will guide the staff of the Commission and the regulated utilities concerning the objectives and level of automation.

Any interested party may submit to the Federal Power Commission, Washington, D.C. 20426, not later than May 16, 1972, data, views, comments, or suggestions, in writing, concerning all or part of the subject matter and actions proposed herein. An original and 14 conformed copies should be filed with the Secretary of the Commission. Written submittals will be placed in the Commission's public files and will be available for public inspection at the Commission's Office of Public Information, Washington, D.C. 20426, during regular business hours. Submittals to the Commission should indicate the name, title, mailing address, and telephone number of the person to whom communications concerning the proposal should be addressed, and whether the person filing them requests a conference with the staff of the Federal Power Commission to discuss the proposed amendments. The staff, in its discretion, may grant or deny requests for conference. The Commission will consider all such written submittals and any conference submissions before taking further action on the matters herein proposed.

The Secretary shall cause prompt publication of this notice to be made in the FEDERAL REGISTER.

By direction of the Commission.

KENNETH F. PLUMB,
Secretary.

EXHIBIT 1

APEX POWER COMPANY 893240 ANNUAL REPORT—1972

Element No.	Element name	Modifier	
304850	Statement of income: Net utility operating income	Current year	47,578,206
304860	do	Increase/decrease from previous year	5,424,466
304861	Statement of income: Other income	Nonutility operating income: Current year	9,415
304862	do	Nonutility operating income: Increase/decrease	8,554
304863	do	Interest and dividend income: Current year	357,216
304864	do	Interest and dividend income: Increase/decrease	448,901–
304865	do	Allow for funds used during construction: Current year	12,087,088
304866	do	Allow for funds used during construction: Increase/decrease	5,286,072
304910	do	Miscellaneous nonoperating income: Current year	20,455
304920	do	Miscellaneous nonoperating income: Increase/decrease from previous year	22,203–
304930	do	Gain on disposition of property: Current year	45,315
304940	do	Gain on disposition of property: Increase/decrease	45,315
304950	do	Total other income: Current year	12,519,489
304960	do	Total other income: Increase/decrease from previous year	4,868,777
304970	Statement of income: Other income deductions	Loss on disposition of property: Current year	6
304980	do	Loss on disposition of property: Increase/decrease	6
304990	do	Miscellaneous amortization: Current year	0
305000	do	Miscellaneous amortization: Increase/decrease from previous year	15,935–
305010	do	Miscellaneous income deductions: Current year	153,651
305020	do	Miscellaneous income deductions: Increase/decrease from previous year	5,978
305030	do	Total other income deductions: Current year	153,657
305040	do	Total other income deductions: Increase/decrease	9,951–
305050	Statement of income: Taxes on other income and deductions	Taxes—Not income: Current year	6,283
305060	do	Taxes—Not income: Increase/decrease from previous year	1,557–
305070	do	Federal income taxes: Current year	133,876
305080	do	Federal income taxes: Increase/decrease from previous year	229,923–
305090	do	Other income taxes: Current year	1,758
305100	do	Other income taxes: Increase/decrease from previous year	3,283–
305110	do	Provided for deferred income taxes: Current year	0
305120	do	Provided for deferred income taxes: Increase/decrease	0
305130	do	Income tax deferred in prior year: Current year	0
305140	do	Income tax deferred in prior year: Increase/decrease	0
305150	do	Investment tax credit adjustment: Current year	0
305160	do	Investment tax credit adjustment: Increase/decrease from previous year	0
305170	do	Investment tax credits: Current year	0
305180	do	Investment tax credits: Increase/decrease from previous year	141,917
305190	do	Total taxes on other income-deductions: Current year	234,773–
305200	do	Total taxes on other income-deductions: Increase/decrease	12,223,915
305210	Statement of income: Other income and deductions	Net other income and deductions: Current year	5,113,502
305220	do	Net other income and deductions: Increase/decrease from previous year	22,041,408
305230	Statement of income: Interest charges	Interest on long-term debt: Current year	5,215,091
305240	do	Interest on long-term debt: Increase/decrease	

EXHIBIT 2

FEDERAL POWER COMMISSION DATA ELEMENT MASTER LIST AS OF MARCH 10, 1972

Element No.	Element name	Modifier	Form ID	Page No.	Catalog	Size	Type	Class	Account No.
304850	Statement of income: Net utility operating income.	Current year	001	0116A	A	012	N	S	
		Increase/decrease from previous year							
304860	do	Nonutility operating income: Current year	001	0116A	A	012	N	S	
304861	Statement of income: Other income.	Nonutility operating income: Increase/decrease.	001	0116A	A	012	N	V	415.
304862	do		001	0116A	A	012	N	V	415.

EXHIBIT 2—Continued

FEDERAL POWER COMMISSION DATA ELEMENT MASTER LIST AS OF MARCH 10, 1972

Element No.	Element name	Modifier	Form ID	Page No.	Catalog	Size	Type	Class	Account No.
304863	do	Interest and dividend income: Current year	001	0116A	A	012	N	V	419.
304864	do	Interest and dividend income: Increase/decrease.	001	0116A	A	012	N	V	419.
304865	do	Allow for funds used during construction: Current year.	001	0116A	A	012	N	V	432.
304866	do	Allow for funds used during construction: Increase/decrease.	001	0116A	A	012	N	V	432.
304910	do	Miscellaneous nonoperating income: Current year	001	0116A	A	012	N	V	421.
304920	do	Miscellaneous nonoperating income: Increase/decrease from previous year.	001	0116A	A	012	N	V	421.
304930	do	Gain on disposition of property: Current year	001	0116A	A	012	N	V	421.1
304940	do	Gain on disposition of property: Increase/decrease.	001	0116A	A	012	N	V	421.1
304950	do	Total other income: Current year	001	0116A	A	012	N	S	----------
304960	do	Total other income: Increase/decrease from previous year.	001	0116A	A	012	N	S	----------
304970	Statement of income: Other income deductions	Loss on disposition of property: Current year	001	0116A	A	012	N	V	421.2
304980	do	Loss on dispositions of property: Increase/decrease.	001	0116A	A	012	N	V	421.2
304990	do	Miscellaneous amortization: Current year	001	0116A	A	012	N	V	425.
305000	do	Miscellaneous amortization: Increase/decrease from previous year.	001	0116A	A	012	N	V	425.
305010	do	Miscellaneous income deductions: Current year.	001	0116A	A	012	N	V	426.
305020	do	Miscellaneous income deductions: Increase/decrease from previous year.	001	0116A	A	012	N	V	426.
305030	do	Total other income deductions: Current year	001	0116A	A	012	N	S	----------
305040	do	Total other income deductions: Increase/decrease.	001	0116A	A	012	N	S	----------
305050	Statement of income: Taxes on other income and deductions.	Taxes—Not income: Current year	001	0116A	A	012	N	V	408.2
305060	do	Taxes—Not income: Increase/decrease from previous year.	001	0116A	A	012	N	V	408.2
305070	do	Federal income taxes: Current year	001	0116A	A	012	N	V	409.2
305080	do	Federal income taxes: Increase/decrease from previous year.	001	0116A	A	012	N	V	409.2
305090	do	Other income taxes: Current year	001	0116A	A	012	N	V	409.2
305100	do	Other income taxes: Increase/decrease from previous year.	001	0116A	A	012	N	V	409.2
305110	do	Provided for deferred income taxes: Current year.	001	0116A	A	012	N	V	410.2
305120	do	Provided for deferred income taxes: Increase/decrease.	001	0116A	A	012	N	V	410.2
305130	do	Income tax deferred in prior year: Current year	001	0116A	A	012	N	V	411.2
305140	do	Income tax deferred in prior year: Increase/decrease.	001	0116A	A	012	N	V	411.2
305150	do	Investment tax credit adjustment: Current year.	001	0116A	A	012	N	V	411.5
305160	do	Investment tax credit adjustment: Increase/decrease from previous year.	001	0116A	A	012	N	V	411.5
305170	do	Investment tax credits: Current year	001	0116A	A	012	N	V	420.
305180	do	Investment tax credits: Increase/decrease from previous year.	001	0116A	A	012	N	V	420.
305190	do	Total taxes on other income-deductions: Current year.	001	0116A	A	012	N	S	----------
305200	do	Total taxes on other income-deductions: Increase/decrease.	001	0116A	A	012	N	S	----------
305210	Statement of income: Other income and deductions.	Net other income and deductions: Current year.	001	0116A	A	012	N	S	----------
305220	do	Net other income and deductions: Increase/decrease from previous year.	001	0116A	A	012	N	S	----------
305230	Statement of income: Interest charges	Interest on long-term debt: Current year	001	0116A	A	012	N	V	427.
305240	do	Interest on long-term debt: Increase/decrease.	001	0116A	A	012	N	V	427.

[FR Doc.72-5806 Filed 4-14-72;8:49 am]

[18 CFR Part 154]

[Docket No. R-312]

PRICE LEVELS BELOW WHICH REFUNDS WILL NOT BE ORDERED, INDEPENDENT PRODUCERS

Order Terminating Proposed Rulemaking Proceeding

APRIL 10, 1972.

The Commission has under consideration here a proposal to amend § 154.102 of its regulations under the Natural Gas Act to provide a "floor" for refund obligations of independent producers, whose increased rates are being collected subject to refund in rate proceedings under section 4(e) of the Natural Gas Act, by setting price levels below which refunds would not be ordered in the various pricing areas other than the Permian Basin Area. The proposed rule was intended as an interim measure applicable only to the period prior to the determination of just and reasonable rates in each area.

The notice of proposed rule making was issued on December 14, 1966 (31 F.R. 16279, December 20, 1966). In response to such notice, comments were received from a number of interested parties.

In light of the area just and reasonable rate determinations made by us in the Appalachian and Illinois Basin Areas, the Hugoton-Anadarko Area, the Texas Gulf Coast Area, the Southern Louisiana Area, and the Other Southwest Area, the proposal in Docket No. R-312, for the most part, is moot. We, therefore, believe it appropriate to terminate Docket No. R-312.

The Commission finds:

(1) The termination of the proposed rule making in Docket No. R-312 is appropriate and necessary for carrying out the provisions of the Natural Gas Act.

(2) For the reasons stated above, the notice, public procedure and effective date provisions of 5 U.S.C. section 553 do not apply.

The Commission, acting pursuant to the provisions of the Natural Gas Act, as amended, particularly section 16 (52 Stat. 830; 15 U.S.C. 717o), orders:

(A) Effective upon the issuance of this order, the proposed rule making in Docket No. R-312 is terminated.

(B) The Secretary shall cause prompt publication of this order to be made in the FEDERAL REGISTER.

By the Commission.

[SEAL] KENNETH F. PLUMB, *Secretary.*

[FR Doc.72-5800 Filed 4-17-72;8:45 am]

Notices

DEPARTMENT OF THE TREASURY

Fiscal Service

[Dept. Circ. 570, 1971 Rev., Supp. No. 17]

QUEEN INSURANCE COMPANY OF AMERICA AND ROYAL GLOBE INSURANCE COMPANY

Termination as Surety on Federal Bonds and Acceptable Surety on Federal Bonds

Queen Insurance Company of America, New York, N.Y., which holds a certificate of authority as acceptable surety on Federal bonds (36 F.R. 12957, July 9, 1971), under sections 6 to 13 of the United States Code merged into Royal Globe Insurance Co., an Illinois corporation, effective December 31, 1971. The latter company is the surviving corporation. Confirmation of this action has been received and filed in the Treasury. Accordingly, the certificate of authority held by Queen Insurance Company of America is hereby terminated, effective December 31, 1971.

The surviving corporation has assumed the assets and liabilities of the merged corporation and has been issued a certificate of authority as an acceptable surety on Federal bonds, effective January 1, 1972 with an underwriting limitation of $5,608,000 as follows:

Name of company, location of principal executive office, and State in which incorporated:

Royal Globe Insurance Company
New York, New York
Illinois

In view of the foregoing, no action need be taken by bond-approving officers by reason of the merger of Queen Insurance Company of America with respect to any bond or other obligation in favor of the United States, or in which the United States has an interest, direct or indirect, issued prior to January 1, 1972, by Queen Insurance Company of America pursuant to its certificate of authority issued by the Treasury.

Certificates of authority expire on June 30 each year, unless sooner revoked, and new certificates are issued on July 1 so long as the companies remain qualified (31 CFR Part 223). A list of qualified companies is published annually as of July 1 in Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact fidelity and surety business and other information. Copies of the circular, when issued, may be obtained from the Treasury Department, Bureau of Accounts, Audit Staff, Washington, D.C. 20226.

Dated: April 13, 1972.

[SEAL] JOHN K. CARLOCK,
Fiscal Assistant Secretary.

[FR Doc.72-5874 Filed 4-17-72;8:50 am]

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

[Notice 59]

TYPE 14 TOBACCO IN GEORGIA AND FLORIDA

Extension of Closing Date for Filing of Applications for 1972 Crop Year

Pursuant to the authority contained in § 401.103 of Title 7 of the Code of Federal Regulations, the time for filing applications for tobacco crop insurance for the 1972 crop year on type 14 tobacco in all counties in Georgia and Florida where such insurance is otherwise authorized to be offered is hereby extended until the close of business on April 14, 1972. Such applications received during this period will be accepted only after it is determined that no adverse selectivity will result.

RICHARD H. ASLAKSON,
Manager, Federal Crop Insurance Corporation.

[FR Doc.72-5869 Filed 4-17-72;8:50 am]

[Notice 60]

RICE IN ARKANSAS, LOUISIANA, AND MISSISSIPPI

Extension of Time for Filing Applications for Insurance

Pursuant to the authority contained in § 401.103 of Title 7 of the Code of Federal Regulations, the time for filing applications for rice crop insurance for the 1972 crop year in all counties in Arkansas, Louisiana, and Mississippi where such insurance is otherwise authorized to be offered is hereby extended until the close of business on April 20, 1972. Such applications received during this period will be accepted only after it is determined that no adverse selectivity will result.

RICHARD H. ASLAKSON,
Manager, Federal Crop Insurance Corporation.

[FR Doc.72-5870 Filed 4-17-72;8:50 am]

DEPARTMENT OF COMMERCE

Bureau of International Commerce

[File: 23(69)-14]

MOCAMBIQUE INDUSTRIAL S.A.R.L.

Order Terminating Indefinite Denial Order

In the matter of Mocambique Industrial S.A.R.L., Beria, Mozambique, respondent, File: 23(69)-14.

On November 17, 1969 (34 F.R. 18770), an order was entered against the above respondent denying it for an indefinite period, all privileges of participating in transactions involving commodities or technical data exported or to be exported from the United States. This order was issued in accordance with § 388.15 of the Export Control Regulations because respondent failed to answer interrogatories without showing good cause for such failure.

The respondent has now furnished essential information in answer to the interrogatories. Pursuant to said § 388.15 the amobe mentioned indefinite denial order of November 17, 1969, is hereby terminated.

Dated: April 11, 1972.

RAUER H. MEYER,
Director, Office of Export Control.

[FR Doc.72-5828 Filed 4-17-72;8:47 am]

Office of Import Programs

FEDERAL BUREAU OF INVESTIGATION ET AL.

Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Articles

The following is a consolidated decision on applications for duty-free entry of scientific articles pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (37 F.R. 3892 et seq.).

A copy of the record pertaining to each of the applications in this consolidated decision is available for public review during ordinary business hours of the Department of Commerce, at the Special Import Programs Division, Office of Import Programs, Department of Commerce, Washington, D.C.

Decision: Applications denied. Applicants have failed to establish that instruments or apparatus of equivalent scientific value to the foreign articles, for such purposes as the foreign articles are intended to be used, are not being manufactured in the United States.

Reasons: Section 701.8 of the regulations provides in pertinent part:

The applicant shall on or before the 20th day following the date of such notice, inform the Deputy Assistant Secretary whether it intends to resubmit another application for the same article for the same intended purposes to which the denied application relates. The applicant shall then resubmit the new application on or before the 90th day following the date of the notice of denial without prejudice to resubmission, unless an extension of time is granted by the Deputy Assistant Secretary in writing prior to the expiration of the 90-day period. * * * If the applicant fails, within the applicable time periods specified above, to either (a) inform the Deputy Assistant Secretary whether it intends to re-

submit another application for the same article to which the denial without prejudice to resubmission relates, or (b) resubmit the new application, the prior denial without prejudice to resubmission shall have the effect of a final decision by the Deputy Assistant Secretary on the application within the context of § 701.11.

The meaning of the subsection is that should an applicant either fail to notify the Deputy Assistant Secretary of its intent to resubmit another application for the same article to which the denial without prejudice relates within the 20-day period, or fails to resubmit a new application within the 90-day period, the prior denial without prejudice to resubmission will have the effect of a final denial of the application.

None of the applicants to which this consolidated decision relates has satisfied the requirements set forth above, therefore, the prior denials without prejudice have the effect of a final decision denying their respective applications.

Section 701.8 further provides:

* * * the Deputy Assistant Secretary shall transmit a summary of the prior denial without prejudice to resubmission to the FEDERAL REGISTER for publication, to the Commissioner of Customs, and to the applicant.

Each of the prior denials without prejudice to resubmission to which this consolidated decision relates was based on the failure of the respective applicants to submit the required documentation, including a completely executed application form, in sufficient detail to allow the issue of "scientific equivalency" to be determined by the Deputy Assistant Secretary.

Docket No. 70-00568-65-77040. Applicant: Federal Bureau of Investigation, Room 5266, 10th and Pennsylvania Avenue NW., Washington, DC 20535. Article: Double focusing spark source mass spectrometer, MS 702. Date of denial without prejudice to resubmission: December 6, 1971.

Docket No. 71-00361-00-07795. Applicant: University of California Los Alamos Scientific Laboratory, Post Office Box 990, Los Alamos, NM 87544. Article: Four each lenses, Model 1060-217. Date of denial without prejudice to resubmission: January 21, 1972.

Docket No. 71-00313-16-61800. Applicant: Museum of Arts and Sciences, 137 North Halifax Avenue, Daytona Beach, FL 32018. Article: Planetarium, Model Venus. Date of denial without prejudice to resubmission: December 14, 1971.

Docket No. 71-00468-33-46500. Applicant: University of Illinois, Purchasing Division, 223 Administration Building, Urbana, Ill. 61801. Article: Ultramicrotome, Model Om U2. Date of denial without prejudice to resubmission: December 6, 1971.

Docket No. 72-00088-99-66700. Applicant: University of Cincinnati, Academic Computer Services, 1401 Crosley Tower, Cincinnati, Ohio 45221. Article: Teleprocessing projector. Date of denial without prejudice to resubmission: December 20, 1971.

Docket No. 72-00093-99-66700. Applicant: Carnegie-Mellon University, Department of Computer Sciences, 5000 Forbes Street, Pittsburgh, PA 15213. Article: Teleprinter projector. Date of denial without prejudice to resubmission: December 20, 1971.

Docket No. 70-00809-65-46070. Applicant: Massachusetts Institute of Technology, Department of Metallurgy, 77 Massachusetts Avenue, Cambridge, MA 02139. Article: Scanning electron microscope, Mark IIA. Date of denial without prejudice to resubmission: November 29, 1971.

Docket No. 71-00288-01-28200. Applicant: University of North Carolina, Department of Chemistry, Chapel Hill, N.C. 27514. Article: ESR spectrometer. Date of denial without prejudice to resubmission: November 30, 1971.

Docket No. 71-00296-00-61800. Applicant: Central Florida Museum and Planetarium, 810 East Rollins Avenue, Orlando, FL 32803. Article: Planetarium projector, Model MS-10. Date of denial without prejudice to resubmission: November 30, 1971.

Docket No. 71-00316-65-07700. Applicant: Georgia Institute of Technology, 225 North Avenue NW., Atlanta, GA 30332. Article: Oscilloscope camera and accessories. Date of denial without prejudice to resubmission: November 2, 1971.

Docket No. 71-00345-33-46500. Applicant: University of Cincinnati, Department of Laboratory Animal Medicine, College of Medicine, Eden and Bethesda Avenues, Cincinnati, OH 45219. Article: Ultramicrotome, Model LKB 8800A. Date of denial without prejudice to resubmission: November 2, 1971.

Docket No. 71-00346-33-46500. Applicant: Rutgers State University, 7 College Avenue, New Brunswick, NJ 08903. Article: Ultramicrotome, Model LKB 8800A. Date of denial without prejudice to resubmission: November 2, 1971.

Docket No. 71-00358-33-46040. Applicant: University of California, San Diego, University Hospital of San Diego County, 225 West Dickinson Street, Post Office Box 3548, San Diego, CA 92103. Article: Electron microscope, Model HU-11E. Date of denial without prejudice to resubmission: November 2, 1971.

Docket No. 71-00362-00-07700. Applicant: University of California, Los Alamos Scientific Laboratory, Post Office Box 990, Los Alamos, NM 87554. Article: Lens, Kinoptik, with barrel mount in carrying case. Date of denial without prejudice to resubmission: November 2, 1971.

Docket No. 71-00383-33-70700. Applicant: Michigan State University, MSU-AEC Plant Research Laboratory, Wilson Road, East Lansing, Mich. 48823. Article: Three channel magnetic tape recorder. Date of denial without prejudice to resubmission: November 30, 1971.

Docket No. 71-00402-33-46040. Applicant: Department of Law and Public Safety, Office of State Medical Examination, 150 Cabinet Street, Newark, NJ 07107. Article: Electron microscope, Model EM 9S-2. Date of denial without prejudice to resubmission: November 29, 1971.

Docket No. 71-00448-33-46040. Applicant: Sloan-Kettering Institute for Cancer Research, Division of Immunology, 425 East 68th Street, New York, NY 10021. Article: Electron microscope, Model EM 9S-2. Date of denial without prejudice to resubmission: November 2, 1971.

Docket No. 71-00576-33-43780. Applicant: Washington Hospital Center, Department of Pulmonary Diseases, 110 Irving Street NW., Washington, DC 20010. Article: Biopsy needle. Date of denial without prejudice to resubmission: November 30, 1971.

SETH M. BODNER,
Director,
Office of Import Programs.

[FR Doc.72-5816 Filed 4-17-72;8:47 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[Docket No. FDC-D-351; NDA 6-566, etc.]

OXANAMIDE AND CERTAIN OTHER DRUGS

Notice of Withdrawal of Approval of New Drug Applications

Correction

In F.R. Doc. 72-2136 appearing at page 3199 in the issue of Saturday, February 12, 1972, the last NDA No. in the table on page 3200, now reading "16-934", should read "6-934 ".

Office of Education

NATIONALLY RECOGNIZED ACCREDITING ASSOCIATIONS AND AGENCIES

List

For the purposes of determining eligibility for Federal assistance, pursuant to Public Law 82-550 and subsequent legislation, the U.S. Commissioner of Education hereby publishes additions to the list of nationally recognized accrediting agencies which he determines to be reliable authority as to the quality of training offered by educational institutions or programs either in a geographical area or in a specialized field, and the general scope of recognition granted to the accrediting bodies.

These additions may be added to the list previously promulgated by the Commissioner of Education on May 16, 1970, 35 F.R. 7668-7669.

ASSOCIATIONS AND AGENCIES RECOGNIZED FOR THEIR SPECIALIZED ACCREDITATION OF SCHOOLS OR PROGRAMS

BLIND AND VISUALLY HANDICAPPED EDUCATION

National Accreditation Council for Agencies Serving the Blind and Visually Handicapped (residential schools for the blind).

FUNERAL SERVICE EDUCATION

Commission of Schools, American Board of Funeral Service Education (independent schools and collegiate departments).

HOSPITAL ADMINISTRATION

Accrediting Commission on Graduate Education for Hospital Administration (graduate programs).

LANDSCAPE ARCHITECTURE

Committee on Education, American Society of Landscape Architects (first professional degree programs).

Dated: April 10, 1972.

S. P. MARLAND, Jr.,
U.S. Commissioner of Education.

[FR Doc.72-5794 Filed 4-17-72;8:47 am]

ATOMIC ENERGY COMMISSION

[Docket No. 50-346]

TOLEDO EDISON CO. AND CLEVELAND ELECTRIC ILLUMINATING CO.

Memorandum and Order and Notice of Hearing on Suspension of Construction Activity at Davis-Besse Nuclear Power Station

On April 7, 1972, the U.S. Court of Appeals for the District of Columbia Circuit rendered a decision remanding the record of a determination, made by the Director of Regulation in the above proceeding under 10 CFR Part 50, Appendix D, section E, for a hearing and further consideration. "Coalition for Safe Nuclear Power et al. v. U.S.A.E.C.," No. 71-1396. Noting that the utilities would commit substantial financial resources in proceeding with construction during the period pending completion of the review under the National Environmental Policy Act of 1969 (NEPA), the court stated that the Commission should consider certain additional matters in the context of balancing environmental harm and economic cost of abandonment. In this regard, the court stated:

> On remand, the Commission should consider in detail whether this additional irretrievable commitment of substantial resources might affect the eventual decision reached on the N.E.P.A. review. The degree to which this expenditure might affect the outcome of the final N.E.P.A. process should be a paramount consideration in the decision on suspension reached after the hearings on remand.

Accordingly, we hereby order a hearing before an Atomic Safety and Licensing Board (Licensing Board) named below, on the question whether the activities under the construction permit No. CPPR-80 for the Davis-Besse facility should be suspended pending completion of final NEPA review. We treat the submission of the Coalition for Safe Nuclear Power and Living in a Finer Environment to the Court of Appeals, together with the court's action thereon, as constituting a request for a hearing. The time and place for the hearing shall be published in the FEDERAL REGISTER by the Licensing Board. The matters to be considered in this hearing shall be the factors specified in 10 CFR Part 50, Appendix D, section E.2, together with the considerations specified in the court's remand.

The remand requires return of the record to the court on or before June 6, 1972. Hence, we direct that all matters be concluded with utmost expedition. For these purposes, the proceeding shall be conducted under the following requirements:

1. The hearing will be held before a Licensing Board composed of the following members: Dr. John Lyman, Dr. Emmeth A. Luebke, and Jerome Garfinkel, Esq., Chairman. Pursuant to 10 CFR 2.785(a)(1), the Commission hereby delegates to the Atomic Safety and Licensing Appeal Board (Appeal Board) the authority and the review function which would otherwise be exercised and performed by the Commission. The Appeal Board shall be composed of the following members: the chairman, the vice chairman, and Dr. Lawrence Quarles.

2. An answer shall be filed by the licensees within three (3) days of the date of publication of this notice following 10 CFR 2.705 to the extent appropriate. A reply to an answer may be filed within three (3) days after it is served.

3. The Licensing Board shall render its initial decision on or before May 19, 1972. In order to meet this schedule, the Licensing Board shall conduct the hearing as soon as possible.

4. The Licensing Board's initial decision shall constitute the final decision of the Commission unless exceptions are filed within five (5) days after its date of issuance or unless, within the same time period, the Appeal Board or Commission directs that the record be certified to it for final decision.

Insofar as this notice and the requirements specified herein reflect shortening of time periods otherwise prescribed in 10 CFR Part 2, we find good cause for such action under 10 CFR 2.711 and 10 CFR Part 50, Appendix D, section E.4(c). We further note that the authority of 10 CFR 2.711 also extends to the Licensing Board.

For purposes of this proceeding on the question whether activities under the construction permit should be suspended pending completion of the ongoing NEPA review, the parties shall be the licensees, the Regulatory Staff, and the Coalition for Safe Nuclear Power, and Living in a Finer Environment.

The Licensing Board shall render a de novo decision based upon the criteria in 10 CFR Part 50, Appendix D, section E.2, together with the above considerations specified in the court's remand. The burden of proof shall be upon the licensees.

Papers required to be filed in this proceeding may be filed by mail or telegram addressed to the Secretary of the Commission, U.S. Atomic Energy Commission, Washington, D.C. 20545, Attention: Chief, Public Proceedings Branch, or may be filed by delivery to the Commission's Public Document Room, 1717 H Street NW., Washington, DC.

Pending further order of the Board, parties are required to file, pursuant to the provisions of 10 CFR 2.708 of the Commission's rules of practice, an original and twenty (20) conformed copies of each such paper with the Commission.

A copy of the Director of Regulation's determination, and the accompanying staff discussion and findings, are available for inspection by members of the public in the Commission's Public Document Room, 1717 H Street NW., Washington, DC. Copies of those documents are also available at the Ida Rupp Public Library, Port Clinton, Ohio, between the hours of 10 a.m. and 8 p.m., Monday through Saturday.

Commissioner Johnson did not participate in this matter.

Dated at Germantown, Md., this 12th day of April 1972.

UNITED STATES ATOMIC ENERGY COMMISSION,
F. T. HOBBS,
Acting Secretary of the Commission.

[FR Doc.72-5797 Filed 4-17-72;8:47 am]

CIVIL AERONAUTICS BOARD

[Docket No. 24236; Order 72-4-51]

ALLEGHENY AIRLINES, INC.

Order Denying Application for an Order To Show Cause and Temporary Suspension, and Setting Application for Hearing

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 12th day of April 1972.

Allegheny Airlines, Inc. (Allegheny), has filed an application (Docket 24236) to (1) delete Marion, Ind., from its certificate of public convenience and necessity for route 97, and (2) redesignate Muncie-Anderson-New Castle, Ind., a point on segment 9, as Muncie-Marion-Anderson-New Castle, Ind. In addition, Allegheny has filed (1) a motion seeking issuance of an order to show cause why its certificate should not be amended as requested; (2) an application to suspend service temporarily at Marion, Ind., if necessary, until the Board acts upon its application in Docket 24236.[1]

In support of its application in Docket 24236, Allegheny alleges, inter alia, that Marion has not generated sufficient passenger traffic to warrant the continuation of air service;[2] Allegheny has tried unsuccessfully to find another air taxi to provide service; Marion is not isolated as there are four other airports serving

[1] By Order 69-11-8, dated Nov. 4, 1969, the Board temporarily suspended Allegheny's service at Marion, Ind., for a period of 5 years on the condition that a replacement air taxi operator provide at least two daily round trips between Marion and Chicago. Air Wisconsin, the air taxi presently providing the replacement service, has expressed its intention to cease its operations at Marion on Apr. 1, 1972.

the area;[3] a reinstitution of certificated service to Marion would generate a subsidy need increase of approximately $120,408 or $36 per passenger; and it would be economically wasteful to require Allegheny to reinstitute service at Marion on April 1, 1972, pending the disposition of its deletion application.

An answer in opposition to Allegheny's application has been filed by the city of Marion (Marion), which controverts the allegations of Allegheny and requests that a hearing be held to include the additional issue of whether Muncie, Anderson, and Kokomo should be served through the Marion Airport.

Upon consideration of the pleadings and all the relevant facts, we have decided to deny Allegheny's requests for a show cause order, temporary suspension, and to set for hearing Allegheny's application to delete Marion and redesignate Muncie-Anderson-New Castle as Muncie-Marion-Anderson-New Castle. The community opposes Allegheny's application and we believe that under all the circumstances it is appropriate to consider on an evidentiary record the conflicting contentions of the parties. We note that there is no other air taxi serving Marion and that should Allegheny's application be granted, Marion will be without air service for the first time since 1952.[4]

We will deny Marion's request that the hearing include the issue of whether Anderson, Muncie, and Kokomo should be served through the Marion Airport. The city has failed to submit any supporting data which suggests that the overall public interest would best be served by a transfer of service from the Muncie and Kokomo Airports to the airport at Marion.

Accordingly, it is ordered, That:

1. The motion of Allegheny Airlines, Inc., for an order to show cause, be and it hereby is denied;

2. The application of Allegheny Airlines, Inc., for a temporary suspension, be and it hereby is denied;

3. The application of Allegheny Airlines, Inc., be and it hereby is set for hearing at a time and place to be hereafter designated; and[5]

4. This order shall be served on the city of Marion; Airport Manager, Marion Airport; State of Indiana; the Indiana Aeronautics Commission; Allegheny Airlines, Inc.; and the Postmaster General.

[3] In 1970, Marion averaged 5.6 passengers per day each way and in 1971, 3.6 passengers each way or 1.8 each departure.

[3] In mileage and driving times from Marion the airports are as follows: Muncie is 35 miles and 45 minutes driving time, Kokomo is 23 miles and 28 minutes' driving time, Fort Wayne is 50 miles and 1 hour's driving time, Indianapolis is 66 miles and 1 hour and 19 minutes' driving time.

[4] 16 C.A.B. 886.

[5] The hearing shall determine whether the public convenience and necessity require that the certificate of Allegheny for route 97 should be altered, amended, or modified so as to (1) delete Marion, Ind. and/or (2) redesignate Muncie-Anderson-New Castle, Ind., as Muncie-Marion-Anderson-New Castle, Ind., to be served through the Muncie Airport.

This order shall be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] HARRY J. ZINK,
Secretary.

[FR Doc.72-5856 Filed 4-17-72;8:51 am]

[Docket No. 20291; Order 72-4-50]

INTERNATIONAL AIR TRANSPORT ASSOCIATION

Order Setting Matter for Oral Argument

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 11th day of April 1972.

By Order 72-1-7, January 4, 1972, the Board deferred action on certain amendments to section XII of the Provisions for the Regulation and Conduct of IATA Traffic Conferences (Agreement CAB 1175-A29) resulting from action of the IATA Executive Committee at its 82d meeting held in Honolulu, Hawaii, on November 19, 1971. Concurrently, the Board requested comments from U.S. member carriers of IATA and invited comments thereon from any interested persons.[1]

The proposed amendments provide that, whenever unanimity among Traffic Conference members is not attainable as to the ratification of rates, fares or related intercarrier agreements, partial or bilateral agreements may be effected subject to IATA Traffic Conference and compliance machinery. Heretofore, only those agreements which met the unanimity rule were subject to the Traffic Conference provisions. Furthermore, under existing IATA rules, the Provisions for the Regulation and Conduct of the Traffic Conferences may be amended by action of the IATA Executive Committee. Additionally, an explanatory memorandum submitted as an attachment to the amendments states that such action will not deprive anyone of present voting rights in the Traffic Conferences, nor will any member be asked or be expected to be bound to any partial agreement without his consent. The memorandum further specifies that emphasis still will be upon unanimity for Conference action but where that unanimity is not attainable and carriers otherwise would have to resort to bilateral agreements as the only alternative to chaos and confusion, the IATA Traffic Conference and Compliance machinery would be made available to formalize and enforce such partial agreements. Such procedure could be invoked only upon approval by the Director General of IATA.

Comments in response to the Board's order have been received from several U.S. member carriers of IATA,[2] Seaboard World Airlines, Inc., a non-IATA carrier, the National Air Carrier Association (NACA) on behalf of its members, and the Aviation Consumer Action Project (ACAP).

Five U.S. member carriers of IATA support the amendments to section XII[3] and four oppose them.[4]

Those carriers favoring the amendments to section XII submit, in summary, that (1) past Traffic Conferences have had limited success because the veto of one carrier has frequently prevented the industry from reaching an agreement on items that a great majority of carriers believed were in the best interests of the public; (2) such past, prolonged inability to achieve unanimity has been a frustrating and costly exercise for IATA member carriers; (3) the instant amendments would not weaken individual carrier rights nor could such changes jeopardize or deprive any one carrier of its present voting rights; and (4) no carrier would be bound by an agreement without his consent and that IATA Compliance and Enforcement machinery would only be used with respect to participating carriers.

Those carriers in opposition to the amendments to section XII state, in pertinent part, that (1) the amendments were adopted by the Executive Committee which has minority U.S. carrier representation; (2) the Executive Committee bypassed IATA membership which precluded member comments or votes; (3) the instant amendments destroy the unanimity rule which has been a keystone of IATA since its inception; and (4) IATA's submission contemplates rate and fare discussions and agreements among groups of carriers independent of IATA meetings; and that U.S. carriers would be precluded from such meetings by antitrust laws or, alternatively, they would be besieging the Board with requests for authority to participate in such discussions. Additionally, the carriers suggest that procedures should be made clear that such discussions and agreements by less than the full membership of a Conference would only occur in the course of regular IATA meetings. The carriers further remark that the unanimity rule has not led to inflated fare levels but has had the effect of reducing fares; the proposed amendments, according to the carriers, seem clearly designed to raise fares.

The carriers in opposition have also indicated that such majority actions might be adopted as government-decreed rates by the governments of one or more carrier parties to the agreement, which governments might, in turn, require nonparticipating carriers to abide by the agreement whether or not approved by the Board or in the public interest. Moreover, according to such carriers, majority carriers to an agreement might be

[1] The full text of the resolution was attached to Order 72-1-7.

[2] American Airlines, Inc., Braniff International Airways, Inc., Delta Air Lines, Inc., Eastern Air Lines, Inc., the Flying Tiger Line, Inc., National Airlines, Inc., Northwest Airlines, Inc., Pan American World Airways, Inc., Trans World Airlines, Inc., and United Air Lines, Inc.

[3] American Airlines, Inc., Eastern Air Lines, Inc., National Airlines, Inc., Pan American World Airways, Inc., and Trans World Airlines, Inc.

[4] Braniff International Airways, Inc., Delta Air Lines, Inc., the Flying Tiger Line Inc., and Northwest Airlines, Inc.

precluded from joint routings/rates with carriers not party to the partial agreement if such majority carrier action were subject to Enforcement and Breaches Commission action. The carriers further state that such signatories to majority agreements could also apply economic pressure to minority carriers by excluding them from agreed-fare service combinations, thereby forcing them to join such agreements.

Seaboard World Airlines, Inc., proposed procedural safeguards for the processing and disposition of such agreements as may be submitted before the Board, i.e., prior Board approval of discussions, the monitoring of such discussions, service of the resultant agreement on all affected air carriers, and opportunity for public comment on and government approval of such agreements before their implementation.

NACA, on behalf of its members, asserts that nonagreeing carriers could be forced to join majority agreements by virtue of the actions of foreign government adopting such agreements and that the proposed amendment might deprive the Board of some of the limited influence it now possesses in areas of fares which may be considered unreasonable by U.S.-flag carriers and the Board itself. It has recommended that the Board should institute a hearing since information presented is insufficient to determine if the proposed amendments are adverse to the public interest.

ACAP has indicated its disapproval of the amendments to section XII and considers them adverse to the public interest. Furthermore, it states that the amendments will (1) reduce the effectiveness of the Board's regulation of IATA matters; (2) cause the Board to be faced with majority agreements U.S. carriers may be unwilling to accept; and (3) curtail freedom of individual airlines to take independent action. Moreover, according to ACAP, the unanimity rule has been a proven safeguard against fare increases by majority action. ACAP suggests that an investigation be instituted to explore possible changes of those rules.

On the basis of this record, we view the proposed amendments as raising issues of considerable significance, requiring further examination which we shall accomplish through the holding of oral argument.[5] Thus, questions have been raised whether the proposed changes would have a significant impact on the level of fares; whether they affect the Board's ability to pass effectively on IATA matters; and whether the instant proposal was appropriately effected through Executive Committee action rather than by the full membership. In addition, the present record lacks the necessary specifics on the extent to which Traffic Conference proceedings have been protracted because of the inability of the membership to arrive at unanimous accord; to what extent any resulting agreements will be considered "IATA agreements" for all purposes; whether the implementation of these limited agreements will require any further amendment of the Traffic Conference provisions; and what antitrust implications inhere in the proposal.

Accordingly, it is ordered, That:

1. CAB Agreement 1175–A29 be set for oral argument before the Board on June 1, 1972, in Room 1027, Universal Building, 1825 Connecticut Avenue NW., Washington, DC; and

2. All parties of record in this proceeding who desire to participate in such oral argument shall submit a request to the Chief Examiner in writing no later than 19 days prior to such oral argument; such notification may be accompanied by a memorandum of argument not to exceed twenty pages in length, which shall be served on each person named on page 2, paragraph 1, supra. The request shall indicate the time allotment desired. The parties will be notified at a later date as to the time to be allotted them.[6]

By the Civil Aeronautics Board.

[SEAL] HARRY J. ZINK,
Secretary.

[FR Doc.72–5857 Filed 4–17–72;8:51 am]

[5] It should be noted that the comments of interested persons were received before the enactment of Public Law 92–259, which substantially enhances the Board's jurisdiction over rates in foreign air transportation.

[6] The time the Board can devote to oral argument is necessarily limited, and joint presentations are encouraged for organizations or persons sharing a common position.

This order shall be published in the FEDERAL REGISTER.

FARM CREDIT ADMINISTRATION

[Farm Credit Administration Order 750]

DIRECTOR OF OPERATIONS AND FINANCE SERVICE

Authority Regarding Certain Functions

FEBRUARY 14, 1972.

Authority of the Director of Operations and Finance Service to approve mergers, consolidations, and amendments of charters, certificates of district to be served, and bylaws of Federal land bank associations and production credit associations.

Whereas, the Governor of the Farm Credit Administration is authorized by the Farm Credit Act of 1971 (Sections 1.13, 2.10, 5.18; 85 Stat. 587, 597, 621) to issue and amend or modify Federal charters and the bylaws of institutions of the Farm Credit System, approve mergers and consolidations of Federal land bank associations and of production credit associations, and consolidations or divisions of the territories they serve; and approve consolidations of boards of directors and of management agreements; and

Whereas, the Governor is authorized by said Act (Section 5.13; 85 Stat. 620) to exercise and perform his powers through such other officers and employees of the Farm Credit Administration as he shall designate;

Now, therefore, *It is hereby ordered,* Effective on the day and date above written, that the Director of Operations and Finance Service be and he hereby is authorized and empowered, with respect to Federal land bank associations and production credit associations, to (1) amend or modify charters; (2) amend or modify bylaws; (3) approve agreements of merger or consolidation; (4) approve consolidations or divisions of territories they serve; (5) approve consolidations of boards of directors; (6) approve management agreements.

E. A. JAENKE,
Governor,
Farm Credit Administration.

[FR Doc.72–5835 Filed 4–17–72;8:48 am]

[Farm Credit Administration Order 751]

DEPUTY GOVERNOR AND DIRECTOR, CREDIT SERVICE, ET AL.

Authority To Act as Governor

APRIL 12, 1972.

Authority of officers of the Farm Credit Administration to act as Governor in the event that the Governor is absent or not able to perform the duties of his office for any other reason (revocation of FCA Order No. 744).

1. In the event that the Governor of the Farm Credit Administration is absent or is not able to perform the duties of his office for any other reason, the officer of the Farm Credit Administration who is the highest on the following list and who is available to act is hereby authorized to exercise and perform all functions, powers, authority, and duties pertaining to the office of Governor of the Farm Credit Administration:

(1) Deputy Governor and Director, Credit Service;

(2) Deputy Governor and Director, Operations and Finance Service;

(3) General Counsel;

(4) Chief Examiner;

(5) Director, Accounting, Budget and Data Management Division;

(6) Any other officer of the Farm Credit Administration designated by the Governor.

2. This order shall be effective on the above written date, and supersedes Farm Credit Administration Order No. 744, dated February 16, 1971 (36 F.R. 3282).

E. A. JAENKE,
Governor,
Farm Credit Administration.

[FR Doc.72–5836 Filed 4–17–72;8:48 am]

[Farm Credit Administration Order 752]

ASSISTANT DIRECTOR, FIELD SERVICE, ET AL.

Order of Precedence To Act as Deputy Governor and Director of Credit Service

APRIL 12, 1972.

Authority of the Deputy Governor and Director of Credit Service and order of precedence of certain officers to act as Deputy Governor and Director of Credit

Service [revocation of FCA Orders Nos. 748, 739, 733].

1. The Deputy Governor and Director of Credit Service shall, subject to the jurisdiction and control of the Governor of the Farm Credit Administration, execute and perform all power, authority, and duties relative to supervision of the credit function of the institutions of the Farm Credit System and to all matters incidental thereto, and to administration of all provisions of law pertinent to such supervision.

2. In the event the Deputy Governor and Director of Credit Service, Farm Credit Administration, is absent or is not able to perform the duties of his office for any other reason, the officer who is highest on the following list and who is available to act is hereby authorized to exercise and perform all functions, powers, authority, and duties pertaining to the office of Deputy Governor and Director of Credit Service:

(1) Assistant Director, Field Service;

(2) Assistant Director, Credit Supervision;

(3) Assistant to the Director.

3. This order shall be effective on the above written date and revokes Farm Credit Administration Orders No. 748, dated January 1, 1972 (37 F.R. 238); No. 739, dated November 12, 1970 (35 F.R. 17753); and No. 733, dated December 11, 1969 (34 F.R. 19830).

E. A. JAENKE,
Governor,
Farm Credit Administration.

[FR Doc.72-5837 Filed 4-17-72;8:48 am]

[Farm Credit Administration Order 753]

ASSISTANT DIRECTOR OF OPERATIONS ET AL.

Order of Precedence To Act as Deputy Governor and Director of Operations and Finance Service

APRIL 12, 1972.

Authority of the Deputy Governor and Director of Operations and Finance Service and order of precedence of certain officers to act as Deputy Governor and Director of Operations and Finance Service.

1. The Deputy Governor and Director of Operations and Finance Service shall, subject to the jurisdiction and control of the Governor of the Farm Credit Administration, execute and perform all power, authority, and duties relative to supervision of the operations and finance function of the institutions of the Farm Credit System and to all matters incidental thereto, and to administration of all provisions of law pertinent to such supervision.

2. In the event the Deputy Governor and Director of Operations and Finance Service, Farm Credit Administration, is absent or is not able to perform the duties of his office for any other reason, the officer who is highest on the following list and who is available to act is hereby authorized to exercise and perform all functions, powers, authority, and duties pertaining to the office of Deputy Governor and Director of Operations and Finance Service:

(1) Assistant Director of Operations;

(2) Assistant Director of Finance;

(3) Assistant to the Director of Operations and Finance Service.

3. This order shall be effective on the above written date.

E. A. JAENKE,
Governor,
Farm Credit Administration.

[FR Doc.72-5838 Filed 4-17-72;8:48 am]

[Farm Credit Administration Order 754]

SECRETARY TO THE GOVERNOR ET AL.

Authorization Regarding Documents and Official Records

Authorization of the Secretary to the Governor, Legal Clerical Assistant and Secretary to the General Counsel, and Secretary, to authenticate documents, certify official records, and affix seal.

1. Helen E. McWilliams, Secretary to the Governor, D. Elizabeth Frew, Legal Clerical Assistant and Secretary to the General Counsel, and Dorothy P. Smith, Secretary, severally and not jointly, are authorized and empowered:

(a) To execute and issue under the seal of the Farm Credit Administration, statements (1) authenticating copies of, or excerpts from, official records and files of the Farm Credit Administration; (2) certifying, on the basis of the records of the Farm Credit Administration, the effective periods of regulations, orders, instructions, and regulatory announcements; and (3) certifying, on the basis of the records of the Farm Credit Administration, the appointment, qualification, and continuance in office of any officer or employee of the Farm Credit Administration, or any conservator or receiver acting under the supervision or direction of the Farm Credit Administration.

(b) To sign official documents and to affix the seal of the Farm Credit Administration thereon for the purpose of attesting the signatures of officials of the Farm Credit Administration.

2. The provisions of this order shall be effective April 12, 1972, and on that date shall supersede Farm Credit Administration Order No. 731, dated November 17, 1969, 34 F.R. 18829.

E. A. JAENKE,
Governor,
Farm Credit Administration.

[FR Doc.72-5839 Filed 4-17-72;8:48 am]

FEDERAL COMMUNICATIONS COMMISSION

[Dockets Nos. 19485, 19486; FCC 72-335]

BLOOMSBURG STATE COLLEGE AND SUSQUEHANNA UNIVERSITY OF THE EVANGELICAL LUTHERAN CHURCH

Order Designating Applications for Consolidated Hearing on Stated Issues

In regard to applications of: Bloomsburg State College, Bloomsburg, Pa., requests: Channel 205; 840 watts; 75 feet; Docket No. 19485, File No. BPED-993; the Susquehanna University of the Evangelical Lutheran Church, noncommercial educational FM station WQSU, Selinsgrove, Pa., has: Channel 218; 10 watts, requests: Channel 205; 5.6 kw. (H); 5.6 kw. (V); 620 feet; Docket No. 19486, File No. BPED-1088; for construction permits.

1. The Commission has for consideration the above-captioned applications which are mutually exclusive in that operation by the applicants as proposed would result in interference involving infringement of 1 mv/m contours. Therefore, a comparative hearing is required.

2. It appears that there will be a significant disparity in the areas and populations served by the applicants. Consequently, it will be necessary to determine pursuant to section 307(b) of the Communications Act of 1934, as amended, which of the proposals would better provide fair, efficient, and equitable distribution of radio service. Inasmuch as this proceeding involves competing applicants for noncommercial educational facilities, the standard 307(b) issue shall be modified in accordance with our prior action in New York University, 10 RR 2d 215 (1967). Such a determination requires that we consider the areas and populations to be served by the applicants, as well as the number of other aural educational services available in the proposed service area of both applicants.

3. In connection with the Notice of Inquiry in Docket No. 14185, 5 FCC 2d 587 (1966), which looks toward the establishment of a nationwide table of assignments for educational FM stations, the Department of Education of the Commonwealth of Pennsylvania has submitted a proposed plan, which is presently under consideration (RM-1504), for the assignment of educational FM channels in the State. Although the proposal of Bloomsburg State College is in compli-

ance with the Pennsylvania plan,[1] the proposal of the Susquehanna University of the Evangelical Lutheran Church (Susquehanna University) is not. Accordingly, in the event that it is determined that the Susquehanna University application should be granted, any such grant will be conditioned, as set forth below, on the outcome of the proceedings in RM–1504.

4. Bloomsburg State College has submitted a proposed program schedule which indicates daily operation Monday through Friday for a total of 35 hours per week. Susquehanna University's program schedule indicates that it has been operating Monday through Sunday for up to 70 hours per week. This apparent significant difference in the proposed hours of operation between the applicants is one factor to be considered under issue 3 below.

5. Both applicants are qualified to construct and operate as proposed. However, because of their mutual exclusivity, they must be designated for hearing in a consolidated proceeding.

6. *Accordingly, It is ordered,* That the applications are designated for hearing in a consolidated proceeding pursuant to section 309(e) of the Communications Act of 1934, as amended, at a time and place to be specified in a subsequent order, on the following issues:

(1) To determine the areas and populations which would receive FM service of 1 mv/m or greater intensity from the respective proposals.

(2) To determine the number of other aural educational services available (primary for AM, 1 mv/m or better for FM) in the proposed service area of both applicants, and the areas and populations served thereby.

(3) To determine the extent to which each of the proposed operations will be integrated into the overall educational operation and objectives of the respective applicants; or whether other factors in the record demonstrate that one applicant will provide a superior FM educational broadcast service.

(4) To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the proposals would better serve the public interest, and, therefore, which application should be granted.

7. *It is further ordered,* That, in the event of a grant of the application of Susquehanna University, the construction permit shall contain the following condition:

The grant of this application is without prejudice to whatever further action may be warranted in connection with the outcome of the proceedings in RM–1504, pertaining to the establishment of a table of assignments for educational FM stations in Pennsylvania.

8. *It is further ordered,* That to avail themselves of the opportunity to be heard, the applicants, pursuant to § 1.221 (c) of the Commission's rules, in person or by attorney, shall within twenty (20) days of the mailing of this order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this order.

9. *It is further ordered,* That the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 1.594 of the Commission's rules, give notice of the hearing within the time and in the manner specified in such rule, and shall advise the Commission of the publication of such notice as required by § 1.594 (g) of the rules.

Adopted: April 5, 1972.

Released: April 11, 1972.

FEDERAL COMMUNICATIONS COMMISSION,[2]
[SEAL] BEN F. WAPLE,
Secretary.

[FR Doc.72–5834 Filed 4–17–72;8:48 am]

[1] Although the site specified in the Pennsylvania plan for a Bloomsburg station is about 4.5 miles from the site, specified by the applicant, the engineering consultants retained by the Department of Education have indicated that this discrepancy in site coordinates will not "affect aspects of the * * * plan." Report submitted by Ocko Associates, December 2, 1970.

[2] Commissioner Robert E. Lee absent.

FEDERAL POWER COMMISSION

[Docket No. CP72–242]

DELHI GAS PIPELINE CORP.

Notice of Application

APRIL 14, 1972.

Take notice that on April 10, 1972, Delhi Gas Pipeline Corp. (applicant), Fidelity Union Tower Building, Dallas, Tex. 75201, filed in Docket No. CP72–242 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce to Texas Eastern Transmission Corp. (Texas Eastern) at two points in Wharton County, Tex., all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it commenced the sale of gas to Texas Eastern on April 6, 1972, within the contemplation of § 2.68 of the Commission's general policy and interpretations (18 CFR 2.68) and that it proposes to continue said sale for 1 year from the end of the 60-day emergency period within the contemplation of § 2.70 of the Commission's general policy and interpretations (18 CFR 2.70). Applicant proposes to sell up to 6,000 Mcf of gas per day at 35 cents per Mcf at 14.65 p.s.i.a.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than 15 days for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said application should on or before May 25, 1972, file with he Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.72–5921 Filed 4–17–72;8:52 am]

[Docket No. CP72–232]

KANSAS-NEBRASKA NATURAL GAS CO., INC.

Notice of Application

APRIL 10, 1972.

Take notice that on March 24, 1972, Kansas-Nebraska Natural Gas Co., Inc. (applicant), 300 North St. Joseph Avenue, Hastings, NE 68901, filed in Docket No. CP70–239 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing applicant to construct and operate certain facilities and to provide natural gas service to Midwest Distilling Co., Inc. (Midwest), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant seeks authorization to provide natural gas to Midwest, a producer of grain ethyl alcohol, wheat starch, vital wheat gluten, and animal feed supplements, at a plant Midwest plans to construct adjacent to applicant's transmission pipeline at McCook, Red Willow County, Nebr. Midwest estimates that its annual gas requirements will be approximately 1,000,000 Mcf once full operation

is achieved. The maximum daily requirement is estimated to be 3,100 Mcf. Applicant states that the location of Midwest's plant in the McCook area will benefit the economy of southwest Nebraska and northwest Kansas by providing a degree of diversification in the immediate area and by augmenting the marketing of grain crops in the Kansas and Nebraska areas. Applicant proposes to supply Midwest's fuel requirements on an interruptible basis and states that delivery of gas to Midwest's plant will be subject to the curtailment during peak system operation. Applicant states that the service proposed will not affect service to any of its firm customers or the capacity of applicant's system.

Applicant asserts that the facilities it proposes to construct include only a tap and those metering and regulating facilities required to accomplish the sale of gas. Total cost of the proposed facilities is estimated to be $20,000, which will be financed out of cash generated by operations.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 2, 1972, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.72-5798 Filed 4-17-72;8:45 am]

[Docket No. CI72-301, etc.]

NORTHERN MICHIGAN EXPLORATION CO. ET AL.

Order Setting Date for Formal Hearing, Prescribing Procedures, Permitting Interventions and Consolidating Proceedings

APRIL 10, 1972.

On November 4, 1971, Northern Michigan Exploration Co. (Northern Michigan) filed in Docket No. CP72-121 [1] an application pursuant to section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale of natural gas purchased in the Southern Louisiana area to Trunkline Gas Co. (Trunkline) and Consumers Power Co. (Consumers). Northern Michigan proposes to sell 25 percent of the gas it will purchase in the South Gibson Field, Terrebonne Parish, La., to Trunkline. Northern Michigan proposes to sell the remainder of the gas it will purchase in the South Gibson Field together with all the gas it will purchase in the Cherokee Field, Terrebonne and St. Mary Parishes, La., as well as any other gas which Northern Michigan may become entitled to purchase in the Southern Louisiana area, all up to a maximum of 60,000 Mcf per day, to its parent company, Consumers. On November 9, 1971, Trunkline filed in Docket No. CP72-128 its application pursuant to section 7 of the Act for a certificate of public convenience and necessity authorizing the construction and operation of facilities [2] for the purchase of the aforementioned gas from Northern Michigan and for the transportation to Consumers Power the volumes of gas delivered by Northern Michigan to Trunkline up to a maximum daily volume of 62,500 Mcf per day. Additionally, on November 4, 1971, Michigan Gas Storage Co. (Michigan Gas) filed in Docket No. CP72-122 its application pursuant to section 7 of the Act for a certificate of public convenience and necessity authorizing the operation of existing facilities for the transportation of an additional volume of up to 60,000 Mcf per day for Consumers.[3]

Petitions requesting leave to intervene in Docket No. CI72-301 were timely filed by the following petitioners:

Central Illinois Light Co.
Trunkline Gas Co.
Panhandle Eastern Pipe Line Co.
Northern Illinois Gas Co.
Mississippi River Transmission Corp.

[1] A new docket number, i.e. CI72-301, has been assigned to this proceeding.

[2] Specifically, Trunkline proposes the construction of 2.8 miles of 12-inch gathering line within the South Gibson and Cherokee Fields and 25.9 miles of 20-inch pipeline to a point on its main line at the inlet of the Calumet Gasoline Plant near Patterson, La.

[3] Michigan Gas presently has authorization, issued February 1, 1971, in Docket No. CP71-145, to transport 700,000 Mcf per day of firm natural gas and up to 50,000 Mcf per day of best-efforts gas, purchased by Consumers from Trunkline.

Petitions requesting leave to intervene in Docket No. CP72-128 were timely filed by the following petitioners:

Central Illinois Light Co.
Illinois Power Co.
Laclede Gas Co.
Northern Illinois Gas Co.
Mississippi River Transmission Corp.
Consumers Power Co.
Michigan Gas Utilities Co.
Northern Michigan Exploration Co.

Petitions requesting leave to intervene in Docket No. CP72-122 were timely filed by the following petitioners:

Central Illinois Light Co.
Trunkline Gas Co.
Panhandle Eastern Pipe Line Co.

The Michigan Public Service Commission filed a timely notice of intervention in Dockets Nos. CI72-301, CP72-128, and CP72-122. On January 19, 1972, the City of Indianapolis, and on January 3, the cities of Fulton and Macon, Mo., and the Illinois Municipal Utilities Association filed motions to be granted permission to file a late petition to intervene in Dockets Nos. CI72-301, CP72-128, and CP72-122. No opposition to the granting of the late petitions to intervene has been filed.

Central Illinois Light Co., the city of Indianapolis, the cities of Fulton and Macon, Mo., and the Illinois Municipal Utilities Association request that these dockets be consolidated and set for formal hearing. These petitioners state that it is not clear from Trunkline's application in Docket No. CP72-128 that it is in the public interest that substantial capacity on the Trunkline system should be used on a long-term basis to transport gas for Consumers. Central Illinois Light Co. also points out that it is not clear that it is in the public interest for a customer of Trunkline to buy gas in the field in competition with Trunkline and arrange for that gas to be transported by it. Accordingly, we shall set the proceedings pending at Dockets Nos. CI72-301, CP72-128, and CP72-122 for formal hearing. We grant the motions to consolidate these proceedings since they are plainly interdependent.

We also note that Northern Michigan states in its application in Docket No. CI72-301 that the sale of its production to Consumers will be covered by the small producer certificate issued to Northern Michigan in Docket No. CS71-1138.[4] The Commission has previously determined in Order No. 308, 34 FPC 1202, that a company affiliated with a pipeline company is not eligible for a small producer certificate. Northen Michigan, a wholly owned subsidiary of Consumers Power Co., was organized in 1967. Consumers Power is also the parent company of Michigan Gas Storage Co., an interstate pipeline company. Therefore, the issuance of a small producer certificate to Northern Michigan in Docket No. CS71-1138 will be reconsidered during the consolidated proceedings.

[4] Northern Michigan owns a 25 percent working interest in the aforementioned Cherokee Field.

The Commission finds:

(1) It is necessary and appropriate in carrying out the provisions of the Natural Gs Act that a public hearing be held on the issues presented by the applications filed in Dockets Nos. CI72–301, CP72–128, and CP72–122.

(2) Good cause exists to accept the petitions to intervene filed late by the city of Indianapolis, the cities of Fulton and Macon, Mo., and the Illinois Municipal Utilities Association.

(3) It is desirable to allow all petitioners who have so requested to intervene in these proceedings in order that they may establish the facts and law from which the nature and validity of their alleged rights and interests may be determined and show what further action may be appropriate under the circumstances in the administration of the Natural Gas Act.

(4) Good cause exists to consolidate the proceedings pending at Dockets Nos. CI72–301, CP72–128, and CP72–122.

The Commission orders:

(A) The above-named petitioners are permitted to intervene in the proceedings consolidated by ordering paragraph (B) below subject to the rules and regulations of the Commission: *Provided, however,* That the participation of such interveners shall be limited to matters affecting rights and interests expressly asserted in the petition to intervene: *And provided, further,* That the admission of such interveners shall not be construed as recognition by the Commission that they or any of them might be aggrieved because of any order or orders entered in these consolidated proceedings.

(B) The motions to consolidate the proceedings pending at Dockets Nos. CI 72–301, CP72–128, and CP72–122 are granted.

(C) Pursuant to the authority of the Natural Gas Act, particularly sections 7 and 15 thereof, the Commission's rules of practice and procedure, and the regulations under the Natural Gas Act (18 CFR Ch. I), a public hearing on the issues presented by the applications filed in the proceedings consolidated by ordering paragraph (B) above will be held in a hearing room of the Federal Power Commission, 441 G Street NW., Washington, DC 20426, commencing at 10 a.m. on June 6, 1972. Each applicant shall file with the Commission and serve on all interveners, the Commission Staff and the Presiding Examiner its proposed direct presentation in support of its application, including the prepared testimony of witnesses and exhibits, on or before May 5, 1972.

(D) A Presiding Examiner to be designated by the Chief Examiner for that purpose (see Delegation of Authority, 18 CFR 3.5(d)), shall preside at the hearing in these consolidated proceedings and prescribe relevant procedural matters not herein provided.

By the Commission.

[SEAL] KENNETH F. PLUMB,
Secretary.

[FR Doc.72–5799 Filed 4–17–72;8:45 am]

FEDERAL RESERVE SYSTEM

AFFILIATED BANKSHARES OF COLORADO, INC.

Proposed Retention of Insurance Professionals, Inc.

Affiliated Bankshares of Colorado, Inc., Boulder, Colo., has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and section 225.4(b)(2) of the Board's Regulation Y, for permission to retain voting shares of Insurance Professionals, Inc., Loveland, Colorado. Notice of the application was initially published in the following newspapers:

Boulder Daily Camera, Boulder, Colo., January 21, 1972.
Colorado Springs Gazette-Telegraph, Colorado Springs, Colo., January 18, 1972.
The Daily Journal, Denver, Colo., January 18, 1972.
The Greeley Daily Tribune and the Greeley Reporter, Greeley, Colo., January 22, 1972.
Loveland Daily Reporter-Herald, Loveland, Colo., January 21, 1972.
Reno Evening Gazette, Reno, Nev., February 2, 1972.
Las Vegas Review Journal, Las Vegas, Nev., February 5, 1972.

Subsequently, the notice was revised and republished in the following newspapers only:

Boulder Daily Camera, Boulder, Colo., February 25, 1972.
Colorado Springs Gazette-Telegraph, Colorado Springs, Colo., February 24, 1972.
The Daily Journal, Denver, Colo., February 25, 1972.
The Greeley Daily Tribune and the Greeley Republican, Greeley, Colo., February 25, 1972.
Loveland Daily Reporter-Herald, Loveland, Colo., February 25, 1972.

Applicant states that the proposed subsidiary would engage in insurance agency activities pursuant to section 225.4(a)(9). Applicant proposes to retain voting shares of Insurance Professionals, Inc., and thereby to engage in the following activities:

To act as insurance agent or broker in offices at which applicant or its subsidiaries are otherwise engaged in business or in offices adjacent thereto with respect to the following types of insurance:

1. Property, casualty, liability, and fidelity insurance for applicant and its subsidiaries;
2. Health, accident and group term life insurance on employees of applicant or its subsidiaries;
3. Credit life and disability insurance related to the extension of credit by applicant's subsidiaries;
4. Property and casualty insurance on real or personal property that is pledged or mortgaged to secure the extension of any credit by applicant's subsidiaries; and
5. Other types of insurance which applicant's subsidiaries find is necessary when acting in a fiduciary capacity.

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweight possible adverse effects such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question should be accompanied by a statement summarizing the evidence the person requesting the hearing proposes to submit or to elicit at the hearing and a statement of the reasons why this matter should not be resolved without a hearing.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than May 8, 1972.

Board of Governors of the Federal Reserve System, April 11, 1972.

[SEAL] MICHAEL A. GREENSPAN,
Assistant Secretary.

[FR Doc.72–5850 Filed 4–17–72;8:49 am]

AMERICAN GENERAL INSURANCE CO.

Order Dismissing Applications for Acquisition of Banks

American General Insurance Co., Houston, Tex. (Applicant), has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire indirectly (through Applicant's subsidiary, Texas Commerce Bancshares, Inc., Houston, Tex.) shares of each of six banks as listed below:

1. 100 percent of the voting shares (less directors' qualifying shares) of the successor by merger to the American National Bank of Beaumont, Tex.
2. 37 percent of the voting shares of Beaumont State Bank, Beaumont, Tex.
3. 100 percent of the voting shares (less directors' qualifying shares) of the successor by merger to MacGregor Park National Bank of Houston, Houston, Tex.
4. 100 percent of the voting shares (less directors' qualifying shares) of the successor by merger to Reagan State Bank of Houston, Houston, Tex.
5. 100 percent of the voting shares (less directors' qualifying shares) of the successor by merger to Airline Bank, Houston, Tex.
6. 100 percent of the voting shares (less directors' qualifying shares) of the successor by merger to North Freeway Bank, Houston, Tex.

On the basis of the facts of record, including the following actions and commitments by American General:

1. Exchange of all voting shares presently held of Texas Commerce for a new class of shares which, while held by American General, is nonvoting;
2. A written commitment stating that when American General disposes of such nonvoting shares, it will do so only at a public offering underwritten by investment bankers and under an agreement that no purchaser either directly or indirectly may acquire at the sale shares aggregating more than 2 percent of the

then outstanding common stock of Texas Commerce;

3. A written commitment that no director, officer or policymaking employee of American General does or will serve in a similar capacity with Texas Commerce or any of its subsidiaries and American General will abstain from exercising any influence or control over Texas Commerce or any of its subsidiaries;

4. A wirtten commitment that no director, officer or policymaking employee of American General, or a person owing 25 percent or more of the shares of American General, or any combination of such persons, does or will own or control, directly or indirectly, 25 percent or more of the voting shares of Texas Commerce or any of its subsidiaries;

5. A written commitment by American General for divestiture of all nonvoting shares of Texas Commerce by January 1, 1981; the Board finds that Applicant has effected a divestiture of its ownership and control of the voting shares of Texas Commerce Bancshares, Inc., Houston, Tex., and has ceased to be a bank holding company for the purposes of the Bank Holding Company Act of 1956, as amended. Accordingly, the company's applications to acquire shares of the aforementioned banks are hereby dismissed as moot.

The Board's findings and action herein are subject to amendment, revocation, or nullification by the Board should it conclude that American General exercises control or a controlling influence over Texas Commerce or any of its subsidiaries.

By order of the Board of Governors,[1] April 11, 1972.

TYNAN SMITH,
Secretary of the Board.

[FR Doc.72-5851 Filed 4-17-72;8:49 am]

FIRST NATIONAL STATE BANCORPORATION

Acquisition of Bank

First National State Bancorporation, Newark, N.J., has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 100 percent of the voting shares (less directors' qualifying shares) of First National State Bank of Central Jersey, Trenton, N.J., the successor by merger to the Security National Bank of Trenton, Trenton, N.J. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the office of the Board of Governors or at the Federal Reserve Bank of New York. Any person wishing to comment on the application should submit his views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than May 1, 1972.

Board of Governors of the Federal Reserve System, April 11, 1972.

[SEAL] MICHAEL A. GREENSPAN,
Assistant Secretary.

[FR Doc.72-5841 Filed 4-17-72;8:48 am]

FIRST FINANCIAL CORPORATION

Order Denying Acquisition of Bank

First Financial Corp, Tampa, Fla., a bank holding company within the meaning of the Bank Holding Company Act, has applied for the Board's approval under section 3(a)(3) of the Act (12 U.S.C. 1842(a)(3)) to acquire 80 percent or more of the voting shares of Union Trust National Bank of St. Petersburg, St. Petersburg, Fla. (Bank).

Notice of receipt of the application has been given in accordance with section 3(b) of the Act, and the time for filing comments and views has expired. The Board has considered the application and all comments received in the light of the factors set forth in section 3(c) of the Act (12 U.S.C. 1842(c)) and finds that:

Applicant has nine banks with aggregate deposits of $427 million, and is the seventh largest banking organization in Florida, controlling 2.9 percent of commercial bank deposits in the State.[1] Acquisition of Bank ($151 million in deposits) by applicant would increase its percentage share of deposits by 1 percent and would make it the sixth largest banking organization in the State. Consummation of the transaction would not result in a significant increase in concentration of banking resources in the State of Florida.

Applicant's lead bank and two other banking subsidiaries are located in the Tampa market. That market is a highly concentrated one with the three leading banking organizations located there having about 68 percent of market deposits. Applicant is the leading organization in the Tampa market with some 31 percent of deposits and is the dominant organization in the Tampa area.

Bank is located in St. Petersburg, which is located across Tampa Bay from Tampa. The St. Petersburg market, though not at highly concentrated as Tampa, still is relatively concentrated with the top four organizations having over 58 percent of market deposits. Bank is the second largest institution in St. Petersburg with 17 percent of market deposits and is only slightly smaller than the leading bank in the market.

Though Tampa and St. Petersburg are adjacent to one another and are part of the Tampa-St. Petersburg Standard Metropolitan Statistical Area, they essentially represent separate banking markets. For this reason there is little competition between applicant and Bank, and consummation of this transaction would not have a substantial adverse effect on actual competition.

However, applicant's acquisition of Bank would have substantially adverse effects on potential competition between applicant and Bank. As stated earlier, applicant is the largest organization in the adjacent Tampa market and, because of its size and orientation, is one of the most likely potential entrants into the St. Petersburg market. St. Petersburg is an attractive market for entry since the deposits per bank in St. Petersburg are considerably higher than the State average and growth prospects of the city are favorable. Thus, applicant has the capability and incentive to enter the St. Petersburg market, a market which would support the de novo establishment of a new bank. Applicant, however, is not limited to de novo entry into the St. Petersburg market; there are numerous independent banking organizations located there, the acquisition of which would not pose the competitive problems raised by applicant's proposed acquisition of Bank and would have a procompetitive effect. In such circumstances, the elimination of a likely entrant into a concentrated market by the acquisition of a leading firm in the market should be discouraged.[2] The Board concludes, therefore, that consummation of the proposed transaction would foreclose significant potential competition between applicant and Bank.

Bank is one of only two institutions remaining in Florida with deposits of over $100 million, which are not lead banks in bank holding company organizations. It, therefore, appears particularly appropriate that the Board keep alive the opportunity for the formation of new holding companies which can serve to provide additional competition for existing holding companies in Florida.

Denial of the proposed transaction would also preserve Bank as a means of entry into the Tampa-St. Petersburg SMSA by a banking organization of appropriate size from a geographic area removed from west-central Florida, which would have a beneficial effect on competition there. This consideration was recognized by the Board in its denial statement of the application of Barnett Banks to acquire Bank (1969 Federal Reserve Bulletin 615). The Board stressed in that case that the acquisition of Bank by one of the State's largest banking organizations could lead to domination of banking in the State by existing holding companies and perpetuate existing concentration in the Tampa-St. Petersburg area by increasing barriers to new entry into St. Petersburg. For similar reasons, the Board concludes that consideration of the competitive factors in the present application weighs against approval.

[1] Voting for this action: Chairman Burns and Governors Mitchell, Brimmer, and Sheehan. Voting against this action: Governor Robertson. Absent and not voting: Governors Daane and Maisel.

[1] Banking data are as of June 30, 1971, and reflect all holding company formations and acquisitions approved by the Board through Feb. 29, 1972.

[2] This position is in accordance with an earlier decision of the Board denying the application of applicant to acquire Bank of Clearwater, Clearwater, Fla., also located in the Tampa-St. Petersburg Standard Metropolitan Statistical Area (1970 Federal Reserve Bulletin 654).

Considerations relating to the financial condition, managerial resources, and prospects of applicant, its subsidiary banks, and Bank are satisfactory though Bank has management succession problems. However, Bank is large enough to attract needed management on its own. Additionally, although applicant at present has adequate managerial resources to provide for its own needs, there is some question that it would be able to provide additional management depth for Bank without straining its own managerial resources. For these reasons, the banking factors do not provide weight for approval of the application.

Applicant proposes to improve and expand the lending capabilities and drive-in facilities of Bank. Although these proposed benefits are favorable, Bank is capable of providing such improvements by itself. Accordingly, these considerations, while consistent with approval of the application, do not outweigh the anticompetitive effects of the proposal. It is the Board's judgment that consummation of the proposed acquisition would not be in the public interest and the application should be denied.

On the basis of the record, the application is denied for the reasons summarized above.

By order of the Board of Governors,[3]

[SEAL] TYNAN SMITH,
Secretary of the Board.

[FR Doc.72-5846 Filed 4-17-72;8:49 am]

NORTH SHORE CAPITAL CORPORATION

Formation of Bank Holding Company

North Shore Capital Corp., Chicago, Ill., has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company through acquisition of 50.1 percent or more of the voting shares of the North Shore National Bank of Chicago, Chicago, Ill. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the office of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit his views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than May 4, 1972.

Board of Governors of the Federal Reserve System, April 12, 1972.

[SEAL] MICHAEL A. GREENSPAN,
Assistant Secretary.

[FR Doc.72-5849 Filed 4-17-72;8:49 am]

[3] Voting for this action: Chairman Burns and Governors Robertson, Daane, Brimmer, and Sheehan. Absent and not voting: Governors Mitchell and Maisel.
April 11, 1972.

SOUTHWEST BANCSHARES, INC.

Order Approving Acquisition of Bank

Southwest Bancshares, Inc., Houston, Tex., a bank holding company within the meaning of the Bank Holding Company Act, has applied for the Board's approval, under section 3(a)(3) of the Act (12 U.S.C. 1842(a)(3)), to acquire 100 percent of the voting shares (less directors' qualifying shares) of the successor by merger to Long Point National Bank of Houston, Houston, Tex. (Bank). The bank into which Long Point National Bank of Houston is to be merged has no significance except as a means of acquiring all of the shares of Bank. Accordingly, the proposed acquisition of shares of the successor organization is treated herein as the proposed acquisition of shares of Bank.

Notice of receipt of the application has been given in accordance with section 3(b) of the Act, and the time for filing comments and views has expired. The Board has considered the application and all comments received in the light of the factors set forth in section 3(c) of the Act (12 U.S.C. 1842(c)) and finds that:

Applicant controls four banks with aggregate deposits of approximately $688 million, representing 2.6 percent of the total commercial bank deposits in Texas and is the fifth largest banking organization in the State. (All banking data are as of June 30, 1971, and reflect holding company formations and acquisitions approved by the Board through March 31, 1972.) Consummation of the proposed acquisition of Bank (deposits of approximately $29 million) would increase slightly applicant's percentage of total commercial bank deposits in the State but would not change its ranking.

Applicant is the third largest banking organization in the relevant market which is approximated by the Houston SMSA. Within the market, applicant has three banking subsidiaries including the area's third largest bank and holds minority stock interests ranging from 4.2 percent to 20.3 percent in each of five other banks (of which Bank is one). The combined deposits of all eight related banks ($798.3 million) represent 12.9 percent of total commercial bank deposits in the market. Bank, with less than 0.5 percent of deposits in the relevant market, ranks 38th in size among 145 banks there.

Bank, located in a suburban area of northwest Houston, was established in 1956 under the sponsorship of principals of applicant's lead bank. Ninety-five common stockholders of Bank and applicant hold 59.5 percent of Bank's shares. In 1956, these shareholders held 52.6 percent. Of the 59.5 percent, applicant itself owns 14.7 percent of Bank's shares and applicant's officers own another 8.3 percent. Based on these facts and other facts of record, disaffiliation in the foreseeable future appears to be no more than a remote possibility.

The service area of applicant's lead bank, primarily a wholesale bank, is the entire Houston SMSA, which overlaps the service area of Bank. However, on the facts of record, including the nature and extent of the existing affiliation between the banks and the differences between the banks in size and type of operation, there appears to be no meaningful competition between them. The competition that exists between Bank and any of applicant's other banking subsidiaries, or between Bank and any of the banks in which applicant has a minority interest, is not regarded as significant. It appears that consummation of the proposed acquisition would not eliminate any meaningful existing competition nor have an adverse effect on the structure of the Houston market where there are numerous banking alternatives available. Disaffiliation appears to be an unlikely prospect and, absent disaffiliation, the development of future competition between Bank and any of applicant's subsidiaries is considered unlikely. It is concluded that competitive considerations are consistent with approval.

The financial and managerial resources and future prospects of applicant, its subsidiaries, and Bank appear to be generally satisfactory and consistent with approval. Bank's service area has experienced considerable economic growth in recent years. Consummation of the proposal herein would enable Bank better to serve the credit requirements of large customers located in its service area. Also, applicant proposes to develop, for Bank, international, investment and trust, and industrial development services, and to make available to Bank the planning and personnel expertise of applicant's lead bank. Convenience and needs factors lend some weight in favor of approval. It is the Board's judgment that consummation of the proposed acquisition would be in the public interest and the application should be approved.

On the basis of the record, the application is approved for the reasons summarized above. The transaction shall not be consummated (a) before the 30th calendar day following the date of this order, or (b) later than 3 months after the date of this order, unless such period is extended for good cause by the Board, or by the Federal Reserve Bank of Dallas pursuant to delegated authority.

By order of the Board of Governors,[1]

April 11, 1972.

[SEAL] TYNAN SMITH,
Secretary of the Board.

[FR Doc.72-5847 Filed 4-17-72;8:49 am]

TEXAS COMMERCE BANCSHARES, INC.

Order Denying Approval for Acquisition of Bank

Texas Commerce Bancshares, Inc., Houston, Tex., a bank holding company

[1] Voting for this action: Chairman Burns and Governors Robertson, Mitchell, Brimmer, and Sheehan. Absent and not voting: Governors Daane and Maisel.

within the meaning of the Bank Holding Company Act, has applied for the Board's approval, under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)), to acquire 100 percent of the voting shares (less directors' qualifying shares) of the successor by merger to American National Bank of Beaumont, Beaumont, Tex.

Notice of receipt of the application has been given in accordance with section 3(a) of the Act, and the time for filing comments and views has expired. The Board has considered the application and all comments received in light of the factors set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

On the basis of the record, the application is denied for the reasons set forth in the Board's Statement [1] of this date.

By order of the Board of Governors,[2] April 11, 1972.

[SEAL] TYNAN SMITH,
Secretary of the Board.

[FR Doc.72-5842 Filed 4-17-72;8:48 am]

TEXAS COMMERCE BANCSHARES, INC.

Order Approving Acquisition of Bank

Texas Commerce Bancshares, Inc., Houston, Tex., a bank holding company within the meaning of the Bank Holding Company Act, has applied for the Board's approval, under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)), to acquire 37 percent of the voting shares of Beaumont State Bank, Beaumont, Tex.

Notice of receipt of the application has been given in accordance with section 3(b) of the Act, and the time for filing comments and views has expired. The Board has considered the application and all comments received in light of the factors set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

On the basis of the record, and for the reasons and upon the conditions set forth in the Board's statement [1] of this date, applicant is granted approval to acquire 37 percent or more of the voting shares of Beaumont State Bank. The transaction shall not be consummated (a) before the 30th calendar day following the date of this order, or (b) later than 3 months after the date of this order, unless such period is extended for good cause by the Board, or by the Federal Reserve Bank of Dallas pursuant to delegated authority.

By order of the Board of Governors,[2] April 11, 1972.

[SEAL] TYNAN SMITH,
Secretary of the Board.

[FR Doc.72-5843 Filed 4-17-72;8:48 am]

[1] Filed as part of the original document. Copies available upon request to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551, or to the Federal Reserve Bank of Dallas. Concurring statements of Governors Mitchell and Brimmer filed as part of the original document and available upon request.

[2] Voting for this action: Chairman Burns and Governors Robertson, Mitchell, Brimmer, and Sheehan. Absent and not voting: Governors Daane and Maisel.

TEXAS COMMERCE BANCSHARES, INC.

Order Denying Approval for Acquisition of Bank

Texas Commerce Bancshares, Inc., Houston, Tex., a bank holding company within the meaning of the Bank Holding Company Act, has applied for the Board's approval, under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)), to acquire 100 percent of the voting shares (less directors' qualifying shares) of the successor by merger to MacGregor Park National Bank, Houston, Tex. (Bank).

Notice of receipt of the application has been given in accordance with section 3(b) of the Act, and the time for filing comments and views has expired. The Board has considered the application and all comments received in light of the factors set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

On the basis of the record, the application is denied for the reasons set forth in the Board's statement [1] of this date.

By order of the Board of Governors,[2] April 11, 1972.

[SEAL] TYNAN SMITH,
Secretary of the Board.

[FR Doc.72-5848 Filed 4-17-72;8:49 am]

UNITED BANK CORPORATION OF NEW YORK

Acquisition of Bank

United Bank Corporation of New York, Albany, N.Y., has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 100 percent of the voting shares (less directors' qualifying shares) of the successor by merger to Highland National Bank of Newburgh, Newburgh, N.Y. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the office of the Board of Governors or at the Federal Reserve Bank of New York. Any person wishing to comment on the application should submit his views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than May 2, 1972.

[1] Filed as part of the original document. Copies available upon request to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551, or to the Federal Reserve Bank of Dallas. Concurring statements of Governors Mitchell and Brimmer filed as part of the original document and available upon request.

[2] Voting for this action: Chairman Burns and Governors Robertson, Mitchell, Brimmer, and Sheehan. Absent and not voting: Governors Daane and Maisel.

[1] Filed as part of the original document. Copies available upon request to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551, or to the Federal Reserve Bank of Dallas.

[2] Voting for this action: Chairman Burns and Governors Robertson, Mitchell, Brimmer, and Sheehan. Absent and not voting: Governors Daane and Maisel.

Board of Governors of the Federal Reserve System, April 12, 1972.

[SEAL] MICHAEL A. GREENSPAN,
Assistant Secretary.

[FR Doc.72-5844 Filed 4-17-72;8:48 am]

UNITED JERSEY BANKS

Order Approving Acquisition of Bank

United Jersey Banks, Hackensack, N.J., a bank holding company within the meaning of the Bank Holding Company Act, has applied for the Board's approval under section 3(a)(3) of the Act (12 U.S.C. 1842(a)(3)) to acquire 100 percent (less directors' qualifying shares) of the voting shares of Madison State Bank, Madison Township, N.J. (Bank).

Notice of receipt of the application has been given in accordance with section 3(b) of the Act, and the time for filing comments and views has expired. The Board has considered the application and all comments received in the light of the factors set forth in section 3(c) of the Act (12 U.S.C. 1842(c)) and finds that:

Applicant, with 10 subsidiary banks holding aggregate deposits of $969.4 million, is the second largest banking organization in New Jersey with 6.2 percent of the commercial bank deposits in the State. (All banking data are as of June 30, 1971, unless otherwise indicated, and reflect holding company formations and acquisitions approved through February 29, 1972.) Consummation of the proposed acquisition of Bank ($4 million in deposits) would increase only slightly applicant's share of State-wide commercial bank deposits, and its present ranking would remain unchanged.

Bank is one of 20 banking institutions in the New Brunswick banking market,[1] the relevant market, where it ranks 18th in size with 0.3 percent of area deposits. Applicant's subsidiary office closest to Bank is located 8 miles northeast of Bank and serves a different banking market. Apparently no significant present competition exists between Bank and this office, or any of applicant's other offices. Moreover, the presence of geographical barriers, including the Garden State Parkway, would appear to limit the development of future competition between Bank and this office.

Two of applicant's subsidiaries have received approval to open branch offices outside of Madison Township, where Bank is domiciled, but within the New Brunswick banking market. Thus, it is possible for competition to develop in the future between Bank and these approved branches. In addition, applicant has the expertise and resources to establish a de novo bank within Madison Township, a relatively underbanked community. Consequently, consummation of the present proposal may foreclose potential competition between applicant's subsidiaries and Bank. However, Bank has failed to achieve the competitive posture expected of a 4-year-old bank, and its competitive potential appears limited. Other competitors may enter the New Brunswick market through the possible acquisition of one of the

11 small-to-moderate size independent banks serving this market. The Board, therefore, concludes that consummation of the proposed acquisition would have only a slightly adverse effect on potential competition.

The financial condition and management of applicant and its subsidaries are satisfactory and the prospects of each are favorable. However, the financial condition of Bank is unsatisfactory; it has yet to report a profit and its deposit growth is lagging. Affiliation with applicant should significantly strengthen the overall condition of Bank through the infusion of both management expertise and financial resources. Thus, considerations relating to the banking factors lend weight toward approval. Applicant further proposes to expand the range of Bank's services to include trust, investment, international banking, data processing, and other specialized services. Affiliation will also permit Bank to become more responsive to the credit needs of the community. At present, over one-half of Bank's loan portfolio represents loans purchased or Federal funds sold. Moreover, applicant intends to assist Bank in opening additional branch facilities. Thus, considerations relating to the convenience and needs of the community to be served lend weight toward approval. It is the Board's judgment that the slightly adverse effects on potential competition which would result from consummation of the proposal are more than outweighed by considerations relating to the convenience and needs of the community and banking factors, that consummation of the proposal would be in the public interest, and that the application should be approved.

On the basis of the record, the application is approved for the reasons summarized above. The transaction shall not be consummated (a) before the 30th calendar day following the date of this order, or (b) later than 3 months after the date of this order, unless such period is extended for good cause by the Board, or by the Federal Reserve Bank of New York pursuant to delegated authority.

By order of the Board of Governors,[2] April 11, 1972.

[SEAL] TYNAN SMITH,
Secretary of the Board.

[FR Doc.72-5845 Filed 4-17-72;8:49 am]

SELECTIVE SERVICE SYSTEM

REGISTRANTS PROCESSING MANUAL

The Registrants Processing Manual is an internal manual of the Selective Service System. The material contained in chapters 613 and 655 is considered to be of sufficient interest to warrant publication in the FEDERAL REGISTER. Therefore chapters 613 and 655 are set forth in full as follows:

CHAPTER 613—REGISTRATION PROCEDURES AND CREATION OF THE REGISTRANT'S SELECTIVE SERVICE FILE

OUTLINE OF PROCEDURES

The registration procedures are briefly outlined below.

1. Identification of the registrant (section 613.2, page 613-2).
2. Preparation of the Registration Card (SSS Form 1) (section 613.4, page 613-3).
3. Issuance of Registration Questionnaire (SSS Form 100) (section 613.4, page 613-3).
4. Assignment of the Selective Service Number (Section 613.6, page 613-6).
5. Preparation and Issuance of the Registration Certificate (SSS Form 2) (section 613.7, page 613-9).
6. Administrative assignment to Class 1-H (section 613.8, page 613-9).
7. Preparation and issuance of the Notice of Classification (SSS Form 110) (section 613.9, page 613-10).
8. Preparation of the Registrant File Folder (SSS Form 101) (section 613.10, page 613-10).
9. Prepare the List of Registrants (SSS Form 3) (section 613.17, page 613-15).
10. Complete administrative entries required by above actions (section 613.11, page 613-10).

SEC. 613.1 *Place and time of registration.* Any person required to be registered will present himself for and submit to registration at any designated place of registration, at the office of any local board during the usual business hours, or at a consulate office within the period which begins 30 days prior to the 18th anniversary of the day of his birth and terminates 30 days after the 18th anniversary of the day of his birth. An alien who is required to register must report for and submit to registration if he has reached age 18 and has not reached age 26, except that an alien medical specialist is required to report for and submit to registration if he has not reached age 35.

SEC. 613.2 *Identification of the registrant.* When a young man presents himself for and submits to registration at his own local board, any other local board of Selective Service, or before any duly appointed uncompensated registrar, it shall be the responsibility of the registrar to verify the prospective registrant's identity through examination of the registrant's birth certificate, Social Security account number card, driver's license, school or college activity card, credit cards, or other means of identification that he may have in his possession. A person who presents himself for registration after the lottery drawing applicable to him has been held, shall be required to present satisfactory evidence as to his date of birth. For registrations accomplished by a consular official outside the continental United States, the State of Alaska, the State of Hawaii, Puerto Rico, the Virgin Islands, Guam or the Canal Zone, the registrant shall be required to provide identification by means of a U.S. passport or birth certificate.

SEC. 613.3 *Registration of persons separated from the Armed Forces.* Any person not previously registered who (1) is separated from the Armed Forces of the United States after having served honorably on active duty, other than active duty for training, for not less than 6 months, or (2) has served as a commissioned officer in the National Oceanic and Atmospheric Administration or the Public Health Service for not less than 24 months, shall not be required to be registered. A registrant who has been discharged from active military service with less than 6 months' service or who is discharged after having served on active duty under conditions other than honorable for 6 or more months is required to register after discharge, providing he has not previously registered.

SEC. 613.4 *Preparation of the Registration Card (SSS Form 1).* 1. Upon the establishment of eligibility to register, the face of the Registration Card (SSS Form 1) shall be completed. The registrar will prepare the registration card or provide such assistance as the registrant requires in order for him to prepare it. It shall be typewritten or clearly printed in ink. The registrant will sign in the space provided on the reverse side. The registrar will verify the statements of the registrant, and sign in the space provided. This will constitute his registration.

2. When a man has completed the SSS Form 1 at his own local board and it would be more efficient to do so, the SSS Form 2 should be completed and issued to the registrant, he should be assigned his SSN, administratively assigned to Class 1-H and issued an SSS Form 110 at the time of registration. The SSS Form 100 will either be completed at time of registration or issued or mailed to the registrant to be returned within 10 days.

3. When a man has completed the SSS Form 1 at his own local board, and it is more efficient for the local board to delay completion of the SSS Forms 2 and 110, the registrant will be advised that these forms will be completed and mailed to him within 10 working days. In the event the SSS Form 100 is not completed at the time of registration, it shall be issued or mailed to the registrant, who is required to return it within 10 days.

4. When registration is accomplished at a place other than the registrant's local board of jurisdiction, only the completion of the SSS Form 1 (except for the SSN) is required. If possible, the SSS Form 100 may be completed and signed at that time. The registrant shall be advised that his SSS Form 1 will be forwarded to his local board of jurisdiction, which will mail him the SSS Forms 2 and 110, as well as the SSS Form 100, if it was not completed at the time of registration.

5. When the registration has been accomplished at a place other than a local board, the registrar shall inform the registrant that the SSS Forms 2 and 110 will be mailed to him by his local board. At the close of business that day, the registrar shall forward the SSS Form 1 and any SSS Form 100 which may have been completed to the local board which appointed the registrar. If the registrar is in a foreign country, the registrar shall delivery the completed SSS Form 1 to

[1] Includes Middlesex County except the municipalities of Plainsboro, Cranbury, Middlesex, and Dunellen, plus Franklin Township in Somerset County.

[2] Voting for this action: Chairman Burns and Governors Robertson, Daane, Brimmer, and Sheehan. Absent and not voting: Governors Mitchell and Maisel.

the chief registrar of the embassy or consulate office which appointed him, for transmission to the Director of Selective Service.

6. When the registration has been accomplished at a local board other than the registrant's local board of jurisdiction, at the close of business that day, the registrar shall forward the SSS Form 1 to the local board having jurisdiction over the registrant's place of residence, if known. Otherwise, it shall be forwarded to the State Director of Selective Service concerned, for transmittal to the proper local board.

SEC. 613.5 *Review and certification.* 1. After completion of the SSS Form 1 by the registrant, the registrar shall review the Registration Card for completeness and accuracy of discriptive information. The registrant must then sign the completed Registration Card in the presence of the registrar, except that if the registrant is unable or refuses to sign the Registration Card or to make a mark instead of a signature, the registrar shall sign the registrant's name and indicate that he has done so by signing his own name, followed by the word "Registrar" beneath the name of the registrant. The act of the registrar in so doing shall have the same force and effect as if the registrant had signed the Registration Card and such registrant shall thereby be registered. Upon completion of the review of the Registration Card, the registrar will then certify to the registration and enter the date of registration on the form.

2. The registrar shall require the registrant to give a sufficient address to establish the proper location of his place of residence and a mailing address for forwarding of notices. The registrant shall determine what place he desires to give as his residence when he does not reside in the same place all the time. The registrant must give a place of residence within the continental United States, the State of Alaska, the State of Hawaii, Puerto Rico, the Virgin Islands, Guam, or the Canal Zone, if he presents himself for registration in any of those places. If a registrant presents himself for registration outside of the continental United States, the State of Alaska, the State of Hawaii, Puerto Rico, the Virgin Islands, Guam, or the Canal Zone, he should, if possible, give a place of residence within one of the above listed places, but in any case must give a place of residence when registering.

SEC. 613.6 *Local board of jurisdiction.* 1. The local board having jurisdiction over the "Place of Residence" entered on the Registration Card shall always have jurisdiction over the registrant, unless otherwise directed by the Director of Selective Service. Whenever two or more local boards have jurisdiction within the same county or corresponding political subdivision, and the offices of such local boards are located at the same site, registrants whose place of residence is within that county or corresponding political subdivision shall be assigned among the local boards in the manner as prescribed by the State Director of Selective Service. When registration was accomplished outside the continental United States, the State of Alaska, the State of Hawaii, Puerto Rico, the Virgin Islands, Guam, or the Canal Zone and the registrant listed his place of residence outside of these places, Local Board No. 100 (Foreign), Washington, D.C., shall have jurisdiction over the registrant.

2. Upon receipt of the Registration Card, the local board will verify that the assignment to that local board is appropriate. If it is determined that the local board does not have jurisdiction over the registrant, the Registration Card shall be forwarded to the state director for transmittal to the proper local board of jurisdiction.

SEC. 613.7 *Assignment of selective service number.* 1. Utilizing the Classification Record (SSS Form 102) as a register, the local board of jurisdiction will assign a selective service number to each registrant by entering his name and date of birth in columns numbered 2 and 3 of the Classification Record, alongside the next unassigned selective service number in Column No. 1, and place that number in the appropriate block on the Registration Card. This number will consist of the following elements:

a. The first element of the selective service number representing the numerical position of the State in which the registrant is registered as shown on the following list of States, territories, and possessions:

1. Alabama.
2. Arizona.
3. Arkansas.
4. California.
5. Colorado.
6. Connecticut.
7. Delaware.
8. Florida.
9. Georgia.
10. Idaho.
11. Illinois.
12. Indiana.
13. Iowa.
14. Kansas.
15. Kentucky.
16. Louisiana.
17. Maine.
18. Maryland.
19. Massachusetts.
20. Michigan.
21. Minnesota.
22. Mississippi.
23. Missouri.
24. Montana.
25. Nebraska.
26. Nevada.
27. New Hampshire.
28. New Jersey.
29. New Mexico.
30. New York.
31. North Carolina.
32. North Dakota.
33. Ohio.
34. Oklahoma.
35. Oregon.
36. Pennsylvania.
37. Rhode Island.
38. South Carolina.
39. South Dakota.
40. Tennessee.
41. Texas.
42. Utah.
43. Vermont.
44. Virginia.
45. Washington.
46. West Virginia.
47. Wisconsin.
48. Wyoming.
49. District of Columbia.
50. New York City.
51. Alaska.
52. Hawaii.
53. Puerto Rico.
54. Virgin Islands.
55. Guam.
56. Canal Zone.

b. The second element of the selective service number shall be the number of the registrant's local board within the State. Each State Director of Selective Service shall assign each local board within his State a specific identifying number in numerical sequence beginning with the numeral 1.

c. The third element of the selective service number shall be the last two digits of the year in which the registrant was born. For example, if a registrant was born in 1954, the third element of his selective service number would be the number 54.

d. The fourth element of the selective service number shall be the number assigned to the registrant by his local board among the other registrants of the local board having the same year of birth. Every local board shall assign each of the registrants who were born in the same year a specific identifying number in numerical sequence beginning with the numeral 1. A separate series of identification numbers on separate pages shall be assigned to registrants by a method most convenient to the person assigning them, provided that each time a number is assigned the next number in sequence for a given year of birth is used.

2. Where four blocks are provided on any form for the entry of the selective service number, the first element of the selective service number shall be entered in the left block and the remaining three elements of such number entered consecutively from left to right in the remaining three blocks. For example, the selective service number to be given to a registrant in Alabama (1), registered with Alabama Local Board No. 24 (24), born in the year 1954 (54) and being number 206 among the registrants of his local board who were born in 1954, would be entered in the four blocks as follows:

1	24	54	206

Where four blocks are not provided for the entry of the selective service number, each of the four elements of the number, written from left to right, shall be separated by a hyphen. For example, the selective service number of the registrant mentioned in the paragraph above would be written without the blocks as follows: 1-24-54-206.

SEC. 613.8 *Preparation and issuance or mailing of Registration Certificate (SSS Form 2).* When registration is accomplished at the local board of jurisdiction, the Registration Certificate (SSS Form 2) may either: (1) Be prepared and copy 2 issued to the registrant at the time of his registration; or (2) be prepared and copy 2 mailed to the registrant within 10 working days of the date of registration. When registration is accomplished at other than the local board of jurisdiction, the local board of jurisdiction will prepare the Registration Certificate and mail copy 2 to the registrant within 10 working days of receipt of the Registration Card.

SEC. 613.9 *Administrative assignment to Class 1–H.* Compensated personnel at the registrant's local board of jurisdiction are authorized and directed to administratively assign each new registrant to Class 1–H. After this initial classification, further classifying can be accomplished only by board action of the appropriate local board, appeal board, or the National Selective Service Appeal Board.

SEC. 613.10 *Preparation and issuance or mailing of the Notice of Classification (SSS Form 110).* When the registration is accomplished at the local board of

jurisdiction, a Notice of Classification (SSS Form 110) may either: (1) Be prepared and copy 2 issued to the registrant at the time of his registration; or (2) be prepared and copy 2 mailed to the registrant within 10 working days of the date of registration. When registration is accomplished at other than the local board of jurisdiction, the local board of jurisdiction will prepare the SSS Form 110 and mail copy 2 to the registrant within 10 working days of receipt of the Registration Card. A 1–H letter will accompany this initial SSS Form 110.

SEC. 613.11 *Creation of a registrant's file.* Following registration, a Registrant File Folder (SSS Form 101) will be prepared. The original of the Registration Card (SSS Form 1) shall be placed in the registrant's file folder, and the duplicate shall be used as an alphabetical locator card. The Registration Questionnaire (SSS Form 100), when received, will be placed in the SSS Form 101.

SEC. 613.12 *Administrative entries required.* 1. After registration, compensated personnel of the local board of jurisdiction will make the following entries on forms:

a. SSS Form 102: 1–H class and date assigned will be entered in the appropriate column.

b. SSS Form 101: The following entries will be made on page 2:

(1) "Registered" (the date of registration shown on SSS Form 1 will be entered in the date column).

(2) "SSS Form 2 issued/mailed" (the date of issuance or mailing of the Registration Certificate will be entered in the date column).

(3) "Administratively assigned to 1–H and SSS Form 110 issued/mailed" (the date of issuance or mailing of the Notice of Classification will be entered in the date column).

(4) "I–H letter issued/mailed" (use appropriate word) (the date of issuance or mailing of the 1–H letter will be entered in the date column).

(5) "SSS Form 100 issued/mailed" (if the SSS Form 100 is issued or mailed, use appropriate word, and enter date in date column).

2. A Registrant File Folder (SSS Form 101) will be used for establishment of a registrant's file. If a Registrant File Folder is not available, a Cover Sheet will be used. In that case, staple SSS Form 100–S to the inside of page 2 to be utilized for notation of "actions." Upon receipt of the new SSS Form 101, the information contained on the SSS Form 100–S shall be used to establish a new file so that registrants who have been registered since January 1, 1972, will all have a Registrant File Folder.

3. At the option of the local board, the Tally Sheet (SSS Form 4) may be used as a temporary work sheet of registrants' names and selective service numbers, prior to entries being made in the SSS Form 102. The use of the Tally Sheet is not mandatory.

SEC. 613.13 *Beginning and end of year registrations.* 1. A man who presents himself for registration and who attained the age of 18 during a previous year shall be assigned a selective service number from the Classification Record (SSS Form 102) appropriate for his year of birth whether or not he is a late registrant. His name should be entered in the SSS Form 102 for that previous year alongside the next unassigned selective service number.

2. A man who presents himself for registration and who will attain the age of 18 in the next calendar year shall be assigned a selective service number by placing his name on an advance page of the Classification Record (SSS Form 102) prepared for the following year.

3. In cases of either 1 or 2 above, the registrant's file folder shall be filed according to the appropriate year of birth group.

SEC. 613.14 *Early and late registrations.* 1. A young man who presents himself for and submits to registration more than 30 days prior to attaining the 18th anniversary of his date of birth will not be registered unless he completes Application for Voluntary Induction (SSS Form 254).

2. A late registrant will be registered in the same manner as any other registrant, and will be assigned a selective service number from the SSS Form 102 appropriate to his year of birth. He will be requested to submit a signed statement setting forth the reason for his failure to register at the proper time.

SEC. 613.15 *Registration procedures for inmates of institutions.* 1. An inmate of an asylum, jail, penitentiary, reformatory, or similar institution, who is required to be registered on the day he leaves such institution shall be registered in the manner prescribed in this chapter. The superintendent or warden of any such institution or any person designated by the superintendent or warden shall be appointed registrar in accord with paragraph 5 of chapter 612.

2. When the Registration Card (SSS Form 1) is being filled out, the superintendent, warden, or other designated person, acting in his capacity as registrar, shall be certain that no reference is made on the Registration Card to indicate that the inmate was registered in an institution or by an official of an institution. If the inmate does not have a permanent place of residence or an address where he intends to be or where he can be located, the address of the local board in whose area the institution is located shall be entered in item 2 of the Registration Card (SSS Form 1). Under no circumstances shall the address of the institution be given as the place of residence or as the mailing address of the inmate who is being registered.

3. The superintendent, warden, or other appointed person acting as registrar shall then explain to the registrant his obligations under the Military Selective Service Act, particularly the requirement to keep his local board advised of his current mailing address.

SEC. 613.16 *Cancellation of registration.* Whenever it is determined that a registration is to be canceled in that the registrant is deceased, he has been transferred to another local board of jurisdiction, his registration was fictitious or erroneous, or represents a duplication of registration at one or more local boards, the local board will accomplish the following action to cancel the registration:

a. If possible, request the registrant to return the Registration Certificate, SSS Form 2, and Notice of Classification, SSS Form 110, and upon receipt mark these forms "Canceled" or "Canceled—Transferred to L.B. No. _____ (if known), State of _____." Indicate the date of cancellation and place these in his file.

b. If the registration is canceled (except for transfers to another local board), write "Canceled—_____" (date) across the top margin of the SSS Forms 1, 100, 101, and other forms in the registrant's file as appropriate. Line out the registrant's name on the SSS Form 3, and send a supplemental Form 3 reflecting the cancellation to the State director. Line out the registrant's name on the SSS Form 102 and enter "Canceled" in the remarks column.

c. When the registrant is to be transferred to another local board indicate "Transferred to L.B. No. _____ (if known), State of _____." in the remarks column on the SSS Form 102.

d. At the next scheduled local board meeting, the cancellation will be reported in the Minutes of Local Board Meeting—Continuation Sheet, SSS Form 112–A.

e. A Notice of Classification, SSS Form 110, will be initiated recording the new classification as "CANC" in accordance with the form's procedural directive. Copy 1 shall be sent to the Data Processing Center, and the remaining copies shall be destroyed.

f. The registrant's file shall be destroyed in accordance with current administrative procedures, unless the registrant is transferred to another local board, in which case his file will be forwarded to the State director for transmittal to the State director or local board to which the registrant is to be transferred.

SEC. 613.17 *Person registered more than once.* 1. If a registrant has registered more than once and has given different places of residence in item 2 of his Registration Card (SSS Form 1), each local board to which the registrant is assigned shall have jurisdiction over the registrant until proper jurisdiction is established.

2. When duplicate registration between local boards is discovered, the place of residence indicated at the first registration, if true, will determine the local board of jurisdiction.

3. When two or more local boards of a State cannot agree on the proper assignment of a registrant, the State director will resolve the matter of jurisdiction. When local boards in different States are involved, the State directors concerned will resolve the matter by mutual agreement. When resolved, the local board which relinquishes jurisdiction will cancel the registration in accordance with section 613.15 of this chapter.

SEC. 613.18 *Preparation of the List of Registrants (SSS Form 3).* Each local board will prepare a List of Registrants (SSS Form 3) in duplicate for each month, listing consecutively by selective service number all registrants assigned during that month. The preparation of this form may be continued throughout the month. The original copy will be forwarded to State headquarters not later than the 10th of the following month.

SEC. 613.19 *Change in date of birth.* Should a registrant furnish documentation establishing a new date of birth, prior to the day before the lottery is conducted to establish his random sequence number, it will be entered on the Classification Record (SSS Form 102) and corrected on page 1 and entered on page 2 of the Registrant File Folder (SSS Form 101), and the verifying evidence placed in the file folder. Should a registrant furnish documentation establishing a new date of birth later than the day before the lottery is conducted to establish his random sequence number, the verifying evidence shall be placed in his file folder and an entry made on page 2 of the file folder, but his date of birth shown on the SSS Form 102 and page 1 of the SSS Form 101 will not be changed.

CHAPTER 655—PROCESSING OF REGISTRANTS RESIDING IN FOREIGN COUNTRIES

1. *Purpose.* The purpose of this chapter of the Registrant Processing Manual is to establish procedures for the selective service processing of registrants residing in foreign countries.

2. *Registration.* Registration in foreign countries is accomplished by diplomatic and consular officials of the Department of State and by registrars appointed by those officers in the same manner as registrations accomplished within the United States. Each male citizen of the United States shall accomplish registration by reporting to the nearest U.S. consular office or designated registrar within the period which begins 30 days prior to the 18th anniversary of the day of his birth, and which ends 30 days after the 18th anniversary of the day of his birth, unless he has been registered by or will register with a local board within the continental United States, the State of Alaska, the State of Hawaii, Puerto Rico, the Virgin Islands, Guam, or the Canal Zone within the prescribed period.

3. *Place of residence.* The registrant may determine what place he desires to give as his residence when he is not located in the same place all of the time. If a registrant presents himself for registration outside of the continental United States, the State of Alaska, the State of Hawaii, Puerto Rico, the Virgin Islands, Guam, or the Canal Zone, he should, if possible, give a place of residence within one of those places, but in any case must give a place of residence. If the place of residence is outside the continental United States, the State of Alaska, the State of Hawaii, Puerto Rico, the Virgin Islands, Guam, or the Canal Zone, Local Board No. 100 (Foreign), Washington, D.C., shall have jurisdiction over the registrant.

4. *Transmittal of forms and communications.* All forms and communications to be transmitted to registrants in foreign countries shall be mailed in regular franked government envelopes stamped "Air Mail". No other supplementary postage is required.

5. *Local board processing of foreign registrations.* a. All registrations initiated by diplomatic or consular officials in foreign countries will be completed by the local board of jurisdiction upon receipt of the Registration Questionnaire (SSS Form 100). Assignment of selective service number, classification, preparation and mailing of Certificate of Registration (SSS Form 2) and Notice of Classification (SSS Form 110), completion of administrative entries, and creation of a registrant's file folder will be accomplished in accordance with current directives.

b. Upon entry into the continental United States, the State of Alaska, the State of Hawaii, Puerto Rico, the Virgin Islands, Guam, or the Canal Zone and establishing residence in any of these places, registrants assigned to Local Board No. 100 (Foreign) must notify that board of the address of their new place of residence. Except in cases where a registrant has a personal appearance or appeal pending, or is under an order to report for induction or alternate service, he will be transferred to the local board having jurisdiction over his new place of residence and his former registration with Local Board No. 100 (Foreign) will be canceled in accordance with current directives.

c. Registrants assigned to local boards other than Local Board No. 100 (Foreign) will not be transferred.

6. *Processing of transferred registrants.* Registrants transferred to the jurisdiction of a new local board will be processed in the same manner as a late registrant. Upon receipt of records of a transferred registrant, the new local board need not reopen and reclassify as a matter of routine.

7. *Registrant processing.* All registrants who registered in foreign countries shall be assigned random sequence numbers, classified, placed in selection groups, and processed for Armed Forces examination, induction or alternate service in lieu of induction in the same manner as registrants who registered within the continental United States, the State of Alaska, the State of Hawaii, Puerto Rico, the Virgin Islands, Guam, or the Canal Zone. The above instruction applies whether or not registrants may have subsequently entered into or established residence in any of these places, or whether they continue to reside in foreign countries, and regardless of whether they are assigned to District of Columbia Local Board No. 100 (Foreign) or any other local board.

However, all regular registrants in the group described in the above paragraph who were born in 1950 or prior years who were in Class 1–A, 1–A–O, or 1–O on December 31, 1970, shall be assigned to the second or lower priority selection group.

Registrants under the age of 35 years in the categories of physicians, dentists, and allied medical specialists will be processed in accordance with current directives to meet the needs of special calls from the Department of Defense when so required.

8. *Examination of registrants in Canada and Mexico.* Registrants residing in Canada and Mexico selected for examination will be processed as follows:

a. *Local board action.* Local boards will forward the following to registrants and place a copy of each in his Registrant File Folder:

(1) An Order to Report for Armed Forces Examination (SSS Form 223) establishing "Place of Reporting" as the address of the local board, and "Date" at least 30 days after issuance.

(2) A "Transmittal Letter for Examination of Registrants Residing in Canada or Mexico," reading as per enclosed sample.

Any medical information or doctor's statements in the registrant's file folder will not be forwarded to the Armed Forces Examining and Entrance Station (AFEES) in advance of the original date of scheduled examination. This information will be forwarded to the Transfer Board upon receipt of notification that a new SSS Form 223 has been issued in accordance with paragraph 8d of this section.

b. *Action by registrant.* Registrants desiring to transfer examination shall submit a request for transfer of Armed Forces examination together with the Order to Report for Armed Forces Examination (SSS Form 223) to the State Director of Selective Service of that State proximate to the area of Canada or Mexico in which they reside. A table indicating the addresses of these State directors is listed in the "Transmittal Letter for Registrants Residing in Canada or Mexico."

c. *Action by State director.* Upon receipt of the letter from the registrant requesting transfer of Armed Forces examination, the appropriate State director shall select a local board of transfer and forward the request for transfer and the Order to Report for Armed Forces Examination (SSS Form 223) to that local board.

d. *Action by transfer board.* This board shall initiate a new Order to Report for Armed Forces Examination (SSS Form 223), establishing the place of reporting, date, and the time in accordance with a regularly scheduled examination date of that local board. A copy of this order will be transmitted directly to the local board to which the registrant is assigned.

e. *Final action by transfer board.* When the registrant's medical records and results of examination are received from AFEES, the transfer board will forward them to the State director in whose jurisdiction the registrant is assigned, for transmittal to the local board to which the registrant is assigned.

9. *Examination of registrants residing outside the United States except those in Canada and Mexico.* Registrants residing outside the United States, except those in Canada and Mexico, selected for Armed Forces examination will be processed as follows:

a. *Local board action.* Local boards will prepare the following and forward them to the registrant and place a copy of each in his Registrant File Folder:

(1) An Order to Report for Armed Forces Examination (SSS Form 223), establishing "Place of Reporting" as the address of the local board, and "Date" at least 30 days after issuance;

(2) A "Transmittal Letter for Examination of Overseas Registrants" reading per enclosed sample.

b. *Action by registrant.* Registrants desiring to be examined overseas are required to submit a written request for accomplishment of Armed Forces examination overseas to the Commander of the Army Area in which they reside.

Army Area Commander	*A.P.O. Address*
Pacific Area:	
Commander in Chief, U.S. Army, Pacific, Fort Shafter, Hawaii.	A.P.O. 96558, San Francisco, CA.
European Area:	
Commander in Chief, U.S. Army, Europe, Heidelberg, Germany.	A.P.O. 09403, New York, NY.
Caribbean Area:	
Commander in Chief, U.S. Army Forces, Southern Command, Fort Amador, Canal Zone.	A.P.O. 09834, New York, NY.

Instructions for submitting this request are contained in the "Transmittal Letter for Examination of Overseas Registrants," attached as part of this section.

c. *Processing by the U.S. Army.* The Army area commander in whose area of jurisdiction the registrant is located shall accomplish the following:

(1) Upon receipt of letter from the registrant requesting Armed Forces examination, the examination shall be scheduled and the registrant advised of the place, time and date to report for Armed Forces examination, and a copy of the communication shall be forwarded to the registrant's local board.

(2) Perform Armed Forces examination and other processing requirements in accordance with the applicable provisions of AR 601–270.

d. *Final action by local board.* Upon receipt of Statement of Acceptability (DD Form 62) the local board will forward the duplicate copy to the registrant and retain the original copy in his Registrant File Folder.

10. *Delivery for induction of registrants residing in Canada and Mexico.* Registrants selected for induction will be issued an Order to Report for Induction (SSS Form 252) giving "place of reporting as the address of the local board and "date" at least 30 days after issuance.

Assisting local boards proximate to the U.S. borders with Canada and Mexico shall provide transportation to registrants residing in Canada or Mexico from the assisting local board to the AFEES servicing its area and advise the AFEES commander of the expected time of the registrant's arrival at his AFEES. No delivery lists or other administration will be required of assisting local boards. Registrants in Class 1–O selected for processing to alternate service in lieu of induction will be processed in accordance with current directives.

11. *Delivery for induction of certain categories of registrants residing overseas.* The following categories of Selective Service registrants who have been selected for induction are entitled to receive transportation to the continental United States, Puerto Rico or Hawaii via military airlift to permit them to present themselves and submit to induction into the Armed Forces:

Registrants assigned to Local Board No. 100 (foreign) who reside outside the continental United States, the State of Alaska, the State of Hawaii, Puerto Rico, the Virgin Islands, Guam, the Canal Zone, Canada, and Mexico.

Registrants assigned to any other local board who registered outside the continental United States, the State of Alaska, the State of Hawaii, Puerto Rico, the Virgin Islands, Guam, or the Canal Zone and who have not subsequently entered into and established residence in any of these places and do not reside in Canada or Mexico.

These registrants will be processed as follows:

a. *Local board action.* Local boards shall prepare an Order to Report for Induction (SSS Form 252) in five copies, establishing "place of reporting" as the address of the local board, and "date" at least 30 days after issuance, a Record of Induction (DD Form 47) in five copies, and a Transmittal Letter for Delivery for Induction of Overseas Registrants in two copies. All copies of both SSS Form 252 and DD Form 47 shall be coded:

CIC:
S61230090000001

The above code identifying the Selective Service System is to be typed on the SSS Form 252 in the blank space immediately above the block provided for the local board stamp, and is to be typed on DD Form 47 in the "remarks" block (item 17.c.). Two-line code entries are required. The top line shall read CIC:. (NOTE.—All letters must be capitalized, followed by a colon; "CIC" is the abbreviation for Customer Identification Code.) The bottom line shall read S61230090000001. These documents will be distributed as follows:

(1) The original and one copy of SSS Form 252 and one copy of the transmittal letter will be sent to the registrant.

(2) Two copies of SSS Form 252 and one copy of transmittal letter will be retained in the registrant's file.

(3) Upon receipt of notification from an overseas Army area commander that he has approved the request of a registrant residing outside the continental United States, the State of Alaska, the State of Hawaii, Puerto Rico, the Virgin Islands, Guam, or the Canal Zone, to be delivered from an overseas point for induction, the local board shall prepare and/or forward to the Army area commander forms in number of copies as follows:

(a) Original and three copies of Record of Induction (DD Form 47);

(b) Original and one copy of the Report of Medical Examination (SF 88);

(c) Two copies of Report of Medical History (SF 93) with any X-ray film made at the time of Armed Forces physical examination, any waiver of disqualification, any order terminating civil custody, and any other such information concerning qualifications of the registrant for service in the Armed Forces.

In cases where the originals of the items mentioned in (b) and (c) are at the AFEES which examined the registrant, the local board shall request these items from the AFEES, so they may be forwarded to the overseas Army area commander by the local board.

(4) One copy of the Order to Report for Induction (SSS Form 252) and one copy of the Record of Induction (DD Form 47) will be forwarded to National Headquarters, Attention: ACFB.

b. *Processing by the U.S. Army area commander.* The Army area commander in whose jurisdiction the registrant resides shall complete the following:

(1) Upon receipt of letter from registrant requesting delivery for induction from overseas area, schedule such delivery by establishing time, date, and collection point for delivery processing.

(2) Authorize transportation of registrant from U.S. military airbase closest to his place of overseas residence to collection point if required.

(3) Advise registrant of the name and location of the military airbase and flight information for his transportation to the collection point and furnish him necessary travel authorization.

(4) When a registrant is to report to the collection point directly, advise him of time, date, and place of reporting for processing at collection point.

(5) Forward copy of the communication described in (3) or (4) to registrant's local board.

(6) Perform processing at collection point to determine registrant's acceptability for delivery for induction.

(7) Release registrants found not acceptable for induction into the Armed Forces during processing at the collection point. Registrants who were delivered to the collection point shall be authorized return air transportation when requested by the registrant.

(8) Provide registrants with necessary travel orders or MAC transportation requests for transportation to the United States and advise them of particular flight arrangements.

(9) Release physical examination and induction records to registrants for hand transmittal to local board and Armed Forces examining and entrance station

upon return to the continental United States.

c. *Delivery of registrants.* Registrants returning to the continental United States or Puerto Rico shall be required to report to local board aligned with port of aerial embarkation for transportation to the Armed Forces examining and entrance station handling inductions in their areas as follows:

ALIGNMENT CHART

Army area commander	Port of aerial embarkation	Local board and address	Location of AFEES
Europe	McGuire AFB, N. J.	No. 29: Carroll Bldg., 428 East State St., Trenton, NJ.	Philadelphia, Pa.
Caribbean	Charleston AFB, S.C.	No. 10: Federal Bldg., Room 333, Charleston, S.C.	Fort Jackson, S.C.
Pacific	McChord AFB, Wash.	No. 12: Hawthorne Bldg., 813 South K St., Tacoma, WA.	Seattle, Wash.
	Travis AFB, Calif.	No. 27: 422 Main St., Suisan, CA	Oakland, Calif.
	Morton AFB, Calif.	No. 130: 547 North Sierra Way, San Bernardino, CA.	Los Angeles, Calif.
Caribbean [1]	Ramey AFB, P. R.	No. 3: N. Acevedo St., Aguadilla, P R.	San Juan, P.R.

[1] The Caribbean Army Area Commander may elect to forward certain overseas registrants to the AFEES in Puerto Rico to be processed for induction in lieu of delivering them to the continental United States when transportation arrangements so permit. In these cases, registrants will be so advised at the collection point and instructed to report to the aligned local board for delivery to AFEES accordingly.

The Pacific Army area commander has established procedures whereby registrants being delivered to Hickam Air Force Base or Honolulu International Airport in Hawaii, are to be instructed to report to the Army air traffic coordinating offices upon arrival, for transportation to the AFEES at Fort De Russy, Hawaii, for induction in lieu of reporting to a local board of Selective Service.

The registrant shall be responsible for providing his own housing, meals and transportation expenses incurred during the time between his departure from his place of residence overseas and his arrival at the overseas military air base to which he is ordered to report for delivery or processing, as well as during the time between his arrival in the United States and his reporting to the alined local board. The registrant must also pay for his housing, meals, and incidental expenses during his overseas travel and processing.

d. *Processing by alined local boards.* Alined local boards shall process overseas registrants reporting for induction as follows:

(1) Registrants shall be scheduled for special forwarding to Armed Forces examining and entrance stations handling inductions for each local area;

(2) Transportation by commercial or other expeditious means shall be provided;

(3) Registrants are to be given appropriate instructions regarding travel schedule and location of Armed Forces examining and entrance station;

(4) The commander of the Armed Forces examining and entrance station will be advised by the local board of expected time of registrant's arrival at his station.

12. *Induction of registrants residing overseas who have been selected for military service.* Registrants shall be processed by the Armed Forces examining and entrance stations for induction and disposition of records accomplished in accordance with AR 601–270.

13. *Ordering of registrants residing overseas to report for alternate service in lieu of induction.* Overseas registrants in Class 1–O selected for alternate service in lieu of induction may apply to their State director and request overseas work assignments. He shall provide guidance in the form of advice on approved employers having such work assignments available. Processing of registrants for assignments to alternate service shall be accomplished in accordance with current directives.

14. *Registrants residing overseas not inducted at Armed Forces examining and entrance stations.* Overseas registrants who fail to qualify for induction into the Armed Forces may either elect to be released from Armed Forces examining and entrance stations or request air transportation back to initial place of reporting for delivery or collection point established by the Army commander of the area of jurisdiction. In either case, the AFEES commander will return the registrant's records to his local board.

When the registrant elects to be returned overseas, the AFEES commander will prepare military travel authorization for return from the port of aerial embarkation to the overseas point at which registrant reported to the Army area commander for delivery for induction. AFEES commanders are requested to enter on all copies of military travel authorization in block 7, the rejection code as follows:

CIC:
S61240090000001

The registrant being returned shall report to the port of aerial embarkation and present military travel authorization in order to obtain return transportation overseas. The registrant shall be responsible for providing his own housing, meals and transportation expenses incurred during the time between his return to the local board from AFEES and departure of his overseas flight from the aerial port of embarkation in the United States, as well as during the time between his return to the military air base overseas at which he was originally ordered to report for delivery or processing and his arrival at his place of residence overseas. The registrant must also pay for his housing, meals, and incidental expenses during his overseas travel and processing.

Overseas registrants who fail to report for or submit to induction will be processed in accordance with AR 601–270. No further housing, feeding or return transportation to any place shall be provided.

15. *Special departure and entrance procedures.* Overseas registrants will be processed through Immigration and Customs offices at aerial ports of embarkation overseas and in the United States in accordance with Immigration and Naturalization Service and Customs Agency procedures.

SAMPLE LETTER FOR EXAMINATION OF REGISTRANTS RESIDING IN CANADA AND MEXICO

Dear _____,

You have been selected to take an Armed Forces examination to determine your acceptability for induction into the Armed Forces of the United States. The enclosed Order to Report for Armed Forces Examination (SSS Form 223) is the official notification issued by the Selective Service System. In lieu of reporting to this local board, you may be examined at an Armed Forces examining and entrance station in the United States closest to the area of Canada or Mexico in which you reside by doing the following:

CONTACT THE STATE DIRECTOR OF SELECTIVE SERVICE

Select from the following list of States the State Director of Selective Service whose State borders that part of Canada or Mexico in which you reside:

Canada

Maine:	State Director, Selective Service System, Federal Building, 40 Western Avenue, Augusta, ME 04330.
New York:	State Director, Selective Service System, Federal Building, 441 Broadway, Albany, NY 12207.
Michigan:	State Director, Selective Service System, Post Office Box 626, Lansing, MI 48903.
Minnesota:	State Director, Selective Service System, Room 1503, Post Office and Custom House, St. Paul, MN 55101.
North Dakota:	State Director, Selective Service System, Post Office Box 1417, Bismark, ND 58501.
Montana:	State Director, Selective Service System, Post Office Box 1183, Helena, MT 59601.
Washington:	State Director, Selective Service System, Post Office Box 5247, Tacoma, WA 98405.

Mexico

California:	State Director, Selective Service System, 801 I Street, Sacramento, CA 95814.
Arizona:	State Director, Selective Service System, Room 202, Post Office Building, 522 North Central Avenue, Phoenix, AZ 85004.
New Mexico:	State Director, Selective Service System, Post Office Box 5175, Sante Fe, NM 87501.
Texas:	State Director, Selective Service System, 209 West Ninth Street, Austin, TX 78701.

Write the State director immediately requesting that your Armed Forces examina-

tion be accomplished by the Armed Forces examining and entrance station which handles the examinations for local boards in his State. You should include the following information in your letter:

a. Your full name.
b. Your Selective Service number.
c. Your present address.
d. The town or city within the United States nearest the Canadian or Mexican border in which a local board of Selective Service is located, if known to you. You may also wish to indicate a city which is most easily accessible by public means of transportation from the area of Canada or Mexico in which you reside.

YOUR EXAMINATION

The State director of Selective Service will advise you of the local board at which you are to report for transportation to the examining station and establish a new reporting date and time.

It is your responsibility to present yourself for examination at the time and place designated. Be sure to bring the Order to Report for Armed Forces Examination (SSS Form 223), to which this is attached, with you, and read all instructions carefully. You must pay all expenses going to and returning from the local board or AFEES. The Armed Forces examination is usually accomplished in one day; however, you should be prepared to be held over for special examination or tests for a period of up to 3 days if such is required to determine your acceptability or nonacceptability.

NOTIFICATION OF RESULTS OF YOUR EXAMINATION

You may be advised informally of the results of your Armed Forces examination when you take it at the military installation. However, the official notification will be sent to you by local board with which you are registered on a Statement of Acceptability (DD Form 62), which will indicate "Found Fully Acceptable" or "Found Not Acceptable" * * * "For Induction Under Current Standards".

If you are found "Fully Acceptable", you may be selected for induction into the Armed Forces of the United States when your lottery number is reached by your local board in filling calls for young men for military service.

If you are found "Not Acceptable" you may be subject to reexamination at a later date if the reason for your nonacceptability is considered of a temporary or minor nature.

SPECIAL INSTRUCTIONS

If you fail to report for the scheduled Armed Forces examination, or to contact the State Director of Selective Service nearest the area in which you reside regarding your examination, it is a serious violation of the Selective Service law, and you may be scheduled for induction into the Armed Forces in normal sequence without such examination.

By direction of the local board

SAMPLE TRANSMITTAL LETTER FOR EXAMINATION OF OVERSEAS REGISTRANT

Dear _____,

You have been selected to take an Armed Forces examination to determine your acceptability for induction into the Armed Forces of the United States. The enclosed Order to Report for Armed Forces Examination (SSS Form 223) is the official notification issued by the Selective Service System. In lieu of reporting to this local board, you may be examined at an overseas examining facility of the U.S. Armed Forces by doing the following:

CONTACT THE ARMY COMMANDER OF YOUR OVERSEAS AREA

Select from the following list the closest Army area commander:

Army area commander	*APO address*
Pacific Area.—Commander in Chief, U.S. Army, Pacific, Fort Shafter, Hawaii.	APO 96558 San Francisco, CA.
European Area.—Commander in Chief, U.S. Army, Europe, Heidelberg, Germany.	APO 09403 New York, NY.
Caribbean Area.—Commander in Chief, U.S. Army Forces, Southern Command, Fort Amador, Canal Zone.	APO 09834 New York, NY.

Write this Army commander immediately requesting that your Armed Forces examination be accomplished at a U.S. military installation overseas. You should include the following information in your letter:

a. Your full name.
b. Your Selective Service number.
c. Your present address.

YOUR EXAMINATION

The Army commander will send you a new reporting date and place of examination. It is your responsibility to present yourself for examination at the time and place designated. Be sure to bring the enclosed prepared papers with you and read instructions on the Order to Report for Armed Forces Examination (SSS Form 223) carefully. You must pay all expenses going to, while at, and returning from the examining facility. The Armed Forces examination is usually accomplished in 1 day, however, you should be prepared to be held over for special examination or tests for a period of up to 3 days if such is required to determine your acceptability or nonacceptability.

NOTIFICATION OF RESULTS OF YOUR EXAMINATION

You may be advised informally of the results of your Armed Forces examination when you take it at the military installation. However, the official notification will be sent to you by the local board with which you are registered on a "Statement of Acceptability", DD Form 62, which will indicate "Found Fully Acceptable" or "Found Not Fully Acceptable" * * * "For Induction Under Current Standards".

If you are found "Fully Acceptable," you may be selected for induction into the Armed Forces of the United States when your lottery number is reached by your local board in filling calls for young men for military service.

If you are found "Not Acceptable" you may be subject to reexamination at a later date if the reason for your nonacceptability is considered of a temporary or minor nature.

SPECIAL INSTRUCTIONS

If you fail to report for the scheduled Armed Forces examination, or to contact the Army commander of your overseas area regarding being examined overseas, it is a serious violation of the Selective Service law, and you may be scheduled for induction into the Armed Forces in normal sequence without such examination.

By direction of the local board

SAMPLE TRANSMITTAL LETTER FOR DELIVERY FOR INDUCTION OF OVERSEAS REGISTRANT

Dear _____,

You have been selected for induction into the Armed Forces of the United States.

Instead of reporting to this local board for delivery to the Armed Forces examining and entrance station handling inductions for this area as indicated in the Order to Report for Induction (SSS Form 252) to which this is is attached, you may request transportation from certain U.S. military airbases overseas to the United States for this induction. Upon your arrival in the United States, you are required to report to the local board of the Selective Service System aligned with the aerial port of embarkation at which you landed in the United States. That local board will provide transportation to an Armed Forces examining and entrance station where you will be inducted. If you wish to request transportation to the United States for induction, you must do the following:

CONTACT THE ARMY AREA COMMANDER

Select from the following list the closest Army area commander:

Army area commander	*APO address*
Pacific Area.—Commander in Chief, U.S. Army, Pacific, Fort Shafter, Hawaii.	APO 96558 San Francisco, Calif.
European Area.—Commander in Chief, U.S. Army, Europe, Heidelberg, Germany.	APO 09403 New York, N.Y.
Caribbean Area. — Commander in Chief, U.S. Army Forces, Southern Command, Fort Amador, Canal Zone.	APO 09834 New York, N.Y.

You must immediately write to the appropriate Army area commander, enclosing a copy of your Order to Report for Induction (SSS Form 252), to which this letter is attached, requesting that he arrange for your delivery for induction. Be sure to include in your letter the following information:

a. Your full name.
b. Your Selective Service number.
c. Your present address.

ACTION BY ARMY AREA COMMANDER

The Army area commander may advise you to report to a U.S. airbase closest to your place of overseas residence for transportation to the collection point where you will be processed before being returned to the continental United States for induction. He will forward military travel authorization which will serve as your airline ticket and advise you of the time, date and place to report for your flight, and the name of the MAC base and its location. The Army area commander may, on the other hand, advise you to report directly to the collection point at which you will be processed.

GOING TO THE OVERSEAS DELIVERY POINT

It is your responsibility to make your own transportation arrangements from your place of overseas residence to the military air base specified and to present yourself on the proper date at the time and place specified by the Army area commander. You are restricted to 66 pounds of total baggage including suitcases, briefcases and other hand luggage. You must pay for your own travel going to this military airbase. You must also pay for your housing, meals and incidental expenses during your overseas travel and processing. If you are not accepted for delivery as the result of overseas processing, you may be released if you reported directly to the collection point for processing or returned to the military airbase to which you originally reported for delivery. You should be prepared to pay for the return expenses to your overseas residence.

YOUR DELIVERY PROCESSING OVERSEAS

You will be processed as follows:

a. Medical records from your Armed Forces physical examinaion will be reviewed and you will receive preliminary processing to determine your acceptability for military service.

b. You will be issued a MAC transportation request or travel order which will serve as your ticket for transportation via military airlift to the United States. You should have DD Form 47 available to show at all points of travel in order to assure continuous movement by MAC.

c. Since you will be requested to pass through customs and immigration stations both overseas and in the United States, be sure to accomplish the following:

(1) Bring your U.S. Passport or other proof of citizenship and immunization or vaccination records.

(2) Observe the various customs and agricultural regulations relative to transporting alcoholic beverages, drugs, plants, fruit and vegetables of a restricted nature, animals, and other items restricted from import.

d. The Army area commander's representative will provide information relative to your return flight and place your medical papers and induction record in your hands for delivery to the local board in the United States to which you must report. For overseas registrants being returned from the Pacific and Caribbean areas, the Army area commander may decide to provide transportation to Puerto Rico or Hawaii instead of the continental United States. In these cases, his representative will instruct you to report to the Armed Forces examining and entrance station in San Juan, P.R., or Honolulu, Hawaii, for induction rather than reporting to a Selective Service local board.

UPON ARRIVAL IN THE UNITED STATES

You are required to report to the local board of the Selective Service System alined with the port of aerial embarkation in the United States per the attached schedule. After processing through customs and immigration offices at the military installation, it is your responsibility to arrange and pay for your transportation to the local board office designated.

YOUR DELIVERY FOR INDUCTION

The executive secretary of the local board of Selective Service will provide a travel authorization or bus ticket for your transportation to the Armed Forces examining and entrance station servicing that area and give you instructions on reporting to the commander of the AFEES. She will advise you of the schedule for your arrival at the AFEES and advise the commander to expect you.

YOUR INDUCTION

You will be inducted into the Armed Forces under procedures which are under the control of the Department of the Army. After induction, you will be transported to an Army reception center for basic military training.

IF YOU ARE NOT ACCEPTED

If you are not accepted for induction into the Armed Forces you may (1) elect to be released from your order to report for induction at the AFEES upon your execution of a written waiver of your right to return transportation overseas, at which point you are free to leave the AFEES, or (2) request to be returned to the overseas military airbase to which you were instructed to report for delivery or processing by the overseas Army area commander in which case the following would take place:

a. The AFEES commander will provide (1) a bus ticket or travel authorization for your return from the AFEES to the local board to which you reported, and (2) a MAC transportation request or travel order for your return flight overseas to the point from which you departed for the United States and to the point of departure to the United States and travel to the military airbase to which you originally reported for delivery or processing. You should make certain that the commander of the AFEES rejecting you enters the correct code for rejection:

CIC:
S61240090000001
on the military travel authorization.

b. You must make your own arrangements for travel from the local board to the port of aerial embarkation in the United States and from the military airbase to which you originally reported for delivery or processing overseas to your place of residence, and pay for meals, housing, transportation and incidental expenses involved.

SPECIAL INSTRUCTIONS

1. If you fail to comply with the Order to Report for Induction (SSS Form 252) and this set of allied instructions, or fail to submit to induction for which you are ordered, such actions are in violation of the Selective Service law, and punishable by fine and/or imprisonment.

2. Overseas registrants arriving in the United States shall be required to report to the local board aligned with the port of aerial embarkation for transportation to the Armed Forces examining and entrance station handling inductions for their area as follows:

ALIGNMENT CHART

Army area commander	Port of aerial Embarkation	Local board and address	Location of AFEES
Europe	McGuire AFB, N.J.	No. 29: Carroll Bldg., 428 East State St., Trenton, NJ	Philadelphia, Pa.
Caribbean	Charleston AFB, S.C.	No. 10: Federal Bldg., Room 333, Charleston, S.C.	Fort Jackson, S.C.
Pacific	McChord AFB, Wash.	No. 12: Hawthorne Bldg., 813 South K St., Tacoma, WA.	Seattle, Wash.
	Travis AFB, Calif.	No. 27: 422 Mail St., Suisan, CA	Oakland, Calif.
	Norton AFB, Calif.	No. 130: 547 North Sierra Way, San Bernardino, CA.	Los Angeles, Calif.
Caribbean [1]	Ramey AFB, P.R.	No. 3: M. Acevedo St., Aguadilla, PR	San Juan, P.R.

[1] The Caribbean Army Area Commander may elect to forward certain overseas registrants to the AFEES in Puerto Rico to be processed for induction in lieu of delivering them to the continental United States when transportation arrangements so permit. In these cases, registrants will be so advised at the collection point and instructed to report to the aligned local board for delivery to AFEES accordingly.

The Pacific Army area commander has established procedures whereby registrants being delivered to Hickam Air Force Base or Honolulu International Airport in Hawaii, are to be instructed to report to the Army air traffic coordinating offices upon arrival, for transportation to the AFEES at Fort De Russy, Hawaii, for induction in lieu of reporting to a local board of Selective Service.

By direction of the local board

CURTIS W. TARR,
Director.

APRIL 12, 1972.

[FR Doc.72-5787 Filed 4-17-72;8:45 am]

SMALL BUSINESS ADMINISTRATION

[License No. 02/02-0064]

DONNER CAPITAL CORP.

Notice of Surrender of License

Notice is hereby given that Donner Capital Corp., New York, N.Y., incorporated under the laws of New York on Jannary 23, 1961, has surrendered its License No. 02/02-0064 issued by the Small Business Administration (SBA) on April 17, 1961.

Donner Capital Corp. has complied with all conditions set forth by SBA for surrender of its license including repayment of all indebtedness owing to SBA.

Therefore, under the authority vested by the Small Business Investment Act of 1958, as amended, and pursuant to the regulations promulgated thereunder, the surrender of the license of Donner Capital Corp. is hereby accepted and it is no longer licensed to operate as a small business investment company.

Dated: April 11, 1972.

A. H. SINGER,
Associate Administrator for Investment.

[FR Doc.72-5854 Filed 4-17-72;8:49 am]

[License No. 02/02-0077]

DONNER EQUITIES CORP.

Notice of Surrender of License

Notice is hereby given that Donner Equities Corp., New York, N.Y., incorporated under the laws of New York on March 14, 1961, has surrendered its License No. 02/02-0077, issued by the Small Business Administration (SBA) on June 22, 1961.

Donner Equities Corp. has complied with all conditions set forth by SBA for surrender of its license including repayment of all indebtedness owing to SBA.

Therefore, under the authority vested by the Small Business Investment Act of 1958, as amended, and pursuant to the regulations promulgated thereunder, the surrender of the license of Donner Equities Corp. is hereby accepted and it is no longer licensed to operate as a small business investment company.

Dated: April 11, 1972.

A. H. SINGER,
Associate Administrator for Investment.

[FR Doc.72-5855 Filed 4-17-72;8:49 am]

INTERSTATE COMMERCE COMMISSION

ASSIGNMENT OF HEARINGS

APRIL 13, 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 presenty 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 75302 Sub 11, Doudell Trucking Co., now assigned May 1, 1972, at Salt Lake City, Utah, postponed to July 17, 1972, at San Francisco, Calif., in a hearing room to be later designated.

MC 113678 Sub 442, Curtis, Inc., MC 115841 Sub 412, Colonial Refrigerated Transportation, Inc., MC 117883 Sub 158, Subler Transfer, Inc., now assigned May 8, 1972, at New York, N.Y., postponed indefinitely.

No. 35481, Public Service Co. of Indiana, Inc. v. Penn Central Transportation Co., et al., now assigned April 18, 1972, at Washington, D.C., postponed to May 22, 1972, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 101186 Sub 11, Arledge Transfer, Inc., now assigned May 8, 1972, at Des Moines, Iowa, will be held in Room 707, Federal Building, 210 Walnut Street, Des Moines, IA.

No. MC 56679 Subs Nos. 41, 48, 50, 63, Brown Transport Corp., Extension Florida Points, MC–F–11345, Brown Transport Corp.—Investigation of Control—Pool Freight Line, Inc., now being assigned prehearing conference, on June 6, 1972, in Room 305, 1252 West Peachtree Street NW., Atlanta, GA, on June 14, 1972, in Holiday Inn—Downtown, 175 Piedmont Avenue NE., Atlanta, GA, on July 10, 1972, Holiday Inn I–85, I–85 and Parkins Mill Road Exit, Greenville, S.C., and on July 17, 1972, Holiday Inn—Downtown, 2300 Phillips Highway (Junction I–95 and U.S. Highway 1 South), Jacksonville, FL.

MC 99680 Sub 2, North Shore and Central Illinois Freight Co., now assigned May 8, 1972, at Chicago, Ill., hearing canceled and application dismissed.

MC 135772, Barrett Transfer & Storage Co., now assigned April 24, 1972, at Olympia, Wash., canceled and reassigned to April 24, 1972, at the Edgewater Inn, 2411 Alaskan Way, Pier 67, Seattle, WA.

MC 117574 Sub 209, Daily Express, Inc., now assigned April 27, 1972, at Washington, D.C., postponed to May 16, 1972, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 133095 Sub 8, Texas Continental Express, Inc., now assigned April 20, 1972, at Washington, D.C., postponed to May 23, 1972, at the Offices of the Interstate Commerce Commission, Washington, D.C.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.72–5875 Filed 4–17–72;8:51 am]

FOURTH SECTION APPLICATION FOR RELIEF

APRIL 13, 1972.

Protests to the granting of an application must be prepared in accordance with Rule 1100.40 of the General Rules of Practice (49 CFR 1100.40) and filed within 15 days from the date of publication of this notice in the FEDERAL REGISTER.

LONG-AND-SHORT HAUL

FSA No. 42399—*General commodities between ports in the Mediterranean and rail stations on the west coast of the United States.* Filed by Sea-Land Service, Inc. (No. 62), for itself and interested rail carriers. Rates on general commodities, between ports in the Mediterranean, on the one hand, and rail stations on the west coast of the United States, on the other.

Grounds for relief—Water competition.

Tariff—Sea-Land Service, Inc., tariff ICC 73. Rates are published to become effective on May 11, 1972.

By the Commission.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.72–5876 Filed 4–17–72;8:51 am]

[Notice 52]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

APRIL 12, 1972.

The following are notices of filing of applications[1] for temporary authority under section 210a(a) of the Interstate Commerce Act provided for under the new rules of Ex Parte No. MC–67 (49 CFR Part 1131), published in the FEDERAL REGISTER, issue of April 27, 1965, effective July 1, 1965. These rules provide that protests to the granting of an application must be filed with the field official named in the FEDERAL REGISTER publication, within 15 calendar days after the date of notice of the filing of the application is published in the FEDERAL REGISTER. One copy of such protests must be served on the applicant, or its authorized representative, if any, and the protests must certify that such service has been made. The protests must be specific as to the service which such protestant can and will offer, and must consist of a signed original and six copies.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in field office to which protests are to be transmitted.

[1] Except as otherwise specifically noted, each applicant (on applications filed after Mar. 27, 1972) states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

MOTOR CARRIERS OF PROPERTY

No. MC 3252 (Sub-No. 79 TA), filed March 29, 1972. Applicant: MERRILL TRANSPORT CO., 1037 Forest Avenue, Portland, ME 04103. Applicant's representative: Francis E. Barrett, Jr., 10 Industrial Park Road, Hingham, MA 02043. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Petroleum products*, in bulk, in tank vehicles, from Westport, N.Y., to points in Vermont except St. Albans Bay and Burlington, for 180 days. Supporting shipper: Mobil Oil Corp., 150 East 42d Street, New York, N.Y. 10017. Send protests to: Donald G. Weiler, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 307, 76 Pearl Street, Portland, ME 04112.

No. MC 24583 (Sub-No. 15 TA), filed March 29, 1972. Applicant: RODNEY STEWART AND TROY STEWART, doing business as, FRED STEWART COMPANY, 129 South Clay Street, Box 665, Magnolia, AR 71753. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid chemicals*, in bulk, from points in Columbia County, Ark., to points in Louisiana, Mississippi, Oklahoma, Tennessee, and Texas (except Houston, Tex., and 50 miles radius thereof), for 180 days. Supporting shipper: The Dow Chemical Co., Louisiana Division, Plaquemine, La. 70764. Send protests to: District Supervisor William H. Land, Jr., Interstate Commerce Commission, Bureau of Operations, 2519 Federal Office Building, 700 West Capitol, Little Rock, AR 72201.

No. MC 30844 (Sub-No. 395 TA), filed March 29, 1972. Applicant: KROBLIN REFRIGERATED XPRESS, INC., 2125 Commercial Street, Post Office Box 5000, Waterloo, IA 50704. Applicant's representative: Paul Rhodes (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen foodstuffs*, from New Hampton, Iowa, to points in Iowa, Illinois, Kentucky, Michigan, Minnesota, and Wisconsin, for 180 days. Supporting shipper: Kitchens of Sara Lee, 500 Waukegan Road, Deerfield, IL 60015. Send protests to: Herbert W. Allen, Transportation Specialist, Interstate Commerce Commisson, Bureau of Operations, 677 Federal Building, Des Moines, Iowa 50309.

No. MC 30844 (Sub-No. 397 TA), filed March 29, 1972. Applicant: KROBLIN REFRIGERATED XPRESS, INC., 2125 Commercial Street, Post Office Box 5000, Waterloo, IA 50702. Applicant's representative: Paul Rhodes (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen foodstuffs*, from New Hampton, Iowa, to points in Alabama, Florida, Georgia, North Carolina, South Carolina, and Tennessee, for 180 days. Supporting ship-

per: Kitchens of Sara Lee, 500 Waukegan Road, Deerfield, IL 60015. Send protests to: Herbert W. Allen, Transportation Specialist, Interstate Commerce Commission, Bureau of Operations, 677 Federal Building, Des Moines, Iowa 50309.

No. MC 51146 (Sub-No. 265 TA), filed March 29, 1972. Applicant: SCHNEIDER TRANSPORT, INC., 2661 South Broadway, Post Office Box 2298, 54306, Green Bay, WI 54304. Applicant's representative: Neil DuJardin (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs*, from Iowa City, Iowa, to points in Minnesota, for 180 days. Supporting shipper: Heinz U.S.A. Division of H. J. Heinz Co., Post Office Box 57, Pittsburgh, Pa. 15230 (John W. Pinchot, Cost Analyst). Send protests to: District Supervisor Lyle D. Helfer, Interstate Commerce Commission, Bureau of Operations, 135 West Wells Street, Room 807, Milwaukee, WI 53203.

No. MC 84692 (Sub-No. 2 TA), filed March 28, 1972. Applicant: BEKINS VAN AND STORAGE COMPANY, West Fourth and Bluff Streets, Post Office Box 777, Sioux City, IA 51102. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Uncrated and crated, used and new furniture, appliances and lawn equipment* from the retail store and warehouse of Bekins Warehouse Furniture Store in Sioux City, Iowa, to points in Lyon, Sioux, Plymouth, Woodbury, Monona, Harrison, Shelby, Crawford, Ida, Cherokee, O'Brien, Osceola, Dickinson, Clay, Buena Vista, Sac, Carroll, Audubon, Calhoun, Pocahontas, Palo Alto, Emmet, Kossuth, and Humbolt Counties, Iowa; Rock, Nobles, and Jackson Counties, Minn.; Union, Lincoln, Minnehaha, Clay, Yankton, Bon Homme, Hutchinson, and Turner Counties, S. Dak.; Dakota, Dixon, Cedar, Knox, Pierce, Wayne, Thurston, Burt, Cuming, Stanton, Madison, Colfax, Dodge, and Washington Counties, Nebr., and on return movement: *Uncrated and used furniture, appliances and lawn equipment*, from the above-described destinations on initial movement to the retail store and warehouse of Bekins Warehouse Furniture Store in Sioux City, Iowa, for 180 days. Supporting shipper: Bekins Warehouse Furniture Store, Sioux City, Iowa. Send protests to: Carroll Russell, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 711 Federal Office Building, Omaha, Nebr. 68102.

No. MC 106674 (Sub-No. 89 TA), filed March 22, 1972. Applicant: SCHILLI MOTOR LINES, INC., Post Office Box 122, Delphi, IN 46923. Applicant's representative: Thomas R. Schilli (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Anhydrous ammonia* from Lima, Ohio, to points in Indiana and Michigan, for 180 days. Supporting shipper: American Cyanamid Co., Agricultural Division, Post Office Box 400, Princeton, NJ 08540. Send protests to: District Supervisor J. H. Gray, Bureau of Operations, Interstate Commerce Commission, Room 204, 345 West Wayne Street, Fort Wayne, IN 46802.

No. MC 109294 (Sub-No. 20 TA), filed March 29, 1972. Applicant: COMMERCIAL TRUCK CO. LTD., 230 Brunette Street, New Westminster, BC Canada. Applicant's representative: Joseph O. Earp, 411 Lyon Building, Seattle, Wash. 98104. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Buoys*, from Seattle, Wash., to the international boundary line between the United States and Canada at or near Blaine or Sumas, Wash., for 180 days. Supporting shipper: Sokil Express Lines Ltd., 8830 126th Avenue, Edmonton, AB. Send protests to: E. J. Casey, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 6130 Arcade Building, Seattle, Wash. 98101.

No. MC 111170 (Sub-No. 188 TA), filed March 29, 1972. Applicant: WHEELING PIPE LINE, INC., Post Office Box 1718, 2811 North West Avenue, El Dorado, AR 71730. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Weed killing compound*, in bulk, from Jacksonville, Ark., to Dumas, Tex., Greeley, Colo., New Orleans, La., and Garden City, Kans., for 180 days. Supporting shipper: Transvaal, Inc., Post Office Box 69, Jacksonville, AR 72076. Send protests to: District Supervisor William H. Land, Jr., Interstate Commerce Commission, Bureau of Operations, 2519 Federal Office Building, 700 West Capitol, Little Rock, AR 72201.

No. MC 111401 (Sub-No. 362 TA), filed March 28, 1972. Applicant: GROENDYKE TRANSPORT, INC., 2510 Rock Island Boulevard, Post Office Box 632, Enid, OK 73701. Applicant's representative: Victor R. Comstock (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Dry processed clay* in bulk, in tank vehicles, from Flatonia, Tex., to Wyoming and Holland, Mich., for 180 days. Supporting shipper: J. C. Nasco, assistant traffic manager, Nalco Chemical Co., 180 North Michigan Avenue, Chicago, IL 60601. Send protests to: C. L. Phillips, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 240, Old Post Office Building, 215 Northwest Third, Oklahoma City, OK.

No. MC 112520 (Sub-No. 259 TA), filed March 28, 1972. Applicant: MCKENZIE TANK LINES, INC., New Quincy Road, Post Office Box 1200, Tallahassee, FL 32302. Applicant's representative: Sol H. Proctor, 2501 Gulf Life Tower, Jacksonville, Fla. 32207. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Crude oil*, in bulk, in tank vehicles, from the plantsite of Sun Oil Co., at or near Jay, Fla., to Pensacola, Fla., for 180 days. Supporting shipper: Sun Oil Co., Post Office Box 2039, Tulsa, OK 74102. Send protests to: District Supervisor G. H. Fauss, Jr., Bureau of Operations, Interstate Commerce Commission, Box 35008, 400 West Bay Street, Jacksonville, FL 32202.

No. MC 113666 (Sub-No. 64 TA), filed March 29, 1972. Applicant: FREEPORT TRANSPORT, INC., 1200 Butler Road, Freeport, PA 16229. Applicant's representative: Daniel R. Smetanick (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Anhydrous ammonia*, in tank vehicles, from the international boundary between the United States and Canada located on the Niagara River to points in New York, Ohio, and Pennsylvania, and the return of *refused, damaged, or rejected shipments*, for 180 days. Supporting shipper: American Cyanamid Co., Agricultural Division, Post Office Box 400, Princeton, NJ 08540. Send protests to: John J. England, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 2111 Federal Building, 1000 Liberty Avenue, Pittsburgh, PA 15222.

No. MC 119789 (Sub-No. 113 TA), filed March 29, 1972. Applicant: CARAVAN REFRIGERATED CARGO, INC., Post Office Box 6188, Dallas, TX 75222. Applicant's representative: James T. Moore (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Canned animal foods*, from Vernon, Calif., to Hanover, Pa., for 180 days. NOTE: Carrier does intend to tack authority. Supporting shipper: Kal Kan Foods, Inc., 3386 East 44th Street, Vernon, CA. Send protests to: District Supervisor E. K. Willis, Jr., Interstate Commerce Commission, Bureau of Operations, 1100 Commerce Street, Room 13C12, Dallas, TX 75202.

No. MC 128527 (Sub-No. 28 TA), filed March 27, 1972. Applicant: MAY TRUCKING COMPANY, a corporation, Post Office Box 398, Payette, ID 83661. Applicant's representative: John K. Gatchell, Post Office Box 195, Payette, ID 83661. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel articles* as follows: *Beams, angles, bars, channels, plate, sheet, coil, flat and shapes, special steel reinforcing bar*, from Portland, Oreg., to points in Ada and Canyon Counties, Idaho, for 180 days. NOTE: Applicant states it does not intend to tack or interline authority herein applied for with other carriers. Supporting shippers: Gate City Steel, Post Office Box 8005, Boise, ID 83707; AG Equipment, Inc., Manufacturers, Caldwell, Idaho 83605; Oregon Steel Mills, 5200 Northwest Front Avenue, Portland, OR; Industrial Export Co., 406 Board of Trade Building, Portland, Oreg. 97204; Elixir Industries, Post Office Box 7986, Boise, ID 83707; Allen Steel Supply Co., 2902 Fletcher Street, Boise, ID 83706; Kit Manufacturing Co., Caldwell, Idaho 83605; Western Steel Manufacturing Co., 2601 Main Street, Boise, ID 83707; Idaho

Pacific Steel Warehouse Co., 5320 Emerald, Boise, ID 83704; and Ace Supply, Inc., Post Office Box 1098, Caldwell, ID 83605. Send protests to: C .W. Campbell, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 550 West Fort Street, Box 07, Boise, ID 83702.

No. MC 136543 TA, filed March 30, 1972. Applicant: DODSON'S MOVING & STORAGE CO., INC., Post Office Box 452, Oak Ridge, TN 37830. Applicant's representative: Robert H. Kinker, Post Office Box 464, Frankfort, KY 40601. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Used household goods, unaccompanied baggage, and personal effects*, between points in Anderson, Blount, Campbell, Carter, Claiborne, Cocke, Cumberland, Grainger, Greene, Hamblen, Hancock, Hawkins, Jefferson, Knox, Loudon, McMinn, Monroe, Roane, Sevier, Sullivan, Unicoi, Union, and Washington Counties, Tenn., Bell and Whitley Counties, Ky.; Lee, Scott, Washington, and Wise Counties, Va.; and Ash, Avery, Cherokee, Graham, Haywood, Madison, Mitchell, Swain, and Watauga Counties, N.C. Restriction: The operations authorized herein are subject to the following conditions: Said operations are restricted to the transportation of traffic having a prior or subsequent movement, in containers, except as to unaccompanied baggage and personal effects, beyond the points authorized. Said operations are restricted to the performance of pickup and delivery service, in containers, with packing, crating, and containerization, or unpacking, uncrating, and decontainerization of such traffic, for 180 days. Supporting shipper: Department of the Army, Office of the Judge Advocate General, Washington, D.C. 20310. Send protests to: Joe J. Tate, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 803 1808 West End Building, Nashville, Tenn. 37203.

No. MC 136547 TA, filed March 28, 1972. Applicant: STAR INDUSTRIES TRANSPORT, INC., 1410 North 14th Street, St. Louis, MO 63106. Applicant's representative: Austin C. Knetzger, 722 Chestnut Street, Room 1011, St. Louis, MO 63101. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Bananas, coconuts, and pineapples*, restricted to traffic moving in chassis mounted containers and having a prior or subsequent movement by rail, from the St. Louis-East St. Louis commercial zone and terminal area, to points in Illinois, Iowa, and Missouri, and from the Kansas City commercial zone and terminal area to points in Kansas, Missouri, Illinois, Iowa, Nebraska, North Dakota, South Dakota, Minnesota, Wisconsin, and Indiana, for 180 days. Supporting shipper: Peter Contabad for Chiquita Brands, Inc., 1250 Broadway, New York, NY. Send protests to: District Supervisor J. P. Werthmann, Interstate Commerce Commission, Bureau of Operations, 1520 Market Street, Room 1465, St. Louis, MO 63101.

No. MC 136549 TA, filed March 28, 1972. Applicant: SEAWAY TRUCKING, LTD., 1900 11th Street SE., Calgary 21, AB, Canada. Applicant's representative: Jos. F. Meglen, Post Office Box 1581, Billings, MT 59103. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Soda ash*, in bulk, from points in Wyoming to ports of entry on the United States-Canada boundary line located at or near Sweetgrass, Mont., and Wild Horse, Mont., for 180 days. Supporting shipper: Dominion Glass Co., Ltd., Main Street North, Redcliff, Alberta, Canada. Send protests to: Paul J. Labane, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 251, U.S. Post Office Building, Billings, Mont. 59101.

No. MC 136550 TA, filed March 29, 1972. Applicant: CRANWOOD TRUCKING CO., INC., 13312 Littleton Avenue, Garfield Heights, OH 44125. Applicant's representative: Keith F. Henley, 88 East Broad Street, Columbus, OH 43215. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Coke*, from Buffalo, N.Y., to Ashtabula, Ohio, and from Erie, Pa., to Buffalo, N.Y., for 180 days. Supporting shipper: Mid-Continent Coal and Coke Co., 105 West Adams Street, Chicago, Ill. Send protests to: District Supervisor G. J. Baccei, Interstate Commerce Commission, Bureau of Operations, 181 Federal Office Building, 1240 East Ninth Street, Cleveland, OH 44199.

No. MC 136552 TA, filed March 28, 1972. Applicant: KARDUX TRANSFER, INC., 1907 Roby Avenue, Muscatine, IA 52761. Applicant's representative. William L. Fairbank, 900 Hubbell Building, Des Moines, Iowa 50309. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Centrifugal pumps and equipment, materials and supplies* used in the manufacture and sale of centrifugal pumps and *pump parts*, between points in Black Hawk, Cedar, Delaware, Muscatine, and Scott Counties, Iowa, and Henry, Jo Daviess, Rock Island, and Whiteside Counties, Ill., under contract with Carver Pump Co., for 180 days. Supporting shipper: Carver Pump Co., Muscatine, Iowa 52761. Send protests to: Herbert W. Allen, Transportation Specialist, Interstate Commerce Commission, Bureau of Operations, 677 Federal Building, Des Moines, Iowa 50309.

No. MC 135705 (Sub-No. 2 TA), filed March 29, 1972. Applicant: LELAND L. MELROSE, doing business as MELROSE TRUCKING COMPANY, 6360 Raderville Route, Casper, WY 82601. Applicant's representative: LeLand L. Melrose (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Fly ash*, in bulk, in pneumatic pressure trailers, equipped with blowers, from the site of the Dave Johnson Power Plant near Glenrock, Wyo., to Brighton and Commerce City, Conn., Kimball, Nebr., and Vernal, Utah, and (2) *powdered chemical* (expansion agent or sealant), in bulk, from points in Denver County, Colo., to stations in Wyoming and to Vernal, Utah, for 180 days. Supporting shippers: Dowell Division of the Dow Chemical Co., Petroleum Building, Casper, Wyo. 82601; Halliburton Services, 1161 East Yellowstone Highway, Casper, Wyo. 82601. Send protests to: District Supervisor Paul A. Naughton, Interstate Commerce Commission, Bureau of Operations, Room 1006, Federal Building and Post Office, 100 East B Street, Casper, Wyo. 82601.

By the Commission.

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

[FR Doc.72-5878 Filed 4-17-72;8:51 am]

[Notice 53]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

APRIL 13, 1972.

The following are notices of filing of applications[1] for temporary authority under section 210a(a) of the Interstate Commerce Act provided for under the new rules of Ex Parte No. MC-67 (49 CFR Part 1131), published in the FEDERAL REGISTER, issue of April 27, 1965, effective July 1, 1965. These rules provide that protests to the granting of an application must be filed with the field official named in the FEDERAL REGISTER publication, within 15 calendar days after the date of notice of the filing of the application is published in the FEDERAL REGISTER. One copy of such protests must be served on the applicant, or its authorized representative, if any, and the protests must certify that such service has been made. The protests must be specific as to the service which such protestant can and will offer, and must consist of a signed original and six copies.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in the field office to which protests are to be transmitted.

MOTOR CARRIERS OF PROPERTY

No. MC 16903 (Sub-No. 30 TA), filed March 21, 1972. Applicant: MOON FREIGHT LINES, INC., 120 West Grimes Lane, Post Office Box 1275, Bloomington, IN 47402. Applicant's representative: Ferdinand Born, 601 Chamber of Commerce Building, Indianapolis, Ind. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Marble chips, lawn and garden limestone and white marble play sands*, from the plantsite of the Ground Products Division of Vermont

[1] Except as otherwise specifically noted, each applicant (on applications filed after Mar. 27, 1972) states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

Marble Co. at Pittsford, Vt. to points in New Hampshire, Maine, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Delaware, and the District of Columbia and to points in the Commonwealth of Pennsylvania east of U.S. Route 15, for 180 days. Supporting shipper: Vermont Marble Co., Proctor, Vt. 05765. Send protests to: District Supervisor James W. Habermehl, Interstate Commerce Commission, Bureau of Operations, 802 Century Building, 36 South Penn Street, Indianapolis, Ind. 46204.

No. MC 41951 (Sub-No. 14 TA), filed March 29, 1972. Applicant: WHEATLEY TRUCKING, INC., 125 Brohawn Avenue, Post Office Box 458, Cambridge, MD 21613. Applicant's representative: Marion L. Wheatley, Jr. (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs*, except frozen and coldpack, from Cambridge, Md., to South Bend, Ind., for 180 days. Supporting shipper: RJR Foods, Inc., Cambridge, Md. Send protests to: Robert D. Caldwell, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 12th and Constitution Avenue NW., Washington, DC 20423.

No. MC 44639 (Sub-No. 52 TA), filed March 22, 1972. Applicant: L & M EXPRESS CO., INC., 220 Ridge Road, Lynhurst, NJ 07071. Applicant's representative: Herman B. J. Weckstein, 60 Park Place, Newark, NJ 07102. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Wearing apparel and materials and supplies* used in the manufacture of wearing apparel, between Goldsboro, N.C., on the one hand, and, on the other, Wilson, N.C., and New York, N.Y., for 180 days. NOTE: To be tacked with existing authority at Crewe, Va. Supporting shipper: Sherayne Manufacturing Co., Inc., 1359 Broadway, New York, NY 10018. Send protests to: District Supervisor Joel Morrows, Bureau of Operations, Interstate Commerce Commission, 970 Broad Street, Newark, NJ 07102.

No. MC 50439 (Sub-No. 48 TA), filed March 28, 1972. Applicant: P.C.M. TRUCKING, INC., 1063 Main Street, Orefield, PA 18069. Applicant's representative: J. William Cain, Jr., 2001 Massachusetts Avenue NW., Washington, DC 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Dry bakery product*, in bulk (except in tank or hopper type vehicles), from the plantsite of Rozansky Feed Co. at Secaucus, N.J., to Lancaster and York, Pa., and Urbana, Broadway, and Harrisonburg, Va., for 150 days. Supporting shipper: John S. Roznasky, president, Rozansky Feed Co., 286 Secaucus Road, Secaucus, NJ 07094. Send protests to: F. W. Doyle, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 1518 Walnut Street, Room 1600, Philadelphia, PA 19102.

No. MC 74647 (Sub-No. 14 TA), filed March 28, 1972. Applicant: P. SALVINO TRANSPORT, INC., 6615 Corson Avenue South, Seattle, WA 98108. Applicant's representative: Joseph O. Earp, 411 Lyon Building, Seattle, Wash. 98104. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Wood pulp and lignin pitch, dry*, from Bellingham, Wash., to Seattle and Tacoma, Wash., for 180 days. Supporting shipper: Georgia-Pacific Corp., Bellingham Division, Post Office Box 898, Bellingham, WA 98225. Send protests to: E. J. Casey, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 6130 Arcade Building, Seattle, Wash. 98101.

No. MC 83217 (Sub-No. 58 TA), filed April 4, 1972. Applicant: DAKOTA EXPRESS, INC., 1217 West Cherokee Avenue (57104), Post Office Box 1252, Sioux Falls, SD 57101. Applicant's representative: Henry J. Schuette (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs*, from Iowa City, Iowa, to points in Minnesota, North Dakota, and South Dakota, for 180 days. Supporting shipper: Heinz U.S.A., Division of H. J. Heinz Co., Post Office Box 57, Pittsburgh, PA 15230, John W. Pinchot, Transportation Cost Analyst. Send protests to: J. L. Hammond, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 369, Federal Building, Pierre, S. Dak. 57501.

No. MC 83539 (Sub-No. 334 TA), filed March 28, 1972. Applicant: C & H TRANSPORTATION CO., INC., 2010 West Commerce Street, Post Office Box 5976, 75208, Dallas, TX 75222. Applicant's representative: Wiley C. Willingham (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Terminal tractors*, from Longview, Tex., to points in the United States (except Hawaii), for 180 days. NOTE: Carrier does not intend to tack authority. Supporting shipper: Capacity, Inc., Post Office Box 3165, Longview, TX 75601. Send protests to: District Supervisor E. K. Willis, Jr., Interstate Commerce Commission, Bureau of Operations, 1100 Commerce Street, Room 13C12, Dallas, TX 75202.

No. MC 107496 (Sub-No. 841 TA), filed March 30, 1972. Applicant: RUAN TRANSPORT CORPORATION, Keosauqua Way at Third Street, Post Office Box 855, 50304, Des Moines, IA 50309. Applicant's representative: H. L. Fabritz (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Flour*, in bulk, in tank vehicles, from Hastings, Minn., to Fargo, N. Dak., for 150 days. Supporting shipper: Peavey Co., 760 Grain Exchange, Minneapolis, Minn. 55415. Send protests to: Herbert W. Allen, Transportation Specialist, Interstate Commerce Commission, Bureau of Operations, 677 Federal Building, Des Moines, Iowa 50309.

No. MC 113267 (Sub-No. 280 TA), filed March 29, 1972. Applicant: CENTRAL & SOUTHERN TRUCK LINES, INC., 312 West Morris Street, Caseyville, IL 62232. Applicant's representative: Lawrence A. Fischer (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen foods*, from plantsite and storage facilities of Michigan Lloyd J. Harris Pie Co., at or near Saugatuck, Mich., to points in Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, North Carolina, South Carolina, Mississippi, Tennessee, and Texas, for 180 days. Supporting shipper: Michigan Lloyd J. Harris Pie Co., 350 Culver Street, Saugatuck, MI 49453. Send protests to: Harold C. Jolliff, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 325 West Adams Street, Room 476, Springfield, IL 62704.

No. MC 114789 (Sub-No. 38 TA), filed March 28, 1972. Applicant: NATIONWIDE CARRIERS, INC., Post Office Box 104, Maple Plain, MN 55359. Applicant's representative: Marshall D. Becker, 530 Univac Building, Omaha, Nebr. 68106. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Such commodities* as are dealt in or used by discount or department stores, for the account of Holly Stores, Inc., from the facilities of Holly Stores, Inc., located in North Bergen, N.J.; to Allentown, Altoona, Butler, New Kensington, and Rochester, Pa.; Akron, Austintown, Cleveland, Highland Heights, Lorrain, Toledo, and Youngstown, Ohio; Elkhart, Fort Wayne, Hammond, and Mishiwaka, Ind.; Ann Arbor, Detroit (and points in its commercial zone), Flint, Livonia, Monroe, Pontiac, and Westland, Mich.; Chicago (and points in its commercial zone), Downers Grove, Elgin, Joliet, and Kankakee, Ill.; Cedar Rapids, Des Moines, and Iowa City, Iowa; Lincoln and Omaha, Nebr.; Colorado Springs, Denver (and points in its commercial zone), Fort Collins, Greeley, and Pueblo, Colo.; Albuquerque, N. Mex.; Phoenix and Scottsdale, Ariz.; Bakersfield, Escondido, Lancaster, Los Angeles (and points in its commercial zone), Oxnard, Riverside, and San Fernando, Calif., for 180 days. Supporting shipper: Holly Stores, Inc., 7373 West Side Avenue, North Bergen, NJ 07047. Send protests to: A. N. Spath, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 448 Federal Building, and U.S. Courthouse, 110 South Fourth Street, Minneapolis, MN 55401.

No. MC 124813 (Sub-No. 93 TA), filed April 4, 1972. Applicant: UMTHUN TRUCKING CO., 910 South Jackson Street, Eagle Grove, IA 50533. Applicant's representative: William L. Fairbank, 900 Hubbell Building, Des Moines, Iowa 50309. Authority sought to operate as a *common carrier*, by motor vehicle,

over irregular routes, transporting: *Bentonite clay*, in bulk, and *bentonite clay*, in bags, when transported in the same vehicle and at the same time as bentonite clay in bulk, from the plantsite of American Colloid Co. near Belle Fourche, S. Dak., to points in Iowa (except Mason City), Minnesota, Nebraska, and Wisconsin, for 180 days. Supporting shipper: American Colloid Co., 5100 Suffield Court, Skokie, IL 60076. Send protests to: Herbert W. Allen, Transportation Specialist, Interstate Commerce Commission, Bureau of Operations, 677 Federal Building, Des Moines, Iowa 50309.

No. MC 126780 (Sub-No. 8 TA), filed March 28, 1972. Applicant: MACK E. BURGESS, doing business as BUILDERS TRANSPORT, Post Office Box 2805 (59404), 409 14th Street SW., Great Falls, MT 59403. Applicant's representative: Howard C. Burton, Post Office Box 2265, Great Falls, MT 59403. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Building materials and supplies*, from ports of entry on the international boundary line between the United States and Canada located in Montana and North Dakota, to points in Washington, Idaho, Montana, North Dakota, South Dakota, Wyoming, Oregon, Utah, Colorado, and Nevada; and (2) *silica blasting sand, stone, stone chips, and lime*, in bulk in bags and *ceramic tile and brick and masonry products*, from points in Idaho and Utah to points in Montana. Service under this authority is to be limited to Georgia-Pacific Co., Boise Cascade Corp., Materials Supply Co., Forzley Sales, Inc., Domtar Construction Materials, Ltd., and IKO Industries, Ltd. for 180 days. Supporting shippers: Boise Cascade Corp., Post Office Box 7747, Boise, ID 83707; Domtar Construction Materials, Post Office Box 6138, Montreal 101, PQ Canada; Georgia-Pacific Corp., 900 Southwest Fifth Avenue, Portland, OR; Forzley Sales, Inc., Post Office Box 2870, Great Falls, MT 59403; IKO Industries, Ltd., Post Office Box 1325, Calgary, AB, Canada; Materials Supply, Post Office Box 20317, Billings, MT 59201. Send protests to: Paul J. Labane, District Supervisor, Interstate Commerce Commission; Bureau of Operations, Room 251, Post Office Building, Billings, Mont. 59101.

No. MC 133590 (Sub-No. 1 TA), filed March 29, 1972. Applicant: WESTERN CARRIERS, INC., 288 Franklin Street, Worcester, MA 01604. Applicant's representative: Robert L. Kendall, Jr., 1719 Packard Building, Philadelphia, Pa. 19102. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Plastic articles*, from Clinton and Leominster, Mass., to points in Alabama, Arkansas, Florida, Georgia Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, West Virginia, Wisconsin, and the District of Columbia, for 180 days. Supporting shipper: Amory Chemical & Plastics Co., Inc., 184 Stone Street, Clinton, MA 01510. Send protests to: District Supervisor Joseph W. Balin, Bureau of Operations, Interstate Commerce Commission, 338 Federal Building & U.S. Courthouse, 436 Dwight Street, Springfield, MA 01103.

No. MC 134588 (Sub-No. 2 TA), filed March 27, 1972. Applicant: VIKING WAY, INC., 429 Washington Boulevard, Ogden, UT 84404. Applicant's representative: Philip C. Pugsley, Suite 400, El Paso Natural Gas Building, 315 East Second Street South, Salt Lake City, UT 84111. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Egg cartons*, from Fullerton, Calif., to points in Utah, under a continuing contract with Huntsman Container Corp., for 180 days. Supporting shipper: Huntsman Container Corp., 2300 Raymer, Fullerton, Calif. 92633 (James C. Fogg, executive vice president). Send protests to: John T. Vaughan, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 5239 Federal Building, Salt Lake City, Utah 84111.

No. MC 136551 TA, filed March 28, 1972. Applicant: DONALD M. ELMORE, doing business as M.O.R.T. ENTERPRISES, 710 Second Street, Hoquiam, WA 98550. Mailing address: Post Office Box 616, Hoquiam, WA 98550. Applicant's representative: James J. Solan, 322 West Heron Street, Aberdeen, WA 98520. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Shakes, shingles, hip and ridge boards, and associated products*, from points in Washington to points in Oregon, California, and Colorado and return, for 180 days. Supporting shippers: Cal Clark Cedar Products, Amanda Park, Wash. 98526; Red Cedar Products, Inc., Post Office Box 697, Amanda Park, WA 98526; Quinault Shingle & Lumber Co., Amanda Park, Wash. 98526. Send protests to: E. J. Casey, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 6130 Arcade Building, Seattle, Wash. 98101.

No. MC 136840 TA (Correction), filed March 10, 1972, published in the FEDERAL REGISTER, issue of March 25, 1972, corrected and republished in part as corrected this issue. Applicant: RUSSELL PARSONS, Rural Route No. 4, Dallas, Pa. 18612. Applicant's representative: Kenneth R. Davis, 999 Union Street, Taylor, PA 18517. NOTE: The purpose of this partial republication is to include New York, N.Y., as an origin point, which was inadvertently omitted in previous publication. The rest of the application remains as previously published.

MOTOR CARRIERS OF PASSENGERS

No. MC 136541 TA, filed March 24, 1972. Applicant: SCENIC RAILWAYS, INC., doing business as CUMBRES & TOLTEC SCENIC RAILROAD, Post Office Box 789, Chama, NM 87520. Applicant's representative: Fritz Baur (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *Passengers*, from Antonito, Colo., to Chama, N. Mex., and from Chama, N. Mex., to Antonito, Colo., using Colorado State Highway 17 and New Mexico State Highway 17, with no intermediate stops between Chama, N. Mex., and Antonito, Colo., for 180 days. Supported by: Fritz Baur, assistant manager, Post Office Box 789, Chama, N. Mex. 87520. Send protests to: District Supervisor William R. Murdoch, Interstate Commerce Commission, Bureau of Operations, 1106 Federal Office Building, 517 Gold Avenue SW., Albuquerque, NM 87101.

By the Commission.

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

[FR Doc.72-5879 Filed 4-17-72;8:51 am]

[Notice 48]

MOTOR CARRIER TRANSFER PROCEEDINGS

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-73496. By order of April 11, 1972, the Motor Carrier Board, on reconsideration, approved the transfer to A & J Trucking Corp., Forest City, Mo., of the operating rights in certificate No. MC-117124 issued August 1, 1958, to Silas R. Kincaid, doing business as R. & K., Pine Bluff, Ark., authorizing the transportation of sand, gravel, dirt, and rock, broken or crushed, in dump vehicles, between points in North Dakota, South Dakota, Iowa, Nebraska, Kansas, and Missouri. Tom B. Kretsinger, 450 Professional Building, Kansas City, Mo. 64106, attorney for applicants.

No. MC-FC-73570. By order of April 11, 1972, the Motor Carrier Board approved the transfer to Noble Graham Transport, Inc., Brimley, Mich., of the operating rights in certificates Nos. MC-107162 (Sub-No. 1), MC-107162 (Sub-No. 11), MC-107162 (Sub-No. 13), MC-107162 (Sub-No. 14), MC-107162 (Sub-No. 15), MC-107162 (Sub-No. 16), MC-107162 (Sub-No. 17), MC-107162 (Sub-No. 19), MC-107162 (Sub-No. 20), MC-107162 (Sub-No. 23), and MC-107162 (Sub-No. 26) issued May 11, 1962, August 8, 1963, March 1, 1965, January 26, 1965, November 2, 1966, May 24, 1965,

October 4, 1966, April 17, 1968, April 14, 1970, April 13, 1970, and June 7, 1971, respectively to Noble Graham, Brimley, Mich., authorizing the transportation of various commodities from and to specified points and areas in Alabama, Arkansas, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, Nebraska, North Carolina, North Dakota, Ohio, South Carolina, South Dakota, Tennessee, Wisconsin, and Wyoming. John D. Varda, 121 South Pinckney Street, Madison, WI 53703, attorney for applicants.

No. MC–FC–73595. By order of April 11, 1972, the Motor Carrier Board approved the transfer to Sidney Lobb, Bonnieville, Ky., of the operating rights in permit No. MC–133463 (Sub-No. 1) issued June 15, 1970, to James T. Hodges, Sonora, Ky., authorizing the transportation of dairy products (except in bulk), supplies, and materials used in the production of dairy products (except in bulk), when moving in mixed loads with dairy products, between the plantsite and storage facilities of Breakstone Sugar Creek Foods Division of Kraftco Corp., at Indianapolis, Ind., and Louisville, Ky., on the one hand, and, on the other, points in Indiana, points in Kentucky, points in that part of Illinois on and south of U.S. Highway 36, points in that part of Tennessee on and west of U.S. Highway 231, points in that part of Alabama on and north of U.S. Highway 278, points in that part of Ohio on and south of U.S. Highway 40, and points in that part of West Virginia on and west of U.S. Highway 220. LaVern Martens, 450 East Illinois Street, Chicago, IL 60611, registered practitioner for applicants.

No. MC–FC–73597. By order of April 11, 1972, the Motor Carrier Board approved the transfer to Friederich Truck Service, Inc., O'Fallon, Ill., of the operating rights as set forth in certificates Nos. MC–75798, MC–75798 (Sub-No. 1), and MC–75798 (Sub-No. 2), issued May 20, 1949, March 21, 1950, and October 10, 1950, to Forrest J. Van Winkle, doing business as Van Winkle Truck Service, Mascoutah, Ill., authorizing the transportation of: General commodities, with the usual exceptions, and livestock and agricultural commodities, between specified points in Illinois and Missouri. Delmar O. Koebel, 107 West St. Louis, Lebanon, IL 62254, attorney for applicants.

No. MC–FC–73634. By order of April 11, 1972, the Motor Carrier Board approved the transfer to Joe H. Fitzgerald and Dudley H. Fitzgerald, doing business as Joe H. Fitzgerald & Son, Cynthiana, Ky., of the operating rights as set forth in certificates Nos. MC–116091, MC–116091 (Sub-No. 1), MC–116091 (Sub-No. 3), and MC–116091 (Sub-No. 5), issued December 16, 1957, October 6, 1959, March 21, 1963, and May 22, 1970, in the name of Stanley Lemons and Claude Lemons, doing business as Lemons Brothers, Cynthiana, Ky., authorizing the transportation of: Salt, fertilizer, animal and poultry feed, empty containers or other articles used in transporting animal and poultry feed, and meats, meat products, and meat byproducts, and articles distributed by meat packinghouses, from, to, or between points and places in Florida, Georgia, Indiana, Kentucky, Ohio, Tennessee, and West Virginia. Robert H. Kinker, Box 464, Frankfort, KY 40601, attorney for applicants.

No. MC–FC–73645. By order of April 11, 1972, the Motor Carrier Board approved the transfer to Leo O'Laughlin, Inc., Shelbina, Mo., of certificate No. MC–123804 issued March 20, 1962, to Leo O'Laughlin, Shelbina, Mo., authorizing the transportation of: Road construction materials and building supplies, in bulk, in dump vehicles, between specified points in counties in Missouri, Iowa, and Illinois. Thomas P. Rose, attorney, Post Office Box 205, Jefferson City, MO 65101.

No. MC–FC–73646. By order of April 12, 1972, the Motor Carrier Board approved the transfer to Ashton Trucking Co., Monte Vista, Colo., of permits Nos. MC–128788 (Sub-No. 1) and MC–128788 (Sub-No. 3), issued February 15, 1968, and March 25, 1969, respectively, to Tom McKee and Killian Mauz, doing business as McKee Trucking Co., Golden, Colo., authorizing the transportation of: Such commodities as are manufactured, processed, or sold by persons engaged in the milling of flour, and incidentally in the sale and distribution of feed, seed, grains, and beans, from the sites of the Colorado Milling & Elevator Co. at or near Denver, Colo., to points in New Mexico, and to Phoenix and Tucson, Ariz., and El Paso, Tex.; and mill feeds, in bulk, from the plantsites of the Colorado Milling & Elevator Co. at or near Denver, Colo., to Quinby, Kans. Dual operations authorized. Leslie R. Kehl, 420 Denver Club Building, Denver, Colo. 80202, attorney for applicants.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.72–5877 Filed 4–17–72;8:51 am]

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TUESDAY, APRIL 18, 1972
WASHINGTON, D.C.
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PART II

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

■

PLANT VARIETY PROTECTION

Notice of Proposed Rule Making

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service [1]

[7 CFR Part 180]

PLANT VARIETY PROTECTION

Notice of Proposed Rule Making

Notice is hereby given in accordance with the administrative procedure provisions in 5 U.S.C. 553, that pursuant to the provisions of the Plant Variety Protection Act (84 Stat. 1542), the Agricultural Marketing Service proposes to issue regulations and rules of practice (7 CFR Part 180) for the administration of said Act.

Statement of considerations. The Plant Variety Protection Act (84 Stat. 1542) was signed into law on December 24, 1970. The Act provides for the formation of a Plant Variety Protection Office and for the promulgation of regulations for administration of the Act. The Act also makes appropriate the issuance of rules of practice governing proceedings arising under the Act.

The proposed regulations and rules of practice, to be included in new Subchapter H of Chapter I, Title 7, Code of Federal Regulations, are as follows:

SUBCHAPTER H—PLANT VARIETY PROTECTION

PART 180—REGULATIONS AND RULES OF PRACTICE UNDER THE PLANT VARIETY PROTECTION ACT

DEFINITIONS

§ 180.1 Meaning of words.

(a) *Construction of words.* Words used in the singular form in this part shall be deemed to import the plural, and vice versa, as the case may be.

(b) *Definitions.* The definitions of terms contained in the Act shall apply to such terms when used in this part. In addition, for the purposes of this part, the following terms shall be construed, respectively, to have the following meanings:

(1) "Abandoned application" means an application which has not been pursued to completion within the time allowed by the Office or has been voluntarily abandoned.

(2) "Act" means the Plant Variety Protection Act (7 U.S.C. 2321 et seq.).

(3) "Administrator" means the Administrator of the Agricultural Marketing Service of the U.S. Department of Agriculture or any other officer or employee of the Department of Agriculture to whom authority has heretofore been delegated or to whom authority may hereafter be delegated, to act in his stead.

(4) "Applicant" means the person who applied for a certificate of plant variety protection.

(5) "Application" means an application for plant variety protection under the Act.

(6) "Assignee" means a person to whom an owner assigns his rights in whole or in part.

(7) "Board" means the Plant Variety Protection Board appointed by the Secretary.

(8) "Certificate" means a certificate of plant variety protection issued under the Act by the Office.

(9) "Certified seed" means seed which: (i) Has been determined by an official seed certifying agency to conform to standards of genetic purity and identity as to variety approved by the Secretary; and (ii) bears an official label issued for such seed by a seed certifying agency certifying that the seed is of a specified class and a specified variety.

[1] Formerly Consumer and Marketing Service. Name changed to Agricultural Marketing Service effective Apr. 2, 1972, 37 F.R. 6327.

(10) "Commissioner" means the Examiner in Chief of the Office.

(11) "Decision and order" includes the Administrator's findings of fact; conclusions with respect to all material issues of fact and law as well as the reasons or basis therefor; and order.

(12) "Examiner" means an employee of the Plant Variety Protection Office who determines whether a certificate is entitled to be issued. The term shall, in all cases, include the Commissioner.

(13) "Foreign application" means an application for plant variety protection filed in a foreign country.

(14) "Hearing Clerk" means the Hearing Clerk, U.S. Department of Agriculture, Washington, D.C.

(15) "Hearing Officer" means an examiner of the Office of Hearing Examiners, U.S. Department of Agriculture, or other officer or employee of the Department of Agriculture, duly assigned to preside at a hearing held pursuant to the rules of this part.

(16) "Hybrid" shall be defined as set forth in the regulations under the Federal Seed Act (§ 201.2(y) of this chapter).

(17) "Office" or "Plant Variety Protection Office" means the Plant Variety Protection Office, Grain Division, Agricultural Marketing Service, U.S. Department of Agriculture.

(18) "Official Journal" means the "Official Journal of the Plant Variety Protection Office."

(19) "Owner" means a breeder who developed or discovered a variety for which plant variety protection may be applied for under the Act or a person to whom the rights to such variety have been assigned or transferred.

(20) "Person" means an individual, partnership, corporation, association, Government agency, or other business or governmental entity.

(21) "Secretary" means the Secretary of Agriculture of the United States or any other officer or employee of the U.S. Department of Agriculture to whom authority has heretofore been delegated or to whom authority may hereafter be delegated to act in his stead.

(22) "Seed certifying agency" shall be defined as set forth in the Federal Seed Act (53 Stat. 1275).

(23) "Sale for other than seed purposes" means the transfer of title to and possession of the seed by the owner thereof to a grower or other person for reproduction for the owner, for testing, or for experimental use, and not for commercial sale of the seed or the reproduced seed for planting purposes.

ADMINISTRATION

§ 180.2 Plant Variety Protection Board.

(a) The Plant Variety Protection Board shall consist of 14 members appointed for a 2-year term. The Board shall be constituted every 2 years and shall consist of individuals who are experts in various areas of varietal development. The membership of the Board shall include farmer representation and shall be drawn approximately equally from the private or seed industry sector and from the sector of Government or the public. No member shall be eligible to act on any matter involving any appeal or questions under section 44 of the Act in which he or his employer has a direct financial interest.

(b) The functions of the Board are to: (1) Advise the Secretary concerning adoption of rules and regulations to facilitate the proper administration of the Act, (2) make advisory decisions on all appeals from the examiner or Commissioner, (3) advise the Secretary on the declaration of a protected variety open to use in the public interest, and (4) advise the Secretary on any other matters under the regulations in this part.

(c) The proceedings of the Board shall be conducted in accordance with Executive Order No. 11007 dated February 26, 1962, Administrative Regulations of the U.S. Department of Agriculture, Agricultural Marketing Service Instruction No. 109–1, and such additional operating procedures as are adopted by the members of the Board.

THE APPLICATION

§ 180.5 General requirements.

(a) Protection under this Act shall be limited to nationals of the United States, except where this limitation would violate a treaty, and except that nationals of a foreign State shall be entitled to so much of the protection afforded under this Act as is afforded by said foreign State to nationals of the United States for the same genus and species.

(b) Applications for certificates shall be made to the Plant Variety Protection Office. An application shall consist of:

(1) A completed application form, except that the section specifying that seed of the variety shall be sold by variety name only as a class of certified seed need not be completed at the time of application.

(2) A completed set of the exhibits as specified in the application form, unless the examiner waives submission of certain exhibits as unnecessary based on other claims and evidence presented in connection with the application.

(3) Language and legibility:

(i) Applications and exhibits must be in the English language and legibly written, typed, or printed.

(ii) Any interlineation, erasure, cancellation, or other alteration must be made in permanent ink before the application is signed and shall be clearly initialed and dated by the applicant to indicate knowledge of such fact at the time of signing.

(c) Application and exhibit forms shall be issued by the Commissioner after consultation with the Board. (Copies of the forms may be obtained from the Plant Variety Protection Office, Grain Division, Agricultural Marketing Service, U.S. Department of Agriculture, 6525 Belcrest Road, Hyattsville, MD 20782.)

§ 180.6 Application for certificate.

(a) An application for a plant variety protection certificate shall be signed by the applicant.

(b) The application shall state the full name, including the full first name and the middle initial or name, if any, and the capacity of the person executing it.

§ 180.7 Statement of applicant.

(a) The applicant, by signing a completed application, states by reference to section 42 of the Plant Variety Protection Act that (1) he believes himself, or his privies, to be the original and first breeder or discoverer of the variety for which he solicits a certificate; (2) he, or his privies, has sexually reproduced the variety; (3) he does not know and does not believe that the variety was ever a public variety before his, or his privies, date of determination; (4) he is a sole or joint owner of the variety; (5) the variety was not a public variety more than 1 year prior to the effective filing date of the application; (6) before the date of determination of the variety by the owner, or his privies, or more than 1 year before the effective filing date of the application, the variety was not effectively available to workers in this country and adequately described by a publication reasonably deemed a part of the public technical knowledge in this country, which description must include a disclosure of the principal characteristics by which the variety is distinguished; (7) he or his privies have not filed an application for the protection of the variety in a foreign country more than 4 years prior to the effective filing date of the application filed in the United States.

(b) If any application for protection on the same variety has been filed or granted in a foreign country, either by the applicant or his privies, the applicant shall state the names of the countries in which such application(s) were filed or protection granted and shall give the day, month, and year of filing and day, month, and year protection was granted, if any.

(c) When an applicant files an application, cross-references to other related applications may be made, when appropriate.

§ 180.8 Specimen requirements.

(a) The applicant may be required by the examiner to furnish representative specimens of the variety, or its flower, fruit, or seeds, in a quantity and at a specified stage of growth, as may be necessary to verify the statements in the application. Such specimens shall be packed and forwarded in conformity with instructions furnished by the examiner. If the applicant requests the examiner to inspect plants in the field before a final decision is made, all such inspection costs shall be borne by the applicant by payment of fees sufficient to reimburse the Office for all costs, including travel, per diem or subsistence, and salary.

(b) Plant specimens submitted in support of an application shall not be removed from the Office except by an employee of the Office or other person authorized by the Secretary.

(c) Plant specimens submitted to the Office shall, except as provided below, and upon request, be returned to the applicant at his expense after the specimens have served their intended purpose. The Commissioner, upon a finding of good cause, may require that certain specimens be retained in the Office for indefinite periods of time. Specimens which are not returned or not retained as provided above shall be destroyed.

§ 180.9 Drawings and photographs.

(a) Drawings or photographs submitted with an application shall disclose the distinctive characteristics of the variety.

(b) Drawings or photographs shall be in color when color is a distinguishing characteristic of the variety and the color shall be described by use of Nickerson's or other recognized color chart.

(c) Drawings should be sent flat, or may be sent in a suitable mailing tube in accordance with instructions furnished by the Commissioner.

(d) Drawings or photographs submitted with an application shall be retained by the Office as part of the application file.

§ 180.10 Parts of application to be filed together.

All parts of an application, including exhibits, should be submitted to the Office together; otherwise, each part shall be accurately and clearly referenced to the application.

§ 180.11 Application accepted and filed when received.

(a) An application if materially complete when initially submitted shall be accepted and filed to await examination.

(b) If any part of an application is so incomplete, or so defective that it cannot be handled as a completed application for examination, as determined by the Commissioner, the applicant will be notified before the Office requests an examination fee. The application will be held a maximum of 6 months for completion. Applications not completed at the end of the prescribed period will be considered abandoned. The application fee in such cases will not be refunded.

§ 180.12 Number and filing date of application.

(a) Applications shall be numbered and dated in sequence in the order received in the Office. Applicants will be informed in writing as soon as practicable of the number and effective filing date of the application.

(b) An applicant may claim the benefit of the filing date of a prior foreign application in accordance with section 55 of the Act. A certified copy of the foreign application shall be filed upon request made by the examiner. If a foreign application is not in the English language, an English translation certified as accurate by a sworn or official translator shall be submitted with the application.

§ 180.13 When the owner is deceased or legally incapacitated.

In case of the death of the owner or if the owner is legally incapacitated, the legal representative (executor, administrator, or guardian) or heir or assignee of the deceased owner may sign as the applicant. If an applicant dies between the filing of his application and the granting of a certificate thereon, the certificate may be issued to the legal representative, heir, or assignee, upon proper intervention by him.

§ 180.14 Joint applicants.

(a) Joint owners shall file a joint application by signing as joint applicants.

(b) If an application for certificate is made by two or more persons as joint owners when they were not in fact joint owners, the application shall be amended prior to issuance of a certificate by filing a corrected application together with a written explanation signed by the original applicants. Such statement shall also be signed by the assignee, if any.

(c) If an application has been made by less than all the actual joint owners, the application shall be amended by filing a corrected application together with a written explanation signed by all of the joint owners. Such statement shall also be signed by the assignee, if any.

(d) If a joint owner refuses to join in a corrected application or cannot be found after diligent effort, the remaining owner may file an application on behalf of himself and the missing owner. Such application shall be accompanied by a written explanation and shall state the last known address of the missing owner. Notice of the filing of the application shall be forwarded by the Office to the missing owner at his last known address. If such notice is returned to the Office undelivered, or if the address of the missing owner is unknown, notice of the filing of the application shall be published once in the Official Journal. Prior to the issuance of the certificate, a missing owner may join in an application by filing a written explanation. A certificate obtained by one of two or more joint owners under this paragraph conveys the same rights and privileges as though all of the original owners had joined in the original application.

§ 180.15 Assigned novel varieties and certificates.

In case the whole or a part interest in a variety is assigned, the application shall be made by the owner or one of the persons identified in § 180.13. However, the certificate may be issued to the assignee or jointly to the owner and the assignee when a part interest in a variety is assigned.

§ 180.16 Amendment by applicant.

An application may be amended before or after the first examination and action by the Office, after the second or subsequent examination or reconsideration as specified in § 180.107, or when and as specifically required by the examiner. Such amendment may include a specification that seed of the variety be sold by variety name only as a class of certified seed, if not previously specified. Once such specification is made, no amendment to reverse such a specification will be permitted unless the variety has not been sold and labeled or publication made in any manner that the variety is to be sold by variety name only as a class of certified seed.

§ 180.17 Papers of completed application to be retained.

The papers submitted with a completed application shall be retained by the Office. After issuance of a certificate of protection the Office will furnish copies of the application and related papers to any person upon payment of the specified fee.

§ 180.18 Applications handled in confidence.

(a) Pending applications shall be handled in confidence. Except as provided below, no information may be given by the Office respecting the filing of an application, the pendency of any particular application, or the subject matter of any particular application, nor will access be given to, or copies furnished of, any pending application or papers relating thereto, without written authority of the applicant, or his assignee or attorney or agent. Exceptions to the above may be made by the Commissioner upon a finding that such action is necessary to the proper conduct of the affairs of the Office or as provided in section 57 of the Act and § 180.19.

(b) Abandoned applications shall not be open to public inspection, except that if an abandoned application is directly referred to in an issued certificate, and is available, it may be inspected or copies obtained by any person on written request, and with written authority received from the applicant. Abandoned applications shall not be returned.

(c) Decisions of the Commissioner on abandoned applications not otherwise open to public inspection (see paragraph (b) of this section) may be published or made available for publication at the Commissioner's discretion. When it is proposed to release such a decision, the applicant shall be notified directly or through the attorney or agent of record and a time not less than 30 days shall be set for presenting objections.

§ 180.19 Publication of pending applications.

Information relating to pending applications shall be published in the Official Journal periodically as determined by the Commissioner to be necessary in the public interest. With respect to each application, the Official Journal shall show the (a) application number and date of filing, (b) the name of the variety or temporary designation, (c) the name of the kind of seed. Additional information, such as (d) the name and address of the applicant, (e) a brief description of the novel features of the variety, and (f)

whether the applicant specified that the variety is to be sold by variety name only as a class of certified seed together with a limitation in the number of generations, may be published upon request or approval received from the applicant at the time the application is filed or at any time before the notice of allowance of a certificate is issued.

§ 180.20 Abandonment for failure to respond within time limit.

(a) Except as otherwise provided in § 180.104, if an applicant fails to advance actively his application within 6 months after the date when the last request for action was mailed to him by the Office, or within such longer time as may be fixed by the Commissioner, the application shall be deemed abandoned.

(b) The submission of an amendment to the application, not responsive to the last request by the Office for action, and any proceedings relative thereto, shall not operate to save the application from abandonment.

(c) When the applicant makes a bona fide attempt to advance his application, and is in substantial compliance with the request for action, but has inadvertently failed to comply with some procedural requirement, opportunity to comply with the procedural requirement shall be given to the applicant before the application shall be deemed abandoned. The Commissioner may set a shortened period, not less than 30 days, to correct any deficiency in the application.

§ 180.21 Extension of time for reply.

The time for reply by an applicant to a request by the Office for certain action, shall be extended by the Commissioner only for good and sufficient cause, and for a specified reasonable time. A request for extension shall be filed on or before the specified time for reply. In no case shall the mere filing of a request for extension require the granting of an extension or stay the time for reply.

§ 180.22 Revival of application abandoned for failure to reply.

An application abandoned for failure on the part of the applicant to advance actively his application to its completion, in accordance with the regulations in this part, may be revived as a pending application upon a finding by the Commissioner that the failure was inadvertent or unavoidable and without fraudulent intent. A request to revive an abandoned application shall be accompanied by a written statement showing the cause of the failure to respond, a response to the last request for action, and by the specified fee.

§ 180.23 Voluntary withdrawal and abandonment of application.

(a) An application may be voluntarily withdrawn or abandoned by submitting to the Office a written request for withdrawal or abandonment signed by the applicant or his attorney or agent of record, if any, or the assignee of record, if any.

(b) An application which has been voluntarily abandoned may be revived within 3 months of such abandonment by the payment of the prescribed fee and a showing that the abandonment occurred without fraudulent intent.

(c) An original application which has been voluntarily withdrawn shall be returned to the applicant and may be reconsidered only by refiling and payment of a new application fee.

§ 180.24 Assignee.

The assignee of record of the entire interest in an application is entitled to advance actively or abandon the application to the exclusion of the applicant.

EXAMINATIONS, ALLOWANCES, AND DENIALS

§ 180.100 Examination of applications.

Examinations of applications shall include a review of all available documents, publications, or other material relating to varieties of the species involved in the application, except that if there are fundamental defects in the application, as determined by the examiner, the examination may be limited to an identification of such defects and notification to the applicant of needed corrective action. However, matters of form or procedure need not, but may, be raised by an examiner until a variety is found to be novel and entitled to protection.

§ 180.101 Notice of allowance.

(a) If, on examination, it shall appear that the applicant is entitled to a certificate, a notice of allowance shall be sent to him or his attorney or his agent of record, if any, calling for the payment of the prescribed fee, which fee shall be paid within 3 months from the date of the notice of allowance. Thereafter, a fee for delayed payment shall be made as required under § 180.175.

(b) Upon request by the Office, the applicant shall submit a reasonable quantity of the viable basic seed required to reproduce the novel variety, as determined by the Commissioner. Failure to deposit viable basic seed within 3 months of the date of request shall result in the application being considered abandoned.

§ 180.102 Amendments after allowance.

Amendments to the application after the notice of allowance is issued may be made, if the certificate has not been issued.

§ 180.103 Issuance of certificate.

(a) After the notice of allowance has been issued, the prescribed fee and sample of viable basic seed received by the Office, and the applicant has clearly specified whether or not the variety shall be sold by variety name only as a class of certified seed, the certificate shall be promptly issued. Once an election is made and a certificate issued specifying that seed of the variety shall be sold by variety name only as a class of certified seed no waiver of such rights shall be permitted by amendment of the certificate.

(b) The certificate shall be delivered or mailed to the owner or assignee of an interest therein or to the attorney or agent of record, if any.

§ 180.104 Application or certificate abandoned.

(a) Except as provided in paragraph (c) of this section, if the fee specified in the notice of allowance is not paid within 3 months from the date of the notice or request, the application shall be considered abandoned.

(b) Upon request by the Office, the owner shall replenish the viable basic seed of the novel variety. Upon request, the sample of seed which has been replaced shall be returned to the owner, otherwise it shall be destroyed. Failure to replenish viable basic seed within 3 months from the date of request shall result in the certificate being regarded as abandoned. No sooner than 1 year after the date of such request, notices of abandoned certificates shall be published in the Official Journal indicating that the variety has become open for use by the public and, if previously specified to be sold by variety name as "certified seed only," that such restriction no longer applies.

(c) If the allowance fee, the viable basic seed or the fee, if any, for delayed payment are submitted within 9 months of the final due date, it may be accepted by the Commissioner as though no abandonment had occurred.

(d) A certificate may be voluntarily abandoned by the applicant or his attorney or agent of record, if any, or the assignee of record, if any, by notifying the Commissioner in writing. Upon receipt of such notice, the Commissioner shall publish a notice in the Official Journal that the variety has become open for use by the public, and if previously specified to be sold by variety name as "certified seed only," that such restriction no longer applies.

§ 180.105 Denial of application.

(a) If the variety is found by the examiner to be not novel as claimed, the application shall be denied.

(b) In denying an application for want of novelty, the examiner shall cite the reasons the application was denied. When a reason involves the citation of certain material which is complex, the particular part of the material relied on shall be designated as nearly as practicable. The pertinence of each reason, if not obvious, shall be clearly explained.

(c) If prior domestic certificates are cited as a reason for denial, their numbers and dates and the names of the owners shall be stated. If prior foreign certificates or rights are cited, as a reason for denial, their nationality or country, numbers and dates, and the names of the owners shall be stated, and such other data shall be furnished as may be necessary to enable the applicant to identify the cited certificates or rights.

(d) If printed publications are cited as a reason for denial, the author (if any), title, date, pages or plates, and places of publication, or place where a copy can be found shall be given.

(e) When a denial is based on facts known to the examiner, and upon request

by the applicant, the denial shall be supported by the affidavit of the examiner. Such affidavit shall be subject to contradiction or explanation by the affidavits of the applicant and other persons.

(f) Abandoned applications may not be cited as reasons for denial.

§ 180.106 Reply by applicant; request for reconsideration.

(a) After an adverse action by the Office, the applicant may respond to the denial and may request a reconsideration, with or without amendment of his application. Any amendment shall be responsive to the reason or reasons for denial specified by the examiner.

(b) To obtain a reconsideration the applicant shall submit a request for reconsideration in writing and shall specifically point out the alleged errors in the examiner's action. The applicant shall respond to each reason cited by the examiner as the basis for the adverse action. A request for reconsideration of a denial based on a faulty form or procedure may be held in abeyance by the Commissioner until the question of novelty is settled.

(c) An applicant's request for a reconsideration must be a bona fide attempt to advance the case to final action. A general allegation by the applicant that certain language which he cites in his application or amendment thereto establishes novelty without specifically explaining how the language distinguishes the alleged novel variety from the material cited by the examiner shall not be grounds for a reconsideration.

§ 180.107 Reconsideration and final action.

If, upon reconsideration, the application is denied by the Commissioner, the applicant shall be notified by the Commissioner of the reason or reasons for denial in the same manner as after the first examination. Any such denial shall be final unless appealed by the applicant to the Secretary within 60 days from the date of denial in accordance with §§ 180.300–180.303. If the denial is sustained by the Secretary on appeal, the denial shall be final subject to appeal to the courts as provided in § 180.500.

§ 180.108 Amendments after final action.

(a) After a final denial by the Commissioner, amendments to the application may be made to overcome the reason or reasons for denial. The acceptance or refusal of any such amendment by the Office and any proceedings relative thereto, shall not relieve the applicant from the time limit set for an appeal or an abandonment for failure to reply.

(b) No amendment of the application can be made in an appeal proceeding. After decision on appeal, amendments can only be made to carry into effect a recommendation under § 180.302(b).

CORRECTION OF ERRORS IN CERTIFICATE

§ 180.120 Corrected certificate—Office mistake.

When a certificate is incorrect because of a mistake in the Office, the Commissioner may issue a certificate of correction stating the fact and nature of such mistake, under seal, without charge, to be issued to the owner and recorded in the records of the Office, or the Commissioner may issue a corrected certificate without charge in lieu of and with like effect as a certificate of correction, in accordance with section 84 of the Act.

§ 180.121 Corrected certificate—applicant's mistake.

When a certificate is incorrect because of a minor mistake by the applicant, and the mistake is found by the Commissioner to have occurred in good faith and does not require a further examination, the Commissioner may, upon payment of the required fee, correct the certificate by issuing a certificate of correction stating the fact and nature of such mistake, under seal, to be issued to the owner and recorded in the records of the Office, in accordance with section 85 of the Act. If the mistake requires a reexamination, a correction of the certificate shall be dependent on the results of the reexamination.

ASSIGNMENTS AND RECORDING

§ 180.130 Recording of assignments.

(a) Any assignment of an application for a certificate, or of a certificate of plant variety protection, or of any interest in a variety, or any license or grant and conveyance of an exclusive right to use of the variety, may be submitted for recording in the Office in accordance with section 101 of the Act (7 U.S.C. 2531).

(b) No instrument shall be recorded which is not in the English language or which does not identify the certificate or application to which it relates.

(c) An instrument relating to title of a certificate shall identify the certificate by number and date, the name of the owner, and the name of the novel variety as stated in the certificate. An instrument relating to title of an application shall identify an application by number and date of filing, the name of the owner, and the name of the novel variety as stated in the application.

(d) If an assignment is executed concurrently with or subsequent to the filing of an application but before its number and filing date are ascertained, the assignment shall identify the application by the date of the application, the name of the owner, and the name of the novel variety.

§ 180.131 Conditional assignments.

Assignments recorded in the Office are regarded as absolute assignments for Office purposes until canceled in writing by both parties to the assignment or by a decree of a court of competent jurisdiction. The Office shall not determine whether conditions precedent to the assignment, such as the payment of money, have been fulfilled.

§ 180.132 Assignment records open to public inspection.

(a) Assignment records relating to original or amended certificates shall be open to public inspection and copies of any recorded document may be obtained upon payment of the prescribed fee.

(b) Assignment records relating to any pending or abandoned application shall not be available for inspection except to the extent that pending applications are published as provided in section 57 of the Act and § 180.19. Copies of assignment records and information on pending or abandoned applications shall be obtainable only upon written authority of the applicant or his assignee, or attorney or agent of record. An order for a copy of an assignment shall give the proper identification of the assignment.

MARKING OR LABELING PROVISIONS

§ 180.140 After filing.

Upon filing an application for protection of a novel variety and payment of the prescribed fee, the owner, or his designee, may label the variety or containers of the seed of the variety or plants produced from such seed, substantially as follows: "Unauthorized Propagation Prohibited—(Unauthorized Seed Multiplication Prohibited)—U.S. Variety Protection Applied For."

§ 180.141 After issuance.

Upon issuance of a certificate the owner of the novel variety or his designee may label the variety or containers of the seed of the variety or plants produced from such seed substantially as follows: "Unauthorized Propagation Prohibited—(Unauthorized Seed Multiplication Prohibited)—U.S. Protected Variety."

§ 180.142 For testing or increase.

An owner who contemplates filing an application and releases for testing or increase seed of the variety or other sexually reproducible plant material produced from seed of the variety, may label such plant material or containers of the seed or plants substantially as follows: "Unauthorized Propagation Prohibited—For Testing (or Increase) Only."

§ 180.143 Certified seed only.

(a) Upon filing an application, or amendment thereto, specifying seed of the variety is to be sold by variety name only as a class of certified seed, the owner, or his designee, may label containers of seed of the variety substantially as follows: "Unauthorized Propagation Prohibited—U.S. Variety Protection Applied for Specifying That Seed of This Variety Is To Be Sold By Variety Name Only as a Class of Certified Seed."

(b) An owner who has received a certificate specifying that a variety is to be

sold by variety name only as a class of certified seed may label containers of the seed of the variety substantially as follows: "Unauthorized Propagation Prohibited—To Be Sold By Variety Name Only as a Class of Certified Seed—U.S. Protected Variety."

§ 180.144 Additional marking or labeling.

Additional clarifying information that is not false or misleading may be used by the owner in addition to the above markings or labeling.

ATTORNEYS AND AGENTS

§ 180.150 Right to be represented.

An applicant may actively advance an application or he may be represented by any attorney or agent authorized in writing by him.

§ 180.151 Authorization.

Only attorneys or agents specified by the applicant shall be allowed to inspect papers or take action of any kind on behalf of the applicant in any pending application or proceedings.

§ 180.152 Revocation of authorization; withdrawal.

An authorization of an attorney or agent may be revoked by an applicant at any time, and an attorney or agent may withdraw, upon application to the Commissioner. When the authorization is so revoked, or the attorney or agent has so withdrawn, the Office shall inform the interested parties and shall thereafter communicate directly with the applicant, or with such other attorney or agent as the applicant may appoint. An assignment will not of itself operate as a revocation of authorization previously given, but the assignee of the entire interest may revoke previous authorizations and be represented by an attorney or agent of his own selection.

§ 180.153 Persons recognized.

Unless specifically authorized as provided in § 180.151, no person shall be permitted to file or advance applications before the Office.

§ 180.154 Government employees.

Officers and employees of the United States who are disqualified by statute (18 U.S.C. 203 and 205) from practicing as attorneys or agents in proceedings or other matters before Government departments or agencies, shall not be eligible to represent applicants, except officers and employees whose official duties require the prepartion and prosecution of applications for certificates of variety protection.

§ 180.155 Signatures.

Every document filed by an attorney or agent representing an applicant or party to a proceeding in the Office shall bear the signature of such attorney or agent, except documents which are required to be signed by the applicant.

§ 180.156 Addresses.

Attorneys and agents practicing before the Plant Variety Protection Office shall notify the Office in writing of any change of address. The Office shall address letters to any such person at the last address received.

§ 180.157 Professional conduct.

Attorneys and agents appearing before the Office shall conform to the standards of ethical and professional conduct generally applicable to attorneys before the courts of the United States.

§ 180.158 Advertising.

(a) The use of advertising, circulars, letters, cards, and similar material to solicit plant variety protection business, directly or indirectly, is forbidden as unprofessional conduct, and any person engaging in such solicitation, or associated with or employed by others who so solicit, shall be refused recognition to practice before the Office or may be suspended, excluded, or disbarred from further practice before the Office.

(b) The use of simple professional letterheads, calling cards, or office signs, simple announcements necessitated by opening an office, change of association, or change of address, distributed to clients and friends and insertion of listings in common form (not display) in a classified telephone or city directory, and listings and professional cards with biographical data in standard professional directories shall not be considered a violation of this section.

FEES AND CHARGES

§ 180.175 Fee and charges.

The following fees and charges apply to the services and actions specified below:

(a) Filing application	$250
(b) Search or examination	250
(c) Allowance and issuance of certificates	250
(d) To revive an abandoned application	50
(e) Reproductions of records, drawings, certificates, exhibits, or printed material (copy per page of material)	1
(f) Authentication (each document)	1
(g) Correcting certificate	10
(h) Recording assignments	5
(i) Copies of 8 x 10 photographs in color	12
(j) Additional fee for reconsideration	25
(k) Additional fee for late issue	25
(l) Additional fee for late replenishment of seed	25
(m) Appeal to Secretary	50

(n) Field inspections by a representative of the Plant Variety Protection Office made at the request of the applicant shall be reimbursable in full (including travel, per diem or subsistence, and salary) in accordance with Standardized Government Travel Regulations.

(o) Any other services not covered above will be charged for at rates prescribed by the Commissioner, but in no event shall they exceed $20 per man-hour.

§ 180.176 Fees payable in advance.

Fees and charges shall be paid at the time of making application or at the time of submitting a request for any action by the Office for which a fee or charge is payable and established in this part.

§ 180.177 Method of payment.

Checks or money orders shall be made payable to the Treasurer of the United States. Remittances from foreign countries must be payable and immediately negotiable in the United States for the full amount of the prescribed fee. Money sent by mail to the Office shall be sent at the risk of the sender.

§ 180.178 Refunds.

Money paid by mistake or excess payments shall be refunded, but a mere change of plans after the payment of money, as when a party decides to withdraw an application or to withdraw an appeal, shall not entitle a party to a refund. Amounts of $1 or less shall not be refunded unless specifically demanded.

§ 180.179 Copies and certified copies.

(a) Upon request, copies of applications, certificates, or of any records, books, papers, drawings, or photographs in the custody of the Office and which are open to the public, will be furnished to persons entitled thereto, upon payment of the prescribed fee.

(b) Upon request, copies will be authenticated by imprint of the seal of the Office and certified by the official authorized by the Commissioner upon payment of the prescribed fee.

AVAILABILITY OF OFFICE RECORDS

§ 180.190 When open records are available.

Copies of records which are open to the public and in the custody of the Office may be examined in the Office during regular business hours upon approval by the Commissioner.

PROTEST PROCEEDINGS

§ 180.200 Protests to the grant of a certificate.

Opposition on the part of any person to the grant of a certificate shall be permitted while an application is pending and for a period not to exceed 5 years following the issuance of a certificate.

§ 180.201 Protest proceedings.

(a) Opposition shall be made by submitting in writing a petition for protest proceedings, which petition shall be supported by affidavits and shall show the reason or reasons for opposing the application or certificate. The petition and accompanying papers shall be filed in duplicate. If it appears to an examiner that a variety involved in a pending application or covered by a certificate may not be or may not have been entitled to protection under the Act, a protest proceeding may be permitted by the Commissioner.

(b) One copy of the petition and accompanying papers shall be served by the Office upon the applicant or owner, or his attorney or agent of record.

(c) An answer, by the applicant or owner of the certificate or his assignee, in response to the petition may be filed with the Commissioner within 60 days after service of the petition upon such person. If no answer is filed within said period, the Commissioner shall decide the

matter on the basis of the allegations set forth in the petition.

(d) If the petition and answer raise any issue of fact needing proof, the Commissioner shall afford each of the parties a period of 60 days in which to file sworn statements or affidavits in support of their respective positions.

(e) As soon as practicable after the petition or the petition and answer are filed or after the expiration of any period for filing sworn statements or affidavits, the Commissioner shall issue his decision as to whether the protests had been upheld or denied. The Commissioner may, following the protest proceeding, cancel any certificate issued and may grant another certificate for the same novel variety to a person who proves to the satisfaction of the Commissioner, that he is the breeder or discoverer. The decision shall be served upon the parties in the manner provided in § 180.403.

PRIORITY CONTEST

§ 180.205 Definition; when declared.

A priority contest may be instituted by the Secretary, on his own motion, or upon the request of any person who has applied for protection on the same variety for which an adverse certificate has been issued, for the purpose of determining the question of priority between two or more parties claiming development or discovery of the same novel variety: *Provided, however,* That any person shall have forfeited his right to assert priority when an adverse certificate has been issued if he fails to make a request for the institution of a priority contest within 1 year of the publication in the Official Journal of issuance of the adverse certificate by the Secretary or if he fails to make the request within the period for taking action after refusal of his application on the basis of the adverse certificate.

§ 180.206 Preparation for priority contest between applicants.

(a) Before a priority contest will be handled by the Office, an examiner must determine that the same novel variety is involved in separate applications filed by two or more parties and apparently certifiable to each of the parties, subject to the determination of the question of priority.

(b) The fact that a certificate has been issued will not prevent a priority contest.

§ 180.207 Preparation of priority papers and declaration of priority contest.

(a) When a priority question is found to exist, the examiner shall forward the pertinent files to the Commissioner together with a written statement showing the reason for the contest.

(b) The Commissioner shall institute and declare the priority contest by forwarding a notice to each of the applicants involved. Each notice shall include the name and residence of each of the other applicants or those of his attorney or agent, if any, and of any assignee, and will identify the application of each opposing party by number and filing date, or in the case of a certificate, by the number and date of the certificate. The notice shall specify the basis of the priority contest. The notice shall specify a time, not to exceed 2 months, for filing preliminary statements.

(c) When a notice is returned to the Office undelivered, or when one of the parties resides abroad and his agent in the United States is unknown, notice may be given by publication once in the Official Journal.

§ 180.208 Burden of proof.

The parties to a priority contest will be presumed to have developed their varieties in the chronological order of the filing dates of their applications for certificates involved in the priority contest, and the burden of proof will rest upon the party who last filed an application.

§ 180.209 Preliminary statement on novel variety developed in the United States.

(a) Each party to the priority contest is required to file on or before a date fixed by the Office, a concise preliminary statement giving the facts and dates relating to the development of his alleged novel variety. The preliminary statement must be signed by the owner: *Provided, however,* That in appropriate circumstances, as when the owner is dead or legally incapacitated or a showing is made of inability to obtain a statement from the owner, the preliminary statement may be made by the assignee or by someone authorized or entitled to make the statement and having knowledge of the facts.

(b) Preliminary statements shall be filed with the Office in duplicate. A copy shall be forwarded to each opposing party by the Office as soon as practicable after both parties have filed their statements within the requisite period.

(c) In filing a preliminary statement each party must show the following information:

(1) The date upon which the first determination of the novel variety was made.

(2) The date upon which the first written description of the novel variety was made. If a written description of the novel variety has not been made prior to the filing date of the application, it must be so stated.

(3) The date of the first act or acts susceptible of proof (other than making a written description or disclosing the novel variety to another person), which, if proven, would establish determination of the novel variety, and a brief description of such act or acts. If there have been no such acts, it must be so stated.

(4) The date of the actual production of the novel variety. If the novel variety had not been actually produced before the filing date of the application, it must be so stated.

(d) When an allegation as to the first written description (paragraph (c) (2) of this section) is made, a copy of such written description shall be attached to the statement.

(e) If a party intends to rely solely on a prior application, domestic or foreign, and on no other evidence, the preliminary statement shall clearly identify such prior application. Copies of the cited application and related documents will be served by the Office to all interested parties to the contest. In the case of an application filed in a foreign country, translations shall be served upon all interested parties by the party relying on the application filed in the foreign country.

§ 180.210 Preliminary statement on novel variety developed in a foreign country.

When the novel variety was developed in a foreign country, the preliminary statement must show (a) the information specified in § 180.209(c) through (e) and (b) whether, and if so, when and under what circumstances the novel variety was introduced into the United States by or on behalf of the party.

§ 180.211 Statements sealed before filing.

The preliminary statement shall be submitted in a sealed envelope bearing the name of the party filing it and the number and title of the priority contest as shown on the notice issued by the Office. The envelope should be enclosed in an outer mailing envelope marked "To Be Opened by the Commissioner."

§ 180.212 Correction of statement on motion.

In case of material error arising through inadvertence or mistake, a preliminary statement may be corrected upon a satisfactory showing to the Commissioner that the correction is of material significance. Correction of the statement must be made as soon as practicable after the discovery of the error.

§ 180.213 Failure to file statements.

If any party to a priority contest fails to file a preliminary statement, he shall be restricted to his earliest effective filing date.

§ 180.214 Access to preliminary statements.

The preliminary statements shall be open to the inspection of any party after the date set for the filing of preliminary statements (§ 180.207(b)), but shall not be open to inspection prior to that time.

§ 180.215 Dissolution at the request of commissioner.

If during a priority contest, information is submitted or found which, in the opinion of the Commissioner, may render the variety ineligible for a certificate, the priority contest may be suspended by the Commissioner and referred to an examiner for consideration of the matter and the parties will be notified of the reason for the suspension. Arguments of the parties regarding the suspension will be considered if filed within 60 days of the notification. The suspension will then be continued, modified, or dismissed in accordance with the determination by the Commissioner.

§ 180.216 Concession; abandonment.

(a) An applicant or a certificate holder involved in a priority contest may, at any time, file a written concession of priority, or abandonment of the certificate, signed by the breeder, or by the assignee, if any. Upon the filing of such an instrument by any party, the decision shall be rendered against him by the Commissioner.

(b) A concession of priority may not be made by an assignee of a part interest.

§ 180.217 Affidavits and exhibits.

Affidavits and exhibits, including official records and any special matter contained in a printed publication, pertinent to the issue involved in the contest, may be introduced in evidence in a priority contest by any party to the contest. In the case of official records and printed publications, the party introducing the evidence shall specify the record or the printed publication, the page or pages thereof to be used, indicating generally its relevancy, and submit to the Commissioner the record or authenticated copy, or the printed publication or a copy. Copies of affidavits and exhibits, including any record or publication, shall be served by the Commissioner on each of the other interested parties.

§ 180.218 Matters considered in determining priority.

In determining priority, the Commissioner will consider only priority of development based on the evidence submitted. Questions of novelty generally will not be considered in the decision on priority. If he desires, the Commissioner may refer his proposed findings of fact, conclusions, and notice of priority to the Board for an advisory decision.

§ 180.219 Recommendation by Commissioner.

The Commissioner may, either before or concurrently with his decision on the question of priority, but independently of such decision, direct the attention of the examiner to any matter not relating to priority which may come to the Commissioner's attention, and which in his opinion establishes the fact that there has been irregularity which amounts to a bar to the grant of a certificate to either of the parties. The Commissioner may suspend the priority contest and remand the case to the examiner for further consideration of the matters to which attention has been directed.

§ 180.220 Decision by commissioner.

(a) When a priority contest is concluded on the basis of preliminary statements, or otherwise, proposed findings of fact, conclusions, and notice of priority shall be issued by the Commissioner to the interested parties giving them a specified period, not less than 30 days, to show cause why such proposed findings of fact, conclusions, and notice of priority should not be made final. Any response made during the specified period will be considered by the Commissioner. Additional affidavits or exhibits will not be considered unless accompanied by a showing of cause. Thereafter, final findings of fact, conclusions, and notice of priority shall be issued by the Commissioner.

(b) The decision shall be entered by the Commissioner against a party whose preliminary statement alleges a date of determination later than the filing date of the other party's application.

§ 180.221 Status of claims of defeated applicant.

Whenever a final notice of priority has been issued by the Commissioner in a priority proceeding and the time limit for an appeal from such decision has expired, the claim or claims constituting the issue of the priority stand finally disposed of without further action by the Commissioner.

§ 180.222 Second priority contest.

A second priority contest between the same parties shall not be entertained by the Commissioner for the same novel variety.

APPEAL TO THE SECRETARY

§ 180.300 Petition to the Secretary.

(a) Petition may be made to the Secretary from any final action of the Commissioner denying an application or refusing to allow a certificate to be issued or from any adverse decision of the Commissioner made under §§ 180.18(c), 180.107, 180.201(e), and 180.220.

(b) Any such petition shall contain a statement of the facts involved and the point or points to be reviewed and the actions requested.

(c) A petition to the Secretary shall be filed in duplicate and accompanied by the prescribed fee (see § 180.175).

(d) Upon request, an opportunity to present data, views, and arguments orally, in an informal manner or in a formal hearing, shall be given to interested persons. If a formal hearing is requested, the proceeding shall be conducted in accordance with §§ 50.28 and 50.30–50.33 (§§ 50.28, 50.30–50.33 of this chapter) of the rules of practice under the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621, et seq.).

(e) Except as otherwise provided in the rules in this part, any such petition not filed within 60 days from the action complained of, shall be dismissed as untimely.

§ 180.301 Commissioner's answer.

(a) The Commissioner may, within such time as may be directed by the Secretary, furnish a written statement to the Secretary in answer to the appellant's petition, including such explanation of the reasons for his action as may be necessary and supplying a copy to the appellant.

(b) Within 20 days from the date of such answer, the appellant may file a reply statement directed only to such new points of argument as may be raised in the Commissioner's answer.

§ 180.302 Decision by the Secretary.

(a) The Secretary, after receiving the advice of the Board, may affirm or reverse the decision of the Commissioner in whole or in part.

(b) Should the decision of the Secretary include an explicit statement that a certificate be allowed based on an amended application, the applicant shall have the right to amend his application in conformity with such statement and such decision shall be binding on the Commissioner.

§ 180.303 Action following decision.

(a) Copies of the decision of the Secretary shall be served upon the appellant and the Commissioner in the manner provided in § 180.403.

(b) When an appeal petition is dismissed, or when the time for appeal to the courts pursuant to the Act has expired and no such appeal or civil action has been filed, proceedings in the appeal shall be considered terminated as of the dismissal or expiration date except in those cases in which the nature of the decision requires further action by the Commissioner. If the decision of the Secretary is appealed or a civil action has been filed pursuant to sections 71, 72, or 73 of the Act, the decision of the Secretary will be stayed pending the outcome of the court appeal or civil action.

GENERAL PROCEDURES IN PRIORITY OR PROTEST PROCEEDINGS

§ 180.400 Extensions of time.

Upon a showing of good cause, extensions of time not otherwise provided for may be granted by the Commissioner or, if an appeal has been filed, by the Secretary.

§ 180.401 Miscellaneous provisions.

(a) Petitions for reconsideration or modification of the decision of the Commissioner shall be filed within 20 days after the date of the decision.

(b) The Commissioner may consider on petition any matter involving abuse of discretion or the exercise of an examiner's authority, or such other matters as he may deem proper to consider. Any such petition, if not filed within 20 days from the decision complained of, may be dismissed as untimely.

§ 180.402 Service of papers.

(a) Every paper required to be served on opposing parties and filed in the Office in any proceeding must be served by the Secretary in the manner provided in § 180.403.

(b) The requirement in certain sections that a specified paper shall be served does not mean that supporting papers need not be served. Proof of such service upon other parties to the proceeding must be made before the supporting papers will be considered in a priority contest by the Commissioner.

§ 180.403 Manner of service.

Service of any paper under this part must be on the attorney or agent of the

party if there be such or on the party if there is no attorney or agent, and may be made in either of the following ways:

(a) By mailing a copy of the paper to the person served by certified mail; the date of the return receipt will be regarded as the date of service.

(b) By leaving a copy at the usual place of business of the person served with someone in his employment;

(c) When the person served has no usual place of business, by leaving a copy at his home with a member of his family over 14 years of age and of discretion;

(d) Whenever it shall be found by the Commissioner that none of the above modes of serving the paper is practicable, service may be by notice published once in the Official Journal.

REVIEW OF DECISIONS BY COURT

§ 180.500 Appeal to U.S. courts.

Any applicant dissatisfied with the decision of the Secretary on appeal may appeal to the U.S. Court of Customs and Patent Appeals or the U.S. Courts of Appeals, or the U.S. District Court as set forth in sections 71, 72, and 73 of the Act. In such cases, the appellant shall give notice to the Secretary, state the reasons for appeal, and obtain a certified copy of the record. The certified copy of the record shall be forwarded to the Court by the Plant Variety Protection Office on order of and at the expense of the appellant.

CEASE AND DESIST PROCEEDINGS

§ 180.600 Rules of practice.

Any proceedings instituted under section 128 of the Act for false marking shall be conducted in accordance with §§ 202.10 through 202.29 of this chapter (rules of practice under the Federal Seed Act) (7 U.S.C. 1551 et seq.), except that all references in those rules and regulations to "Examiner" shall be construed to be "Hearing Officer" and not an "Examiner" as defined in the regulations under the Plant Variety Protection Act.

PUBLIC USE DECLARATION

§ 180.700 Public interest in wide usage.

(a) If the Secretary has reason to believe that a protected variety should be declared open to use by the public in accordance with section 44 of the Act, the Secretary shall give the owner of the variety appropriate notice and an opportunity to present his views orally or in writing, with regard to the necessity for such action to be taken in the public interest.

(b) Upon the expiration of the period for the presentation of views by the owner, as provided in paragraph (a) of this section, the Secretary shall refer the matter to the Plant Variety Protection Board for its advice, including advice on any limitations or rate of remuneration.

(c) Upon receiving the advice of the Plant Variety Protection Board, the Secretary shall advise the owner of the variety, the members of the Plant Variety Protection Board, and the public, by issuance of a press release, of any decision based on the provisions of section 44 of the Act to declare a variety open to use by the public. Any decision not to declare a variety open to use by the public will be transmitted only to the owner of the variety and the members of the Plant Variety Protection Board.

PUBLICATION

§ 180.800 Publication of public variety descriptions.

Voluntary submissions of varietal descriptions of "public varieties" will be accepted in accordance with instructions issued by the Office, for publication in the Official Journal. Such publication shall not constitute recognition that the variety is, in fact, novel.

Any person who wishes to submit written data, views, or arguments concerning this proposal may do so by filing them with the Hearing Clerk, U.S. Department of Agriculture, Washington, D.C. 20250, within 60 days after publication of this notice in the FEDERAL REGISTER.

All written submissions made pursuant to this notice will be made available for public inspection at the Office of the Hearing Clerk during regular business hours (7 CFR 1.27b)).

Done at Washington, D.C., on April 12, 1972.

JOHN C. BLUM,
Deputy Administrator,
Regulatory Programs.

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