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1972 Issuances

This checklist, prepared by the Office of the Federal Register, is published in the first issue of each month. It is arranged in the order of CFR titles, and shows the issuance date and price of revised volumes of the Code of Federal Regulations issued to date during 1972. New units issued during the month are announced on the inside cover of the daily FEDERAL REGISTER as they become available.

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

CFR unit (Rev. as of Jan. 1, 1972):

Title		Price
3	1971 Compilation	$1.25
4		.55
5		1.75
6	(Rev. March 1, 1972)	.75
7	Parts:	
	46–51	1.75
	52	3.25
	900–944	1.75
	945–980	1.00
	981–999	1.00
	1000–1059	1.75
	1060–1119	1.75
	1120–1199	1.50
	1500-end	2.50
8		1.00
9		2.00
10		1.75
11	[Reserved]	
12	Parts:	
	1–299	3.00
	300-end	2.75
13		1.25
14	Parts:	
	1–59	3.00
	60–199	2.75
16	Parts:	
	0–149	3.25
	150-end	2.00
18	Parts 1–149	2.00
19		2.75
20	Parts 01–399	1.25
21	Parts:	
	1–119	1.75
	120–129	1.50
	147–299	1.25
	300-end	.60
22		1.75
23		.55
24		3.25
25		1.75
26	Parts:	
	1 (§§ 1.301–1.400)	1.00
	1 (§§ 1.401–1.500)	1.50
	1 (§§ 1.501–1.640)	1.25
	1 (§§ 1.641–1.850)	1.75
	1 (§§ 1.851–1.1200)	2.00
	Parts—Continued	
	2–29	1.25
	30–39	1.50
	40–169	2.00
	500–599	1.75
	600-end	.60
27		.45
28		1.00
30		2.75
32	Parts:	
	1–8	3.50
	400–589	2.50
	590–699	1.00
	700–799	3.50
	1000–1399	.75
	1400–1599	1.50
	1600-end	1.00
32A		1.50
33	Parts:	
	1–199	2.50
	200-end	1.75
34	[Reserved]	
37		.70
38		3.50
39		2.00
40		1.75
41	Chapters:	
	1–2	2.75
	3–5D	2.00
	19–100	1.25
	101-end	2.75
43	Parts:	
	1–999	1.50
	1000-end	2.75
44		.35
45	Parts:	
	1–199	2.00
	200-end	2.00
46	Parts:	
	66–145	2.75
	146–149	3.75
	150–199	2.75
	200-end	3.00
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	20–69	2.50
	70–79	1.75
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	1–99	.60
	100–199	3.75
	200–999	2.00
	1000–1199	1.25
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	1300-end	1.25
50		1.25

Title 5—ADMINISTRATIVE PERSONNEL

Chapter I—Civil Service Commission

PART 213—EXCEPTED SERVICE

Department of Health, Education, and Welfare

Section 213.3316 is amended to show that the following positions in the Office of the Assistant Secretary for Planning and Evaluation are excepted under Schedule C: Deputy Assistant Secretary for Program Systems, Deputy Assistant Secretary for Interagency Policy Analysis, and Executive Assistant to the Assistant Secretary. This section is further amended to reflect the following change in reporting relationship: From Special Assistant to the Deputy Assistant Secretary for Evaluation and Program Monitoring to Special Assistant to the Deputy Assistant Secretary for Program Systems.

Effective on publication in the FEDERAL REGISTER (6–1–72), subparagraph (9) is amended and subparagraphs (11), (12), and (13) are added to paragraph (k) of § 213.3316 as set out below.

§ 213.3316 Department of Health, Education, and Welfare.

* * * * *

(k) *Office of the Assistant Secretary for Planning and Evaluation.* * * *

* * * * *

(9) One Special Assistant to the Deputy Assistant Secretary for Program Systems.

* * * * *

(11) Deputy Assistant Secretary for Program Systems.

(12) Deputy Assistant Secretary for Interagency Policy Analysis.

(13) Executive Assistant to the Assistant Secretary.

* * * * *

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

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

[FR Doc.72-8190 Filed 5-31-72;8:47 am]

PART 213—EXCEPTED SERVICE

Occupational Safety and Health Review Commission

Section 213.3344 is amended to show that one Confidential Assistant to the Chairman is excepted under Schedule C.

Effective on publication in the FEDERAL REGISTER (6–1–72), paragraph (c) of § 213.3344 is amended as set out below.

§ 213.3344 Occupational Safety and Health Review Commission.

* * * * *

(c) One Confidential Assistant to each member of the Commission.

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

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

[FR Doc.72-8189 Filed 5-31-72;8:47 am]

PART 772—APPEALS TO THE COMMISSION

Review by the Commissioners

Section 772.404 has been amended to provide that the Commissioners may reopen and reconsider any previous decisions on their own motion as well as under the principles set forth in § 772.308.

Effective on publication in the FEDERAL REGISTER (6–1–72), § 772.404 is amended as set out below.

§ 772.404 Review by the Commissioners.

The Commissioners may reopen and reconsider any previous decision on their own motion or under the principles set forth in § 772.308.

(5 U.S.C. secs. 1302, 3301, 3302, 5115, 5338, 7512, 7701, 8347, E.O. 10577; 3 CFR 1954–58 Comp., p. 218, E.O. 11491; 3 CFR, 1969 Comp. secs. 772.401–772.404 also issued under 5 U.S.C. secs. 7151, 7154, E.O. 11478; 3 CFR, 1969 Comp.)

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

[FR Doc.72-8188 Filed 5-31-72;8:47 am]

Title 7—AGRICULTURE

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

[Peach Reg. 1, Amdt. 1]

PART 917—FRESH PEARS, PLUMS, AND PEACHES GROWN IN CALIFORNIA

Grades and Sizes

Notice was published in the FEDERAL REGISTER issue of May 9, 1972 (37 F.R. 9327), that the Department was giving consideration to a proposal to amend § 917.426 (Peach Regulation 1; 37 F.R. 8669) pursuant to the applicable provisions of the marketing agreement, as amended, and Order No. 917, as amended (7 CFR Part 917) regulating the handling of fresh pears, plums, and peaches grown in California. This regulatory program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The proposal was submitted by the Peach Commodity Committee, established pursuant to said amended marketing agreement and order.

The proposal would amend § 917.426 (Peach Regulation 1; 37 F.R. 8669) to: (1) Continue the effective period of said regulation to include all peach shipments for the 1972 season; (2) continue to June 20, 1972, the minimum size provision (size 96) for varieties not otherwise specified in the regulation; and (3) increase the minimum size, from 96 size to 80 size for varieties not specifically named in the regulation, for the period June 21 to October 31, 1972. It is the committee's recommendation that such regulation be continued for the entire 1972 peach shipping season. The present regulation ends May 31, 1972. Such amendment would also recognize that the later maturing varieties are larger in size at maturity than the earlier varieties and limitations should be set accordingly.

During the period provided by the notice for submission of written data, views, or arguments pertaining to the proposal, a proposed minor revision was submitted by the Peach Commodity Committee. Such revision which is hereinafter included would specify an equivalent diameter size for loose or jumble packed peaches in a No. 22D standard lug box or a No. 12B standard peach box as measured by a rigid ring. Currently the regulation requires that peaches so packed in such containers be not smaller than a size that will pack a specified count in these containers in accordance with the requirements of standard pack. The specification of this diameter equivalent would make it easier for inspectors and others to determine compliance with such size requirements when peaches are loose or jumble packed in the 22D and 12B containers.

The amendment reflects the prevailing supply and market situation for the 1972 peach shipping season and is consistent with the objectives of the act in that it will tend to assure desirable peaches to consumers and maximize returns to producers pursuant to the declared policy of the act.

After consideration of all relevant matters presented, including the proposal set forth in the aforesaid notice, the recommendations and information submitted by the Peach Commodity 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 peaches, as hereinafter provided, will tend to effectuate the declared policy of the act.

It is hereby further found that it is impracticable, unnecessary, and contrary to the public interest to give further preliminary notice to engage in further public rule making procedure and that good cause exists for not postponing the effective date of this amendment until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553) in that (1) shipments of such peaches are currently in progress and this amendment should be applicable to all peach shipments occurring on and after the effective date as specified herein in order to effectuate the declared policy of the act; (2) the effective period specified herein is the same as that specified in the notice, to which no exceptions were submitted; and (3) compliance with this regulation will not require any special preparation on the part of the persons subject thereto which cannot be completed by the effective time hereof.

Order. In § 917.426 (Peach Regulation 1; 37 F.R. 8669) the provisions of paragraph (a) preceding subparagraph (1) thereof; subdivision (ii) of paragraph (a)(2); subdivision (ii) of paragraph (a)(3); subdivision (iii) of paragraph (a)(4); subdivision (iii) of paragraph (a)(5); subdivision (iii) of paragraph (a)(6); paragraph (b) preceding subparagraph (1) thereof; paragraph (b)(2); are amended and a new paragraph (c) is added reading as follows:

§ 917.426 Peach Regulation 1.

(a) Order: During the period June 1, 1972 through May 31, 1973 no handler shall handle:

* * * * *

(2) * * *

(ii) Such peaches when packed in any container, other than a No. 22D standard lug box that is packed in accordance with the requirements of standard pack, measure not less than 2 inches in diameter as measured by a rigid ring: *Provided,* That not more than 10 percent by count of peaches in any container may fail to meet such diameter requirement.

(3) * * *

(ii) Such peaches when packed in any container, other than a No. 22D standard lug box that is packed in accordance with the requirements of standard pack, measure not less than 2⅛ inches in diameter as measured by a rigid ring: *Provided,* That not more than 10 percent by count of peaches in any container may fail to meet such diameter requirements.

(4) * * *

(iii) Such peaches when packed in any container, other than a No. 22D standard lug box or a No. 12B standard peach box that is packed in accordance with the requirements of standard pack, measure not less than 2¼ inches in diameter as measured by a rigid ring: *Provided,* That not more than 10 percent, by count, of peaches in any such container may fail to meet such diameter requirement.

(5) * * *

(iii) Such peaches when packed in any container, other than a No. 22D standard lug box or a No. 12B standard peach box that is packed in accordance with the requirements of standard pack, measure not less than 2⅜ inches in diameter as measured by a rigid ring: *Provided,* That not more than 10 percent, by count, of peaches in any such container may fail to meet such diameter requirement.

(6) * * *

(iii) Such peaches when packed in any container, other than a No. 22D standard lug box or a No. 12B standard peach box that is packed in accordance with the requirements of standard pack, measure not less than 2⁷⁄₁₆ inches in diameter as measured by a rigid ring: *Provided,* That not more than 10 percent, by count, of peaches in any such container may fail to meet such diameter requirement.

(b) During the period June 1, 1972, through June 20, 1972, no handler shall handle any packaged or container of any variety of peaches not specifically named in subparagraph (2), (3) (4), (5), or (6) of paragraph (a) of this section unless:

* * * * *

(2) Such peaches when packed in any container, other than a No. 22D standard lug box that is packed in accordance

with the requirements of standard pack, measure not less than 2⅛ inches in diameter as measured by a rigid ring: *Provided*, That not more than 10 percent by count of peaches in any such container may fail to meet such diameter requirement.

(c) During the period June 21, 1972, through October 31, 1972, no handler shall handle any packaged or container of any variety of peaches not specifically named in subparagraph (2), (3), (4), (5), or (6) of paragraph (a) of this section unless:

(1) Such peaches when packed in a No. 22D standard lug box are of a size that will pack, in accordance with the requirements of standard pack, not more than 80 peaches in the lug box;

(2) Such peaches when packed in a No. 12B standard peach box are of a size that will pack, in accordance with the requirements of standard pack, not more than 70 peaches in the peach box; or

(3) Such peaches when packed in any container, other than a No. 22D standard lug box or a No. 12B standard peach box that is packed in accordance with the requirements of standard pack, measure not less than 2⅜ inches in diameter as measured by a rigid ring: *Provided*, That not more than 10 percent by count of peaches in any such container may fail to meet such diameter requirement.

* * * * *

Dated May 26, 1972, to become effective June 1, 1972.

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

[FR Doc.72-8227 Filed 5-31-72;8:52 am]

[Plum Reg. 8, Amdt. 1]

PART 917—FRESH PEARS, PLUMS, AND PEACHES GROWN IN CALIFORNIA

Grades and Sizes

Notice was published in the FEDERAL REGISTER issue of May 13, 1972 (37 F.R. 9634) that the Department was giving consideration to a proposal to amend § 917.427 (Plum Regulation 8; 37 F.R. 9205) pursuant to the applicable provisions of the marketing agreement, as amended, and Order No. 917, as amended (7 CFR Part 917) regulating the handling of fresh pears, plums, and peaches grown in California. This regulatory program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The proposal was submitted by the Plum Commodity Committee, established pursuant to said amended marketing agreement and order.

The proposal would amend § 917.427 (Plum Regulation 8; 37 F.R. 9205) to continue the effective period of said regulation through May 31, 1973. The present regulation ends June 5, 1972. It is the committee's recommendation that such regulation be continued for the entire 1972 plum shipping season and that the grade, size, and pack for specified varieties be continued to the start of the 1973 shipping season.

The amendment reflects the prevailing supply and market situation for the 1972 plum shipping season and is consistent with the objectives of the act in that it will tend to assure desirable plums to consumers and maximize returns to producers pursuant to the declared policy of the act.

After consideration of all relevant matters presented, including the proposal set forth in the aforesaid notice, the recommendations and information submitted by the Plum Commodity 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 plums, as hereinafter provided, will tend to effectuate the declared policy of the act.

It is hereby further found that good cause exists for not postponing the effective date of this amendment until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553) in that (1) shipments of such plums are currently in progress and this amendment should be applicable to all plum shipments occurring on and after the effective date as specified herein in order to effectuate the declared policy of the act; (2) the effective period herein specified is the same as that specified in the notice to which no exceptions were submitted; (3) the regulatory provisions of this amended regulation are the same as those currently in effect; and (4) compliance with this amended regulation will not require any special preparation on the part of the persons subject thereto which cannot be completed by the effective time hereof.

Order. Section 917.427 (b), (c) preceding subparagraph (1), and paragraph (d) preceding Table I, is hereby amended to read as follows:

§ 917.427 Plum Regulation 8.

* * * * *

(b) During the period June 6, 1972, through May 31, 1973, no handler shall ship any lot of packages or containers of any plums, other than the varieties named in paragraph (c) of this section, unless such plums grade at least U.S. No. 1.

(c) During the period June 6, 1972, through May 31, 1973, no handler shall ship:

* * * * *

(d) During the period June 6, 1972, through May 31, 1973, no handler shall ship any package or other container of any variety of plums listed in Column A of the following Table I unless such plums are of a size that an 8-pound sample, representative of the sizes of the plums in the package or container, contains not more than the number of plums listed for the variety in Column B of said table.

* * * * *

Dated May 26, 1972, to become effective June 6, 1972.

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

[FR Doc.72-8226 Filed 5-31-72;8:52 am]

PART 946—IRISH POTATOES GROWN IN THE STATE OF WASHINGTON

Order Amending the Order

It is hereby ordered, That, on and after the effective date specified herein, all handling of Irish potatoes grown in the State of Washington shall be in conformity to and in compliance with the "Order Amending the Order Regulating the Handling of Irish Potatoes Grown in the State of Washington" which was annexed to and made a part of the decision of the Secretary of Agriculture dated March 31, 1972 (F.R. Doc. 72-5285; 37 F.R. 6927).

§ 946.0 Findings and determinations.

The findings and determinations hereinafter set forth are supplementary and in addition to the previous findings and determinations which have been made in connection with the issuance of the marketing agreement and order, and all of the said previous findings and determinations are hereby ratified and affirmed except insofar as such previous findings and determinations may be in conflict with the findings and determinations set forth herein (for prior findings and determinations see 14 F.R. 5860).

(a) *Findings upon the basis of the hearing record.* Pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674) and the applicable rules of practice and procedure effective thereunder (7 CFR Part 900), a public hearing was held in Quincy, Wash., on October 28, 1971, upon a proposed amendment of Marketing Agreement No. 113 and Order No. 946 (7 CFR Part 946) regulating the handling of Irish potatoes grown in the State of Washington. Upon the basis of evidence introduced at such hearing and the record thereof, it is hereby found that:

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

(2) The order, as hereby amended, regulates the handling of potatoes grown in the State of Washington in the same manner as, and is applicable only to persons in the respective classes of industrial and commercial activity specified in, the marketing order upon which hearings have been held;

(3) The order, as hereby amended, is limited in application to the smallest regional production area which is practicable, consistently with carrying out the declared policy of the act; and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the act;

(4) There are no differences in the production and marketing of potatoes in the production area covered by the order, as hereby amended, which require different terms applicable to different parts of such area; and

(5) All handling of potatoes grown in the production area is in the current of interstate or foreign commerce, or directly burdens, obstructs, or affects such commerce.

(b) *Additional findings.* It is hereby found that good cause exists for not postponing the effective date of this amendment beyond the date specified herein and for making it effective on such date (5 U.S.C. 553) in that: (1) Shipments of production area potatoes are expected to begin on or about July 5, 1972, and the amendment should be made effective as far as possible in advance of such date so that producers may avail themselves of any benefits that may be derivable from the amendment during the greatest possible portion of the current marketing season; (2) the provisions of the amendment are well known to handlers and other interested persons by reason of the public hearing, the recommended decision, and the final decision thereon; (3) the producer referendum was held April 21 through May 1, 1972, when a summary of the amendment was mailed to each known producer; (4) the changes effected by this amendment will not require advance preparation by handlers which cannot be completed prior to the effective date; and (5) no useful purpose will be served by postponing the effective date beyond that specified herein.

(c) *Determinations.* It is hereby determined that:

(1) Handlers (excluding cooperative associations who are not engaged in processing, distributing, or shipping potatoes covered by the order as hereby amended) who during the period April 16, 1971, through April 15, 1972, handled not less than 50 percent of the volume of potatoes covered by the order, as hereby amended, have signed the marketing agreement as amended regulating the handling of Irish potatoes grown in the State of Washington, and

(2) The issuance of this order, amending the order, is approved or favored by at least two-thirds of the producers who participated in a referendum held April 21 through May 1, 1972, and who, during the determined representative period (April 16, 1971, through April 15, 1972) were engaged within the production area, as defined in this order amending the order, in the production of Irish potatoes for market, such producers also having produced for market at least two-thirds of the volume of such potatoes represented in such referendum.

It is therefore ordered, That, on and after the effective date specified herein, all handling of potatoes grown in the production area shall be in conformity to, and in compliance with, the order as hereby amended as follows:

1. Section 946.6 is revised to read as follows:

§ 946.6 Handler.

"Handler" is synonymous with "shipper" and means any person (except a common or contract carrier of potatoes owned by another person) who handles potatoes or causes potatoes to be handled.

2. Section 946.7 is revised to read as follows:

§ 946.7 Handle.

"Handle" is synonymous with "ship" and means to transport, sell, or in any other way to place potatoes grown in the State of Washington, or cause such potatoes to be placed, in the current of commerce within the production area or between the production area and any point outside thereof, or from any point in the adjoining States of Oregon and Idaho to any other point: *Provided,* That, the definition of "handle" shall not include the transportation of ungraded potatoes within the production area for the purpose of having such potatoes prepared for market, or stored, except that the committee may impose safeguards pursuant to § 946.55 with respect to such potatoes.

3. Section 946.9 is revised to read as follows:

§ 946.9 Fiscal period.

"Fiscal period" means the period beginning on July 1 of each year and ending June 30 of the following year, or such other period as the Secretary may establish pursuant to recommendation of the committee.

§§ 946.13, 946.14, and 946.15 [Deleted]

4. Sections 946.13, 946.14, and 946.15 are deleted.

5. Section 946.16 is renumbered as § 946.13 and revised to read as follows:

§ 946.13 Grade and size.

"Grade" means any one of the officially established grades of potatoes, and "size" means any one of the officially established sizes of potatoes as defined and set forth in:

(a) The U.S. Standards for Potatoes issued by the U.S. Department of Agriculture (§§ 51.1540 to 51.1566 of this title), or amendments thereto or modifications thereof, or variations based thereon;

(b) U.S. Standards for Grades of Potatoes for Processing as issued by the U.S. Department of Agriculture (§§ 51.3410 to 51.3424 of this title), or amendments thereto, or modifications thereof, or variations based thereon;

(c) U.S. Standards for Grades of Peeled Potatoes (§§ 52.2421 to 52.2433 of this title), or amendments thereto or modifications thereof, or variations based thereon; and

(d) State of Washington Standards for Potatoes issued by the State of Washington Director of Agriculture, or amendments thereto, or modifications thereof, or variations based thereon.

6. Section 946.14 is added to read as follows:

§ 946.14 Grading.

"Grading" is synonymous with "preparing for market" which means the sorting or separating of potatoes into grades and sizes for market purposes.

7. Section 946.17 is renumbered as § 946.15 and revised to read as follows:

§ 946.15 Export.

"Export" means shipment of potatoes beyond the boundaries of the 48 contiguous States of the United States, or the District of Columbia.

§ 946.16 [Renumbered]

8. Section 946.18 is renumbered as § 946.16.

9. Paragraph (a) of § 946.25 is amended to read as follows:

§ 946.25 Selection.

(a) Persons selected as committee members or alternates to represent producers shall be individuals who are producers in the respective district for which selected, or officers or employees of a corporate producer in such district.

* * * * *

10. Paragraph (a) of § 946.27 is amended to read as follows:

§ 946.27 Term of office.

(a) The term of office of committee members and alternates shall be for 3 years beginning on the 1st day of July and continuing until their successors are selected and have qualified: *Provided, however,* That the terms of office of the initial committee under the amended order shall be determined by the Secretary so that the terms of office of one-third of the initial members and alternates shall be for 1 year, one-third for 2 years, and one-third for 3 years.

* * * * *

11. Section 946.30 is revised to read as follows:

§ 946.30 Expenses and compensation.

Committee members and their respective alternates when acting on committee business shall be reimbursed for reasonable expenses necessarily incurred by them in the performance of their duties and in the exercise of their powers under this subpart. In addition, they may receive reasonable compensation at a rate recommended by the committee and approved by the Secretary.

12. Section 946.32 is revised to read as follows:

§ 946.32 Nomination.

The Secretary may select the members of the State of Washington Potato Committee and their respective alternates from nominations which may be made in the following manner, or from among such other qualified persons:

(a) A meeting or meetings of producers and handlers shall be held by the committee in each district for which nominees are to be selected not later than May 1 of each year to designate nominees for members and alternates to the committee; or the committee may conduct nominations by mail in a manner recommended by the committee and approved by the Secretary; and, in arranging for such meetings, the committee may, if it deems desirable, utilize the services and facilities of other existing organizations;

(b) At least one nominee shall be designated for each position as member and for each position as alternate member on the committee which is vacant, or which is to become vacant the following July 1;

(c) The names of nominees shall be supplied to the Secretary in such manner and form as he may prescribe, not later than June 1 of each year, or by such other date as may be specified by the Secretary;

(d) Only producers may participate in designating producer nominees, and only handlers may participate in designating handler nominees. Any person who operates in more than one district or is engaged in producing and handling potatoes, shall elect the classification (i.e., producer or handler), and the district within which he desires to participate in designating nominees;

(e) Regardless of the number of districts in which a person produces or handles potatoes, each such person is entitled to cast only one vote on behalf of himself, his agents, subsidiaries, affiliates, and representatives in designating nominees for committee members and alternates. An eligible voter's privilege of casting only one vote as aforesaid shall be construed to permit a voter to cast one vote for each position to be filled in the district in which he elects to vote; and

(f) If nominations are not made within the time and in the manner specified in this section, the Secretary may, without regard to nominations, select the committee members and alternates on the basis of the representation provided for in this subpart.

§ 946.33 [Deleted]

13. Section 946.33 is deleted.

§ 946.33 [Renumbered]

14. Section 946.34 is renumbered as § 946.33.

15. Section 946.40 is revised to read as follows:

§ 946.40 Expenses.

The committee is authorized to incur such expenses as the Secretary finds are reasonable and likely to be incurred by it during each fiscal period for its maintenance and functioning, and for such other purposes as the Secretary, pursuant to this subpart, determines to be appropriate. The committee shall submit to the Secretary a budget for each fiscal period, including an explanation of the items appearing therein, and a recommendation as to the rate of assessment for such fiscal period.

16. Section 946.41 is revised to read as follows:

§ 946.41 Assessments.

Each handler shall pay to the committee upon demand, his pro rata share of the expenses authorized by the Secretary for each fiscal period. Each handler's pro rata share shall be the rate of assessment per hundredweight fixed by the Secretary times the quantity of potatoes which he handles as the first handler thereof. At any time during or after a fiscal period, the Secretary may increase the rate of assessment as necessary to cover authorized expenses. Such increase shall be applicable to all potatoes handled during the given fiscal period. The payment of expenses for the maintenance and functioning of the committee may be required during periods when no regulations are in effect. If a handler does not pay his assessment within the time prescribed by the committee, the assessment may be increased by a late payment charge or an interest charge, or both, at rates prescribed by the committee with the approval of the Secretary.

17. Section 946.42 is revised to read as follows:

§ 946.42 Accounting.

(a) *Excess funds.* At the end of a fiscal period, funds in excess of the year's expenses shall be placed in an operating reserve not to exceed approximately two fiscal periods' operational expenses or such lower limits as the committee, with the approval of the Secretary, may establish. Funds in such reserve shall be available for use by the committee for expenses authorized pursuant to § 946.40. Funds in excess of those placed in the operating reserve shall be refunded to handlers. Each handler's share of such excess shall be the amount of assessments he paid in excess of his pro rata share of the actual expenses of the committee and the addition, if any, to the operating reserve.

(b) *Accounting of funds upon termination of order.* Any money collected as assessments pursuant to this subpart and remaining unexpended in the possession of the committee after termination of this part shall be distributed in such manner as the Secretary may direct: *Provided,* That to the extent practical, such funds shall be returned pro rata to the persons from whom such funds were collected.

18. Section 946.46 is renumbered as § 946.50 and revised to read as follows:

§ 946.50 Marketing policy.

(a) Prior to each marketing season, the committee shall consider and prepare a policy statement for the marketing of potatoes. In developing its marketing policy, the committee shall investigate relevant supply and demand conditions for potatoes. In such investigations, the committee shall give appropriate considerations to the following:

(1) Market prices of potatoes, including prices by grade, size, quality, and maturity in different packs of fresh potatoes and of the various forms of processed potatoes;

(2) Supplies of potatoes by grade, size, quality, and maturity in the production area and in other production areas, of fresh potatoes, and the supplies of various forms of processed potatoes;

(3) The trend and level of consumer income;

(4) Establishing and maintaining orderly marketing conditions for potatoes;

(5) Orderly marketing of potatoes as will be in the public interest; and

(6) Other relevant factors.

(b) In the event it becomes advisable to deviate from such marketing policy because of changed supply and demand conditions, the committee shall formulate a revised marketing policy statement in accordance with the appropriate considerations in paragraph (a) of this section.

(c) The committee shall submit a report to the Secretary setting forth such marketing policy. Notice of each such marketing policy and any revision thereof shall be given to producers, handlers, and other interested parties by bulletins, newspapers, or other appropriate media, and copies thereof shall be available for examination at the committee office to all interested parties.

19. Section 946.47 is renumbered as § 946.51 and revised to read as follows:

§ 946.51 Recommendation for regulation.

The committee shall recommend to the Secretary regulations, or amendments, modifications, suspension, or termination thereof, whenever it finds that such regulations as provided in § 946.52 are in accordance with the marketing policy established pursuant to § 946.50 and that such regulations will tend to effectuate the declared policy of the act.

20. Section 946.48 is renumbered as § 946.52 and revised to read as follows:

§ 946.52 Issuance of regulations.

(a) The Secretary shall limit the shipment of potatoes as set forth in this subpart whenever he finds from the recommendation and information submitted by the committee, or from other available information, that it would tend to effectuate the declared policy of the act:

(1) To regulate, in any or all portions of the production area the handling of particular grades, sizes, qualities or maturity of any or all varieties of potatoes during any period;

(2) To regulate the handling of particular grades, sizes, qualities or maturities of any or all varieties of potatoes, or for any combination of the foregoing during any period in the States of Oregon and Idaho which have been shipped from the production area to specified locations therein for grading or storage pursuant to § 946.54;

(3) To regulate the handling of particular grades, sizes, qualities or maturities of any or all varieties differently for: Different portions of the production area, different uses or outlets, different packs or for any combination of the foregoing, during any period;

(4) To regulate the handling of potatoes by establishing in terms of grades, sizes, or both, minimum standards of quality and maturity.

(b) The Secretary may amend any regulation issued under this subpart whenever he finds that such amendment would tend to effectuate the declared policy of the act. The Secretary may also terminate or suspend any regulation whenever he finds that such regulation obstructs or no longer tends to effectuate the declared policy of the act.

(c) The Secretary shall notify the committee of any such regulation issued pursuant to this section and the committee shall give reasonable notice thereof to handlers.

21. Section 946.49 is renumbered as § 946.53 and revised to read as follows:

§ 946.53 Minimum quantities.

The committee, with the approval of the Secretary, may establish, for any or all portions of the production area, minimum quantities below which shipments will be free from regulations issued pursuant to this part.

22. Section 946.50 is renumbered as § 946.54 and revised to read as follows:

§ 946.54 Shipments for specified purposes.

(a) Whenever the Secretary finds, upon the basis of the recommendations and information submitted by the committee, or from other available information, that it will tend to effectuate the declared policy of the act, he shall modify, suspend, or terminate any or all regulations issued pursuant to this part in order to facilitate shipments of potatoes for the following purposes:

(1) Livestock feed;

(2) Charity;

(3) Export;

(4) Seed;

(5) Prepeeling;

(6) Such other purposes as may be specified by the committee with the approval of the Secretary; and

(7) Grading or storing between the districts within the production area or to and within specified locations in the adjoining States of Idaho and Oregon.

(b) The Secretary shall give prompt notice to the committee of any modification, suspension, or termination of regulations pursuant to this section, or of any approval issued by him under the provisions of this section.

23. Section 946.55 is added to read as follows:

§ 946.55 Safeguards.

(a) The committee, with the approval of the Secretary, may prescribe adequate safeguards to prevent shipments pursuant to § 946.54 from entering channels of trade and other outlets for other than the specific purposes authorized therefor, and the transportation of potatoes for grading and storing to points outside the production area.

(b) Safeguards provided by this section may include, but shall not be limited to, requirements that handlers:

(1) Shall obtain the inspection required by § 946.60 or pay the assessment provided by § 946.41, or both, in connection with the potato shipments effected in accordance with § 946.54, and

(2) shall obtain a special purpose certificate from the committee for shipments of potatoes effected or to be effected under provisions of § 946.54.

(c) The committee, with the approval of the Secretary, shall prescribe rules governing the issuance and the contents of the special purpose certificate.

(d) The committee may rescind, or deny to any handler the special purpose certificate if proof satisfactory to the committee is obtained that potatoes shipped by him for the purpose stated in § 946.54 were handled contrary to the provisions of this section.

(e) The committee shall make reports to the Secretary, as requested, showing the number of applications for such certificates, the quantity of potatoes covered by such applications for such certificates, the number of such applications denied, and certificates granted, the quantity of potatoes shipped under duly issued certificates, and such other information as may be requested by the Secretary.

24. Section 946.53 is renumbered as § 946.60 and paragraph (a) is amended to read as follows:

§ 946.60 Inspection and certification.

(a) During any period in which the Secretary regulates the shipment of potatoes pursuant to the provisions of this subpart, each handler who first ships potatoes shall, prior to making shipment, cause each shipment to be inspected by an authorized representative of the Federal-State inspection service or such other inspection service as the Secretary shall designate. The committee may, with the approval of the Secretary, prescribe rules and regulations modifying the inspection requirements of this section in circumstances under which such requirements would create an undue hardship on growers or shippers: *Provided,* That all such shipments shall comply with all regulations in effect: *And provided further,* That proper safeguards to assure compliance are adopted.

* * * * *

§§ 946.56, 946.57, 946.58, and 946.59 [Deleted]

25. Sections 946.56, 946.57, 946.58, and 946.59 are deleted.

26. Section 946.70 is revised to read as follows:

§ 946.70 Reports and records.

(a) Upon the request of the committee, with the approval of the Secretary, every handler shall furnish to the committee in such manner and at such time as may be prescribed, such information as will enable the committee to exercise its duties under this subpart.

(b) Each handler shall establish and maintain for at least 2 succeeding years such records and documents with respect to potatoes received and potatoes disposed of by him as will substantiate the required reports.

(c) For the purpose of assuring compliance with the recordkeeping requirements and verifying reports filed by handlers, the Secretary and the committee through its duly authorized employees, shall have access to such records.

(d) All reports and records furnished or submitted by handlers to, or obtained by the employees of, the committee which contain data for information constituting a trade secret or disclosing the trade position, financial condition, or business operations of the particular handler from whom received, shall be treated as confidential, and the reports and all information obtained from records shall at all times be kept in the custody and under the control of one or more employees of the committee who shall disclose such information to no person other than the Secretary, or his authorized agents. Compilations of general reports from data and information submitted by handlers is authorized subject to the prohibition of disclosure of individual handlers' identity or operations.

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

Dated May 25, 1972, to become effective June 5, 1972.

RICHARD E. LYNG,
Assistant Secretary.

[FR Doc.72-8272 Filed 5-31-72;8:55 am]

[Amdt. 1]

PART 966—TOMATOES GROWN IN FLORIDA

Limitation of Shipments

Findings. (a) Pursuant to Marketing Agreement No. 125 and Order No. 966, both as amended (7 CFR Part 966), regulating the handling of tomatoes grown in the production area, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and upon the basis of the recommendation and information submitted by the Florida Tomato Committee, established pursuant to said marketing agreement and order, and upon other available information, it is hereby found that the amendment to the limitation of shipments hereinafter set forth will tend to effectuate the declared policy of the act.

(b) It is hereby found that it is impracticable to give preliminary notice, or engage in public rule making procedure, and that good cause exists for not postponing the effective date of this amendment until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553) because (1) the time intervening between the date when the information upon which this regulation 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; (2) more orderly marketing than would otherwise prevail will be promoted by regulating the handling of tomatoes in the manner set forth in this amendment; (3) compliance with this amendment will not require any special preparation by handlers which cannot be completed by the effective date; and (4) this amendment relieves restrictions on the handling of tomatoes in the production area.

Statement of consideration. This amendment relieves size classification requirements on other than mature green tomatoes upon issuance of the amendment. In addition, it terminates all requirements on production area tomatoes effective June 17, 1972, when

the marketing season for Florida tomatoes will end.

Regulation, as amended. In § 966.309 (36 F.R. 21449) subparagraph (1) of paragraph (a) is hereby amended, effective upon signing, to read as follows:

§ 966.309 Limitation of shipments.

* * * * *

(a) *Size classifications.* (1) No person shall handle any lot of mature green tomatoes unless they are sized in one or more of the following ranges of diameters (expressed in terms of minimum and maximum). Measurement of minimum and maximum diameter shall be in accordance with the methods prescribed in the U.S. Standards for Grades of Fresh Tomatoes (§§ 51.1855 to 51.1877 of this title). All other tomatoes of any size may be commingled.

Size classification:	*Diameter (inches)*
7 x 8 and smaller	$2\frac{1}{32}$ and smaller.
7 x 7	Over $2\frac{1}{32}$ to $2\frac{9}{32}$, inclusive.
6 x 7	Over $2\frac{9}{32}$ to $2\frac{17}{32}$, inclusive.
6 x 6	Over $2\frac{17}{32}$ to $2\frac{25}{32}$, inclusive.
5 x 6	Over $2\frac{25}{32}$.

* * * * *

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

Termination of regulation. The provisions of § 966.309 (36 F.R. 21449) are terminated effective June 17, 1972.

Dated: May 26, 1972.

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

[FR Doc.72-8271 Filed 5-31-72;8:55 am]

Title 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Administration, Department of Transportation

[Airspace Docket No. 72-GL-1]

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

Designation of Transition Area

On Page 3367 of the FEDERAL REGISTER dated February 15, 1972, the Federal Aviation Administration published a notice of proposed rule making which would amend § 71.181 of the Federal Aviation Regulations so as to designate a transition area at Ely, Minn.

Interested persons were given 45 days to submit written comments, suggestions, or objections regarding the proposed amendment. No objections have been received and the proposed amendment is hereby adopted without change, except the citation should read "* * * the following transition area is added" instead of "* * * the following transition area is amended to read."

This amendment shall be effective 0901 G.m.t., July 20, 1972.

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

Issued in Des Plaines, Ill., on May 10, 1972.

LYLE K. BROWN,
Director, Great Lakes Region.

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

ELY, MINN.

That airspace extending upward from 700 feet above the surface within a 6-mile radius of the Ely Municipal Airport (latitude 47°49'26" N., longitude 91°49'45" W.); and within 3 miles each side of the 112° bearing from the Ely Municipal Airport, extendng from the 6-mile radius area to 8 miles southeast of the airport, and within 3 miles each side of the 305° bearing from Ely Municipal Airport, extending from the 6-mile radius area to 8 miles northwest of the airport; that airspace extending upward from 1200 feet above the surface within 9½ miles south and 4½ miles north of the 112° bearing from the Ely Municipal Airport extending from the airport to 18½ miles southeast of the airport, and within 9½ miles southwest and 4½ miles north of the 305° bearing of the Ely Municipal Airport extending from the airport to 18½ miles northwest of of the airport excluding the portion which overlies the prohibited areas P-205 and P-204.

[FR Doc.72-8143 Filed 5-31-72;8:45 am]

[Airspace Docket No. 71-GL-33]

PART 73—SPECIAL USE AIRSPACE

Designation of Restricted Area

On March 28, 1972, a notice of proposed rule making was published in the FEDERAL REGISTER (37 F.R. 6321) stating that the Federal Aviation Administration (FAA) was considering an amendment to Part 73 of the Federal Aviation Regulations that would designate a restricted area near Crane, Ind.

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

In consideration of the foregoing, Part 73 of the Federal Aviation Regulations is amended, effective 0901 G.m.t., July 20, 1972, as hereinafter set forth.

Section 73.34 (37 F.R. 2353) is amended by adding the following:

R-3404 CRANE, IND.

Boundaries. A circular area 1 nautical mile in diameter, centered on latitude 38°49'18" N., longitude 86°50'03" W.

Designated altitudes. Surface to 1,800 feet MSL.

Time of designation. Sunrise to sunset.

Controlling agency: Federal Aviation Administration, Terre Haute Flight Service Station.

Using agency: Commanding Officer, Naval Ammunition Depot, Crane, Ind.

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

Issued in Washington, D.C., on May 23, 1972.

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

[FR Doc.72-8142 Filed 5-31-72;8:45 am]

[Airspace Docket No. 72-WA-30]

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

Modification of Waypoint

The purpose of this amendment to Part 75 of the Federal Aviation Regulations is to modify the Avenal, Calif., waypoint in area high route J902R by changing its reference facility from Bakersfield, Calif., to Fresno, Calif., and to relocate and rename the Rustlers Peak, Oreg., waypoint to Hyatt, Oreg., also in route J902R.

J902R was designated effective October 14, 1971, and extends from Portland, Oreg., to Los Angeles, Calif. J924R will become effective June 22, 1972, and will extend from Seattle, Wash., to Los Angeles, Calif. This change in reference facility is made so that the Avenal waypoint, which is common to J902R and J924R, will have the same reference facility on each route.

J900R, as proposed in Airspace Docket No. 71-WA-3, would cross J902R approximately 8 miles south of the Rustlers Peak, Oreg., waypoint. The designation of a waypoint at this intersection to serve both of these routes would eliminate one waypoint and reduce chart clutter. Due to the fact that this action simply renames and relocates facilities without effecting any change in the route structure, this amendment is minor in nature.

Since this amendment is minor in nature and no substantive change in the regulation is effected, notice and public procedure thereon are unnecessary. However, since it is necessary that sufficient time be allowed to permit appropriate changes to be made on aeronautical charts, this amendment will not become effective on publication in the FEDERAL REGISTER (6-1-72).

In consideration of the foregoing, Part 75 of the Federal Aviation Regulations is amended, as hereinafter set forth, effective 0901 G.m.t., June 22, 1972.

In § 75.400 (37 F.R. 2400) J902R is amended to read:

J902R Portland, Oreg., to Los Angeles, Calif.:
Sherwood, Oreg., 45°21'05" N./122°59'00" W., Portland, Oreg.
Hyatt, Oreg., 42°27'23" N./122°20'36" W., Medford, Oreg.
Kirkwood, Calif., 40°08'28" N./121°52'29" W., Red Bluff, Calif.
Sacramento, Calif., 38°26'38" N./121°33'-02" W., Sacramento, Calif.
Avenal, Calif., 35°38'49" N./119°58'40" W., Fresno, Calif.

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

Issued in Washington, D.C., on May 26, 1972.

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

[FR Doc.72-8281 Filed 5-31-72;8:57 am]

Chapter II—Civil Aeronautics Board

SUBCHAPTER B—PROCEDURAL REGULATION

[Reg. PR-128; Amdt. 12]

PART 302—RULES OF PRACTICE IN ECONOMIC PROCEEDINGS

Attendance and Mileage Fees for Witnesses

Attendance Fees and Mileage

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 25th day of May 1972.

Section 1004(b) of the Federal Aviation Act of 1958, as amended, authorizes the Board to require by subpena the attendance and testimony of witnesses, and the production of evidence relating to matters under investigation. Section 1004(e) of the Act empowers the Board in any pending proceeding to order testimony to be taken by deposition, and to issue subpenaes in order to compel a witness to appear and be deposed. Witnesses so summoned are required, by sections 1004(b) and 1004(h), to be paid the same fees and mileage paid witnesses in the courts of the United States.[1] This requirement is reflected in § 302.21 of the Board's procedural regulations, which, inter alia, sets forth the types of fees to be paid and specifies the amounts therefor. However, the amounts presently specified for witness fees, in subdivisions (i), (ii), and (iii) of paragraph (b)(1) thereof, are no longer the same as the amounts currently paid to witnesses in the courts of the United States, and it is therefore necessary to amend these provisions. Additionally, a new proviso is being added to paragraph (b)(1), to make it clear that the fees specified therein do not apply to witnesses subpenaed to testify in Alaska. This proviso is necessary because the amounts payable for fees and mileage in the U.S. District Court for the District of Alaska are different from those payable in other Federal courts.

Since this amendment is procedural in nature and merely serves to conform the amounts prescribed for witness fees in our regulations to those currently paid in the Federal courts, as required by the Act, the Board finds that notice and public procedure are not necessary, and that the amendment should be effective immediately.

Accordingly, the Civil Aeronautics Board hereby amends subdivisions (i), (ii), and (iii) of paragraph (b)(1), and adds a new proviso to paragraph (b)(1) of § 302.21 of Part 302 of its procedural regulations (14 CFR Part 302) effective May 25, 1972, to read as follows:

[1] It should be noted that although section 1004(h) literally refers only to fees, while section 1004(b) expressly refers to both fees and mileage, the Board has consistently interpreted section 1004(h) to cover both fees and mileage.

§ 302.21 Attendance fees and mileage.

* * * * *

(b) *Amount of mileage and attendance fees to be paid.* (1) Witnesses who are not salaried employees of the United States, or such employees summoned to testify on matters not related to their public employment, shall be paid the same fees and mileage paid to witnesses for like service in the courts of the United States, as provided in subdivisions (i) through (iii) of this subparagraph: *Provided,* That no employee, officer, or attorney of an air carrier who travels under the free or reduced rate provisions of section 403(b) of the Act shall be entitled to any fees or mileage: *And provided further,* That the amounts hereinafter set forth for fees and mileage shall not be applicable for witnesses summoned to testify in Alaska.

(i) *Per diem for attendance.* There shall be tendered $20 for each day of expected attendance at a hearing or place where deposition is to be taken, and for the time necessarily occupied in going to and returning from the place of attendance.

(ii) *Allowance for subsistence.* In addition to per diem for attendance, when attendance is required at a point so far removed from the witness' residence as to prohibit daily return thereto, there shall be tendered an additional sum of $16 per day for expenses of subsistence for each day of expected attendance and including the time necessarily occupied in going to and returning from the place of attendance.

(iii) *Mileage.* There shall be tendered an amount equal to 10 cents per mile for the round trip distance between the witness' place of residence and the place where attendance is required. Regardless of the mode of travel employed, computation of mileage shall be made on the basis of a uniform table of distances adopted by the Attorney General where the travel is covered by such table: *Provided,* That in lieu of this mileage allowance witnesses who are required to travel between the territories and possessions, or to and from the continental United States or between two foreign points shall be tendered a ticket for such transportation at the lowest first-class rate available at the time of reservation plus the required per diem attendance fees: *And provided further,* That in Alaska where permitted by section 403 (b) of the Federal Aviation Act of 1958, as amended, the witness may, at his option, accept a pass for travel by air.

* * * * *

(Secs. 204(a), 1004, Federal Aviation Act of 1958, as amended, 72 Stat. 743, 792; 49 U.S.C. 1324, 1484)

By the Civil Aeronautics Board.

[SEAL] HARRY J. ZINK, *Secretary.*

[FR Doc.72-8264 Filed 5-31-72;8:54 am]

Title 16—COMMERCIAL PRACTICES

Chapter I—Federal Trade Commission

[Docket No. C-2200]

PART 13—PROHIBITED TRADE PRACTICES

Associated Dry Goods Corp.

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, Associated Dry Goods Corp., New York, N.Y., Docket No. C-2200, Apr. 21, 1972]

In the Matter of Associated Dry Goods Corp., a Corporation

Consent order requiring a New York City importer and distributor of ladies' scarves to cease importing, selling, or transporting dangerously flammable fabrics.

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

It is ordered, That respondent Associated Dry Goods Corp., a corporation, its successors and assigns, and its officers, and respondent's agents, representatives and employees, directly or through any corporation, subsidiary, division 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 ladies' scarves; or any article of wearing apparel, or fabric intended for use or which may reasonably be expected to be used in an article of wearing apparel, imported by or manufactured under the control or direction of Associated Dry Goods Corp. as the terms "commerce" and "article of wearing apparel" are defined in the Flammable Fabrics Act, as amended; or any other article of wearing apparel or fabric which is intended for use or which may reasonably be expected to be used in an article of wearing apparel, the manufacturer of which has not furnished a guaranty under section 8(a) of the Flammable Fabrics Act, as amended; and which ladies' scarves, articles of wearing apparel and fabric fail to conform to an applicable standard or regulation, issued, amended, or continued in effect under the provisions of the aforesaid Act; provided, however, nothing herein shall accord to the respondent immunity from any subsequent proceedings under section 3, 6(a) or 6(b) of the Flammable

Fabrics Act, as amended. Further, nothing herein shall limit the authority of the Commission to extend the terms of the order to products, fabrics or related material presently excluded from this order in any subsequent proceeding against the respondent.

It is further ordered, That if not already accomplished the respondent notify all of its customers who can be identified as having purchased or to whom if identified, have been delivered the products which gave rise to this complaint of the flammable nature of said products and effect the recall of said products from such customers wherever possible.

It is further ordered, That if not already accomplished the respondent herein 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 respondent herein shall, within ten (10) days after service upon it of this order, file with the Commission a special report in writing setting forth the respondent's 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 or 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 April 1970, 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 respondent has in inventory any article of wearing apparel, or fabric which is intended for use or which may reasonably be expected to be used in an article of wearing apparel, which article of wearing apparel or fabric comes within the provisions of the first paragraph of this order, having a plain surface and made of 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 article of wearing apparel, or fabric which is intended for use or which may reasonably be expected to be used in an article of wearing apparel having a raised fiber surface. Upon request of the Commission the respondent shall submit samples of any such article of wearing apparel, or not less than 1 square yard in size of any such fabric which is intended for use or which may reasonably be expected to be used in an article of wearing apparel.

It is further ordered, That respondent notify the Commission at least 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 any retail 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 respondent herein shall, within sixty (60) days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with this order.

Issued: April 21, 1972.

By the Commission.

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

[FR Doc.72-8171 Filed 5-31-72;8:51 am]

[Docket No. C-2210]

PART 13—PROHIBITED TRADE PRACTICES

BP Oil Corp.

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; § 13.1905 *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, BP Oil Corp., Cleveland, Ohio, Docket No. C-2210, May 2, 1972]

In the Matter of BP Oil Corp., a Corporation

Consent order requiring a Cleveland, Ohio, distributor of petroleum and related filling station products to cease violating the Truth in Lending Act by issuing credit cards without prior request from recipient or in substitution for an accepted credit card as defined in § 226.13 (a) of 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 BP Oil Corp., a corporation, its successors and assigns, and respondent's officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the issuance of credit cards, as "credit card" is defined in Regulation Z (12 CFR Part 226 et seq.) of the Truth in Lending Act, as amended (Public Law 90-321, 15 U.S.C. 1601 et seq.), shall forthwith cease and desist from:

1. Issuing any credit card without prior request or application therefor from the recipient, unless said credit card is in renewal of or in substitution for an accepted credit card, as "accepted credit card" is defined in § 226.13(a) of Regulation Z.

2. Issuing any credit card pursuant to any form of authorization from the consumer, either written or oral, unless it is clearly and conspicuously disclosed to the consumer that, by his action, he is authorizing respondent to issue him a credit card.

It is further ordered, That respondent shall forthwith deliver a copy of this order to cease and desist to all present and future management personnel of respondent responsible for the issuance of credit cards 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 the corporate respondent which may affect compliance obligations arising out of this order, such as dissolution, assignment, or sale resulting in the emergence of a successor corporation or the transfer of that portion of respondent's business affected hereby to any subsidiary.

It is further ordered, That the respondent 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: May 2, 1972.

By the Commission.

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

[FR Doc.72-8172 Filed 5-31-72;8:51 am]

[Docket No. C-2204]

PART 13—PROHIBITED TRADE PRACTICES

Nat Beinhorn

Subpart—Invoicing products falsely: § 13.1108 *Invoicing products falsely:* 13.1108-45 Fur Products Labeling Act. Subpart—Misbranding or mislabeling: § 13.1185 *Composition:* 13.1185-30 Fur Products Labeling Act; § 13.1212 *Formal regulatory and statutory requirements:* 13.1212-30 Fur Products Labeling Act. Subpart—Neglecting, unfairly or deceptively, to make material disclosure: § 13.1852 *Formal regulatory and statutory requirements:* 13.1852-35 Fur Products Labeling Act.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended, sec. 8, 65 Stat. 179; 15 U.S.C. 45, 69f) [Cease and desist order, Nat Beinhorn, New York, N.Y., Docket No. C-2204, May 1, 1972]

In the Matter of Nat Beinhorn, an Individual Trading as Nat Beinhorn

Consent order requiring a New York City retail furrier of fur products to cease misbranding and falsely or deceptively invoicing its products.

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

It is ordered, That respondent, Nat Beinhorn, an individual trading as Nat Beinhorn, or under any other name or names and respondent's representatives, agents, and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the sale, advertising, or offering for sale in commerce, or the transportation or distribution in commerce, of any fur product; or in connection with the sale, advertising, offering for sale, transportation or distribution of any fur product which is made in whole or in part of fur which has been shipped and received in commerce, as the terms "commerce" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

A. Misbranding fur products by:

1. Representing directly or by implication on labels that the fur contained in any fur product is natural when the fur contained therein is pointed, bleached, dyed, tip-dyed, or otherwise artifically colored.

2. Failing to affix labels to fur products showing in words and in figures plainly legible all of the information required to be disclosed by each of the subsections of section 4(2) of the Fur Products Labeling Act.

3. Failing to set forth on labels the item number or mark to be assigned to each fur product.

B. Falsely or deceptively invoicing fur products by:

1. Failing to furnish invoices, as the term "invoice" is defined in the Fur Products Labeling Act, showing in words and figures plainly legible all the information required to be disclosed by each of the subsections of section 5(b)(1) of the Fur Products Labeling Act.

2. Representing, directly or by implication, on invoices that the fur contained in the fur products is natural when such fur is pointed, bleached, dyed, tip-dyed, or otherwise artificially colored.

3. Describing fur products which have been bleached, dyed, or otherwise artificially colored by the name of mink or by any other animal name or names without disclosing that the said fur products were bleached, dyed or otherwise artificially colored.

4. Failing to set forth on invoices the item number or mark required to be assigned to such fur products.

It is further ordered, That 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 this order.

Issued: May 1, 1972.

By the Commission.

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

[FR Doc.72-8173 Filed 5-31-72;8:51 am]

[Docket No. C-2206]

PART 13—PROHIBITED TRADE PRACTICES

Louis Braun, Inc., and Louis Braun

Subpart—Invoicing products falsely: § 13.1108 *Invoicing products falsely:* 13.1108-45 Fur Products Labeling Act. Subpart—Neglecting, unfairly or deceptively, to make material disclosure: § 13.1852 *Formal regulatory and statutory requirements:* 13.1852-35 Fur Products Labeling Act.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended, sec. 8, 65 Stat. 179; 15 U.S.C. 45, 69f) [Cease and desist order, Louis Braun, Inc., et al., New York, N.Y., Docket No. C-2206, May 1, 1972]

In the Matter of Louis Braun, Inc., a Corporation, and Louis Braun, Individually and as an Officer of Said Corporation

Consent order requiring a New York City fur merchant to cease falsely and deceptively invoicing its merchandise.

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

It is ordered, That respondents Louis Braun, Inc., a corporation, and its officers, and Louis Braun, individually and as an officer of said corporation, and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the manufacture for introduction into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce, of any fur product; or in connection with the manufacture for sale, sale, advertising, offering for sale, transportation, or distribution of any fur product which is made in whole or in part of fur which has been shipped and received in commerce, or in connection with the introduction into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce, of furs, as the terms "commerce," "fur," and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from falsely or deceptively invoicing furs or fur products by:

1. Failing to furnish invoices, as the term "invoice" is defined in the Fur Products Labeling Act, showing in words and figures plainly legible all the information required to be disclosed by each of the subsections of section 5(b)(1) of the Fur Products Labeling Act.

2. Failing when a fur or fur product is pointed or contains or is composed of bleached, dyed, or otherwise artificially colored fur, to disclose such facts as a part of the required information on invoices pertaining thereto.

It is further ordered, That respondents notify the Commission at least 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 subsidaries or any other change in the corporation which may affect compliance obligations arising out of the 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 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: May 1, 1972.

By the Commission.

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

[FR Doc.72-8174 Filed 5-31-72;8:51 am]

[Docket No. C-2212]

PART 13—PROHIBITED TRADE PRACTICES

Browning Arms Co.

Subpart—Coercing and intimidating: § 13.358 *Distributors.* Subpart—Combining or conspiring: § 13.425 *To enforce or bring about resale price maintenance.* Subpart—Cutting off access to customers or market: § 13.560 *Interfering with distributive outlets.* Subpart—Cutting off supplies or service: § 13.660 *Threatening withdrawal of patronage.* Subpart—Maintaining resale prices: § 13.1130 *Contracts and agreements;* § 13.1155 *Price schedules and announcements.*

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45) [Cease and desist order, Browning Arms Co., Morgan, Utah, Docket No. C-2212, May 4, 1972]

In the Matter of Browning Arms Co., a Corporation

Consent order requiring a Morgan, Utah, manufacturer of firearms and accessories to cease fixing the resale prices of its products, requiring its dealers to agree to its specified prices, requiring dealers and sales personnel to report any persons not observing retail selling prices, requiring those dealers caught price cutting to cease their practices as a condition of future sales, and to prevent its dealers from reselling its products to other dealers or distributors. Respondent is also required to indicate on any future price lists that the prices are only suggested or approximate.

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

I. *It is ordered,* That respondent, Browning Arms Co., a corporation, its subsidiaries, successors, assigns, officers, directors, agents, representatives, and employees, individually or in concert directly or through any corporate or other device, in connection with the manufacture, distribution, offering for sale or sale of firearms and firearm accessories (hereinafter referred to in this order as "products"), in commerce, as "commerce" is defined in the Federal Trade

Commission Act, do forthwith cease and desist from:

A. Establishing, maintaining, or enforcing any plan or policy under which contracts, agreements, understandings, or arrangements are entered into with dealers in respondent's products which have the purpose or effect of fixing, establishing, maintaining, or enforcing the retail prices at which respondent's products are to be resold.

B. Requiring any dealer or prospective dealer to enter into verbal agreements or understandings that such dealer or prospective dealer will maintain respondent's established or suggested retail prices as a condition of buying respondent's products.

C. Requesting dealers, either directly or indirectly, to report any person or firm who does not observe the resale prices suggested by respondent, or acting on reports so obtained by refusing or threatening to refuse sales to any person or firm so reported.

D. Directing or requiring respondent's salesmen, or any other agents, representatives, or employees, directly or indirectly, as part of any plan or program of requiring its dealers to adhere to its suggested resale prices, to report dealers who do not observe such suggested resale prices, or to act on such reports by refusing or threatening to refuse sales to dealers so reported.

E. Requiring from dealers charged with price cutting or failure to observe suggested resale prices, promises or assurances of the observance of respondent's resale prices as a condition precedent to future sales to said dealers.

F. Publishing, disseminating or circulating to any dealer, any price lists, price books, price tags, or other documents indicating any resale or retail prices without stating on such lists, books, tags, or other documents that the prices are suggested or approximate.

G. Requiring or inducing by any means, dealers or prospective dealers to refrain, or to agree to refrain from reselling respondent's products to any other dealers or distributors.

Provided, however, nothing hereinabove shall be construed to waive, limit, or otherwise affect the right of respondent to enter into, establish, maintain, and enforce in any lawful manner any price maintenance agreement excepted from the provisions of section 5 of the Federal Trade Commission Act by virtue of the McGuire Act amendments to said Act.

II. *It is further ordered,* That the respondent herein shall within sixty (60) days after service upon it of this order, mail a copy of this order to each of its dealers in the States of Alabama, Alaska, Hawaii, Kansas, Mississippi, Missouri, Montana, Nebraska, Nevada, Rhode Island, Texas, Utah, Vermont, Wyoming, and the Commonwealth of Puerto Rico and the District of Columbia under cover of the letter annexed hereto as Exhibit A,[1] and furnish the Commission proof of the mailing thereof.

III. *It is further ordered,* That the respondent herein shall forthwith distribute a copy of this order to each of its operating divisions, and to all of its sales personnel and shall instruct each sales person employed by it now or in the future to read this order and to be familiar with its provisions.

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

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

Issued: May 4, 1972.

By the Commission.

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

[FR Doc.72-8175 Filed 5-31-72;8:51 am]

[Docket No. C-2211]

PART 13—PROHIBITED TRADE PRACTICES

Cattlemens Quality Meat, Inc., et al.

Subpart—Advertising falsely or misleadingly: § 13.70 *Fictitious or misleading guarantees;* § 13.73 *Formal regulatory and statutory requirements:* 13.73–92 Truth in Lending Act; § 13.85 *Government approval, action, connection or standards;* § 13.155 *Prices:* 13.155–10 Bait; 13.155–95 Terms and conditions: 13.155–95(a) Truth in Lending Act; § 13.175 *Quality of product or service;* § 13.230 *Size or weight.* 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; § 13.1882 Prices; § 13.1886 *Quality, grade or type;* § 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, Cattlemens Quality Meat, Inc., et al., Oak Park, Ill., Docket No. C-2211, May 4, 1972]

In the Matter of Cattlemens Quality Meat, Inc., a Corporation, Glen Park Meats, Inc., a Corporation, William David Evans, Individually and as an Officer of Cattlemens Quality Meat, Inc.

Consent order requiring two affiliated meat retailers of Oak Park, Ill., and Gary, Ind., to cease using bait advertisements, misrepresenting the price, quality, and quantity of their products and to cease violating the Truth in Lending Act by failing to make all disclosures required by Regulation Z of the said Act.

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

It is ordered, That respondents Cattlemens Quality Meat, Inc., a corporation and Glen Park Meats, Inc., a corporation, their successors and assigns and officers, and William David Evans, individually and as an officer of Cattlemens Quality Meat, Inc., and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the offering for sale, sale and distribution of meat or other food products, in commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Disseminating, or causing the dissemination, by means of the U.S. mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, of any advertisement which represents directly or by implication:

(a) That any product is offered for sale, when the purpose of such representations is not to sell the offered product, but to obtain prospects for the sale of other products at higher prices.

(b) That any product is offered for sale when such an offer is not a bona fide offer to sell such product.

(c) That any product is guaranteed unless the nature, conditions, and extent of the guarantee and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed in immediate conjunction therewith.

(d) That any product is guaranteed unless in all instances respondents fully, satisfactorily, and promptly perform all of their obligations and requirements under the terms of the guarantee.

(e) That any product offered for sale may be purchased at any stated price per day, per week or for any other specified period of time unless, in immediate conjunction therewith is clearly and conspiciously disclosed, the number of payments or the total sum which the purchasers will be required to pay pursuant to any time payment plan so advertised.

2. Disseminating, or causing the dissemination, of any advertisement by means of U.S. mails, or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which:

(a) Fails to clearly and conspicuously disclose:

(1) That beef sides, hindquarters, and other untrimmed pieces of meat offered for sale are sold subject to average weight loss due to cutting, dressing, and trimming.

(2) That the price charged for such untrimmed meat is based on the hanging weight before cutting, dressing, and trimming occurs.

[1] Copies of Exhibit A may be obtained at Federal Trade Commission Building, Room 130, Sixth and Pennsylvania Avenue NW.

(3) The average percentage range of weight loss of such meat due to cutting, dressing, and trimming.

(b) Fails to clearly and conspicuously include:

(1) When U.S. Department of Agriculture graded meat is advertised which is below the grade of "USDA Good", the statement "This meat is of a grade below U.S. Prime, U.S. Choice, and U.S. Good."

(2) When meat not graded by the U.S. Department of Agriculture is advertised:

(a) The statement "This meat has not been graded by the U.S. Department of Agriculture," and

(b) If such meat is a portion of the total meat offered, a statement indicating the portion which is ungraded and the percentage of such ungraded portions, by weight, of the total meat offered.

3. Disseminating, or causing the dissemination, of any advertisement by means of U.S. mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which misrepresents in any manner:

(a) The extent of their guarantee and the manner in which the guarantor will perform thereunder.

(b) The amount of ground beef which will be contained in beef orders when the same are packaged and ready for home freezer storage.

(c) The amount, grade, quality, identity, or classification of meat which will be received by a purchaser.

(d) The price of any product, the savings available to purchasers thereof, or the terms, conditions, and requirements of any installment payment contracts executed by the purchasers thereof.

4. Disseminating, or causing to be disseminated, by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of any meat or other food product in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which contains any of the representations prohibited in paragraph 1 or the misrepresentations prohibited in paragraph 3, or fails to comply with the affirmative requirements of paragraph 2 hereof.

5. Discouraging the purchase of, or disparaging in any manner, or encouraging, instructing or suggesting that others discourage or disparage any meat or other food products which are advertised or offered for sale in advertisements, disseminated or caused to be disseminated by means of the U.S. mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act.

6. Failing to deliver a copy of this order to cease and desist to all operating divisions of the corporate respondents, and to all officers, managers, and salesmen thereof, both present and future, and to any person now engaged or who becomes engaged in the sale of meat or other food products as respondents' agent, representative, or employee, and to secure from each of said persons a signed statement acknowledging receipt of a copy thereof.

7. Failing to include the following legend on the face of any note or other instrument of indebtedness executed by respondents' purchasers in connection with the purchase of meat or any other food product, but only when such notes or other instruments of indebtedness are sold or otherwise transferred to companies or persons affiliated with respondents:

NOTICE

The holder of this instrument shall take it subject to any and all defenses which the maker hereof has against the seller Cattlemens Quality Meat, Inc., Glen Park Meats, Inc., and/or any affiliate or successor, which arise out of any representations or other conduct, in connection with the contract giving rise to this instrument, which violates the Federal Trade Commission Act or any other statute administered by the Federal Trade Commission.

It is further ordered, That respondents, Cattlemens Quality Meat, Inc., Glen Park Meats, Inc., corporations, and their officers, and respondent, William David Evans, individually and as an officer of Cattlemens Quality Meat, Inc., and respondents' agents, representatives, and employees, directly or through any corporate or other device, in connection with any extension of 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, on any document containing the consumer credit cost disclosures required by Regulation Z, if the disclosure is on a separate document, to identify the transaction to which the disclosures relate, as required by § 226.8(a) of Regulation Z.

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

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

It is further ordered, That respondents notify the Commission at least 30 days prior to any proposed change in any 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 corporations which may affect compliance obligations arising out of the order.

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: May 4, 1972.

By the Commission.

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

[FR Doc.72-8176 Filed 5-31-72;8:51 am]

[Docket No. C-2209]

PART 13—PROHIBITED TRADE PRACTICES

Custom Modes, Inc., and Edward Rudnick

Subpart—Importing, selling, or transporting flammable wear: § 13.1060 *Importing, selling, or transporting flammable wear.* Subpart—Misbranding or mislabeling: § 13.1185 *Composition:* 13.1185–80 Textile Fiber Products Identification Act; § 13.1212 *Formal regulatory and statutory requirements:* 13.1212–80 Textile Fiber Products Identification Act. Subpart—Neglecting, unfairly or deceptively, to make material disclosure: § 13.1852 *Formal regulatory and statutory requirements:* 13.1852–70 Textile Fiber Products Identification Act.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply secs. 5, 38 Stat. 719, as amended, 72 Stat. 1717, 67 Stat. 111, as amended; 15 U.S.C. 45, 70, 1191) [Cease and desist order, Custom Modes, Inc., et al., New York, N.Y., Docket No. 2209, May 1, 1972]

In the Matter of Custom Modes, Inc., a Corporation and Edward Rudnick, Individually and as an Officer of Said Corporation

Consent order requiring a New York City manufacturer of ladies' custom-made gowns and dresses to cease importing or selling fabrics so highly flammable as to be dangerous when worn and failing to maintain proper records of fiber content of its textile fiber products.

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

It is ordered, That respondents Custom Modes, Inc., a corporation, its successors and assigns and its officers, and Edward Rudnick, individually, and as an officer of said corporation, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, do forthwith cease and desist from manufacturing for sale, selling, or 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 manufacturing for sale, 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 any applicable standard or regulation continued in effect, issued, or amended 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 this complaint of the flammable nature of said products, and effect recall of said products from such customers.

It is further ordered, That the respondents herein either process the products which gave rise to the complaint so as to bring the products 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 action 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 July 16, 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.

It is further ordered, That respondents Custom Modes, Inc., its successors and assigns and its officers, and Edward Rudnick individually and as an officer of said corporation, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the introduction, delivery for introduction, manufacture for introduction, sale, advertising, or offering for sale, in commerce, or the transportation or causing to be transported in commerce, or the importation into the United States, of any textile fiber product; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, of any textile fiber product, which has been advertised or offered for sale in commerce; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, after shipment in commerce, of any textile fiber product, whether in its original state or contained in other textile fiber products, as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act, do forthwith cease and desist from failing to maintain and preserve proper records of fiber content of textile fiber products manufactured by them as required by section 6(a) of the Textile Fiber Products Identification Act and Rule 39 of the rules and regulations thereunder.

It is further ordered, That respondents notify the Commission at least 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 the order.

It is further ordered, That the corporate respondent 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: May 1, 1972.

By the Commission.

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

[FR Doc.72-8177 Filed 5-31-72;8:51 am]

[Docket No. C-2207]

PART 13—PROHIBITED TRADE PRACTICES

David Kassman, Inc., and David Kassman

Subpart—Invoicing products falsely: § 13.1108 *Invoicing products falsely:* 13.1108-45 Fur Products Labeling Act. Subpart—Neglecting, unfairly or deceptively, to make material disclosure: § 13.1852 *Formal regulatory and statutory requirements:* 13.1852-35 Fur Products Labeling Act.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended, sec. 8, 65 Stat. 179; 15 U.S.C. 45, 69f) [Cease and desist order, David Kassman, Inc., et al., New York, N.Y., Docket No. C-2207, May 1, 1972]

In the Matter of David Kassman, Inc., a Corporation, and David Kassman, Individually and as an Officer of Said Corporation

Consent order requiring a New York City fur merchant to cease falsely and deceptively invoicing its merchandise.

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

It is ordered, That respondents David Kassman, Inc., a corporation, and its officers, and David Kassman, individually and as an officer of said corporation, and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the manufacture for introduction into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce, or any fur product; or in connection with the manufacture for sale, sale, advertising, offering for sale, transportation or distribution of any fur product which is made in whole or in part of fur which has been shipped and received in commerce; or in connection with the introduction into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce, of furs, as the terms "commerce," "fur" and "fur products" are defined in the Fur Products Labeling Act, do forthwith cease and desist from falsely or deceptively invoicing furs or fur products by:

1. Failing to furnish invoices, as the term "invoice" is defined in the Fur Products Labeling Act, showing in words and figures plainly legible all the information required to be disclosed by each of the subsections of section 5(b)(1) of the Fur Products Labeling Act.

2. Failing when a fur or fur products is pointed or contains or is composed of bleached, dyed or otherwise artificially colored fur, to disclose such facts as a part of the required information on invoices pertaining thereto.

It is further ordered, That respondents notify the Commission at least 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 the 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 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: May 1, 1972.

By the Commission.

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

[FR Doc.72-8178 Filed 5-31-72;8:51 am]

[Docket No. C-2199]

PART 13—PROHIBITED TRADE PRACTICES

Fujisawa International Corp. and Hideo Fujisawa

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, Fujisawa International Corp. et al., New York, N.Y., Docket No. C-2199, Apr. 21, 1972]

In the Matter of Fujisawa International Corp., a Corporation, and Hideo Fujisawa, Individually and as an Officer of Said Corporation

Consent order requiring a New York City importer of scarves and other textile fiber products to cease importing, selling, or transporting dangerously flamamble fabrics.

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

It is ordered, That respondents Fujisawa International Corp., a corporation, and its officers, and Hideo Fujisawa, 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 manufacturing for sale, 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 scarfs which gave rise to the complaint, of the flammable nature of said scarfs and effect the recall of said scarfs from such customers.

It is further ordered, That the respondents herein either process the scarfs 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 scarfs.

It is further ordered, That the respondents herein shall, within ten (10) days after service upon them of this order, file with the Commission an interim 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 scarfs which gave rise to the complaint, (2) the number of said scarfs in inventory, (3) any action taken and any further actions proposed to be taken to notify customers of the flammability of said scarfs and effect the recall of said scarfs from customers, and of the results thereof, (4) any disposition of said scarfs since January 25, 1971, and (5) any action taken or proposed to be taken to bring said scarfs into conformance with the applicable standard of flammability under the Flammable Fabrics Act, as amended, or destroy said scarfs, 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 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: April 21, 1972.

By the Commission.

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

[FR Doc.72-8179 Filed 5-31-72;8:51 am]

[Docket No. C-2197]

PART 13—PROHIBITED TRADE PRACTICES

Jet Set of California, Inc., and Joseph Foreman

Subpart—Misbranding or mislabeling: § 13.1185 *Composition*: 13.1185-80 Textile Fiber Products Identification Act; § 13.1212 *Formal regulatory and statutory requirements*: 13.1212-80 Textile Fiber Products Identification Act. Subpart—Neglecting, unfairly or deceptively, to make material disclosure: § 13.1845 *Composition*: 13.1845-70 Textile Fiber Products Identification Act; § 13.1852 *Formal regulatory and statutory requirements*: 13.1852-70: Textile Fiber Products Identification.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended, 72 Stat. 1717; 15 U.S.C. 45, 70) [Cease and desist order, Jet Set of California, Inc., et al., Los Angeles, Calif., Docket No. C-2197, Apr. 21, 1972]

In the Matter of Jet Set of California, Inc., a Corporation, and Joseph Foreman, Individually and as an Officer of Said Corporation

Consent order requiring a Los Angeles, Calif., manufacturer of women's coats and pant suits to cease misbranding its textile fiber products.

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

It is ordered, That respondents Jet Set of California, Inc., a corporation, its successors and assigns, and its officers, and Joseph Foreman, individually and as an officer of said corporation, and respondents' agents, representatives, and employees directly or through any corporation, subsidiary, division, or any other device, in connection with the introduction, delivery for introduction, manufacture for introduction, sale, advertising, or offering for sale in commerce, or the transportation or causing to be transported in commerce, or the importation into the United States of any textile fiber product; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, of any textile product, which has been advertised or offered for sale in commerce; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, after shipment in commerce of any textile fiber product, whether in its original state or contained in other textile fiber products, as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act, do forthwith cease and desist from:

Misbranding textile fiber products by:

1. Failing to affix labels to such textile fiber products showing in a clear, legible, and conspicuous manner each element of information required to be disclosed by section 4(b) of the Textile Fiber Products Identification Act.

2. Failing to separately set forth the required information as to fiber content on the required label in such a manner as to separately show the fiber content of the separate sections of textile fiber products containing two or more sections where such form of marking is necessary to avoid deception.

3. Failing to affix labels showing the respective fiber content and other required information to samples, swatches, or specimens of textile fiber products subject to the aforementioned Act which are used to promote or effect sales of such textile fiber products.

4. Failing to set forth separately and distinctly the fiber content of any linings, interlinings, fillings, or paddings if incorporated in the textile fiber products for warmth rather than for structural purposes, or if any express or implied representations are made as to their fiber content.

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 the 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 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: April 21, 1972.

By the Commission.

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

[FR Doc.72-8180 Filed 5-31-72;8:51 am]

[Docket No. C-2203]

PART 13—PROHIBITED TRADE PRACTICES

Max Bogen & Co., Inc., and Ernest Bogen

Subpart—Invoicing products falsely: § 13.1108 *Invoicing products falsely:* 13.1108-45 Fur Products Labeling Act. Subpart—Misbranding or mislabeling: § 13.1185 *Composition:* 13.1185-30 Fur Products Labeling Act; § 13.1212 *Formal regulatory and statutory requirements:* 13.1212-30 Fur Products Labeling Act. Subpart—Neglecting, unfairly or deceptively, to make material disclosure: § 13.1852 *Formal regulatory and statutory requirements:* 13.1852-35 Fur Products Labeling Act.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended, sec. 8, 65 Stat. 179; 15 U.S.C. 45, 69f) [Cease and desist order, Max Bogen & Co., Inc., et al., New York, N.Y., Docket No. C-2203, May 1, 1972]

In the Matter of Max Bogen & Co., Inc., a Corporation, and Ernest Bogen, Individually and as an Officer of said Corporation

Consent order requiring a New York City manufacturer of fur products to cease misbranding and deceptively invoicing its merchandise.

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

It is ordered, That Max Bogen & Co., Inc., a corporation, and its officers, and Ernest Bogen, individually and as an officer of said corporation, and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the introduction, or manufacture for introduction, into commerce, or the sale, advertising, or offering for sale in commerce, or the transportation or distribution in commerce, of any fur product; or in connection with the manufacture for sale, sale, advertising, offering for sale, transportation, or distribution, of any fur product which is made in whole or in part of fur which has been shipped and received in commerce, as the terms "commerce", "fur" and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

A. Misbranding any fur product by:

1. Representing directly or by implication on a label that the fur contained in such fur product is natural when such fur is bleached, dyed, tip-dyed, or otherwise artificially colored.

2. Failing to affix a label to such fur products showing in words and in figures plainly legible all of the information required to be disclosed by each of the subsections of section 4(2) of the Fur Products Labeling Act.

B. Falsely or deceptively invoicing any fur product by:

1. Failing to furnish an invoice, as the term "invoice" is defined in the Fur Products Labeling Act, showing in words and figures plainly legible all the information required to be disclosed by each of the subsections of section 5(b)(1) of the Fur Products Labeling Act.

2. Representing, directly or by implication on an invoice that the fur contained in such fur product is natural when such fur is pointed, bleached, dyed, tip-dyed, or otherwise artificially colored.

It is further ordered, That Max Bogen & Co., Inc., a corporation, and its officers, and Earnest Bogen, 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 furnishing a false guaranty that any fur product is not misbranded, falsely invoiced, or falsely falsely advertised when the respondents have reason to believe that such fur product may be introduced, sold, transported, or distributed in commerce.

It is further ordered, That respondents notify the Commission at least 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 the 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 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: May 1, 1972.

By the Commission.

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

[FR Doc.72-8181 Filed 5-31-72;8:52 am]

[Docket No. C-2202]

PART 13—PROHIBITED TRADE PRACTICES

P. Miller & Son et al.

Subpart—Invoicing products falsely: § 13.1108 *Invoicing products falsely:* 13.1108-45 Fur Products Labeling Act. Subpart—Misbranding or mislabeling: § 13.1185 *Composition:* 13.1185-30 Fur Products Labeling Act; § 13.1212 *Formal regulatory and statutory requirements:* 13.1212-30 Fur Products Labeling Act. Subpart—Neglecting, unfairly or deceptively, to make material disclosure: § 13.1852 *Formal regulatory and statutory requirements:* 13.1852-35 Fur Products Labeling Act.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended, sec. 8, 65 Stat. 179; 15 U.S.C. 45, 69f) [Cease and desist order, P. Miller & Son et al., New York, N.Y., Docket No. C-2202, May 1, 1972]

In the Matter of P. Miller & Son, a Partnership, and Paul Miller and Jack Miller, Individually and as Copartners Trading as P. Miller & Son

Consent order requiring a New York City manufacturer of fur products to cease misbranding and deceptively invoicing its merchandise.

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

It is ordered, That respondents P. Miller & Son, a partnership, and Paul Miller and Jack Miller, individually and as copartners trading as P. Miller & Son, or under any other name, and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the introduction into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce, of any fur product; or in connection with the sale, advertising, offering for sale, transportation or distribution of any fur product which is made in whole or in part of fur which has been shipped and received in commerce, as the terms "commerce," "fur," and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

A. Misbranding fur products by:

1. Representing directly or by implication, on labels that the fur contained in any fur product is natural when the fur contained therein is pointed, bleached, dyed, tip-dyed, or otherwise artificially colored.

2. Failing to affix labels to fur products showing in words and in figures plainly legible all of the information required to be disclosed by each of the subsections of section 4(2) of the Fur Products Labeling Act.

B. Falsely or deceptively invoicing fur products by:

1. Failing to furnish invoices, as the term "invoice" is defined in the Fur Products Labeling Act, showing in words and figures plainly legible all the information required to be disclosed by each

of the subsections of section 5(b)(1) of the Fur Products Labeling Act.

2. Representing, directly or by implication, on invoices that the fur contained in the fur products is natural when such fur is pointed, bleached, dyed, tip-dyed, or otherwise artificially colored.

3. Describing fur products which have been bleached, dyed, or otherwise artificially colored by the name of mink or by any other animal name or names without disclosing that the said fur products were bleached, dyed, or otherwise artificially colored.

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: May 1, 1972.

By the Commission.

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

[FR Doc.72-8182 Filed 5-31-72;8:52 am]

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[Docket No. C-2213]

PART 13—PROHIBITED TRADE PRACTICES

Multi-State Distributing, Inc., et al.

Subpart—Advertising falsely or misleadingly: § 13.15 *Business status, advantages, or connections:* 13.15-195 Nature; § 13.60 *Earnings and profits;* § 13.70 *Fictitious or misleading guarantees;* § 13.155 *Prices:* 13.155-100 Usual as reduced, special, etc.; § 13.175 *Quality of product or service:* § 13.185 *Refunds, repairs, and replacements;* § 13.240 *Special or limited offers.* Subpart—Misrepresenting oneself and goods—Business status, advantages, or connections: § 13.1490 *Nature;* Misrepresenting oneself and goods—Goods: § 13.1615 *Earnings and profits;* § 13.1647 *Guarantees;* § 13.1715 *Quality;* § 13.1725 *Refunds;* § 13.1747 *Special or limited offers;* Misrepresenting oneself and goods—Prices: § 13.1825 *Usual as reduced or to be increased.* Subpart—Neglecting, unfairly or deceptively, to make material discolsure: § 13.1882 *Prices;* § 13.1892 *Sales contract, right-to-cancel provision.*

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45) [Cease and desist order, Multi-State Distributing, Inc., et al., Anaheim, Calif., Docket No. C-2213, May 4, 1972]

In the Matter of Multi-State Distributing, Inc., a Corporation and Stewart Z. Weinstein, Individually and as an Officer of Said Corporation and Robert D. Butler, Individualy and as an Officer of Said Corporation

Consent order requiring an Anaheim, Calif., seller and distributor of vending machines and merchandise sold therein to cease misrepresenting the profits to be realized from its vending machines, failing to maintain adequate records, misrepresenting the quality of the locations of its machines and the products sold therein, making false guarantees, failing to disclose that it is primarily interested in selling the merchandise, not the machines, and misrepresenting that the owner of the vending machines can easily sell his machines or routes at a profit. It is further ordered that customers' contracts may be canceled within 3 days for any reason.

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

It is ordered, That respondents Multi-State Distributing, Inc., a corporation, its successors and assigns, and its officers, and Stewart Z. Weinstein, individually and as an officer of said corporation, and Robert D. Butler, individually and as an officer of said corporation, and respondents' agents, representatives, and employees directly or through any corporation, subsidiary, division, or any other device, in connection with the advertising, offering for sale, sale, or distribution of vending machines, merchandise sold in vending machines, or any other product, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Making any representations regarding the amount of earnings, profit or compensation which might be realized as the result of purchasing and operating vending machines sold by respondents when said amounts represented exceed the average earnings, profits, or compensation of all current owners and operators of vending machines sold by respondents.

2. Failing to maintain adequate records

(a) Which disclose the facts upon which any representations of the type described in paragraph 1 of this order are based, and

(b) From which the validity of any representations of the type described in paragraph 1 of this order can be determined.

3. Representing, directly or by implication, that an offer of any product or service is restricted or limited to qualified individuals unless such represented restrictions or limitations are actually in force and adhered to in good faith.

4. Representing, directly or by implication, that respondents will obtain excellent locations for vending machines where there is a lot of foot traffic; or misrepresenting, in any manner, the quality of locations to be provided by respondents.

5. Representing, directly or by implication, that vending machines or any other products sold by respondents are of excellent quality or durability or misrepresenting, in any manner the nature, character, performance, or efficacy of respondents' vending machines or any other products sold by respondents.

6. Representing, directly or by implication, that vending machines or other products are guaranteed unless the nature, extent, and duration of their guarantee, the identity of the guarantor and the manner in which the guarantor will perform thereunder are clearly and conspicuously disclosed in immediate conjunction therewith; and unless respondents do in fact perform each of their obligations directly or impliedly represented under the terms of such guarantee or guarantees.

7. Representing, directly or by implication, that respondents are primarily in the business of selling merchandise sold in vending machines and not in the business of selling vending machines; or misrepresenting in any manner the true nature of respondents' business activities.

8. Representing, directly or by implication, that a purchaser will receive an exclusive sales territory.

9. Representing, directly or by implication, that most top name brand candies and snacks can be vended through vending machines sold by respondents; or misrepresenting, in any manner, the type of merchandise which can be vended through vending machines sold by respondents.

10. Representing, directly or by implication, that any price charged for respondents' merchandise is a lower price than available from competing suppliers, unless such price constitutes a significant reduction from an established selling price at which such products have been sold in substantial quantities by respondents' competing suppliers; or misrepresenting, in any manner, the prices charged by respondents or their competitors.

11. Failing to maintain adequate records.

(a) Which disclose the facts upon which comparative pricing claims are based, and

(b) From which the validity of any savings claims, including comparative pricing claims, can be determined.

12. Representing, directly or by implication, that an owner and operator of vending machines sold by respondents can easily sell his route at a profit or that respondents will resell the machines on his behalf; or misrepresenting, in any manner, the resale value of a vending machine route or resale assistance to be provided to owners and operators by respondents.

It is further ordered, That respondents

a. Inform orally all prospective customers and provide in writing in all contracts that (1) the contract may be canceled for any reason by notification to respondents in writing within 3 days from the date of execution and that (2) the contract is not final and binding until respondents have completely performed their obligations thereunder by placing the vending machines in locations satisfactory to the customer and said customer has thereafter signed a statement indicating his satisfaction.

b. Refund immediately all monies to (1) prospective customers who have requested contract cancellation in writing within 3 days from the execution thereof and to, (2) prospective customers who have refused to sign statements indicating satisfaction with respondents' placement of the machines, and (3) prospective customers showing that respondents' contract, solicitations, or performance were attended by or involved

violations of any of the provisions of this order.

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

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

It is further ordered, That 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: May 4, 1972.

By the Commission.

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

[FR Doc.72-8183 Filed 5-31-72;8:52 am]

[Docket No. C-2201]

PART 13—PROHIBITED TRADE PRACTICES

PondaRoza Originals, Inc., and Max Klar

Subpart—Invoicing products falsely: § 13.1108 *Invoicing products falsely:* 13.1108-45 Fur Products Labeling Act. Subpart—Misbranding or mislabeling: § 13.1185 *Composition:* 13.1185-30 Fur Products Labeling Act; § 13.1212 *Formal regulatory and statutory requirements:* 13.1212-30 Fur Products Labeling Act. Subpart—Neglecting, unfairly or deceptively, to make material disclosure: § 13.1852 *Formal regulatory and statutory requirements:* 13.1852-35 Fur Products Labeling Act.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended, sec. 8, 65 Stat. 179; 15 U.S.C. 45, 69f) [Cease and desist order, PondaRoza Originals, Inc., et al., New York, N.Y., Docket No. C-2201, May 1, 1972]

In the Matter of PondaRoza Originals, Inc., a Corporation, and Max Klar, Individually and as an Officer of Said Corporation

Consent order requiring a New York City manufacturer of fur products to cease misbranding and deceptively invoicing its merchandise.

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

It is ordered, That respondent PondaRoza Originals, Inc., a corporation, and its officers, and Max Klar, individually and as an officer of said corporation, and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the introduction, or manufacture for introduction, into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce, of any fur product; or in connection with the manufacture for sale, sale, advertising, offering for sale, transportation or distribution, of any fur product which is made in whole or in part of fur which has been shipped and received in commerce, as the terms "commerce," "fur," and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

A. Misbranding any fur product by:

1. Representing directly or by implication on a label that the fur contained in such fur product is natural when such fur is pointed, bleached, dyed, tip-dyed, or otherwise artificially colored.

2. Failing to affix a label to such fur product showing in words and in figures plainly legible all of the information required to be disclosed by each of the subsections of section 4(2) of the Fur Products Labeling Act.

B. Falsely or deceptively invoicing any fur product by:

1. Failing to furnish an invoice, as the term "invoice" is defined in the Fur Products Labeling Act, showing in words and figures plainly legible all the information required to be disclosed by each of the subsections of section 5(b)(1) of the Fur Products Labeling Act.

2. Representing directly or by implication, on an invoice that the fur contained in such fur product is natural when such fur is pointed, bleached, dyed, tip-dyed, or otherwise artificially colored.

It is further ordered, That respondents notify the Commission at least 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 the 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: May 1, 1972.

By the Commission.

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

[FR Doc.72-8185 Filed 5-31-72;8:52 am]

[Docket No. C-2205]

PART 13—PROHIBITED TRADE PRACTICES

Nat Shomer, Inc., et al.

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, Nat Shomer, Inc., et al., Brooklyn, N.Y., Docket No. C-2205, May 1, 1972]

In the Matter of Nat Shomer, Inc., Best Importing Co., Inc., Shomer's Imports, Inc., Corporations, and Nat Shomer Individually and as an Officer of Said Corporations, and Isaac Mitrani, Individually and as an Officer of Best Importing Co., Inc.

Consent order requiring three Brooklyn, N.Y., importers of fabrics to cease importing, selling or transporting fabrics so highly flammable as to be dangerous when worn.

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

It is ordered, That respondents Nat Shomer, Inc., Best Importing Co., Inc., and Shomer's Imports, Inc., corporations, their successors and assigns and their officers, and Nat Shomer, individually and as an officer of said corporations, and Isaac Mitrani, individually and as an officer of Best Importing Co., Inc., and respondents' representatives, agents, and employees, directly or through any corporation, subsidiary, division 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 manufacturing for sale, 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 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 an interim 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 January 21, 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 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 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: May 1, 1972.

By the Commission.

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

[FR Doc.72-8184 Filed 5-31-72;8:52 am]

[Docket No. C-2208]

PART 13—PROHIBITED TRADE PRACTICES

Verron Soieries, Inc., and Roger Verron

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, Verron Soieries, Inc., et al., New York, N.Y., Docket No. C-2208, May 1, 1972]

In the Matter of Verron Soieries, Inc., a Corporation, and Roger Verron Individually and as an Officer of Said Corporation

Consent order requiring a New York City importer of textile products to cease importing, selling, or transporting fabrics so highly flammable as to be dangerous when worn.

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

It is ordered, That the respondents Verron Soieries, Inc., a corporation, its successors and assigns, and its officers, and Roger Verron, 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 manufacturing for sale, 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 fabric which gave rise to the complaint, of the flammable nature of said fabric and effect the recall of said fabric from such customers.

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

It is further ordered, that the respondents herein shall, within ten (10) days after service upon them of this order, file with the Commission an interim 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 fabric which gave rise to the complaint, (2) the amount of said fabric in inventory, (3) any action taken and any further actions proposed to be taken to notify customers of the flammability of said fabric and effect the recall of said fabric from customers, and of the results thereof, (4) any disposition of said fabric since April 2, 1971, and (5) any action taken or proposed to be taken to bring said fabric into conformance with the applicable standard of flammability under the Flammable Fabrics Act, as amended, or destroy said fabric, 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 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: May 1, 1972.

By the Commission.

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

[FR Doc.72-8186 Filed 5-31-72;8:52 am]

[Docket No. C-2198]

PART 13—PROHIBITED TRADE PRACTICES

Zolte's, Inc., and Henry Lightman

Subpart—Advertising falsely or misleadingly: § 13.73 *Formal regulatory and statutory requirements:* 13.73-92 Truth in Lending Act; § 13.155 *Prices:* 13.155-95 Terms and conditions: 13.155-95(a) Truth in Lending Act. Subpart — Misrepresenting oneself and goods—Goods: § 13.1623 *Formal regulatory and statutory requirements:* 13.1623-95 Truth in Lending Act; Misrepresenting oneself and goods—Prices: § 13.1823 *Terms and conditions;* 13.1823-20 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, Zolte's, Inc., et al., Buffalo, N.Y., Docket No. C-2198, Apr. 21, 1972]

In the Matter of Zolte's, Inc., a Corporation, and Henry Lightman, Individually and as an Officer of Said Corporation

Consent order requiring a Buffalo, N.Y., furniture retailer to cease violating the Truth in Lending Act by failing to disclose to customers the annual percentage rate and other disclosures required by Regulation Z of the said Act.

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

It is ordered, That respondents Zolte's, Inc., a corporation, and Henry Lightman, 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 or arrangement for the 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 disclose the "Annual Percentage Rate" accurately to the nearest quarter of 1 percent, in accordance with § 226.5(b)(1) of Regulation Z.

2. 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 respondents, for purposes of notification only, notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent, such as dissolution, assignment, or sale, resultant 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 the order.

It is further ordered, That 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: April 21, 1972.

By the Commission.

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

[FR Doc.72-8187 Filed 5-31-72;8:52 am]

Title 17—COMMODITY AND SECURITIES EXCHANGES

Chapter II—Securities and Exchange Commission

[Release 33-5248A]

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

Investment Company Advertising and Summary Prospectus for Investment Companies; Correction

On May 9, 1972, in Securities Act Release No. 5248 and appearing in F.R. Doc. 72-7552 in the issue of Friday, May 19, 1972 (37 F.R. 10071), the Commission adopted, among other things, a new Rule 135A (17 CFR 230.135a), under the Securities Act of 1933. When the Commission adopted the new Rule 135A, paragraph (c) of the rule was inadvertently omitted in the release and in the FEDERAL REGISTER.

Accordingly, paragraph (c) as set forth below is added to Rule 135A.

COMMISSION ACTION

Section 230.135a of Chapter II of Title 17 of the Code of Federal Regulations is amended by adding a new paragraph (c) thereunder and as so amended § 230.135 a(c) reads as follows:

§ 230.135a Generic advertising.

* * * * *

(c) With respect to any communication describing any type of security, service, or product, the broker, dealer, or other person sponsoring such communication must offer for sale a security, service, or product of the type described in such communication.

(Sec. 19(a), 48 Stat. 85, 15 U.S.C. 77s(a))

For the Commission.

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

MAY 26, 1972.

[FR Doc.72-8251 Filed 5-31-72;8:57 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 19—CHEESES, PROCESSED CHEESES, CHEESE FOODS, CHEESE SPREADS, AND RELATED FOODS

Standards of Identity, Confirmation of Effective Date of Order

In the matter of amending the identity standards for pasteurized process cheese, pasteurized process cheese food, pasturized process cheese spread, pasteurized Neufchâtel cheese spread with other foods, and cold-pack cheese food (21 CFR 19.750, 19.765, 19.775, 19.783, and 19.787) to permit optional use of anhydrous milkfat and dehydrated cream:

Pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 401, 701, 52 Stat. 1046, 1055–56, as amended by 70 Stat. 919, 72 Stat. 948; 21 U.S.C. 341, 371) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 2.120), notice is given that no objections or requests for a hearing were filed in response to the order on the above-identified matter published in the FEDERAL REGISTER of March 16, 1972 (37 F.R. 5489). Accordingly, the amendment promulgated by that order became effective May 15, 1972.

Dated: May 17, 1972.

SAM D. FINE, *Associate Commissioner for Compliance.*

[FR Doc.72-8191 Filed 5-31-72;8:55 am]

SUBCHAPTER C—DRUGS

[DESI 5740]

PART 141a—PENICILLIN AND PENICILLIN-CONTAINING DRUGS, TESTS AND METHODS OF ASSAY

PART 146a—CERTIFICATION OF PENICILLIN AND PENICILLIN-CONTAINING DRUGS

Confirmation of Order Revoking Provisions for Certification of Penicillin for Topical Use

An order was published in the FEDERAL REGISTER of January 12, 1972 (37 F.R. 438), amending the antibiotic drug regulations to revoke provisions for certification or release of penicillin for topical use and any similar drugs for topical administration in man. The order amended Parts 141a and 146a by amending §§ 141a.8 and 146a.26 of the antibiotic regulations and revoked all antibiotic certificates and releases issued thereunder for such drugs for human use. Sections 141a.11, 141a.15, 141a.17, 141a.18, 141a.22, 141a.35, 141a.36, 141a.40, 141a.53, 141a.58, 141a.65, 141a.89, 141a.96, 146a.22, 146a.29, 146a.33, 146a.35, 146a.36, 146a.40, 146a.54, 146a.55, 146a.59, 146a.76, 146a.81, 146a.89, and 146a.111 describe the conditions for certification of other penicillin-containing products for topical use and are also affected by this order.

Pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 502, 507, 52 Stat. 1050–51, as amended, 59 Stat. 463, as amended; 21 U.S.C. 352, 357) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 2.120), notice is given that no objections were filed to the above-identified order. Accordingly the amendments promulgated thereby became effective February 21, 1972.

Firms affected by the order will be allowed 30 days after publication hereof in

the FEDERAL REGISTER to recall outstanding stocks of the affected drugs. Certification of new stocks has been discontinued.

Dated: May 22, 1972.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.72-8192 Filed 5-31-72;8:55 am]

Title 25—INDIANS

Chapter I—Bureau of Indian Affairs, Department of the Interior

PART 221—OPERATION AND MAINTENANCE CHARGES

Flathead Irrigation Project

MAY 23, 1972.

On page 7703 of the FEDERAL REGISTER of April 19, 1972, there was published a notice of intention to amend §§ 221.24, 221.26, and 221.28 of Title 25, Code of Federal Regulations, dealing with the irrigable lands of the Flathead Indian Irrigation Project, Montana, that are subject to the jurisdiction of the several irrigation districts. The purpose of the amendments is to establish the lump sum assessment against the Flathead, Mission and Jocko Valley Irrigation Districts within the Flathead Indian Irrigation Project for the 1973 season.

Interested persons were given 30 days within which to submit written comments, suggestions, or objections with respect to the proposed amendments. No comments, suggestions, or objections have been received, and the proposed amendments are hereby adopted without change as set forth below.

Sections 221.24, 221.26, and 221.28 are amended to read as follows:

§ 221.24 Charges.

Pursuant to a contract executed by the Flathead Irrigation District, Flathead Indian Irrigation Project, Montana, on May 12, 1928, as supplemented and amended by later contracts dated February 27, 1929, March 28, 1934, August 26, 1936, and April 5, 1950, there is hereby fixed for the season of 1973 an assessment of $391,445.50 for the operation and maintenance of the irrigation system which serves that portion of the project within the confines and under the jurisdiction of the Flathead Irrigation District. This assessment involves an area of approximately 85,468.45 acres, which does not include any land held in trust for Indians and covers all proper general charges and project overhead.

§ 221.26 Charges.

Pursuant to a contract executed by the Mission Irrigation District, Flathead Indian Irrigation Project, Montana, on March 7, 1931, approved by the Secretary of the Interior on April 21, 1931, as supplemented and amended by later contracts dated June 2, 1934, June 6, 1936, and May 16, 1951, there is hereby fixed, for the season of 1973 an assessment of $69,589.16 for the operation and maintenance of the irrigation system which serves that portion of the project within the confines and under the jurisdiction of the Mission Irrigation District. This assessment involves an area of approximately 16,373.92 acres, which does not include any land held in trust for Indians and covers all proper general charges and project overhead.

§ 221.28 Charges.

Pursuant to a contract executed by the Jocko Valley Irrigation District, Flathead Irrigation Project, Montana, on November 13, 1934, approved by the Secretary of the Interior on February 26, 1935, as supplemented and amended by later contracts dated August 26, 1936, April 18, 1950, and August 24, 1967, there is hereby fixed for the season of 1973 an assessment of $29,197.04 for the operation and maintenance of the irrigation system which serves that portion of the project within the confines and under the jurisdiction of the Jocko Valley Irrigation District. This assessment involves an area of approximately 7,525.01 acres, which does not include any lands held in trust for Indians and covers all proper general charges and project overhead.

GEORGE L. MOON,
Project Engineer.

[FR Doc.72-8252 Filed 5-31-72;8:53 am]

Title 26—INTERNAL REVENUE

Chapter I—Internal Revenue Service, Department of the Treasury

SUBCHAPTER A—INCOME TAX

[T.D. 7174]

PART 13—TEMPORARY INCOME TAX REGULATIONS UNDER THE TAX REFORM ACT OF 1969

Arbitrage Bonds

In order to change the definition of the term "materially higher," as such term is used in section 103(d) of the Internal Revenue Code of 1954, paragraph (a)(3) of § 13.4 of the Temporary Income Tax Regulations under the Tax Reform Act of 1969 is amended to read as follows:

§ 13.4 Arbitrage bonds; temporary rules.

(a) *In general.* * * *

* * * * *

(3) *Materially higher.* For purposes of this section, the yield produced by acquired obligations is not "materially higher" than the yield produced by an issue of governmental obligations if it is reasonably expected, at the time of issue of such governmental obligations, that the adjusted yield (computed in accordance with subparagraphs (4) and (5) of this paragraph) to be produced by the acquired obligations will not exceed the adjusted yield (computed in accordance with subparagraphs (4) and (5) of this paragraph) to be produced by the issue of governmental obligations by more than one-eighth of 1 percentage point. In the case of an issue of governmental obligations issued on or before July 1, 1972, the percentage specified in the preceding sentence shall be one-half of 1 percentage point.

* * * * *

Since the change in the definition of "materially higher" will apply with respect to governmental obligations issued after July 1, 1972, and since proposed regulations are published herewith giving the public an opportunity to comment on the substance of the change made by this Treasury decision, it is found unnecessary and impracticable to issue this Treasury decision with the notice and public procedure thereon under 5 U.S.C. section 553(b).

(Secs. 103(d), 7805, Internal Revenue Code of 1954, 83 Stat. 656, 68A Stat. 917; 26 U.S.C. 103, 7805)

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

Approved: March 15, 1972.

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

[FR Doc.72-8280 Filed 5-26-72;4:44 pm]

Title 31—MONEY AND FINANCE: TREASURY

Chapter II—Fiscal Service, Department of the Treasury

SUBCHAPTER B—BUREAU OF THE PUBLIC DEBT

PART 344—REGULATIONS GOVERNING U.S. TREASURY CERTIFICATES OF INDEBTEDNESS—STATE AND LOCAL GOVERNMENT SERIES, AND U.S. TREASURY NOTES—STATE AND LOCAL GOVERNMENT SERIES

The regulations in the Department of the Treasury Circular, Public Debt Series No. 3-72 (31 CFR Part 344), set forth below, are issued under the authority of 26 U.S.C. 103(d), 83 Stat. 656; 31 U.S.C. 753, 754, 754b, and 5 U.S.C. 301.

This offer of U.S. Treasury Certificates of Indebtedness—State and Local Government Series, and U.S. Treasury Notes—State and Local Government Series, relates to the fiscal policy of the United States and notice and public procedures thereon are unnecessary.

The regulations were adopted on May 22, 1972.

[SEAL] JOHN K. CARLOCK,
Fiscal Assistant Secretary of the Treasury.

Sec.

344.0 Offering of securities.
344.1 Description of securities
344.2 Subscription for purchase.
344.3 Issue date and payment.
344.4 Redemption.
344.5 General provisions.

AUTHORITY: The provisions of this Part 344 issued under 26 U.S.C. 103(d), 83 Stat. 656; 31 U.S.C. 753, 754, 754b, and 5 U.S.C. 301.

§ 344.0 Offering of securities.

(a) In order to provide States, municipalities, and other government bodies

described in section 103(a)(1) of the Internal Revenue Code of 1954 and the regulations thereunder with investments tailored to their needs under those provisions, the Secretary of the Treasury offers, under the authority of the Second Liberty Bond Act, as amended—

(1) U.S. Treasury Certificates of Indebtedness—State and Local Government Series, and

(2) U.S. Treasury Notes—State and Local Government Series,

for sale to those entities. The term "government body" as used herein refers to any one of these entities. The term "securities" herein refers jointly to the certificates and notes. This offering will continue until terminated by the Secretary of the Treasury.

§ 344.1 Description of securities.

(a) *General.* The securities will be issued in book-entry form on the books of the Department of the Treasury, Bureau of the Public Debt, Washington, D.C. 20226. They may not be transferred by sale, exchange, assignment, or pledge, or otherwise.

(b) *Terms and rates of inteerst.*—(1) *Certificates of indebtedness.* The certificates will be issued in multiples of $5,000 with periods of maturity fixed, at the option of the government body, for (i) 3 months, (ii) 6 months, (iii) 9 months, or (iv) 1 year. Each certificate will bear such rate of interest as the government body may designate, provided that it shall not be more than the current Treasury rate on a comparable maturity, reduced by one-eighth of 1 percent. The applicable Treasury rates will be determined by the Treasury not less often than monthly, and will be available at Federal Reserve banks and Branches. Interest on the certificates will be computed on an annual basis and will be payable at maturity with the prinicipal amount.

(2) *Notes.* The notes will be issued in multiples of $5,000 with periods of maturity fixed, at the option of the government body, from 1 year 6 months up to and including 7 years, or for any intervening half-yearly period. Each note will bear such rate of interest as the government body may designate, provided that it shall not be more than the current Treasury rate on a comparable maturity, reduced by one-eighth of 1 percent. The applicable Treasury rates will be determined by the Treasury not less often than monthly, and will be available at Federal Reserve Banks and Branches. Interest on the notes will be payable on a semiannual basis by Treasury check on June 1 and December 1, and at maturity if other than June 1 or December 1. Final interest will be paid with the principal.

§ 344.2 Subscription for purchase.

A government body may purchase a security under this offering by submitting a subscription and making payment to a Federal Reserve Bank or Branch. A commercial bank may act on behalf of a government body in submitting subscriptions. The subscription, dated and signed by an official authorized to make the purchase, must state the amount, maturity, and interest rate of the security desired, and give the title of the designated official authorized to redeem it. Separate subscriptions must be submitted for certificates and notes, and for securities of each maturity and each interest rate.

§ 344.3 Issue date and payment.

The issue date of a security will be the date on which funds in full payment therefor are available at a Federal Reserve Bank or Branch.

§ 344.4 Redemption.

(a) *At maturity.* A security may not be called for redemption by the Secretary of the Treasury prior to maturity. Upon the maturity of a security, the Treasury will make payment of the principal amount and interest to the owner thereof by Treasury check, or in accordance with other prior arrangements made by the government body with the Bureau of the Public Debt.

(b) *Prior to maturity.* (1) Securities may be redeemed at the owner's option on 2 days' notice after 1 month from the issue date in the case of certificates, and after 1 year from the issue date in the case of notes. Where redemption prior to maturity occurs, the interest for the entire period the security was outstanding shall be calculated on the basis of the lesser of (i) the original interest rate at which the security was issued, or (ii) an adjusted interest rate reflecting both the shorter period during which the security was actually outstanding and a penalty. The adjusted interest rate is the Treasury rate which would have been in effect on the date of issuance for a marketable Treasury certificate or note maturing on the quarterly maturity date prior to redemption (in the case of certificates), or on the semiannual maturity period prior to redemption (in the case of notes), reduced in either case by a penalty which shall be the lesser of (iii) one-eighth of 1 percent times the number of months from the date of issuance to original maturity, divided by the number of full months elapsed from the date of issue to redemption, or (iv) one-fourth of 1 percent. There shall be deducted from the redemption proceeds, if necessary, any overpayment of interest resulting from previous payments made at a higher rate based on the original longer period to maturity. A schedule showing the adjusted interest rates that apply to securities redeemed prior to their maturity dates will be available at the time of issuance of the securities. A notice to redeem a security prior to the maturity date must be given by the official authorized to redeem it, as shown in the subscription for purchase, to the Bureau of the Public Debt, Division of Securities Operations, Washington, D.C. 20226, by letter, wire, or telex, or by telephone confirmed by wire or telex. The telephone number is 202—964-7007, and the telex number is 892428.

§ 344.5 General provisions.

(a) *Regulations.* U.S. Treasury Certificates of Indebtedness—State and Local Government Series, and U.S. Treasury Notes—State and Local Government Series, shall be subject to the general regulations with respect to U.S. securities, which are set forth in the Department of the Treasury Circular No. 300, current revision (Part 306 of this chapter), to the extent applicable. Copies of the circular may be obtained from the Bureau of the Public Debt, Division of Securities Operations, Washington, D.C. 20226, or a Federal Reserve Bank or Branch.

(b) *Fiscal agents.* Federal Reserve Banks and Branches, as fiscal agents of the United States, are authorized to perform such services as may be requested of them by the Secretary of the Treasury in connection with the purchase of, and transactions in, the securities.

(c) *Reservations.* The Secretary of the Treasury reserves the right to reject any application for the purchase of securities hereunder, in whole or in part, and to refuse to issue or permit to be issued any such securities in any case or any class or classes of cases if he deems such action to be in the public interest, and his action in any such respect shall be final. The Secretary of the Treasury may also at any time, or from time to time, supplement or amend the terms of these regulations, or of any amendments or supplements thereto.

[FR Doc.72-7931 Filed 5-26-72;4:45 pm]

Title 32A—NATIONAL DEFENSE, APPENDIX

Chapter X—Office of Oil and Gas, Department of the Interior

[Oil Import Reg. 1 (Rev. 5) Amdt. 431]

OIL REG. 1—OIL IMPORT REGULATION

Allocations Based on the Conversion of Heavy Liquids to Petrochemicals

There appeared in the FEDERAL REGISTER for December 4, 1971 (36 F.R. 23158), a proposal to provide for allocations of imports of crude oil and unfinished oils into Districts I–IV and District V to operators of plants which utilize "heavy liquid feedstock" in the production of "hydrocarbon intermediates" or in the production of "petrochemicals," or both.

Careful consideration was given to all of the comments on the proposal which were received. Several recommendations were incorporated in the program. The definition of "heavy liquid feedstock" (paragraph (a)) has been revised to state with more precision the required characteristics of such feedstock. A provision (paragraph (f)) has been added to allow a person to obtain an allocation for the conversion of heavy liquid feedstocks to "petrochemicals" in plants other than heavy liquid plants. Under paragraph (e) as revised and under new paragraph (f), an applicant may claim, as the basis for an allocation, hydrocarbon intermediates

which are sold or transferred by the initial purchaser or transferee to another; tolling operations will be included. Heavy aromatic gas oil (with a correlation index greater than 100) was added to the list of hydrocarbon intermediates, and several items were added to the list of "petrochemicals." As the list of petrochemicals should be kept abreast of new types of processes and modifications of existing processes, it is intended to modify the list from time to time. Paragraph (g) has been modified so that a penalty will not be assessed unless an estimate of operations exceeds actual operations by more than 10 percent, and authority is vested in the Director of the Office of Oil and Gas to grant relief in certain circumstances. A person operating a heavy liquid plant is provided an option (under paragraph (e)) either to verify his material balance to obtain waste or to receive 1 percent of his total hydrocarbon feedstock as waste. Like for like exchanges of unfinished oils will be allowed without restriction. A provision has been added to paragraph (c) respecting trade secrets and privileged commercial information. Finally, a number of clarifying amendments were made in response to suggestions received.

Several comments suggested that a fixed date for initiation of the program be established. Under paragraph (l), the program will begin July 1, 1974, provided that the Director of the Office of Oil and Gas determines that as of June 1, 1973, a substantial amount of construction has been done on a new heavy liquid plant, the construction of which was begun on or after August 12, 1971. If such a finding is not made by the Director, the implementation of the program will be contingent on a subsequent determination by the Director.

Proposals were made in some of the comments that fuel gas and residual fuel oil be excluded from the deduction of organic compounds required in the computation of allocations. These proposals relate to energy policy generally and will be taken into account in this regard. Comments made concerning possible adverse consequences of the petrochemical heavy liquid program on Puerto Rico are under study, and a decision has been made to modify the requirement that Puerto Rican petrochemical plants use Western Hemisphere feedstocks when allocations are made pursuant to the program. Some objections were raised to the implementation of the program on the premise that it was unnecessary and adversely affected national security; considerable study by several concerned Government agencies did not bear out this contention.

A new section 9B, reading as set forth below, is added to Oil Import Regulation 1 (Revision 5), effective 30 days after publication of this Amendment 43 in the FEDERAL REGISTER.

HOLLIS M. DOLE,
Assistant Secretary of the Interior.

MAY 25, 1972.

I concur:

G. A. LINCOLN,
Director, Office of Emergency Preparedness.

Sec. 9B Allocations of Imports of Crude Oil and Unfinished Oils for Conversion of Heavy Liquid Feedstocks to Petrochemicals—Districts I–IV and District V.

(a) For the purpose of this section:

(1) The term "heavy liquid feedstock" means (i) a stream of crude oil or (ii) a stream of hydrocarbons which was derived from crude oil or natural gas products, 90 percent (by weight) of which consisted of hydrocarbon compounds having a carbon content of C_3 or greater, and in which the weight of paraffins (including cycloparaffins) exceeded that of the olefins and that of the aromatics, respectively.

(2) The term "petrochemicals" means any of those items listed in column 1 of the schedule set forth in paragraph (k) of this section 9B insofar as they conform to the notations contained in columns 2 and 3 of such schedule.

(3) The term "hydrocarbon intermediates" means any or all of the following items which were produced from feedstocks to a heavy liquid plant or from heavy liquid feedstocks: Methane, ethane, propane, butane, olefins C_2-C_{15}, diolefins C_7-C_{15} (and C_3-C_6 in the event their purity falls below 90 percent by weight), acetylenes C_4-C_{15} (or C_2-C_3 in the event their purity falls below 90 percent by weight), benzene, toluene, and xylene, or combinations thereof, and heavy aromatic gas oil with a correlation index (CI) greater than 100 computed on the basis of the following formula:

$$100\left(\frac{876}{460+\text{MBP}}+\frac{670}{131.5+\text{API Gravity}}-4.568\right)$$

and extender oil as described in ASTM Designation D 2226–70.

(4) The term "heavy liquid plant" means a facility or plant complex (including associated downstream product recovery and processing units except petrochemical units and petrochemical plants) which is located in Districts I–IV or District V, which is not comprised within or a part of a person's refinery capacity as that term is defined in section 22, to which at least one heavy liquid feedstock stream was charged during the base period, and in which more than 30 percent by weight of each of its hydrocarbon feedstock streams during the base period were converted by chemical reaction (i) directly into petrochemicals, or (ii) indirectly into petrochemicals by the chemical conversion of hydrocarbon intermediates or by the chemical conversion of heavy liquid feedstocks which were subsequently fed to a heavy liquid plant and converted to petrochemicals or to hydrocarbon intermediates which were subsequently converted to petrochemicals, or, (iii) into petrochemical plant inputs as defined in section 22.

(5) The term "petrochemical unit" refers to equipment located in Districts I–IV or District V, in which 30 percent by weight of hydrocarbon intermediates in each separate feedstock stream are processed into petrochemicals.

(6) The term "base period" means the period of 12 months ending on September 30 preceding the allocation period for which an application for an allocation under this section 9B is filed.

(b) Except as provided in paragraph (l), of this section, allocations under this section shall be made for periods of 12 months beginning January 1.

(c) (1) Applications for allocations under paragraphs (e), (f), and (g) of this section must be filed within the time prescribed by section 5 of this regulation.

(2) An application shall be in such form the Director may prescribe, and an applicant shall furnish such additional information as the Director shall require. All information supplied by an applicant shall be subject to such verification as the Director may deem appropriate, including inspection of the applicant's heavy liquid plant or plants, the applicant's petrochemical unit or units, and the petrochemical unit or units of persons to whom hydrocarbon intermediates have been sold or transferred by the applicant. In the case of an application for an allocation based, in whole or in part, upon the sale or transfer by the applicant of hydrocarbon intermediates to be processed into petrochemicals, the application shall be accompanied by certificates from the buyers or transferees as to the weight of such hydrocarbon intermediates and as to such buyers' or transferees' disposition thereof. Such verification may include examination of the records of all plants participating in the production of petrochemicals which are claimed by an applicant as a basis for an allocation.

(3) Except as provided in this subparagraph, information furnished by an applicant on or in connection with an application under section 9B shall be available for public inspection. Material balances respecting a plant or unit and detailed technical information descriptive of a particular process fall within the category of trade secrets and privileged commercial information and shall not be available for public inspection.

(d) A person who receives an allocation under this section 9B may not receive an allocation pursuant to section 9 based on any feedstock stream processed in the person's heavy liquid plant or plants. The hydrocarbon content of materials upon which an allocation under section 9, section 9A, or section 25 (as it relates to section 9) of this regulation is based will not qualify as a basis for an allocation under this section 9B. Hydrocarbon materials upon which an allocation under this section 9B is based will not qualify as a basis for an allocation under section 9, section 9A, or section 25 (as it relates to section 9) of this regulation. No hydrocarbon materials upon which an allocation under this section 9B is based may serve as a basis for another allocation under this section 9B.

(e) To be eligible under this paragraph for an allocation of imports of crude oil and unfinished oils into Districts I–IV or into District V, a person must have operated a heavy liquid plant in the respective districts during the base period. For a particular allocation period, each such eligible applicant shall be entitled to receive an allocation of

imports of crude oil and unfinished oils into Districts I–IV or into District V, as appropriate, computed as follows:

(1) The Director shall determine the weight of hydrocarbon intermediates which were produced by each of the applicant's heavy liquid plants and which were processed in a petrochemical unit or units by the applicant during the base period. The Director shall deduct from the weight so determined the weight of the hydrocarbon content of any organic compounds that were not petrochemicals and that were produced by processing from the hydrocarbon intermediates and recovered for commercial disposition or use, including use as fuel.

(2) The Director shall determine the weight of hydrocarbon intermediates (i) which were produced by each of the applicant's heavy liquid plants, and (ii) which the applicant certifies were sold or transferred by him to a second person, or by such second person to a third person to be processed into petrochemicals, and (iii) respecting which the applicant has furnished certificates from the buyers or transferees as to the weight and disposition of the hydrocarbon intermediates purchased or transferred and processed in a petrochemical unit during the base period. The Director shall deduct from the weight so determined the weight of the hydrocarbon content of any organic compounds that were not petrochemicals and that were produced by the buyers or transferees from the hydrocarbon intermediates and recovered for commercial disposition or use, including use as fuel.

(3) (i) The Director shall determine the total weight of hydrocarbon feedstocks charged to each of the applicant's heavy liquid plants during the base period. The Director shall deduct from the weight so determined the weight of all hydrocarbon intermediates produced from such feedstocks and the hydrocarbon content of any other organic compounds that were not petrochemicals and that were produced by the applicant from total feedstocks and recovered for commercial disposition or use, including use as fuel. In connection with a determination under this subdivision, an applicant must satisfactorily identify the cause or causes of the difference between the weight of hydrocarbon feedstocks charged and the weight of hydrocarbon intermediates and organic compounds produced, and the Director shall make no determination under this subdivision if such difference is attributable principally to inaccuracy of meters.

(ii) In lieu of the net weight determined under subdivision (i) of this subparagraph, an applicant may elect to have the Director determine the weight of the hydrocarbon content of petrochemicals and hydrogen produced at the applicant's heavy liquid plant during the base period plus one percent (1 percent) of the weight of total hydrocarbon feedstocks charged.

(4) The Director shall divide the net weight of hydrocarbon materials determined for each of the applicant's heavy liquid plants pursuant to subparagraphs (1) through (3) of this paragraph, by the weight of the total hydrocarbon feedstocks charged to each such plant during the base period and multiply the quotient thus obtained by the quantity (expressed in barrels per day) of heavy liquid feedstocks charged to each such plant. The applicant shall, with respect to each such plant, receive an allocation of imports of crude oil and unfinished oils in a quantity equal to the product of such multiplication.

(f) (1) Subject to the provisions of paragraph (d) of this section, a person who produces hydrocarbon intermediates from heavy liquid feedstocks in a plant in Districts I–IV or in District V, other than a heavy liquid plant and who manufactures petrochemicals by processing such hydrocarbon intermediates during a base period shall be entitled, with respect to such plant, to an allocation of imports of crude oil and unfinished oils into Districts I–IV or into District V, as appropriate, computed as follows: The Director shall determine the weight (in pounds) of such hydrocarbon intermediates and shall deduct therefrom the weight of the hydrocarbon content of any organic compounds that were not petrochemicals and that were recovered for commercial disposition or use, including use as fuel. The net weight (in pounds) so determined shall be divided by 300, and the person shall receive an allocation of imports of crude oil and unfinished oils equal to the resulting quotient.

(2) Subject to the provisions of paragraph (d) of this section, a person who produces hydrocarbon intermediates from heavy liquid feedstocks in a plant other than a heavy liquid plant and sells or transfers such hydrocarbon intermediates to another who manufacturers petrochemicals therefrom by processing during a base period shall, with respect to such plant, be entitled to an allocation of imports of crude oil and unfinished oils into Districts I–IV or into District V, as appropriate, computed as follows: The Director shall determine the weight (in pounds) of the hydrocarbon intermediates (i) which were so produced, (ii) which the applicant certifies were sold or transferred by him to a second person, or by such second person to a third person, to be processed into petrochemicals, and (iii) respecting which the applicant has furnished certificates from the buyers or transferees as to the weight and disposition of the hydrocarbon intermediates purchased or transferred and processed during the base period. The Director shall deduct from the weight so determined the weight of the hydrocarbon content of any organic compounds that were not petrochemicals and that were recovered by the buyers or transferees for commercial disposition or use, including use as fuel. The net weight (in pounds) so determined shall be divided by 300, and the person shall receive an allocation of imports of crude oil and unfinished oils equal to the resulting quotient.

(g) (1) With respect to a heavy liquid plant which is scheduled to come on stream during a particular allocation period, an applicant who has filed an application within the time prescribed in section 5 of this regulation shall be entitled to an allocation for that plant for that allocation period. The allocation shall be computed as provided in paragraph (e) of this section, except that estimated data on the operations of that plant by the applicant during the allocation period shall be substituted for data on actual operations during the base period.

(2) With respect to a heavy liquid plant which has come on stream during the allocation period immediately preceding a particular allocation period, an applicant who has filed an application within the time prescribed in section 5 of this regulation shall be entitled to an allocation for that plant for the particular allocation period. The allocation shall be computed as provided in paragraph (e) of this section, except that actual and estimated data on the operations of that plant by the applicant during a period of 12 months shall be substituted for data on actual operations during the base period. The period of 12 months shall run from the day on which the plant began operations.

(3) If an allocation based in whole or in part on estimated data on operations is made under this section, allocations made to the applicant under this section in succeeding allocation periods will be adjusted upward or downward to compensate for the difference between the allocation based in whole or in part on estimates and the allocation which the applicant would have received if the allocation had been based on actual data.

(4) If an allocation based in whole or in part on estimates exceeds by more than 10 percent the allocation which the applicant would have received if the allocation had been based on actual data, the reduction of the applicant's allocations in succeeding allocation periods required by subparagraph (3) of this paragraph shall be doubled. However, to the extent that an applicant demonstrates to the satisfaction of the Director that all or a part of the excess of estimated inputs over actual inputs was attributable to acts of God, fires or explosions, the Director may reduce the number of barrels of excess for which the penalty will be imposed.

(5) The Director shall make an allocation pursuant to this paragraph (g) only if he is satisfied that the applicant's heavy liquid plant constitutes a bona fide business venture. The Director shall not issue a license under an allocation made pursuant to this paragraph until the heavy liquid plant has been on stream for not less than 60 days and until an on-the-spot evaluation of the plant has been conducted by authorized representatives of the Office of Oil and Gas and a determination has been made that the facility has the actual operational capacity which the applicant has certified in his application. Licenses issued under allocations made pursuant to this paragraph

shall expire on the last day of the allocation period.

(h) An allocation made pursuant to this section shall entitle a person to a license or licenses which will allow the importation of unfinished oils in an amount not exceeding, in the aggregate, 15 percent of the person's allocation. However, the Director shall permit a person holding such an allocation to import unfinished oils in an amount up to 100 percent of the allocation upon certification by him to the Director that such imported unfinished oils will not be exchanged, that such unfinished oils will be processed entirely in the petitioner's heavy liquid plants, that the person will not charge to any of his plants a quantity of such unfinished oils in excess of the allocation made with respect to each such plant, and that more than 30 percent by weight of the yields from such unfinished oils will be converted directly or indirectly into petrochemicals or petrochemical plant inputs. The Director may, in special circumstances, permit a person holding such an allocation to import up to 100 percent of his allocation in the form of unfinished oils and to exchange such imports for like domestic material to be run entirely in the petitioner's heavy liquid plants in amount not in excess of the allocation made with respect to each such plant.

(i) A person who imports crude oil or unfinished oils under an allocation made under this section may, except as provided in paragraph (h) of this section, exchange his imported crude oil either for domestic crude oil or for domestic unfinished oils or exchange his imported unfinished oils for domestic unfinished oil or for domestic crude oil. All such exchanges shall be governed by the provisions of subparagraphs (2), (3), (5), and (6) of paragraph (b) of section 17 of this regulation.

(j) No allocation made pursuant to this section may be sold, assigned, or otherwise transferred.

(k) Each item listed in column 1 of the following schedule is a petrochemical if, and only if, it conforms to any notation opposite the item in column 2 and to the condition specified opposite the item in column 3. The conditions specified are as follows:

A—petrochemical must be recovered in a state of 90 percent purity by weight on an anhydrous basis.

B—petrochemical must be recovered in a state of 98 percent purity by weight on an anhydrous basis.

C—carbon atoms per average molecule must be greater than 30.

Petrochemical	Limitations	Condition
Acetaldehyde		A
Acetic acid		A
Acetone		A
Acetonitrile		A
Acetylene		A
Acrolein		A
Acrylic acid		A
Acrylonitrile		A
Alcohols	Those with carbon No. C_5 and greater.	A
Aldehydes and/or ketones.	do	A
Alkyl acrylates		A
Alkyl anilines		A
Alkyl benzenes	Alkyl group must be greater than C_3.	A
Alkyl naphthalenes		A
Alkyl phenols		A
Alkyl toluenes		B
Allyl alcohol		A
Allyl chloride		A
Alpha olefins (linear)	Those with carbon No. C_6 and greater.	A
Benzyl chloride		A
Benzyl dichloride		A
Benzene hexachloride		A
Benzene sulfonic acid		A
Benzotrichloride		A
Benzoyl chloride		A
Butadiene		A
Butyl alcohol		A
Butyl ether		A
Butylene glycol		A
Butylene oxide		A
Butyl rubber	Only the content derived from butylene.	C
Butyraldehyde		A
Butyric acid		A
Carbon black	Does not include petroleum coke.	B
Carbon disulfide		A
Carboxylic acids	Those with carbon No. C_5 or greater.	A
Chlorobenzene		A
Chloroform		A
Chlorotoluene		A
Cumene		B
Cyclohexane		B
Cyclopentadiene		A
Dichlorobenzene		A
Dichloropropene		A
Diethyl Ketone		A
Diisopropylbenzene		A
Dimethylterephthalate		A
Diphenyl		A
Dipropylene glycol		A
Ethanol		A
Ethyl benzene		B
Ethyl bromide		A
Ethyl chloride		A
Ethyl ether		A
Ethylene chlorohydrin		A
Ethylene dibromide		A
Ethylene dichloride		A
Ethyleneimine		A
Ethylene oxide		A
Ethylene-propylene copolymer (EPM).		C
Ethylene-propylene terpolymer (EPDM).	Only the content derived from ethylene and propylene.	C
Ethylene-vinyl acetate copolymer.	Only the content derived from ethylene.	B
Formaldehyde		B
Fumaric acid		A
Hydrogen cyanide		A
Isoprene		A
Maleic anhydride		A
Methylacetylene and/or propadiene.		A
Methyl alcohol		B
Methyl chloride		A
Methylene chloride		A
Methyl cyclohexane		B
Methylcyclopentadiene		A
Methylethyl ketone		A
Naphthalene		A
Nitrobenzene Mono Di Tri		A
Nitroethane		A
Nitromethane		A
Nitropropane		A
Nitroxylenes		A
Para-Xylene sulfonic acid.		A
Perchloroethylene		A
Phthalic Anhydride		A
Piperylene		A
Polylbutylene	Only the content derived from butylene.	C
Polyethylene	Only the content derived from ethylene.	C
Polyisobutylene	Only the content derived from isobutylene.	C
Polypropylene	Only the content derived from propylene.	C
Propionic acid		A
Propionaldehyde		A
Propyl alchohol		A
Propyl ether		A
Propylene chlorohydrin.		A
Propylene dichloride		A
Propylene oxide		A
Tert-butyl paracresol		A
Oil extended SBR and butadiene rubber.	Only the content derived from extender oil by chemical reaction.	A
Tetrachlorobenzene		A
Thermal catalytic diene resins.	Only content derived from C_3–C_{15} diolefins.	C
Thermal catalytic olefin resins.	Only the content derived from C_3–C_{15} olefins.	C
Toluene diisocyante		A
Toluene sulfonic acid		A
Toluene sulfonyl chloride.		A
Trichloroethane		A
Trichloroethylene		A
Trimethyl benzene		B
Urea		A
Valeraldehyde		A
Vinyl acetate		A
Vinyl chloride		A
Vinyl fluoride		A
Vinyl toluene		B

(l) (1) The Director shall determine, in writing, whether or not as of June 1, 1973, substantial construction work has been done, and construction work is being diligently prosecuted, on a new heavy liquid plant of reasonable commercial size, the construction of which was begun on or after August 12, 1971. The Director shall send to the FEDERAL REGISTER, in sufficient time to insure publication before July 1, 1973, a document describing the determination which he has made.

(2) If the Director determines that the situation described in the first sentence of subparagraph (1) of this paragraph exists, allocations shall be made under this section 9B, both in Districts I–IV and in District V, for the period July 1 through December 31, 1974.

(3) If the Director determines that the situation described in the first sentence of subparagraph (1) of this paragraph does not exist, allocations shall not be made under this section unless the Director subsequently determines, in writing, that substantial construction work has been done, and construction work is being diligently prosecuted, on a new heavy liquid plant, the construction of which was begun on or after August 12, 1971. Allocations under this section shall be made for the calendar year or the period July 1 through December 31 (as the case may be) which follows the expiration of a period of a year from the date of publication in the FEDERAL REGISTER of a document describing the Director's determination.

(4) In the event that allocations are to be made for the last 6 months of a calendar year pursuant to subparagraph (2) or (3) of this paragraph (l), the Director shall so announce in a statement published in the FEDERAL REGISTER and shall fix a time within which applications must be filed. The provisions of subparagraphs (2) and (3) of paragraph (c) of this section shall be applicable to such applications. The provisions of paragraphs (e) and (f) of this section shall be applicable with respect to eligibility for, and computation of, such allocations, except that the base period shall be the period of 6 months ending

March 31 of the calendar year in which the allocations are to be made.

(5) In the event that allocations are to be made for the last 6 months of a calendar year pursuant to subparagraph (2) or (3) of this paragraph (l), applicants who file applications within the time fixed by the Director shall be entitled to an allocation for the period of 6 months with respect to a heavy liquid plant which is scheduled to go on stream within that period or which came on stream before July 1. An allocation shall be computed as provided in paragraph (g) of this section, except that the estimated data on operations referred to in subparagraph (1) of paragraph (g) of this section shall pertain to the last 6 months of the calendar year and the actual and estimated data on operations referred to in subparagraph (2) of paragraph (g) of this section shall pertain to a period of 6 months beginning on the date on which the plant commenced operations. The provisions of subparagraphs (3), (4), and (5) of paragraph (g) of this section shall be applicable to allocations made under this subparagraph (5) of paragraph (l).

[FR Doc.72-8201 Filed 5-26-72;12:33 pm]

Title 36—PARKS, FORESTS, AND MEMORIALS

Chapter II—Forest Service, Department of Agriculture

PART 251—LAND USES

Recreation Fee Rules

The Act of July 15, 1968 (82 Stat. 354), as amended by the Act of July 7, 1970 (84 Stat. 410), repealed as of December 31, 1971, section 2 of the Land and Water Conservation Fund Act of 1965 (78 Stat. 897, 16 U.S.C. 460L), under which the Golden Eagle fee program was established. Therefore, pursuant to the authority contained in the Act of June 4, 1897, as amended (16 U.S.C. 551), and the Act of July 22, 1937, as amended (7 U.S.C. 1011), § 251.25a of Title 36 of the Code of Federal Regulations is revised to read as follows:

§ 251.25a Payment for occupancy and use of designated recreation areas.

Occupancy and use for recreational purposes of lands, facilities, or services of the national forests and national grasslands for which a recreation use fee has been established shall be permitted only upon payment of the required fee. Such fee shall be established by the Chief of the Forest Service or his delegate. Clear notice that a fee has been established shall be posted at each area. Occupancy and use without payment of the required fee is prohibited. As provided by the Act of June 4, 1897, as amended (16 U.S.C. 551), and the Act of July 22, 1937, as amended (7 U.S.C. 1011), any violation of this section is punishable by a fine or imprisonment, or both.

(Sec. 1, 30 Stat. 35 as amended; 16 U.S.C. 551; sec. 32, 50 Stat. 525 as amended; 7 U.S.C. 1011; sec. 501, 65 Stat. 290, 31 U.S.C. 483a)

Findings and determination. The purpose of the revision is to provide for the Forest Service fee program. While it is the policy of the Department of Agriculture, whenever practicable, to afford the public an opportunity to participate in the rulemaking process, it is deemed unnecessary to do so in this instance since the revision serves to continue in effect provisions of the current fee program and the revised regulations do not further restrict members of the public.

Effective date. These regulations shall become effective on the date of publication in the FEDERAL REGISTER (6-1-72).

T. K. COWDEN,
Assistant Secretary of Agriculture.

MAY 25, 1972.

[FR Doc.72-8225 Filed 5-31-72;8:50 am]

Title 42—PUBLIC HEALTH

Chapter I—Public Health Service, Department of Health, Education, and Welfare

SUBCHAPTER F—QUARANTINE, INSPECTION, LICENSING

PART 73—BIOLOGICAL PRODUCTS

Test for Hepatitis Associated (Australia) Antigen

On November 5, 1971, a notice of proposed rule making was published in the FEDERAL REGISTER (36 F.R. 21292-21293) proposing to amend Part 73 of the Public Health Service regulations by (1) adding two new sections requiring testing of donations of human blood, plasma, or serum for the presence of hepatitis associated (Australia) antigen and rendering ineligible as donors of human blood, plasma, or serum persons testing positive for such antigen, and (2) by amending § 73.601 to prescribe related package labeling requirements.

Views and arguments respecting the proposed standards were invited to be submitted within 30 days after publication of the notice in the FEDERAL REGISTER and notice was given of intention to make any amendments that were adopted effective 30 days after publication in the FEDERAL REGISTER.

After consideration of all comments submitted and accepting several of the suggested changes, the following amendments to Part 73 of the Public Health Service regulations are hereby adopted to become effective 30 days after publication in the FEDERAL REGISTER, except that changes in labeling necessitated by § 73.601(s) shall not be mandatory until 6 months after publication in the FEDERAL REGISTER.

Dated: May 24, 1972.

ROBERT Q. MARSTON,
Director, National Institutes of Health.

1. Subpart A of the table of contents is amended by inserting in numerical sequence the following:

Sec.
73.755 Test for hepatitis associated (Australia) antigen.
73.756 History of hepatitis associated (Australia) antigen.

2. Section 73.601 is amended by adding immediately after paragraph (r) a new paragraph (s) as follows:

§ 73.601 Package label.

* * * * *

(s) For injectable products prepared from human blood, plasma, or serum, indication that the product was prepared from bood that was nonreactive when tested for hepatitis associated (Australia) antigen. In lieu of inclusion on the package label, such information may be included in a circular enclosed with the package.

3. Subpart A is amended by adding immediately after § 73.750, the following new sections:

§ 73.755 Test for hepatitis associated (Australia) antigen.

(a) *General.* Each donation of human blood, plasma, or serum to be used in preparing a biological product shall be tested for the presence of hepatitis associated (Australia) antigen. Such test shall be performed on blood, plasma, or serum taken from the donor at the time of donation or, for such material collected prior to the effective date of this section, upon removal from storage by the manufacturer. Only hepatitis associated antibody (anti-Australia antigen) licensed under this part shall be used in performing the test and the test method(s) used shall be that for which the antibody product is specifically designate to be effective as recommended by the manufacturer in the package enclosure.

(b) *Restrictions on use*—(1) *Injectable biological products.* Blood, plasma, or serum that is reactive when tested for hepatitis associated (Australia) antigen shall not be used in manufacturing injectable biological products.

(2) *In vitro diagnostic biological products.* Blood, plasma, or serum that is reactive when tested for hepatitis associated (Australia) antigen may be used in manufacturing in vitro diagnostic biological products, provided that the package label of the biological products prepared from such blood, plasma, or serum conspicuously indicates that the product was prepared from material that was reactive when tested for hepatitis associated antigen and may transmit viral hepatitis.

§ 73.756 History of hepatitis associated (Australia) antigen.

A person testing positive, or known to have previously tested positive, for hepatitis associated (Australia) antigen may not serve as a donor of human blood, plasma, or serum to be used in preparing any injectable biological product, except that a person known to have previously tested positive for hepatitis associated (Australia) antigen may serve as a

source of hepatitis associated antibody when such antibody is required for the manufacture of a licensed biological product provided such person meets the requirements of § 73.755 at the time of donation.

4. Section 73.3004(f) is amended by inserting the phrase "and the test for hepatitis associated (Australia) antigen prescribed in § 73.755" immediately following the reference "§ 73.3003." As amended this paragraph shall read as follows:

§ 73.3004 General requirements.

* * * * *

(f) *Issue prior to determination of test results.* Notwithstanding the provisions of § 73.700, blood may be issued by the licensee on the request of a physician, hospital, or other medical facility, before results of all tests prescribed in § 73.3003 and the test for hepatitis associated (Australia) antigen prescribed in § 73.755 have been determined where such issue is essential to allow time for transportation to assure arrival of the blood by the time when needed for transfusion of such blood provided (1) the blood is shipped directly to such physician or medical facility, (2) the records licensee contain a full explanation of the need for such issue, (3) the label on each container of such blood bears the information required by § 73.3005(e), (4) the label does not bear results of tests other than those made on pilot samples of the blood to be shipped, taken at the time of its collection, and (5) the label does not bear the name or any other identification of the intended recipient.

5. Section 73.3005 is amended by revising paragraph (b) to read as follows:

§ 73.3005 Labeling.

* * * * *

(b) *Serological test and test for hepatitis associated (Australia) antigen.* Indication of the method used for serological test for syphilis and the test for hepatitis associated (Australia) antigen, and the results.

6. Section 73.3042(c) is amended by adding immediately after subparagraph (6) a new subparagraph (7) to read as follows:

§ 73.3042 General requirements.

* * * * *

(c) * * *

(7) Indication of the test method for hepatitis associated (Australia) antigen used and the result.

(Sec. 215, 58 Stat. 690, as amended; 42 U.S.C. 216; sec. 351, 58 Stat. 702, as amended; 42 U.S.C. 262)

[FR Doc.72-8238 Filed 5-31-72;8:55 am]

Title 45—PUBLIC WELFARE

Subtitle A—Department of Health, Education, and Welfare, General Administration

PART 83—NONDISCRIMINATION ON THE BASIS OF SEX IN TRAINING PROGRAMS IN ENTITIES FUNDED UNDER TITLES VII AND VIII OF THE PUBLIC HEALTH SERVICE ACT

Titles VII and VIII of the Public Health Service Act, as amended by the Comprehensive Health Manpower Training and Nurse Training Acts of 1971, authorize the Secretary of Health, Education, and Welfare to award financial assistance to promote the training of health personnel and to sustain the viability of health training institutions. Sections 799A and 845 of the Public Health Service Act, 42 U.S.C. 295h-9 and 298, direct the Secretary to require, from certain types of entities applying for such awards, assurances of nondiscrimination on the basis of sex in admissions to health-related training programs. Administration of those provisions has been delegated to the Director, Office for Civil Rights.

The following regulation requires that such nondiscrimination assurances be obtained from all entities applying for awards under titles VII and VIII.

Notice of proposed rule making, public rule making procedures, and postponement of effective date have been omitted in the issuance of the following Part 83, which relates solely to assurances of nondiscrimination based on sex, because for good cause it has been found that such notice, public participation, and delay would be contrary to the public interest. This finding is made in light of the need to effect uniform requirements in this regard for all awards made before the end of the current fiscal year, and because comments upon this regulation will be considered with comments upon the regulations implementing sections 799A and 845, to be proposed shortly.

Written comments concerning the regulations are also invited at this time. Inquiries and comments may be addressed to Director, Office for Civil Rights, Department of Health, Education, and Welfare, Room 3556, HEW North, 330 Independence Avenue SW., Washington, DC 20201. All comments received in response to this publication will be available for public inspection in the above-named office on weekdays between 9 a.m. and 5 p.m. (except on holidays).

The following regulation shall become effective on the date of publication in the FEDERAL REGISTER (6-1-72).

Dated: May 26, 1972.

ELLIOT L. RICHARDSON,
Secretary.

§ 83.1 Assurances required.

No grant, loan guarantee, or interest subsidy payment under titles VII or VIII of the Public Health Service Act shall be made to or for the benefit of any entity, and no contract under titles VII or VIII of the Public Health Service Act shall be made with any equity, unless the entity furnishes assurances satisfactory to the Director, Office for Civil Rights, that the entity will not discriminate on the basis of sex in the admission of individuals to its training programs.

(Public Health Service Act sec. 215, 58 Stat. 690, as amended, 42 U.S.C. 216)

[FR Doc.72-8338 Filed 5-31-72;8:57 am]

Title 49—TRANSPORTATION

Chapter V—National Highway Traffic Safety Administration, Department of Transportation

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

Extension of Application of Definitions

This notice extends the applicability of the definitions used in the Federal Motor Vehicle Safety Standards to other regulations contained in Chapter V of Title 49, Code of Federal Regulations, and deletes the definitions of "Gross axle weight rating" and "Gross vehicle weight rating" from the regulations governing vehicles manufactured in two or more stages.

49 CFR 571.3(b) contains the definitions used in the Federal Motor Vehicle Safety Standards. Some of the regulations other than standards contain their own definition sections defining terms unique to the regulation, and otherwise incorporating by reference the definitions of Part 571. An example of this is the definition section in the Certification Regulation, 49 CFR 567.3: "All terms that are defined in the Act and the rules and standards issued under its authority are used as defined therein." However, there is no reverse applicability of 49 CFR 571.3(b), which applies only to terms "as used in this part." One result has been that duplicate definitions appear in certain regulations, specifically, the identical definitions of "Gross axle weight rating" and "Gross vehicle weight rating" found in both Part 571 and the regulations on Vehicles Manufactured in Two or More Stages, Part 568. To prevent unnecessary duplication and the possibility of confusion in the future, the Administration has determined that the definitions used in Part 571 should apply to all regulations in Chapter V, and also that Part 568 should be amended by deleting the definitions of "Gross axle weight rating" and "Gross vehicle weight rating."

In consideration of the foregoing:

1. 49 CFR 568.3 is amended by deleting the definitions for "Gross axle weight rating" and "Gross vehicle weight rating."

2. The introductory phrase of 49 CFR 571.3(b) *Other definitions* is revised to read "As used in this chapter—."

Effective date: June 1, 1972. Since this amendment is administrative and interpretive in nature and imposes no additional burden upon any person, notice and public procedure thereon is unnecessary and it may be made effective in less than 30 days after publication in the FEDERAL REGISTER.

(Secs. 103, 119, National Traffic and Motor Vehicle Safety Act of 1966, 15 U.S.C. 1392, 1407, delegation of authority from the Secretary of Transportation to the National Highway Traffic Safety Administration 49 CFR 1.51.)

Issued on May 9, 1972.

DOUGLAS W. TOMS,
Administrator.

[FR Doc.72-8239 Filed 5-31-72;8:56 am]

Title 6—ECONOMIC STABILIZATION

Chapter I—Cost of Living Council

PART 105—COST OF LIVING COUNCIL PROCEDURAL REGULATIONS

Part 105—Cost of Living Council Procedural Regulations was added to Title 6 and Chapter I of the Code of Federal Regulations on January 21, 1972 (37 F.R. 1002).

The purpose of these amendments is to amend, modify, revise, and republish the regulation previously issued by the Cost of Living Council, to make certain changes, to supersede the present provisions of Part 105, and to repromulgate Part 105 as amended, modified, and revised.

1. Subpart A is amended: In § 105.1 to indicate that this part also establishes procedures for appeals from adverse actions by the Office of Chief Counsel for the IRS; in § 105.2 to clarify the definitions of "adverse action" and "person aggrieved," and to add definitions for "exhaustion of administrative remedies" and "person"; in § 105.3 to broaden the rights of representation before the Cost of Living Council; in § 105.4 to clarify the requirements for a certificate of service; and in §§ 105.6 and 105.8 to reflect minor language changes.

2. Subpart B is amended: In § 105.20 to indicate that this part also establishes procedures for appeals from adverse actions by the Office of Chief Counsel for the IRS; in § 105.21 to clarify who may appeal; in § 105.23 to expand from 10 days to 30 days the period of time within which an appeal may be filed; in § 105.24 to reflect minor language changes; in § 105.25 to renumber former § 105.26, § 105.25 and to reflect minor language changes; in § 105.26 to renumber former § 105.25, § 105.26 and to more clearly set forth the steps taken in screening an appeal; in §§ 105.27 and 105.28 to expand from 10 days to 14 days the period of time within which the Hearing Officer will file a report and the Council will issue a decision and to reflect minor language changes.

3. Subpart C is amended: In § 105.31 to reflect minor language changes and to make clear that after an initial action by the Council, an appellant may seek judicial review upon the expiration of 30 days; in § 105.32 to reflect minor language changes; in § 105.33 to clarify who may seek reconsideration; in § 105.35 to expand from 10 days to 14 days the period of time within which a hearing will be conducted and the Council will issue a decision; and in § 105.38 to reflect minor language changes.

Subpart D has not been amended.

Subpart E is amended only in § 105.50 to make clear that the appointment of a Hearing Officer is made by the Director of the Council.

This amendment shall become effective when filed with the Office of the Federal Register.

DONALD RUMSFELD,
Director, Cost of Living Council.

Subpart A—General

Sec.
105.1 Purpose and scope.
105.2 Definitions.
105.3 Representation.
105.4 Filing of documents.
105.5 Computation of time.
105.6 Service.
105.7 Extensions of time.
105.8 Subpoenas; witness fees.
105.9 Consolidations.

Subpart B—Appeals From Adverse Actions

105.20 Purpose and scope.
105.21 Who may appeal.
105.22 Where to file appeal.
105.23 When to file appeal.
105.24 Contents of appeal.
105.25 Obtaining record.
105.26 Screening of appeals.
105.27 Hearing.
105.28 Decision by Council.

Subpart C—Requests for Exception, Exemption, and Reclassification

105.30 Purpose and scope.
105.31 Initial action by Council.
105.32 Scope of review.
105.33 Who may request reconsideration.
105.34 Where to file.
105.35 When to file.
105.36 Contents.
105.37 Hearing.
105.38 Decision by Council.

Subpart D—Public Comments on Council Regulations or Rulings

105.40 Purpose and scope.
105.41 Where to file.

Subpart E—Hearing Officer

105.50 Appointment of Hearing Officer.
105.51 Notice of appointment of Hearing Officer.
105.52 Powers and duties of Hearing Officer.

AUTHORITY: The provisions of this Part 105 are issued under 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 11627, as amended.

Subpart A—General

§ 105.1 Purpose and scope.

(a) This part establishes procedures for (1) appeals from adverse actions by the IRS or the Office of the Chief Counsel for the IRS; (2) action on requests for exception, exemption, and reclassification, and reconsideration of denials of such requests, in whole or in part; (3) public comment on regulations or published rulings of the Council; and (4) appointment of Hearing Officers.

(b) If any small business enterprise referred to in section 214(b)(3) of the Act files a request, application or appeal under the provisions of this part, such request, application or appeal will be accorded expeditious handling by affording it priority on the dockets maintained by the Council for the orderly conduct of its business.

(c) This part applies to any person aggrieved by a denial of a requested action by IRS or the Council made on or after the effective date of this part.

§ 105.2 Definitions.

"Act" means the Economic Stabilization Act of 1970, as amended.

"Adverse action" means an action by the IRS, or Office of the Chief Counsel for the IRS denying in whole or in part a requested interpretation, ruling or other action on the merits which is contrary to the position asserted by the person seeking the interpretation, ruling or action, except it does not include a notice of violation.

"Council" means the Cost of Living Council established by Executive Order No. 11615 as amended, and continued by Executive Order 11627 and Executive Order 11640.

"Exception" means a waiver from the provisions of Part 101 of this chapter directed to a person in a particular case which relieves it from the requirements of a rule, regulation or order issued pursuant to the Act.

"Exemption" means a general waiver of the requirements of all rules, regulations, and orders issued pursuant to the Act.

"Exhaustion of administrative remedies" as used in § 105.23 means a final action of the Internal Revenue Service as defined in § 401.604 of this title or of the Office of the Chief Counsel for the Internal Revenue Service as defined in § 401.611 of this title.

"Hearing Officer" means a person appointed by the Director of the Council for the purpose of conducting a hearing in accordance with Subparts B, C, and D of this part.

"IRS" means the Internal Revenue Service.

"Person" includes any individual, estate, trust, sole proprietorship, partnership, association, company, joint-venture, corporation, labor organization, State or local governmental unit or instrumentality of such governmental unit, or a charitable, educational, or other such institution, but does not include a foreign corporation in a foreign country, a foreign government, or an organization that includes within its membership foreign governments.

"Person aggrieved" means a person to whom IRS or the Office of Chief Counsel for the IRS has issued an interpretation or ruling which is contrary to the position asserted by the person seeking the

interpretation or ruling and who has exhausted his administrative remedies within IRS.

"Regulation" means a regulation promulgated by the Council which appears in Chapter I of Title 6, Code of Federal Regulations.

§ 105.3 Representation.

(a) A person may take any action or make any appearance which is required or permitted by this part on his own behalf, or he may be represented by any natural person, age 21 years or older, whom he has designated to represent him. Such designation shall be in writing and signed by the person legally authorized to so designate and shall be filed with the Council.

(b) Persons acting in a representative capacity before the Cost of Living Council may be barred from appearances before the Council for disreputable conduct which includes, but is not limited to, the following:

(1) Filing false or altered documents, affidavits, financial statements, and other papers.

(2) Willfully making false or misleading representations either orally or in writing.

(3) Using intemperate or abusive language or engaging in obnoxious conduct before the Council or its representative.

§ 105.4 Filing of documents.

A document required to be filed directly with the Council under this chapter is considered filed if it has been received at Council Offices, New Executive Office Building, Washington, D.C. 20507. Documents received after regular business hours are deemed filed the next regular business day.

§ 105.5 Computation of time.

Except as otherwise provided by law, in computing any 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 designated period of time begins to run shall not be counted.

(a) If the last day of the period falls on a Saturday, Sunday, Federal legal holiday, or other nonbusiness day, the period shall be extended to the next day which is not a Saturday, Sunday, Federal legal holiday, or other nonbusiness day.

(b) If the period prescribed or allowed is 7 days or less an intervening Saturday, Sunday, or Federal legal holiday shall not be counted.

§ 105.6 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) Service by registered or certified mail is complete upon mailing.

§ 105.7 Extensions of time.

Where 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.

§ 105.8 Subpoenas; witness fees.

The Director of the Council or a Hearing Officer may issue subpoenas on written application of a party to the proceedings or on his own motion.

(a) A subpoena 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 subpoena may be served by any person who is not a party and is not less than 18 years of age.

(c) The original subpoena bearing a certificate of service shall be filed with the Council.

(d) A witness subpoenaed by any party shall be paid the same fees and mileage as are paid for like service in the District Courts of the United States. The witness fees and mileage shall be paid by the party at whose instance the subpoena was issued.

§ 105.9 Consolidations.

Upon its own initiative or upon the motion of a party, the Council, the Director of the Council, or the Hearing Officer may consolidate two or more appeals or requests for exception, exemption, or reclasification which involve substantially the same parties or issues which are closely related if it finds that such consolidation will expedite the proceedings.

Subpart B—Appeals From Adverse Actions

§ 105.20 Purpose and scope.

This subpart establishes the rules of the Council governing the conduct of its administrative review proceedings.

(a) The Council has jurisdiction to consider and decide appeals from adverse actions issued by IRS or Office of the Chief Counsel for the IRS.

(b) The Council may review all relevant questions of law and fact.

(c) Review will be limited to the material evidence in the record before the IRS or Office of Chief Counsel for the IRS, at the time of the latter's action, except as otherwise directed by the Council.

§ 105.21 Who may appeal.

Any person aggrieved by an adverse action of IRS or the Office of the Chief Counsel for the IRS issued pursuant to Part 401 of this title and relating to Chapter I of this title.

§ 105.22 Where to file appeal.

An appeal shall be filed with the Cost of Living Council, New Executive Office Building, Washington, D.C. 20507, and a copy of the appeal and briefs or other supporting documents shall be sent to the IRS official who issued the adverse action being appealed.

§ 105.23 When to file appeal.

An appeal must be filed within 30 days of service by IRS or Office of the Chief Counsel for IRS of the adverse action upon which the appeal is based. The appellant must have exhausted his administrative remedies within the IRS before filing an appeal.

§ 105.24 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 Council;

(3) A copy of the adverse action appealed from;

(4) A concise statement of the facts and contentions;

(5) A statement of the grounds for review and relief requested; and,

(6) A statement that a copy of the appeal has been sent to the official who issued the adverse action.

(b) Appeals may be accompanied by briefs.

§ 105.25 Obtaining record.

(a) Upon receipt of a copy of an appeal, the official who took the adverse action on the subject of the appeal will forward to the Council the record in the matter.

(b) This record, together with the appeal and briefs, if any, and any statement submitted by IRS, or the Office of the Chief Counsel for IRS, will constitute the record on appeal.

(c) The Council may request any additional evidence it deems necessary.

§ 105.26 Screening of appeals.

(a) The Council will determine whether the appeal contains a prima facie showing that the adverse action was erroneous in law or in fact.

(b) Where the Council determines that the appellant has failed to make such a prima facie showing, the Council may summarily reject the appeal, notifying the appellant of its action, and advise him that he has exhausted his administrative remedies, and that he may be entitled to judicial review under the Act.

(c) Where the Council determines that the appellant has made such a prima facie showing, it will proceed in accordance with the provisions of §§ 105.27 and 105.28.

§ 105.27 Hearing.

(a) If the Council in its dicretion deems that a hearing is advisable, it will direct that a hearing be held before a Hearing Officer or before the Council in the first instance.

(b) Where a hearing has been directed in accordance with paragraph (a) of this section, it will be conducted within 14 days after written notice to the appellant at such time and place as the Council may direct.

(c) Where a hearing is conducted in accordance with this section, the appellant may present oral argument and submit such additional documentary evidence as the Council or the Hearing

Officer deems necessary to fully disclose the position of the appellant.

(d) Within 14 days after the close of the hearing, the Hearing Officer will submit to the Council a report and any recommendation he deems appropriate with respect to the appellant's request for relief.

§ 105.28 Decision by Council.

When administratively feasible, within 14 days of receipt of an appeal or within 14 days of receipt of a Hearing Officer's report where a hearing has been directed, or as soon thereafter as practicable—

(a) Where the Council grants the relief requested it will serve upon the applicant and any other party to the proceeding a written copy of its decision and the bases therefor.

(b) Where the Council denies the relief requested, in whole or in part, it will serve upon the appellant and any other party to the proceeding a written copy of its decision and the basis therefor, and advise the appellant that he has exhausted his administrative remedies and may be entitled to judicial review under the Act.

Subpart C—Requests for Exception, Exemption and Reclassification

§ 105.30 Purpose and scope.

(a) Requests for exception or exemption are initiated pursuant to Subpart D of Part 401 of this title.

(b) Requests for reclassification must be filed with the Director of the Cost of Living Council, New Executive Office Building, Washington, D.C. 20507.

(c) This subpart establishes the rules of practice of the Council governing initial action on requests for exception, exemption and reclassification and reconsideration of denials of such requests, in whole or in part.

§ 105.31 Initial action by Council.

Initial action on a request for exception, exemption or reclassification will be considered by the Council. After considering the record, the Council will issue a decision in writing directed to the person filing the request for exception, exemption, or reclassification setting forth its decision and the basis therefor.

(a) Where the Council grants a request for an exception, exemption, or reclassification it will serve upon the appellant a copy of its decision.

(b) Where the Council refuses to grant an exception, exemption, or reclassification in whole or in part, it will—

(1) Serve upon the appellant a copy of its decision;

(2) Advise him that he may request reconsideration of the Council's denial pursuant to §§ 105.32 through 105.38 or, that he may be entitled to judicial review under the Act after the expiration of 30 days.

§ 105.32 Scope of review.

The Council shall reconsider its refusal to grant an exception, exemption, or reclassification if the request makes a prima facie showing by the applicant that the Council's initial action was erroneous in law or in fact.

(a) Where the Council determines that the request for reconsideration has failed to make a prima facie showing, the Council may summarily reject the request for reconsideration notifying the appellant of its action, and advise him that he has exhausted his administrative remedies, and that he may be entitled to judicial review under the Act.

(b) Where the Council determines that the appellant has made a prima facie showing, it will proceed in accordance with the provisions of §§ 105.33 through 105.38.

§ 105.33 Who may request reconsideration.

A person whose request for exception, exemption, or reclassification was denied in whole or in part may request reconsideration.

§ 105.34 Where to file.

A request for reconsideration shall be addressed to the Cost of Living Council, New Executive Office Building, Washington, D.C. 20507.

§ 105.35 When to file.

A request for reconsideration must be filed within 30 days of service of the decision refusing to grant the exception, exemption or reclassification.

§ 105.36 Contents.

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; and,

(d) Be accompanied by briefs, if any.

§ 105.37 Hearing.

(a) If the Council in its discretion deems that a hearing is advisable, it will, within 14 days of receipt of the request for reconsideration, direct that an informal hearing be held before a Hearing Officer.

(b) Where a hearing has been directed in accordance with paragraph (a) of this section, it will be conducted within 14 days after written notice to the appellant at such time and place as the Council may direct.

(c) Where 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 deems necessary to fully disclose the position of the appellant.

(d) Within 14 days after the close of the hearing, the Hearing Officer will submit to the Council his report and any recommendation he deems appropriate with respect to the appellant's request for reconsideration.

§ 105.38 Decision by Council.

When administratively feasible, within 14 days of receipt of a request for reconsideration or within 14 days of receipt of a Hearing Officer's report where a hearing has been directed, or as soon thereafter as practicable—

(a) Where the Council grants the relief requested it will serve upon the applicant and any other party to the proceeding a written copy of its decision and the basis therefor.

(b) Where the Council denies the relief requested, in whole or in part, it will serve upon the appellant and any other party to the proceeding a written copy of its decision and the basis therefor, an advise the appellant that he has exhausted his administrative remedies and may be entitled to judicial review under the Act.

Subpart D—Public Comments on Cost of Living Council Regulations and Rulings

§ 105.40 Purpose and scope.

(a) The provisions of 5 U.S.C. section 553 will be followed for the issuance of all regulations or amendments to regulations by the Council, to the extent such provisions apply.

(b) In addition, the Council will accept written comments from members of the public on its regulations or on its published rulings at any time. If in the opinion of the Council such comments warrant a proceeding similar to a rule making proceeding as provided by 5 U.S.C. section 553, the Council will conduct such a proceeding, pursuant to notice published in the FEDERAL REGISTER.

§ 105.41 Where to file.

A written comment shall be filed with the Council, New Executive Office Building, Washington, D.C. 20507.

Subpart E—Hearing Officer

§ 105.50 Appointment of Hearing Officer.

Where a hearing is directed, it will be presided over by a Hearing Officer appointed by the Director of the Council.

§105.51 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.

§ 105.52 Powers and duties of the Hearing Officer.

(a) A Hearing Officer shall 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 Council; 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 Council from his decision may be filed; or

(2) Upon transmission to the Council of his report and recommendation with the record of the hearing conducted in behalf of the Council.

[FR Doc.72-8305 Filed 5-31-72;11:33 am]

Chapter III—Price Commission

PART 300—PRICE STABILIZATION

Interim Rate Requests by Public Utilities

The purpose of this amendment is to revise paragraph (i) of § 300.16a of the Price Commission's regulations pertaining to interim rate increases by public utilities.

On March 18, 1972 (37 F.R. 5701) the Price Commission published a new regulation (§ 300.16a) governing rate increase requests for public utilities. Paragraph (i) of that section stated that the Price Commission intended to issue further regulations prescribing the conditions under which interim rates would be treated. The paragraph also provided that those regulations, when issued, would "apply to increases authorized under this paragraph as well as to increases authorized after the regulations are issued."

The new paragraph (i) would not apply to rate requests involving increases in a public utility's annual revenues from its utility operations by less than $5 million, or to those specially exempted by the regulations of a State or Federal regulatory agency, specifically applicable to interim rates, which have been approved by the Price Commission. It provides for differing treatment of interim rate requests depending on the time of the request, and depending on the status of the State or Federal regulatory agency with respect to certification under paragraph (d) of § 300.16a.

Because the purpose of this amendment is to provide immediate guidance and information on the price stabilization rules in effect for interim rates and to provide further clarification and amplification with respect to those rates, it is hereby found that notice and public procedure therein is impracticable and that good cause exists for making it effective less than 30 days after publication.

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

In consideration of the foregoing, § 300.16a of Title 6, Code of Federal Regulations is amended as set forth below, effective June 1, 1972.

Issued in Washington, D.C., on May 26, 1972.

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

Paragraph (a)(2)(ii) of § 300.16a is amended by striking out the word "In" at the beginning thereof and inserting the words "Except for interim rates, in" in place thereof and paragraph (i) of § 300.16a is amended to read as follows:

§ 300.16a Public utility prices not subject to § 300.16; proposed rules by regulatory agencies for public utility price increases.

* * * * *

(i) *Interim rates.* Each public utility that places or continues on interim rate in effect shall comply with the applicable subparagraphs of this paragraph.

(1) *Definition.* For the purposes of this paragraph "interim rate" means an increased rate allowed to go into effect by operation of law, or by action or inaction of a regulatory agency, pending a final determination by that agency on the requested increase. A rate may be an interim rate whether or not it is placed in effect subject to accounting and refund.

(2) *Applicability.* This paragraph applies to all interim rate requests except for any interim rate that increases or would increase the revenues of a public utility from its utility operations by less than a rate of $5 million per annum. However, if a regulatory agency issues regulations setting standards for minimum amounts below which this paragraph will not apply to public utilities under its jurisdiction, and the Price Commission approves those regulations, then this paragraph will not apply to any case in which the increase in a public utility's annual revenues from its utility operations is below the minimum stated in those regulations.

(3) *Certain interim rates continued or placed in effect after March 19, 1972.* Each public utility that continues or places an interim rate in effect after March 19, 1972, before the Price Commission issues a certificate to the regulatory agency concerned under paragraph (d) of this section, and before June 1, 1972, shall—

(i) Furnish in writing to the regulatory agency concerned, with a copy to the Price Commission, a statement that the interim rate complies with the criteria in paragraph (c) (1) through (5) of this section; and

(ii) Furnish to the Price Commission proof of publication, in a newspaper of general circulation in the area affected by the interim rate, of a statement that the interim rate request and supporting data has been filed with the regulatory agency and that members of the public may request a public proceeding on the increase to the extent provided by the regulatory agency's rules of practice and procedure.

(4) *Interim rates after May 31, 1972, and before certification of regulatory agency.* An interim rate which is authorized by a regulatory agency, or otherwise allowed, to be placed in effect after May 31, 1972, and before the Price Commission issues a certificate under paragraph (d) of this section to the regulatory agency concerned, may not be placed in effect until—

(i) The regulatory agency has suspended the interim rate for the maximum period authorized by law, unless otherwise required for emergency reasons so found in an order of that agency; or unless the interim rate represents a price increase of the same or lesser amount than a previously filed rate for the same service which has already been suspended for the maximum period;

(ii) The public utility has furnished in writing, to the regulatory agency, with a copy to the Price Commission, a statement that the rate complies with the criteria in paragraph (c) (1) through (5) of this section; and

(iii) The public utility has furnished to the Price Commission proof of publication, in a newspaper of general circulation in the area to be affected by the interim rate request, of a statement that the interim rate and supporting data have been filed with the regulatory agency and that members of the public may request a public proceeding on the increase to the extent provided by the regulatory agency's rules of practice and procedure. However, the regulatory agency may authorize a different method of notice to the public, if that different method is approved by the Price Commission.

(5) *Interim rates applied for after certification of regulatory agency.* An interim rate which is authorized by a regulatory agency, or otherwise allowed, to be placed in effect after the Price Commission has issued a certificate to that regulatory agency under paragraph (d) of this section may not be placed in effect until—

(i) The regulatory agency has suspended the interim rate for the maximum period authorized by law, unless otherwise required for emergency reasons

so found in an order of that agency; or unless the interim rate represents a price increase of a lesser amount than a previously filed rate for the same service which has already been suspended for the maximum period;

(ii) The public utility has furnished, in writing, to the regulatory agency a statement that the request complies with the regulations adopted by that agency pursuant to paragraph (d) of this section; and

(iii) The public utility has furnished to the regulatory agency proof of publication, in a newspaper of general circulation in the area to be affected by the interim rate request, of a statement that the interim rate and supporting data have been filed with the regulatory agency and that members of the public may request a public proceeding on the increase to the extent provided by the regulatory agency's rules of practice and procedure. However, the regulatory agency may authorize a different method of notice to the public, if that different method is approved by the Price Commission.

* * * * *

[FR Doc.72-8288 Filed 5-31-72;8:56 am]

PART 300—PRICE STABILIZATION

Loss or Low Profit Firms

The purpose of this amendment is to revise § 300.31, and add a new § 300.32, to the regulations of the Price Commission. The purpose of the revision of § 300.31 (applicable to manufacturers, retailers, and wholesalers) is to allow these firms to qualify on the basis of loss or low profit during their current fiscal year, to change prenotification and reporting requirements for firms which elect that option, and to insert certain pay limitations similar to those which will be applicable to service organizations, as discussed below.

The new § 300.32 is intended to provide relief to certain service organizations which had a profit margin of less than 1 percent during their most recent fiscal or their alternate fiscal year, or can demonstrate that they will have such a profit margin for their current fiscal year. The new section makes it possible for such firms to increase prices, without regard to the regulations governing allowable price increases, to the extent necessary to achieve a profit margin of 1 percent in the current fiscal year.

The new section extends to such service organizations as construction contractors relief similar to that formerly applicable only to manufacturers, retailers, and wholesalers by virtue of § 300.31. The § 300.32 applies to all service organizations except public utilities, milk producers, providers of health services, insurers, and public benefit corporations, and cooperatives.

Under the new § 300.32 the salaries and other compensation paid to each of the principal officers or employees or officers or employees who are owners or relatives of owners of covered service organizations are in each case limited under the new section to the salary and compensation level of the firm's most recent fiscal year plus 5.5 percent.

A provision has been added to § 300.31 to require that a firm may qualify thereunder only if, during its most recently ended fiscal year, it did not obtain more than 10 percent of its revenues from the providing of services. This does not, however, revoke the election of any firm to come under § 300.31 made before June 1, 1972, if that election was valid when made. Firms making the election after May 31, 1972, will be required to meet the requirement.

A similar provision has been inserted in § 300.32 to limit its application to service organizations which, during their most recently ended fiscal year, obtained at least 90 percent of their revenues from the furnishing of services.

The Commission is aware that, although the new § 300.32 extends to certain service organizations loss and low profit relief previously available only to manufacturers, retailers and wholesalers, there remain some "mixed" firms comprised of both service and manufacturing/retailing/wholesaling functions for which no loss or low profit relief will be available under § 300.31 or § 300.32. Therefore, it is the Commission's intention to issue, as soon as possible, additional regulations which would provide a formula for further broadening the availability of loss and low profit relief. In the meantime, a firm which does not qualify under § 300.31 or § 300.32 but feels that its situation nevertheless warrants relief may apply for an exception.

Because the purpose of this amendment is to provide immediate guidance and information as to the price stabilization rules in effect for certain service organizations having losses or low profits, it is hereby found that notice and public procedure thereon is impracticable and that good cause exists for making it effective less than 30 days after publication.

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

In consideration of the foregoing, Part 300 of Title 6 of the Code of Federal Regulations is amended as set forth below, effective June 1, 1972.

Issued in Washington, D.C., on May 26, 1972.

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

1. Section 300.31 is revised to read as follows:

§ 300.31 Low profit firms: manufacturers, wholesalers, and retailers.

(a) *Definition.* For the purposes of this section, "low profit firm" means any manufacturer, retailer, or wholesaler which, during its most recently ended fiscal year did not obtain more than 10 percent of its revenues from the providing of services, and which—

(1) During its most recently ended fiscal year or during its alternative fiscal year computed in accordance with paragraph (c) of this section had during that fiscal year—

(i) Net sales of less than $1 million and a profit margin which was less than 3 percent; or

(ii) Net sales of $1 million or more and a profit margin which was less than the percentage set forth in column B of the table in paragraph (b) of this section, corresponding to the firm's capital turnover ratio; or

(2) Has estimated, and has prepared supporting documentation, that it will have for its current fiscal year—

(i) Net sales of less than $1 million and a profit margin of less than 3 percent; or

(ii) Net sales of $1 million or more and a profit margin of less than the percentage set forth in column B of the table in paragraph (b) of this section, corresponding to the firm's capital turnover ratio.

(b) *Table.* For the purposes of this section, 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 nonoperating income). For the purposes of this section, only "covered" activities (as defined in Part II of the instructions to Form PC-50 in Appendix II) are included. The average total capital for any fiscal year is computed by adding the outstanding total capital at the beginning of that fiscal year to the outstanding total capital at the end of that fiscal year, and dividing by 2:

Column A *Capital turnover ratio*	*Column B* *Applicable profit margin (percent)*
Less than 3.4	3.0
3.4 or more, but less than 3.6	2.9
3.6 or more, but less than 3.7	2.8
3.7 or more, but less than 3.8	2.7
3.8 or more, but less than 4.0	2.6
4.0 or more, but less than 4.2	2.5
4.2 or more, but less than 4.3	2.4
4.3 or more, but less than 4.5	2.3
4.5 or more, but less than 4.8	2.2
4.8 or more, but less than 5.0	2.1
5.0 or more, but less than 5.3	2.0
5.3 or more, but less than 5.6	1.9
5.6 or more, but less than 5.9	1.8
5.9 or more, but less than 6.3	1.7
6.3 or more, but less than 6.7	1.6
6.7 or more, but less than 7.1	1.5
7.1 or more, but less than 7.7	1.4
7.7 or more, but less than 8.3	1.3
8.3 or more, but less than 9.1	1.2
9.1 or more, but less than 10.0	1.1
10.0 or more, but less than 11.1	1.0
11.1 or more, but less than 12.5	0.9
12.5 or more, but less than 14.3	0.8
14.3 or more, but less than 16.7	0.7
16.7 or more, but less than 20.0	0.6
20.0 or more, but less than 25.0	0.5
25.0 or more, but less than 33.3	0.4
33.3 or more, but less than 50.0	0.3
50.0 or more	0.2

(c) *Base period low profit-alternative fiscal year.* Any manufacturer, retailer, or wholesaler may compute an average fiscal year for use as an alternative fiscal year for the purposes of paragraph (a) of this section by combining and

dividing by 2 the net sales and the average total capital, respectively, for any two of that firm's base period years.

(d) *General.* Notwithstanding § 300.12 or § 300.13, but subject to paragraphs (e) and (f) of this section, a low profit firm may increase any of its prices by an amount reasonably calculated to result in a profit margin that does not exceed its applicable profit margin by the end of the third fiscal quarter following the fiscal quarter in which the prices are increased. For firms covered by paragraph (a)(1)(i) or (2)(i) of this section, the applicable profit margin is 3 percent. For firms covered by paragraph (a)(1)(ii) or (2)(ii) of this section, the applicable profit margin is that set forth in column B of the table in paragraph (b) of this section.

(e) *Price limitations.* No manufacturer may in the course of any of its fiscal years, increase the price of any of its products under this section by more than 8 percent of the base price or the price which was legally in effect on the day before the day on which the firm elected to be subject to this section, whichever is higher. No retailer or wholesaler may, in the course of any of its fiscal years, increase the price of any of its products under this section by an amount resulting in an increase of more than 8 percent in the customary initial markup in effect on the day before the day on which the firm elected to be subject to this section.

(f) *Pay limitations.* No firm may qualify as a low profit firm if during its current fiscal year, and for as long as it continues to use this section as a basis for further increasing any price, it pays or credits to any of its principal officers or employees or any of its officers or employees who are owners or relatives of owners of the firm a rate of salary or other compensation or benefit which exceeds the rate of salary or other compensation or benefit it paid or credited to each of those officers or employees during its most recent fiscal year, plus 5.5 percent for each year thereafter.

(g) *Reporting—prenotification and reporting firms.* Each prenotification or reporting firm intending to increase its prices under this section shall, in addition to complying with the reporting requirements of § 300.51 or § 300.52, as the case may be, and before increasing any price under this section, furnish to the Price Commission sufficient financial data to support its loss or low profit position. Such a firm may increase prices under this section after 30 days following the date of the receipt of that financial data by the Price Commission unless, during that 30-day period, the Commission suspends or disapproves that action.

(h) *Firms other than prenotification or reporting firms—reporting.* A price category III firm (as defined in Part 101 of this title) that wishes to qualify under paragraph (a) of this section shall, before increasing any price under this section, prepare sufficient financial data to support its loss or low profit position and shall have that data incorporated in a notarized statement.

(i) *Persons to which section does not apply.* This section does not apply to any service organization covered by § 300.14; any public utility covered by § 300.16 or § 300.16a; any milk producer covered by § 300.17; any provider of health services covered by § 300.18 or § 300.19; any insurer covered by § 300.20; any public benefit corporation covered by § 300.51 (k); or any cooperative organized under the laws of the United States or any State or the District of Columbia.

(j) *Savings provisions.* This section does not affect any action taken by any firm before June 1, 1972, that was valid under this section as it existed on the date that action was taken. However, any action taken by any firm with respect to increasing prices, after May 31, 1972, on the basis of a loss or low profit margin, must conform to this section, as in effect on June 1, 1972.

2. The following new section is added after § 300.32:

§ 300.32 Low profit firms: certain service organizations.

(a) *Definition.* For the purposes of this section, "low profit firm" means any service organization which, during its most recently ended fiscal year, obtained at least 90 percent of its revenues from the furnishing of services, and which—

(1) During its most recently ended fiscal year or during its alternative fiscal year computed in accordance with paragraph (b) of this section, had a profit margin which was less than 1 percent; or

(2) Has estimated, and has prepared supporting documentation that it will have for its current fiscal year, a profit margin of less than 1 percent.

(b) *Base period low profit-alternative fiscal year.* Any service organization may compute an average fiscal year use as an alternative fiscal year for the purposes of paragraph (a) of this section by combining and dividing by 2 the net sales and the average total capital, respectively, for any two of that firm's base period years.

(c) *General rule.* Notwithstanding any other provision of this part, a low profit firm may increase any of its prices by an amount reasonably calculated to result in a profit margin of not to exceed 1 percent by the end of the third fiscal quarter following the fiscal quarter in which the prices are increased. However, no service organization shall qualify as a low profit firm if during its current fiscal year, and for as long as it continues to use this section as a basis for increasing any price, it pays or credits to any of its principal officers or employees or any of its officers or employees who are owners or relatives of owners of the service organization a rate of salary and other compensation or benefit which exceeds the rate of salary and other compensation or benefit it paid or credited to each of such officers or employees during its most recent fiscal year, plus 5.5 percent for each year thereafter.

(d) *Reporting—prenotification and reporting firms.* Each prenotification or reporting firm intending to increase its prices under this section shall, in addition to complying with the reporting requirements of § 300.51, or § 300.52, as the case may be, and before increasing any price under this section, furnish to the Price Commission sufficient financial data to support its loss or low profit position. Such a firm may increase prices under this section after 30 days following the date of the receipt of that financial data by the Price Commission unless, during that 30-day period, the Commission suspends or disapproves that action.

(e) *Firms other than prenotification or reporting firms—reporting.* A price category III firm (as defined in Part 101 of this title) that wishes to qualify under paragraph (a) of this section shall, before increasing any price under this section, prepare sufficient financial data to support its loss or low profit position and shall have that data incorporated in a notarized statement.

(f) *Persons to which section does not apply.* This section does not apply to any manufacturer covered by § 300.12, any wholesaler or retailer covered by § 300.13, any public utility covered by § 300.16 or § 300.16a, any milk producer covered by § 300.17, any provider of health services covered by § 300.18 or § 300.19, any insurer covered by § 300.20, any public benefit corporation covered by § 300.51 (k), or any cooperative organized under the laws of the United States or any State or the District of Columbia.

§ 300.53 [Amended]

3. By inserting the reference "§ 300.32," immediately after the reference to "§ 300.31," in paragraph (a) of § 300.53.

§ 300.54 [Amended]

4. By striking out the reference to "§ 300.31," in paragraph (a) of § 300.54 and inserting a reference to "§ 300.31 or 300.32," in place thereof.

[FR Doc.72-8287 Filed 5-31-72;8:56 am]

PART 301—RENT STABILIZATION

8 Percent Ceiling on Certain Rent Increases

The purpose of this amendment is to add a new § 301.210 to the rent regulations of the Price Commission. The new section imposes a ceiling of 8 percent on certain rent increases. In any case in which a lease of longer than 1 year expired after December 29, 1971, or a lease of longer than 1 year expired between August 15, 1971, and December 28, 1971, which was renewed on a month-to-month basis or less, a lessor must offer a tenant the tenant's choice of two options: (1) A lease of the same or longer duration than the expiring lease with the rent calculated under existing regulations or (2) a lease of 1 year or less in which any rent increase would be limited to 8 percent over the May 1971 rent. In the latter option landlords would be allowed to exceed the 8 percent only for increased property taxes, increased municipal service charges, and capital improvements begun before June 1, 1972. The new section also provides for the form of the notice

to be supplied to the tenant to set forth the options which the tenant may elect.

Because the purpose of this amendment is to provide immediate guidance and information as to the rent stabilization program, and for its effective implementation, it is hereby found that notice and public procedure thereon is impracticable and that good cause exists for making it effective less than 30 days after publication.

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

In consideration of the foregoing, Part 301 of Title 6 of the Code of Federal Regulations is amended by adding a new § 301.210 after § 301.209; as set forth below, effective June 1, 1972.

By direction of the Commission, issued in Washington, D.C., on May 30, 1972.

W. DAVID SLAWSON,
General Counsel.

§ 301.210 Residences or other real property which became occupied before May 15, 1971, under a lease of greater than 1 year's duration.

(a) *Applicability.* Notwithstanding any other provision of this part, the base rent (except for the base rent of decontrolled units provided for by § 301.106(e)) of the following residences or other real property shall be determined as provided in this section:

(1) Those which became occupied before May 15, 1971, under a lease of greater than 1 year which expired after December 28, 1971 (whether or not that residence or other real property became occupied after December 28, 1971).

(2) Those which became occupied before May 15, 1971, under a lease for a period of greater than 1 year which expired during the period beginning on August 15, 1971, and ending on December 28, 1971, and such residence or other real property became occupied after December 28, 1971, under a lease with month-to-month or lesser duration.

(b) *Determination of base rent.* In any case in which a lessor offers to lease, or is leasing, a residence or other real property to which the section applies, he shall offer the following options to the present or a new lessee:

(1) A lease of equal or greater duration than the expiring lease referred to in subparagraph (1) or (2) of paragraph (a) of this section which provides for a monthly rent not to exceed that allowable by the application of subparts B and C of this part.

(2) A lease of 1 year or less, as specified by the lessee, which provides for a monthly rent, which, including the amount of the increase resulting from the application of § 301.206, the allowable rent increase provided by § 301.102(a)(1), and any increase for capital improvements (began after May 31, 1972) under § 301.103, but excluding allowable cost increases provided by § 301.102(a)(2), does not exceed the monthly rent charged for the most recent rent payment interval before May 15, 1971, plus 8 percent.

If option (1) is elected, the base rent of the residence or other real property shall be the base rent determined under subpart C of this part. If option (2) is elected, the base rent shall be the rent specified in the lease, less allowable cost increases provided by § 301.102(a)(2), the allowable rent increase provided by § 301.102(a)(1), and any increase for capital improvements under § 301.103.

(c) *Effective date of options*—(1) *New lessees.* The term of the lease offered to a new lessee under the options specified in paragraphs (b)(1) and (2) of this section shall begin on the date the lessee acquires possession. The rent specified in that lease shall be effective beginning with the first rent payment interval of the lease.

(2) *Renewal lessees.* The term of the lease offered to a renewal lessee under the option specified specified in paragraph (b)(1) or (2) of this section shall begin with the date specified in the notice provided under paragraph (e) of this section. The rent specified in the lease offered to a renewal lessee under either option shall become effective for the first rent payment interval of the lease beginning after June 30, 1972.

(d) *Notification.* Before a transaction under this section, the lessor shall notify the lessee of the lessee's options, in writing, in conformance with paragraph (e) of this section. However, after such date as the Price Commission or its authorized representative issues a form to be used for that purpose, the notification may be made on that form. In all cases where a written lease is in effect, the lessor shall prepare a new written lease that conforms to the options chosen by the tenant in the notice under paragraph (e) of this section.

(e) The notice required by paragraph (d) of this section shall be as follows:

LEASE NOTIFICATION ADDENDUM

_____
(Date)

To: (Insert tenant's name and address.)

Our records show the expiration date of the lease on your rental unit as _____. Your notification of rent increase (attached or furnished to you on _____) is computed under the rent regulations and is more than 8 percent, excluding increases for real estate taxes, allowable municipal service charges, and capital improvement begun before June 1, 1972. Therefore, if you wish to rent this unit, the Federal Rent Stabilization Regulations require us to offer you the following options:

1. You many lease this unit for $ _____ a month, for 1 year or less, at your option.

2. You may lease this unit for $ _____ a month, according to the calculation furnished to you in the notification of rent increase, but for a term of _____ years which is the same length as (or longer than) the prior lease. The effective date of the lease is _____.

The monthly rent in the first option is calculated as follows:

Monthly rent for most recent rent payment interval before May 15, 1971	$_____
8 percent of above amount	×_____
	=_____
Increased property taxes, and allowable municipal service charges (if any)	+_____
Capital improvements begun before June 1, 1972 (if any)	+_____
New rent	=_____

Please advise us of your choice by _____. Check the box below that shows which option you choose, sign in the space provided, and return this notice to us at the address shown.

Sincerely yours,

_____
(Signature and address of lessor)

Please check which option you prefer

☐ I chose option 1 for a term of _____ months, to begin with the next rent pay-this interval.

☐ I chose option 2. ☐ I do not want to lease this unit.

_____ _____
(Signature of lessee) (Date)

Special provisions for tenants who executed leases between December 29, 1971, and June 1, 1972

If you choose option 1, your rent will be reduced with the first rent payment after June 30, 1972. However, under the Federal Rent Stabilization Regulations, you are not entitled to a refund of any previous increase in that rent that exceeded the 8 percent limitation for any period before July 1, 1972.

If you choose option 2, your monthly rent will remain the same; however, the term of your lease will be the same or for a longer period.

[FR Doc.72-8341 Filed 5-31-72;8:57 am]

Proposed Rule Making

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR Part 1]

INCOME TAX

Arbitrage Bonds; Notice of Hearing

Proposed regulations under section 103(d) of the Internal Revenue Code of 1954, relating to arbitrage bonds, appear in the FEDERAL REGISTER for June 1, 1972 (37 F.R. 10946).

A public hearing on the provisions of the proposed regulations will be held on August 22, 1972, at 10 a.m., e.d.s.t., and if necessary, will continue on August 23, 1972, beginning at 10 a.m. in Room 3313, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC 20224.

The rules of § 601.601(a)(3) of the Statement of Procedural Rules (26 CFR Part 601) shall apply with respect to such public hearing. Copies of these rules may be obtained by a request directed to the Commissioner of Internal Revenue, Attention: CC:LR:T, Washington, D.C. 20224, or by telephoning (Washington, D.C.) 202—964–3935. Under such section 601.601(a)(3), persons who have submitted written comments or suggestions within the time prescribed in the notice of proposed rule making and who desire to present oral comments at such hearing should by August 8, 1972, submit an outline of the topics and the time they wish to devote to each topic. Such outlines should be submitted to the Commissioner of Internal Revenue, Attention: CC:LR:T Washington, D.C. 20224.

Persons who desire a copy of such written comments or suggestions or outlines and who desire to be assured of their availability on or before the beginning of such hearing should notify the Commission, in writing, at the above address by August 15, 1972. In such a case, unless time and circumstances permit otherwise, the desired copies are deliverable only at the above address. The charge for copies is twenty-five cents ($0.25) per page, subject to a minimum charge of $1.

LEE H. HENKEL, Jr.,
Acting Chief Counsel.

[FR Doc.72-8279 Filed 5-26-72;4:42 pm]

Internal Revenue Service

[26 CFR Part 1]

INCOME TAX

Arbitrage Bonds

Notice is hereby given that the regulations set forth in tentative form in the attached appendix are proposed to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury or his delegate. Pror to the final adoption of such regulations, consideration will be given to any comments or suggestions pertaining thereto which are submitted in writing (preferably six copies) to the Commissioner of Internal Revenue, Attention: CC:LR:T, Washington, D.C. 20224, by July 25, 1972. Any written comments or suggestions not specifically designated as confidential in accordance with 26 CFR 601.601(b) may be inspected by any person upon written request. Any person submitting written comments or suggestions who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his request, in writing, to the Commissioner by July 25, 1972. A public hearing will be held, and notice of the time, place, and date is simultaneously published herewith. The proposed regulations are to be issued under the authority contained in sections 103(d) and 7805 of the Internal Revenue Code of 1954 (83 Stat. 656, 68A Stat. 917; 26 U.S.C. 103, 7805).

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

In order to conform the Income Tax regulations (26 CFR Part 1) to certain amendments made to the Internal Revenue Code of 1954 by section 601(a) of the Tax Reform Act of 1969 (83 Stat. 656), relating to arbitrage bonds, such regulations are hereby amended as set forth below. Section 1.103–13 of the regulations hereby adopted supersedes the provisions of § 13.4 of this chapter which were prescribed by T.D. 7072, approved November 7, 1970, and published in the FEDERAL REGISTER for November 13, 1970 (35 F.R. 17406).

PARAGRAPH 1. Section 1.103–1 is amended to read as follows:

§ 1.103–1 Interest upon obligations of a State, Territory, etc.

* * * * *

(b) Obligations issued by or on behalf of any State or local governmental unit by constituted authorities empowered to issue such obligations are the obligations of such a unit. However, section 103(a)(1) and this section do not apply to industrial development bonds except as otherwise provided in section 103(c), or to arbitrage bonds except as otherwise provided in section 103(d). See section 103(c) and §§ 1.103–7 through 1.103–12 for the rules concerning interest paid on industrial development bonds. See section 103(d) and §§ 1.103–13 and 1.103–14 for the rules concerning interest paid on arbitrage bonds. Certificates issued by a political subdivision for public improvements (such as sewers, sidewalks, streets, etc.) which are evidence of special assessments against specific property, which assessments become a lien against such property and which the political subdivision is required to enforce, are, for purposes of this section, obligations of the political subdivision even though the obligations are to be satisfied out of special funds and not out of general funds or taxes. For purposes of this section, the term "political subdivision" denotes any division of any State or local governmental unit which is a municipal corporation, or to which has been delegated the right to exercise part of the sovereign power of the unit. As thus defined, a political subdivision of any State or local governmental unit may or may not include special assessment districts so created, such as road, water, sewer, gas, light, reclamation, drainage, irrigation, levee, school, harbor, port improvement, and similar districts and divisions of any such unit.

PAR. 2. There are inserted immediately after § 1.103–12 the following new sections:

§ 1.103–13 Arbitrage bonds.

(a) *Scope*—(1) *In general.* Under section 103(d)(1), any arbitrage bond shall be treated as an obligation not described in section 103(a)(1) and § 1.103–1. Thus, the interest on an arbitrage bond will be included in gross income and subject to Federal income taxation. In general, arbitrage bonds are obligations issued by a State or local governmental unit, the proceeds of which are reasonably expected to be used to acquire other obligations where the yield on such acquired obligations will be materially higher than the yield on the governmental obligations. The term "arbitrage bond" is defined in paragraph (b)(1) of this section. Under paragraph (a) of § 1.103–14, the investment of all or a portion of the proceeds of an issue of obligations for a temporary period or periods will not cause such obligations to be arbitrage bonds regardless of the yield produced by such investments. Similarly, under paragraph (f) of § 1.103–14, the investment of a portion of the proceeds as a reasonably required reserve or replacement fund will not cause such obligations to be arbitrage bonds regardless of the yield produced by such investments. Even if an obligation is not an arbitrage bond under section 103(d), such bond may nevertheless be treated as an obligation which is not described in section 103(a)(1) and § 1.103–1 if it is an industrial development bond under section 103(c). For regulations as to special issues of Federal Treasury obligations offered to State and local governmental units, see 31 CFR Part 344.

(2) *Reasonable expectations*—(i) Under section 103(d)(2), the determination whether an obligation is an

"arbitrage bond" depends upon the reasonable expectations, as of the date of the issue, with respect to the uses to be made of the proceeds of the issue. Thus, an obligation is not an arbitrage bond if it is reasonably expected on the date of issue that the proceeds of the issue will not be used in a manner that would cause the obligations to be "arbitrage bonds" under section 103(d)(2), this section, and § 1.103–14. Except as provided in subdivision (iv) of this subparagraph, the reasonable expectations with respect to the use of the proceeds of a governmental obligation may be established by either of the methods described in subdivisions (ii) or (iii) of this subparagraph.

(ii) A State or local governmental unit may certify, in the bond indenture or a related document, that on the basis of the facts and circumstances in existence on the date of issue, and set forth in such indenture or related documents, it is not expected that the proceeds of the issue of obligations will be used in a manner that would cause such obligations to be arbitrage bonds. This expectation will be deemed reasonable unless it would be clear, to a reasonably prudent person having the degree of expertise possessed by bond counsel, underwriters, or other persons having specialized knowledge in such fields, that such expectation is not reasonable. A certification by the issuer under this subdivision is not affected by subsequent events which could not have been reasonably expected on the date of issue by such a reasonably prudent person.

(iii) Alternatively, the State or local governmental unit may establish a reasonable expectation by a covenant, to the purchasers of the obligations contained in the bond indenture or a related document, that the issuer will make no use of the proceeds of an issue of obligations which, if such use had been reasonably expected on the date of issue of such obligations, would have caused such obligations to be arbitrage bonds. The covenant must impose an obligation on the issuer to comply with the requirements of section 103(d), this section, and § 1.103–14, throughout the term of the issue. Thus, for example, the State or local governmental unit may establish a reasonable expectation under this subdivision where the facts and circumstances as of the date of issue are not sufficiently clear for a certification under subdivision (ii) of this subparagraph.

(iv) The Commissioner may give notice by publication in the Internal Revenue Bulletin that the statements of certification or the covenants of a State or local governmental unit may not be relied upon with respect to issues of governmental obligations to be issued by it subsequent to the date of publication of such notice. If such notice has been published, neither the certification as to specific expectations described in subdivision (ii) of this subparagraph, nor the covenant described in subdivision (iii) of this subparagraph, may be relied upon with respect to any obligations issued by the State or local governmental unit after the date of such notice unless it is established prior to the date of any subsequent issue to the satisfaction of the Commissioner or his delegate that such certification or covenant may be relied upon. No State or local governmental unit shall be listed in such notice unless the unit has been advised that such a listing is contemplated and such unit has been given an opportunity to consult thereon with the Commissioner or his delegate.

(3) *Effective date.* The provisions of section 103(d) apply with respect to obligations issued after October 9, 1969. See paragraph (b)(7) of this section for definition of the term "date of issue."

(b) *Definitions.* For purposes of this section and § 1.103–14, the following definitions shall apply:

(1) *Arbitrage bonds.* Under section 103(d)(2), an obligation is an arbitrage bond if it is issued by a State or local governmental unit as part of an issue of obligations (for purposes of this section and § 1.103–14 referred to as "governmental obligations") all or a major portion of the proceeds of which are reasonably expected to be used directly or indirectly—

(i) To acquire acquired obligations which may reasonably be expected, on the date of issue of such governmental obligations, to produce an adjusted yield over the term of the issue of such governmental obligations which is materially higher than the adjusted yield on such issue, or

(ii) To replace funds which were used directly or indirectly to acquire such acquired obligations.

A major portion of the proceeds of an issue is invested in materially higher yield acquired obligations if at any time the sum of available proceeds so invested and amounts in a reasonably required reserve or replacement fund is an amount equal to more than 5 percent of the outstanding face amount of the issue at that time. "Available proceeds" of an issue are determined under subparagraph (2)(iv) of this paragraph. The term "materially higher yield acquired obligations" is defined in subparagraphs (4), (5), and (6) of this paragraph. In determining whether a major portion of the available proceeds of an issue is reasonably expected to be used in a manner described in subdivision (i) or (ii) of this subparagraph, investments of the available proceeds of the issue during a temporary period or periods described in paragraph (a) of § 1.103–14 shall be disregarded. For exception as to amounts invested as part of a reasonably required reserve or replacement fund and for the relationship of the amount invested in such a fund to the "major portion" test, see paragraph (f) of § 1.103–14. Adjusted yield is computed under paragraph (c) of this section. For rules with respect to bonds issued to finance certain governmental programs and with respect to exempt arbitrage bonds for educational personnel, see, respectively, paragraphs (d) and (e) of this section. Acquired obligations are defined in subparagraph (4) of this paragraph and are allocated under paragraph (f) of this section to proceeds of governmental obligations.

(2) *Proceeds.* The type of proceeds attributable to an issue of governmental obligations are defined and illustrated as follows:

(i) "Original proceeds" are net amounts (after payment of all expenses of issuing the obligations) received by the State or local governmental unit as a result of the sale of such issue. Examples of issuing expenses are advertising and printing costs, financial advisors' and counsel fees, initial fees of trustees, paying agents, certifying or authenticating agents, and similar expenses.

(ii) Subject to subdivision (v) of this subparagraph, "gross repayment proceeds" at any time are amounts received by the issuer at or prior to such time in respect of property (other than acquired nonpurpose obligations) directly or indirectly financed with any proceeds of such issue. Amounts received in respect of property include, but are not limited to, interest, dividends, and repayments of principal on acquired purpose obligations, rents, tolls, and other revenue, and proceeds from the sale or other disposition of property so financed. Gross repayment proceeds do not include amounts received as payment of taxes which are described in section 164(a). For definitions of the classes of acquired obligations, see subparagraph (4)(iv) of this paragraph.

(iii) "Investment proceeds" at any time are amounts received by the issuer as interest and dividends resulting from the investment of any proceeds of an issue of obligations in acquired nonpurpose obligations, increased by any profits and decreased (if necessary, below zero) by any losses on such investments. Thus, for example, the interest received on acquired Federal obligations purchased with the proceeds of an issue of governmental obligations constitutes investment proceeds of such issue whether or not such acquired obligations represent amounts invested for a temporary period or in a reasonably required reserve or replacement fund under § 1.103–14.

(iv) (*a*) As of any monthly computation date, "available proceeds" of an issue are the aggregate on such date of the proceeds described in subdivisions (i), (ii), and (iii) of this subparagraph, minus the sum, as of such monthly computation date, of:

(*1*) Amounts which constitute a reasonably required reserve or replacement fund for the issue (within the meaning of paragraph (f) of § 1.103–14), and

(*2*) Amounts which have been expended, from any type of proceeds, for the purpose for which the obligations were issued (other than amounts subtracted by reason of (*1*) of this subdivision).

However, the available proceeds of an issue as of any monthly computation date shall not exceed the outstanding face amount of the issue as of such date. The available proceeds determined as of a particular computation date shall be deemed to be the available proceeds of

the issue throughout the period beginning on such computation date and ending on the day before the next computation date.

(b) The "monthly computation dates" of an issue of governmental obligations are its date of issue and the corresponding numerical day in each succeeding calendar month (or if a month has no corresponding day, the last day of such month). However, if the applicable "front-end" temporary period with respect to an issue (within the meaning of paragraph (b) or (c) of § 1.103–14) does not end on the day before a monthly computation date as thus determined, then the day after such temporary period terminates shall be a computation date and thereafter the computation dates shall be the corresponding numerical day in each succeeding calendar month (or if a month has no corresponding day, the last day of such month).

(c) For purposes of (a)(2) of this subdivision, amounts expended for the purpose for which obligations were issued include, for example, construction costs, acquisition costs, portions of any proceeds expended in payment of the debt service (i.e., principal, interest, or both) to the holders of such obligations (as contrasted to a sinking fund payment) and portions of gross repayment proceeds which were reinvested in a project. In addition, amounts expended for the purpose for which obligations were issued include payment of expenses incurred in realizing the gross repayment proceeds and investment proceeds of the issue and of overhead of the State or local governmental unit properly allocable to realizing such proceeds. Such amounts expended may be allocated to the issue using any reasonable method of allocation chosen by the issuer. Amounts placed in escrow are not expended for the purpose for which the obligations were issued until they are released from escrow and expended.

(v) (a) As of any monthly computation date, gross repayment proceeds described in subdivision (ii) of this subparagraph attributable to an issue of obligations shall not exceed the sum of the amounts described in (b) and (c) of this subdivision, whether or not such gross repayment proceeds are accounted for separately. If such gross repayment proceeds are not accounted for separately pursuant to the terms of the bond indenture or related documents, such gross repayment proceeds shall be deemed to be an amount equal to the sum of the amounts described in (b) and (c) of this subdivision.

(b) The amount described in this subdivision (b) as of a monthly computation date is 150 percent of the cumulative ratable monthly debt service on such issue as of such monthly computation date. The ratable monthly debt service is the amount of principal and interest on the issue to be paid after the expiration of the applicable "front-end" temporary period with respect to such issue (described in paragraph (b) or (c) of § 1.103–14) divided by the number of months (including a fraction of a month) in the entire term of the issue excluding such temporary period. The cumulative ratable monthly debt service as of any computation date is the ratable monthly debt service multiplied by the number of whole months elapsed after the end of such temporary period and before such date. For purposes of this subdivision (v), the "entire term of an issue" ends on the latest maturity date of any obligation of the issue (determined without regard to any optional redemption dates) unless the entire term of the issue, so computed, is more than 225 percent of the "average life of the issue" (as determined under paragraph (a)(2)(iii) of § 1.103–14). In such a case, the "entire term of the issue" shall be treated as 225 percent of the average life of the issue.

(c) The amount described in this subdivision is the amount, if any, received by the issuer of such issue of obligations directly or indirectly as a result of the sale or other disposition of property financed directly or indirectly with the proceeds of such issue if the terms of such sale or disposition provide that at least 90 percent of the sale (or other disposition) price of such property will be received within a period equal to 50 percent or less of the entire term of such issue.

(vi) The provisions of this subparagraph may be illustrated by the following examples:

Example (1). City A issues $10 million of 5 percent serial revenue bonds on December 31, 1971, at a premium of $20,000 over the face amount. The bonds mature at a rate of $1 million per year beginning on December 31, 1973. The gross repayment proceeds of the issue are accounted for separately, and the various types of proceeds are computed monthly. These proceeds are set forth on a calendar year basis, as of the dates indicated, in accordance with the facts assumed in the table below:

Issue price		$10,020,000
Less: Issuing expenses		(70,000)
Original proceeds		9,950,000
1972:		
Less: Amount invested in reserve or replacement fund		(1,000,000)
Available proceeds on Dec. 31, 1971		8,950,000
Add investment proceeds:		
Interest received in 1972 on:		
Reserve or replacement fund investments (6.5% × $1 million)	$65,000	
Investments for a temporary period	250,000	315,000
Less: Amount expended during 1972 on project	(8,700,000)	
Interest paid to bondholders for 1972 (5% × $10 million)	(500,000)	(9,200,000)
Available proceeds on Dec. 31, 1972		65,000
1973:		
Add: Gross repayment proceeds for 1973		1,450,000
Add investment proceeds:		
Interest received in 1973 on:		
Reserve or replacement fund investments (6.5% × $1 million)	$65,000	
Annual debt service requirement invested for a temporary period (1,500,000 at 6.5 percent) (see paragraph (d) of § 1.103–14)	97,500	
Available proceeds invested at 5.5 percent	5,000	167,500
Less: Interest and principal paid to bondholders for 1973		1,500,000
Available proceeds on Dec. 31, 1973		182,500
Interest paid to bond-holders for 1972 (5% × $10 million)	(500,000)	(9,200,000)

Example (2). (a) On January 15, 1970, Authority B issues $10 million of serial obligations to be retired pursuant to a semiannual level debt service payment of $400,000 principal and interest on each June 30 and December 31 over a 20-year period beginning in 1973. B has covenanted under paragraph (a)(2)(iii) of this section to the purchasers of the obligations that B will make no use of the proceeds of the issue which, if such use had been reasonably expected on the date of such issue, would have caused such obligations to be arbitrage bonds. The proceeds of the issue are to be used to construct a new sewer system including a sewage treatment facility and the bonds are to be secured by the revenue from the system. The bond indenture requires that the revenues from the system be accounted for separately. Thus, the revenue from the system, limited as described in subdivision (v) of this subparagraph, will be the gross repayment proceeds. No gross repayment proceeds were received during the 3-year temporary period ending on January 14, 1973, for a construction project under paragraph (b)(1) of § 1.103–14. Since the 23-year term of the issue does not exceed 225 percent of the average life of the issue, the "entire term of the issue" is 23 years; and for purposes of subdivision (v)(b) of this subparagraph, the maximum amount of gross repayment proceeds at the end of any month is 150 percent of the cumulative ratable monthly debt service on the issue. Thus, for example, the maximum amount of gross repayment proceeds as of the first computation date following termination of the temporary period is $100,000 (150 percent of (40 payments × $400,000) ÷ 240 months). The cumulative gross repayment proceeds on the last day of each of the first 12 months following the termination of the 3-year temporary period are set forth in column (3) of the table below, on the basis of the additional facts assumed.

[Amounts shown in thousands]

Date	(1) Actual amount described in subdivision (ii) of this subparagraph	(2) 150% of cumulative ratable monthly debt service	(3) Cumulative gross repayment proceeds (lower of (1) or (2))
2-15-73	$50	$100	$50
3-15-73	125	200	125
4-15-73	185	300	185
5-15-73	310	400	310
6-15-73	450	500	450
7-15-73	575	600	575
8-15-73	705	700	700
9-15-73	840	800	800
10-15-73	915	900	900
11-15-73	980	1000	980
12-15-73	1100	1100	1100
1-15-74	1245	1200	1200

(Note that if the bond indenture did not require that the revenues from the system be accounted for separately, the cumulative gross repayment proceeds on each date would be deemed to be the amount shown in column (2)).

(b) The available proceeds on the last day of each month of the 12-month period specified in part (a) of this example are, on the basis of the additional facts assumed, set forth in the table below:

Date indicated	(1) Available proceeds end of preceding month	(2) Ajustments for month: Investment proceeds	(3) Gross repayment proceeds	(4) Operation and maintenance expenses	(5) Semiannual debt service	(6) Available proceeds on date indicated ((1)+(2)+(3) minus (4)+(5))
2-15-73	$210,000	$14,000	$50,000	$20,000	----------	$254,000
3-15-73	254,000	16,900	75,000	22,900	----------	323,000
4-15-73	323,000	24,500	60,000	12,500	----------	395,000
5-15-73	395,000	26,400	125,000	22,400	----------	524,000
6-15-73	524,000	30,900	140,000	20,900	----------	674,000
7-15-73	674,000	44,900	125,000	21,900	$400,000	422,000
8-15-73	422,000	59,300	125,000	20,300	----------	586,000
9-15-73	586,000	76,000	100,000	22,000	----------	740,000
10-15-73	740,000	80,800	100,000	23,800	----------	897,000
11-15-73	897,000	105,200	80,000	23,200	----------	1,059,000
12-15-73	1,059,000	153,000	120,000	24,000	----------	1,308,000
1-15-74	1,308,000	225,900	100,000	35,900	400,000	1,198,000

(3) *State or local governmental unit.* The term "State or local governmental unit" shall have the same meaning as in paragraph (a) of § 1.103–1.

(4) *Acquired obligations.* (i) The term "acquired obligations" means securities and obligations acquired with the available proceeds of an issue of governmental obligations during the period of time that such issue is outstanding.

(ii) The term "securities" has the same meaning as in section 165(g)(2)(A) and (B). Thus, the term "security" means (a) a share of stock in a corporation or (b) a right to subscribe for, or to receive, a share of stock in a corporation.

(iii) The term "obligations" means any evidence of indebtedness which is not described in section 103(a)(1). Thus, for example, if interest on a bond issued by a State or local governmental unit is not exempt in the hands of the holder because it is an industrial development bond or an arbitrage bond, the bond is an obligation within the meaning of this subdivision. For another example, a transaction which in form is a lease of property by a State or local governmental unit, but which is treated for Federal income tax purposes as a loan (or an installment sale), shall be treated as a loan (or an installment sale) for purposes of this subdivision.

(iv) Except as provided in paragraph (d)(4) of this section, the classes of acquired obligations and the definitions of such classes are as follows:

(a) "Acquired purpose obligations" are obligations acquired to carry out the purpose of a governmental program for which the governmental obligations are issued. Thus, for example, a note secured by a mortgage on a factory built with the available proceeds of an exempt small issue of industrial development bonds (within the meaning of section 103(c)(6) and § 1.103–10) is an acquired purpose obligation in the hands of the issuer of such exempt small issue. However, obligations acquired solely for the purpose of realizing an arbitrage profit do not constitute acquired purpose obligations.

(b) "Acquired nonpurpose obligations" are acquired obligations other than acquired purpose obligations.

(5) *Materially higher.* (i) In general, the adjusted yield produced by acquired obligations is "materially higher" than the adjusted yield produced by an issue of governmental obligations if the adjusted yield (computed in accordance with paragraph (c) of this section) produced by the acquired obligations exceeds the adjusted yield (so computed) produced by the issue of governmental obligations by more than one-eighth of 1 percentage point. However, in the case of an issue of governmental obligations issued on or before July 1, 1972, the percentage specified in the preceding sentence shall be one-half of 1 percentage point. For rules relating to acquired program obligations, see paragraph (d) of this section.

(ii) In the case of an issue of governmental obligations issued after July 1, 1972, described in subdivision (iii) or (iv) of this subparagraph, the provisions of this subdivision (ii) shall apply instead of the provisions of subdivision (i) of this subparagraph. The adjusted yield produced by acquired obligations acquired with the proceeds of such issue of governmental obligations is "materially higher" than the adjusted yield produced by such issue of governmental obligations if the adjusted yield produced by the acquired obligations exceeds by any amount the adjusted yield produced by the issue of governmental obligations.

(iii) An issue of governmental obligations is described in this subdivision (iii) if it is a refunding issue and materially higher yield acquired obligations (within the meaning of subdivision (ii) of this subparagraph) acquired with the proceeds of such issue, will be held for any period prior to the retirement of the issue to be refunded (other than the 3-year period immediately preceding the retirement of the issue to be refunded). The rules of subdivision (i) of this subparagraph and the rules of paragraph (e) of § 1.103–14 shall apply to a refunding issue the proceeds of which will not be invested in materially higher yield acquired obligations (within the meaning of subdivision (ii) of this subparagraph) for any period prior to the retirement of the issue to be refunded (other than the 3-year period immediately preceding the retirement of the issue to be refunded). For rules relating to the treatment of proceeds of a prior issue as proceeds of a refunding issue, see paragraph (e)(3) of § 1.103–14.

(iv) An issue of governmental obligations is described in this subdivision if less than all of the proceeds of such issue is reasonably expected to be used to carry out the governmental purpose or purposes (not including as a governmental purpose the investment of such proceeds) for which such obligations were issued. Amounts invested for a temporary period referred to in paragraph (a) of § 1.103–14 or amounts set aside as a reasonably required reserve or replacement fund (within the meaning of paragraph (f) of § 1.103–14) or as a reserve reasonably required for contingencies shall be considered to be used to carry out such governmental purpose or purposes. Thus, where it appears that an issue of obligations was issued in order to derive an arbitrage profit, or where it appears that governmental obligations were issued in

an amount which exceeds the requirements of the governmental purpose or purposes for which such issue of governmental obligations were issued, the provisions of subdivision (ii) of this subparagraph shall apply to such issue.

(6) *Materially higher yield acquired obligations.* The term "materially higher yield acquired obligations" means any acquired obligations which produce an adjusted yield which is materially higher than the adjusted yield produced by governmental obligations the available proceeds of which were used to acquire such acquired obligations.

(7) *Date of issue.* The date of issue of an obligation is the date on which there is a physical delivery of the evidences of indebtedness in exchange for the amount of the issue price. For example, obligations are issued when the issuer physically exchanges the obligations for the underwriter's (or other purchaser's) check. Thus, obligations which are taken down after October 9, 1969, by purchasers pursuant to a delayed delivery agreement with the issuer are subject to the rules contained in section 103 (d), this section, and § 1.103–14.

(8) *Related documents.* With respect to a bond indenture, the term "related documents" includes, for example, a bond resolution or ordinance, a trust agreement, or a prospectus.

(c) *Computation of adjusted yield*—(1) *In general.* (i) For purposes of this section and § 1.103–14, adjusted yield shall be computed by computing yield pursuant to the provisions of subparagraph (2) of this paragraph and then making adjustments pursuant to the provisions of subparagraph (3) of this paragraph. In the case of governmental obligations, the computations shall be made separately for each issue of obligations issued by a governmental unit. In the case of acquired obligations, the computations shall be made separately with respect to each class of acquired obligations referred to in paragraph (b)(4)(iv) of this section. However, no such computations need be made with respect to acquired obligations while such obligations are being held for a temporary period or periods referred to in paragraph (a) of § 1.103–14, since yields on acquired obligations during a temporary period are disregarded in determining whether a governmental obligation is an arbitrage bond. Similarly, no computation need be made with respect to acquired obligations which represent a reasonably required reserve or replacement fund under paragraph (f) of § 1.103–14 since such obligations are not acquired with the available proceeds of an issue of governmental obligations. Any discount, premium, or expense shall be disregarded to the extent attributable to the period during which acquired obligations are held for such a temporary period or in such a reserve or replacement fund.

(ii) The yield produced by a class of acquired obligations shall be computed as if all of the obligations of such class comprised a single issue of obligations, whether or not such obligations are to be acquired or held concurrently. Thus, for example, if a State or local governmental unit uses the available proceeds of an issue to acquire two blocks of nonpurpose obligations (such as, for example, Federal obligations) with different interest rates and maturity periods for each block, the yield on such acquired nonpurpose obligations shall be computed as if one issue of obligations with different interest rates and maturity periods had been acquired. The maturity period of each acquired obligation shall be the period that the State or local governmental unit will hold such obligation.

(2) *Yield.* (i) With respect to governmental obligations of an issue all of which have a single interest rate (expressed in dollars per $1,000 of face amount of bonds), or a class of acquired obligations treated as a single issue all of which have a single interest rate (so expressed), yield shall be computed using the following four steps:

(*a*) *Step (1).* Compute the total number of bond years for the issue by multiplying the number of bonds (treating each $1,000 of face amount as one bond for purposes of this computation) of each maturity by the length of the maturity period (expressed in years and fractions thereof) and then adding together the amounts determined for each maturity period.

(*b*) *Step (2).* Compute the total interest payable on the issue by multiplying the total number of bond years (as computed in step (1)) by the amount payable, expressed in dollars, as interest on each $1,000 of bonds for 1 year.

(*c*) *Step (3).* Compute the net interest in dollars for the issue by adding the amount, in dollars, of any discounts to, or by subtracting the amount, in dollars, of any premium from, the total interest payable on the issue.

(*d*) *Step (4).* Compute yield by dividing the net interest by the product obtained by multiplying the total number of bond years for the issue by 10.

(ii) With respect to governmental obligations of an issue which have different interest rates (expressed in dollars per $1,000 of face amount of bonds), or a class of acquired obligations treated as a single issue which have different interest rates (so expressed), yield shall be computed using the following four steps:

(*a*) *Step (1).* Compute the total number of bond years for each group of bonds bearing the same interest rate (treating each $1,000 of face amount as one bond for purposes of this computation) in the manner described in step 1 of subdivision (i) of this subparagraph.

(*b*) *Step (2).* Compute the total interest payable on the issue by multiplying the total number of bond years for each group of bonds bearing the same interest rate (as computed in step (1)) by the amount payable, expressed in dollars, as interest on each $1,000 of bonds for 1 year, and then adding together the amounts determined for each group.

(*c*) *Step (3).* Compute net interest in the manner described in step (3) of subdivision (i) of this subparagraph.

(*d*) *Step (4).* Compute the yield produced by the issue in the manner described in step (4) of subdivision (i) of this subparagraph.

(iii) In the case of acquired obligations which produce dividends, yield shall be computed in accordance with the principles set forth in this subparagraph.

(iv) The following example illustrates the provisions of this subparagraph:

Example: Assume an issue with a face amount of $200,000 ($1,000 per bond) and with a stated interest (expressed in dollars per bond) of $50 on bonds maturing in 1, 2, or 3 years, a stated interest of $60 on bonds maturing in 4, 5, 6, or 7 years, and a stated interest of $70 on bonds maturing in 8, 9, or 10 years. Assume also that a price of $101 has been bid for the issue. The yield on the issue is determined in accordance with the table below:

Amount	Rate	Years to maturity	Bond years	Total bond years at interest rate	×	Interest rate	=	Interest cost
$10,000	$50	1	10					
5,000	50	2	10					
25,000	50	3	75					
				95		$50		$4,750
10,000	60	4	40					
10,000	60	5	50					
30,000	60	6	180					
50,000	60	7	350					
				620		60		37,200
20,000	70	8	160					
25,000	70	9	225					
15,000	70	10	150					
				535		70		37,450
Totals 200,000				1,250				79,400
Less premium								2,000
Net interest cost								77,400
Divide by: Product of total bond years (1,250), multiplied by 10								12,500
Yield (percent)								6,192

(3) *Adjusted yield.* (i) "Adjusted yield" shall be computed in accordance with subparagraph (2) of this paragraph, except that—

(*a*) In the case of a class of acquired obligations, an amount equal to the sum of the administrative costs to be incurred in purchasing, carrying, and selling or redeeming such obligations shall be treated as a premium on the purchase price of such acquired obligations.

(*b*) In the case of an issue of governmental obligations, an amount equal to the sum of the administrative costs of

issuing, carrying, and repaying such issue of obligations shall be treated as a discount on the selling price of such issue of governmental obligations.

(ii) The provisions of subdivision (i) of this subparagraph may be illustrated by the following examples:

Example (1). State A issues $15 million of obligations all of which will mature in 10 years. The obligations are sold at $1,000 each (par) to yield 6 percent interest. The adjusted yield produced by such issue of obligations will be determined as follows, assuming the following administrative expenses of issuing, carrying, and repaying such issue of obligations are reasonably expected:

Issuing costs:	
Printing	$12,500
Financial advisors	25,000
Counsel fees	12,500
Total	50,000
Carrying costs (paying agent and trustees fees)	10,000
Repaying costs (paying agent)	3,000
Total administrative costs	63,000
Bond years (15,000 × 10 years)	150,000
Interest cost per $1,000 bond per year	60
Total interest cost	9,000,000
Discount or premium	0
Plus adjustments	63,000
Net interest cost	9,063,000
Divide by product of bond years (150,000) multiplied by 10	1,500,000
Adjusted yield (percent)	6.042

Example (2). State A uses $14,922,000 of original proceeds of the issue of obligations described in Example (1) to acquire students' notes at par of $1,000 each under a student loan program. The student's notes will all mature in 10 years and all have a stated interest rate of 7½ percent. Expenses of the program include printing of forms ($5,000), financial advisors' fees ($11,000), counsel fees ($12,000), trustees' fees ($5,000), fees for the collecting agents and various banks which administer the loans ($100,000), advertising expenses ($10,000), credit reference checks ($20,000), and general office overhead ($5,000). Of the expenses listed in the preceding sentence, only those indicated on the following table constitute adjustments to yield in order to determine the adjusted yield to be produced by the students' notes:

Purchasing costs:	
Printing forms	$5,000
Financial advisors' fees	11,000
Counsel fees	12,000
Total	28,000
Carrying costs (trustees' fees)	5,000
Total administrative cost	33,000
Bond years (14,922×10 years)	149,220
Interest receivable per $1,000 note per year	75
Total interest receivable	11,191,500
Discount or premium	0
Minus adjustments	33,000
Net interest receivable	11,158,500
Divide by product of bond years (149,220) multiplied by 10	1,492,200
Adjusted yield percent	7.478

Example (3). State B issues governmental obligations with an adjusted yield of 5 percent. One-half of the available proceeds of the issue is used to acquire a promissory note secured by a mortgage on a large office building (an acquired purpose obligation), and the remaining half of such proceeds is used to acquire Federal obligations (acquired nonpurpose obligations). The adjusted yield produced by the promissory note is 6 percent, the adjusted yield produced by the Federal obligations is 4 percent, and no portion of such available proceeds of the issue of State B obligations is invested for a temporary period. The adjusted yield produced by the promissory note (6 percent) is materially higher than the adjusted yield produced by the State B obligations (5 percent). The State B obligations are arbitrage bonds notwithstanding the fact that the average adjusted yield produced by the two classes of acquired obligations (5 percent) is not materially higher than the adjusted yield produced by the State B obligations, because the adjusted yield produced by acquired purpose obligations may not be used to offset the adjusted yield produced by acquired nonpurpose obligations. However, if the second half of such available proceeds had been used to acquire a mortgage on a second office building (an acquired purpose obligation) producing an adjusted yield of 4 percent, the adjusted yield for the class would have been 5 percent (assuming that the terms of the acquired purpose obligations were identical) and the State B obligations would not have been arbitrage bonds by reason of the acquisition of such acquired purpose obligations.

(d) *Rule with respect to certain governmental programs.* [Reserved]

(e) *Exempt arbitrage bonds for personnel of educational institutions*—(1) *In general.* Under section 103(d)(3), except as provided in subparagraph (3) of this paragraph, interest paid on an issue of arbitrage bonds is not includable in gross income if—

(i) The bonds are issued as part of an issue 90 percent of the available proceeds of which is to be used to provide permanent financing for real property occupied or to be occupied for residential purposes by the personnel of an educational institution (within the meaning of section 151(e)(4)) which grants baccalaureate or higher degrees, or to replace funds which are so used, and

(ii) The adjusted yield on the bonds (computed in accordance with paragraph (c) of this section) is not more than 1 percentage point lower than the adjusted yield on obligations acquired or to be acquired in providing such financing.

(2) *Other definitions.* The following definitions shall be applicable for purposes of this paragraph:

(i) The term "real property" means land or improvements thereon, such as buildings or other inherently permanent structures thereon (including items which are structural components of such buildings or structures). In addition, the term "real property" includes interests in real property. Local law definitions will not be controlling for purposes of determining the meaning of the term "real property" as used in section 103(d)(3) and this paragraph. The term includes items which are structural components of a building such as the wiring, plumbing system, central heating or central air-conditioning machinery, pipes, or ducts, and elevators or escalators installed in the building. The term also includes built-in air conditioners, stoves, refrigerators, and dishwashers, but does not include any other accessories or equipment which are not structural components of the building.

(ii) The term "personnel of an educational institution" means the personnel who are employed by the institution on a full-time basis for at least one semester even if such persons are also enrolled for a degree and take courses. The determination whether a person is employed on a full-time basis depends upon the customary practice of the educational institution.

(3) *Obligations held by substantial users or related persons.* Subparagraph (1) of this paragraph shall not apply to any bond for any period during which it is held by a person who is a substantial user of the real property financed by the proceeds of the issue of which it is a part, or by a member of the family (within the meaning of section 318(a)(1)) of any such person. A person is a substantial user of such real property if he occupies such property for any period excess of 3 months.

(f) *Allocation of investments*—(1) *General rule.* A State or local governmental unit shall allocate the cost of the acquired obligations in its portfolio to the amounts (if any) by which the available proceeds of each issue of governmental obligations issued by such unit after October 9, 1969, exceeds the portion thereof (if any) invested for a temporary period. Such allocation may be made at any time and under any method chosen by the State or local governmental unit.

(2) *Separate accounts.* If acquired obligations acquired with the available proceeds of an issue of governmental obligations are segregated from obligations obtained with other amounts, subparagraph (1) of this paragraph shall apply only with respect to the acquired obligations acquired with the available proceeds of such issue of governmental obligations.

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

Example. On January 1, 1974, the records of City A show the following information:

GOVERNMENTAL OBLIGATIONS

Excess of available proceeds over portion invested for a temporary period	Date of issue	Adjusted yield (percent)
	3- 5-55	3.2
$15,000,000	12-10-69	7.7
10,000,000	5- 6-70	6.1
17,000,000	6-10-71	5.3

ACQUIRED OBLIGATIONS

Cost:	*Adjusted yield (percent)*
$8,000,000	5.1
$10,000,000	5.4
$4,000,000	5.9
$9,000,000	6.2
$50,000,000	8.0

Assume that the issue of December 10, 1969, is an issue of taxable industrial development

bonds. City A may allocate its portfolio using any method it chooses. City A does not segregate the acquired obligations acquired with the proceeds of the governmental obligations. On January 1, 1974, City A chooses to allocate its portfolio as follows:

Acquired obligations		Governmental obligations		
Cost	Adjusted yield	Excess of available proceeds over portion invested for a temporary period	Issue date	Adjusted yield (percent)
$9,000,000	6.2			
1,000,000	5.9	$10,000,000	5-6-70	6.1
10,000,000				
10,000,000	5.4			
7,000,000	5.1			
17,000,000		17,000,000	6-10-71	5.3

It is unnecessary to make any further allocations because the obligations issued on March 5, 1955, are not subject to the provisions of section 103(d) since they were not issued after October 9, 1969, and the obligations issued on December 10, 1969, are taxable industrial development bonds. Thus, on January 1, 1974, pursuant to the allocations made by the city, no acquired obligation produces a materially higher adjusted yield than the adjusted yield produced by the governmental obligation to which it is allocated.

§ 1.103–14 Temporary investments and reserves or replacement fund.

(a) *Temporary period*—(1) *In general.* Under section 103(d)(4)(A), an obligation shall not be treated as an arbitrage bond solely by reason of the fact that all or a portion of the available proceeds of the issue of which such obligation is a part may be invested in materially higher yield acquired obligations for a "front-end" temporary period or periods described in paragraphs (b) and (c) of this section (relating to long-term and short-term construction and acquisition projects) until such time as they are used for the purpose for which such obligations were issued or, in the case of the temporary period under paragraph (d) of this section (relating to the annual debt service requirement), until such time as they are used to pay the debt service on such obligations. Thus, the investment for such temporary period or periods of the available proceeds of an issue of governmental obligations in acquired obligations which produce a yield is materially higher than the yield produced by such issue of governmental obligations will not cause such governmental obligations to be treated as arbitrage bonds. If all of the available proceeds of an issue of obligations are not expended during such a temporary period, an investment of a portion of such unexpended available proceeds in materially higher yield acquired obligations beyond such period may cause such obligations to be treated as arbitrage bonds. For rules with respect to temporary periods in connection with advance refunding proceeds, see paragraph (e) of this section. For rules with respect to a reasonably required reserve or replacement fund, see paragraph (f) of this section. For rules indicating that acquired obligations acquired pursuant to an investment for a temporary period need not be allocated to available proceeds, see paragraph (f) of § 1.103–13. For rules as to the treatment of obligations issued for more than one purpose, see subparagraph (3) of this paragraph.

(2) *Definitions.* For purposes of this section:

(i) *Long-term obligations.* An issue of "long-term" obligations is an issue of governmental obligations issued for an average life of 10 years or more.

(ii) *Short-term obligations.* An issue of "short-term" obligations is an issue of governmental obligations issued for an average life of less than 10 years.

(iii) *Average life of issue.* (*a*) The "average life of an issue" shall be determined by dividing the total number of bond years for the issue (computed in the manner prescribed in paragraph (c)(2)(i)(*a*) of § 1.103–13) by the number of bonds which are part of such issue. For purposes of this computation, each $1,000 of face amount is treated as one bond.

(*b*) If the issuer of a prior issue of governmental obligations makes a commitment in the bond indenture or related document to refinance such prior issue with a subsequent issue of governmental obligations, the prior issue and the subsequent issue shall be treated together as a single issue for purposes of determining their average life of issue and for purposes of determining whether both of them shall be treated as short-term obligations or long-term obligations. Thus, for example, if a State or local governmental unit issues 1-year bond anticipation notes and, on or before the date of issue, commits itself by means of the bond indenture or related documents to "roll-over" such 1-year issue by refinancing it with a second 1-year issue, both issues shall be treated together as a single issue of short-term obligations having an average life of issue of 2 years. The principles of this subdivision (*b*) shall apply in the case of a commitment at the date of issuance of an issue to successively refinance the issue. Thus, in the preceding example, if on or before the date of issue of the first 1-year bond anticipation notes the State or local governmental unit also commits itself to eventually issue governmental obligations which will result, if the 3 issues are treated as a single issue, in an average life of 15 years, all 3 issues shall be treated as one long-term issue of governmental obligations.

(iv) *Spendable proceeds for the period.* The term "spendable proceeds for the period" means, in respect of an issue of governmental obligations, the sum of available proceeds (within the meaning of paragraph (b)(2)(iv) of § 1.103–13) at the beginning of the period in question increased by any investment and gross repayment proceeds received during such period and decreased only by amounts of available proceeds expended in payment of the debt service (i.e. principal, interest, or both) on such issue of governmental obligations to the holders of such obligations (as contrasted to a sinking fund payment). Thus, for example, if an issue of governmental obligations results in $5 million of available proceeds on the date it is issued, if the investment of all or a part of such available proceeds for the period in question results in investment proceeds of $250,000, and if there are no debt service payments during such period, then the spendable proceeds for such period are $5,250,000.

(v) In the context of a temporary period, the term "year" (or "years") means the period beginning on a date in 1 year and terminating on the day before the corresponding date in the next succeeding year (or in another succeeding year), or, if a particular succeeding year does not have such a corresponding date, terminating on the last day of the corresponding month in such particular succeeding year. Similarly, the term "month" (or "months") in the context of a temporary period is dened by applying the principles of the preceding sentence.

(vi) *Substantial binding obligation to commence.* A substantial binding obligation to commence a project exists on the date on which the issuer incurs a binding obligation to a third party involving a substantial expenditure for some part of the project, such as, for example, architectural or engineering services, land acquisition, site development, construction materials, or the purchase of equipment for the project. In order for an expenditure to be substantial, it must be an expenditure of a substantial dollar amount. However, the amount involved need not be compared to the size of the financed project. For example, a binding obligation to expend $250,000 in connection with a $10 million project would be considered substantial.

(3) *Rule in case of multiple purpose issues*—(i) *In general.* In the case of an issue of governmental obligations issued to finance 2 or more projects with respect to which the temporary periods provided under the provisions of paragraphs (b), (c), and (e) of this section are different, the portion of the proceeds of such governmental obligations to be used to finance each such project or projects shall be treated as a separate issue of governmental obligations for purposes of determining the temporary period with respect to each such project.

(ii) *Projects.* In determining what constitutes one project or more than one project under the provisions of paragraphs (b) and (c) of this section, all of the facts and circumstances relevant to such a determination shall be considered. Thus, for example, where one-half of the proceeds of an issue of long-term obligations is to be used to construct a school and the other half of such proceeds is to be used to acquire an existing office building, the rules of paragraph (b)(1) of this section (relating to temporary period for a construction project) shall apply with respect to one-half of the proceeds of such issue and the rules of paragraph (b)(2) of this section (relating to temporary period for acquisition projects) shall apply with respect

to the other one-half of such proceeds. However, where one-half of such proceeds will be used to construct a school and the other one-half of such proceeds will be used to construct an office building to be used by the issuer, the issue shall be treated as a single issue and the rules of paragraph (b)(1) of this section shall apply to the entire issue since the temporary period with respect to obligations issued to finance both projects is the same.

(iii) *Allocation of investment proceeds.* Investment proceeds realized with respect to the investment of proceeds of an issue of governmental obligations shall be allocated to a specific project or projects in the same proportion as available proceeds are allocated to such project or projects.

(b) *Long-term obligations*—(1) *Construction projects*—(i) *In general.* The rules of this subparagraph shall apply in the case of long-term obligations issued to finance one or more construction projects. For purposes of this paragraph, a "construction project" is a project requiring the construction or improvement of property. A construction project may encompass the acquisition of land connected with the project as well as the acquisition of the property to be improved. Examples of construction projects are projects to construct or improve highways, dams, buildings, or industrial park facilities, including equipment incidental to such projects.

(ii) *Temporary period.* Except as provided in subparagraph (4) of this paragraph, in the case of an issue of long-term obligations issued to finance a construction project, available proceeds that are invested during a 3-year period beginning on the date of issue are invested for a temporary period if it is reasonably expected on the date of issue that:

(*a*) Eighty-five percent of the spendable proceeds for such period will be expended by the end of such period,

(*b*) The time requirements in subparagraph (3) of this paragraph for committing the spendable proceeds for such period and incurring a substantial binding obligation to commence one or more projects financed by such proceeds will be met, and

(*c*) After a substantial binding obligation to commence each such project is incurred, work on the project will proceed with due diligence to completion.

(2) *Acquisition projects*—(i) *In general.* The rules of this subparagraph shall apply in the case of long-term obligations issued to finance one or more projects to acquire property (hereinafter, for purpose of this paragraph, referred to as "acquisition projects"). Acquisition projects do not include construction projects. Thus, the rules of subparagraph (1) of this paragraph apply where the acquisition of property is only one step in a more extensive project involving the construction or improvement of property if the governmental obligations are issued to finance the entire project.

(ii) *Temporary period.* Except as provided in subparagraph (4) of this paragraph, in the case of an issue of long-term obligations issued to finance an acquisition project, available proceeds that are invested during a 1-year period beginning on the date of issue are invested for a temporary period if it is reasonably expected on such date that:

(*a*) Ninety-five percent of the spendable proceeds for such period will be expended by the end of such period, and

(*b*) The time requirements in subparagraph (3) (i) and (ii)(*a*) of this paragraph for committing spendable proceeds for such period and incurring a substantial binding obligation to commence one or more projects financed by such proceeds will be met.

(3) *Time requirements.* The time requirements of this subparagraph are met if—

(i) With respect to dollar amounts of spendable proceeds for the period committed by the terms of the bond indenture or related documents to finance one or more specific construction or acquisition projects (such as, for example, construction of a bridge or school or acquisition of park land), substantial binding obligations to commence all such projects will be incurred within 120 days after the date such governmental obligations are issued, and

(ii) With respect to dollar amounts of spendable proceeds for the period not committed by the terms of the bond indenture or related documents to finance one or more specific construction or acquisition projects, (*a*) one-half of such proceeds will be committed to one or more specific projects with respect to which substantial binding obligations to commence will be incurred not later than 6 months after the date such governmental obligations are issued, and (*b*) 95 percent of such proceeds will be committed to one or more specific projects with respect to which substantial binding obligations to commence will be incurred not later than 1 year after the date such governmental obligations are issued.

(4) *Exception.* In the case of an issue of long-term obligations issued to finance a construction or acquisition project, if an investment of available proceeds does not qualify as an investment for a temporary period because an insufficient percentage of the spendable proceeds for the applicable period specified in subparagraph (1)(ii) or (2)(ii) of this paragraph will not have been expended by the end of such period, such investment shall nevertheless be considered to be for a temporary period if the issuer demonstrates to the satisfaction of the Commissioner or his delegate that, on the basis of the facts and circumstances in existence on the date of issue, a longer temporary period is necessary. However, such longer temporary period shall not exceed a period of time equal to the shorter of—

(i) The period beginning on the date of issue and ending at the close of a reasonable period for settlement of claims by creditors after completion of the construction, improvement, or acquisition, or

(ii) A 5-year period beginning on the date of issue.

An example of such particular facts and circumstances is a revenue bond issued to finance a tunnel under a large river which will take more than 3 years to build and where under local law amounts sufficient to finance the entire project must be on hand before construction can begin.

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

Example (1). City A realized $10 million of original proceeds upon issuing an issue of long-term obligations to finance the construction, at a cost of $8.5 million, of a municipal auditorium it will own and operate. At the date of issue of such obligations, it was reasonable expected that: (i) $1.5 million of the original proceeds will be required to be invested in a reasonably required reserve or replacement fund within the meaning of paragraph (f) of this section, so that the available proceeds on the date of issue will be $8.5 million (i.e., $10 million minus $1.5 million); (ii) for the 3-year period beginning with the date of issue the excess of investment proceeds over payments of debt service will be $900,000, so that spendable proceeds for the period will be $9.4 million (i.e., $8,500,000 plus $900,000); (iii) 85 percent of such spendable proceeds for the period will be expended by the end of such period; (iv) a substantial binding obligation to commence such project will be incurred within 120 days after the date of issue; and (v) the construction will proceed with due diligence after such substantial binding obligation to commence such project is incurred. Until such times as each portion of the available proceeds of the issue are expended in connection with construction of the auditorium, City A plans to invest them in materially higher yield acquired obligations. Since the requirements of subparagraph (1) of this paragraph as to construction projects are complied with, such investment of the available proceeds will be for a temporary period. If, in respect of the issue, there are any unexpended available proceeds at the end of such temporary 3-year period, an investment of such available proceeds after such period in materially higher yield acquired obligations (except as provided in paragraph (d) of this section in respect of the annual debt service requirement) may cause such obligations to be arbitrage bonds.

Example (2). Assume the same facts as in example (1) except that at the date of issue it is reasonably expected that $4.4 million of the spendable proceeds for the period will be used to construct a bridge, and $5 million will be used to construct schools at such time, and at locations, as the State board of education deems desirable and necessary. Assume further that, on the date of issue of such obligations, it is reasonably expected that: (i) 85 percent of the $9.4 million of spendable proceeds for the period will be expended by the end of such period; (ii) a substantial binding obligation to commence the bridge project will be incurred within 120 days after the date of issue; (iii) of the $5 million of spendable proceeds for the period which are allocated for school construction, $2.5 million will be committed to specific school construction projects with respect to which substantial binding obligations to commence will be incurred within 6 months after the date of issue of such obligations, and 95 percent of such $5 million of spendable proceeds for the period shall be so committed to specific projects with respect to which substantial binding obligations to commence will be incurred within 1 year after such date of issue; and (iv) such bridge and school construction will proceed with due diligence after obligations to commence

such projects have been incurred. Until such time as each portion of the available proceeds of the issue are expended in connection with the construction projects, the city plans to invest them in materially higher yield acquired obligations. Since the requirements of subparagraph (1) of this paragraph as to such projects have been incurred. Until such investment of the available proceeds will be for a temporary period. If, in respect of the issue, there are any unexpended available proceeds at the end of such temporary 3-year period, an investment of such available proceeds after such period in materially higher yield acquired obligations (except as provided in paragraph (d) of this section in respect of the annual debt service requirement) may cause such obligations to be arbitrage bonds.

(c) *Short-term obligations*—(1) *Temporary period.* Except as provided in subparagraph (2) of this paragraph, in the case of an issue of short-term obligations (other than tax and other revenue anticipation notes), available proceeds that are invested for a period not in excess of the period specified in subdivision (i) of this subparagraph shall be considered to be invested for a temporary period if 95 percent of the spendable proceeds for the period will be expended—

(i) Within a period equal to the shortest of (*a*) one-half of the average life of the issue of such obligations, (*b*) the 2-year period beginning on the date of issue, or (*c*) the temporary period prescribed in paragraph (b) of this section for the same purpose as the short-term obligation, and

(ii) If the average life of the issue is at least 1 year, throughout such period.

For purposes of subdivision (ii) of this subparagraph, spendable proceeds for the period will be considered to be spent throughout such period if 20 percent of such proceeds are expended within the first half of such period and 30 percent of such proceeds are expended within the first three-fourths of such period. For rules with respect to the average life of an issue, see paragraph (a)(2)(iii) of this section.

(2) *Exception.* Notwithstanding subparagraph (1) of this paragraph, in the case of an issue of short-term obligations which, under the bond indenture or related documents, have an average life of issue in excess of 3 years, the issuer may establish to the satisfaction of the Commissioner or his delegate that, on the basis of the facts and circumstances in existence on the date of issue, a longer temporary period is necessary. However, such longer temporary period shall not exceed a period of time equal to the shorter of—

(i) The period beginning on the date of issue and ending at the close of a reasonable period for settlement of claims by creditors after completion of the construction, improvement, or acquisition, or

(ii) A 3-year period beginning on the date of issue.

(3) *Tax and other revenue anticipation notes*—(i) *In general.* In the case of an issue of short-term obligations issued in anticipation of taxes or other revenues, available proceeds that are invested shall be considered to be an investment for a temporary period if such obligations—

(*a*) Will not be outstanding for a period in excess of 13 months, and

(*b*) Will not be issued in an amount greater than the maximum anticipated cumulative cash flow deficit to be financed by such anticipated tax or other revenue sources for the period for which such taxes or other revenues are anticipated and during which such obligations are outstanding.

(ii) *Cumulative cash flow deficit.* For purposes of this subparagraph, the "cumulative cash flow deficit" at any time during a period is an amount equal to:

(*a*) The amount that the issuing State or local governmental unit will expend from the beginning of such period to such computation date to pay expenditures which would ordinarily be paid out of or financed by the anticipated tax or other revenues, plus

(*b*) The amount reasonably required by the issuer as a cash balance on hand at all times (the amount of the anticipated expenditures for a period of 1 month from such time being deemed to be reasonably required for this purpose), minus

(*c*) The sum of the amounts (other than the proceeds of the anticipated tax or other revenues in question), whether in the form of cash, marketable securities, or otherwise, which will be available for the payment of such expenditures from the beginning of such period to such time.

(iii) *Amount available for payment.* For purposes of subdivision (ii)(*c*) of this subparagraph, in addition to amounts in a general fund account, amounts in other accounts will be considered to be available for the payment of such expenditures if such other accounts may, without legislative or judicial action, be invaded to pay such expenditures without a legislative, judicial, or contractual requirement that such accounts be reimbursed.

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

Example (1). City A issues obligations with an average life of 5 years to finance the construction of low-income housing. The obligations are secured by the housing and by an anticipated grant from the Federal Housing Authority. The city does not intend to "roll over" the obligations. At the date of issue of such obligations, it is reasonably expected that, of the spendable proceeds for the 2-year period beginning on the date of issue, 25 percent will be expended within 1 year after the date of issue, an additional 15 percent within 18 months after such date, and a total of 95 percent within 2 years after such date. Until such time as the available proceeds of such issue are paid out, City A plans to invest such proceeds in materially higher yield acquired obligations. Since 95 percent of the spendable proceeds for the period will be expended within a period of 2 years from the date of issue and throughout such period, and since such 2-year period is shorter than both one-half of the 5-year average life of the issue and the 3-year temporary period for a long-term issue to finance a construction project, the requirements of subparagraph (1) of this paragraph are complied with and the investment for the available proceeds will be an investment for a temporary period. If, in respect of the issue, there are any unexpended available proceeds at the end of such temporary 2-year period, an investment of such proceeds after such period in materially higher yield acquired obligations (except as provided in paragraph (d) of this section in respect of the annual debt service requirement) may cause such obligations to be arbitrage bonds.

Example (2). County B plans to issue 13-month tax anticipation notes on July 1, 1971, in anticipation of income tax revenues in the amount of $4 million to be received on March 1, 1972, and real property tax revenues in the amount of $8 million to be received on May 1, 1972. Assume that all receipts will be received on the first day of each month. The maximum amount of such notes which may be issued pursuant to the provisions of subparagraph (3) of this paragraph may be determined in accordance with the following table on the basis of the facts assumed:

	Estimated expenditures	Estimated receipts [1]	Cumulative surplus (or deficit) at end of month [2]
August			$2,000,000
July	$750,000	$40,000	1,290,000
August	900,000	36,450	426,450
September	1,100,000	32,132	(641,418)
October	1,250,000	26,782	(1,864,636)
November	1,000,000	20,576	(2,844,060)
December	800,000	15,779	(3,628,281)
January	1,100,000	11,858	(4,716,423)
February	1,289,994	6,417	(6,000,000)
March	1,000,000	4,020,000	(2,980,000)
April	1,535,100	15,100	(4,500,000)
May	975,000	8,475,000	3,000,000
June	1,515,000	15,000	1,500,000

[1] Tax receipts plus proceeds from investments.
[2] Does not include amount of reasonably required cash balance.

The maximum cumulative deficit is $7 million which occurs at the end of February (i.e., $6 million cumulative deficit at the end of February plus $1 million reasonably required as a cash balance on hand (the amount of the anticipated expenditures for March)). Thus, an investment of the available proceeds of the County B notes will be an investment for a temporary period if such notes are not issued in an amount in excess of $7 million.

(d) *Annual debt service requirement*—(1) *Temporary period.* An investment of available proceeds for a period not to exceed 1 year is an investment for a temporary period if for such period the average daily investment (within the meaning of subparagraph (2) of this paragraph) is not in excess of the amount necessary to pay in cash the principal, interest, or both, due to the holders of such governmental obligations on the payment date immediately following such 1-year period. However, the provisions of this paragraph shall not apply with respect to an issue of obligations while any portion of the available proceeds of such issue is invested for a temporary period described in paragraph (b) or (c) of this section. Thus, for example, in the case of an issue of governmental obligations with respect to which the debt service payments are only made annually, if $1 million of principal and interest payable on such issue is payable on June 30, 1972, an average daily investment of $1 million of available proceeds in materially higher yield acquired obligations for a

period not in excess of 1 year commencing on June 30, 1971, and ending on June 29, 1972, is an investment for a temporary period if, during such period, no portion of the available proceeds of such issue is so invested during a temporary period described in paragraph (b) or (c) of this section.

(2) *Average daily investment.* For purposes of this paragraph, the average daily investment for a period is the sum of the amounts of acquired nonpurpose obligations (valued at cost) held at the end of each day of a period, divided by the number of days in such period. Thus, for example, if the sum of the daily investments for a 1-year period of 365 days is $365 million, the average daily investment for such period is $1 million.

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

Example. On January 2, 1971, Sewer District A issues $15 million of 17-year serial bonds yielding 4 percent. Under the provisions of paragraph (b) of this section, investments of the available proceeds of the issue in materially higher yield acquired obligations were made for a temporary period terminating on January 1, 1973. Interest on the obligations is payable in equal semiannual installments on July 1 and January 1 of each year. Beginning in 1974, principal payments are due on January 1 of each year. The investments of available proceeds specified in the following table will be investments for a temporary period on the dates indicated with respect to each debt service payment on the day after the close of the period indicated. Note that the time periods overlap.

Time period	Average daily investment
Jan. 1, 1973–June 30, 1973	$300,000
Jan. 1, 1973–Dec. 31, 1973	1,300,000
July 1, 1973–June 30, 1974	280,000
Jan. 1, 1974–Dec. 31, 1974	1,280,000
July 1, 1974–June 30, 1975	260,000
Jan. 1, 1975–Dec. 31, 1975	1,260,000
July 1, 1975–June 30, 1976	240,000

Thus, while the maximum amount which may be invested on any given day during the periods specified in the table is not limited, the average daily investment for any such period is limited to the amount specified for such period.

(ii) If with respect to each debt service payment the issuer chooses to keep an amount equal to such payment invested for a temporary period preceding such payment, investments of available proceeds for each period specified in the table below will be investments for a temporary period.

Time period	Average daily investment
Jan. 1, 1973–June 30, 1973	$1,600,000
July 1, 1973–Dec. 31, 1973	1,580,000
Jan. 1, 1974–June 30, 1974	1,560,000
July 1, 1974–Dec. 31, 1974	1,540,000
Jan. 1, 1975–June 30, 1975	1,520,000
July 1, 1975–Dec. 31, 1975	1,500,000

(e) *Refunding issues*—(1) *In general*—(i) *Limitation.* Except as provided in this paragraph, no investment of the proceeds of a prior issue of obligations to be refunded, and no investment of the refunding proceeds of a subsequent issue, is an investment for a temporary period after the date of issue of such subsequent issue. A "refunding issue" is an issue of obligations the proceeds of which may be used only to refund a prior outstanding issue of governmental obligations issued by the same issuer. For purposes of this paragraph, the issue to be refunded may be referred to as the "prior issue" and the refunding issue as the "subsequent issue".

(ii) *Refunding proceeds.* "Refunding proceeds" are the available proceeds of a subsequent issue (computed, however, without any reduction for a reasonably required reserve or replacement fund within the meaning of paragraph (f) of this section) which, under the terms of its bond indenture or related documents, are to be used only to refund a prior outstanding issue.

(iii) *Cross references.* For rules relating to partial refundings and multiple purpose subsequent issues, see subparagraphs (4) and (5), respectively, of this paragraph.

(2) *Temporary period for refunding proceeds.* An investment of refunding proceeds is an investment for a temporary period if the investment is for a period, beginning on the date of issue of the subsequent issue, that does not exceed the shorter of 10 percent of the entire term of the issue, or 3 months. The "entire term of an issue" is determined in the manner described in paragraph (b)(2)(v)(b) of § 1.103–13.

(3) *Temporary period for proceeds of the prior issue deemed proceeds of subsequent issue*—(i) *In general.* Since the proceeds of a subsequent issue are used to refund a prior outstanding issue, the proceeds of (and acquired obligations in respect of) the prior issue are deemed, as of the date of issue of the subsequent issue, to be proceeds of (and acquired obligations in respect of) the subsequent issue. Except as provided in subdivision (v) of this subparagraph, the amounts of such proceeds (and obligations) deemed to be proceeds (and obligations) of the subsequent issue that may be invested in materially higher yield acquired obligations shall be determined under subdivisions (ii), (iii), and (iv) of this subparagraph.

(ii) *Temporary periods for construction and acquisition projects.* The rules of paragraphs (b) and (c) of this section shall be applied as though the subsequent issue had not been issued.

(iii) *Temporary period for annual debt service requirements.* Paragraph (d) of this section shall be applied by using the debt service requirements of the subsequent issue.

(iv) *Reasonably required reserve or replacement fund.* Paragraph (f) of this section shall be applied by using the appropriate percentage (specified in such paragraph (f)) of the sum of—

(*a*) The face amount of the subsequent issue, and

(*b*) If subparagraph (4) of this paragraph applies, the face amount of any portion of the prior issue which will not be refunded by the proceeds of the subsequent issue.

(v) *Obligations issued before October 9, 1969.* If the prior issue had been issued before October 9, 1969, the proceeds of such prior issue shall not be deemed to be proceeds of the subsequent issue until the earlier of the date of maturity of the prior issue (as specified on October 9, 1969, in its bond indenture or related documents), or the date the prior issue is retired. If less than the entire face amount of such a prior issue is retired between such date and such date of maturity, the retired and nonretired portions shall be treated, as of the date of such retirement, as separate issues. In such a case, as of the date of such a retirement, any proceeds of (or acquired obligations or other amounts in respect of) such prior issue shall be allocated between such separate issues in the proportion that the face amount of the retired portion bears to the face amount of the nonretired portion.

(4) *Partial refundings.* If less than the entire outstanding face amount of the prior outstanding issue will be refunded with the refunding proceeds of a subsequent issue, the refunded and nonrefunded portions of the prior issue shall be treated, as of the date of issue of the subsequent issue, as separate issues. In such case, as of the date of issue of the subsequent issue any proceeds of (or acquired obligations and other amounts in respect of) the prior issue shall be allocated between such separate issues in the proportion that the face amount of the refunded portion bears to the face amount of the nonrefunded portion.

(5) *Multiple purpose issue.* For purposes of applying the rules for multiple purpose issues in paragraph (a)(3) of this section to paragraphs (b) and (c) of this section and to this paragraph, the portion of the proceeds of an issue of governmental obligations that is refunding proceeds shall be treated as used to finance a separate project.

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

Example. (i) In June 1970, State A issued noncallable bonds having a face amount of $100 million which mature at the rate of $10 million annually beginning in 1990. All of the available proceeds of such issue were used to construct a toll road and all revenues from the road were pledged to secure such bonds. A restriction in the bond indenture precludes pledging such revenues as security for any other bonds. As a result of increased usage, it is necessary to spend $50 million to widen and extend the road. In 1981, the State proposes to issue a bond issue in the face amount of $159 million maturing at the rate of $10 million annually beginning in 1995, from which original proceeds of $155 million will be realized. Under the terms of the 1981 indenture, $100 million of the original proceeds will be used to refund the 1970 issue by being invested in acquired obligations to be placed in an escrow account in order to eliminate the effect of the restrictions contained in the 1970 bond indenture. On the date of issue of the 1981 issue, it is reasonably expected that: (*a*) There will be $50 million of available proceeds from the 1981 issue with which to widen and extend the road; (*b*) $5 million of the original proceeds of the 1981 issue will be used to establish a reasonably required reserve or replacement fund within the meaning of paragraph (f) of this section with respect to such $50 million; and (*c*) the revenue from the road (as widened and extended) will be the security for the 1981 issue.

(ii) Since the $100 million of original proceeds are to be used only to refund State

A's outstanding 1970 issue, the $100 million are refunding proceeds. Under subparagraph (5) of this paragraph, the refunding proceeds and the $50 million are each treated as used to finance separate projects for purposes of determining what is a temporary period. An investment of the $100 million of refunding proceeds of the 1981 issue in materially higher yield acquired obligations for a period not to exceed 3 months (the maximum period permissible) will be an investment for a temporary period. Under subparagraph (3) of this paragraph, after the 1981 issue is issued any amounts which would have been proceeds of the 1970 issue are deemed to be proceeds of the 1981 issue. Since the 1970 issue had been outstanding for 11 years, the maximum temporary period for a construction project on a long-term issue under paragraph (b)(1) of this section had expired. Thus, no period after the 1981 issue was issued can qualify as a temporary period under subparagraph (3)(ii) of this paragraph during which a portion of the proceeds deemed to be proceeds of the 1981 issue may be invested in materially higher yield acquired obligations.

(iii) The rules of paragraph (b)(1) of this section apply for purposes of determining what is a temporary period for a construction project on a long-term issue with respect to the $50 million of available proceeds to be used to widen and extend the road.

(iv) In addition, the State may invest any proceeds of the 1970 or 1981 issue (other than the advance refunding proceeds), in materially higher yield acquired obligations in the amounts and for the periods permitted by paragraph (d) of this section with respect to the annual debt service requirement for the entire 1981 issue and by paragraph (f) of this section with respect to a reasonably required reserve or replacement fund for the entire 1981 issue.

(f) *Reasonably required reserve or replacement fund*—(1) *In general.* Under section 103(d)(4)(B), an obligation shall not be treated as an arbitrage bond solely by reason of the fact that a portion of any proceeds of the issue of which such obligation is a part may be invested in materially higher yield acquired obligations which are part of a reasonably required reserve or replacement fund. As a general rule a reserve or replacement fund will be considered to be reasonably required only if the amount so invested at any time during the term of the issue does not exceed an amount equal to 15 percent of the face amount of such issue outstanding at such time. If an amount in excess of 15 percent of such face amount is to be invested in a reserve or replacement fund, such reserve or replacement fund will not be considered to be reasonably required unless the State or local governmental unit seeking to issue such obligations establishes to the satisfaction of the Commissioner or his delegate, on the basis of the facts and circumstances in existence on the date of issue, that the specified reserve or replacement fund is necessary and that the amount invested at any time during the term of the issue as a reserve or replacement fund will not exceed an amount equal to such higher percentage of the face amount of such issue outstanding at such time.

(2) *Additions to fund.* If proceeds other than original proceeds are to be added to a reserve or replacement fund pursuant to the provisions of the bond indenture or related documents, the amount of the original fund plus the proceeds to be added must be reasonably required as a reserve or replacement fund based upon the appropriate percentage of the face amount of such issue outstanding at the time such proceeds are added.

(3) *Relationship to major portion test.*—(i) *In general.* Under paragraph (b)(1) of § 1.103–13, a major portion of the proceeds of an issue is invested in materially higher yield acquired obligations at any time if the sum of available proceeds so invested and amounts in a reasonably required reserve or replacement fund is an amount equal to more than 5 percent of the outstanding face amount of the issue at that time. If the amount in a reasonably required reserve or replacement fund equals or exceeds 5 percent of the outstanding face amount of an issue, the investment of the entire amount in such fund will not cause the issue to be treated as arbitrage bonds since subparagraph (1) of this paragraph applies. In that case, the investment of any available proceeds in materially higher yield acquired obligations may cause the obligations of such issue to be treated as arbitrage bonds. If the reasonably required reserve or replacement fund does not exceed 5 percent of the outstanding face amount of the issue, a portion of the available proceeds of such issue may be invested in materially higher yield acquired obligations without causing the issue of governmental obligations to be arbitrage bonds, so long as the sum of the available proceeds invested in materially higher yield acquired obligations and amounts invested in a reasonably required reserve or replacement fund do not exceed 5 percent of the outstanding face amount of such issue. Thus, for example, if the amount in the reasonably required reserve or replacement fund equals 2 percent of the outstanding face amount of an issue, an amount of available proceeds equal to up to 3 percent of the outstanding face amount of the issue could be invested in materially higher yield obligations without causing the obligations sold as part of the issue to be treated as arbitrage bonds.

(ii) *Exception.* If the adjusted yield produced by obligations acquired with the proceeds of an issue of governmental obligations as a reasonably required reserve or replacement fund (computed, for purposes of this subparagraph, in the manner described in paragraph (c) of § 1.103–13 as if such obligations were a separate class of acquired obligations) at any time is not materially higher than the adjusted yield produced by such governmental obligations, available proceeds of such issue in an amount not to exceed 5 percent of the outstanding face amount of such issue at such time, may be invested in materially higher yield acquired obligations without causing such obligations to be arbitrage bonds.

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

Example. On January 15, 1973, State A issues $10 million of 20-year obligations. In order to market the obligations the State will establish a reserve or replacement fund of $1.5 million. The amount of such fund will be invested, for the entire term of the obligations, in materially higher yield acquired obligations. As a result of this investment, the State reasonably expects to earn $100,000 interest in the first year and greater amounts in subsequent years. State A expects to add such earnings to the reserve or replacement fund. Since it is reasonably expected that the State will maintain a reserve or replacement fund in excess of 15 percent of the face amount of the issue outstanding at any time during the term of such issue, it will be necessary for the State to affirmatively show that a reserve or replacement fund in excess of 15 percent is necessary to market the issue in order for the fund to be considered as reasonably required.

[FR Doc.72–8278 Filed 5–26–72;4:44 pm]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 911]

LIMES GROWN IN FLORIDA

Notice of Proposed Rule Making With Respect to Approval of Expenses and Fixing of Rate of Assessment for 1972–73 Fiscal Year and Carryover of Unexpended Funds

Consideration is being given to the following proposals submitted by the Florida Lime Administrative Committee, established under the marketing agreement, as amended, and Order No. 911, as amended (7 CFR Part 911; 36 F.R. 14125), regulating the handling of limes grown in Florida, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), as the agency to administer the terms and provisions thereof:

(1) That expenses that are reasonable and likely to be incurred by the Florida Lime Administrative Committee, during the period from April 1, 1972, through March 31, 1973, will amount to $22,420;

(2) That there be fixed, at $0.035 per bushel of limes, the rate of assessment payable by each handler in accordance with § 911.41 of the aforesaid marketing agreement and order; and

(3) Unexpended assessment funds in the amount of approximately $20,000, which are in excess of expenses incurred during the fiscal year ending March 31, 1972, shall be carried over as a reserve in accordance with § 911.42 of said amended marketing agreement and order.

All persons who desire to submit written data, views, or arguments in connection with the aforesaid proposals shall file the same, in quadruplicate, with the Hearing Clerk, U.S. Department of Agriculture, Room 112, Administration Building, Washington, D.C. 20250, not later than the 10th day after the publication of this notice in the FEDERAL REGISTER. All written submissions made pursuant to

this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

Dated: May 25, 1972.

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

[FR Doc.72-8222 Filed 5-31-72;8:49 am]

[7 CFR Part 915]

AVOCADOS GROWN IN FLORIDA

Notice of Proposed Rule Making With Respect to Approval of Expenses and Fixing of Rate of Assessment for 1972–73 Fiscal Year and Carryover of Unexpended Funds

Consideration is being given to the following proposals submitted by the Avocado Administrative Committee, established under the marketing agreement, as amended, and Order No. 915, as amended (7 CFR Part 915; 36 F.R. 14126), regulating the handling of avocados grown in Florida, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), as the agency to administer the terms and provisions thereof:

(1) That expenses which are reasonable and likely to be incurred by the Avocado Administrative Committee, during the period from April 1, 1972, through March 31, 1973, will amount to $22,420;

(2) That the rate of assessment for such period, payable by each handler in accordance with § 915.41 be fixed at $0.035 per bushel of avocados; and

(3) Unexpended assessment funds in the amount of approximately $12,646.27, which are in excess of expenses incurred during the fiscal year ending March 31, 1972, shall be carried over as a reserve in accordance with § 915.42 of said amended marketing agreement and order.

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

Dated: May 25, 1972.

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

[FR Doc.72-8223 Filed 5-31-72;8:49 am]

[7 CFR Part 923]

SWEET CHERRIES GROWN IN DESIGNATED COUNTIES IN WASHINGTON

Notice of Proposed Rule Making With Respect to Approval of Expenses and Fixing of Rate of Assessment for 1972–73 Fiscal Period and Carryover of Unexpended Funds

Consideration is being given to the following proposals submitted by the Washington Cherry Marketing Committee, established under the marketing agreement and Order No. 923 (7 CFR Part 923) regulating the handling of sweet cherries grown in designated counties in Washington, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), as the agency to administer the terms and provisions thereof:

(1) That expenses that are reasonable and likely to be incurred by said committee, during the period April 1, 1972, through March 31, 1973, will amount to $15,419.

(2) That there be fixed, at $0.70 per ton of sweet cherries, the rate of assessment payable by each handler in accordance with § 923.41 of the aforesaid marketing agreement and order.

(3) That unexpended assessment funds, in excess of expenses incurred during the fiscal period ended March 31, 1972, shall be carried over as a reserve in accordance with the applicable provisions of § 923.42 of said marketing agreement and order.

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

Dated: May 26, 1972.

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

[FR Doc.72-8268 Filed 5-31-72;8:54 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Part 36]

FROZEN RAW BREADED SHRIMP

Definitions and Standards of Identity; Notice of Withdrawal of Petition and Termination of Proposed Rule Making

In the matter of amending the definition and standard of identity for frozen raw breaded shrimp (21 CFR 36.30) to permit the use of sodium tripolyphosphate, sodium metaphosphate, or mixtures thereof as optional ingredients:

A notice of proposed rule making in the above-identified matter was published in the FEDERAL REGISTER of April 7, 1970 (35 F.R. 5628), based on a petition filed by the Calgon Corp., Post Office Box 1346, Pittsburgh, Pa. 15320. Notice is given that the petitioner has withdrawn his petition. Accordingly, the rule making procedure in this matter is terminated. The withdrawal of this petition is without prejudice to a future filing.

This action is taken pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 401, 701, 52 Stat. 1046, 1055, as amended, 70 Stat. 919, 72 Stat. 948; 21 U.S.C. 341, 371) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 2.120).

Dated: May 5, 1972.

VIRGIL O. WODICKA,
Director, Bureau of Foods.

[FR Doc.72-8193 Filed 5-31-72;8:57 am]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Part 71]

[Airspace Docket No. 72-WA-10]

SAN FRANCISCO, CALIF., TERMINAL CONTROL AREA

Notice of Proposed Rule Making

The Federal Aviation Administration (FAA) is considering the adoption of a Group I terminal control area for San Francisco, Calif. Rules for the control and segregation of all aircraft operated within terminal control areas are contained in Part 91, §§ 91.70 and 91.90 of the Federal Aviation Regulations.

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, Western Region, Attention:

Chief, Air Traffic Division, Federal Aviation Administration, 5651 West Manchester Avenue, Post Office Box 92007, Worldway Postal Center, Los Angeles, CA 90009. All communications received within 60 days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. The proposal contained in this notice may be changed in the light of comments received.

An official docket will be available for examination by interested persons at the Federal Aviation Administration, Office of the General Counsel, Attention: Rules Docket, 800 Independence Avenue SW., Washington, DC 20591. An informal docket also will be available for examination at the office of the Regional Air Traffic Division Chief.

As part of this proposal relates to the navigable airspace outside the United States, this notice is submitted in consonance with the ICAO International Standards and Recommended Practices.

Applicability of International Standards and Recommended Practices by the Air Traffic Service, FAA, in areas outside domestic airspace of the United States is governed by Article 12 of and Annex 11 to the Convention on International Civil Aviation, which pertain to the establishment of air navigation facilities and services necessary to promoting the safe, orderly, and expeditious flow of civil air traffic. Their purpose is to insure that civil flying on international air routes is carried out under uniform conditions designed to improve the safety and efficiency of air operations.

The International Standards and Recommended Practices in Annex 11 apply in those parts of the airspace under the jurisdiction of a contracting state, derived from ICAO, wherein air traffic services are provided and also whenever a contracting state accepts the responsibility of providing air traffic services over high seas or in airspace of undetermined sovereignty. A contracting state accepting such responsibility may apply the International Standards and Recommended Practices to civil aircraft in a manner consistent with that adopted for airspace under its domestic jurisdiction.

In accordance with Article 3 of the Convention on International Civil Aviation, Chicago, 1944, state aircraft are exempt from the provisions of Annex 11 and its Standards and Recommended Practices. As a contracting state, the United States agreed by Article 3(d) that its state aircraft will be operated in international airspace with due regard from the safety of civil aircraft. Also, the proposed rule places no requirements on foreign aircraft operating in international airspace.

Since this action involves, 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 10854.

On January 12, 1970, the Federal Aviation Administration held a public hearing in San Francisco to discuss the original TCA concept designed for the San Francisco terminal area. Shortly thereafter, a meeting was held with the users and user representatives in the local San Francisco area to consider the problems associated with the TCA configuration. Although several suggested changes were adopted, a notice of proposed rule making was not issued.

In response to requests from certain user groups, the FAA agreed to test the climb/descent corridor concept and further action on the TCA program was suspended. A comprehensive simulation of the corridor concept was conducted at Boston, Mass., during June and July 1971. All users were invited to observe and/or participate in the test. Results of the tests indicated that the corridor configuration of airspace is not feasible for the major air traffic hubs. Therefore, the FAA has resumed actions to establish a TCA at San Francisco. Subsequent Notices of Proposed Rule Making will be issued for Boston, Miami, and Dallas.

The proposed San Francisco TCA configuration has again been reviewed and operational knowledge derived from currently established TCA's applied, resulting in several airspace changes. On April 18, 1972, a meeting was again held with the users and user representatives in the local San Francisco area and the newly proposed TCA configuration was presented at that time. There were no substantial objections.

In consideration of the foregoing and for reasons stated in Docket No. 9880 (35 F.R. 7782) it is proposed to amend Part 71 of the Federal Aviation Regulations by adding the following to § 71.401(a) Group I terminal control areas.

SAN FRANCISCO, CA., TERMINAL CONTROL AREA

PRIMARY AIRPORT

San Francisco International Airport (lat. 37°37'07" N., long. 122°22'35" W.) San Francisco LVOR/DME, lat. 37°37'10" N., long. 122°22'22" W.

BOUNDARIES

1. *Area A.* That airspace extending upward from the surface to 8,000 feet MSL within a 7-mile radius of the San Francisco (SFO) VOR extending clockwise from the SFO VOR 247° T (230° M) radial to the SFO VOR 127° T (110° M) radial and within a 5-mile radius of the SFO VOR extending clockwise from the SFO VOR 127° T (110° M) radial to the SFO VOR 247° T (230° M) radial, excluding that airspace within a 4-mile radius of the Oakland VORTAC.

2. *Area B.* That airspace extending upward from 1,500 feet MSL to 8,000 feet MSL bounded on the northwest by a 5-mile radius arc from the SFO VOR, on the southeast by a 10-mile radius arc of the SFO VOR, on the northeast by the SFO VOR 107° T (090° M) radial, and on the southwest by the SFO VOR 137° T (120° M) radial, excluding that portion within Area A.

3. *Area C.* That airspace extending upward from 2,500 feet MSL to 8,000 feet MSL bounded on the northwest by a 10-mile radius arc from the SFO VOR, on the southeast by a 15-mile radius arc from the SFO VOR, on the northeast by the SFO VOR 107° T (090° M) radial, and on the southwest by the SFO VOR 137° T (120° M) radial.

4. *Area D.* That airspace extending upward from 4,000 feet MSL to 8,000 feet MSL bounded by a line beginning at the 5-mile DME point on the SFO VOR 137° T (120° M) radial thence southeast along the 137° T (120° M) radial to and counterclockwise along a 15-mile DME arc of the SFO VOR to and east along the SFO VOR 107° T (090° M) radial to and clockwise along the 20-mile radius DME arc of the SFO VOR to and northwest along the SFO VOR 167° T (150° M) radial to and counterclockwise along the 5-mile radius DME arc of the SFO VOR to the point of beginning.

5. *Area E.* That airspace extending upward from 6,000 feet MSL to 8,000 feet MSL bounded by a line beginning at the 5-mile DME point on the SFO VOR 167° T (150° M) radial thence southeast along the 167° T (150° M) radial to and counterclockwise along the 20-mile DME arc of the SFO VOR to and east along the SFO VOR 107° T (090° M) radial to and clockwise along the 25-mile DME arc of the SFO VOR to and northwest along the Point Reyes VORTAC 161° T (144° M) radial to and northeast along the SFO VOR 217° T (200° M) radial to and counterclockwise along the 5-mile DME arc of the SFO VOR to the point of beginning.

6. *Area F.* That airspace extending upward from 2,100 feet MSL to 8,000 feet MSL bounded by a line beginning at the 10-mile DME point on the SFO VOR 247° T (230° M) radial thence clockwise along the 10-mile DME arc to and west along the SFO VOR 107° T (090° M) radial to and counterclockwise along the 7-mile DME arc of the SFO VOR to and clockwise along the 4-mile DME arc of the Oakland VORTAC to and counterclockwise along the 7-mile DME arc of the SFO VOR to and southwest along the SFO VOR 247° T (230° M) radial to the point of beginning.

7. *Area G.* That airspace extending upward from 3,000 feet MSL to 8,000 feet MSL between the 10- and 15-mile radii of the SFO VOR from the SFO VOR 247° T (230° M) radial clockwise to the SFO VOR 107° T (090° M) radial, excluding the airspace southwest of the Point Reyes VORTAC 161° T (144° M) radial.

8. *Area H.* That airspace extending upward from 4,500 feet MSL to 8,000 feet MSL bounded by a line beginning at the intersection of the Sausalito VORTAC 052° T (035° M) radial and the Oakland VORTAC 305° T (288° M) radial thence northeast along the Sausalito VORTAC 052° T (035° M) radial to and clockwise along a 20-mile DME arc of the SFO VOR to and southwest along the SFO VOR 072° T (055° M) radial to and counterclockwise along the 15-mile DME arc of the SFO VOR to and northwest along the Oakland VORTAC 305° T (288° M) radial to the point of beginning.

9. *Area I.* That airspace extending upward from 6,000 feet MSL to 8,000 feet MSL bounded on the northeast by a 25-mile radius arc of the SFO VOR, on the southeast by the SFO VOR 072° T (055° M) radial, on the southwest by the 20-mile radius arc of the SFO VOR, and on the northwest by the Sausalito VORTAC 052° T (035° M) radial.

10. *Area J.* That airspace extending upward from 5,000 feet MSL to 8,000 feet MSL bounded on the northeast by a 5-mile radius arc of the SFO VOR, on the southeast by the SFO VOR 217° T (200° M) radial, on the southwest by the Point Reyes VORTAC 161° T (144° M) radial, and on the northwest by the SFO VOR 247° T (230° M) radial.

This amendment is proposed under the authority of sections 307(a) and 1110 of the Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1510), Executive Order 10854 (24 F.R. 9565) and section

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

Issued in Washington, D.C., on May 26, 1972.

LOUIS H. MCCAUGHEY,
Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc.72-8277 Filed 5-31-72;8:55 am]

[14 CFR Part 71]

[Airspace Docket No. 72-SO-42]

FEDERAL AIRWAY

Proposed Revocation

The Federal Aviation Administration (FAA) is considering an amendment to Part 71 of the Federal Aviation Regulations that would revoke VOR Federal airway No. 502 which extends from Louisville, Ky., to Falmouth, Ky.

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, Southern Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, Post Office Box 20636, Atlanta, GA 30320. All communications received within 30 days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. The proposal contained in this notice may be changed in the light of comments received.

An official docket will be available for examination by interested persons at the Federal Aviation Administration, Office of the General Counsel, Attention: Rules Docket, 800 Independence Avenue, SW., Washington, DC 20591. An informal docket also will be available for examination at the office of the Regional Air Traffic Division Chief.

The 1971 Peak Day Report listed a total of three operations for V-502. Therefore, the airway can no longer be justified as an assignment of airspace. The proposed action would revoke VOR Federal airway No. 502 in its entirety.

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

Issued in Washington, D.C., on May 23, 1972.

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

[FR Doc. 72-8144 Filed 5-31-72;8:45 am]

[14 CFR Part 71]

[Airspace Docket No. 72-SO-48]

TRANSITION AREA

Proposed Designation

The Federal Aviation Administration is considering an amendment to Part 71 of the Federal Aviation Regulations that would designate the Williamston, N.C., transition area.

Interested persons may submit such written data, views, or arguments as they may desire. Communications should be submitted in triplicate to the Federal Aviation Administration, Southern Region, Air Traffic Division, Post Office Box 20636, Atlanta, GA 30320. All communications received within 30 days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Chief, Airspace and Procedures Branch. Any data, views, or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in light of comments received.

The official docket will be available for examination by interested persons at the Federal Aviation Administration, Southern Region, Room 724, 3400 Whipple Street, East Point, GA.

The Williamston transition area would be designated as:

That airspace extending upward from 700 feet above the surface within a 5-mile radius of Martin County Airport (lat. 35°51'45" N., long. 77°10'35"W.); within 2.5 miles each side of Rocky Mount VOR 105° radial, extending from the 5-mile radius area to 24.5 miles east of the VOR.

The proposed designation is required to provide controlled airspace protection for IFR operations at Martin County Airport. A prescribed instrument approach procedure to this airport, utilizing the Rocky Mount, N.C. VOR, is proposed in conjunction with the designation of this transition area.

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

Issued in East Point, Ga., on May 19, 1972.

DUANE W. FREER,
Acting Director, Southern Region.

[FR Doc.72-8145 Filed 5-31-72;8:45 am]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 91]

[Docket No. 19478; RM-1842]

BUSINESS RADIO SERVICE

Order Extending Time for Filing Reply Comments

In the matter of amendment of Part 91 of the Commission's rules to permit medical telemetry and other low power uses of offset frequencies in the Business Radio Service (37 F.R. 6757).

At the request of the Hewlett-Packard Co., Palo Alto, Calif., and for good cause shown therein, it is ordered, pursuant to section 4(i) of the Communications Act of 1934, as amended, and to § 0.251(b) of the Commission's rules, that the time for filing reply comments in the above-entitled proceeding is extended to June 2, 1972.

Adopted: May 23, 1972.

Released: May 25, 1972.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] JAMES E. BARR,
Chief, Safety and Special Radio Services Bureau.

[FR Doc.72-8276 Filed 5-31-72;8:56 am]

GENERAL SERVICES ADMINISTRATION

[41 CFR Parts 101-26, 101-33, 101-43]

USE OF GOVERNMENT SUPPLY SOURCES BY GRANTEES

Notice of Proposed Rule Making

Notice is hereby given that the General Services Administration (GSA) is considering the adoption of revised rules prohibiting the use of GSA and other Government sources of supply by recipients of Federal grants.

The Office of Management and Budget has directed GSA to propose discontinuance of the authorization permitting Federal grantees to use Federal supply sources. Therefore, appropriate amendments to the Federal Property Management Regulations to accomplish this have been developed. However, cost-reimbursement type contractors will continue to be permitted to use GSA supply sources under the provisions of Subparts 1-5.5 and 1-5.9 of the Federal Procurement Regulations.

This notice is published pursuant to section 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

Interested persons are invited to submit written data, views, or arguments regarding the proposed revision to the Commissioner, Federal Supply Service, General Services Administration, Washington, D.C. 20406, within 30 days after the date of publication of this notice in the FEDERAL REGISTER.

Dated: May 31, 1972.

M. S. MEEKER,
Commissioner.

SUBCHAPTER E—SUPPLY AND PROCUREMENT

PART 101-26—PROCUREMENT SOURCES AND PROGRAMS

Section 101-26.000 is revised to read as follows:

§ 101-26.000 Scope of part.

This part sets forth policies and procedures regarding the procurement of

personal property and nonpersonal services from or through supply sources which are established by law or other competent authority. It does not include policies and procedures pertaining to the purchasing and contracting for property or services obtained from commercial sources without recourse or use of Federal Supply Schedules or other GSA established contracts. (These are provided in the Federal Procurement Regulations.) The extent to which the sources of supply included in this Part 101–26 are to be used by Government agencies is prescribed in the specific subpart or section covering the subject matter involved. Included as eligible to use GSA supply sources are certain civilian and military commissaries and nonappropriated fund activities, generally buying for their own use but not for resale, except as authorized by the individual Federal agency and concurred in by GSA.

Section 101–26.508 is revised to read as follows:

§ 101–26.508 Electronic data processing tape.

Procurement by Federal agencies of electronic data processing (EDP) tape shall be accomplished in accordance with the provisions of this § 101–26.508.

Section 101–26.509 is revised to read as follows:

§ 101–26.509 Tabulating machine cards.

Procurement by Federal agencies of tabulating machine cards shall be made in accordance with the provisions of this § 101–26.509.

Section 101–26.604 is revised to read as follows:

§ 101–26.604 Marginally punched continuous forms.

The U.S. Government Printing Office (GPO) has been delegated authority by GSA to procure all marginally punched continuous forms for use by Federal agencies, except those procured by GSA for stock. Therefore, all Federal agencies shall submit their requirements for such forms in accordance with the provisions of this § 101–26.604.

PART 101–33—GOVERNMENT SOURCES AVAILABLE TO GRANTEES AND CONTRACTORS

The table of contents for Subchapter E is amended as follows:

Part
101–33 [Reserved]

Part 101–33 is deleted and reserved as follows:

PART 101–33 [RESERVED]

SUBCHAPTER H—UTILIZATION AND DISPOSAL

PART 101–43—UTILIZATION OF PERSONAL PROPERTY

The table of contents for Part 101–43 is amended by revising entry for § 101–43.320 to read as follows:

Sec.
101–43.320 Use of excess property on contracts.

Subpart 101–43.3—Utilization of Excess

Section 101–43.320 is revised to read as follows:

§ 101–43.320 Use of excess property on contracts.

(a) Executive agencies are responsible under § 101–43.302 for fulfilling requirements for property, including requirements of cost-reimbursement type contractors, by transferring to and obtaining from other Federal agencies excess personal property. The use of excess personal property shall be considered by Federal agencies in their cost-reimbursement type contracts which are made pursuant to programs established by law and for which funds are appropriated by the Congress.

(b) It is the responsibility of all agencies to achieve their program objectives at the least possible cost. Excess personal property can be used to reduce costs and shall be considered for such use wherever possible. Excess personal property can also be used to expand the ability of a contractor to fulfill his mission, and shall be considered for this use wherever possible. Excess personal property may be furnished to a contractor with the approval of an authorized Federal official provided a determination is made by the contracting agency that the acquisition will result in a reduction in the cost to the Government of the contract or an enhancement in the product or the benefit from the contract. Transfer orders for excess personal property must be executed by a duly authorized official of the contracting agency.

(c) Excess personal property is transferred from one Federal agency to another Federal agency as provided in § 101–43.315–5. The receiving Federal agency may furnish the property to its contractor as Government-furnished property, but title normally remains vested in the Government. Federal agencies, when drawing up contract documents, shall ensure that appropriate provisions are included therein to accommodate the furnishing of excess personal property to contractors. The system of accountability for such property will be in accordance with contractual and agency procedures, and records will be subject to audit by an internal audit group of the contracting Federal agency. In addition, the records shall be made available upon request to the General Accounting Office. The contract shall include adequate safeguards and assurances relative to use, maintenance, consumption, unauthorized use, and redelivery to Government custody of Government-furnished property.

(d) Upon termination of the contract in whole or in part, Government-furnished property no longer needed shall be reassigned, as far as practicable, to other contractors, or to other activities of the contracting Federal agency, except consumable property which has been expended. If no reassignment is made, and if the property is not disposed of pursuant to applicable regulations or contract provisions relating to contractor inventory, it shall be reported to GSA by the contracting Federal agency for possible further Government use, as provided in § 101–43.311, unless other reporting requirements have been agreed upon by GSA and the reporting agency. Property not required to be reported shall be handled as provided in §§ 101–43.306 and 101–43.318–2. Property normally shall be held by the contractor until transfer, donation, or disposal instructions are received. Contracting agencies shall have published procedures which clearly delineate the obligations of contractors with respect to the use and consumption or return to Government custody of property acquired from excess sources.

(e) Generally, title to excess property furnished by a Federal agency to a contractor remains vested in the Government. A few Federal agencies, however, have specific statutory authority to vest title in contractors under certain circumstances. When competing Federal claims are made for particular items of excess personal property, GSA will give preference to the Federal agency whose contractor is operating under agreements which do not permit ultimate vesting of title.

[FR Doc.72–8383 Filed 5–31–72;10:46 am]

SECURITIES AND EXCHANGE COMMISSION

[17 CFR Part 240]

[Release 34–9605]

REPORTS ON STABILIZING ACTIVITIES

Notice of Proposed Rule Making

Notice is hereby given that the Securities and Exchange Commission has under consideration a proposal to adopt amendments to Rule 17a–2 (17 CFR 240.17a–2) and Form X–17A–1 (17 CFR 249.717) under the Securities Exchange Act of 1934 (the Act). The amendments would be adopted under sections 10(b), 17(a), and 23(a) of the Act.

Rule 17a–2 provides for the filing of reports on Form X–17A–1 by all members of an underwriting syndicate or group engaged in a distribution of securities if stabilizing purchases have been made to facilitate the distribution. The purpose of such reports is to inform the Commission whether (1) stabilizing transactions on behalf of the syndicate or group were affected in conformity with the restrictions and limitations of Rule 10b–7 (17 CFR 240.10b–7) under the Act and therefore properly come within exception (8) of Rule 10b–6 (17 CFR 240.10b–6) which permits "stabilizing transactions not in violation of Rule 10b–7" and (2) whether any other activity by any member of the syndicate

violated the prohibitions of Rule 10b–6 against the purchase of securities of the same class and series as those being distributed.

As is currently provided in Rule 17a–2 and Form X–17A–1, the member of the syndicate which makes stabilizing purchases for the syndicate account is required to file separate reports on Form X–17A–1 respecting syndicate transactions in the stabilized and offered securities and in any rights to subscribe for them. These must be filed on each business day following the day on which such transactions occur. Such reports are filed in its capacity "as manager." As to the other members of the syndicate for whose account stabilizing purchases were made, each of them is merely required to file one report on Form X–17A–1 "not as manager", reflecting all of his transactions in the same securities within a specified period ending with the termination of stabilization. This report, "not as manager", must be filed within 5 business days after such termination.

In a recent survey conducted by the Commission into, among other things, the examination and processing of Form X–17A–1 reports, it has been ascertained that the separate, "not as manager" filings in connection with a given distribution casts an undue time-consuming burden on the Commission's staff in the processing of these reports. Accordingly, in the interests of efficiency and expedition, the Commission proposes to adopt a new paragraph (d)(5) of Rule 17a–2 and an amendment of paragraphs (d)(1) and (e) of the rule as well as of Instruction V of Form X–17A–1 which would require the "not as manager" reports to be made to the syndicate manager within the same period as they are now required under the rule to be filed, namely, within 5 business days after the termination of stabilization. In turn, under the proposed amendments, the manager would have 10 business days after such termination to file with the Commission all of the "not as manager" reports, including its own "not as manager" report reflecting its transactions in the same securities during the prescribed period, other than its transactions for the syndicate account.

TEXT OF PROPOSED AMENDMENTS

Paragraphs (d) (1), (5) and (e) of § 240.17a–2 of Chapter II of Title 17 of the Code of Federal Regulations would be amended to read as follows:

§ 240.17a–2 Reports on stabilizing activities.

* * * * *

(d) *Reports as manager.* Any person subject to this rule who effects one or more stabilizing purchases for his sole account or for the account of a syndicate or group shall:

(1) Report to the Commission "as manager" on Form X–17A–1, in duplicate original, not later than 3 business days following the day upon which the first stabilizing purchase was effected, all purchases, sales and transfers, in the stabilized and offered securities, and if the offering is a rights offering, in the rights, during the period beginning on the ninth business day prior to the first day upon which the offering was made or beginning on the business day prior to the day on which the first stabilizing purchase was effected, whichever date is earlier, and ending on the day upon which the first stabilizing purchase was effected: *Provided, however,* That in the case of securities offered pursuant to an effective registration statement under the Securities Act of 1933 the distribution shall not be deemed to commence for purposes of this subparagraph prior to the effective date of the registration statement; and

* * * * *

(5) Such person shall require from all other members of the syndicate or group, as a condition for becoming and remaining such members, a commitment to file with such person the reports in duplicate original, "not as manager," on Form X–17A–1 in accordance with the requirements of paragraph (e) of this section; and such person shall, together with such person's own report, if any, "not as manager," file in duplicate original with the Commission each such report "not as manager" within 10 business days following the day upon which stabilizing was terminated.

(e) *Reports not as managers.* Any other person subject to this section who has a participation in an account for which a stabilizing purchase is effected (other than a person stabilizing for his sole account all of whose transactions are reported "as manager") shall, not later than 5 business days following the day upon which stabilizing was terminated, report to the Commission on Form X–17A–1 by transmission to the person who is required to report "as manager" pursuant to paragraph (d) of this section, all purchases, sales, and transfers in the stabilized and offered securities, and if the offering is a rights offering, in the rights, during the period beginning on the ninth business day prior to the first day upon which the offering was made or on the business day prior to the day upon which the first stabilizing purchase was effected, whichever date is earlier, and ending on the day when stabilizing was terminated. *Provided: however,* (1) That transactions reported "as manager" shall not again be reported "not as manager" and (2) that in the case of securities offered pursuant to an effective registration statement under the Securities Act of 1933 the distribution shall not be deemed to commence for purposes of this paragraph (e) prior to the effective date of the registration statement.

* * * * *

Instruction V of Form X–17A–1 would be amended to read as follows:

V. Instructions "not as manager": (a) A person reporting "not as manager" should file a single report in duplicate original on Form X–17A–1 with the Commission by transmitting it through the person required to report "as manager" after stabilizing has terminated, and within 5 business days after such termination. (See "Period To Be Covered," paragraph III above.) (b) In item 1, immediately below these instructions, enter all of your agency transactions for the account of others during the "Period To Be Covered," and in item 3, on the other side of this form, enter all takedowns, purchases, sales, and transfers for your own account that were made during the "Period To Be Covered," and total columns C and H. (c) In item 2 indicate your net position at the opening of the first day of the "Period To Be Covered," usually the ninth business day prior to the offering date, and in item 4 indicate your net position at the end of the "Period To Be Covered," the termination of stabilization. (d) A separate report should be filed for each security offered or stabilized.

All interested persons may submit their views and comments on the above proposal in writing to the Securities and Exchange Commission, Washington, D.C. 20549 on or before July 3, 1972. All such communications will be considered available for public inspection.

(Sec. 10(b), 48 Stat. 891, 15 U.S.C. 78j; sec. 17(a), 48 Stat. 897, as amended 49 Stat. 1379, sec. 4, 52 Stat. 1076, sec. 5, 15 U.S.C. 78q; sec. 23(a), 48 Stat. 901, as amended, 49 Stat. 1370, sec. 8, 15 U.S.C. 78)

By the Commission.

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

MAY 24, 1972.

[FR Doc.72–8211 Filed 5–31–72;8:48 am]

Notices

DEPARTMENT OF STATE

Agency for International Development

HOUSING GUARANTY PROGRAM FOR REPUBLIC OF TUNISIA

Information for Investors

The Agency for International Development (A.I.D.) has advised La Societe Nationale Immobiliere Tunisienne (the "Borrower"), an instrumentality of the Government of the Republic of Tunisia that, upon execution by an eligible U.S. investor acceptable to A.I.D. of an agreement to loan the borrower an amount not to exceed $10 million, and subject to the satisfaction of certain further terms and conditions by the borrower, A.I.D. will guarantee repayment to the investor of the principal and interest on such loan. The guarantee will be backed by the full faith and credit of the United States of America and will be issued pursuant to authority contained in section 221 of the Foreign Assistance Act of 1961, as amended (the "Act"). Proceeds of the loan will be used for housing projects in the Republic of Tunisia.

Eligible investors interested in extending a guaranteed loan to the borrower should communicate promptly with:

Commercial and Economic Counselor, Embassy of the Republic of Tunisia, 2408 Massachusetts Avenue NW., Washington, DC 20008.

Investors eligible to receive a guaranty are those specified in section 238(c) of the Act. They are: (1) U.S. citizens; (2) domestic corporations, partnerships, or associations substantially beneficially owned by U.S. citizens; (3) foreign corporations whose share capital is at least 95 percent owned by U.S. citizens; and (4) foreign partnerships or associations wholly owned by U.S. citizens.

To be eligible for a guaranty, the loan must be repayable in full no later than the 25th anniversary of the final disbursement of the principal amount thereof and the interest rate may be no higher than the maximum rate to be established by A.I.D. A.I.D. will charge a guaranty fee equal to one-half of 1 percent per annum on the outstanding guaranteed principal amount of the loan.

Information as to eligibility of investors and other aspects of the A.I.D. housing guaranty program can be obtained from:

Director, Office of Housing, Agency for International Development, Room 501, S.A. 16, Washington, D.C. 20523.

This notice is not an offer by A.I.D. or by the borrower. The borrower and not A.I.D. will select a lender and negotiate the terms of the proposed loan.

STANLEY BARUCH,
Director, Office of Housing, Agency for International Development.

MAY 23, 1972.

[FR Doc.72-8254 Filed 5-31-72;8:53 am]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[Price Commission Ruling 1972-177]

MAINTENANCE OF CUSTOMARY PERCENTAGE MARKUPS IN RETAIL MEAT PRICING

Price Commission Ruling; Correction

Price Commission Ruling 1972-177, (F.R. Doc. 72-7612) published at page 10087 in the issue dated May 19, 1972, is corrected by changing the percent in the first paragraph under "Proposed Pricing Action" from 30 percent to 32 percent.

Dated: May 26, 1972.

LEE H. HENKEL, JR.,
Acting Chief Counsel, Internal Revenue Service.

Approved: May 26, 1972.

SAMUEL R. PIERCE, JR.,
General Counsel, Department of the Treasury.

[FR Doc.72-8231 Filed 5-31-72;8:50 am]

[Price Commission Ruling 1972-179; Cost of Living Council Ruling 1972-51]

PRICE CATEGORY I FIRM—PRENOTIFICATION

Price Commission Ruling and Cost of Living Council Ruling

Facts. M is in the manufacturing business. S is in a manufacturing business which is within the same two-digit Standard Industrial Classification as M. M owns 51 percent interest in S. M and S have the same fiscal year. During the last fiscal year M and S had annual sales or revenues of $95 million and $15 million, respectively. M wishes to increase the price for the product it manufactures over the base price.

Issue. Whether M is a Price Category I Firm and must comply with the prenotification requirements of the Economic Stabilization Regulations?

Ruling. Yes. Section 101.11 provides in part that a Price Category I firm is a firm with annual sales or revenues of $100 million or more; 6 CFR 101.11, 36 F.R. 21788 (November 13, 1971). Section 101.2 defines annual sales or revenues as the total gross receipts of a firm during its most recent fiscal year from whatever source derived. A firm includes an entity * * * that is directly or indirectly controlled by the firm; 6 CFR 101.2, 37 F.R. 1237 (January 27, 1972), as amended 37 F.R. 9457 (May 11, 1972). Whether or not one firm controls another firm is a question of fact. Among other things, ownership of more than 50 percent interest meets the test of control. Thus, in the present case, M controls S, and the firm referred to in § 101.11 includes M and S. Accordingly, the annual sales or revenues of M and S must be combined in order to determine whether M is a Category I firm which must prenotify in accordance with 6 CFR 300.51 of the Economic Stabilization Regulations.

This ruling has been approved by the General Counsels of the Price Commission and Cost of Living Council.

Dated: May 22, 1972.

LEE H. HENKEL, Jr.,
Acting Chief Counsel, Internal Revenue Service.

Approved: May 22, 1972.

SAMUEL R. PIERCE, Jr.,
General Counsel, Department of the Treasury.

[FR Doc.72-8232 Filed 5-31-72;8:50 am]

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[Albuquerque Area Office Redelegation Order 2, Amdt. 1]

SUPERINTENDENTS, ALBUQUERQUE AREA

Preservation of Antiquities

MAY 9, 1972.

This notice is published in exercise of authority delegated by the Secretary of the Interior to the Commissioner of Indian Affairs by 230 DM 2 (32 F.R. 13938).

This delegation is issued under the authority delegated to the Commissioner of Indian Affairs from the Secretary of the Interior in section 25 of Secretarial Order 2508 (10 BIAM 2.1) and redelegated by the Commissioner to the area directors in 10 BIAM 3.

The Albuquerque Area Office Redelegation Order 2 published beginning on page 3763 of the February 26, 1970, FEDERAL REGISTER (35 F.R. 3763) is being amended by revoking section 2.12 which redelegates to superintendents the authority to grant archeological permits on

Indian land. Section 2.12 is being revoked because the delegation of this authority to the Commissioner in section 13(k) of Secretarial Order 2508 was revoked and the revocation published on page 5514 of the March 16, 1972, FEDERAL REGISTER (37 F.R. 5514). The Secretary has redelegated the authority to grant archeological permits on Indian land to the Director, National Park Service, in 310 DM 7.2B.

Therefore, section 2.12 of Albuquerque Area Office Redelegation Order 2 is hereby revoked.

Effective date. This notice is effective this date.

WALTER O. OLSON,
Area Director.

Approved: May 22, 1972.

ALEXANDER S. MACNABB,
Acting Deputy Commissioner of Indian Affairs.

[FR Doc.72-8253 Filed 5-31-72;8:57 am]

[Portland Area Office Redelegation Order 3, Amdt. 2]

SUPERINTENDENTS ET AL.

Delegation of Authority Regarding Functions Relating to Lands and Minerals

MAY 3, 1972.

This notice is published in exercise of authority delegated by the Secretary of the Interior to the Commissioner of Indian Affairs by 230 DM 2 (32 F.R. 13938).

This delegation is issued under the authority delegated to the Commissioner of Indian Affairs from the Secretary of the Interior in section 25 of Secretarial Order 2508 (10 BIAM 2.1) and redelegated by the Commissioner to the Area Directors in 10 BIAM 3.

The Portland Area Office Redelegation Order 3 published beginning on page 15813 of the October 14, 1969, FEDERAL REGISTER (34 F.R. 15813) is being amended by revoking section 2.17 which redelegates to Superintendents the authority to grant archeological permits on Indian land. Section 2.17 is being revoked because the delegation of this authority to the Commissioner in section 13(k) of Secretarial Order 2508 was revoked and the revocation published on page 5514 of the March 16, 1972, FEDERAL REGISTER (37 F.R. 5514). The Secretary has redelegated the authority to grant archeological permits on Indian land to the Director, National Park Service, in 310 DM 7.2B.

Therefore, section 2.17 of Portland Area Office Redelegation Order 3 is hereby revoked.

DALE M. BALDWIN,
Area Director.

Approved: May 2, 1972.

ALEXANDER S. MACNABB,
Acting Deputy Commissioner of Indian Affairs.

[FR Doc.72-8206 Filed 5-31-72;8:48 am]

LUMMI INDIAN RESERVATION, WASH.

Ordinance Legalizing the Introduction, Sale, or Possession of Intoxicants

MAY 23, 1972.

In accordance with authority delegated by the Secretary of the Interior to the Commissioner of Indian Affairs by 230 DM 2, and in accordance with the Act of August 15, 1953, Public Law 277, 83d Congress, first session (67 Stat. 586), I certify that the following ordinance relating to the application of the Federal Indian Liquor Laws on the Lummi Indian Reservation, Lummi, Wash., was adopted on March 14, 1972, by the Lummi Business Council, which has jurisdiction over the area of Indian country included in the ordinance, reading as follows:

Whereas, the Lummi Business Council is the duly constituted governing body of the Lummi Indian Reservation by authority of the Constitution and Bylaws of the Lummi Tribe of the Lummi Reservation as approved April 10, 1970, by the Assistant Commissioner of Indian Affairs; and,

Whereas, Public Law 277, 83d Congress, approved August 15, 1953, provides that sections 1154, 1156, 3113, 3488, and 3618 of title 18, United States Code, commonly referred to as the Federal Indian Liquor Laws, shall not apply to any act or transaction within any area of Indian country provided such act or transaction is in conformity with both the laws of the State in which such act or transaction occurs and with an ordinance duly adopted by the tribe having jurisdiction over such area of Indian country, certified by the Secretary of the Interior, and published in the FEDERAL REGISTER; and,

Whereas, the Lummi Business Council has the responsibility of safeguarding and promoting the peace, safety, morals, and general welfare of the Lummi Reservation by regulating the conduct of trade and the use and disposition of property upon the Reservation; and,

Whereas, regulation of the sale of intoxicating liquors is a long established means of generating tax revenues for governmental entities; and,

Whereas, the development of the Lummi Indian Reservation and the welfare of the Lummi Indian Tribe and its members requires the creation of additional sources of tribal revenue to fund urgently needed programs.

Now, therefore, be it resolved that the introduction, sale, or possession of intoxicating beverages shall be lawful within the Indian country under the jurisdiction of the Lummi Indian Tribe: *Provided,* That such introduction, sale, or possession is in conformity with the laws of the State of Washington; and,

Be it further resolved that any tribal laws, resolutions, or ordinances heretofore enacted which prohibit the sale, introduction, or possession of intoxicating beverages are hereby repealed.

ALEXANDER MACNABB,
Acting Deputy Commissioner of Indian Affairs.

[FR Doc.72-8207 Filed 5-31-72;8:48 am]

Bureau of Land Management

AREA MANAGERS, ALL OREGON DISTRICTS AND SPOKANE, WASH.

Redelegation of Authority

MAY 11, 1972.

In accordance with Bureau Order No. 701 of July 23, 1964 (F.R. Doc. 64-7492; 29 F.R. 10526, as amended), the Area Managers of all Oregon districts and Spokane, Wash., are authorized to perform in their respective areas of responsibility, in accordance with existing policies and under the direct supervision of the District Manager; the function listed below, subject to the limitations set forth in Bureau Order No. 701, as amended, together with any limitations specified below.

SEC. 3.3(d) *Trespass.* Determine liability and accept damages for trespass on the public land and dispose of resources in trespass cases for amounts not less than the appraised value, where the amount is less than $500.

ARCHIE D. CRAFT,
State Director.

Approved:

GEORGE L. TURCOTT,
Associate Director.

[FR Doc.72-8205 Filed 5-31-72;8:48 am]

[M 21491: Group 104]

MINNESOTA

Notice of Filing of Plat of Survey

MAY 23, 1972.

1. The plats of survey of omitted islands described below, accepted April 13, 1972, will be officially filed in the Montana State Office, Bureau of Land Management, 316 North 26th Street, Billings, MT 59101, at 10 a.m., on July 3, 1972.

FIFTH PRINCIPAL MERIDIAN, MINNESOTA

T. 117 N., R. 23 W.:
Islands:
Tract 37, 0.90 acres.
Tract 38, 1.60 acres.
Tract 39, 0.40 acres.
Tract 40, 0.20 acres.
Tract 41, 0.90 acres.
Tract 42, 1.20 acres.
Tract 43, 0.30 acres.
T. 138 N., R. 39 W.:
Islands:
Tract 37, 5.20 acres.
Tract 38, 0.20 acres.

2. The character of these islands and the timber growth thereon indicate their existence when Minnesota was admitted to the Union and at the time of the original survey. They are therefore determined to be public land.

3. The islands are upland in character within the meaning of the Swampland Act.

4. Except for valid existing rights, the islands will not be subject to use and/or disposition under the public land laws, including the mineral leasing and mining laws, until a further order is issued.

5. All inquiries relating to the islands should be sent to Chief, Division of Management Services, Bureau of Land Management, Billings, Mont. 59101.

ALAN B. CARLSON,
Chief,
Division of Management Services.

[FR Doc.72-8204 Filed 5-31-72;8:48 am]

[Montana 21435]

MONTANA

Notice of Proposed Withdrawal and Reservation of Lands

MAY 19, 1972.

The Forest Service, U.S. Department of Agriculture, has filed application M 21435 for the withdrawal of national forest lands described below from mineral location and entry under the mining laws but not from leasing under the mineral leasing laws, subject to existing valid claims.

The public lands involved are in use for public purposes as administrative sites and recreation areas, and the Forest Service desires to protect the existing improvements.

For a period of 30 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management, Department of the Interior, 316 North 26th Street, Billings, MT 59101.

The Department's regulation (43 CFR 2351.4(c)) provides that the authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the lands and their resources. He will also undertake negotiations with the applicant agency with the view of adjusting the application to reduce the area to the minimum essential to meet the applicant's needs, to provide for the maximum concurrent utilization of the lands for the purpose other than the applicant's, to eliminate lands needed for purposes more essential than the applicant's, and to reach agreement on the concurrent management of the lands and their resources.

The authorized officer will also prepare a report for consideration by the Secretary of the Interior who will determine whether or not the lands will be withdrawn as requested by the applicant agency.

The determination of the Secretary on the application will be published in the FEDERAL REGISTER. A separate notice will be sent to each interested party of record.

If circumstances warrant, a public hearing will be held at a convenient time and place, which will be announced.

The lands involved in the application are:

PRINCIPAL MERIDIAN, MONTANA

DEERLODGE NATIONAL FOREST

Spire Rock Spike Camp

T. 2 N., R. 5 W.,
Sec. 6, SE¼ of lot 4 and lot 5.

Rock Creek Spike Camp

T. 6 N., R. 7 W.,
Sec. 20, lot 4 and NE¼NW¼SE¼.

Douglas Creek Administrative Site

T. 9 N., R. 12 W.,
Sec. 28, N½N½SW¼SW¼ and S½S½ NW¼SW¼.

East Fork of Rock Creek Trail Head Facilities

T. 4 N., R. 14 W.,
Sec. 17, W½SW¼NE¼ and E½SE¼NW¼.

Carp Lakes Trail Head Facilities

T. 3 N., R. 15 W.,
Sec. 11, N½NW¼NW¼.

Fuse Lake Recreation Area

T. 6 N., R. 17 W.,
Sec. 27, S½NW¼NW¼ and N½SW¼NW¼;
Sec. 28, SE¼NE¼NE¼ and NE¼SE¼NE¼.

Rock Creek Trail End Facility

T. 2 S., R. 3 W.,
Sec. 6, SE¼ of lot 6 and NE¼ of lot 8.

The areas described aggregate 256.43 acres in Jefferson, Granite, and Madison Counties, Mont.

ROLAND F. LEE,
Chief, Branch of
Lands and Minerals Operations.

[FR Doc.72-8263 Filed 5-31-72;8:54 am]

National Park Service

HOT SPRINGS NATIONAL PARK

Notice of Intention To Extend Concession Contracts

Pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that thirty (30) days after the date of publication of this notice, the Department of the Interior, through the Director of the National Park Service, proposes to extend the concession contracts with the following concessioners, authorizing them to continue to operate bathhouses in Hot Springs National Park, and to obtain hot mineral waters therefrom for drinking, bathing, and such other purposes as may be authorized for a period of 2 years from January 1, 1973, through December 31, 1974.

Buckstaff Bath House Co.
Health Services, Inc.
Lamar Bath House Co.
Maurice Bath Co.
Ozark Bath House Co.

The foregoing concessioners have performed their obligations under the expiring contracts to the satisfaction of the National Park Service, and therefore, pursuant to the Act cited above, are entitled to be given preference in the renewal of their contracts and in the negotiation of new contracts. However, under the Act cited above, the Secretary is also required to consider and evaluate all proposals received as a result of this notice. Any proposal to be considered and evaluated must be submitted within thirty (30) days after the publication date of this notice.

Interested parties should contact the Chief of Concessions Management, National Park Service, Washington, D.C. 20240, for information as to the requirements of the proposed contract.

LAWRENCE C. HADLEY,
Assistant Director,
National Park Service.

MAY 18, 1972.

[FR Doc.72-8208 Filed 5-31-72;8:48 am]

HOT SPRINGS NATIONAL PARK, ARK.

Notice of Intention To Extend Concession Contracts

Pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), public notice is hereby given that thirty (30) days after the date of publication of this notice, the Department of the Interior, through the Director of the National Park Service, proposes to extend the concession contracts under which the following obtain hot mineral waters from Hot Springs National Park, Ark., for drinking, bathing, and such other purposes as may be authorized, for a period of 2 years from January 1, 1973, through December 31, 1974:

Alhambra Bath House, Inc.
Arlington Hotel Co., Inc.
The Knights of Pythias of North America, South America, Europe, Asia, Africa, and Australia.
Leo N. Levi Memorial National Arthritis Hospital.
Majestic Hotel Co.
National Baptist Convention, U.S.A., Inc.

The foregoing concessioners have performed their obligations under the expiring contracts to the satisfaction of the National Park Service, and therefore, pursuant to the Act cited above, are entitled to be given preference in the renewal of their contracts and in the negotiation of new contracts. However, under the Act cited above, the Secretary is also required to consider and evaluate all proposals received as a result of this notice. Any proposal to be considered and evaluated must be submitted within thirty (30) days after the publication date of this notice.

Interested parties should contact the Chief of Concessions Management, National Park Service, Washington, D.C. 20240, for information as to the requirements of the proposed contract.

LAWRENCE C. HADLEY,
Assistant Director,
National Park Service.

MAY 18, 1972.

[FR Doc.72-8209 Filed 5-31-72;8:48 am]

Office of the Secretary

[INT DES 72-59]

PROPOSED ELLIS UNIT, PICK-SLOAN MISSOURI BASIN PROGRAM, KANS.

Notice of Availability of Draft Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of the Interior has prepared a draft environmental statement on a proposed multiple-purpose water resource project which would furnish a municipal water supply to Hays, Kans., and provide flood control, outdoor recreation enhancement, fish and wildlife conservation, and water quality benefits.

Copies are available for inspection at the following locations:

Office of Ecology, Room 7620, Bureau of Reclamation, Department of the Interior, Washington, D.C. 20240, Telephone (202) 343-4991.

Division of Engineering Support, Technical Services Branch, E&R Center, Denver Federal Center, Denver, Colo. 80225, Telephone (303) 234-3007.

Office of the Regional Director, Bureau of Reclamation, Building 20, Denver Federal Center, Denver, Colo. 80225, Telephone (303) 234-3779.

Kansas River Projects Office, Bureau of Reclamation, Post Office Box 737, McCook, Nebr. 69001, Telephone (308) 345-4400.

Single copies of the draft statement may be obtained on request to the Commissioner of Reclamation or the Regional Director. In addition, copies may be purchased from the National Technical Information Service, Department of Commerce, Springfield, Virginia 22151. Please refer to the statement number above.

Dated: May 24, 1972.

WILLIAM W. LYONS,
Deputy Assistant Secretary of the Interior.

[FR Doc.72-8210 Filed 5-31-72;8:48 am]

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

[Docket No. SH-308]

TEXAS SUGARCANE AREA

Notice of Hearing on Sugarcane Wages, and Designation of Presiding Officers

Pursuant to the authority contained in section 301(c)(1) of the Sugar Act of 1948, as amended (61 Stat. 929; 7 U.S.C. 1131), and in accordance with the rules of practice and procedure applicable to wage proceedings (7 CFR 802.1 et seq.), notice is hereby given that a public hearing will be held at San Benito, Texas, on June 23, 1972, in the Community Building, 210 East Heywood, beginning at 9:30 a.m.

The purpose of this hearing is to receive evidence likely to be of assistance to the Secretary of Agriculture, in determining, pursuant to the provisions of section 301(c)(1) of the act, fair and reasonable wage rates for workers employed in the production, cultivation, or harvesting of sugarcane in the Texas Sugarcane Area.

In the interest of obtaining the best possible information, growers, representatives of labor and all other interested persons are requested to appear at the hearing to express their views and present appropriate data in regard to wages. While testimony on all pertinent points is desired, it is especially requested that witnesses be prepared to offer information and recommendations on the following matters regarding fair wages for sugarcane fieldworkers:

I. *Type of wage rate desired.*

A. Hourly rate.

B. Agreed upon piecework rates with minimum hourly guarantee.

II. *Operations to be covered.*

III. *Number and kinds of worker classifications.*

IV. *Level of wage rates.*

A. Initial minimum rate(s) desired.

B. Wage rate differentials among different classifications of workers.

C. Statement of wage rates prevailing in the area for various farm and industrial enterprises.

V. *Other provisions for inclusion in the wage regulation, such as:*

A. Reduced wage rates for apprentice operators of tractors and machine harvesting and loading equipment, and for handicapped workers.

B. Compensable working time.

C. Method of payment of wages to workers.

All written submissions made pursuant to this notice will be made available for public inspection at such times and places and in a manner convenient to the public business (7 CFR 1.27(b)).

The hearing, after being called to order at the time and place mentioned herein, may be continued from day to day within the discretion of the presiding officers and may be adjourned to a later day or to a different place without notice other than the announcement thereof at the hearing by the presiding officers.

T. O. Murphy, L. L. Sommerville, C. F. Denny, J. E. Agnew, Jr., J. L. Coburn, and J. A. Zechman are hereby designated as presiding officers to conduct either jointly or severally the foregoing hearing.

Signed at Washington, D.C., on May 25, 1972.

CARROLL G. BRUNTHAVER,
Acting Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc.72-8224 Filed 5-31-72;8:50 am]

Animal and Plant Health Inspection Service

HUMANELY SLAUGHTERED LIVESTOCK

Identification of Carcasses; Changes in Lists of Establishments

Pursuant to section 4 of the Act of August 27, 1958 (7 U.S.C. 1904), and the statement of policy thereunder in 9 CFR 391.1, the lists (37 F.R. 2795, 6143, 7723, and 9047) of establishments which are operated under Federal inspection pursuant to the Federal Meat Inspection Act, as amended (21 U.S.C. 601 et seq.) and which use humane methods of slaughter and incidental handling of livestock are hereby amended as follows:

The reference to swine with respect to Greenwald Locker Plant, establishment 8982, is deleted.

The following table lists species at additional establishments that have been reported as being slaughtered and handled humanely.

ESTABLISHMENTS SLAUGHTERING HUMANELY

Name of establishment	Establishment No.	Cattle	Calves	Sheep	Goats	Swine	Equines
Pawnee Packing Co.	270					(*)	
Potter Packing Co.	5571	(*)					
Boston Store, Inc.	5602	(*)				(*)	
Panhandle Packing Co.	5624	(*)				(*)	
Kimball Locker Plant	5656	(*)				(*)	
Lamb Specialties, Inc.	6018			(*)			
Sister's of the Order of Saint Benedict	7784	(*)				(*)	
New Establishments Reported, 7.							

Done at Washington, D.C., on May 24, 1972.

KENNETH M. MCENROE,
Acting Associate Administrator, Meat and Poultry Inspection Program.

[FR Doc.72-8131 Filed 5-31-72;8:45 am]

FEDERAL MARITIME COMMISSION

CONTINENTAL NORTH ATLANTIC WESTBOUND FREIGHT CONFERENCE

Notice of Agreement Filed

Notice is hereby given that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1405 I Street NW., Room 1015; or may inspect the agreement at the field offices located at New York, N.Y., New Orleans, La., and San Francisco, Calif. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after publication of this notice in the FEDERAL REGISTER. Any person desiring a hearing on the proposed agreement shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the statement should indicate that this has been done.

Notice of agreement filed by:

Elliott B. Nixon, Esq., Burlingham Underwood & Lord, 25 Broadway, New York, NY 10004.

Agreement No. 8210–16, among the member lines of the above named conference, modifies: (1) The majority vote required to take certain actions under the agreement, and (2) the procedures governing withdrawals from conference membership.

Dated: May 24, 1972.

By order of the Federal Martime Commission.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.72-8236 Filed 5-31-72;8:50 am]

SEA LAND SERVICE, INC., ET AL.

Notice of Agreement Filed

Notice is hereby given that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1405 I Street NW., Room 1015; or may inspect the agreement at the field offices located at New York, N.Y., New Orleans, La., and San Francisco, Calif. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 20 days after publication of this notice in the FEDERAL REGISTER. Any person desiring a hearing on the proposed agreement shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the statement should indicate that this has been done.

Sea-Land Service, Inc., Seatrain Lines, Inc., United States Lines, Inc.

Notice of agreement filed by:

J. S. Morrison, Senior Vice President, Sea-Land Service, Inc., Post Office Box 1050, Elizabeth, N.J. 07207.

Agreement No. 9984, among the above named parties, provides for discussion and agreement upon rates in the trades between U.S. South Atlantic ports and ports in the United Kingdom, Northern Ireland, Eire, continental Europe (Bordeaux/Hamburg range), and Scandinavia except that the westbound trade from the United Kingdom, Northern Ireland, and Eire is excluded.

Dated: May 24, 1972.

By order of the Federal Maritime Commission.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.72-8235;Filed 5-31-72;8:50 am]

FEDERAL POWER COMMISSION

NATIONAL GAS SURVEY COORDINATING COMMITTEE

Order Designating Representative and Member

MAY 22, 1972.

The Federal Power Commission by order issued May 10, 1971, established a Coordinating Committee of the National Gas Survey.

1. *FPC Representative.* A new FPC Representative to the Coordinating Committee, as selected by the Chairman of the Commission with the approval of the Commission, is as follows:

Kenneth B. Lucas, Assistant to the Chairman, Federal Power Commission.

Mr. Lucas is to fill the position vacated by the resignation of Mr. Frederick H. Warren, Federal Power Commission, from this Committee.

2. *Membership.* A new member to the Coordinating Committee, as selected by the Chairman of the Commission with the approval of the Commission, is as follows:

Charles A. Gallagher, Engineer, Federal Power Commission.

Mr. Gallagher is to fill the position vacated by Mr. Lucas who will serve as the FPC Representative on the Committee.

By the Commission.

[SEAL] KENNETH F. PLUMB,
Secretary.

[FR Doc.72-8162 Filed 5-31-72;8:47 am]

NATIONAL GAS SURVEY COORDINATING TASK FORCE

Order Designating an Additional Representative

MAY 22, 1972.

The Federal Power Commission by order issued December 21, 1971, established the Technical Advisory and Coordinating Committee Task Forces of the National Gas Survey.

1. *FPC Representatives.* An additional FPC Representative to the Coordinating Task Force, as selected by the Chairman of the Commission with the approval of the Commission, is as follows:

Charles A. Gallagher, Engineer, Federal Power Commission.

By the Commission.

[SEAL] KENNETH F. PLUMB,
Secretary.

[FR Doc.72-8153 Filed 5-31-72;8:46 am]

NATIONAL GAS SURVEY TECHNICAL ADVISORY COMMITTEE—DISTRIBUTION

Order Designating an Additional Member

MAY 22, 1972.

The Federal Power Commission by order issued April 6, 1971, established the Technical Advisory Committees of the National Gas Survey.

1. *Membership.* An additional member to the Technical Advisory Committee—Distribution, as selected by the chairman

of the Commission with the approval of the Commission, is as follows:

Dr. Alfred E. Kahn, dean, College of Arts and Sciences, and professor of economics, Cornell University.

By the Commission.

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

[FR Doc.72-8160 Filed 5-31-72;8:46 am]

NATIONAL GAS SURVEY DISTRIBUTION—TECHNICAL ADVISORY TASK FORCE—GENERAL

Order Designating Additional Members

MAY 22, 1972.

The Federal Power Commission by order issued December 21, 1971, established the Technical Advisory and Coordinating Committee Task Forces of the National Gas Survey.

1. *Membership.* Additional members to the Distribution—Technical Advisory Task Force—General, as selected by the chairman of the Commission with the approval of the Commission, are as follows:

Dr. Frederick C. Allvine, assistant professor of marketing, Northwestern University.
Lucio A. D'Andrea, natural gas specialist, Office of Oil and Gas, Department of the Interior.
Charles L. Haller, superintendent, gas division—gas & electric department, city of Holyoke, Mass.
Thomas M. O'Neill, special assistant to the commissioner on environmental protection, New Jersey Department of Environmental Protection.
Thomas B. Stoel, staff attorney, Natural Resources Defense Council (DC).

By the Commission.

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

[FR Doc.72-8147 Filed 5-31-72;8:45 am]

NATIONAL GAS SURVEY DISTRIBUTION—TECHNICAL ADVISORY TASK FORCE—GENERAL

Order Designating Survey Coordinating Representative and Secretary and Alternate and Additional Representatives

MAY 22, 1972.

The Federal Power Commission by Order issued December 21, 1971, established the Technical Advisory and Coordinating Committee Task Forces of the National Gas Survey.

1. *FPC Survey Coordinating Representative and Secretary.* The new FPC Survey Coordinating Representative and Secretary to the Distribution—Technical Advisory Task Force—General, as selected by the chairman of the Commission with the approval of the Commission, is as follows:

Charles A. Gallagher, engineer, National Gas Survey, Federal Power Commission.

Mr. Gallagher is to fill the position vacated by Kenneth B. Lucas, Federal Power Commission, from this Task Force.

2. *Alternate FPC Survey Coordinating Representative and Secretary.* The new Alternate FPC Survey Coordinating Representative and Secretary to the Distribution-Technical Advisory Task Force-General, as selected by the chairman of the Commission with the approval of the Commission, is as follows:

James R. Spor, industry economist, National Gas Survey, Federal Power Commission.

Mr. Spor is to fill the position vacated by Charles A. Gallagher, from this position on this Task Force.

3. *FPC Representatives.* Additional FPC Representatives to the Distribution—Technical Advisory Task Force—General, as selected by the chairman of the Commission with the approval of the Commission, are as follows:

Dr. Charles A. Franklin, Chief, Division of Reports and Statistical Analysis, Office of Economics, Federal Power Commission.
Dr. Richard F. Hill, acting advisor on environmental quality, Office of the Advisor on Environmental Quality, Federal Power Commission.

By the Commission.

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

[FR Doc.72-8152 Filed 5-31-72;8:46 am]

NATIONAL GAS SURVEY TECHNICAL ADVISORY COMMITTEE—DISTRIBUTION

Order Designating FPC Survey Coordinating Representative and Secretary and Alternate Representatives

MAY 22, 1972.

The Federal Power Commission by order issued April 6, 1971, established the Technical Advisory Committees of the National Gas Survey.

1. *FPC Survey Coordinating Representative and Secretary.* The new FPC Survey Coordinating Representative and Secretary to the Technical Advisory Committee—Distribution, as selected by the chairman of the Commission with the approval of the Commission, is as follows:

Charles A. Gallagher, engineer, National Gas Survey, Federal Power Commission.

Mr. Gallagher is to fill the position vacated by Kenneth B. Lucas, Federal Power Commission, from this position on this committee.

2. *Alternate FPC Survey Coordinating Representative and Secretary.* The Alternate FPC Survey Coordinating Representative and Secretary to the Technical Advisory Committee—Distribution, as selected by the chairman of the Commission with the approval of the Commission, is as follows:

James R. Spor, industry economist, National Gas Survey, Federal Power Commission.

3. *FPC Representatives.* The FPC Representatives to the Technical Advisory Committee—Distribution, as selected by the chairman of the Commission with the approval of the Commission, are as follows:

Dr. Richard F. Hill, acting advisor on environmental, quality, Office of the Advisor on Environmental Quality, Federal Power Commission.
Kenneth B. Lucas, assistant to the chairman, Federal Power Commission.

By the Commission.

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

[FR Doc.72-8154 Filed 5-31-72;8:46 am]

NATIONAL GAS SURVEY TECHNICAL ADVISORY COMMITTEE—SUPPLY

Order Designating Additional Member

MAY 22, 1972.

The Federal Power Commission by order issued April 6, 1971, established Technical Advisory Committees of the National Gas Survey.

1. *Membership.* An additional member to the Technical Advisory Committee—Supply, as selected by the Chairman of the Commission with the approval of the Commission, is as follows:

Dr. John W. Harbaugh, Chairman, Geology Department, Stanford University.

By the Commission.

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

[FR Doc.72-8155 Filed 5-31-72;8:46 am]

NATIONAL GAS SURVEY SUPPLY—TECHNICAL ADVISORY TASK FORCE—NATURAL GAS SUPPLY

Order Designating Additional Representatives and Members

MAY 22, 1972.

The Federal Power Commission by order issued December 21, 1971 established the Technical Advisory and Coordinating Committee Task Forces of the National Gas Survey.

1. *FPC Representatives.* Additional FPC Representatives to the Supply—Technical Advisory Task Force—Natural Gas Supply, as selected by the Chairman of the Commission with the approval of the Commission, are as follows:

Frank E. Baker, Geologist, Bureau of Natural Gas, Federal Power Commission.
Robert M. Jimeson, Assistant Advisor on Environmental Quality, Office of the Advisor on Environmental Quality, Federal Power Commission.

2. *Membership.* Additional members to the Supply—Technical Advisory Task Force—Natural Gas Supply, as selected by the Chairman of the Commission with the approval of the Commission, are as follows:

Dr. Kenneth K. Landes, Professor of Geology, University of Michigan.
Dr. J. Robert Moore, Director of Marine Research Laboratory, University of Wisconsin.

By the Commission.

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

[FR Doc.72-8148 Filed 5-31-72;8:45 am]

NATIONAL GAS SURVEY SUPPLY—TECHNICAL ADVISORY TASK FORCE—SYNTHETIC GAS—COAL

Order Designating Representative

MAY 22, 1972.

The Federal Power Commission by order issued December 21, 1971, established the Technical Advisory and Coordinating Committee Task Forces of the National Gas Survey.

1. *FPC Representative.* The FPC Representative to the Supply—Technical Advisory Task Force—Synthetic Gas—Coal, as selected by the Chairman of the Commission with the approval of the Commission, is as follows:

Dr. Jack M. Heinemann, Chief, Environmental Biologist, Office of the Advisor on Environmental Quality, Federal Power Commission.

By the Commission.

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

[FR Doc.72-8156 Filed 5-31-72;8:46 am]

NATIONAL GAS SURVEY SUPPLY—TECHNICAL ADVISORY TASK FORCE—REGULATION AND LEGISLATION

Order Designating Additional Member and Representative

MAY 22, 1972.

The Federal Power Commission by order issued December 21, 1971, established the Technical Advisory and Coordinating Committee Task Forces of the National Gas Survey.

1. *Membership.* An additional member to the Supply—Technical Advisory Task Force—Regulation and Legislation, as selected by the Chairman of the Commission with the approval of the Commission, is as follows:

David W. Calfee, Attorney at Law, Public Interest Research Group (DC).

2. *FPC Representatives.* An additional FPC Representative to the Supply—Technical Advisory Task Force—Regulation and Legislation, as selected by the Chairman of the Commission with the approval of the Commission, is as follows:

Dr. Jack M. Heinemann, Chief, Environmental Biologist, Office of the Advisor on Environmental Quality, Federal Power Commission.

By the Commission.

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

[FR Doc.72-8149 Filed 5-31-72;8:45 am]

NATIONAL GAS SURVEY SUPPLY—TECHNICAL ADVISORY TASK FORCE—NATURAL GAS TECHNOLOGY

Order Designating Additional Member

MAY 22, 1972.

The Federal Power Commission by order issued December 21, 1971, established the Technical Advisory and Coordinating Committee Task Forces of the National Gas Survey.

1. *Membership.* An additional member to the Supply–Technical Advisory Task Force–Natural Gas Technology, as selected by the Chairman of the Commission with the approval of the Commission, is as follows:

Dr. Frank B. Counselman, Director, International Center for Arid and Semi-Arid Land Studies, Texas Tech University.

By the Commission.

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

[FR Doc.72-8150 Filed 5-31-72;8:45 am]

NATIONAL GAS SURVEY TRANSMISSION—TECHNICAL ADVISORY TASK FORCE—REGULATION AND LEGISLATION

Order Designating Representative

MAY 22, 1972.

The Federal Power Commission by order issued December 21, 1971, established the Technical Advisory and Coordinating Committee Task Forces of the National Gas Survey.

1. *FPC Representative.* The FPC Representative to the Transmission-Technical Advisory Task Force—Regulation and Legislation, as selected by the Chairman of the Commission with the approval of the Commission, is as follows:

Allen F. Crabtree, Environmental Assistant to the Advisor on Environmental Quality, Office of the Advisor on Environmental Quality, Federal Power Commission.

By the Commission.

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

[FR Doc.72-8151 Filed 5-31-72;8:46 am]

NATIONAL GAS SURVEY TECHNICAL ADVISORY COMMITTEE—TRANSMISSION

Order Designating Representative

MAY 22, 1972.

The Federal Power Commission by order issued April 6, 1971, established the Technical Advisory Committees of the National Gas Survey.

1. *FPC Representative.* The FPC Representative to the Technical Advisory Committee—Transmission, as selected by the Chairman of the Commission with the approval of the Commission, is as follows:

Dr. Richard F. Hill, Acting Advisor on Environmental Quality, Office of the Advisor on Environmental Quality, Federal Power Commission.

By the Commission.

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

[FR Doc.72-8157 Filed 5-31-72;8:46 am]

NATIONAL GAS SURVEY SUPPLY—TECHNICAL ADVISORY TASK FORCE—LIQUEFIED NATURAL GAS (LNG)

Order Designating Representative

MAY 22, 1972.

The Federal Power Commission by order issued December 21, 1971, established the Technical Advisory and Coordinating Committee Task Forces of the National Gas Survey.

1. *FPC Representative.* The FPC Representative to the Supply—Technical Advisory Task Force—Liquefied Natural Gas (LNG), as selected by the Chairman of the Commission with the approval of the Commission, is as follows:

Robert M. Jimeson, Assistant Advisor on Environmental Quality, Office of the Advisor on Environmental Quality, Federal Power Commission.

By the Commission.

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

[FR Doc. 72-8158 Filed 5-31-72;8:46 am]

NATIONAL GAS SURVEY SUPPLY—TECHNICAL ADVISORY TASK FORCE—REFORMER GAS

Order Designating Additional Representative

MAY 22, 1972.

The Federal Power Commission by order issued December 21, 1971, established the Technical Advisory and Coordinating Committee Task Forces of the National Gas Survey.

1. *FPC Representatives.* An additional FPC Representative to the Supply—Technical Advisory Task Force—Reformer Gas, as selected by the Chairman of the Commission with the approval of the Commission, is as follows:

Robert M. Jimeson, Assistant Adviser on Environmental Quality, Office of the Adviser on Environmental Quality, Federal Power Commission.

By the Commission.

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

[FR Doc.72-8159 Filed 5-31-72;8:46 am]

NATIONAL GAS SURVEY SUPPLY—TECHNICAL ADVISORY TASK FORCE—SYNTHETIC GAS—COAL

Order Designating Additional Member

MAY 22, 1972.

The Federal Power Commission by order issued December 21, 1971, established the Technical Advisory and Coordinating Committee Task Forces of the National Gas Survey.

1. *Membership.* A present member of the Supply—Technical Advisory Task Force—Synthetic Gas—Coal, as selected by the Chairman of the Commission with the approval of the Commission, is assigned additional responsibilities as Task Force Deputy Director, as follows:

Dr. Henry R. Linden, Director, Institute of Gas Technology.

By the Commission.

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

[FR Doc.72-8161 Filed 5-31-72;8:47 am]

[Docket No. CP70-92]

COLUMBIA GULF TRANSMISSION CO.

Notice of Petition to Amend

MAY 23, 1972.

Take notice that on May 5, 1972, Columbia Gulf Transmission Co. (petitioner), Post Office Box 683, Houston, TX 77001, filed in Docket No. CP70-92 a petition to amend the order of the Commission heretofore issued in said docket on February 24, 1970 (43 FPC 218), pursuant to section 7(c) of the Natural Gas Act so as to conform the authorized facilities with those actually constructed, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

By the order of February 24, 1970, petitioner was authorized, inter alia, to install a new measuring station near Means, Ky., and retire the existing measuring facility at Leach, Ky. At the time of application in said docket, petitioner believed that a proposed interstate highway would require the relocation of the Leach facility. Subsequently, when plans to build the highway were indefinitely suspended, petitioner determined that the measurement facilities for its new Line 300 could be constructed approximately 4 miles southwest of the present Leach facilities at a point where its Lines 100, 200, and 300 are side by side rather than at the proposed location near Means.

Petitioner states that this relocation of the measuring facilities reduced the actual costs of said facilities to $159,700 as compared to the estimated cost of $438,900 for constructing a new measuring station near Means.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before June 12, 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.

KENNETH F. PLUMB, *Secretary.*

[FR Doc.72-8163 Filed 5-31-72;8:47 am]

[Docket No. CP72-256]

EL PASO NATURAL GAS CO.

Notice of Application

MAY 22, 1972.

Take notice that on May 3, 1972, El Paso Natural Gas Co. (applicant), Post Office Box 1492, El Paso, TX 79978, filed in Docket No. CP72-256 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon certain natural gas facilities and deliveries of natural gas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that by order issued January 11, 1965 (33 FPC 34), as amended June 2, 1965 (33 FPC 1159), February 4, 1966 (35 FPC 185), August 3, 1966 (36 FPC 368), and September 27, 1971 (46 FPC ------), in Docket No. CP61-92, it was authorized to construct and operate certain natural gas facilities and to deliver natural gas to Northern Natural Gas Co. (Northern), on an exchange basis, at certain designated points in Ochiltree County, Tex. Applicant states that the natural gas for the exchanges authorized in said docket is obtained from certain wells located in Ochiltree County, Tex., identified in Exhibit B to the 1963 Service Agreement dated August 17, 1962, between applicant and Northern, comprising special Rate Schedule Z-1 to applicant's FPC Gas Tariff, Third Revised Volume No. 2. Applicant further states that one of the wells so identified, the Key-Richardson 2-71, is no longer capable of production and has been plugged and abandoned. Accordingly, applicant proposes to abandon its facilities utilized to deliver natural gas from this well, consisting of a total of approximately 253 feet of 4½-inch O.D. pipeline and related metering and wellhead equipment, and the exchange deliveries made therefrom.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 12, 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 permission and approval for the proposed abandonment are required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

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

[FR Doc. 72-8164 Filed 5-31-72;8:47 am]

[Docket No. CP72-87 etc.]

MICHIGAN WISCONSIN PIPE LINE CO.

Findings and Order After Statutory Hearing

MAY 22, 1972.

Findings and order after statutory hearing issuing Certificates of Public Convenience and Necessity, and order setting date for formal hearing, prescribing procedures, and permitting intervention.

On September 28, 1971, as supplemented on February 16, and March 17, 1972, Michigan Wisconsin Pipe Line Co. (applicant) filed in Docket No. CP72-87 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of facilities offshore Louisiana and the transportation of natural gas to be purchased from a group of producers,[1] all as more fully set forth in the application. Notice of this application was issued on October 15, 1971, and was published in the FEDERAL REGISTER on October 22, 1971 (36 F.R. 20457).

On November 8, 1971, as supplemented on March 7 and March 23, 1972, applicant filed in Docket No. CP72-125 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of facilities offshore and onshore Louisiana and the transportation of natural gas to be purchased from a group of producers,[2]

[1] The producers involved are Canadian Superior Oil (U.S.) Ltd., General Crude Oil Co., Hamilton Brothers Oil Co., Hamilton Brothers Petroleum Corp., Highland Resources, Inc., Hunt Oil Co., Hunt Petroleum Corp., Kewanee Oil Co., Placid Oil Co., the Superior Oil Co., TransOcean Oil, Inc., and Union Carbide Petroleum Corp.

[2] The producers involved are General Crude Oil Co., Hamilton Brothers Oil Co., Hamilton Brothers Petroleum Corp., Hassie Hunt Trust, Hunt Petroleum Corp., Kewanee Oil Co., Placid Oil Co., Trans-Ocean Oil, Inc., and Ashland Oil, Inc.

all as more fully set forth in the application. Notice of this application was issued on November 18, 1971, and published in the FEDERAL REGISTER on November 30, 1971 (36 F.R. 22788).

On January 7, 1972, as supplemented on February 14 and March 21, 1972, applicant filed in Docket No. CP72–175 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity for the construction and operation of facilities to increase applicant's mainline capacity, to expand applicant's gathering capacity, and to improve service to certain of applicant's existing customers. In addition, applicant requests authorization to increase its annual deliveries to existing customers and to provide increased peak day deliveries. Finally, applicant proposes a modification of its tariff, all as more fully set forth in the application. Notice of this application was issued on January 21, 1971, and published in the FEDERAL REGISTER on January 27, 1972 (37 F.R. 1269). Further notice of the application was issued on March 20, 1972, and published in the FEDERAL REGISTER on March 22, 1972 (37 F.R. 5844).

In Docket No. CP72–87, applicant proposes to construct and operate the following facilities in the Eugene Island area, offshore Louisiana:

1. Approximately 34.5 miles of 30-inch pipeline extending from Block 306 through Block 296 and continuing to an existing platform in Block 188;

2. Approximately 0.2 mile of 20-inch pipeline from the above-mentioned producers [3] platform in Block 296 to the proposed 30-inch line and metering facilities on those producers' platform;

3. Adjacent to applicant's existing platform in Block 188, applicant proposes to construct a platform and install thereon two 13,000 horsepower compressors, together with the necessary connection facilities.

The daily design of the proposed facilities is estimated to be 200,000 Mcf with maximum capabilities of the facilities estimated to be 338,000 Mcf per day. Said facilities will be used to attach gas dedicated to applicant in Blocks 296 and 306, Eugene Island area.

Applicant states that drilling has established proven reserves for Block 296 alone of 750 billion cubic feet, and that such drilling, combined with geophysical evidence, indicates proved and probable reserves for the block of some 1.5 trillion cubic feet. Applicant further states that the potential reserves of Block 306 are similar to Block 296.

The total estimated cost of the proposed facilities in Docket No. CP72–87 is $26,419,000. Applicant proposes to finance said costs from borrowing from banks under lines of credit, together with retained earnings and other funds generated internally.

The application in Docket No. CP72–87 indicates that the construction and operation of the proposed facilities will have minimal adverse environmental effects. Applicant states that its proposed offshore pipeline will be laid at a minimum depth of 3 feet below the floor of the Gulf in water depths ranging from 66 feet at the northerly terminus (Block 199) to 207 feet at the southerly terminus (Block 306). Applicant states that 90 percent of white shrimp and 60 percent of brown shrimp are caught in waters shallower than 60 feet, and 35 percent of brown shrimp and 9 percent of white shrimp are caught in water depths between 60 and 180 feet, and that the proposed construction area is considered to be an area where minimum to moderate catches of brown shrimp are made. The trench width for the pipeline is estimated to be 8 to 10 feet wide and the jetting operation to provide the trench is estimated to disturb only an area within 25 feet of the pipeline. Therefore, applicant alleges that any adverse effect on the shrimp would be minimal and temporary. Applicant further states that menhaden fish are taken inside the 60-foot contour but that pipeline construction is not detrimental to the menhaden industry since these fish are a surface-schooling species and bottom construction does not affect them. Applicant concludes that the only adverse effect caused by the proposed facility will be a temporary and slight disturbance of the seabed where the offshore line is to be constructed and that any disturbance will last only for the relatively short time required for construction with the tides and currents quickly restoring the offshore right-of-way to its prior state.

The proposed location of the compressor platform in Docket No. CP72–87 is approximately 35 miles away from the nearest point of safety fairway which at this distance offers minimum hazard risk to ocean-going traffic. The application indicates that the structure will be equipped to conform to applicable Coast Guard regulations and will have the necessary lighting and signaling devices to serve as a navigational aid. Further, the structure is also designed to prevent accidental spillage and any sewage will be processed by a sewage disposal plant before disposal into the sea. Applicant states that the conduct of normal gas compression operations will have no adverse effect on the marine environment and that the installation of the compressor platform will not result in any permanent damage to wildlife or aquatic life or to the suitability of the area for its current uses.

Accordingly, the Commission finds that approval of the application in Docket No. CP72–87 would not constitute a major Federal action having any significant effect on the environment.

Timely petitions for leave to intervene in the proceeding in Docket No. CP72–87 were filed by Wisconsin Fuel and Light Co. and by North Central Public Service Co., Division of Dovanan Cos., Inc. Late petitions for leave to intervene were filed by United Gas Pipe Line Co. and by Sea Robin Pipeline Co. None of the aforementioned petitioners request a hearing in this docket. No other petition to intervene, notice of intervention or protest to the granting of the application in Docket No. CP72–87 has been filed.

In Docket No. CP72–125, applicant proposes to construct and operate the following facilities:

1. A purchase meter station and approximately 13 miles of 30-inch offshore pipeline extending southwesterly from Block 71 field, West Cameron area, to Block 171;

2. Approximately 5.4 miles of 26-inch onshore loop line into applicant's North Tepetate Compressor Station, Acadia Parish, La.; and

3. Approximately 22.1 miles of 30-inch diameter onshore pipeline extending from the onshore terminus of applicant's existing 30-inch offshore pipeline from Block 71 to applicant's compressor station near Lake Arthur, Cameron Parish, La. (the Marsh Line).

On April 3, 1972, applicant requested that the offshore facilities and the 5.4-mile segment of onshore facilities (items 1 and 2, above) be certificated as Phase I and that consideration of the remaining onshore facilities (item 3, above) be held in abeyance as Phase II pending the circulation of a draft environmental statement which was necessary because of the routing of Phase II facilities through a marsh area and 3.4 miles thereof through the Lacassine Wildlife Refuge, a Federal wildlife refuge.[5]

Applicant states that it can utilize the Phase I facilities, even if the Phase II facilities are delayed, by exchanging some additional gas with Tennessee Gas Pipeline Co. (Tennessee) at the northern terminus of applicant's Block 71 lateral. By order issued July 16, 1971, in Docket Nos. CP71–249 and CP71–260, Tennessee and applicant were authorized to exchange 80,000 Mcf of gas per day. At the present time, approximately 50,000 Mcf per day is being exchanged. Thus, applicant has the capability of increasing its deliveries to Tennessee during an interim buildup period after the Block 171 reserves are brought on stream and pending completion of the Phase II facilities.

The proposed Phase I and Phase II facilities would be used to attach and transport reserves dedicated to applicant in Block 171. Applicant states that drilling in the northeast quadrant of the block has established proven reserves of 200 billion cubic feet and that this quantity of gas is currently dedicated to applicant.

The total estimated cost of the proposed facilities are approximately $7,171,000 for Phase I and $8,598,000 for Phase II, exclusive of filing fees. Applicant proposes to finance said costs from borrowings from banks under lines of credit, together with retained earnings and other funds generated internally.

The application in Docket No. CP72–125 (Phase I) indicates that the instant proposal will have minimal environmen-

[3] See footnote [1] above.

[5] The draft environmental statement pertaining to the Phase II facilities in Docket No. CP72–125 was circulated on Apr. 7, 1972.

tal impact. The proposed offshore pipeline will be laid at a minimum depth of 3 feet below the floor of the Gulf of Mexico, in water depths ranging from 41 feet at the northern terminus to 45 feet at the southern terminus. During the estimated 3-month construction period [6] there will be limited disturbance to the Gulf floor. However, these limited disturbances will have no material effect on the ecology of the Gulf. Preliminary surveys, including bottom core sampling along the proposed route, indicated there are no shell, oyster, or shrimp beds along said route. Moreover, oyster beds are rarely found in the deeper offshore waters where the proposed 30-inch line will be located. Finally, as stated above, offshore pipeline construction is generally not detrimental to the menhaden fishing industry.

The 5.4-mile onshore segment of pipeline is to be constructed on high ground which is currently being farmed. A ditch will be dug, the pipe laid, and the ditch backfilled, causing minimal environmental effects.

Thus, the Commission finds that approval of the Phase I facilities in Docket No. CP72–125 would not constitute a major federal action having any significant effect on the environment.

As to Phase II, however, the Commission's staff has decided that Commission approval of the proposed facilities could constitute a major federal action having a significant effect on the environment. Therefore, a draft environmental statement was circulated.

Timely petitions for leave to intervene were filed by Wisconsin Fuel and Light Co., North Central Public Service Co., Division of Donovan Companies, Inc., Iowa Southern Utilities Co., and Wisconsin Public Service Corp.

None of these petitioners request a formal hearing. No other petition to intervene, notice of intervention, or protest to the granting of the application has been filed.

In Docket No. CP72–175, applicant proposes to construct and operate the following facilities:

1. A total of approximately 187.1 miles of 36-inch loop lines located at various sites on applicant's Louisiana main line system in the States of Louisiana, Mississippi, Tennessee, Kentucky, and Indiana;

2. A 5,000 horsepower compressor and a 4,500 horsepower compressor at applicant's existing St. John and Bridgman Compressor Stations and an uprating of an existing compressor unit at applicant's Hamilton Compressor Station from 15,000 to 19,000 horsepower; [7]

3. Approximately 12.5 miles of 30-inch loop line on applicant's onshore Louisiana gathering system near its St. Martinville Compressor Station in Louisiana.

4. Approximately 15.7 miles of 6-inch loop line on applicant's Abbotsford lateral in Wisconsin; and

5. New measuring and regulating station near Christmas Lake, Ind.

Applicant states that the estimated cost of these facilities is $58,311,000. Applicant contemplates financing such facilities initially with treasury funds, retained earnings and other internally generated funds, together with short-term borrowings. Such borrowings are proposed to be refinanced with permanent debt and equity funds as market conditions permit.

The proposed facilities in this docket will serve the following purposes:

1 and 2. To increase applicant's Louisiana mainline transmission capacity by approximately 100,500 Mc.f. per day,

3. To expand the capacity of applicant's onshore Louisiana gathering facilities,

4. To loop applicant's Abbotsford lateral in Wisconsin to meet increased firm requirements, and

5. To provide a new delivery point for Community Natural Gas Co., Inc., at Christmas Lake which will obviate the necessity for a more extensive extension of the company's existing distribution system.

Applicant states that the proposed facilities would have minimal adverse environmental effects.

Applicant also requests authorization to increase its annual deliveries to existing customers by approximately 36,900,000 Mc.f.[8] and through the use of transmission and storage facilities to provide increased peak day deliveries of up to 177,378 Mc.f. per day.[9] Applicant states that the reserves to be secured by means of the facilities proposed in Dockets Nos. CP72–87 and CP72–125 will enable it to increase the annual gas supply to its customers by approximately 36,900,000 Mc.f.

In addition, applicant proposes modifications of its tariff to provide:

(1) A method for the allocation of natural gas among buyers of annual volumes in the event the total requested increases in annual volumes exceed the available increase in supply, and

(2) An extension of the option of purchasing gas under applicant's new ACQ–2 rate schedule to present SGS customers.

Timely petitions to intervene were filed by Wisconsin Public Service Corp., Wisconsin Power and Light Co., Iowa Southern Utilities Co., Northern Indiana Public Service Co., Wisconsin Fuel and Light Co., North Central Public Service Co., Division of Donovan Cos., Inc., Wisconsin Gas Co., and Illinois Power Co. A timely notice of intervention was filed by the Public Service Commission of Wisconsin. Late petitions to intervene were filed by Associated Natural Gas Co. and Michigan Gas Utilities Co. None of the above petitioners requests a formal hearing. No other petition to intervene, notice of intervention, or protest to the granting of the application in this docket has been filed.

The Commission notes that at the present time the leases on Blocks 296, 306, and 171 have not been fully developed, and that applicant cannot state with certainty the total reserves which would be dedicated to it in Dockets Nos. CP72–87 and CP72–125. Also, applicant has not submitted a gas balance for the next 5 years showing the effects on deliverability of the addition of new reserves and the expansion of applicant's markets.

It would appear that applicant's current deliverability in meeting its existing markets is less than 1 year. With the anticipated additional volumes proposed to be attached by the facilities proposed in Dockets Nos. CP72–87 and CP72–125, applicant's deliverability could increase to 4 to 5 years. However, applicant's deliverability, even with the additional volumes, would fall to the range of less than 1 year to 3 years with the expansion of markets proposed in Docket No. CP72–175.

Thus, an issue is presented as to whether it is in the public interest to allow applicant to expand its market in light of the affect it may have on its systemwide deliverability.

Another issue presented is whether it is in the public interest to permit applicant to ratably increase service to ACQ and MDC customers in light of applicant's stated curtailment policy which includes the possibility of requiring its customers to reduce or discontinue taking gas for the requirements of interruptible customers, in order to protect the firm service of all of applicant's customers.

Another issue presented is the end use of the additional volumes. We would expect presentations by applicant's customers showing the end use of additional volumes and the availability of alternative means of meeting additional requirements.[10]

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[6] The construction period is scheduled for June–August. Eighty percent of the white shrimp are taken during September–November.

[7] In Dockets Nos. CP70–21, CP71–184, and CP71–236, applicant was authorized to install at its Hamilton Compressor Station a 3,000 horsepower unit, a 5,000 horsepower unit, and a 4,000 horsepower unit, respectively. On November 22, 1971, applicant amended its application in those dockets to install a single 12,000 horsepower centrifugal unit in lieu of the three units. On Nov. 29, 1971, applicant filed a proposal in Docket No. CP72–147 to uprate the 12,000 horsepower unit to 15,000 horsepower.

[8] Applicant has allocated this volume to ACQ and MDQ Rate Schedule customers.

[9] Applicant states that its customers have nominated an increase of 177,378 Mc.f. in their aggregate Maximum Daily Quantities.

[10] For example, do interruptible users have alternative fuel sources which, if utilized, would allow more gas to be supplied to firm or human-needs customers?

At the hearing held on May 17, 1972, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the applications in Dockets Nos. CP72–87 and CP72–125, as supplemented, and exhibits thereto, submitted in support of the authorizations sought herein, and upon consideration of the record.

The Commission finds:

(1) Applicant, Michigan Wisconsin Pipe Line Co., a Delaware corporation having its principal place of business in Detroit, Mich., is a "natural gas company" within the meaning of the Natural Gas Act, as heretofore found by the Commission in its order of November 30, 1946, in Docket No. G–669 (5 FPC 953).

(2) The facilities hereinbefore described as more fully described in the applications in this proceeding, are to be used in the transportation and delivery of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and the construction and operation thereof by applicant are subject to the requirements of subsections (c) and (e) of section 7 of the Natural Gas Act.

(3) Insofar as Dockets Nos. CP72–87 and CP72–125 (Phase I) are concerned, applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(4) The construction and operation of the proposed facilities by applicant in Dockets Nos. CP72–87 and CP72–125 (Phase I) are required by the public convenience and necessity and certificates therefor should be issued as hereinafter ordered and conditioned.

(5) Participation by Sea Robin Pipeline Co., and United Gas Pipe Line Co. in Docket No. CP72–87, and by Associated Natural Gas Co., and Michigan Gas Utilities Co. in Docket No. CP72–175 may be in the public interest and good cause exists for permitting the filing of late petitions to intervene.

(6) 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.

(7) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that a public hearing be held on the issues presented by the application filed in Docket No. CP72–175 and in Docket No. CP72–125, to the extent that responses to the environmental statement relating to the Phase II facilities so require.

The Commission orders:

(A) Certificates of public convenience and necessity are issued authorizing applicant, Michigan Wisconsin Pipe Line Co., to construct and operate the facilities proposed in the applications in Dockets Nos. CP72–87 and CP72–125 (Phase I) and to transport natural gas therein as hereinbefore described, all as more fully described in the applications, as supplemented, in Dockets Nos. CP72–87 and CP72–125 (Phase I), upon the terms and conditions of this order.

(B) The certificates issued by paragraph (A) above and the rights granted thereunder are conditioned upon applicant's compliance with all applicable Commission regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraphs (a), (c)(1), (c)(3), (c)(4), (e), (f), and (g) of § 157.20 of such regulations.

(C) The facilities hereinabove authorized shall be constructed and placed in actual operation, as provided by paragraph (b) of § 157.20 of the Commission's regulations under the Natural Gas Act, within 1 year from the date this order issues.

(D) The certificates issued hereinabove are conditioned upon the grant to and acceptance by the related producers of temporary certificates in Dockets Nos. CI72–171, CI72–235, CI72–238, CI72–240, CI72–250, CI72–255, CI72–295, CI72–398, CI72–583, CI72–352, CI72–376, CI72–439, CI72–462, CI72–542, and CI72–543.

(E) The proposed offshore facilities hereinabove authorized are subject to § 2.65 of the Commission's General Policy and Interpretations which section sets forth a minimum load factor of 60 percent to be used in cost-of-service calculations for future rate proceedings.

(F) The cost associated with the facilities hereinabove authorized in Docket No. CP72–125 (Phase I) may be eliminated from applicant's cost of service in any future rate proceedings pursuant to section 4 or 5 of the Natural Gas Act in the event the flow of gas from such facilities ceases by virtue of applicant's failure to take affirmative action as is required to construct the facilities necessary to tie in the instant Block 71 and Block 171 fields reserves to its interstate system on a permanent basis.

(G) All of the hereinabove named petitioners are permitted to intervene in this proceeding subject to the rules and regulations of the Commission: *Provided, however,* That participation of such interveners shall be limited to matters affecting asserted rights and interests as specifically set forth in the petitions 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 of the Commission entered in this proceeding.

(H) Pursuant to the authority of the Natural Gas Act, particularly sections 7 and 15 thereof, the Commission's rules of practice and procedure, the regulations under the Natural Gas Act (18 CFR Ch. I), a public hearing shall be convened in these proceedings in a hearing room of the Federal Power Commission, 441 G Street NW., Washington, D.C. 20426, on August 9, 1972, at 10 a.m., e.d.s.t., concerning the issues hereinbefore discussed as well as other matters raised in the applications in these proceedings.

(I) 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 and prescribe relevant procedural matters not herein provided.

(J) On or before June 8, 1972, the applicant and supporting interveners shall file their direct testimony and evidence in support of their position. On or before June 27, 1972, all other parties to this proceeding shall file their direct and/or answering testimony in support of their respective positions. All direct testimony and evidence filed herein shall be served upon the Presiding Examiner, the Commission Staff, and all other parties.

(K) The application in Docket No. CP72–125 (Phase II) is held in abeyance pending receipt of comments from the circulation of the draft environmental statement therein.

By the Commission.

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

[FR Doc.72–8167 Filed 5–31–72;8:47 am]

[Docket No. CP72–258]

NATURAL GAS PIPELINE CO. OF AMERICA

Notice of Application

MAY 22, 1972.

Take notice that on May 5, 1972, Natural Gas Pipeline Co. of America (applicant), 122 South Michigan Avenue, Chicago, IL 60603, filed in Docket No. CP72–258 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the installation and operation of one additional compressor cylinder on each of 52 existing compressor engines, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to undertake a 5-year program of modifying 52 Worthington SUTC compressor engines on its Gulf Coast pipeline by the addition of one additional compressor cylinder to the existing four cylinders on each engine. Applicant states that this program is necessary because of unpredictable mechanical vibration resulting from the present four cylinder design. Applicant further states that this modification, along with other work to be done under section 2.55 of the Commission's general policy and interpretations (18 CFR 2.55), will result in an increase in horsepower capability of the engines, adding considerably to the reliability of continuity of service through increased flexibility of engine operations at the compressor stations involved.

Applicant states that the estimated cost of the additional compressor cylinders including installation over the 5-year program is $2,905,000. Applicant plans to finance this expenditure first through funds on hand and ultimately through permanent financing.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 12, 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 Commision 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.72-8165 Filed 5-31-72;8:47 am]

[Docket No. CS72-569]

WESTERN OIL & MINERALS CORP.

Notice of Petition to Amend

MAY 22, 1972.

Take notice that on April 12, 1972, Western Oil & Minerals Corp. (petitioner), Post Office Box 191, Farmington, NM 87401, filed in Docket No. CS72-569 a petition to amend the order of the Commission issued in subject docket pursuant to section 7(c) of the Natural Gas Act and § 157.40 of the regulations thereunder by authorizing sales for resale of natural gas in interstate commerce which were previously excluded from such certificate, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioner presently is holder of a small producer certificate in Docket No. CS72-569 authorizing sales for resale of natural gas in interstate commerce except sales to El Paso Natural Gas Co. made pursuant to its FPC Gas Rate Schedules Nos. 3 and 4. Petitioner states that it has renegotiated the contracts involved and has eliminated favored-nation pricing provisions. Petitioner, therefore, seeks authorization to make such sales under its small producer certificate.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before June 12, 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). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc.72-8166 Filed 5-31-72;8:47 am]

[Docket No. RI72-207, etc.]

MOBIL OIL CORP., ET AL.

Order Providing for Hearing on and Suspension of Proposed Changes in Rates, and Allowing Rate Changes To Become Effective Subject to Refund [1]

MAY 18, 1972.

Respondents have filed proposed changes in rates and charges for jurisdictional sales of natural gas, as set forth in Appendix A hereof.

The proposed changed rates and charges may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is in the public interest and consistent with the Natural Gas Act that the Commission enter upon hearings regarding the lawfulness of the proposed changes, and that the supplements herein be suspended and their use be deferred as ordered below.

The Commission orders: (A) Under the Natural Gas Act, particularly sections 4 and 15, the regulations pertaining thereto (18 CFR, Chapter I), and the Commission's Rules of Practice and Procedure, public hearings shall be held concerning the lawfulness of the proposed changes.

(B) Pending hearings and decisions thereon, the rate supplements herein are suspended and their use deferred until date shown in the "Date Suspended Until" column. Each of these supplements shall become effective, subject to refund, as of the expiration of the suspension period without any further action by the respondent or by the Commission. Each respondent shall comply with the refunding procedure required by the Natural Gas Act and section 154.102 of the regulations thereunder.

(C) Unless otherwise ordered by the Commission, neither the suspended supplements, nor the rate schedule sought to be altered, shall be changed until disposition of these proceedings or expiration of the suspension period, whichever is earlier.

By the Commission.

[SEAL] KENNETH F. PLUMB,
Secretary.

[1] Does not consolidate for hearing or dispose of the several matters herein.

APPENDIX A

Docket No.	Respondent	Rate schedule No.	Supplement No.	Purchaser and producing area	Amount of annual increase	Date filing tendered	Effective date unless suspended	Date suspended until—	Cents per Mcf*		Rate in effect subject to refund in dockets Nos.
									Rate in effect	Proposed increased rate	
RI72-207	Mobil Oil Corp.	38	[7] 1-18	El Paso Natural Gas Co. (San Juan Basin Area of New Mexico).	$262,666	4-24-72		[11] 5-24-72	[12] 13.2175	[8] 21.33	RI69-430.
									[13] 15.2510	[8] 21.33	RI69-430.
RI72-212	do	199	[7] 1-7	do	517	4-24-72		[11] 5-30-72	13.2175	[9] 21.33	RI71-120.
RI72-207	do	[3] 313	[7] 1-14	do	12,867	4-24-72		[11] 5-28-72	14.0	[8] 21.33	RI69-442.
RI72-207	do	314	[7] 1-16	do	23,821	4-24-72		[11] 5-28-72	14.2678	[8] 21.33	RI69-431.
RI72-207	do	360	[7] 1-13	do	9,202	4-24-72		[11] 5-28-72	13.2175	[8] 21.33	RI69-431.
RI72-212	do	370	[7] 1-6	do	12,799	4-24-72		[11] 5-28-72	[4] 14.0	[4] 21.33	RI69-431.
RI72-207	do	422	[7] 1-5	do	3,345	4-24-72		[11] 5-30-72	14.0	[9] 21.33	RI69-431.
RI72-207	do	427	[7] 1-15	do	7,626	4-24-72		[11] 5-28-72	15.2869	[8] 21.33	RI69-431.
RI72-208	Northern Natural Gas Producing Co.	25	[7] 1-21	do	61	4-24-72		5-30-72	[5] 14.2343	[10] 21.33	RI69-856.
RI72-208	do	26	[7] 1-20	do	1,405	4-24-72		[11] 5-30-72	[5] 14.2343	[10] 21.33	RI69-432.
RI72-208	do	27	[7] 1-21	do	1,212	4-24-72		[11] 5-30-72	[5] 14.2343	[10] 21.33	RI69-432.
RI72-208	do	30	[7] 1-8	do	3,796	4-24-72		[11] 5-30-72	14.2343	[10] 21.33	RI69-432.

See footnotes at end of table.

APPENDIX A—Continued

Docket No.	Respondent	Rate schedule No.	Supplement No.	Purchaser and producing area	Amount of annual increase	Date filing tendered	Effective date unless suspended	Date suspended until—	Cents per Mcf* Rate in effect	Cents per Mcf* Proposed increased rate	Rate in effect subject to refund in dockets Nos.
RI72-241	Gulf Oil Corp	38	[12] 7	El Paso Natural Gas Co. (San Juan Basin Area of New Mexico).		4-21-72	5-22-72	[55] Accepted			
			8	do	1,406	4-21-72		10-22-72	21.33	[13] 22.0 [15] 28.0	RI72-159.
	do	47	[12] 10	do		4-21-72	5-22-72	[55] Accepted			
			11	do	3,097	4-21-72		10-22-72	21.33	[13] 22.0 [15] 28.0	RI72-159.
	do	190	[12] 11	do		4-21-72	5-22-72	[53] Accepted			
			12	do	12,375	4-21-72		10-22-72	15.2869 21.33	[13] 22.0 [15] 28.0	RI69-708. RI72-159.
	do	202	[12] 8	do		4-21-72	5-22-72	[53] Accepted			
			9	do	21,375	4-21-72		10-22-72	21.33	[13] 22.0 [15] 28.0	RI72-159.
		351	[12] 12	do		4-21-72	5-22-72	[53] Accepted			
			13	do	8,550	4-21-72		10-22-72	15.2869 21.33	[13] 22.0 [15] 28.0	RI70-1662. RI70-217.
RI70-217	Pubco Petroleum Corp.	1	[12] 33	El Paso Natural Gas Co. (San Juan Basin Area).		4-20-72	4-20-72	[57] Accepted			
			[17] 34	do	(408,920)	4-20-72	4-20-72	[56] Accepted	29.6	[13] 22.0 [15] 28.0	RI70-217.
RI72-242	do		[18] [19] 35	do	4,982	4-20-72		10-21-72	[18] [34] 15.2525 [19] 14.2357	[13] 22.0 [15] 28.0	RI70-217. RI70-217.
		2	[12] 6	do		4-20-72	4-20-72	[57] Accepted			
RI72-58	do	2	7	do	(2,303)	4-20-72	4-20-72	[56] Accepted	29.6	[13] 22.0 [15] 28.0	RI72-58.
	do	3	[12] 7	do		4-20-72	4-20-72	[57] Accepted			RI72-58.
			8	do	(9,365)	4-20-72	4-20-72	[56] Accepted	29.6	[13] 22.0 [15] 28.0	RI72-58.
RI72-243	do	4	33	do		4-20-72	5-21-72	[35] Accepted			
	do		34	do	10,922	4-20-72		[25] 6-21-72	[20] 21.33	[13] 22.0	RI72-184.
						4-20-72		10-21-72	[20] 21.33	[13] 22.0 [15] 28.0	RI72-184.
									[21] 13.2188 [23] 14.2357		RI70-217.
	do	[12] 6	6	do		4-20-72	4-20-72	[57] Accepted			
RI72-58	do	6	7	do	(55,141)	4-20-72	4-20-72	[56] Accepted	28.11	[13] 22.0 [15] 28.0	RI72-58
RI72-243	do	7	[12] 12	do		4-20-72	4-20-72	[57] Accepted			
	do		[25] 13	do	164	4-20-72		10-21-72	21.33	[13] 22.0 [15] 28.0	RI72-184.
RI72-58	do		[26] 14	do	(38,315)	4-20-72	4-20-72	[56] Accepted	29.5971	[13] 22.0 [14] 28.0	RI72-58
RI72-243	do	13	[12] 26	do		4-20-72	5-21-72	[53] Accepted			
	do		27	do	75,317	4-20-72		[20] 6-21-72	[24] [29] 15.2510	[13] 22.0	RI72-218.
	do	13	27	do		4-20-72		10-21-72	[24] [29] 15.2510 [27] 14.2357 [28] 21.33	[13] 22.0 [15] 28.0	RI70-218.
		16	[12] 8	do		4-20-72	5-21-72	[55] Accepted			
			9	do	27	4-20-72		10-21-72	21.33	[13] 22.0 [15] 28.0	RI72-184.
RI72-244	Mobil Oil Corp	446	[12] 5	do		3-29-72	4-20-72	[55] Accepted			
			6	do	15,546	3-29-72		[11] 5-30-72	13.2175	21.33	RI71-944.
RI72-245	Continental Oil Co	274	[12] [24] 7	El Paso Natural Gas Co. (San Juan Basin)(New Mexico).		4-24-72	5-25-72	[56] Accepted			
	do		8	do	2,695	4-24-72		10-25-72	21.33	[13] 22.0 [15] 28.0	RI72-171.
	do	277	[12] [24] 8	do		4-24-72	5-25-72	[55] Accepted			
	do		9	do	18	4-24-72		10-25-72	21.33 [7] [32] 15.2678	[13] 22.0	RI72-171.
				do	219					[32] 28.0	
	do	278	[12] 5	do		4-24-72	5-25-72	[55] Accepted			
			6	do	(60)	4-24-72		10-25-72	13.2486	[13] 22.0 [15] 28.0	RI69-433.
	do	279	[12] [24] 4	do		4-24-72	5-25-72	[55] Accepted			
	do	279	5	do		4-24-72		10-25-72	21.33	[13] 22.0 [15] 28.0	RI72-171.
	do	[3] 280	[12] 4	do		4-24-72	5-25-72	[55] Accepted			
	do		5	do	1,330	4-24-72		10-25-72	15.0	[13] 22.0 [14] 28.0	RI69-443.
	do	287	[12] 4	do		4-24-72	5-25-72	[55] Accepted			
	do		5	do	10,632	4-24-72		10-25-72	14.0	[13] 22.0 [15] 28.0	RI69-433.
	do	295	[12] [24] 3	do		4-24-72	5-25-72	[55] Accepted			
	do		4	do	3,596	4-24-72		10-25-72	21.33	[13] 22.0 [14] 28.0	RI72-171.
	do	[35] 296	[12] 11	do		4-24-72	5-25-72	[55] Accepted			
	do		12	do	28,500 92,767	4-24-72		10-25-72	14.0	[13] 22.0 [32] 28.0	RI69-433.
	do	309	[12] 2	do		4-24-72	5-25-72	[55] Accepted			
	do		3	do	41,600	4-24-72		10-25-72	14.0	[13] 22.0 [15] 28.0	RI69-433.
RI72-246	Union Texas Petroleum, a division of Allied Chemical Corp.	102	2	Natural Gas Pipeline Co. of America (ROC Field, Ward County, Tex.) (Permian Basin).	5,760	4-24-72		10-25-72	[59] 27.0	[37] [59] 27.4	RI71-1007.
RI72-247	Phillips Petroleum Co	483	3	El Paso Natural Gas Co. (Goldsmith Plant, Ector County, Tex.) (Permian Basin).	31,060	4-24-72		12-2-72	[38] [57] 24.5	[39] [59] 24.85	RI72-103.
RI72-248	Continental Oil Co	198	[12] 10	El Paso Natural Gas Co. (San Juan Basin Area of New Mexico).		4-24-72	5-25-72	[53] Accepted			
	do		11	do	4,199	4-24-72		10-25-72	21.33 [45] 15.2678	[13] 22.0 [15] 28.0	RI72-171. RI69-433.
	do	199	[12] 8	do		4-24-72	5-25-72	[55] Accepted			
	do		9	do	525 6,959	4-24-72		10-25-72	[40] 13.2486 [41] 14.2678	[13] 22.0	RI69-433. RI69-433.
	do	208	[12] 11	do		4-24-72	5-25-72	[55] Accepted			
	do		12	do	59,168	4-24-72		10-25-72 [44] 6-25-72	13.2486	22.0	RI69-433.
	do	221	[12] 8	do		4-24-72	5-25-72	[55] Accepted			
	do		9	do	108,800	4-24-72		10-25-72	[42] 13.2486 [43] 21.33	[13] 22.0 [15] 28.0	RI69-433.

APPENDIX A—Continued

Docket No.	Respondent	Rate schedule No.	Supplement No.	Purchaser and producing area	Amount of annual increase	Date filing tendered	Effective date unless suspended	Date suspended until—	Cents per Mcf* Rate in effect	Cents per Mcf* Proposed increased rate	Rate in effect subject to refund in dockets Nos.
R172-248	Continental Oil Co	241	[12] 7	El Paso Natural Gas Co. (San Juan Basin Area of New Mexico).		4-24-72	5-25-72	[45] Accepted			
	do		8	do	39	4-24-72		10-25-72	21.33	[13] 22.0 [15] 28.0	RI72-171.
	do	[35] 242	[12] 8	do		4-24-72	5-25-72	[45] Accepted			
	do		9	do	175	4-24-72		10-25-72	21.33	[13] 22.0 [15] 28.0	RI72-171.
	do	259	[12] 10	do		4-24-72	5-25-72	[45] Accepted			
	do		11	do	449	4-24-72		10-25-72	21.33 [46] 12.0495 [47] 13.0	[13] 22.0 [15] 28.0	RI72-171.
				do		4-24-72		[49] 6-25-72	21.33 [46] 12.0495 [47] 13.0	[13] 22.0 [15] 28.0	RI72-171.
	do	266	4	do		4-24-72	5-25-72	[45] Accepted			
	do		5	do		4-24-72		10-25-72	21.33	[13] 22.0 [15] 28.0	RI72-171.
	do	267	4	do		4-24-72	5-25-72	[45] Accepted			
	do		5	do	230	4-24-72		10-25-72	21.33	[13] 22.0 [15] 28.0	RI72-171.
	do	273	4	do		4-24-72	5-25-72	[45] Accepted			
	do		5	do		4-24-72		10-25-72	21.33	[13] 22.0 [15] 28.0	RI72-171.
	do	316	3	do		4-24-72	5-25-72	[45] Accepted			
	do		4	do	114,453	4-24-72		10-25-72	13.0	[13] 22.0	
	do	332	[12] 3	do		4-24-72	5-25-72	[45] Accepted			
	do		4	do	3,952	4-24-72		10-25-72	14.0	[13] 22.0 [15] 28.0	RI71-1009.
	do	334	[12] 3	do		4-24-72	5-25-72	[45] Accepted			
	do		4	do	2,344	4-24-72		10-25-72	14.0	[13] 22.0 [15] 28.0	RI71-1009.
	do	336	[12] 2	do		4-24-72	5-25-72	[45] Accepted			
	do		3	do	101,331	4-24-72		10-25-72	13.0	[13] 22.0 [15] 28.0	
	do	339	[12] 4	do		4-24-72	5-25-72	[45] Accepted			
	do		5	do	26,608	4-24-72		10-25-72	14.0	[13] 22.0 [15] 28.0	RI71-921.
	do	340	[12] 3	do		4-24-72	5-25-72	[45] Accepted			
	do		4	do	7,956	4-24-72		10-25-72	13.0	[13] 22.0 [15] 28.0	
	do	345	[12] 2	do		4-25-72	5-25-72	[45] Accepted			
	do		3	do	12,078	4-24-72		10-25-72	13.0	[13] 22.0 [15] 28.0	
RI72-249	Gulf Oil Corp	193	26	Transwestern Pipeline Co. (Worsham Field, Reeves County, Tex.) (Permian Basin).		4-24-72	5-25-72	[58] Accepted			
	do		27	do	85,491	4-24-72		6-25-72	[59] 19.0831	[51] [59] 40.4189	RI72-27.
	do	194	[12] 14	Transwestern Pipeline Co. (McKee Field, Crane County, Tex.) (Permian Basin).		4-24-72	5-25-72	[58] Accepted			
	do		15	do	1,636	4-24-72		6-25-72	[59] 19.0831	[51] [59] 19.7510	RI72-28.
	do	342	[12] 14	Transwestern Pipeline Co. (Crawar and Heiner Fields, Pecos and Ward Counties, Tex.) (Permian Basin).		4-24-72	5-25-72	[58] Accepted			
	do		15	do	28,861	4-24-72		6-25-72	[52] [59] 19.0831 [60] 19.0229	[51] [52] [54] [59] 19.9609 [51] [53] [54] [59] 20.0724	RI72-28. RI72-28.
	do	418	[12] 10	Transwestern Pipeline Co. (Kermit and South Kermit Fields, Winkler County, Tex.) (Permian Basin).		4-24-72	5-25-72	[58] Accepted			
	do		11	do	3,075	4-24-72		6-25-72	[59] 27.32	[51] [59] 29.37	RI71-983.
	do	192	[12] 15	Transwestern Pipeline Co. (Puckett Ellenburger Field, Pecos County, Tex.) (Permian Basin).		4-21-72	6-22-72	[58] Accepted			
	do		16	do	2,485,845	4-21-72		6-22-72	[59] 15.0656	[59] 20.5897	RI72-27.

* Unless otherwise stated, the pressure base is 15.025 p.s.i.a.
[1] For low pressure gas (below 500 p.s.i.g.) from certain Pictured Cliffs Wells.
[2] For high pressure gas.
[3] All sales in Colorado.
[4] Does not apply to sales under Supplement No. 3.
[5] Applies to sales under Supplements Nos. 3, 4, and 5 only.
[6] Applies to sales under Supplements Nos. 2, 3, and 4.
[7] Substitute filing fracturing renegotiated rate increase to 22 cents per Mcf, previously suspended in these same dockets for 5 months, in order not to exceed rate limit for 1-day suspension.
[8] Increase to 22 cents per Mcf currently suspended in Docket No. RI72-207.
[9] Increase to 22 cents per Mcf currently suspended in Docket No. RI72-212.
[10] Increase to 22 cents per Mcf currently suspended in Docket No. RI72-208.
[11] 61-days from date of filing of original rate change filing.
[12] Contract amendment.
[13] Applicable to production from wells completed before June 1, 1970.
[14] For sales from acreage added by Supplement No. 4.
[15] Applicable to production from wells completed on or after June 1, 1970 (No production at present).
[16] For sales from acreage added by Supplements Nos. 4 and 5.
[17] Not applicable to Supplements Nos. 24, 27, 28, and 29.
[18] Applicable to Supplement No. 24.
[19] Applicable to Supplements Nos. 27, 28, and 29.
[20] Not applicable to Supplements Nos. 28-30.
[21] Applicable to Supplement No. 28.
[22] Applicable to Supplements Nos. 29 and 30.
[23] For sales under Supplements Nos. 29 and 30 which were dated after Oct. 1, 1968, insofar as they apply to 22-cent rate.
[24] Includes 1 cent per Mcf minimum guarantee for liquids.
[25] Applicable to Pictured Cliffs Formation production.
[26] Applicable to Mesa Verde Formation production.
[27] Applicable to Supplements Nos. 14-22.
[28] Applicable to basic contract and Supplements Nos. 1-5 thereto.
[29] Applicable to Supplements Nos. 6-10.
[30] For sales under Supplement No. 22 which is dated Oct. 1, 1968, insofar as it applies to 22-cent rate.
[31] Not used.
[32] Applicable to wells completed on or after June 1, 1970.
[33] For sales under Supplement No. 2.
[34] Also eliminates Favored Nations clause.
[35] Also includes acreage in Colorado.
[36] Applicable to base rate.
[37] Subject to upward and downward B.t.u. adjustment.
[38] Previously reported as 25.0625 cents per Mcf inclusive of 3.0625 cents upward B.t.u. adjustment and 2.5 cents compression charge by buyer.
[39] Subject to upward and downward B.t.u. adjustment and compression charge.
[40] For gas delivered at 500 p.s.i.g. or less.
[41] For gas delivered in excess of 500 p.s.i.g.
[42] Gas from acreage added by Supplement No. 5.
[43] All gas except that from acreage added by Supplement No. 5.
[44] For acreage added by Supplements Nos. 8 and 10 dated after Oct. 1, 1968.
[45] For acreage added by Supplement No. 2.
[46] For sales under Supplements Nos. 5 and 6.
[47] For sales under Supplement No. 8.
[48] One day suspension for sales under Supplements Nos. 6 and 8 with regard to 22-cent rate. (Supplements dated after Oct. 1, 1968).
[49] Applicable to new gas well gas.
[50] Applicable to residue gas not derived from new gas well gas.
[51] Upward B.t.u. adjustment and tax reimbursement.
[52] Heiner Field gas.
[53] Crawar Field gas.
[54] Includes treating charge of 0.06 cent per Mcf by buyer.
[55] Accepted for filing 30 days after date of filing as shown in the "Effective Date" column.
[56] Accepted for filing as of Apr. 20, 1972, with waiver of notice granted, subject to the existing rate proceedings.
[57] Accepted for filing effective as of Apr. 20, 1972, the date of filing, with waiver of notice rate granted.
[58] Accepted for filing effective as of the date shown in the "Effective Date" column.
[59] The pressure base is 14.65 p.s.i.a.
[60] No production at present.

Mobil Oil Corp. and Northern Natural Gas Producing Co. propose to substitute 21.33 cents per Mcf filings (the applicable ceiling for a 1 day suspension period) in lieu of currently suspended rates of 22 cents per Mcf, in order to shorten the suspension period from 5 months to 1 day. The substitute rate change filings are permitted and the suspension periods are reduced to 60 days from the date of filing of the original increases, as requested.

Those 22-cent increases resulting from El Paso's renegotiation program in the San Juan Basin area which relate to add acreage amendments dated after October 1, 1968, are suspended for 1 day because they do not exceed the ceiling for that vintage gas. All the remaining proposed renegotiated increases exceed the corresponding rate filing limitations imposed in Southern Louisiana and therefore are suspended for 5 months. The proposed renegotiated decreases from favored-nation increased rates are accepted for filing as of the date of filing, with waiver of notice granted, subject to refund in the existing rate proceedings.

Gulf Oil Corp. submitted agreements with Transwestern Pipeline Co. for sales of gas in the Permian Basin area of Texas which provide for upward and downward adjustment for B.t.u. content above or below 1,000 B.t.u. per cubic foot of gas.[1] Gulf also submitted rate increases reflecting upward B.t.u. adjustment and tax reimbursement attributable to the upward adjustment. The proposed increases are suspended for 1 day inasmuch as they do not exceed the ceiling for a 1 day suspension.

The proposed increased rates and charges involved here exceed the applicable area price levels for increased rates as set forth in the Commission's Statement of General Policy No. 61–1, as amended (18 CFR, Chapter I, Part 2, section 2.56).

CERTIFICATION OF ABBREVIATED SUSPENSION

Pursuant to § 300.16(i)(3) of the Price Commission rules and regulations, 6 CFR 300 (1972), the Federal Power Commission certifies as to the abbreviated suspension period in this order as follows:

(1) This proceeding involves producer rates which are established on an area rather than company basis. This practice was established by Area Rate Proceeding, Docket No. AR61–1, et al., Opinion No. 468, 34 FPC 159 (1965), and affirmed by the Supreme Court in Permian Basin Area Rate Case, 390 U.S. 747 (1968). In such cases as this, producer rates are approved by this Commission if such rates are contractually authorized and are at or below the area ceiling.

(2) In the instant case, the requested increases do not exeeced the ceiling rate for a 1 day suspension.

(3) By Order No. 423 (36 F.R. 3464 issued February 18, 1971, this Commission determined as a matter of general policy that it would suspend for only 1 day a change in rate filed by an independent producer under section 4(d) of the Natural Gas Act (15 U.S.C. 717c(d)) in a situation where the proposed rate exceeds the increased rate ceiling, but does not exceed the ceiling for a 1 day suspension.

(4) In the discharge of our responsibilities under the Natural Gas Act, this Commission has been confronted with conclusive evidence demonstrating a natural gas shortage. (See Opinions Nos. 595, 598, and 607, and Order No. 435). In these circumstances and for the reasons set forth in Order No. 423 the Commission is of the opinion in this case that the abbreviated suspension authorized herein will be consistent with the letter and intent of the Economic Stabilization Act of 1970, as amended, as well as the rules and regulations of the Price Commission, 6 CFR 300 (1972). Specifically, this Commission is of the opinion that the authorized suspension is required to assure continued, adequate and safe service and will assist in providing for necessary expansion to meet present and future requirements of natural gas.

[FR Doc.72–8101 Filed 5–31–72;8:45 am]

[1] Opinion No. 468 prescribed a base of 1,050 B.t.u. per cubic foot for upward adjustments and 1,000 B.t.u. per cubic foot for downward adjustments.

FEDERAL RESERVE SYSTEM

FIRST SECURITIES NATIONAL CORP.

Acquisition of Bank

First Securities National Corp., Beaumont, Tex., 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 Bank of Colleyville, Colleyville, Tex., a proposed new bank. 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 Dallas. Any person wishing to comment on the application should submit his views in writing to the Reserve Bank to be received not later than June 19, 1972.

Board of Governors of the Federal Reserve System, May 24, 1972.

[SEAL] MICHAEL A. GREENSPAN,
Assistant Secretary.

[FR Doc.72–8168 Filed 5–31–72;8:49 am]

HAMILTON BANCSHARES, INC.

Acquisition of Bank

Hamilton Bancshares, Inc., Chattanooga, Tenn., 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 9,280 of an additional issue of 24,200 voting shares of the First National Bank of Cartersville, Cartersville, Ga., a bank in which Hamilton Bancshares, Inc., already controls more than 25 percent of the voting shares. 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 Atlanta. Any person wishing to comment on the application should submit his views in writing to the Reserve Bank to be received not later than June 19, 1972.

Board of Governors of the Federal Reserve System, May 24, 1972.

[SEAL] MICHAEL A. GREENSPAN,
Assistant Secretary.

[FR Doc.72–8169 Filed 5–31–72;8:50 am]

DEPARTMENT OF COMMERCE

Office of Import Programs

GEORGE WASHINGTON UNIVERSITY

Notice of Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article 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 this decision is available for public review during ordinary business hours of the Department of Commerce, at the Office of Import Programs, Department of Commerce, Washington, D.C.

Docket No. 71–00446–33–46040. Applicant: George Washington University, 2150 Pennsylvania Avenue NW., Washington, DC 20037. Article: Electron microscope, Model EM 801 and accessories. Manufacturer: Associated Electrical Industries, Ltd., United Kingdom. Intended use of article: The article will be used for research studies on the junctional complexes between endothelial cells of intestinal mucosal lymphatics, capillaries, and the junctional complexes between intestinal absorptive cells; the elucidation of the fine structure of erythropoietic tissues in the mature erythrocyte; and for studies of normal and pathologic erythropoiesis in man, which will be performed upon specimens obtained from routine bone marrow aspiration and biopsy.

Comments: Comments have been received from one domestic manufacturer, Forgflo Corp. (Forgflo), which alleges, inter alia, that its "Model Paragon (electron microscope) is of equivalent scientific value to the instrument (foreign article) for which duty-free entry has been requested for the purposes stated in the application for which the instrument is intended to be used."

Decision: Application approved. No domestic manufacturer was both able and willing to produce an instrument or apparatus within the United States of equivalent scientific value to the foreign article, for such purposes as the article is intended to be used, and have it available without unreasonable delay to the applicant at the time the foreign article was ordered (February 19, 1971).

Reasons: The Department of Health, Education, and Welfare (HEW) advises in its memorandum dated July 9, 1971, that a "tilt stage with demonstrated 5 angstroms resolution (i.e., resolving power) with the tilt stage in use" is necessary for the applicant's research studies involving tight junctions between capillary endothelial cells and intestinal absorptive cells. Such a stage is then a pertinent specification within the meaning of § 701.2(n) of the regulations. Resolving power bears an inverse relationship to its numerical rating in angstrom units, i.e., the lower the rating the

better the resolving power. The foreign article has a guaranteed resolving power of 5 angstroms and is equipped with a tilt stage which is guaranteed to operate without loss of resolution.

Comparable electron microscopes are produced in the United States by only one manufacturer, Forgflo. Forgflo has published specifications for two electron microscopes, i.e., the Model EMU–4C and the Paragon. The EMU–4C can be equipped with a tilt stage but this stage is guaranteed to provide 8 angstroms in operation. Accordingly, the EMU–4C is not of equivalent scientific value to the foreign article for the purposes that the foreign article is intended to be used.

The "Paragon" is an instrument that is customarily produced on order. Section 701.2(j) of the regulations defines produced on order as follows:

"Produced on order" means an instrument, apparatus, or accessory which a manufacturer lists in a current catalog and is able and willing to produce and have available without unreasonable delay to the applicant.

Section 701.11(b) of the regulations provides as to availability of such instruments:

An instrument, apparatus, or accessory shall be considered as being manufactured in the United States if it is customarily produced for stock, produced on order, or custom-made within the United States. In determining whether a U.S. manufacturer is able and willing to produce a product on order, or custom-made instrument, apparatus or accessory and have it available without unreasonable delay to the applicant the Deputy Assistant Secretary shall take into account the normal commercial practices applicable to the production and delivery of instruments, apparatus, or accessories of the same general category * * *.

As to the Forgflo Model "Paragon", we note that: (1) The Department of Commerce knows of no instance wherein Forgflo demonstrated that it had produced an instrument conforming to the printed specifications of the Paragon. (2) Although the design of the Paragon apparently had been completed as of the date of the comments, the component parts were not. And further, the instrument had not reached, in performance, its design specifications. (3) Forgflo's published material relating to the Paragon did not include information on delivery and Forgflo has never been able to provide the Department of Commerce with a firm delivery date. (4) Although Forgflo has accepted orders for the Paragon, delivery has been set back, and Forgflo has not been able to deliver a single Paragon to this date.

Accordingly, we find that at the time the foreign article was ordered, Forgflo was not both able and willing to make available to the applicant an instrument or apparatus of equivalent scientific value to the foreign article for such purposes as this article is intended to be used, within the meaning of § 701.11(b) of the regulations. (We cite as precedents our prior decisions relating to Docket Numbers 71–00414–33–46040, 71–00439–33–46040 and 71–00461–33–46040 which conform in essential particulars to the captioned application.)

SETH M. BODNER,
Director,
Office of Import Programs.

[FR Doc.72–8256 Filed 5–31–72;8:54 am]

PURDUE UNIVERSITY

Notice of Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article 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 this decision is available for public review during ordinary business hours of the Department of Commerce, at the Office of Import Programs, Department of Commerce, Washington, D.C.

Docket No. 71–00388–65–39700. Applicant: Purdue University, Lafayette, Ind. 47907. Article: MRC sterometric analyzing system. Manufacturer: Wild Heerbrugg Instruments, Inc., Switzerland. Intended use of article: The article will be used for research involving powders of metals, metal oxides, and semiconductors; thick film resistors and conductors; and polycrystalline ceramics and metal alloys. The volume fractions and particle size distribution of each phase present will be determined. The shape factor of each of the phases will also be measured.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, was being manufactured in the United States at the time the application for the foreign article was received (February 8, 1971).

Reasons: The foreign article is capable of being used with a scanning electron microscope to measure particles 0.01 to 10 micrometers in size. We are advised by the National Bureau of Standards (NBS) in its memorandum dated April 3, 1972, that the measurements to be performed by the applicant require this capability. The capability of being used with a scanning electron microscope for the measurements indicated then is a pertinent feature of the article. NBS further advises that it knows of no domestically manufactured instrument satisfying the above pertinent specification at the time the application was received.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which was being manufactured in the United States at the time the application for the foreign article was received.

SETH M. BODNER,
Director,
Office of Import Programs.

[FR Doc.72–8257 Filed 5–31–72;8:54]

REGENTS OF THE UNIVERSITY OF CALIFORNIA

Notice of Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article 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 this decision is available for public review during ordinary business hours of the Department of Commerce, at the Office of Import Programs, Department of Commerce, Washington, D.C.

Docket No. 71–00505–65–46070. Applicant: The Regents of the University of California, c/o The Purchasing Office, Post Office Box 112, Riverside, CA 92502. Article: Scanning electron mircoscope, Model JSM–U3A. Manufacturer: Japan Electron Optics Laboratory Co., Ltd., Japan. Intended use of article: The article will be used for plant pathology research on cell wall fiber development on encystment of fungus spores; germination of fungus spores on and their penetration of leaf and fruit tissue, and the effects of fungicides on this process; and the stem-pitting phenomenon in woody tissues of citrus induced by certain viruses. Other studies concern carbonate petrology and clay minerals.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, was being manufactured in the United States at the time the foreign article was ordered (February 25, 1971).

Reasons: The Department of Health, Education, and Welfare (HEW) advises in its memorandum dated September 3, 1971, that the best resolution available is pertinent to the applicant's studies of virus-induced stem pitting of woody citrus tissue and hydrated colloids. Resolution bears an inverse relationship to its numerical value in angstrom units (Å), i.e., the lower the rating the better the resolution. The foreign article has a guaranteed resolution of 100 Å. Comparable domestic instruments available at the time the foreign article was ordered guaranteed 150 Å resolution. HEW further advises that it knows of no comparable domestic instrument which provided 100 Å resolution at the time the foreign article was ordered.

The Department of Commerce knows of no other instrument or apparatus of

equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which was being manufactured in the United States at the time the foreign article was ordered.

SETH M. BODNER,
Director,
Office of Import Programs.

[FR Doc.72-8259 Filed 5-31-72;8:54 am]

SEQUOIA HOSPITAL DISTRICT 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 resubmit 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 § 701.11 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. 71-00335-33-43780. Applicant: Sequoia Hospital District, Whipple and Alameda de las Pulgas, Redwood City, Calif. 94062. Article: Surgical instruments and appliances. Date of denial without prejudice to resubmission: February 2, 1972.

Docket No. 71-00450-33-01110. Applicant: University of Washington, Seattle, Wash. 98105. Article: Amino acid analyzer, Model JLC-5AH. Date of denial without prejudice to resubmission: February 14, 1972.

Docket No. 71-00473-33-46040. Applicant: Veterans Administration Hospital, Highway 6, Iowa City, Iowa 52240. Article: Electron microscope, Model Elmiskop 101. Date of denial without prejudice to resubmission: February 2, 1972.

Docket No. 71-00490-11-01350. Applicant: National Aeronautics and Space Administration, Langley Research Center, Hampton, Va. 23365. Article: Airfoil, prototype for testing. Date of denial without prejudice to resubmission: February 11, 1972.

Docket No. 71-00493-01-34040. Applicant: University of Utah, Salt Lake City, Utah 84111. Article: Microtron MK II microwave power generator. Date of denial without prejudice to resubmission: February 11, 1972.

Docket No. 71-00566-33-40700. Applicant: Scripps Clinic and Research Foundation, Department of Experimental Pathology, 476 Prospect Street, La Jolla, CA 92037. Article: Gammacel 40 Small Animal Irradiator. Date of denial without prejudice to resubmission: February 2, 1972.

Docket No. 71-00568-55-17500. Applicant: University of Alaska, College, Alaska 99701. Article: Two recording current meters. Date of denial without prejudice to resubmission: February 2, 1972.

Docket No. 71-00579-33-46500. Applicant: Veterans Administration Hospital, 3801 Miranda Avenue, Palo Alto, CA 94304. Article: Ultramicrotome, Model "Om U2". Date of denial without prejudice to resubmission: February 2, 1972.

Docket No. 71-00594-33-43780. Applicant: The Hospital of the Good Samaritan, Department of Orthopedic Surgery, 1212 Shatto Street, Los Angeles, CA 90017. Article: Charnley femoral prosthesis (hip joint replacements). Date of denial without prejudice to resubmission: February 2, 1972.

Docket No. 71-00608-33-46500. Applicant: Eastman Dental Center, Department of Periodontology, 800 East Main Street, Rochester, NY 14603. Article: Ultramicrotome, Model Om U2. Date of denial without prejudice to resubmission: February 11, 1972.

Docket No. 72-00070-99-46040. Applicant: National Institutes of Health, Laboratory of Neurophysiology, National Institute of Mental Health, 9000 Rockville Pike, Building 36, Room 2-D-10, Bethesda, MD 20014. Article: Electron microscope, Model HS-8. Date of denial without prejudice to resubmission: February 2, 1972.

Docket No. 72-00153-33-43780. Applicant: University of Cincinnati Medical Center, Gastric Laboratory, Department of Internal Medicine, Cincinnati General Hospital, 234 Goodman Street, Cincinnati, OH 45229. Article: Receiver. Date of denial without prejudice to resubmission: February 11, 1972.

SETH M. BODNER,
Director,
Office of Import Programs.

[FR Doc.72-8258 Filed 5-31-72;8:54 am]

UNIVERSITY OF TEXAS

Notice of Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article 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 this decision is available for public review during ordinary business hours of the Department of Commerce, at the Office of Import Programs, Department of Commerce, Washington, D.C.

Docket No. 71-00484-33-46040. Applicant: The University of Texas, Medical School at Houston, 102 Jesse H. Jones Library Building, Houston, Tex. 77025. Article: Electron microscope, Model HU-12. Manufacturer: Hitachi, Ltd., Japan.

Intended use of article: The article will be used for research on the mammalian central nervous system, autonomic ganglia and adrenal medulla. Cytochemical localization of neurohormones (serotonin, norepinephrine, dopamine) and associated enzymes will be studied. Rat and monkey nervous tissue studies will be made to identify the above compounds in the normal state and under the influence of drugs and stress.

Comments: Comments have been received from one domestic manufacturer, Forgflo Corporation (Forgflo), which alleges inter alia that its "Model Paragon (electron microscope) is of equivalent scientific value to the instrument foreign article) for which duty-free entry has been requested for the purposes stated

in the application for which the instrument is intended to be used."

Decision: Application approved. No domestic manufacturer was both able and willing to produce an instrument or apparatus within the United States of equivalent scientific value to the foreign article, for such purposes as the article is intended to be used, and have it available without unreasonable delay to the applicant at the time the foreign article was ordered (September 29, 1970).

Reasons: The Department of Health, Education, and Welfare (HEW) in its memorandum dated October 1, 1971, advises that the availability of the means to study a number of serial sections in continuity and to "hold six specimen grids simultaneously are essential" to the applicant's research on cytochemical localization of neural hormones and associated enzymes. Such a capability is then a pertinent specification within the meaning of § 701.2(h) of the regulations. The foreign article is equipped with a multispecimen holder which. HEW advises, can be utilized to perform the applicant's research.

The "Paragon" is an instrument that is customarily produced on order. Section 701.2(j) of the regulations defines produced on order as follows:

"Produced on order" means an instrument, apparatus, or accessory which a manufacturer lists in a current catalog and is able and willing to produce and have available without unreasonable delay to the applicant.

Section 701.11(b) of the regulations provides as to availability of such instruments:

An instrument, apparatus, or accessory shall be considered as being manufactured in the United States if it is customarily produced for stock, produced on order, or custom-made within the United States. In determining whether a U.S. manufacturer is able and willing to produce a produced on order, or custom-made instrument, apparatus or accessory and have it available without unreasonable delay to the applicant the Deputy Assistant Secretary shall take into account the normal commercial practices applicable to the production and delivery of instruments, apparatus, or accessories of the same general category. * * *

As to the Forgflo Model "Paragon," we note that: (1) The Department of Commerce knows of no instance wherein Forgflo demonstrated that it had produced an instrument conforming to the printed specifications of the Paragon. (2) Although the design of the Paragon apparently had been completed as of the date of the comments, the component parts were not. And further, the instrument had not reached, in performance, its design specifications. (3) Forgflo's published material relating to the Paragon did not include information on delivery and Forgflo has never been able to provide the Department of Commerce with a firm delivery date. (4) Although Forgflo has accepted orders for the Paragon, delivery has been set back, and Forgflo has not been able to deliver a single Paragon to this date.

Accordingly, we find that at the time the foreign article was ordered, Forgflo was not both able and willing to make available to the applicant an instrument or apparatus of equivalent scientific value to the foreign article for such purposes as this article is intended to be used, within the meaning of § 701.11(b) of the regulations. (We cite as precedents our prior decisions relating to Docket Nos. 71-00414-33-46040, 71-00439-33-46040, and 71-00461-33-46040 which confirm in essential particulars to the captioned application.)

SETH M. BODNER,
Director, Office of Import Programs.

[FR Doc.72-8260 Filed 5-31-72;8:54 am]

UNIVERSITY OF WASHINGTON

Notice of Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article 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 this decision is available for public review during ordinary business hours of the Department of Commerce, at the Office of Import Programs, Department of Commerce, Washington, D.C.

Docket No. 72-00164-99-64600. Applicant: University of Washington, Department of Civil Engineering FV-10, Room 304 More Hall, Seattle, Wash. 98105. Article: BCURA flue dust sampling apparatus. Manufacturer: Air Flow Development Ltd., Canada.

Intended use of article: The article is to be used in engineering course CEWA 467: "Air Pollution Source Testing and Equipment Evaluation" and graduate student thesis research projects in industrial plants such as pulp mills, aluminum reduction plants, sewage sludge incinerators, coalfired furnaces etc. The best features from various sampling trains will be adapted to the particular problems of the students.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The foreign article used in conjunction with other types of air pollution test equipment is intended to provide students with an evaluation of the various types of air pollution test methods available. The National Bureau of Standards (NBS) advises in its memorandum dated April 17, 1972, that the applicant's stated requirement for the article for this use is pertinent. NBS, also advises that it knows of no domestically manufactured instrument scientifically equivalent to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

SETH M. BODNER,
Director, Office of Import Programs.

[FR Doc.72-8261 Filed 5-31-72;8:54 am]

Office of the Secretary

PACIFIC NORTHWEST

Notice of Designation as an Economic Development Region

Pursuant to the provisions of section 501(a) of the Public Works Act of 1965, as amended (Public Law 89-136; 42 U.S.C. 3181(a)), having examined all pertinent data, I have determined that the three States of Idaho, Oregon, and Washington meet the requirements of the Act for designation as an economic development region. Accordingly, in response to a request dated March 30, 1972, from the Governors of the three States, I have today designated the States as the Pacific Northwest Economic Development Region.

PETER G. PETERSON,
Secretary of Commerce.

MAY 25, 1972.

[FR Doc.72-8255 Filed 5-31-72;8:55 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

ANCHOR SERUM CO.

Penicillin-Streptomycin Powder With Vitamins and Arsanilic Acid; Notice of Drug Deemed Adulterated

An announcement was published in the FEDERAL REGISTER of August 22, 1970 (35 F.R. 13484, DESI 0037NV), concerning Anchor (Medicated) Swine Formula No. 2 manufactured by Anchor Serum Co., Division of Philips Roxane, Inc., 2621 North Belt Highway, St. Joseph, Mo. 64502. The announcement set forth the findings of the National Academy of Sciences-National Research Council, Drug Efficacy Study Group, and the Food and Drug Administration that the drug was probably not effective as an aid in the prevention of and for the treatment of bacterial swine enteritis. Said announcement provided the manufacturer and all interested parties a 6-month period in which to submit new animal drug applications.

Anchor Serum Co. did not submit a new animal drug application for the above-named product within the 6-month period.

Based on the foregoing and the information before him, the Commissioner of Food and Drugs concludes that the above-named drug is adulterated within the meaning of section 501(a) (5) and (6) of the Federal Food, Drug, and Cosmetic Act, in that it is not the subject

of an approved new animal drug application pursuant to section 512 of the act. Therefore, notice is given to the Anchor Serum Co. and to all interested persons that all stocks of Anchor (Medicated) Swine Formula No. 2 for use in animal feeds and all animal feeds bearing or containing this product within the jurisdiction of the act are deemed adulterated within the meaning of the act and are subject to appropriate regulatory action.

This notice is issued pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 501(a) (5) and (6), 512, 52 Stat. 1049, as amended, 82 Stat. 343-51; 21 U.S.C. 351(a) (5) and (6), 360b) and under authority delegated to the Commissioner (21 CFR 2.120).

Dated: May 19, 1972.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.72-8195 Filed 5-31-72;8:57 am]

[Docket No. FDC-D-194V; NADA 10-815V]

JENSEN-SALSBERY LABORATORIES

Paladide; Notice of Withdrawal of Approval of New Animal Drug Application

A notice of opportunity for a hearing was published in the FEDERAL REGISTER of September 9, 1970 (35 F.R. 14228), proposing to withdraw approval of NADA (new animal drug application) No. 10-815V for the drug Paladide (a drug product containing cuprous iodide).

Jensen-Salsbery Laboratories, Division of Richardson-Merrell Inc., 520 West 21st Street, Kansas City, Mo. 64141, holder of NADA No. 10-815V, has failed to provide substantial evidence of effectiveness of the drug for use as adjunctive therapy in the treatment of foot rot (necrotic pododermatitis) in cattle and as an expectorant in respiratory tract congestion of cattle and swine.

The Commissioner of Food and Drugs based on his evaluation of new information before him with respect to said drug together with the evidence available to him when the application was approved, finds that there is a lack of substantial evidence that the drug will have the effect it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in its labeling.

Based on the grounds set forth in the notice of opportunity for a hearing and the lack of substantial efficacy data the Commissioner concludes that approval of said new animal drug application should be withdrawn. Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 512, 82 Stat. 343-51; 21 U.S.C. 360b) and under authority delegated to the Commissioner (21 CFR 2.120), approval of NADA No. 10-815V, including all amendments and supplements thereto, is hereby withdrawn effective on the date of publication of this document (6-1-72).

Dated: May 17, 1972.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.72-8197 Filed 5-31-72;8:57 am]

[Docket No. FDA-D-408; NDA 6-472, etc.]

McGAW LABORATORIES (FORMERLY DON BAXTER, INC.)

Certain Parenteral Electrolyte Solutions: Lactated Potassic Saline Injection and Ammonium Chloride Injections; Notice of Withdrawal of Approval of New-Drug Applications

A notice was published in the FEDERAL REGISTER of February 11, 1972 (37 F.R. 3078), extending to Don Baxter, Inc. (now McGaw Laboratories), 1015 Grandview Avenue, Glendale, Calif. 91201, and to any interested person who may be adversely affected, an opportunity for hearing on the proposal of the Commissioner of Food and Drugs to issue an order under section 505(e) of the Federal Food, Drug, and Cosmetic Act withdrawing approval of NDA 6-472 for lactated potassic saline injection (potassium chloride, sodium chloride, and sodium lactate) and that part of NDA 6-580 pertaining to ammonium chloride in distilled water (ammonium chloride 0.9 percent) (DESI 6472). The basis of the proposed action was the lack of substantial evidence that the drugs are effective for their labeled indications.

Neither the holder of the applications nor any other person filed a written appearance of election within the 30 days provided by said notice. The failure to file such an appearance is construed as an election by such persons not to avail themselves of an opportunity for hearing.

The Commissioner of Food and Drugs pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 505 (e), 52 Stat. 1053, as amended; 21 U.S.C. 355(e)) and under authority delegated to him (21 CFR 2.120), finds that on the basis of new information before him with respect to the drugs, evaluated together with the evidence available to him when the applications were approved, there is a lack of substantial evidence that the drugs will have the effect they purport or are represented to have under the conditions of use prescribed, recommended, or suggested in the labeling thereof.

Therefore, pursuant to the foregoing finding, approval of new-drug application No. 6-472 and all amendments and supplements thereto and that part of NDA 6-580 referred to above are withdrawn effective on the date of publication hereof in the FEDERAL REGISTER (6-1-72).

Dated: May 22, 1972.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.72-8194 Filed 5-31-72;8:57 am]

[Docket No. FDC-D-460; NDA 6-008]

SANDOZ-WANDER, INC.

Mephenytoin With Phenobarbital; Notice of Withdrawal of Approval of New-Drug Application

In the FEDERAL REGISTER of November 5, 1970 (35 F.R. 17069), the Commissioner announced (DESI 5694) his conclusions pursuant to evaluation of a report received from the National Academy of Sciences-National Research Council, Drug Efficacy Study Group on Hydantal Tablets, containing mephenytoin and phenobarbital, marketed by Sandoz Pharmaceuticals, Division Sandoz-Wander, Inc., Route 10, Hanover, N.J. 07936 (NDA 6-008). The announcement erroneously referenced the drug as NDA 5-694.

The announcement stated that the drug was regarded as probably effective for its labeled indications. Twelve months from the date of that publication were allowed for the holder of the application and any person marketing such drug without approval to obtain and submit data providing substantial evidence of effectiveness of the drug. No such data have been received, and the holder of the new-drug application has requested withdrawal of approval of that portion of their new-drug application providing for such drug and has waived opportunity for a hearing, stating that marketing of the drug has been discontinued.

The Commissioner of Food and Drugs, pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 505 (e), 52 Stat. 1053, as amended; 21 U.S.C. 355(e)), and under authority delegated to him (21 CFR 2.120), finds that on the basis of new information before him with respect to such drug, evaluated together with the evidence available to him when the application was approved, there is a lack of substantial evidence that the drug will have the effect it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in the labeling thereof.

Therefore, pursuant to the foregoing findings, approval of those portions of new-drug application No. 6-008 providing for such drug, and all amendments and supplements thereto, is withdrawn effective on the date of publication hereof in the FEDERAL REGISTER (6-1-72).

Dated: May 22, 1972.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.72-8196 Filed 5-31-72;8:57 am]

ROHM AND HAAS CO.

Notice of Filing of Petition for Food Additive

Pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409 (b)(5), 72 Stat. 1786; 21 U.S.C. 348(b)(5)), notice is given that a petition (FAP 2B2790) has been filed by Rohm and Haas Co., Independence Mall West,

Philadelphia, Pa. 19105 proposing that § 121.2597 *Polymer modifiers in semi-rigid and rigid vinyl chloride plastics* be amended in paragraph (b) (2) by revising the polymer content of the finished plastic food-contact article to include polymer units derived from homopolymers and/or copolymers of styrene, divinylbenzene and 1,3-butylene glycol dimethacrylate, in addition to ethyl acrylate and methyl methacrylate currently listed.

Dated: May 16, 1972.

VIRGIL O. WODICKA,
Director, Bureau of Foods.

[FR Doc.72-8198 Filed 5-31-72;8:57 am]

[Docket No. FDC-D-411; NDA's 8-021, 8-895]

SCHERING CORP.

Certain Drugs Containing Meparfynol; Notice of Withdrawal of Approval of New-Drug Applications

A notice (DESI 8021) was published in the FEDERAL REGISTER of February 4, 1972 (37 F.R. 2689), extending to Schering Corp., 1011 Morris Avenue, Union, N.J. 07083, and to any interested person who may be adversely affected, an opportunity for hearing on the proposal of the Commissioner of Food and Drugs to issue an order under section 505(e) of the Federal Food, Drug, and Cosmetic Act withdrawing approval of NDA 8-021 and NDA 8-895 for Dormison Capsules (meparfynol). The basis of the proposed action was the lack of substantial evidence that the drug is effective for its labeled indications.

Neither the holder of the application nor any other person filed a written appearance of election within the 30 days provided by said notice. The failure to file such an appearance is construed as an election by such persons not to avail themselves of an opportunity for hearing.

The Commissioner of Food and Drugs pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 505 (e), 52 Stat. 1053, as amended; 21 U.S.C. 355(e)) and under authority delegated to him (21 CFR 2.120), finds that on the basis of new information before him with respect to the drug, evaluated together with the evidence available to him when the applications were approved, there is a lack of substantial evidence that the drug will have the effect it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in the labeling thereof.

Therefore, pursuant to the foregoing finding, approval of new-drug applications No. 8-021 and No. 8-895 and all amendments and supplements thereto is withdrawn effective on the date of publication hereof in the FEDERAL REGISTER (6-1-72).

Dated: May 22, 1972.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.72-8199 Filed 5-31-72;8:57 am]

TRI-VALLEY GROWERS

Canned Peaches, Canned Fruit Cocktail Deviating From Identity Standards Temporary Permit for Market Testing

Pursuant to § 10.5 (21 CFR 10.5) concerning temporary permits to facilitate market testing of foods deviating from the requirements of the standards of identity promulgated pursuant to section 401 (21 U.S.C. 341) of the Federal Food, Drug, and Cosmetic Act, notice is given that a temporary permit has been issued to Tri-Valley Growers, 100 California Street, San Francisco, CA 94106. This permit covers limited interstate marketing tests of canned peaches and canned fruit cocktail that deviate from their respective standards of identity (21 CFR 27.2 and 27.40) in that they will be packed in a packing medium prepared in part with peach nectar.

The packing medium will be declared on the principal display panel of the label on each container of the canned peach product by the statement "packed in peach nectar and heavy sirup" and on each container of the canned fruit cocktail product by the statement "packed in peach nectar with heavy grape and pineapple juice sirup." The words "from concentrate" will appear as part of the statement if either the grape and/or pineapple juice is prepared from concentrate. The ingredients used shall be declared on the information panel of the label in the order of decreasing predominance.

This permit will expire 12 months from the date of signature of this document.

Dated: May 19, 1972.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.72-8200 Filed 5-31-72;8:57 am]

ATOMIC ENERGY COMMISSION

[Docket No. 50-301]

WISCONSIN ELECTRIC POWER CO. AND WISCONSIN MICHIGAN POWER CO.

Order Reconvening Hearing

In the matter of Wisconsin Electric Power Co. and Wisconsin Michigan Power Co., Point Beach Nuclear Plant, Unit 2.

Pursuant to the Commission's memorandum and order of May 26, 1972, the hearing in the above-captioned matter will reconvene on June 1, 1972, at 10 a.m. in

Court Room 325, U.S. Courthouse and Federal Building, 517 East Wisconsin Avenue, Milwaukee, WI 52202.

ATOMIC SAFETY AND LICENSING BOARD,
ROBERT M. LAZO,
Chairman.

MAY 30, 1972.

[FR Doc.72-8309 Filed 5-30-72;10:18 am]

WATER COOLED NUCLEAR POWER PLANTS

Notice of Issuance of Safety Guides

The Atomic Energy Commission has issued four new safety guides which have been developed to provide guidance on the acceptability of specific safety-related features of water cooled nuclear power plants.

A total of 27 of these guides has been completed since the Commission, on November 13, 1970, announced development of a series of these guides.

The primary purpose of the safety guides is to make available to the industry positions that have been developed by the Regulatory Staff and the Commission's Advisory Committee on Reactor Safeguards on safety issues. Although the safety guides are not regulatory requirements, they do specifically identify safety issues that should be considered in the design and in the evaluation of water cooled nuclear power plants and describe a set of principles and specifications which will represent an acceptable solution to the Regulatory Staff and Advisory Committee on Reactor Safeguards on these issues. Their use by an applicant will expedite the licensing review process.

Titles of the new guides are:

Safety Guide No. 24. "Assumptions Used for Evaluating the Potential Radiological Consequences of a Pressurized Water Reactor Gas Storage Tank Failure."

Safety Guide No. 25. "Assumptions Used for Evaluating the Potential Radiological Consequences of a Fuel Handling Accident in the Fuel Handling and Storage Facility for Boiling and Pressurized Water Reactors."

Safety Guide No. 26. "Quality Group Classifications and Standards."

Safety Guide No. 27. "Ultimate Heat Sink."

Other safety guides currently being developed include the following:

Reactor Coolant Pressure Boundary Leakage Detection.
Design Phase Quality Assurance Requirements.
Quality Standards and Specifications.
Seismic Design Classification.
Quality Assurance Program Requirements (Operation).
Quality Assurance Program Requirements (Design and Construction).
Monitoring and Reporting of Environmental Levels.
Diesel Generator Protective Interlocks.
Use of IEEE Std 308-1970 "IEEE Standard Criteria for Class IE Electric Systems for Nuclear Power Generating Stations."
Availability of Emergency Power Sources.
Physical Independence of Safety Related Electric Systems.
Indication of Bypasses in Protection Systems and Engineered Safety Feature Systems.
Post-Accident and Incident Monitoring.
Flood Design Bases.
Inservice Surveillance of Ungrouted Prestressing Tendons.
Stainless Steel Weld Metal Microfissure Control.
Design Loading Combinations for Fluid System Components.

Comments and suggestions for improvements in the guides are encouraged. Comments and requests for copies of the guides should be sent to the Director of

Regulatory Standards, U.S. Atomic Energy Commission, Washington, D.C. 20545.

(5 U.S.C. 552(a))

Dated at Bethesda, Md., this 24th day of May 1972.

For the Atomic Energy Commission.

L. MANNING MUNTZING,
Director of Regulation.

[FR Doc.72-8237 Filed 5-31-72;8:50 am]

CIVIL AERONAUTICS BOARD

[Docket No. 24502; Order 72-5-95]

DELTA AIR LINES, INC., ET AL.

Order of Investigation and Suspension Regarding Revised 21-Day Florida Excursion Fares

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 26th day of May 1972.

By tariff revisions [1] marked to become effective May 28, 1972 and June 12, 1972, Northwest Airlines, Inc. (Northwest), followed by Delta Air Lines, Inc. (Delta), and Eastern Air Lines, Inc. (Eastern), propose to revise their 5-21-day midwest/southwest Florida excursion fares to provide for travel on all days of the week throughout the summer and fall period through December 15, 1972, at the present off-season (fall) midweek fare level.[2] Presently, Northwest provides only off-season midweek 5-21-day excursion fares which are marked to expire with June 30, 1972. Delta and Eastern, on the other hand, presently provide both midweek and higher weekend 5-21-day excursion fares, all of which are at a higher level during the summer months. The carriers also propose to cancel existing holiday blackouts. In addition, Delta, followed by Northwest, proposes to establish new 21-day night-coach excursion fares in markets where it operates nonstop or direct connecting night-coach services in both directions, at a level 20 percent below the proposed day fares.

Northwest's proposal involves fares to Miami and Tampa from five points outside Florida, whereas Delta and Eastern would extend the fares into 21 points (exclusive of night coach which affects 10 points) and 23 points, respectively. The fares reflect discounts of 24 to 32 percent from regular coach fares in the markets. For Delta and Eastern, the fares reflect reductions of up to 8.3 percent from 5-21-day excursion fares. Delta's proposed night-coach excursion fares reflect discounts ranging between 29.1 and 44.0 percent below normal coach fares.

In support of its filing, Northwest alleges that these same fares were in effect last fall throughout the week and proved successful; that July and August traffic does not peak and that a higher fare level in these months is therefore not warranted; and that since the lowest fare available in the markets involved already applies on weekends it is illogical to charge a premium for weekend travel under the 21-day excursion fares. Eastern and Delta contend that the filings are primarily to match Northwest, but that the additional markets are included to accommodate intermediate points and for consistency throughout the same geographic area.

With regard to the night-coach excursion proposal, Delta alleges that since the proposed day-coach excursion fares undercut normal night-coach fares, considerable diversion from night service can be expected if these new night excursion fares are not permitted. It believes that it would be impossible to justify the continuation of many existing night flights absent these fares (night traffic represents 18 percent of Delta's system traffic), and that the greater equipment utilization which forms the economic basis for night service would suffer.

Braniff Airways, Inc. (Braniff), has complained against Eastern's proposal only, requesting suspension and investigation, alleging that the adverse effects on its revenues will be substantial if it is forced to meet the fares; [3] that debasement of the four-tier structure to the lowest denominator of fares which are already uneconomic, both by cost and profit impact tests, is unjustified; and that the far more broadly available and lower fare here in question is unacceptable even as an experiment.

In answer to the complaint Eastern alleges that Braniff has raised no issues which have not previously been determined in Eastern's favor by the Board; that the critical factor in the application of the fares is the nature of the Florida markets; and that Braniff has failed to indicate any respect in which the Florida markets it serves are different from other markets in which similar fares apply.

Upon consideration of the tariff proposals, the complaint and answer thereto, and other relevant matters, the Board finds that the proposed 5-21-day excursion fares, including the night excursion fares, may be unjust, unreasonable, unjustly discriminatory, unduly preferential, unduly prejudicial, or otherwise unlawful and should be investigated. The Board further concludes that the tariffs should be suspended pending investigation.

In recent months the carriers have come forward with an extremely wide variety of discount-fare proposals. We have previously indicated our concern with the spread of discount fares and our belief that the time is approaching when the cumulative impact of the many discount fares now available must be considered when evaluating new discount fares.[4] In view of the number of special fares already in effect, we believe it essential that the carriers submit rather convincing justification when additional or lower yield discount fares are proposed. The justifications filed with the instant proposals provide no meaningful basis upon which to evaluate the probable impact of the reduced fares, and we believe a sufficient question of reasonableness exists to warrant suspension pending investigation.

The carriers have failed to provide even the most basic economic justification in support of their instant proposals. In its justification, Northwest provides data which indicates that it probably does not have a midsummer peaking problem in the markets involved, but the justification shows little else. While Northwest alleges that similar fares in effect last year were successful, the basis for this statement is not revealed, as the carrier has provided no historical traffic or revenue data whatsoever. In any event, even if true, the lower fare level may or may not be economically sound today in view of alleged cost increases in the past year, and Northwest has failed to provide any generation/diversion, revenue, or profit impact estimates in support of its proposed fares.

Eastern alleges only that because Northwest has proposed to revise its 5-21-day fares in five midwest-Florida markets, Eastern must make similar adjustments in those and 18 other markets "in the interest of fare simplicity and consistency." Only recently (May 11), Eastern saw fit to establish such higher peak-period fares in the very same markets. Delta argues that it favors a single-level fare to avoid confusion, and that it filed its present 5-21-day excursion-fare structure on a defensive basis to match Eastern. While we agree that fare simplicity is highly desirable, the carriers have not established either that the proposed level is reasonable, or that traffic peaking is not a factor in the affected markets. Like Northwest, neither Eastern nor Delta have provided any historical or forecast data in support of their proposed fares.

Turning to the proposed night excursion fares, Delta argues that since the proposed excursion fares (applicable on day-coach flights) are lower than its regular night-coach fares substantial traffic will divert from the latter to the former unless its night excursion fares are also permitted. The carrier argues that such diversion would inevitably result in elimination of some night-coach flights. To the extent Delta's argument is correct it tends more to point out undesirable consequences of the proposed day excursion fares than to support further night-coach fare reductions. In any event, since we are suspending the fares proposed in day service, we are likewise suspending the related night excursion fares.

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[1] Northwest Airlines, Inc., Tariff CAB No. 498, Delta Air Lines, Inc., Tariff CAB No. 168, and Eastern Air Lines, Inc., Tariff CAB No. 375.

[2] Northwest's tariff contains no expiration date; however, the fares are to apply only between Apr. 25 and Dec. 15 of each year. Delta and Eastern have placed a Dec. 15, 1972, expiration date on their tariffs.

[3] Braniff is concerned only with markets in direct competition with Eastern, asserting that Eastern's "competition" in the more northern markets does not affect it to any appreciable degree.

[4] Order 72-5-22, May 5, 1972.

Accordingly, pursuant to the Federal Aviation Act of 1958, and particularly sections 204(a), 403, 404, and 1002 thereof:

It is ordered, That:

1. An investigation be instituted to determine whether the fares and provisions described in Appendix A hereto,[5] and rules, regulations, and practices affecting such fares and provisions, are or will be unjust, unreasonable, unjustly discriminatory, unduly preferential, unduly prejudicial, or otherwise unlawful, and if found to be unlawful, to determine and prescribe the lawful fares and provisions, and rules, regulations, or practices affecting such fares and provisions;

2. Pending hearing and decision by the Board, the fares and provisions described in Appendix A hereto are suspended and their use deferred to and including August 25, 1972, unless otherwise ordered by the Board, and that no changes be made therein during the period of suspension except by order or special permission of the Board;

3. Except to the extent granted herein, the complaint of Braniff Airways, Inc., in Docket 24462 is hereby denied;

4. The proceeding ordered herein be assigned for hearing before an Examiner of the Board at a time and place hereafter to be designated; and

5. Copies of this order be filed in the aforesaid tariffs and be served upon Braniff Airways, Inc., Delta Air Lines, Inc., Eastern Air Lines, Inc., and Northwest Airlines, Inc., which are hereby made parties to this proceeding.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] HARRY J. ZINK,[6]
Secretary.

[FR Doc.72-8265 Filed 5-31-72;8:55 am]

[Docket No. 24359; Order 72-5-93]

NORTHEAST AIRLINES, INC.

Order of Investigation and Suspension Regarding Reduced Children's Fares

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 26th day of May 1972.

By tariff revisions[1] marked to become effective May 28, 1972, Northeast Airlines, Inc. (Northeast), proposes to amend the children's fare provisions associated with its 21-day northeast-Florida excursion fares to provide that children 12 through 17 accompanied by two full adult-fare passengers will be charged 75 percent of the adult fare. The provision is to apply only on Tuesdays, Wednesdays, and Thursdays through December 15, 1972.

In support of its proposal Northeast contends that ample space exists for midweek travel and that there exists a considerable potential for diversion of families from auto travel, that it is not so much relying on the small discount for the family unit as an incentive but on the promotional effect of a fare reduction for all children coupled with attractive family-unit ground packages. Additionally, the carrier alleges that the requirement of two full-fare-paying adults accompanying these children is considerably more restrictive than the existing provisions in similar tariffs of its own and other carriers which require only one adult to make use of the 25-percent discount.

National Airlines, Inc. (National), has complained against the proposal, requesting its suspension and consolidation into the investigation ordered in Docket 24359. The carrier alleges that this filing is an attempt to circumvent the investigation ordered recently in the case of very similar fares and provisions; that the fares are unreasonably low, yielding only 3.4 cents per mile for a family of four in the Boston-Miami market; and that the Board has questioned the soundness of providing discounts from an already substantially discounted fare by suspending Northeast's earlier proposal.

Northeast has not answered the complaint.

Upon consideration of the proposal, the complaint and other relevant matters, the Board finds that the proposal may be unjust, unreasonable, unjustly discriminatory, unduly preferential, unduly prejudicial, or otherwise unlawful and should be investigated. The Board further concludes that the proposal should be suspended pending investigation.

The Board recently suspended a proposal by Northeast[2] to establish a 75-percent discount (off the same midweek excursion fares) for children 2 through 17 in view of the substantial discounts involved, stating its belief that the fares may be unreasonably low. While the fares for children under the instant proposal are discounted less, because of the low level of the related adult excursion fares the proposal would still result in fares for the family group which may be unreasonably low. The proposed reductions for children 12 through 17 would result in fares as much as 40 percent below regular family fares for family groups of three and four members. Yields likewise are very low, as low as 3.3 cents a mile for a family of three and 3 cents a mile for a family of four (with each family group containing one child 12 through 17).

Accordingly, pursuant to the Federal Aviation Act of 1958, and particularly sections 204(a), 403, 404, and 1002 thereof:

It is ordered, That:

1. An investigation be instituted to determine whether the charge and provisions of Rule No. 4C on 4th Revised Page 2-A of Northeast Airlines, Inc.'s, CAB No. 136, and rules, regulations, and practices affecting such charge and provisions, are or will be unjust, unreasonable, unjustly discriminatory, unduly preferential, unduly prejudicial, or otherwise unlawful, and if found to be unlawful, to determine and prescribe the lawful charges and provisions, and rules, regulations, or practices affecting such charge and provisions;

2. Pending hearing and decision by the Board, Rule No. 4C on 4th Revised Page 2-A of Northeast Airlines, Inc.'s, CAB No. 136 is suspended and its use deferred to and including August 25, 1972, unless otherwise ordered by the Board, and that no changes be made therein during the period of suspension except by order or special permission of the Board;

3. Except to the extent granted herein, the complaint in Docket 24463 is hereby dismissed;

4. The investigation ordered herein is hereby consolidated into Docket 24359; and

5. Copies of this order be filed in the aforesaid tariff and be served upon National Airlines, Inc., and Northeast Airlines, Inc., which are hereby made parties to this proceeding.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] HARRY J. ZINK,[3]
Secretary.

[FR Doc.72-8266 Filed 5-31-72;8:55 am]

COUNCIL ON ENVIRONMENTAL QUALITY

ENVIRONMENTAL IMPACT STATEMENTS

Notice of Public Availability

Environmental Impact Statements received by the Council on Environmental Quality, May 15–May 19, 1972.

NOTE: At the head of the listing of statements received from each agency is the name of an individual who can answer questions regarding those statements.

DEPARTMENT OF AGRICULTURE

Contact: Dr. T. C. Byerly, Office of the Secretary, Washington, D.C. 20250, (202) 388-7803.

FOREST SERVICE

Draft, May 15

San Francisco Peaks, Arizona, County: Coconino. The statement evaluates 10 alternative management plans for the San Francisco Peaks area of the Coconino National Forest. Each plan is designed to promote optimum conditions for particular objectives (such as timber production, wildlife habitat, recreational use). (ELR Order No. 04464) (NTIS Order No. EIS 72 4464D).

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[5] Filed as part of the original document.

[6] Dissenting statement of Minnetti and Murphy filed as part of the original document.

[1] Revisions to Northeast Airlines, Inc., Tariff CAB No. 136.

[2] Order 72-3-97, Mar. 29, 1972.

[3] Dissenting statement of Minetti and Murphy filed as part of the original document.

Final, May 12

Beaverhead National Forest, Mont., Counties: Beaver, and Madison. Proposed spraying of 2,4–D herbicide on Beaverhead rangelands in order to control big sagebrush. The purpose of the project is the increase of forage production for domestic livestock. Nontarget plants will also be destroyed; the herbicide will enter local water systems. Comments made by: HEW, State and local agencies. (ELR Order No. 04455) (NTIS Order No. EIS 206 786F).

SOIL CONSERVATION SERVICE

Final, May 17

Oolenoy Watershed, South Carolina, County: Pickens. Proposed conservation land treatment and construction of six floodwater retarding structures, and one multiuse 58-acre lake on the Oolenoy River Watershed. Fifty-three acres of agricultural and wildlife land along with 2.4 acres of stream would be lost to the project. Comments made by: COE, EPA, HEW, DOI, State and regional agencies. (ELR Order No. 04491) (NTIS Order No. EIS 201 687F).

ATOMIC ENERGY COMMISSION

Contact: For nonregulatory matters: Mr. Joseph J. DiNunno, Director, Office of Environmental Affairs, Washington, D.C. 20545, (202) 973–5391.

For regulatory matters: Mr. Christopher L. Henderson, Assistant Director of Regulations for Administration, Washington, D.C. 20545, (202) 973–7531.

Draft, May 17

Wm. Zimmer Nuclear Power Station, Ohio. County: Clermont. Proposed issuance of a construction permit to the Cincinnati Gas & Electric Co. for construction of the Wm. H. Zimmer Power Station. The station will employ a boiling water reactor to produce 2,436 MWT and a steam-turbine generator to provide 840 MWE (net). Exhaust steam will be cooled by Ohio River water circulated in a natural-draft cooling tower. Nonradioactive chemical, sanitary, and other waste will be discharged to the Ohio River; 26,000 curies of radioactivity in gaseous wastes and 25 curies of radioactivity (including 20 curies of tritium) in liquid wastes will be released per year to the environment; the 479-foot tall cooling tower will have a visual impact upon the landscape; 280 acres will be lost to the project. (ELR Order No. 4485) (NTIS Order No. EIS 72 4485D)

Draft, May 19

Aguirre Nuclear Plant, Puerto Rico. Proposed issuance of a construction permit to the Puerto Rico Water Resources Authority for the Aguirre Nuclear Plant Unit No. 1. The unit will have a pressurized water reactor with an output of 1,780 MWT and 583 MWE. A "stretch" output of 1,860 MWT is anticipated. The nuclear unit will supplement two existing 40 MWE oil-fired gas turbines and two under-construction 460 MWE oil-fired thermoelectric generation units. Cooling water from Unit 1 will be drawn from the Bay of Jobos and discharged to the Aguirre Ship Canal at a rate of 1,000,000 g.p.m. Minor impact can be expected upon aquatic life. (ELR Order No. 04510) (NTIS Order No. EIS 72 4510D)

Final, May 11

Pilgrim Nuclear Power Station, Massachusetts, County: Plymouth. Proposed issuance of an operating license to the Boston Edison Co. for the startup and operation of the Pilgrim Nuclear Power Station on Cape Cod Bay. The station employs a boiling water reactor with a designed thermal rating of 1,998 mw. to produce 655 mw. net electrical power. A once-through flow of water from Cape Cod Bay will be utilized for cooling. The water will be heated to 29° F. above the ambient; a local lobster fishery and an Irish Moss harvesting industry will be adversely affected by the station. Comments made by: USDA, COE, DOC, EPA, FPC, DOI, and DOT. (ELR Order No. 04444) (NTIS Order No. EIS 206 605F)

DEPARTMENT OF COMMERCE

Contact: Dr. Sidney R. Galler, Deputy Assistant Secretary for Environmental Matters, Department of Commerce, Washington, D.C. 20230, (202) 967–4335.

Draft, May 2

1976 International Exposition, Pennsylvania, Philadelphia. The statement is concerned with the proposed 1976 Exposition, a project of the Philadelphia 1976 Bicentennial Corp. Areas of Philadelphia affected by the project would include the Southwest Industrial Area Site, the Eastwick Urban Renewal Area, and sites near the Delaware and Schuylkill Rivers. Attendance is estimated at 51 million; environmental impact would include increased traffic congestion, air quality degradation, noise, water and river quality effects, and possible residential relocation. (ELR Order No. 04339) (NTIS Order No. PB–208 828–D)

DEPARTMENT OF DEFENSE

ARMY

Contact:

Mr. George A. Cunney, Jr.
Acting Chief, Environmental Office
Directorate of Installations
Office of the Deputy Chief of Staff for Logistics
Washington, D.C. 20310
(202) OX 4–4269

Final, May 11

Diamond Laboratories, Maryland, counties: Montgomery and Prince Georges. Proposed construction (in three phases) of the Harry Diamond Laboratories on a 137-acre site in White Oak, Md. The laboratories are presently housed in research facilities at the National Bureau of Standards. These old facilities will be razed, beginning in May 1972. General purpose research at the new laboratories will generate gamma radiation. Comments made by: EPA, State, and local agencies. (ELR Order No. 04449) (NTIS Order No. EIS 199 313F)

ARMY CORPS

Contact: Colonel William L. Barnes, Executive Director of Civil Works, Attention: DAEN–CWZ–C, Office of the Chief of Engineers, U.S. Army Corps of Engineers, 1000 Independence Avenue SW., Washington, DC 20314, (202) 693–7168.

Draft, May 17

Port Hueneme Harbor, Calif., County: Ventura. Proposed dredging of the central basin and channel A of Port Hueneme Harbor to a depth of 35 feet. Marine eco-systems will be disturbed and/or destroyed by the dredge and dumping operations. Increased use of the harbor will increase the potential for oil spillage and leakage. (ELR Order No. 04486) (NTIS Order No. EIS 72 4486D)

Mission Bay, Calif., County: San Diego. Proposed maintenance dredging of the bay entrance, with spoil being used for the nourishment. Marine eco-systems will be damaged at the sites of dredging and dumping. (ELR Order No. 04489) (NTIS Order No. EIS 72 4489D)

Draft, May 10

Kansas River, Kans. Proposed navigation project on 9.3 miles of the Kansas River, which would involve dredging and construction of dikes, revetments, channel works and bank stabilization structures. Riverfront vegetation will be lost to the project. (ELR Order No. 04413) (NTIS Order No. PB–209 050–D)

Draft, May 17

Tred Avon River, Md., County: Talbot. Proposed dredging of the river channel to a depth of 12 feet and a width of 150 feet in order to provide a deeper channel for commercial vessels. Dredging operations will disturb and/or destroy marinelife; 90 acres will be covered with spoil. (ELR Order No. 4490) (NTIS Order No. EIS 72 4490D)

Draft, May 10

Scituate Harbor, Mass. Proposed periodic maintenance dredging of the harbor. An estimated 145,000 cubic yards of spoil would be dumped at an approved site. (ELR Order No. 04433) (NTIS Order No. PB–209 044–D)

Erie Harbor, Pa. Proposed annual maintenance dredging of the harbor, with the 300,000 cubic yards of spoil being dumped in Lake Erie. (ELR Order No. 04416) (NTIS Order No. PB–209 049–D)

Draft, May 9

Woodcock Creek Lake, Pa., County: Crawford. Proposed construction of a retention dam and lake on Woodcock Creek. Two miles of natural stream would be lost and 775 acres inundated by the project. (ELR Order No. 04405) (NTIS Order No. PB–208 962–D)

Draft, May 8

Canyon Lakes Project, Texas, Lubbock. Proposed granting of matching Federal assistance funds for the acquisition and development of land for recreational purposes. Approximately 675 acres, located in Yellowhouse Canyon, are involved. Twenty-six residences and 36 businesses would be displaced by the action. (ELR Order No. 04420) (NTIS Order No. PB–209 047–D)

ENVIRONMENTAL PROTECTION AGENCY

Contact: Mr. Sheldon Meyers, Director, Office of Federal Activities, Room 3630, Waterside Mall, Washington, D.C. 20460, (202) 755–0940.

Draft, May 12

Water Control Plant, Washington, D.C. Proposed expansion (from 240 m.g.d. to 309 m.g.d. capacity) and upgrading, from secondary to tertiary treatment, of existing Water Pollution Control Facilities. Disposal of residue sludge will be made by incineration, with ash being transported to approved landfill sites. The incineration will have an adverse effect upon ambient air quality. (ELR Order No. 04478) (NTIS Order No. EIS 72 4478D)

DEPARTMENT OF HUD

Contact: Mr. Richard H. Broun, Director, Environmental and Land Use Planning Division, Washington, D.C. 20410, (202) 755-6186.

Draft, May 11

Walla Walla Community College, Washington, Walla Walla. Proposed development of the first phase of a new community college campus. The school is intended to serve 3,000 students on an 86-acre site by the year 2000. Two pond areas exist on the site. (ELR Order No. 04429) (NTIS Order No. PB-209 051-D)

Final, May 15

Public Facility Loans Program. The statement is concerned with the HUD Project Selection System for its Public Facility Loans Program. The system is designed to aid in the evaluation of applications for loans in the construction of local public works by public bodies of less than 50,000 persons. Comments made by: AEC, COE, EPA, FPC, GSA, HEW, and DOI. (ELR Order No. 04473) (NTIS Order No. EIS 204 917F)

DEPARTMENT OF THE INTERIOR

Contact: Mr. Bruce Blanchard, Director, Environmental Project Review, Room 7260, Department of the Interior, Washington, D.C. 20240, (202) 343-3891.

BUREAU OF MINES

Final, May 15

Scranton, Pa., County: Clark, new. Proposed conduction of a demonstration project to test the economic feasibility of the Dowell hydraulic slurry injection process for blind backfill of dry and flooded underground mine voids. Approximately 300,000 cubic yards of coal refuse would be used beneath 20 acres of residential area. Construction will disrupt traffic and create public safety hazards. Comments made by: EPA and DOI. (ELR Order No. 04474) (NTIS Order No. EIS206 767F)

Huntington Canyon, Utah, County: Emery. A coal-burning, 430-mw. thermal electric generating-station is presently under construction with a 345-kv. transmission line to Salt Lake City and Four Corners. It is scheduled for service in 1974. A second, similar unit is planned for service beginning in 1977; transmission lines would also be constructed for it. Ultimate plant capacity is expected to be 2,000 mw. Estimated stack emissions for the 430-mw. unit (with no controls) include 33 to 45 t.p.d. of SO_2; 36 t.p.d. of NO_x; and 0.9 to 1.4. t.p.d. particulates. Comments received from: USDA, AEC, EPA, HEW, State and local agencies. (ELR Order No. 04462) (NTIS Order No. EIS-198 736-F)

INTERNATIONAL BOUNDARY AND WATER COMMISSION

Contact: Mr. T. R. Martin, ARA/Mex., Department of State, Washington, D.C. 20520, (202) 632-1317.

Draft, May 10

Emergency Water, California. Proposed emergency temporary delivery of up to 20,600 AF/year of the 1944 Treaty allocation of Colorado River water to Tijuana, Mexico. A 6100-foot pipeline would be constructed to the boundary, with Mexico paying the costs for new construction and use of existing works. (ELR Order No. 04421) (NTIS Order No. EIS 72 4421D)

DEPARTMENT OF JUSTICE

Draft, May 1

Marijuana Eradication Project, Ind., County: Pulaski. Proposed aerial spraying of 65 acres of farmland and 65 linear miles of ditch with 2,4-D herbicide. The purpose of the action is the elimination of marijuana in Pulaski County. The loss of cover for birds and other fauna will result; 2,4-D is slightly toxic to humans and animals. (ELR Order No. 04390) (NTIS Order No. EIS 208 868-D)

DEPARTMENT OF TRANSPORTATION

Contact: Mr. Martin Convisser, Director, Office of Environmental Quality, 400 Seventh Street SW., Washington, DC 20590, (202) 426-4355.

FEDERAL AVIATION AGENCY

Draft, May 10

Olney-Noble Airport, Ill., County: Richland. Proposed acquisition of 40 acres and construction of a 3,900 foot by 75 foot runway with turnarounds, and installation of MIRL. (ELR Order No. 04415) (NTIS Order No. PB-209 041-D)

Carmi Airport, Ill., County: White. Proposed acquisition of land and construction of a new airport, with a 3,900 foot by 75 foot runway, hangars, a terminal, etc. (ELR Order No. 04424) (NTIS Order No. PB-209 039-D)

Fairmont Airport, Minn., County: Martin. Proposed extension of the runway, additions to MIRL, reconstruction of the access road, etc. (ELR Order No. 04423) (NTIS Order No. PB-209 039-D)

Cincinnati Blue Ash Airport, Ohio, County: Hamilton. Proposed construction of a new 3,500 foot by 75 foot runway, taxiways, aprons, etc. at the airport. (ELR Order No. 04416) (NTIS Order No. EIS 72 4416)

Final, May 15

Greensboro Airport, Ga., County: Green. Proposed construction of a new basic utility airport capable of accommodating 95 percent of propeller-driven aircraft weighing less than 12,500 pounds. Thirty acres of land would be committed to the project. Comments made by: USDA, EPA, and DOI. (ELR Order No. 04459) (NTIS Order No. EIS 206 575F)

Blue Ridge Airport, Ga., County: Fannin. Proposed construction of a new basic utility airport adequate for 95 percent of propeller-driven aircraft weighing less than 12,500 pounds. Eighty-five acres would be committed to the project; 11 families would be displaced. Comments made by: EPA, DOI, State, and local agencies. (ELR Order No. 04460) (NTIS Order No. EIS 206 864F)

Final, May 16

Schoolcraft Airport, Mich., County: Manistee. Proposed acquisition of land and construction of a new runway, extension of an existing runway, installation of a wind cone, VOR, etc. An unspecified amount of land will be committed to the project. Comments made by: USDA, DOC, EPA, DOI, DOT, State, and local agencies. (ELR Order No. 04479) (NTIS Order No. EIS 206 106F)

FEDERAL HIGHWAY ADMINISTRATION

Draft, May 15

State Road 200, Florida, County: Nassau. Proposed reconstruction of 6.9 miles of S.R. 200, from the town of Yulee to the Amelia River Bridge. The four-lane roadway will span Lofton Creek in two 200-foot bridges. (ELR Order No. 04458) (NTIS Order No. EIS 72 4458D)

Draft, May 10

F.A.P. F-0361(4), Hawaii, Maui. Proposed construction of 2.8 miles of two-lane highway. Twenty-two residences and two businesses will be displaced; 65 acres will be committed to the project. (ELR Order No. 04411) (NTIS Order No. PB-209 040-D)

Draft, May 3

State Route 66, Illinois, County: St. Louis. Proposed replacement of an existing bridge over the River Des Peres. A 4(f) statement may be required as land may be taken from a local park. (ELR Order No. 04362) (NTIS Order No. EIS 72 4362D)

Draft, May 15

21st Street, Kansas, County: Shawnee. Proposed reconstruction of an intersection in urban Topeka. Nine residences would be displaced by the action. (ELR Order No. 4461) (NTIS Order No. EIS 72 4461D)

Draft, May 11

U.S. 113, Maryland, County: Worcester. Proposed construction of 7.3 miles of new, two-lane highway. An unspecified number of displacements will result. (ELR Order No. 04426) (NTIS Order No. PB-209 038-D)

Draft, May 15

Route 2, Massachusetts. Proposed reconstruction of 11.3 miles of two-lane Route 2 in Lexington, Lincoln, Concord, and Action, to freeway standards. Eighty-seven residences would be displaced by the project. Several 4(f) statements will be filed, as the highway would affect the Minute Man National Historical Park, the Walden Pond State Reservation, one town forest and two conservation areas. (ELR Order No. 04472) (NTIS Order No. EIS 72 4472 D)

Draft, May 10

State Route 61, Missouri, County: Lewis Proposed relocation of 12.1 miles of S.R. 61, a two-lane facility. Approximately 443 acres of agricultural and timberland will be committed to the project. (ELR Order No. 04422) (NTIS Order No. PB-209 045-D)

Draft, May 17

Six Forks Road, North Carolina, County: Wake. Proposed widening of Six Forks Road, in urban Raleigh, from four- and five-lane sections to five- and seven-lane sections. Two businesses and three residences would be displaced by the action. (ELR Order No. 04488) (NTIS Order No. EIS 72 4488D)

Draft, May 12

Lake Oahe, N. Dak., Counties: Sioux and Emmons. Proposed construction of a bridge across Lake Oahe. The two-lane roadway would connect U.S. 83 and S.H. 24. Five alternate routes are under consideration. Approximate route length is 23 miles; approximate bridge length, including approaches, is 1 mile. An unspecified amount of land would be committed to the project. (ELR Order No. 04454) (NTIS Order No. EIS 72 4454D)

Draft, May 11

State Route 34, Tennessee, County: Greene. Proposed construction of approximately 11.3 miles of four-lane S.R. 34. An unspecified amount of land and number of residences will be lost to the project. (ELR Order No. 04228) (NTIS Order No. PB–209 048–D)

F.M. 776, Texas, County: Jasper. Proposed construction of 1.6 miles of two-lane F.M. 776 in urban Jasper. Thirteen residences would be displaced by the action; an unspecified amount of land would be committed to the project. (ELR Order No. 04440) (NTIS Order No. EIS 72 4440D)

Draft, May 17

State Route 193, Washington, Counties: Asotin and Whitman. Proposed construction of a new bridge for S.R. 193, over the Snake River. Total length is estimated from 1500 feet to 1900 feet. Four residences would be displaced by the action. (ELR Order No. 04487) (NTIS Order No. EIS 72 4487D)

Draft, May 15

State Trunk Highway 59, Wisconsin, Counties: Waukesha and Milwaukee. Proposed construction of 8.1 miles of two-lane S.H. 59. Thirty-one residences will be displaced by the action and an unspecified number of acres taken. A 4(f) statement will be filed as land would be taken from a local park. (ELR Order No. 04456) (NTIS Order No. EIS 72 4456–D)

Final, May 11

Anchorage-Fairbanks Highway, Alaska. Proposed reconstruction of 22.6 miles of the two-lane Anchorage-Fairbanks Highway. A section of the highway lies within the Mount McKinley National Park, necessitating the filing of a 4(f) statement. Comments made by: EPA, DOI, DOT, State, and local agencies. (ELR Order No. 04443) (NTIS Order No. EIS 202 124F)

Final, May 16

Haines Highway, Alaska. Proposed reconstruction of 40 miles of two-lane Haines Highway, from the city of Haines to the Canadian border. Comments made by: USDA, DOT, HUD, and DOI. (ELR Order No. 04468) (NTIS Order No. EIS 72 4468F)

Final, May 17

Project S–6408, Alabama, County: Walker. Proposed construction of 10.901 miles of new two-lane roadway. Approximately 225 acres of wildlife habitat will be committed to the project; 17 residences will be displaced. Comments made by: USDA, COE, EPA, DOI, and HUD. (ELR Order No. 04483) (NTIS Order No. EIS 201 846F)

Mesa-Payson Highway, Arizona, County: Gila. Proposed reconstruction of 26 miles of highway (the "Beeline," or S.R. 87). An unspecified amount of land will be lost to the project. Comments made by: USDA, EPA, HUD, DOI, State, and local agencies. (ELR Order No. 04494) (NTIS Order No. EIS 204 022F)

Final, May 11

Pedestrian Overcross, California, County: Merced. Proposed construction of a pedestrian overcrossing of State Highway 152. The facility will connect two portions of the city's school facilities which are severed by the existing road. A 4(f) statement would be required as the Los Banos Recreation Park would be affected by the project. Comments made by: DOI, State, and local agencies. (ELR Order No. 04452) (NTIS Order No. EIS 203 812F)

Moreland Avenue, Georgia, Counties: De Kalb and Fulton. Proposed reconstruction and widening of 4 miles of Moreland Avenue (S.R. 160), including the construction of two new bridges. An unspecified number of displacements will occur; a 4(f) statement will be filed as local park land would be affected by the project. Comments made by: COE, EPA, HUD, DOI, State and local agencies. (ELR Order No. 04442) (NTIS Order No. EIS 72 4442F)

Project S–2114, Georgia, County: Jenkins. Proposed construction of 5.055 miles of two-lane State Route 17, along an existing stretch of unpaved country road. Comments made by: USDA, EPA, DOT, HUD, DOI, State and local agencies. (ELR Order No. 04450) (NTIS Order No. EIS 201 396F)

Final, May 17

FAS 175, Indiana, County: Franklin. Pro-Proposed reconstruction and widening of 1.5 miles of FAS Route 187. Fourteen residences and nine businesses would be displaced by the action. A 4(f) statement would be required as land would be taken from Olney Park. Comments made by: DOI, DOT, State, and local agencies. (ELR Order No. 04495) (NTIS Order No. EIS 200 005F)

Final, May 16

F.A.S. 175, Indiana, County: Franklin. Proposed construction of a new two-lane bridge on FAS 175 (S.R. 1), over the White River. Total length of the project, including approaches, is 1.3 miles. Two residences would be displaced by the action. Comments made by: USDA, EPA, DOI, DOT, State, and local agencies. (ELR Order No. 04480) (NTIS Order No. EIS 203 689F)

Final, May 17

U.S. 119, Kentucky, Counties: Harlan and Letcher. Proposed reconstruction of 6.6 miles of U.S. 119. Sixty-three residences, six businesses and three churches will be displaced by the project; 330 acres will be permanently lost, and one stream will be channelized. A 4(f) statement will be filed as a city-owned park would be taken by the project. Comments made by: DOI, DOT, OEO, State, and local agencies. (ELR Order No. 04481) (NTIS Order No. PB–202 131–F)

Final, May 16

Harlan Road, Kentucky, County: Harlan. Proposed reconstruction of 6.05 miles of the Harlan-Cumberland-Whitesburg Road (U.S. 119). Several streams would be crossed and/or channelized by the project; 30 residences will be displaced and 325 acres of land committed. Comments made by: EPA, HUD, DOI, DOT, State, and local agencies. (ELR Order No. 04476) (NTIS Order No. EIS 72 4476F)

Maryland, County: Dorchester. Proposed reconstruction of 1.976 miles of Maryland Route 16, between Parsons Creek and Slaughter Creek. An unspecified amount of land would be committed to the project. Comments made by: USDA, EPA, HUD, DOT, State, and local agencies. (ELR Order No. 04469) (NTIS Order No. EIS 201 565–F)

Final, May 11

M–43, Michigan, Counties: Kalamazoo and Van Buren. Proposed reconstruction of 11.5 miles of two-lane M–43, partially on new location. Approximately 144 acres would be committed to the project; 31 residences and 11 businesses would be displaced. Comments made by: USDA, COE, DOC, EPA, DOI, DOT, HUD, State, and local agencies. (ELR Order No. 04447) (NTIS Order No. EIS 72 4447F)

State Highway 24, Minnesota, Counties: Nicollet and Blue Earth. Proposed construction of a new two-lane bridge on Nicollet County State Aid Highway 24, over the Minnesota River. Total length of the bridge and access ramps is 1.02 miles. An unspecified amount of land will be committed to the project. Comments made by: USDA, COE, EPA, FPC, HEW, DOI, OEO, DOT, State, and local agencies. (ELR Order No. 04446) (NTIS Order No. EIS 72 4446F)

Final, May 16

New Bern Bypass, North Carolina, County: Craven. Proposed construction of a four-lane U.S. 70 Bypass at New Bern, from Clarks to James City. Two streams would be spanned by bridges along the 8.1-mile route; 33 residences and eight businesses would be displaced. Comments made by: USDA, COE, EPA, HUD, DOI, OEO, State, and local agencies. (ELR Order No. 04475) (NTIS Order No. EIS 72 4475F)

Project U–515(8), Nebraska, County: Douglas. Proposed construction of 0.8 mile of four-lane urban roadway in South Omaha. Forty-two single family residences, 19 trailer homes, 56 flats, two churches, and 29 businesses would be displaced by the action. Comments made by: USDA, COE, EPA, HUD, DOI, State, and local agencies. (ELR Order No. 04470) (NTIS Order No. EIS 204 100F)

Final, May 17

Route 130, New Jersey, County: Burlington. Proposed replacement of an existing four-lane bridge on Route 130 over Rancocas Creek with a six-lane structure. Thirty-eight residences and 10 businesses would be replaced by the action. Comments made by: HUD, DOT, State, and local agencies. (ELR Order No. 04483) (NTIS Order No. EIS 200 015F)

Final, May 16

Route 5, New York, County: Herkimer. Proposed reconstruction of Route 5 at its intersection with County Roads 26 and 37 in the town of Schuyler. Five residences and one business would be displaced by the action. Comments made by: EPA, DOI, State, and local agencies. (ELR Order No. 04467) (NTIS Order No. EIS 199 245F)

State Route 45, Ohio, County: Columbiana. Proposed construction of S.R. 45, a four-lane bypass of Lisbon. One farm and seven residences would be displaced by the action; 150 acres would be taken. Comments made by: EPA, HUD, DOI, State, and local agencies. (ELR Order No. 04471) (NTIS Order No. EIS 72 4471F)

Final, May 11

State Route 235, Ohio, Counties: Clark and Champaign. Proposed reconstruction of 16 miles of two-lane S.R. 235. Sixteen residences will be displaced by the action and an unspecified number of acres committed to it. Comments made by: EPA, DOI, State, and local agencies. (ELR Order No. 04445) (NTIS Order No. EIS 202 438F)

Final, May 2
State Route 60, Ohio. Proposed construction of 1.2 miles of S.R. 60, including a bridge over the Muskingham River. An unspecified number of residences and businesses will be committed to the project. Comments made by: COE, DOC, EPA, DOI, DOT, State, and local agencies. (ELR Order No. 04344) (NTIS Order No. PB-202 425-F)

Final, May 16
Diamond Lake Bypass, Oregon, County: Douglas. Proposed construction of 5 miles of two-lane bypass, as Oregon F.H. Route 46, from the intersection of S.R.'s 138 and 230 north. Approximately 100 acres of forest land will be lost to the project. Comments made by: USDA, State, and local agencies. (ELR Order No. 04477) (NTIS Order No. EIS 202 802F)

Final, May 17
Legislative Route 10001, Pennsylvania, Counties: Butler and Beaver. Proposed construction of 2.8 miles of new two-lane highway, L.R. 10001. Twenty acres would be committed to the action; two families would be displaced. Comments made by: ARC, HUD, State, and local agencies. (ELR Order No. 04484) (NTIS Order No. EIS 202 901F)

Final, May 11
Legislative Route 11804, Pennsylvania, County: Cambria. Proposed reconstruction of 1.7 miles of L.R. 11804, an existing two-lane facility. A 4(f) statement will be filed as 14 acres would be taken from Prince Gallitzin State Park. Comments made by: USDA, EPA, State, and local agencies. (ELR Order No. 04448) (NTIS Order No. EIS 202 083F)

Final, May 16
Campus Loop Road, Washington, County: Whitman. Proposed construction of 7 miles of four-lane Campus Loop Road, some of it on the location of existing S.R. 195. Two residents would be displaced by the action; an unspecified amount of farmland and wildlife habitat will be lost. Comments made by: USDA, COE, EPA, HUD, DOI, DOT, State, and local agencies. (ELR Order No. 04466) (NTIS Order No. EIS 199 612F)

Final, May 2
Project S-0487(5), Wisconsin, County: Racine. Proposed construction of 2.4 miles of two-lane rural roadway. Comments made by: EPA, HEW, DOT, State, and local agencies. (ELR Order No. 04345) (NTIS Order No. PB-202 426-F)

Final, May 13
State Trunk Highway 71, Wisconsin, Counties: Monroe and Juneau. Proposed reconstruction of 6 miles of two-lane S.H. 71. One business and 88 acres of land would be committed to the project. A 4(f) statement will be filed as recreational land would be taken by the project. Comments made by: USDA, EPA, HUD, DOI, DOT, State, and local agencies. (ELR Order No. 04441) (NTIS Order No. EIS 200 384F)

WATER RESOURCES COUNCIL

Contact: Mr. Don Maughn, 2120 L Street, Washington, D.C. 20037, (202) 254-6303.

Draft, May 8
Red River Basin, Arkansas, Louisiana, Oklahoma, and Texas. The statement is a proposed comprehensive plan for the development of the Red River Basin. Flood protection, water supply, navigation, power, and wildlife needs are considered. Several dams, reservoirs, flood control structures, and channelization projects are proposed. (ELR Order No. 04397) (NTIS Order No. PB-208 876-D)

BRIAN P. JENNY,
Acting General Counsel.

[FR Doc.72-8220 Filed 5-31-72;8:49 am]

ENVIRONMENTAL PROTECTION AGENCY

[I. F. & R. Docket No. 146]

ALLIED CHEMICAL CO.

Products Containing the Insecticide Mirex; Determination and Order of the Administrator

Published herewith is my determination and order issued May 3, 1972, concerning the registration of products containing the insecticide "Mirex."

Done this 25th day of May 1972.

WILLIAM D. RUCKELSHAUS,
Administrator.

Before the Environmental Protection Agency, In regard Allied Chemical Co., Petitioner, Regs. Nos. 218-495, 516, 548, 564, 565, 585, 586, 590, 628, and 638; I.F. & R. No. 146; Determination and Order of the Administrator.

This proceeding, which arises under section 4.c of the Federal Insecticide, Fungicide, and Rodenticide Act (the FIFRA) (7 U.S.C. 135b(c)), involves a challenge by Allied Chemical Co. to a notice canceling its registration of a number of pesticides containing Mirex. For the reasons that follow, I have determined to issue the following order: The cancellation of Allied Chemical's registrations is affirmed, but those registrations will be reinstated if Allied Chemical complies with the conditions outlined herein.

A. On March 18, 1971, this Agency issued a notice of cancellation of Allied's 10 registrations of pesticides containing Mirex for use against the imported fire ant and certain other insects. The grounds for cancellation were that evidence, primarily from the laboratory, concerning the effect of Mirex on human health and on animals raised serious questions about the safety of continued use of pesticide products containing Mirex. The Agency determined to commence the administrative process in order to resolve these questions. Accordingly, the Agency canceled all registrations of products containing Mirex on the grounds that continued registration of these products was contrary to the provisions of the Act (see 7 U.S.C. 135(z)(2)(c), (d), and (g)). Allied Chemical chose to challenge the order by petitioning, on April 16, 1971, for referral of the matter to a scientific advisory committee (pursuant to 7 U.S.C. 135b(c)). The Advisory Committee was appointed on September 24, 1971, and received the relevant data and its charge on October 5, 1971. The committee was charged with considering and evaluating all relevant scientific evidence concerning both benefits and risks from the use of Mirex and, based thereon, expressing its opinion and recommendations. Specifically, with respect to benefits, it was to consider, inter alia, (1) the nature and extent of the problem posed by the fire ant and other insects at issue; (2) the effectiveness of the several types of control measures which utilize Mirex; (3) the benefits expected to be achieved by each such control program, measured against the damage which would occur if no control were undertaken; and (4) the availability and effectiveness of, and the hazards connected with, alternative control measures. With respect to the hazards associated with the several uses of Mirex, the committee was charged to consider, inter alia, the nature, scope and possibility of occurrence of any (1) direct hazard to the user and to the general public; (2) hazard to vegetation; (3) hazard to nontarget vertebrate and invertebrate animals; and (4) hazard to the environment generally.

The committee submitted its report on February 4, 1972. With my approval, the committee later submitted revisions of certain statements which had inadvertently appeared in the initial report as a result of the press to meet the statutory time deadline. A revised version of the report, dated March 1, 1972, and containing, as an addendum, a letter from the chairman explaining each of the revisions, has been printed. Under the law, I am required within 90 days of my receipt of the report to "make [a] determination and issue an order, with findings of fact, with respect to registration * * *." 7 U.S.C. 135b(c).

B. The committee discussed in detail the evidence pertaining to Mirex and, based thereon, made a number of findings regarding Mirex. Those findings are summarized below:

1. The imported fire ant, which infests more than 126 million acres in nine Southern States, is both a major nuisance pest because of its sting and a health hazard due to dangers of secondary infection and allergic reaction.

2. The imported fire ant is a minor agricultural pest because the threat of its sting interferes with hand labor on some crops and its mounds may damage agricultural machinery.

3. The imported fire ant is an aggressive predator to an unknown extent of both pests and beneficial species, and is also a scavenger.

4. Mirex bait is effective for fire ant control to a degree correlated with the size of the area treated and the number of applications. For example, three applications at 6-month intervals virtually eliminates all mounds exposed to treatment.

5. The goal which should be sought is control of the fire ant, through publicly sponsored programs involving application of Mirex bait as needed, rather than total elimination of the pest. The latter is not feasible, given the financial and environmental problems involved.

6. Mirex baits provide highly effective and comparatively selective control for a number of other pests, including certain species of ants, yellow jackets, and, indirectly, aphids, scale insects, and mealy bugs.

7. The only effective alternatives to Mirex for control of the fire ant are even more persistent chlorinated hydrocarbons, e.g., chlordane, aldrin, dieldrin, and heptachlor. Inasmuch as their effective dosage rates far exceed the rate used in Mirex bait, their substitution is inadvisable. No possible method of biological control shows immediate promise.

8. No instance of acute Mirex poisoning of humans has been reported in more than a decade of use, nor is there any evidence of damage to vegetation from the use of Mirex bait.

9. Insufficient data are available on most mammals for an accurate evaluation of Mirex acute toxicity. No data are available on the chronic toxicity of Mirex to experimental animals.

10. Mirex has caused significant reproductive effects in rats when fed at relatively high levels, but none when fed at rates likely to occur in treated food or feed applied to control the fire ant.

11. Based on preliminary data, no metabolites of Mirex have been detected in rats. Mirex is stored in animal adipose tissue, and appears to have biological half life of at least 25 days.

12. Mirex has been demonstrated to be tumorigenic to mice at high dosages.

13. Insignificant residues of Mirex have been detected in the human food chain in treated areas.

14. Laboratory experiments have shown exceedingly toxic effects on juvenile crustaceans, especially shrimp and crabs, exposed to low concentrations of Mirex, indicating the

chemical presents a hazard to the aquatic environment.

15. Mirex residues in both soil and water in areas of normal treatment are minimal, but may have some biological importance in water because of the probable ingestion of organic detritus and other components by bottom feeding crustaceans.

Based on its findings, the committee made recommendations which can be summarized as follows: (1) Mirex registrations should be continued with labeling restrictions to minimize environmental contamination; (2) publicly supported control programs should be limited to infested areas where the imported fire ant is a problem because of use by people or interference with agricultural operations; (3) where publicly sponsored programs are unavailable [nonaerial] broadcast treatment of lawns, pastures, schoolgrounds, parks, and similar areas by individuals is recommended instead of mound treatment; (4) more information should be obtained in order to establish economic or nuisance threshold levels requiring Mirex treatment as well as information regarding rates of reinfestation and population recovery in areas receiving a single bait treatment; and (5) more research should be conducted on the possible hazards of Mirex to man and his environment in order that the role of Mirex as a pesticide may be accurately assessed.

There is no basis in the data currently before me to disregard these findings. Accordingly, I accept the findings stated above and adopt them as my own. I believe, however, that additional discussion is in order inasmuch as I have decided to depart in some degree from the committee's further recommendations.

The acute toxicity of Mirex to man is low. Though Mirex is capable of being stored in adipose tissue (as are DDT and other related compounds), recent gas chromatograph analyses of more than 700 adipose tissue samples collected in 23 States showed that only 12 samples contained residues which could possibly have been Mirex. Those 12 were tentative identifications, and only two samples have been confirmed as containing Mirex.

Subacute toxicity studies in rats and mice have shown some evidence of chronicity and reproductive effects but only at high dosage levels. Mirex was clearly tumorigenic in one experiment in mice; the results were comparable to those obtained from known carcinogens used as positive controls. The Advisory Committee avoided referring to this as carcinogenic because only one species of animal was involved. With the essentially nondetectable level of human exposure, the risk to man's health must be considered very low in relation to the benefits, particularly those relating to human health, to be derived from use of Mirex.

Mirex is highly toxic to some species of invertebrates, but is apparently very low in toxicity to other closely related species. Residues of Mirex have been found in some invertebrates and vertebrates, especially those that are predaceous on ants and other insects. There have been some population declines demonstrated in terrestrial invertebrates, most of which apparently feed directly on the Mirex bait. In spite of its persistence, troublesome concentrations of Mirex are not apt to build up in the terrestrial environment in the near future because of the extremely small dosages used (far less than 1 ounce per acre and seldom more than one application per year).

On the other hand, Mirex is most apt to do significant damage in the aquatic environment. Significant adverse effects to crustaceans have resulted from laboratory exposure to Mirex. In the wild, however, the lethal effects to some aquatic species, such as the commercial blue crab, are delayed so that such effects would be difficult to discover in the natural environment. Consequently, although troublesome concentrations of Mirex have not yet been demonstrated in the aquatic environment, the hazard to aquatic organisms cannot be disregarded, particularly in view of the fact that Mirex is apt to be recycled, especially in estuaries, and because of the sensitivity of some economically important species of crustaceans to Mirex.

As a result of the potential threat to the aquatic environment posed by Mirex, I am naturally reluctant to permit distribution of Mirex bait in a manner that might contaminate estuaries, lakes, and streams. Those who are familiar with aerial application techniques believe that it is practical, by the use of proper cutoff mechanisms and guidance systems in the aircraft, to avoid contamination of streams and lakes in upland areas where such aquatic environments cover a rather small proportion of the land. Judicious use of aerial application is preferable to hand distribution of bait, which often results in overtreating obvious mounds but missing inapparent young colonies with a resultant rapid reinfestation.

At the same time, maximum caution must be exercised to prevent damage to the aquatic environment. All broadcast application, aerial or otherwise, must be prohibited in coastal counties or parishes and on or near rivers, streams, lakes, ponds, and other aquatic areas. I also believe it necessary to restrict aerial or other broadcast application in noncoastal, nonaquatic areas to Federal, State, county, or local authorities. Thus, I depart from the recommendation of the Advisory Committee that nonaerial broadcast treatment by individuals be authorized where publicly supported control programs are unavailable. All broadcast treatment by private individuals must be prohibited.

By prohibiting aerial application, I do not wish to eliminate completely the use of Mirex from coastal counties or parishes. Should we do so, the homeowners, farmers, and others affected by the ants would in all likelihood apply heptachlor, dieldrin, or another chlorinated hydrocarbon as a control chemical. This alternative could be worse from the standpoint of environmental safety than would applications of Mirex. Therefore, I have determined to authorize the private use of Mirex for application on a mound-to-mound basis only.

For the foregoing reasons, the cancellation of Allied Chemical's registrations is affirmed, but the registrations will be reinstated upon submission by Allied Chemical, and acceptance by the Agency, of amended labeling which conforms to the conditions set forth in this decision,[1] and submission by the company for a 2-year plan to monitor Mirex in the environment to insure that run-off, leaching and erosion of soil in mound-treated areas are not resulting in aquatic contamination.

[FR Doc.72-8228 Filed 5-31-72;8:56 am]

[1] The evidence presently available indicates that the hazard to aquatic organisms from current use of Mirex in aquatic areas does not approach the "imminent" stage. In other words, I am not faced with a highly dangerous situation which needs to be corrected immediately, prior to the completion of the cancellation proceedings. Consequently, I have no reason to suspend the aquatic use immediately. Instead, I am merely canceling the aquatic use. Under the FIFRA, this cancellation order is not effective until, at the earliest, the expiration of the 60 days allowed for the filing of an administrative appeal from this decision. Thus, even if Allied does not appeal from this decision, it will have 60 days to conform its labeling to the newly imposed conditions.

FEDERAL COMMUNICATIONS COMMISSION

[Dockets Nos. 18456, 18457; FCC 72R-142]

HARVIT BROADCASTING CORP. AND THREE STATES BROADCASTING CO., INC.

Memorandum Opinion and Order Enlarging Issues

1. This proceeding, involving the mutually exclusive applications of Harvit Broadcasting Corp. (Harvit) and Three States Broadcasting Co., Inc. (Three States), for new FM broadcast stations at Williamson and Matewan, W. Va., respectively, was designated for hearing by Commission order, released March 7, 1969 (FCC 69-180, 16 FCC 2d 806). Before the Review Board is a petition to enlarge issues, filed January 14, 1972, by Three States.[1] The crux of the petition is that the controlling principal of Harvit (Robert B. Harvit) sought to improperly induce and coerce testimony against Three States in this proceeding.[2]

2. In support of its request, petitioner submits an affidavit dated January 6, 1972, executed by Ron W. Cordell and Eric P. Pickell (also known as Rick Russell), which, in pertinent part, reads as follows:

[1] Also before the Review Board are: (a) Broadcast Bureau's comments, filed Jan. 20, 1972; (b) opposition, filed Feb. 3, 1972, by Harvit; (c) reply filed Feb. 15, 1972, by Three States; (d) statement of Harvit, filed Mar. 14, 1972; (e) petition for leave to file, filed Mar. 23, 1972, by Harvit; and (f) response to (c), filed Mar. 23, 1972, by Harvit. Harvit's response to Three States' reply will not be accepted by the Board. The pleading is not authorized by the Commission's rules (see section 1.294) and good cause and compelling and unusual circumstances for filing have not been shown. Indiana Broadcasting Corp., 26 FCC 2d 717, 20 RR 2d 897 (1970). D. H. Overmyer Communications Co., 4 FCC 2d 496, 8 RR 2d 96 (1966). Therefore, Harvit's petition for leave to file will be denied and the response attached thereto will not be considered.

[2] The requested issues read as follows:

(a) To determine whether Robert B. Harvit or anyone else on behalf of Harvit Broadcasting Corp. has attempted to induce, entice, coerce, or otherwise improperly influence any witness or prospective witness in this proceeding, or has engaged or attempted to engage in any other conduct which abuses the Commission's processes;

(b) To determine in light of the evidence adduced pursuant to issue (a) and the other issues in this proceeding whether Harvit Broadcasting Corp. possesses the requisite character qualifications to be a licensee of the Commission;

(c) To determine in the light of the evidence adduced pursuant to issue (a) and the other issues in this proceeding whether Harvit Broadcasting Corp. should be absolutely disqualified in this proceeding;

(d) To determine in the light of the evidence adduced pursuant to issue (a) and the other issues in this proceeding whether such misconduct should result in the assessment of a comparative demerit in this proceeding against Harvit Broadcasting Corp.

* * * as inducement for us to appear at his [Harvit's] office at WBTH Radio, for the purpose of making of the interview of December 8th, and for going to Washington, D.C., for the purpose of testifying against Radio Station WHJC and its manager, George Warren in the FM case, we were several times offered money. Rick Russell [Eric Pickell] was given the sum of $25. More money was offered and was turned down.

In addition to the offers of money, we were sent by Mr. Harvit to Montgomery, W. Va., for the purpose of talking to the manager about jobs following the hearings. Ron Cordell was the only one who actually received a job offer, and it was the understanding of Rick Russell and Danny Hayes that they would be hired to work at WMON following Ron Cordell's acceptance at that station.

Regarding the interview of December 8th: We were all under pressure, and said things that we would not have said under normal circumstances.[3]

Three States contends that such allegations of inducement and coercion raise substantial questions concerning the character of the controlling principal in Harvit (Robert Harvit) that should be explored in an evidentiary hearing. Three States claims that its petition is timely filed since it did not have possession of the supporting affidavit until January 6, 1972.

3. The Broadcast Bureau, in its comments, urges that Three States' petition does not warrant the addition of the requested issues because the supporting affidavit is not specific and does not state what pressure was exerted, by whom, or that what the affiants said, as a result of "this pressure", was in any part false. The Bureau also notes that at the hearing held on January 11, 1972, the affiants gave testimony that was contrary to their affidavit of January 6, 1972, and that Three States' counsel failed to cross-examine Messrs. Cordell and Pickell on this subject. In the Bureau's opinion, this last point makes the petition tardy.

4. In opposition, Harvit denies the allegations against its principal. Harvit then argues that since Three States already had possession of the joint affidavit on January 11, when Cordell and Pickell testified, the proper procedure was to raise the issue under cross-examination and not wait to petition to enlarge issues. Harvit cites Wheeler v. U.S., 351 F. 2d 946 (1st Cir. 1965), to support its contention.[4] Harvit concedes that Robert Harvit (President of Harvit Broadcasting Corp.) lent twenty-five dollars ($25) to Pickell and also discloses that he "lent" Cordell one hundred dollars ($100). Copies of the receipts for both "loans" are attached to the opposition and show amounts due of $25 and $100, respectively. Harvit also points out that both loans were made some weeks after the December 8 interview, i.e. January 3, 1972, and December 24, 1971, respectively. Regarding offers of employment, Harvit submits affidavits of its station manager at WMON, Montgomery, W. Va., and of Danny Hayes, the third striking employee of WHJC (see note 3, supra), which support Harvit's claim that the possibility of employment was discussed with Cordell prior to the employee strike at WHJC, but that this discussion never went beyond a short interview at WMON and that no offer of employment was ever made. Hayes, who was present at the December 8, 1971, interview at WBTH and verified the transcript in a December 11, 1971, affidavit, states that he was not under pressure, and that he does not remember any pressure being exerted. Harvit points out that Messrs. Cordell and Pickell, in their January 6, 1972, affidavit, did not state that "the inducements" were made in order to influence the content of their statements (December 8, 1971) or testimony (January 11, 1972). Harvit further alleges that in an interview at the office of Harvit's counsel on January 11, 1972, Cordell and Pickell stated before witnesses that their statements of December 8, 1971 were true and in no way influenced by the loans they had received.

5. In its reply, Three States submits that the affidavits attached to Harvit's opposition, rather than resolving the question, merely emphasize the need for a further evidentiary hearing. Three States contends that the $25 "loan" to Pickell was not a loan but a payment and that the receipt attached by Harvit does not indicate otherwise. In response to Harvit's comments regarding the Cordell loan, Three States attaches an affidavit of Cordell who claims that Mr. Harvit requested him to take the money, never mentioning that it was a loan but merely asking for a signed receipt. Cordell also states that, while offered up to $1,000, he only received and accepted $100. In the same affidavit Cordell states that he was offered a job at radio station WMON in Montgomery, W. Va., but after learning the true circumstances surrounding the position he declined the offer. Therefore, Three States contends, there are sufficient conflicting factual allegations to warrant an additional evidentiary inquiry. Finally, finding Wheeler irrelevant to the case at hand, Three States submits that, while this serious matter might have been appropriately considered under cross-examination of Messrs. Cordell and Pickell, it was more properly explored by a petition for enlargement of specific issues, with full notice to all parties.

6. The Review Board will grant Three States' petition.[5] Charges of attempted inducement, enticement, coercion, or other improper influence on Commission witnesses raise a serious and substantial public interest question. Cf. Chronicle Broadcasting Co., 19 FCC 2d 240, 16 RR 2d 1014, review denied, 23 FCC 2d 162, 19 RR 2d 204 (1970). In the instant proceeding, the petitioner relies on a joint affidavit based on personal knowledge of the facts contained therein to support its serious allegations. While the joint statement of Messrs. Cordell and Pickell, in and of itself, would not be specific enough to require an evidentiary hearing, there are sufficient serious questions raised by the conflicting allegations and affidavits to warrant an evidentiary inquiry. In short, "someone may not be telling the truth". Christian Voice of Central Ohio, 26 FCC 2d 76, 81, 20 RR 2d 389, 395 (1970). Thus, the joint affidavit of Cordell and Pickell, attached to Three States' pleading, alleges that earlier affidavits signed by them on December 11, 1971, were obtained by coercion. It further alleges that a $25 payment made on January 3, 1972, to Eric Pickell, plus a job offer made to Ron Cordell (sometime in mid-December) influenced Messrs. Cordell's and Pickell's signing of the affidavits on December 11, 1971, and their testimony in Washington on January 11, 1972. Harvit contests the joint affidavit and to support its position it attaches the affidavit of its president which alleges that the $25 was a loan and that Cordell was not made any job offer. Additionally, Mr. Harvit contends that Cordell asked for and received the loan of $100. Cordell submits that this was not the case. Cordell alleges, in an affidavit attached to Three States' reply, that Mr. Harvit asked him whether he could help Cordell financially and offered up to $1,000, and that he, Cordell, finally accepted $100. In addition to these contradictory claims and accusations, Cordell and Pickell, at the hearing on January 11, did not testify regarding their joint January 6 affidavit, nor did they contradict their earlier statements given to Mr. Harvit on December 8, 1971, although they had advised Three States' counsel that these statements were made under pressure. On the basis of the foregoing, the Board concludes that there are suffi-

[3] A brief outline of the events leading up to the petition will be helpful to an understanding of the factual allegations. On Dec. 6, 1971, three employees at Three States' standard broadcast Station WHJC (Ron Cordell, Eric Pickell, and Danny Hayes) went on strike. Two days later on Dec. 8, 1971, they were interviewed by Robert Harvit, at the offices of Harvit's standard broadcast Station WBTH. The interview was not broadcast over the air. During this interview, the employees made certain statements concerning the operation of WHJC by Three States. On Dec. 11, 1971, a typed transcript of the interview was verified as accurate in separate affidavits signed by each of the three striking employees. However, on Jan. 6, 1972, Cordell and Pickell signed a joint affidavit, which is being offered by Three States to support its charges of witness coercion.

[4] In Wheeler, the court held that it was reversible error to refuse to allow the defense attorney of an employer charged with federal income tax evasion to cross-examine a key government witness regarding the witness' financial stake in the particular outcome of the case since, had there been a finding of tax evasion, the witness could have claimed an informer's award.

[5] Procedurally, the Board believes that, while Three States could have introduced this evidence at the hearing by means of cross-examination of the witnesses, an enlargement of issues would still be necessary. Messrs. Cordell's and Pickell's conflicting affidavits could affect their credibility, cf. The Prattville Broadcasting Co., FCC 65R-83, 4 RR 2d 728, 729 n.4, but in order for the Hearing Examiner to make findings and conclusions on the allegations of witness coercion, he would need an additional hearing issue. Therefore, the Board agrees with Three States that Wheeler v. United States, supra, cited by Harvit, is inapposite.

cient contradictory sworn affidavits and factual allegations to necessitate a full evidentiary inquiry. See Christian Voice of Central Ohio, supra; Folkways Broadcasting Co., Inc., 27 FCC 2d 619, 21 RR 2d 163 (1971); Sumiton Broadcasting Co., Inc., 15 FCC 2d 400, 14 RR 2d 1000 (1968). Appropriate issues will therefore be added.

7. *Accordingly, it is ordered,* That the petition for leave to file, filed March 23, 1972, by Harvit Broadcasting Corp., is denied; and the response attached thereto is dismissed; and

8. *It is further ordered,* That the petition to enlarge issues, filed January 14, 1972, by Three States Broadcasting Co., Inc., is granted; and that the issues in this proceeding are enlarged by the addition of the following issues:

(a) To determine whether Robert B. Harvit or anyone else on behalf of Harvit Broadcasting Corp., has attempted to induce, entice, coerce, or otherwise improperly influence any witness or prospective witness in this proceeding or has engaged or attempted to engage in any other conduct which abuses the Commission's processes;

(b) To determine in light of the evidence adduced pursuant to issue (a) whether Harvit Broadcasting Corp., possesses the requisite and/or comparative qualifications to be a Commission licensee.

9. *It is further ordered,* That the burden of proceeding with the introduction of evidence under the issues added herein shall be on Three States Broadcasting Co., Inc., and the burden of proof under such issues shall be on Harvit Broadcasting Corp.

Adopted: May 22, 1972.

Released: May 24, 1972.

FEDERAL COMMUNICATIONS COMMISSION,[6]
[SEAL] BEN F. WAPLE,
Secretary.

[FR Doc.72-8275 Filed 5-31-72;8:55 am]

[FCC 72-431]

STATION-INITIATED TELEPHONE CALLS

MAY 18, 1972.

The Commission has received a number of complaints concerning the broadcasting of harassing and embarrassing telephone conversations without giving notice to the party called as required by § 73.1206 of the Commission's rules.

These calls are made by the licensee to provide entertainment programing for broadcast, and involve asking the party called questions of an harassing, embarrassing, or perplexing nature designed to elicit reactions usually expected from "practical jokes." As with "practical jokes" the results are sometimes shocking and harmful to a degree not expected, and such results can be avoided by strict adherence to § 73.1206 of the rules.

Illustrative instances of this practice may be found in the following cases. A station representative called a beauty salon owner, stating that the caller's wife had her hair dyed at the beauty salon about a week prior to the call and that her hair was falling out. The announcer then asked the beauty salon owner what he was going to do about it. The party called hung up in disgust. Later he learned that a radio station had called him and was concerned that the broadcast would have adverse consequences to his business. He said that damage to the woman's hair is now believed to be a fact by many persons. At no time while on the air was he informed that his conversation was being simultaneously broadcast. The licensee said that it was its practice to so notify the party called sometime before the end of the broadcast, but that the practice was not followed in this instance.

In another case a disc jockey, identifying himself as representing a fictitious company, called a housewife telling her that he understood that she had purchased a new piece of plumbing equipment and that he wanted to talk to her about it. She said she was not interested, he persisted, and she hung up. The next day the man called again, he persisted making embarrassing suggestions in poor taste including the suggestion that he come to the house to photograph the new equipment. The housewife angrily hung up. A third call was made the next day during which the man told the housewife that the whole thing was a joke, that he was a disc jockey, and that the prior conversation had been recorded. The lady complained that she was upset because her husband was away on business, she was home with three small children, and she had found out via the Better Business Bureau that the company, which the DJ claimed to represent, was nonexistent. The licensee's practice was not to give any notice of recording during the telephone conversation, but to give notice of recording and intention to broadcast at some time later before the actual broadcast was made. Such notice was not given to the lady in this instance.

Another variation is found in the practice of a broadcast station making a recording of a telephone conversation for broadcast purpose with the intention of seeking, at the end of the recording, the permission of the party called to later broadcast the recording. In the particular case, the party called hung up before his permission to broadcast was obtained, and the recording was later broadcast without permission.

By public notice dated February 4, 1966, No. 78332, FCC 66-98, the Commission took cognizance of broadcasts of contests and promotions adversely affecting the public interest, resulting, among other things, in alarm to the public about imaginary dangers, infringement of public or private rights or the right of privacy, and annoyance or embarrassment to innocent parties. That public notice is applicable to situations described above.

We remind all licensees that § 73.1206 of our rules requires that before a telephone conversation is recorded for later broadcast or is begun for simultaneous broadcast, the licensee must inform the other party that the conversation will be recorded for broadcast purposes or will be broadcast live, as the case may be. The recording of such conversation with the intention of informing the other party later—whether during the conversation or after it is completed but before it is broadcast—does not comply with the rule if the conversation is recorded for possible broadcast. Likewise, the initiation of a live broadcast of a conversation with the intention of seeking the other party's permission for its broadcast sometime during the conversation, does not constitute compliance.

Licensees also are reminded that compliance with § 73.1206 of the rules does not excuse them from compliance with local or interstate tariff requirements that a tone-warning device be used in conjunction with any recording of two-way conversations. The interstate and intrastate tariffs also contain provisions prohibiting the use of telephone service "* * * in a manner reasonably to be expected to frighten, abuse, torment, or harass another." The American Telephone and Telegraph Co. and major independent telephone companies are requested to review the foregoing tariff regulations with licensees within the areas of their operating companies.

Finally, it should be noted that section 223 of the Communications Act and similar provisions in the laws of each State make certain types of harassing or annoying telephone calls a criminal offense. For example, section 223(1)(B) of the Act provides criminal penalties for making an interstate call without disclosing the identity of the caller and with intent "to annoy, abuse, threaten or harass any person at the called number."

Action by the Commission May 17, 1972, by letters. Commissioners Burch (Chairman), Bartley, Robert E. Lee, Johnson, H. Rex Lee, Reid and Wiley.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Secretary.

[FR Doc.72-8274 Filed 5-31-72;8:56 am]

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[6] Board member Nelson dissenting on the grounds advanced by the Bureau. Board member Kessler concurring in result only.

FEDERAL HOME LOAN BANK BOARD

[H.C. 127]

COMMERCE PROPERTIES, INC.

Notice of Receipt of Application for Approval of Acquisition of Control of Franklin Savings Association

MAY 26, 1972.

Notice is hereby given that the Federal Savings and Loan Insurance Corp. has received an application from Commerce Properties, Inc., Kansas City, Mo., for approval of acquisition of control of the Franklin Savings Association, Ottawa, Kans., an insured institution, under the provisions of section 408(e) of the National Housing Act, as amended (12

U.S.C. 1730a(e)), and § 584.4 of the regulations for Savings and Loan Holding Companies, said acquisition to be effected by the purchase for cash by Commerce Properties, Inc. of the outstanding stock of Franklin Savings Association. Comments on the proposed acquisition should be submitted to the Director, Office of Examinations and Supervision, Federal Home Loan Bank Board, Washington, D.C. 20552, within 30 days of the date this notice appears in the FEDERAL REGISTER.

[SEAL] EUGENE M. HERRIN,
Assistant Secretary,
Federal Home Loan Bank Board.

[FR Doc.72-8262 Filed 5-31-72;8:54 am]

SECURITIES AND EXCHANGE COMMISSION

[812-3077]

ABERDEEN MANAGEMENT CORP. ET AL.

Notice of Filing of Application Exempting Transactions

MAY 25, 1972.

Notice is hereby given that Aberdeen Management Corp., Income Estates of America, Steadman Fiduciary Investment Fund, Inc., and Steadman Security Corp., 1730 K Street, Washington, DC 20006 (collectively "Applicants"), have filed an application pursuant to sections 17(b) and 26(b) of the Investment Company Act of 1940 (Act) for an order exempting from the provisions of section 17(a) certain transactions incident to a proposed combination of Aberdeen Fund, a New Jersey common law trust (Aberdeen), and Steadman Fiduciary Investment Fund, Inc., a Delaware corporation (Fiduciary); and approving substitution of Fiduciary shares for Aberdeen shares by certain unit investment trusts registered under the Act. Upon the consummation of the combination of the two funds, it is proposed that the investment policies will be identical to those of Fiduciary, and that Fiduciary's name will be changed to Steadman Investment Fund, Inc. Aberdeen and Fiduciary are open-end, diversified management investment companies, registered under the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein which are summarized below.

Aberdeen Management Corp. (AMC) serves as depositor, general manager, and principal underwriter for Aberdeen, pursuant to a trust agreement dated April 1, 1933, as amended, between AMC and The Trust Company of New Jersey, as trustee. Steadman Security Corp., a Delaware corporation (Steadman), which owns all of the outstanding shares of AMC's capital stock, serves as investment counsel to Aberdeen. Steadman is retained by Fiduciary as its manager and investment adviser. Steadman Investment Services Corp., a wholly owned subsidiary of Steadman, serves as Fiduciary of the nonvoting stock of Steadman. Chairman of the Board and President of AMC and Chairman of the Board and President of Fiduciary, owns all of the voting stock and approximately 25 percent of the nonvoting stock of Steadman.

In view of the foregoing, Aberdeen and Fiduciary may be deemed to be under common control and may be deemed to be affiliated persons of each other under the Act. Thus, the proposed transactions may be deemed to involve the purchase and sale of securities between registered investment companies and affiliated persons of such companies.

Section 17(b). Section 17(a) of the Act, as here pertinent, provides that it is unlawful for any affiliated person of a registered investment company, or an affiliated person of such an affiliated person, to sell any security or other property to such registered company (except securities of which the buyer is the issuer) or to purchase from such registered company any security or other property (except securities of which the seller is the issuer).

Section 17(b) provides, however, that a proposed transaction may be exempted from the provisions of section 17(a) upon application if the evidence establishes that the terms of the proposed transaction are reasonable and fair and do not involve overreaching on the part of any person concerned and that the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act.

It is proposed that all of Aberdeen's assets (less funds required for expenses of the reorganization) will be transferred to Fiduciary in exchange for shares of common stock of Fiduciary. Fiduciary will assume all of Aberdeen's liabilities. The number of shares of Fiduciary common stock to be transferred to the shareholders of Aberdeen will be based upon the relative net asset values of Aberdeen and Fiduciary at the time of the consummation of the acquisition, with adjustments, in accordance with a formula set forth in the application, to apportion the anticipated tax burden for realized and unrealized capital gains between the funds.

The total expenses in connection with the proposed combination have been estimated at $89,492. Such expenses are as follows, with identifiable expenses allocated directly to the respective funds and expenses not readily allocable such as legal and accounting fees allocated on the basis of the respective net asset values of the funds as of June 30, 1971. At June 30, 1971, the net asset values of Fiduciary and Aberdeen were $12,357,495 and $40,677,958, respectively.

	Aberdeen	Fiduciary	Total
Accounting	$3,835	$1,165	$5,000
Legal fees and expenses	46,020	13,980	60,000
Printing and mailing of proxy statements (including postage and envelopes)	13,635	2,357	15,992
Administrative services in connection with issuance of shares	8,500	None	8,500
Total	71,990	17,502	89,492

The administrative service costs are payable to Steadman. Steadman has informed the funds that it will make no profit on the shareholder administrative service fees payable in connection with the proposed combination.

Of the total expenses of the combination now estimated at $89,492 as set forth above, Steadman has undertaken to pay the expense of proxy solicitation to the extent these exceed the expenses associated with regular annual meetings, not to exceed $5,000 in the aggregate. Such excess expenses are estimated at $4,891. This has the effect of reducing the printing and mailing of proxy statements item to approximately $11,101, the amount which the funds would have normally incurred as expenses in connection with their annual meetings.

Applicants state that the advantages to be derived from the transaction by the shareholders of Aberdeen and Fiduciary include: (a) A more modern corporate structure for the shareholders of Aberdeen; (b) elimination of the use of consents by Aberdeen and requirement for the holding of meetings which shareholders could attend and at which they could question the directors of Fiduciary; (c) elimination of the use of services of the trustee used by Aberdeen; (d) elimination of the requirement of the payment of a tax levied on Aberdeen by the State of New Jersey, amounting to $17,932 in 1969, $12,017 in 1970, and $17,339 in 1971; and (e) benefits accruing from the efficiencies and economies of scale resulting from the fact that Fiduciary and Aberdeen would succeed to a combined entity with substantially greater assets than each fund presently holds.

Applicants submit that the terms of the proposed transaction are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the investment policies of Aberdeen and Fiduciary, which are substantially similar.

Section 26(b). A majority of the shares of Aberdeen are owned by four unit investment trusts registered under the Act as follows: Aberdeen Investor Programs, Benjamin Franklin Foundation Certificates, Trusteed Income Estates Certificates—Series C, and Trusteed Income Estates Certificates—Original Series Trusteed Industry Shares (collectively the "Trusts").

The Trusts are issuers of periodic payment plan certificates which have shares of Aberdeen as their underlying medium of investment. Aberdeen Investor Programs is sponsored by AMC, a wholly owned subsidiary of Steadman. No certificates have been offered by Aberdeen Investor Programs since April 1971, nor will any certificates be offered in the future by this trust. The three remaining trusts are sponsored by Income Estates of America, also a wholly owned subsidiary of Steadman. The trustee for each of these trusts has informed Steadman that no certificates have been sold by these trusts in the last 10 years, nor will any certificates be offered in the future by these trusts.

Upon the consummation of the proposed combination, shares of Fiduciary will be substituted for the shares of Aberdeen now held by the Trusts. After the consummation of the proposed combination, shares of Fiduciary will also be substituted for shares of Aberdeen in the event any certificateholder, pursuant to a certificate issued by any one of the Trusts, elects to make additional purchases or elects to have distributions reinvested in shares of the underlying fund.

Section 26(b) of the Act provides that before any such substitution can be effected it must be approved by the Commission, and that the Commission shall issue an order approving such substitution if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Because Aberdeen, the issuer of the securities currently held and being purchased by the Trusts, will cease to exist as a separate entity upon the consummation of the proposed combination, it will be necessary, if the Trusts are to continue operations, to substitute another security for the Aberdeen shares. The Applicants request that the Commission approve the proposed substitutions because (a) the certificateholders would have as their underlying medium of investment shares in a company with a more modern corporate structure; (b) the certificateholders would have as their underlying medium of investment shares in a company with substantially greater assets than Aberdeen, and as a result, the certificateholders would benefit indirectly from resulting efficiencies and economies of scale; (c) the proposed combination would eliminate payment of a tax by Aberdeen levied by the State of New Jersey, amounting to $17,932 in 1969, $12,017 in 1970, and $17,339 in 1971; and (d) the proposed combination would eliminate the use of consents by Aberdeen and require the holding of meetings which certificateholders could attend and at which they could question the directors of Fiduciary. Moreover, Applicants state that the interests of the certificateholders, as beneficial owners of shares of Aberdeen, are virtually identical to those of the direct owners of Aberdeen and that, accordingly, the considerations supporting a finding of fairness of the terms of the proposed combination of Aberdeen and Fiduciary also support a finding that the substitutions should be approved. Applicants also state that the proposed combination is consistent with the investment policies of Aberdeen, which are substantially similar to those of Fiduciary.

Notice is further given that any interested person may, not later than June 20, 1972, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reasons for such request and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon Applicants at the address stated above. Proof of such service (by affidavit or in case of an attorney at law by certificate) shall be filed contemporaneously with the request. At any time after said date, as provided by Rule 0–5 of the rules and regulations promulgated under the Act, an order disposing of the application herein may be issued by the Commission upon the basis of the information stated in said application, unless an order for hearing upon said application shall be issued upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

By the Commission.

[SEAL] RONALD F. HUNT,
Secretary.

[FR Doc.72-8240 Filed 5-31-72;8:52 am]

[812-3177]

AMERICAN FILTRONA CORP.

Notice of Filing Application for Order Declaring Company Not Be an Investment Company

MAY 25, 1972.

Notice is hereby given that American Filtrona Corp., 8401 Jefferson Davis Highway, Richmond, VA 23234, (Applicant), a corporation organized under the laws of Virginia, has filed an application pursuant to section 3(b)(2) of the Investment Company Act of 1940 (Act) for an order declaring that Applicant is primarily engaged in a business or businesses other than that of investing, reinvesting, owning, holding or trading in securities either directly or through majority-owned subsidiaries or through controlled companies conducting similar types of businesses. All interested persons are referred to the application on file with the Commission for a statement of the representations therein which are summarized below.

Applicant states, with respect to its corporate structure that it owns 100 percent of the capital stock of Southern Plastics Co. (Southern Plastics), and 50 percent of Filtrona International Corp. (FIC) and Filtrona Philippines, Inc. (Filtrona Philippines). Applicant owns 49 percent of Bunzl Pulp & Paper (Canada), Ltd. (Bunzl Canada), and of Filtrona Brasiliera Industria E Commercia Ltda (Filtrona Brazil). The remaining interests in FIC, Filtrona Philippines, Bunzl Canada and Filtrona Brazil are owned by Cigarette Components, Ltd. (Cigarette Components), a wholly owned subsidiary of Bunzl Pulp & Paper, Ltd. (BPP). Applicant approximately owns 10 percent of the outstanding capital stock of BPP and Cigarette Components owns approximately 18 percent of the outstanding capital stock of Applicant.

Applicant was organized in 1954 to manufacture filters from fibers for use in the domestic manufacture of cigarettes and cigars and for certain export markets.

At the time Applicant was organized, its outstanding capital stock was owned by members of the Bunzl family group and related companies, including Cigarette Components, a manufacturer of tobacco filters located in England which is a wholly owned subsidiary of BPP. BPP also has its headquarters in England and has always engaged in diversified manufacturing operations. Applicant was organized by Cigarette Components and the Bunzl family group in order to establish a cigarette filter manufacturing facility in the United States which would be affiliated with Cigarette Components and would utilize its technical know-how and experience.

The Bunzl family group founded BPP and ever since has held substantial stock interests in that company. This group lived in England and in various parts of Europe, and between 1939 and 1940 Robert Bunzl, brother of the founder of BPP, and his two sons, R. H. Bunzl and Walter Bunzl, came to the United States. These three individuals were officers and stockholders of Applicant at the time of its organization, but held only a minority interest in Applicant. J. H. Newman, the other principal officer of Applicant at the time of its organization, had been previously employed by another company controlled by the Bunzl family group. Thus, formation of Applicant extended the Bunzl family interest into the manufacture of cigarette filters in the United States by means of a corporation which would coordinate its activities with those of Cigarette Components.

In 1957 Cigarette Components and Applicant entered into a joint venture to manufacture cigarette filters in Canada. From that date to the present, Applicant has owned 49 percent of Bunzl Canada, and Cigarette Components owns the balance. This Canadian company has manufactured cigarettee filters since its organization, and also presently engages in the manufacture of plastic packaging of

various types. In 1959 Cigarette Components and Applicant organized FIC, an export sales company located in New York, and each owns 50 percent of that corporation.

Applicant also has joint ventures with Cigarette Components in Brazil and the Philippines. Filtrona Brazil is 49 percent owned by Applicant and manufactures cigarette filters for the Brazilian market. Filtrona Philippines is 50 percent owned by Applicant and manufactures cigarette filters for the Philippine market. These joint ventures were established in 1958 and 1964, respectively.

Since its organization in 1954 Applicant has relied heavily on research and development activities conducted jointly with Cigarette Components. Since 1963 Applicant has had a joint research and development agreement with Cigarette Components; these joint activities were crucial to Applicant's success during its early years of operations.

In 1967, Applicant was reorganized through a merger with certain other U.S. companies, the primary assets of which, other than Applicant's stock were BPP stock. At that time and ever since, BPP was and has been a publicly owned company with worldwide manufacturing operations. Applicant states that the following were the business purposes of the reorganization.

> The majority ownership of Applicant will hereafter be in American hands. This will be an important factor in the future development of Applicant particularly in respect of its capital and acquisition program and will avoid the necessity for time consuming consultations with representatives of the present British majority who are influenced by British Exchange Control.
>
> Through the merger Applicant will become the holder of almost 10 percent of the shares of BPP which through its wholly owned subsidiary Cigarette Components, Ltd., will continue to hold about 11 percent of Applicant's shares. The two companies feel that this will insure the indefinite continuance of a fruitful collaboration in research and development and similar fields.
>
> The merger will also strengthen Applicant financially. After the merger it will have a net worth in excess of $10 million. This will greatly assist Applicant in its endeavor to diversify its operations through the acquisition of other companies. The Applicant management regards this as of prime importance in view of the fact that its cigarette filter business has declined and the likelihood that it will continue to decline.

As a result of the 1967 reorganization, control of Applicant passed from Cigarette Components and the European members of the Bunzl family to Robert Bunzl and Walter Bunzl, who were the American investors managing Applicant. Also, in order to achieve the above primary purposes of the reorganization, it was necessary for Applicant to acquire the approximately 10 percent stock ownership in BPP which it continues to hold to the present time. Applicant states that its motives in acquiring and retaining the BPP stock were to strengthen the operations of the American company and preserve its important relationship with Cigarette Components.

Applicant states that a result of its research and development work in the field of fiber products, it began in 1961 to manufacture ink reservoirs for marking pens and is now a leading supplier of ink reservoirs and writing tips to the writing instrument industry in the United States. In 1970, Applicant acquired Southern Plastics, a plastics extruder, located in Columbia, S.C. This acquisition was accomplished by means of a merger of Southern Plastics into a wholly owned subsidiary of Applicant.

Thus, Applicant states that it has at all times since its organization engaged in substantial manufacturing operations, first in the area of cigarette filters and later as a supplier to the writing instrument industry and a manufacturer of plastics extrusions. Its ownership of less than a majority of the equity interests in Bunzl Canada, Filtroma Brazil, Filtrona Philippines and FIC is all directly related to its own basic manufacturing business. The joint owner of these foreign companies, Cigarette Components, is also in the cigarette filter business and conducts important joint research and development activities with Applicant. Additionally, the ownership interest of Applicant in BPP was obtained originally as a necessary part of a reorganization designed to strengthen Applicant and shift its control to the American members of the Bunzl family who were managing its business.

Applicant states that beginning about 1959, it began to invest surplus funds not needed immediately in operations in short-term commercial paper and Treasury bills pending their application to taxes, expansion of the business, dividends, and acquisitions. In 1961, Applicant was advised to put a portion of these funds in other marketable securities, as a hedge against inflation. These investments have gradually grown over the years until at December 31, 1971, they had a market value of approximately $4,688,000. However, these investments remained relatively level at about $2.5 to $3 million from 1967 to 1970, during which time funds from this source were applied to expansion of Applicant's business. The substantial increase in these investments in 1971 (most of which was in short-term commercial paper) resulted from the Applicant's substantial increase in profits during that year.

Applicant states that at its current level of operations, increased funds will be necessary for taxes, dividends, and for use in its general business. Insignificant amounts of time of Applicant's officers and directors is devoted to managing this portfolio, because it is managed by outside sources who have charged annual fees averaging about $5,300 during the past 5 years. Applicant states it has never regarded these investment activities as an independent line of business and has never emphasized these activities in its annual reports to stockholders or otherwise, nor has it relied on these investments as a material source of its income.

Applicant states it is regarded by its stockholders, employees, customers, and suppliers as a manufacturing enterprise and holds itself out to the public as such an enterprise. All of the approximately 400 employees of Applicant and Southern Plastics are engaged in manufacturing and related operations. The unions representing portions of such employees are industrial unions. The annual reports of Applicant to its stockholders have stressed its manufacturing activity. All of its advertising and all references to it in the trade press have dealt exclusively with its manufacturing activities.

Applicant states its officers and directors do not spend any significant time in dealing with investments and do not regard themseleves as investment experts. The officers and directors are all persons who are presently or formerly connected with the operations of Applicant, Cigarette Components, BPP or Southern Plastics, except Mr. Coleman, a retired banker, and Dr. Last, a management consultant. Messrs. Coleman and Last have for years advised Applicant as to all of its operations, with no particular emphasis upon its investment activities.

As of December 31, 1971, the date of its last annual audit, Applicant's total assets on an unconsolidated basis were $16,029,444, of which $321,992 represented cash and U.S. Government Bonds, $2,105,000 represented short-term commercial paper, and $1,626,655 represented investments in wholly owned subsidiaries. The remainder of "marketable securities" as shown on the balance sheet had a market value of $2,146,436, and includes about 40 securities of a variety of industrial, transportation, and financial stocks.

The investment in BPP at December 31, 1971, is carried at $7,247,108 (market value $8,200,000). Applicant's equity in the net assets of Bunzl Canada and FIC at December 31, 1971, was $1,660,033 and $388,456, respectively. The Applicant's investment in Filtrona Brazil and Filtrona Philippines is carried at a cost of $55,965 and $50,000, respectively.

Applicants submit the table below to, on a consolidated basis, its major sources of income as a percentage of total income before taxes for the period of 1967 and 1971. (Income from commercial paper and Government Securities is not reflected in the table.)

[Percent]

	1967	1968	1969	1970	1971
Income from marketable securities	9	6	6	5	0
BPP dividends	7	15	19	21	10
Income from investment in jointly owned companies	7	8	5	8	2
Total	23	29	30	34	12
Income from operations	77	71	70	66	88
	100	100	100	100	100

Applicant states it does not expect to increase its investments in marketable securities, but rather plans in the next few years to devote the funds set aside in this investment portfolio to operational uses.

Section 3(a)(3) of the Act defines as an investment company any issuer which is engaged, or proposes to engage, in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment

securities having a value exceeding 40 percent of the value of such issuer's total assets (exclusive of Government securities and cash items) on an unconsolidated basis. The securities of Lifetime owned by Applicant constitute investment securities as that term is defined in section 3(a) of the Act.

Section 3(b)(2) of the Act excepts from the definition of an investment company in section 3(a)(3), any issuer which the Commission finds and by order declares to be primarily engaged in a business other than that of investing, reinvesting, owning, holding, or trading in securities, either controlled companies conducting similar types of business.

Notice is further given that any interested person may, not later than June 13, 1972, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon Applicant at the address set forth above. Proof of such service (by affidavit or in case of an attorney at law by certificate) shall be filed contemporaneously with the request. At any time thereafter, as provided by Rule 0–5 of the rules and regulations promulgated under the Act, an order disposing of the matter may be issued upon the basis of the information stated in the application, unless an order for hearing upon this matter shall be issued upon request or upon the Commission's own motion. Persons who request a hearing or advice as to whether a hearing is ordered will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation pursuant to delegated authority.

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

[FR Doc.72-8241 Filed 5-31-72;8:52 am]

[File 500-1]

BEVIS INDUSTRIES, INC.

Order Suspending Trading

MAY 24, 1972.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock, $0.10 par value, and all other securities of Bevis Industries, Inc., being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

It is ordered, Pursuant to section 15(c)(5) of the Securities Exchange Act of 1934, that trading in such securities otherwise than on a national securities exchange be summarily suspended, this order to be effective for the period from May 25, 1972 through June 3, 1972.

By the Commission.

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

[FR Doc.72-8212 Filed 5-31-72;8:48 am]

[File 500-1]

CANADIAN JAVELIN LTD.

Order Suspending Trading

MAY 25, 1972.

The common stock, no par value, of Canadian Javelin Ltd. being traded on the American Stock Exchange pursuant to provisions of the Securities Exchange Act of 1934 and all other securities of Canadian Javelin Ltd. being traded otherwise than on a national securities exchange; and

It appearing to the Securities and Exchange Commission that the summary suspension of trading in such security on such exchanges and otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

It is ordered, Pursuant to sections 15(c)(5) and 19(a)(4) of the Securities Exchange Act of 1934, that trading in such securities on the above mentioned exchanges and otherwise than on a national securities exchange be summarily suspended, this order to be effective for the period from May 26, 1972 through June 4, 1972.

By the Commission.

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

[FR Doc.72-8245 Filed 5-31-72;8:53 am]

[File 500-1]

COGAR CORP.

Order Suspending Trading

MAY 25, 1972.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock, $0.60 par value, of Cogar Corp. being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

It is ordered, Pursuant to section 15(c)(5) of the Securities Exchange Act of 1934, that trading in such securities otherwise than on a national securities exchange be summarily suspended, this order to be effective for the period from May 27, 1972 through June 5, 1972.

By the Commission.

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

[FR Doc.72-8246 Filed 5-31-72; 8:53 am]

[File 500-1]

CONTINENTAL VENDING MACHINE CORP.

Order Suspending Trading

MAY 24, 1972.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock, 10¢ par value, of Continental Vending Machine Corp., and the 6 percent convertible subordinated debentures due September 1, 1976, being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

It is ordered, Pursuant to section 15(c)(5) of the Securities Exchange Act of 1934, that trading in such securities otherwise than on a national securities exchange be summarily suspended, this order to be effective for the period May 25, 1972 through June 3, 1972.

By the Commission.

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

[FR Doc.72-8213 Filed 5-31-72;8:48 am]

[File 500-1]

FIRST FIDELITY CO.

Order Suspending Trading

MAY 25, 1972.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock, no par value, of First Fidelity Co. being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

It is ordered, Pursuant to section 15(c)(5) of the Securities Exchange Act of 1934, that trading in such securities otherwise than on a national securities exchange be summarily suspended, this order to be effective from May 26, 1972 through June 4, 1972.

By the Commission.

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

[FR Doc.72-8247 Filed 5-31-72;8:53 am]

[File 500-1]

FIRST WORLD CORP.

Order Suspending Trading

MAY 25, 1972.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the Class A and Class B common stock, $0.15 par value, of First World Corp. being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

It is ordered, Pursuant to section 15(c)(5) of the Securities Exchange Act of 1934, that trading in such securities otherwise than on a national securities exchange be summarily suspended, this

order to be effective for the period from May 30, 1972 through June 8, 1972.

By the Commission.

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

[FR Doc.72-8248 Filed 5-31-72;8:53 am]

[70-5197]

GEORGIA POWER CO.

Notice of Proposed Issue and Sale of First Mortgage Bonds at Competitive Bidding

MAY 22, 1972.

Notice is hereby given that Georgia Power Co. (Georgia), 270 Peachtree Street NW., Atlanta, GA 30303, an electric utility subsidiary company of The Southern Co., a registered holding company, has filed an application with this Commission pursuant to the Public Utility Holding Company Act of 1935 (Act), designating section 6(b) of the Act and Rule 50 promulgated thereunder as applicable to the following proposed transaction. All interested persons are referred to the application, which is summarized below, for a complete statement of the proposed transaction.

Georgia proposes to issue and sell, subject to the competitive bidding requirements of Rule 50 under the Act, $100 million principal amount of its First Mortgage Bonds, — percent Series, to mature not less than 5 years and not more than 30 years from the second day of the calendar month within which the bonds are issued. Georgia will decide on the maturity of the bonds after the date of public invitation for proposals and subsequently notify prospective bidders not less than 72 hours prior to the time of the bidding. The interest rate (which will be a multiple of one-eighth percent) and the price, exclusive of accrued interest, to be paid to Georgia (which will be not less than 99 percent nor more than 102¾ percent of the principal amount thereof) will be determined by the competitive bidding. The bonds will be issued under an Indenture, dated as of March 1, 1941, between Georgia and Chemical Bank, as Trustee, as heretofore supplemented and as to be further supplemented by a Supplemental Indenture to be dated as of July 1, 1972, which includes a prohibition until July 1, 1977, against refunding the bonds with or in anticipation of the proceeds from borrowings at a lower cost.

Georgia proposes to use the proceeds from the sale of the bonds and cash contributions to capital of $100,000,000 by The Southern Co. (see Holding Company Act Releases Nos. 17399 and 17556) together with Georgia's cash on hand in excess of operating requirements, interest and dividends, to finance in part its 1972 construction program (estimated to be $457,553,000), to pay short-term promissory notes payable in the form of bank notes and commercial paper notes incurred for such purpose and for other lawful purposes. Georgia expects to sell $200,000,000 of additional long-term securities later in 1972, which will be the subject of further filings under the Act.

It is stated that the Georgia Public Service Commission has expressly authorized the proposed issuance and sale of the bonds by Georgia and that no other State commission and no Federal commission, other than this Commission, has jurisdiction over the proposed transaction. The fees and expenses to be incurred in connection with the transaction will be supplied by amendment.

Notice is further given that any interested person may, not later than June 14, 1972, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon the applicant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application, as filed or as it may be amended, may be granted as provided in Rule 23 of the general rules and regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

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

[FR Doc.72-8215 Filed 5-31-72;8:49 am]

[File 500-1]

GRAPHIC SCANNING CORP.

Order Suspending Trading

MAY 19, 1972.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in common stock, $0.01 par value, of Graphic Scanning Corp. being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors:

It is ordered, Pursuant to section 15(c)(5) of the Securities Exchange Act of 1934, that trading in such securities otherwise than on a national securities exchange be summarily suspended, this order to be effective for the period from 2:30 p.m., e.d.t., on May 19, 1972, through May 28, 1972.

By the Commission.

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

[FR Doc.72-8214 Filed 5-31-72;8:49 am]

[File 500-1]

INTER-ISLAND MORTGAGEE CORP.

Order Suspending Trading

MAY 24, 1972.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock, $0.10 par value, of Inter-Island Mortgage Corp. being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors:

It is ordered, Pursuant to section 15(c)(5) of the Securities Exchange Act of 1934, that trading in such securities otherwise than on a national securities exchange be summarily suspended, this order to be effective for the period from May 25, 1972, through June 3, 1972.

By the Commission.

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

[FR Doc.72-8216 Filed 5-31-72;8:49 am]

[File 811-1997]

INTERSCIENCE GROWTH FUND, INC.

Notice of Filing of Application for Order Declaring that Company has Ceased To Be an Investment Company

MAY 25, 1972.

Notice is hereby given that Interscience Growth Fund, Inc. (Applicant), 488 Madison Avenue, New York, N.Y. 10022, a Delaware corporation registered as an open-end, diversified investment company under the Investment Company Act of 1940 (Act), has filed an application pursuant to section 8(f) of the Act for an order of the Commission declaring that Applicant has ceased to be an investment company as defined in the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations set forth therein, which are summarized below.

Applicant was incorporated on December 15, 1969, and the Commission's records indicate that Applicant registered under the Act by filing a Notification of Registration on Form N-8A and a Registration Statement on Form N-8B-1 on January 9, 1970. On January 9, 1970, a Registration Statement pursuant to the Securities Act of 1933 was also filed with the Commission; that Registration Statement was not made effective and Applicant's request for its withdrawal was granted on February 17, 1972.

Applicant represents that it has never made a public offering of its shares and

that it has no intention of making a public offering of its shares in the future. Applicant further represents that there are presently no shareholders of Applicant and that there will be no shareholders of Applicant in the future.

Section 3(c)(1) of the Act 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 of its securities.

Section 8(f) of the Act provides, in pertinent part, that when the Commission, upon application, finds that a registered investment company has ceased to be an investment company, it shall so declare by order, and upon the taking effect of such order, the registration of such company shall cease to be in effect.

Notice is further given that any interested person may, not later than June 20, 1972, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reasons for such request, and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon Applicant at the address stated above. Proof of such service (by affidavit or in case of an attorney at law by certificate) shall be filed contemporaneously with the request. At any time after said date, as provided by Rule 0-5 of the rules and regulations promulgated under the Act, an order disposing of the application herein may be issued by the Commission upon the basis of the information stated in said application, unless an order for hearing upon said application shall be issued upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

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

[FR Doc.72-8242 Filed 5-31-72;8:53 am]

[File 500-1]

MERIDIAN FAST FOOD SERVICES, INC.

Order Suspending Trading

MAY 25, 1972.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock, $0.01 par value, of Meridian Fast Food Services, Inc., being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

It is ordered, Pursuant to section 15(c)(5) of the Securities Exchange Act of 1934, that trading in such securities otherwise than on a national securities exchange be summarily suspended, this order to be effective for the period from May 26, 1972, through June 4, 1972.

By the Commission.

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

[FR Doc.72-8249 Filed 5-31-72;8:53 am]

[812-3171]

NUVEEN INCOME FUND, SERIES 1 MONTHLY PAYMENT PLAN ET AL.

Notice of Filing of Application for Order of Exemption

MAY 24, 1972.

Notice is hereby given that Nuveen Income Fund, Series 1 Monthly Payment Plan (Series 1), a unit investment trust registered under the Investment Company Act of 1940 (Act), and its sponsor, John Nuveen and Co., Inc. (Nuveen) (hereinafter collectively referred to as Applicants), 209 South La Salle Street, Chicago, IL 60604, have filed an application pursuant to section 6(c) of the Act for an order of the Commission exempting Applicants and all subsequent series of Nuveen Income Fund (Fund) from the provisions of section 14(a) of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations made therein which are summarized below.

A registration statement for Series 1 was filed under the Act on Form N-8B-2 on February 18, 1972. On the same date a registration statement was also filed under the Securities Act of 1933 on Form S-6. Each series of the Fund will be organized under and governed by a separate Trust Indenture and Agreement (Agreement) pursuant to which Nuveen will act as sponsor and the First National Bank of Chicago will Act as trustee (Trustee). Nuveen, as sponsor, will deposit with the Trustee at least $5 million principal amount of interest-bearing corporate debt securities (Bonds) and, simultaneously, the Trustee will deliver to Nuveen registered certificates for at least 50,000 units of undivided interest in the series (Units) representing the entire ownership of each series. No additional Units can be issued after the initial offering. The Agreement will terminate by its terms on the December 31 preceding the 50th anniversary of its execution or earlier if all outstanding units are redeemed or upon the disposition of the last bond held.

Each series will consist of the Bonds, bonds substituted for any of the Bonds, and undistributed income and principal. Bonds may from time to time be sold under circumstances set forth in the Agreement, may be redeemed, or may mature in accordance with their terms. Proceeds from the sale or redemption of Bonds, within limitations set by the Agreement, may be reinvested in other corporate debt securities. That portion of the proceeds not reinvested together with the proceeds received upon maturity of Bonds will be distributed to unit holders.

Units will remain outstanding until redeemed or until the termination of the Agreement. The Agreement may be terminated by 67 percent agreement of the unit holders of the series or, after completion of the initial offering, if the value of the Bonds shall fall below 20 percent of the principal amount originally deposited in the series, upon direction by Nuveen & Trustee.

In connection with the requested exemption Nuveen has agreed to:

(1) Refund on demand the price paid, including sales load, to purchasers of units if, within 90 days after the effective date of the registration statement the net worth of that series shall be reduced to less than $100,000;

(2) Instruct the Trustee to terminate a series in the manner provided in the agreement if at any time the net worth of such series is reduced to less than 40 percent of the principal amount of bonds originally deposited, as a result of Nuveen's redemption of units not previously sold to the public in an amount constituting more than 60 percent of the total units of such series; and

(3) In the event of termination for the reasons described in (2), refund the sales load, on demand, to any purchaser of units purchased from Nuveen.

Section 14(a) of the Act requires that a registered investment company (a) have a net worth of at least $100,000 prior to making a public offering of its securities, (b) have previously made a public offering and at that time have had a net worth of $100,000, or (c) have made arrangements for at least $100,000 to be paid in by 25 fewer persons before acceptance of public subscriptions.

Section 6(c) of the Act provides among other things, that the Commission, by order upon application, may conditionally or unconditionally exempt any person from any provision or provisions of the Act or of any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested persons may, not later than June 13, 1972, 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail (airmail if the person being served is located more than 500 miles from the

point of mailing) upon Applicant at the address stated above. Proof of such service (by affidavit or in case of an attorney at law by certificate) shall be filed contemporaneously with the request. At any time after said date, as provided by Rule 0-5 of the rules and regulations promulgated under the Act, an order disposing of the application herein may be issued by the Commission upon the basis of the information stated in said application, unless an order for hearing upon said application shall be issued upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

[SEAL] RONALD F. HUNT,
Secretary.

[FR Doc.72-8218 Filed 5-31-72;8:49 am]

[812-3020]

PACIFIC SCHOLARSHIP TRUST

Notice of and Order for Hearing on Application for Order of Exemptions

MAY 24, 1972.

Notice is hereby given that Pacific Scholarship Trust sponsored by the Pacific Scholarship Fund (Applicant), c/o Scholarship Investment Corp., 2200 Sixth Avenue, Seattle, WA 99121, a trust organized under the laws of the State of Washington and a registered, closed end, nondiversified management investment company, has filed an application pursuant to section 6(c) of the Investment Company Act of 1940 (Act) for an order of the Commission exempting Applicant from the provisions of sections 14 (a), and 27(c)(1) of the Act, and pursuant to sections 6(c), 18(i), and 23(b) for orders thereunder. All interested persons are referred to the application and exhibits on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant is sponsored by Pacific Scholarship Fund (Pac Fund), a nonprofit membership corporation organized in the State of Washington in August 1971. Applicant was created by an Investment Trust Agreement executed in August 1971, between Pac Fund and the Peoples National Bank of Washington (Trustee). Applicant's purpose is to administer investment plans (scholarship plans) which would provide funds to be used towards the college or university education of children designated by the investors. The scholarship plans, which investors establish by depositing money, on a lump sum or monthly basis, in the custodian bank, the National Bank of Commerce in Seattle (Custodian), are to be initially offered solely to bona fide residents of the State of Washington by Scholarship Investment Corp. (SICO), Pac Fund's agent and distributor. The Custodian will receive and distribute investor's funds pursuant to a Custodian Trust Agreement executed between Pac Fund and Custodian in August 1971. SICO, a profitmaking corporation organized in Washington in October 1970, will administer and sell the scholarship plans under a Service Agreement with Pac Fund executed in August 1971.

Applicant proposes to issue the plans under Investment Agreements, each of which will contain one of three fully-paid or one of three installment plans. Each plan requires the Investor: (1) To deposit funds in a savings account trust with Custodian; (2) to maintain all deposits for a specified period; (3) to assign his share of savings account trust earnings for annual transfer to Applicant; and (4) to pay prescribed sales and administrative charges which vary among plans. After transfer, savings account trust earnings as well as other accretions which may result from the forfeitures of earnings by other investors, become the absolute property of Applicant, which invests these amounts in securities and in accordance with restrictive investment policies. (These amounts are hereinafter referred to as "Applicant's funds"). Apart from income taxes and any required fees and expenses of the Trustee under sections 27(c)(2) and 26(a)(2) of the Act, Applicant's funds are intended to be used solely to provide for qualified expenses of investor-designated student beneficiaries for up to 3 years of post-high-school education or training after the first year.

An investor is entitled at anytime to withdraw from the plan and obtain the principal in his account from the Custodian. However, in the event of a withdrawal, an investor automatically forfeits all interest in his investment account with Applicant, which includes all previously transferred savings account earnings, as well as his pro rata share of any accretions to Applicant's funds which may have resulted from the forfeitures of other investors. In addition, subject to the 45-day refund requirements of section 27(f) of the Act, investor forfeits all sales charges and prepaid administrative charges. Similarly, if a child designated as a beneficiary dies prior to entering college and a substitute is not named within a prescribed period of time, or if a child beneficiary does not enter college or does not complete any year of college, the investor's interest in any portion of Applicant's funds will be forfeited. Finally, a forfeiture may result in the event that an investor should fail to make any prescribed payments in accordance with the plan. These forfeiture provisions may be subject to certain additional conditions set forth in the application.

It is contemplated that, if the plans are carried to completion, the principal amount of an investor's savings account in Custodian will be applied toward payment of the first year's college expenses and that Applicant's funds will be applied toward payment of the succeeding 3 years' expenses for the beneficiary. The beneficiary is entitled to such sums from Applicant's funds so long as he continues his education beyond the first year at the college or university which he has entered, and maintains a passing grade for such college or university, provided that no single child may receive a sum from Applicant greater than the cost of his tuition and expenses for a total of 3 years. Applicant states, however, that there is no guarantee that amounts derived from Applicant's funds will be sufficient to pay all of the college expenses of the beneficiary. The beneficiary will have available to him to meet college expenses at least the principal amount of the investor's payments into the savings account and all earnings thereon, including earnings and gains, if any, upon Applicant's funds.

Pursuant to the Investment Trust Agreement between Applicant and Pac Fund, Applicant's funds cannot be used to meet the selling and administrative expenses of the scholarship plans, except that Applicant may be liable for payment of taxes on income derived from its investments, and may be further required to meet certain fees and expenses of Trustee pursuant to section 26(a)(2) of the Act. Consequently, all selling and administrative expenses in respect of the plans are to be borne by investors. In the case of the three installment plans which Applicant proposes to offer through SICO, administrative charges and sales charges total $68.50 and $141.50 respectively for each plan. For these plans charges will range from 5.98 percent to 8.34 percent of total payments. For purposes of monthly payments, Applicant has elected to be governed by the provisions of section 27(h) of the Act. In the case of the three fully paid plans offered by Applicant, administrative and sales charges total $55 and $141.50 respectively for each plan. Total charges range from 8.94 percent to 10.94 percent of total payments. All six scholarship plans provide that if such administrative charges are not sufficient, Pac Fund may, with the approval of the Administrator of Securities of the State of Washington, assess the investors for additional payments, or alter the amounts paid to SICO. Such changes are further subject to conditions set forth in the Application.

In order to ensure payment of the 45-day refund which is made available to investors through the requirements of section 27(f) of the Act, a segregated Refund Trust will be created. Also, to retain funds to help administer and secure Pac Fund's and SICO's performance of the Plans, an Administrative Trust account, an Extraordinary Trust account, and a Reserve Trust account have been established with Custodian. Before commencing sales of Scholarship plans, SICO must deposit the sum of $50,000 with Custodian in a Reserve Trust account which may be used for unanticipated, extraordinary expenses of Pac Fund and to remedy any defaults in SICO's performance of its obligations to investors and Pac Fund.

For the reasons set forth below, Applicant has requested an order of the Commission pursuant to section 6(c) exempting Applicant from sections 14(a) and 27(c)(1) of the Act.

Applicant seeks an exemption from section 14(a) of the Act insofar as it provides that no registered investment company shall make a public offering of a security of which such company is the issuer, unless such company has a net worth of at least $100,000.

Applicant represents that the net worth of SICO (which has assumed most of Applicant's liabilities) and the reserve system establishing assets in trust for Applicant must be examined to determine the net worth of Applicant and the degree to which Investors are protected.

Applicant and SICO have agreed not to commence plan sales until SICO's paid-in capital is at least $175,000, until SICO has obtained at least a $150,000 bank line of credit for working capital to perform its obligations to Applicant under the Service Agreement, and until responsible shareholders of SICO have agreed to guarantee lines of credit to SICO to a maximum of $250,000 (including the $150,000 bank line of credit). As of February 1, 1972, SICO's paid-in capital was $111,652; consisting of $89,000 in cash, $10,152 in property, and $12,500 in services.

In addition to the $50,000 reserve trust which must be available before plan sales may commence, Applicant represents that certain amounts will be periodically set aside in the Administrative and Extraordinary Trusts in excess of amounts paid directly to SICO. These reserves should accumulate at a rate which is commensurate with the future volume of investments, and will be added to the $50,000 which will already be deposited as security for the performance of Applicant's obligations to its investors.

Finally, in support of the requested exemption, Applicant has represented that SICO has agreed to obtain a bond to insure against dishonesty on the part of any of its employees. Based on these representations, Applicant has requested that the Commission find that its net worth on the effective date will meet the requirements of section 14(a), or, alternatively, that an order be granted which would exempt Applicant from the requirements of that section.

Section 27(c)(1) of the Act provides that a registered investment company issuing periodic payment plan certificates may not sell such certificates unless they are redeemable securities. A "redeemable security," as defined in section 2(a)(32) of the Act, includes any security under the terms of which the holder is entitled to receive, upon presentation to the issuer or its designees, approximately his proportionate share of the issuer's net assets or the cash equivalent. Section 27(c)(1), therefore, would require that any investor who redeems his scholarship plan must receive that plan's proportionate share of Applicant's current net assets.

Applicant states that if each plan holder's share must be refunded upon a default under the plan rather than forfeited to those plan accounts which remain current, the entire objective of the plans would be destroyed, since removal of the forfeiture provisions would eliminate the savings incentives presented by the plans and make it impossible for investors to pool their savings under the plans for the eventual benefit of students who go on to higher education.

In support of its request for an exemption from this section, Applicant states that it is substantially different from the conventional management investment company and that its securities differed from conventional periodic payment plan certificates. Applicant represents that strict application of section 27(c)(1) of the Act would not be in the public interest, and would not be necessary for the protection of investors, particularly since Applicant's prospectus will fairly apprise investors of the nonredemption and forfeiture features of the plans. Finally each investor would always be able to recover the principal of his savings account in Custodian, even though he may forfeit earnings which have been transferred to investment accounts in Applicant.

Applicant has requested an exemption from section 27(c)(1) to the extent necessary to permit sales of Applicant's plans, which prohibit redemption of plans from any portion of Applicant's assets.

In addition, Applicant seeks an order pursuant to sections 6(c), 18(i), and 23(b) of the Act. Applicant has requested an order pursuant to section 18(i) of the Act insofar as that section requires that all stock issued by Applicant have equal voting rights with every other outstanding voting stock. Since the holder of each scholarship plan will be entitled to one vote and one membership, regardless of any variations in the amount which may have accumulated under his investment and savings accounts, Applicant may be deemed to violate section 18(i) of the Act.

Section 18(i) provides that the Commission may issue an order exempting certain shares of stock from the requirements of that section. In support of its request for an order, Applicant has represented that the plans are designed so that the total amounts of earnings which will be transferred to investment accounts with Applicant under each plan type will be substantially equal. Applicant has stated that voting in this fashion is the most equitable, practical, and least costly method.

Section 23(b) of the Act prohibits any registered closed-end investment company from selling its shares at a price below the current net asset value for such stock, except that such selling practices are not illegal so long as they have been approved by a majority of the company's shareholders. Applicant states that it is difficult to determine a current net asset value for Applicant's assets which would be available to investors, since Applicant's assets will be distributed only upon the occurrence of certain contingencies and then only to those beneficiaries who meet the requirements for such distribution. Thus Applicant may be selling plans at less than net asset value, as such value may be deemed to include potential gains which plans may acquire through future forfeitures, as well as future earnings which may be transferred from Custodian to Applicant.

Applicant represents that it is illogical to treat unknown future amounts of forfeitures, gains, and losses as part of the current net asset value of a plan at the time of sale. In addition, Applicant states that whenever one plan type is converted by an investor into another, he must pay into Applicant whatever additional amount is necessary substantially to equalize between the two plans the total transfers of earnings from Custodian to Applicant, thereby maintaining equality between investors and avoiding conversion of a plan to another at a price below its current net asset value.

While Applicant believes that its plans meet the requirements of section 23(b), it requests a temporary exemption from that section to the extent that it is applicable until the first annual meeting of Pac Fund. At that time, under the provision in its bylaws that Pac Fund members must decide annually whether to continue sale of plans, Applicant may come within the exception of section 23(b)(2).

Section 6(c) of the Act provides that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security, or transaction from any provision of the Act or from any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicant submits that the establishment of scholarship plans is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. To this end the plans will be subject at all times to the requirements of Washington State law and the general oversight of the Washington Securities Administrator. Specifically, the State Securities Administrator has reviewed Applicant's filings and has concluded: (1) That Applicant has been organized for the bona fide purpose of establishing and maintaining its plans in accordance with applicable State statutes and regulations; and (2) that Applicant's plans are fair and reasonable and capable of providing benefits to students in accordance with its representations. In addition the Washington Securities Administrator has undertaken to review Applicant's advertising materials and to exercise specific rights of approval and control that have been delegated to that office by Applicant. The conclusions and representations of the State Securities Administrator have been filed as an exhibit to the application.

It is ordered, Pursuant to section 40(a) of the Act, that a hearing on the aforesaid application under the applicable provisions of the Act and the rules of the Commission thereunder be held on July 10, 1972, at 10 a.m., in the offices of the Commission, 500 North Capitol Street NW., Washington, DC 20549. At such

time, the Hearing Room Clerk will advise as to the room in which such hearing will be held. Any person desiring to be heard or otherwise wishing to participate in the proceeding is directed to file with the Secretary of the Commission, on or before June 30, 1972, his application as provided by Rule 9(c) of the Commission's rules of practice, setting forth any issues of law or fact which he desires to controvert or any additional issues which he deems raised by this notice and order or by such application. A copy of such request shall be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon Applicants at the address noted above, and proof of service (by affidavit, or, in the case of an attorney at law, by certificate) shall be filed contemporaneously with the request. Persons filing an application to participate or be heard will receive notice of any adjournment of the hearing as well as other actions of the Commission involving the subject matters of these proceedings.

It is further ordered, That any officer or officers of the Commission to be designated by it for that purpose shall preside at said hearing. The officer so designated is hereby authorized to exercise all the powers granted to the Commission under sections 41 and 42(b) of the Act and to a hearing officer under the Commission's rules of practice.

The Division of Corporate Regulation has advised the Commission that it has made a preliminary examination of the application and that upon the basis thereof the following matters and questions are presented for consideration, without prejudice to its specifying additional matters and questions upon further examination:

(1) Whether the granting of the requested exemptions and orders under the Act is (a) necessary or appropriate in the public interest, (b) consistent with the protection of investors, and (c) consistent with the purposes fairly intended by the policy and provisions of the Act; and

(2) If the requested exemptions and orders are to be granted, what conditions, if any, should be imposed in the public interest and for the protection of investors.

It is further ordered, That at the aforesaid hearing attention be given to the foregoing matters and questions.

It is further ordered, That the Secretary of the Commission shall give notice of the aforesaid hearing by mailing copies of this notice and order by certified mail to Applicant; that notice to all other persons shall be given by publication of this notice and order in the FEDERAL REGISTER; and that a general release of this Commission in respect of this notice and order be distributed to the press and mailed to the mailing list for releases.

It is further ordered, That the Secretary of the Commission shall mail a copy of this notice and order by certified mail to the Securities Administrator of the State of Washington.

By the Commission.

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

[FR Doc.72-8217 Filed 5-31-72;8:49 am]

[812-3163]

SMALL BUSINESS INVESTMENT COMPANY OF NEW YORK, INC.

Notice of Filing an Application Exempting Transactions

MAY 25, 1972.

Notice is hereby given that Small Business Investment Company of New York, Inc. (hereinafter "SBICNY" or "Applicant"), 1701 Pennsylvania Avenue NW., Washington, D.C., a closed-end investment company registered under the Investment Company Act of 1940 (Act) and licensed as a small business investment company under the Small Business Investment Act of 1958, has filed an application pursuant to section 17(b) of the Act to exempt from section 17(a) of the Act the exchange by SBICNY of preferred stock in Chemical Separations Corp. (CHEMSEPS) for certain patents of CHEMSEPS, the license by SBICNY of such patents to CHEMSEPS, and the purchase by Foster Wheeler Corp. (Foster Wheeler) of 1,100,000 newly issued shares of the common stock of CHEMSEPS, and for an order under section 17(d)-1 of the Act authorizing such transactions. All interested persons are referred to the application on file with the Commission for a statement of the representations made therein which are summarized below.

Applicant has been engaged for more than 5 years in the business of investing and supervising its investments in small business concerns.

CHEMSEPS, a Tennessee corporation, is engaged in the engineering and sale of continous countercircuit downflow ion exchange equipment, which equipment removes and recovers impurities and other chemical compounds from liquid solutions. CHEMSEPS now has outstanding 1,021,625 shares of Class A common stock, 8,000 shares of $100 par value convertible preferred stock (convertible into common stock at $5 per share), and certain employee stock options to purchase Class A common stock. CHEMSEPS also has outstanding a $50,000 debenture, convertible into common stock at $5 per share.

Foster Wheeler, a publicly held corporation, is listed on the New York Stock Exchange. Foster Wheeler is engaged in the business of designing, selling, manufacturing and installing power plant, chemical plant, and oil refinery equipment, and specially engineered industrial apparatus.

International General Industries, a publicly held corporation listed on the American Stock Exchange, owns approximately 13 percent of the outstanding common stock of Foster Wheeler; 47 percent of the outstanding stock of International General Industries ("IGI") is owned by IB Industries, which in turn is a wholly owned subsidiary of Intermediate Credit Corp. (Credit), which in turn is a wholly owned subsidiary of Financial Security Corp., which in turn is a wholly owned subsidiary of The International Bank (Bank), a publicly held corporation.

Edward J. Bermingham, Jr., is the President and Chief Executive Officer of SBICNY. Mr. Bermingham, members of his family, and family trusts together own beneficially an aggregate of 227,970 (approximately 40 percent) of the outstanding common shares of SBICNY. Neither Mr. Bermingham nor any member of his family is a director, officer, or shareholder in any of the corporations referred to above.

Credit owns 328,223 shares (approximately 45 percent) of the outstanding common shares of SBICNY. Another indirect subsidiary of The International Bank owns another 13,428 shares of SBICNY.

General George Olmsted and William L. Cobb are directors of Bank, Credit, IB Industries, IGI, and Foster Wheeler. Mr. Ridgway B. Espey, Jr., is a Vice President of Bank and President of Credit. Mr. Jerauld Olmsted is a Vice President of Credit.

Messrs. George Olmsted, William L. Cobb, Ridgway B. Espey, Jr., and Jerauld Olmsted are directors of SBICNY. None of the other five directors of SBICNY is affiliated with any of the corporations referred to above.

There are nine directors of CHEMSEPS. Messrs. Espey and Bermingham are directors. In addition, Richard Ayash, Vice President of SBICNY, Calvin J. McManus, a Vice President of Foster Wheeler, and Robert Lorenzini, a former officer of Foster Wheeler (now a consultant to Foster Wheeler) are directors of CHEMSEPS. None of the remaining four directors of CHEMSEPS is affiliated with SBICNY or Foster Wheeler.

Applicant made its initial investment in CHEMSEPS in January, 1969, investing $800,000 in 8,000 shares of the preferred stock, $100 par value, convertible at $5 per share, and $35,000 in what is now (as a result of a 5-for-1 stock split) 413,450 shares of Class A common stock. (The common stock originally purchased by SBICNY was a Class B nonvoting stock, but such stock was converted pursuant to its terms into Class A common stock in 1970.)

After SBICNY made its first investment in CHEMSEPS, CHEMSEPS' sales declined. In addition, a number of customers became dissatisfied with certain systems previously sold by CHEMSEPS, and CHEMSEPS incurred considerable expense to make such systems workable.

As a consequence of such difficulties, CHEMSEPS required additional funds. In March 1970, CHEMSEPS made a rights offering of additional shares to its

shareholders; SBICNY agreed to "back stop" the underwriting and since most shareholders did not exercise their rights, SBICNY was required to and did purchase an additional 185,902 shares for $222,377. Accordingly, SBICNY now holds 599,352 shares (approximately 60 percent) of CHEMSEPS Class A common stock outstanding. In addition, SBICNY guaranteed $450,000 of short term bank loans to CHEMSEPS to finance construction of equipment being designed by CHEMSEPS for Farmers Chemical Association (Farmers). On completion of the equipment CHEMSEPS will lease the equipment to Farmers on a 5–7-year lease. If CHEMSEPS cannot refinance the bank loan prior to the earlier of June 30, 1972, or the acceptance of the equipment, SBICNY would have to pay the bank loan and become subrogated to the rights of the bank as creditor. SBICNY has made various other short-term loans to, and guarantees of loans by, CHEMSEPS. CHEMSEPS is now indebted to SBICNY for $327,500 in respect of said loans.

Applicant states that after the rights offering referred to above, CHEMSEPS continued to experience sales and engineering problems. As of December 31, 1971, CHEMSEPS' current liabilities ($979,245) exceeded its current assets ($894,496), and CHEMSEPS had a negative net worth (book value) of $11,583. At the present time CHEMSEPS has certain short-term liabilities that are overdue (including liabilities to SBICNY described above) and CHEMSEPS has not been able to meet certain mandatory sinking fund requirements in the preferred stock held by SBICNY.

CHEMSEPS believes that it must obtain new working capital if it is to be able to increase its sales. Such capital is needed to hire additional sales and technical personnel, to pay for advertising and other costs in connection with its sales effort, and to pay off existing liabilities. In addition, in connection with sales to municipalities, it is usually necessary for CHEMSEPS to put up a performance bond, and CHEMSEPS has not been able to bid for many such sales because it has not been able to obtain the requisite performance bonds.

SBICNY cannot advance any additional funds to CHEMSEPS without exceeding its investment limit under regulations of the Small Business Administration.

By the middle of 1970, it had become apparent to the officers of SBICNY and CHEMSEPS that CHEMSEPS would not be able to effectively compete in the industrial equipment business unless it obtained the backing of a corporation with substantial technical and sales know-how in the industrial equipment business. CHEMSEPS, which has only 15 employees, needs greater engineering and sales depth to compete in the highly competitive water purification field.

Commencing in the second half of 1970 Mr. Richard Ayash, Vice President of SBICNY, tried to interest several large corporations in acquiring (by purchase, merger, or otherwise) CHEMSEPS' assets or stock. In this connection he contacted 15 or 20 companies. No serious offers were received and the only two proposals that were even made (each very tentative) were completely unsatisfactory.

Discussions with Foster Wheeler commenced in the spring of 1971. On August 17, 1971, Foster Wheeler made an offer to purchase SBICNY's common and preferred stock in CHEMSEPS. The Board of Directors of SBICNY obtained the financial report and evaluation of CHEMSEPS by Ebasco Services Inc., an independent expert, and subsequently rejected the Foster Wheeler offer.

In January 1972, representatives of SBICNY, Foster Wheeler, and CHEM SEPS recommenced negotiations which led to agreement on the proposed transactions described below. SBICNY states that the proposed transaction is considerably more favorable to SBICNY and CHEMSEPS than the August 17, 1971, offer, and, in the unanimous opinion of the management of SBICNY and CHEM SEPS, as favorable as could be obtained from anyone under present business and financial conditions.

It is proposed that the following transactions will be consummated:

A. CHEMSEPS will, subject to shareholder approval, distribute all of its patents and patents pending to SBICNY in complete liquidation of SBICNY's 8,000 shares of CHEMSEPS preferred stock. SBICNY would then give an exclusive license in the patents to CHEMSEPS in return for a royalty of 2.8 percent on sales covered by the patents, provided that when the royalties under the agreement shall have exceeded an average of $80,000 per year, the royalty rate on any sales in excess of $3,570,000 in any 1 year will be reduced to 1.4 percent.

B. CHEMSEPS will sell 1,100,000 shares of its Class A common stock (which will then represent 52 percent of outstanding shares) to Foster Wheeler for $110,000. In addition, Foster Wheeler will commit to lend CHEMSEPS up to $400,000 as needed (for 5-year terms at one-half of 1 percent over the prime rate), will agree to provide management services to CHEMSEPS at cost, and will agree, subject to certain limitations, to guarantee CHEMSEPS' performance bonds.

C. CHEMSEPS will apply funds obtained from Foster Wheeler in part to pay off CHEMSEPS' $327,500 debt to SBICNY, with interest.

Applicant asserts that the foregoing transactions have been unanimously approved by the directors of SBICNY, CHEMSEPS, and Foster Wheeler. Approval by the majority of CHEMSEPS' shareholders was obtained on May 3, 1972. Applicant states that under Tennessee law dissenting shareholders of CHEMSEPS will have a right to demand payment for their shares.

The SBICNY-CHEMSEPS agreement contemplates that SBICNY will agree to purchase from CHEMSEPS any such shares tendered for payment at the price that CHEMSEPS is required to pay for them, provided that if more than 5% of the outstanding CHEMSEPS common shares are put in for appraisal SBICNY may, at its option, determine not to proceed with transactions.

Section 17(a) of the Act, with certain exceptions, prohibits an affiliated person of a registered investment company from purchasing or selling property from or to such registered investment company. Rule 17d–1 prohibits an affiliated person of an affiliated person of a registered investment company from effecting any transaction in which such registered investment company is a joint or a joint and several participant with such person unless the Commission has by order granted an application relating to such transaction. CHEMSEPS is controlled by and is an affiliated person of SBICNY within the meaning of the Act. Foster Wheeler may be considered an affiliated persons of Credit, which in turn is an affiliated person of SBICNY within the meaning of the Act.

The report of Ebasco referred to above placed an aggregate value on the CHEMSEPS common and preferred stock of $1,176,000, or a value of 37 cents per share on the common stock (after deducting from such $1,176,000 the $800,000 liquidation value of the preferred stock). The board of directors of SBICNY placed the same value on the CHEMSEPS shares in determining the December 31, 1971, valuation of the assets of SBICNY.

While the amount to be paid by Foster Wheeler for the common shares to be issued to it is 10 cents per share, in the opinion of the board of directors of SBICNY and CHEMSEPS the additional consideration in the form of the provision of up to $400,000 working capital, management assistance, and the furnishing of performance bonds, makes the overall transaction more favorable to CHEMSEPS than a sale of shares for a simple consideration of 37 cents a share.

It is the opinion of the management of CHEMSEPS and SBICNY that it would not be possible to obtain financing and management assistance for CHEMSEPS from other sources on as favorable terms as those contemplated by the proposed agreement.

In the opinion of SBICNY's management, the exchange of the CHEMSEPS preferred stock for the CHEMSEPS patents, subject to the relicense described above, would be advantageous to SBICNY even absent the transaction between CHEMSEPS and Foster Wheeler. SBICNY anticipates that if CHEMSEPS' sales develop as they should SBICNY would recover over the life of the patents somewhat more than its investment in the CHEMSEPS preferred stock, considerably more than would be realized on an immediate liquidation of CHEMSEPS. Also, if CHEMSEPS does not prosper it would be easier for SBICNY to realize on the patents than on CHEMSEPS preferred stock. Applicant further states that in its opinion, if Foster Wheeler were not acquiring an interest in CHEMSEPS, the exchange by SBICNY of the CHEMSEPS preferred stock for the patents would not require Securities and Exchange

Commission approval. The transaction between CHEMSEPS and Foster Wheeler provides additional benefit to SBICNY in that the value of the royalties to be received by SBICNY from the patents will be enhanced by Foster Wheeler's contribution of services and capital to CHEMSEPS, and accordingly the Foster Wheeler transaction should not be considered an objection to the consummation of the SBICNY-CHEMSEPS exchange of preferred stock for patents.

The proposed transaction does not involve over-reaching on the part of any person concerned, or any preference or special treatment for any affiliated person of SBICNY or any affiliated person of such an affiliated person. While Credit, an affiliate of SBICNY, has a substantial indirect interest in Foster Wheeler, Intermediate Credit Corp.'s indirect percentage interest in Foster Wheeler is substantially less than its percentage interest in SBICNY. Accordingly, it could not be said that Credit or its officers or directors could benefit from any diversion of assets from SBICNY to Foster Wheeler.

The proposed transaction whereby CHEMSEPS would sell stock to Foster Wheeler would not appear to be covered by section 17(a), but such transaction might be considered subject to section 17(d) and Rule 17d–1 thereunder.

The proposed transaction under which CHEMSEPS would distribute its patents to SBICNY in exchange for CHEMSEPS preferred stock may be covered by section 17(a) and not within the exception of Rule 17a–6 due to Foster Wheeler's contemplated financial interest in CHEMSEPS.

The Commission, upon application for an order pursuant to section 17(b), may grant an exemption from the provisions of section 17(a) upon finding that the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any persons concerned, and that the proposed transaction is consistent with the policy of the registered investment company concerned and with the general purposes of the Act.

Applicant makes the further assertion in support of its contention that the proposed transactions are fair and reasonable to all parties involved:

The terms of the proposed transaction were determined in arms-length negotiations between Edward J. Bermingham, the President of SBICNY, who has no interest in Foster Wheeler, Mr. Brennan, President of CHEMSEPS, who has no interest in either SBICNY or Foster Wheeler, and Frank Lee, President of Foster Wheeler, who has no interest in SBICNY and no present interest in CHEMSEPS.

Applicants further state that the proposed transaction is consistent with SBICNY's investment policy, as recited in its registration statement and reports filed under the Act, and is consistent with the general purposes of the Act. The transaction does not favor any particular insider or special class of security holder of SBICNY.

Notice is further given that any interested person may, not later than June 14, 1972, 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon applicant at the address set forth above. Proof of such service (by affidavit or in case of an attorney at law by certificate) shall be filed contemporaneously with the request. At any time after said date, as provided by Rule 0–5 of the rules and regulations promulgated under the Act, an order disposing of the application herein may be issued by the Commission upon the basis of the information stated in said application, unless an order for hearing upon said application shall be issued upon request or upon the Commission's own motion. Persons who request a hearing or advice as to whether a hearing is ordered will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

[SEAL] RONALD F. HUNT,
Secretary.

[FR Doc.72-8243 Filed 5-31-72;8:53 am]

[File 500-1]

TANGER INDUSTRIES

Order Suspending Trading

MAY 25, 1972.

The common stock, $1 par value, of Tanger Industries being traded on the American Stock Exchange, pursuant to provisions of the Securities Exchange Act of 1934 and all other securities of Tanger Industries being traded otherwise than on a national securities exchange; and

It appearing to the Securities and Exchange Commission that the summary suspension of trading in such securities on such exchange and otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

It is ordered, Pursuant to sections 15(c)(5) and 19(a)(4) of the Securities Exchange Act of 1934, that trading in such securities on the above mentioned exchange and otherwise than on a national securities exchange be summarily suspended, this order to be effective for the period from May 28, 1972, through June 6, 1972.

By the Commission.

[SEAL] RONALD F. HUNT,
Secretary.

[FR Doc. 72-8250 Filed 5-31-72;8:53 am]

[70-5198]

WESTERN MASSACHUSETTS ELECTRIC CO.

Notice of Proposed Issue and Sale of First Mortgage Bonds at Competitive Bidding

MAY 24, 1972.

Notice is hereby given that Western Massachusetts Electric Co. (WMECO) 174 Brush Hill Avenue, West Springfield, MA 01089, an electric utility subsidiary company of Northeast Utilities (Northeast), a registered holding company, has filed an application with this Commission, pursuant to the Public Utility Holding Company Act of 1935 (Act), designating section 6(b) of the Act and Rule 50 promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the application, which is summarized below, for a complete statement of the proposed transaction.

WMECO proposes to issue and sell, subject to the competitive bidding requirements of Rule 50 promulgated under the Act, $30 million principal amount of First Mortgage Bonds, Series J, ------ percent, due July 1, 2002. The interest rate of the bonds (which shall be a multiple of one-eighth of 1 percent) and the price, exclusive of accrued interest, to be paid to WMECO (which shall be not less than 100 percent nor more than 102.75 percent of the principal amount thereof) will be determined by the competitive bidding. The bonds will be issued under the First Mortgage Indenture and Deed of Trust dated as of August 1, 1954, between WMECO and the First National Bank of Boston, as Successor Trustee, as heretofore supplemented and amended and as to be further supplemented by the 33d Supplemental Indenture to be dated as of July 1, 1972, and which contains a prohibition until July 1, 1977, against refunding the issue with or in anticipation of the proceeds of borrowings at a lower interest cost.

It is stated that the net proceeds from the issue and sale of the bonds will be used to repay short-term borrowings incurred in financing in part WMECO's construction program and which are expected to aggregate $30 million at the time of the proposed sale. WMECO's construction program for 1972 is estimated to total approximately $45 million. It is stated that the construction program will require an additional $22 million of external financing which WMECO contemplates will be obtained through a $5 million capital contribution from Northeast (Holding Company Act Release No.

17464) and through short-term borrowings. WMECO anticipates that funds to repay such short-term borrowings and to finance the construction program over the next few years will be provided by internally generated funds, by additional capital contributions from Northeast, and by the sale of additional securities, the nature and timing of which are as yet undetermined. Such additional financings will, to the extent necessary, be the subject of future filings with the Commission.

The fees and expenses incident to the proposed transaction will be filed by amendment. The filing states that the issue and sale of the bonds are subject to the jurisdiction of the Department of Public Utilities of the Commonwealth of Massachusetts, the State commission of the State in which WMECO is organized and doing business; and that the approval of the Connecticut Public Utilities Commission is also required. It is further stated that no other State commission and no Federal commission, other than this Commission, has jursidiction over the proposed transaction.

Notice is further given that any interested person may, not later than June 15, 1972, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon the applicant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application, as filed or as it may be amended, may be granted as provided in Rule 23 of the general rules and regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Coroprate Regulation, pursuant to delegated authority.

[SEAL] RONALD F. HUNT,
Secretary.

[FR Doc.72-8219 Filed 5-31-72;8:49 am]

[812-2173]

WOOD, STRUTHERS & WINTHROP, INC.

Notice of Application for Exemption and Temporary Order of Exemption Pending Determination of the Application

MAY 19, 1972.

Notice is hereby given that Wood, Struthers & Winthrop Inc. ("Wood, Struthers" or "applicant"), 20 Exchange Place, New York, New York 10005, a Delaware corporation, registered as a broker-dealer under the Securities Exchange Act of 1934 and as an investment adviser under the Investment Advisers Act of 1940, has filed an application pursuant to section 9(c) of the Act (1) for an order exempting applicants from the provisions of section 9(a) of the Act, and, without prejudice to the Commission's consideration of such application, (2) for a temporary order of exemption from section 9(a) pending the Commission's determination of the application. All interested persons are referred to the application on file with the Commission for a statement of the representations therein.

Wood, Struthers is a member of the New York Stock Exchange and certain other national exchanges. In addition, Wood, Struthers serves as an investment adviser to Compass Growth Fund, Inc., Compass Income Fund, Inc., deVegh Mutual Fund, Inc., Pine Street Fund, Inc., and W, S & W Fund, Inc. (collectively called "Funds") all of which are open-end investment companies registered under the Investment Company Act of 1940 (Act). Wood, Struthers also serves as the principal underwriter of shares of W, S & W Fund, Inc. Wood, Struthers states that as of December 31, 1971, the aggregate net assets of the Funds amounted to $172,444,340.

Eliot J. Robinson (Robinson) is a vice president of Wood, Struthers, and sales manager of its Boston office. On January 20, 1972, the Commission filed a complaint in the U.S. District Court for the Southern District of New York seeking to enjoin Robinson, among others, from further violations of the antifraud provisions of the federal securities laws in connection with his purchases and sales of the securities of Harvey's Stores, Inc. (Harvey's). The Commission's complaint alleged that during January and February 1971, Robinson purchased Harvey's stock for himself, certain brokerage customers, his wife and his secretary without disclosing to his respective sellers certain material nonpublic information he had regarding merger and acquisition negotiations being conducted by Harvey's with other companies. Wood, Struthers states that Robinson, without admitting or denying any of the allegations contained in the Commission's complaint, has consented to the entry of a judgment and order of the aforementioned court enjoining him from further violations of certain provisions of the federal securities laws and requiring him to pay into the Registry of Aid Court a sum in full satisfaction of the Commission's request for ancillary relief.

Section 9(a) of the Act, insofar as it is pertinent here, makes it unlawful for any person, or any company with which such person is affiliated, to act in the capacity of employee, officer, director, member of an advisory board, investment adviser, or depositor of any registered investment company or principal underwriter for any registered open-end company, registered unit investment trust or registered face amount certificate company, if such person is by reason of any misconduct enjoined by order of any court of competent jurisdiction from engaging in or continuing any conduct or practice in connection with any activity as an underwriter, broker, dealer, or investment adviser or as an affiliated person, salesman, or employee of an investment company.

Section 9(c) provides that upon application the Commission shall grant an exemption from the provisions of section 9(a) either unconditionally or on an appropriate temporary or other conditional basis, if it is established that the prohibitions of section 9(a), as applied to the applicant, are unduly or disproportionately severe or that the conduct of such person has been such as not to make it against the public interest or protection of investors to grant such application.

Applicant contends that the standards for exemption specified in section 9(c) of the Act are entirely satisfied by the facts in this case. Wood, Struthers states that it did not beneficially own any securities of Harvey's nor did any of the Funds beneficially own any Harvey's securities during the relevant period of the Commission's complaint.

Wood, Struthers represents that all of the advisory functions that it performs for the Funds are discharged through its New York City office, Robinson has had no connection with such activities, and has since 1963 been employed at Wood, Struthers Boston office. It is further stated that during such employment, Robinson has been engaged in sales and marketing activities at successively responsible levels and, in the judgment of Wood, Struthers, has performed his functions competently and effectively. At no time during his employment has he been subject to any governmental disciplinary proceeding or, except for the aforementioned civil action, any action alleging wrongdoing in connection with the securities business. Wood, Struthers states that it believes that Robinson can continue to contribute effectively to the business of Wood, Struthers and presently does not intend to terminate his employment. At the present time, Robinson engages in sales and marketing activities at such office, but performs no supervisory functions with respect thereto or

with respect to any other activities at such office.

Wood, Struthers represents that it will supervise Robinson's activities for a minimum period of at least 2 years. Prior to the execution by Wood, Struthers of any order by Robinson for the purchase or sale of any security, for his own account or for the account of any customer, such order will be reviewed by a vice president of Wood, Struthers at its Boston office; separate records will be maintained in respect thereof; and such records will be reviewed periodically by the Boston branch office manager and by appropriate personnel of Wood, Struthers at its principal office. Such review will consist of, among other things, a consideration of (i) the type of transaction involved (e.g., whether solicited or unsolicited, whether based on a recommendation by Robinson or not), (ii) the degree of public information available with respect to the issuer of the security, and (iii) the basis on which any recommendation or solicitation by Robinson is made, or action in respect of any account over which Robinson has control is taken.

Wood, Struthers further represents that in the future it will not employ Robinson in any activity associated with its advisory or underwriting functions with respect to the Funds nor will he be appointed an officer or director of any of the Funds, unless an application is filed pursuant to section 9(c) requesting the Commission to issue an order of exemption from the provisions of section 9(a), and the Commission issues said order.

Wood, Struthers contends that if it were unable to serve as investment adviser to the Funds and as principal underwriter to W, S & W Fund, Inc., as a result of the injunction against Robinson, the investment and administrative operations of the Funds would be disrupted to the detriment of the Funds and their shareholders, the boards of directors of each of the Funds would be required to obtain investment advice from another source, and the shareholders of each of the Funds could not be assured that any new investment adviser would serve under terms and conditions similar to those under which Wood, Struthers serves. Wood, Struthers further claims that approval of shareholders of each of the Funds would be required of any new investment advisory contract, resulting in additional expense to the Funds and delay in securing the services of a new investment adviser.

The Commission has considered the matter and finds that:

(1) The conduct of the applicant has been such as not to make it against the public interest or protection of investors to grant the application for a temporary exemption from section 9(a) pending determination of the application, and

(2) In order to maintain uninterrupted management of the Funds under the management of Wood, Struthers, it is necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act that a temporary order of exemption be issued forthwith.

Accordingly, it is ordered, Pursuant to section 9(c) of the Act that applicant be and is hereby temporarily exempted from the provisions of section 9(a) of the Act pending determination by the Commission of Wood, Struthers' application for an order exempting Wood, Struthers from the provisions of section 9(a).

Notice is further given that any interested persons may, not later than June 16, 1972, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon Applicant at the address set forth above. Proof of such service (by affidavit or in the case of any attorney at law by certificate) shall be filed contemporaneously with the request. At any time after said date, as provided in Rule 0–5 of the rules and regulations promulgated under the Act, an order disposing of the application herein may be issued by the Commission upon the basis of the information stated in said application, unless an order for hearing upon said application shall be issued upon request or upon the Commission's own motion. Persons who request a hearing or advice as to whether a hearing is ordered will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

[SEAL] RONALD F. HUNT,
Secretary.

[FR Doc.72-8244 Filed 5-31-72;8:53 am]

TARIFF COMMISSION

[337-L-50]

COMBINATION MEASURING TOOL

Notice of Complaint Received

The U.S. Tariff Commission hereby gives notice of the receipt on May 1, 1972, of an amended complaint under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), filed by the Stanley Works, New Britain, Conn., alleging unfair methods of competition and unfair acts in the unauthorized importation and sale of combination measuring tools, featuring a combination level and square, a protractor, nail and screw gauges, dowel gauge, and beam compass said to be embraced within the claims of U.S. Patent No. 3,488,868 and U.S. Patent No. Des. 213,643, both of which patents are owned by complainant. The complainant alleges further unfair methods or acts in the form of respondent's trading upon the secondary meaning allegedly achieved by the design of complainant's tool.

The respondent named in the complaint is Oxwall Tool Co., Ltd., 133–10 32d Street, Flushing, NY.

In accordance with the provisions of § 203.3 of its rules of practice and procedure (19 CFR 203.3), the Commission has initiated a preliminary inquiry into the allegations of the complaint for the purpose of determining whether there is good and sufficient reason for a full investigation, and if so whether the Commission should recommend to the President the issuance of a temporary order of exclusion from entry under section 337(f) of the Tariff Act.

A copy of the complaint is available for public inspection at the Office of the Secretary, U.S. Tariff Commission, Eighth and E Streets NW., Washington, DC, and at the New York office of the Tariff Commission located in Room 437 of the Customhouse.

Information submitted by interested persons which is pertinent to the aforementioned preliminary inquiry will be considered by the Commission if it is received not later than July 14, 1972. Such information should be sent to the Secretary, U.S. Tariff Commission, Eighth and E Streets NW., Washington, DC 20436. A signed original and 19 true copies of each document must be filed.

Issued: May 26, 1972.

By order of the Commission.

[SEAL] KENNETH R. MASON,
Secretary.

[FR Doc.72-8230 Filed 5-31-72;8:50 am]

INTERSTATE COMMERCE COMMISSION

ASSIGNMENT OF HEARINGS

MAY 26, 1972.

Cases assigned for hearing, postponement, cancellation, or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested.

MC 107515 Sub 764, Refrigerated Transport Co., Inc., now assigned June 6, 1972, at New York, N.Y., postponed indefinitely.

MC 123613 Sub 9, Claremont Motor Lines, Inc., now assigned June 14, 1972, at Charlotte, N.C., postponed indefinitely.

MC-F-11320, Bowman Trucking Co., Inc. vs. Delbert J. Spencer, et al., now assigned June 6, 1972, at Washington, D.C., postponed to August 21, 1972, at the offices of the Interstate Commerce Commission, Washington, D.C.

MC 60014 Sub 30, Aero Trucking, Inc., MC 112304 Sub 52, Ace Doran Hauling & Rigging Co., and MC 117574 Sub 217, Daily Express Inc., continued to June 20, 1972, at the offices of the Interstate Commerce Commission, Washington, D.C.

MC 135295, Falcon Convoy, Inc., now assigned June 22, 1972, at Washington, D.C., hearing canceled, transferred to modified procedure.

MC 135497 Sub 1, I-5 Freightline, Inc., continued to June 27, 1972, in the Auditorium, Blue Cross Building, 100 Southwest Market Street, Portland, OR.

MC 95876 Sub 121, Anderson Trucking Service, Inc., MC 114211 Sub 163, Warren Transport, Inc., now assigned July 12, 1972, at Chicago, Ill., hearing is canceled and transferred to modified procedure.

MC-F-11449, Howard Wolfsy—investigation of control—Air-Freight Trucking Service, Inc., and Aft Services, Inc., assigned June 8, 1972, MC 55429, Air-Freight Trucking Service, Inc., assigned June 8, 1972, MC 66101 Sub 1, Aft Services, Inc., assigned June 8, 1972, and MC 117940 Sub 59, Nationwide Carriers, Inc., assigned June 5, 1972, at New York, N.Y., will be held in Room F-2220, 26 Federal Plaza.

MC 107295 Sub 558, Pre-Fab Transit Co., now being assigned hearing July 12, 1972 (1 day), in Room 1430, Everett McKinley Dirksen Building, 219 South Dearborn Street, Chicago, IL.

MC-C-7377, J. J. Sullivan The Mover, Inc., now assigned June 14, 1972, at Boston, Mass., hearing canceled.

MC 25869 Sub 109, Nolte Bros. Truck Line, Inc., assigned July 13, 1972, MC 51146 Sub 225, Schneider Transport & Storage, Inc., assigned July 14, 1972, MC 51146 Sub 237, Schneider Transport & Storage, Inc., assigned July 11, 1972, and MC 109397 Sub 260, Tri-State Motor Transit Co., assigned July 10, 1972, at Chicago, Ill., will be held in Room 1430, Everett McKinley Dirksen Building, 219 South Dearborn Street.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.72-8283 Filed 5-31-72;8:56 am]

[Notice 16]

MOTOR CARRIER ALTERNATE ROUTE DEVIATION NOTICE

MAY 26, 1972.

The following letter-notices of proposals (except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application), to operate over deviation routes for operating convenience only have been filed with the Interstate Commerce Commission under the Commission's Revised Deviation Rules—Motor Carriers of Property, 1969 (49 CFR 1042.4(d)(11)) and notice thereof to all interested persons is hereby given as provided in such rules (49 CFR 1042.4(d)(11)).

Protests against the use of any proposed deviation route herein described may be filed with the Interstate Commerce Commission in the manner and form provided in such rules (49 CFR 1042.4(d)(12)) at any time, but will not operate to stay commencement of the proposed operations unless filed within 30 days from the date of publication.

Successively filed letter-notices of the same carrier under the Commission's Revised Deviation Rules—Motor Carriers of Property, 1969, will be numbered consecutively for convenience in identification and protests, if any, should refer to such letter-notices by number.

MOTOR CARRIER OF PROPERTY

No. MC-75320 (Deviation No. 36), CAMPBELL SIXTY-SIX EXPRESS, INC., Post Office Box 807, Springfield, MO 65801, filed May 17, 1972. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: From Anniston, Ala., over U.S. Highway 431 to junction Alabama Highway 62, thence over Alabama Highway 62 to junction Alabama Highway 77, thence over Alabama Highway 77 to junction U.S. Highway 11, thence over U.S. Highway 11 to junction U.S. Highway 278, thence over U.S. Highway 278 to junction Interstate Highway 65, thence over Interstate Highway 65 to junction Alabama Highway 157, thence over Alabama Highway 157 to junction Alternate U.S. Highway 72, thence over Alternate U.S. Highway 72 to junction U.S. Highway 72, thence over U.S. Highway 72 to Memphis, Tenn., and return over the same route, for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities, over pertinent service routes as follows: (1) from Memphis, Tenn., over U.S. Highway 78 to Tupelo, Miss., (2) from Tupelo, Miss., over U.S. Highway 45 to junction Mississippi Highway 45-W, thence over Mississippi Highway 45-W to junction U.S. Highway 82, thence over U.S. Highway 82 to Mayhew, Miss., (3) from Greenwood, Miss., over U.S. Highway 82 to Columbus, Miss., thence over Mississippi Highway 12 to the Mississippi-Alabama State line, thence over Alabama Highway 18 to Vernon, Ala., (4) from Birmingham, Ala., over U.S. Highway 11 to Tuscaloosa, Ala., thence over U.S. Highway 82 to Columbus, Miss., and (5) from Birmingham, Ala., over U.S. Highway 78 to Atlanta, Ga., and return over the same routes.

By the Commission.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.72-8285 Filed 5-31-72;8:56 am]

[Notice 42]

MOTOR CARRIER APPLICATIONS AND CERTAIN OTHER PROCEEDINGS

MAY 26, 1972.

The following publications are governed by the new § 1.247 of the Commission's rules of practice, published in the FEDERAL REGISTER, issue of December 3, 1963, which became effective January 1, 1964.

The publications hereinafter set forth reflect the scope of the applications as filed by applicant, and may include descriptions, restrictions, or limitations which are not in a form acceptable to the Commission. Authority which ultimately may be granted as a result of the applications here noticed will not necessarily reflect the phraseology set forth in the application as filed, but also will eliminate any restrictions which are not acceptable to the Commission.[1]

APPLICATIONS ASSIGNED FOR ORAL HEARING

MOTOR CARRIER OF PROPERTY

No. MC 2193 (Sub-No. 5) (Republication), filed June 7, 1971, published in the FEDERAL REGISTER, issue of July 15, 1971, and republished this issue. Applicant: NEBRASKA CITY TRANSFER, 1215 Sixth Corsa, Post Office Box 532, Nebraska City, NE 68410. Applicant's representative: Charles J. Kimball, 605 South 14th Street, Post Office Box 82028, Lincoln, NE 68501. An order of the Commission, Operating Rights Board, dated March 9, 1972, and served April 5, 1972, finds that the present and future public convenience and necessity require operation by applicant in interstate or foreign commerce, as a common carrier by motor vehicle, of general commodities (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and commodities requiring special equipment), regular routes: (1) Between Nebraska City and Omaha, Nebr., over U.S. Highway 75, serving the intermediate points of Plattsmouth and La Platte and the off-route points of Union, Murray, and Maynard, and (2) between Nebraska City and Lincoln, Nebr., over Nebraska Highway 2 serving the intermediate points of Unadilla, Syracuse, and Dunbar and the off-route points of Peru and Julian; irregular routes: Between points in Cass, Otoe, Johnson, and Nemaha Counties, Nebr., on the one hand, and, on the other, points in Nebraska on and east of Nebraska Highway 61, restricted against the transportation of traffic moving from Carter Lake and Council Bluffs, Iowa, to points in Nebraska on U.S. Highway 30 between Grand Island and Ogallala, Nebr.; that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder and that an appropriate certificate should be issued. That upon compliance by applicant with the requirements of sections 215, 217, and 221(c) of the Interstate Commerce Act, and with the Commission's rules and regulations thereunder, a certificate be issued to applicant authorizing operation, in interstate or foreign commerce, as a common carrier by motor vehicle in the manner described above, subject to the coincidental cancellation at applicant's written request of the Certificate of Registration in No. MC

[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.

2193 (Sub-No. 3). Because it is possible that other parties, who have relied upon the notice of the application as published, may have an interest in and would be prejudiced by the lack of proper notice of the authority described in the findings in this order, a notice of the authority actually granted will be published in the FEDERAL REGISTER and issuance of a certificate in this proceeding will be withheld for a period of 30 days from the date of such publication, during which period any proper party in interest may file an appropriate petition for leave to intervene in this proceeding setting forth in detail the precise manner in which it has been so prejudiced.

No. MC 9050 (Sub-No. 32) (Republication), filed October 22, 1971, published in the FEDERAL REGISTER, issue of November 25, 1971, and republished this issue. Applicant: SEEGER BROS., a corporation, Hillside Avenue, Kenvil, N.J. 07847. Applicant's representative: James J. Farrell, 2060 North Boulevard, Belmar, NJ 07719. An order of the Commission, Operating Rights Board, dated April 25, 1972, and served May 17, 1972, finds that operation by applicant, in interstate or foreign commerce, as a contract carrier by motor vehicle, over irregular routes, of classes A, B, and C, explosives, blasting materials, blasting supplies, and ammonium nitrate (except nitro-carbo-nitrate), between McAdory, Ala., on the one hand, and, on the other, points in Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, and the District of Columbia, under a continuing contract with Hercules, Inc., of Wilmington, Del., limited, in point of time, to a period expiring 5 years from the date of issuance of a permit herein, will be consistent with the public interest and the national transportation policy; that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder. That upon compliance by applicant with the requirements of sections 215, 218, and 221(c) of the Interstate Commerce Act, with the Commission's rules and regulations thereunder, and with the requirements established in *Contracts of Contract Carriers*, 1 M.C.C. 628, a permit be issued to applicant authorizing the operations described above. Because it is possible that other parties, who have relied upon the notice of the application as published, may have an interest in and would be prejudiced by the lack of proper notice of the authority described in the findings in this order, a notice of the authority actually granted will be published in the FEDERAL REGISTER and issuance of a permit in this proceeding will be withheld for a period of 30 days from the date of such publication, during which period any proper party in interest may file a petition setting forth in precise detail the manner in which it has been so prejudiced.

No. MC 30237 (Sub-No. 21) (Republication), filed June 16, 1971, published in the FEDERAL REGISTER, issue of July 15, 1971, and republished this issue. Applicant: YEATTS TRANSFER COMPANY, a corporation, Box 666, Altavista, VA 24517. Applicant's representative: W. Barney Arthur, Post Office Box 551, 513 Main Street, Altavista, VA 24517. A recommended order of the Commission, by Hearing Examiner dated February 14, 1972, and served March 3, 1972, finds: That the present and future public convenience and necessity require operation by applicant, in interstate or foreign commerce, as a common carrier by motor vehicle, over irregular routes, of new furniture as described in Appendix II to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766, from points in Chautauqua and Cattaraugus Counties, N.Y., and Warren, McKean, Erie, and Luzerne Counties, Pa., to points in Virginia and West Virginia; that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder. Because it is possible that other parties, who have relied upon the notice of the application as published, may have an interest in and would be prejudiced by the lack of proper notice of the authority described in the findings in this order, a notice of the authority actually granted will be published in the FEDERAL REGISTER and issuance of a certificate in this proceeding will be withheld for a period of 30 days from the date of such publication, during which period any proper party in interest may file an appropriate petition or other relief setting forth in detail the precise manner in which it has been so prejudiced.

No. MC 41257 (Sub-No. 13) (Republication), filed June 11, 1971, published in the FEDERAL REGISTER, issue of July 15, 1971, and republished this issue. Applicant: NORTH STAR LINE, INC., 341 Ellsworth SW., Grand Rapids, MI 49502. Applicant's representative: William B. Elmer, 23801 Gratiot Avenue, East Detroit, MI 48201. A supplemental order of the Commission, Operating Rights Board, dated April 10, 1972, and served May 2, 1972, finds: That the present and future public convenience and necessity require operation by applicant, in interstate or foreign commerce, as a common carrier by motor vehicle, over irregular routes, of passengers and their baggage, in the same vehicle with passengers, in special operations, beginning and ending at points in Allegan, Antrim, Barry, Branch, Calhoun (except Battle Creek, Charlevoix, Cheboygan, Chippewa, Clare, Clinton, Eaton, Emmett, Grant Traverse, Gratiot, Isabella, Ionia, Kalkaska, Kent, Lake, Mackinac, Mason, Mecosta, Montcalm, Muskegon, Newaygo, Osceola, Ottawa, and Wexford Counties, Mich., and extending to points in the United States (excluding Hawaii but including Alaska); that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder; that since it is possible that other parties who have relied upon the notice in the FEDERAL REGISTER of the application as originally published may have an interest in and would be prejudiced by the lack of proper notice of the grant of authority without the requested limitation in our findings herein, a notice of the authority actually granted will be published in the FEDERAL REGISTER and issuance of the certificate in this proceeding will be withheld for a period of 30 days from the date of such publication, during which period any proper party in interest may file an appropriate petition for leave to intervene in the proceeding setting forth in detail the precise manner in which it has been prejudiced.

No. MC 74761 (Sub-No. 18) (Republication), filed July 16, 1971, published in the FEDERAL REGISTER, issue of September 16, 1971, and republished this issue. Applicant: TAMIAMI TRAIL TOURS, INC., 455 East 10th Avenue, Hialeah, FL 33011. Applicant's representative: James E. Wharton, 506 First National Bank Building, Orlando, Fla. 32802. A supplemental order of the Commission, Operating Rights Board, dated April 12, 1972, and served May 9, 1972, finds: That the present and future public convenience and necessity require operation by applicant, in interstate or foreign commerce, as a common carrier by motor vehicle, over irregular routes, of passengers and their baggage, (1) in special operations, in round trip, sightseeing or pleasure tours, beginning and ending at points in Alachua, Bay, Bradford, Broward, Calhoun, Charlotte, Citrus, Clay, Collier, Columbia, Dade, De Soto, Dixie, Duval, Escambia, Flagler, Franklin, Gadsden, Gilchrist, Glades, Gulf, Hardee, Hendry, Hernando, Highlands, Hillsborough, Jefferson, Lee, Leon, Levy, Liberty, Madison, Manatee, Marion, Martin, Nassau, Okaloosa, Okeechobee, Orange, Osceola, Palm Beach, Pasco, Pinellas, Polk, Putnam, St. Johns, Santa Rosa, Sarasota, Seminole, Taylor, Union, Volusia, Wakulla, Walton, and Washington Counties, Fla., Atkinson, Ben Hill, Berrien, Brooks, Calhoun, Charlton, Chattachoochee, Clayton, Clinch, Coffee, Colquitt, Crisp, Decatur, De Kalb, Dougherty, Early Echols, Fayette, Fulton, Grady, Henry, Irwin, Lanier, Lee, Lowndes, Meriwether, Miller, Mitchell, Muscogee, Pike, Randolph, Schley, Seminole, Spaulding, Stewart, Sumter, Talbot, Taylor, Telfair, Terrell, Thomas, Tift, Upson, Ware, Webster, and Worth Counties, Ga., and Houston Counties, Ala., and extending to points in the United States (including Alaska, but excluding Hawaii), and (2) in charter operations, beginning and ending at points in the counties described in (1) above, and extending to points in the United States (including Alaska but excluding Hawaii) that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder. Because it is possible that other parties, who have relied upon the notice of the application as published, may have an interest in

and would be prejudiced by the lack of proper notice of the authority described in the findings in this order, a notice of the authority actually granted will be published in the FEDERAL REGISTER and issuance of a certificate in this proceeding will be withheld for a period of 30 days from the date of such publication, during which period any proper party in interest may file an appropriate petition for leave to intervene in this proceeding setting forth in detail the precise manner in which it has been so prejudiced.

No. MC 105566 (Sub-No. 60) (Republication), filed August 16, 1971, published in the FEDERAL REGISTER, issue of September 30, 1971, and republished this issue. Applicant: SAM TANKSLEY TRUCKING, INC., Post Office Box 1119, Cape Girardeau, MO 63701. Applicant's representative: Thomas F. Kilroy, 2111 Jefferson Davis Highway, Arlington, VA 22202. An order of the Commission, Review Board No. 2, dated May 17, 1972, and served May 23, 1972, finds that the present and future public convenience and necessity require operation by applicant, in interstate or foreign commerce as a common carrier by motor vehicle, over irregular routes, of printed matter, plastic articles, games, toys, puzzles, playing cards, pencils, crayons, writing slates (self-erasing), store display racks, telescopes and microscopes, from Racine, Wis., and Mount Morris, Ill., to points in California, Idaho, Montana, Nevada, Oregon, Utah, and Washington; and that this proceeding should be held open for further consideration, as stated in said order. Because it is possible that other parties, who have relied upon the notice of the application as published, may have an interest in and would be prejudiced by the lack of proper notice of the authority described in the findings, in this order, a notice of the actual service for which a need has been found will be published in the FEDERAL REGISTER and issuance of a certificate in this proceeding will be withheld for a period of at least 30 days from the date of such publication, during which period any proper party in interest may file a petition to reopen or for other appropriate relief setting forth in detail the precise manner in which it has been so prejudiced.

No. MC 120099 (Sub-No. 2) (Republication), filed December 9, 1968, published in the FEDERAL REGISTER, issue of February 19, 1969, and republished this issue. Applicant: KENNETH F. SHADE, doing business as K & B FREIGHT LINE, 740 North 11th Street, Salina, KS. An order of the Commission, Operating Rights Board, dated April 7, 1972, and served April 18, 1972, finds that applicant, in accordance with the requirements of section 206(a)(6) of the Interstate Commerce Act, as amended, and the Commission's rules and regulations promulgated thereunder, has made application for a certificate of registration as evidence of the right to conduct operations, in interstate or foreign commerce, within limits which do not exceed the scope of the intrastate operations for which applicant holds a State certificate as a common carrier by motor vehicle, solely within a single State, as follows: *General commodities* (except those of unusual value and except dangerous explosives, household goods as defined in *Practices of Motor Common Carriers of Household Goods*, 17 M.C.C. 467, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading), between Salina, Kans., from Salina, Kans., via U.S. Highway 40 to the intersection of Kansas Highway 14, thence via Kansas Highway 14 to its intersection with U.S. Highway 156, thence over U.S. Highway 156 to its intersection with Kansas Highway 4, thence east over Kansas Highway 4 to Lindsborg, Kans., thence north via U.S. Highway 81 to Salina, Kans., with service authorized to, from, and between all intermediate points and the off-route points of Kanopolis, the commercial locations at the intersection of Interstate Highway 70 and U.S. Highway 156, Claflin, Lorraine, Kanopolis Reservoir, Salemburg, Smolan, Ralun, Mentor, and the Roxbury and Lindsborg commercial intersection on Interstate Highway 35, also as an alternate route for operating convenience only, between Ellsworth, Kans., and the intersection of Kansas Highway 14 and Kansas Highway 4 approximately 2 miles west of Genesco, Kans., via Kansas Highway 14. Since it is possible that other parties who have relied upon the notice in the FEDERAL REGISTER of the application as originally published may have an interest in and would be prejudiced by the lack of proper notice of the grant of authority without the requested limitation set forth in the appendix hereto, a notice of the authority actually granted will be published in the FEDERAL REGISTER and issuance of the certificate of registration in this proceeding will be withheld for a period of 30 days from the date of such publication, during which period any proper party in interest may file an appropriate petition for leave to intervene in the proceeding setting forth in detail the precise manner in which it has been prejudiced.

No. MC 126587 (Sub-No. 1) (Republication), filed October 26, 1971, published in the FEDERAL REGISTER, issue of November 25, 1971, and republished this issue. Applicant: PARK AVENUE STORAGE CORPORATION, 359–365 Park Avenue, Newark, NJ 07102. Applicant's representative: Edward F. Bowes, 744 Broad Street, Newark, NJ 07102. An order of the Commission, Operating Rights Board, dated April 14, 1972, and served May 4, 1972, finds: That the present and future public convenience and necessity require operation by applicant, in interstate or foreign commerce, as a common carrier by motor vehicle, over irregular routes, of used household goods, between those points in Hudson and Essex Counties, N.J., in that portion of the New York, N.Y., commercial zone, as defined in *Commercial Zones and Terminal Areas*, 53 M.C.C. 451, within which local operations may be conducted pursuant to the partial exemption of section 203(b)(8) of the Interstate Commerce Act (the "exempt" zone), on the one hand, and, on the other, points in Bergen, Essex, Passaic, Morris, Sussex, Hudson, Union, Salem, Middlesex, Somerset, Mercer, Monmouth, Camden, and Gloucester Counties, N.J., restricted to the transportation of traffic having a prior or subsequent movement, in containers, beyond the points authorized and further restricted to the performance of pickup and delivery service in connection with packing, crating, and containerization, or unpacking, uncrating, and decontainerization of such traffic; that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder. Because it is possible that other parties, who have relied upon the notice of the application as published, may have an interest in and would be prejudiced by the lack of proper notice of the authority described in the findings in this order, a notice of the authority actually granted will be published in the FEDERAL REGISTER and issuance of a certificate in this proceeding will be withheld for a period of 30 days from the date of such publication, during which period any proper party in interest may file an appropriate petition seeking leave to intervene in this proceeding setting forth in detail the precise manner in which it has been so prejudiced.

No. MC 135145 (Sub-No. 2) (Republication), filed November 1, 1971, published in the FEDERAL REGISTER, issue of December 9, 1971, and republished this issue. Applicant: LUTHER TRANSFER & WAREHOUSE CO., INC., 1841 Industrial Avenue, San Angelo, TX 76901. Applicant's representative: Robert L. Strickland, 715 Frost National Bank Building, San Antonio, Tex. 78205. An order of the Commission, Operating Rights Board, dated April 7, 1972, and served May 1, 1972, finds: that the present and future public convenience and necessity require operation by applicant, in interstate or foreign commerce, as a common carrier by motor vehicle, over irregular routes, of used household goods (1) between Del Rio, Tex., on the one hand, and, on the other, points in Val Verde, Edwards, Kinney and Maverick Counties, Tex.; (2) between points in Coke, Coleman, Concho, Crane, Crockett, Irion, Kimble, Menard, Reagan, Runnels, Schleicher, Sutton, Tom Green, and Upton Counties, Tex., restricted in (1) and (2) above, to the transportation of traffic having a prior or subsequent movement, in containers, beyond the points authorized and further restricted to the performance of pickup and delivery service in connection with packing, crating, and containerization or unpacking, uncrating, and decontainerization of such traffic; that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder. Because it is possible that other parties, who have relied upon the notice of the application as published, may have an

interest in and would be prejudiced by the lack of proper notice of the authority described in the findings in this order, a notice of the authority actually granted will be published in the FEDERAL REGISTER and issuance of a certificate in this proceeding will be withheld for a period of 30 days from the date of such publication, during which period any proper party in interest may file an appropriate petition or other pleading setting forth in precise detail the manner in which it has been so prejudiced.

APPLICATION FOR FILING OF PETITIONS

No. MC 1756 (Notice of Filing of Petition for Modification of Certificate), filed May 12, 1972. Petitioner: PEOPLES EXPRESS CO., a corporation, Newark, N.J. Petitioner's representative: Bert Collins, 140 Cedar Street, New York, NY 10006. Petitioner holds a certificate in MC 1756, which reads as follows: *General commodities*, except those of unusual value, and except dangerous explosives, household goods (when transported as a separate and distinct service in connection with so-called "household moving"), commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading, over irregular routes, between points in Bronx, Kings, New York, and Queens Counties, N.Y., on the one hand, and, on the other, points in Bergen, Essex, Hudson, Middlesex, Passaic, Somerset, and Union Counties, N.J. By the instant petition petitioner requests modification to reflect New York, N.Y., in lieu of the Counties of New York, Bronx, Brooklyn, and Queens. Any interested person desiring to participate may file an original and six copies of his written representations, views or argument in support of or against the petition within 30 days from the date of publication in the FEDERAL REGISTER.

No. MC 30319 (Notice of Filing of Petition for Modification or Removal of Two Restrictions as They Apply at Commerce, Cooper, and Enloe, Tex.), filed May 3, 1972. Petitioner: SOUTHERN PACIFIC TRANSPORT COMPANY OF TEXAS AND LOUISIANA. Petitioner's representatives: Damon R. Capps and Edwin N. Bell, 3057 1 Shell Plaza, Houston, TX 77003. By the instant petition, petitioner seeks to remove two restrictions in its certificate applicable at Commerce, Cooper, and Enloe, Tex. These are intermediate points on its route between Paris and Commerce, Tex., over Texas Highway 24. The distance involved is approximately 35 miles. The operating rights over this particular route contain, in substance, the following restrictions, among others: "The motor carrier service to be performed by carrier shall be limited to that which is auxiliary to or supplement of rail service of the Southern Pacific Transportation Company, except Chappel Hill, Sublime, Hallettsville, Rusk, Maydelle, Palestine, Sheridan, and Rock Island. Carrier shall not render any service to or from any point not a station on the line of the railroad except Coldspring, Tex., the site of the Southern Production Company near Pledger, Tex., the site of Freeport Sulphur Plant, near Damon, Tex., Chappel Hill, Sublime, Hallettsville, Rusk, Maydelle, Palestine, Sheridan and Rock Island, Tex." The relief sought can be accomplished by changing the two restrictions in MC 30319 to read: "The motor carrier service to be performed by carrier shall be limited to service which is auxiliary to or supplemental of train service of the Southern Pacific Transportation Company, except at Chappel Hill, Sublime, Hallettsville, Rusk, Maydelle, Palestine, Sheridan, Rock Island, Commerce, Cooper and Enloe, Tex." "Carrier shall not render any service to or from any point not a station on the line of the railroad except Coldspring, Tex., the site of the Southern Production Company near Pledger, Tex., the site of Freeport Sulphur Plant, near Damon, Tex., Chappel Hill, Sublime, Halletsville, Rusk, Maydelle, Palestine, Sheridan, Rock Island, Commerce, Cooper and Enloe, Tex." Any interested person desiring to participate may file an original and six copies of his written representations, views or argument in support of or against the petition within 30 days from the date of publication in the FEDERAL REGISTER.

No. MC 30319 (Sub-No. 63), (Notice of filing of Petition for Removal of Two Restrictions), filed April 21, 1972. Petitioner: SOUTHERN PACIFIC TRANSPORT COMPANY OF TEXAS AND LOUISIANA. Petitioner's representative: Damon R. Capps and Edwin N. Bell, 3057 1 Shell Plaza, Houston, TX 77002. By the instant petition, petitioner seeks to remove two restrictions from its certificate, applicable at DeRidder, La., and at intermediate points on its route between DeRidder and Lake Charles, La., over that route described as follows: "From Lake Charles over U.S. Highway 90 to junction U.S. Highway 171, and thence over U.S. Highway 171 to DeRidder and return over the same route." The distance of the route involved is approximately 50 miles. The points that would be affected are DeRidder, Ararat, Belfield, Gillis, Gaytime, Fulton, Harrican Creek, Longville, Insco, Bannister, Tulla, and Pan Ami, La. The restrictions are as follows: "The motor carrier service to be performed by carrier shall be limited to service which is auxiliary to or supplemental of train service of the Southern Pacific Company, except Leonville, Cecelia, and Arnaudville, La. Carrier shall not serve any point not a station on the rail lines of Southern Pacific Company, except Bowie, Brousville, Bunkie, Cecelia, Cleon, Deroven, Gray, Humphreys, Henderson Landing, Leleux, Long Bridge, Maurice, Milton, Port Berre, Shuteston, Talieu, Leonville, and Arnaudville, La., and points between Houma, La., on the one hand, and, on the other, Montegut, Dulac, and Theriot, La." The relief sought can be accomplished by changing the two restrictions in Sub 63 to read: "The motor carrier service to be performed by carrier shall be limited to service which is auxiliary to or supplemental of train service of the Southern Pacific Transportation Company, except Leonville, Cecelia, Arnaudville, DeRidder, Ararat, Belfield, Gillis, Gaytime, Fulton, Harrican Creek, Longville, Insco, Bannister, Tulla and Pan Ami, La. Carrier shall not serve any point not a station on the rail lines of Southern Pacific Transportation Company, except Bowie, Brousville, Bunkie, Cecelia, Cleon, Deroven, Gray, Humphreys, DeRidder, Ararat, Belfield, Gillis, Gaytime, Fulton, Harrican Creek, Longville, Insco, Bannister, Tulla, and Pan Ami, La." Any interested person desiring to participate may file an original and six copies of his written representations, views, or argument in support of or against the petition within 30 days from the date of publication in the FEDERAL REGISTER.

No. MC 69833 (Sub-No. 77) (Notice of Filing of Petition for Removal of Operating Restrictions), filed April 19, 1972. Petitioner: ASSOCIATED TRUCK LINES, INC., Vandenberg Center, Grand Rapids, Mich. 49502. Petitioner's representatives: Earl E. Meisenbach and Harry Pohlad (same address as above). Petitioner requests removal of operating restrictions restricting service between Chicago, Ill., on the one hand, and, Evansville, Vincennes, and Terre Haute, Ind., on the other, as stated in its Certificate of Public Convenience and Necessity MC 69833 (Sub-No. 77), wherein it is authorized to operate over the following routes serving points as indicated and restricted as follows: *General commodities*, except those of unusual value, classes A and B explosives, household goods as defined by the Commission, and commodities in bulk, between Marion, Ind., and Evansville, Ind., serving all intermediate points: From Marion over Indiana Highway 9 to junction Indiana Highway 67, thence over Indiana Highway 67 to Indianapolis, Ind., thence over U.S. Highway 40 to junction U.S. Highway 41, thence over U.S. Highway 41 to Evansville, and return over the same route. (Sub 77—page 33.) Restriction: The service authorized hereinabove is restricted against the transportation of shipments moving between Evansville, Vincennes, and Terre Haute, Ind., on the one hand and, on the other, Chicago, Ill., except those interlined with other carriers at Indianapolis, Ind. (Sub 77—page 37.) Any interested person desiring to participate may file an original and six copies of his written representations, views or argument in support of or against the petition within 30 days from the date of publication in the FEDERAL REGISTER.

No. MC 117072 (Sub-No. 3) (Notice of Filing of Petition To Add an Additional Shipper), filed April 24, 1972. Petitioner: ARMORED TRANSPORT, INC., Los Angeles, Calif. Petitioner's representative: R. Y. Schureman, 1545 Wilshire Boulevard, Los Angeles, CA 90017. Petitioner holds authority in No. MC 117072 (Sub-No. 3), which reads as follows: Over irregular routes, (1) *Such commercial papers, documents, written instruments,* and *business records* (except currency and negotiable securities), as are used in

the business of banks and banking institutions, and (2) *audit media* and *business records* (except cash letters), between Reno, Nebr., and Tahoe City, South Lake Tahoe, Kings Beach, and Tahoe Vista, Calif., under contract with: Central California Federal Savings & Loan Association of Auburn, Calif., Crocker-Citizens National Bank of San Francisco, Calif., First National Bank of Nevada of Reno, Nev., Sears, Roebuck & Co. of Chicago, Ill., Sierra Pacific Power Co., of Reno, Nev., Tahoe National Bank of South Lake Tahoe, Nev., to participate may file an original and six copies of his written representations, views or argument in support of or against the petition within 30 days from the date of publication in the FEDERAL REGISTER.

No. MC 117610 (Sub-No. 7) (Notice of Filing of Petition for Modification and Amendment for Addition of Shipper), filed May 8, 1972. Petition: DERRICO TRUCKING CORP., 907 East 141st Street, Bronx, NY 10454. Petitioner's representative: Bert Collins, 140 Cedar Street, New York, NY 10006. Petitioner holds a permit in MC 117610 (Sub-No. 7), which reads as follows: Irregular routes: *Paper board, box board, kraft board, corrugated and paper containers, cartons and boxes, waste paper and rags, and materials and supplies,* used in the manufacture and distribution thereof (except commodities in bulk), between New York, N.Y., and points in Nassau, Suffolk, Westchester, Orange, and Rockland Counties, N.Y., points in Hudson, Bergen, Passaic, Essex, Union, Morris, Middlesex, Mercer, and Camden Counties, N.J., and Philadelphia, Pa., on the one hand, and, on the other, points in that part of New York on and east of New York Highway 14, points in that part of Pennsylvania on and east of U.S. Highway 15, and those in Connecticut, Massachusetts, Rhode Island, New Jersey, Delaware, those in that part of Maryland on and east of a line extending from the Maryland-Delaware State line over U.S. Highway 40 to Baltimore, and the District of Columbia, under a continuing contract, or contracts with Derrico Co., Inc., of New York, N.Y., and Simkins Industries, Inc., of New Haven, Conn. By the instant petition, petitioner requests that its permit be modified by the addition of Whippany Paper Co. Inc., as a shipper to be served under a continuing contract or contracts. Any interested person desiring to participate may file an original and six copies of his written representations, views or argument in support of or against the petition within 30 days from the date of publication in the FEDERAL REGISTER.

APPLICATIONS UNDER SECTIONS 5 AND 210a(b)

The following applications are governed by the Interstate Commerce Commission's special rules governing notice of filing of applications by motor carriers of property or passengers under sections 5(a) and 210a(b) of the Interstate Commerce Act and certain other proceedings with respect thereto (49 CFR 1.240).

MOTOR CARRIERS OF PROPERTY

No. MC-F-11448. (Amendment) (CARAVAN REFRIGERATED CARGO, INC. — PURCHASE — CHAMPION TRANSPORTATION, INC.), published in the February 9, 1972, issue of the FEDERAL REGISTER on page 2911. By amendment filed May 19, 1972, JAMES T. MOORE, Post Office Box 6188, Dallas, TX 75222, joins in as party applicant to the proceeding.

No. MC-F-11541. Authority sought for purchase by WILSON FREIGHT CO., 3636 Follett Avenue, Cincinnati, OH 45223, of the operating rights of ROSS TIMM AND ROBERT TIMM, doing business as TIMM TRANSIT, 1036 South Jackson Street, Janesville, WI 53545, and for acquisition by DAVID M. GANTZ, JOHN E. SHORE, S. DAVID SHORE, AND JOSEPH M. GANTZ, all of 3636 Follett Avenue, Cincinnati, OH 45223, of control of such rights through the purchase. Applicants' attorneys: Charles E. Prieve, 312 East Wisconsin Avenue, Milwaukee, WI 53202, David Axelrod, 39 South LaSalle Street, Chicago, IL 60603, and Milton H. Bortz, 3636 Follett Avenue, Cincinnati, OH 45223. Operating rights sought to be transferred: *General commodities,* with exceptions, as a *common carrier* over regular routes, between Madison, Wis., and Rockford, Ill., serving the intermediate points of Oregon, Union, Evansville, Leyden, Janesville, and Beloit, Wis., and Roscoe, Ill., and the off-route point of Brooklyn, Wis., between Beloit, Wis., and Rockford, Ill., serving the intermediate point of Rockton, Ill., between Madison, Wis., and Janesville, Wis., serving the intermediate points of Stoughton, Albion, Edgerton, and Indian Ford, Wis., and the off-route point of McFarland, Wis., between Madison, Wis., and Stoughton, Wis., serving the intermediate points of Nora, Cambridge, Rockdale, and Utica, Wis., and the off-route points of Deerfield, and Fort Atkinson, Wis. Vendee is authorized to operate as a *common carrier* in Connecticut, New Jersey, New York, Pennsylvania, Ohio, Massachusetts, Maryland, West Virginia, North Carolina, Virginia, Rhode Island, Kentucky, Tennessee, Indiana, Illinois, Missouri, Iowa, Wisconsin, Maine, New Hampshire, Vermont, Oklahoma, Kansas, and the District of Columbia. Application has not been filed for temporary authority under section 210a(b).

No. MC-F-11542. Authority sought for control by LIQUID TRANSPORTERS, INC., 1292 Fern Valley Road, Post Office Box 21395, Louisville, KY 40221, of (1) RUSS TRANSPORT, INC., and (2) PRODUCERS TRANSPORT CO., both of Post Office Box 4022, Chattanooga, TN 37405, and for acquisition by CHARLES E. CRANMER, also of Louisville, KY 40221, of control of RUSS TRANSPORT, INC., and PRODUCERS TRANSPORT CO., through the acquisition by LIQUID TRANSPORTERS, INC. Applicants' attorney and representative: L. A. Jaskiewicz, 1730 M Street NW., Suite 501, Washington, DC 20036, and Charles R. Dunford, Post Office Box 21395, Louisville, KY 40221. Operating rights sought to be controlled: (1) *Road tar, creosote oil, pipe dip compounds,* and *pitch,* and *compounds and blends of road tar, creosote oil, pipe dip compounds* and *pitch,* in bulk, in tank vehicles, as a common carrier over irregular routes, from Chattanooga, Tenn., to points in Alabama, Georgia, Kentucky, North Carolina, South Carolina, and Florida; *liquid asphalt* and *liquid asphalt products,* in bulk, in tank vehicles, from Chattanooga, Tenn., to points in Alabama, Georgia, Kentucky, and North Carolina; *coal tar products,* as described in Appendix XIV to the report in *Description in Motor Carrier Certificates,* 61 M.C.C. 209, in bulk, in tank vehicles, from Chattanooga, Tenn., to points in Louisiana and Mississippi; *asphalt* and *asphalt products,* and *residual fuel oils,* in bulk, in tank vehicles, from Knoxville, Tenn., to points in Alabama, Georgia, South Carolina, and a described area of Virginia and North Carolina;

Residual fuel oils, in bulk, in tank vehicles, from Chattanooga, Tenn., to points in Kentucky, North Carolina, South Carolina, Virginia and a described area of Alabama and Georgia; *dry cement,* in bulk, from Cape Girardeau, Mo., to points in Tennessee; *latex compounds,* in bulk, in tank vehicles, from Chattanooga, Tenn., to points in Mississippi; *tall oil,* in bulk, in tank vehicles, from Panama City, Fla., and Charleston, S.C., to Chattanooga and Knoxville, Tenn.; *vegetable oils, animal oils and fats,* and *blends thereof* (but not including tall oil or naval stores), in bulk, in tank vehicles, between Chattanooga, Tenn., on the one hand, and, on the other, points in Kentucky (except Louisville), Alabama, Arkansas, and Florida, from Chattanooga, Tenn., to points in Michigan; *asphalt* and *asphalt products,* in bulk, in tank vehicles (except chemicals derived from asphalt and asphalt products), from Savannah, Ga., and points within 10 miles thereof, to points in Tennessee; *fly ash,* in bulk, in hopper and tank-type vehicles, from the plant-sites of the Tennessee Valley Authority located at or near Bridgeport and Pride, Ala., Grahamville and Paradise, Ky., and Gallatin, Kingston, Johnsonville, and Rogersville, Tenn., to points in Alabama, Kentucky, and Tennessee; *asphalt* and *asphalt products,* in bulk, in tank vehicles, from Bristol, Va., to points in North Carolina, Kentucky, South Carolina, and Tennessee, and to points in a described area of West Virginia, from points in Sullivan County, Tenn., to points in Virginia, West Virginia, North Carolina, Kentucky, and South Carolina, from Algood, Tenn., to points in Kentucky; *fuel oils,* in bulk, in tank vehicles, from Chattanooga, Tenn., to points in that part of Georgia on and north of a line beginning at the Georgia-South Carolina State line and extending along U.S. Highway 29 to Atlanta, Ga., and thence along U.S. Highway 78 to Georgia-Alabama State line; *salt* and *salt products,* from points

in Bradley, Hamilton, and Shelby Counties, Tenn., to points in Alabama, Georgia, Kentucky, North Carolina, South Carolina, Tennessee, and Virginia; *acetylene, argon, carbon dioxide, compressed air, helium, hydrogen, nitrogen, oxygen, propane,* and *mapp,* in containers, in shipper-owner trailers, from Chattanooga, Tenn., to Atlanta, Augusta, and Gainesville, Va., Enka, N.C., and Greenville, S.C., from Ringgold, Ga., to Nashville and Knoxville, Tenn., Enka, N.C., and Greenville, S.C.;

(2) (a) *Cement,* between points in (1) Alabama, (2) Georgia, (3) Kentucky, (4) North Carolina, (5) South Carolina, (6) Virginia, (7) West Virginia, and (8) Tennessee, with restriction, (b) from the plantsite of Ideal Cement Co. in Knox County, Tenn., to points in Alabama, Georgia, Kentucky, North Carolina, South Carolina, Virginia, West Virginia, and Tennessee, (c) from the plant of Penn-Dixie Cement Corp., at Richard City, Tenn., to points in Georgia, South Carolina, North Carolina, Tennessee, and a described area of Kentucky, Virginia, Alabama, and Mississippi, (d) from the plantsite of Penn-Dixie Cement Corp., at Richard City, Tenn., to points in a described area of Mississippi, (e) from the plantsite of Missouri Portland Cement Co. and the plantsite of Dundee Cement Co. at Nashville, Tenn., to points in Alabama and Kentucky, and (f) from the plantsite of Signal Mountain Portland Cement Division, General Portland Cement Co., at Knoxville, Tenn., to points in Alabama, Georgia, Kentucky, North Carolina, South Carolina, Virginia, West Virginia, and Tennessee, from the plantsite of Dundee Cement Co. at Nashville, Tenn., to points in Georgia and Mississippi. LIQUID TRANSPORTERS, INC., is authorized to operate as a *common carrier* in all of the States in the United States (except Alaska and Hawaii). Application has not been filed for temporary authority under section 210a(b).

No. MC–F–11543. Authority sought for control by AMERICAN COURIER CORPORATION, 2 Nevada Drive, Lake Success, NY 11040, of LUBBOCK-AMARILLO ARMORED SERVICE, INC., 524 32d Street, Lubbock, TX 79408, and for acquisition by PUROLATOR, INC., and, in turn, by PAUL A. CAMERON, both of 970 New Brunswick Avenue, Rahway, NJ 07065, of control of LUBBOCK-AMARILLO ARMORED SERVICE, INC., and for acquisition by AMERICAN COURIER CORPORATION. Applicants' attorneys: John M. Delany, 2 Nevada Drive, Lake Success, NY 11040, and Russell S. Bernhard, 1625 K Street NW., Washington, DC 20006. Operating rights sought to be controlled: *Bills, notes, checks, records, business communications,* and *documents,* as a *common carrier* over irregular routes, between points in a described area of Texas on the one hand, and, on the other, points in New Mexico and Colorado, between points in New Mexico, Colorado, and Oklahoma, between points in a described area of Texas on the one hand, and, on the other, points in Oklahoma, from Altus, Okla., to Dallas and Fort Worth, Tex., between Duncan, Okla., and points in Texas, between San Angelo, Tex., on the one hand, and, on the other, points in Oklahoma and New Mexico. AMERICAN COURIER CORPORATION is authorized to operate as a *common carrier* in Connecticut, Massachusetts, Maine, New Hampshire, New Jersey, Pennsylvania, New York, Iowa, Illinois, Nebraska, Kentucky, Tennessee, Ohio, West Virginia, Rhode Island, Michigan, Indiana, Maryland, Virginia, Delaware, Wisconsin, Missouri, Minnesota, North Dakota, South Dakota, Kansas, North Carolina, Texas, Louisiana, Vermont, Alabama, Georgia, Arkansas, Mississippi, Oklahoma, Florida, South Carolina, California, and the District of Columbia, and as a *contract carrier* in New York, New Jersey, Connecticut, Pennsylvania, West Virginia, Ohio, Massachusetts, Delaware, Virginia, Maryland, Louisiana, Rhode Island, Iowa, Missouri, Illinois, Indiana, Maine, Kentucky, Minnesota, Wisconsin, New Hampshire, Nebraska, Vermont, Michigan, South Dakota, North Dakota, North Carolina, Alabama, Georgia, Tennessee, South Carolina, Texas, Mississippi, Oklahoma, and Florida. Application has not been filed for temporary authority under section 210a(b).

MOTOR CARRIERS OF PASSENGERS

No. MC–F–11544. Authority sought for merger by I-V COACHES, INC., 1600 Bayou Street, Vincennes, IN 47591, of the operating rights and property of WABASH-ARROW LINES, INC., 1600 Bayou Street, Vincennes, IN 47591, and for acquisition by CHARLES AND AMERICO ARGENTA, both of Vincennes, Ind. 47591, and CATHERINE O'NEIL, Rural Route No. 3, Box 33, Vincennes, IN 47591, of control of such rights and property through the transaction. Applicants' attorney: Harry J. Harman, 1 Indiana Square, Suite 2425, Indianapolis, IN 46204. Operating rights sought to be merged: Passengers and their baggage, and express, newspapers and mail, in the same vehicle with passengers, as a *common carrier* over regular routes, between Terre Haute, and Evansville, Ind., serving all intermediate points. I-V COACHES, INC., is authorized to operate as a *common carrier* in all of the States in the United States (except Alaska and Hawaii). Application has not been filed for temporary authority under section 210a(b). NOTE: The two carriers are now commonly controlled.

No. MC–F–11545. Authority sought for purchase by MILLER TRANSFER AND RIGGING CO., Post Office Box 6077, Akron, OH 44312, of the operating rights of (1) ENGEL TRUCKING, INC., AND (2) M AND M HEAVY HAULERS CORP., both of Post Office Box 7214, Akron, OH 44306, and for acquisition by JOHN J. BRUTVAN, 2366 Short Hills Drive, Akron, OH 44313, of control of such rights through the purchase. Applicants' attorneys: A. David Milner, 744 Broad Street, Newark, NJ 07102, and A. Charles Tell, 100 East Broad Street, Columbus, OH 43215. Operating rights sought to be transferred: *Steel tanks and parts thereof, steel castings, machinery, machinery parts, bridge materials, and lumber,* as a *common carrier* over irregular routes, between Greenville, Pa., on the one hand, and, on the other, points in that part of Ohio on and east of U.S. Highway 21 and those in that part of New York on and west of U.S. Highway 62; *machinery,* between Ebensburg, Pa., and points within 10 miles thereof, on the one hand, and, on the other, points in Ohio, New York, and Maryland; *machinery, machine parts, contractors' equipment, and supplies, and commodities* requiring specialized handling or rigging, between points in Cuyahoga County, Ohio, on the one hand, and, on the other, points in a described area of Michigan and Pennsylvania; *machinery, materials, supplies, and equipment* used in the drilling of water wells, and *machinery, materials, supplies, and equipment,* incidental to, or used in, the construction, development, operation, and maintenance of facilities for the discovery, development, and production between points in a described area of Indiana, Illinois, and Kentucky;

Hydraulic pressure and shearing machinery which, because of size or weight, requires the use of special equipment, and parts thereof when transported therewith, from Mount Carmel, Ill., to points in Connecticut, Delaware, Maine, Maryland, Massachusetts, Minnesota, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, Vermont, Virginia, and the District of Columbia; *heavy machinery,* between Newark, Ohio, on the one hand, and, on the other, points and places in that part of Indiana on and east of U.S. Highway 31, between points and places in the Chicago, Ill. commercial zone, as defined by the Commission in 1 MCC 673, on the one hand, and, on the other, points and places in Illinois and Indiana within a radius of 300 miles of Chicago; (2) *household goods* as defined by the Commission, *livestock, and heavy machinery,* between points in Tuscarawas County, Ohio, on the one hand, and, on the other, points in Ohio, Pennsylvania, and West Virginia; and in pending docket No. MC–F–10831, Recommended report and order served April 25, 1972, certificate not yet issued; machinery, between points in Chester County, Pa., on the one hand, and, on the other, points in Connecticut, Delaware, Maryland, Massachusetts, New Jersey, New York, North Carolina, Ohio, Rhode Island, Virginia, West Virginia, and the District of Columbia. Vendee is authorized to operate as a *common carrier* in Pennsylvania, Ohio, New York, West Virginia, Maryland, Illinois, Indiana, New Jersey, Minnesota, Oklahoma, California, Connecticut, Massachusetts, and the District of Columbia, and as a *contract carrier* in all of the States in the United States (except Alaska and Hawaii). Application has been filed for temporary authority under section 210a(b).

No. MC–F–11546. Authority sought for purchase by U F T TRANSPORT COMPANY, Box 906, Irving, TX 75060, of

the operating rights of TRANS-ELECTRONIC VAN LINES, INC., 4850 Olive Street, Commerce City, CO 80022, and for acquisition by ROBERT G. DAWE, also of Box 906, Irving, TX 75060, of control of such rights through the purchase. Applicants' attorney: Max G. Morgan, 600 Leininger Building, Oklahoma City, OK 73112. Operating rights sought to be transferred: *Household goods* as defined in *Practices of Motor Common Carriers of Household Goods*, 17 MCC 467, as a *common carrier* over irregular routes, from St. Louis, Mo., and points and places within 25 miles thereof, to points and places in Massachusetts, Rhode Island, Connecticut, New Jersey, New Hampshire, New York, Pennsylvania, Delaware, Maryland, Virginia, West Virginia, District of Columbia, Ohio, Michigan, Illinois, Minnesota, Wisconsin, Iowa, Nebraska, Kansas, Missouri, Indiana, Tennessee, North Carolina, Alabama, Florida, Georgia, Mississippi, Texas, Oklahoma, Arkansas, Louisiana, and Colorado, from the above-described destination points to points and places in a described area of Iowa, Missouri, Arkansas, Tennessee, Kentucky, Ohio, Michigan, and Illinois. Vendee is authorized to operate as a *common carrier* in all of the States in the United States (except Hawaii). Application has been filed for temporary authority under section 210a(b).

No. MC–F–11547. Authority sought for control and merge by KENAN TRANSPORT COMPANY, INCORPORATED, Box 2933, Durham, NC 27705, of the operating rights and property of FELTS TRANSPORT CORPORATION, U.S. Highway 460, Montvale, VA 24122, and for acquisition by FRANK H. KENAN, HENRY EMERSON, AND LEE P. SHAFFER, all of Durham, N.C. 27705, of control of such rights and property through the transaction. Applicants' attorney: Francis W. McInerny, 1000 16th Street, NW., Washington, DC 20036. Operating rights sought to be controlled and merged: *Gasoline, fuel oil and kerosene*, in bulk, in tank vehicles as a *common carrier* over irregular routes, from Friendship, N.C., to points and places in a described area of Virginia; *petroleum products*, in bulk, in tank trucks, from Friendship, N.C., to Peterstown, W. Va., through Virginia for operating convenience only; *petroleum and petroleum products*, in bulk, in tank vehicles, from Friendship, N.C., to Mouth of Wilson, Va., *petroleum and petroleum products*, as described by the Commission with certain exceptions, from Hugheston, W. Va., to Covington, Va., and points in a described area of Virginia, from Charleston and Boomer, W. Va., to points in a described area of Virginia; *petroleum and petroleum products* (except liquid chemicals), in bulk, in tank vehicles, from Friendship, N.C., to points in West Virginia; *petroleum products* (except petro acid and chemicals, and asphalt and asphalt products), in bulk, in tank vehicles, from terminals off the Colonial pipeline at or near Montvale, Va., and terminals off the Plantation pipeline at or near Roanoke, Va., to points in a described area of West Virginia; liquefied petroleum gas, in bulk, in tank vehicles, from the site of the pipe line terminal of the Dixie Pipe Line Co. near Apex, N.C., to points in a described area of Virginia; *varsol, and varnish maker and paint*, in bulk, in tank vehicles, from Wilmington, N.C., to Pulaski, Va.; *petroleum products*, except petrochemicals, in bulk, in tank vehicles, from Chesapeake, Va., to points in a described area of West Virginia; *liquid petroleum and petroleum products*, except petroleum chemicals, in bulk, in tank vehicles, from Friendship, N.C., to points in a described area of Virginia. KENAN TRANSPORT COMPANY is authorized to operate as a *common carrier* in North Carolina, Virginia, South Carolina, West Virginia, Delaware, Maryland, New Jersey, Georgia, and Pennsylvania. Application has been filed for temporary authority under section 210a(b).

By the Commission.

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

[FR Doc.72–8286 Filed 5–31–72;8:56 am]

NOTICE OF FILING OF MOTOR CARRIER INTRASTATE APPLICATIONS

MAY 27, 1972.

The following applications for motor common carrier authority to operate in intrastate commerce seek concurrent motor carrier authorization in interstate or foreign commerce within the limits of the intrastate authority sought, pursuant to section 206(a)(6) of the Interstate Commerce Act, as amended October 15, 1962. These applications are governed by § 1.245 of the Commission's rules of practice, published in the FEDERAL REGISTER, issue of April 11, 1963, page 3533, which provides, among other things, that protests and requests for information concerning the time and place of State Commission hearings or other proceedings, any subsequent changes therein, any other related matters shall be directed to the State Commission with which the application is filed and shall not be addressed to or filed with the Interstate Commerce Commission.

Kansas Docket Number not shown filed May 11, 1972. Applicant: GRIFFIN FREIGHT LINES, INC., 6615 East Bayley, Wichita, KS. Applicant's representative: Warner Moore and Curtis Irby, Union National Building, Suite 715, Wichita, Kans. 67202. Certificate of public convenience and necessity sought to operate a freight service as follows: Transportation of *General commodities*, between Wichita, Kans., and Newton, Kans., serving all intermediate points between Wichita, Emporia, Strong City, Cottonwood Falls, Florence, Peabody, Marion, Hesston, and Newton, Kans., with closed door operation via Interstate 35 (Kansas Turnpike) between Wichita and Emporia, Kans., and over U.S. Highway 50, U.S. Highway 77 and U.S. Highway 50 and Interstate 35W as shown in said application and return over the same route. Both intrastate and interstate authority sought.

HEARING: Thursday, July 6, 1972, at 10 a.m. in the Fiesta Room at the Holiday Inn Midtown, 1000 North Broadway, Wichita, KS, and at the Ramada Inn, 1839 Merchants, Emporia, KS, on Friday July 7, 1972, at 10 a.m. Requests for procedural information including the time for filing protests concerning this application should be addressed to the State Corporation Commission, Transportation Division, Fourth Floor, State Office Building, Topeka, Kans. 66612 and should not be directed to the Interstate Commerce Commission.

New York Docket No. T–4268 filed April 19, 1972. Applicant: LAPP EXPRESS CO., INC., Medina, N.Y. 14103. Applicant's representative: Thomas A. Weir, 761 North Forest Road, Williamsville, NY 14421. Certificate of public convenience and necessity sought to operate a freight service as follows: Transportation of *perishable commodities*, in insulated vehicles, other than tank vehicles, equipped with mechanical refrigerating devices or with mechanical temperature controlling devices; heavy merchandise limited to boats, which, because of weight or bulk, require the use of special trucks, equipment, and rigging: Between all points in the counties of Erie, Niagara, Orleans, Monroe, and Genesee, N.Y. Both intrastate and interstate authority sought.

HEARING: Date, time, and place to be hereafter fixed. Requests for procedural information including the time for filing protests concerning this application should be addressed to the New York State Department of Transportation, 1220 Washington Avenue, State Campus, Albany, NY 12226 and should not be directed to the Interstate Commerce Commission.

Georgia Docket No. 4607–M filed May 15, 1972. Applicant: W. C. WINTER, INC., 1227 Constitution Road SE., Atlanta, GA 30316. Applicant's representative: Ralph Searcy (same address as applicant). Certificate of public convenience and necessity sought for class B certificate: (a) For the transportation of *casings*, animal; from Chatham County, Ga., to all points in Georgia over no fixed routes, and (b) applicant also applies for corresponding authority "for the transportation of *casings*, animal; from Chatham County, Ga., to all points in Georgia over no fixed routes" in interstate and foreign commerce, under section 206(a)(6) of the Interstate Commerce Act, as amended October 15, 1968, by Public Law 87–805. Both intrastate and interstate authority sought.

HEARING: June 27, 1972 at 10 a.m., at 177 State Office Building, 244 Washington Street SW., Atlanta, GA 30334. Requests for procedural information including the time for filing protests concerning this application should be addressed to the Georgia Public Service Commission, 162 State Office Building, 244 Washington Street SW., Atlanta, GA 30334 and should not be directed to the Interstate Commerce Commission.

Georgia Docket No. 4609–M filed May 19, 1972. Applicant: PEARL S. BECK AND RAY M. BECK, doing business as CEDARTOWN-ATLANTA FREIGHT LINE, lessor and CEDARTOWN-ATLANTA FREIGHT LINES, Inc., lessee, Post Office Box 127, Cedartown, GA 30125. Certificate of public convenience and necessity sought for amendment of class A certificate No. 1227 so that said certificate will read as follows: For the transportation of *general commodities*, between Rockmart and Rome, Ga., via Cedartown and Linedale, Ga., over State Highway 6 (U.S. 278), State Highway 1 (U.S. 27) and State Highway 1–E; also, between Cedartown and Rome, Ga., over State Highway 1 (U.S. 27); also, between Rome and junction of State Highways 140 and 53 over State Highway 1 (U.S. 27) and State Highway 140 to junction with State Highway 53 with closed doors at all points and places on State Highway 140; without authority to handle freight from Atlanta, Ga., destined to Rome or beyond Rome, Ga., and without authority to handle freight from or through Rome destined to Atlanta or beyond Atlanta, but with authority to serve Silver Creek, Ga., as an off-route point; also, for corresponding authority to conduct operations in interstate and foreign commerce under section 206(a)(6) of the Interstate Commerce Act, as amended October 15, 1962, by Public Law 87–805. Both intrastate and interstate authority sought.

HEARING: June 27, 1972, at 10 a.m., at 177 State Office Building, 244 Washington Street SW., Atlanta, GA 30334. Requests for procedural information including the time for filing protests concerning this application should be addressed to the Georgia Public Service Commission, 162 State Office Building, 244 Washington Street SW., Atlanta, GA 30334 and should not be directed to the Interstate Commerce Commission.

New York Docket T–5088, filed May 18, 1972. Applicant: UTICA-OSWEGO MOTOR EXPRESS, INC., 1100 Broad Street, Utica, NY 13501. Applicant's representative: Herbert M. Canter, 315 Seitz Building, 201 East Jefferson Street, Syracuse, NY 13202. Certificate of public convenience and necessity sought to operate a freight service as follows: Transportation of *general commodities*, as defined in 16 NYCRR section 800.1: Between Utica, N.Y., and Amsterdam, N.Y., via New York Routes 5 and 5–S, serving all intermediate points and the off-route points of Dolgeville, Johnstown, and Gloversville. Both intrastate and interstate authority sought.

HEARING: Date, time, and place to be hereafter fixed. Requests for procedural information including the time for filing protests concerning this application should be adressed to the New York State Department of Transportation, 1220 Washington Avenue, State Campus, Albany, NY 12226 and should not be directed to the Interstate Commerce Commission.

By the Commission.

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

[FR Doc.72–8284 Filed 5–31–72;8:56 am]

[35596]

WYOMING INTRASTATE FREIGHT RATES AND CHARGES

Order Instituting Investigation

MAY 26, 1972.

At a Session of the Interstate Commerce Commission, Division 2, held at its office in Washington, D.C., on the 17th day of May 1972.

By petition filed April 3, 1972, Burlington Northern Inc., Chicago & North Western Railway Co., Colorado & Southern Railway Co., Colorado & Wyoming Railroad Co., and Union Pacific Railroad Co., common carriers by railroad within the State of Wyoming and from, to, and through that State, allege that under the laws of that State and the regulations of the Public Service Commission of Wyoming they may not increase their intrastate rates without the authorization of the Public Service Commission of Wyoming, which has denied their request to increase their intrastate rates on sugar beets as authorized by this Commission on that commodity in Ex Parte No. 262, Increased Freight Rates, 1969, 337 I.C.C. 436 and Ex Parte No. 265, Increased Freight Rates, 1970, 339 I.C.C. 125, nor have they been authorized to increase their intrastate rates and charges to the same extent as their interstate rates, as authorized by this Commission in Ex Parte No. 267, Increased Freight Rates, 1971, 339 I.C.C. 125, and petitioners have not sought authority from the State, nor have they increased their intrastate rates to the extent considered by this Commission on interstate traffic in Ex Parte No. 281, Increased Freight Rates, 1972, as authorized by order dated February 1, 1972, and as proposed by the carriers to become effective May 1, 1972, and suspended; and

It appearing, that the petitioners allege that in authorizing the increases in the cited proceedings this Commission recognized that the railroads were in need of additional revenue, considering both interstate and intrastate commerce, to meet increased operating expenses; that failure to permit the increases sought herein on intrastate traffic will deprive the petitioners of at least $130,000 in annual revenue; that the Wyoming intrastate freight rates and charges fail to produce their fair share of the earnings required to enable the respondents under honest, economical, and efficient management to provide adequate and efficient railway transportation service at the lowest cost consistent with the furnishing of such service; that transportation conditions incident to transportation on such lines within Wyoming and adjacent States do not justify the existing disparity in freight rates and charges; that historically the Wyoming intrastate rates and charges have been subject to the same general increases as the interstate rates and charges; that the interstate and intrastate rates and charges have generally been maintained on the same level; that the present interstate rates and charges are just and reasonable; that the intrastate rates and charges, if increased as sought would not exceed a just and reasonable level; that the existing disparity in favor of the Wyoming intrastate rates and charges creates undue and unreasonable advantage, preference, and prejudice as between persons and localities in intrastate commerce within Wyoming, on the one hand, and interstate and foreign commerce on the other, and results in undue, unreasonable, and unjust discrimination against and undue burden on interstate and foreign commerce, which will continue to exist until the Wyoming intrastate freight rates and charges shall have been increased in the same measure and degree as the rates and charges on interstate shipments have been increased as authorized in the above-cited proceedings; thus, the petitioners have submitted the petition, pursuant to the provisions of sections 3, 13(3), 13(4), and 15a of the Act, requesting that the Commission institute an investigation with respect to the matters and things alleged as set forth above, and after hearing enter an order requiring removal of the alleged violations above referred to, by prescribing rates and charges for the transportation of intrastate traffic within Wyoming and directing that such rates and charges be increased in the same measure and to the same degree as the rates and charges on interstate and foreign commerce from, to, and within the State of Wyoming; and, it is alleged that action by the Commission will have no effect on the quality of the environment;

And it further appearing, that there have been brought in issue by the railroad petitioners matters sufficient to require an investigation into the lawfulness of intrastate rates and charges made or imposed by the State of Wyoming, which do not include increases maintained by the petitioners on similar traffic moving in interstate or foreign commerce; therefore,

It is ordered, That the petition be, and it is hereby granted.

It is further ordered, That an investigation be, and it is hereby, instituted under section 13 of the Interstate Commerce Act to determine whether the intrastate rates and charges of the petitioning carriers by railroad, or any of them, operating in the State of Wyoming, for the intrastate transportation of property, made or imposed by the State of Wyoming, as previously indicated, cause or will cause, by reason of the failure of

such rates and charges to include increases corresponding to those authorized on interstate traffic by this Commission in Ex Parte No. 262, Increased Freight Rates, 1969, supra, Ex Parte Nos. 265 and 267, Increased Freight Rates, 1970 and 1971, supra, and in Ex Parte No. 281, Increased Freight Rates, 1972, and the increases the respondents in Ex Parte No. 281, Increased Freight Rates, 1972, proposed to establish effective May 1, 1972, any undue or unreasonable advantage, preference, or prejudice, as between persons or localities in intrastate commerce on the one hand, and those in interstate or foreign commerce, on the other, or any undue, unreasonable, or unjust discrimination against, or undue burden on, interstate or foreign commerce, and to determine what rates and charges, if any, or what maximum, or minimum, or maximum and minimum, rates and charges should be prescribed to remove the unlawful advantage, preference, discrimination or undue burden, if any, that may be found to exist.

It is further ordered, That all carriers by railroad operating within the State of Wyoming, subject to the jurisdiction of this Commission, be, and they are hereby, made respondents to this proceeding.

It is further ordered, That any person intending to participate in this proceeding by submitting initial or reply statements, or otherwise, shall notify this Commission, by filing with the Secretary, Interstate Commerce Commission, within 30 days of the service date of this order, the original and one copy of a statement of his intention to participate. Inasmuch as the Commission desires wherever possible, (a) to conserve time, (b) to avoid unnecesary expense to the public, and (c) the service of pleadings by parties in proceedings of this type only upon those who intend to take an active part in the proceedings, the statement of intention to participate shall include a detailed specification of the extent of such person's interest, including (1) whether such interest extends merely to receiving Commission releases in this proceeding, (2) whether he genuinely wishes to participate by receiving or filing initial and/or reply statements, (3) if he so desires to participate as described in (2), whether he will consolidate or is capable of consolidating his interests with those of other interested parties by filing joint statements in order to limit the number of copies of pleadings that need be served, such consolidation of interests being strongly urged by the Commission, and (4) any other pertinent information which will aid in limiting the service list to be issued in this proceeding; that this Commission shall then prepare and make available to all such persons a list containing the names and addresses of all parties desiring to participate in this proceeding and upon whom copies of all statements must be filed; and that at the time of service of this service list the Commission will fix the time within which initial statements and replies must be filed.

It is further ordered, That a copy of this order be served upon each of the said petitioners, and that the State of Wyoming be notified by sending copies of this order and the said petition by certified mail to the Governor of Wyoming, Cheyenne, Wyo., and to the Public Service Commission of Wyoming, Cheyenne, Wyo.

And it is further ordered, That notice of this proceeding be given to the public by depositing a copy of this order in the office of the Secretary of the Commission at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register, for publication therein. Interested persons shall be afforded the opportunity to inspect pleadings at the Office of the Secretary of the Commission in Washington, D.C.

By the Commission.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.72-8282 Filed 5-31-72;8:56 am]

LIST OF FEDERAL REGISTER PAGES AND DATES—JUNE

Pages	*Date*
10907–11045	June 1

federal register

THURSDAY, JUNE 1, 1972
WASHINGTON, D.C.

Volume 37 ■ Number 106

PART II

DEPARTMENT OF TRANSPORTATION

■

FEDERAL AVIATION ADMINISTRATION

■

Airport Aid Program

Title 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Administration, Department of Transportation

[Docket No. 10747]

PART 152—AIRPORT AID PROGRAM

The purpose of this part is to implement the Airport Aid Program for airport development and planning grant projects under the Airport and Airway Development Act of 1970 (84 Stat. 219).

Interested persons have been afforded an opportunity to participate in the making of these regulations by a notice of proposed rule making (Notice 70–50) issued on December 22, 1970, and published in the FEDERAL REGISTER on December 29, 1970 (35 F.R. 19678). Due consideration has been given to all comments presented in response to that notice. The public comments received were generally favorable, although some commentators voiced objections or recommended modifications to certain proposed provisions.

As stated in Notice 70–50, the Airport and Airway Development Act of 1970 authorizes the Secretary of Transportation to exercise the regulatory functions set forth in part II of the Act (sections 11 through 27). The Secretary has delegated that authority to the Administrator of the Federal Aviation Administration (35 F.R. 17044), except with respect to certain provisions for approval, hearings, air and water quality, and airport site selection with respect to any project as to which opposition is stated, whether expressly or by proposed revision, by any Federal, State, or local government agency or by a substantial number of persons, other than one of those agencies.

Also as stated in Notice 70–50, Part 151 of the Federal Aviation Regulations prescribes the policies and procedures for administering the Federal-Aid Airport Program under the Federal Airport Act (49 U.S.C. 1101 et seq.). Until that program is completely phased out, Part 151 will continue to govern grants made under that Act. Section 52(c) of the 1970 Act continues in effect all orders, determinations, rules, regulations, permits, contracts, certificates, licenses, grants, rights, and privileges issued, made, granted, or allowed to become effective under the Federal Airport Act until appropriately terminated.

The rules now issued to implement the Airport Aid Program are in large part the same as the substantive provisions of Part 151. However, as proposed in Notice 70–50, a number of changes have been made that are required by the 1970 Act. Thus, appropriate new terminology is used; reference is made to the preparation of a "National Airport System Plan," with subsequent review and revision as necessary, instead of the former yearly "National Airport Plan"; and public hearings must now be made available by sponsors, in specified development situations, to consider the economic, social, and environmental effects. Other changes include expansion of "airport development" to include work with respect to navigation aids, to safety equipment required by regulation for airport certification under new section 612 of the Federal Aviation Act of 1958, and to acquisition of land for future airport development. Also, the United States is not an eligible sponsor, under the 1970 Act.

As another provision that is not in the Federal Airport Act, section 16(c)(4) of the 1970 Act prohibits the approval of any airport development project involving airport location, a major runway extension, or runway location that is found to have an adverse effect on natural resources, including fish and wildlife, natural, scenic, and recreation assets, water and air quality, and other factors affecting the environment unless, after consultation with the Secretary of the Interior and the Secretary of Health, Education, and Welfare, it is found that no feasible and prudent alternative exists and that all possible steps have been taken to minimize such adverse effect. Furthermore, section 16(d) of the 1970 Act provides that no airport development project involving the location of an airport, an airport runway, or a runway extension may be approved unless the public agency sponsoring the project certifies that there has been afforded the opportunity for public hearings for the purpose of considering the economic, social, and environmental effects of the airport location and its consistency with the goals and objectives of such urban planning as has been carried out by the community.

Order 5610.1A (36 F.R. 23679), of the Office of the Secretary of Transportation has implemented section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4321), the above portions of section 16 of the 1970 Act, and section 4(f) of the Department of Transportation Act (airport programs or projects affecting public parks, recreation areas, wildlife refuge, or historic sites). Pursuant to that order, these regulations require the applicant for developmental aid to submit a proposed draft environmental impact statement, to be utilized in the preparation of an environmental impact statement or negative declaration by the Administrator.

Also as a provision that is not in the Federal Airport Act, section 16(e) of the 1970 Act prohibits the approval of any project involving airport location, a major runway extension, or runway location unless the Governor of the State in which the project may be located certifies in writing that there is reasonable assurance that the project will be located, designed, constructed, and operated so as to comply with applicable air and water quality standards. Where these standards have not been approved or where they have been promulgated by the Administrator of the Environmental Protection Agency, certification must be obtained from him. Under the rules now issued, approval of the project is conditioned on receipt of certification and on compliance with the applicable air and water quality standards during construction and operation.

Section 16(f) of the Airport and Airway Development Act of 1970 provides that in the case of a proposed new airport serving any area, which does not include a metropolitan area, an airport development project may not be approved with respect to any proposed airport site that is not approved by the community or communities in which the airport is proposed to be located. The rules now issued reflect this provision.

Section 10(d) of the Federal Airport Act provides that to the extent that the project costs of an approved project represent the cost of (1) land required for the installation of approach light systems, (2) inrunway lighting, (3) high intensity runway lighting, or (4) runway distance markers, the U.S. share may not exceed 75 percent of the allowable costs thereof. The parallel provision in section 17(d) of the Airport and Airway Development Act of 1970 differs from this in three respects. First, the second item is designated as "touchdown zone and centerline runway lighting." Second, the fourth item (runway distance markers) no longer appears. Third, the maximum U.S. share now is 82 percent of these allowable costs, instead of 75 percent. The rules now issued reflect these changes, both in implementing the policy that the project must provide for such of the three named landing aids as are determined to be needed for safe and efficient use of the airport by aircraft, and in the provision on the U.S. share of project costs. Likewise, runway distance markers are excluded from the list of eligible project items.

The 1970 Act does not provide for "advance planning and engineering grants" formerly included in the Federal Airport Act. However, the 1970 Act does provide for two kinds of planning for development purposes, namely airport master planning and airport system planning. As stated in Notice 70–50, the former concerns development for planning purposes of guidance and information as to the extent, type, and nature of development needed at a specific airport, while the latter concerns similar planning as to the extent, type, nature, location, and timing of airport development needed in a specific area. Grants of funds to planning agencies are authorized as to airport system planning, while grants to public agencies are authorized as to airport master planning. The rules now issued reflect these matters and the differences between them. They also incorporate the statutory provisions that a grant under this program is limited to two-thirds of the costs incurred, that not more than 7.5 percent of the available funds in any fiscal year may be allocated for projects in a single State, and that grant allocations between States are to be made in proportion to area encompassed where the project involves land in more than one State.

The rules now issued cover the relevant regulatory items including sponsor and project eligibility, application procedures for each kind of planning grant,

grant agreements, allowable costs, payments, and accounting and audit.

As stated in Notice 70–50, §151.72 provides for incorporation by reference of technical guidelines in certain Advisory Circulars as mandatory standards. These rules, in § 152.83, likewise incorporate Advisory Circulars as mandatory standards, updated and properly referenced.

Also as stated in Notice 70–50, the FAA issued Notice 70–13 on March 11, 1970 (35 F.R. 4864) that proposed requiring the sponsor of any project under the Federal-Aid Airport Program to provide for installing an approved airport beacon if one is not already installed on the airport. The rules now issued include a final rule based on that Notice, in § 152.101. Six comments were received in response to Notice 70–13, most of which agreed with the concept of requiring approved airport beacons, while discussing in particular the type of beacon called for in the FAA standards. Types of beacons that are covered by Advisory Circulars are now made mandatory by the rules being issued. The beacons requirement is made a part of § 152.101, for the reason stated in Notice 70–13, namely, that airport beacons provide a valuable contribution to safety as the initial VFR identification aid for all airports, even in the presence of electronic aids to navigation for IFR-equipped aircraft.

The rules now issued also reflect requirements imposed by Office of Management and Budget Circular No. A–95, as revised February 9, 1971, with respect to complete coordination of projects with State and local governments (§§ 152.23 and 152.123). These rules also reflect the requirements of the Secretary of Transportation (35 F.R. 9178) with respect to airport development projects involving displacement of persons and acquisition of real property (§ 152.23), implementing the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (84 Stat. 1894).

The significant public comments received on Notice 70–50 that contained objections or recommended modifications to proposed provisions are considered as follows, grouped under the general categories used in the notice to indicate changes made from the rules contained in Part 151.

A. *Rules newly required.* Two public comments were addressed to the proposed provision on public hearings on requests for aid for airport development projects (§ 152.73). It was asserted that the proposed rule was unclear as to the stage in project formulation at which the requirement must be complied with, and that it actually should be complied with at the project application stage rather than at or before the request for aid stage. It also was asserted that there should be a definition of "major runway extension," and an explanation of the "significant social, economic or environmental interest" a person would need to have to request a hearing.

The rule specifies that the opportunity for a hearing must be afforded, and a hearing held if requested, before the FAA will act upon a request for aid submitted by the sponsor. This stage is chosen because of the requirements of Office of Management and Budget Circular A–95 and the National Environmental Policy Act of 1969 that must be met before the FAA may consider the sponsor's request for aid. This allows the use of the same time interval to meet ancillary requirements concurrently rather than sequentially, and shortens the time between allocation and grant.

The proposal that a person's interest in the project's social, economic, and environmental impact must be "significant" has been dropped, as the 1970 Act does not specifically impose this qualification. However, it is anticipated that any attempts to delay made by persons making requests out of sheer caprice or general, undefined opposition to the project, may be dealt with appropriately. For the purpose of the hearing requirement, section 16(d) of the 1970 Act does not require that the runway extension must be "major", therefore a definition of this kind would not be relevant.

One comment made on behalf of a State noted that under its law the State may lease land for an airport from either a public or a private body, and requested that Federal participation be made available for airport development on land leased by the State from private interests. However, the 1970 Act defines a public airport (for which, alone, Federal assistance is available) as one whose landing area is publicly owned. Accordingly, any leased land must be leased from a public agency owning the land.

One commentator would have the cost of land for the middle marker for Federal participation at the 82 percentage rate. The only land eligible for that rate of participation, under section 17(d) of the 1970 Act, is land required for an approach light system (§ 152.49(d)), and the middle marker is not a part of that system. Another commentator asserted that the rules should be more specific as to participation on exit taxiway lighting system, including taxiway lead-in lighting. The 1970 Act makes only touchdown zone and runway centerline lighting eligible for the 82-percent rate of participation. Exit taxiway systems and taxiway lead-in lighting will be eligible for only the 50-percent rate of participation.

Some comments were concerned with the rules proposed for the airport planning projects newly introduced by the 1970 Act. Two commentators recommended that a preexisting approved system plan should be a prerequisite to the issuance of a master planning grant for an airport within the particular system. While there is merit in this recommendation, its immediate adoption in the rules could result in undue delay for badly needed master planning. As issued, the rule provides that a master planning grant may not be approved after July 1, 1973, for the purpose of establishing a new airport serving a large or medium air traffic hub in the absence of an appropriate system plan identifying the need for the airport and the acceptable alternate locations where it could be located (§ 152.129). The rule further provides that a master planning grant may not be approved after July 1, 1975, for an existing airport serving a large or medium air traffic hub in the absence of an appropriate system plan identifying the need for the airport. However, the rule also provides that a master planning grant for an individual airport in such an air traffic hub may be approved in the absence of an existing system plan if, in the judgment of the Administrator, the absence of a system plan is due to the failure of the responsible planning agency to proceed with its development, or an existing system plan is not acceptable.

One commentator recommended that the rules should provide for eligibility of planning costs incurred before the execution of the planning grant. However, it is not considered proper or reasonable to provide U.S. payment for planning costs incurred before the execution of the planning grant which represent effort expended upon a work program which has yet to be approved by the Government as being appropriate to the proposed planning effort. However, the FAA agrees that there is both merit and justification for reimbursing an applicant for reasonable and substantiated costs which are incurred in designing the study effort needed to accompany its application. Thus the recommendation has been partially accommodated (§ 152.137(c)).

Three commentators recommended that the administrative costs incurred by a sponsor should be considered eligible where a third-party contract is involved. Here, the sponsor's administrative costs in a planning project are largely indirect, such as travel, review time, and correspondence, unlike the situation under force account, where the administrative costs necessary to carry out and produce the planning product are direct and are considered eligible. It is considered that these costs should be recognized here, but subject to the limitation that these costs must be figured in accordance with Office of Management and Budget Circular No. A–87 (§§ 152.129 and 152.131).

One commentator, the Department of Housing and Urban Development (DHUD), recommended that the planning process should be extended to include "analysis of" all necessary population, land use, and environmental studies. The FAA agrees and the § 152.131 therefore now reflects eligibility in terms of "analysis" as recommended. Aid for land-use planning is now also eligible under DHUD's "701" comprehensive planning assistance program. Section 13(c) of the Airport and Airway Development Act of 1970 contemplates that DOT and DHUD will preclude duplication between their respective planning assistance activities. This coordination is underway and when resolved, will determine whether land-use planning will be funded under the Airport Planning Grant Program or by HUD.

Several other recommendations were made that, if adopted, would provide

rules in conflict with the 1970 Act. Thus, it was recommended that 10-percent amendment (provision for change in a grant agreement that does not increase the maximum obligation of the United States by more than 10 percent) should be made applicable to planning grants. However, this 10-percent item is applicable, under the Act, only to airport development grants, and there is no similar authority as to planning grants. Another recommendation was that the "designated planning agency" should be designated by the Governor of the State rather than by the Secretary as provided in the Act. This recommendation likewise cannot be accommodated, since this procedure is set forth in the Act.

On April 17, 1971, the Secretary of Labor published regulations (29 CFR 1518; 36 F.R. 7340) on construction health and safety standards pursuant to section 107 of the Contract Work Hours and Safety Standards Act (83 Stat. 96). These regulations became effective on April 24, 1971, for all federally assisted construction contracts initially advertised after that date, and on April 27, 1971, for negotiated contracts for which negotiations began after that date. On May 29, 1971, the Secretary of Labor published regulations (29 CFR 1910; 36 F.R. 10466) on occupational safety and health standards pursuant to sections 6(a) and 8(g) of the Williams-Steiger Occupational Safety and Health Act of 1970 (84 Stat. 1593, 1600; 29 U.S.C. 655, 657). Section 1910.12 of those regulations adopted the standards prescribed by 29 CFR 1518 as occupational safety or health standards under section 6(a) of the Williams-Steiger Act which are applicable to employment in construction work. To implement those regulations, now provisions have been added to Appendix H to this part that require the sponsor to include in each nonexempt construction contract (also a condition in any subcontract) that the contractor and any subcontractor may not require any laborer or mechanic employed in the performance of the contract to work in surroundings or under working conditions that are unsanitary, hazardous, or dangerous to his health or safety as determined under construction safety and health standards promulgated by the Secretary of Labor. Appendix H also reflects the requirements of Part 5a of the Secretary of Labor, issued September 27, 1971 (36 F.R. 19305) that provides labor standards for ratios of apprentices and trainees to journeymen on Federal and federally assisted construction, as well as amendments to Part 5 of the Secretary's regulations, issued September 28, 1971 (36 F.R. 19304) concerned with apprentices and trainees.

B. *Policy determinations.* One commentator expressed the opinion that the proposed orientation of a clear zone on the threshold is an area of contention that should require further study. Since issuance of Notice 70–50, the FAA has encountered considerations that persuade concurrence in this comment. Therefore, until additional study has been completed, the clear zone will be considered to be located as heretofore, and this rule effects no change from Part 151 in this respect (§ 152.9(b)).

As proposed in Notice 70–50, the phrase "runway safety area" is now used (§ 152.11), instead of "landing strip" as formerly used. One commentator expressed concern that making the "runway safety area" capable of supporting aircraft would be an excessive and expensive requirement. However, the intention of the proposal was merely to provide more accurate terminology, not to impose a design standard for the runway safety area different from that applicable to the landing strip.

At this point, it may be noted the provisions on high intensity runway edge lighting, as stated in § 152.13(b)(3), differ slightly from what was proposed in Notice 70–50, by referring to items recommended in the National Airport System Plan rather than to items "programmed." The change is necessary because the installation of landing aids at a particular location is not identified in the facilities and equipment program over a 5-year period, and this makes it impossible to apply the criteria precisely as set forth in Notice 70–50 for a particular airport location.

Two commentators considered service within 5 years by aircraft of more than 150,000 pounds as an eligibility requirement for HIRL on an ILS runway to be excessive. The FAA now considers that the use of HIRLS on ILS runways will enhance safety, increase the probable success rate of ILS approaches, and support the introduction of RVR capability. Therefore HIRLS should be required at ILS locations. However, since present ILS minimums for aircraft of 150,000 pounds or less at locations equipped with MIRLS are in no way hazardous, it is not intended that existing standard MIRLS be upgraded to HIRLS solely to meet this requirement. Accordingly, the rule now provides that the installation of HIRLS shall be required as part of a project and eligible for the 82 percent rate of participation where a new runway edge lighting system is to be installed on a designated ILS runway and that runway is recommended in the National Airport System Plan to be eligible for the installation of an instrument landing system within 5 years.

Three commentators asserted that a mandatory requirement for VASI–2 with MIRL on "utility" airports (those serving small aircraft, other than turbojet powered aircraft) is too expensive and beyond the airport owner's technical expertise to maintain. However, this requirement is retained (§ 152.103(h)), since according to a 3-year survey of general aviation accidents, one-half of these accidents occurred during the approach and landing phase of flights. The VASI–2 is an effective visual aid in assisting the pilot to establish a safe approach slope.

C. *Clarification and other purposes.* One commentator asserted that the cost of piers for an approach light system (ALS) should be considered eligible for Federal participation at the 82-percent rate. As proposed in Notice 70–50, this cost would be ineligible for this rate. Section 17(d) of the 1970 Act provides for 82-percent participation in the cost of acquiring land for the installation of approach light systems. In the past, the FAA has considered the construction of piers, in lieu of land acquisition, for the installation of ALS over water as eligible airport development only at the 50-percent rate of participation. After reconsideration, it has been determined to continue that policy with respect to piers (§ 152.49(d)(3)). Other construction associated with the installation of an ALS is limited as set forth in the notice.

Three commentators expressed concern over a proposed requirement that contracts for engineering and planning services must be submitted for FAA approval before execution of a new (or extension of an existing) contract, or performance of force account services in any project for airport development or planning. They pointed out that engineering contracts are frequently entered into long before there is any Federal involvement, and to require FAA approval at such an early stage complicates and delays project formulation. The FAA considers this point well taken, especially since the 1970 Act makes eligible project formulation costs, including engineering services, incurred before the execution of a grant agreement, recognizing that engineering services are required early in the formulation stage. Accordingly, the rules require FAA approval of the engineering contract before the start of the development of design plans and specifications (§ 152.51(f)).

In consideration of the foregoing, Title 14, Chapter 1, of the Code of Federal Regulations is amended, effective July 1, 1972, by adding the following new Part 152 in subchapter I.

Issued in Washington, D.C., on May 24, 1972.

J. H. SHAFFER,
Administrator.

NOTE: Incorporation by reference provisions approved by the Director of the Federal Register April 14, 1972.

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AUTHORITY: The provisions of this Part 152 issued under secs. 11–27, Airport and Airway Development Act of 1970; 84 Stat. 220–233; sec. 1.47(g), Regulations of the Office of the Secretary of Transportation; 35 F.R. 17044, unless otherwise noted.

Subpart A—General Requirements

§ 152.1 Applicability.

This part prescribes the policies and procedures for administering the Airport Aid Program for airport development and planning grant projects under the Airport and Airway Development Act of 1970 (84 Stat. 219).

(a) Subpart A prescribes general requirements applicable as indicated to projects under this part.

(b) Subpart B prescribes rules and procedures for airport development projects under the Airport Development Aid Program.

(c) Subpart C prescribes project programing standards for airport development projects under the Airport Development Aid Program.

(d) Subpart D prescribes rules and procedures for projects for airport master planning and airport system planning under the Planning Grant Program.

§ 152.3 National Airport System Plan.

(a) *Preparation and revision of plan.* Under the Airport and Airway Development Act of 1970, the FAA is directed to prepare and publish before May 21, 1972 and thereafter to review and revise as necessary, a "National Airport System Plan" for the development of public airports in the United States. This also encompasses development of public airports in Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Virgin Islands. The plan specifies, for at least a 10-year period, the type and estimated cost of airport development that is necessary to provide a system of public airports adequate to anticipate and meet the needs of civil aeronautics, to meet requirements in support of the national defense as determined by the Secretary of Defense, and to meet the special needs of the postal service.

(b) *Eligibility of location.* If, within the preparation period or any revision period, a location will have a substantial aeronautical necessity, it may be included in the National Airport System Plan. Only airport development at a location included in the current plan is eligible for inclusion in the Airport Development Aid Program to be undertaken within currently available appropriations and authorizations. However, the inclusion of a location in the plan does not commit the United States to include airport development aid in that program. In addition, the local community concerned is not required to proceed with planning or development at a location included in the plan.

§ 152.5 General policies.

(a) *Airport layout plan.* All airport development under the Airport Development Aid Program must be done in accordance with an approved airport layout plan.

(1) Each airport layout plan, and any change in it, is subject to FAA approval. The signature of the Administrator on the face of an original airport layout plan, or of any change in it, indicates FAA approval. The FAA approves an airport layout plan only if the airport development is sound and meets applicable requirements.

(2) As used in this part, "airport layout plan" means the basic plan for the layout of an airport that shows, as a minimum—

(i) The present boundaries of the airport and of the offsite areas that the sponsor owns or controls for airport purposes, and of their proposed additions;

(ii) The location and nature of existing and proposed airport facilities (such as runways, taxiways, aprons, terminal buildings, hangars, and roads) and of their proposed modifications and extensions; and

(iii) The location of existing and proposed nonaviation areas, and of their existing improvements.

(b) *Safe, useful, and usable unit.* Except as provided in paragraph (d) of this section, each project for airport master planning or airport development must provide for the planning or development of—

(1) An airport or unit of an airport that is safe, useful, and usable; or

(2) An additional facility that increases the safety, usefulness, or usability of an airport.

(c) *National defense needs.* The needs of national defense are fully considered in administering the Airport Development Aid Program and the Planning Grant Program. However, approval of a grant for a project for airport master planning or airport development is limited to planning or development necessary for civil aviation.

(d) *Stage development.* In any case in which airport development can be accomplished more economically under stage construction, Federal funds may be programed in advance for the development over 2 or more years under two or more grant agreements. In such a case, the FAA makes a tentative allocation of funds for both the current and future fiscal years, rather than allocating the entire Federal share in 1 fiscal year. A grant agreement is made only during the fiscal year in which funds are authorized to be obligated. Grants for airport system planning and airport master planning are not made under this paragraph.

§ 152.7 Grant of funds: general policies.

(a) *Compliance with sponsorship requirement.* The FAA authorizes the expenditure of funds for airport development, airport systems planning or airport master planning only if the Administrator is satisfied that the sponsor has met or will meet the requirements established by existing and proposed agreements with the United States with respect to any airport that the sponsor owns or controls and, when applicable, the requirements for an airport operating certificate with respect to the airport for which Federal assistance is sought.

(1) Agreements with the United States to which this requirement of compliance applies include—

(i) Any grant agreement made under the Federal Airport Act (49 U.S.C. 1101 et seq.) or the Airport and Airway Development Act of 1970;

(ii) Any covenant in a conveyance under section 23 of the Airport and Airway Development Act of 1970 or section 16 of the Federal Airport Act; and

(iii) Any covenant in a conveyance of surplus airport property either under section 13(g) of the Surplus Property Act (50 U.S.C. App. 1622(g)) or under Regulation 16 of the War Assets Administration.

Denial of a grant of funds for failure to comply with the assurances required under section 602 of the Civil Rights Act of 1964 (42 U.S.C. 2000d–1) and § 21.7 of the regulations of the Office of the Secretary of Transportation (49 CFR Part 21), is determined under § 21.13 and other applicable provisions of Part 21.

(2) If it appears that a sponsor has failed to comply with a requirement of an agreement with the United States with respect to an airport, the FAA notifies the sponsor of this fact and affords it an opportunity to submit materials to refute the allegation of noncompliance or to achieve compliance.

(3) If a project is otherwise eligible, a grant may be made to a sponsor that has not complied with an agreement if the sponsor shows—

(i) That the noncompliance is caused by factors beyond its control; or

(ii) That the following circumstances exist:

(*a*) The noncompliance consisted of a failure, through mistake or ignorance, to perform minor conditions in old agreements with the Federal Government; and

(*b*) The sponsor is taking reasonable action promptly to correct the deficiency, or the deficiency relates to an obligation that is no longer required for the safe and efficient use of the airport under existing law and policy.

(b) *Small proposals and projects.* Unless there is otherwise a special need for U.S. participation, the FAA includes a project in the Airport Development Aid Program only if the project application involves more than $5,000 in U.S. funds. Whenever possible with respect to airport development, the sponsor must consolidate small projects on a single airport in one grant agreement even though the airport development is to be accomplished over a period of years.

(c) *Previously obligated work.* Unless the Administrator specifically authorizes it, no project application may include any planning, engineering, or construction work included in a prior agreement with the United States obligating the sponsor or any other public agency to do the work, and entitling the sponsor or any other public agency to payment of U.S. funds for all or part of the work.

(d) *Limitation on participation.* When a release has been granted, authorizing the sponsor to dispose of land acquired with assistance under the Federal-Aid Airport Program or the Airport Development Aid Program or through conveyances under the Surplus Property Act, participation in the cost of a project for airport development or airport master planning is limited to that portion of the total allowable costs of the project that is in excess of the dollar amount the sponsor is obligated to expend on the airport under the terms and conditions of the release. If the sponsor has expended all or a portion of that amount in accordance with the terms and conditions of the release, participation is limited to that portion of the total allowable project costs that is in excess of the unexpended balance.

§ 152.9 Runway clear zones: general.

(a) *Ownership or acquisition.* Whenever funds are allocated for developing new runways or runway safety areas, or to improve or repair existing runways, the sponsor must own, acquire, or agree to acquire, runway clear zones. Exceptions are considered (on the basis of a full statement of facts by the sponsor) upon a showing of uneconomical acquisition costs, or lack of necessity for the acquisition.

(b) *Meaning of "runway clear zone."* For the purpose of this part, a runway clear zone is an area at ground level that begins at the end of each primary surface defined in § 77.25(c) of this chapter and extends with the width of each approach surface defined in § 77.25(d), to terminate directly below each approach surface slope at the point, or points, where the slope reaches a height of 50 feet above the elevation of the runway end or 50 feet above the terrain at the outer extremity of the clear zone, whichever distance is shorter.

§ 152.11 Runway clear zones: requirements.

(a) *General.* In projects involving grants-in-aid under the Airport Development Air Program, a sponsor must own, acquire, or agree to acquire an adequate property interest in runway clear zone areas as prescribed in paragraph (b), (c), (d), or (e) of this section, as applicable. Property interests that a sponsor acquires to meet the requirements of this section are eligible for inclusion in the program.

(b) *On new airports.* On new airports, the sponsor must own, acquire, or agree to acquire adequate property interests in runway clear zone areas (in connection with initial land acquisition) for all eligible runways or runway safety areas without substantial deviation from standard configuration and length.

(c) *On existing airports: New runways or runway safety areas.* On existing airports where new runways or runway safety areas are developed, the sponsor must own, acquire, or agree to acquire adequate property interests in runway clear zone areas for each runway and runway safety area to be developed or extended, to the extent that the Administrator determines is practical and feasible considering all facts presented by the airport owner or operator, preferably without substantial deviation from standard configuration and length.

(d) *On existing runways: improvements to runways or runway safety areas.* On existing airports where improvements are made to runways or runway safety areas, the sponsor must own, acquire, or agree to acquire adequate property interests in runway clear zone areas for each runway or runway safety area that is to be improved, to the extent that the Administrator determines is practical and feasible with regard to standard configuration, length, and property interests, considering all facts presented by the airport owner or operator. Any development that improves a specific runway or runway safety area is considered to be a runway improvement, including runway lighting and the developing or lighting of taxiways serving a runway.

(e) *On existing airports: other improvements.* On existing airports where substantial improvements are made that do not benefit a specific runway or runway safety area, such as overall grading or drainage, terminal area or building developments, the sponsor must own, acquire, or agree to acquire adequate property interests in runway clear zone areas for the dominant runway or runway safety area, to the extent that the Administrator determines is practical and feasible, with regard to standard configuration, length, and property interests, considering all facts presented by the airport owner or operator.

(f) *On existing airports: alternative to adequate property interest.* If a sponsor or other public agency shows that it is legally able to prevent the future erection or creation of obstructions in the runway clear zone area, and adopts protective measures to prohibit their future erection or creation, that showing is acceptable for the purposes of paragraphs (d) and (e) of this section in place of an adequate property interest (except for rights required for removing existing obstructions). In such a case, there must be an agreement between the FAA and the sponsor for removing or marking or lighting (to be determined in each case) any existing obstruction to air navigation. In each case, the sponsor must furnish information as to the specific height limitations established and as to the current and foreseeable future use of the property to which they apply. The information must include an acceptable legal opinion of the validity of the measures adopted, including a conclusion that the height limitations are not unreasonable in view of current and foreseeable future

use of the property, and are a reasonable exercise of the police power, together with the reasons or basis supporting the opinion.

(g) *Authority of Regional Directors.* The authority exercised by the Administrator under paragraphs (b), (c), (d), and (e) of this section to allow a deviation from, or to determine the extent of conformity to, standard configuration or length of runway clear zones, or to determine the adequacy of property interests therein, as also exercised by Regional Directors.

(h) *Meaning of "adequate property interest."* For the purposes of this section an airport operator or owner is considered to have an adequate property interest if it has an easement (or a covenant running with the land) giving it enough control to rid the clear zone of all obstructions (objects so far as they project above the approach surfaces established by § 77.25(d)), and to prevent the creation of future obstructions, together with the right of entrance and exit for those purposes, to ensure the safe and unrestricted passage of aircraft in and over the area.

§ 152.13 Airport Development Aid Program: policy affecting landing aid requirements.

(a) *Landing aid requirements.* No project for developing or improving an airport may be approved for the program unless it provides for acquiring or installing such of the following landing aids as the Administrator determines are needed for the safe and efficient use of the airport by aircraft, considering the category of the airport and the type and volume of traffic using it:

(1) Land needed for installing approach lighting systems (ALS).

(2) Touchdown zone and centerline runway lighting.

(3) High intensity runway lighting.

For the purposes of this part, "approach lighting system" (ALS) is a standard configuration of aeronautical ground lights in the approach area to a runway or channel to assist a pilot in making an approach to the runway or channel.

(b) *Specific landing aid requirements.* The landing aids listed in paragraph (a) of this section are required for the safe and efficient use of airports by aircraft in the following cases:

(1) When the installation of the components of an approach lighting system on the airport is included in an approved FAA budget, and full funding of the installation costs is assured, lands for installing the system are required as part of a project unless the sponsor has already acquired the land necessary for the system or is otherwise undertaking to acquire the land. If the sponsor is otherwise undertaking to acquire the land, the grant agreement for the project must obligate the sponsor to complete the acquisition within a time limit prescribed by the Administrator. The Administrator immediately notifies a sponsor when a budget is approved providing for installing an approach lighting system at the airport concerned. Piers may be constructed, in lieu of land acquisition, where needed for installing approach lighting systems over water.

(2) The installation of touchdown zone and centerline lighting is required as part of a project when the Administrator, after considering pertinent environmental and operational factors, considers them to be necessary for the safe and efficient use of the airport by aircraft, and—

(i) The airport has a runway equipped or programed by the FAA to be equipped with funds then available therefor with navigational aids that will allow Category II operations; and

(ii) Category II operations on the runway are reasonably assured.

(3) The installation of high intensity runway edge lighting is required as part of a project where a new runway edge lighting system is to be installed on a designated ILS runway and that runway is recommended in the National Airport System Plan to be eligible for the installation of an ILS within 5 years.

§ 152.15 Airport Development Aid Program: policy affecting runway or taxiway remarking.

No project for developing or improving an airport may be approved for the program unless it provides for runway or taxiway remarking if the present marking is obliterated by construction, alteration or repair work included in a Federal-Aid Airport Program or Airport Development Aid Program project or by the required routing of construction equipment used therein.

Subpart B—Rules and Procedures for Airport Development Projects

§ 152.21 Applicability.

This subpart prescribes rules and procedures for airport development projects under the Airport Development Aid Program.

§ 152.23 Procedures: request for aid; accompanying information.

(a) *Request for aid.* An eligible sponsor that desires to obtain Federal aid for eligible airport development must submit to the appropriate FAA office (Airport District Office having jurisdiction over the area where the sponsor is located or, when there is no such office, the regional office having that jurisdiction) a request on FAA Form 5100–3, accompanied by the following:

(1) The sponsor's written statement as to whether (i) the proposed project involves the displacement, after January 1, 1971, of any person occupying land that has been or will be acquired, with or without Federal assistance, for the project development, and (ii) any person has been or will be displaced after January 1, 1971, and before execution of the grant agreement from land that has been or will be acquired, with or without Federal assistance, for the project development. This subparagraph applies whether or not the sponsor requests reimbursement for the costs of any such land or displacement.

(2) If the project involves displacement described in subparagraph (1) of this paragraph, the assurances required by paragraph (a) of § 25.57 of the regulations of the Office of the Secretary of Transportation (36 F.R. 9178) accompanied, if applicable, by the sponsor's statement of assurances it cannot provide and the opinion of the sponsor's chief legal official required by paragraph (d) of that section. These assurances shall be in such form as to apply to those displacements described in subparagraph (1) of this paragraph occurring before execution of the grant agreement, whether or not reimbursement is being requested for the costs of the displacement.

(3) The assurances required by paragraph (a) of § 25.59 of the regulations of the Office of the Secretary of Transportation accompanied, if applicable, by the sponsor's statement of assurances it cannot provide and the opinion of the sponsor's chief legal official required by paragraph (b) of that section. These assurances shall be in such form as to apply to those acquisitions of real property occurring after January 1, 1971, and before execution of the grant agreement, whether or not reimbursement is being requested for the costs of the acquisitions.

(4) Any comments made by or through clearinghouses as a result of coordination required by Office of Management and Budget Circular No. A–95, accompanied by—

(i) The sponsor's statement that those comments have been considered by it before submitting the request for aid (FAA Form 5100–3); or

(ii) The sponsor's statement that the procedures outlined in Office of Management and Budget Circular No. A–95 have been followed and that no comments have been received.

(5) The sponsor's proposed draft environmental impact statement prepared in conformance with Department of Transportation "Procedures for Considering Environmental Impacts" (DOT Order 5610.1A), 36 F.R. 23679, December 11, 1971, and Federal Aviation Administration "Interim Instructions for Processing Airport Development Actions Affecting the Environment" (FAA Order 5050.2), 36 F.R. 23686, December 11, 1971.

(6) A showing that the sponsor has complied with § 152.73 (public hearings) of this part.

(7) In the case of a proposed new airport serving any area that does not include a metropolitan area, a showing that the community or communities in which the proposed airport is to be located has, through the body having general legislative juridisdiction, approved the proposed airport site.

(b) *Selection of project for inclusion in program.* A proposed project may not be selected for inclusion in a program unless the sponsor has submitted the assurances, comments, statement, and showing required by paragraph (a) of this section. If the Administrator selects

a proposed project for inclusion in a program, a tentative allocation of funds is made for it, and the sponsor is notified of the allocation. The tentative allocation may be withdrawn if the sponsor fails to submit an acceptable project application as provided in § 152.25 of this part or fails to proceed diligently with the project.

§ 152.25 Procedures: application; funding information.

(a) *Project application.* As soon as practicable after receiving notice of the tentative allocation, the sponsor must submit a project application on FAA Form 5100–10 to the appropriate FAA official, without changing the language of the form, unless the change is approved by the Administrator. In the case of a joint project, each sponsor executes only those provisions of the project applications that apply to it.

(b) *Funding information.* Each sponsor must state in its application that it has on hand, or show that it can obtain as needed, funds to pay all estimated costs of the proposed project that are not borne by the United States under this part or by another sponsor. If any of the funds are to be furnished to a sponsor, or used to pay project costs on behalf of a sponsor, by a State agency or any other public agency that is not a sponsor of the project, that agency may, instead of the sponsor, submit evidence that the funds will be provided if the project is approved.

§ 152.27 Procedures: application; information on estimated project costs.

(a) *Donated land, labor, materials, or equipment.* If any part of the estimated project costs consists of the value of donated land, labor, materials, or equipment, or of the value of a property interest in land acquired at a cost that (as represented by the sponsor) is not the actual cost or the amount of an award in eminent domain proceedings, the sponsor must so state in the application, indicating the nature of the donation or other transaction and the value it places on it.

(b) *Inadvertent or unknowing nondisclosure.* If, after the grant agreement is executed and before the final payment of the allowable project costs is made under § 152.71 of this part, it appears that the sponsor inadvertently or unknowingly failed to comply with paragraph (a) of this section as to any item, the Administrator—

(1) Makes or obtains an appraisal of the item, and if the appraised value is less than the value placed on the item in the project application, notifies the sponsor that it may, within a stated time, ask in writing for reconsideration of the appraisal and submit statements of pertinent facts and opinions; and

(2) Adjusts the U.S. share of the project costs to reflect any decrease in value of the item below that stated in the project application.

§ 152.29 Procedures: application; information as to property interests.

(a) *Statement and covenants on property interests.* Each sponsor must state in its application all of the property interest that it holds in the lands to be developed or used as part of, or in connection with, the airport as it will be when the project is completed. Each project application contains a covenant on the part of the sponsor to acquire, before starting construction work, or within a reasonable time if not needed for the construction, property interests satisfactory to the Administrator in all the lands in which it does not hold those property interests at the time it submits the application. In the case of a joint project, any one or more of the sponsors may hold or acquire the necessary property interests. In such a case, each sponsor may show on its application only those property interests that it holds or is to acquire.

(b) *Property map.* Each sponsor of a project must send with its application a property map (designated as Exhibit A) or incorporate such a map by reference to one in a previous application that was approved. The sponsor must clearly identify on the map all property interests required in paragraph (a) of this section, showing prior and proposed acquisitions for which United States aid is requested under the project.

(c) *Meaning of "property interest" required.* For the purposes of paragraphs (a) and (b) of this section, the property interest that the sponsor must have or agree to obtain, is—

(1) Title free and clear of any reversionary interest, lien, easement, lease, or other encumbrance that, in the opinion of the Administrator, would create an undue risk that it might deprive the sponsor of possession or control, interfere with its use for public airport purposes, or make it impossible for the sponsor to carry out the agreements and covenants in the application;

(2) A lease of not less than 20 years granted to the sponsor by another public agency or the United States that has title as described in subparagraph (1) of this paragraph, on terms that the Administrator considers satisfactory; or

(3) In the case of an offsite area, title, or an agreement, easement, leasehold or other right or property interest that, in the Administrator's opinion, provides reasonable assurance that the sponsor will not be deprived of its right to use the land for the intended purpose during the period necessary to meet the requirements of the grant agreement.

(d) *Meaning of "land."* For the purposes of this section, the word "land" includes landing areas, building areas, runway clear zones, clearways and approach zones, and areas required for offsite construction, entrance roads, drainage, protection of approaches, installation or air navigation facilities, or other airport purposes.

§ 152.31 Procedures: application; compatible land use statement; air and water quality standard certification; relocation of displaced persons assurances; civil rights assurance.

(a) *Statement on compatible land use.* Each sponsor must state in its application the action that it has taken to restrict the use of land adjacent to or in the immediate vicinity of the airport to activities and purposes compatible with normal airport operations including landing and takeoff of aircraft. The sponsor's statement must include information on—

(1) Any property interests (such as airspace easements or title to airspace) acquired by the sponsor to assure compatible land use, or to protect or control aerial approaches;

(2) Any zoning laws enacted or in force restricting the use of land adjacent to or in the vicinity of the airport, or assuring protection or control of aerial approaches, whether or not enacted by the sponsor; and

(3) Any action taken by the sponsor to induce the appropriate government authority to enact zoning laws restricting the use of land adjacent to or in the vicinity of the airport, or assuring protection or control of aerial approaches, when the sponsor lacks the power to zone the land.

(b) *Relocation of displaced persons assurances; certification on air and water quality standards; and civil rights assurance.* Each sponsor must submit with its application the following:

(1) Assurances required by paragraph (b) of § 25.57 of the regulations of the Office of the Secretary of Transportation. These assurances must be supported by the relocation plan required by § 25.55 of those regulations.

(2) For a project involving airport location, a major runway extension, or a runway location, a written certification to the Administrator from the Governor (or his delegatee) of the State in which the project may be located that there is reasonable assurance that the project will be located, designed, constructed, and operated so as to comply with applicable air and water quality standards. In any case where air and water quality standards have not been approved, the certification required must be obtained from the Administrator of the Environmental Protection Agency.

(3) The assurance on civil rights required by § 21.7 of the Regulations of the Office of the Secretary of Transportation.

§ 152.33 Procedures: application; plans, specifications, and appraisals.

(a) *Plans and specifications.* Except as provided in paragraph (b) of this section, each sponsor must incorporate by reference in its project application the final plans and specifications, describing the items of airport development for which it requests U.S. aid. It must submit the plans and specifications with the application unless they were previously submitted or are submitted with that of another sponsor of the project.

(b) *Postponement of submission of plans and specifications.* In special cases, the Administrator authorizes the postponement of the submission of final plans and specifications until a later date to be specified in the grant agreement, if the sponsor has submitted—

(1) An airport layout plan approved by the Administrator; and

(2) Preliminary plans and specifications in enough detail to identify all

items of development included in the project, and prepared so as to provide for accomplishing the project in accordance with the airport layout plan, the rules in Subparts B and C, and applicable local laws and regulations.

(c) *Appraisal of donated property interest.* If a project involves acquiring a property interest in land by donation, or at a cost that (as represented by the sponsor) is not the actual cost or the amount of an award in eminent domain proceedings, the Administrator, before passing on the eligibility of the project, makes or obtains an appraisal of the interest. If the appraised value is less than the value placed on the interest by the sponsor (§ 152.27), the Administrator notifies the sponsor that he may, within a stated time, ask in writing for reconsideration of the appraisal and submit statements of pertinent facts and opinion.

§ 152.35 Procedures: offer, increase in amount offered, and acceptance.

(a) *Offer.* Upon approving a project the Administrator makes an offer to the sponsor to pay the U.S. share of the allowable project costs. The offer states a definite amount as the maximum obligation of the United States, and is subject to change or withdrawal by the Administrator, in his discretion, at any time before it is accepted.

(b) *Increase in amount offered.* If, before the sponsor accepts the offer, it is determined that the maximum obligation of the United States stated in the offer is not enough to pay the U.S. share of the allowable project costs, the sponsor may request an increase in the amount in the offer, through the appropriate FAA office.

(c) *Acceptance.* An official of the sponsor must accept the offer for the sponsor within the time prescribed in the offer, and in the required number of counterparts, by signing it in the space provided. The signing official must have been authorized to sign the acceptance by a resolution or ordinance adopted by the sponsor's governing body. The resolution or ordinance must, as appropriate under the local law—

(1) Set forth the terms of the offer at length; or

(2) Have a copy of the offer attached to the resolution or ordinance and incorporated into it by reference.

The sponsor must attach a certified copy of the resolution or ordinance to each executed copy of an accepted offer or grant agreement that it is required to send to the appropriate FAA office.

§ 152.37 Procedures: grant agreement; amendment.

(a) *Grant agreement.* An offer by the Administrator, and acceptance by the sponsor, as set forth in § 152.35 of this part, constitute a grant agreement between the sponsor and the United States. Except as provided in § 152.47(c)(3) of this part, the United States does not pay, and is not obligated to pay, any part of the project costs that have been, or may be, incurred, before the grant agreement is executed.

(b) *Change in grant agreement.* The Administrator and the sponsor may agree to a change in a grant agreement under the following conditions:

(1) The change does not increase the maximum obligation of the United States under the grant agreement by more than 10 percent. No part of the first $25,000 of the cost to a sponsor of providing payments and assistance to a displaced person under section 211(a) of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (84 Stat. 1894), on account of any acquisition or displacement occurring prior to July 1, 1972, is included as part of the change for determining whether the increase exceeds 10 percent. No part of the cost allowed under section 211(c) of the Act is included in determining the maximum obligation of the United States and any 10-percent increase under this paragraph.

(2) The change provides only for airport development that meets the requirements of Subparts B and C of this part or for relocation expenses.

(3) The change does not prejudice the interests of the United States.

(c) *Amendment issued.* When a change is agreed to, the Administrator issues an amendment incorporating the change. The sponsor must accept the amendment in the manner provided for acceptance of the offer in § 152.35(c).

(d) *Mandatory amendment.* Subject to the provisions of section 221 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, any grant agreement executed before January 2, 1971, for a project which will result in the displacement of any person on or after that date shall be amended to include the cost of providing payments and services under sections 210 and 305 of that Act.

§ 152.39 Cosponsorship and agency.

(a) *General.* Any two or more public agencies that desire to participate, either in accomplishing development under a project or in maintaining or operating the airport, may cosponsor it if between them they meet the requirements of Subparts B and C of this part, including—

(1) The eligibility requirements of § 152.43 of this part; and

(2) The submission of a single project application, executed by each sponsor, clearly stating the certifications, representations, warranties, and obligations made or assumed by each, or a separate application by each that does not meet all the requirements of Subparts B and C, if in the Administrator's opinion the applications collectively meet the requirements of Subparts B and C as applied to a project with a single sponsor.

(b) *Contribution of funds only.* A public agency that desires to participate in a project only by contributing funds to a sponsor need not become a sponsor or an agent of the sponsor, as provided in this section. However, any funds that it contributes are considered as funds of the sponsor for purposes of the Airport and Airway Development Act of 1970 and Subparts B and C.

(c) *Agreement.* If the sponsors of a joint project are not each willing to assume, jointly and severally, the obligations that Subparts B and C require a sponsor to assume, they must send a true copy of an agreement between them, satisfactory to the Administrator, to be incorporated into the grant agreement. Each agreement must state—

(1) The responsibilities of each sponsor to the others with respect to accomplishing the proposed development and operating and maintaining the airport;

(2) The obligations that each will assume to the United States; and

(3) The name of the sponsor or sponsors who will accept, receipt for, and disburse grant payments.

If an offer is made to the sponsors of a joint project, as provided in § 152.35 of this part, it contains a specific condition that it is made in accordance with the agreement between the sponsors (and the agreement is incorporated therein by reference) and that, by accepting the offer, each sponsor assumes only its respective obligations as set forth in the agreement.

(d) *Agency.* A public agency may, if it is authorized by local law, act as agent of the public agency that is to own and operate the airport, with or without participating financially and without becoming a sponsor. The terms and conditions of the agency and the agent's authority to act for the sponsor must be set forth in an agency agreement that is satisfactory to the Administrator. The sponsor must submit a true copy of the agreement with the project application. Such an agent may accept, on behalf of the sponsor, an offer made under § 152.35, only if that acceptance has been specifically and legally authorized by resolution or ordinance of the sponsor's governing body and the authority is specifically set forth in the agency agreement.

(e) *Cosponsors located in different areas.* When the cosponsors of an airport are not located in the same area, they must submit a joint request to the appropriate FAA office having jurisdiction over the area in which the airport development will be located.

§ 152.41 Airport development and facilities to which Subparts B and C apply.

(a) *Airport development.* Subparts B and C apply to the following kinds of airport development:

(1) Any work involved in constructing, improving, or repairing a public airport or part thereof, including the constructing, altering, or repairing of only those buildings or parts thereof that are intended to house facilities or activities directly related to the safety of persons at the airport.

(2) Any work involved in installing navigation aids used by aircraft landing at, or taking off from, a public airport.

(3) Any safety equipment, including airport firefighting and rescue equipment required by another part of this chapter for an airport operating certificate.

(4) Removing, lowering, relocating, marking, and lighting of airport hazards as defined in § 152.45(c) of this part.

(5) Acquiring land or an interest therein, or any easement through or other interest in airspace, that is necessary to allow any work covered by subparagraph (1), (2), (3), or (4) of this paragraph, or for future airport development, or to remove or mitigate, or prevent or limit the establishment of, airport hazards as defined in § 152.45(c). It does not apply to constructing, altering, or repairing airport hangars or public parking facilities for passenger automobiles.

(b) *Facilities.* The airport facilities to which Subparts B and C apply are those structures, runways, or other items, on or at an airport that are—

(1) Used or intended to be used, in connection with the landing, takeoff, or maneuvering of aircraft, or for or in connection with operating and maintaining the airport itself; or

(2) Required to be located at the airport for use by the users of its aeronautical facilities or by airport operators, concessionaires, and other users of the airport in connection with providing services or commodities to the users of those aeronautical facilities.

(c) *Meaning of "public airport".* For the purposes of this part, "public airport" means an airport used for public purposes, under the control of a public agency named in § 152.43(a), with a publicly owned landing area.

§ 152.43 Sponsor eligibility.

To be eligible to apply for an individual or joint project for development with respect to a particular airport a sponsor must—

(a) Be a public agency, which means for the purposes of this part, a State, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, Guam, or an agency of any of them; a municipality or other political subdivision; or a tax-supported organization; or an Indian tribe or pueblo;

(b) Be legally, financially, and otherwise able, individually in the case of a single sponsor, or between them in the case of joint sponsors, to—

(1) Make the certifications, representations, and warranties in the application form prescribed in § 152.75 of this part;

(2) Make, keep, and perform the assurances, agreements, and covenants in that form; and

(3) Meet the other applicable requirements of the Airport and Airway Development Act of 1970, and Subparts B and C of this part;

(c) Have, or be able to obtain, enough funds to meet the requirements of § 152.25 of this part; and

(d) Have, or be able to obtain, property interests that meet the requirements of § 152.29(a) of this part.

§ 152.45 Project eligibility.

(a) *General requirements.* A project for construction or land acquisition may not be approved under Subparts B and C of this part unless the following requirements are met:

(1) It is an item of airport development described in § 151.41(a).

(2) The airport development is within the scope of the current National Airport System Plan and is shown on an FAA approved airport layout plan.

(3) The airport site is approved by the FAA, and the airport development is, in the opinion of the Administrator, reasonably necessary to provide a needed civil airport facility.

(4) The Administrator is satisfied that the project has been coordinated in accordance with the requirements of Office of Management and Budget Circular No. A–95 and section 16(c)(1)(A) of the Airport and Airway Development Act of 1970, as applicable, and that the project is reasonably consistent with existing plans, or plans in the process of development, of public agencies for the development of the area in which the project is located, and that the project will contribute to the accomplishment of the purposes of the Airport Development Aid Program.

(5) The Administrator is satisfied as to the following, after considering pertinent information including the sponsor's statements required by § 152.31(b) and evidence required by § 152.73 of this part:

(i) Adequate consideration has been given to the interests of communities in or near which the project may be located. In the case of a proposed new airport serving any area which does not include a metropolitan area, the Administrator does not approve any airport development project with respect to any proposed airport site that is not approved by the community or communities in which it is proposed to locate the airport.

(ii) Comparable replacement housing as defined in § 25.15 of the regulations of the Office of the Secretary of Transportation (35 F.R. 9180), that is open to all persons, regardless of race, color, religion, sex, or national origin, will be available within a reasonable period of time prior to any displacement of persons who have occupied land that has been or will be acquired with or without Federal aid for the project development and have been or will be displaced thereby after January 1, 1971.

(6) The project provides for installing such of the landing aids specified in section 17(d) of the Airport and Airway Development Act of 1970 as the Administrator considers are needed for the safe and efficient use of the airport by aircraft, based on the category of the airport and the type and volume of its traffic.

(7) The Governor (or his delegatee) of the State in which a project involving airport location, a major runway extension, or runway location may be located has certified in writing to the Administrator that there is reasonable assurance that the project will be located, designed, constructed, and operated so as to comply with applicable air and water quality standards. Where air and water quality standards have not been approved or where those standards have been issued by the Environmental Protection Agency, the sponsor must obtain the certification from the Administrator of that agency, and notice of certification or refusal to certify must be provided within 60 days after the project application is received by the FAA. The FAA Administrator conditions approval of any project application on compliance during construction and operation with applicable air and water quality standards.

(8) The requirements of § 152.73 (public hearings) of this part have been met.

(9) The FAA has satisfied the requirements of the National Environmental Policy Act of 1969.

(b) *Adverse effect on natural resources.* If, after consulting with the Secretary of the Interior and the Secretary of Health, Education, and Welfare, a project involving airport location, a major runway extension, or a runway location is found to have an adverse effect on natural resources, including fish and wildlife, natural, scenic, and recreation assets, water and air quality, and other factors affecting the environment, the Administrator does not approve the project unless he finds in writing, after a full and complete review, that is a matter of public record, that no feasible and prudent alternative exists and that all possible steps have been taken to minimize that adverse effect.

(c) *Eligible kinds of airport development.* Only the following kinds of airport development described in § 152.41(a) are eligible to be included in a project under Subparts B and C:

(1) Preparing all or part of an airport site, including clearing, grubbing, filling, and grading.

(2) Dredging of seaplane anchorages and channels.

(3) Drainage work, on or off the airport or airport site.

(4) Constructing, altering, or repairing airport buildings or parts thereof, to the extent that it is covered by § 152.41(a).

(5) Constructing, altering, or repairing runways, taxiways, and aprons, including—

(i) Bituminous resurfacing of pavements with a minimum of 100 pounds of plant-mixed material for each square yard:

(ii) Applying bituminous surface treatment on a pavement (in accordance with FAA Specification P–609), the existing surface of which consists of that kind of surface treatment; and

(iii) Resealing a runway that has been substantially extended or partially reconstructed, if that resealing is necessary for the uniform color and appearance of the runway.

(6) Fencing, erosion control, seeding, and sodding of an airport or airport site.

(7) Installing, altering, or repairing airport markers and runway, taxiway, and apron lighting facilities and equipment, including navigation aids used by aircraft landing at, or taking off from, a public airport.

(8) Constructing, altering, or repairing entrance roads and airport service roads, and lighting of entrance roads.

(9) Constructing, installing, or connecting utilities, either on or off the airport or airport site.

(10) Removing, lowering, relocating, marking, or lighting any airport hazard.

(11) Site preparation for installing navigation aids.

(12) Relocating structures, roads, and utilities necessary to allow eligible airport development.

(13) Safety equipment including airport firefighting and rescue equipment required by another part of this chapter for an airport operating certificate.

(14) Acquiring land or an interest therein, or any easement through or other interest in airspace, when necessary to—

(i) Allow other airport development to be made, whether or not a part of the Airport Development Aid Program;

(ii) Prevent or limit the establishment of airport hazards;

(iii) Allow the removal, lowering, relocation, marking, and lighting of existing airport hazards;

(iv) Allow the installation of landing aids, including navigation aids used by aircraft landing at, or taking off from, a public airport;

(v) Allow the proper use, operation, maintenance, and management of the airport as a public facility; or

(vi) Allow future airport development.

(15) Any other development described in § 152.41 of this part that is specifically approved by the Administrator.

For the purposes of subparagraph (10) of this paragraph, an "airport hazard" is any structure or object of natural growth located on or in the vicinity of a public airport, or any use of land in the vicinity of the airport, that obstructs the airspace needed for the landing or takeoff of aircraft or is otherwise hazardous to the landing or takeoff of aircraft. For the purposes of subparagraph (14) of this paragraph, land acquisition includes the acquiring of land that is already developed as a private airport and the structures, fixtures, and improvements that are a part of realty (other than hangars, other ineligible structures and parts thereof, fixtures, and improvements).

(d) *Donated land.* A project for acquiring land that has been or will be donated to the sponsor is not eligible for inclusion in the Airport Development Aid Program unless the project also includes other items of airport development that would require a sponsor's contribution equal to or more than the U.S. share of the value of the donated land as appraised by the Administrator.

§ 152.47 Project costs.

(a) *General.* For the purposes of Subparts B and C of this part, project costs consist of any costs involved in accomplishing a project, including those of—

(1) Making field surveys;

(2) Preparing plans and specifications;

(3) Accomplishing or procuring the accomplishing of the work;

(4) Supervising and inspecting construction work;

(5) Acquiring land or an interest therein, or any easement through or other interest in airspace;

(6) Providing relocation payments and services required by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;

(7) Meeting the requirements of § 152.73 in affording an oportunity for a hearing and conducting a hearing; and

(8) Administrative and other incidental costs that are incurred specifically in connection with accomplishing a project, and that would not have otherwise been incurred.

(b) *Nonallowable costs.* The costs described in paragraph (a) of this section, including the value of land, labor materials, and equipment donated or loaned to the sponsor and appropriated to the project by the sponsor, are eligible for consideration as to their allowability, except for—

(1) That part of the cost of acquiring an existing private airport that represents the cost of acquiring passenger automobile parking facilities, buildings to be used as hangers, living quarters, or for nonairport purposes, at the airport, and those buildings or parts of buildings the construction of which is not airport development within the meaning of § 152.41(a) of this part;

(2) The cost of materials and supplies owned by the sponsor or furnished from a source of supply owned by the sponsor, if—

(i) Those materials and supplies were used for airport development before the grant agreement was executed; or

(ii) The cost is not supported by proper evidence of quantity and value;

(3) The cost of nonexpendable machinery, tools, or equipment owned by the sponsor and used under a project by the sponsor's force account, except to the extent of the fair rental value of that machinery, tools, or equipment for the period it is used on the project;

(4) The cost of general area, urban, or statewide planning of airports, as distinguished from planning a specific project;

(5) The value of any land, including improvements, donated to the sponsor by another public agency; and

(6) Any cost incurred in connection with raising funds by the sponsor, including interest and premium charges and administrative expenses involved in conducting bond elections and in selling bonds.

(c) *Allowable project costs.* To be an allowable project cost, for the purposes of computing the amount of grant, an item that is paid or incurred must, in the opinion of the Administrator—

(1) Have been necessary to accomplish airport development in conformity with the approved plans and specifications for an approved project and with the terms of the grant agreement for the project;

(2) Be reasonable in amount (or be subject to partial disallowance to the extent the Administrator determines it is unreasonable in amount);

(3) Have been incurred after the date the grant agreement was executed, except that costs of land acquisition, field surveys, planning, preparing plans and specifications, and administrative and incidental costs, may be allowed even though they were incurred before that date, if they were incurred after May 13, 1946;

(4) Be supported by satisfactory evidence; and

(5) Have not been included in any airport planning grant project under Subpart D of this part.

§ 152.49 U.S. share of project costs.

(a) *General.* The U.S. share of the allowable costs of a project is stated in the grant agreement for the project, to be paid from appropriations made under the Airport and Airway Development Act of 1970.

(b) *Fifty percent share.* Except as provided in paragraphs (c), (d), (e), and (f) of this section and in Subpart C of this part, the U.S. share of the costs of an approved project for airport development (regardless of its size or location) is 50 percent of the allowable costs of the project.

(c) *Shares: public land States.* The U.S. share of the costs of an approved project for airport development in a State in which the unappropriated and unreserved public lands and nontaxable Indian lands (individual and tribal) is more than 5 percent of its total land, is the percentage set forth in the following table:

State	*Percent*	*State*	*Percent*
Alaska	62.50	New Mexico	56.16
Arizona	60.65	Oregon	55.66
California	53.72	South Dakota	52.57
Colorado	52.68	Utah	60.65
Idaho	55.78	Washington	51.52
Montana	52.98	Wyoming	56.33
Nevada	62.50		

(d) *Eighty-two percent share.* The U.S. share of the costs of an approved project, representing the costs of any of the following, is 82 percent:

(1) The costs of installing high intensity runway edge lighting where a new runway edge lighting system is to be installed on a designated ILS runway and that runway is recommended in the National Airport System Plan to be eligible for the installation of an ILS within 5 years.

(2) The costs of installing touchdown zone and centerline runway lighting on a designated Category II runway.

(3) The costs of acquiring land, or a suitable property interest in land or in or over water, needed for installing, operating, and maintaining an ALS (as described in § 152.13 of this part). Where, instead of land acquisition, piers are constructed to install an ALS over water, the U.S. share of that construction cost is the share prescribed by paragraph (b) of this section.

(e) *Virgin Islands, American Samoa, and the Trust Territory of the Pacific*

Islands. The U.S. share of costs of any approved project in the Virgin Islands, American Samoa, or the Trust Territory of the Pacific Islands, is 75 percent.

(f) *Relocation expenses.* The U.S. share of the cost to a sponsor of providing payments and assistance under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 is 100 percent of the first $25,000 of the cost to the sponsor of providing payments and assistance for a displaced person under sections 206, 210, 215, and 305 of that Act on account of any displacement occurring after January 1, 1971 and (1) before July 1, 1972, or (2) after June 30, 1972, on account of an acquisition occurring before July 1, 1972.

§ 152.51 Performance of construction work: general requirements.

(a) *General.* All construction work under a project must be performed under contract, except in a case where the Administrator determines that the project, or a part of it, can be more effectively and economically accomplished on a force account basis by the sponsor or by another public agency acting for or as agent of the sponsor.

(b) *Requirements of local law.* Each contract under a project must meet the requirements of local law.

(c) *Change orders.* No sponsor may issue any change order under any of its construction contracts or enter into a supplemental agreement unless three copies of that order or agreement have been sent to and approved by the FAA. Sections 152.53 and 152.55 of this part apply to supplemental agreements as well as to original contracts.

(d) *Owner removal contracts.* This section and §§ 152.53 and 152.55 do not apply to contracts with the owners of airport hazards (as described in § 152.45 (c) of this part), buildings, pipelines, powerlines, or other structures or facilities, for installing, extending, changing, removing, or relocating that structure or facility. However, the sponsor must obtain the approval of the appropriate FAA office before entering into such a contract.

(e) *Commencement of work.* No sponsor may allow a contractor or subcontractor to begin work under a project until—

(1) The sponsor has furnished three conformed copies of the contract to the appropriate FAA office; and

(2) That office agrees to the issuance of a notice to proceed with the work to the contractor. However, that office does not agree to the issuance of such a notice to proceed with construction or any project phase if such construction or project phase will cause the displacement of any person unless the sponsor has submitted satisfactory written assurance that comparable replacement housing as defined in § 25.15 of the Regulations of the Office of the Secretary of Transportation will be available within a reasonable period of time before displacement. As used in this part, "project phase" includes initiation of negotiation for acquisition of land for the project development, whether or not Federal assistance is involved in the acquisition.

The sponsor must send three copies of the notice to the appropriate FAA office immediately after it is issued.

(f) *Engineering and construction: satisfactory supervision and inspection.* Except when the appropriate FAA office determines that the sponsor has previously demonstrated satisfactory engineering and construction supervision and inspection, no sponsor may allow a contractor or subcontractor to begin work, nor may the sponsor begin force account work, until the sponsor has notified the FAA in writing that engineering and construction supervision and inspection have been arranged to insure that construction will conform to FAA approved plans and specifications, and that the sponsor has caused a review to be made of the qualifications of personnel who will be performing such supervision and inspection and is satisfied that they are qualified to do so. Also, each proposal for engineering and planning services or for force account work must be submitted to the appropriate FAA office for approval before the commencement of the development of design plans and specifications in any project for airport development.

§ 152.53 Performance of construction work: letting of contracts.

(a) *Advertising required; exceptions.* Unless the Administrator approves another method for use on a particular airport development project, each contract for construction work on a project in the amount of more than $2,000 must be awarded on the basis of public advertising and open competitive bidding under the local law applicable to the letting of public contracts. Any oral or written agreement or understanding between a sponsor and another public agency that is not a sponsor of the project, under which that public agency undertakes construction work for or as agent of the sponsor, is not considered to be a construction contract for the purposes of this section, or §§ 152.51, 152.55, and 152.57 of this part.

(b) *Advertisement; conditions and contents.* There may be no advertisement for bids on, or negotiation of, a construction contract until the Administrator has approved the plans and specifications. The advertisement shall inform the bidders of the contract and reporting provisions required by § 152.61 of this part. Unless the estimated contract price or construction cost is $2,000 or less, there may be no advertisement for bids or negotiations until the Administrator has given the sponsor a copy of a decision of the Secretary of Labor establishing the minimum wage rates for skilled and unskilled labor under the proposed contract. In each case, a copy of the wage determination decision must be set forth in the initial invitation for bids or proposed contract or incorporated therein by reference to a copy set forth in the advertised or negotiated specifications.

(c) *Procedures for obtaining wage determinations*—(1) *Specific request for wage determination.* At least 60 days before the intended date of advertising or negotiating under paragraph (b) of this section, the sponsor shall send to the appropriate FAA office, completed Department of Labor Form DB–11 or DB–11(a), as appropriate, with only the classifications needed in the performance of the work checked. General entries (such as "entire schedule" or "all applicable classifications") may not be used. Additional necessary classifications not on the form may be typed in the blank spaces or on an attached separate list. A classification that can be fitted into classifications on the form, or a classification that is not generally recognized in the area or in the industry, may not be used. Except in areas where the wage patterns are clearly established, the Form must be accompanied by any available pertinent wage payment or locally prevailing fringe benefit information.

(2) *General wage determination.* Whenever the wage patterns in a particular area for a particular type of construction are well settled and whenever it may be reasonably anticipated that there will be a large volume of procurement in that area for that type of construction, the Secretary of Labor, upon the request of a Federal agency or in his discretion, may issue a general wage determination when, after consideration of the facts and circumstances involved, he finds that the applicable statutory standards and those of Part 1, 29 CFR, Subtitle A, will be met. This general wage determination is used for all projects located in the area and for the type of construction covered by the general wage determination.

(d) *Use and effectiveness of wage determination*—(1) Wage determinations are effective only for 120 days from the date of the determinations. If it appears that a determination may expire between bid opening and award, the sponsor shall so advise the FAA as soon as possible. If it wishes a new request for wage determination to be made and if any pertinent circumstances have changed, it shall submit a new Form DB–11 or DB–11(a), as appropriate, and accompanying information. If it claims that the determination expires before award and after bid opening due to unavoidable circumstances, it shall submit proof of the facts which it claims support a finding to that effect.

(2) The Secretary of Labor may modify any wage determination before the award of the contract or contracts for which it was sought. If the proposed contract is awarded on the basis of public advertisement and open competitive bidding, any modification that the FAA receives less than 10 days before the opening of bids is not effective, unless the Administrator finds that there is reasonable time to notify bidders. A modification may not continue in effect beyond the effective period of the wage determination to which it relates. The Administrator sends any modification to the sponsor as soon as possible. If the

modification is effective, it must be incorporated in the invitation for bids, by issuing an addendum to the specifications or otherwise.

(e) *Requirements for awarding construction contracts.* A sponsor may not award a construction contract without the written concurrence of the Administrator (through the appropriate FAA office) that the contract prices are reasonable and that the contract conforms to the sponsor's grant agreement with the United States. A sponsor that awards contracts on the basis of public advertising and open competitive bidding, shall, after the bids are opened, send a tabulation of the bids and its recommendations for award to the appropriate FAA office. The allowable project costs of the work, on which the Federal participation is computed, may not be more than the bid of the lowest responsible bidder. The sponsor may not accept a bid by a contractor whose name appears on the current list of ineligible contractors published by the Comptroller General of the United States under § 5.6(b) of the regulations of the Secretary of Labor (29 CFR Part 5), or a bid by any firm, corporation, partnership, or association in which the contractor has a substantial interest.

(f) *Applicability of interpretations of the Secretary of Labor.* Where applicable by their terms, the regulations of the Secretary of Labor (29 CFR 5.20–5.32) interpreting the "fringe benefit provisions" of the Davis-Bacon Act apply to this section.

§ 152.55 Performance of construction work: contract requirements.

(a) *Contract provisions.* In addition to any other provisions necessary to insure completion of the work in accordance with the grant agreement, each sponsor entering into a construction contract for an airport development project shall insert in the contract the provisions required by the Secretary of Labor, as set forth in Appendix H to this part. The Director, Airports Service, may amend any provision in Appendix H from time to time to accord with rulemaking action of the Secretary of Labor. The provisions in the following subparagraphs also must be inserted in the contract:

(1) *Airport Development Aid Program Project.* The work in this contract is included in Airport Development Aid Program Project No. ------ which is being undertaken and accomplished by the [insert sponsor's name] in accordance with the terms and conditions of a grant agreement between the [insert sponsor's name] and the United States, under the Airport and Airway Development Act of 1970 (84 Stat. 219) and Part 152 of the Federal Aviation Regulations (14 CFR Part 152), pursuant to which the United States has agreed to pay a certain percentage of the costs of the project that are determined to be allowable project costs under that Act. The United States is not a party to this contract and no reference in this contract to the FAA or any representative thereof, or to any rights granted to the FAA or any representative thereof, or the United States, by the contract, makes the United States a party to this contract.

(2) *Consent to assignment.* The contractor shall obtain the prior written consent of the [insert sponsor's name] to any proposed asignment of any interest in or part of this contract.

(3) *Convict labor.* No convict labor may be employed under this contract.

(4) *Veterans preference.* In the employment of labor (except in executive, administrative, and supervisory positions), preference shall be given to qualified individuals who have served in the military service of the United States (as defined in section 101(1) of the Soldiers' and Sailors' Civil Relief Act of 1940 (50 U.S.C. App. 501) and have been honorably discharged from the service, except that preference may be given only where that labor is available locally and is qualified to perform the work to which the employment relates.

(5) *Withholding: sponsor from contractor.* Whether or not payments or advances to the [insert sponsor's name] are withheld or suspended by the FAA, the [insert sponsor's name] may withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics employed by the contractor or any subcontractor on the work the full amount of wages required by this contract.

(6) *Nonpayment of wages.* If the contractor or subcontractor fails to pay any laborer or mechanic employed or working on the site of the work any of the wages required by this contract the [insert sponsor's name] may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment or advance of funds until the violations cease.

(7) *FAA inspection and review.* The contractor shall allow any authorized representative of the FAA to inspect and review any work or materials used in the performance of this contract.

(8) *Subcontracts.* The contractor shall insert in each of his subcontracts the provisions contained in paragraphs [insert designation of 6 paragraphs of contract corresponding to subparagraphs (1), (3), (4), (5), (6), and (7) of this paragraph], and also a clause requiring the subcontractors to include these provisions in any lower tier subcontracts which they may enter into, together with a clause requiring this insertion in any further subcontracts that may in turn be made.

(9) *Contract termination.* A breach of paragraphs [insert designation of 3 paragraphs corresponding to subparagraphs (6), (7), and (8) of this paragraph] may be grounds for termination of the contract.

(b) *Exemption of certain contracts.* Appendix H to this Part and subparagraph (a)(5) of this section do not apply to prime contracts of $2,000 or less.

(c) *Adjustment in liquidated damages.* A contractor or subcontractor who has become liable for liquidated damages under paragraph G of Appendix H to this part and who claims that the amount administratively determined as liquidated damages under section 104(a) of the Contract Work Hours and Safety Standards Act is incorrect or that he violated inadvertently the Contract Work Hours and Safety Standards Act notwithstanding the exercise of due care, may—

(1) If the amount determined is more than $100, apply to the Administrator for a recommendation to the Secretary of Labor that an appropriate adjustment be made or that he be relieved of liability for such liquidated damages; or

(2) If the amount determined is $100 or less, apply to the Administrator for an appropriate adjustment in liquidated damages or for release from liability for the liquidated damages.

(d) *Corrected wage determinations.* The Secretary of Labor corrects any wage determination included in any contract under this section whenever the wage determination contains clerical errors. A correction may be made at the Administrator's request or on the initiative of the Secretary of Labor.

(e) *Applicability of interpretations of the Secretary of Labor.* When applicable by their terms, the regulations of the Secretary of Labor (29 CFR 5.20–5.32) interpreting the "fringe benefit provisions" of the Davis-Bacon Act apply to the contract provisions in Appendix H, and to this section.

§ 152.57 Performance of construction work: sponsor force account.

(a) *General.* Construction by sponsor force account is considered to be construction done by the sponsor with its own labor force, or by another public agency with its own labor force and acting as agent of the sponsor, as distinguished from acting in the capacity of a private contractor. In sponsor force account construction, all purchase or rental of supplies and equipment is performed and paid for by the sponsor itself or the public agency acting as agent, and all skilled and unskilled labor engaged in work on the project is carried on the sponsor's payroll or the payroll of the public agency acting as its agent.

(b) *Requirements.* Before undertaking any force account construction work, the sponsor (or any public agency acting as agent for the sponsor) must obtain the written consent of the Administrator through the appropriate FAA office. In requesting that consent, the sponsor must submit—

(1) Adequate plans and specifications showing the nature and extent of the construction work to be performed under that force account;

(2) A schedule of the proposed construction and of the construction equipment that will be available for the project;

(3) Assurance that adequate labor, material, equipment, engineering personnel, as well as supervisory and inspection personnel as required by § 152.51(f) of this part, will be provided; and

(4) A detailed estimate of the cost of the work, broken down for each class

of costs involved, such as labor, materials, rental of equipment, and other pertinent items of cost.

§ 152.59 Performance of construction work: labor requirements.

A sponsor who is required to include in a construction contract the labor provisions required by § 152.55 of this part shall require the contractor to comply with those provisions and shall cooperate with the FAA in effecting that compliance. For this purpose the sponsor shall—

(a) Keep, and preserve, for a 3-year period beginning on the date the contract is completed, each affidavit and payroll copy furnished by the contractor, and make those affidavits and copies available to the FAA, upon request, during that period;

(b) Have each of those affidavits and payrolls examined by its resident engineer (or any other of its employees or agents who is qualified to make the necessary determinations), as soon as possible after receiving it, to the extent necessary to determine whether the contractor is complying with the labor provisions required by § 152.55 and particularly with respect to whether the contractor's employees are correctly classified;

(c) Have investigations made during the performance of work under the contract, to the extent necessary to determine whether the contractor is complying with those labor provisions, particularly with respect to whether the contractor's employees are correctly classified, including in the investigations, interviews with employees and examinations of payroll information at the worksite by the sponsor's resident engineer (or any other of its employees or agents who is qualified to make the necessary determinations); and

(d) Keep the appropriate FAA office fully advised of all examinations and investigations made under this section, all determinations made on the basis of those examinations and investigations, and all efforts made to obtain compliance with the labor provisions of the contract.

For the purpose of paragraph (c) of this section, the sponsor shall give priority to complaints of alleged violations, and treat as confidential any written or oral statements made by any employee. The sponsor may not disclose an employee's statement to a contractor without the employee's consent.

§ 152.61 Equal employment opportunity requirements.

(a) *Incorporation by reference.* There are hereby incorporated by reference into this part the regulations issued by the Secretary of Labor on May 21, 1968, and published in the FEDERAL REGISTER on May 28, 1968 (41 CFR Part 60–1, 33 F.R. 7804), except for the following provisions:

(1) Paragraph (a), "Government contracts", of § 60–1.4, "Equal opportunity clause."

(2) Section 60–1.6, "Duties of agencies."

(b) *Applicability and effectiveness.* The regulations incorporated by reference in paragraph (a) of this section apply to grant agreements made after June 30, 1968. They also apply to contracts, as defined in § 60–1.3(f) of those regulations, entered into under any grant agreement before or after the date, as provided in § 60–1.47 of those regulations.

(c) *Local affirmative action plans.* The sponsor is required to include in the invitation for bids or other solicitation used for a construction contract under the Airport Development Aid Program a notice stating that to be eligible for award each bidder will be required to comply with the affirmative action plan for equal employment opportunity prescribed by the Office of Federal Contract Compliance (OFCC), U.S. Department of Labor in Chapter 60, Regulations of the Secretary of Labor (41 CFR chapter 60), or by other relevant orders of that office, with respect to designated trades used in performance of the contract and other nonfederally involved construction in the area geographically defined in the plan. The form of the notice shall be substantially similar to the notice designated in those regulations as Appendix A to each plan for each geographical area.

§ 152.63 Accounting and audit of records of sponsors and contractors.

(a) *Accounting records.* Each sponsor shall establish and maintain, for each individual project, an adequate accounting record to allow appropriate personnel of the FAA to determine all funds received (including funds of the sponsor and funds received from the United States or other sources), and to determine the allowability of all incurred costs of the project. The sponsor shall segregate and group project costs so that it can furnish, on due notice, cost information in the following cost classifications:

(1) Purchase price or value of land.

(2) Cost of relocation payments and assistance.

(3) Incidental costs of land acquisition.

(4) Costs of contract construction.

(5) Costs of force account construction.

(6) Engineering costs of plans and designs.

(7) Engineering costs of supervision and inspection.

(8) Other administrative costs.

(b) *Documentary evidence.* The sponsor shall obtain and retain in its files for a period of 3 years after the date of the final grant agreement, documentary evidence such as invoices, cost estimates, and payrolls supporting each item of project costs.

(c) *Retention of evidence of payment.* The sponsor shall retain, for a period of 3 years after the date of the final grant payment, evidence of all payments for items of project costs including vouchers, canceled checks or warrants, and receipts for cash payments.

(d) *Availability of records.* The sponsor shall allow the Administrator and the Comptroller General of the United States, or an authorized representative of either of them, access to any of its books, documents, papers, and records that are pertinent to grants received under the Airport Development Aid Program for the purposes of accounting and audit. Appropriate FAA personnel may make progress audits at any time during the project, upon notice to the sponsor. If work is suspended on the project for an appreciable period of time, an audit will be made before any semifinal payment is made. In each case an audit is made before the final payment.

(e) *Availability of contractor's records.* The sponsor shall include in each contract of the cost reimbursable type a clause which allows the Administrator and the Comptroller General of the United States, or an authorized representative of either, access to the contractor's records pertinent to the contract for the purposes of accounting and audit.

§ 152.65 Grant payments: general.

(a) *Application.* An application for a grant payment is made on FAA Form 5100–6, accompanied by—

(1) A summary of project costs on FAA Form 5100–7;

(2) A periodic cost estimate on FAA Form 5100–8 for each contract representing costs for which payment is requested; and

(3) Any supporting information, including appraisals of property interests, that the FAA needs to determine the allowability of any costs for which payment is requested.

(b) *Contractor certification as to labor provisions.* Each application that involves work performed by a contractor must contain, in the contractor's certification in the periodic cost estimate, a statement that "there has been full compliance with all labor provisions included in the contract identified above and in all subcontracts made under the contract", and, in the case of a substantial dispute as to the nature of the contractor's or a subcontractor's obligation under the labor provisions of the contract or a subcontract, an additional phrase "except insofar as a substantial dispute exists with respect to these provisions".

(c) *Failure of contractor to comply with labor provisions.* If a contractor or a subcontractor fails or refuses to comply with the labor provisions of the contract with the sponsor, further grant payments to the sponsor are suspended until the violations stop, until the Administrator determines the allowability of the project costs to which the violations relate, or, to the extent that the violations consist of underpayments to labor, until the sponsor furnishes satisfactory assurances to the FAA that restitution has been or will be made to the affected employees.

(d) *Excess of grant payments.* If, upon final determination of the allowability of all project costs of a project, it is found that the total of grant payments to the sponsor was more than the total

U.S. share of the allowable costs of the project, the sponsor shall promptly return the excess to the FAA.

§ 152.67 Grant payments: land acquisition.

(a) *General.* If an approved project includes land acquisition as an item of airport development, the sponsor may, at any time after executing the grant agreement and after title evidence has been approved by the Administrator for the property interest for which payment is requested, apply to the FAA, through the appropriate FAA office, for payment of the U.S. share of the allowable project costs of the acquisition, including any acquisition that is completed before executing the grant agreement and is part of the airport development included in the project.

(b) *Additional requirements.* Payment referred to in paragraph (a) of this section may be made only if the sponsor has complied with § 152.47(c) of this part, and—

(1) The land was acquired before January 2, 1971, and the acquisition has not resulted or will not result in the displacement of any person on or after that date;

(2) The sponsor has complied, to the extent it is able under State and local law, with the requirements of § 210 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, where the acquisition has resulted or will result in the displacement of any person on or after January 2, 1971, and before July 1, 1972;

(3) The sponsor has complied, to the extent it is able under State and local law, with § 305 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 where the land has been or will be acquired after the effective date of this part and before July 1, 1972, whether or not the acquisition has resulted or will result in the displacement of any person; or

(4) The sponsor has complied with the requirements of § 210 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, where the acquisition has resulted or will result in the displacement of any person after June 30, 1972, and with § 305 of that Act if the land is acquired after June 30, 1972, whether or not the acquisition has resulted or will result in the displacement of any person after that date.

§ 152.69 Grant payments: partial.

(a) *General.* Subject to the final determination of allowable project costs as provided in § 152.63 of this part, partial grant payments for project costs may be made to a sponsor upon application. Unless previously agreed otherwise, a sponsor may apply for partial payments on a monthly basis. The payments may be paid, upon application, on the basis of the costs of airport development that is accomplished or on the basis of the estimated cost of airport development expected to be accomplished.

(b) *Amount.* Except as otherwise provided, partial grant payments are made in amounts large enough to bring the aggregate amount of all partial payments to the estimated U.S. share of the project costs of the airport development accomplished under the project as of the date of the sponsor's latest application for payment. In addition, if the sponsor applies, a partial grant payment is made as an advance payment in an amount large enough to bring the aggregate amount of all partial payments to the estimated project costs of the airport development expected to be accomplished within 30 days after the date of the sponsor's application for advance payment. However, no partial payment may be made in an amount that would bring the aggregate amount of all partial payments for the project to more than 90 percent of the estimated U.S. share of the total estimated cost of all airport development included in the project, but not including contingency items, or 90 percent of the maximum obligation of the United States as stated in the grant agreement, whichever amount is the lower. In determining the amount of a partial grant payment, those project costs that the Administrator considers to be of questionable allowability are deducted both from the amount of project costs incurred and from the amount of the estimated total project cost.

§ 152.71 Grant payments: semifinal and final.

(a) *Semifinal payment.* Whenever certain airport development on a project is delayed or suspended for an appreciable period of time for reasons beyond the sponsor's control and the allowability of the project costs of all airport development completed has been determined on the basis of an audit and review of all costs, a semifinal grant payment may be made in an amount large enough to bring the aggregate amount of all partial grant payments for the project to the U.S. share of all allowable project costs incurred, even if the amount is more than the 90-percent limitation prescribed in § 152.69 (b) of this part. However, it may not be more than the maximum obligation of the United States as stated in the grant agreement.

(b) *Final payment.* Whenever the project is completed in accordance with the grant agreement, the sponsor may apply for final payment. The final payment is made to the sponsor if—

(1) A final inspection of all work at the airport site has been made jointly by the appropriate FAA office and representatives of the sponsor and the contractor, unless that office agrees to a different procedure for final inspection;

(2) A final audit of the project account has been completed by appropriate personnel of the FAA; and

(3) The sponsor has furnished final "as constructed" plans, unless otherwise agreed to by the Administrator.

(c) *Payment of U.S. share.* Based upon the final inspection, the final audit, the plans, and the documents and supporting information required by § 152.65(a) of this part, the Administrator determines the total amount of the allowable project costs and pays the sponsor the U.S. share, less the total amount of all prior payments.

§ 152.73 Public hearings.

(a) *Notice of opportunity for public hearing.* Before submitting a request for aid (FAA Form 5100–3) for an airport development project involving the location of an airport, an airport runway, or a runway extension, the sponsor must give adequate public notice that opportunity is afforded for a public hearing for the purpose of considering the economic, social, and environmental effects of the location of the airport, the airport runway, or the runway extension, and the consistency thereof with the goals and objectives of such urban planning as has been carried out by the community.

(b) *Form of notice.* The notice of opportunity for public hearing must include a concise statement of the proposed development, and it must be published in a newspaper of general circulation in the communities in or near which the project may be located. The notice must provide a minimum of 15 days from the date of publication for submission of requests for a hearing to persons having an interest in the economic, social, and environmental effects of the project, and it must state the manner in which the hearing may be requested. The notice must further state that a copy of the sponsor's environmental analysis is and will be available at the sponsor's place of business for examination by the public for a minimum of 30 days, beginning with the date of the notice, before any hearing held pursuant to the notice.

(c) *Notice of public hearing.* A public hearing must be provided if requested, and if a public hearing is to be held pursuant to receipt of a request the sponsor must publish a notice of that fact in the same newspaper in which the notice of opportunity for a hearing was published. The notice must be published at least 15 days before the date set for the hearing, and must specify the date, time, and place of the hearing. The notice must contain a concise description of the proposed project, and indicate where and at what times more detailed information may be obtained.

(d) *Report of hearing.* If a public hearing is held, the sponsor must provide to the Administrator a summary of the issues raised, the alternatives considered, the conclusion reached, and the reasons for that conclusion. He also must, upon request, provide a copy of a transcript of the public hearing to the Administrator.

(e) *Review and evaluation.* If the Administrator requests from the sponsor a copy of a transcript of the public hearing, the Administrator reviews the transcript—

(1) To assure that an adequate opportunity was afforded for the presentation of views by all persons with an interest in the economic, social, and environmental effects of the location of the airport, the airport runway, or the runway extension; and

(2) To assist him in making the determinations required by § 152.45(b) of this part for approval of projects found to have adverse effects after consulting with the Secretary of the Interior and the

Secretary of Health, Education, and Welfare.

(f) *Hearing not held.* A hearing need not be held if, after adequate public notice of opportunity for a hearing, no person having an interest in the economic, social, and environmental effects of the project requests a hearing. In such a case the sponsor must accompany his request for aid with a certification that adequate notice of opportunity for a hearing has been provided, and that no request for a public hearing has been received. Proof of publication of the notice must be submitted with the certification.

§ 152.75 Forms.

(a) *General.* The forms used for the purposes of Subparts B and C of this part are as follows:

(1) *Request for Federal-Aid, FAA Form 5100–3.* Contains a statement requesting Federal aid in carrying out a project under the Airport and Airway Development Act of 1970, with appropriate spaces for inserting information needed for considering the request, including the location of the airport, the amount of funds available to the sponsor, a description of the proposed work, and its estimated cost.

(2) *Project Application, FAA Form 5100–10.* A formal application for Federal aid to carry out a project under Subparts B and C. It contains four parts:

(i) *Part I*—For pertinent information regarding the airport and proposed work included in the project.

(ii) *Part II*—For incorporating the representations of the sponsor relating to its legal authority to undertake the project, the availability of funds for its share of the project costs, approvals of other non-U.S. agencies, the existence of any default on the compliance requirements of § 152.7(a) of this part, possible disabilities, and other ownership of lands and interests in lands to be used in carrying out the project and operating the airport.

(iii) *Part III*—For incorporating the sponsor's assurances regarding the operation and maintenance of the airport, further development of the airport, and the acquisition of any additional interests in lands that may be needed to carry out the project or for operating the airport.

(iv) *Part IV*—For a statement of the sponsor's acceptance, to be executed by the sponsor and certificated by its attorney.

(3) *Grant Agreement, FAA Form 5100–13*—(i) *Part I*—Offer by the United States to pay a specified percentage of the allowable costs of the project, as described therein, on specified terms relating to the undertaking and carrying out of the project, determination of allowability of costs, payment of the U.S.'s share, and operation and maintenance of the airport in accordance with assurances in the project application.

(ii) *Part II*—Acceptance of the offer by the sponsor, execution of the acceptance by the sponsor, and certification by its attorney.

(4) *Application for Grant Payment, FAA Form 5100–6.* Application for payment under a grant agreement for work completed as of a specific date or to be completed by a specific date, with space for an appropriate breakdown of project costs among the categories shown therein, and certification provisions to be executed by the sponsor and the appropriate FAA office.

(5) *Summary of Project Costs, FAA Form 5100–7.* For inserting the latest revised estimate of total project costs, the total costs incurred as of a specific date, an estimate of the aggregate of those total costs incurred to date and those to be incurred before a specific date in the future.

(6) *Periodic Cost Estimate, FAA Form 5100–8.* A certification to be executed by the contractor, with space for information regarding the progress of construction work as of a specific date, and the value of the completed work.

(b) *Availability of forms.* Copies of the forms listed in paragraph (a) of this section, and assistance in completing and executing them, are available from FAA offices.

Subpart C—Project Programing Standards for Airport Development Projects

§ 152.81 Applicability.

(a) *General.* This subpart prescribes programing and design and construction standards for airport development projects under the Airport Aid Program to assure the most efficient use of program funds and to assure that the most important elements of a national system of airports are provided.

(b) *Effective dates of standards.* Except for the standards made mandatory by § 152.83(a) of this part, the standards prescribed in this subpart that apply to any particular project are those in effect on the date the sponsor accepts the Administrator's offer under § 152.35(c) of this part. The standards of § 152.83(a) applicable to a project are those in effect on the date written on the notification of tentative allocation of funds (§ 152.23(b) of this part). Standards that become effective after that date may be applied to the project by agreement between the sponsor and the Administrator.

§ 152.83 Incorporation by reference of technical guidelines in Advisory Circulars.

(a) *Provisions incorporated; mandatory standards.* The technical guidelines in the Advisory Circulars, or parts of circulars, listed in Appendix I to this part, are incorporated into this subpart by reference. Guidelines so incorporated are mandatory standards and apply in addition to the other standards in this subpart. No provision so incorporated and made mandatory supersedes any other provision of this Part 152 (other than of Appendix I) or of any other part of the Federal Aviation Regulations. Each circular is incorporated with all amendments outstanding at any time unless the entry in Appendix I states otherwise.

(b) *Amendments of Appendix I.* The Director, Airports Service, may add to, or delete from, Appendix I any Advisory Circular or part thereof.

(c) *Availability of Advisory Circulars.* The Advisory Circulars listed in Appendix I may be inspected and copied at any FAA Regional Office or Airports District Office. Copies of the circulars that are available free of charge may be obtained from any of the offices or from the Federal Aviation Administration, Distribution Unit, TAD 483.1, Washington, D.C. 20590. Copies of the Circulars that are for sale may be bought from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 for the price listed.

§ 152.85 Land acquisition.

The acquisition of land or any interest therein, or of any easement or other interest in airspace, is eligible for inclusion in a project if it was made after May 13, 1946, and is necessary—

(a) To allow the initial development of the airport;

(b) For improvement indicated in the current National Airport System Plan;

(c) For ultimate development of the airport, as indicated in the current approved airport layout plan to the extent consistent with the National Airport System Plan;

(d) For approach protection meeting the standards of § 77.23 as applied to § 77.25 of this chapter;

(e) To allow installing an ALS (as described in § 152.13 of this part), in which case the costs of acquiring land needed for it is eligible for 82 percent U.S. participation if the need is shown in the National Airport System Plan, based on the best information available to the FAA for the forecast period;

(f) To allow proper use, operation, or maintenance of the airport as a public facility, including offsite lands needed for locating necessary parts of the utility systems serving the airport;

(g) To allow installing navigational aids or any component thereof within or beyond the airport boundaries;

(h) To allow relocation of navigational aids; or

(i) For future airport development consistent with the National Airport System Plan, subject to any conditions that may be prescribed by the Administrator.

Appendix A to this part sets forth typical eligible and ineligible items of land acquisition as covered by this section.

§ 152.87 Preparation of site.

(a) *General.* Grading, drainage, and associated items of site preparation are eligible for inclusion in a project, but only with respect to one runway safety area at any airport, unless the airport qualifies for more than one runway, based on traffic volume or wind conditions (as outlined in § 152.91 or § 152.93 of this part) and the overall site preparation required for development in accordance with the airport layout plan. In the case of a new runway or extension of an existing runway, the complete clearance of runway

clear zone areas is desirable, but, as a minimum, all obstructions as determined by § 77.23 as applied to § 77.25 of this chapter must be removed. Grading of the extended runway safety area and grading to remove terrain that is an obstruction are eligible. Specific site preparation for an airport building is eligible on the same basis as the building itself. The site preparation cost is prorated based on eligible and ineligible building space.

(b) *Eligible offsite drainage work.* Eligible drainage work off the airport site includes drainage outfalls, drainage disposal, and interception ditches. If there is damage to adjacent property, its correction is an eligible item for inclusion in the project.

Appendix B to this part sets forth typical eligible and ineligible items of site preparation as covered by this section.

§ 152.89 Runway paving: general rules.

(a) *General.* On any airport, paving of the designated instrument landing runway (or dominant runway if there is no designated instrument runway) is eligible for inclusion in a project, within the limits of the current National Airport System Plan. Program participation in constructing, reconstructing, or resurfacing is limited to a single runway at each airport, unless more than one runway is eligible under a standard in § 152.91 or § 152.93 of this part.

(b) *Specific.* The kinds of runway paving that are eligible for inclusion in a project include pavement construction and reconstruction, and include runway grooving to improve skid resistance, resurfacing to increase the load bearing capacity of the runway or to provide a leveling course to correct major irregularities in the pavement. Runway resealing and refilling joints as ordinary maintenance matters are not eligible items, except for bituminous resurfacing consisting of at least 100 pounds of plant-mixed material for each square yard, and except for the application of a bituminous surface treatment (two applications of material and cover aggregate as prescribed in FAA Specification P-609) on a pavement the current surface of which consists of that kind of a bituminous surface treatment.

(c) *Bituminous seal coat: new construction.* On new pavement construction, the applying of a bituminous seal coat on plant hot-mix bituminous surfaces only, is an eligible item only if initial engineering analysis and design indicate the need for a seal coat. However, any delay in applying it that is caused other than by construction difficulties, makes the application a maintenance item that is not eligible.

(d) *Bituminous seal coat: runway extension or partial reconstruction.* In any case in which the need for a seal coat is necessary for a new runway extension or partial reconstruction of a runway, the entire runway may be sealed.

Appendix C to this part sets forth typical eligible and ineligible items of runway paving.

§ 152.91 Runway paving: second runway; wind conditions.

(a) *All airports.* Paving a second runway on the basis of wind conditions is eligible for inclusion in a project only if the sponsor shows that—

(1) The airport meets the applicable standards of paragraph (b) or (c) of this section:

(2) The operational experience, and the economic factors of air traffic at the location, justify an additional runway for the airport; and

(3) The second runway is oriented with the existing paved runway to achieve the maximum wind coverage, with due consideration to the airport noise factor, topography, soil conditions, and other pertinent factors affecting the economy and efficiency of the runway development.

(b) *Airports and runways serving large aircraft and small turbojet powered aircraft.* The airport or runway serves both large aircraft and small turbojet powered aircraft, and the existing paved runway is subject to a cross-wind component of more than 15 miles per hour (13 knots) more than 5 percent of the time.

(c) *Airports and runways serving small aircraft other than turbojet powered aircraft.* The airport or runway serves small aircraft (other than turbojet powered aircraft), and the existing paved runway is subject to a cross-wind component of more than 12 miles per hour (10.5 knots) more than 5 percent of the time.

§ 152.93 Runway paving: additional runway; other conditions.

Paving an additional runway on an airport that does not qualify for a second runway under § 152.91 of this part is eligible if the Administrator, upon consideration on a case-to-case basis, is satisfied that—

(a) The volume of traffic justifies an additional paved runway and the layout and orientation of the additional runway will expedite traffic; or

(b) A combination of traffic volume and aircraft noise problems justifies an additional paved runway for that airport.

§ 152.95 Taxiway paving.

The construction, alteration, and repaid of taxiways needed to expedite the flow of ground traffic between runways and aircraft parking areas available for general public use are eligible items under the program. Taxiways to serve an area or facility that is primarily for the exclusive or near exclusive use of a tenant or operator that does not furnish aircraft servicing to the public are not eligible. In addition, the policies on resealing or refilling joints, as set forth in § 152.89 of this part, apply also to taxiway paving.

Appendix D to this part sets forth typical eligible and ineligible items of taxiway paving.

§ 152.97 Aprons.

(a) *General.* The construction, alteration, and repair of aprons are eligible program items upon being shown that they are needed as public use facilities. An apron to serve an area that is primarily for the exclusive or near exclusive use of a tenant or operator who does not furnish aircraft servicing to the public is not eligible. In addition, the policies on resealing or refilling joints, as set forth in § 152.89 of this part, apply also to apron paving.

(b) *Hangar use.* In determining public use for the purposes of this section, the current use being made of a hangar governs, unless there is definite information regarding its future use. In the case of an apron area being built for future hangars, it must be shown that early hangar development is assured and that the hangars will be public facilities.

Appendix E to this part sets forth typical eligible and ineligible items of apron paving.

§ 152.99 Special treatment areas.

Special treatment of areas adjacent to paved runways, holding aprons, and taxiways is eligible for inclusion in a project where the operation of turbojet powered aircraft makes the treatment necessary to prevent erosion from the blast effects of those aircraft. The type and areas of treatment must be in accordance with the standards and guidelines set forth in applicable Advisory Circulars listed in Appendix I to this part.

§ 152.101 Lighting and electrical work: general.

(a) *General.* The installing of lighting facilities and related electrical work, as provided in § 152.103 of this part, is eligible for inclusion in a project only if the Administrator determines, for the particular airport involved, that they are needed to insure—

(1) Its safe and efficient use by aircraft under § 152.13 of this Part; or

(2) Its continued operation and adequate maintenance, and it has a large enough volume (actual or potential) of night operations.

(b) *Requirements.* Before the Administrator makes a grant offer to the sponsor of a project that includes installing lighting facilities and related electrical work under paragraph (a) of this section, the sponsor must—

(1) Provide in the project for removing, relocating, or adequately marking and lighting, each obstruction in the approach and turning zones, as provided in § 152.107(a) of this part;

(2) Provide in the project for installing an approved airport beacon if one is not already installed;

(3) Acknowledge its awareness of the cost of operating and maintaining airport lighting; and

(4) Agree to operate the airport lighting installed—

(i) Throughout each night of the year; or

(ii) According to a satisfactory plan of operation, submitted under paragraph (c) of this section.

(c) *Special operation plan: requirements.* The sponsor of a project that includes installing airport lighting and related electrical work, under paragraph (a) of this section, may—

(1) Submit to the Administrator a proposed plan of operation of the airport lighting installed for periods less than throughout each night of the year;

(2) Specify, in the proposed plan, the times when the airport lighting installed will be operated; and

(3) Satisfy the Administrator that the proposed plan provides for safety in air commerce, and justifies the investment of program funds.

§ 152.103 Lighting and electrical work: specific.

(a) *Number of runways eligible.* The number of runways that are eligible for lighting is the same as the number eligible for paving under §152.89, § 152.91, or § 152.93 of this part.

(b) *High-intensity runway edge lighting.* The installation of high intensity runway edge lighting is eligible where a new runway edge lighting system is to be installed on a designated ILS runway and that runway is recommended in the National Airport System Plan to be eligible for the installation of an ILS within 5 years.

A runway that is eligible for lighting, but does not meet the requirements for 82 percent U.S. participation under § 152.49(d) of this part, is eligible for 50 percent U.S. participation in the costs of high intensity runway edge lighting (or the allowable percentage in § 152.49 (c) for public land States), if the airport is served by a navigational aid that will allow nonprecision instrument approach procedures. If a runway is not eligible for 82 or 50 percent Federal participation in high intensity runway edge lighting but is otherwise eligible for runway lighting, the U.S. share of the cost of the runway edge lighting is 50 percent of the lighting installed but not more than 50 percent of the cost of medium intensity lighting.

(c) *Touchdown zone and centerline runway lighting.* Touchdown zone and centerline runway lighting are eligible on the designated Category II runway. Touchdown zone and centerline runway lighting are also eligible at 50 percent U.S. participation on a runway where a reduction in landing minimums below Category I minimums can be reasonably assured, based upon equipment installed or recommended in the National Airport System Plan to be eligible for installation within 5 years, even though the runway is not a designated Category II runway. Centerline runway lighting is also eligible at 50 percent U.S. participation on a runway designated for takeoffs under Category II conditions at large hub airports.

(d) *Taxiways.* Taxiways to eligible runways on airports served by transport aircraft are eligible for lighting. On airports serving only general aviation, the lighting of connecting taxiways is eligible if the runway served is lighted or is programed to be lighted. The lighting of a parallel taxiway is eligible if the taxiway is eligible for paving. Lighting of other taxiways is eligible or not, depending on the complexity of the taxiway system.

(e) *Floodlighting of aprons.* Floodlighting of aprons is eligible if there is a proven need for it, including a showing of night operations where the runway is lighted.

(f) *Airport beacon.* Any airport that is eligible to participate in the costs of runway lighting is eligible for the installing of an airport beacon, lighted wind indicator, obstruction lights, lighting control equipment, and other components of basic airport lighting, including separate transformer vaults and connection to the nearest available power source.

(g) *Power sources.* The interconnection of two or more power sources on an airport property, the providing of second sources of power, and the installing of standby engine generators of reasonable capacity, are eligible under the Program.

(h) *Economy approach lighting aids.* (1) The following approach lighting aids are eligible for inclusion in a project at an airport that will not qualify within the next 3 years for approach lighting aids installed by the FAA under the Facilities and Equipment Program:

(i) Medium Intensity Approach Lighting System (MALS) is eligible on any runway with an assigned, or having the potential for, nonprecision instrument approach where a visual problem exists on the approach. Medium Intensity Approach Lighting System with Sequenced Flasher (MALSF) is eligible where an identification problem exists on the approach.

(ii) Runway End Identifier Light System (REILS) is eligible for runways where identification of the ends is difficult. It is not eligible where MALS is installed.

(2) A two-box Visual Approach Slope Indicator (VASI–2) is eligible on lighted runways not served by turbojet powered aircraft. The VASI–2 is mandatory with new construction of Medium Intensity Runway Lights (MIRL) on runways at airports serving small aircraft (other than turbojet powered aircraft). The VASI–2 is also eligible for installation on runways with an approach slope deficiency and for retrofitting existing runways on such of those airports that have MIRL installed.

(3) A Simple Abbreviated Visual Approach Slope Indicator (SAVASI) is eligible only at airports serving small aircraft (other than turbojet powered aircraft), where there is a need to limit the load in the lighting circuit. The VASI–2 is selected if electrical capacity is not a problem, since it has a growth potential to the four-box VASI (VASI–4). Where the VASI–2 would provide an excessive load on the electrical circuits at airports that only serve small aircraft (other than turbojet powered aircraft), the installation of SAVASI in conjunction with new MIRL construction is mandatory. The SAVASI is also eligible on the same basis for retrofitting existing runways on such of those airports that have MIRL installed.

Appendix F to this part sets forth typical eligible and ineligible items of airport lighting covered by § 152.101 and this section.

§ 152.105 Roads.

(a) *General.* Airport Development Aid Program funds may not be used to resolve highway problems. Only those airport entrance roads that are definitely needed and are intended only as a way in and out of the airport are eligible.

(b) *Eligible roads and streets.* The construction, alteration, and repair of airport roads and streets that are entirely within the airport boundaries are eligible under the program, if needed for operating and maintaining the airport. In the case of an entrance road, a strip right-of-way joining the main body of the airport to the nearest public road may be considered a part of the normal boundary of the airport if—

(1) Adequate title is obtained;

(2) It was acquired to provide an airport entrance road and was not, before the existence of the airport, a public thoroughfare;

(3) The entrance road is intended only as a way in and out of the airport; and

(4) The entrance road extends only to the nearest public highway, road, or street.

(c) *More than one entrance road.* More than one entrance road is eligible if the volume of airport surface traffic requires the additional roads for safety and avoidance of congestion.

(d) *Joinder of entrance road to existing highway.* An entrance road may be joined to an existing highway or street with a normal fillet connection. Accessory facilities such as acceleration—deceleration strips, grade separations, bus stops, and road lighting, are eligible when needed for the safe accommodation of heavy volume of surface traffic.

(e) *Offsite road or street relocation.* Offsite road or street relocation needed to allow airport development or to remove an obstruction, and not for entrance road purposes, is eligible.

Appendix G to this part sets forth typical eligible and ineligible items of road construction covered by this section.

§ 152.107 Removal of obstructions.

(a) *General.* The removal or relocation, or both, of obstructions, as defined in § 77.23 as applied to § 77.25 of this chapter, is eligible under the program in cases where definite arangements are made to prevent the obstruction from being recreated. In a case where removal is not feasible, the cost of marking or lighting it is eligible. The removal and relocation of structures necessary for essential airport development is eligible. The removal of structures that are not obstructions under § 77.23 as applied to § 77.27 is eligible when they are located within a runway clear zone.

(b) *Airport hangar.* The removal and relocation of an airport hangar that is an airport hazard (as described in § 152.45

(c) of this part) is eligible, if the re-erected hangar will be substantially identical to the disassembled one.

(c) *Cost of airport hangar relocation.* Whenever a hangar must be relocated (either for clearance of the site for other airport development or to remove a hazard) and the existing structure is to be relocated with or without disassembly, the cost of the relocation is an eligible item of project cost, including costs incidental to the relocation such as necessary footings and floors. However, if the existing structure is to be demolished and a new hangar is to be built, only the cost of demolishing the existing hangar is an eligible item.

§ 152.109 Buildings; utilities; parking areas; landscaping; sidewalks.

(a) *Buildings.* Only buildings or parts of buildings intended to house facilities or activities directly related to the safety of persons at the airport, including fire and rescue equipment buildings, are eligible items under the Airport Development Aid Program. To the extent they are necessary to house snow removal and abrasive spreading equipment, and to provide minimum protection for abrasive materials, field maintenance equipment buildings are eligible items in any airport development project for an airport in a location having a mean daily minimum temperature of zero degrees Fahrenheit, or less, for at least 20 days each year for the 5 years preceding the year when Federal aid is requested under § 152.23 (a) of this part, based on the statistics of the National Weather Service, if available, or other evidence satisfactory to the Administrator.

(b) *Airport utilities.* Airport utility construction, installation, and connection are eligible under the Airport Development Aid Program as follows:

(1) An airport utility serving only eligible areas and facilities is eligible.

(2) An airport utility serving both eligible and ineligible airport areas and facilities is eligible only to the extent of the additional cost of providing the capacity needed for eligible areas and facilities over and above the capacity necessary for the ineligible areas and facilities.

However, a water system is eligible only to the extent necessary to provide fire protection for aircraft operations, and to provide water for a fire and rescue equipment building.

(c) *Public parking facility.* No part of the constructing, altering, or repairing (including grading, drainage, and other site preparation work) of a facility or area that is to be used as a public parking facility for passenger automobiles is eligible for inclusion in a project.

(d) *Landscaping.* Landscaping and turfing are eligible for inclusion in a project when needed to preserve the operational utility of an eligible facility or area, to enhance the environment, or to minimize the adverse effect of the facility on the environment.

(e) *Sidewalks.* The construction of sidewalks is eligible only to the extent that they are incidental to and serve eligible facilities or areas.

§ 152.111 Fences; navigational and landing aids; boundary markers; offsite work.

(a) *Boundary or perimeter fence.* Boundary or perimeter fences for security purposes are eligible for inclusion in a project.

(b) *Blast fence.* A blast fence is eligible for inclusion in a project whenever—

(1) It is necessary for safety at a runway end or a holding area near the end of a runway and its installation would be more economical than the acquiring of additional property interests; or

(2) Its installation for safety at a passenger gate for turboject powered aircraft will result in less separation being needed for gate positions, thereby reducing the need for apron expansion, and it is more economical to build the fence than to expand the apron.

(c) *Relocation of navigational aids.* The relocation of navigational aids is eligible for inclusion in a project whenever necessitated by development on the airport under a program project and the sponsor is responsible under FAA Order 6030.1A.

(d) *Installation of navigation aids.* The installation of navigation aids used by aircraft landing at, or taking off from, the airport is eligible for inclusion in a project.

(e) *Landing aids.* The installation of any of the following landing aids is eligible for inclusion in a project:

(1) Segmented circle.

(2) Wind and landing direction indicators.

(3) Boundary markers.

(f) *Initial runway and taxiway marking.* The initial marking of runway and taxiway systems is eligible for inclusion in a project. The remarking of existing runways or taxiways is eligible if—

(1) Present marking is obsolete under current FAA standards; or

(2) Present marking is obliterated by construction, alteration or repair work included in an airport development project or by the required routing of construction equipment used therein.

However, apron marking that is not allied with runway and taxiway marking systems, is not eligible.

(g) *Offsite work.* The following offsite work performed outside of the boundaries of an airport or airport site is eligible for inclusion in a project:

(1) Removal of obstructions as provided in § 152.107 of this part.

(2) Outfall drainage ditches, and the correction of any damage from their construction.

(3) Relocating of roads and utilities that are airport hazards as defined in § 152.45(c) of this part.

(4) Site preparation for installation of navigation aids.

(5) Constructing and installing utilities.

(6) Lighting of obstructions.

§ 152.113 Maintenance and repair.

(a) *General.* Maintenance work is not airport development as defined in the Airport and Airway Development Act of 1970 and is not eligible for inclusion in the program. Therefore, it is necessary in many cases that a determination be made whether particular proposed development is maintenance or repair. For the purpose of these determinations, maintenance includes any regular or recurring work necessary to preserve existing airport facilities in good condition, any work involved in cleaning or caring for existing airport facilities, and any incidental or minor repair work on existing airport facilities, such as—

(1) Mowing and fertilizing turfed areas;

(2) Trimming and replacing landscaping material;

(3) Cleaning drainage systems including ditches, pipes, catch basins, and replacing and restoring eroded areas, except when caused by act of God or improper design;

(4) Painting buildings (inside and outside) and replacing any damaged items normally anticipated;

(5) Repairing and replacing burned out or broken fixtures and cables, unless major reconstruction is needed;

(6) Paving repairs in localized areas, except where the size of the work is such that it constitutes a major repair item or is part of a reconstruction project; and

(7) Refilling joints and resealing surface of pavements.

(b) *Repair.* Repair includes any work not included in paragraph (a) of this section that is necessary to restore existing airport facilities to good condition or preserve them in good condition.

§ 152.115 Modification of programing standards.

The Director, Airports Service, or the Regional Director concerned may, on individual projects, when necessary for adaptation to meet local conditions, modify any standard set forth in or incorporated into this subpart, if he determines that the modification will provide an acceptable level of safety, economy, durability, or workmanship.

§ 152.121 Applicability.

This subpart prescribes rules and procedures for airport planning projects under the Airport Aid Program. As used in this part, the following meanings apply:

(a) "Airport Master Planning" means the development for planning purposes of information and guidance to determine the extent, type, and nature of development needed at a specific airport. It includes the preparation of an airport layout plan and feasibility studies, and the conduct of such other studies, surveys, and planning actions as may be necessary to determine the short-range, intermediate-range, and long-range aeronautical demands required to be met by a particular airport as a part of a system of airports.

(b) "Airport System Planning" means the development for planning purposes of information and guidance to determine the extent, type, nature, location, and timing of airport development needed in a specific area, and to establish a viable and balanced system of public airports. It includes the identification

of the specific aeronautical role of each airport within the system, development of estimates of systemwide development costs, and the conduct of such studies, surveys, and other planning actions as may be necessary to determine the short-range, intermediate-range, and long-range aeronautical demands required to be met by a particular system of airports.

§ 152.123 Procedures: application; sponsor funds; sponsor force account; third party contracts.

(a) *Application.* An eligible sponsor that desires to obtain Federal aid for eligible airport master planning or airport system planning must submit to the appropriate FAA office an application for Airport Master Planning Grant (FAA Form 5910–1) or an application for Airport System Planning Grant (FAA 5920–1), as appropriate, accompanied by the following:

(1) Except where the sponsor's authority has been previously established, certification by the sponsor's attorney establishing its authority to undertake the planning proposed in the application.

(2) Authorization of sponsor to submit application.

(3) Showing of coordination with other agencies, as required by Office of Management and Budget Circular No. A–95.

(4) Detailed description of the proposed project work.

(5) Estimated project costs and basis upon which they were computed.

(b) *Availability of sponsor funds.* Each sponsor must state in its application that it has on hand, or show that it can obtain as needed, funds to pay all costs of the project that are not to be borne by the United States. If any portion of the funds is to be furnished to or for a sponsor by a State agency or other public agency that is not a sponsor of the project, that agency may, instead of the sponsor, submit the showing that the funds will be provided if the project is approved. The sponsor's share of the estimated costs may consist of or include the value of labor, materials or equipment.

(c) *Sponsor force account.* If the sponsor proposes to accomplish the project work with its own forces, or those of another public or planning agency, it must request approval from the appropriate FAA office. In requesting this approval, the sponsor must submit with its application—

(1) Assurance that adequate competent personnel are available to satisfactorily accomplish the proposed planning;

(2) A firm schedule for timely accomplishment of the project; and

(3) A detailed estimate of costs and charges for professional, technical, or other personnel, and for equipment, material, and other pertinent items of costs. Cost eligibility will be determined in accordance with Office of Management and Budget Circular No. A–87.

(d) *Third party contracts.* An eligible sponsor must submit for approval to the appropriate FAA office any third party contract for engineering and planning services, before commencing the planning project.

§ 152.125 Sponsor eligibility.

(a) *Eligible agency.* To be eligible to apply for a planning grant the sponsor must be—

(1) With respect to an Airport Master Planning project, a public agency which means, for the purposes of this part, a State, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, Guam, or any agency of any of them; a municipality or other political subdivision; or a tax-supported organization; or an Indian tribe or pueblo; and

(2) With respect to an Airport System Planning project, a planning agency designated by the Administrator that is authorized by the laws of the State or States (including the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, and Guam) or political subdivisions concerned to engage in area-wide planning for the areas in which assistance under this subpart is to be used.

(b) *Eligibility requirements.* The sponsor must be legally, financially, and otherwise able to—

(1) Make the certifications, representations, and warranties required in the Application for Airport Master Planning Grant (FAA Form 5910–1), or Application for Airport System Planning Grant (FAA Form 5920–1), as applicable.

(2) Make, keep, and perform the assurances, agreements, and covenants in the grant agreement;

(3) Have, or be able to obtain, enough funds to pay all planning project costs not borne by the United States;

(4) Meet any other applicable requirements of the Airport and Airway Development Act of 1970 and this subpart; and

(5) In the case of an Airport Master Planning project or elements thereof, be legally able to implement the planning that results from the project study.

Where more than one agency applies for a grant for the same or similar planning project, and where identification of the appropriate agency empowered to do the planning is not clear, the Administrator designates the eligible applicant, on the basis of which is best equipped to do the planning.

§ 152.127 Cosponsorship and agency.

(a) *General.* Any two or more agencies that desire to participate in an airport planning project may cosponsor it if at least one meets the applicable eligibility requirements of § 152.125 of this part, and they submit a single application executed by all of them that clearly states the certifications, representations, warranties, and obligations made or assumed by each of them.

(b) *Contribution of funds only.* An agency that desires to participate in an airport planning project only by contributing funds for the project need not become a sponsor or an agent of the sponsor. Any funds contributed by the agency are considered to be funds of the sponsor for the purposes of § 152.125.

(c) *Agreement.* If the sponsors of an airport planning project do not jointly and severally assume the obligations required by § 152.125, they must submit a true copy of an agreement between all of the sponsors, that is acceptable to the Administrator, for incorporation into the grant agreement. Each agreement so submitted must state—

(1) The responsibilities of each sponsor to the others with respect to accomplishing the proposed project;

(2) The obligations to the United States that each sponsor will assume; and

(3) The name of the sponsor who will accept, receive, and disburse grant payments.

(d) *Grant offer to cosponsors.* An offer to the sponsors of a joint project is made in accordance with the agreement between them (incorporated in the offer). By accepting the offer each sponsor assumes only its respective obligations as set forth in the agreement.

(e) *Agency.* A public agency may if authorized by local law act as the agent of another public or planning agency, and a planning agency may if authorized by local law act as the agent of another public or planning agency, with or without participating financially and without becoming a sponsor. The terms and conditions of the agency and the agent's authority to act for the sponsor must be stated in an agency agreement satisfactory to the Administrator. The sponsor must submit a true copy of the agreement with the application. The agent may accept, on behalf of the sponsor, an offer made under § 152.133 of this part only if that acceptance has been specifically and legally authorized by the sponsor's governing body and the authority is specifically set forth in the agency agreement.

(f) *Cosponsors located in different areas.* When the cosponsors of an Airport System Planning project are not located in the same State or other area, they must submit the project application to the appropriate FAA office having jurisdiction over the larger geographical portion of the area that the project will encompass.

§ 152.129 Project eligibility: Airport Master Planning Projects.

(a) *Eligibility: general.* A project for airport master planning is not approved unless—

(1) The application is made with respect to a public airport location that is included in the current National Airport System Plan; and

(2) The proposed planning would, in the opinion of the Administrator, promote the effective location of public airports and the development of an adequate National Airport System Plan.

(b) *Projects in large or medium air traffic hubs.* In order to assure consistency between system and master planning, a project for airport master planning may not be approved—

(1) After July 1, 1973, for purposes of establishing a new airport serving a large or medium air traffic hub, unless in the opinion of the Administrator there is in existence an appropriate system plan identifying the need for the airport and the acceptable alternate locations where it could be located; or

(2) After July 1, 1975, for an existing airport serving a large or medium air traffic hub, unless in the opinion of the Administrator there is in existence an appropriate system plan identifying the need for the airport.

However, a master planning grant for an airport serving a large or medium air traffic hub may be approved in the absence of an existing system plan if, in the opinion of the Administrator, the absence of a system plan is due to the failure of the responsible planning agency to proceed with its development, or an existing system plan is not acceptable.

(c) *Eligible items.* Only the following items (and components thereof) for an airport master plan or a revision thereof, are eligible for inclusion in an airport master planning project:

(1) Inventory of existing airport facilities and related data and plans.
(2) Forecasts of aviation demand.
(3) Demand and capacity analysis.
(4) Facility requirement determinations.
(5) Environmental impact studies.
(6) Site selection.
(7) Airport layout plan.
(8) Land use plan.
(9) Terminal area plan.
(10) Airport access plan.
(11) Schedules of proposed and staged development.
(12) Estimates of development costs.
(13) Economic feasibility studies of proposed development.
(14) Financial plan for development capital.
(15) Printing of master plans.
(16) Costs of public hearings.
(17) Costs of preparing information, as required by the Administrator, for inclusion of a location in the National Airport System Plan and development thereof.
(18) The sponsor's administrative costs incurred where a third party contract is involved, figured in accordance with Office of Management and Budget Circular No. A–87.

§ 152.131 Project eligibility: Airport System Planning Projects.

(a) *Eligibility: general.* A project for airport system planning is not approved unless the proposed planning will, in the opinion of the Administrator, promote the effective location of public airports and development of an adequate National Airport System Plan.

(b) *Eligible items.* Only the following items (and components thereof) for an airport system plan or a revision thereof, are eligible to be included in an airport system planning project:

(1) Inventories of existing airports and related data and plans.
(2) General analysis of land use and ground transportation planning, and environmental considerations.
(3) Development of aviation system demand forecasts.
(4) Analysis of system airspace and access capacity.
(5) General analysis of airfields and terminal areas, and determination of airport requirements.
(6) Recommendation of general locations of new airports within the system.
(7) Development of system schedules of implementation.
(8) Development of system cost estimates.
(9) System economic feasibility studies.
(10) Overall financial plan for development capital.
(11) Printing of system plans.
(12) Costs of public hearings.
(13) Costs of preparing information, as required by the Administrator, for inclusion of a location in the National Airport System Plan and development thereof.
(14) The sponsor's administrative costs incurred where a third party contract is involved, figured in accordance with Office of Management and Budget Circular No. A–87.

§ 152.133 Grant offer and acceptance.

(a) *Offer.* Upon approving a planning grant application, the Administrator makes an offer to the sponsor to pay all or a part of the U.S. share of the allowable project costs. The offer states a definite amount as the maximum obligation of the United States, and is subject to change or withdrawal by the Administrator, at his discretion, at any time before it is accepted. The Planning Grant Agreement (FAA Form 5900–1) is used for making the grant offer.

(b) *Acceptance.* An official of the sponsor must accept the offer for the sponsor within the time prescribed in the offer, and in the required number of counterparts, by signing it in the space provided. The signing official must have been authorized to sign the acceptance by a resolution or ordinance adopted by the sponsor's governing body. The resolution or ordinance must, as appropriate under the local law—

(1) Set forth the terms of the offer at length; or
(2) Have a copy of the offer attached to the resolution or ordinance and incorporated into it by reference.

The sponsor must attach a certified copy of the resolution or ordinance to each executed copy of an accepted offer or grant agreement that it is required to send to the appropriate FAA office.

§ 152.135 Grant agreement; amendment.

(a) *General.* An offer by the Administrator, and acceptance by the sponsor as set forth in § 152.133 of this part, constitute a grant agreement between the sponsor and the United States.

(b) *Changes.* The Administrator and the sponsor may agree to a change in a grant agreement if—

(1) The change does not increase the maximum obligation of the United States under the grant agreement;
(2) The change provides only for airport planning that meets the requirements of § 152.129 or § 152.131; and
(3) The change does not prejudice the interest of the United States.

When a change is agreed to, the Administrator issues an amendment to the grant agreement incorporating the change. The sponsor's acceptance must be in the same manner as that provided in § 152.133(b) of this part.

§ 152.137 Allowable costs.

To be an allowable project cost, for the purpose of figuring the amount of a grant, an item that is paid or incurred must, in the opinion of the Administrator—

(a) Have been necessary to accomplish airport planning in conformity with an approved project and with the terms of the grant agreement for the project;
(b) Be reasonable in amount;
(c) Have been incurred after the date the grant agreement was entered into, except for substantiated and reasonable costs incurred in designing the study effort;
(d) Be supported by satisfactory evidence; and
(e) Be figured in accordance with Office of Management and Budget Circular No. A–87.

§ 152.139 U.S. share of project costs; allocation.

(a) *General.* The U.S. share of the allowable costs of an approved planning project under this subpart may not exceed two-thirds of the costs incurred in the accomplishment of the planning project.

(b) *Limitation on allocation for projects within a single State.* No more than 7.5 percent of the funds made available for planning grants in any fiscal year may be allocated for projects within a single State, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, or Guam.

(c) *Projects encompassing area located in two or more States.* Grants for planning projects encompassing an area located in two or more States are charged to each State in the proportion that the number of square miles the project encompasses in each State bears to the square miles encompassed by the entire project.

§ 152.141 Grant payments.

(a) *Installments.* The U.S. share of planning costs is paid in installments unless the planning grant agreement provides otherwise.

(1) Partial payments may be made, if requested by the sponsor, in total amount not more than 90 percent of the estimated U.S. share of the total estimated cost of planning, or 90 percent of the maximum obligation of the United States stated in the planning grant agreement, whichever amount is the lower.

(2) Partial payments are normally made in amounts large enough to bring the aggregate amount of all partial payments to the estimated U.S. share of the project costs of the planning accomplished on or before the particular application for payment if—

(i) The sponsor certifies that the requested amount of payment is for planning work already accomplished; and
(ii) The sponsor submits the work items completed, if requested by the FAA.

(3) Partial payments may be allowed for project costs of the planning that the sponsor certifies that it expects to accomplish within 30 days after the date of an application therefor, if specific provision for advance payment has been incorporated in the grant agreement.

(b) *Final payment.* The final payment is made upon the request of the sponsor after—

(1) The conditions of the planning grant agreement have been met;

(2) A final delivery and acceptance of all project documents has been made;

(3) Evidence of the cost of each item has been submitted; and

(4) Audit of submitted evidence or audit of the sponsor's records, if considered appropriate by the FAA, has been made.

(c) *Request for payment.* Any request for partial or final payment must be made on the Application and Voucher for Planning Grant Payment (FAA Form 5900–2). If considered necessary by the FAA, the Summary of Planning Project Costs (FAA Form 5900–3) shall be submitted as a supporting document.

§ 152.143 Accounting; and audit of records of sponsors and contractors.

(a) *Accounting record.* Each sponsor shall establish and maintain, for each project, an adequate accounting record to allow appropriate personnel of the FAA to determine all funds received (including funds of the sponsor and funds received from the United States or other sources), and to determine the allowability of all incurred costs of the project. The sponsor shall furnish, on due notice, direct and indirect cost information of each planning project in the following classifications:

(1) Third party contract costs.

(2) Force account costs.

(3) Administrative costs.

(b) *Retention of evidence of payments.* The sponsor shall retain in its files, for a period of 3 years after the date of the final grant payment, documentary evidence of—

(1) Invoices, cost estimates, and payrolls, supporting each item of project costs; and

(2) All payments for items of project costs including vouchers, canceled checks or warrants, and receipts for cash payments.

(c) *Availability of sponsor's records.* The sponsor shall allow the Administrator and the Comptroller General of the United States, or an authorized representative of either of them access to any of its books, documents, papers, and records that are pertinent to grants received for airport planning, for the purposes of accounting and audit. Appropriate FAA personnel may make progress audits at any time during the project, upon notice to the sponsor. If work is suspended on the project for an appreciable period of time, an audit is made before any partial payment. In each case an audit is made before final payment.

(d) *Availability of contractor's records.* The sponsor shall include in each contract of the cost reimbursable type a clause which allows the Administrator and the Comptroller General of the United States, or an authorized representative of either, access to the contractor's records pertinent to the contract for the purposes of accounting and audit.

The reporting and/or recordkeeping requirements contained herein have been approved by the Office of Management and Budget in accordance with the Federal Reports Act of 1942.

APPENDIX A

There is set forth below an itemization of typical eligible and ineligible items of land acquisition as covered by § 152.85 of this part:

TYPICAL ELIGIBLE ITEMS

1. Land for:
(a) Initial acquisition for entire airport developments, including building areas as delineated on the approved airport layout plan.
(b) Expansion of airport facilities.
(c) Clear zones at ends of eligible runways.
(d) Approach lights.
(e) Approach protection.
(f) Airport utilities.
(g) Installation of navigation aids.
(h) Future airport development.
2. Easements for:
(a) Use of airspace by aircraft.
(b) Storm-water runoff.
(c) Powerlines to serve offsite obstruction lights.
(d) Airport utilities.
3. Extinguishment of easements which interfere with airport development.

TYPICAL INELIGIBLE ITEMS

Land required only for industrial and other nonairport purposes.

APPENDIX B

There is set forth below an itemization of typical eligible and ineligible items of site preparation as covered by § 152.87 of this part:

TYPICAL ELIGIBLE ITEMS

1. General site preparation:
(a) Clearing of site.
(b) Grubbing of site.
(c) Grading of site.
(d) Storm drainage of site.
2. Erosion control.
3. Grading to remove obstructions.
4. Site preparation for installing navigation aids.
5. Dredging of seaplane anchorages and channels.
6. Grading extended runway safety areas.

TYPICAL INELIGIBLE ITEMS

Specific site preparation (not a part of an overall site preparation project) for:
1. Hangars and other buildings ineligible under the Act.
2. Public parking facilities for passenger automobiles.
3. Industrial and other nonairport purposes.

APPENDIX C

There is set forth below an itemization of typical eligible and ineligible items of runway paving as covered by § 152.89 of this part:

TYPICAL ELIGIBLE ITEMS

1. New runways for specified loadings.
2. Runway widening or extensions for specified loadings.
3. Reconstruction of existing runways for specified loadings.
4. Resurfacing runways for specified strength or for smoothness.
5. Runway grooving to improve skid resistance.

TYPICAL INELIGIBLE ITEMS

Maintenance-type work, including:
1. Seal coats.
2. Crack filling.
3. Resealing joints.
4. Runway patching.
5. Isolated repair.

APPENDIX D

There is set forth below an itemization of typical eligible and ineligible items of taxiway paving as covered by § 152.95 of this part:

TYPICAL ELIGIBLE ITEMS

1. Basic types of pavement listed as eligible under § 151.89.
2. Taxiway providing access to ends and intermediate points of eligible runways.
3. Bleed-off taxiways.
4. Bypass taxiways.
5. Run-up pads.
6. Primary taxiway systems providing access to hangar areas and other building areas delineated on approved airport layout plan.
7. Secondary taxiways providing access to groups of individual storage hangars and/or multiple-unit tee hangers.

TYPICAL INELIGIBLE ITEMS

1. Basic types of pavement listed as ineligible under § 151.89.
2. Taxiways providing access to an area not offering aircraft storage and/or service to the public.
3. Lead-ins to individual storage hangars.

APPENDIX E

There is set forth below an itemization of typical eligible and ineligible items of apron paving as covered by § 152.97 of this part:

TYPICAL ELIGIBLE ITEMS

1. Basic types of pavement listed as eligible under § 151.89.
2. Loading ramps.
3. Aprons available for public parking, storage, and service or a combination of any of the three.
4. Aprons serving hangars used for public storage of aircraft or service to the public, or both.
5. Aprons for cargo buildings used for public storage or service to the public, or both.

TYPICAL INELIGIBLE ITEMS

1. Basic types of pavement listed as ineligible under § 151.89.
2. Aprons serving installations for nonpublic use.
3. Paving inside a hangar or on the proposed site of a hangar.
4. Aprons for cargo buildings not under Item 5 of "Typical Eligible Items".
5. Apron services (pits or pipes for chemicals).

APPENDIX F

There is set forth below an itemization of typical eligible and ineligible items of airport lighting covered by §§ 152.101 and 152.103 of this part:

TYPICAL ELIGIBLE ITEMS

1. Runway edge lights (high intensity and medium intensity).
2. Touchdown zone and centerline runway lighting.
3. Taxiway lights.
4. Taxiway guidance signs.
5. Obstruction lights.
6. Apron floodlights.
7. Beacons.
8. Wind and landing direction indicators.
9. Electrical ducts and manholes.
10. Transformer or generator vaults.
11. Control panels for field lighting.
12. Control equipment for field lighting.
13. Auxiliary power.
14. Lighting offsite obstructions.
15. Electrical vaults for field lighting.
16. Navigation aids.
17. Lighting entrance roads.

TYPICAL INELIGIBLE ITEMS

1. Horizon lights.
2. Isolated repair and reconstruction of airport lighting.

3. Lighting of public parking area for passenger automobiles.

APPENDIX G

There is set forth below an itemization of typical eligible and ineligible items of road construction covered by § 152.105 of this part:

TYPICAL ELIGIBLE ITEMS

1. Entrance roads.
2. Service roads for access to public areas.
3. Service roads for airport maintenance (including perimeter airport service road within airport boundary and not for general public access).
4. Relocation of roads to permit airport development or expansion or to remove obstructions.

TYPICAL INELIGIBLE ITEMS

1. Offsite roads.
2. Roads to areas of exclusive use.

APPENDIX H

There is set forth below the contract provision required by the regulations of the Secretary of Labor in Parts 5 and 5a of Title 29 of the Code of Federal Regulations. Section 152.55(a) requires sponsors to insert this provision in full in each construction contract.

PROVISION REQUIRED BY THE REGULATIONS OF THE SECRETARY OF LABOR

A. *Minimum wages.* (1) All mechanics and laborers employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act [29 CFR Part 3]), the full amounts due at time of payment computed at wage rates not less than those contained in the wage determination decision(s) of the Secretary of Labor which is (are) attached hereto and made a part thereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics; and the wage determination decision(s) shall be posted by the contractor at the site of the work in a prominent place where it (they) can be easily seen by the workers. For the purpose of this paragraph, contributions made or costs reasonably anticipated under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of subparagraph (4) below. Also for the purpose of this paragraph, regular contributions made or costs incurred for more than a weekly period under plans, funds, or programs, but covering the particular weekly period, are deemed to be constructively made or incurred during such weekly period (29 CFR 5.5(a)(1)(i)).

(2) Any class of laborers or mechanics, including apprentices and trainees, which is not listed in the wage determination(s) and which is to be employed under the contract, shall be classified or reclassified conformably to the wage determination(s), and a report of the action taken shall be sent by the [insert sponsor's name] to the FAA for approval and transmittal to the Secretary of Labor. In the event that the interested parties cannot agree on the proper classification or reclassification of a particular class of laborers and mechanics, including apprentices and trainees, to be used, the question accompanied by the recommendation of the FAA shall be referred to the Secretary of Labor for final determination (29 CFR 5.5(a)(1)(ii)).

(3) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly wage rate and the contractor is obligated to pay a cash equivalent of such a fringe benefit, an hourly cash equivalent thereof shall be established. In the event the interested parties cannot agree upon a cash equivalent of the fringe benefit, the question accompanied by the recommendation of the FAA shall be referred to the Secretary of Labor for determination (29 CFR 5.5(a)(1)(iii)).

(4) If the contractor does not make payments to a trustee or other third person, he may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing benefits under a plan or program of a type expressly listed in the wage determination decision of the Secretary of Labor which is a part of this contract: *Provided, however,* The Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

B. *Withholding: FAA from sponsor.* Pursuant to the terms of the grant agreement between the United States and [insert sponsor's name], relating to Airport Development Aid Project No. ------, and Part 152 of the Federal Aviation Regulations (14 CFR Part 152), the FAA may withhold or cause to be withheld from the [insert sponsor's name] so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices and trainees, employed by the contractor or any subcontractor on the work the full amount of wages required by this contract. In the event of failure to pay any laborer or mechanics, including any apprentice or trainee, employed or working on the site of the work all or part of the wages required by this contract, the FAA may, after written notice to the [insert sponsor's name], take such action as may be necessary to cause the suspension of any further payment or advance of funds until such violations have ceased (29 CFR 5.5(a)(2)).

C. *Payrolls and basic records.* (1) Payrolls and basic records relating thereto will be maintained during the course of the work and preserved for a period of 3 years thereafter for all laborers and mechanics working at the site of the work. Such records will contain the name and address of each such employee, his correct classification, rates of pay (including rates of contributions or costs anticipated of the types described in section 1(b)(2) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found, under 29 CFR 5.5(a)(1)(iv) (see subparagraph (4) of paragraph A above), that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits (29 CFR 5.5(a)(3)(i)).

(2) The contractor will submit weekly a copy of all payrolls to the [insert sponsor's name] for availability to the FAA, as required by § 152.59(a). The copy shall be accompanied by a statement signed by the employer or his agent indicating that the payrolls are correct and complete, that the wage rates contained therein are not less than those determined by the Secretary of Labor and that the classifications set forth for each laborer or mechanic conform with the work he performed. A submission of a "Weekly Statement of Compliance" which is required under this contract and the Copeland regulations of the Secretary of Labor (29 CFR Part 3) and the filing with the initial payroll or any subsequent payroll of a copy of any findings by the Secretary of Labor, under 29 CFR 5.5(a)(1)(iv) (see subparagraph (4) of paragraph A above), shall satisfy this requirement. The prime contractor shall be responsible for the submission of copies of payrolls of all subcontractors. The contractor will make the records required under the labor standards clauses of the contract available for inspection by authorized representatives of the FAA and the Department of Labor, and will permit such representatives to interview employees during working hours on the job (29 CFR 5.5(a)(3)(ii)).

D. *Apprentices and trainees.*—(1) *Apprentices.* Apprentices will be permitted to work as such only when they are registered, individually, under a bona fide apprenticeship program registered with a State apprenticeship agency which is recognized by the Bureau of Apprenticeship and Training, U.S. Department of Labor; or, if no such recognized agency exists in a State, under a program registered with the Bureau of Apprenticeship and Training, U.S. Department of Labor. The allowable ratio of apprentices to journeymen in any craft classification shall not be greater than the ratio permitted to the contractor as to his entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not a trainee as defined in subparagraph (2) of this paragraph, or who is not registered as above, shall be paid the wage rate determined by the Secretary of Labor for the classification of work he actually performed. The contractor or subcontractor will be required to furnish to the [insert sponsor's name] written evidence of the registration of his program and apprentices as well as of the appropriate ratios and wage rates, for the area of construction prior to using any apprentices on the contract work (29 CFR 5.5(a)(4)).

(2) *Trainees.* Trainees will be permitted to work as such when they are bona fide trainees employed pursuant to a program approved by the U.S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training and, where subparagraph (3) of this paragraph is applicable, in accordance with the provisions of Part 5a, 29 CFR, Subtitle A.

(3) *Application of 29 CFR Part 5a.* On contracts in excess of $10,000, the employment of all laborers and mechanics, including apprentices and trainees as defined in 29 CFR Part 5.2(c) shall also be subject to the provisions of 29 CFR Part 5a. Apprentices and trainees shall be hired in accordance with the requirements of 29 CFR Part 5a as set forth in subparagraphs (4), (5), (6), (7), and (8) of this paragraph.

(4) *Apprentice and trainee employment requirements.* (i) The contractor agrees—

(*a*) That he will make a diligent effort to hire for the performance of the contract a number of apprentices or trainees, or both, in each occupation, which bears to the average number of the journeymen in that occupation to be employed in the performance of the contract the applicable ratio as determined by the Secretary of Labor;

(*b*) That he will assure that 25 percent of such apprentices or trainees in each occupation are in their first year of training, where feasible. Feasibility here involves a consideration of the availability of training opportunities for first year apprentices, the hazardous nature of the work for beginning workers, excessive unemployment of apprentices in their second and subsequent years of training; and

(c) That during the performance of the contract he will, to the greatest extent possible, employ the number of apprentices or trainees necessary to meet currently the requirements of subdivisions (a) and (b) of this subparagraph.

(ii) The contractor agrees to maintain records of employment by trade of the number of apprentices and trainees, apprentices and trainees by first year of training, and of journeymen, and the wages paid and hours of work of such apprentices, trainees and journeymen. The contractor agrees to make these records available for inspection upon request of the Department of Labor and the Federal Aviation Administration.

(iii) The contractor who claims compliance based on the criterion stated in subdivision (4)(i)(b) of this paragraph agrees to maintain records of employment, as described in subdivision (ii) of this paragraph on non-Federal and nonfederally assisted construction work done during the performance of this contract in the same labor market area. The contractor agrees to make these records available for inspection upon request of the Department of Labor and the Federal Aviation Administration.

(iv) The contractor agrees to supply one copy of the written notices required in accordance with § 5a.5(iii) at the request of Federal Aviation Administration compliance officers. The contractor also agrees to supply at 3-month intervals during performance of the contract and after completion of contract performance a statement describing steps taken toward making a diligent effort and containing a breakdown by craft, of hours worked and wages paid for first year apprentices and trainees, other apprentices and trainees, and journeymen. One copy of the statement will be sent to the Federal Aviation Administration, and one to the Secretary of Labor.

(v) The contractor agrees to insert in any subcontract under this contract the requirements contained in subdivisions (4) (i), (ii), and (iii). Subparagraphs (5), (6), (7), and (8) shall also be attached to each such contract for the information of the contractor. The term "contractor" as used in such clauses in any subcontract shall mean the subcontractor.

(5) *Criteria for measuring diligent effort.* A contractor will be deemed to have made a "diligent effort" as required by subparagraph (4) of this paragraph if during the performance of his contract he accomplishes at least one of the following three objectives:

(i) The contractor employs on this project a number of apprentices and trainees by craft as required by the contract clause at least equal to the ratios established in accordance with subparagraph (6) of this paragraph.

(ii) The contractor employs, on all his public and private, construction work combined in the labor market area of this project, an average number of apprentices and trainees by craft as required by the contract clauses, at least equal to the ratios established in accordance with subparagraph (6).

(iii) (a) Before commencement of work on the project, the contractor, if covered by a collective bargaining agreement, will give written notice to all joint apprenticeship committees; the local U.S. Employment Security Office; local chapter of the Urban League, or other local organization concerned with minority employment; and the Bureau of Apprenticeship and Training Representative, U.S. Department of Labor, for the locality. The contractor, if not covered by a collective bargaining agreement, will give written notice to all the groups stated above except joint apprenticeship committees; this contractor also will notify all non-joint apprenticeship sponsors in the labor market area.

(b) The notice will include at least the contractor's name and address, the jobsite address, value of contract, expected starting and completion dates, the estimated average number of employees in each occupation to be employed over the duration of the contract, and a statement of his willingness to employ a number of apprentices and trainees at least equal to the ratios established in accordance with subparagraph (6).

(c) The contractor must employ all qualified applicants referred to him through normal channels (such as the Employment Service, the Joint Apprenticeship Committees and, where applicable, minority organizations and apprentice outreach programs who have been delegated this function) at least up to the number of such apprentices and trainees required by the applicable provision of subparagraph (6).

(6) *Determination of ratios of apprentices or trainees to journeymen.* The Secretary of Labor has determined that the applicable ratios of apprentices and trainees to journeymen in any occupation shall be as follows:

(i) In any occupation the applicable ratio of apprentices and trainees to journeymen shall be equal to the predominant ratio for the occupation in the area where the construction is to be undertaken, set forth in collective bargaining agreements or other employment agreements, and available through the Regional Manager for the Bureau of Apprenticeship and Training for the applicable area.

(ii) For any occupation for which no such ratio is found the ratio of apprentices and trainees to journeymen shall be determined by the contractor in accordance with the recommendations set forth in the standards of the National Joint Apprentice Committee for the occupation, which are filed with the U.S. Department of Labor's Bureau of Apprenticeship and Training.

(iii) For any occupation for which no such recommendations are found, the ratio of apprentices and trainees to journeymen shall be at least one apprentice or trainee for every five journeymen.

(7) *Variations, tolerances, and exemptions.* Variations, tolerances, and exemptions from any requirement of this part with respect to any contract or subcontract may be granted when such action is necessary and proper in the public interest, or to prevent injustice, or undue hardship. A request for a variation, tolerance, or exemption may be made in writing by any interested person to the Secretary, U.S. Department of Labor, Washington, D.C. 20210.

(8) *Enforcement.* (i) Each Federal agency concerned shall insure that the contract clauses required by subdivision (4)(i) of this paragraph are inserted in every Federal or federally assisted construction contract subject thereto. Federal agencies administering assistance programs for construction work for which they do not contract directly shall promulgate regulations and procedures necessary to insure that contracts for the construction work subject to subdivision (4)(i) will contain the clauses required thereby.

(ii) Enforcement activities, including the investigation of complaints of violations, to assure compliance with the requirements of this part, shall be the primary duty of the Federal agency awarding the contract or providing the Federal assistance. The Department of Labor will coordinate its efforts with the Federal agencies, as may be necessary, to assure consistent enforcement of the requirements of this part. Enforcement of these provisions shall be in accordance with the procedures outlined in subparagraph (8) of this paragraph.

E. *Compliance with Copeland Regulations.* The contractor shall comply with the Copeland Regulations (29 CFR Part 3) of the Secretary of Labor which are herein incorporated by reference (29 CFR 5.5(a)(5)).

F. *Overtime requirements.* No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any laborer or mechanic in any workweek in which he is employed on such work to work in excess of 8 hours in any calendar day or in excess of 40 hours in such workweek unless such laborer or mechanic received compensation at a rate not less than 1½ times his basic rate of pay for all hours worked in excess of 8 hours in any calendar day or in excess of 40 hours in such workweek, as the case may be (29 CFR 5.5(c)(1)).

G. *Violations; liability for unpaid wages; liquidated damages.* In the event of any violation of paragraph F of this provision, the contractor and any subcontractor responsible therefor shall be liable to any affected employee for his unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed, with respect to each individual laborer or mechanic employed in violation of said paragraph F of this provision, in the sum of $10 for each calendar day on which such employee was required or permitted to work in excess of 8 hours or in excess of the standard workweek of 40 hours without payment of the overtime wages required by said paragraph F of this provision (29 CFR 5.5(c)(2)).

H. *Withholding for unpaid wages and liquidated damages, and priority of payment.* (1) The FAA may withhold or cause to be withheld, from any monies payable on account of work performed by the contractor or subcontractor, such sums as may administratively be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in paragraph G of this provision (29 CFR 5.5(c)(3)).

(2) In the event of failure or refusal of the contractor or any subcontractor to comply with overtime pay requirements of the Contract Work Hours and Safety Standards Act, if the funds withheld by the FAA for the violations are not sufficient to pay fully both the unpaid wages due laborers and mechanics and the liquidated damages due the United States, the available funds shall be used first to compensate the laborers and mechanics for the wages to which they are entitled (or an equitable portion thereof when the funds are not adequate for this purpose); and the balance, if any, shall be used for the payment of liquidated damages (29 CFR 5.14(d)(2)).

I. *Working conditions.* No contractor may require any laborer or mechanic employed in the performance of the contract to work in surroundings or under working conditions that are unsanitary, hazardous, or dangerous to his health or safety as determined under construction safety and health standards (29 CFR Part 1518; 36 F.R. 7340) issued by the Secretary of Labor.

J. *Subcontracts.* The contractor will insert in each of his subcontracts the clauses contained in paragraphs A through K of this provision, and also a clause requiring the subcontractors to include these provisions in any lower tier subcontracts which they may enter into, together with a clause requiring this insertion in any further subcontracts that may in turn be made (29 CFR 5.5(a)(6), 5.5(c)(4)).

K. *Contract termination; debarment.* A breach of paragraphs A through J of this provision may be grounds for termination of the contract. A breach of paragraphs A through E and I may also be grounds for debarment as provided in 29 CFR 5.6 of the regulations of the Secretary of Labor (29 CFR 5.5(a)(7)).

APPENDIX I

Lists of Advisory Circulars Incorporated by § 152.83:

(a) *Circulars available free of charge.*

150/5210-10	Airport Fire and Rescue Equipment Building Guide.
150/5300-6	Airport Design Standards—General Aviation Airports—Basic and General Transport.
150/5325-2B	Airport Design Standards—Air Carrier Airports—Surface Gradient and Line of Sight.
150/5325-4	Runway Length Requirements for Airport Design.
150/5325-6	Effects of Jet Blast.
150/5335-1A	Airport Design Standards—Airports Served by Air Carriers—Taxiways.
150/5340-1C	Marking of Paved Areas on Airports.
150/5340-4B	Installation Details for Centerline and Touchdown Zone Lighting.
150/5340-5A	Segmented Circle Airport Marker System.
150/5340-8	Airport 51-foot Tubular Beacon Tower.
150/5340-13A	High Intensity Runway Lighting System.
150/5340-14B	Economy Approach Lighting Aids, Equipment and Installation Details.
150/5340-15A	Taxiway Edge Lighting System.
150/5340-16B	Medium Intensity Runway Lighting Systems and Visual Approach Slope Indicators for Utility Airports.
150/5340-17A	Standby Power for Non-FAA Airport Lighting Systems.
150/5340-18	Taxiway Guidance Sign System.
150/5340-19	Taxiway Centerline Lighting System.
150/5340-21	Airport Miscellaneous Lighting Visual Aids.
150/5345-1C	Approved Airport Lighting Equipment.
150/5345-2	Specification for L-810 Obstruction Light.
150/5345-3A	Specification for L-821 Airport Lighting Panel for Remote Control of Airport Lighting.
150/5345-4	Specification for L-829 Internally Lighted Airport Taxi Guidance Sign.
150/5345-5	Specification for L-847 Circuit Selector Switch 5,000 Volt 20 Ampere.
150/5345-7B	Specification for L-824 Underground Electrical Cables for Airport Lighting Circuits.
150/5345-9C	Specification for L-819 Fixed Focus Bidirectional High Intensity Runway Light.
150/5345-10C	Specification for L-828 Constant Current Regulator with Stepless Brightness Control.
150/5345-11	Specification for L-812 Static Indoor Type Constant Current Regulator Assembly, 4 kw. and 7½ kw., with Brightness Control for Remote Operation.
150/5345-12A	Specification for L-801 Beacon.
150/5345-13	Specification for L-841 Auxiliary Relay Cabinet Assembly for Pilot Control of Airport Lighting Circuits.
150/5345-15	Specification for L-842 Airport Centerline Light.
150/5345-16	Specification for L-843 Airport In-Runway Touchdown Zone Light.
150/5345-17	Specification for L-845 Semiflush Inset Prismatic Airport Light.
150/5345-18	Specification for L-811 Static Indoor Type Constant Current Regulator Assembly, 4 kw.; with Brightness Control and Runway Selection for Direct Operation.

APPENDIX I—Continued

150/5345-19	Specification for L-838 Semiflush Prismatic Airport Light.
150/5345-20	Specification for L-802 Runway and Strip Light.
150/5345-21	Specification for L-813 Static Indoor Type Constant Current Regulator Assembly; 4 kw. and 7½ kw.; for Remote Operation of Taxiway Lights.
150/5345-22	Specification for L-834 Individual Lamp Series-to-Series Type Insulating Transformer for 5,000 Volt Series Circuit.
150/5345-23	Specification for L-822 Taxiway Edge Light.
150/5345-26A	Specification for L-823 Plug and Receptacle, Cable Connectors.
150/5345-27A	Specification for L-807 8-Foot and 12-Foot Unlighted or Externally Lighted Wind Cone Assemblies.
150/5345-28A	Specification for L-851 Visual Approach Slope Indicators.
150/5345-29A	Specification for L-852 Light Assembly, Airport Taxiway Centerline.
150/5345-30A	Specification for L-846 Electrical Wire for Lighting Circuits to be Installed in Airport Pavements.
150/5345-31A	Specification for L-833 Individual Lamp Series-to-Series Type Insulating Transformer for 600 Volt or 3,000 Volt Series Circuits.
150/5345-33	Specification for L-844 Individual Lamp Series-to-Series Type Insulating Transformer for 5,000 Volt Series Circuit 20/6.6 Amperes 200 Watt.
150/5345-34	Specification for L-839 Individual Lamp Series-to-Series Type Insulating Transformer for 5,000 Volt Series Circuit 6.6/20 Amperes 300 Watt.
150/5345-35	Specification for L-816 Circuit Selector Cabinet Assembly for 600 Volt Series Circuits.
150/5345-36	Specification for L-808 Lighted Wind Tee.
150/5345-37B	FAA Specification for L-850, Light Assembly, Airport Runway Centerline and Touchdown Zone.
150/5345-38	Changes to Airport Lighting Equipment.
150/5345-39A	FAA Specification L-853, Runway and Taxiway Centerline Retroreflective Markers.
150/5345-41	Specification for L-55, Individual Lamp, Series-to-Series Type Insulating Transformer for 5,000 Volt Series Circuit 6.6/6.6 Amperes, 65 Watts.
150/5345-42	FAA Specification L-857, Airport Light Bases, Transformer Housings, and Junction Boxes.
150/5345-43	FAA/DOD Specification L-856, High Intensity Obstruction Lighting System.
150/5345-44A	Specification for L-858 Retroreflective Taxiway Guidance Sign.
150/5360-1	Airport Service Equipment Buildings.

(b) *Circulars for sale at the price stated.*

150/5070-5	Planning the Metropolitan Airport System; $1.25.
150/5070-6	Airport Master Plans; $1.25.
150/5300-4A	Utility Airports; $1.75.
150/5370-1A	Standard Specifications for Construction of Airports; $3.50.
150/5390-1A	Heliport Design Guide; $0.75.

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PART III

DEPARTMENT OF THE INTERIOR

■

GEOLOGICAL SURVEY

■

Operating Regulations for Exploration, Development and Production

Title 30—MINERAL RESOURCES

Chapter II—Geological Survey, Department of the Interior

PART 231—OPERATING REGULATIONS FOR EXPLORATION, DEVELOPMENT, AND PRODUCTION

On March 24, 1971, a notice and text of a proposed revision of the mining operating regulations, governing operations conducted under mineral permits and leases on public and acquired lands of the United States and Indian lands administered by the Department of the Interior, was published in the FEDERAL REGISTER (36 F.R. 5510–5515) for the following purposes:

(1) To update the existing regulations by deleting obsolete provisions and including requirements consistent with modern mining practices;

(2) To add provisions for the protection of the environment during exploratory and mining operations and for reclamation of lands disturbed by such operations;

(3) To revise the procedure for appeals from decisions of the Mining Supervisors; and

(4) To delete provisions pertaining to health and safety of miners since health and safety standards for metal and nonmetallic mines are now contained in 30 CFR Parts 55, 56, and 57.

Interested parties were given 60 days from the date of publication of the notice within which to submit written comments, suggestions, or objections with respect to the proposed revision. The period for submitting written comments, suggestions, or objections was subsequently extended to July 22, 1971, by a notice published in the FEDERAL REGISTER on June 19, 1971 (36 F.R. 11815). After consideration of the views presented, the following changes have been made in the proposed regulations:

1. In § 231.1, the term "oil shale" has been corrected to read "shale oil" when referring to the extraction of shale oil by in situ methods from oil shale.

2. Section 231.2 has been amended to eliminate the definition of "Chief, Branch of Mining Operations" and to change the definition of "Mining Supervisor." These amendments have been made to reflect the recently approved reorganization of the Conservation Division of the Geological Survey. (Departmental Manual Part 120, Chapter 4; Release No. 1373, December 8, 1971.) For the same reason, the title, "Chief, Branch of Mining Operations" has been deleted in paragraph (a) of § 231.3, and in paragraphs (c) (3) and (4) of that section, the title "Chief, Conservation Division of the Geological Survey" has been substituted for the title "Chief, Branch of Mining Operations."

3. In § 231.3, the provision in paragraph (d) authorizing the Mining Supervisor to consult with or solicit and receive advice of the Environmental Protection Agency pertaining to water pollution problems has been deleted since such matters are more appropriately the subject of a memorandum of understanding between this Department and the Environmental Protection Agency. For the same reason, the provisions in paragraph (e) of this section and in paragraph (d) of § 231.4 with respect to consultation by the Mining Supervisor with the Environmental Protection Agency have been deleted. Paragraph (e) of § 231.3 has been amended to provide that the Mining Supervisor in addition to making inspections to determine the adequacy of water pollution control measures shall also make inspections to determine the adequacy of air pollution control measures.

4. Section 231.4 has been changed to make it clear that a lessee's or permittee's obligation, under paragraph (b), pertaining to damage to the environment, surface improvements, and other values is to "avoid, minimize or repair" such damage, and that determination made by the mining supervisor under paragraph (b) will be subject to appeal. Paragraph (c) has been amended to provide that all operations under the regulations shall be consistent with both Federal and State water and air quality standards.

5. Section 231.10(a) has been changed to require that exploration and mining plans be submitted in quintuplicate rather than in triplicate. This change is necessary to assure that the mining supervisor receives sufficient copies of the plans to permit distribution to other interested agencies.

6. In § 231.10(b), which enumerates the items which the mining supervisor may require be included in an exploration plan, the first 17 words: "Depending on the size and nature of the operations and terms and conditions of the permit * * * ," have been deleted as unnecessary since the authority granted to the mining supervisor to require inclusion of the enumerated item is discretionary. For the same reason, the first 17 words, "Depending on the size and nature of the operation and the terms and conditions of the lease * * *" have been deleted from paragraph (c) of this section which enumerates the items which the mining supervisor may require be included in mining plans. Also, the title of paragraphs (b) and (c) have been changed from "Permits" and "Lease" respectively, to the more descriptive titles, "Exploration Plans" and "Mining Plans." The number of maps or aerial photographs that may be required with exploration and mining plans has been increased from two to five because of the need by the mining supervisor and other interested agencies for additional copies of these items.

7. The requirement of § 231.11 that copies of maps of underground workings and surface operations be submitted on "tracing cloth" has been changed to require that such maps be submitted on "reproducible material." Copies of maps on reproducible material will be adequate for the Mining Supervisor's needs. In the requirement that the accuracy of maps furnished to the Mining Supervisor be certified "by a professional engineer, professional land surveyor, or other qualified person", the word "professionally" has been added between the words "other" and "qualified" to make it clear that the accuracy of such maps shall be certified only by those who are professionally qualified to do so.

8. The requirement of § 231.20(a) that all drill holes be logged "by competent geologists or engineers" has been changed to require that drill holes be logged "under supervision of a competent geologist or engineer." The changed requirement is considered to afford adequate protection to the United States and is consistent with present drilling practices. Section 231.20(a) also has been amended to place a limitation of 1 year on the period an operator is required to retain the core from test holes for inspection since retention for a longer period puts an unnecessary burden on the operator.

9. Section 231.20(b) has been changed to make it clear that drill holes shall be "cemented and/or cased" when abandoned, unless other methods of abandonment are approved in advance by the Mining Supervisor.

10. Section 231.20(d) has been changed to make the requirement for equipping drilling equipment with blowout preventers when drilling on lands valuable or potentially valuable for geothermal resources applicable also when drilling on land valuable or potentially valuable for oil and gas since the danger of blowouts exists in both situations.

11. In the requirement of § 231.30 that operators observe the highest standards while conducting mining operations, the term "good practice following the highest standards" has been substituted for the term "the highest standards." Section 231.30, as originally proposed, amended former § 231.12 by substituting "highest standards" for the term "good practice." It was not the purpose of that change to place on an operator any additional obligations to those required in the former regulation. The present change is being made to make it clear that the requirement that an operator observe "good practice" means that he shall follow the highest standards prevailing in the mining industry.

12. Since pillars may not be the only acceptable method for protection of mine workings and overlying deposits, § 231.31 has been amended to authorize the Mining Supervisor to approve other methods for providing such protection.

13. Section 231.34 has been changed by adding the word "underground" in the first sentence to make it clear that this section, which provides for development of leased lands from a mine on adjoining lands, applies only to underground mines on adjoining lands and not to surface mines. The requirement of paragraph (c) for providing free access for inspection of connecting mines on privately owned or controlled lands "at all hours" has been changed to the more reasonable requirement that such access be provided at "any reasonable time."

14. The requirement of § 231.34 that structures within 100 feet of a mine opening be protected against fire has been changed to add the additional requirement that they be constructed of fire resistent material. This change will add a higher degree of safety and is consistent with a similar requirement in 30 CFR Part 57.

15. Section 231.73 *Enforcement of orders*, has been rewritten to require that the Mining Supervisor serve notice on the operator before suspending operations for failure to comply with regulations, terms, and conditions of the permit or lease, the requirements of approved plans, and instructions of the Supervisor. Such advance notice, however, would not be required if the violation threaten immediate, serious or irreparable harm to the environment, mine, or other resources.

16. Section 231.74 has been changed in several respects for the purpose of clarifying the procedure for appeals from orders of the Mining Supervisor. The section has been amended to provide that appeals from a decision of the Director, Geological Survey, or the Commissioner of Indian Affairs under 30 CFR Part 231, may be taken to the Board of Land Appeals in accordance with the Department hearings and appeals procedures in 43 CFR Part 4.

Other suggestions for changes in the proposed regulations were considered but were not adopted.

Effective date. The amended regulations are hereby adopted to take effect at the beginning of the 30th calendar day following the date of publication in the FEDERAL REGISTER.

Dated: May 26, 1972.

W. T. PECORA,
Acting Secretary of the Interior.

ADMINISTRATION OF REGULATIONS AND DEFINITIONS

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231.61 Royalty basis.
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INSPECTION, ISSUANCE OF ORDERS AND ENFORCEMENT OF ORDERS

231.70 Inspection of underground and surface conditions; surveying, estimating, and study.
231.71 Issuance of orders.
231.72 Service of notices, instructions, and orders.
231.73 Enforcement of orders.
231.74 Appeals.

AUTHORITY: The provisions of this Part 231 issued under 35 Stat. 312; 35 Stat. 781, as amended; secs. 32, 6, 26, 41 Stat. 450, 753, 1248; secs. 1, 2, 3, 44 Stat. 301, as amended; secs. 6, 3, 44 Stat. 659, 710; secs. 1, 2, 3, 44 Stat. 1057; 47 Stat. 1487; 49 Stat. 1482, 1250, 1967, 2026; 52 Stat. 347; sec. 10, 53 Stat. 1196, as amended; 56 Stat. 273; sec. 10, 61 Stat. 915; sec. 3, 63 Stat. 683; 64 Stat. 311; 25 U.S.C. 396, 396a–f, 30 U.S.C 189, 271, 281, 293, 359. Interpret or apply secs. 5, 5, 44 Stat. 302, 1058, as amended; 58 Stat. 483–485; 5 U.S.C. 301, 16 U.S.C. 508b, 30 U.S.C. 189, 192c, 271, 281, 293, 359, 43 U.S.C. 387.

ADMINISTRATION OF REGULATIONS AND DEFINITIONS

§ 231.1 Scope and purpose.

(a) The regulations in this part shall govern operations for the discovery, testing, development, mining, and processing of potash, sodium, phosphate, sulphur, asphalt, and oil shale (except for operations for the extraction of shale oil by in situ retorting methods utilizing boreholes or wells) under leases or permits issued for public domain lands pursuant to the regulations in 43 CFR Group 3500. These regulations shall also apply to operations for the discovery, testing, development, mining, and processing of minerals (except coal, oil, and gas) in acquired lands under leases or permits issued pursuant to the regulations in 43 CFR Group 3500 and minerals (except coal, oil, and gas) in tribal and allotted Indian lands leased under the regulations in 25 CFR Parts 171, 172, 173, 174, and 176.

(b) The purpose of the regulations in this part is to promote orderly and efficient prospecting, exploration, testing, development, mining, and processing operations and production practices without waste or avoidable loss of minerals or damage to deposits; to promote the safety, health, and welfare of workmen; to encourage maximum recovery and use of all known mineral resources; to promote operating practices which will avoid, minimize, or correct damage to the environment—land, water and air—and avoid, minimize, or correct hazards to public health and safety; and to obtain a proper record and accounting of all minerals produced.

(c) When the regulations in this part relate to matters included in the regulations in 43 CFR Part 23—Surface Exploration, Mining, and Reclamation of Lands—pertaining to public domain and acquired lands, or 25 CFR Part 177—Surface Exploration, Mining, and Reclamation of Lands—pertaining to Indian lands, the regulations in this part shall be considered as supplemental to the regulations in those parts, and the regulations in those parts shall govern to the extent of any inconsistencies.

CROSS REFERENCE: See Part 211 of this chapter for regulations governing operations under coal permits and leases. See Part 221 of this chapter for regulations governing operations under oil and gas leases and operations for the extraction of shale oil by in situ retorting or other methods utilizing boreholes or wells.

§ 231.2 Definitions.

The terms used in this part shall have the following meanings:

(a) *Secretary.* The Secretary of the Interior.

(b) *Director.* The Director of the Geological Survey, Washington, D.C.

(c) *Mining supervisor.* A registered professional engineer; the representative of the Secretary under administrative direction of the Director through the Chief, Conservation Division, and appropriate Regional Manager, Conservation Division of the Geological Survey, authorized and empowered to regulate operations and to perform other duties prescribed in the regulations in this part, or any subordinate of the Mining Supervisor acting under his direction.

(d) *Lessee.* Any person or persons, partnership, association, corporation, or municipality to whom a mineral lease is issued subject to the regulations in this part, or an assignee of such lease under an approved assignment.

(e) *Permittee.* Any person or persons, partnership, association, corporation, or municipality to whom a mineral prospecting permit is issued subject to the regulations in this part, or an assignee of such permit under an approved assignment.

(f) *Leased lands, leased premises, or leased tract.* Any lands or deposits under a mineral lease and subject to the regulations in this part.

(g) *Permit lands.* Any lands or deposit under a mineral prospecting permit and subject to the regulations in this part.

(h) *Operator.* A lessee or permittee or one conducting operations on the leased or permit lands under the authority of the lessee or permittee.

(i) *Reclamation.* The measures undertaken to bring about the necessary reconditioning or restoration of land or water that has been affected by exploration, testing, mineral development, mining, onsite processing operations, or waste disposal, in ways which will prevent or control onsite and offsite damage to the environment.

§ 231.3 Responsibilities.

(a) Subject to the supervisory authority of the Secretary, the regulations in this part shall be administered by the Director through the Chief, Conservation Division, of the Geological Survey.

(b) The responsibility for health and safety inspections of mines subject to the regulations in this part is vested in the Bureau of Mines in accordance with section 4 of the Federal Metal and Nonmetallic Mine Safety Act (80 Stat. 772, 773; 30 U.S.C. 723) and the Health and Safety Standards contained in Parts 55, 56, and 57, Chapter I, of this title.

(c) The mining supervisor, individually, or through his subordinates is empowered to regulate prospecting, exploration, testing, development, mining, and processing operations under the regulations in this part. The duties of the mining supervisor or his subordinates include the following:

(1) *Inspections; supervision of operations to prevent waste or damage.* Examine frequently leased or permit lands where operations for the discovery, testing, development, mining, or processing of minerals are conducted or are to be conducted; inspect and regulate such operations, including operations at accessory plants, for the purpose of preventing waste of mineral substances or damage to formations and deposits containing them, or damage to other formations, deposits, or nonmineral resources affected by the operations, and insuring that the terms and conditions of the permit or lease and the requirements of the exploration or mining plans are being complied with.

(2) *Compliance with regulations, lease or permit terms, and approved plans.* Require operators to conduct their operations in compliance with the provisions of applicable regulations, the terms and conditions of the leases or permits, and the requirements of approved exploration or mining plans.

(3) *Reports on condition of lands and manner of operations; recommendations for protection of property.* Make reports to the Chief, Conservation Division of the Geological Survey, as to the general condition of lands under permit or lease and the manner in which operations are being conducted and orders or instructions are being complied with, and to submit information and recommendations for protecting the minerals, the mineral-bearing formations and the nonmineral resources.

(4) *Manner and form of records, reports, and notices.* Prescribe, subject to the aproval of the Chief, Conservation Division of the Geological Survey, the manner and form in which records of operations, reports, and notices shall be made.

(5) *Records of production; rentals and royalties.* Obtain and check the records of production of minerals; determine rental and royalty liability of lessees and permittees; collect and deposit rental and royalty payments; and maintain rental and royalty accounts.

(6) *Suspension of operations and production.* Act on applications for suspension of operations or production or both filed pursuant to 43 CFR 3503.3–2(e), and terminate such suspensions which have been granted; and transmit to the Bureau of Indian Affairs for appropriate action applications for suspension of operations or production or both under leases on Indian lands.

(7) *Cessation and abandonment of operations.* Upon receipt of a report of cessation or abandonment of operations, inspect and determine whether the terms and conditions of the permit or lease and the exploration or mining plans have been complied with; and determine and report to the agency having administrative jurisdiction over the lands when the lands have been properly conditioned for abandonment. The mining supervisor, in accordance with applicable regulations, will consult with, or obtain the concurrence of, the authorized officer of the agency having administrative jurisdiction over the lands with respect to compliance by the operator with the surface protection and reclamation requirements of the lease or permit and the exploration or mining plan.

(8) *Trespass involving removal of mineral deposits.* Report to the agency having administrative jurisdiction over the lands any trespass that involves removal of mineral deposits.

(d) Prior to the approval of an exploration or mining plan, the mining supervisor shall consult with the authorized officer of the agency having administrative jurisdiction over the lands with repect to the surface protection and reclamation aspects of the plan.

(e) The mining supervisor shall inspect exploratory and mining operations to determine the adequacy of water management and pollution control measures for the protection and control of the quality of surface and ground water resources and the adequacy of emission control measures for the protection and control of air quality.

(f) The mining supervisor shall issue such orders and instructions not in conflict with the laws of the State in which the leased or permit lands are situated as necessary to assure compliance with the purposes of the regulations in this part.

§ 231.4 General obligations of lessees and permittees.

(a) Operations for the discovery, testing, development, mining, or processing of minerals shall conform to the provisions of applicable regulations, the terms and conditions of the lease or permit, the requirements of approved exploration or mining plans, and the orders and instructions issued by the mining supervisor or his subordinates under the regulations in this part. Lessees and permittees shall take precautions to prevent waste and damage to mineral-bearing formations, and shall take such steps as may be needed to prevent injury to life or health and to provide for the health and welfare of employees.

(b) Lessees and permittees shall take such action as may be needed to avoid, minimize, or repair soil erosion; pollution of air; pollution of surface or ground water; damage to vegetative growth, crops, including privately owned forage, or timber; injury or destruction of fish and wildlife and their habitat; creation of unsafe or hazardous conditions; and damage to improvements, whether owned by the United States, its permittees, licensees or lessees, or by others; and damage to recreational, scenic, historical, and ecological values of the land. The surface of leased or permit lands shall be reclaimed in accordance with the terms and conditions prescribed in the lease or permit and the provisions of the approved exploration or mining plan. Where any question arises as to the necessity for or the adequacy of an action to meet the requirements of this paragraph, the determination of the mining supervisor shall be final, subject to the right of appeal as provided in § 231.74.

(c) All operations conducted under the regulations in this part must be consistent with Federal and State water and air quality standards.

(d) When the mining supervisor determines that a water pollution problem exists, the mining supervisor may require that a lessee or permittee maintain records of the use of water, quantity and quality of waste water produced, and the quantity and quality of waste water disposal, including mine drainage discharge, process wastes and associated wastes. In order to obtain this information, the lessee or permittee may be required to install a suitable monitoring system.

(e) Full reports of accidents, inundations, or fires shall be promptly mailed to the mining supervisor by the operator or his representative. Fatal accidents, accidents threatening damage to the mine, the lands, or the deposits, or accidents which could cause water pollution shall be reported promptly to the mining supervisor by telegram or telephone. The reports required by this section shall be in addition to those required by Parts 55, 56, or 57, Chapter I of this title or other applicable regulations.

(f) Lessees and permittees shall submit the reports required by 25 CFR Part 177; Part 200 of this chapter, and 43 CFR Part 23.

§ 231.5 Public inspection of records.

Geological and geophysical interpretations, maps, and data and commercial and financial information required to be submitted under this part shall not be available for public inspection without the consent of the permittee or lessee so long as the permittee or lessee furnishing such data, or his successors or assignees, continues to hold a permit or lease of the lands involved.

MAPS AND PLANS

§ 231.10 Operating plans.

(a) *General.* Before conducting any operations under a permit or lease, the operator shall submit, in quintuplicate, to the mining supervisor for approval an exploration or mining plan which shall show in detail the proposed exploration, prospecting, testing, development, or mining operations to be conducted. Ex-

ploration and mining plans shall be consistent with and responsive to the requirements of the lease or permit for the protection of nonmineral resources and for the reclamation of the surface of the lands affected by the operations. The mining supervisor shall consult with the other agencies involved, and shall promptly approve the plans or indicate what modifications of the plans are necessary to conform to the provisions of the applicable regulations and the terms and conditions of the permit or lease. No operations shall be conducted except under an approved plan.

(b) *Exploration plans.* The mining supervisor may require that an exploration plan include any or all of the following:

(1) A description of the area within which exploration is to be conducted;

(2) Five copies of a suitable map or aerial photograph showing topographic, cultural, and drainage features;

(3) A statement of proposed exploration methods, i.e., drilling, trenching, etc., and the location of primary support roads and facilities;

(4) A description of measures to be taken to prevent or control fire, soil erosion, pollution of surface and ground water, pollution of air, damage to fish and wildlife or other natural resources, and hazards to public health and safety both during and upon abandonment of exploration activities.

(c) *Mining plans.* The mining supervisor may require that a mining plan include any or all of the following:

(1) A description of the location and area to be affected by the operations;

(2) Five copies of a suitable map, or aerial photograph showing the topography, the area covered by the permit or lease, the name and location of major topographic and cultural features, and the drainage plan away from the area affected;

(3) A statement of proposed methods of operating, including a description of the surface or underground mining methods; the proposed roads or vehicular trails; the size and location of structures and facilities to be built;

(4) An estimate of the quantity of water to be used and pollutants that are expected to enter any receiving waters;

(5) A design for the necessary impoundment, treatment or control of all runoff water and drainage from workings so as to reduce soil erosion and sedimentation and to prevent the pollution of receiving waters;

(6) A description of measures to be taken to prevent or control fire, soil erosion, pollution of surface and ground water, pollution of air, damage to fish and wildlife or other natural resources, and hazards to public health and safety;

(7) A statement of the proposed manner and time of performance of work to reclaim areas disturbed by the operations.

(d) *Revegetation; regrading; backfilling.* In those instances in which the permit or lease requires the revegetation of an area to be affected by operations the exploration or mining plan shall show:

(1) Proposed methods of preparation and fertilizing the soil prior to replanting;

(2) Types and mixtures of shrubs, trees, or tree seedlings, grasses or legumes to be planted; and

(3) Types and methods of planting, including the amount of grasses or legumes per acre, or the number and spacing of trees, or tree seedlings, or combinations of grasses and trees.

If the permit or lease requires regrading and backfilling, the exploration or mining plan shall show the proposed methods and the timing of grading and backfilling of areas of lands affected by the operations.

(e) *Changes in plans.* Exploration and mining plans may be changed by mutual consent of the mining supervisor and the operator at any time to adjust to changed conditions or to correct an oversight. To obtain approval of a changed or supplemental plan the operator shall submit a written statement of the proposed changes or supplement and the justification for the changes proposed.

(f) *Partial plan.* If circumstances warrant, or if development of an exploration or mining plan for the entire operation is dependent upon unknown factors which cannot or will not be determined except during the progress of the operations, a partial plan may be approved and supplemented from time to time. The operator shall not, however, perform any operation except under an approved plan.

§ 231.11 Maps of underground workings and surface operations and equipment.

Maps of underground workings and surface operations shall be drawn to a scale acceptable to the mining supervisor. All maps shall be appropriately marked with reference to Government land marks or lines and elevations with reference to sea level. When required by the mining supervisor vertical projections and cross sections shall accompany plan views. Maps shall be based on accurate surveys made at least annually and as may be necessary at other times. Accurate copies of such maps on reproducible material or prints thereof shall be furnished the mining supervisor when and as required. The maps shall be posted to date and submitted to the mining supervisor at least once each year. The accuracy of maps furnished shall be certified by a professional engineer, professional land surveyor, or other professionally qualified person.

§ 231.12 Other maps.

(a) The operator shall prepare such maps of the leased lands as in the judgment of the mining supervisor are necessary to show the surface boundaries, improvements, and topography, including subsidence resulting from mining, and the geological conditions so far as determined from outcrops, drill holes, exploration or mining. All excavations in each separate bed or deposit shall be shown in such manner that the production of minerals for any royalty period can be accurately ascertained.

(b) In the event of the failure of the operator to furnish the maps required, the mining supervisor shall employ a competent mine surveyor to make a survey and maps of the mine, and the cost thereof shall be charged to and promptly paid by the operator.

(c) If any map submitted by an operator is believed to be incorrect, the mining supervisor may cause a survey to be made, and if the survey shows the map submitted by the operator to be substantially incorrect in whole or in part, the cost of making the survey and preparing the map shall be charged to and promptly paid by the operator.

Bore Holes and Samples

§ 231.20 Core or test hole, cores, samples, cuttings, mill products.

(a) The operator shall submit promptly to the mining supervisor signed copies, in duplicate, of records of all core or test holes made on the leased or permit lands, the records to be in such form that the position and direction of the holes can be accurately located on a map. The records shall include a log of all strata penetrated and conditions encountered, such as water, quicksand, gas, or unusual conditions, and copies of analyses of all samples analyzed from strata penetrated shall be transmitted to the mining supervisor as soon as obtained or at such time as specified by the mining supervisor. All drill holes will be logged under supervision of a competent geologist or engineer, and the lessees will furnish to the mining supervisor a detailed lithologic log of each drill hole and all other in-hole surveys, such as electric logs, gamma ray neutron logs, sonic logs or any other logs produced. The core from test holes shall be retained by the operator for 1 year and shall be available for inspection at the convenience of the mining supervisor, and he shall be privileged to cut such cores and receive samples of such parts as he may deem advisable, or on request of the mining supervisor the operator shall furnish such samples of strata, drill cuttings, and mill products as may be required.

(b) Drill holes for development or holes for prospecting shall be abandoned to the satisfaction of the mining supervisor by cementing and/or casing or by other methods approved in advance by the mining supervisor and in a manner to protect the surface and not to endanger any present or future underground operation or any deposit of oil, gas, other mineral substances, or water strata.

(c) At the option of the mining supervisor or the operator drill holes may be converted to surveillance wells for the purpose of determining the effect of subsequent operations upon the quantity, quality, or pressure of ground water or mine gases.

(d) When drilling on lands valuable or potentially valuable for oil and gas or geothermal resources drilling equipment shall be equipped with blowout control devices acceptable to the mining supervisor before penetrating more than 100

feet of consolidated sediments unless a greater depth is approved in advance by the mining supervisor.

WELFARE AND SAFETY

§ 231.25 Sanitary, welfare, and safety arrangements.

The underground and surface sanitary, welfare, health, and safety arrangements shall be in accordance with the recommendations of the U.S. Public Health Service and the applicable standards in Parts 55, 56, and 57, Chapter I of this title.

CROSS REFERENCE: For regulations of the U.S. Public Health Service, Department of Health, Education, and Welfare, see 42 CFR Chapter I.

MINING METHODS

§ 231.30 Good practice to be observed.

The operator shall observe good practice following the highest standards in prospecting, exploration, testing, development, and mining, sinking wells, shafts, and winzes, driving drifts and tunnels, stoping, blasting, transporting ore and materials, hoisting, the use of explosives, timbering, pumping, and other activities on the leased or permit lands.

§ 231.31 Ultimate maximum recovery; information regarding mineral deposits.

(a) Mining operations shall be conducted in a manner to yield the ultimate maximum recovery of the mineral deposits, consistent with the protection and use of other natural resources and the protection and preservation of the environment—land, water, and air. All shafts, main exits, and passageways, as well as overlying beds or mineral deposits that at a future date may be of economic importance, shall be protected by adequate pillars in the deposit being worked or by such other means as approved by the mining supervisor.

(b) Information obtained regarding the mineral deposit being worked and other mineral deposits on the leased or permit lands shall be fully recorded and a copy of the record furnished to the mining supervisor.

§ 231.32 Pillars left for support.

Sufficient pillars shall be left in first mining to insure the ultimate maximum recovery of mineral deposits when the time arrives for the removal of pillars. Boundary pillars shall in no case be less than 50 feet thick unless otherwise specified in writing by the mining supervisor. Boundary and other main pillars shall be mined only with the written consent or by order of the mining supervisor or his authorized subordinates.

§ 231.33 Boundary pillars and isolated blocks.

(a) If the ore on adjacent lands subject to these regulations has been worked out beyond any boundary pillar, if the water level beyond the pillar is below the lessee's adjacent operations, and if no other hazards exist, the lessee shall, on the written demand of the mining supervisor, mine out and remove all available ore in such boundary pillar, both in the lands covered by the lease and in the adjoining premises, when the mining supervisor determines that it can be mined without undue hardship to the lessee.

(b) If the mining rights in adjoining premises are privately owned or controlled, an agreement may be made with the owners of such interests for the extraction of the ore in the boundary pillars.

(c) Narrow strips of ore between leased lands and the outcrop on other lands subject to these regulations and small blocks of ore adjacent to leased lands that would otherwise be isolated or lost may be mined under the provisions specified in paragraphs (a) and (b) of this section.

§ 231.34 Development on leased tract through adjoining mines as part of a mining unit.

A lessee may mine his leased tract from an adjoining underground mine on land privately owned or controlled or from adjacent leased lands, under the following conditions:

(a) A mine that is on the land privately owned or controlled shall conform to all sections in the regulations in this part.

(b) The only connections between the mine on land privately owned or controlled and the mine on leased land shall be the main haulageways, the ventilationways, and the escapeways. Substantial concrete frames and fireproof doors that may be closed in an emergency and opened from either side shall be installed in each such connection. Other connections through the boundary pillars shall not be made until both mines are about to be exhausted and abandoned. The mining supervisor may waive any of the requirements in this paragraph when, in his judgment, such a waiver would not conflict with the regulations in Part 57, Chapter I of this title and would not entail substantial loss of ore.

(c) Free access for inspection of said connecting mine on land privately owned or controlled shall be given at any reasonable time to the mining supervisor or other representative of the Secretary of the Interior.

(d) If a lessee operating on a lease through a mine on land privately owned or controlled does not maintain the mine in accordance with the operating regulations, operations on the leased land may be ordered stopped or departmental seals applied by the mining supervisor, and the operations on leased lands shall be stopped.

§ 231.35 Minerals soluble in water; brines; mineral taken in solution.

In mining or prospecting deposits of potassium or other minerals soluble in water, all wells, shafts, prospect holes, and other openings shall be adequately protected with neat cement or other suitable materials against the coursing or entrance of water; and the operator shall, on orders of the mining supervisor, backfill with rock or other suitable material to protect the roof from breakage when there is a danger of the entrance of water. On leased or permit lands containing brines, due precaution shall be exercised to prevent the deposits becoming diluted or contaminated by the mixture of water or valueless solution. Where minerals are taken from the earth in solution, such extraction shall not be within 500 feet of the boundary line of the leased lands without the written permission of the mining supervisor.

PROTECTION AGAINST MINE HAZARDS

§ 231.40 Surface openings.

(a) The operator shall substantially fill in, fence, protect or close all surface openings, subsidence holes, surface excavations or workings which are a hazard to people or animals. Such protective measures shall be maintained in a secure condition during the term of the permit or lease. Before abandonment of operations all openings, including water discharge points, shall be closed to the satisfaction of the mining supervisor.

(b) Reclamation or protection of surface areas no longer needed for operations should commence without delay. The mining supervisor shall designate such areas where restoration or protective measures, or both, must be taken.

§ 231.41 Abandonment of underground workings.

No underground workings or part thereof shall be permanently abandoned and rendered inaccessible without the advance and written approval of the mining supervisor.

§ 231.42 Flammable gas and dust.

Mines in which flammable gas is found or explosive dust produced shall be subject to the coal-mining operating regulations in Part 211 of this chapter. An "explosive dust" is a combustible solid in airborne dispersion capable of propagating flame when ignited.

§ 231.43 Fire protection.

All structures within 100 feet of any mine opening shall be protected against fire and constructed of fire resistant material. Flammable material shall not be stored within 100 feet of a mine exit. All shafts shall be fireproof, or adequate fire-control devices, satisfactory to the mining supervisor, shall be installed. All underground offices, stations, shops, magazines, and stores shall be so constructed, equipped, and maintained as to reduce the fire hazard to a minimum. Sufficient fire-fighting apparatus shall be maintained in working condition at the mine exits and at convenient points in the mine workings for fire emergencies. An adequate water supply shall be held in storage tanks or reservoirs for fire emergencies and shall be available for immediate use through connecting pipelines for either surface or underground fires.

MILLING; WASTE FROM MINING OR MILLING

§ 231.50 Milling.

It shall be the duty of the operator to conduct milling operations pursuant to the terms of the lease, the approved mining plan, and the regulations in this part and to use due diligence in the reduction, concentration, or separation of mineral substances by mechanical or chemical

processes, by distillation, by evaporation, or other means so that the percentage of salts, concentrates, oil, or other mineral substances recovered shall be in accordance with approved practices.

§ 231.51 Disposal of waste.

The operator shall dispose of all wastes resulting from the mining, reduction, concentration, or separation of mineral substances in accordance with the terms of the lease, approved mining plan, the regulations in this part, and the directions of the mining supervisor.

PRODUCTION RECORDS AND AUDIT

§ 231.60 Books of account.

Operators shall maintain books in which will be kept a correct account of all ore and rock mined, of all ore put through the mill, of all mineral products produced, and of all ore and mineral products sold and to whom sold, the weight, assay value, moisture content, base price, dates, penalties, and price received, and the percentage of the mineral products recovered and lost shall be shown.

CROSS REFERENCE: See Part 200 of this chapter for reports required to be filed and the forms to be used.

§ 231.61 Royalty basis.

The sale price basis for the determination of the rates and amount of royalty shall not be less than the highest and best obtainable market price of the ore and mineral products, at the usual and customary place of disposing of them at the time of sale, and the right is reserved to the Secretary of the Interior to determine and declare such market price, if it is deemed necessary by him to do so for the protection of the interests of the lessor.

§ 231.62 Audits.

An audit of the lessee's accounts and books may be made annually or at such other times as may be directed by the mining supervisor, by certified public accountants, and at the expense of the lessee. The lessee shall furnish free of cost duplicate copies of such annual or other audits to the mining supervisor, within 30 days after the completion of each auditing.

INSPECTION, ISSUANCE OR ORDERS, AND ENFORCEMENT OF ORDERS

§ 231.70 Inspection of underground and surface conditions; surveying, estimating, and study.

Operators shall provide means at all reasonable hours, either day or night, for the mining supervisor or his representative to inspect or investigate the underground and surface conditions; to conduct surveys; to estimate the amount of ore or mineral product mined; to study the methods of prospecting, exploration, testing, development, processing, and handling that are followed; to determine the volumes, types, and composition of wastes generated, the adequacy of measures for minimizing the amount of such wastes, and the measures for treatment and disposal of such wastes; and to determine whether the terms and conditions of the permit or lease and the requirements of the exploration or mining plan have been complied with.

§ 231.71 Issuance of orders.

Before beginning operations the operator shall inform the mining supervisor in writing of the designation and post office address of the exploration or mining operation, the operator's temporary and permanent post office address, and the name and post office address of the superintendent or other agent who will be in charge of the operations and who will act as the local representative of the operator. The mining supervisor shall also be informed of each change thereafter in the address of the mine office or in the name or address of the local representative.

§ 231.72 Service of notices, instructions, and orders.

The operator shall be considered to have received all notices, instructions, and orders that are mailed to or posted at the mine or mine office, or mailed or handed to the superintendent, the mine foreman, the mine clerk, or higher officials connected with the mine, for transmittal to the operator or his local representative.

§ 231.73 Enforcement of orders.

(a) If the mining supervisor determines that an operator has failed to comply with the regulations in this part, other applicable departmental regulation, the terms and conditions of the permit or lease, the requirements of an approved exploration or mining plan, or with the mining supervisor's orders or instructions, and such noncompliance does not threaten immediate, serious, or irreparable damage to the environment, the mine or the deposit being mined, or other valuable mineral deposits or other resources, the mining supervisor shall serve a notice of noncompliance upon the operator by delivery in person to him or his agent or by certified or registered mail addressed to the operator at his last known address. Failure of the operator to take action in accordance with the notice of noncompliance shall be grounds for suspension by the mining supervisor of operations.

(b) A notice of noncompliance shall specify in what respects the operator has failed to comply with the provisions of applicable regulations, the terms and conditions of the permit or lease, the requirements of an approved exploration or mining plan or the orders and instructions of the mining supervisor, and shall specify the action which must be taken to correct the noncompliance and the time limits within which such action must be taken.

(c) If in the judgment of the mining supervisor such failure to comply with the regulations, the terms and conditions of the permit or lease, the requirements of approved exploration or mining plans, or with the mining supervisor's orders or instructions threatens immediate, serious, or irreparable damage to the environment, the mine or the deposit being mined, or other valuable mineral deposits or other resources, the mining supervisor is authorized, either in writing or orally with written confirmation, to suspend operations without prior notice.

§ 231.74 Appeals.

(a) A party adversely affected by an order of the mining supervisor made pursuant to the provisions of this part shall have a right to appeal to the Director and the further right to appeal to the Board of Land Appeals in the Office of Hearings and Appeals, Office of the Secretary, from an adverse decision of the Director, unless such decision was approved by the Secretary prior to promulgation.

(b) An appeal to the Director may be taken by filing a notice of appeal with the mining supervisor within 30 days from service of the mining supervisor's order. The notice of appeal shall incorporate or be accompanied by such written showing and argument on the facts and laws as the appellant may deem adequate to justify reversal or modification of the order. Within the same 30-day period, the appellant will be permitted to file with the mining supervisor additional statements of reasons and written arguments or briefs.

(c) The mining supervisor shall transmit the appeal and accompanying papers to the Director who will review the record and render such a decision in the case as he deems proper.

(d) Appeals to the Board of Land Appeals shall be made pursuant to procedures outlined in 43 CFR Part, 4, Department Hearings and Appeals Procedures.

(e) Oral argument in any case pending before the Director will be allowed on motion in the discretion of such officer and at a time to be fixed by him.

(f) The procedure for appeals under this part shall be followed for permits and leases on Indian land except that with respect to such permits and leases, the Commissioner of Indian Affairs will exercise the functions vested in the Director. A party adversely affected by a decision of the Commissioner of Indian Affairs under this part shall have a right of appeal to the Board of Land Appeals in the Office of Hearings and Appeals, Office of the Secretary, in accordance with the procedures provided in this section.

(g) With the exception of the time fixed for filing a notice of appeal, the time for filing any document in connection with an appeal may be extended by the officer to whom the appeal is taken. A request for an extension of time must be filed within the time allowed for the filing of the document and must be filed in the same office in which the document in connection with which the extension is requested must be filed.

CROSS REFERENCE: See 43 CFR 23.12 for appeals under 43 CFR Part 23—Surface Exploration, Mining, and Reclamation of Lands. See 25 CFR 177.11 for appeals under 25 CFR Part 177—Surface Exploration, Mining, and Reclamation of Lands.

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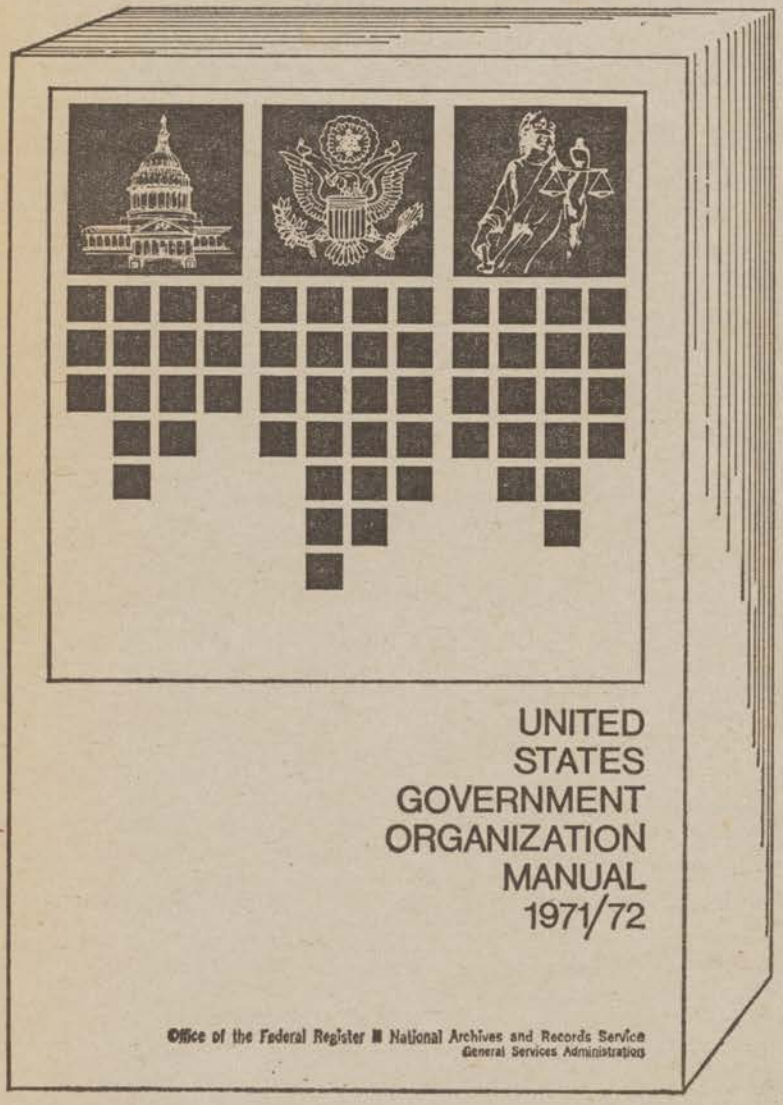

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